Committee Reports

102d Congress

House Rept. 102-588

102 H. Rpt. 588

PERMITTING WILLIE D. HARRIS TO PRESENT A CLAIM AGAINST THE UNITED STATES IN THE MANNER PROVIDED FOR IN CHAPTER 171 OF 28, UNITED STATES CODE, AND FOR OTHER PURPOSES

**DATE:** June 22, 1992. Committed to the Committee on the Whole House and ordered to be printed

**SPONSOR:** Mr. Brooks, from the Committee on the Judiciary, submitted the following

REPORT

(To accompany H.R. 760)

**TEXT:**

The Committee on the Judiciary, to whom was referred the bill (H.R. 760) permitting Willie D. Harris to present a claim against the United States in the manner provided for in chapter 171 of title 28, United States Code, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

purpose

H.R. 760 permits Willie D. Harris to present a claim against the United States for injuries he suffered in connection with steroid injections administered to him by Armed Forces medical personnel during his service with the United States Air Force, notwithstanding the Feres doctrine (which generally bars suits under the Federal Tort Claims Act by active-duty military personnel) and the time limitations of the FTCA.

background

Willie Harris enlisted in the United States Air Force in October, 1962 and played on the Kirtland Air Force Base basketball team for three years. Mr. Harris injured his knees in 1963 and was consistently given steroid injections (of cortisone) during 1964-1965 to enable him to continue playing basketball, despite the injury. Harris estimates that he was given nearly 100 injections of cortisone over this time period.

Mr. Harris was honorably discharged from the Air Force by reason of physical disability in 1967, and was given a 20 percent disability rating at that time. The Veterans Administration during the same year rated Harris at 30 percent disability. Harris continued to have severe pain in his knees, making impossible his once promising prospective career as a professional basketball player. In 1974, the Air Force Board for the Correction of Military Records corrected Mr. Harriss military records to indicate that he was retired permanently (rather than discharged) with 30 percent disability (and thus entitled to greater military medical benefits).

In 1982, Mr. Harris filed a claim for damages against the Air Force under the Federal Tort Claims Act. The Air Force Judge Advocate General ruled against Mr. Harris, stating that Mr. Harris has filed to establish a connection between the cortisone injections in 1963 and his condition in 1982, and the claim was barred by the statute of limitations and the Feres doctrine. Mr. Harris did not file suit in federal district court because such a suit would have failed because of the statute of limitations and the Feres doctrine.

The Committee determined that the facts in this case warrant the special consideration available through private legislation. The circumstances of Mr. Harris knee problems are so extraordinary that the Air Force Board for the Correction of Military Records concluded in 1974 that Mr. Harris "has suffered an injustice \* \* \*" The Committee believes there is a direct causal relationship between the actions of the Armed Forces medical personnel, motivated by a desire for a winning basketball team, and the present condition of Mr. Harris knees. Mr. Harris now has problems walking, let alone running, and his possibility of a career playing professional basketball has been destroyed.

Unlike most military medical malpractice actions, the medical actions alleged in Mr. Harris case appear not to be designed simply to heal Mr. Harris injuries, or even to return him to battle against our national enemies, but rather to enable him to represent his Air Force base on the basketball court. Such exploitation of athletes is sad when performed by colleges or professional sports teams, but colleges and professional sports teams and their doctors are subject to legal action concerning their activities. The United States Armed Forces and its medical personnel normally are not, making their exploitation of an athlete like Mr. Harris even more shameful.

The Committee noted that it would not consider this bill as precedential in nature for all military medical malpractice claims, since it was considered strictly on the exact facts presented in this case.

agency report

The Department of the Air Force, expressing the views of the Department of Defense, opposes the enactment of H.R. 760, saying H.R. 760 would provide special favorable treatment for Mr. Harris not afforded other similarly situated individuals. The Department of the Air Force said the deteriorating condition of Mr. Harriss knees was caused by his size, athletic activities, and the natural course of chronodromalacia of the patella (softening of the knee cartilage), rather than by any negligence on the part of the Air Force.

committee action

The Subcommittee on Administrative Law and Governmental Relations held a hearing on H.R. 760 on March 7, 1991. The Subcommittee heard testimony from Congressman George Brown of California and Mr. Willie Harris. The Subcommittee also received written testimony from the Department of the Air Force.

On October 3, 1991, the Subcommittee considered H.R. 760, and favorably recommended the bill without amendment to the full Committee. On November 19, 1991, the Committee on the Judiciary favorably recommended by voice vote H.R. 760. On the basis of the facts and equities presented in this matter, the Committee favorably recommends H.R. 760 to the House and recommends that the House favorably consider the bill.

The report of the Department of the Air Force is as follows:

 Department of the Air Force,

 Washington, DC, March 4, 1991.

 Hon. Jack Brooks,

 Chairman, Committee on Judiciary,

 House of Representatives, Washington, DC.

Dear Mr. Chairman: This is in response to your request for the views of the Department of Defense on H.R. 760, 102nd Congress, a bill "To permit Willie D. Harris to present a claim against the United States in the manner provided for in chapter 171 of title 28, United States Code, and for other purposes." The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense on this matter.

H.R. 760 would, for Mr. Harris, waive both the two-year statute of limitation contained in 28 U.S.C. 2401(b) for the presentation of administrative tort claims against the United States, and the Feres doctrine (Feres v. United States, 340 U.S. 135 (1950)) which generally bars suits under the Federal Tort Claims Act by active-duty military personnel arising out of their service.

This legislation would single out Mr. Harris for special favorable treatment not afforded other similarly situated individuals. Specifically, it would authorize him to present his claim for alleged medical malpractice suffered incident to service notwithstanding the statute of limitations and the Feres doctrine, both of which are applicable in this case. It would therefore undercut both the longstanding federal policy against the entertaining of stale claims and the disciplinary interests underlying the Feres doctrine.

The Department of the Air Force, on behalf of the Department of Defense, opposes H.R. 760. In addition to the reasons set out above, Mr. Harris medical care has been reviewed and was found to meet the standard of care for 1963, when it was rendered. Mr. Harris condition was a product of his size, athletic activities, and the natural course of chronodromalacia of the patella (softening of the knee cartilage), rather than any negligence on the part of the Air Force. In addition, Mr. Harris condition and problems do not appear to present more of a hardship than those of any other similarly-situated person. He is eligible for VA benefits and medical treatment, and is in fact receiving disability payments of $1,620.000 per month. DVA has authority to increase his benefits, if it could be demonstrated that his disability exceeds the 80 percent at which it is currently rated. Mr. Harris case has already been given due consideration; his original claim was denied in 1982 for three reasons: (1) no negligence was present; (2) the statute of limitations; and (3) the Feres doctrine. All of these factors militate against enactment of H.R. 760.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administrations program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

 Ann C. Petersen,

 General Counsel.

committee oversight findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

committee on government operations oversight findings

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

new budget authority and tax expenditures

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.