

tax which the taxpayer had made for 1951. The Internal Revenue Service did not match the taxpayer's prepayment documents with her return for 1951 and was not aware of the taxpayer's error. In March 1955, an agent of the Internal Revenue Service discovered the possibility of the erroneous overpayment when he assisted the taxpayer in preparing her income-tax return for 1954. At that time the 3-year statutory period of limitation had not expired, and the agent advised the taxpayer to file a claim for refund. The taxpayer, however, did not file her claim until about 2 months later, at which time the statutory period had expired, and the claim could not under the law be allowed. The record on this bill affords no explanation for the taxpayer's failure to file a timely claim for refund.

The statutory period of limitations, which the Congress has included in the revenue system as a matter of sound policy, is essential in order to achieve finality in tax administration. Granting special relief in this case would constitute a discrimination against other taxpayers similarly situated and would create an undesirable precedent.

For these reasons I am constrained to withhold my approval from the bill.

On August 28, 1958:

NORTH COUNTIES HYDRO-ELECTRIC CO.

H. R. 10419. I am withholding my approval from H. R. 10419, for the relief of North Counties Hydro-Electric Co.

The bill provides that—

notwithstanding any statute of limitation, lapse of time, or any prior court decision of this claim by any court of the United States, jurisdiction is hereby conferred upon the United States Court of Claims to hear, determine, and render judgment on the claim of North Counties Hydro-Electric Co., of Illinois, against the United States for damages to its powerplant and dam at Dayton, Ill., sustained as the result of a dam built by the United States on the Illinois River, at Starved Rock near Ottawa, Ill.

The North Counties Hydro-Electric Co. owns a hydroelectric power development on the Fox River near Dayton, Ill. On two occasions, once in 1943 and again in 1952, the company suffered damages to its facilities from ice jams and flooding in the river. It twice brought suit against the United States in the Court of Claims alleging that the ice jam and flooding were caused by the erection by the United States of the Starved Rock Dam, which is located on the Illinois River at a point approximately 14 miles below the corporation's properties. In each instance the decision of the Court of Claims went against the company.

The matters covered by this bill have been fully considered on their merits and decided adversely to the corporation. The company has had its day in court on two occasions and the Court of Claims should not now be required to consider the same matter again.

On September 2, 1958:

SOUTHWEST RESEARCH INSTITUTE

H. R. 1494. I am withholding my approval from H. R. 1494, for the relief of the Southwest Research Institute.

This bill would direct the Secretary of the Treasury to pay to the Southwest

Research Institute such sum, not exceeding \$8,200.84, as the Housing and Home Finance Administrator may approve. This payment would be for services rendered by the beneficiary in excess of its written contract with the Government.

Approval of this legislation could well encourage others to perform unauthorized work and expect payment therefor from the Government. Furthermore, under this bill this organization would receive preferential treatment which has in the past been denied other research contractors who performed work in excess of their contract obligations.

On September 2, 1958:

HARRY N. DUFF

H. R. 1695. I am withholding my approval from H. R. 1695, for the relief of Harry N. Duff.

This bill would confer jurisdiction on the Court of Claims, notwithstanding the applicable statute of limitations, to adjudicate the claim of Harry N. Duff arising out of the failure of the then War Department to retire him, in 1946, for physical disability incurred as an incident of his military service.

The beneficiary of this bill had a long history of spinal trouble and arthritis while serving as an officer in the Army during World War II. He contends that these disabilities were suffered or aggravated as a result of injuries incurred in the service. Although early medical records do not support this contention, in 1945 an Army retiring board found the beneficiary permanently incapacitated for active duty as an incident of the service and recommended his retirement.

Reviewing the case in accordance with applicable regulations, the Office of the Surgeon General of the Army disagreed with the findings of the retiring board and requested it to reconsider the case. Upon reconsideration, the retiring board reaffirmed its previous findings, whereupon the Office of the Surgeon General recommended to the Secretary of War that the findings of the board be disapproved. The recommendation of that office was based on its opinion that a spinal defect and arthritis clearly had existed prior to entry on active duty and had not been aggravated permanently by such service. The findings of the board were disapproved by the Secretary of War, and the beneficiary was thereupon released from active duty in 1946, without entitlement to retired pay. In 1949, however, he was awarded disability compensation by the Veterans' Administration on account of service-aggravation of a congenital defect.

The beneficiary appealed the decision in his case to the statutory Army Disability Review Board. In 1947 this Board affirmed the decision of the Secretary of War and, subsequently, reaffirmed its decision upon a request for reconsideration. In 1955 the Army Board for Correction of Military Records found no error or injustice in the determinations which had been made in the beneficiary's case. He also brought an action in the Court of Claims in 1955, which was dismissed as barred by the statute of limitations.

Traditionally, eligibility for retirement on account of physical disability has been determined by the military services in accordance with general provisions of law. Appellate review of these determinations has been provided within the executive branch by means of statutory boards such as the Disability Review Board and the Board for Correction of Military Records.

In recent years the Court of Claims has been petitioned in various cases to award disability retirement to individuals who have been found not entitled to such pay by the Secretary of the military department concerned. In consistently denying these petitions, the court has stated, in effect, that, under the statutory procedures for determining and reviewing entitlement to retirement, it has jurisdiction only in cases where it can be shown that the cognizant military Secretary has acted arbitrarily, capriciously, or plainly contrary to law.

I believe that this rule which the Court of Claims has adopted is a sound one. It conforms to an important principle underlying judicial review of administrative decisions; namely, that the courts will not substitute their judgment for that of the experienced officials who have been given adjudicative responsibility by law. For this reason and since there is no evidence in this case that the Secretary of War acted arbitrarily, capriciously, or contrary to law, I can see no justification for special legislation which would require the Court of Claims to grant the beneficiary a de novo hearing.

Approval of this bill would discriminate against the many hundreds of individuals who have had their claims for disability retirement denied without benefit of judicial review. It would also establish an undesirable precedent leading to other exceptions to the orderly procedure which is now provided for under general law and which currently governs the hundreds of similar cases that are adjudicated each year.

On September 2, 1958:

TOLEY'S CHARTER BOATS, INC., ETC.

H. R. 3193. I am withholding my approval from H. R. 3193, entitled "For the relief of Toley's Charter Boats, Inc., Toley Engebretsen, and Harvey Homlar."

The bill would direct the Secretary of the Treasury to pay the sum of \$37.65 to Toley's Charter Boats, Inc., of Salerno, Fla., and the sum of \$3,227.10 to Toley Engebretsen and Harvey Homlar, of Salerno, Fla., in full settlement of all claims of the named persons for a refund of taxes paid pursuant to section 3469 of the Internal Revenue Code of 1939, relating to tax on the transportation of persons.

The records of the Treasury Department show that the amounts which this bill would refund to the claimants were paid as transportation taxes with respect to fees charged for the charter of fishing boats by the claimants at various times between January 1945 and November 1951. On March 31, 1953, the District Court for the Northern District of Florida held that the transportation tax was not applicable to amounts paid for fishing parties in situations similar to the one involved in this bill. On the date of this decision, the claimants could have