In view of the acts of Congress above cited, I am of opinion that the provision of the act of May 4, 1898, herein discussed has not been superseded or repealed, either expressly or by implication, and that it is still in force; and that the appointment of Richard B. Chapman on January 9, 1903, by the President, as acting assistant surgeon in the Navy for temporary service, was authorized under said act.

Section 13, act of March 3, 1899 (30 Stat., 1007), known as the navy personnel act, provides:

"That all officers, including warrant officers, who have been or may be appointed to the Navy from civil life, shall, on the date of appointment, be credited, for computing their pay, with five years' service."

The above section is found in the act of Congress approved March 3, 1899 (30 Stat., 1007), entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States."

This act, in my opinion, has reference to the officers of the Regular Navy and had not in view officers who are merely in the temporary service. By it I do not think Congress had in view the organization or pay of officers who are merely in the temporary service, and I fail to find in said act any express provision relative to officers of the Navy in the temporary service.

In answer to your question, I am of opinion, and so decide, that upon the facts stated Mr. Chapman is not entitled to be credited, for computing his pay, with five years' service under said section 13; see also *Taylor* v. *United States*, No. 22516, decided January 5, 1903.

DISBURSEMENTS FOR THE GOVERNMENT HOSPITAL FOR THE INSANE.

The Secretary of the Interior is authorized to direct the disbursing officer of the Interior Department to disburse moneys for the Government Hospital for the Insane during a vacancy in the office of superintendent of the hospital.

(*Acting Comptroller Mitchell to the Secretary of the Interior, June 30, 1903.*)

In your communication of June 30, 1903, you request my decision of a question which you present as follows:

"Section 4839 of the Revised Statutes provides that the superintendent of the Government Hospital for the Insane shall be the responsible disbursing agent of the institution. As you are probably aware, Dr. A. B. Richardson, the superintendent and disbursing agent, died suddenly on the 27th instant.

"I have designated an officer of that institution to temporarily take charge of its executive affairs, but, as before stated, the designation being temporary, I do not deem it proper to call upon him to give bond as a disbursing agent, and therefore submit the question to you for an opinion whether or not, under the emergencies now existing, I can appoint Mr. George W. Evans, the disbursing clerk of this Department, to make disbursements on account of that institution until some permanent arrangement can hereafter be made."

On a similar occasion, upon the death of Dr. W. W. Godding, former superintendent of the hospital, who died May 6, 1899, no legal objection was made to the appointment by the Secretary of the Interior of Dr. A. H. Witmer, an assistant physician of the hospital, who had been designated as acting superintendent, as special disbursing agent during the vacancy in the office of superintendent. (See 6 Comp. Dec., 81.) In such case a person appointed as special disbursing agent to disburse moneys for the hospital does not become disbursing agent of the hospital, that office being combined, by section 4839 of the Revised Statutes, with the office of superintendent, but he is merely an agent of the Interior Department. I see no legal objection, therefore, to your directing the disbursement of moneys for the hospital to be made by the disbursing clerk of the Interior Department.

RENT OF BUILDINGS IN THE DISTRICT OF COLUMBIA.

Under the provision in the appropriation for "classification, arrangement, care, and storage of the civil records of the late military government of Cuba," including "every other necessary expense in connection therewith," payment for the rent of a portion of a building in the District of Columbia for the storage of such records is authorized, notwithstanding the provision in the act of March 3, 1877, that no contract shall be made for the rent of any building, or part of any building, in the District of Columbia "until an appropriation therefor shall have been made *in terms*."

(*Acting Comptroller Mitchell to the Disbursing Clerk of the War Department, June 30, 1903.*)

I have received your letter of the 27th instant, as follows:

"I have the honor to transmit for your consideration a voucher in favor of the Merchants Transfer and Storage

Company, for $100, for rent of a portion of building 920 and 922 E street, NW., for the month of June, 1903.

"Payment of this rent has heretofore been made from the appropriation 'Emergency fund War Department,' act of March 3, 1899 (30 Stat., 1223), see Comp. Dec., March 13, 1903, but the Secretary of War has directed that hereafter no further disbursements shall be made from that appropriation, and that payments shall be made from the appropriation made in the sundry civil act of March 3, 1903 (32 Stat., 1129):

"'For classification, arrangement, care, and storage of the civil records of the late military government of Cuba, including hire of clerks, messengers, and every other necessary expense in connection therewith, eleven thousand two hundred and eighty dollars, to be immediately available.'

"This act does not provide for rent 'in terms' as required by the act of March 3, 1877 (19 Stat., 370), and I have therefore to request your decision whether payment of the account may be made therefrom."

In the decision of this office of March 13, 1903, to which you refer, it was held that the broad discretion given to the President in the expenditure of the appropriation made in the act of March 3, 1899 (30 Stat., 1223), when considered in view of a recent opinion of the Attorney-General, and of decisions of the Court of Claims and of this office therein referred to, would authorize the payment, under his discretion, of the rent in question, notwithstanding the provisions of the act of March 3, 1877 (19 Stat., 370), in regard to the rental of buildings in the District of Columbia, and I now see no reason for modifying that decision.

At the time that the expenses then under consideration were incurred (in February, 1903) there was no specific appropriation available for expenses of classification, arrangement, care, and storage of the civil records of the late military government of Cuba and kindred expenses, but, as stated above, the appropriation known as the "Emergency fund, War Department," was held to be available for all expenses connected therewith, including rent of room for the storage of documents.

On March 3, 1903, Congress passed an act making the appropriation quoted by you "to be immediately available," with the object to provide for expenses exactly similar to those considered in my former decision. This act was not called to my attention at the time, but, in any case, it would not have affected any expenses incurred prior to its passage.

In this condition of affairs and under authority of my former decision you appear to have continued to pay the rent in question from the "emergency fund" up to June 1, 1903, and would probably have continued this practice, at least until July 1, if the Secretary of War had not ordered that no further disbursements should be made from that fund.

While there would be no difference in principle between payments to be made for the month of June and thereafter and payments already made after the act of March 3, 1903, *supra*, since after that date you could have made the payments from the specific appropriation, it does not seem necessary to disturb the former payments and the settlement of your accounts already made, and hence it is necessary only to answer your question, whether the account now presented may be paid from the appropriation for "Care of civil records of the late military government of Cuba."

This appropriation, as you state, does not provide in terms for rent, but under all the facts of the case, and in view of the clearly-indicated intention of the later act to provide for all expenses of the Cuban records, including storage, I am of the opinion that the account may be properly paid from that appropriation. A decision which would require all the expenses except storage (as another name for rent) to be paid out of the current appropriation, because it was once decided that it was payable from an appropriation at that time available, but no longer so, would I think, in view of all the facts of this case, be a refinement of construction which should be avoided.