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SENATE

{ REPORT
No. 91-1060

THOMAS J. CONDON

JULY 30, 1970.—Ordered to be printed

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

REPORT

[To accompany H.R. 9092]

The Committee on the Judiciary, to which was referred the bill (H.R. 9092) for the relief of Thomas J. Condon, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize the payment to Thomas J. Condon of East Weymouth, Mass., the amount of additional compensation he would have been paid in the period from October 1, 1946, to January 1, 1948, had he been placed in the appropriate salary grade and received the correct compensation authorized in the act of July 31, 1946, as amended. The amended bill would authorize an appropriate deduction from the amount so ascertained for civil service retirement.

STATEMENT

In its report to the House Judiciary Committee, the Post Office Department stated that it favored enactment of the bill, and in its report, the U.S. Civil Service Commission stated that it too favored the bill. The Comptroller General questioned relief on the ground that it would in effect require the waiver of a statute of limitations.

Mr. Thomas J. Condon, a veteran of World War II, was appointed a temporary substitute carrier, grade 1, on December 31, 1945. In that position he was authorized compensation at 84 cents an hour; with enactment of Public Law 577, approved July 31, 1946, his salary

was adjusted to grade 3, \$1.14 per hour; with the enactment of Public Law 492, approved April 29, 1950, which retroactively increased the benefits previously provided by the 1946 law for certain employees who, by reason of their military service, lost opportunity for probational appointment, Mr. Condon's salary should have been adjusted to grade 8, \$1.39 per hour, retroactive to October 1, 1946; through administrative error this was not done.

Between the enactment of Public Law 477 in 1946 and the enactment of Public Law 492 in 1950, Mr. Condon was made a regular employee and given a salary adjustment of four grades, but without the retroactive feature which would have given him the benefits to which he was entitled under the 1946 law.

The error in placement and pay was not recognized by the Department until after the 10-year period (31 U.S.C. 71a) for administrative adjustment had expired.

An investigation by the Department later revealed that Mr. Condon, on many occasions, did informally seek adjustment of his salary within the period prescribed by the statute and that a formal claim was filed after the statute of limitations had run. Accordingly, the Department is without authority to correct the error by paying the amount of back-pay due carrier Condon.

In its report to the House Judiciary Committee, the Post Office Department concluded that Mr. Condon was entitled to relief and stated:

In our view, Condon should not be denied the benefits to which he is entitled merely because of the lapse of time in the formal filing of his claim. It is solely by administrative error that he is being denied benefits which have already been made to other similarly entitled employees. For this reason, we recommend approval of the legislation.

As has been noted, the Comptroller General in his report to the House committee has questioned relief on the ground that payment of the amount claimed by Mr. Condon is presently barred by a 10-year statute of limitations. The committee has carefully considered this objection and has concluded that both the report of the Post Office Department and the Civil Service Commission provide the basis for legislative waiver in this instance. Both the Post Office Department and the Civil Service Commission note that Mr. Condon made repeated efforts to clarify and correct the situation but apparently without success. However, in the opinion of this committee, these efforts show that Mr. Condon was diligent in his efforts to assert his claim within the period of limitation and that it would be inequitable to deny relief solely on this ground. In this connection, the U.S. Civil Service Commission stated that while it constantly has opposed the preferential waiving of the statute of limitations, it had found that in this particular instance, an exception is in order. The error lay in the fact that a claim was never forwarded to the General Accounting Office. The statute of limitations provides that a claim will be barred unless it is presented to the General Accounting Office within the 10-year period. The assertion of a claim with the employing agency does not have the effect of tolling the statute. On these facts the committee

has concluded that legislative relief is in order and therefore recommends the favorable consideration of H.R. 9092, without amendment.

Attached hereto and made a part hereof are the following: a letter dated August 29, 1969, from the Post Office Department; a letter dated August 26, 1969, from the Civil Service Commission; and a letter dated April 20, 1964, from the Comptroller General:

POST OFFICE DEPARTMENT,
Washington, D.C., August 29, 1969.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Postmaster General has asked me to reply to your request for the Department's views concerning H.R. 9092, a bill for the relief of Thomas J. Condon, an employee of the Hingham, Mass., post office.

The bill would authorize payment to Mr. Condon in an amount commensurate to the amount of additional compensation he would have received had he not been erroneously placed in an improper salary grade during the period from October 1, 1946, to January 1, 1948.

The gross amount due Mr. Condon upon enactment of H.R. 9092 would be \$1,061.11.

Records in the Department indicate that on December 31, 1945, Mr. Condon was appointed temporary substitute carrier, grade 1, \$0.84 per hour; with enactment of Public Law 577, approved July 31, 1946, his salary was adjusted to grade 3, \$1.14 per hour; with the enactment of Public Law 492, approved April 29, 1950, which retroactively increased the benefits previously provided by the 1946 law for certain employees who, by reason of their military service, lost opportunity for probational appointment, Mr. Condon's salary should have been adjusted to grade 8, \$1.39 per hour, retroactive to October 1, 1946; through administrative error this was not done.

Between the enactment of Public Law 577 in 1946 and the enactment of Public Law 492 in 1950, Mr. Condon was made a regular employee and given a salary adjustment of four grades, but without the retroactive feature which would have given him the benefits to which he was entitled under the 1946 law.

The error in placement and pay was not recognized by the Department until after the 10-year period (31 U.S.C. 71a) for administrative adjustment had expired.

An investigation by the Department later revealed that Mr. Condon, on many occasions, did informally seek adjustment of his salary within the period prescribed by the statute and that a formal claim was filed after the statute of limitations had run. Accordingly, the Department is without authority to correct the error by paying the amount of backpay due carrier Condon.

In our view Condon should not be denied the benefits to which he is entitled merely because of the lapse of time in the formal filing of his claim. It is solely by administrative error that he is being denied

benefits which have already been made to other similarly entitled employees. For this reason, we recommend approval of the legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee from the standpoint of the administration's program.

Sincerely,

DAVID A. NELSON,
General Counsel.

By LOUIS A. COX,
Deputy General Counsel.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., August 26, 1969.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request of March 25, 1969, for the Commission's views on H.R. 9092, a bill for the relief of Thomas J. Condon.

The Commission has no objection to the favorable consideration of this proposal.

H.R. 9092 would authorize payment to Mr. Condon of additional compensation (\$1,061.11) he would have received under Public Law 492, 81st Congress, if a timely claim had been filed with the General Accounting Office. Public Law 492 retroactively increased the benefits previously provided by Public Law 577, 79th Congress, for certain employees who, by reason of their military service, lost opportunity for probational appointment. Since this later law affected only employees of the postal service, the Post Office Department had primary responsibility for determining eligibility for additional pay under its provisions, and instructions for the processing of payments were issued on June 15, 1950. Such a claim for payment was not filed with the General Accounting Office prior to the expiration of the 10-year statutory period.

In considering similar bills in the past, the Commission has consistently held the view that preferential waiving of the statutes of limitations was unwise, but in this particular instance an exception would seem to be in order. The Post Office Department has informed us that Mr. Condon did actively seek the subject compensation on a number of occasions within the prescribed time, but that somehow no claim was forwarded to the General Accounting Office.

Therefore, as Mr. Condon's claim does seem to be valid, the Commission feels that equity demands the favorable consideration of this proposal.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 20, 1964.

B-153627.

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

DEAR MR. CHAIRMAN: Your letter of February 27, 1964, acknowledged February 28, requests our views upon H.R. 10032, 88th Congress, for the relief of Thomas J. Condon.

Because of his military service during World War II Mr. Condon, the beneficiary named in the bill, lost opportunity for a probational appointment in the postal service and by reason thereof upon his subsequent appointment in the postal service as a classified substitute carrier he became entitled to the benefits provided in the act of July 31, 1946, 60 Stat. 749, Public Law 577, 79th Congress, as amended by the act of April 29, 1950, 64 Stat. 93, Public Law 492, 81st Congress.

Public Law 577 provided that a person subject to its provision "shall, for the purpose of (A) determining his rate of compensation and (B) his seniority rights in the postal field service, be held to have been appointed to such position as of the earliest date on which an eligible standing lower on the same list of eligibles received a probational appointment therefrom."

Public Law 492 amended Public Law 577 by the addition of a proviso reading in part as follows:

"*Provided*, That the grade, time in grade, and rate of compensation of any person so appointed to a position in the postal field service shall, at the time this act first applies to such person, be not less than the grade, time in grade, and rate of compensation of the lower eligible (whether a substitute or regular employee) receiving the highest automatic rate of compensation at such time * * *".

We understand that Mr. Condon was not granted the benefits of Public Law 577 when he first received a probational appointment in the postal service on October 1, 1946, and neither was he granted the benefits of that law after its amendment by Public Law 492. However, we have ascertained that following the enactment of Public Law 492, specific instructions were issued in the Postal Bulletin of June 15, 1950, as well as the Postal Bulletin of August 1, 1950, relative to the filing of claims by persons entitled to the benefits of Public Law 492 for periods prior to July 1, 1948. Despite such fact, Mr. Condon apparently failed to file a claim for the additional compensation to which he was entitled under Public Law 577, as amended by Public Law 492, within the 10-year statutory period of limitations prescribed by the act of October 9, 1940, 31 U.S.C. 71a. Therefore, amounts which otherwise would have been payable had a timely claim been filed may not now be paid Mr. Condon under existing law.

We recommend against enactment of H.R. 10032, the effect of which would be to waive the 1940 statute of limitations. In our opinion where a claimant fails to file a claim within the statutory period the consequences of such delay should be left with the claimant and not shifted to the Government. We believe that enactment of legislation which waives the barring statute, no matter how equitable such action

may seem in an individual case, establishes an undesirable precedent for others to seek similar legislation which eventually could lead to a breakdown of the statutory principle of the 1940 statute.

However, should your committee consider that enactment of H.R. 10032 is desirable, then, as a technical matter, we suggest that the following language be inserted immediately after the parenthesis following the word "Congress" appearing on line 3, page 2 of the bill: "as amended by the Act of April 29, 1959 (64 Stat. 93, Public Law, 492, 81st Congress)."

Based upon the pertinent service records of the Post Office Department we understand that the gross amount of the additional compensation to which Mr. Condon would have been entitled had he filed a timely claim under the provisions of Public Law 577, as amended, is \$1,061.11 from which the sum of \$53.01 would have been deducted for civil service retirement purposes, leaving a net balance due Mr. Condon of \$1,008.10. In such connection we note that should the bill be enacted without a provision for deposit of applicable retirement deductions into the civil service retirement and disability fund, then at the time of his retirement Mr. Condon would be faced with the alternative of refunding the amount by which his retirement fund account is deficient or suffering a reduction in his retirement annuity equal to 10 percent of the amount owing the fund.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

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