A TREATISE

ON THE

PRACTICE OF THE PENSION BUREAU

GOVERNING THE

ADJUDICATION OF ARMY AND NAVY PENSIONS.

Compiled by order of
THE COMMISSIONER OF PENSIONS

Under the authority of
THE SECRETARY OF THE INTERIOR.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

A TREATISE

ON THE

PRACTICE OF THE PENSION BUREAU

GOVERNING THE

ADJUDICATION OF ARMY AND NAVY PENSIONS.

Compiled by order of
THE COMMISSIONER OF PENSIONS

Under the authority of
THE SECRETARY OF THE INTERIOR.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

DEPARTMENT OF THE INTERIOR,

Washington, April 9, 1898.

SIR: I have approved, and return herewith, the Treatise on the Practice of the Pension Bureau, which was submitted by you personally for my consideration.

Very respectfully,

C. N. BLISS,

Secretary.

The COMMISSIONER OF PENSIONS.

TABLE OF CONTENTS.

A TREATISE

ON THE

PRACTICE OF THE PENSION BUREAU.

DEPARTMENT OF THE INTERIOR,
PENSION BUREAU.

In the adjudication of claims for pensions there is an unwritten practice with which all who perform a part in the settlement of claims should be familiar. This unwritten code is the result of the experience of different administrations; therefore, it has been carefully considered from time to time by those whose ability and experience qualified them to establish the practice herein formulated, the result of which is entitled to respect.

To reduce such unwritten practice to writing is the chief object of this treatise. As the unwritten practice is founded upon the laws, decisions, rulings and orders, a part of the written law must therefore of necessity be embodied herein.

COURSE OF PROCEDURE.

1. On the filing of a claim it is stamped in the Mail Division with the date of its receipt. The receipt of increase claims, and of original claims when accompanied by evidence, is acknowledged by the Mail Division.

2. All claims are sent by the Mail Division to the Record Division, where they are examined as to the formality of the declaration and attorneyship. If the declaration is formal in all particulars, the standing of the attorney is properly indorsed thereon, and a search is then made to ascertain whether a prior claim has been filed. If not, it is jacketed, numbered and recorded in the State service records and also in the three-letter combination book. In original claims a notification card is sent to the attorney, whether it is a duplicate or not, and if not a duplicate, a notification card is also sent to the claimant. The applications are then sent to the divisions to which they belong.

If the declaration is found to be informal in any particular, and the informality is of such a character as to affect its validity, it is returned to the attorney or claimant with a letter indicating the nature of the informality for correction.

All claims based upon service prior to March 4, 1861, and Navy claims are sent to the Old War and Navy Division, where they are jacketed and recorded.

3. The first action to be taken by an adjudicating division is to determine whether the allegations contained in the declaration are sufficient, if sustained, to constitute a claim for pension. It is all important that it contains a clear and intelligent description of all disabilities for which pension is claimed and the manner in which the same were contracted.

If sufficient, the proper call will at once be made on the War Department, and upon receipt of the report, the invalid claimant will be ordered for medical examination, and a call will be made, through the attorney, for all the

evidence necessary to complete the claim, thereby notifying him that the Bureau is ready to consider the case and the evidence thereafter filed. The examiner will briefly and plainly note on the jacket the date and nature of all calls made by him.

4. When the evidence is complete, the examiner shall prepare the case and submit it for admission or rejection. The chief of the division will then send such adjudicated case to the Board of Review, and unless the case is sent back to him as improperly submitted, his connection with such claim shall then cease.

The sole function of the Board of Review is to treat cases judicially, upon the papers, and after a finding upon the law and the facts, cases requiring medical action will be referred to the medical referee for his decision upon the medical questions involved, based upon such finding.

The Board of Review will review such adjudication and return to the chief of the proper division all claims improperly submitted, and such as are rejected. All admitted cases, after medical review, will be sent forward to the raters for completion of brief and the issuance of certificates.

The Certificate Division will make proper record, have certificate, order to inscribe, and the proper notices made and sent without delay.

5. Should an appeal to the Secretary be taken from an adverse decision of this Bureau, such appeal, when referred by the Secretary for report, will be sent to the chief of the Board of Review, who will have the claim carefully reviewed, and if the rejection was in all respects proper and warranted by the evidence, he will transmit the papers in the case to the Secretary, with a report setting forth the reasons for such action.

If in the judgment of the chief of the Board of Review the rejection was not warranted by the facts shown in evidence, and the claim should be allowed, or reopened for further evidence, he will so advise the Secretary, suggest-

ing that the appeal be dismissed, and return the papers to the adjudicating division for proper action, indicating what such action should be. If the claim was rejected on medical grounds, the case should be referred by the chief of the Board of Review to the medical referee for his personal consideration, and if the medical referee expresses the opinion that the rejection should be set aside, the same course will be taken as that already indicated.

If additional evidence is filed by the claimant with a view of reopening his claim, the same will be carefully examined by the proper adjudicating division or by the medical referee, as the case may be, and if in the opinion of the chief of said division or of the medical referee the evidence so furnished is not sufficient to reopen the case, a full type-written statement should be prepared and attached to the brief giving the reasons for such decision.

Under rule 8 of the Rules of Practice, established by the Secretary, no claim, the rejection whereof has been affirmed by the Secretary, shall be reopened without his approval. To that end, whenever new and material evidence shall have been filed, the case may, on the report of the Commissioner, with his opinion, be again submitted to the Secretary for action.

Under this rule the chief of the adjudicating division or the medical referee, as the case may be, will cause a careful examination to be made of the evidence, and if in the judgment of such chief it is not sufficient to warrant the reopening of the case, a statement to that effect, giving reasons therefor, will be prepared and attached to the brief.

If the evidence is sufficient to reopen the claim, the case should be submitted to the chief of the Board of Review for the action indicated in rule 8.

If the action of the Bureau is reversed by the Secretary, the case will be sent to the proper adjudicating division for prompt action in accordance with such decision.

6. In all cases submitted for review, the brief shall be prepared by the examiner in accordance with the forms

heretofore promulgated, and care should be taken by him to have the papers properly arranged in the order indicated, and the face brief should show clearly and correctly, without any erasures or interlineations, all the data required in the issuance of the certificate, and the preparation of the necessary orders and notices.

DECLARATION FOR INVALID PENSION.

1. Under the act of July 1, 1890, declarations may be executed before any officer authorized to administer oaths for general purposes in the State, city, or county where said officer resides.

If executed in a foreign country they may be made before a United States minister, consul, or other consular officer, or before some officer of the country duly authorized to administer oaths for general purposes, and whose official character and signature shall be duly authenticated by the certificate of a United States minister, or consul, or other consular officer. Declarations in claims of Indians may be made before a United States Indian agent.

For further explanation as to the verification of officers before whom declarations may be made, see joint resolution of September 1, 1890, amending and construing the act of July 1, 1890.

2. In examining a declaration for an original invalid pension to determine its sufficiency, the following points must be considered:

(*a*) Whether executed before the proper officer.

(*b*) Identifying witnesses, and in addition to the formal parts, the facts in regard to the following points must be covered by allegation:

(*c*) All service rendered by claimant.

(*d*) Personal description.

(*e*) Description of disability or disabilities claimed, the facts connected therewith, and incurrence thereof.

(*f*) Hospital treatment.

(*g*) Residence and occupation since leaving the service.

(*h*) Extent of disability claimed with regard to performing manual labor.

AMENDMENTS TO DECLARATION.

1. To be received as sufficient to fix date of commencement of pension, it is not required that a declaration contain all of the above statements, but if in any other form, it can not be said to be complete. In office parlance, a declaration is said to be formal when executed before the proper officer, and hence informal when not so executed.

2. A formal declaration which contains some description of the disability for which pension is claimed may be amended by affidavit, but if a new disability is claimed in the affidavit, the pension for same, if allowed, must commence at the date of filing such affidavit, if filed since June 30, 1880.

3. Great care should be taken by the examiner to observe whether the evidence filed by the claimant in a case from time to time supports the disability alleged in the declaration. Often one disability is alleged and a different one proven. This may occur for various reasons, and for such as should not prejudice the case. Claimants and their agents are not often physicians, and may give an improper diagnosis of their cases. A certain disability may be described and called by an incorrect name, which fact should not militate against a case. Often in such cases no change is required in the declaration. Again, it may be necessary to modify the declaration in accordance with the facts established; in such cases the claimant's interest should be carefully guarded and he promptly notified.

FACTS NECESSARY TO ESTABLISH AN INVALID CLAIM UNDER THE GENERAL LAW.

1. A sufficient declaration being on file for an invalid claim, to establish the same it must be proven by competent and satisfactory evidence:

(*a*) That the claimant was an enlisted soldier or sailor in the Army or Navy of the United States or of that class of persons mentioned in section 4693 of the Revised Statutes.

(*b*) That such soldier or sailor contracted an injury or disability in said service and in the line of duty.

LINE OF DUTY.

1. To obtain a pension the claimant is required to show, in addition to the fact that he received an injury or disability while in the service, that the same was received in the line of duty. It is therefore necessary to have some understanding as to what is meant by "line of duty" to enable one to have a proper understanding of the proof required to establish a claim.

2. "Line of duty" is a technical phrase, which is defined in the administration of the pension laws as that relation which a soldier or sailor sustains to the military or naval service of the United States when performing an act connected with any of the possible conditions or requirements of the service, or in the observance of the proper orders of his superiors, not in violation of the army or naval regulations.

3. A few observations will be sufficient to illustrate all that is necessary to be said on this subject in a work like this. A soldier may be in the line of duty in general, but not actually, at the time he contracts his disability. For instance, he may be in action and instantly cease to perform his duty and shoot himself purposely. He may be in camp and provoke a quarrel with another and in the contest receive an injury; incur a disability while on leave to attend to private business; or receive an injury through gross carelessness in handling his weapon, or while foraging without orders.

4. Such injuries or disabilities, though received while the soldier was in the service, but not in line of duty, are not pensionable. Therefore, to give title to pension the claimant must prove that he received an injury or disability

while in the service, and the facts connected with the incurrence thereof must also be made to appear, that it may thus be determined whether the same was received in line of duty.

THE CHARACTER AND AMOUNT OF EVIDENCE REQUIRED TO ESTABLISH CLAIMS FOR PENSION.

1. A claim for pension may be proved by record evidence only, or by record and parol evidence, but never by parol evidence alone. The reports of the War Department and certificates of disability constitute what is called the "record."

2. Unless the soldier was discharged for disability, no certificate thereof exists in his case, and unless he received treatment, no report showing treatment can be had from the War Department; but in every case there must be a full report from the War Department to show the service of the soldier. In cases based upon service in certain militia organizations, when no record of their service is on file in the War Department, reports will be obtained from the Auditor for the Interior Department, Treasury Department, which are accepted as sufficient to show enlistment, service, and discharge of a soldier.

3. Parol evidence is testimony of any character, other than record, tending to establish a claim. It is divided into medical and lay. Medical evidence is the testimony of physicians upon medical questions. Lay evidence is all other parol evidence.

4. In the absence of record evidence, origin of alleged disabilities in service and line of duty may be proved by parol, and in some cases even by lay evidence, if it be first shown that medical evidence can not be had. The character of evidence necessary to establish the different classes of claims, and the rules governing the sufficiency of the same will be hereafter considered in detail.

5. As to the amount of evidence necessary to establish any given claim only general rules will be stated; therefore,

when it is hereafter stated that the testimony of a certain number of witnesses will establish a specific point, it must always be understood that the rule is given upon the presumption that nothing adverse to the claim appears in the case, that the affidavits of the witnesses are full and specific, and the testimony in all respects is in accordance with the office requirements.

A doubt may arise in regard to the merits of a case, and a large number of affidavits be filed, all of which may not prove the claim. Let it then be remembered that the statements in regard to the sufficiency of parol evidence are made with the qualifications stated.

WITNESSES, AND THE OFFICERS BEFORE WHOM EVIDENCE MAY BE VERIFIED.

1. An affidavit to be complete should show what relation the witness sustains or sustained to the claimant; that is, whether physician, neighbor, employer, commissioned officer, or comrade.

2. Every witness should state whether he is directly or indirectly interested in the prosecution of the claim in which his testimony is given. It should always be shown whether a witness testified from personal knowledge or not; if so, it should appear that he possessed such knowledge, and he should state his means of information.

3. Joint affidavits are objectionable, for the reason that a witness should not merely confirm the statement of other parties, but each witness should make a separate, specific, detailed statement of the facts to which he testifies.

4. Testimony to have the greatest weight should be in the handwriting of the witness, and should be free from interlineations; if material interlineations have been made, the officer before whom such testimony is executed should certify that they were made before signing.

5. It is important that claims for pension be established by witnesses who are not relatives of claimants, but testimony of relatives who are disinterested will be accepted.

6. The official certificate of officers using a seal, or of commissioned officers of the Army or Navy in actual service, will be accepted without affidavit, and the testimony of examining surgeons of the Pension Bureau need not be sworn to, unless the title to pension in doubtful cases rests on their evidence alone, when its execution before a proper officer may be required.

7. All testimony must be executed before an officer authorized to administer oaths for general purposes. Testimony executed before an officer who is interested in the prosecution of the claim will not be accepted. If such testimony is executed before the attorney of record, it may be accepted, but the attorney will no longer be recognized in said case, and he should be so informed.

8. The officer before whom testimony is executed should certify as to the credibility of the witnesses in his own handwriting in the jurat, and if they sign by mark, he should certify that their testimony was read to them and the contents fully made known to them before their oath thereto was administered.

9. All evidence duly executed before a notary public within the jurisdiction of the United States and authenticated by the official seal of said notary shall be accepted without further verification, whether or not said notary is required by the laws of his State to use an official seal.

Evidence executed before an officer (other than a notary public) who is not required to use an official seal shall be accepted; provided that a proper certificate of the official character of such officer shall be filed in this Bureau showing his authority at the time such papers purport execution before him; and provided further that an official seal used by such an officer shall not be accepted in lieu of said certificate.

Papers executed before an officer who is required by law to use a seal, and which are authenticated by such seal, shall be accepted without further verification.

Papers executed before an officer required by law to use a seal and which are not authenticated by the seal of such

officer, as required by law, shall be accepted; provided that a proper certificate shall be filed in this Bureau showing the authority of such officer on the date such papers purport execution before him.

Papers executed before a clerk of a court of record and not authenticated by the seal of said court, as required by law, shall be accepted; provided that there shall be filed in this Bureau a certificate of the official character of such clerk (which may be under his own signature and seal), which shall be attached to the papers in question.

Papers executed before an officer outside of the jurisdiction of the United States shall be accepted; provided that there shall be filed in this Bureau a certificate under the hand and official seal of a United States minister, consul, or other consular officer, showing the authority of such officer on the date when said papers purport execution before him.

Certificates of official character showing the authority of officers within the jurisdiction of the United States shall be under the hand and official seal of a clerk of a court of record or other proper officer of the State or Territory.

No certificate of official character shall be accepted by this Bureau to show the authority of an officer unless such certificate shows at least the official character and signature of such officer, both of which must be certified by the officer furnishing the certificate.

Where a certificate of official character is filed showing the authority and signature of an officer on a date when papers purport execution before him, but which does not show his term of office, such certificate must be attached to the papers in question, and will be accepted to show his authority to execute said papers.

Where a certificate of official character is filed in this Bureau which shall show the official character, signature, and term of office of a magistrate, certified under the hand and seal of a proper officer, such certificate shall be filed in the Record Division for general reference; and all papers

duly executed before said magistrate during that term of office shall be accepted without further verification.

DUPLICATE CALLS FOR EVIDENCE.

1. When a call for evidence is made in a case it should, as far as it is possible to ascertain it at that time, include all that is necessary to establish the claim. No call for evidence should be made from the entries on the jacket. When the evidence called for is filed, it may not be sufficient for a number of reasons. The affidavits may be too general in terms, or it may be clear that the affiants have no personal knowledge of the facts stated therein, or they may develop such facts as to make further inquiry necessary. But the original call should not be repeated in the same form.

2. If the evidence does not cover the points, it should be stated wherein it is insufficient. The claimant is at all times entitled to know the exact condition of his case, and when a further requirement is necessary a full explanation should be made showing why it is necessary, and a good and sufficient reason given therefor, the substance of which should be briefly indorsed on the jacket by the examiner.

JACKET ENTRIES BY EXAMINERS.

1. In all classes of claims the entries on jackets containing papers should be made in a legible handwriting, the dates given, with the initials of the examiner who made the same, and all abbreviations omitted except such as are clearly intelligible. Such entries should give a full and complete history of every action taken in the case and the date thereof. The numbers of the circulars should never be entered on the jacket for the purpose of indicating what calls have been made, but the points to be covered by evidence should be clearly stated.

2. When evidence is filed with the papers the entry on the jacket of the call therefor should be at once canceled. When evidence is called for, the names of the attorneys

through whom it was made should appear, and so aid in avoiding mistakes as to their recognition. The entry "called on attorney" is not complete; his name should be given.

3. As has been stated, no calls for evidence should be made and the status of claims should not be given from the entries on the jacket, for the reason that the claim may have been in the hands of different examiners, and the jacket not properly indorsed, or evidence may have been filed in the jacket without canceling the call therefor.

4. By a careful observance of these rules mistakes may to a great extent be avoided, and the Bureau not embarrassed by examiners making calls for evidence already on file, and recognizing attorneys who are not authorized to act for claimants, and giving condition of claims from incomplete and incorrect entries on jackets. When a jacket becomes so worn as to be unfit for further use, a new one should be supplied, and the old preserved for reference.

REPORTS FROM THE WAR DEPARTMENT.

1. To obtain the record evidence required in a case, calls for the same should be made on the War Department in accordance with the allegations of the declaration, and care should be taken to state in such call all the information relative to his military and medical history furnished by the claimant.

2. Where it appears from the report of the War Department, or otherwise, that the soldier was discharged on a certificate of disability, the same should be obtained and applied to the case. These certificates are issued in duplicate; one is filed in the War Department and the other in this Bureau, and ordinarily no call on the War Department is necessary to obtain the same. It may occur that a certificate of disability exists and no duplicate is filed in this Bureau or in the War Department. In such cases a call

should be made upon the Auditor for the War Department, Treasury Department, for a copy of such part of the final statement of the soldier as relates to his disability.

3. Since the consolidation of the records on file in the War Department in February, 1889, it is often practicable to obtain additional information relating to a soldier's service and hospital treatment, and when the report heretofore furnished by the War Department was made prior to said consolidation of the records, another call should be made on the War Department for a military and medical history of the soldier, returning the reports now on file.

PROOF IN GUNSHOT-WOUND CASES.

1. Where the disability alleged by the soldier is a gunshot wound received in action and line of duty, if the report of the War Department shows the service of the soldier to be as claimed, and that he was wounded in action, or at a place where a battle is known to have been fought, and locates and describes said wound or wounds, no further evidence is required to legally establish the claim, and it is held to be proven on the record.

2. Claimant should then be ordered before such examining board as is most convenient for him in regard to distance and means of travel. Should the board of surgeons, upon examination of the soldier, find evidence of the wound alleged in the declaration and shown by the record, and a disability therefrom, the claim is established and the claimant is entitled to pension.

PROOF IN GUNSHOT-WOUND CASES WHICH ARE NOT FULLY ESTABLISHED BY THE RECORDS OF THE WAR DEPARTMENT.

1. On such records as have been described, and under the circumstances mentioned, claims for gunshot wounds should be accepted as proven. To this general rule there are exceptions; for instance, the record may describe a

slight flesh wound, and the examining surgeons find evidence of a wound of such a character and resulting in a disability which can not be accepted as the one described in the record, though answering in description, as far as location is concerned.

2. The soldier's claim may be a just one and the record incorrect, or it may be that during the years since the war the soldier has received an additional disability. In such a case, or in any other, where, in connection with the report of the medical examination, a reasonable doubt is raised on the record, evidence of origin or condition at and subsequent to discharge should be required.

3. Where the report of the War Department shows that the claimant was wounded in action, or at a place where a battle is known to have been fought at the time alleged. but does not locate the wound, the claim in such cases is not proven by the record, and testimony of witnesses should be required to locate the wound. If such testimony is not obtainable, the claimant may be ordered for medical examination, and he should be examined for all other physical signs of wounds besides the one alleged. If the examining surgeons find no physical signs of any other wound than that claimed, such report, in connection with the allegation of the claimant, is usually accepted as sufficient to locate and describe the wound as proven by the record, though not particularly located or described therein.

4. Deficiencies in the reports of the War Department, as have been heretofore mentioned, may be supplied by certificates of disability signed by the captain of the soldier's company and by his regimental surgeon, and thus legally establish a claim. Such certificates, when so signed, are received as the best evidence of the facts stated therein.

5. Certificates of disability signed by a surgeon in charge of a general hospital are not given so great weight, as they may not show line of duty; for a hospital surgeon, as a rule, does not possess personal knowledge of the facts concerning the manner in which a disability was contracted.

PROOF IN CASES WHERE THE RECORD SHOWS "ACCIDENTAL" WOUND.

1. Where the records of the War Department show the claimant "accidentally wounded" at a given time, locate and describe the wound alleged, but do not show the facts connected with its incurrence, such reports are accepted as proof that the soldier received the wound in the service, but line of duty must be shown by parol evidence. If the record does not locate or describe the wound evidence should be required covering that point, as well as that showing "line of duty," for every fact and circumstance connected with the incurrence of the wound should be made to appear.

2. Line of duty must be shown, for the reason that it is not accepted that the wound was "accidentally" received because it is so stated in the record. The only fact accepted is that a wound was received at the time and place stated. The word "accidental" shows that the actual facts of the incurrence of the wound were not known; or, in other words, not being known, it was supposed to be "accidental" at the time the record was made.

3. The parol evidence required to prove a claim supported by such a record, is the testimony of one of the commissioned officers or first sergeant of the soldier's company; or, if that can not be furnished, then that of two comrades will be accepted as sufficient. The testimony of such officer or comrades should show that they had personal knowledge of the facts to which they testify, and their credibility must be satisfactorily shown. When such parol evidence is filed the examiner should call upon the War Department for a report concerning the presence or absence of the affiants at the time it is alleged such wound was received. If the War Department reports them present at that time, such claim is accepted as "legally" established upon the record and parol evidence as stated; provided, from the description of the wound and the facts and circumstances stated in the evidence, no reasonable doubt arises concerning the

incurrence of the same. In all cases in which the affidavits of affiants are not in their own handwriting, correspondence should be had directly with the affiants, and specific inquiry made in regard to their personal knowledge of the facts and circumstances to which they testify.

4. Under such circumstances inquiry should be made of the postmaster at their places of residence concerning their credibility; but no such information should be requested of postmasters of cities containing over 20,000 inhabitants, it being considered impracticable for them to obtain it. If by such correspondence or inquiry such doubt is removed, the claim should be submitted. If not, the action to be taken in such cases must depend upon the judgment of the examiner, who should duly consider all the surrounding circumstances and facts connected therewith.

5. If it appears that the case possesses too much merit to be rejected, a requirement for further evidence should be made or the case submitted for special examination.

6. There are many accidental wounds, which appear of record, that were incurred at such time and place as to make it impossible for the claimant to obtain the evidence required, although the claim may be genuine. Wounds received while on picket, or while foraging under orders, are often of this class. The claimant should, therefore, be required to give a very full and specific description of the wound, and to state all the facts and circumstances connected with its incurrence, so that it may be possible to form an opinion as to whether the wound was in fact accidentally received, or purposely self-inflicted. For instance, pistol-shot wounds received in the hands or feet should be carefully guarded. A soldier would not be likely to purposely shoot himself in the head or through the leg. In cases where all the surrounding facts and circumstances are in favor of the claim, and it appears that the claimant can not furnish the required proof, all circumstantial evidence possible should be obtained, and the reputation of the claimant for truth and veracity, and his standing as a soldier, should be inquired into.

EVIDENCE IN CLAIMS FOR DISEASES OF RECORD.

1. The number of disease cases that are pensionable is so great that it is impracticable to attempt to consider separately the evidence required to establish each. Only such are specifically considered as will answer for a guide to enable the examiner to ascertain the proof required in any given case by a comparison with that held to be necessary to establish claims for the different classes of diseases herein specified. Reference will be made to the most common diseases and to some of the pathological sequences therefrom which are accepted as being susceptible of proof.

2. The act of March 3, 1885, provides that all applicants for pensions shall be presumed to have had no disability at the time of enlistment; but such presumption may be rebutted. It has been held that after six months' continuous service immediately following enlistment, uninterrupted by the incurrence of any pensionable disability, diseases contracted thereafter will be accepted as due to the service upon record evidence alone. If there is a record of the alleged disease soon after the soldier's enlistment, and the evidence raises a doubt as to its origin in the service, the questions of prior soundness and origin should be determined by special examination, but all the surroundings of the case should be carefully considered before this course is taken.

3. In all disease cases which carry arrears, continuance of the disease, or the result therefrom, together with the degree of disability existing by reason of such disease since the discharge of the soldier from the service, must be shown by competent and satisfactory evidence. This is required, even though it is shown by the record that the disease is due to the service; the present condition of the soldier is shown by medical examination, for the reason that diseases are progressive and changeable, and he may have contracted others since discharge. Evidence of continuance

should be specific in its character, it being absolutely necessary, particularly in arrears cases, to fix a just and equitable rate from time to time during the years since discharge, the medical examinations not being sufficient to cover so long a period as has elapsed since the war.

4. In claims which do not carry arrears the degree of disability need not be shown for any period prior to the filing of the claim, but continuance of the disease from date of discharge must be proved by competent evidence.

CIRCUMSTANCES UNDER WHICH ORIGIN IN THE SERVICE OF CERTAIN DISEASES IS ESTABLISHED UPON THE RECORD.

1. Typhoid, malarial and other fevers, diarrhea, paralysis, smallpox, measles, sunstroke, pneumonia, and other acute diseases are generally accepted as shown to be due to the service by record evidence alone, nothing adverse to the claim appearing therein.

2. In determining whether anything adverse appears of record it must be remembered that there is a limited time in which diseases develop after they have been contracted. It is a generally accepted medical fact that measles develops itself, or makes its appearance in the form of eruptions, in from ten to fourteen days after it has been contracted; smallpox in from twelve to fourteen days; typhoid, malarial, and other fevers develop in about two or three weeks after they are contracted. Pneumonia and many other acute diseases may be contracted in a very brief time, and one may be immediately stricken with paralysis or with a sunstroke. If there is a record of fever or of measles and smallpox within a less period of time after the enlistment of the soldier than it is generally accepted that the same could have been contracted, the record will not be accepted as showing that such diseases are due to the service, and claims therefor must, as a rule, be rejected. As the period in which these diseases will develop may vary, when cases are presented in which it is claimed that the said diseases

developed in a shorter time than heretofore stated, but within a few days of that time, they should be submitted to the medical referee for his consideration and decision.

3. It must be remembered that it is not in any case the disease for which pension is granted, but for its effects; that is, the disability arising therefrom. A record of measles, typhoid fever, and other similar diseases, nothing adverse to the claim appearing in the record, does not give title to pension, the soldier having long since recovered, but he may be suffering from the effects thereof. If so, and he can prove a pensionable disability therefrom and continuance since discharge, the claim is established upon the record and by such proof, provided the medical examination supports his claim.

Although the character of the disease may be such that it still exists, it is the *disability* therefrom that gives title to pension, and not the fact alone of the mere existence of the disease.

PATHOLOGICAL SEQUENCES OF DISEASES HERETOFORE CONSIDERED.

1. In stating the pathological sequences of diseases which are accepted as being susceptible of proof it is not to be understood, in all cases, that there is a direct affinity between the original disease and the result—that is, that the one necessarily follows the other—but that such result is susceptible of proof. For instance, disease of rectum or liver may be direct pathological sequences of chronic diarrhea, viz: There is an affinity between them which is susceptible of proof; but it is not accepted that under any circumstances they are necessary results following chronic diarrhea.

2. For the purpose of this work no distinction will be made between the different classes of pathological sequences, as in each case the same must be proven; for the reason that while there may be generally a direct affinity between two diseases, one being a natural result of the

other, it may not be so in the case under consideration; therefore, all sequences must be proven alike.

3. The evidence usually required in a case where a sequence is claimed should show the date said sequence first appeared, and the condition of the claimant as to the original disease at such time; and the question as to the acceptance of pathological diseases being a medical one, should always be referred for the consideration of the medical referee.

4. The following pathological sequences are accepted as susceptible of proof:

(*a*) Of *chronic diarrhea;* disease of rectum and digestive organs.

(*b*) Of *typhoid fever;* derangement of the nervous system.

(*c*) Of *malarial poisoning;* enlarged spleen and disease of stomach and liver.

(*d*) Of *measles;* disease of lungs and catarrh.

(*e*) Of *sunstroke;* intolerance of heat, headache, and vertigo.

(*f*) Of *pneumonia;* disease of lungs.

(*g*) Of *rheumatism;* disease of the heart, and structural changes of joints, tendons, and muscles.

(*h*) Of *scurvy;* disease of gums and loss of teeth.

5. It should be stated that malarial poisoning is a condition resulting from protracted attacks of intermittent or remittent fever, or, in other words, chills and fever.

6. Where there is an accepted record showing chronic diarrhea due to the service, and either of the said sequences is shown by competent and satisfactory evidence to have resulted therefrom, if a disability has resulted from such sequence since discharge, a claim for chronic diarrhea and results is established on the record and by such proof, and the claimant is entitled to a rating according to the degree of disability shown to have resulted from such sequence. The proper form of approval in such cases by the legal reviewer is for "chronic diarrhea. * * * alleged as a result and shown to have existed from * * * , 18—."

DISEASES ESTABLISHED ON THE RECORD.

1. As has been stated, the law presumes that all applicants for pension were of sound health at the time of enlistment, and that such presumption may be rebutted. When it appears of record that a soldier has performed six months' continuous service immediately following enlistment, and such service was not interrupted by the incurrence of any disability, the question of prior soundness should not be raised, nothing either of record or in any other way appearing adverse to such claim.

2. There is a class of diseases, however, which, if shown to have existed within six months after enlistment, should require careful consideration with reference to their origin in service. To this class, rheumatism, epilepsy, hemorrhoids, fistula in ano, varicose veins, disease of lungs, liver, bladder, eyes, and ears, and organic disease of heart may be said to belong. While it is not considered that it will require six months to contract any of said diseases, it is not reasonable to suppose that such diseases will, as a rule, be contracted and develop to such an extent as to cause a pensionable disability within a less period of time.

3. A record showing the existence of any of the said diseases within the time mentioned is, of course, accepted as proving that the soldier had such disease in the service, but that it was due thereto, does not in all cases necessarily follow. As has been said, this class of claims should be carefully guarded, and if the circumstances surrounding the case are such as to create a grave doubt that such diseases originated in service, they should be referred for special examination.

CLASSIFICATION OF DISEASES AND EVIDENCE IN CLAIMS FOR DISEASES NOT OF RECORD.

1. To establish a claim for disease in the absence of a record, it must, as in all other claims for pension, appear from a report of the War or Navy Department that the

claimant was in the military or naval service of the United States. It must also be shown by parol evidence that the alleged disease was contracted in the service and line of duty, and has continued to exist since his discharge, or that a pathological sequence has resulted therefrom by reason of which the claimant is disabled, and the claim must be supported by the report of a medical examination.

2. In all classes of claims not established by record, where officers or comrades furnish testimony, a call should be made on the War Department to verify the presence or absence of such witnesses covering the period named in their testimony.

3. In considering the character and amount of evidence required to establish claims for diseases not of record, the diseases will be classified into "obscure" and "not obscure."

4. The distinction made in the classification is, that obscure diseases are such as can generally be distinguished only by a physician, whereas diseases not obscure may be distinguished by persons not physicians. While only medical experts can give a diagnosis of diseases of the eye and ear, yet if any person is suffering from any form of disease of the eye or from defective hearing, anyone associated with such person is a competent witness to the fact of the existence of some form of disease of the eye and ear. So it is with other diseases not obscure. At some stages of the disease the character of the same can be detected by medical experts only; but after such diseases have fully developed anyone may be able to distinguish the disease. Therefore a distinction is made between the character of evidence required to distinguish between diseases obscure and not obscure.

5. A witness may give such a description of a soldier when diseased as to clearly indicate the character of the disease, however obscure it may be, and such evidence, though not medical, can be accepted.

Any person may be able to describe some symptoms of epilepsy, but the ordinary witness not a physician can not

distinguish it from minor diseases of a similar character which are not pensionable; but anyone who can describe the symptoms is a competent witness to show repeated attacks thereof, and thus aid in proving a claim for the same.

6. The classification of diseases into *obscure* and *not obscure* is made upon the medical knowledge or intelligence of the average witness, therefore, like many other statements, it is general in its terms. Witnesses differ in their ability to distinguish diseases. The general rule in regard to the competency of evidence in such cases may be varied, as has been stated, if a witness shows himself competent. Otherwise the rule should be observed.

PROOF OF ORIGIN IN CLAIMS FOR OBSCURE DISEASES NOT OF RECORD.

1. As a general rule it may be stated that lay testimony, when unsupported by the record or by medical evidence, and dated years after the discharge of the soldier, can not be accepted as proof of service origin of obscure diseases. To show origin in the service, medical evidence must generally be produced; but there is no established rule on this subject, the circumstances surrounding these cases rendering it impracticable to adopt one. If it is clearly shown that such evidence is not within reach of the claimant, he should be required to furnish medical evidence showing that such diseases existed when he returned from the service or within a reasonable time after his discharge.

2. The testimony of the surgeon who treated the claimant for the alleged disease in the service is sufficient to show origin, but if that can not be had, and there is medical evidence of condition at or within a reasonable time after discharge, then that of an officer, first sergeant, or two comrades will be accepted to show origin; provided they give such a specific description of the symptoms of the disease as to show themselves competent witnesses.

The credibility of all witnesses should be ascertained, and correspondence should be had directly with them concerning their personal knowledge of the facts to which they testify; provided the affidavits are not in their own handwriting. In all cases it must be satisfactorily shown that the highest class of testimony can not be had before testimony of a lower class can be received.

PROOF OF CONTINUANCE IN CLAIMS FOR OBSCURE DISEASES NOT OF RECORD.

1. After origin in the service has been established, the question of continuance is one of great importance. Special care should be taken to ascertain the true condition of the claimant, as the evidence on that point, taken in connection with the report of the medical examinations, governs the question of rate in arrears cases. Hence, not only the fact of continuance must be shown in such cases, but also the degree of disability from time to time during the whole period since discharge. It is not reasonable to presume that the claimant has been disabled in a pensionable degree during the entire time since discharge, and had no medical treatment during such period. In many cases the claimant is unable to produce the testimony of the physician who treated him, by reason of his death, or inability to obtain his post-office address, or from some other cause. But continuance can be shown in all just and lawful claims either by medical evidence or by lay testimony that medical treatment was had for the alleged disease. The amount of evidence necessary to show continuance must depend largely upon the facts and surroundings of each particular case.

2. Where origin in the service is established by medical evidence and the alleged disease is shown by the report of the medical examination, less evidence is required to show continuance than in cases where medical evidence at discharge is partly relied upon to establish such origin, but it should be none the less specific. Affidavits executed

either by neighbors or physicians merely showing generally the continuance of the disease, without giving the claimant's condition from time to time specifically, so that the degree of the disability can be ascertained therefrom, are practically worthless for the purpose of rating.

3. As origin in the service on the testimony of one witness should not be accepted unsupported by evidence of condition at discharge; so, also, continuance should never be accepted on the evidence of one witness—the number of years covered since discharge being too great and the question of rate one of too much importance both to the claimant and the Government.

4. In cases where there is medical evidence of origin in the service and it is made to appear that medical evidence to prove continuance can not be had, the evidence of two neighbors, showing that the claimant was treated for the alleged disease as a fact, and giving a specific history of the claimant's condition from time to time since discharge, describing his symptoms as well as it is possible for witnesses not physicians to do, will be accepted as sufficient to establish the point, provided the alleged disability is shown by the report of a medical examination.

5. If the affidavits of such neighbors are not in their own handwriting, correspondence should be had directly with them concerning their personal knowledge of the facts to which they testify, and their credibility should also be ascertained.

6. As has been heretofore stated under another heading, pathological sequences from diseases must be proven as are other facts, and not presumed; so, in claims where it appears that the claimant has, technically speaking, recovered from the original disease but is disabled by reason of its result, the same must be established by competent and satisfactory evidence. It is more important that medical evidence should be produced to establish a pathological sequence than almost any other fact necessary to be proven in the adjudication of claims for pensions.

7. To establish a sequential disease it should be shown when it first appeared, and that it did appear as such sequence within a proper time; the condition of the claimant with reference to the original disease at the time such sequential disease first appeared should also be shown; whether any apparent cause therefor intervened other than the original disease, and whether the claimant is disabled to a pensionable degree by reason of such result.

8. The testimony of one physician, who should be required to give the facts, not his opinions, is sufficient to establish a pathological sequence; but the continuance of the disability should be shown by such evidence as the nature and character of the disease require, under the rules heretofore presented.

9. Pathological sequences may be shown, in the absence of the best evidence, by such secondary testimony as is required to establish obscure diseases, whether the sequence claimed is from such a disease or one that is not obscure.

PROOF IN CLAIMS FOR DISEASES NOT OBSCURE AND NOT OF RECORD.

1. There is no difference in the amount of proof required to establish claims for diseases "obscure" and "not obscure," but there is in the character of the evidence as to the competency of the witnesses.

2. In claims for diseases not obscure, the best evidence should always be called for, but if it can not be obtained, secondary evidence will be considered and accepted if satisfactory. The rule laid down by the Secretary is that "neither record nor medical evidence of incurrence or treatment in service is absolutely essential to prove service origin; but an absence of such evidence should be satisfactorily accounted for, as a claim must be established by the best evidence of which the case in its nature is susceptible." (Vol. 8, Secretary's Decisions, p. 304.) In the same decision "satisfactory" evidence is defined as "sufficient" evidence, and means "that amount of proof which

ordinarily satisfies an unprejudiced mind beyond reasonable doubt."

3. In such claims the witness, though not a physician, may state in general terms the facts in the case, so far as origin in the service is concerned—that is, that the claimant was afflicted with the alleged disease, giving its proper name if possible; also the symptoms he noticed, and the facts connected with its incurrence.

4. The evidence necessary to establish origin in the service is the testimony of the regimental surgeon; but if such evidence can not be obtained, that of a commissioned officer, first sergeant, or two comrades will be considered sufficient to show origin in the service. Correspondence should be had with the witnesses concerning their personal knowledge of the facts to which they testify, and their credibility should be ascertained from some reliable source.

5. In a case of this class, where there is no medical evidence of origin in the service, to prove continuance, there should, in general, be medical evidence covering a number of years, beginning at discharge or within a reasonable time thereafter. On a proper showing, however, in lieu of such evidence, the testimony of two neighbors whose credibility is ascertained, and who state as a fact that the claimant was treated for the alleged disease within a reasonable time after discharge, and who can give a full description of the claimant's condition with reference to the diseases alleged, from time to time since his discharge, will be considered and accepted if satisfactory.

6. There is no distinction made as to the evidence required to show pathological sequences in claims for diseases obscure and not obscure.

CLAIMS FOR DISABILITIES CONTRACTED WHILE PRISONERS OF WAR.

1. When it appears that the soldier was sound at the date of his capture in line of duty, and that he was disabled as alleged at the date of his release from rebel prison, his

disability may be presumed to have originated in the service and in the line of duty, provided said disease was incident to the service or to such imprisonment.

2. The effect of this rule is to waive direct proof of origin in the service and accept the disease as due thereto on proof of soundness at the time of capture in line of duty, of condition at the time of release from prison, and of continuance since discharge. The evidence necessary to establish the facts above indicated should be of the same character and amount as is required in other disease cases of the same class.

3. This rule may be applied in claims for injuries and wounds received by soldiers while prisoners of war, unless the character of the disabilities is such as to raise a doubt as to their origin being due to the service.

4. Where a soldier, while in a rebel prison, enlisted in the rebel army, the presumption is that he voluntarily aided and abetted the rebellion, and his claim should be rejected under the provisions of section 4716, Revised Statutes. His own sworn statement that such enlistment was to avoid starvation, and with the hope of finding means to escape from his captors, is insufficient to rebut such adverse presumption. Even if such statement were true, the motive of such enlistment does not relieve him from the consequence of his voluntary act.

CLAIMS FOR INJURIES..

1. In common usage the words "wound" and "injury" are often used synonymously, but in the administration of the pension laws a wound is a disability received by a soldier from any weapon of war, whether accidental or otherwise; an injury is a disability received by means of over-exertion, by any hurt or violence which is not the result of a wound or disease.

2. Injuries are not accepted as established merely on a record of treatment for same in service, for the reason that they may or may not have been received in line of

duty. There is no class of claims which should be more carefully guarded than those for injuries, and the evidence produced to show origin thereof in service and line of duty should always be based upon actual personal knowledge of the nature and extent of the injury, as well as the circumstances under which such injury was received, in order that the Bureau may be able to determine the question of origin in the line of duty.

PROOF IN CLAIMS FOR HERNIA AND VARICOCELE WHEN NOT ESTABLISHED ON THE RECORD.

1. To show origin of hernia or varicocele it is not enough for a witness to testify that he heard the claimant complain of having received a certain injury. While such testimony should be considered and given its proper weight, better and more specific corroborative testimony must be produced to establish a claim therefor. The disabilities under consideration are often caused by long laborious marches and over-exertion, and as they may appear gradually, claimants can not always state the precise time when such injuries occurred.

2. To establish such claims when they thus appear the testimony of the regimental surgeon and another commissioned officer or first sergeant should be required; or, in lieu thereof, that of two comrades who saw the alleged rupture about the time it first appeared.

3. When a specific injury has caused such disabilities it is a fact more easily proven, and in either case, where an injury was received, the soldier, as a rule, has received some medical treatment, and can show that fact either directly or indirectly.

4. The amount of proof required in this class of cases is, in general, two witnesses as to origin, and when no medical evidence of treatment in service can be produced, medical or other competent evidence should be called for to show the existence of the said disabilities at or soon after discharge. In each case, and upon each point, as in all other

cases, the best evidence should be required, or secondary when the proper foundation is laid for receiving the same, and correspondence should be had with the witnesses concerning their means of knowledge, and their credibility should always be ascertained.

5. In claims for injuries other than hernia and varicocele, not established on the record, the same amount and character of testimony is required as in claims for hernia, and in all cases the circumstances under which the injury was received must be specifically shown by the proof.

6. In cases where from the nature of the injury the disability is unchangeable, no evidence of continuance is necessary; but in cases carrying arrears, where the disability may be progressive, condition at and since discharge should be shown, to aid in connection with the medical examination in fixing the rate.

WOUNDS AND INJURIES NOT OF RECORD.

1. Many cases not supported by the record are presented for allowance. They are not to be regarded with suspicion, but should be very carefully guarded, chiefly for the reason that, while this class of injuries may have been received, they are not likely to be of a very serious character.

2. If such wounds or injuries had very badly disabled the soldier, he would probably have received some medical treatment and a record of the same would have been made. But owing to the fact that in many cases hospital records were very defective, and that it is not always possible to obtain even them, therefore it is not just to raise the presumption against the soldier in a case without record.

3. In these cases, if the medical examination shows a very serious wound or injury, to obtain favorable action, the best, or at least satisfactory, evidence should be produced. Claimants in such cases should be required to show good and sufficient reasons why the best evidence can not be obtained, and it should appear that due diligence has been observed in endeavoring to procure the

same. The proof should show origin in service and in line of duty, and condition at discharge, and be supported by a report of medical examination showing a wound or injury of the character claimed.

4. As to the character of evidence required in claims for wounds and injuries, medical evidence, though the best, is not always indispensable. The amount of proof required depends largely upon the character of the wound or injury and the nature of the claimant's statement in regard to the incurrence of the disability.

5. To show that such wound or injury was due to the service, the testimony of the regimental surgeon and that of one other commissioned officer or first sergeant, or two comrades of the soldier's company, will establish origin; provided that such officers or comrades are shown to be credible witnesses and in reply to private inquiry made direct from this Bureau state that they had personal knowledge of the incurrence of such wound or injury.

6. Origin in service having been clearly established, if the alleged disability is of such a character that it would remain in the same condition, no proof of continuance is necessary, provided it be found on a medical examination and the report thereof is consistent with the proof.

7. In a case where the best evidence of origin in the service is not produced, condition at discharge should be shown by competent evidence.

BRIEFING CLAIMS FOR INVALID PENSIONS.

1. All cases should be fully and carefully briefed in accordance with existing orders, and the face brief should show:

(*a*) The character of the claim, name, post-office address, pensionable rank, and service of claimant. *No abbreviations are permitted on these points except service.*

(*b*) Dates of enlistment, muster, and discharge.

(*c*) Facts as to prior and subsequent service, with dates of same.

(*d*) Date of filing declaration, and if more than one has been filed that fact should appear, with dates of filing same.

(*e*) A short and concise statement of the basis of the claim.

(*f*) The disability for which pension should be granted in the opinion of the examiner.

(*g*) The date of commencement of pension. (No abbreviations.)

(*h*) The name and post-office address of the attorney, the amount of fee he is to receive, and when fee agreements have been filed that fact should be stated.

It should also be stated whether the case is submitted for admission or rejection, or for special examination; the date of submission should appear and the brief be signed by the examiner.

LEGAL REVIEW OF INVALID CLAIMS.

1. The legal review involves a critical examination of all the evidence produced in a case, both legal and medical, together with final action upon the points involved. It is the duty of the legal reviewers to see that every point in the case is covered by competent and sufficient evidence, as they act for the Commissioner, who is responsible for the allowance of claims.

2. All evidence presented in a case should be given the weight to which it is entitled under the rules of the Bureau. If an affidavit does not come up to the requirements as heretofore stated, or if, from the reviewer's experience in the Bureau or from any other source, it be within his personal knowledge that a certain witness is not in good standing, or if for any other reason the evidence is not sufficient to support a given claim, it should be returned to the proper adjudicating division with specific reasons in each case why the evidence can not be accepted as sufficient on the points in question. The legal

reviewer is the sole judge of the weight and sufficiency of evidence to establish a claim.

3. The action of the legal precedes that of the medical reviewer, and the action of the latter is based upon that of the former. The medical reviewer has no jurisdiction in a case until the same has been acted upon by the legal reviewer, unless it be referred to the medical reviewer through the medical referee for an opinion upon a specific point stated. The duties of the legal and medical reviewer are often very closely connected, but the dividing line may be clearly defined and should be closely observed, that the proper reviewer may be held responsible for the final action in every case, and that the responsibility may not rest somewhere between the respective reviewers, and therefore upon neither.

4. Every case should be approved for a specific disability, and that disability should be the wound, injury, or disease which the soldier alleged in his declaration and which he had in the service. As the basis of every claim is the disability that was contracted in the service, no claim should be legally approved for a result of such disability. If such results existed in the service, the legal reviewer should approve for the same by name; if not, then the approval should be for the original disability, and the approval should state what results are claimed, and from what period the particular diseases claimed as results are shown in evidence, leaving a specific description of the latter to the medical reviewer. The approval of a claim by the legal reviewer includes continuance as well as the origin of the disability.

5. Before a claim for disease is legally established, continuance must be shown as a fact. The degree of the disability is a question for the medical reviewer; therefore no case should be approved unless continuance of the original disability or of a pathological sequence is shown. Technically speaking, the medical reviewer is the judge of pathological sequences, but as the legal reviewer's approval

includes continuance as a fact, the date when each of the alleged results first appeared and the period of their continuance should be specifically stated in the legal reviewer's approval.

MEDICAL REVIEW OF CLAIMS FOR INVALID PENSIONS AND MEDICAL EXAMINATIONS.

1. In discussing the subject of legal review of claims much has been said concerning the duties of the medical reviewer, and reference therefore should be had to comments under that title.

2. It is the sole duty of a medical reviewer, under direction of the medical referee, to fix the rates to which the claimant is entitled by reason of the disability covered by the legal approval; that is, to fix the basis of the rate of pension, which includes all questions concerning pathological sequences arising in the course of the legal approval. The office of the medical reviewer is really that of a medical expert, whose province it is to determine technical medical questions; therefore such reviewer has no jurisdiction of any question of fact arising in any case except such as are strictly connected with the duties herein defined.

3. The evidence bearing upon the question of degree of disability in the case should be carefully considered in connection with the certificates of medical examination and the record, by the medical reviewer, and no case should be adjudicated upon an examination of the reports of surgeons alone. In a case involving arrears great care should be taken to rate the disease, so that it may be graded from time to time in accordance with the law and the facts. In most cases it is not reasonable to presume that claimants have been entitled to the same rate, as at the present time, during a number of years since the disability was contracted; of course to what extent the rate should vary must be largely governed by the character of the disability. While reports of medical examinations are not infallible—

for experience has shown that such reports often do claimants great injustice, and again the ratings stated therein are often excessive—they are far more reliable than the usual evidence of continuance.

4. As has been stated, the approval of the legal reviewer includes continuance as a fact, but the evidence may not be sufficiently specific to enable the medical reviewer to fix the degree of disability. In such cases the medical reviewer should return the case to the Board of Review, indicating the character of the evidence required to show degree of disability. The legal reviewer will then return the case to the adjudicating division, calling attention to the requirements of the medical division.

5. A report of medical examination may describe a pensionable disability and yet state that the claimant is not disabled, and fix no rate. In such cases, if the evidence of continuance is specific and the description in said report raises a purely medical question, the medical referee, upon a personal examination of the case, may rate the claim to continue in the future, if the facts so warrant.

6. Reports of medical examinations in all cases should be required to conform to the law and the requirements of the Bureau based thereon. So much depends upon these examinations that too much importance can not be attached to them, and the reports should be required to be full, complete, and specific.

7. When no medical examination has been made of the claimant within three years of the time of adjudication of the claim, it will not be admitted without another medical examination.

INCREASE OF INVALID PENSIONS UNDER THE GENERAL LAW.

1. A declaration for increase should be executed in the same manner and before the same officers as a claim for original pension. The following points should be covered by allegation:

(*a*) Age, residence, and post-office address.

(*b*) That he is a pensioner of the United States, the agency where enrolled, and the rate.

(*c*) Disability for which pensioned and service in which the same was incurred.

(*d*) His present physical condition.

2. In cases where the soldier alleges that his disability has increased to the extent that he is entitled to second or first grade, medical evidence should be required to establish such degree of disability from pensioned causes before a medical examination is ordered, and when such evidence is received the case will be referred to the medical referee for the purpose of ordering a medical examination, with special instructions to the examing surgeons.

3. Claims for increase will be briefed and submitted to the Board of Review, and the arrangement of the papers will be in the following order:

(*a*) Brief face.

(*b*) Pending declaration for increase.

(*c*) Evidence in support of claim for increase.

(*d*) Powers of attorney.

(*e*) Former face sheets in order (oldest last).

(*f*) The certificate of medical examination should follow certificate of examination made in former claim.

4. The face brief must contain the facts that were given on the face of the invalid brief when first submitted for review, together with a full history of all subsequent proceedings in the case. The face of a brief should never be removed in cases of any character, and especially is this true in increase claims; no matter how often adjudication has been had, the old face brief should remain. A full history of the case, as occasion may require, can be thus easily obtained and presented on the new face, and the correctness of the same can be readily ascertained. The "arrears" brief should always be attached in its proper place.

LEGAL AND MEDICAL REVIEW OF CLAIMS FOR INCREASE OF PENSIONS.

1. In reviewing claims for increase of invalid pensions, if the proceedings in the invalid claim were correct, including any increase that may have been had in the case, the only point for the consideration of the legal reviewer is, whether the brief contains a full and correct history of the former proceedings in the case and is in all respects correctly briefed. It appearing that all former proceedings were correct and the increase claim properly briefed, the reviewer should repeat the approval in the invalid claim.

2. It is not considered the duty of the reviewer, when examining a claim for increase, to re-review the invalid claim and former proceedings in the case. If it be patent, however, from the face of the brief, that the former action in the case was not in accordance with the practice of the Bureau at the time the claim was adjudicated, the reviewer should carefully review the evidence in the case; and if a good and sufficient reason appear therefor, should refer the claim for a special examination. If the evidence thus produced shows the former action incorrect, then it may be reconsidered and corrected; or, if it appear that the claimant is not entitled to a pension, his name should be dropped from the roll, after service of legal notice upon him.

3. On a review of an increase claim it is improper to take exceptions to former proceedings simply because, in the judgment of the reviewer, the weight of evidence was not sufficient to justify former action. A judgment formed upon the weight of evidence, and acted upon by one duly authorized, should not be disturbed, unless new and material evidence is presented showing such action to be incorrect, or it is made to appear that fraud was practiced, or it is patent that an error was committed; that is, when upon a re-review it is so manifest that the former action was improper that the correctness thereof is not a question of controversy, or in regard to which there would have

been no difference in judgment, special attention having been invited to the particular facts considered.

4. The sole question to be determined in the medical review of a claim for increase is whether the disability for which the pension was granted has increased to such a degree as to entitle the claimant to a higher rate than he is now receiving; provided the medical action in the allowance of the original claim, and also in all proceedings for increase that may have been had, was correct.

5. What has been said in considering legal review of claims for increase in regard to the reconsideration of the prior proceedings applies to the medical review and need not be repeated. Special attention is, however, invited to the definition of a patent or manifest error. Single and narrow as the question for the medical reviewer appears when stated, it is of very great importance, being, at least for the time being, a final action by which, as a rule, the Bureau is bound; therefore, such action should be carefully and judiciously considered in all cases.

6. No distinction is made concerning the judgment of different boards of surgeons, it being presumed that they are all entitled to the same credit. Therefore, unless the last medical examination of the claimant describes a greater disability than first shown by preceding reports, no increase in rate should in any case be granted. If an increase is allowed, it should appear from such last report that the description given was one obtained by physical examination and not from the claimant's statements. No claim for increase should be allowed simply by reason of a difference of judgment on the part of the board of surgeons as to the adequacy of the former rate, but it should clearly be made to appear that the disability has increased before favorable action be had.

7. Where the disability is of such a nature that a physical examination would not fully disclose the degree of disability (such as epilepsy), evidence should be required

showing the pensioner's condition, the frequency and severity of the attacks, and the extent he is disabled therefrom as a question of fact.

8. A claim for restoration in which no increase is claimed will not be accepted as a claim for increase.

CLAIMS FOR RESTORATION AND RENEWAL OF INVALID PENSIONS UNDER THE GENERAL LAW.

1. In claims for restoration where the pensioner has failed to draw his pension for three years after it had become due, a declaration is required, executed as in original claims. In addition to the allegations required in such claims he must state the reason why he failed to claim his pension and that the disability for which he was pensioned still exists.

2. The proof required in such cases is fixed by statute. The evidence required is, satisfactory testimony accounting for the failure to claim pension and medical evidence as to continuance of the disability for which pension was granted; and, as it must depend largely upon the character of the reason given and all the surroundings of the case, no general rule can be laid down. Under section 4719, Revised Statutes, evidence of a medical character as to continuance of disablity is an absolute necessity in establishing a claim for restoration if claimant was originally not exempt from biennial examination.

In all cases where a claim for restoration was allowed under the practice in force at the time, to commence June 21, 1879, the date of the act which abolished biennial examinations, medical evidence is required in order to entitle such persons to receive pension from the date their names were dropped from the rolls on account of failure to claim for more than three years. The act of June 21, 1879, did not repeal by implication the requirement for medical evidence in cases for restoration under section 4719, Revised Statutes.

3. In reviewing claims for restoration the same scrutiny is required as in original ones; and if for any reason it is found that the claim was improperly allowed in the first instance, it should be specially examined or rejected, as the evidence in the case may indicate. The Bureau having the right to reject claims for restoration by reason of the original claims being improperly allowed, it must necessarily follow that the original action can be modified in accordance with the facts; therefore, a claim may be restored at a less rate than that for which it was originally allowed.

4. Cases where the names of soldiers were dropped from the rolls for various causes are governed by the same rules with reference to the character and amount of evidence as those that apply to original claims.

5. A renewal of pension is where the pensioner's name was dropped from the rolls by reason of re-enlistment in the military or naval service of the United States, and a claim is presented to be restored to the rolls. A declaration executed as in original claims is required; and, in addition to the allegations in such claims, all subsequent service should be set forth and the continuance of the disability alleged. A call should be made upon the War Department for a full history of the subsequent service. This report may show continuance of original disability, or it may show no treatment for the disability claimed, which may be of such a character as to make it improbable that the claimant could perform such subsequent service while so disabled. Only the most direct and positive evidence of continuance should be accepted in claims for renewal, and they may be allowed at a less rate than that for which it was originally granted.

CLAIMS FOR INCREASE ON ACCOUNT OF NEW DISABILITIES.

1. Failure to allege in the original declaration, or in an explanatory affidavit filed soon thereafter, certain disabilities which are afterwards alleged as "new disabilities,"

raises the strong legal presumption that such disabilities did not exist at the filing of the original declaration. It has been held, upon consideration of claim for a new disability, that where the claimant, years after discharge, alleges a disease or disability of which his hospital record contains no mention, and of which also there was no evidence at discharge, the presumption is that said disease or disability was not incurred in the service, but subsequently to his discharge.

2. In claims for a new disability established by the record, the same amount of testimony is required as in an original claim, but if no record of treatment in service exists, the adverse presumption can be overcome only by direct and positive proof of incurrence and existence, or by satisfactory evidence as to facts and circumstances from which said incurrence and existence are to be naturally, fairly, and reasonably inferred. Continuance should be proved as in original claims.

3. Great care should be exercised in reviewing claims of this character, and generally where there is no record or medical evidence of treatment in service or at discharge, the case should be referred for special examination.

RE-RATING OF CLAIMS FOR INVALID PENSION.

1. A claim that has been adjudicated, and the rate granted in accordance with the law and practice in force at the time, should not be re-rated simply because a greater rate is granted now for the same disability. No former action of the Bureau, where the question must be decided upon a mere opinion of the weight of evidence, should be reconsidered on a review of the same evidence. A judgment formed upon the weight of evidence at a given time is entitled to the same consideration as the judgment formed upon the same evidence at a subsequent time.

2. An application for re-rating should specifically allege wherein a manifest error has been committed in fixing the

former rates of pension, and a claim for re-rating, included in an application for increase, will not be considered.

3. The rule with reference to claims for re-rating is that former ratings of pension will not be disturbed where it does not appear that a manifest error, either of law or of fact, about which there can be no dispute, was involved. As the question is largely a medical one, claims of this class should never be allowed without the approval of the Medical Referee after a personal examination of the evidence.

THE RATING OF APPROVED CLAIMS.

1. When claims have been legally and medically approved, the rate must be given on the basis fixed by the medical reviewers, in figures on the face of the brief.

2. The raters do not sign the brief and, therefore, technically speaking, a rater is not responsible for the other action; but, it being the last action taken before the certificate is issued, it is the duty of the raters to cause any manifest errors that have been committed, either legal or medical, in the approval of claims, to be corrected through the chief of the Board of Review or the Medical Referee.

3. Special care should be observed to rate no claim where it is patent that the basis thereof fixed by the legal or medical reviewer is not sustained by the facts, or where an error has been committed in regard to dates. Great accuracy is required in rating claims. If it is apparent that the basis of the rate fixed by the medical reviewer, or the date of commencement fixed by either the legal or medical reviewer, is for any reason not correct, the claim should be referred to the chief of the Board of Review or to the Medical Referee, as the case may be, for personal consideration and action. When a claim is rated, it is transmitted to the Certificate Division for the issuance of a certificate of the claimant's right to pension.

ADVERSE RECORDS.

1. Certificates of disability which are received as evidence adverse to an invalid claim for pension may be divided into three classes:

(*a*) Those that are positively adverse and in which sufficient reason therefor is fully given, signed by the captain of the soldier's company and his regimental surgeon.

(*b*) Those that are positive in their character, but no reason therefor is given therein, and signed as aforesaid.

(*c*) Those that are adverse, as the first and second classes, and in which a reason may or may not be given, and signed by a surgeon of a general hospital.

2. An adverse record of the first class can not usually be overcome by parol evidence. These certificates were issued by officers who were presumed to know the facts stated therein, for the reason that it was their duty to do so, and to make a record thereof, or cause it to be done, at the time.

3. To make a record positive in its character, so as to support the rejection of the claim, the facts upon which such certificate is based must be stated therein. For instance, a soldier may be discharged for a wound, injury, or disease, and the records state "not received in line of duty." This is not conclusive against the soldier unless the facts be given, so that the question may be determined by the Bureau.

4. The facts stated in such certificates are usually conclusive, but not the legal conclusions based thereon. If it be stated that the disability originated prior to enlistment, it may be conclusive, or, owing to the character of the disability, it may not. If such a description be given as to make it clear that the disability could not have been contracted since the soldier's enlistment, the record is conclusive against him.

5. Adverse records of the second class may be controverted by parol evidence, for the reason that the facts upon

which the certificate is based are not given. But when such evidence is accepted, special care should be taken to secure the very best obtainable. The character of the evidence required must depend upon the nature of the disability. As a rule, medical evidence should be produced before a claim is allowed over such an adverse record or the facts should be obtained by a special examination of the case.

6. Adverse records of the third class may also be overcome by parol evidence, for the reason that they were made by officers who were not in a situation to have personal knowledge of the facts which may or may not be contained in the certificates, but upon which the medical opinion stated therein was based. Where there is a record of this class, special care should be taken to ascertain all the facts before such a claim is allowed over the records, and these facts should be obtained by a special examination of the case.

7. Where a certificate of disability of any class contains statements of a claimant against his interest, in the absence of the most conclusive proof showing the falsity thereof, the same should be accepted as true. Where the certificate contains a statement made by the claimant that the disability for which he was discharged existed prior to enlistment or for any reason was not due to the service, a claim for such disability should be rejected upon the record without making a call upon the claimant for proof.

8. Again, where a certificate of disability of any character shows claimant discharged for a specific disability and pension is claimed for one of a different character, such certificate is presumed to be adverse by reason of claimant's allegations, because it is reasonable to presume that if he was disabled as alleged at the time of his discharge, record of such disability would have been made. Special caution should be observed in the consideration of such claims. While a claim for pension for disability not

mentioned in such a certificate may be established by parol evidence, it should not be allowed except upon the best obtainable evidence and the most satisfactory proof.

ADVERSE WAR DEPARTMENT REPORTS.

1. The report of the War Department may be presumed to be adverse by reason of the claimant's allegations. For instance, if the report shows the claimant, at the time the disability is alleged to have been contracted, absent on furlough or not present for duty for any reason, no pension can be granted unless the discrepancy be satisfactorily explained and corrected. Claimants and witnesses may make mistakes in dates after the lapse of so many years since the war and proper allowance will be made therefor, and if honestly made they should not prejudice a claim. If it clearly appear that the disability was incurred in the service, an opportunity should be given the claimant to correct discrepancies as to dates if a mistake has been made and cause the allegations to conform to the record, but the greatest caution should be observed in considering the testimony in this class of cases.

2. Again, where the report of the War Department shows the soldier present for duty on the rolls during the time he claims he was disabled, such record is presumed to be adverse, but may be controverted by parol evidence, for the reason that a claimant may be greatly disabled and still reported present for duty, and as a fact never receive hospital treatment; but, as in all other cases, before such claims are allowed the best obtainable evidence should be required and the proof should be satisfactory.

3. Where a soldier alleges that he contracted a certain disability at a given time and place and the report of the War Department shows him absent and sick in hospital at the time alleged, but shows hospital treatment at such time for a different disability, the presumption is that the claimant is in error, and unless a satisfactory explana-

tion can be given, and upon a proper showing the discrepancies corrected, such claims should not be allowed.

4. Again, a soldier may allege that he received hospital treatment at a certain time for a particular disability and the report of the War Department show that the claimant received treatment at the time alleged for a different disability than that claimed. In such cases allowance may be made for the fact that an incorrect diagnosis may have been made of the claimant's disability when he was received in hospital. As experience, however, has demonstrated that such records are in most cases correct, no claim should be allowed over such a one without positive and direct evidence sustaining the claimant's allegations.

5. A claimant against whom there stands a charge of desertion under an enlistment for service in the war of the rebellion, which charge the War Department declines to remove, has no title to pension under any existing law on account of disability incurred in said war or service performed therein. That is, the claimant must have received a discharge from all enlistments for service in the war of the rebellion, and if he was not so discharged, but a record of desertion from any such service stands against him, he is not entitled to pension.

CLAIMS OF WIDOWS FOR PENSIONS UNDER THE GENERAL LAW.

1. The basis of a widow's title to pension is an invalid right. That is, the soldier through whom the right to pension is claimed must have contracted a disability in the military or naval service of the United States, and under such circumstances as would have entitled him to a pension, and died by reason of said disability either in the service or since discharge.

2. When a soldier's right to a pension has been established, to give title to his widow it must appear: First, that he died on a certain date of a wound, injury, or disease

contracted in the service and line of duty; and second, that the claimant was his lawful wife when he died.

DECLARATION OF A WIDOW FOR ORIGINAL PENSION.

A declaration of a widow for original pension under the general law should be executed in accordance with the law as heretofore stated under the head of declarations for invalid pensions, and the facts concerning the following points should be covered by allegation:

(*a*) Name of claimant, age, and under what law the pension is claimed.

(*b*) That she is the widow of the soldier.

(*c*) Name of soldier, rank, service, nature of wounds and all circumstances attending them, or the disease and manner in which it was incurred; in either case showing soldier's death to have been the sequence.

(*d*) Cause of soldier's death and the date thereof.

(*e*) Marriage to the soldier, with date thereof, maiden name of widow, and the name of officiating clergyman or magistrate, and place where married.

(*f*) Whether any legal bar existed to said marriage.

(*g*) Whether either claimant or the soldier had been previously married, and if so, the facts in relation to said prior marriage.

(*h*) Whether she has remarried since the soldier's death.

(*i*) Names, and dates of birth of all legitimate surviving children of the soldier, under sixteen years of age at his death, either by the claimant or by a former marriage.

(*j*) Custody of the children.

(*k*) Whether she in any manner engaged in, aided or abetted the rebellion against the United States.

(*l*) Residence and post-office address.

PROOF IN CLAIMS OF WIDOWS FOR ORIGINAL PENSIONS UNDER THE GENERAL LAW.

1. When a soldier has died or dies in the military or naval service of the United States, to give title to the

widow of such soldier it must be proven that he contracted the fatal disability in such service and in line of duty. These points will generally be proven by the record if the soldier died in the service. The question whether the record shall be accepted as sufficient proof that the soldier contracted the disability of which he died in the service is determined by the rules which govern invalid claims.

2. In addition to the record such parol evidence may be required as the character of the disability and the surroundings of the case would make necessary in establishing an invalid claim for the same cause. As a rule, the immediate cause of death is accepted on the record, but if there be no military or public record of it, the cause must be shown by parol evidence, which should be the testimony of the physician who treated the soldier during his last sickness and at the time of death. When the public record of the soldier's death is indefinite as to cause of death, and where it is necessary to show the pathological connection between the death cause, as shown in the record, and the disability proven as of service origin, the testimony of the attending physicians should be required giving a full history of the soldier's fatal illness, and the mode and manner of his death.

3. In the irremediable absence of such evidence the testimony of credible witnesses will be considered, provided the witnesses show themselves competent to testify to the death cause and their testimony is in all other respects satisfactory. If a substantial doubt arises as to the character and origin of the fatal disease the case should be referred for special examination.

4. If a soldier, not a pensioner, has died since discharge, whether he filed an application for pension or not, the widow must first establish his right by the evidence required to prove an invalid claim, the date of his death, and that it occurred by reason of the pensionable disability. In such cases the death cause should be proven by a public record, or medical evidence, the testimony of one physician

being generally sufficient to establish the point, provided he was the soldier's attending physician and has personal knowledge of the cause of his death.

5. In considering parol testimony to show origin and continuance of disability in widows' claims, the same rules should apply with reference to the quality and quantity of testimony and to its verification as are laid down under the head of "proof in invalid claims," and the legal presumptions that arise concerning disabilities and their origin and continuance in invalid claims apply equally as well to claims of widows. If there is no record of the alleged disability in the service and the soldier never applied for pension, a strong presumption against the widow's claim arises, which can only be overcome by the most positive and direct evidence, and in the absence of medical testimony of treatment at or soon after discharge, for the disabilities alleged, favorable action is not generally warranted without a thorough special examination.

6. To establish a widow's title in her own right, the basis of her claim otherwise having been made to appear, the first point required to be proven is, as stated, that the claimant was legally married to the soldier on account of whose service and death she claims pension. Section 2 of the act of August 7, 1882, provides that: "Marriages, except such as are mentioned in section 4705 of the Revised Statutes, shall be proven in pension cases to be legal marriages according to the law of the place where the parties resided at the time of marriage, or at the time when the right to pension accrued."

The act of February 19, 1887, relates to proof of marriages in the Territories.

PROOF OF MARRIAGE.

A marriage may be proven by the following testimony, and its weight is according to the order given:

(*a*) By a verified copy of a church or public record.

(*b*) By the affidavit of the clergyman or officer who performed the ceremony.

(*c*) By the testimony of two or more eye-witnesses of the ceremony.

(*d*) By a verified copy of the church record of the baptism of the children.

(*e*) Or, in a case where the above indicated evidence can not be had, a marriage may be presumed upon the testimony of two or more credible witnesses who know that the parties lived together as husband and wife for a number of years, acknowledged each other as such, and were so received by reputable persons in the community in which they resided—that is, such evidence (when it is clearly shown that better testimony can not be had) will be accepted as evidence of the fact that a ceremony was performed.

Special provision is made concerning proof of marriage of colored and Indian soldiers by section 4705 of the Revised Statutes, under which marriage is proven by showing that the parties "were joined in marriage by some ceremony deemed by them obligatory, or habitually recognized each other as husband and wife, and were so recognized by their neighbors, and lived together as such up to the date of enlistment, when such soldier or sailor died in the service, or if otherwise, to date of death."

It is held that all enactments of Congress relating to the marriage of colored soldiers contemplate only negroes who were slaves or who resided in States wherein their marriage may not have been legally solemnized. They neither refer to nor include negro soldiers or their families who were free or who resided in States where they could have solemnized legal marriage.

The evidence furnished in claims presented under the provisions of section 4705, Revised Statutes, must be clear and positive, and where the testimony is not of the very best character, the case should not be allowed without a special examination.

LEGAL BAR TO MARRIAGE.

1. The widow is required to state in her declaration that there existed no legal bar to her marriage with the soldier. If either she or the soldier had been previously married the facts in relation to said marriage or marriages should be stated by her, and if such prior marriage was dissolved by death or divorce, that fact must be shown by the best obtainable evidence.

2. A marriage by a party while he or she has a former wife or husband living and undivorced is void; but where a matrimonial cohabitation commences between parties under a contract of marriage which is void, a subsequent actual marriage may be presumed to have been entered into after the removal of the disability, from acts of recognition by the parties, continued matrimonial cohabitation and general repute showing consent. The evidence in such cases should always be carefully guarded, and, as a rule, the facts must be determined by a special examination.

3. A divorced wife has no title to pension on account of the death of her divorced husband.

LAWFUL WIDOW.

1. Remarriage forfeits the widow's title to a future pension. If a widow alleges that she has not remarried since the soldier's death, that fact should always be proved by competent testimony.

2. The open, notorious and adulterous cohabitation of a widow who is a pensioner or an applicant for a pension, on account of the service and death of her husband, will also work a forfeiture of her right to a pension; and such cohabitation may be proved by her conduct in habitually, openly, and notoriously consorting with one or more persons of the opposite sex under circumstances which would lead the guarded discretion of a reasonable and just man to infer from such relation, as a necessary conclusion, that it was illicit. But adulterous cohabitation prior to August 7, 1882,

is no bar to pension, when such cohabitation had ceased before that date. The adulterous cohabitation of a widow subsequent to the passage of the act of August 7, 1882, works a forfeiture of her pension or right to a pension from the commencement of such cohabitation.

3. If the soldier left a widow who is entitled to a pension by reason of his death, and a child or children under 16 years of age by such widow, her title to pension may be forfeited by her abandonment of the care and custody of such child or children, or upon satisfactory proof that she is an unsuitable person, by reason of immoral conduct, to have the custody of the same. Section 4706 of the Revised Statutes provides that no pension shall be allowed to such widow until such child or children have attained the age of 16 years.

4. The proof required in a widow's claim should therefore establish the fact that she has not remarried since the soldier's death; and where there is a substantial doubt on this point, arising from the evidence produced, the case should be referred for a special examination. If the widow's application is filed within a short period after the soldier's death, and the proof is complete on other points, no requirement as to her remarriage should be made.

5. In all claims of widows for pension, or accrued pension, competent testimony should be produced showing that she and the soldier were never divorced from each other, and that they lived together as man and wife up to the date of the soldier's death. If for any reason they were not living together at the time of his death, but their separation was by mutual agreement, or otherwise, not by legal divorce, all the facts relating to such separation should be fully produced in evidence, in order that her rights may be fully and clearly determined.

WHERE SOLDIER HAS FILED AN APPLICATION.

1. If the soldier had filed an application for pension and the same is pending at the date of his death, the widow,

on perfecting the claim, is entitled to the accrued pension due thereon, which will be allowed upon the same evidence as if he were living. Such pension will end on the day of his death, and the brief should authorize its payment to the widow.

2. In such cases the widow may establish the basis of her title by perfecting such claim, or by showing that the soldier contracted another and different disability in the service and died by reason thereof.

3. If the widow completes the pending claim of her husband, she will be entitled, on request, to receive the accrued pension without further testimony than to prove the fact and date of the soldier's death, and that she was his lawful wife when he died.

4. It may be that the said soldier did not die by reason of a disability contracted in the service, and therefore the widow would not be able to obtain a pension in her own right. The adjudication of the invalid claim in such cases should not be delayed to take final action in her own claim; but in the absence of a request for such delay, or of any special reason for it, both claims should be adjudicated at the same time.

WIDOWS OF PENSIONERS.

When a soldier who is a pensioner dies leaving a widow, she is entitled to the accrued pension due upon his certificate, on proof of his death and the date thereof, and that she was his lawful wife when he died. In such cases, if the pensioner died of the disability for which he was pensioned, or if he died of some other disability contracted in the military or naval service and line of duty, the widow may establish her claim to a pension in her own right by showing these facts as heretofore indicated. When the widow applies for pension in her own right, her application will be accepted as covering any accrued pension due the soldier at the date of his death, and no separate application for the same is required. In cases of this kind the

action of the Bureau will be prompt, and the calls for the necessary evidence will be made, and the case submitted to the Board of Review when complete, without any unnecessary delay.

COMMENCEMENT OF WIDOW'S PENSION AND INCREASE OF PENSION UNDER THE GENERAL LAW.

1. If a soldier dies after discharge having a claim for pension pending, or dies in the service, or while a pensioner, the pension of his widow, if she is entitled, will commence on the day succeeding his death; but if he died after discharge, without filing a claim, her pension will commence on the day of his death.

2. A widow is entitled, in addition to pension in her own right, to $2 per month for each surviving minor child of the soldier, provided such minor was under 16 years of age on the 25th of July, 1866; or if he died subsequent to that time, and they were under that age at his death; the increase which is allowed on account of such minors is a personal right, terminating as the minors respectively become 16 years of age, or in case of death.

3. The increase on account of minor children can not commence prior to July 25, 1866, or prior to the date of their birth, if born after soldier's death, in any case, and the increase granted to the widow on account of the minor children of the soldier by a former wife can be paid her only for such period of her widowhood as she has been, or shall be, charged with the maintenance of such child or children. When increase is claimed on account of minor children by a former wife, it must be shown by satisfactory evidence that the claimant is and has been charged with their maintenance during the period alleged.

4. Pensions to widows are graded according to the rank held by the soldier at the time the fatal disease was contracted. If the pensionable rank is below that of a commissioned officer, the rate is $8 per month, prior to March 19, 1886, and $12 from and after that date, provided she

was married to the soldier or sailor prior to March 19, 1886, or was married to such soldier or sailor prior to or during his pensionable service.

5. If, for any reason, the widow was not granted increase of pension on account of the minor children of the soldier, she may file a declaration for increase on account of such minors. In such declaration she should state that she is a pensioner in her own right; that she remains the widow of such soldier, or that she has remarried if such be the fact; that she has not willfully abandoned the support of any one of the children claimed for, and whether she has had the care and maintenance of such children. It is provided by law that a widow shall not be deprived of the increase granted on account of minor children by reason of their being maintained in whole or in part at the expense of a State or the public in any educational institution, or in any institution organized for the care of soldier's orphans. Also that children born before the marriage of their parents, if acknowledged by the father before or after the marriage, shall be deemed legitimate. In cases of this kind the proof of such acknowledgment should be direct and conclusive.

PROOF OF BIRTH OF MINORS.

1. The proof required of the widow to support such declaration is, to show the names and dates of births of the children of the soldier through whom title to pension is claimed. This may be done by the following testimony, which will be accepted in the order given, to wit:

(*a*) By a duly verified copy of the church record of baptism or other public record.

(*b*) By the affidavit of the physician who attended the mother.

(*c*) By the testimony of the midwife, or of one or more persons who were present at the birth. All witnesses should state their means of knowledge, and thus show that they

were present or are otherwise competent to give the precise dates.

2. A widow is required to state in her declaration whether the minor children still survive, and she should also prove that fact by competent testimony.

BRIEFING CLAIMS OF WIDOWS.

1. The face of the brief in a claim of a widow should contain the following facts:

(*a*) The character of the claim, name, and post-office address of the claimant.

(*b*) The name of the soldier, rank, service, dates of enlistment, muster, and discharge, unless he died in the service.

(*c*) Date of soldier's death and date of filing the widow's application.

(*d*) Date when invalid application was filed and date to which he was last paid.

(*e*) Date of marriage to the soldier, and, if he had a former wife, the date of the marriage and death of such wife.

(*f*) Rates of pension and dates of their commencement. Also date of termination of pension and cause of such termination, if there be any.

(*g*) The names and dates of birth of all minor children of the soldier, living or dead, who were under 16 years of age at the time of his death.

(*h*) Name and post-office address of the attorney, the amount of fee to be paid to him, and the date of filing articles of agreement.

2. It should also appear when said minors became, or shall become, 16 years of age, and if any have died, the date of death; and the date of commencement of the increase on account of such minors should be stated. The history of attorneyships should be carefully stated on the brief in order that the question as to the recognition of the attorney may be determined. The date of submission

should appear and also whether the claim is submitted for admission or rejection, and the brief must be signed by the examiner.

LEGAL AND MEDICAL REVIEW OF WIDOWS' CLAIMS UNDER THE GENERAL LAW.

1. The legal and medical review of widows' claims for pension may be properly considered together, inasmuch as the duties of the respective reviewers have been specifically considered in the review of invalid claims. The observations made under the same title in invalid claims apply herein with the following qualifications, and in addition thereto but few points need be mentioned.

2. No medical review is required in cases where the cause of death is entirely a question of fact and is shown by the records of the War or Navy Department. In such cases it is the province of the legal reviewer to determine all the questions.

3. All claims of widows other than described should be referred to the medical referee for a determination of the cause of death and its pathological connection with the disability shown to be of service origin, the legal reviewer first passing upon all legal questions involved. It is the province of the medical reviewer to pass upon the immediate as well as the remote cause of death in widows' claims; but the legal reviewer must determine whether the soldier contracted a pensionable disability in the service and line of duty, and whether continuance of such disability has been shown from discharge to date of death. On this finding the medical reviewer must determine, as stated, whether the soldier died of such disability so contracted or of a pathological sequence thereof.

4. In determining pathological sequences in claims of widows, the same evidence should be required and the same rules applied as in those for invalids. The medical reviewer may, at his discretion, make a requirement for additional testimony in cases not established.

5. In the review of widows' claims the legal reviewer should apply the same rules with reference to the character and amount of evidence required as are laid down under the head of requirements in invalid claims, and an approval should never be made in a widow's claim for a disability unless it is proven in accordance with the rules established herein for the approval of invalid claims.

A widow's claim should not be rejected by the legal reviewer, when a pensionable disability has been established, without the concurrent action of the medical division. If the evidence is sufficient to prove origin and continuance of a pensionable disability, the claim should be approved for the same by the legal reviewer, leaving the question as to whether the cause of death is a pathological sequence of such disability to the medical referee. But when the evidence clearly fails to show origin and continuance of any disability, the case should be rejected by the legal reviewer without reference to the medical division, for the reason that there is no basis for medical action in such a case.

CLAIMS OF MINORS FOR PENSION UNDER THE GENERAL LAW.

1. If a soldier has died under such circumstances as would have entitled his widow to pension, the legitimate minors of such soldier under the age of 16 years also become entitled, provided the rights of the widow do not intervene. That is, if such soldier left no widow, his minors become entitled to pension; or, if the soldier left a widow, when her title terminates the minors who are then under 16 years of age succeed to her rights.

2. A declaration for pension of minors should be executed as declarations for original pension, and the following points should be covered by allegation:

(*a*) Name, post-office address of the guardian, and that he has been duly appointed.

(*b*) Name, rank, service, date, and cause of death of the soldier through whom title to pension is claimed.

(*c*) Nature of wounds and all circumstances attending them, or the disease and manner in which it was incurred, in either case showing soldier's death to have been the sequence. (This requirement is not necessary in cases where the widow was pensioned.)

(*d*) That the soldier left no widow, or, if he did, that she is dead or remarried, or for any reason her title has terminated.

(*e*) That the father of the minors was legally married to their mother.

(*f*) Names, dates of birth of all legitimate children of the soldier under 16 years of age at the time of his death, and if any such minors have deceased that fact should appear.

When made by a guardian, the declaration should be accompanied by properly certified letters of guardianship.

PROOF IN CLAIMS FOR PENSIONS OF MINORS UNDER THE GENERAL LAW.

1. If a soldier dies and leaves no widow, or if he left one who died or remarried without having filed an application, then the minors, or their guardian, must prove the necessary facts to establish an invalid claim; and to show their own right it must be proven that their mother was the lawful wife of the soldier, the fact and date of her remarriage or death, or that in some manner she has been divested of her title. The cause and date of the soldier's death, and that it was due to a disability contracted in the service and line of duty, must also be proven; the facts and dates of births of the claimants, and that the soldier left no other minors under 16 years of age at the time of his death than those for whom pension is claimed. If the soldier left any minor under 16 years of age who has since deceased, that fact should also be proved. If the mother of the children died before the father, it must be shown whether he again married.

2. All these facts must be proven by the same character and amount of evidence as is required to establish claims of widows for pension. Remarriage is proven by the same evidence as marriage in original claims. The fact of the death of a widow or of any of the minors may be proven by the testimony of one or more witnesses having personal knowledge of the facts.

BRIEFING CLAIMS OF MINORS FOR PENSION UNDER THE GENERAL LAW.

1. The face of a brief in a claim of minors should contain the following facts:

(*a*) The character of the claim, name and post-office address of the guardian.

(*b*) Names of the minors in full, and if any of the female minors are married their married name should also be stated at the head of the brief.

(*c*) The post-office address of those who are to be paid upon their own vouchers.

All other entries in regard to dates of commencement, etc., are the same as in widows' claims.

2. Whenever a minor shall have attained his or her majority under the law of the State in which he or she resides his or her portion of the pension will be paid on the individual voucher of such child. If any of the minors have died before the allowance of the claim, their names should not appear on the brief, as the right to pension on their account has abated.

It is very important in completing minors' claims to see that all children of the soldier are accounted for who could possibly share the pension if they are living. If any of the minors have disappeared and it can not be ascertained whether they are alive or dead, the case should be approved, allowing their proportionate share of the pension to the children who have applied, and withholding the share due on account of the minors who are missing.

COMMENCEMENT OF MINORS' PENSION UNDER THE GENERAL LAW.

1. If a soldier dies in the service, or while a pensioner, or after discharge, having a claim for pension pending, leaving no widow, the minors, if entitled, will be pensioned from the date of his death; but if he died after discharge, without filing a claim, their pension will commence on the date of his death. If he left a widow, the pension of the minors, except in cases under section 4706, act of August 7, 1882, and overpayments, always begins on the day after her remarriage or death, or on the day after her title has terminated. The minors of a soldier are pensioned from the day of his death if the widow dies without receiving a pension, no matter whether she made an application or not; but if she remarries and is living, under no circumstances can they be pensioned from a date prior thereto; although if she remarries and dies without receiving her pension or any part of it, the minors are pensioned from the date of the soldier's death.

2. Payment of pension to a widow, under the act of June 27, 1890, is not payment of any part of the pension provided for widows by the general law, and does not debar the minor child or children from applying for and receiving the general-law pension from the date of the soldier's death to the date at which the widow's pension under the act of June 27, 1890, commenced.

If the widow received her pension, or any part of it under the general law, and then died, the minors are pensioned from the date of her death. If a pensioned widow has drawn pension after remarriage, and had the care of the soldier's children for the time between remarriage and the date of last payment, pension to the minors will begin on the day to which she was last paid. If she was not overpaid, or if she did not have the care of the children for the time she was overpaid, they are pensioned from the date of her remarriage.

3. In every case of remarriage, before the claim of the minors is allowed, it is necessary that the date to which the widow was last paid should be ascertained by a call on the Auditor for the Interior Department, Treasury Department.

4. The phrase "from the date of" any event means the day after such event.

5. The limitation as to date of filing applications for pension prescribed in the act of March 3, 1879, does not apply to claims by or in behalf of insane persons and children under 16 years of age.

A properly executed declaration filed by or in behalf of such children by their "next friend" will be accepted as a valid declaration, but payment of pension during the legal minority of such children must be made to a duly constituted guardian.

6. As in the case of widows, an increase of $2 per month will be allowed for each minor, but in no case can it commence prior to the passage of the act allowing such increase, July 25, 1866. Therefore, though the commencement of original pension is governed by the rules heretofore set forth, when reference is made to the date of commencement of minors' pension it is to be understood that increase can not begin prior to the date mentioned.

7. The rates of pension to minor children are governed by the same rules as those relating to widows, except that minors are entitled to the $12 rate after March 19, 1886, whether the marriage of their parents occurred prior or subsequent to that date.

8. Under section 4706 of the Revised Statutes, the abandonment of the children of a soldier by his widow, or her unfitness to have the care and custody of them, may be proved by the certificate of the court having probate jurisdiction over the persons of such minors, or by other satisfactory evidence of such facts. The minors of the soldier by such widow are entitled to the original as well as the increase pension until they severally attain the age of 16

years; but a widow can not be deprived of her pension under this section by reason of abandonment or by reason of being an unfit person to have the care and custody of the children by a former wife, but the increase granted to such widow on account of such minors can be paid to her only so long as she is charged with their care and maintenance. The increase pension due to such minors can be paid to their guardian during the lifetime of the widow when she does not have the care and maintenance of them. When a widow has forfeited her title to pension under the provisions of section 4706 of the Revised Statutes or under the act of August 7, 1882, the pension of the minors commences from the date of the last payment to the widow, or if she was not a pensioner, from the date of the forfeiture of her title to pension.

LEGAL AND MEDICAL REVIEW OF CLAIMS OF MINORS FOR PENSION UNDER THE GENERAL LAW.

1. As minors succeed to the rights of the widow of a soldier when her title has terminated, the remarks under the same title in widows' claims very largely apply herein. To avoid repetition, reference is had to the observations under said title.

2. Where a widow's claim has been adjudicated, the basis of the widow's title and the cause of the soldier's death having been determined, no medical questions arise upon the review of the minor's claim, the questions for consideration being only legal. Where a widow's claim has not been adjudicated, the same rule applies concerning the relations of the legal and medical reviewers to the case as has been given concerning widows' claims for original pension.

CLAIMS OF DEPENDENT RELATIVES FOR PENSION UNDER THE GENERAL LAW.

1. If a soldier died of a disability contracted in the service under such circumstances as would have entitled him to pension, and leaves neither widow nor legitimate minor

child, certain relatives of such soldier, if any survive, who were dependent in whole or in part on said soldier at the time of his death, become entitled. Under the statute granting pensions to dependent relatives, the mother of the soldier is first entitled; secondly, the father; thirdly, orphan brothers and sisters under 16 years of age, who shall be pensioned jointly.

2. A dependent mother is always pensioned from the date of the soldier's death, provided her application was filed prior to July 1, 1880; otherwise the pension will begin at the date of filing the declaration and cease at her remarriage. If the mother died before the death of the soldier, the pension of the father begins at the date of the soldier's death, if the claim was filed prior to July 1, 1880; otherwise it will commence at date of filing his claim. If the mother was dependent, upon her death the father, if surviving, will, provided his application was filed within the limitation, be pensioned from the date of her death; otherwise the pension will begin at the date of filing the declaration.

DECLARATION FOR PENSION OF A MOTHER.

A declaration for pension of a mother must be executed and witnessed as other declarations for original pension, and the following points should be covered by allegation:

(*a*) Relationship and post-office address.

(*b*) Name, rank, service, cause, and date of the death of the soldier.

(*c*) Celibacy of the son.

(*d*) Dependence in whole or in part at date of soldier's death and since.

(*e*) Names and ages of other children, if any, of claimant.

(*f*) Whether the husband is living or not, his age and physical condition from soldier's death.

(*g*) That she has not aided or abetted the rebellion.

(*h*) Whether her son through whom title to pension is claimed was a pensioner or not, or had filed an application at the time of his death.

(*i*) If soldier's father has deceased, claimant should state whether she has remarried.

PROOF IN CLAIMS OF DEPENDENT MOTHERS UNDER THE GENERAL LAW.

To support a declaration the claimant must establish her title in the following manner:

(*a*) The basis of her title to pension by the same proof required to establish an invalid right.

(*b*) In addition thereto she must show that the soldier left no widow nor minor child surviving.

(*c*) That she is the mother of the soldier who died of a disability contracted in service, and date of his death.

(*d*) That the claimant was dependent in whole or in part upon the soldier for support at the time of his death.

WHAT CONSTITUTES DEPENDENCE.

There is no settled rule by which the question of dependency can be determined, but it must rest upon the peculiar facts and circumstances in each case—the age of the claimant, the number and condition of members in the family dependent upon her for support, claimant's surrounding circumstances in life, the husband's physical ability to perform manual labor, his opportunities for employment. his habit of thrift and economy, and his disposition to support his family being pertinent.

CELIBACY OF SOLDIER.

1. The celibacy of the soldier and the relationship of the mother may be shown by the testimony of two credible witnesses having personal knowledge of the facts.

2. The cause of death and date thereof should be shown by the same character and amount of evidence as is required in claims of widows for original pension.

PROOF OF DEPENDENCE.

1. To prove dependence it must appear that prior to the death of the soldier his father died, or, if living, did not support the claimant. That at the time the soldier died she had no adequate means of support other than the proceeds of her own labor; and that her son, provided he was over 21 years of age, in whole or in part contributed to or in some way recognized his obligation to so aid in her support; otherwise no evidence of contributions is generally necessary. The death of the father may be proven by two witnesses.

2. The claimant, having first proven the death of her husband, or that for any reason he did not support her, must next show that she had not sufficient property in her own right to furnish an adequate support.

3. The proceeds of the labor of the mother are not to be charged against her, no account being taken of the same. The affidavit of the mother and father making an exhibit of his property should also include an exhibit of hers, and the certificate showing the taxable property of the father should also state the facts concerning the property of the mother.

4. If the father was living, it should in all cases be ascertained whether, at the time of the soldier's death, and each year since, he had any property; and if so, what the income therefrom was during said years, and the amount of his earnings by labor or otherwise during such period. To obtain the facts concerning the property and income of the father from all sources is often an exceedingly difficult matter. It should be ascertained from the claimant where she and her husband have resided during each year since the death of the soldier, and the claimant should show by her affidavit and that of her husband, a complete exhibit of his and her property during said period, and a certificate from the proper officer at their place of residence having charge of the records relating to the taxation of property, showing

the amount, if any, of property, real and personal, upon which the husband or the claimant was assessed for taxation during each year since the soldier's death, but the commercial as well as the assessed value should be given; and, if the real property is in farms, a general description of size, fertility, and productions should be set forth, as, in many instances, on account of remoteness, such property may not have a high commercial value, but still be productive and yield an ample support. In claims filed after June 30, 1880, dependence at date of soldier's death having been shown, it is only necessary to show continuance of such dependence since date of filing claim.

5. If the testimony of the claimant and her husband and the certificate of such officer tend to show dependence, the number of witnesses to perfect the proof, as in all cases, must depend upon circumstances. Where such affidavits and certificates are satisfactory, the testimony of two credible witnesses, having personal knowledge of the facts, will usually be sufficient to show dependence, provided it is shown that the father of the soldier was disabled, or that he was a man of intemperate or such habits as would indicate that he neglected the support of his family.

PHYSICAL DISABILITY OF THE FATHER.

1. If the claimant's husband was an able-bodied man, cumulative evidence, either in the form of correspondence with the witnesses, inquiry of the postmaster if practicable, or direct testimony, especially if the period of time covers a great number of years, should be required. If the claimant's husband was able-bodied, more than two witnesses should generally be required, for it must be shown by the testimony of those with whom the father was associated in business what his income was during the period of time mentioned; and if he was a laboring man, his earnings must be shown by the testimony of his employers during the major part of the time. The number of witnesses must therefore be governed by the physical

condition of the father, the business in which he has been engaged, and whether he has resided in the same locality during the time specified, and whether he is living or dead.

2. Where a father, by reason of physical disability, did not support his family, that fact should, if possible, be established by medical evidence. The amount of testimony required in such cases to show physical disability must necessarily depend upon the character of the same; the number of witnesses must also depend upon the years to be covered by their testimony.

3. It must be remembered that dependence of a mother does not rest upon the physical inability of her husband to support her. The question, so far as support from the father is concerned, is, did he, as a fact, support the mother of the soldier; not, whether he was physically able to do so; for a husband though an able-bodied man may still fail to support his wife. It is a question that should usually be determined by a special examination, for the reason that the presumptions are somewhat against the theory that an able-bodied man can not or will not support his family.

If a father was over 60 years of age at the death of the soldier, less evidence is necessary to show his physical inability to support his wife and family, and especially is this true if he was a laboring man.

If the father permanently abandoned the support of soldier's mother, the fact and date of such abandonment may be established by the testimony of two credible witnesses.

CONTRIBUTIONS.

1. If the soldier lived with his mother when he enlisted, and was under 21 years of age at the time of his death, she is not required to produce any evidence that he recognized his obligation to, or did contribute toward her support. By the common law of this country parents are entitled to the earnings of their minor children. Though they are

legally bound for the support of such children, the parents in return are entitled to the earnings of such minors.

2. Contributions to the support of a mother from a son over 21 years of age, or a recognition of his obligation to aid in her support, may be proven by letters of the soldier transmitting the same, or admitting his obligations by promising support, or expressing in any manner a desire to contribute when possible. The point may also be proven by the testimony of two credible witnesses possessing personal knowledge. Testimony showing that the soldier liquidated the obligation of his parents, or that support was furnished them upon his order, will be received as proof tending to show dependence.

3. A contract for support between a claimant and another is a bar to pension for such time as the claimant or pensioner shall receive an adequate support under such contract. In other words, if a transfer of property is made to one or more of the claimant's children in consideration of a life support to the claimant, such contract would operate as a bar to payment of pension to claimant during the period of such adequate support. But if the contract was based upon an entirely insufficient consideration, and such child or children are unable, for any reason, to support the claimant, and as a fact do not provide her an adequate support, such contract should not deprive the mother of a pension. In cases of this kind great care should be had to ascertain all the facts, and usually pension should not be granted without a special examination.

4. It must be remembered that the mother is only required to show that she was dependent upon her son in part. If she had other sons who contributed to her support and the evidence shows that she was in part dependent upon the soldier, the point is thus established.

CLAIMS OF DEPENDENT FATHERS UNDER THE GENERAL LAW.

1. If a soldier died under such circumstances as would entitle his dependent mother to pension, the dependent

father of such soldier is also entitled on the death of the mother.

The declaration of a dependent father should cover all the points indicated in a mother's claim, and also the death of the mother and the date thereof, and the marriage of the claimant to the mother of the soldier.

2. In addition to the proof required in a mother's claim, the father must prove the fact and date of his marriage to the mother of the soldier, and the fact and date of her death, by the same character and amount of evidence required to establish such points in other cases.

3. It must be shown by competent evidence that the father was disabled at the date of the soldier's death to such an extent that he could not earn a livelihood, and that the proceeds of his property and income from all sources did not furnish him an adequate support.

4. It is provided by statute that the income which is derived or derivable from the father's actual or possible manual labor should be taken into account in estimating his means of independent support.

In determining what constitutes dependence in claims of fathers, the same circumstances concerning the surroundings of the family should be taken into consideration as in mothers' claims.

DEPENDENCE OF COLORED PERSONS.

1. No distinction is made in the pension laws concerning the rights of dependent relatives whether they are white or colored; but great difficulty is realized in obtaining the facts in regard to the dependence of colored persons owing to their condition of servitude at the beginning of the war of the rebellion.

2. To allow such claims there must be some evidence of contributions or a recognition of obligation to aid in the support of a parent on the part of the adult son at some period of time prior to his death; but no rule can be stated as to the amount of proof required in such cases.

3. If the claimant was held as a slave, and resided upon the plantation of her owner and master, and was maintained and supported by him as such, and the deceased soldier never in any manner aided in her support, or contributed thereto, she was not dependent upon her son for support within the meaning of the pension laws. This rule will apply even if the claimant was so held and supported after the issuance of the emancipation proclamation.

In a claim of a father for pension it must be shown that he was legally married to the mother of the son on whose account the claim is made. Section 4705 of the Revised Statutes does not apply to marriages of parents of a soldier.

CLAIMS FOR PENSION OF DEPENDENT MINORS.

1. Where a soldier has died under such circumstances as would entitle his mother, and, in the order of succession, his father, to pension, on the death of both parents or upon the death of the father and the remarriage of the mother, the dependent brothers and sisters under 16 years of age jointly become entitled to such pension until they attain the age of 16 years, respectively.

A declaration for pension for minor brothers and sisters should be executed as other original declarations, and the proof to be furnished is practically the same as in a mother's case, except that they should establish the marriage of the father and mother of the soldier, if possible; the dates of their births; their relationship to the soldier, and the death of their parents, or the death of the father and the remarriage of the mother.

The marriage of a dependent sister forfeits her right to pension from the date of such marriage. Their dependence on the soldier for support must be shown by the same evidence as is required in a mother's claim.

2. It is held that the title of dependent brothers and sisters does not depend upon the validity of the marriage of the parents. If they can establish the fact that they are the offspring of the same parents as the soldier, they thus

establish their identity as the persons named in the law and are entitled to pension, if the other conditions named in the law are shown. (Vol. 8, Pension Decisions, p. 18.)

3. The rule with regard to limitation as to date of filing claim is the same as that which applies to minor children of the soldier.

BRIEF IN CLAIMS OF DEPENDENT RELATIVES.

The face of a brief in claims of dependent relatives should contain practically the same facts as in a widow's claim. In the claim of a dependent father the brief should show the fact and date of the mother's death, and in claims of dependent minors, the names and dates of births of the minors should be given and the date when they became or shall become sixteen years of age. The brief should also show the fact and date of the death of the parents, or the death of the father and the remarriage of the mother, as the case may be.

The date of submission should appear, and also whether the claim is submitted for "admission" or "rejection," and the brief should be signed by the examiner.

LEGAL AND MEDICAL REVIEW OF CLAIMS OF DEPENDENT RELATIVES.

1. The respective duties of the legal and medical reviewers in reviewing claims of dependent relatives are the same as in claims of widows for original pension, and no further observations concerning their duties need be made herein. If a dependent mother has perfected her claim, no medical question arises on a subsequent review of the father's claim, and the same rule applies in reviewing claims of minor brothers and sisters where a parent's claim has been previously perfected.

2. If on a subsequent review of the claim of a dependent father or dependent brothers and sisters the question of the cause of death of the soldier has not been previously

determined, the same rule applies concerning the respective duties of the reviewers as in claims of dependent mothers.

SPECIAL EXAMINATION OF CLAIMS FOR PENSION.

1. Under the provision of section 4744 of the Revised Statutes, as amended July 25, 1882, a special examination may be had of all classes of claims for pension, whether pending or adjudicated, when deemed proper by the Bureau. Three classes of claims only should be referred for special examination:

(*a*) Those in which the claimant has presented a prima facie case and a well-grounded doubt arises as to the genuineness of the claim, whether the same be pending or adjudicated.

(*b*) Those in which there is an adverse record of such a character that it may be overcome by evidence obtained through a special examination, the claimant having, upon ex parte testimony of commissioned officers, or such medical evidence as may be required according to the character of the claim, presented a prima facie case.

(*c*) All other cases where a claimant has presented a prima facie case, it appearing that the claim is meritorious, but the character of the evidence, whether parol or record, is not such as, under the rules of the Bureau, is required to establish a claim for the particular disability alleged and the claimant is unable to comply with those requirements.

2. It is not to be understood that all such cases as mentioned *should* be referred for special examination, but only such *may* be examined. No claim of the first class mentioned should be specially examined unless the doubt referred to is well grounded and founded upon facts elicited by the Bureau in the usual manner, or upon information and evidence voluntarily furnished by reliable persons, or upon the face of the papers.

3. It is not every discrepancy that appears in the evidence, or improbability that is claimed, that will justify a special examination. Only discrepancies of such a character and such improbabilities which raise a doubt and

which claimants fail to satisfactorily explain will justify a special examination. Before a special examination is had in cases of the second or third class, the Bureau, upon the facts presented, should be satisfied that the claims possess too much merit to warrant rejection, but that under the practice of the Bureau they are inadmissible. Sound judgment should be exercised in this class of cases, for it is not intended to specially examine all cases which the claimants are unable to prove, but only such claims as are established prima facie, but in which a well-grounded doubt arises upon the evidence.

4. The chief object of a special examination in any given claim is twofold:

(*a*) To protect the Bureau against claims which are not genuine.

(*b*) To obtain the real facts in just and lawful claims which are inadmissible upon ex parte testimony.

5. The duties of a special examiner are delicate and important; he is charged with the protection of the interests of the Government and the rights of the claimant; he is not in any sense the attorney of either; his mission in all cases is to obtain the real facts, and without bias or prejudice for or against either party in interest, report the same to the Commissioner.

6. Before a case is referred for special examination care should be taken that the reports of the War Department contain a full military and medical history of the soldier, and when the former report is deficient in that respect a call should be made on the War Department for a further report.

7. When a case is referred for special examination it is the duty of the person referring it to indicate precisely the points upon which the special examination is required. Cumulative evidence upon points already established and not in controversy is not to be called for.

8. All cases submitted for special examination must be accompanied by a slip signed by the chief of the division referring the case, stating explicitly just what points should

be inquired into, and the reasons therefor. When purely medical questions are involved the directions of the medical referee, as to points for examination, should be included in the above. The slip should also state that all necessary and accessible evidence from the several departments has been obtained, and that all the evidence is properly briefed.

9. When a case is referred to the Special Examination Division it is the duty of the chief of the Adjudicating Division and the chief of the Board of Review to see that the slip of reference is definite and specific in its terms, and that the points given below are clearly set forth:

(*a*) The purpose for which sent to the field. (Origin, continuance, death cause, etc.)

(*b*) The evidence accepted as proving any given point. (A. B., as to origin; C. D. and E. F., as to continuance from 1870.)

(*c*) The evidence necessary to complete. (One comrade, and evidence as to continuance from discharge to 1870.)

(*d*) If more than one disability alleged and in question, state proof necessary to establish each. (Rheumatism and bronchitis; origin of rheumatism shown, continuance in question; origin of bronchitis in question.)

10. Special examiners will not be expected to confine their examination of claims strictly to the points contained in the slip of reference in all cases, as conditions may develop during the investigation requiring independent action and the exercise of an intelligent judgment, in which event the investigation will be conducted on such lines as the conditions may warrant. It is not intended in any event to prevent the special examiner from taking all testimony that may present itself as to fraudulent imposition or action on the part of the claimant, his attorney or friends, but to avoid the taking of unnecessary evidence and the consumption of time and consequent expense on matters not material, or on matters already established.

11. As stated heretofore, under head of "Legal review of invalid claims," the legal reviewer is the sole judge of the

weight and sufficiency of evidence to establish a claim; and when in the judgment of the Board of Review a claim should be referred for special examination, such decision should govern, unless overruled by the Commissioner or Deputy Commissioner.

12. Great care should be exercised by the examiner and reviewer in referring cases for special examination, where it is apparent that all sources of information have not been exhausted, and where it is possible to properly adjudicate the claim by evidence that can be obtained by the examiner.

13. Whenever a case is returned by the medical referee for special examination on medical points, the requirements should be so plainly stated by him that a layman will have no difficulty in comprehending the nature of the information which it is desired to obtain.

14. When it is deemed necessary to ascertain the credibility of or cross-examine witnesses residing in cities containing over 20,000 inhabitants, the examiner should forward to the Special Examination Division a properly prepared inquiry for each witness, and the chief of that division will adopt such methods as will most expeditiously and accurately determine the questions involved in the inquiry.

15. When the Board of Review returns a case to an adjudicating division for credibility or cross-examination of one or more witnesses specifically named, who reside in cities containing over 20,000 inhabitants, the adjudicating division shall retain all the papers in the case and forward to the Special Examination Division a properly prepared inquiry for each witness so named on the blank prepared for that purpose, accompanied by a slip signed by the chief of the Board of Review directing the inquiry.

16. In no instance will the examiner call for the credibility or cross-examination of witnesses residing in any other localities than those indicated in the two preceding paragraphs, through the Special Examination Division,

unless specifically instructed so to do by the chief of the division on his personal approval.

17. In preparing cases for special examination as to general merits, all claims on account of the service of the soldier should be briefed and indexed, and should be sent to the Special Examination Divison through the Board of Review, together with the case referred for examination.

When the special examination is completed the papers will be submitted to the Board of Review by the Special Examination Division for action.

PENSIONS ON ACCOUNT OF SERVICE IN THE REGULAR ARMY.

1. No distinction is made between the rights of soldiers who became disabled in the Regular Army prior to March 4, 1861, and those who contracted disabilities subsequent thereto, except as provided in sections 4694 and 4713 Revised Statutes.

2. The same character and amount of evidence is required to establish such claims as is necessary for disabilities contracted in the war of the rebellion, and the only difference in the practice between them is, that in those of the Regular Army the certificates of commissioned officers thereof in actual service are accepted without being sworn to, and correspondence with all witnesses who are in the service is had through the War Department and not with the witnesses direct, as in other cases.

3. The rights of widows, minors, and dependent relatives of officers and soldiers of the Regular Army who have died of a disability contracted since March 4, 1861, are the same as those of the war of the rebellion; but no provision is made for pensioning dependent relatives of those who have died of disabilities contracted prior to March 4, 1861, and to entitle their widows and minors to a pension such disability must have been contracted during a period of actual war.

4. Under the limitations imposed by section 4694, Revised Statutes, no person shall be entitled to pension by

reason of wounds or injury received or disease contracted in the service of the United States subsequent to July 27, 1868, unless the person who was wounded, or injured, or contracted the disease was in the line of duty; and if in the military service, was at some post, fort, or garrison, or en route by direction of competent authority, to some post, fort, or garrison; or, if in the naval service, was at the time borne on the books of some ship or other vessel of the United States, at sea or in harbor, actually in commission, or was at some naval station, or on his way, by direction of competent authority, to the United States, or to some other vessel, or naval station, or hospital.

Under this limitation, no pensionable status can arise by reason of disabilities contracted by an officer, soldier, or sailor while on the retired list of the Army or Navy, and if such officer, soldier, or sailor dies of a disability so contracted, no pensionable rights are conferred on his widow, minor children, or dependent relatives.

5. In claims filed on account of service in the Regular Army the call for report of service and disability should be made on the Adjutant General of the Army, and where a soldier served in the regular and in the volunteer service, the call for report of the entire service of the soldier will be made on the Adjutant General.

NAVY PENSIONS.

1. The observations heretofore made are chiefly applicable to army pensions, for disabilities contracted since March 4, 1861, and to the claims of those entitled by reason of the service of such soldiers. The distinctions relating to the granting of navy pensions during the same period, as well as those disabled prior to March 4, 1861, will be treated herein.

2. When a claim for navy pension has been filed, to obtain a record of service the following facts should be remembered:

(*a*) That the service of officers is obtained from the Secretary of the Navy.

(*b*) Of seamen, from the Auditor for the Navy Department, Treasury Department.

(*c*) Of marines, from the adjutant and inspector of the Marine Corps.

(*d*) The service of officers and seamen of revenue cutters of the United States, who were wounded or disabled in the discharge of their duty while cooperating with the Navy by order of the President, should be obtained by a call upon the Secretary of the Treasury, through the Secretary of the Interior.

3. The record of disabilities is obtained from the Surgeon General of the Navy. When evidence of the disability of a sailor from *wounds* or *injuries* can not be obtained from the Surgeon General, information thereof may often be had from the log book in the office of the Chief of the Bureau of Navigation. In claims arising on account of service in the Mississippi flotilla, when the enlistment was prior to October 1, 1862, the call for service should be made on the Auditor for the War Department, and if subsequent to that date, on the Auditor for the Navy Department, Treasury Department.

4. To establish a claim for navy pension the same character and amount of proof is required as in those for army pensions. Medical surveys, when signed by the commandant of the ship and the surgeon thereof, are entitled to the same credit, if such surveys were made on the ship, the officers having the opportunity for personal knowledge of the facts stated in such surveys, as certificates of disability in claims for army pensions when signed by the captain of the soldier's company and the surgeon of his regiment. Otherwise their weight is similar to that of a certificate of disability issued from a general hospital. The certificates of commissioned officers of the Navy, given while in the service, need not be sworn to.

5. The commencement of invalid navy pensions for disabilities contracted since March 4, 1861, and of those who succeed to their rights, is governed by the same law as

pertains to army claims, and the rights of such widows, minors, and dependents are the same under the laws governing army and navy pensions, except in pensions granted under section 4741, which, on certain conditions, gives title to pension to the officers and seamen of revenue cutters, and those under the provisions of sections 4756 and 4757, Revised Statutes, end with the invalid right.

6. Under sections 4756 and 4757, Revised Statutes, pensions for twenty years' service, and for ten years' service, are allowed by the Secretary of the Navy to enlisted men and appointed petty officers who have not been discharged for misconduct. Pension commences on the date of filing the claim therefor in the Navy Department, and for twenty years' service amounts to one-half the monthly pay of the applicant's rating at his discharge; for ten years' service the pension can not exceed the rate for total disability, and is fixed, as also its duration, by a board of naval officers. No application is required to be filed in the Pension Bureau for such pension.

7. Where a sailor is pensioned under the provisions of section 4756, Revised Statutes, for twenty years' service at one-half the pay of his rating at the time he was discharged, and he has also established a claim for pension under the general law for disability contracted in service and line of duty, or under the act of June 27, 1890, a certificate will issue consolidating such pensions, and he will be entitled to receive the allowance granted under said section, in addition to the pension granted him by this Bureau, either under the general law or under the act of June 27, 1890.

8. When the Secretary of the Navy shall certify to this Bureau, under the provisions of section 4757, Revised Statutes, that a person who has served ten years in the Navy or Marine Corps is entitled to aid from the surplus income of the naval-pension fund, in addition to a pension granted by this Bureau, either under the general law or under the act of June 27, 1890, not to exceed one-fourth the rate of such pension, a certificate will be issued covering both

allowances for the period specified by the Secretary of the Navy.

9. Section 4694 of the Revised Statutes governs the rights of sailors who have contracted disabilities since July 27, 1868, as well as those of soldiers of the Regular Army.

10. The widow, or children under 16, of *sailors* whose service was prior to March 4, 1861, are entitled to pension only when the death of the sailor occurred in service and in line of duty.

PENSIONS TO INVALIDS DISABLED IN SERVICE PRIOR TO MARCH 4, 1861, AND TO THE WIDOWS AND MINORS OF SUCH SOLDIERS AND SAILORS.

1. Section 4713 of the Revised Statutes provides that "in all cases where the cause of disability and death originated in the service prior to the 4th day of March, 1861, and an application for pension shall not have been filed within three years from the discharge or death of the person on whose account the claim is made, or within three years of the termination of a pension previously granted on account of the service and death of the same, the pension shall commence from the date of filing, by the party prosecuting the claim, the last paper requisite to establish the same."

2. Therefore, if an application was filed within the time prescribed, the applicant would be pensioned from the date of the discharge of the invalid, or from the date of the death of the person through whom title to pension is claimed; but if the application was filed after three years from the soldier's or sailor's discharge or death, or three years after the pension has terminated, then the pension will commence at the date of filing the last material evidence; but no arrears of pension can be allowed in claims admitted prior to June 6, 1866.

3. Loyalty in all claims of this class, for both army and navy pensions, must be shown. The only exception to this rule are those persons embraced in section 5 of the act of

March 9, 1878. It will be noticed that claims on account of disabilities contracted in the war with Mexico are not included in the exceptions noted in said section.

CLAIMS FOR PENSION OF INVALIDS DISABLED IN THE MEXICAN WAR, AND THEIR WIDOWS AND MINORS.

1. The right to pension of soldiers disabled in the war with Mexico is governed by section 4730, and the rights of their widows and minors by section 4731, Revised Statutes. The commencement of pension is controlled by section 4713, Revised Statutes, the provisions of which have heretofore been set forth.

The same character and amount of evidence is required to establish a claim for pension under this title as in claims for pension for disabilities contracted since March 4, 1861.

2. The conditions under which a pension is granted in this class of cases are that the disability on account of which pension is claimed was contracted in the line of duty in actual service in the war with Mexico, or in going to or returning from the same, and that the soldier received an honorable discharge from such service.

3. In case of the death of such person by reason of any injury received or disease contracted under the circumstances set forth in the preceding section, his widow is entitled to receive the same pension as the husband would have been entitled to receive had he been totally disabled; and in case of her death or remarriage, the child or children of such soldier, while under the age of 16 years, will be entitled to the pension. The rates of pension granted in this class of cases shall not be more than one half the pay of the rank held by the soldier at the date at which he received the wound or incurred the disability, prior to July 25, 1866; but after that date the rates of pension are governed by section 4712, Revised Statutes, and this rule applies equally to widows and minors of such soldiers and sailors.

SURVIVORS OF THE WAR OF 1812, AND THEIR WIDOWS.

1. Service pensions of $8 per month to certain survivors of the war of 1812 and to their widows are granted by sections 4736, 4737, and 4738, Revised Statutes, and also by the act of March 9, 1878.

2. Those entitled under the first-named statute are officers, soldiers, and sailors who served sixty days in said war between June 18, 1812, and February 17, 1815, and were honorably discharged, and such officers and soldiers as may have been personally named in any resolution of Congress for any specific service in said war, although their term of service was less than sixty days.

The widows of such soldiers or sailors are also entitled to pension, provided—

(*a*) That they were married to such soldiers or sailors prior to the treaty of peace which terminated said war, February 17, 1815, and

(*b*) That they have not remarried.

All service pensions granted under the first-mentioned statute are allowed from the date of the approval of the act, February 14, 1871. If the soldier died after February 14, 1871, his widow is entitled to the pension from the date of his death.

3. Under the act of March 9, 1878, officers, soldiers, and sailors who served fourteen days or more during the war of 1812, or were in any battle during that war, and were honorably discharged, and the widows of such officers, soldiers, and sailors, irrespective of the date of marriage, are entitled to a pension of $8 per month from March 9, 1878.

4. Under the act of March 19, 1886, widow pensioners under the above-named acts are entitled to $12 per month from that date, but there is no law granting increase to the soldier or sailor himself, and the rate of pension does not vary with the rank of the soldier or sailor.

5. In claims under the act of February 14, 1871, loyalty must be proven, but proof of loyalty is not required in claims under the act of March 9, 1878.

6. The service of a soldier or sailor, that he was honorably discharged, and the fact that he participated in a battle, is usually obtained by a call on the proper Department. The service of soldiers of the militia and volunteers in the war of 1812 should be obtained by a call upon the Record and Pension Office, War Department, and that of soldiers in the Regular Army by a call upon the Adjutant General. The call for service of sailors should be made upon the Auditor for the Navy Department. In case such reports fail to show the service of the soldier or sailor, but do show service of the organization to which he claims to have belonged for the required period, his service may be proven by the testimony of a commissioned officer or two comrades who served in the same organization, provided their names are borne on the rolls of such organization during the entire period covered by their testimony, and they are shown to be credible witnesses.

It is further provided by the act of March 9, 1878, that when any person has been granted a land warrant under any act of Congress, for and on account of service in the said war of 1812, such grant shall be prima facie evidence of his service and honorable discharge, so as to entitle him, if living, or his widow, if he be dead, to a pension under that act; but such evidence shall not be conclusive, and may be rebutted by evidence that such land warrant was improperly granted. Identity and loyalty may be proven by two credible witnesses.

7. If a claimant applied for service pension under the act of February 14, 1871, the claim, whether pending or rejected, will be treated as filed under the act of March 9, 1878, upon the claimant filing a statement, signed by him or her in the presence of two attesting witnesses, requesting that the claim be adjudicated under the act of March 9, 1878. In such cases new applications will not be required.

INDIAN WARS FROM 1832 TO 1842—SERVICE PENSIONS.

The act of July 27, 1892, provides pension for the surviving officers and enlisted men, including marines, militia,

and volunteers who were in the military or naval service of the United States for thirty days in the Black Hawk war, the Creek war, the Cherokee disturbances, or the Florida war with the Seminole Indians, and were honorably discharged; or who were personally named in any resolution of Congress for specific service therein; and for their widows, provided they have not remarried. All pensions under this act are fixed at $8 per month, irrespective of rank; are not subject to increase for any cause, and are payable from July 27, 1892; but the pension of a widow whose husband was living on that date commences from the day of his death.

The provisions of section 4716 do not apply to pensions under this act. No pension is provided in the act for any descendant of the soldier or sailor.

Calls for service for the volunteers and militia in this class of cases are made on the Auditor for the War Department.

MEXICAN WAR SERVICE PENSIONS.

1. Under the act of January 29, 1887, officers and enlisted men who were in the military or naval service of the United States for sixty days in Mexico, or on the coasts or frontier thereof, or en route thereto, in the war with that nation, or were actually engaged in a battle in said war, and were honorably discharged; or who were personally named in any resolution of Congress for specific service in said war, are entitled to pension if 62 years of age; or, if not, upon proof of pensionable disability or dependence.

2. Widows of officers and enlisted men who served as above stated are entitled to pension on the same conditions as to age, disability, or dependence, as apply to such officer or soldier; but disability incurred while in any manner voluntarily engaged in, or aiding, or abetting, the late rebellion does not give title to pension, nor are any persons entitled thereto while under the political disabilities imposed by the fourteenth amendment to the Constitution.

3. Pensions under this act commence on January 29, 1887, if a pensionable condition by reason of age or disability, or dependence, then existed; if not, then on the date the applicant became 62 years of age, or disabled, or dependent, within the meaning of the law.

4. The rate of pension is $8 per month, irrespective of rank, which rate, for survivors who were pensioners on January 5, 1893, may be increased to $12 per month under the act of that date on proof that the pensioner is wholly disabled for manual labor and in such destitute circumstances that $8 per month is a sum insufficient to provide him with the necessaries of life. This increase commences on the date of the approval of claim by the Board of Review.

Widows' pensions are not subject to increase, nor are the descendants of survivors entitled to a service pension.

5. The provisions of section 4716, Revised Statutes, do not apply to pensions under this act.

6. For pensionable purposes, April 24, 1846, is accepted as the commencement, and May 30, 1848, as the date of the legal termination of the war with Mexico.

ARMY NURSES.

1. Under the act of August 5, 1892, all women employed by the Surgeon General of the Army as nurses, under contract or otherwise, during the late war of the rebellion, or who were employed as nurses during such period by authority which is recognized by the War Department, and who rendered actual service as nurses upon the sick or wounded in any regimental, post, camp, or general hospital of the armies of the United States for a period of six months or more, and who were honorably relieved from such service, and who are now or may hereafter be unable to earn a support, are granted a pension of $12 per month from the date of filing the claim after August 5, 1892.

2. If the service of an army nurse for the required period is shown by the records of the War Department,

further evidence on this point is not required, but a call should be made upon the Auditor for the War Department to show the period for which such nurse was paid for such services.

3. If the records fail to show six months' service, as stated, a call should be made upon the claimant for all documents and other information in her possession showing such service, and for the testimony of the surgeon or assistant surgeon in charge of hospital, hospital steward, or of enlisted men who were on duty with them at the hospitals where she was stationed. These witnesses should testify from personal knowledge and be explicit as to the period of her service, and should state how they are able to fix the dates of her service, whether from records or from memory.

Upon the receipt of the testimony indicated the usual call will be made to verify the service of the witnesses, and correspondence should be had with them direct to test their actual knowledge of the facts to which they have testified.

4. When all obtainable testimony with regard to the service of such nurse has been furnished, it should be referred to the Surgeon General of the Army for report as to whether it is sufficient to show that such service was rendered and that the employment of such nurses during such period was given by authority which is recognized by the War Department.

5. Remarriage is no bar to pension under this act, but the claimant must show by competent evidence that she is at least 65 years of age or that she is unable to earn a support.

6. Women who specially superintended and prepared the diet of the sick and wounded in hospitals under the directions of those in charge and where such superintendence required the information and skill of a dietarian or nurse rather than that of an ordinary kitchen employee, are pensionable under this act.

INVALID CLAIMS FOR ORIGINAL AND ADDITIONAL PENSION UNDER THE ACT OF JUNE 27, 1890.

The term "Claims for original pension" under the act of June 27, 1890, refers to claims where no pension has ever been granted under any law.

The term "Claims for additional pension" refers to claims under the act of June 27, 1890, where the claimant is now a pensioner under prior laws.

1. The second section of the act of June 27, 1890, provides that all persons who served ninety days or more in the military or naval service of the United States during the late war of the rebellion, and who have been honorably discharged therefrom, and who are now or may hereafter be suffering from a mental or physical disability of a permanent character, not the result of their own vicious habits, which incapacitates them from the performance of manual labor in such a degree as to render them unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of invalid pensioners of the United States and be entitled to receive a pension not exceeding $12 per month and not less than $6 per month, proportioned to the degree of inability to earn a support; and such pension shall commence from the date of filing of the application in the Pension Office, after the passage of the act, upon proof that the disability then existed, and shall continue during the existence of the same.

The same section also provides that those who are now receiving pensions under existing laws, or whose claims are pending in the Pension Office, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto, receive the benefits of this act; and that nothing contained in the act shall be so construed as to prevent any pensioner thereunder from prosecuting his claim and receiving his pension under any other general or special act; provided, however,

that no person shall receive more than one pension for the same period. Rank in the service shall not be considered in claims filed under this act.

2. Every application for pension under the second section of the act of June 27, 1890, should state that the same is made under said act, the date of enlistment and discharge, the name or nature of the disease, wounds, or injuries by which the claimant is disabled, and that they are not due to vicious habits; provided, however, that the omission of any of these averments shall not invalidate the application (the intent to claim pension being manifest and the declaration being executed in accordance with law); but such application shall be subject to amendment by means of a supplemental affidavit in the particulars wherein it is defective; said supplemental affidavit or affidavits to be read in connection with and as a part of the application itself; and provided further, that a declaration *in the terms of the act* shall be sufficient.

3. Should the paper filed fail to show upon its face with certainty that it is intended as a claim for the benefits of the act of June 27, 1890, the claimant may make it certain by means of a supplemental affidavit, which shall be read in connection with and as a part of the original application.

4. Should the medical examination disclose the existence of any disease, wound, or injury not alleged in the original or amendatory application which is a factor in the applicant's inability to earn a support by manual labor, the claimant shall be called upon to state, under oath, the time, place, and circumstances, when, where, and under which such wound or injury was received, or disease contracted, and whether it was, in any manner, caused by vicious habits.

5. Should the wound, injury, or disease not specified in the original or amendatory declaration, but discovered on medical examination, be shown to have existed at the time when the original declaration was filed, and it is found not to be due to vicious habits, it shall be taken into account, the same as if formally specified in the original application, in

estimating the degree of the permanent mental or physical disability to which it contributes.

6. Should it be found, however, not to have existed at the time when the original application was filed, but from a subsequent date prior to medical examination, the degree of the disability of the applicant being below the maximum rating, may be increased accordingly from the date when such wound or injury was incurred, or disease contracted, provided the degree of disability from all contributory causes is thereby enhanced to a sufficient extent to justify a higher rating.

Should it be found impossible to fix the exact date when such wound or injury was received or disease contracted, the higher rating shall commence from the date of the certificate of medical examination showing its existence.

7. In claims under the act of June 27, 1890, where the first medical examination showing a ratable degree of disability was made more than three months after the date of filing the application, the claimant should be required to show by the best obtainable evidence the existence and degree of disability from all causes not due to vicious habits at the date of filing the application, and thereafter until the date of said medical examination. But when a claim is based upon disabilities of a permanent character, and of such a nature as to lead to the presumption that they have existed in an unchanging degree since a period prior to the date of filing the application, evidence as to their existence and degree of disability at date of filing the claim is usually not required. It is, however, within the province of the medical referee to require such evidence if deemed necessary to fix the degree of disability.

8. Claims filed under the act of June 27, 1890, will not be adjudicated upon a certificate of medical examination made under the general law prior to the date of filing the application under the act of June 27, 1890; in such cases another medical examination will be ordered under the pending claim.

In all cases where the medical examination was made more than three years prior to the date of the adjudication of the claim, another examination will be ordered before the claim is allowed.

9. Claimants who have attained the age of 75 years are wholly disabled for manual labor within the meaning of the law, and are entitled to the maximum rating under the act of June 27, 1890. Claimants who have attained the age of 65 years shall be deemed entitled to at least the minimum rate under that act, unless the evidence discloses an unusual vigor and ability for the performance of manual labor in one of that age. A declaration stating that the claimant is 75 years of age, or 65 years, as the case may be, is a sufficient allegation in cases of this kind, even if no other disabling cause is set forth; but competent proof should be required showing the actual age of the claimant.

10. Where a declaration is filed, in which certain disabilities are alleged, such declaration may be accepted as sufficient to cover all the usual results of such diseases, and a new application for such resulting disabilities is not required. For instance, a claim on account of diarrhea will cover any disability from disease of rectum, and a claim for rheumatism will be accepted as covering a disability arising from disease of heart. But where disabilities are shown on medical examination that are not commonly accepted as results of diseases set forth in the declaration, a new application should be required, as indicated in paragraphs 4 and 5 under this head.

11. Where a claim under the act of June 27, 1890, has been rejected on the ground of no ratable disability, the claimant may file new evidence going to the ground of rejection and request action thereon by the Bureau. If said new evidence, either considered separately or in connection with previously filed evidence, establishes a prima facie case, a new medical examination should be ordered. (Secretary's decision, July 10, 1897, Luther Case.)

12. Where a claim under the act of June 27, 1890, has been rejected on the ground of no ratable disability, and the claimant files a new declaration, alleging the same disabilities set forth in his prior application, or additional disabilities not heretofore alleged, a new medical examination may be ordered. If a ratable disability is found on such examination, the claim should be adjudicated under such new declaration in the same manner and under the same rules as if no previous application had been filed. If, however, the claimant sets forth in such new application that an injustice was done him in rejecting his claim under the prior application, and furnishes competent evidence to show that fact, the adjudication of the claim will be governed by the provisions of the act of March 6, 1896, which provides that "whenever a claim for pension under the act of June 27, 1890, has been, or shall hereafter be, rejected, suspended, or dismissed, and a new application shall have been, or shall hereafter be, filed, and a pension has been, or shall hereafter be, allowed in such claim, such pension shall date from the time of filing the first application, provided the evidence in the case shall show a pensionable disability to have existed, or to exist, at the time of filing such first application."

The question as to whether a pensionable disability is shown at the time of filing the first application is one for the decision of the medical referee.

13. In cases where the basis of the claim under the act of June 27, 1890, was a single hernia, or the loss of sight of one eye, or that the claimant was 65 years of age, and the certificate of medical examination and other evidence showed the existence of said disability at the date of filing such claim, but the claim was rejected under the prevailing practice on the ground that disabilities of that nature did not constitute a ratable disability under the act of June 27, 1890, the adoption of the rule which allows a rate for the said disabilities will operate to vacate the former

adverse action, and the pension in such cases will commence at the date of filing the first application, provided the claimant has filed a subsequent application under the act of June 27, 1890.

14. When a declaration is filed for certain disabilities, and the medical examination shows a ratable degree of disability from "obesity" which was not alleged in the declaration, such disability will be taken into account in fixing the rate of pension without requiring a new application therefor.

VICIOUS HABITS.

1. When a certificate of medical examination shows that there is no evidence of vicious habits, that report will be accepted in the absence of any evidence or reasonable presumption to the contrary, as determining the question of vicious habits in claims based upon disease; but if nothing is stated in such certificate relating to the habits of the claimant, the testimony of two credible and competent witnesses, or of the family physician, is required to prove that the diseases alleged are not due to vicious habits. The same rule will apply to claims on account of hernia, varicocele, and varicose veins when those disabilities have developed in the ordinary pursuits of the claimant's occupation, and are not due to traumatic causes.

2. When the claimant alleges disability from injuries or wounds, he should be required to furnish his affidavit setting forth the time, place, and circumstances when, where, and under which the same were incurred, provided said allegations were not set forth in the declaration.

He should also be required to furnish the testimony of at least two credible witnesses who have personal knowledge of the facts to corroborate his allegations. The credibility of the witnesses should be ascertained, and if their testimony is too general and indefinite to show all the circumstances attending the receipt of the injury or wound, they should be corresponded with for the purpose of determining the extent of their actual knowledge of the facts.

3. Where a claimant can not furnish the testimony of persons having actual knowledge of circumstances under which his disability was incurred, and there is nothing in the case to create a suspicion that it was caused by "vicious habits," his own affidavit setting forth the circumstances, together with the testimony of two credible witnesses who have known him from a time antedating the incurrence of the disability, showing that he was then, and has been during all of their acquaintance with him, a man of good habits, will suffice, whether said disability is a result of injury or disease.

Where there are grounds for suspecting that the disability is a result of vicious habits, the kind and amount of evidence necessary to overcome that suspicion will vary according to the circumstances of the case. In general, where there is no apparent ground for suspecting vicious habits, and, so far as can be ascertained, claimant has always been a man of good habits and of good repute for credibility, the presumption should be in favor of the claim.

PENSIONABLE SERVICE.

1. The express terms of the act of June 27, 1890, confine its benefits to those who served ninety days or more in the military or naval service of the United States during the late war of the rebellion, and who have been honorably discharged.

The beginning of the war of the rebellion is dated in the pension laws for pensionable purposes on March 4, 1861.

2. Enlistments in the loyal States after April 13, 1865, will not be deemed enlistments in or for the war of the rebellion, and any service rendered under such enlistments will be presumed not to have been rendered in the war of the rebellion, and to establish the contrary the claimant will be required to show affirmatively that his said subsequent service was rendered in direct connection with active military duty in aid of suppressing the rebellion.

3. The above-stated rule applies to enlistments in any of the other States, Territories, or District of Columbia, made after June 1, 1865, of any white or colored troops, and to enlistments in the United States Navy after July 1, 1865.

Service rendered after July, 1865, will be presumed to have not been in said war; and service rendered after April 2, 1866, must be shown to have been rendered in some connection with the war as existing in the State of Texas. Service rendered within the State of Tennessee after June 13, 1865, will likewise be presumed not to have been in said war unless shown to have had some necessary connection with the war elsewhere. (Digest of 1897, p. 476.)

4. A person who rendered service in a State organization which was never a part of the Federal Army, and whose sole service was under the authority of a State, said organization or person never having acted under orders of an officer of the United States, is not pensionable under this act.

5. Persons who were employed in the civil branch of the service are not included within the terms of the act of June 27, 1890. This rule embraces acting assistant or contract surgeons, provost-marshals, deputy provost-marshals, enrolling officers, cadets in the United States Military and Naval academies, quartermaster's employees, and pilots in the naval service.

6. An honorable discharge from all service contracted to be performed during the war of the rebellion is a prerequisite to pension under the act of June 27, 1890; but desertion from the Regular Army under an enlistment subsequent to the war of the rebellion is not a bar to allowance of pension under that act.

7. The provisions of section 4716 apply to claims under sections 2 and 3 of the act of June 27, 1890. Therefore, if the claimant in any manner voluntarily engaged in, or aided or abetted, the late rebellion against the authority of the United States, there is no title to pension under that act. The acts of March 3, 1877, and August 1, 1892,

which remove the disability of those who, having participated in the rebellion, afterwards voluntarily enlisted in the Army or Navy of the United States, and who, while in such service, incurred disability from a wound, or injury or disease contracted in the line of duty, do not apply to claims under the second and third sections of the act of June 27, 1890.

8. Where a drafted man or substitute was examined and accepted by a board of enrollment in a draft district, he was in the United States service until discharged, as any other soldier might be. Where a soldier was accepted as a substitute by a board of enrollment and mustered into the service of the United States by a provost-marshal, and was afterwards again examined at the general draft rendezvous, rejected, and discharged from the service on a surgeon's certificate, it is held that said soldier was in the service of the United States from the date of his acceptance by the board of enrollment to the date of his discharge for disability, even if the cause of his disability existed at the date of his enlistment.

9. A service of ninety days or more during the war of the rebellion, in actual cooperation with the Navy under the orders of the President, and an honorable discharge from such service, is sufficient to give the officers and seamen of the United States Revenue-Marine Service a pensionable status under the provisions of section 2, act of June 27, 1890.

CLAIMS FOR INCREASE UNDER THE ACT OF JUNE 27, 1890.

1. Original pension having been allowed, any subsequent increase of pension must be based on the fact that there is increased incapacity for earning a support by manual labor, and must be adjudicated, so far as commencement of the increased rate is concerned, under section 4698½, Revised Statutes.

2. In claims for increase under the act of June 27, 1890, if the declaration does not specify any causes of disability

it shall be deemed a claim for increase on account of the causes already accepted; provided, however, that if the examination shall show other disabling causes the claimant shall be accorded the same right to amend his declaration as in an original claim. If new disabling causes are alleged in an application for increase the same averments must be made in regard to such disabling causes as are required in original claims; and in all cases when increase is allowed it will commence at the date of the certificate of medical examination establishing the same. The rule with regard to proof of non-vicious habits applies to the new disabling causes the same as in original claims.

3. When a declaration for increase is filed on account of the old, or newly alleged causes of disability, and in the same declaration the claimant states that he wishes to secure a restoration of the former rate from date of reduction, or that he claims pension from the date of filing a prior application, or a higher rate from the date of commencement of original pension, such claim will be treated as a claim for increase, and that part of the claim which relates to the other matters stated herein will be rejected as informal.

4. When a declaration is filed under the act of March 6, 1896, for reissue to allow pension from date of filing the first application, and in such application the claimant sets forth causes of disability not included in the former rate, the application will be treated as a claim for reissue under the act of March 6, 1896, without reference to the new disabilities mentioned in said application.

5. Where a claimant is a pensioner under the general law, and applies for additional pension under the act of June 27, 1890, the disability for which pension was allowed under the general law will be taken into account in determining the rate under the act of June 27, 1890, whether it is set forth in the declaration filed under the act of June 27, 1890, or not.

6. Where an application was filed under the act of June 27, 1890, alleging certain disabilities, and the claim was

rejected on the ground of no ratable disability, and the claimant afterwards files another application for other disabilities, if the medical examination held under the last application, and the evidence, show a ratable disability from the causes set forth in the first application, they will be taken into account in fixing the rate of pension, whether they were alleged in the last application or not.

7. Where a case was acted upon by the Board of Revision, in which a claim for increase under the act of June 27, 1890, was pending, and the pension was either dropped, reduced, or continued by such revision, the application for increase will be held to have been finally adjudicated by the action of the Board of Revision.

RESTORATION, RENEWAL AND REISSUE.

1. A declaration for restoration should be executed in the same manner as those for original claims, and should set forth in full the reasons why the applicant believes the action of dropping or reduction of rate was improper. As stated before, a statement of the claimant in an increase application that he wishes to secure restoration of a former rate where the pension had been reduced, is not treated as a claim for restoration, but one for increase.

2. Where the pensioner's name has been dropped from the rolls on the ground of no ratable disability, and a claim for restoration is filed, if the medical examination held thereunder shows a ratable disability from the causes for which pension was originally granted, the claimant should be afforded an opportunity to furnish competent testimony showing that such disability has existed in a ratable degree from the date when he was dropped. If the testimony fails to show a ratable disability from date of dropping, but does show a degree of disability ratable under the act of June 27, 1890, at the date of filing the claim for restoration, a renewal of pension will be granted to commence at date of filing such application for restoration, and the claim for restoration of pension from date of dropping will be rejected.

3. When the pensioner's name has been dropped from the rolls on the ground of no ratable disability, and a new declaration is filed alleging the same or additional causes of disability, the process of adjudication of such claim will be the same as if no prior application had ever been filed, and pension, if allowed thereunder, will be termed a "renewal," and commences at date of filing the new declaration.

4. Where an application was filed under the act of June 27, 1890, and it was rejected after a medical examination, and pension was afterwards allowed under a new application to commence at date of filing such new application, and the claimant files an application under the act of March 6, 1896, asking to have the date of commencement of pension changed to the date of filing the first application, a new medical examination will not be ordered and no evidence will be called for under such application, but the case will be adjudicated upon the sole point involved, viz: whether the evidence in the case showed a pensionable disability to have existed at the time of filing such first application. This question is one for the decision of the medical referee, with the exceptions heretofore indicated.

BRIEFING CLAIMS FOR INVALID PENSION UNDER THE ACT OF JUNE 27, 1890.

1. All cases should be fully and carefully briefed and the papers arranged in accordance with existing orders and the face brief should show the same facts as heretofore indicated under the head of "Briefing claims for invalid pensions" under the general law.

2. The pensionable service in claims under this act is the last service rendered by the claimant during the war of the rebellion, provided that service covered the period of ninety days or more. If not, then the prior service should be included in the pensionable service at the head of the brief.

3. When the last rebellion service was in the Veteran Reserve Corps the service from which the claimant was transferred to the Veteran Reserve Corps should be included in the pensionable service.

4. If the last rebellion service was rendered in the United States Navy or Marine Corps and was for the full period of ninety days or more, only the Navy service or the service in the Marine Corps should appear at the head of the brief. If such service in the Navy or Marine Corps was less than ninety days, the prior service in the Army should be included in the pensionable service.

5. When the claimant is a pensioner under the general law for disabilities contracted in a prior service during the war of the rebellion, such service should appear at the head of the brief as well as the last rebellion service.

6. The highest rank held by the claimant during his pensionable service should always appear at the head of the brief as the pensionable rank under this act.

7. Where the claimant is now a pensioner under other laws, the date when such pension commenced and the rate should appear on the brief. If such pension has ceased the date of last payment of same should appear on the brief.

LEGAL AND MEDICAL REVIEW OF INVALID CLAIMS UNDER THE ACT OF JUNE 27, 1890.

1. The rules which govern the review of claims under the general law will apply to claims under the act of June 27, 1890. Great care should be taken by the legal reviewer to dispose of all claims set up by the applicant; and where an allowance is made, but some portion of the claim as contained in the application or applications is disallowed, or held up for further evidence, a slip should be attached to the face of the brief requesting the chief of the Certificate Division to return the papers, after issue of certificate, to the proper division, for letter of rejection or such other action as the chief of the Board of Review or the medical referee shall indicate.

2. Claims should be approved by the legal reviewer for all the disabilities that are properly alleged and shown not to be due to vicious habits, and the medical reviewer will fix the rate of pension to which the claimant is entitled for the disabilities covered by the approval of the legal reviewer. Where the question as to the date of commencement of pension in original claims is a legal one, the date of commencement will be determined by the legal reviewer, and stated on the brief at the time of his approval; but when the question of commencement of pension depends upon the medical action, the date of commencement will not be placed upon the brief until after the medical action has been taken.

In considering the question as to whether a former rejection of a claim should be vacated, and pension commence at the date of a prior application, the medical reviewer should be governed in the determination of the question by the rules laid down by the Secretary of the Interior with regard to the sufficiency of evidence on file in the case to overcome the certificates of medical examination upon which former action was based.

3. When it is necessary for the legal reviewer to submit a question for a medical opinion in advance of the legal approval of the claim he should refer the case to the medical referee for that purpose, indicating clearly the points upon which he desires a medical opinion.

4. If a claim is not properly submitted in accordance with existing orders, or if the testimony is not sufficient to prove the facts necessary to the allowance of the claim, the case should be returned by the legal reviewer to the adjudicating division, with a slip fully setting forth wherein the evidence is defective or in what respect the submission of the case was improper. If, in the opinion of the chief of the Board of Review, the claim should be referred for special examination, the same rules will govern such reference as apply to claims under the general law.

5. When a claim is submitted for allowance under the general law, and under the act of June 27, 1890, the claim-

ant will not be required to elect under which law he wishes to be pensioned, but issue will be made under that law clearly shown to be of most benefit to the claimant, and the other claim will be rejected on the ground of no benefit, setting forth fully the reasons therefor. In cases where the rate and date of commencement of pension are the same under both laws, issue will be made under the general law and the claim under the act of June 27, 1890, will be rejected.

CLAIMS OF WIDOWS UNDER THE ACT OF JUNE 27, 1890.

1. The third section of the act of June 27, 1890, confers title to pension upon the widows of officers or enlisted men who served in the Army or Navy of the United States during the late war of the rebellion.

The law requires in a widow's case:

(*a*) That the soldier or sailor served at least ninety days during said war.

(*b*) That he was honorably discharged.

(*c*) Proof of death of soldier, but it need not have been the result of his army service.

(*d*) That the widow is "without other means of support than her daily labor."

(*e*) That she married the soldier prior to June 27, 1890—date of the act.

2. Declarations of widows under this act should be executed in the same manner and form as in general law claims, but to constitute a valid claim under the act of June 27, 1890, all the essential elements of title as indicated in the preceding paragraph must be alleged in the declaration.

The above rule is modified in the instructions of the Secretary, dated July 28, 1897, which permit a supplemental affidavit to be filed in claims under this act, covering the particulars wherein the declaration is defective, but such instructions are not intended to be retroactive nor to overturn the actions taken in such cases under the former practice.

3. The declaration being formal, the proof of marriage and the absence of a legal bar to marriage, non-divorce, and legal widowhood are governed by the same rules as apply to claims of widows under the general law.

4. The rate of pension under this act is $8 per month, irrespective of the rank of the soldier, and $2 per month for each child of such officer or enlisted man under 16 years of age. The pension commences at the date of filing the application under this act. The rules as to evidence of dates of birth of children and the law as to the forfeiture of pension by a widow apply equally in claims under this act as under the general law and need not here be repeated, as they are fully set forth in another part of this treatise.

5. An honorable discharge of the soldier on whose account pension is claimed, from all rebellion service is a prerequisite to pension under the third section of this act. The death of a soldier in service is not an "honorable discharge" within the meaning of the act of June 27, 1890, and the widow of a soldier who dies in service is not pensionable under the act of June 27, 1890, he not having been honorably discharged from service.

But when the soldier has served a term of ninety days or more during the late war of the rebellion and has been honorably discharged therefrom, reenlists and dies during his subsequent term of service, his death not being the result of a violation of any law, rule, or regulation of the military or naval service, his widow is entitled to pension under this act on compliance with the other conditions of the act.

6. The discharge of an enlisted man by reason of his promotion to a higher rank is not a discharge within the meaning of the act of June 27, 1890, and when such soldier was, after his promotion, dismissed from the service by sentence of a court-martial he can not be held to have been honorably discharged.

7. The proof of marriage required in claims under the act of June 27, 1890, is the same as that required in claims

under the general law, but it should be remembered that the provisions of section 4705, Revised Statutes, relating to proof of marriage of colored and Indian soldiers and sailors have no application to claims for pension under the third section of the act of June 27, 1890, and in such cases the claimant must prove her marriage by the laws governing marriages in the State where she and the soldier resided at the time.

8. Where the claimant and soldier were married prior to June 27, 1890, were divorced, and were remarried by ceremony subsequent to the passage of the act of June 27, 1890, the widow has no title to pension under that act, as she was not the wife of the soldier on June 27, 1890.

9. Where a soldier was pensioned under the general law and dies, his widow files an application under the act of June 27, 1890, while the proof shows clearly that the soldier's death was due to the disability for which he was pensioned, the presumption is that the claimant filed her application under the act of June 27, 1890, under a misapprehension of her rights, and in such cases she should be fully advised thereof and given an opportunity to file a claim under the general law before the claim under the act of June 27, 1890, is adjudicated.

10. The fact and date of the soldier's death may be proven by a certified copy of the public records, or by the testimony of the attending physician or of two credible and competent witnesses.

Death of soldier may be presumed if satisfactory evidence is produced establishing the fact of the continued and unexplained absence of such soldier from his home and family for a period of seven years, during which period no intelligence of his existence shall have been received. (Act of March 13, 1896.)

The facts attending such absence must be such that the absence of the soldier can not be accounted for on any other theory than that of death, and the proof required in such cases should be very specific with reference to the

soldier's habits, his domestic relations, and all other facts which may have a bearing as to his motive for leaving his home and family. Usually such cases should not receive favorable action without a special examination to determine all the facts attending such disappearance.

PROOF OF DEPENDENCE IN CLAIMS OF WIDOWS UNDER THE ACT OF JUNE 27, 1890.

1. The claimant should in all cases be required to furnish her statement under oath, showing the character, location, and value of all property, real, personal, or mixed, including bonds, stocks, and investments, owned by her or in which she has had any interest, and the full amount of her income per month or year from all sources since the date of filing her claim for pension, and whether any person has been legally bound to provide for her support.

2. There should also be required a duly verified statement by the officer having custody of the proper records, describing all taxable property borne on the rolls in the name of claimant or her husband for the year in which her application was filed and every year since that date, and showing the assessed value of such property and the ratio which the assessed value bears to the true or cash value. If such officer has no official seal by which to authenticate his signature, his statement should be under oath.

3. If any property is encumbered by mortgage or otherwise, there should be filed a duly authenticated transcript from the public records showing what property is encumbered and the amount of encumbrance.

4. If the claimant has disposed of any real estate since the date of filing her claim for pension, a transcript from the public records showing when, to whom, and for what consideration the transfer was made should be required.

5. Testimony of at least two credible and competent witnesses should be required, showing the character, location, and value of all property, real, personal, or mixed, owned by the claimant, or in which she had any interest since the

date of filing her application, and also the amount of her income from all sources and her means of support during the same period.

6. In determining the question of dependence in this class of cases, an inflexible rule of practice as to the amount of income can not be established. It is very unusual to find two cases with the same existing conditions and circumstances, and each case will be considered upon its merits, in the light of all the facts presented in evidence.

7. The amount of income derived from property is not the sole question to be considered in determining the fact of a widow's dependence. Her means of support include all those resources from which the wants of life are supplied. If, therefore, a claimant owns a large amount of unproductive property which has a commercial value, she can not obtain a pension on the ground that she received no income therefrom. Thus, where a widow owns real estate and personal property of a value which, reduced to cash and invested at the usual rates of interest, would yield an annual income considerably in excess of the amount which the act of June 27, 1890, provides for widows, it is held that she is not without other means of support than her daily labor.

8. The questions of age and physical and mental infirmity, or of location (as affecting living expenses) and social condition, should not be regarded as factors in considering the question of dependence. But when the income is derived *mainly* from the widow's manual labor or the labor of her minor children it is held that she is without other means of support under the provisions of the act.

CLAIMS ON ACCOUNT OF MINORS UNDER THE ACT OF JUNE 27, 1890.

1. The third section of the act of June 27, 1890, provides that "in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of 16 years, such pension shall be paid such child or children until the age of 16."

Proof of dependence in a pecuniary point of view is not necessary to establish a minor's pensionable status. The proof required in a minor's claim is the same as in a widow's claim, except proof of dependence, and the rules heretofore stated as necessary to establish a minor's claim under the general law with respect to marriage of parents, dates of birth of all children under the age of 16 at date of soldier's death, death or remarriage of the mother, etc., apply to this class of claims.

2. Under the act of June 27, 1890, a minor may file a declaration and prosecute his or her claim in person, by guardian or next friend, but where the claim is completed by the minor or next friend, before payment, a guardian must be appointed, and when qualified to act, the pension should be paid to him.

3. Pensions granted to minor children of soldiers under this act commence at the date of filing the application therefor after the passage of said act, the death of the soldier and the death or remarriage of the widow, or forfeiture of her right to pension. The rate is $8 per month and $2 per month additional for each minor child until such child reaches the age of 16.

4. The minor children of a deceased soldier by a former marriage prior to June 27, 1890, have no title to pension in their own right under the act of June 27, 1890, while the widow of such soldier is living and not remarried, unless such widow has forfeited her right to pension under the act of August 7, 1882, or section 4706, Revised Statutes, notwithstanding such widow married such soldier subsequent to June 27, 1890, and that he did not die of any disease, wound, or injury incurred in the service.

5. The inhibition of the last proviso in the third section of the act of June 27, 1890, against widows who were married to the soldier after the passage of the act, extends to the children of such marriage. Therefore, if the soldier was married or marries after June 27, 1890, and dies, neither his widow nor his children of such marriage become entitled to pension under the provisions of said act.

INSANE, IDIOTIC OR OTHERWISE PERMANENTLY HELPLESS MINORS.

1. The proviso in the third section of the act of June 27, 1890, is as follows: "That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statute, and such pensions shall commence from the date of application therefor since the passage of this act."

2. The term "permanently helpless" is, in its application to the capacity of a minor to earn a support, relatively of the same meaning as the words "insane" and "idiotic" used in the same clause—that is, in the sense that an insane or idiotic person would be incapable of earning a living or attending to his personal comforts—so one suffering from permanent injuries or disease of body in a degree that would prevent him from performing any labor or from caring for himself would be helpless and entitled to the benefits conferred by the said proviso.

It is held that the loss of one leg does not render a minor "permanently helpless" in contemplation of the statute.

3. A soldier's child who becomes insane or permanently helpless after he has completed his sixteenth year is not entitled under the provisions of this section, and there is no provision of law by which a helpless or idiotic child who was over 16 years of age at the death of the soldier can be pensioned.

4. A declaration on behalf of an alleged helpless child (at present a co-pensioner with other minors) for continuance of pension to an insane, idiotic, or otherwise permanently helpless minor, filed prior to the period when such minor shall have attained the age of 16 years, will not be considered nor the claim adjudicated until such alleged helpless child becomes 16 years of age. And in the event

such continuance of pension shall be granted by reason of permanent helplessness, the same will commence on the day following the termination of the minor's pension previously granted. But when the declaration for continuance of pension or increase on behalf of a child or children who have attained the age of 16 years since June 27, 1890, has been or shall hereafter be filed after the period when such child or children became 16 years old, the pension or increase will commence from the date of filing such application.

5. The statute only provides for the continuance of a pension already granted or hereafter to be granted to a minor under 16 years of age, or to the widow on its account. It makes no grant direct to a child who is over 16 years of age, but provides that when a pension is granted to such minor who is insane, idiotic, or permanently helpless, or to the widow on its account, such pension shall continue during the life of such child or during the continuance of the disability. Therefore if no pension has been granted to a child, nor to the widow on its account, while it was under the age of 16 years, and no right to a pension has accrued to it during its minority, there is no provision of law by which it can now be pensioned as the surviving child of the soldier.

6. Where pension granted to a widow on account of a minor child of her deceased husband has been terminated because such child had attained its sixteenth year, and said child has been continuously since reaching its sixteenth year insane, idiotic, or otherwise permanently helpless, pension may be allowed it (subject to the right of other minor children of the deceased father to participate with it in such pension during their minority), after the termination of the widow's right to pension, from the date of filing application therefor subsequent to June 27, 1890, upon proof of its continued insanity, idiocy, or permanent helplessness, the rate of such pension being determined by the law under which original title is taken.

7. During the life of a widow pensioner who has not remarried, no minor has any pensionable rights, and the

only allowance that can be made on account of a helpless minor under the act of June 27, 1890, in such a case, is the continuance of the $2 increase to the widow, and she alone can apply for and obtain it.

8. Where two or more minor children are pensioned in their own right, and one of them is entitled to continuance of pension upon attaining the age of 16, by reason of insanity, idiocy, or otherwise permanent helplessness, such child will receive its pro rata share of the entire pension until all the other children have attained the age of 16, after which it will receive the pension in its entirety during the life of such child or during the period of such disability. But the payments which have been made to them under a different construction of the law will not be disturbed.

9. Claims of helpless minors will be placed upon the "special" list, and will be taken up for action as soon as received in the adjudicating division.

In addition to the testimony usually required in claims of minors a call should be made for medical evidence showing the physical and mental condition of the child for a period antedating its attaining the age of 16 to the present date. A medical examination will also be ordered which should be done under the direction of the medical referee.

The approval of the legal reviewer in cases of this kind carries only the legal questions, and the allowance of the claim must be subject to the approval of the medical referee on the medical questions involved, viz: the fact of insanity, idiocy, or otherwise permanent helplessness necessary to give title to pension.

CLAIMS OF DEPENDENT PARENTS UNDER THE ACT OF JUNE 27, 1890.

1. The first section of the act of June 27, 1890, provides that "in considering the pension claims of dependent parents, the fact of the soldier's death by reason of any wound, injury, casualty, or disease which, under the con-

ditions and limitations of existing laws, would have entitled him to an invalid pension, and the fact that the soldier left no widow or minor children having been shown, as required by law, it shall be necessary only to show by competent and sufficient evidence that such parent or parents are without other present means of support than their own manual labor or the contributions of others not legally bound for their support: *Provided*, That all pensions allowed to dependent parents under this act shall commence from date of the filing of the application hereunder, and shall continue no longer than the existence of the dependence."

2. The proof required in a claim of dependent parents under this act is:

(*a*) That the soldier died of a wound, injury, or disease, which, under prior laws, would have given him a pension.

(*b*) That he left no widow or minor child.

(*c*) That the mother or father is at present dependent on her or on his own manual labor, being "without other present means of support than their own manual labor or the contributions of others not legally bound for their support."

The benefits of the above-stated section of the act of June 27, 1890, are not confined to the parents of those who served in the war of the rebellion, but are extended to all parents where pensionable dependence has arisen on account of the death of a son who served since said war in the Army or Navy of the United States.

3. Pensions of dependent parents are rated at $12 per month, and rank in the service shall not be considered in applications filed under this act.

4. The rules with reference to proof of *present* dependence of parents that apply to claims under the general law also apply to claims under this act.

5. The remarriage of a mother after the death of the soldier is a bar to pension under this act.

6. The words "other present means of support," as used in the first section of the act of June 27, 1890, are held to mean "other present means of an adequate support."

The first section of said act permits the pensioning of those who can establish dependence at the date of filing the application instead of the date of the soldier's death, but the conditions attaching to dependence itself are not changed by the act of June 27, 1890.

7. When a declaration is filed by dependent parents under the general law subsequent to June 27, 1890, and the claimant requests in writing before final action is taken in said claim that the said declaration be accepted as a claim under the act of June 27, 1890, the case will be adjudicated as a claim under the act of June 27, 1890, without requiring a new declaration, and the pension when allowed will commence at date of filing such declaration.

GENERAL INSTRUCTIONS.

1. When a claim for pension was allowed under the practice prevailing at the time of its allowance, and there is no evidence of fraud or mistake of fact, such adjudication will not afterwards be disturbed for the reason that such practice has been abrogated or modified by subsequent rulings or decisions.

This rule applies to questions of original title to pension and not to the rate of pension.

If, however, in such cases, an application is filed for increase or additional allowance of pension upon the same basis as the original allowance was made, such application will be rejected on the ground that under existing rules title to original pension could not be granted upon the facts shown, and therefore an increase of pension or an additional allowance on the same basis is not warranted.

2. Under the provisions of the act of December 21, 1893, any pension heretofore or that may hereafter be granted to any applicant under any law of the United States, shall be deemed to be a vested right in the grantee to that extent that payment thereof shall not be withheld or suspended until, after due notice to the grantee of not less than thirty days, the Commissioner, after hearing all the evidence, shall decide to annul, vacate, modify, and set aside the

decision upon which such pension was granted. Such notice to grantee must contain a full and true statement of any charges or allegations upon which such decision granting such pension shall be sought to be in any manner disturbed or modified.

All cases in which these questions arise are to be determined by the chief of the Board of Review or by the medical referee, as the case may be, and where it is proposed to drop or reduce a pension, great care should be exercised in the consideration of the evidence furnished tending to show absence of title to pension or that the rate of pension now paid is excessive, and in all cases the notice to the pensioner should be a "full and true statement" of the facts upon which such action is based.

When rebutting evidence is filed by the pensioner it should be given full and fair consideration before final action is taken.

3. Pension paid in consequence of fraud on the part of the pensioner or of a mistake of fact in the adjudication of the claim may be recovered by withholding accruing pension; but there can be no recovery where the pension was paid in consequence of an erroneous judgment merely, all the facts being in evidence, and the law being capable of construction. In the application of this rule overpayments under the general law, or payments made in consequence of fraud or of a mistake of fact in a general law claim, may be recovered by withholding the pension that is granted under the act of June 27, 1890.

Where a material fact which would have defeated the allowance of a claim for pension under the general law was concealed by the claimant in the prosecution of his or her claim, such concealment by claimant amounted to fraud, and justifies recovery of the amount paid under the general law from the pension subsequently allowed under the act of June 27, 1890.

Where a clerical error has been made as to the rate to which a pensioner has been adjudged entitled, or as to the

date of commencement of pension, further payment should be withheld until the Government is reimbursed for such overpayment. In such cases the notice to pensioner required by the act of December 21, 1893, of such action should explain clearly and fully wherein the former action was an error.

ACCRUED PENSION.

1. The act of March 2, 1895, which is the only law relative to the payment of accrued pension now in force, provides that from and after September 28, 1892, the accrued pension to the date of the death of any pensioner, or of any person entitled to a pension having an application therefor pending, and whether a certificate therefor shall issue prior or subsequent to the death of such person, shall, in the case of a person pensioned or applying for pension on account of his disabilities or service, be paid, first, to his widow; second, if there is no widow, to his child or children under the age of 16 years at his death; third, in case of a widow, to her minor children under the age of 16 years at her death.

Such accrued pension shall not be considered a part of the assets of the estate of such deceased person, nor be liable for the payment of debts of said estate in any case whatsoever, but shall inure to the sole and exclusive benefit of the widow or children. And if no widow or child survive such pensioner, and in the case of his last surviving child who was such minor at his death, and in case of a dependent mother, father, sister, or brother, no payment whatsoever of their accrued pension shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of their last sickness and burial, if they did not leave sufficient assets to meet such expense.

2. The effect of this act was to nullify the Departmental ruling of September 28, 1892, which restricted the application of section 4718, Revised Statutes, to invalid pensioners

and applicants; the intent of the act being to leave all adjustments and payments of accrued pension made prior to September 28, 1892, undisturbed, but to establish a new rule to govern all adjustments and payments of such pension after that date. It makes no difference when the claim was filed or when the applicant for pension died. The only question is when was the claim adjudicated. If prior to September 28, 1892, then the law governing was section 4718, Revised Statutes; if subsequent to September 28, 1892, then the law governing was the act of March 2, 1895. (Vol. 8, p. 439, Secretary's Decisions.)

3. The provision in said act that in case of a widow, the accrued pension shall be paid to her minor children under 16 years at her death, is held to refer only to her children by the soldier.

4. Under this act no accrued pension will be paid in the case of the last surviving child of soldier who was such minor at his death, and in the case of a dependent mother, father, sister, or brother, unless such person did not leave sufficient assets to meet the expense of his or her last sickness and burial, in which case only so much as may be necessary to reimburse the person who bore such expense will be allowed.

All claims for reimbursement on such account are settled by the Auditor for the Interior Department.

5. The act provides that the mailing of a pension check, drawn by a pension agent in payment of a pension due, to the address of a pensioner shall constitute payment in the event of the death of a pensioner subsequent to the execution of the voucher.

All such checks must be forwarded to the Auditor for the Interior Department for investigation and proper action, accompanied by the necessary evidence to establish the right of the person claiming payment to receive payment therefor. Such checks can be paid upon indorsement of the administrator or executor of the payee's estate, or if the amount is less than $100 payment can be made to the

immediate beneficiaries without intervention of an administrator or executor. These questions, however, are settled by the Auditor for the Interior Department, and this Bureau has no jurisdiction in the matter.

6. Where a soldier's claim for pension was rejected, and he filed material evidence going to the cause of rejection, prior to his death, his claim may be reopened after his death and prosecuted by or in behalf of the widow or children.

The widow has a right to appeal from the rejection of her late husband's claim, though the claim was rejected during the soldier's lifetime, and there is no limit as to the time when such appeal may be entered. (Decision of Secretary in Hughes case, current series, No. 71.)

7. When the claim of a soldier for pension or increase of pension was rejected during his life, and he died so soon thereafter that he had no opportunity to ask for a reconsideration or file new evidence, the claim may be reopened after his death and prosecuted by or on behalf of his widow or children.

8. When a soldier's claim for pension stands rejected at the time of his death on the ground that the records of the War Department show a certain fact, upon which alone rejection is based, which is subsequently determined by that Department to have been erroneous, and is corrected accordingly, such claim will be considered as pending within the meaning of the act of March 2, 1895.

REOPENING REJECTED CLAIMS.

1. No claim rejected on grounds tenable under existing laws and practice, will be reopened except upon new and material evidence going to the cause of rejection. In all cases where evidence is filed for the reopening of claims a brief statement of all material facts will be prepared by the examiner for the consideration of the chief of division, and the claimant shall be informed by letter of the action of the Bureau.

2. When a claim has been specially examined and rejected, and rebutting evidence has been filed by the claimant, favorable action should not be taken without a cross-examination of the witnesses giving the rebutting evidence.

3. Applications for the reopening of increase claims and the filing of evidence thereunder should be limited to ninety days after the date of mailing the letter of rejection.

If the application, with evidence, in such cases is not made within the ninety days as aforesaid, the rejection will be considered final.

TABLE OF RATES AND RULES FOR RATING.

The following tables show the rates fixed by law for "total" and "specific" disabilities, and the rates fixed by this Bureau for certain disabilities not specified by law:

Rates Fixed by Law for Total Disability.

ARMY.

	Per month.
Lieutenant-colonel and all officers of higher rank	$30
Major, surgeon, and paymaster	25
Captain, provost-marshal, and chaplain	20
First lieutenant, assistant surgeon, contract surgeon, and deputy provost-marshal	17
Second lieutenant, and enrolling officer	15
All enlisted men	8

NAVY AND MARINE CORPS.

Captain and all officers of higher rank in the Navy, commander, lieutenant-commander, lieutenant commanding and master commanding, surgeon, paymaster, and chief engineer, respectively ranking with commander by law; lieutenant-colonel and all officers of higher rank in Marine Corps	$30
Lieutenant, surgeon, paymaster, and chief engineer, respectively ranking with lieutenant by law, and passed assistant surgeon in the naval service, and major in the Marine Corps	25
Professor of mathematics, master, assistant surgeon, assistant paymaster and chaplain in the naval service, and captain in the Marine Corps	20

Per month.

First lieutenant in Marine Corps..... $17
First assistant engineer, ensign, and pilot in the naval service, and second lieutenant in Marine Corps..... 15
Cadet midshipman, passed midshipman, midshipman, clerks of admirals and paymasters and other officers commanding vessels, second and third assistant engineers, master's mate and all warrant officers in the naval service..... 10
All enlisted men, except warrant officers..... 8

Rates and disabilities specified by law.	From July 4, 1864.	From Mar. 3, 1865.	From June 6, 1866.	From June 4, 1872.	From June 4, 1874.	From Feb. 28, 1877.	From June 17, 1878.	From Mar. 3, 1879.	From Mar. 3, 1883.	From Mar. 3, 1885.	From Aug. 4, 1886.	From Aug. 27, 1888.	From Feb. 12, 1889.	From Mar. 4, 1890.	Act of July 14, 1892.
Loss of both hands	$25	...	...	$31½	$50	...	$72	...	...	...	...	...	$100	...	....
Loss of sight of both eyes	25	...	...	31¼	50	...	72	...	...	...	...	...	...	...	....
Loss of both feet	20	...	...	31¼	50	...	72	...	...	...	...	...	...	...	....
Loss of sight of one eye, the sight of the other lost before enlistment	...	...	$25	31¼	50	...	72	...	...	...	...	...	...	...	....
Total disability in both hands	...	...	25	31¼	50	...	72	...	...	...	...	...	...	...	....
Regular aid and attendance (first grade)	...	...	25	31¼	50	...	72	...	...	...	...	...	...	$72	(*)
Periodical aid and attendance	...	...	...	...	...	...	...	...	...	...	...	...	...	...	†$50
Loss of a leg at hip joint	...	...	15	24	...	...	...	$37½	...	...	$45	...	...	...	....
Loss of an arm at shoulder joint	...	...	15	18	24	...	...	...	$30	$37½	45	...	...	...	....
Loss of an arm at or above elbow, or a leg at or above knee	...	...	15	18	24	...	...	...	30	...	36	...	...	...	....
Loss of a leg above the knee causing inability to wear an artificial limb	...	...	15	24	...	...	...	...	30	...	36	...	...	...	....
Loss of one hand and one foot	...	$20	...	24	...	$36	...	...	...	...	...	...	...	...	....
Total disability in one arm or one leg	...	...	15	18	...	...	...	...	24	...	36	...	...	...	....
Total disability in one hand and one foot	...	...	20	24	...	36	...	...	...	...	...	...	...	...	....
Total disability in both feet	...	...	20	31¼	...	...	...	...	...	...	...	...	...	...	....
Loss of a hand or a foot	...	...	15	18	...	...	...	...	24	...	30	...	...	...	....
Total disability in one hand or one foot	...	...	15	18	...	...	...	...	24	...	30	...	...	...	....
Incapacity to perform manual labor	...	...	20	24	...	...	...	...	30	...	...	...	...	...	....
Total deafness	...	...	...	13	...	...	...	...	...	...	...	...	$30	...	....
Disability equivalent to the loss of a hand or a foot	...	...	15	18	...	...	...	...	24	...	...	...	...	...	....

*Seventy-two dollars from June 17, 1878, only where the rate was $50 under the act of June 18, 1874, and granted prior to June 16, 1880. First grade proper is $50, amended by act of March 4, 1890, which increases rate to $72.

†From date of medical examination held after July 14, 1892.

Table of rates fixed by the Commissioner of Pensions for certain disabilities not specified by law.

	Per month.
Anchylosis of shoulder	12/18
Anchylosis of elbow	10/18
Anchylosis of knee	10/18
Anchylosis of ankle	8/18
Anchylosis of wrist	8/18
Loss of sight of one eye	12/18
Loss of one eye	17/18
Nearly total deafness of one ear	6/30
Total deafness of one ear	10/30
Slight deafness of both ears	6/30
Severe deafness of one ear and slight of the other	10/30
Nearly total deafness of one ear and slight of the other	15/30
Total deafness of one ear and slight of the other	20/30
Severe deafness of both ears	22/30
Total deafness of one ear and severe of the other	25/30
Deafness of both ears existing in a degree nearly total	27/30
Loss of palm of hand and all the fingers, the thumb remaining	17/18
Loss of thumb, index, middle, and ring fingers	17/18
Loss of thumb, index, and middle fingers	16/18
Loss of thumb and index finger	12/18
Loss of thumb and little finger	10/18
Loss of thumb, index and little fingers	16/18
Loss of thumb	8/18
Loss of thumb and metacarpal bone	12/18
Loss of all the fingers, thumb and palm remaining	16/18
Loss of index, middle, and rin fingers	16/18

Table of rates fixed by the Commissioner of Pensions for certain disabilities not specified by law—Continued.

	Per month.
Loss of middle, ring, and little fingers	$\frac{14}{18}$
Loss of index and middle fingers	$\frac{8}{18}$
Loss of little and middle fingers	$\frac{8}{18}$
Loss of little and ring fingers	$\frac{6}{18}$
Loss of ring and middle fingers	$\frac{6}{18}$
Loss of index and little fingers	$\frac{6}{18}$
Loss of index finger	$\frac{4}{18}$
Loss of any other finger without complications	$\frac{2}{18}$
Loss of all the toes of one foot	$\frac{10}{18}$
Loss of great, second, and third toes	$\frac{8}{18}$
Loss of great toe and metatarsal	$\frac{8}{18}$
Loss of great and second toes	$\frac{8}{18}$
Loss of great toe	$\frac{6}{18}$
Loss of any other toe and metatarsal	$\frac{6}{18}$
Loss of any other toe	$\frac{2}{18}$
Chopart's amputation of foot, with good results	$\frac{14}{18}$
Pirogoff's modification of Syme's	$\frac{17}{18}$
Small varicocele	$\frac{2}{18}$
Well-marked varicocele	$\frac{4}{18}$
Inguinal hernia, which passes through the external ring	$\frac{10}{18}$
Inguinal hernia, which does not pass through the external ring	$\frac{6}{18}$
Double inguinal hernia, each of which passes through the external ring	$\frac{14}{18}$
Double inguinal hernia, one of which passes through the external ring and the other does not	$\frac{12}{18}$
Double inguinal hernia, neither of which passes through the external ring	$\frac{8}{18}$
Femoral hernia	$\frac{10}{18}$

Under the provisions of section 4699, Revised Statutes, and act of March 3, 1883, the rate of $18 per month may

be proportionately divided for any degree of disability established for which section 4695 makes no provision.

The rates for all other disabilities not mentioned in the foregoing tables are fixed upon the evidence and medical examinations in the claim on the basis of disability for the performance of manual labor and range from six-eighteenths to seventeen-eighteenths, according to the degree of disability shown. When a disability is shown in excess of seventeen-eighteenths and equivalent to the loss of a hand or a foot, the rate is $24 (third grade); but if the disability is not equivalent to the loss of a hand or a foot, even if it is in excess of seventeen-eighteenths, no higher rate can be allowed, as no intermediate rate exists.

The class of disabilities which are rated under the above-stated rule are all wounds, injuries, and diseases which do not fall under the designation of specific disabilities and which constitute a disability for the performance of manual labor.

The second section of the act of June 27, 1890, grants pension for mental and physical disabilities of a permanent character not the result of vicious habits, which cause incapacity for the performance of manual labor in such a degree as to render the claimant unable to earn a support.

A total disability to earn a support is rated at $12 per month, and this embraces all wounds, injuries, and diseases of whatever character, and without regard to the time when and how they were incurred, if permanent and not caused by vicious habits.

The rates under this act are to be graded between substantial impairment of ability to earn a support by manual labor entitling to minimum ($6) rating and inability to earn practically any support whatever, thereby entitling to the maximum rating ($12).

H. CLAY EVANS,
Commissioner of Pensions.

Approved:
C. N. BLISS,
Secretary.

INDEX.