

-4-

The attorneys for the claimant entered an appeal in the Department, April 29, 1911, which reads as follows:

We desire to appeal from the action of the Commissioner of Pensions of which we received notice April 13, 1911, rejecting the claim for arrears under the act June 27, 1890, in the case of Peter Mitchell, Co. H, 9th U. S. C. Vol. Inf., Invalid Certificate #635,308, as we understand it this man was originally placed on the rolls under the act June 27, 1890, at \$12 per month upon evidence that he was totally disabled for the performance of effective manual labor. He appears to have been dropped from the rolls December 4, 1894, on the ground as alleged that he was not ratably disabled for the performance of labor, as shown by the evidence on file, he appears to have been again placed on the rolls from July 16, 1897, at a lower rate. We contend that the testimony we filed indicates total disability for twenty years and that he should be pensioned at \$12 per month from December 4, 1894, date of dropping.

It is proper to here state that the soldier was not originally allowed pension under act of June 27, 1890, at \$12 a month because "he was totally disabled for the performance of effective manual labor," but because it was shown that he was slightly deaf in both ears.

The attorney must know that the allowance of claims for pension under the act of June 27, 1890 at the time this claim was passed upon was based upon an erroneous construction of the law as fully set out in the case of Bennett (supra), and it is not deemed necessary to now repeat the opinion then expressed.

It requires no argument to convince one that slight deafness of both ears would not reduce the claimant's