

Decisions of the Department of the Interior in cases relating to pension, 1891

By United States. Dept. of the Interior, United States. Board of Pension Appeals

Herewith are returned the papers which accompanied your report of December 6, 1889, upon the appeal of Mary Sloan, mother of William Sloan, late of Company I, Fifty-fifth Kentucky Volunteers, from the action of your Bureau rejecting her claim for pension based on *dependency*. From the papers on file, it appears that William Sloan enlisted in the Fortieth Kentucky Volunteers, October 25, 1863, and was mustered out, December 30, 1864. He re-enlisted in the Fifty-fifth Kentucky Volunteers, February 17, 1865, and died in Carter county, Kentucky, May 20, 1865, of disease of lungs and abscess of bowels. The appellant filed her application as dependent mother, May 12, 1866. Her claim was rejected March 5, 1878, on the ground that "the fatal disease of soldier was not contracted in the line of duty."

In the report from your Bureau, it is stated that, "under section 4700, R. S., it would be necessary to establish the fact that soldier was absent at the date of his *death* either on a *sick* or a *veteran* furlough, to give title to claimant." This would be true, if the disease which resulted in death was contracted *after* the soldier left the service and *while* on furlough. But the real point in the case is, was the disease which resulted in death contracted in the service and in the line of duty? If it was, then, the fact that death occurred while the soldier was on furlough would not debar claimant from pension.

There is no record of furlough nor of sickness in the service. It could not be expected that there would be a record of the latter, for the evidence shows that the soldier was taken sick on *the day the furlough was granted* or the day after; that, while on the boat returning home, he grew rapidly worse, and in fact never reached his destination. The appellant swears that she went to the house of Dr. Burnham to attend her son in his last sickness and that the soldier told her on his dying bed that he was sick two or three days before he got his furlough. Although there might be a question about the admissibility of his statements as evidence, they become important in connection with *other* evidence in the case and with the statement in your report that "appellant claims the furlough was granted as a reward for re-enlisting." The soldier had, as the attending physician says, "pneumonia fever, and was very bad, and continued so until death. The disease settled on his lungs and he had a bad cough." The records of the Adjutant-General's Office show that he died of lung disease, May 20, 1865.

The following evidence is on file as to the incurrence of the disease in the service, which resulted in death:

Christian Adkins swears that he enlisted at the same time the soldier did and that William Sloan was a strong hearty man; that he (Sloan) and others got furloughs to go home; that, when Sloan got his furlough, he was complaining of being sick, and was suffering a great deal when he started home; that on the way home he was very bad on the steamboat, and when he landed at Quincy, Kentucky, affiant had to lead him off and up the river bank; that he was taken to the house of Nickles and left. Affiant says "this is all I know in the case, except he was complaining of burning up, and said he had hot fever the night before he left the camp."

William W. Nickles enlisted with William Sloan at the same time and in the same company, Fifty-fifth Kentucky Volunteers, and he testifies that he and Sloan both got furloughs to carry their money home; that they received the furloughs on or about the last day of February, 1865; that the next day they left the regiment at Covington, Kentucky, and that night landed at Quincy, Kentucky. On the journey up the

river. Sloan was complaining of being sick. The next day he was confined to his bed, and was very poorly. He stayed with him about two weeks, and he continued to get worse. Affiant then returned to the regiment and soon heard Sloan was dead.

George W. Sulzer was orderly sergeant of the company, and he says that he remembers well that William Sloan started from Covington, Kentucky, some time in February, 1865, just after he was mustered into the service (some eight or ten days perhaps), for his home in Carter county, Kentucky; that he died on that trip; that he was taken sick as he learned, and died of abscess of the bowels.

James F. Scott was a comrade, and he swears that they all got furloughs and went up the river on the steamboat, Wild Waganer; that Chris. Adkins led a man up the bank whom he supposed to be William Sloan; that after he returned to the company the orderly sergeant would call the name of Sloan and report him sick and finally reported him dead.

The evidence shows that the soldier was sound at enlistment. Two witnesses swear that he was carefully examined and found to be sound. There is no question that the soldier left neither widow nor children, and that appellant was dependent on the son for support at the date of death. that appellant was dependent on the son for support at the date of death. The evidence shows that the soldier contributed to the mother's support while in the service and before enlisting. There is not much evidence in the case, but from what is on file it is clear that the soldier had a furlough when he attempted to return home. And where, as in this case, the fatal disease manifests itself the day *before* the furlough was granted, or on the next day, the Department holds that it is but just to presume that the disease originated in and was due to the military service, particularly when it has often been held that, where a soldier was attacked with a disease a few days after muster-in, without any special cause, the Department would presume he had the disease before enlistment. The action of your Bureau rejecting the claim is, therefore, reversed, and you are directed to admit the case in harmony with this opinion.