85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
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CHARLES J. JENNINGS

FEBRUARY 27, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. POFF, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7267]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7267) for the relief of Charles J. Jennings, having considered the same, report favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof:

That Second Lieutenant Charles J. Jennings, Army of the United States, retires (service number O1641433), is relieved of liability to repay to the United States the sum of $10,744.41, which was paid to him as retired pay for the period beginning July 20, 1950, and ending August 3, 1955, in violation of section 212 of the Act of June 30, 1932, as amended (5 U. S. C. 59a). In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for any amounts for which liability is relieved by this Act.

SEC. 2. The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to the said Charles J. Jennings an amount equal to all amounts paid by him to the United States, or withheld from his retired pay, before the date of enactment of this Act on account of liability of which he is relieved by the first section of this Act.

SEC. 3. Notwithstanding any contract no money shall be paid, or delivered to, or received by any agent or attorney on account of services rendered in connection with this matter. Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000.

STATEMENT OF FACTS

Second Lieutenant Jennings, United States Army, was found to be permanently incapacitated for service as a result of severe, chronic, bronchial asthma incurred in June 1944 as an incident of service in the Army but not as a result of combat with an enemy of the United States or the explosion of an instrumentality of war. He was accordingly placed on the retired list, United States Army.

This retirement status entitled Mr. Jennings to receive monthly pay of $143.75. This was increased to $172.50 July 1, 1946; to $179.40 May 1, 1952; and to $190.16 April 1, 1955. Mr. Jennings was never a member of the United States Army Reserve.

On July 20, 1950, Mr. Jennings was employed at the United States Army Signal School, Fort Monmouth, N. J. At the time of his application for this job, Jennings reported that he was receiving retirement pay from the Army.

On November 4, 1953, Mr. Jennings submitted a statement (as required) to the Department of Army certifying that he was holding a civilian position in the United States Government. On June 4, 1956, he again submitted such a report.

On April 2, 1957, a letter was sent to Mr. Jennings from the Retired Pay Division of the United States Army Finance Center. The letter informed Mr. Jennings that he was subject to dual salary restrictions imposed by section 212 of the act of June 1932 which places a restriction on the combined total salary and retired pay being received for or on account of commissioned service. They informed Mr. Jennings that he owed $10,744.41 in overpayment of retired pay.

Beginning in May of 1957, two-thirds of Mr. Jennings' monthly retirement pay is being deducted to satisfy this indebtedness.

At the present time, Mr. Jennings is in ill health. He is presently 45 years old and has already suffered 4 strokes. At present, he is unable to work and owes his employer 30 days of advanced sick leave. Mr. Jennings' only present income is the retirement pay and two-thirds of that is being deducted leaving only $63.38 a month. He is married and has an 11-year-old daughter.

The Department of the Army has no objection to the enactment of the bill for relief, but does propose the bill be amended.

The bill has been amended to conform with the Army recommendation and therefore, your committee recommend favorable consideration of the bill as amended.

DEPARTMENT OF THE ARMY,
Washington, D. C., October 11, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of the Army for the views of the Department of the Army with respect to H. R. 7267, 85th Congress, a bill for the relief of Charles J. Jennings.

This bill provides as follows:

"That Second Lieutenant Charles J. Jennings, United States Army, retired (serial number O1641433), is relieved of liability to repay to the United States the sum of $10,744.41, which was erroneously paid to him as retired pay for the period beginning July 20, 1950, and ending August 3, 1955, in violation of section 212 of the Act approved June 30, 1932 (5 U. S. C. 59a). In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for any amounts for which liability is relieved by this Act."

The Department of the Army has no objection to the above-mentioned bill.

Records of the Department of the Army show that Charles John Jennings was born on March 14, 1911, in Emmetsburg, Iowa. On April 11, 1934, he enlisted in the Regular Army of the United States in the grade of private. He reenlisted in the Regular Army and continued to serve on active duty until February 12, 1940, when he was discharged from the Regular Army, and enlisted in the Regular Army Reserve. On September 11, 1940, he again enlisted in the Regular Army, and remained on active duty until December 30, 1942, when he was discharged from the Regular Army for the convenience of the Government, in the grade of first sergeant, in order to accept an appointment as a second lieutenant in the Army of the United States. He was appointed a second lieutenant in the Army of the United States on December 31, 1942, and remained on active duty from that date until February 1, 1946. On the latter date, he was released from active duty by reason of physical disability.

Lieutenant Jennings was found to be permanently incapacitated for active service as a result of severe, chronic, bronchial asthma incurred in June 1944 as an incident of service in the Army but not as a result of combat with an enemy of the United States or the explosion of an instrumentality of war.

Accordingly, Lieutenant Jennings was placed on the retired list, Army of the United States. The War Department (now Department of the Army), certified to the Veterans' Administration that he had contracted a permanent disability in the line of duty and was entitled to retirement as a second lieutenant, effective February 2, 1946, in the amount of $143.75. His entitlement to disability retired pay accrued under sections 1245 and 1275, Revised Statutes, as applied to Army of the United States officers by section 5 of the act of April 3, 1939 (53 Stat. 557). These sections provide for the retirement of any officer at 75 percent of his basic pay, when he "has become incapable of performing the duties of his office." Lieutenant Jennings' retired pay was increased to $172.50 per month on July 1, 1946, to $179.40 per month on May 1, 1952, and to $190.16 per month on April 1, 1955.

Lieutenant Jennings had occupied a military status as a commissioned officer in the Army of the United States without component. He held this appointment under the act of September 22, 1941 (55 Stat. 728) which provided for temporary Army of the United States commissions which would terminate, unless sooner vacated, after the emergency plus 6 months. The Comptroller General of the United States ruled that under law, all Army of the United States commissions without component, terminated on July 1, 1948 (35 Comp. Gen. 191 (1955)). Accordingly, although he still receives disability retirement pay, Mr. Jennings has technically had no military status since June 30, 1948. It is important to note that the only commission he ever held was in the Army of the United States, and that he was not a member of a Reserve component of the Army upon retirement.

On April 25, 1950, Mr. Jennings was sent a notice of his right to elect certain options for retirement pay benefits under section 411 of the Career Compensation Act of 1949 (63 Stat. 802, 823). At that time, in accordance with law, it was determined that when retired, he was under a disability of 30 percent. Mr. Jennings elected to continue to receive his then monthly disability retirement pay of $172.50, as the highest of the available options.

On November 4, 1953, Mr. Jennings submitted a required statement to the Department of the Army, certifying that he was holding a civilian position in the United States Government. On June 4, 1956, he again submitted such a report indicating that he was holding a civilian position in the United States Government. On April 2, 1957, the following letter was sent to Mr. Jennings from the Retired Pay Division of the United States Army Finance Center:

"1. Reference is made to your employment with the United States Army Signal School, Fort Monmouth, N. J., for the period July 20, 1950, through August 3, 1955.

"2. The Adjutant General has furnished this headquarters with the information that your disability was not incurred in combat with an enemy of the United States nor caused by an instrumentality of war. In view of this, you are subject to the dual salary restrictions imposed by section 212 of the act of June 1932, as amended, which places a restriction on the combined total salary and retired pay being received for or on account of commissioned service.

"3. Prior to August 4, 1955, the per annum rate of the civilian salary when combined with the rate of retired pay could not exceed $3,000. In the event the salary of the civilian position was less than $3,000 per annum and its rate when combined with the retired pay exceeding $3,000 per annum, deductions were made from retired pay to bring the combined total within the $3,000 limitation. The civilian salary was required to be paid in full. When the per annum rate of the civilian position was at a rate of $3,000 or more and retired pay was less than $3,000, the retired pay had to be waived during the period of employment. The civilian salary was paid in full. When the retired pay amounted to or exceeded the rate of $3,000, member could elect to receive either the salary of the civilian position or retired pay.

"4. Under date August 4, 1955, there was enacted into law, Public Law 239, 84th Congress, amending the provisions of section 212, of the act of June 30, 1932, increasing the restriction on combined civilian salary and retired pay being received on account of commissioned service from $3,000 to $10,000. This action does not affect retired pay prior to August 4, 1955, the date of enactment thereof.

"5. Since this headquarters was not previously notified of your civilian employment, an overpayment of retired pay exists as follows:

Period	Rate Pd	Rate Due	Rate of Civ Salary	Rate of RP O/Pd	Total
20 Jul 50-30 Apr 52	$172.50	0	0/3,000.00	$172.50	$3,685.75
1 May 52-31 Mar 55	179.40	0	0/3,000.00	179.40	6,279.00
1 Apr 55-3 Aug 55	190.16	0	0/3,000.00	190.16	779.66
					10,744.41

"6. It is requested that a remittance of $10,744.41, drawn payable to the Retired Pay Division, be forwarded to this headquarters to liquidate your indebtedness.

"7. In the event repayment is not made, this headquarters will have no alternative but to invoke Public Law 497, 83d Congress, which provides that when it is determined that any member of the Army or of a Reserve component is indebted to the United States as the result

of any erroneous payment, the amount of the indebtedness may be collected in monthly installments by deduction from the current pay account of such person. The act further provides that a maximum of two-thirds of net retired pay may be withheld regardless of when the indebtedness was incurred. The amount of retired pay that would be withheld in your case is $126.78, unless such action would cause undue hardship, in which case a complete financial statement of current assets, including monthly income from all sources, and monthly expenditures will be required to support a claim of excessive hardship, as well as a statement of the maximum monthly deduction that can be afforded.

"8. Your remittance or reply should be forwarded to this headquarters within 10 days with a copy of this letter for identification purposes."

Mr. Jennings failed to remit the amount of his indebtedness or claim any specific hardship resulting from deductions from his retired pay. Accordingly, collection action was initiated by the Department of the Army under the provisions of the act of July 15, 1954 (68 Stat. 482). Beginning with May 1957, $126.78 a month (two-thirds of his present retired pay of $190.16 per month), is being deducted from his monthly retired pay. The subject bill seeks to relieve Mr. Jennings of liability to repay to the United States the amount of money he received in contravention of the dual compensation provisions of section 212 of the Economy Act of June 30, 1932 (47 Stat. 382, 406, as amended, 5 U. S. C. 59a).

Section 212 of the Economy Act (47 Stat. 406) provides that:

"(a) After the date of the enactment of this Act, no person holding a civilian office or position, appointive or elective, under the United States Government * * * shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services * * * at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than $3,000; and when the retired pay amounts to or exceeds the rate of $3,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. As used in this section, the term 'retired pay' shall be construed to include credits for all service that lawfully may enter into the computation thereof.

"(b) This section shall not apply to any person whose retired pay, plus civilian pay, amounts to less than $3,000: *Provided, That this section shall not apply to regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an explosion of an instrumentality of war in line of duty during an enlistment or employment* * * *." [Emphasis supplied.]

Effective January 1, 1951, subsection 212 (b), supra, was amended by the act of February 20, 1954 (68 Stat. 18), by substituting the following for the above underscored portion:

"*Provided*, That this section shall not apply to any Regular or emergency commissioned officer retired for disability (1) incurred in combat with an enemy of the United States, or (2) caused by an instrumentality of war and incurred in line of duty during an enlistment or employment * * *."

Section 212 was further amended by the act of August 4, 1955 (69 Stat. 498), to raise the limit of total compensation an individual may receive from $3,000 to $10,000. However, the amendment of August 4, 1955, has no retroactive application and does not affect the liabilities incurred by Mr. Jennings prior to that date.

In 1954, the United States Court of Claims decided the case of *Tanner et al.* v. *United States* (129 Ct. Cl. 792 (1954)) which was to have a far-reaching effect on the application of the dual-compensation provision. The plaintiffs brought suit against the United States to resolve the question of whether an Army or Air Force Reserve officer on the retired list, who was otherwise entitled to retired pay, may receive such pay if the officer holds civilian employment with the Government for which he was paid $3,000 or more per year. The Court cited section 212 of the Economy Act which prohibits such payments, and then discussed the effect of the act of July 1, 1947 (61 Stat. 238, 239) which provided, in part, as follows:

"*Provided further*, That no existing law shall be construed to prevent any member of the Officers' Reserve Corps or the Enlisted Reserve Corps from accepting employment in any civil branch of the public service nor from receiving the pay incident to such employment in addition to any pay and allowances to which he may be entitled under the laws relating to the Officers' Reserve Corps and Enlisted Reserve Corps, nor as prohibiting him from practicing his civilian profession or occupation before or in connection with any department of the Federal Government."

The Court pointed out that the plaintiffs in this action had qualified for retirement under title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1087), which authorized retired pay for officers who have reached the age of 60 and have completed 20 or more years of satisfactory Federal service. The Court found that the term "pay and allowances" in the above-quoted act included retirement pay under title III, and therefore, granted the plaintiffs' motion for summary judgment.

The Comptroller General of the United States ruled on March 2, 1956, on the effect of the *Tanner case* (35 Comp. Gen. 501). His decision points out that the above-quoted section of the act of July 1, 1947, applied only to members of the Officers' Reserve Corps or the Enlisted Reserve Corps (another section of the act of July 1, 1947, applied to National Guard officers), until January 1, 1953, when it was amended by section 804 of the Armed Forces Reserve Act of 1952 (66 Stat. 506), which extended the provision to "any member of the Reserve components of the Armed Forces." In view of the fact that several other dual compensation cases were pending, the Comptroller General ruled that the decision in the Tanner case would be followed "as a precedent for retroactive and prospective payment of military retired pay (in addition to civilian compensation) in those cases where the claimant, being otherwise entitled, has been, or may be, granted retired pay under title III of the act of June 29, 1948 [The Army and Air Force Vitalization and Retirement Equalization Act of 1948], and has been during the period covered by the payment, a de jure member of a Reserve component of the Armed Forces, provided that for any period prior to January 1, 1953, payment will be approved only if the claimant was a de jure member of the Officers' Reserve Corps or the National Guard during the period involved, since mem-

bers of other Reserve components were not brought within the provisions of the 1947 act until that date."

The latest decision on this question was made by the Comptroller General on June 11, 1957. The following is the text of that decision, which incorporates references to the relevant court decisions to date:

"Reference is made to decision to you dated March 2, 1956, B–123382 (35 Comp. Gen. 497), advising that we would follow the case of *Tanner* v. *United States* (129 C. Cls. 792), as a precedent for retroactive and prospective payment of military retired pay (in addition to civilian compensation) only in those cases where the person concerned is otherwise entitled and has been, or may be, granted retired pay under title III of the act of June 29, 1948 (62 Stat. 1087).

"Specific reference was made in the decision of March 2, 1956, to other cases then pending before the Court of Claims which involved dual compensation questions relating to those decided in the Tanner case. Among the cases mentioned was that of *Madden* v. *United States* (C. Cls. 454–55). Madden was retired for physical disability under section 5 of the act of April 3, 1939 (53 Stat. 557), and, as there provided, was granted the same retired pay as a member of the Regular Army of corresponding grade and length of service retired for physical disability. In meeting the Government's argument in the Tanner case that a decision in the plaintiff's favor would result in giving retired Reserve officers a dual compensation advantage not enjoyed by retired officers of the Regular Army, the plaintiff argued in briefs filed with the Court of Claims, and in the Supreme Court of the United States in opposition to the Government's petition for a writ of certiorari, that only persons granted retired pay under title III of the 1948 act were affected and that they received but a fraction of the retired pay paid to retired officers of the Regular Army. We felt that this matter should be considered again by the court in another case, such as the Madden case, where the plaintiff received the same rate of retired pay as a retired officer of the Regular Army of corresponding grade and longevity, especially in view of the statement in the case of *Leonard* v. *United States* (C. Cls. No. 182–55), decided November 7, 1956, that the act of July 1, 1947 (10 U. S. C. 371 (b) (1952 ed.)), on which the plaintiff in this type of case relies, serves to exempt 'longevity retired members' of Reserve components from the dual compensation restrictions of section 212 of the Economy Act of June 30, 1932, as amended (5 U. S. C. 59a). However, in the Madden case judgment was entered on May 8, 1957, in the plaintiff's favor on tipulation between the parties.

"The same dual compensation question as that involved in the Madden case was considered in the case of *United States of America* v. *Dr. John J. Toma*, in the United States District Court, Southern District of California, Central Division, No. 20360–BM (148 F. Supp. 489 (1957)), Dr. Toma, also, having been retired under the 1939 act. Relying on the Tanner case, the court, in an opinion rendered February 14, 1957, decided that the defendant, Toma, was not indebted to the Government for the military retired pay received by him while he was employed by the Government as a civilian at a salary which, together with the retired pay, was in excess of the dual compensation limitation of the Economy Act. It is understood that the Solicitor General decided on March 26, 1957, that an appeal would not be taken from that decision.

"In such circumstances, we have decided to extend the rule stated in Volume 35 Comptroller General, page 497, to make it apply to cases of reservists whose retired pay is authorized under statutory provisions other than those of title III of the act of June 29, 1948 (now 10 U. S. C., ch. 67), in addition to those already within the rule whose retired pay is authorized under that title. Our decision of March 2, 1956, is modified accordingly."

The result of this decision is that retired members of Reserve components are now exempted from the dual compensation restrictions of the Economy Act, as amended. However, Regular Army officers and officers who held temporary appointments in the Army of the United States without component, are still subject to dual compensation restrictions.

Mr. Jennings acted in good faith at all times. In his application for civilian Federal employment, dated July 20, 1950, he reported that he was receiving retired pay from the Army. On November 4, 1953, he reported the fact of his civilian employment with the Government, while receiving retired pay. No action was taken on his case until he again submitted such a report on June 4, 1956. This delay was occasioned through no fault of his own. His combined income from his civilian job and his retirement pay has never exceeded $10,000, the limit on dual compensation put into effect by the act of August 4, 1955 (69 Stat. 498). The Committee on Veterans' Affairs, House of Representatives, in reporting favorably upon that bill (H. Rept. 888 84th Cong., 1st sess., p. 2 (1955)), stated pertinently that:

"The $3,000 limitation in section 212 of Public Law 212 was determined to be a reasonable maximum by the 72d Congress in 1930. In 25 years, economic conditions have changed to such a degree as to make the present restriction of $3,000 totally unrealistic. * * * As can be readily seen from the tables reproduced below [current pay for classified civil-service employees and retired pay for military personnel], the existing limitation of $3,000 virtually bars a retired man or woman from employment with the Government and in many cases it means the loss of valuable skills which could and should be utilized. It is for this reason that the committee has increased the ceiling to $10,000."

For the foregoing reasons, the Department of the Army has no objection to the enactment of the subject bill, but recommends that it be amended by striking out everything after the enacting clause and inserting the following:

"That Second Lieutenant Charles J. Jennings, Army of the United States, retired (service number O1641433), is relieved of liability to repay to the United States the sum of $10,744.41, which was paid to him as retired pay for the period beginning July 20, 1950 and ending August 3, 1955, in violation of section 212 of the Act of June 30, 1932, as amended (5 U. S. C. 59a). In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for any amounts for which liability is relieved by this Act.

"SEC. 2. The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to the said Charles J. Jennings an amount equal to all amounts paid by him to the United States, or withheld from his retired pay, before the date of enactment

of this Act on account of liability of which he is relieved by the first section of this Act.

"SEC. 3. Notwithstanding any contract no money shall be paid, or delivered to, or received by any agent or attorney on account of services rendered in connection with this matter. Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000."

The fiscal effect of this bill, if enacted, will be to relieve Mr. Jennings of the liability to repay to the United States the sum of $10,744.41.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

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