IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

FLORENCE KENNEDY,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet.App. No. 19-0256
	)	
ROBERT L. WILKIE,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

SUPPLEMENTAL BRIEF OF THE APPELLEE

Pursuant to the Court's Order dated August 19, 2020, Appellee, Robert L. Wilkie, Secretary of Veterans Affairs, respectfully submits the following supplemental brief. In that Order, the Court seeks supplemental briefing with answers to the following questions:

(1) What is the definition of an "issue," and does a Department of Veterans Affairs (VA) Fast Letter qualify as an issue under that definition?

(2) How, if at all, does 38 C.F.R. § 19.5,[1] which provides that "the Board is not bound by Department manuals, circulars, or similar administrative issues," affect the definition of "issue"?

(3) Should the Court apply the Federal Circuit's test for determining whether a provision is a liberalizing law – "one which brought about a substantive change in the law creating a new and different entitlement to a benefit" – to determine whether a provision is a liberalizing "issue"? If not, what test should the Court apply to determine whether an "issue" is liberalizing?

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[1] This regulation is now found at 38 C.F.R. § 20.105 (2020).

(4) Does VA have discretion to decline to award the one year earlier effective date if it finds a law or issue liberalizing? If so, what standard applies in making a determination as to whether an earlier effective date of one year is warranted?

SUMMARY OF THE ARGUMENT

While the term "issue" is not defined by the relevant statutes and regulations, it is apparent from the legislative and regulatory history, to include that of 38 C.F.R. § 19.5, that any document issued from VA, its administrations, or other staff offices may be considered an issue. Thus, a VA fast letter is an "issue". However, identifying whether a particular document is a liberalizing issue depends on whether it has a substantive effect on a benefit. This inquiry is entirely consistent with the Federal Circuit's test for determining whether a provision is a liberalizing law, and thus, this Court should apply the same test. Fast Letter 13-04 is not a liberalizing issue under the Federal Circuit's test as it does not have a substantive effect on the award of benefits. Lastly, 38 C.F.R. § 3.114(a)(3) gives VA discretion to award the entire one year earlier effective date only insofar as it must determine whether the claimant met all of the requirements for entitlement to the benefit for the liberalized benefits of the liberalizing law or VA issue and that such eligibility existed continuously from the date of the claim or administrative determination of entitlement.

ARGUMENT

An "issue" is not limited or confined to a particular type or class of documents but, rather, is defined by the substance and effect of the document. In 1962, when

Congress first introduced the phrase "administrative issue" into the statutory language of 38 U.S.C. § 3010(g) by Pub. L. 87-825, 76 Stat. 949, the committee reports specified that liberalizing laws and administrative issues were those creating "new benefits." S. Rep. No. 2042, 87th Cong., 2d Sess. 2 (1962); H.R. Rep. No. 2123, 87th Cong., 2d Sess. 2 (1962) (explaining that the introduction of the provision "governing the effective dates of liberalizing laws and administrative issues that are enacted or promulgated in the future . . . would, . . . obviate the necessity of a potential beneficiary filing a specific claim for *the new benefit*") (emphasis added). The language of the statute has remained virtually unchanged since, but now appears as 38 U.S.C. § 5110(g). Section 5110(g) addresses awards or increases in compensation "pursuant to any Act or administrative issue."

The implementing regulation under 38 C.F.R. § 3.114, implemented shortly after Congress enacted Pub. L. 87-825, titled "Change of law or Department of Veterans Affairs issue," variously refers to "a liberalizing VA issue approved by the Secretary or by the Secretary's direction," "administrative issue," "VA issue," and "Department of Veterans Affairs issue." *See* 27 Fed. Reg. 11886 (Dec. 1, 1962). The relevant language has remained substantively unchanged since that time. *See* 76 Fed. Reg. 4245 (Jan. 25, 2011); *see also* 38 C.F.R. § 3.114 (2020).

Prior to the enactment of 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114, the term "issue" was included in VA regulations, R&P R-1214(B) and R&P R-2553. The term appeared in the 1947 version of R&P R-1214, titled "[e]ffective dates of awards of increased disability compensation" and, more specifically, section

(B)(2), titled "[b]y reason of regulatory or schedular provisions," which established effective dates for increased ratings "resulting from an amendment of the 1945 schedule or the promulgation of an administrative issue . . . but in no event prior to the date of the amendment or administrative issue." R&P R-1214(B)(2) (Sep. 26, 1947) (Appendix at 51); *see also* R&P R-1214(B)(2) (Oct. 10, 1949) (Appendix at 56). The previous version of R&P R-1214(B) did not include the term issue but referred specifically to "amendment[s] to the rating schedule or governing regulation." R&P R-1214(B)(1) (Sep. 20, 1946) (Appendix at 48). The term also appeared in R&P R-2553, titled "[a]pplication of liberalizing VA issues," which established effective dates for certain awards granted "pursuant to the provisions of an amended regulation or a VA issue containing liberalizing criteria approved by the Administrator or by his direction." R&P R-2553 (Aug. 4, 1948) (Appendix at 52).

In 1959, R&P R-1214(B)(2) and R&P R-2553 were combined into 38 C.F.R. § 3.400(P), titled "[l]iberalizing [i]ssues," which stated "the date of an amended regulation or a VA issue approved by the Administrator or by his direction." R&P R-2553 (May 29, 1959) (Appendix at 81-82). Section 3.400(p) was implemented, effective December 1, 1962, and has remained substantively unchanged since. *See* VA Transmittal Sheet (TS) 270 (Dec. 1, 1962) (explaining that "[t]he substance of subparagraph (P) has been deleted and a cross-reference substituted to the new VA Regulation 1114, which covers effective dates of benefits based on liberalizing laws and VA issues.") (Appendix at 68).

The term "issue" also appears in 38 C.F.R. § 20.105 which outlines certain criteria that govern the disposition of appeals at the Board of Veterans Appeals (Board). It states, in whole:

> In the consideration of appeals and in its decision, the Board is bound by applicable statutes and regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

This language has remained virtually unchanged since 1992. *See* 57 Fed. Reg. 4088 (Feb. 3, 1992). However, the prior version of the regulation, effective January 1, 1980, provided additional information regarding the types of issues that were not binding on the Board, stating that "[i]n its appellate decisions, the Board is not bound by agency manuals, circulars and similar administrative issues *not approved by the Administrator*." 38 C.F.R. § 19.103(b) (1980) (emphasis added) (Appendix at 114); *see also* VA Transmittal Sheet 9 (Feb. 4, 1983) (explaining that "[n]ew paragraph (b) makes note of the fact that, in its decisions, the Board is not bound by administrative issues not approved by the Administrator") (Appendix at 114). The portion of the regulation stating "not approved by the Administrator" was removed without explanation by 57 Fed. Reg. 4088 (Feb. 3, 1992).[2]

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[2] It is important to note, however, that in October 1988, VA was elevated to a Cabinet-level executive department which took effect on March 15, 1989. *See* Department of Veterans Affairs Act, Pub. L. 100-527, § 10, 102 Stat. 2635 (1988). At that time, administrative changes occurred at all levels, including the addition of the Secretary of Veterans Affairs, which replaced the position of Administrator. *Id*. at 2640-41 (stating that "[r]eference in any other Federal law, Executive order, rule, regulation, . . . or any document of or pertaining to the Veterans' Administration (1)

Additionally, the relevant regulatory language has been addressed in various internal documents such as TSs, technical bulletins (TBs), and information bulletins (IBs), which also help to shed light on the contours of what constitutes an administrative issue. When 38 C.F.R. § 3.114 was first promulgated, TS 267, which accompanied the regulation, explained that the regulation applied "when liberalized standards of entitlement are established by a liberalizing law or approval of a liberalizing VA issue, e.g., a change in rating or dependency criteria, or in the nature of evidence required to establish relationship." VA Transmittal Sheet 267 (Dec. 1, 1962) (Appendix at 4-5). It also included several examples of issues, describing "a new VA issue (e.g., a change in the Schedule for Rating Disabilities, or a revision of VA Regulations)." *Id*. In 1948, TB 8-88 was issued which explained R&P R-2553 "which follow the principles previously set forth in R&P R-1214(B)(2), will be observed in applying the liberalizing provisions of 1948, and R&P R-1228 . . ., and other similar issues." Technical Bulletin 8-88 (Aug. 13, 1948) (Appendix at 1). In 1949, IB 8-31 issued stating that "[a]ny case may be reviewed under TB 8-132[,]" that "[t]he effective date of any award will be governed by R&P R-2553 following procedure set forth in R&P R-1214(B)(2)" and that "[t]his will be equally applicable to any future liberalizing issue or criteria unless otherwise specified therein." Information Bulletin 8-31 (Nov. 29, 1949) (Appendix at 122). Then, in

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to the Administrator of Veterans' Affairs shall be deemed to refer to the Secretary of Veterans Affairs").

1951, IB 8-53 was issued which explained that the provisions of R&P R-1214(B)(2) and R-2553 are not applicable to opinions of the Solicitor as they do not constitute new criteria but rather concern the proper application of existing criteria. Information Bulletin 8-53 (Mar. 9, 1951) (Appendix at 123). Thereafter, IB 8-69 was issued which provided examples of liberalizing issues "such as changes in the rating schedule or VA Regulations or other authoritative criteria, in the view of the provisions of VA Regulations 1214(B)(2)." Information Bulletin 8-69 (Mar. 4, 1952) (Appendix at 125).

The statutory and regulatory language has also been addressed in numerous OGC opinions. A review of OGC opinions dating back to 1994 generally equate "issues" with regulations or regulatory changes. *See, e.g.,* VAOPGCPREC 10-94, para. 3 (noting a VA regulation is an example of an administrative issue); VAOPGCPREC 26-97, para. 5 ("[A] rating schedule change which makes it easier for a veteran to establish service connection for a disability may be considered a liberalizing VA issue for purposes of 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114(a)."). However, other OGC opinions have also recognized that documents beyond regulations may constitute administrative issues to include an OGC opinion and even an Attorney General notification to Congress that described a Presidential directive. *See* VAOPGCPREC 88-90, para. 4 (explaining that 38 C.F.R. § 3.101 requires all VA decisions to conform to General Counsel precedent opinions and so "[i]t follows then that a liberalization of VA policy may result from a precedent General Counsel opinion, i.e., such a G.C. opinion is an administrative

issue, and the effective date of any benefit award resulting therefrom is governed by 38 U.S.C. § 3010(g)."); VAOPGCPREC 3-2014, para. 6 ("The President's directive, as described in the Attorney General's letter, establishes the Executive Branch's position on an issue of law and has the effect of authorizing previously proscribed payments, and we believe it may be considered a liberalizing 'administrative issue' within the meaning of section 5110(g).").

OGC opinions have also addressed what documents may be considered liberalizing issues. *See, e.g.,* VAOPGCPREC 01-96, para. 5 (explaining that 38 C.F.R. § 3.114(a) is not applicable to provisions in manuals such as M21-1 in part because they are not approved by the Secretary or by the Secretary's direction and because benefits manual provisions "do not provide authority for awarding benefits"); VAOPGCPREC 26-97, para. 6 (noting that an addition to the rating schedule may be considered a liberalizing issuance where it "had a substantive impact on claims by liberalizing the evidentiary basis on which service connection for certain disabilities may be established"); VAOPGCPREC 3-2012, para. 23 (noting that "other documents, such as manual provisions, issued by VA providing guidance on the implementation of [a regulation] do not constitute liberalizing administrative issues for purposes of § 3.114 because they address claim development and remind adjudicators of the types of evidence that may support a claim and do not alter the substantive rules governing benefit entitlement").

Considering the statutory and regulatory history, it is clear that a change to a regulation or the Schedule for Rating Disabilities constitutes an administrative

issue as contemplated by the statutes and regulations. *See* VAOPGCPREC 10-94, para. 3, 6; VAOPGCPREC 26-97, para. 5. The language of the regulations, as well as the sub-regulatory guidance, support this interpretation. *See* R&P R-1214(B)(1) (July 10, 1942) (Appendix at 48); R&P R-1214(B)(2) (Sep. 26, 1947) (Appendix at 51); R&P R-2553 (Aug. 4, 1948) (Appendix at 52); TS 267 (describing a VA issue as "a change in the Schedule for Rating Disabilities, or a revision of VA regulations") (Appendix at 4-5). But administrative issues are not limited to regulations and the rating schedule and may include other types of documents. As noted above, TBs were equated to administrative issues as well as an OGC opinion and a Presidential directive. *See* Technical Bulletin 8-88 (Appendix at 1); Information Bulletin 8-31 (Appendix at 122); VAOPGCPREC 88-90, para 4; VAOPGCPREC 3-2014, para. 6.

To determine whether documents constitute liberalizing administrative issues, the question is whether they have a substantive effect on benefits. Considering the statutory history, a substantive effect on benefits may occur when a new benefit is created. S. Rep. No. 2042, 87th Cong., 2d Sess. 2 (1962); H.R. Rep. No. 2123, 87th Cong., 2d Sess. 2 (1962). Additionally, a document may have a substantive effect on benefits when it creates a change to the criteria or standards for establishing entitlement to a benefit. *See* Transmittal Sheet 267 (providing examples of liberalizing issues to include "a change in rating or dependency criteria, or in the nature of evidence required to establish relationship") (Appendix at 4-5); Information Bulletin 8-53 (explaining that opinions of the Solicitor

are not VA issues because they "do not constitute new criteria but rather concern the proper application of existing criteria") (Appendix at 123); VAOPGCPREC 88-90, para. 4; VAOPGCPREC 26-97, para. 6; VAOPGCPREC 3-2014, para. 6. Conversely, documents that do not alter the substantive rules governing benefit entitlement do not constitute administrative issues. *See* IB 853; VAOPGCPREC 01-96, para. 4 (explaining that 38 U.S.C. § 5110(g) is inapplicable to "awards based merely on an interpretation of law or VA issue); VAOPGCPREC 3-2012, para. 23 (noting that a provision of a regulation was not a liberalizing issue because it "merely calls to the attention of adjudicators the types of evidence that may support a claim for benefits" and that documents "issued by VA providing guidance on the implementation of [a regulation] do not constitute liberalizing administrative issues . . . because they address claim development and remind adjudicators of the types of evidence that may support a claim and do not alter the substantive rules governing benefit entitlement").

This is also consistent with the language of 38 C.F.R. § 20.105, which describes two separate classes of documents: those that are binding on the Board and those that are not. First, it provides that the Board is bound, as a matter of law, by statutes and regulations of VA and the precedent opinions of the General Counsel of VA. *See* 38 C.F.R. § 20.105; *see also* 38 U.S.C. § 7104(c). Second, it provides a list of documents that are not binding on the Board including Department manuals, circulars, or similar administrative issues. 38 C.F.R. § 20.105. This second class of documents can further be understood as those that

are not approved by the Secretary or by the Secretary's direction, which is consistent with the language of the provision's historical version. *See* 38 C.F.R. § 19.103(b) (1980). This is also consistent with 38 C.F.R. § 3.114(a)'s requirement that the administrative issue must be "approved by the Secretary or by the Secretary's direction." 38 C.F.R. § 3.114(a).

The Federal Circuit's established test for determining whether a provision is a liberalizing law, that is, "one which brought about a substantive change in the law creating a new and different entitlement to a benefit," is consistent with the legislative history. As explained above, in enacting 38 U.S.C. § 5110(g), Congress expressly contemplated that a liberalizing issue would be one that creates a new benefit. S. Rep. No. 2042, 87th Cong., 2d Sess. 2 (1962); H.R. Rep. No. 2123, 87th Cong., 2d Sess. 2 (1962) (explaining that the introduction of the provision "governing the effective dates of liberalizing laws and administrative issues that are enacted or promulgated in the future . . . would, . . . obviate the necessity of a potential beneficiary filing a specific claim for *the new benefit*") (emphasis added). VA's determination that liberalizing issues include those that create a change to the criteria or standards for establishing entitlement to a benefit is also consistent with the Federal Circuit's test. *See* Transmittal Sheet 267 (Appendix at 4-5); Information Bulletin 8-53 (Appendix at 123); VAOPGCPREC 88-90, para. 4; VAOPGCPREC 26-97, para. 6; VAOPGCPREC 3-2014, para. 6. In *Routen v. West*, the Federal Circuit explained that "[i]f a new law provides for benefits not previously available, even though grounded on some but not all of the same facts

adjudicated under an earlier law, a new cause of action is created along with a new entitlement to a remedy." 142 F.3d 1434, 1441 (Fed. Cir. 1998). Indeed, in *Routen*, the Federal Circuit specifically addressed whether a change in the evidentiary standard required to demonstrate entitlement to a benefit constituted a substantive change in the law. *Id*. at 1442; *see also* VAOPGCPREC 26-97, para. 5 (explaining that a "rating schedule change which makes it easier for a veteran to establish service connection for a disability may be considered a liberalizing VA issue"). Therefore, there is no need to establish a new test to determine whether a provision is a liberalizing law.

Turning to the facts of the present case, VA Fast Letter 13-04 (FL 13-04) does not satisfy the requirements of 38 C.F.R § 3.114(a). 38 C.F.R. § 3.114(a) provides, in relevant part, that where dependency and indemnity compensation is awarded pursuant to "a liberalizing law or VA issue approved by the Secretary or by the Secretary's direction, the effective date of that award shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue." Thus, for a document to satisfy the requirements of § 3.114(a), it must be (1) an issue, (2) that is liberalizing, and (3) was approved by the Secretary or by the Secretary's direction. *See* 38 C.F.R. § 3.114(a).

Primarily, FL 13-04 was issued by the Director of Pension & Fiduciary Services and was later rescinded due to its incorporation into the M21-1, so it was not "approved by the Secretary or by the Secretary's direction." *See* VAOPGCPREC 01-96, para. 5 ("Provisions in manuals such as M21-1 are not

approved by the Secretary or by the Secretary's direction, but rather are approved by the *head of the VA component*, in this case VBA, issuing the manual.") (emphasis added); *see also* VAOPGCPREC 26-97, para. 8 (explaining that because the change in the program guide 21-1 and the Department of Medicine and Surgery Professional Services Letter IL-11-08-15 (Mar. 20, 1980), which added the diagnosis of PTSD, were not approved by the Administrator or by his direction, neither could be considered a liberalizing issue for purposes of 38 C.F.R. § 3.114(a)). Moreover, FL 13-04 does not have a substantive effect on any benefits or benefits' criteria. 38 C.F.R. § 3.400 governs the evidence that may substantiate whether a veteran's death is due to a service-connected death. *See* 26 Fed. Reg. 1582 (Feb. 24, 1961). The rule provides in pertinent part that the "issue involved will be determined by exercise of sound judgment, without recourse to speculation, after a careful analysis has been made of ***all*** of the facts and circumstances surrounding the death of the veteran, including, particularly, autopsy reports." *Id*. (Emphasis added). FL 13-04 did not change any evidentiary standard, it merely provided adjudicators with the types of evidence that may support a finding that a veteran's service-connected disability was either the principal or contributory cause of the veteran's death. *See* VA Fast Letter 13-04, at 2-3. In short, FL 13-04 clarified the types of evidence that may be considered in determining whether the requirements for entitlement to the benefit have been met. *See id*.; *see also* VAOPGCPREC 3-2012, para. 23. FL 13-04 was intended to change the *procedures* for processing DIC claims by "eliminating certain redundant

development actions and performing limited screening" in an effort to expedite processing of these claims. VA Fast Letter, at 1. This is consistent with FL 13-04's stated purpose: "to ensure timely delivery of benefits to vulnerable survivors who have an immediate need for supplemental income following the death of Veteran." *Id*. Simply put, FL 13-04 was intended as procedural issue to expedite claims processing and not intended to abrogate the adjudicator's responsibility to consider "all" evidence under 38 C.F.R. § 3.400 and therefore did not create a new benefit under the law.

Lastly, 38 C.F.R. § 3.114(a)(3), which provides that for "a claim [ ] reviewed . . . more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such claim," does not allow VA discretion in awarding the full benefit of the 1 year retroactive date. While the provision uses the term "may," this merely recognizes that a claimant must first meet all the requirements of the benefit to be entitled to the retroactive payment. This is consistent with the language of 38 C.F.R. § 3.114(a) which provides:

> [I]n order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of the claim or administrative determination of entitlement.

Therefore, pursuant to § 3.114(a)(3), a claim reviewed more than 1 year after the effective date of the liberalizing law or VA issue it is awarded pursuant to, is entitled

to the benefit of the 1 year retroactive effective date, *so long as* the claimant met all of the eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from the date of the claim or administrative determination of entitlement. *See* VAOPGCPREC 26-97, para. 10 (explaining that "38 C.F.R. § 3.114(a) require[s] that the effective date of an award made pursuant to a liberalizing act or administrative issue 'be fixed in accordance with the facts found,' indicating that entitlement to a retroactive award is dependent on the existence of facts supporting a finding of entitlement from an earlier date.").

CONCLUSION

WHEREFORE, Appellee, Robert L. Wilkie, Secretary of Veterans Affairs, respectfully responds to the Court's August 19, 2020, Order, and urges the Court to affirm the Board decision dated November 1, 2018.

Respectfully submitted,

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APPENDIX

Rescinded by M3-1, 9-15-53

TB 8-88

VETERANS ADMINISTRATION TECHNICAL BULLETIN

Washington 25, D. C. August 13, 1948

COMMENCING DATE OF DEATH COMPENSATION OR PENSION UNDER LIBERALIZING VA ISSUES

1. The purpose of this technical bulletin is to disseminate information relative to the application of the provisions of R&P R-2553, recently approved by the Administrator, which reads as follows:

> "APPLICATION OF LIBERALIZING VA ISSUES.--Except where otherwise specifically provided, death compensation or pension which is payable pursuant to the provisions of an amended regulation or a VA issue containing liberalizing criteria approved by the Administrator or by his direction shall not be paid for any period prior to the date of such regulation or issue."

2. The provisions of the foregoing regulation, which follow the principles previously set forth in R&P R-1214 (B) (2), will be observed in applying the liberalizing provisions of VA Technical Bulletin TB 8-69 dated February 18, 1948, R&P R-1057 (E) (1) dated May 5, 1948, and R&P R-1228 dated July 6, 1948, and other similar issues. The provisions of R&P R-2553 are applicable to death claims pending on the dates of such liberalizing issues, claims previously disallowed but appealed by the claimant or his authorized representative within the appeal period, and claims filed subsequent to the dates of such issues.

3. It will not be necessary to adjust any award heretofore made solely for the purpose of changing the commencing date to the date of the liberalizing issue under which the award was approved.

By direction of the Administrator:

O. W. CLARK
Executive Assistant Administrator

Distribution:

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38 CFR 3.114(a)

38 CFR 3.114(a)
12/01/62 (TS 267)

38 CFR 3.114(a)
revised 08/23/89 (54 FR 34977)
retroactively effective 03/15/89

38 CFR 3.114(a)
revised 05/11/90 (55 FR 13522)

38 CFR 3.114(a)
revised 07/13/92 (57 FR 31006)
retroactively effective 08/06/91

38 CFR 3.114(a)
revised 04/11/97 (62 FR 17706)
retroactively effective 06/12/96

38 CFR 3.114(a)
revised 06/02/00 (65 FR 35280)
retroactively effective 10/01/97

38 CFR 3.114(a)
revised 07/31/02 B54(2)
applicable 12/01/01

38 CFR 3.114(a)
revised 02/24/11 (76 FR 4245)

4/11.2

38 CFR 3.114(a)

Veterans Administration
Washington 25, D.C.

December 1, 1962

VA REGULATIONS

COMPENSATION AND PENSION--Transmittal Sheet 267

Remove pages	Insert pages
35-R and 36-R	35-2R and 36-2R
37-R and 38-R	37-2R and 38-2R
39-2R and 40-2R, 41-2R, 42-2R, 43-2R, 44-2R	39-3R and 40-3R 41-3R, 42-3R, 43-3R, 44-3R

Paragraph revised	Paragraphs added	Paragraphs canceled
1105 Introduction, (A), (D), (E)	1105(F) 1114	None

Page 35-1 (contents page): Under "1113 Signature by Mark" insert "1114 Change of Law or VA Issue".

EXPLANATION

The purpose of the following comment on the changes included in this amendment of VA Regulations is to inform all concerned why these changes are being made. These comments are not regulatory.

Paragraph 1105. The revisions in this paragraph reflect changes made necessary by Public Law 87-825, enacted October 15, 1962. The provisions of this act are not for application for the purpose of awarding, reducing or discontinuing benefits prior to the effective date, December 1, 1962, specified in section 7 of the act.

This act substituted a new section 3012(b) of title 38 for the former subsections (b) and (c). Consistent with the provisions of the new subsection (b), the preamble to paragraph 1105 has been amended to eliminate reference to "fraud" and to substitute reference to acts of commission or omission by the payee. The subject of revision of decisions due to changes in law or administrative issues is specifically covered in the new VA Regulation 1114.

Subparagraph (A) has been amended to show clearly that when an earlier unfavorable decision is reversed because of clear and unmistakable error, retroactive benefits may be authorized as if the earlier decision had been favorable. The basic rule for reduction or discontinuance of awards because of error is contained in VA Regulation 1500(B).

38 CFR 3.114(a) 12-1-62

Subparagraph (D) as revised is based on the new section 3012(b)(6) which provides statutory authority for rules which were established by regulation. The existing procedure preliminary to severance of service connection, which is applicable only where service connection has not been in effect for 10 or more years, will be maintained. By the specific language in subsection (b)(6) relating to changes in service-connected (or employability) status, severance of service connection and reduction of compensation awards are excepted from the general provisions of subsection (b)(10) for discontinuance of awards because of administrative error or error in judgment.

Subparagraph (E), relating to reduction or discontinuance of compensation awards because of reduction in evaluation of service-connected disability, has been modified to include a change in employability status which would affect eligibility for compensation. As under existing procedure, compensation awards will not be reduced or discontinued until the veteran has been afforded a period of 60 days in which to submit additional evidence. The rating and award (if discontinuance is not in order) will reflect the lower evaluation and the reduced rate of compensation effective the first day of the third calendar month following the date of notice to the payee.

The new subparagraph (F) provides for reduction (e.g., aid and attendance allowance) or discontinuance of a pension award on the basis of a reduced evaluation where there has been a change in the disability or in employability, effective the last day of the month in which the discontinuance is approved. This action will be taken on the basis of the rating. No waiting period is authorized for the submission of additional evidence.

(Comment on par. 1109. This paragraph has not been changed. Subpar. (A)(2) provides a 1-year time limit for submission of evidence in support of a claim for benefits, which is equally applicable to original and reopened claims and claims for increase. The former 38 U.S.C. 3011, which provided that in reopened and increase claims benefits could not be paid for any period prior to date of receipt of evidence establishing entitlement, is repealed by sec. 5, PL 87-825. Under this law, payments may be authorized from the date of receipt of an informal claim for reopening or increase, if the necessary evidence is received within 1 year from the date of request. Additional comments concerning this aspect are contained in transmittal sheet 268 accompanying the revision of VA Regulation 1156.)

Paragraph 1114 combines the provisions of the new sections 3010(g) and 3012(b)(6), which affect award actions due to changes in law or VA issues, or interpretations of either. Benefits may not be authorized under this paragraph for any period prior to December 1, 1962

Subparagraph (A) is based on section 3010(g), which provides statutory authority for payment of benefits based on pending or previously disallowed claims, when liberalized standards of entitlement are established by a liberalizing law or approval of a liberalizing VA issue, e.g., a change in

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rating or dependency criteria, or in the nature of evidence required to establish relationship. Benefits may be paid from the effective date of the law or VA issue if a claim is reviewed in the course of a general review within 1 year from the effective date of the law or VA issue, or as to other pending or finally disallowed claims, where the claimant's request for consideration is received within 1 year from the applicable effective date.

In other instances, where a general review of claims is not authorized or an individual claim was not identified in the course of a general review, benefits may be authorized retroactively either on the basis of a reopened claim or an administrative review. If a claim is reopened by the claimant, or is reviewed on the initiative of the VA more than 1 year after the effective date of the law or VA issue, benefits may be awarded retroactively covering a period of 1 year prior to the date of reopening or date of administrative determination of entitlement (e.g., the date of rating), whichever is applicable.

Subparagraph (B) is based on section 3012(b)(6), relating to discontinuance of awards because of a new law or administrative issue, or because of a change in interpretation of a law or issue. This provides a general rule for situations where a statute may require termination of running awards authorized under an earlier law, or termination is required because of a new VA issue (e.g., a change in the Schedule for Rating Disabilities, or a revision of VA Regulations) or where, because of a new interpretation of a law or VA issue, it is determined that an award which was properly made under instructions in effect at that time, should not have been authorized. Under the circumstances described, the general rule will be followed in the absence of other specific statutory or administrative provisions.

By direction of the Administrator:

W. J. DRIVER
Deputy Administrator

Distribution:

DVB publications code 0071
All other elements same as Compensation and Pension Regulations.

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1112 (§3.112). FRACTIONS OF ONE CENT.--In all cases where the amount to be paid under any award involves a fraction of a cent, the fractional part will be excluded. (May 29, 1959) Per. 26.06, M 22-1

1113 (§3.113). SIGNATURE BY MARK.--All signatures by mark or thumbprint must be:

(A) Witnessed by two persons who can write and who have signed their names and addresses; or (May 8, 1962)

(B) Certified by a notary public or other person having authority to administer oaths for general purposes; or (May 8, 1962)

(C) Certified by a VA employee under authority of VA Form 4505 series. (May 8, 1962) G.C. 1-12-66

[1114 (§3.114). CHANGE OF LAW OR VA ISSUE

(A) Effective Date of Awards. Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or a liberalizing VA issue, approved by the Administrator or by his direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Sec. 1-7, PL 21-1; Direct ltr. 2-6-78

(1) If a claim is reviewed on the initiative of the VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue. Ltr.

(2) If a claim is reviewed on the initiative of the VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request. (38 U.S.C. 3010(g); PL 87-825)] (Dec. 1, 1962) Per., 20.49-20.50 & 30.4, M 21-1; Sec. 1-7, PL 21-1; ltr. 2-4-65

[(B) Discontinuance of Benefits. Where the reduction or discontinuance of an award is in order because of a change in law or a VA issue, or because of a change in interpretation of a law or VA issue, the payee will be notified at his latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired. (38 U.S.C. 3012(b)(6), PL 87-825)] (Dec. 1, 1962)

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54 FR 34977

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54 FR 34977

DEPARTMENT OF VETERANS AFFAIRS

AGENCY. Department of Veterans Affairs

38 CFR Chapter I

Nomenclature Changes; Technical Amendments

54 FR 34977

August 23, 1989

ACTION: Final technical amendments.

SUMMARY: The Department of Veterans Affairs Act established the Veterans Administration as the Department of Veterans Affairs, an executive-level Department, (see 54 FR 10476). The Department of Veterans Affairs (VA) is making technical amendments to title 38, Code of Federal Regulations, chapter I, to bring its nomenclature into conformance with the changes required by the Act.

EFFECTIVE DATE: These final amendments are retroactively effective to March 15, 1989, the effective date of VA becoming the Department of Veterans Affairs.

FOR FURTHER INFORMATION CONTACT: Lynn H. Covington, Director, Paperwork Management and Regulations Service (73), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3616.

TEXT:
SUPPLEMENTARY INFORMATION: VA is updating 38 CFR chapter I nomenclature to conform to the Department of Veterans Affairs, Act, Pub. L. 100-527. However, the Department's reorganization under Public Law 100-527 is not yet totally finalized. Any further changes requiring amendment of 38 CFR chapter I will be published at a later date. Those changes will primarily reflect new titles for personnel responsible for certain functions which appear in 38 CFR. At this time, VA is also taking the opportunity to remove any gender-specific language remaining in 38 CFR as required by 38 CFR 1.13, and is making certain that terms used by the Department are consistent throughout 38 CFR to avoid any confusion. For example, the terms field facility and field station have been used interchangeably in 38 CFR, the term field facility is now used throughout the title.

VA finds that good cause exists for making these amendments final without previous publication of a notice of proposed rulemaking, and for making them retroactively effective to the date of the establishment of the Department of Veterans Affairs, March 15, 1989. All the changes contained in these regulations are technical ones designed to correct erroneous references and eliminate sexually biased language. There are no substantive changes. Public participation in this rulemaking is therefore unnecessary (38 CFR 1.12).

Since a notice of proposed rulemaking is unnecessary and will not be published, these final amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. These amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These final regulatory amendments do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The final regulatory amendments will not have a $100 million annual effect on the economy and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete in domestic or foreign-based markets

These final regulatory amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

These amendments are promulgated under the authority granted the Secretary of Veterans Affairs by 38 U.S.C. 210(c)

Approved August 15, 1989

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR chapter I, Pensions Bonuses, and Veterans' Relief is amended as follows.

38 CFR CHAPTER I -- [AMENDED]

1. In 38 CFR chapter I remove the words "Veterans Administration" and "Veterans' Administration" and add, in their place, the words "Department of Veterans Affairs" everywhere they appear

2. In 38 CFR chapter I remove the words "Department of Medicine and Surgery" and add, in their place, the words "Veterans Health Services and Research Administration" everywhere they appear

3. In 38 CFR chapter I remove the words "Department of Veterans Benefits" and add, in their place, the words "Veterans Benefits Administration" everywhere they appear.

4. In 38 CFR chapter I remove the words "Department of Memorial Affairs" and add, in their place, the words "National Cemetery System" everywhever they appear.

5. In 38 CFR chapter I remove the acronyms "DM&S", "DVB", and "DMA" and add, in their place, the acronyms "VHS&RA", "VBA", and ""NCS" respectively everywhere they appear

6. In 38 CFR Chapter I remove the words "Administrator" and "Adminisrator's" and add, in their place, the words "Secretary" and "Secretary's" respectively everywhere they appear.

7. In 38 CFR Chapter I remove the words "Administrator of Veterans' Affairs" and add, in their place, the words "Secretary of Veterans Affairs" everywhere they appear.

8. In 38 CFR Chapter I remove the words "Deputy Administrator" and "Deputy Administrator's" and add, in their place, the words "Deputy Secretary" and "Deputy Secretary's" respectively everywhere they appear.

9. In 38 CFR Chapter I remove the words "Chief Memorial Affairs Director" and add, in their place, the words "Director, National Cemetery System" everywhere they appear.

In addition to the amendments set forth above, 38 CFR Chapter I is further amended as follows:

PART 0 -- [AMENDED]

1. §§ 0.735-10, 0.735-11, 0.735-21, 0.735-51, 0.735-52, 0.735-53, 0.735-54, and 0.735.56 remove the word "himself" and add in its place, the words "himself or herself" in the following places

(a) Section 0.735-10(a);

(b) Section 0.735-11(a) introductory text and (c),

(c) Section 0.735-21(f);

(d) Section 0.735-51;

(e) Section 0.735-52(a);

(f) Section 0.735-53,

(g) Section 0.735-54, and

(h) Section 0.735-56

1. In §§ 3.7(b), 3.103(b), 3.103(c), and 3.655(f) remove the word "he" and add, in its place, the words "he or she".

2. In §§ 3.7, 3.8, 3.9, 3.103, 3.105, 3.114, 3.155, 3.450, 3.654, 3.703, and 3.1000 remove the word "his" and add, in its place, the words "his or her" in the following places:

(a) Section 3.7(b),

(b) Section 3.8(d)(1);

(c) Section 3.9(a)(4) and (5);

(d) Section 3.103(a), (c), and (e);

(e) Section 3.105 introductory text;

(f) Section 3.114(b);

(g) Section 3.155(a);

(h) Section 3.450(a)(1)(i);

(i) Section 3.654(c),

(j) Section 3.703(b), and

(k) Section 3.1000(a)(1) (i) through (iii)

§ 3.114 [Amended]

3. In §§ 3.114(a) introductory text and 3.342(b)(5) remove the word "his" and add, in its place, the words "the Secretary's".

§§ 3.103 and 3.704 [Amended]

4. In §§ 3.103 (a), (c), and (e) and 3.704(b) remove the word "him" and add, in its place, the words "him or her".

§ 3.100 [Amended]

5. In § 3.100 remove the word "him" and add, in its place, the words "the Director".

§ 3.1604 [Amended]

6. In § 3.1604 (a), (c), (d)(1) (iii) and (iv), (d)(2), and (d)(3) remove the word "state" and add, in its place, the word "State".

7. In §§ 3.27, 3.151, 3.152, 3.157, 3.311, 3.556, 3.557, 3.558, 3.808, 3.812, 3.813, 3.905, 3.1600, and 3.1612 remove the words "the VA" and add, in their place, the words "VA" in the following places.

(a) Section 3.27 (a) and (b),

(b) Section 3.151 (a) and (b);

(c) Section 3.152(a),

(d) Section 3.157(b)(1);

(e) Section 3.311b(d)(1);

(f) Section 3.556(e);

(g) Section 3.557 (a) and (b)(1);

(h) Section 3.558(c) (1) and (2),

(i) Section 3.808(c),

(j) Section 3.812(b)(5);

creased disability, age, or the existence of a dependent and to applications for reopening or resumption of payments. If substantiating evidence is required with respect to the veracity of a witness or the authenticity of documentary evidence timely filed, there will be allowed for the submission of such evidence 1 year from the date of the request therefor. However, any evidence to enlarge the proofs and evidence originally submitted is not so included.

(b) *Failure to furnish claim form or notice of time limit.* Failure to furnish a potential claimant any form or information concerning the right to file claim for pension, compensation, or dependency and indemnity compensation, or to furnish notice of the time limit for the filing of a claim or submission of evidence will not extend the periods allowed for these actions. As to appeals, see § 19.110 of this chapter.

[26 FR 1569, Feb. 24, 1961, as amended at 26 FR 2231, Mar. 16, 1961; 29 FR 1462, Jan. 29, 1964; 30 FR 133, Jan. 7, 1965]

§ 3.110 Computation of time limit.

In computing the time limit for any action required of a claimant, including the filing of claims or evidence requested by the Department of Veterans Affairs, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

[28 FR 29, Jan. 1, 1963]

§ 3.111 [Reserved]

§ 3.112 Fractions of one cent.

In all cases where the amount to be paid under any award involves a fraction of a cent, the fractional part will be excluded.

[26 FR 1570, Feb. 24, 1961]

§ 3.113 Signature by mark.

All signatures by mark or thumbprint must be:

(a) Witnessed by two persons who can write and who have signed their names and addresses; or

(b) Certified by a notary public or other person having authority to administer oaths for general purposes; or

(c) Certified by a Department of Veterans Affairs employee under authority of Department of Veterans Affairs Form 4505 series.

[27 FR 4365, May 8, 1962]

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) *Effective date of awards.* Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or a liberalizing Department of Veterans Affairs issue, approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue.

(1) If a claim is reviewed on the initiative of the Department of Veterans Affairs within 1 year from the effective date of the law or Department of Veterans Affairs issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or Department of Veterans Affairs issue.

(2) If a claim is reviewed on the initiative of the Department of Veterans Affairs more than 1 year after the effective date of the law or Department of Veterans Affairs issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or Department of Veterans Affairs issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

Authority: 38 U.S.C. 3010(g))

(b) *Discontinuance of benefits.* Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her

latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.

(Authority: 38 U.S.C. 3012 (b)(6))

[27 FR 11886, Dec. 1, 1962]

CLAIMS

§ 3.150 Forms to be furnished.

(a) Upon request made in person or in writing by any person applying for benefits under the laws administered by the Department of Veterans Affairs, the appropriate application form will be furnished.

(Authority: 38 U.S.C. 3002)

(b) Upon receipt of notice of death of a veteran, the appropriate application form will be forwarded for execution by or on behalf of any dependent who has apparent entitlement to pension, compensation, or dependency and indemnity compensation. If it is not indicated that any person would be entitled to such benefits, but there is payable an accrued benefit not paid during the veteran's lifetime, the appropriate application form will be forwarded to the preferred dependent. Notice of the time limit will be included in letters forwarding applications for benefits.

(c) When disability or death is due to Department of Veterans Affairs hospital treatment, training, medical or surgical treatment, or examination, a specific application for benefits will not be initiated.

[26 FR 1570, Feb. 14, 1961, as amended at 30 FR 133, Jan. 7, 1965]

CROSS REFERENCE: Failure to furnish claim form or notice of time limit. See § 3.109(b).

§ 3.151 Claims for disability benefits.

(a) *General.* A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA. (38 U.S.C. 3001(a)). A claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.

(b) *Retroactive disability pension claims.* Where disability pension entitlement is established based on a claim received by VA on or after October 1, 1984, the pension award may not be effective prior to the date of receipt of the pension claim unless the veteran specifically claims entitlement to retroactive benefits. The claim for retroactivity may be filed separately or included in the claim for disability pension, but it must be received by VA within one year from the date on which the veteran became permanently and totally disabled. Additional requirements for entitlement to a retroactive pension award are contained in § 3.400(b) of this part.

(Authority: 38 U.S.C 3010(b)(3))

[50 FR 25981, June 24, 1985]

CROSS REFERENCE: Informal claims. See § 3.155(b).

§ 3.152 Claims for death benefits.

(a) A specific claim in the form prescribed by the Secretary (or jointly with the Secretary of Health and Human Services, as prescribed by § 3.153) must be filed in order for death benefits to be paid to any individual under the laws administered by VA. (See § 3.400(c) concerning effective dates of awards.)

(Authority: 38 U.S.C. 3001(a))

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation will also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension will be considered to be a claim for death compensation or dependency and indemnity compensation and accrued benefits.

(Authority: 38 U.S.C. 3001(b)(1))

(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits.

DEPARTMENT OF VETERANS AFFAIRS

AGENCY: Department of Veterans Affairs.

38 CFR Part 3

Procedural Due Process

RIN 2900-AC54

55 FR 13522

April 11, 1990

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on procedural due process for VA claimants and beneficiaries and the eligibility criteria for retroactive awards based on liberalizing laws or administrative issues. These amendments are necessary because of the need for more specificity in VA regulations on procedural due process and because of a VA General Counsel opinion on eligibility for retroactive benefits. The effect of these amendments will be to improve and more clearly define procedural due process rights and retroactive eligibility criteria.

EFFECTIVE DATE: May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Don England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

TEXT: SUPPLEMENTARY INFORMATION: On pages 37797 through 37801 of the Federal Register of September 28, 1988, VA published proposed amendments to title 38, Code of Federal Regulations, on procedural due process and the eligibility criteria for retroactive awards based on liberalizing laws or administrative issues. Interested persons were given until October 28, 1988, to submit comments, suggestions, or objections to the proposed rules.

VA received comments on the proposed rules from the Vietnam Veterans of America and the Puerto Rico Public Advocate for Veterans Affairs. The comments and recommendations with respect to each proposed amendment have been summarized and are set forth below together with the actions and/or responses of VA.

Comments and Recommendations

Section 3.103

One commenter recommended that the proposed regulation be amended to state that required notices of VA proposed and final actions be sent to a claimant at his or her last known address.

(b) "The first day of the specified period" referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits. As to appeals, see § 19.129 of this chapter. (Authority: *38 U.S.C. 210(c)*)

5. Section 3.114(a) is revised to read as follows

§ 3.114 Change of law or VA issue.

(a) *Effective date of award.* Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. In order to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request. (Authority: *38 U.S.C. 3010(g)*)

* * * * *

[FR Doc. 90-8279 Filed 4-10-90; 8:45 am]

BILLING CODE 8320-01-M

38 CFR 3.114(a)

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 0, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 18a, 18b, 21, 36, 39, 41, 43, 44, and 45

RIN 2900-AF95

Nomenclature Changes

AGENCY: Department of Veterans Affairs.

ACTION: Technical amendments.

SUMMARY: Public Law No. 102-40 and Public Law No. 102-83 affected a renumbering of the provisions of title 38, United States Code. Accordingly, this technical amendment changes the references to the provisions of title 38 to reflect the renumbering. Also, with the change of the Veterans Administration to the Department of Veterans Affairs, position titles have been changed to reflect the change in status. This technical amendment also redesignates the position titles where necessary. No substantive changes to the content of the regulations are being made by this technical amendment.

EFFECTIVE DATE: This amendment is effective August 6, 1991, the date Public Law No. 102-83 was signed by the President.

FOR FURTHER INFORMATION CONTACT: Frederic Conway, Deputy Assistant General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 523-3911.

SUPPLEMENTARY INFORMATION: Public Law No. 102-40, the "Department of Veterans Affairs Health-Care Personnel Act of 1991," and Public Law No. 102-83, the "Department of Veterans Affairs Codification Act," redesignated sections of title 38, United States Code, to conform to chapter numbers and made other changes to reflect the change in the status of the Veterans Administration to the Department of Veterans Affairs affected by Public Law No. 100-527, the "Department of Veterans Affairs Act." This document revises the references found throughout title 38 of the Code of Federal Regulations to conform to the changes made by the enactment of these laws.

The Department of Veterans Affairs finds good cause for making this final rule effective immediately, since the rule is merely a technical amendment following a statutory change in our status, name, and underlying statute. The amendment is not a regulation or rule for the purposes of Executive Order No. 12291.

Approved: June 23, 1992.

B. Michael Burger,

Director, Records Management Service.

For the reasons set out in the preamble, title 38 of the Code of Federal Regulations is amended under the authority of Public Law 102-40, 105 Stat. 187, and Public Law No. 102-83, 105 Stat. 378, as set forth below:

PART 0—STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

1. Remove the citation "38 U.S.C. 1763" and add in its place "38 U.S.C. 3683", wherever it appears.

2. Remove the words "Chief Attorneys" and add in their place "District Counsels", wherever they appear.

PART 1—GENERAL PROVISIONS

1. Remove the citation "38 U.S.C. 202" and add in its place "38 U.S.C. 302", wherever it appears.

2. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.

3. Remove the citation "38 U.S.C. 601" and add in its place "38 U.S.C. 2301", wherever it appears.

4. Remove the citation "38 U.S.C. 210, 901" and add in its place "38 U.S.C. 501, 2301", wherever it appears.

5. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

6. Remove the citation "38 U.S.C. 219" and add in its place "38 U.S.C. 527", wherever it appears.

7. Remove the citation "38 U.S.C. 218" and add in its place "38 U.S.C. 901", wherever it appears.

8. Remove the citation "38 U.S.C. 218(b)(1)" and add in its place "38 U.S.C. 902", wherever it appears.

9. Remove the citation "38 U.S.C. 210(c)(1), 5009" and add in its place "38 U.S.C. 501, 8109", wherever it appears.

10. Remove the citation "38 U.S.C. 5009" and add in its place "38 U.S.C. 8109", wherever it appears.

11. Remove the citation "38 U.S.C. 3301, 3302" and add in its place "38 U.S.C. 5701, 5702", wherever it appears.

12. Remove the citation "38 U.S.C. 210, 3301" and add in its place "38 U.S.C. 501, 5701", wherever it appears.

13. Remove the citation "38 U.S.C. 3301" and add in its place "38 U.S.C. 5701", wherever it appears.

14. Remove the citation "38 U.S.C. 4132" and add in its place "38 U.S.C. 7332", wherever it appears.

15. Remove the citation "38 U.S.C. 1820" and add in its place "38 U.S.C. 3720", wherever it appears.

16. Remove the citation "38 U.S.C. 3301(a), (c)" and add in its place "38 U.S.C. 5701(a), (c)", wherever it appears.

17. Remove the citation "38 U.S.C. 3301(c), (h)(2)(D)" and add in its place "38 U.S.C. 5701(c), (h)(2)(D)", wherever it appears.

18. Remove the citation "38 U.S.C. 3301(h)(2)(A), (B), (C)" and add in its place "38 U.S.C. 5701(h)(2)(A), (B), (C)", wherever it appears.

19. Remove the citation "38 U.S.C. 3101(c), (h)(2)(A) and (D)" and add in its place "38 U.S.C. 5701(c), (h)(2)(A) and (D)", wherever it appears.

20. Remove the citation "38 U.S.C. 3101(h)(2)(D)" and add in its place "38 U.S.C. 5701(h)(2)(D)", wherever it appears.

21. Remove the citation "38 U.S.C. 651-664" and add in its place "38 U.S.C. 1751-1764", wherever it appears.

22. Remove the citation "38 U.S.C. 3301(g)" and add in its place "38 U.S.C. 5701(g)", wherever it appears.

23. Remove the citation "38 U.S.C. 3301(f)" and add in its place "38 U.S.C. 5701(f)", wherever it appears.

24. Remove the citation "section 3301(f)" and add in its place "section 5701(f)", wherever it appears.

25. Remove the citation "38 U.S.C. 775, 784" and add in its place "38 U.S.C. 1975, 1984", wherever it appears.

26. Remove the citation "38 U.S.C. 3302(b)" and add in its place "38 U.S.C. 5702(b)", wherever it appears.

27. Remove the citation "38 U.S.C. 3305" and add in its place "38 U.S.C. 5705", wherever it appears.

28. Remove the citation "38 U.S.C. 3001" and add in its place "38 U.S.C. 5101", wherever it appears.

29. Remove the citation "38 U.S.C. 3301(b)(1)" and add in its place "38 U.S.C. 5701(b)(1)", wherever it appears.

30. Remove the citation "38 U.S.C. 210(c); 1004" and add in its place "38 U.S.C. 501, 2404", wherever it appears.

31. Remove the citation "38 U.S.C. 1004" and add in its place "38 U.S.C. 2404", wherever it appears.

32. Remove the citation "38 U.S.C. 3003; 3020" and add in its place "38 U.S.C. 5103; 5120", wherever it appears.

33. Remove the citation "38 U.S.C. 1820(a)(4) and (5) and 3102(a)" and add in its place "38 U.S.C. 3720(a)(4) and (5) and 5302(a)", wherever it appears.

34. Remove the citation "38 U.S.C. 3102" and add in its place "38 U.S.C. 5302", wherever it appears.

35. Remove the citation "38 U.S.C. 3103, 3114" and add in its place "38 U.S.C. 5303, 5314", wherever it appears.

36. Remove the citation "38 U.S.C. 1825" and add in its place "38 U.S.C. 3725", wherever it appears.

88. Remove the citation "38 U.S.C. 3503" and add in its place "38 U.S.C. 6103", wherever it appears.

89. Remove the citation "38 U.S.C. 3504" and add in its place "38 U.S.C. 6104", wherever it appears.

90. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.

91. Remove the citation "38 U.S.C. 3004" and add in its place "38 U.S.C. 5104", wherever it appears.

92. Remove the citation "38 U.S.C. 3012(b)(6)" and add in its place "38 U.S.C. 5112(b)(6)", wherever it appears.

93. Remove the citation "38 U.S.C. 3012(b)(5)" and add in its place "38 U.S.C. 5112(b)(5)", wherever it appears.

94. Remove the citation "38 U.S.C. 3012" and add in its place "38 U.S.C. 5112", wherever it appears.

95. Remove the citation "38 U.S.C. 3106(a)" and add in its place "38 U.S.C. 5306(a)", wherever it appears.

96. Remove the citation "38 U.S.C. 3106(b)" and add in its place "38 U.S.C. 5306(b)", wherever it appears.

97. Remove the citation "38 U.S.C. 3003(a)" and add in its place "38 U.S.C. 5103(a)", wherever it appears.

98. Remove the citation "38 U.S.C. 3010(g)" and add in its place "38 U.S.C. 5110(g)", wherever it appears.

99. Remove the citation "38 U.S.C. 3002" and add in its place "38 U.S.C. 5102", wherever it appears.

100. Remove the citation "38 U.S.C. 3001(a)" and add in its place "38 U.S.C. 5101(a)", wherever it appears.

101. Remove the citation "38 U.S.C. 3010(b)(3)" and add in its place "38 U.S.C. 5110(b)(3)", wherever it appears.

102. Remove the citation "38 U.S.C. 3001(a)" and add in its place "38 U.S.C. 5101(a)", wherever it appears.

103. Remove the citation "38 U.S.C. 3001(b)(1)" and add in its place "38 U.S.C. 5101(b)(1)", wherever it appears.

104. Remove the citation "38 U.S.C. 3001(b)(2)" and add in its place "38 U.S.C. 5101(b)(2)", wherever it appears.

105. Remove the citation "38 U.S.C. 3001(e)" and add in its place "38 U.S.C. 5110(e)", wherever it appears.

106. Remove the citation "38 U.S.C. 3005" and add in its place "38 U.S.C. 5105", wherever it appears.

107. Remove the citation "38 U.S.C. 351" and add in its place "38 U.S.C. 1151", wherever it appears.

108. Remove the citation "38 U.S.C. 3010(a)" and add in its place "38 U.S.C. 5110(a)", wherever it appears.

109. Remove the citation "38 U.S.C. 3007" and add in its place "38 U.S.C. 5107", wherever it appears.

110. Remove the citation "38 U.S.C. 784" and add in its place "38 U.S.C. 1984", wherever it appears.

111. Remove the citation "38 U.S.C. 415 (b), (c), or (d)" and add in its place "38 U.S.C. 1315 (b), (c), or (d)", wherever it appears.

112. Remove the citation "38 U.S.C. 415(d)" and add in its place "38 U.S.C. 1315(d)", wherever it appears.

113. Remove the citation "38 U.S.C. 415" and add in its place "38 U.S.C. 1315", wherever it appears.

114. Remove the citation "38 U.S.C. 521, 541, 542" and add in its place "38 U.S.C. 1521, 1541, 1542", wherever it appears.

115. Remove the citation "38 U.S.C. 545" and add in its place "38 U.S.C. 1543", wherever it appears.

116. Remove the citation "38 U.S.C. 521(c)" and add in its place "38 U.S.C. 1521(c)", wherever it appears.

117. Remove the citation "38 U.S.C. 521(c)" and add in its place "38 U.S.C. 1521(c)", wherever it appears.

118. Remove the citation "section 542" and add in its place "section 1542", wherever it appears.

119. Remove the citation "38 U.S.C. 521(d)(1)" and add in its place "38 U.S.C. 1521(d)(1)", wherever it appears.

120. Remove the citation "38 U.S.C. 521 (b)(3) or (c)(3)" and add in its place "38 U.S.C. 1521 (b)(3) or (c)(3)", wherever it appears.

121. Remove the citation "38 U.S.C. 521(d)(2)" and add in its place "38 U.S.C. 1521(d)(2)", wherever it appears.

122. Remove the citation "38 U.S.C. 415(e) and 506(a)" and add in its place "38 U.S.C. 1351(a) and 1506(a)", wherever it appears.

123. Remove the citation "38 U.S.C. 415(g)(2); 503(b)" and add in its place "38 U.S.C. 1315(g)(2), 1503(b)", wherever it appears.

124. Remove the citation "38 U.S.C. 412(a)" and add in its place "38 U.S.C. 1312(a)", wherever it appears.

125. Remove the citation "38 U.S.C. 521(f)" and add in its place "38 U.S.C. 1521(f)", wherever it appears.

126. Remove the citation "38 U.S.C. 415(g), 503(a)(6)" and add in its place "38 U.S.C. 1315(g), 1503(a)(6)", wherever it appears.

127. Remove the citation "38 U.S.C. 503(15)" and add in its place "38 U.S.C. 1503(15)", wherever it appears.

128. Remove the citation "38 U.S.C. 503(a)(10)" and add in its place "38 U.S.C. 1503(a)(10)", wherever it appears.

129. Remove the citation "38 U.S.C. 415(g)" and add in its place "38 U.S.C. 1315(g)", wherever it appears.

130. Remove the citation "38 U.S.C. 503(a)(14)" and add in its place "38 U.S.C. 1503(a)(14)", wherever it appears.

131. Remove the citation "38 U.S.C. 415(g)(3), 503(c), 521(f)" and add in its place "38 U.S.C. 1315(g)(3), 1503(c), 1521(f)", wherever it appears.

132. Remove the citation "38 U.S.C. 503(a)(7)" and add in its place "38 U.S.C. 1503(a)(7)", wherever it appears.

133. Remove the citation "38 U.S.C. 503(a)(9)" and add in its place "38 U.S.C. 1503(a)(9)", wherever it appears.

134. Remove the citation "38 U.S.C. 503(a)(1)" and add in its place "38 U.S.C. 1503(a)(1)", wherever it appears.

135. Remove the citation "38 U.S.C. 210(c), 503(a)(1)" and add in its place "38 U.S.C. 501, 1503(a)(1)", wherever it appears.

136. Remove the citation "38 U.S.C. 503(a)(2)" and add in its place "38 U.S.C. 1503(a)(2)", wherever it appears.

137. Remove the citation "38 U.S.C. 503(a)(5)" and add in its place "38 U.S.C. 1503(a)(5)", wherever it appears.

138. Remove the citation "38 U.S.C. 503(a)(6)" and add in its place "38 U.S.C. 1503(a)(6)", wherever it appears.

139. Remove the citation "38 U.S.C. 503(a)(7)" and add in its place "38 U.S.C. 1503(a)(7)", wherever it appears.

140. Remove the citation "38 U.S.C. 503(a)(3)" and add in its place "38 U.S.C. 1503(a)(3)", wherever it appears.

141. Remove the citation "38 U.S.C. 503(a)(4)" and add in its place "38 U.S.C. 1503(a)(4)", wherever it appears.

142. Remove the citation "38 U.S.C. 618" and add in its place "38 U.S.C. 1718", wherever it appears.

142. Remove the citation "38 U.S.C. 618(f)" and add in its place "38 U.S.C. 1718(f)", wherever it appears.

143. Remove the citation "38 U.S.C. 521(h), 541(g)" and add in its place "38 U.S.C. 1521(h), 1541(g)", wherever it appears.

144. Remove the citation "38 U.S.C. 522(a)" and add in its place "38 U.S.C. 1522(a)", wherever it appears.

145. Remove the citation "38 U.S.C. 543(a)(1)" and add in its place "38 U.S.C. 1543(a)(1)", wherever it appears.

146. Remove the citation "38 U.S.C. 543(a)(2)" and add in its place "38 U.S.C. 1543(a)(2)", wherever it appears.

147. Remove the citation "38 U.S.C. 543(b)" and add in its place "38 U.S.C. 1543(b)", wherever it appears.

148. Remove the citation "38 U.S.C. 506(a)" and add in its place "38 U.S.C. 1506(a)", wherever it appears.

149. Remove the citation "38 U.S.C. 105, 310, 321, 331, 401, and 521(a)" and add in its place "38 U.S.C. 105, 1110, 1121, 1131, 1301, and 1521(a)", wherever it appears.

150. Remove the citation "38 U.S.C. 311" and add in its place "38 U.S.C. 1111", wherever it appears.

38 CFR 3.114(a)
eff: 8/6/91

[55 FR 13529, Apr. 11, 1990]

§ 3.111 [Reserved]

§ 3.112 Fractions of one cent.

In all cases where the amount to be paid under any award involves a fraction of a cent, the fractional part will be excluded.

[26 FR 1570, Feb. 24, 1961]

§ 3.113 Signature by mark.

All signatures by mark or thumbprint must be:

(a) Witnessed by two persons who can write and who have signed their names and addresses; or

(b) Certified by a notary public or other person having authority to administer oaths for general purposes; or

(c) Certified by a Department of Veterans Affairs employee under authority of Department of Veterans Affairs Form 4505 series.

[27 FR 4365, May 8, 1962]

§ 3.114 Basic pension determinations.

(a) *Effective date of award.* Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. In order to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

(Authority: 38 U.S.C. 5110(g))

(b) *Discontinuance of benefits.* Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.

(Authority: 38 U.S.C. 5112 (b)(6))

[27 FR 11886, Dec. 1, 1962, as amended at 55 FR 13529, Apr. 11, 1990]

CLAIMS

§ 3.150 Forms to be furnished.

(a) Upon request made in person or in writing by any person applying for benefits under the laws administered by the Department of Veterans Affairs, the appropriate application form will be furnished.

(Authority: 38 U.S.C. 5102)

(b) Upon receipt of notice of death of a veteran, the appropriate application form will be forwarded for execution by or on behalf of any dependent who has apparent entitlement to pension, compensation, or dependency and indemnity compensation. If it is not indicated that any person would be entitled to such benefits, but there is payable an accrued benefit not paid during the [illegible] lifetime [illegible]

FEDERAL REGISTER

Vol. 62, No. 70

Rules and Regulations

DEPARTMENT OF VETERANS AFFAIRS (VA)

38 CFR Part 3

RIN 2900-A157

Retroactive Payments Due to a Liberalizing Law or VA Issue

62 FR 17706

DATE: Friday, April 11, 1997

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulation regarding retroactive payments of compensation, pension and dependency and indemnity compensation due to a liberalizing law or VA issue. The change is necessary to bring the regulation into conformance with a U.S. Court of Veterans Appeals' decision.

EFFECTIVE DATE: This amendment is effective June 12, 1996

FOR FURTHER INFORMATION CONTACT: Laurence Freiheit, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7252.

SUPPLEMENTARY INFORMATION: Under the provisions of *38 U.S.C. 5110*(a) and 38 CFR 3.400, awards of compensation, pension and dependency and indemnity compensation benefits are generally effective on the date VA receives the claim or the date entitlement arose, whichever is later. However, *38 U.S.C. 5110*(g) provides an exception: Where benefits are awarded or increased based on a change in law or an administrative issue, benefits are awarded based on facts found but not earlier than the effective date of the law or issue and not more than one year prior to the earlier of the date of application or administrative determination of entitlement. The purpose of section 5110(g) was to provide a one-year grace period, such as that allowed after service discharge or death, for potential beneficiaries who would otherwise be penalized by not filing promptly.

The implementing regulation for section 5110(g) is 38 CFR 3.114. Section 3.114(a) states that the effective date of an award or increase made pursuant to a liberalizing law or VA issue will be made in accordance with facts found but not earlier than the effective date of the law or administrative issue. It goes on to state that, in order for a claimant to be eligible for a retroactive award, the evidence must show that he or she met all eligibility criteria for the liberalized

benefit on the effective date of the liberalizing law or issue and that the eligibility existed continuously from that date to the date of claim or administrative determination of entitlement.

In *McCay v. Brown, 9 Vet. App. 183 (1996)*, the U.S. Court of Veterans Appeals (the Court) noted that both section 5110(g) and § 3.114(a) are silent as to a liberalizing law or issue with a retroactive effective date. The Court stated that the requirement that the claimant must have met all eligibility criteria on the effective date of the law or issue fulfills the intent of section 5110(g) when the liberalizing law is prospective. However, the Court held that, where the liberalizing law has a retroactive effective date, it is not a permissible construction of section 5110(g) and would result in unequal treatment of claimants. This document amends § 3.114(a) to make it clear that that requirement applies only when liberalizing laws or issues take effect on or after the date of enactment or issuance.

The effective date of this amendment is June 12, 1996, the date of the Court's decision in *McCay v. Brown, 9 Vet. App. 183 (1996)*.

Since this amendment merely implements a Court decision, the Secretary finds under *5 U.S.C. 553*(b) that prior notice and comment are unnecessary and that there is a basis for dispensing with a 30-day delay of the effective date.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (*5 U.S.C. 601*-612.) Even so, the Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (*5 U.S.C. 601*-612). These amendments are not substantive and do not affect any small entities.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 12, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3--ADJUDICATION

Subpart A--Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: *38 U.S.C. 501*(a), unless otherwise noted.

2. In § 3.114(a) the second sentence is amended by removing "In order" and adding, in its place, "Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant".

[FR Doc. 97-9445 Filed 4-10-97; 8:45 am]

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TITLE 38 -- PENSIONS, BONUSES, AND VETERANS' RELIEF
REVISED AS OF JULY 1, 1997

CHAPTER I -- DEPARTMENT OF VETERANS AFFAIRS

PART 3 -- ADJUDICATION

SUBPART A -- PENSION, COMPENSATION, AND DEPENDENCY AND INDEMNITY COMPENSATION

ADMINISTRATIVE

38 CFR 3.114

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) Effective date of award. Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request

(Authority: 38 U.S.C. 5110(g))

(b) Discontinuance of benefits. Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her last address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired

HISTORY: [27 FR 11886, Dec. 1, 1962, as amended at 55 FR 13529, Apr. 11, 1990, 62 FR 17706, April 11, 1997]

Source: All Sources / Federal Register
Terms: "65 fr 35280" (Edit Search)

65 FR 35280, *

FEDERAL REGISTER

Vol. 65, No. 107

Rules and Regulations

DEPARTMENT OF VETERANS AFFAIRS (VA)

38 CFR Parts 3, 17, and 21

RIN 2900-AJ25

Children Suffering from Spina Bifida Who Are Children of Vietnam Veterans

65 FR 35280

DATE: Friday, June 2, 2000

ACTION: Final rule.

To view the next page, type .np* TRANSMIT.
To view a specific page, transmit p* and the page number, e.g. p*1

[*35280]

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations concerning benefits for children suffering from spina bifida who are children of Vietnam veterans. This is necessary to implement statutory [*35281] changes contained in the Veterans' Benefits Act of 1997.

DATES: *Effective Date:* October 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: Section 421 of Pub. L. 104-204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits to children suffering from spina bifida who are the natural children of Vietnam veterans. VA published three sets of regulations to implement the provisions of section 421 of Pub. L. 104-204, i.e. regulations concerning monetary allowances, provision of healthcare, and provision of vocational training and rehabilitation in the **Federal Register** of September 30, 1997 (62 FR 51273-51296).

Section 404 of Pub. L. 105-114, the Veterans' Benefits Act of 1997, enacted on November 21, 1997 amended chapter 18 of title 38, United States Code. This document revises VA's regulations to implement those statutory amendments. The changes concerning the definition of "Vietnam veteran," the definition of "child," and the submission of social security numbers concern all three sets of regulations. The other changes made by this document only concern the monetary allowance regulations.

Public Law No. 104-204 defined the term "Vietnam veteran" as a "veteran" who performed active military, naval, or air service in the Republic of Vietnam "during the Vietnam era." Public Law No. 105-114 amended that definition to refer to an "individual" who performed active military, naval, or air service in the Republic of Vietnam "during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the individual's service." We are amending 38 CFR 3.814(a)(1) of the monetary allowance regulations accordingly. This change also affects the spina bifida regulations concerning

3. Section 3.31 is amended as follows:

a. The introductory text is amended in the first sentence by removing "compensation, pension or dependency and indemnity compensation" and adding, in its place, "compensation, pension, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran"; and

b. Paragraph (c)(4)(ii) and the authority citation at the end of the section are revised to read as follows:

§ 3.31 -- Commencement of the period of payment.

* * * * *

(c) * * *

(4) * * *

(ii) Increases in Improved Pension, parents' dependency and indemnity compensation, or the monetary allowance for children suffering from spina bifida pursuant to § 3.27, or

* * * * *

Authority: 38 U.S.C. 1806, 5111.

4. Section 3.114 is amended as follows:

a. Paragraph (a) introductory text is amended by removing "Where pension, compensation, or dependency and indemnity compensation" in each place it appears and adding, in its place, "Where pension, compensation, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran", and

b. The authority citation at the end of paragraph (a) is revised to read as follows:

§ 3.114 -- Change of law or Department of Veterans Affairs issue.

* * * * *

Authority: 38 U.S.C. 1806, 5110(g)).

* * * * *

5. In § 3.216, the section heading is amended by removing "number" and adding, in its place, "numbers"; the first sentence is amended immediately following "of this part" by adding ", or the monetary allowance for a child suffering from spina bifida who is a child of a Vietnam veteran under § 3.814 of this part,"; and the authority citation is revised to read as follows:

§ 3.216 -- Mandatory disclosure of social security numbers.

* * * * *

Authority: 38 U.S.C. 1806, 5101(c)).

6. Section 3.814 is amended as follows:

a. Paragraph (c)(1) is amended by removing "a veteran" and adding, in its place, "an individual", by removing "during the Vietnam era" and adding, in its place, "during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the individual's service",

b. Paragraph (c)(2) is amended by removing "during the Vietnam era" and adding, in its place, "during the period beginning on January 9, 1962, and ending on May 7, 1975", and

c. Paragraphs (e) and (f) are added immediately following paragraph (d)(5) and the authority citation at the end of the section is revised to read as follows:

§ 3.814 -- Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

* * * * *

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38 CFR 3.114(a)
eff: 10/1/97

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TITLE 38 -- PENSIONS, BONUSES, AND VETERANS' RELIEF
REVISED AS OF JULY 1, 2000

CHAPTER I -- DEPARTMENT OF VETERANS AFFAIRS

PART 3 -- ADJUDICATION

SUBPART A -- PENSION, COMPENSATION, AND DEPENDENCY AND INDEMNITY COMPENSATION

ADMINISTRATIVE

38 CFR 3.114

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) Effective date of award. Where pension, compensation, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

(Authority: 38 U.S.C. 1806, 5110(g).)

(b) Discontinuance of benefits. Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.

(Authority: 38 U.S.C. 5112(b)(6))

HISTORY [27 FR 11886, Dec. 1, 1962, as amended at 55 FR 13529, Apr. 11, 1990; 62 FR 17706, Apr. 11, 1997; 65 FR 35280, 35282, June 2, 2000]

NOTES [EFFECTIVE DATE NOTE: 65 FR 35280, 35282, June 2, 2000, amended paragraph (a), effective Oct. 1, 1997.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[EDITORIAL NOTE: Nomenclature changes to chapter I appear at 54 FR 34978, Aug. 23, 1989; 57 FR 31006, July 13, 1992; 57 FR 38606, Aug. 26, 1992; 57 FR 43616, Sept. 22, 1992; 64 FR 30244, June 7, 1999; and 65 FR 544, 1545, Jan. 11, 2000.]

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HIGHLIGHTS

Book B, Supplement No. 54
August 25, 2002

Note: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: "Supplement *Highlights* references—6(2)." This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book B (*Adjudication*) was originally supplemented four times a year, in February, May, August, and November. Beginning 1 August 1995, supplements will be issued ***every month*** during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 31 July 2002, the VA published a final rule, effective that same date, to amend its adjudication regulations regarding service connection for disabilities incurred or aggravated during inactive duty for training. Change:

- In §3.6, removed paragraphs (a)(1)–(3), revised paragraph (a), and added a new paragraph (c)(3).

2. On 31 July 2002, the VA published a final rule, effective that same date (with a retroactive applicability date of 1 December 2001), to provide for payment of a monetary allowance for an individual with disability from one or more covered birth defects who is a child of a woman Vietnam veteran; provide for the identification of covered birth defects, to implement recent legislation; amend the VA adjudication regulations affecting benefits for Vietnam veterans' children with spina bifida to reflect that legislation; make conforming changes; and remove unnecessary or obsolete provisions. Changes:

- In §3.27, revised paragraphs (c)–(d);
- In §3.29, revised paragraph (c);
- In §3.31, revised the introductory text and paragraph (c)(4)(ii);
- In §3.105, revised paragraph (g);
- In §3.114, revised paragraph (a), introductory text);
- In §3.158, revised paragraphs (a) and (c);

- Revised §3.216;
- In §3.261, revised paragraph (a)(40);
- In §3.262, revised paragraph (y);
- In §3.263, revised paragraph (g);
- In §3.272, revised paragraph (u);
- In §3.275, revised paragraph (i);
- In §3.403, revised paragraph (b) and added a new paragraph (c);
- In §3.503, revised paragraph (b);
- In §3.814, revised the heading and paragraphs (a), (c), (d), and (e), and removed and reserved paragraph (b); and
- Added a new §3.815.

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eff: 7/31/02
applic: 12/1/01

CODE OF FEDERAL REGULATIONS
TITLE 38--PENSIONS, BONUSES, AND VETERANS' RELIEF
CHAPTER I--DEPARTMENT OF VETERANS AFFAIRS
PART 3--ADJUDICATION
SUBPART A--PENSION, COMPENSATION, AND DEPENDENCY AND INDEMNITY COMPENSATION
ADMINISTRATIVE

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) Effective date of award. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

(Authority: 38 U.S.C. 1822, 5110(g))

(b) Discontinuance of benefits. Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.

(Authority: 38 U.S.C. 15112 (b)(6))

[27 FR 11886, Dec. 1, 1962; 54 FR 34981, Aug. 23, 1989; 55 FR 13529, April 11, 1990; 62 FR 17706, April 11, 1997; 65 FR 35282, June 2, 2000; 67 FR 49586, July 31, 2002]

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comments during the rule's 30-day comment period, it would publish a notice of withdrawal in the **Federal Register**.

BOEMRE has determined that it has received significant adverse comments during the comment period and, therefore, is withdrawing the direct final rule. BOEMRE intends to publish a notice of proposed rulemaking within 30 days of the date of this notice in order to reinitiate rulemaking. The proposed rule will have a 30-day public comment period. All comments received in response to the original November 26, 2010, notice will be considered in relation to the proposed rule unless they are withdrawn by the commenters, so those who commented on the original November 26, 2010, direct final rule need not re-submit their comments.

However, parties who responded to the November 26, 2010, notice may submit additional comments on the proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Timothy Redding at (703) 787–1219.

Dated: January 18, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–1505 Filed 1–24–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 17, and 21

RIN 2900–AN27

Herbicide Exposure and Veterans With Covered Service in Korea

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the Department of Veterans Affairs' (VA) proposal to amend VA adjudication, medical, and vocational rehabilitation and employment regulations to incorporate relevant provisions of the Veterans Benefits Act of 2003. Specifically, this document amends VA regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in their children. It also amends VA's medical regulations by correcting the Health Administration Center's hand-delivery address.

DATES: *Effective Date:* This final rule is effective February 24, 2011.

Applicability Date: This final rule shall apply to all applications for benefits that are received by VA on or after February 24, 2011 and to all applications for benefits that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on February 24, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas Kniffen, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9366. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 24, 2009, VA published a proposal in the **Federal Register** (74 FR 36640), to amend its adjudication, medical, and vocational rehabilitation and employment regulations by incorporating relevant provisions from the Veterans Benefits Act of 2003, Public Law 108–183. More specifically, based on Section 102 of the Act, codified at 38 United States Code (U.S.C.) 1821, VA proposed to amend VA regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in such veterans' children. Additionally, VA proposed to amend medical regulations by correcting the Health Administration Center's hand-delivery address. We provided a 60-day comment period and interested persons were invited to submit comments on or before September 22, 2009. We received five written comments from the public based on the proposed rule. Two of the responses were comments from Vietnam Veterans of America (VVA) and National Veterans Legal Services Program (NVLSP). The remaining three comments were from the general public.

One commenter supported promulgation of the proposed regulation. The commenter asserted approval when stating, "If passed will be a great help towards helping Korea DMZ Vets with their exposure." The commenter later stated: "This in fact would promote fairness and be beneficial to Vets that served along the DMZ. However, it appears that the new proposed presumption Agent Orange exposure rule, [sic] will not benefit Korea DMZ Veterans that served outside of the 1968/1969 timeframe."

NVLSP also asserted approval of the rule by stating that it "eliminates the need for the claimant to prove a fact that would be difficult to prove on his or her own* * *such a presumption makes the VA claims adjudication process more efficient by making it easier for VA to decide these claims;" however, NVLSP also expressed the view that the presumption of exposure set forth in the proposed rule applies to too narrow a period. NVLSP asserted that the period should conform to the statutory window of September 1, 1967 through August 31, 1971, stated in the Veterans Benefits Act of 2003 and that the proposed rule fails to provide for residual exposure to herbicides for periods long after herbicide spraying had ceased.

Similarly, VVA expressed that VA is "taking a step in the right direction" by putting "certain veterans who served in Korea along the Demilitarized Zone (DMZ) on par with veterans who served in Vietnam and were also exposed to herbicides." VVA contended that, based on past and current scientific evidence regarding the long-term effects of herbicides, it is clear that herbicides "can continue to be toxic and hazardous" long after they are applied, and that veterans who served in Korea along the DMZ after July 1969 and have a condition consistent with exposure to herbicides "are being left out in the cold." VVA stated the view that VA's proposal to limit the period covered by the rule is not supported by scientific and medical evidence.

Based upon these comments, VA has determined that revisions to the proposed rule, which defined the presumed exposure period as the period from April 1, 1968 to July 31, 1969, are necessary in order to adequately reflect the statutory provisions in section 102 of the Veterans Benefits Act of 2003, codified at 38 U.S.C. 1821. Section 1821(c) states, "[A] veteran of covered service in Korea is any individual, without regard to the characterization of that individual's service, who—(1) Served in the active military, naval, or air service in or near the Korean demilitarized zone [DMZ], as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on September 1, 1967, and ending on August 31, 1971; and (2) is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to an herbicide agent during such service in or near the Korean demilitarized zone." We believe it is reasonable and consistent with the intent of Congress to concede exposure for veterans who served in or near the Korean DMZ after herbicide application ceased, because of the potential for exposure to residuals of herbicides applied in that area. *See* 149 Cong. Rec. H11705–01 (2003) (noting that in order to account for residual exposure "it is appropriate to extend the qualifying service period beyond 1969 to account

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materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Therefore, the rule was submitted to OMB for review.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and Tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.019, Veterans Rehabilitation—Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; 64.026, Veterans State Adult Day Health Care; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on September 30, 2010, for publication.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Dated: January 19, 2011.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR chapter 1 is amended as follows:

PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.27(c) by:
■ a. Revising the paragraph heading.
■ b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

* * * * *

■ 3. Amend § 3.29(c) by:
■ a. Removing "who are children of Vietnam veterans" and adding, in its place, "who are children of Vietnam veterans or children of veterans with covered service in Korea".
■ b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.29 Rounding.

* * * * *

(c) * * *

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

■ 4. Amend § 3.31:
■ a. In the first sentence of the introductory text, by removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".
■ b. By revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5111)

■ 5. Amend § 3.105(g) by:
■ a. Revising the paragraph heading.
■ b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5112(b)(6))

* * * * *

■ 6. Amend § 3.114(a) by:
■ a. Removing "who is a child of a Vietnam veteran" both times it appears

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and adding, in its place, "who is a child of a Vietnam veteran or child of a veteran with covered service in Korea".
■ b. Revising the authority citation at the end of the paragraph.
The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5110(g)

* * * * *

■ 7. Amend § 3.216 by:
■ a. Adding "or" preceding "a monetary allowance" in the first sentence.
■ b. Revising the authority citation at the end of the section.
The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

(Authority: 38 U.S.C. 1832, 5101(c))

§ 3.261 [Amended]

■ 8. Amend § 3.261(a)(40) by removing "who are children of Vietnam veterans (38 U.S.C. 1823(c))" and adding, in its place, "who are children of Vietnam veterans or children of veterans with covered service in Korea (38 U.S.C. 1833(c))".
■ 9. Amend § 3.262(y) by:
■ a. Revising the paragraph heading.
■ b. Removing "who is the child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".
■ c. Revising the authority citation at the end of the paragraph.
The revisions read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

(Authority: 38 U.S.C. 1833(c))

* * * * *

■ 10. Amend § 3.263(g) by:
■ a. Revising the paragraph heading.
■ b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".
■ c. Revising the authority citation at the end of the paragraph.
The revisions read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

(Authority: 38 U.S.C. 1833(c))

* * * * *

■ 11. Amend § 3.272(u) by:
■ a. Revising the paragraph heading.
■ b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".
The revision reads as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

■ 12. Amend § 3.275(i) by:
■ a. Revising the paragraph heading.
■ b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".
The revision reads as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

■ 13. Amend § 3.307 by:
■ a. Adding paragraph (a)(6)(iv).
■ b. Revising the authority citation at the end of new § 3.307(a)(6)(iv).
The addition and revision read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) * * *
(6) * * *
(iv) A veteran who, during active military, naval, or air service, served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. *See also* 38 CFR 3.814(c)(2).

(Authority: 38 U.S.C. 501(a), 1116(a)(3), and 1821)

* * * * *

■ 14. Amend § 3.403 by:
■ a. In paragraph (b), removing "An award of the monetary allowance" and adding, in its place, "Except as provided in § 3.814(e), an award of the monetary allowance".
■ b. In paragraph (b), removing "date of claim, but" and adding, in its place, "the later of the date of claim or the date entitlement arose, but".
■ c. Revising the authority citation for paragraph (b).
■ d. Revising the authority citation for paragraph (c).
■ e. Adding paragraph (d) and its authority citation.
■ f. Removing the authority citation at the end of the section.
The addition and revisions read as follows:

§ 3.403 Children.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 1805, 1832, 5110)

(c) * * *

(Authority: 38 U.S.C. 1815, 1832, 1834, 5110)

(d) *Monetary allowance under 38 U.S.C. 1821 for an individual suffering from spina bifida who is a child of a veteran with covered service in Korea.* Except as provided in § 3.814(e), an award of the monetary allowance under 38 U.S.C. 1821 based on the existence of an individual suffering from spina bifida who is a child of a veteran with covered service in Korea will be effective from either the date of birth if claim is received within 1 year of that date, or the later of the date of claim or date entitlement arose, but not earlier than December 16, 2003.

(Authority: 38 U.S.C. 1821, 1832, 5110)

■ 15. Amend § 3.503 by:
■ a. Revising the heading of paragraph (b).
■ b. Removing the authority citation for paragraph (b).
■ c. Revising the authority citation at the end of the section.
The revisions read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

(Authority: 38 U.S.C. 501, 1832, 5112(b))

■ 16. Amend § 3.814 by:

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eff: 2/24/11

§3.114 Change of law or Department of Veterans Affairs issue.

(a) *Effective date of award.* Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran or child of a veteran with covered service in Korea is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran or child of a veteran with covered service in Korea is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request. (Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5110(g))

(b) *Discontinuance of benefits.* Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired. (Authority: 38 U.S.C. 5112(b)(6))

[27 FR 11886, Dec. 1, 1962, as amended at 55 FR 13529, Apr. 11, 1990; 62 FR 17706, Apr. 11, 1997; 65 FR 35282, June 2, 2000; 67 FR 49586, July 31, 2002; 76 FR 4247, Jan. 25, 2011]

Supplement *Highlights* references: 28(2), 42(1), 54(2), 95(1).

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3/20/33

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R&PR 1214(B)
1/25/36

R&PR 1214(B)
revised 10/14/36

R&PR 1214(B)
revised 7/10/42

R&PR 1214(B)
revised 9/20/46

R&PR 1214(B)
revised 9/26/47

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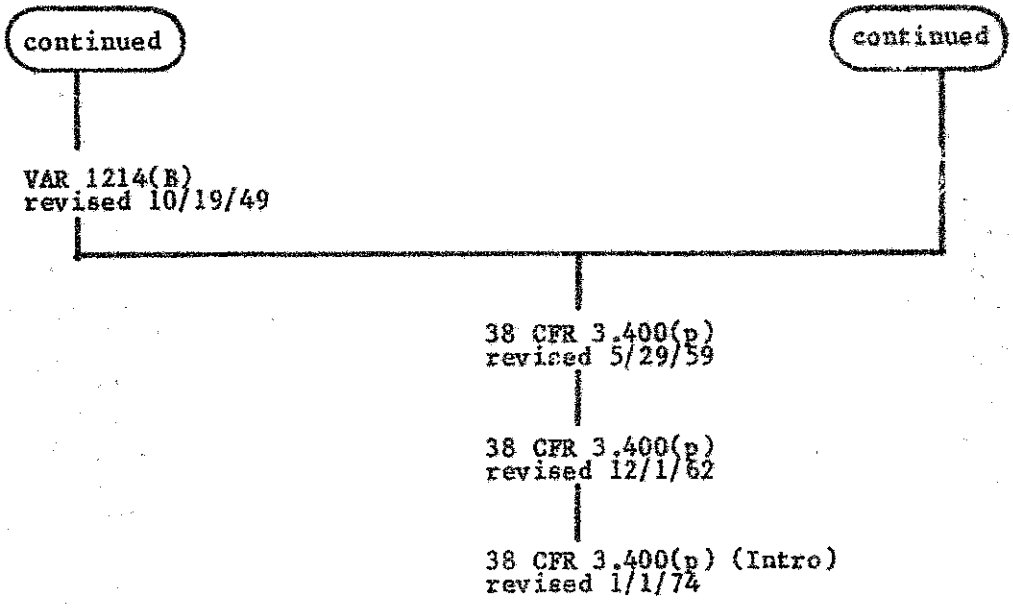

For amendments, see copy with Laws of 78th Cong

Executive Order

Eff. 7-28-33

VETERANS REGULATION No. 2(a), Part I, Par. II

EFFECTIVE DATES OF AWARDS OF DISABILITY AND DEATH PENSIONS; PROVISIONS FOR FILING CLAIMS; REVIEW OF PRESUMPTIVE CLAIMS BY SPECIAL REVIEW BOARDS

WHEREAS, Section 9, Title I, of Public N ., 73d Congress, entitled "An Act To maintain the credit of the United States Government", provides:

"Claims for benefits under this title shall be filed with the Veterans' Administration under such regulations, including provisions for hearing, determination, and administrative review, as the President may approve, and payments shall not be made for any period prior to date of application. When a claim shall be finally disallowed under this title and the regulations issued thereunder, it may not thereafter be reopened or allowed."

AND WHEREAS, Paragraphs 1 and 3 of Section 20, Public No. 78, 73d Congress, entitled "An Act Making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1934, and for other purposes", provides:

"The President is hereby authorized under the provisions of Public Law Numbered 2, Seventy-third Congress, to establish such number of special boards (the majority of the members of which were not in the employ of the Veterans' Administration at the date of enactment of this Act), as he may deem necessary to review all claims (where the veteran entered service prior to November 11, 1918, and whose disability is not the result of his own misconduct), in which presumptive service connection has heretofore been granted under the World War Veterans' Act, 1924, as amended, wherein payments were being made on March 20, 1933, and which are held not service connected under the regulations issued pursuant to Public Law Numbered 2, Seventy-third Congress. Members of such boards may be appointed without regard to the Civil Service laws and regulations, and their compensation fixed without regard to the Classification Act of 1923, as amended. Such special boards shall determine, on all available evidence, the question whether service connection shall be granted under the provisions of the regulations issued pursuant to Public Law Numbered 2, Seventy-third Congress (notwithstanding the evidence may not clearly demonstrate the existence of the disease or any specific clinical findings within the terms of or period prescribed by regulation 1, part 1, subparagraph (c), or instruction numbered 2, regulation numbered 1, issued under Public Law Numbered 2, Seventy-third Congress), and shall in their decisions resolve all reasonable doubts in favor of the veteran, the burden of proof in such cases being on the Government.

"Notwithstanding the provisions of Public Law Numbered 2, Seventy-third Congress, the decisions of such special boards shall be final in such cases, subject to such appellate procedure as the President may prescribe, and, except for fraud, mis-

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take, or misrepresentation, 75 per centum of the payments being made on March 20, 1933, therein shall continue to October 31, 1933, or the date of special board decision, whichever is the earlier date: Provided, That where any case is pending before any one of the special boards on October 31, 1933, the President may provide for extending the time of payment until decision can be rendered. The President shall prescribe such rules governing reviews and hearings, as may be deemed advisable. Payment of salaries and expenses of such boards and personnel assigned thereto shall be paid out of and in accordance with appropriations for the Veterans' Administration."

NOW, THEREFORE, by virtue of authority vested in me by said laws, the following regulation is hereby promulgated, canceling Veterans Regulation No. 2 and substituting Veterans Regulation No. 2(a) to read as follows:

PART I

EFFECTIVE DATES OF AWARDS OF DISABILITY AND DEATH PENSIONS AND PROVISIONS FOR FILING CLAIMS.

I. The effective date of an award of pension shall be as follows:

(a) The effective date of an award of pension shall be fixed in accordance with the facts found, except that:

Rescind by V.R. 2(d)

(1) No award of disability or death pension shall be effective prior to the date of the veteran's separation from service, date of the veteran's death, date of the happening of the contingency upon which disability or death pension is allowed, or the date of receipt of application therefor, whichever is the later date.

(2) In the event the claimant's application is not complete at the time of original submission, the Veterans' Administration will notify the claimant of the evidence necessary to complete the application and if such evidence is not received within six months from the date of request therefor, pension may not be paid by virtue of that application.

II. The effective date of an award of increased pension shall be fixed in accordance with the facts found, except that:

Sec. 910-911. PL 85-56

(a) No award of increased pension may be effective for any period prior to the date of receipt of the evidence showing entitlement thereto.

(b) For the purpose of this Regulation, increased pension shall be taken to mean any award of pension, amending, reopening, or supplementing a previous award, authorizing any payments not theretofore authorized to the particular individual involved.

Inst. 12

III. The effective date of reduction or discontinuance of compensation, disability allowance and/or pension shall be fixed in accordance with the facts found, except that:

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(a) Reductions and discontinuances by reason of Public No. 2, 73d Congress, of benefits being paid, on the date of approval thereof, pursuant to the laws in effect prior to the date of enactment of Public No. 2, 73d Congress, shall, except as provided for in Section 20, Paragraph 3 of Public No. 78, 73d Congress, and Veterans Regulation No. 12, be June 30, 1933, the last day of the third calendar month after the date of enactment of Public No. 2, 73d Congress, unless sooner reduced or discontinued under the provisions of such prior law.

(b) Where disability or death pension has been awarded pursuant to the provisions of Public No. 2, 73d Congress, and a reduction or discontinuance is thereafter effected as to rates, such reduction or discontinuance shall be effective the last day of the month in which the reduction or discontinuance is approved.

(c) Reductions or discontinuances because of the death of a disabled person receiving a pension shall be effective as of the date of death.

(d) Discontinuance of a pension because of remarriage or death of a widow shall be effective the date next preceding the date of her remarriage, or upon the date of her death. Par. XII, VR 10; Sect 13, VR 2(a)

(e) Discontinuance or reduction of a pension to or because of a child reaching the age of eighteen years, or being married, or dying, shall be effective the date next preceding the eighteenth birthday or next preceding the date of marriage or will be effective upon the date of death.

(f) Where there is fraud shown to have been committed by the person receiving pension or with his or her knowledge the effective date of discontinuance shall be as of the effective date of the award to such person.

(g) Discontinuance of a pension because of the receipt of active service or retirement pay shall be effective as of the date next preceding the date of commencement of such pay.

IV. (a) Pension payable to a widow shall continue until death or remarriage, provided, however, that where pension is properly discontinued by reason of remarriage, it shall not thereafter be recommenced. Repealed by PL 85-56

(b) Pension to a dependent mother or father shall continue during dependency until death or remarriage of the mother or father, whether the dependency arises prior or subsequent to the death of the veteran, except that no pension shall be payable to any mother or father where the dependency arises more than ten years subsequent to the death of the veteran. (Amd. by [illegible])

Sec. 912, PL 85-56

D. 125

V.R. 2(a)

D. 120-A

Par. V, VR 10(b). Sect 2-E, VR 2 Sec 3, 162-A

D. 207 214 213 250 256 262 265 267 268 277 284 298 324

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(c) Pension to or for a child shall continue only until the child's eighteenth birthday or marriage, or, if permanently and totally incapable of self-support, as outlined in Veterans Regulation No. 10(a), until the child's marriage or death, but only during the continuance of such permanent and total incapacity or until completion of education or training (but not after the child marries or reaches the age of twenty-one years, whichever is the earlier date), when the child is or may hereafter be pursuing a course of instruction at a school, college, academy, seminary, technical institute or university particularly designated by him and approved by the Administrator. Repealed by PL 85-56

V. Pension or emergency officers' retirement pay, not paid during the lifetime of the person entitled thereto, shall upon the death of such person be paid as follows: (a) Upon death of the veteran, first to the widow; second, if there is no widow, to his child or children under the age of eighteen years at his death; (b) upon death of the widow, to her children under the age of eighteen years at her death; (c) upon the death, prior to payment of all or any part of the apportioned amount, of an apportionee of a part of the veteran's pension or emergency officers' retirement pay, such apportioned amount not paid shall be payable to the veteran; (d) in all other cases no payment whatsoever of such pension or emergency officers' retirement pay shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of burial, provided, however, that no payment shall be made unless claim therefor be filed within one year from the date of the death of the person entitled and perfected by the submission of the necessary evidence within six months from the date of the request of the Veterans' Administration therefor. Such pension shall include only payments due and unpaid at the time of death under then existing ratings or decisions.

Amended by Act Dec. 12, 1941, 77th Cong. Pub. 144, "Increased benefits"

VI. A specific claim on the form prescribed by the Administrator of Veterans' Affairs must be filed by a veteran, who is not already on the rolls of the Veterans' Administration, with the Veterans' Administration for benefits under Public No. 2, 73d Congress, involving disabilities and deaths resulting from injury or disease incurred or aggravated in line of duty in war-time or peace-time service and disabilities and deaths not incurred in service.

Repealed PL 85-56 C.D. 270 290

Part II

Appeals

I. There is hereby created in the Veterans' Administration a Board of Veterans' Appeals under the administrative control and supervision of a Chairman directly

See Sec. VIII, PL 85-56.

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responsible to the Administrator of Veterans' Affairs. The Board shall be composed of the Chairman, a Vice Chairman and not to exceed fifteen (15) associate members and such other professional, administrative, clerical and stenographic personnel as are necessary in conducting hearings and in the consideration and disposition of appeals properly before such Board in accordance with the instructions herein provided. Members of the Board, including the Chairman and the Vice Chairman, shall be appointed by the Administrator of Veterans' Affairs with the approval of the President.

(a) The Chairman may from time to time divide the Board into sections of three members, assign the members of the Board thereto and designate the chief thereof. If a section as a result of a vacancy or absence or inability of a member assigned thereto to serve thereon is composed of a number of members less than designated for the section, the Chairman may assign other members to the section or direct the section to proceed with the transaction of business without awaiting any additional assignment of members thereto. A hearing docket shall be maintained and formal recorded hearings shall be held by such associate member or members as the Chairman may designate, the associate member or members being of the section which will make final determination in the claim. A section of the Board shall make a determination on any proceeding instituted before the Board and on any motion in connection therewith assigned to such section by the Chairman and shall make a report of any such determination, which report shall constitute its final disposition of the proceeding.

(b) The determination of the section, when unanimously concurred in by the members of the section, shall be the final determination of the Board except that such Board on its own motion may correct an obvious error in the record, or may upon the basis of additional official information from the War or Navy Department reach a contrary conclusion. In the event of a disagreement among the members of the section the concurrence of the Chairman with the majority of members of such section shall constitute the final determination of the Board, subject to correction only on a showing of obvious error, or when in the opinion of the Board, a contrary conclusion is justified on the basis of additional official information furnished by the War or Navy Department.

II. All questions on claims involving benefits under the laws administered by the Veterans' Administration shall be subject to one review on appeal to the Administrator of Veterans' Affairs, decisions in such cases to be made by the Board of Vet-

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erans' Appeals. Jurisdiction to render final decisions on questions so reviewed on appeal shall vest in the Board of Veterans' Appeals in accordance with the provisions of Paragraph 1. When a claim shall be disallowed by the Board of Veterans' Appeals it may not thereafter be reopened and allowed and no claim based upon the same factual basis shall be considered, except that where subsequent to such disallowance new and material evidence in the form of official reports from the proper Service Department is secured, the Board of Veterans' Appeals may authorize the reopening of the claim and review of the former decision. The Board of Veterans' Appeals shall in its decisions be bound by the Regulations of the Veterans' Administration, instructions of the Administrator of Veterans' Affairs, and the precedent opinions of the Solicitor.

III. Applications for review on appeal to the Administrator of Veterans' Affairs shall be filed (excepting in those claims involving simultaneously contested claims, (see paragraph 9(a) hereof)) within six months from the date of mailing of notice of the result of initial review or determination or from July 1, 1933, whichever is the later date. Applications for review must be filed with the activity which entered the denial. If no application for review on appeal is filed in accordance with this regulation within the time limit specified, the action taken on initial review or determination shall become final and the claim will not thereafter be reopened or allowed, except where subsequent to such disallowance new and material evidence in the form of official reports from the proper service department is secured the Administrator of Veterans' Affairs may authorize the reopening of the claim and review of the former decision. If application for review on appeal is entered within the time limit specified by regulations, a reasonable time thereafter will be allowed, if requested, for the perfection of the appeal and the presentation of additional evidence before final determination or decision is made.

IV. Exclusive jurisdiction for the review of emergency officers' retirement claims covered by Section 10, Public No. 2, 73d Congress, shall be vested in such persons as shall be designated by the Administrator of Veterans' Affairs. Following initial determination the same rules and regulations governing applications for review to the Administrator of Veterans' Affairs as provided in this Regulation will be for application.

V. Application for review on appeal may be made in writing by the claimant, his legal guardian, or such accredited representative, or authorized agent, as shall be

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selected by him. Not more than one recognized organization or authorized agent will be recognized at any one time in the prosecution of a claim.

VI. Application for review on appeal may be made by any member of the Special Review Boards created by Part III of this Regulation and by such officials of the Veterans' Administration as may be designated by the Administrator of Veterans' Affairs at any time within the time limit provided by this Regulation. An application for review on appeal entered by a designated official of the Veterans' Administration shall not operate to deprive the claimant of the right of review on appeal as provided in this Regulation.

VII. In each application for review on appeal the name and service of the veteran on account of whose service the claim is based must be stated, together with the number of the claim and the date of the action from which the appeal is taken. The application must clearly identify the benefit sought.

VIII. Each application for review on appeal should contain specific assignments of the alleged mistake of fact or error of law in the adjudication of said claim, and any application for review on appeal insufficient in this respect may be dismissed.

XI. All cases received pursuant to application for review on appeal shall be considered and decided in regular order according to their places upon the docket, unless for cause shown a case may be advanced on motion for earlier consideration and determination. Every such motion shall set forth succinctly the grounds upon which it is based. No such motion will be granted except in cases involving interpretation of law of general application affecting other claims, or for other sufficient cause shown.

X. (a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of an application for review on appeal shall be sixty days from the date of mailing notice of the original action to the claimant to whom the action is adverse. In such cases the activity concerned shall promptly notify all parties in interest of the original action taken, expressly inviting attention to the fact that an application for review on appeal will not be entertained unless filed within the period of sixty days herein prescribed. Such notices shall be forwarded to the parties in interest to the last known address of record.

(b) Upon the filing of an application for review on appeal in simultaneously contested claims, all parties other than the applicant for review on appeal whose interests may be adversely affected by the decision, shall be notified of the substance

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thereof and allowed thirty days from date of mailing of such notice within which to file brief or argument in answer thereto before the record is forwarded on application for review on appeal. The notice herein referred to shall be forwarded to the last known address of record of the parties whose interest may be adversely affected, and such action shall constitute sufficient evidence of notice.

XI. An application for review on appeal shall not be entertained unless it is in conformity with paragraphs 1 to 10 inclusive.

Part III

REVIEW OF PRESUMPTIVE CLAIMS BY SPECIAL REVIEW BOARDS

I. For the purpose of conducting the review of those claims which have heretofore been service connected by virtue of statutory presumptions as comprehended in Section 20 of Public No. 78, 73d Congress, there are hereby temporarily created such Special Review Boards as may be necessary, to be located in the regional areas of the Veterans' Administration as determined upon by the Administrator of Veterans' Affairs. The Special Review Boards shall function in accordance with this regulation and such special instructions as may be issued to them.

II. These Boards will each be composed of five members, three of whom shall be selected by the President from personnel who were not in the employ of the Veterans' Administration on the date of the approval of Public No. 78, 73d Congress, and two employees shall be designated by the Administrator of Veterans' Affairs from the personnel of the Veterans' Administration. The official stations of the respective Boards will be in the Veterans' Administration Facility or Office to which they are assigned and the Manager of such Facility or Office will furnish such space, supplies, clerical and stenographic assistance as may be necessary for the proper operation of the Boards, such clerical and stenographic assistance to be furnished from the personnel now on the rolls of the Veterans' Administration Facility or Office concerned.

III. The concurrence of any three members of a Special Review Board shall constitute the decision of such Board. E.D. 198

IV. The Special Review Boards will grant hearings where indicated, such hearings to be without expense as to travel or per diem allowance to the Government. When requested in due time hearings will be arranged for claimants, their authorized representatives or qualified agents and notices will be dispatched indicating the hour and date on which the cases are to be heard. Claimant's representatives or agents will,

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however, be required to respond at the time and date set, otherwise the Board will proceed with the consideration and determination of the claim and no further arrangement as to hearing will be made. Claimants, their authorized representatives, agents or witnesses appearing before the Board for the purpose of presenting oral testimony will be duly sworn.

V. The jurisdiction of the Special Review Boards shall be confined to a determination of questions of service connection in those cases which were heretofore service connected by reason of the statutory presumption of soundness at enlistment or by reason of the first proviso Section 300, War Risk Insurance Act, as amended, or by reason of the second proviso Section 200, World War Veterans' Act, 1924, as amended, and which are denied service connection as a result of the review of awarded cases under the provisions of Public No. 2, 73d Congress, where the veteran had World War service as defined in Veterans Regulation No. 1(a), Part I, Paragraph 1(a).

The Boards in their determinations will be guided by the following principles:

(a) The Special Review Boards shall determine on all available evidence the question of whether service connection shall be granted under the provisions of Veterans Regulations issued pursuant to Public No. 2, 73d Congress, (notwithstanding the evidence may not clearly demonstrate the existence of the disease or any specific clinical findings within the terms of or period prescribed by Veterans Regulation No. 1(a), Part I, Paragraph 1(c), issued under Public No. 2, 73d Congress), and shall in their decisions resolve all reasonable doubts in favor of the veteran, the burden of proof in such cases being on the Government. The Special Review Boards shall be guided by the principles enunciated in Veterans Regulation No. 1(a), Part I. However, in any case where in view of the peculiar circumstances and in the exercise of sound judgment it is determined that the veteran is entitled to service connection an affirmative determination may be made even though literal adherence to such principles would prevent the granting of service connection.

The Boards shall set forth briefly in their decisions the reasons for the conclusions reached. Rendition, by the Board, of a decision in any case shall terminate its jurisdiction in such case.

(b) In their determinations the Special Review Boards will view the claim in the light of the circumstances under which the veteran served in the armed forces during the World War, giving particular consideration to service in the American Expeditionary Forces and the zone of hostilities, and on the whole evidence of record

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reach a determination without reference to prior determinations, which is proper under the circumstances of the individual case.

(c) The Boards in resolving all reasonable doubts in favor of the claimant will not indulge in speculative theory in reaching their conclusion. The Boards will, however, give due consideration to lay evidence as well as medical evidence of record, bearing in mind that the evidence should be viewed in the light of the facts set forth rather than the conclusions stated and that the weight to be given the evidence must depend largely upon the knowledge and capacity of the individual giving the testimony concerning the subject or fact about which he testifies.

(d) That provision of the law which placed the burden of proof on the Government in denying benefits will not be construed to mean that affirmative evidence only may be used as rebuttal evidence, but such rebuttal may also be predicated upon sound medical judgment, negative evidence of the War or Navy Department, or any other competent evidence available relating to the question at issue.

VI. The procedure covering the operation of the Special Review Boards will be provided by the Administrator of Veterans' Affairs in an appropriate instruction issued pursuant to provisions of this regulation.

VII. The provisions in this regulation covering the review of claims on appeal shall apply to the decisions of the Special Review Boards.

VIII. Service connection granted by Special Review Boards will not thereafter be discontinued except in the event of an appeal, or for fraud, misrepresentation, or when it is found by the Administrator that such grant is clearly contrary to this regulation and instructions governing the operation of the Special Review Boards.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
July 28, 1933.

[No. 6230]

U.S. GOVERNMENT PRINTING OFFICE 1933

1-25-36

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WHAT CONSTITUTES NEW AND MATERIAL EVIDENCE.

1205. Evidence which is solely cumulative or repetitious in character will not serve as the basis for reconsideration of the previous decision. When evidence relates to the same specific fact to which proof was before adduced of a like character it is cumulative but not when it relates to a new fact respecting the general question or point in issue. To constitute material evidence the facts offered must relate and go to the issue, or have a legitimate and effective influence or bearing on the decision in question. (January 25, 1936.)

EFFECTIVE DATES OF AWARDS OF DISABILITY COMPENSATION OR PENSION.

1212. (A) Initial awards of disability compensation or pension will be payable in accordance with the provisions of Veterans Regulation No. 2(a), Part I, Paragraph I, provided an appropriate claim therefor has been filed and, if incomplete, the necessary evidence to complete such claim is submitted within one year from the date of request therefor: Provided, however, that no award of disability compensation or pension under Public No. 2, 73d Congress, will be effective prior to March 20, 1933; and provided further, that no award of disability compensation under Title III, Public No. 141, 73d Congress, will be effective prior to March 28, 1934.

(B) Where, upon reconsideration by a rating agency of original jurisdiction in accordance with R. & P. R-1201, a favorable decision is rendered, the effective date of an award for monetary benefits will be the date of receipt by the Veterans' Administration of the application for reconsideration, or the date the evidence establishes entitlement, whichever is the later. (January 25, 1936.)

EFFECTIVE DATES OF AWARDS PURSUANT TO PART III, VETERANS REGULATION NO. 1(c).

1213. Awards pursuant to Part III, Veterans Regulation No. 1(c), will be

(A) Effective as of January 19, 1934, without the filing of a claim therefor if it is demonstrated that permanent total disability existed on January 19, 1934:

(1) If the veteran's name was on the rolls on March 19, 1933, or January 19, 1934, or

(2) If a claim for compensation or pension filed prior to January 19, 1934, had not been disallowed or abandoned prior to that date, and provided the claim was revived by written notice at any time prior to January 19, 1935.

(B) Effective as of the date of receipt of a claim therefor or the date upon which permanent total disability arose, whichever is the later, if not comprehended within (A) (1) or (2) hereof. (January 25, 1936.)

EFFECTIVE DATES OF AWARDS OF INCREASED DISABILITY COMPENSATION OR PENSION.

1214. The effective date of an award of increased disability compensation or pension will be in accordance with the provisions of Veterans Regulation No. 2(a), Part I, Paragraph II.

(A) BY REASON OF DEPENDENTS.--Increased disability compensation payable by reason of dependents under Title III, Public No. 141, 73d Congress, will be effective as of the date of the receipt of the claim or the date the evidence establishes entitlement, whichever is the later, but in no event prior to March 28, 1934. The evidence necessary to complete the application for dependency allowance must be submitted within one year from the date of request for such evidence; otherwise the allowance for the dependents may not be paid by virtue of that application.

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(B) BY REASON OF TOTAL DISABILITY.—The effective date of an award based upon a total disability rating rendered solely by the application of R. & P. R-1166 (C), 1167, and 1168, will be the date of receipt of the claim (original, reopening or increased) by the Veterans' Administration, or the date the evidence establishes the existence of total disability, whichever is the later, but in no event prior to October 16, 1934, (effective date of the change in criteria for establishing total disability under Public No. 2, 73d Congress), provided, however, that where the claim was in a pending or appellate status as of October 16, 1934, the effective date of the award will be the date of administrative determination by the original or appellate rating agency.

(C) WHERE THE BASIC RIGHT TO ENTITLEMENT HAS BEEN BARRED.—Retroactive increases or additional benefits will not be awarded after the basic right to entitlement has been barred, such as by reason of forfeiture or severance of service connection. (January 25, 1936.)

APPLICATION FOR INCREASE BASED UPON CHANGED PHYSICAL CONDITION.

1216. A formal application for increased disability compensation or pension will not be required and an informal application or request when accompanied by evidence of a changed physical condition will suffice.

(A) INCREASE BASED UPON REPORT OF PHYSICAL EXAMINATION.—Where an increase in disability is shown by an official report of physical examination made in a Veterans' Administration facility or by a designated examiner in connection with compensation, pension, or treatment pursuant to proper authority, the report of physical examination will be accepted as a claim and payment of the increase may be made effective as of the date of examination.

(B) STATEMENT BY PRIVATE PHYSICIAN OR PRIVATE INSTITUTION.—A statement by a private physician or a private institution showing increased disability submitted by or on behalf of a veteran for the purpose of obtaining increased benefits may be accepted as an informal claim and payments awarded from the date of receipt of the evidence, if otherwise in order, provided that the findings contained therein are subsequently verified by an official Veterans' Administration examination. (January 25, 1936.)

RIGHT OF ELECTION OF BENEFITS PAYABLE.

1217. Where a claimant has a right to benefits under both Public No. 2, 73d Congress, and Public No. 141, 73d Congress, he may elect to take under either law, regardless of whether it is the greater or lesser benefit and even though the election results in reducing the benefits payable to his dependents. (A.D. 253.) (January. 25, 1936.)

AWARD OF GREATER BENEFIT.

1218. Where the monetary benefits under existing legislation are the same in the amounts payable, the monetary benefit previously awarded under Public No 2, 73d Congress, will be continued unless it should be subject to reduction or suspension by reason of the provisions of Paragraphs X or XI of Veterans Regulation No. 10 as amended by Veterans Regulation No. 10(b), 10(c), and 10(d). In that event, or reduction or suspension would render it the lesser benefit, compensation will be paid under Title III of Public No. 141, 73d Congress, if otherwise in order (January 25, 1936.)

Appendix

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or his representative to the Veterans Administration, be revived at any time prior to June 30, 1937, and when title is otherwise established payments under the provisions of section 403, Public No. 844, 74th Congress, (Act of June 29, 1936), shall commence from the date of its enactment.] (October 14, 1936.)

EFFECTIVE DATES OF AWARDS OF INCREASED DISABILITY COMPENSATION OR PENSION.

1214. The effective date of an award of increased disability compensation or pension will be in accordance with the provisions of Veterans Regulation No. 2(a), Part I, Paragraph II.

(A) BY REASON OF DEPENDENTS.—Increased disability compensation payable by reason of dependents under Title III, Public No. 141, 73d Congress, will be effective as of the date of the receipt of the claim or the date the evidence establishes entitlement, whichever is the later, but in no event prior to March 28, 1934. The evidence necessary to complete the application for dependency allowance must be submitted within one year from the date of request for such evidence; otherwise the allowance for the dependents may not be paid by virtue of that application.

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(B) BY REASON OF TOTAL DISABILITY.—[(1)] The effective date of an award based upon a total disability rating rendered solely by the application of R. & P. R-1166 (C), 1167, and 1168, will be the date of receipt of the claim (original, reopening or increased) by the Veterans Administration, or the date the evidence establishes the existence of total disability, whichever is the later, but in no event prior to October 16, 1934, (effective date of the change in criteria for establishing total disability under Public No. 2, 73d Congress), provided, however, that where the claim was in a pending or appellate status as of October 16, 1934, the effective date of the award will be the date of administrative determination by the original or appellate rating agency. (January 25, 1936.)

[(2) The effective date of an award based upon a total disability rating rendered solely by the application of R. & P. R-1166 (E), will be the date of receipt of the claim (original, reopening or increased) by the Veterans Administration, or the date the evidence establishes the existence of total disability, whichever is the later, but in no event prior to August 26, 1936, provided, however, that where the claim was in a pending or appellate status as of August 26, 1936, the effective date of the award will be the date of administrative determination by the original or appellate rating agency]. (October 14, 1936.)

(C) WHERE THE BASIC RIGHT TO ENTITLEMENT HAS BEEN BARRED.—Retroactive increases or additional benefits will not be awarded after the basic right to entitlement has been barred, such as by reason of forfeiture or severance of service connection. (January 25, 1936.)

APPLICATION FOR INCREASE BASED UPON CHANGED PHYSICAL CONDITION.

1216. A formal application for increased disability compensation or pension will not be required and an informal application or request when accompanied by evidence of a changed physical condition will suffice.

(A) INCREASE BASED UPON REPORT OF PHYSICAL EXAMINATION.—Where an increase in disability is shown by an official report of physical examination made in a Veterans Administration facility or by a designated examiner in connection with compensation, pension, or treatment pursuant to proper authority, the report of physical examination will be accepted as a claim and payment of the increase may be made effective as of the date of examination.

(B) STATEMENT BY PRIVATE PHYSICIAN OR PRIVATE INSTITUTION.—A statement by a private physician or a private institution showing increased disability submitted by or on behalf of a veteran for the purpose of obtaining increased benefits may be accepted as an informal claim and payments awarded from the date of receipt of the evidence, if otherwise in order, provided that the findings contained therein are subsequently verified by an official Veterans Administration examination. (January 25, 1936.)

RIGHT OF ELECTION OF BENEFITS PAYABLE.

1217. Where a claimant has a right to benefits under both Public No. 2, 73d Congress, and Public No. 141, 73d Congress, he may elect to take under either law, regardless of whether it is the greater or lesser benefit and even though the election results in reducing the benefits payable to his dependents. (A D. 263.) (January, 25, 1936.)

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or his representative to the Veterans Administration, be revived at any time prior to June 30, 1937, and when title is otherwise established payments under the provisions of section 403, Public No. 844, 74th Congress, (Act of June 29, 1936), shall commence from the date of its enactment.] (October 14, 1936.)

EFFECTIVE DATES OF AWARDS OF INCREASED DISABILITY COMPENSATION OR PENSION.

1214. The effective date of an award of increased disability compensation or pension will be in accordance with the provisions of Veterans Regulation No. 2(a), Part I, Paragraph II.

(A) BY REASON OF DEPENDENTS.--Increased disability compensation payable by reason of dependents under Title III, Public No. 141, 73d Congress, will be effective as of the date of the receipt of the claim or the date the evidence establishes entitlement, whichever is the later, but in no event prior to March 28, 1934. The evidence necessary to complete the application for dependency allowance must be submitted within one year from the date of request for such evidence; otherwise the allowance for the dependents may not be paid by virtue of that application.

300-R Inst. Revised 37-4R 38-a followed by 39-R 39-2R 39-3R

7-10-42

R+PR 1214 (B)

1214

(B) BY REASON OF INCREASED DISABILITY.—(1) The effective date of an award based upon an increased disability rating under an amendment to the rating schedule or governing regulation, as the case may require, will be the date of receipt of the claim (original, reopening or increased) by the Veterans Administration, or the date the evidence establishes the existence of the increased disability, whichever is the later, but in no event prior to the date of the amendment or regulation involved, provided, however, that where the claim was in a pending or appellate status as of that date the effective date of the award will be the date of administrative determination by the original or appellate rating agency. (July 10, 1942.)

(2) The effective date of an award based upon a total disability rating rendered solely by the application of R. & P. R-1166 (E), will be the date of receipt of the claim (original, reopening or increased) by the Veterans Administration, or the date the evidence establishes the existence of total disability, whichever is the later, but in no event prior to August 26, 1936, provided, however, that where the claim was in a pending or appellate status as of August 26, 1936, the effective date of the award will be the date of administrative determination by the original or appellate rating agency. (October 14, 1936.)

(C) WHERE THE BASIC RIGHT TO ENTITLEMENT HAS BEEN BARRED.—Retroactive increases or additional benefits will not be awarded after the basic right to entitlement has been barred, such as by reason of forfeiture or severance of service connection. (January 25, 1936.)

1216. APPLICATION FOR INCREASE BASED UPON CHANGED PHYSICAL CONDITION.—A formal application for increased disability compensation or pension will not be required and an informal application or request when accompanied by evidence of a changed physical condition will suffice.

(A) INCREASE BASED UPON REPORT OF PHYSICAL EXAMINATION.—Where an increase in disability is shown by an official report of physical examination made by a full-time, part-time or designated physician of the Veterans Administration in connection with compensation, pension, or treatment pursuant to proper authority, the report of physical examination will be accepted as a claim and payment of the increase may be made effective as of the date of examination. This principle likewise is for application, effective April 7, 1938, to claims under Veterans Regulation No. 1(a), Part III, Paragraph I(a). O.M. 7-14-38

(B) STATEMENT BY PRIVATE PHYSICIAN OR PRIVATE INSTITUTION.—A statement by a private physician or a private institution showing increased disability submitted by or on behalf of a veteran for the purpose of obtaining increased benefits may be accepted as an informal claim and payments awarded from the date of receipt of the evidence, if otherwise in order, provided that the findings contained therein are subsequently verified by an official Veterans Administration examination. (August 24, 1938.)

1217. RIGHT OF ELECTION OF BENEFITS PAYABLE.—Where a claimant has a right to benefits under both Public No. 2, 73d Congress, and Public No. 141, 73d Congress, he may elect to take under either law, regardless of whether it is the greater or lesser benefit and even though the election results in reducing the benefits payable to his dependents. (A.D. 263.) (January 25, 1936.)

Eff 9-20-46

R+PR 1214 (B)

(b) When payable under laws other than Public No. 144, 78th Congress, the effective date of the award of disability compensation will be the date of receipt of claim, or date the evidence shows entitlement, whichever is the later.

(3) Reviewed or reopened disallowed claims:

(a) When reviewed on motion of the VA and compensation is payable only under Public No. 144, 78th Congress, the award will be effective the first day of the calendar month next succeeding the date of the approval of the award.

(b) When payable only under Public No. 144, 78th Congress, and claim to reopen under Public No. 144, 78th Congress, was filed within a year from the date of discharge, the award will be effective from July 13, 1943, if otherwise in order. If claim to reopen was filed more than a year after date of discharge, the award will be effective from the date of receipt of claim to reopen.

(c) When payable under laws other than Public No. 144, 78th Congress, the effective date of the award will be determined in accordance with (A) and/or (B).] (September 20, 1946.)

EFFECTIVE DATES OF AWARDS PURSUANT TO PART III, VETERANS REGULATION NO. 1 (c), AND SECTION 403, PUBLIC NO 844, 74TH CONGRESS.

1213. Awards pursuant to Part III, Veterans Regulation No. 1 (c), will be (A) Effective as of January 19, 1934, without the filing of a claim therefor if it is demonstrated that permanent total disability existed on January 19, 1934;

(1) If the veteran's name was on the rolls on March 19, 1933, or January 19, 1934, or

(2) If a claim for compensation or pension filed prior to January 19, 1934, had not been disallowed or abandoned prior to that date, and provided the claim was revived by written notice at any time prior to January 19, 1935.

(B) Effective as of the date of receipt of a claim therefor or the date upon which permanent total disability arose, whichever is the later, if not comprehended within (A) (1) or (2) hereof. (January 25, 1936.)

(C) For the purposes of section 403, Public No. 844, 74th Congress, awards predicated upon new claims, will be effective as of the date of receipt of claim or the date upon which permanent total disability arose, whichever is the later, but in no event prior to June 29, 1936. Awards in claims filed prior to June 29, 1936, for benefits under the provisions of paragraph II (a), Part III, Veterans Regulation No. 1 (a), which were not disallowed or abandoned prior to June 29, 1936, under Public No. 2, 73d Congress, and in which title is otherwise established under the provisions of Public No. 844, 74th Congress, will be effective from June 29, 1936. Any claim filed for benefits under the provision of Paragraph II (a), Part III, Veterans Regulation No. 1 (a) which was disallowed prior to June 29, 1936, because of "Annual Income" from the benefits enumerated in section 403 supra, may, upon written notice from the claimant or his representative to the VA, be revived at any time prior to June 30, 1937, and when title is otherwise established payments under the provisions of section 403, Public No. 844, 74th Congress, (Act of June 29, 1936), shall commence from the date of its enactment. (October 14, 1936.)

EFFECTIVE DATES OF AWARDS OF INCREASED DISABILITY COMPENSATION [ ].

1214. The effective date of an award of increased disability compensation [ ] will be in accordance with the provisions of Veterans Regulation No. 2 (a), Part I, paragraph II.

Appendix

9-20-46

R+PR 1214 (B)

S.O. 8/7/43 (Anderson)

(A) BY REASON OF DEPENDENTS.—Increased disability compensation payable by reason of dependents under Title III, Public No. 141, 73d Congress, will be effective as of the date of the receipt of the claim or the date [of receipt of the evidence which establishes entitlement, whichever is the later, subject to the provisions of R. & P. R-1255 (C) in cases of institutionalization], but in no event prior to March 28, 1934. The evidence necessary to complete the application for dependency allowance must be submitted within one year from the date of request for such evidence; otherwise the allowance for the dependents may not be paid by virtue of that application.

(B) BY REASON OF INCREASED DISABILITY.—(1) The effective date of an award based upon an increased disability rating under an amendment to the rating schedule or governing regulation, as the case may require, will be the date of receipt of the claim (original, re-opening or increased) by the VA, or the date [of receipt of the evidence which] establishes the existence of the increased disability, whichever is the later, but in no event prior to the date of the amendment or regulation involved, provided, however, that where the claim was in a pending or appellate status as of that date the effective date of the award will be the date of administrative determination by the original or appellate rating agency.

(2) The effective date of an award based upon a total disability rating rendered solely by the application of R. & P. R-1166 (E), will be the date of receipt of the claim (original, reopening or increased) by the VA, or the date [of receipt of the evidence which] establishes the existence of total disability, whichever is the later, but in no event prior to August 26, 1936, provided, however, that where the claim was in a pending or appellate status as of August 26, 1936, the effective date of the award will be the date of administrative determination by the original or appellate rating agency. (September 20, 1946.)

(C) WHERE THE BASIC RIGHT TO ENTITLEMENT HAS BEEN BARRED.—Retroactive increases or additional benefits will not be awarded after the basic right to entitlement has been barred, such as by reason of forfeiture or severance of service connection. (January 25, 1936.) M 7-538

1216. APPLICATION FOR INCREASE BASED UPON CHANGED PHYSICAL CONDITION.—A formal application for increased disability compensation or pension will not be required and an informal application or request when accompanied by evidence of a changed physical condition will suffice. Sec. I, Cir. 28, 1946

B.M. 10/20/38

(A) INCREASE BASED UPON REPORT OF PHYSICAL EXAMINATION.—Where an increase in disability is shown by an official report of physical examination made by a full-time, part-time or designated physician of the VA in connection with compensation, pension, or treatment pursuant to proper authority, the report of physical examination will be accepted as a claim and payment of the increase may be made effective as of the date of examination. This principle likewise is for application, effective April 7, 1938, to claims under Veterans Regulation No. 1 (a), Part III, Paragraph I (a).

(B) STATEMENT BY PRIVATE PHYSICIAN OR PRIVATE INSITITUTION.—A statement by private physician or a private institution showing increased disability submitted by or on behalf of a veteran for the purpose of obtaining increased benefits may be accepted as an informal claim and payments awarded from the date of receipt of the evidence, if otherwise in order, provided that the findings contained therein are subsequently verified by an official VA examination. (August 24, 1938.)

1217. RIGHT OF ELECTION OF BENEFITS PAYABLE.—Where a claimant has a right to benefits under both Public No. 2, 73d Congress, and Public No. 141, 73d Congress, be

R&PR 1214 (B)

Eff. 9-26-47

EFFECTIVE DATES OF AWARDS PURSUANT TO PART III, VETERANS REGULATION NO. 1 (c), [ ].

1213. [Awards pursuant to Part III, Veterans Regulation No. 1 (c), will be effective as of the date of the receipt of a claim or the date upon which permanent total disability arose, whichever is the later] (September 26, 1947.)

EFFECTIVE DATES OF AWARDS OF INCREASED DISABILITY COMPENSATION.

1214. The effective date of an award of increased disability compensation will be in accordance with the provisions of Veterans Regulation No. 2 (a), Part I, paragraph II. (September 20, 1946.)

(A) BY REASON OF DEPENDENTS.--Increased disability compensation payable by reason of dependents under Title III, Public No. 141, 73d Congress, will be effective as of the date of the receipt of the claim or the date of receipt of the evidence which establishes entitlement, whichever is the later, subject to the provisions of R&P R-1255 (C) in cases of institutionalization [ ]. The evidence necessary to complete the application for dependency allowance must be submitted within one year from the date of request for such evidence; otherwise the allowance for the dependents may not be paid by virtue of that application. (September 26, 1947.) S. 8-7-43 (Anderson)

(B) [BY REASON OF REGULATORY OR SCHEDULAR PROVISIONS.--(1) The effective date of increased compensation due to the promulgation of the 1945 schedule is controlled by R&P R-1149.

(2) The effective date of an award, original, increased or reopened, resulting from an amendment of the 1945 schedule or the promulgation of an administration issue will be the date of receipt of the claim, original, increased or reopened, but in no event prior to the date of the amendment or administration issue; Provided, That if the amendment or issue is applied on the initiative of the administration the effective date will be the date of administrative determination. The date of administrative determination is the date the rating sheet is signed. Except in unusual cases, the rating sheets will be typed and signed the same day the work sheet is prepared by the rating board.] (September 26, 1947.) (Revised and consolidated with R&P R-1216)

M-659

1216. APPLICATION FOR INCREASE BASED UPON CHANGED PHYSICAL CONDITION.--A formal application for increased disability compensation or pension will not be required and an informal application or request when accompanied by evidence of a changed physical condition will suffice. (August 24, 1938.)

(A) INCREASE BASED UPON REPORT OF PHYSICAL EXAMINATION.--Where an increase in disability is shown by an official report of physical examination made by a full-time, part-time or designated physician of the VA in connection with compensation, pension, or treatment pursuant to proper authority, the report of physical examination will be accepted as a claim and payment of the increase may be made effective as of the date of examination. This principle likewise is for application [ ] to claims under Veterans Regulation No. 1 (a), Part III, paragraph I (a). (September 26, 1947.)

(B) STATEMENT BY PRIVATE PHYSICIAN OR PRIVATE INSTITUTION.--A statement by private physician or a private institution showing increased disability submitted by or on behalf of a veteran for the purpose of obtaining increased benefits may be accepted as an informal claim and payments awarded from the date of receipt of the evidence, if otherwise in order, provided that the findings contained therein are subsequently verified by an official VA examination. (August 24, 1938.)

(C) PHYSICAL EXAMINATION REPORTS FROM STATE, COUNTY AND MUNICIPAL INSTITUTIONS AND CONTRACT HOSPITALS.--Generally, physical examination reports from State, county and municipal institutions and contract hospitals relative to veterans undergoing treatment or domiciled therein, whether by the VA or otherwise, will be accorded the same consideration for the purpose of rating claims for compensation or pension as though the examinations were received from a VA field station. These examinations, however, must present the essentials upon which ratings are to be founded, that is, the disabling conditions must be adequately identified; sufficient findings must be reported

[2553. APPLICATION OF LIBERALIZING VA ISSUES.--Except where otherwise specifically provided, death compensation or pension which is payable pursuant to the provisions of an amended regulation or a VA issue containing liberalizing criteria approved by the Administrator or by his direction shall not be paid for any period prior to the date of such regulation or issue.] (August 4, 1948) T 8-88; Z 8-31 + 8-53; ~~[illegible]~~

2554. RENOUNCEMENT OF PENSION.--Any person entitled to pension or compensation under any law or veterans regulation administered by the VA may renounce his right thereto. The application renouncing the right shall be in writing over the person's signature and upon filing of such application, payment of such benefits and the right thereto shall be terminated, and he shall be denied any and all rights thereto effective as of the date of last payment. The renouncement provided for herein shall not preclude the person from filing a new application for pension or compensation at a future date, but such application shall have the attributes of an original application and no payment will be made for any period prior to the date of receipt thereof. (Vet. Reg. 10 (c), par. XXI, as amended by sec. 3, Pub. L. 144, 78th Cong.) (August 20, 1943) S.O. 2-13-45 + 6-6-45; Par. 13, Let. 2-10-48; S.O. 5-21-48 (Olcutt) + 8-14-50 (Nelle)

2556. FOREIGN RESIDENCE.--No person entitled to pension or compensation under the provisions of Public No. 2, 73d Congress (act of March 20, 1933), who resides outside the continental limits of the United States, exclusive of Hawaii, Alaska, Puerto Rico, Virgin Islands, and the Panama Canal Zone, shall, while so residing, receive more than 50 percent of the amount of pension or compensation otherwise provided for the period ended February 4, 1935, date of cancellation of such provision of the law. (Vet. Reg. 10 (d)) Except as provided in R&P R-2610, awards of death pension or compensation awarded prior to March 20, 1933, based on service rendered subsequent to April 20, 1898, are subject to 50 percent reduction from July 1, 1933, to February 5, 1935. (Vet. Reg. 4) The rates of compensation awarded under Public No. 484, 73d Congress (act of June 28, 1934), are not subject to the 50 percent reduction. (A.D. 281) (January 25, 1936)

2558. GOVERNMENT EMPLOYEES RIGHT TO PENSION.--For the purposes of Public No. 2, 73d Congress (act of March 20, 1933), no person holding an office or position, appointive or elective, under the United

Veterans Administration
Washington 25, D. C.

VAR 1214 (B3)

October 19, 1949

VA REGULATIONS

CLAIMS--Transmittal Sheet 19

Remove pages	Insert pages
1-12R and 2-12R	1-13R and 2-13R
	2-13Ra
3-13R and 4-13R	3-14R and 4-14R
4a-10R and 4b-3R	4a-11R and 4b-4R
6a-5R and 6b-2R	6a-6R and 6b-3R
6c-R	6c-2R and 6d
8a-2R	8a-3R and 8b
9b-R and 10-9R	9b-2R and 10-10R
12a-6R [12b-3R]	12a-7R and 12b-4R
13-10R and 13a-R	13-11R and 13a-2R
13b-R and 14-10R	13b-2R and 14-11R
15-3R and 16-3R	15-4R and 16-4R
	16-4Ra
16c and 16d	16c-R and 16d-R
[16e-R, 16f-R], 17-2R and 18-2R, [18a-R, 18b-R]	17-3R and 18-3R
19-6R and 20-6R	19-7R and 20-7R
20a and 20b	20a-R and 20b-R
	20c and 20d
	20e
21-7R and 22-7R	21-8R and 22-8R
24c and 24d	24c-R and 24d-R
26a-2R and 26b	26a-3R and 26b-R
27-4R and 28-4R [28a-3R, 28b-3R]	27-5R and 28-5R
	28a-4R and 28b-4R
30a-R and 30b-R	30a-2R and 30b-2R
32a and 32b	32a-R and 32b-R
37-5R and 38-5R	37-6R and 38-6R
	38a
39-8R and 39a-R	39-9R and 39a-2R
41-5R and 42-5R	41-6R and 42-6R
42a	42a-R
43-6R and 44-6R	43-7R and 44-7R
45-11R and 46-11R	45-12R and 46-12R
47-7R and 48-7R	47-8R and 48-8R
55-7R and 56-7R	55-8R and 56-8R
57-5R and 58-5R	57-6R and 58-6R

VAR 1214(B) 10-19-49

CLAIMS--Transmittal Sheet 19--Continued

Paragraphs revised

R-1001 (C)
R-1004
R-1007
R-1009 (B) and (C)
R-1027
R-1032 (C)
R-1045 (B)
R-1055 (G)
R-1060
R-1064 (D)
R-1066 (B)
R-1076
R-1080 (B)
R-1086 (A)
R-1102 (F)
R-1131 (F)
R-1133 (A) and (B)
R-1142 (A)
R-1155 (F)
R-1201 (F)
R-1214 (B)
R-1236
R-1237 (B)
R-1255 (B)
R-1310 (D)

Paragraphs added

R-1059 (C)
R-1123 (B) (7)
R-1139 (I)

Paragraphs deleted

None

Rescissions

All Station Letter--MC-28, dated February 10, 1942
VA Instruction 1, Public Law 876, 80th Congress

By direction of the Administrator:

O. W. CLARK
Deputy Administrator

10-19-49

VAR 1214(B)

(D) The effective date of an award of disability compensation or pension (original or amended) to or for a veteran who has (1) been issued an honorable discharge pursuant to the findings of a Department of the Army, Department of the Air Force, Treasury Department, or Department of the Navy Board of Review, under section 301, Public Law 346, 78th Congress, or (2) has had his military or naval record corrected pursuant to section 207, Public Law 601, 79th Congress, shall be:

(1) The date of separation from active service or the date of the happening of the contingency upon which compensation or pension is allowed, whichever is the later date--if application is filed within 1 year from the date of separation from active service.

(2) Date of application or the date of the happening of the contingency upon which compensation or pension is allowed, whichever is the later date--if claim is filed more than 1 year from the date of separation from active service. (For purposes of this paragraph, the "date of the happening of the contingency" is the date of the action of the board under section 301, Public Law 346, 78th Congress, or under section 207, Public Law 601, 79th Congress.) (Adm. Dec. 665, and Solicitor's Opinions of February 6, 1948, and February 25, 1948, in C-919 497) (January 26, 1949)

Par 5, T 8 8-19

1213. EFFECTIVE DATES OF AWARDS PURSUANT TO PART III, VETERANS REGULATION 1 (a).--Awards pursuant to part III, Veterans Regulation No. 1 (a), as amended, will be effective as of the date of the receipt of a claim or the date upon which permanent total disability arose, whichever is the later. (January 26, 1949) Let. 9-13-49; S.O. 6-20-50 (Geary)

Par 5, T 8 8-52

1214. EFFECTIVE DATES OF AWARDS OF INCREASED DISABILITY COMPENSATION.--The effective date of an award of increased disability compensation will be in accordance with the provisions of paragraph II, part I, Veterans Regulation No. 2 (a). (September 20, 1946)

(A) By Reason of Dependents. Increased disability compensation payable by reason of dependents under Public No. 2, 73d Congress, as amended, title III, Public No. 141, 73d Congress, or under Public Law 877, 80th Congress, will be effective as of the date of the receipt of the evidence which establishes entitlement. Where additional evidence is necessary to substantiate the original evidence, the effective date of increased disability compensation is the date of receipt of the original evidence if the substantiating evidence is received within 1 year from the date of request therefor. Additional evidence required for the purpose of inquiring into the veracity of a witness or the authenticity of the documentary evidence falls within the above-cited rule. However, any evidence to enlarge the proofs and evidence originally submitted is not so included. (January 26, 1949)

S O 8-2-43 (Anderson)

Appendix

10-19-49

VAR1214(B)

(B) By Reason of Regulatory or Schedular Provisions

(1) The effective date of increased compensation due to the promulgation of the 1945 Schedule is controlled by R&P R-1149. (September 26, 1947)

(2) The effective date of an award, original, increased, or reopened, resulting from an amendment of the 1945 Schedule or the promulgation of an administration issue, will be the date of receipt of the claim, original, increased, or reopened, but in no event prior to the date of the amendment or administration issue; [Provided, That if a claim is pending, benefits may be awarded from the date of promulgation of the amendment or administration issue; Provided, further,] That if the amendment or issue is applied on the initiative of the administration, the effective date will be the date of administrative determination. The date of administrative determination is the date the rating sheet is signed. Except in unusual cases, the rating sheets will be typed and signed the same day the work sheet is prepared by the Rating Board. (October 19, 1949)

(C) Where the Basic Right to Entitlement Has Been Barred. Retroactive increases or additional benefits will not be awarded after the basic right to entitlement has been barred, such as by reason of forfeiture or severance of service-connection. (January 25, 1936)

1216. APPLICATION FOR INCREASE BASED UPON CHANGED PHYSICAL CONDITION.--A formal application for increased disability compensation or pension will not be required, and an informal application or request when accompanied by evidence of a changed physical condition will suffice. (August 24, 1938)

(A) Increase Based Upon Report of Physical Examination. Where an increase in disability is shown by an official report of physical examination made by a full-time, part-time, or designated physician of the VA in connection with compensation, pension, or treatment pursuant to proper authority, the report of physical examination will be accepted as a claim, and payment of the increase may be made effective as of the date of examination. This principle likewise is for application to claims under Veterans Regulation No. 1 (a), part III, paragraph I (a). (September 26, 1947)

(B) Statement by Private Physician. A statement by a private physician showing increased disability submitted by or on behalf of a veteran for the purpose of obtaining increased benefits may be accepted as an informal claim, and payments awarded from the date of receipt of the evidence, if otherwise in order, Provided, That the findings contained therein are subsequently verified by an official VA examination.

Followed by 40-SR

Appendix

Veterans Administration
Washington 25, D.C.

Eff: May 29, 1959

38CFR3.400(p)

VA REGULATIONS

COMPENSATION AND PENSION--Transmittal Sheet 195

Remove pages	Insert pages
See explanation on Transmittal Sheet 189	129-i 129 and 130 131 and 132 133 and 134 135 and 136 137, 138, 139, 140

Paragraphs revised	Paragraphs added	Paragraphs canceled
None	1400 1401 1402 1403 (See explanation on Transmittal Sheet 189)	None

EXPLANATION

The purpose of the following comment on the changes included in this amendment of VA Regulations is to inform all concerned why these changes are being made. These comments are not regulatory.

Paragraph 1400. Outlines the general rules which govern the commencing date of awards of pension, compensation, and dependency and indemnity compensation. The preamble changes the provisions of the former VA Regulation 1148(A) to provide that the effective date of an evaluation of disability will be the date from which benefits are payable.

Subparagraph (G) is new as to the inclusion of cases where the character of separation from service is changed by a Board of Review or other corrective action is taken by competent military, naval, or air authority. This provision may be retroactive to August 1, 1956.

Paragraph 1401. Is applicable to awards to veterans. VA Regulation 1276 is enlarged to include in 1401(D) effective date of institutional awards.

38CFR 3.400 (P) 5-29-59

[EFFECTIVE DATES]

(Formerly in 1212, 1213, 2080, 2109, 2570-2572, 2574, 2576-2578, 2945)

[1400 (§3.400). GENERAL.--Except as otherwise provided, the effective date of an evaluation and award of pension, compensation, or dependency and indemnity compensation will be the date of receipt of claim or the date evidence shows entitlement whichever is the later. The commencing date of an award of pension or compensation will be the same as the effective date of evaluation, except where there is a bar to payment. (38 U.S.C. 3010) 7608

(Changes former 1148 - see T.S. 195) (from 1212 (C))

(A) Unless Specifically Provided	On basis of facts found.] (May 29, 1959) (from 2945 (C))
[(B) Disability Benefits	
(1) Disability pension VA Regulation 1003(C)	Date of receipt of claim or date entitlement arose, whichever is later. (Formerly 1213) 2109 P-28
(2) Disability Compensation	~~7608~~ S.O. 2/2/48
(a) Direct service connection VA Regulation 1004(B) JS C 4-21-60 (Telecon)	Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from the period of service in which the disability was incurred or aggravated; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. (Formerly 1212) 2180 S.C. 12/14/58 1401(A) 1403(A)
(b) Presumptive service connection	Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later.] (May 29, 1959)
[(C) Death Benefits	
(1) Death in service VA Regulations 1004(C), 1005(B)	Day following the date fixed by the Secretary concerned as the date of actual or presumed death, if claim is received within 1 year after the date the initial report of actual death or finding of presumed death was made; however, benefits based on a 1109

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	report of actual death are not payable for any period for which the claimant has received, or is entitled to receive, an allowance, allotment, or service pay of the veteran.
(2) Death after separation from service VA Regulations 1003(D), 1004(C), 1005(B)	Day following the veteran's death if claim is received within 1 year after that date; otherwise, date of receipt of claim. (From 2570-2572, 2574, 2576, 2578)
(3) Dependency and indemnity compensation	
(a) Deaths prior to January 1, 1957 VA Regulation 1702	Date of receipt of election or date dependency and indemnity compensation becomes the greater monthly benefit if election is received within (generally) 120 days before that date.
(b) Child	Date on which entitlement arose if claim is received within 1 year after that date; otherwise, date of receipt of claim.] (May 29, 1959)
[(D) Age--Veteran 65, Widow 70 VA Regulation 1208	In other than original claims date of receipt of claim or 65th (or 70th) birthday, whichever is later, if evidence filed within 1 year after date of request; otherwise, date of receipt of evidence.] (May 29, 1959)
[(E) Apportionment VA Regulation 1450	On original claims, in accordance with the facts found. On other than original claims from first day of month (in Philippine cases, the first day of the second month) following month in which notice of estrangement of veteran and his wife, or that the child is not in the actual or constructive custody of the payee, is received.] (May 29, 1959)
[(F) Bureau of Employees' Compensation Cases VA Regulation 1708	Day following date of last payment by the Bureau of Employees' Compensation.] (May 29, 1959)

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5-29-59

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[(G) Correction of Military Records (38 U.S.C. 3004(a))	Where entitlement is established because of the correction, change, or modification of a military record or of a discharge or dismissal, or because of other corrective action by competent military, naval, or air authority, the award will be effective from the later of these dates: A.D. 665 807 A.C 3/1/58
	(1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;
	(2) Date of receipt of claim if claim was disallowed; or T.S. 195
	(3) August 1, 1956.] (May 29, 1959) Formerly 2577(B) 2945(B))
[(H) Difference of Opinion VA Regulation 1105 A.D. 970	Date of Central Office approval authorizing a favorable decision. However, where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death.] (May 29, 1959) Formerly VA 1009(B))
[(I) Disability or Death Due to Hospitalization, etc. VA Regulation 1800	
(1) Disability	Date of claim. 0-37
(2) Death	Day following date of death if a claim is received within 1 year following the date of death.] (May 29, 1959) Formerly 2577 2945 (71)

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[(J) Election of VA Benefits VA Regulations 1701, 1702	Day following date of discontinuance of benefits under other law.] (May 29, 1959)
[(K) Error VA Regulation 1105 A.D. 970	Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision.] (May 29, 1959)
[(L) Foreign Residence	See VA Regulation 1653.] (May 29, 1959)
[(M) Forfeiture VA Regulations 1901, 1902	Day following date of last payment on award to payee who forfeited.] (May 29, 1959)
[(N) Guardian	Day following date of last payment to prior payee or fiduciary. NOTE: Award to guardian shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients.] (May 29, 1959)
[(O) Increases VA Regulations 1156, 1157 1401(B) S.O. 11-13-36, 5-26-49, 11-10-49, 5-9-50 MF 533 and 578 Par. 3, let. 1-28-48; let. 8-8-49, let. to VFW 4-21-58 IB 8-52, Par. 4, IB 21-7; Par. 2, IB 21-9; Par. 8, IB 22-5 G.C. 7-15-55, 6-5-59 L-26; P-45 Par. 8, Inst. 1, PL 86-146 Par. 1d, IB 21-29	Increase (amending, reopening, or supplementing a previous award authorizing any payments not previously authorized to the individual involved) will be fixed in accordance with the facts found but not earlier than the date of receipt of the evidence establishing entitlement. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection or forfeiture.] (May 29, 1959) (Formerly 1214 and 2588(B))
[(P) Liberalizing Issues MF 659 + 1,F 424 Let. 12-12-47, 7-12-4?, 10-19-53, 5-25-54 Let. to VFW 6-10-49, 11-29-49 IB 8-31, 8-53; Par. 9, IB 8-54; Par. 2, IB 8-69 F-2 S.O. 3-25-53 Par. 5108, M 8-1, 8-2-6 2 S.O. 6-11-56, Inst. 1-A, PL 86-222	Unless otherwise provided, the date of an amended regulation or a VA issue approved by the Administrator or by his direction. If issue is applied on initiative of VA, award will (formerly 2140(B)) +2553 Followed by 133

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be effective the date of administrative determination, e.g., the date the evaluation is made.] (May 29, 1959) (Formerly 1214(B)) 6-3-59

[(Q) New and Material Evidence
VA Regulation 1156

(1) Other than service department records	
(a) Received within appeal period or prior to appellate decision	The effective date will be as though the original decision had not been rendered and will be in accordance with VA Regulation 1104(C).
-Par 2, IB 8-69; I-104, M75 11 578	
(b) Received after the appeal period	Date of receipt of evidence which constitutes a new claim or date entitlement arose, whichever is later.
S 0. 7-22-49	
(2) Service department records	To agree with evaluation (since it is considered these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made, whichever is later, subject to rules on original claims filed within 1 year after separation from service.] (May 29, 1959)
M75 78, 8-31-30; Par. 15, Ltr 1-28-48; Par. 8, IB 8-61, recorded decision 11/18/52; Ltr. 7-19-56; M7 201, 8-6-48. ~~Par. 2, IB 8-69; I-104; MP 511~~ Par. 48, "Conferences B VA" file	(Formerly 1201, 1212(B), 2931(F))

[(R) Pending Claims on January 1, 1959 (Sec. 9, PL 85-857)

(1) Entitlement solely by reason of PL 85-857	Not earlier than January 1, 1959.
(2) Entitlement under prior laws	In accordance with provisions of prior law.] (May 29, 1959)

[(S) Renouncement
VA Regulation 1106

Date of receipt of new claim.)] (May 29, 1959)

[(T) Servicemen's Indemnity
VA Regulation 1705(C)

Dependency and indemnity compensation may begin if otherwise in

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order the day following the due date of the final installment of servicemen's indemnity which is payable.] (May 29, 1959)

(Formerly 2928(B))

[(U) Whereabouts Now Known
VA Regulations 1158, 1458(I)

(1) Whereabouts unknown for less than 1 year	Day following date of last payment.
(2) Whereabouts unknown for 1 year or more	Date the evidence showing the payee's present whereabouts is received in the VA.] (May 29, 1959)

[1401 (§3.401). VETERANS.--Awards of pension or compensation payable to or for a veteran will be effective as follows:

(A) Aid and Attendance VA Regulation 1552	(1) Date of receipt of claim or date entitlement arose, whichever is later. See also VA Regulation 1400(B) (2). (Formerly 2080) (2) Date of departure from hospital, institution, or domiciliary.] (May 29, 1959)
[(B) Dependents, Additional Compensation for VA VA Regulation 1004(B) (2)	Commencing date of veteran's award if dependent shown on claim and evidence is received within 1 year after date of request. (Increases, see VA Regulation 1400(O).)] (May 29, 1959)
[(C) Divorce of Veteran and Wife	See VA Regulation 1501(D).] (May 29, 1959)
[(D) Institutional Awards VA Regulation 1852	
(1) Chief officer of non-VA hospital or institution	From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.

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Appendix

Veterans Administration
Washington 25, D.C.

December 1, 1962

38 CFR 3.400 (P)

VA REGULATIONS

COMPENSATION AND PENSION--Transmittal Sheet 270

Remove pages	Insert pages
129-3R and 130-3R	129-4R and 130-4R [130a-3R, 130b-2R]
130a-2R and 130b-R	
131-R and 132-R	131-2R and 132-2R
133-2R and 134-2R	133-3R and 134-3R
135 and 136	135-R and 136-R
137, 138, 139, 140	137-R and 138-R, 139-R, 140-R

Paragraphs revised	Paragraphs added	Paragraph canceled
1400 (Introduction), (C), (D), (F), (G), (I), (O), (P), (Q), (R)	1400(V)	1402(C)
1401 (B), (F)	1401(H)	
1403(A)		

EXPLANATION

The purpose of the following comments on the changes included in this amendment of VA Regulations is to inform all concerned why these changes are being made. These comments are not regulatory.

Public Law 87-825 amends 38 U.S.C. 3010 to provide that unless otherwise specifically stated, the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of pension, compensation or dependency and indemnity compensation will be fixed in accordance with the facts found, but not earlier than the date of claim. Where a request for reconsideration (either for increase or to reopen) was pending on December 1, 1962, benefits may be authorized from that date if necessary evidence is received within 1 year after the date of request.

The new section 3010 is applicable as to events which occurred on or after December 1, 1962 (such as death of the veteran), or where entitlement is established under the liberalizing provisions of the act (as in sec. 351 cases), subject to the limitation that no benefits will be authorized solely by reason of this act for periods prior to December 1, 1962. Where benefits are otherwise payable for periods prior to December 1, 1962, the effective date of awards will be determined under the prior regulations.

Budget 65-3

3-11-63

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The former sections 3004 and 3011 have been repealed by section 5 of the act. Section 3004 required new and material evidence to reopen a finally disallowed claim and limited the effective date of benefits to the date of receipt of such evidence. Section 3011 required evidence establishing entitlement to constitute a claim for increase and limited the effective date of increased benefits to the date of receipt of the evidence establishing entitlement. In either a reopened claim or claim for increase, the crucial date was the date of receipt of evidence. The problem boiled down to what was acceptable evidence, which was a question of fact to be determined in the individual case.

A single, uniform rule is provided by the act extending the general rule applicable in original claims as to effective date of an award of benefits to reopened claims or claims for increase. In an original claim, reopened claim or claim for increase, the effective date of an award of benefits, unless otherwise specified, will be the date of receipt of claim or the date evidence shows entitlement, whichever is the later. For example, a veteran in receipt of compensation whose claim had been finally adjudicated writes the VA alleging increased disability. He is requested to submit evidence to support his contention, and on the basis of our request furnishes the VA with a statement from his private physician which justifies the ordering of an examination. The examination shows increased disability. Formerly increased benefits would ordinarily have been awarded from the date of receipt of the private physician's statement. Under present regulations increased benefits could be awarded from date of receipt of the veteran's letter if the private physician's statement was received within 1 year from the date the VA requested the veteran to submit evidence of increased disablement.

Section 3010 as amended also effects changes in the effective dates of awards of pension, compensation and dependency and indemnity compensation as follows:

1. Death benefits may be paid for the full month in which the veteran's death occurred, rather than the day following the date of death. This appl. only where the veteran's death occurred on or after December 1, 1962, the effective date of Public Law 87-825. In such cases, the veteran's pension or compensation will be terminated (under sec. 3012(b)) effective the end of the preceding month. This eliminates any accrued benefit in the usual case. Claim for death benefits must have been filed within 1 year after the date of death. Under section 3110, the monthly rate of death pension, compensation or dependency and indemnity compensation for a widow for the month in which the veteran died will not be less than the monthly rate of pension or compensation payable to the veteran, as provided in VA Regulation 1020.

2. Dependency and indemnity compensation for a child may be paid for the full month in which the child's entitlement arose, rather than from the date of the contingency. If claim is filed within 1 year after the date of the entitling contingency, dependency and indemnity compensation may be paid for the full month in which the child's 18th birthday occurred, or the month in which the widow's remarriage or death occurred. The commencing date of

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payments to the child will be determined without regard to the fact that an additional allowance may have been paid to the widow under 38 U.S.C. 411 through the day preceding the child's 18th birthday.

3. In section 351 cases, disability compensation may be paid from the date of injury or aggravation resulting from hospitalization or other VA services, rather than from the date of claim, if a claim is filed within 1 year after the injury or aggravation occurred.

4. Additional compensation for dependents commencing the date of the qualifying rating is subject to a new time limit for the submission of evidence. This is discussed in connection with the revision of VA Regulation 1401(B).

5. A more restrictive period for retroactive benefits has been established for awards based on the correction of military records by a board established in a service department under 10 U.S.C. 1552 or 1553. The delimiting date of August 1, 1956, has been changed to 1 year prior to the date of reopening of a disallowed VA claim.

6. A retroactive period of 1 year has been established for awards based on a liberalizing law or VA issue. This provision is covered in the new VA Regulation 1114. Where a finally disallowed claim is reopened by the claimant, or is administratively reviewed by the VA, more than 1 year after the effective date of the law or issue, benefits otherwise payable may be authorized for a period of 1 year prior to the date of reopening or administrative determination of entitlement.

Section 3010 as amended further provides statutory authority in two areas for effective dates of awards previously authorized by VA regulations. The new section 3010(g) limits the retroactive effect of a liberalizing law or VA issue to the effective date of the law or issue, consistent with VA Regulation 1400(P). The new section 3010(h) incorporates the substance of the present VA Regulation 1660(B)(2)(a)2 and provides for pension awards retroactive to the first of a calendar year where an award of pension has been deferred or made at a lower rate based on anticipated income, if evidence of entitlement is received before the end of the next calendar year.

Paragraph 1400. The general statement concerning the commencing dates of awards has been amended to provide a uniform rule applicable to original claims, reopened claims, and claims for increase. All claims are subject to the time limit of 1 year for the submission of evidence requested by the VA.

Subparagraph (C) (1), (2) and (3)(b) has been amended to provide for payment of death benefits from the first day of the month in which the veteran's death occurred, or in the case of a child entitled to dependency and indemnity compensation in his own right, from the first day of the month in which entitlement arose.

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Subparagraph (D) has been revised to delete the former restriction which provided for the increased rate based on attained age of a veteran or widow effective the date of receipt of evidence.

Subparagraph (F) has been revised to show that where an award of VA benefits is made to a person who has been receiving Bureau of Employees' Compensation benefits, the award will generally be made effective the date of the claim or other date authorized by the applicable law, and will be subject to payments made by the Bureau of Employees' Compensation.

P.C. 5-31-62

Subparagraph (G) has been amended to substitute the new code citation, which is substantially a restatement of the provisions contained in the repealed section 3004, and to show that it is applicable to cases where VA benefits are payable based on the findings of a service department Board for the Correction of Records or a Board of Review, as well as to correction of military records by other competent service department authorities. This provision in no way affects cases which fall within the purview of VA Regulation 1156(E), in which the service department has corrected a prior certification on the basis of error. Where it is officially reported that there was an error of commission or omission in the earlier report, the situation is analogous to VA error. The commencing date of benefits is determined on the basis of the earlier claim.

Findings by either of the boards named will meet the requirements of this subparagraph. Other corrections or changes in prior reports or certifications are included if based on new evidence, or based on a change in policy or views, or both. This includes corrections as to character of discharge, active duty status, line of duty, or willful misconduct, and recertifications of Philippine service.

Where there is doubt as to whether a new report or certification requires application of VA Regulation 1156(E), 1400(Q)(2) or this subparagraph, the service department should be requested to state specifically whether the latest decision represents correction of an earlier error or is based on evidence which was not in the official records when the earlier report was made, or a change in policies or views, or both.

Subdivision (3) has been changed to restrict retroactive benefits, formerly payable retroactively to August 1, 1956, to 1 year prior to the date of reopening of the VA claim which has been disallowed.

Subparagraph (I) has been revised to reflect the provisions of the new section 3010 (c) and (d). Disability compensation may be authorized for a veteran from the date of an injury or aggravation resulting from hospital treatment or other circumstances contemplated by section 351, if a claim is filed within 1 year after that date. The commencing date of death benefits under this section is subject to the general rule contained in section 3010(d).

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The removal of the 2-year time limit for the filing of claims in these cases is discussed in transmittal sheet 273 accompanying the revision of VA Regulation 1800.

Subparagraph (O), relating to increases, has been restated to show clearly that increased benefits may be authorized from the date of receipt of the claim rather than from the date of receipt of the evidence establishing entitlement. Reference to forfeiture as a reason for termination has been dropped because of its limited application. The second sentence of this subparagraph precludes retroactive increases where the award has been terminated because of forfeiture or because the award was erroneous by reason of an act of commission or omission by the payee or by reason of administrative error or error in judgment.

The substance of subparagraph (P) has been deleted and a cross-reference substituted to the new VA Regulation 1114, which covers effective dates of benefits based on liberalizing laws and VA issues.

In subparagraph (Q), subdivision (1)(b) has been amended to delete reference to date of receipt of new and material evidence as a controlling factor in determining the effective date of an award. M74119

The substance of the former subparagraph (R) has been canceled as generally inapplicable to pending claims. A statement concerning reopened claims has been substituted.

(Comment on subpar. (U), which has not been changed. The date of receipt of evidence of the payee's whereabouts is continued under the "facts found" provision in sec. 3010(a).)

Subparagraph (V), which has been added, incorporates rules covering the effective dates of benefits for a widow or child where a marriage or remarriage was either void ab initio or has been annulled by a court decree. Where it is determined that the marriage was void without court action, payments are subject to the basic limitation contained in section 3010(a), which precludes payment of benefits prior to the date of receipt of a claim. Where the marriage was annulled, section 3010(k), formerly 3010(f) as added by Public Law 87-674, authorizes the payment of retroactive benefits from the date the decree of annulment became final if a claim is received within 1 year after that date. Under the latter provision, benefits may be paid retroactively where a void marriage was declared invalid by a court decree.

Benefits may not be authorized for a widow on the basis of an annulled marriage under Public Law 87-674 for any period prior to September 19, 1962. The commencing date of benefits from the date of a claim, rather than from the date of receipt of evidence that a marriage was void, may not be authorized for any period prior to December 1, 1962.

Appendix at 068

12-1-62

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EFFECTIVE DATES

Pg 21-1, A-21-1, Par 3 b.

1400 (§3.400). GENERAL.--[Except as otherwise provided, the effective date of an award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. The effective date of an evaluation and award of pension or compensation for a veteran will be the date of receipt of the claim or the date entitlement arose, whichever is later. (38 U.S.C. 3010(a); PL 87-825)] (Dec. 1, 1962) M 608

(A) Unless Specifically Provided	On basis of facts found. (May 29, 1959)	
(B) Disability Benefits		
(1) Disability pension VA Regulation 1003(C)	Date of receipt of claim or date entitlement arose, whichever is later.	Decision & notes added to P-23 0-21; 61-15
(2) Disability Compensation		
(a) Direct service connection VA Regulation 1004(B)	Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from the period of service in which the disability was incurred or aggravated; otherwise, date of receipt of claim, or date entitlement arose, whichever is later.	1401(A) 1403(A)
(b) Presumptive service connection	Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. (May 29, 1959)	S.O. 7-2-48 G.O: 12-19-53 4-21-60
(C) Death Benefits		
(1) Death in service [(38 U.S.C. 3010(j); PL 87-825)] VA Regulations 1004(C), 1005(B)	[First day of the month] fixed by by the Secretary concerned as the date of actual or presumed death, if claim is received within 1 year after the date the initial report of	

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G.C. 6-20-58

actual death or finding of presumed death was made; however, benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran.

(2) Death after separation from service [(38 U.S.C. 3010(d); PL 87-825)] VA Regulations 1003(D), 1004(C), 1005(B)

Philippine File, (MF 736)

[First day of the month in which the veteran's death occurred] if claim is received within 1 year after [the date of death]; otherwise, date of receipt of claim. (Dec. 1, 1962)

(3) Dependency and indemnity compensation

(a) Deaths prior to January 1, 1957 VA Regulation 1702

1400(J), (T) 1705

Date of receipt of election or date dependency and indemnity compensation becomes the greater monthly benefit if election is received within (generally) 120 days before that date. (May 29, 1959)

(b) Child [(38 U.S.C. 3010(e); PL 87-825)]

1152, 1155, 1403

[First day of the month in] which entitlement arose if claim is received within 1 year after [the date of entitlement]; otherwise, date of receipt of claim. (Dec. 1, 1962)

(D) Age--Veteran 65, Widow 70 VA Regulation 1208

In other than original claims date of receipt of claim or 65th (or 70th) birthday, whichever is later, if evidence filed within 1 year after date of request [ ]. (Dec. 1, 1962)

(E) Apportionment VA Regulations 1450 through 1461, 1551, 1557

1400 (E) 1005 3

On original claims, in accordance with the facts found. On other than original claims from the first day of the month (in Philippine cases, the first day of the second month) following the month in which:

(1) Claim is received for apportionment of a veteran's award, except that where payments to him have been interrupted, apportionment will be

Par. 10, IB 21-43

Followed by 131-2R

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effective the day following date of last payment if a claim for apportionment is received within 1 year after that date;

(2) notice is received that a child included in a widow's award is not in the widow's custody, except that where payments to her have been interrupted, apportionment will be effective the day following date of last payment if such notice is received within 1 year after that date. (Sept. 1, 1962)

Par. 39.10, M 21-1; B.C. 1-21-63

(F) Bureau of Employees' Compensation Cases
VA Regulation 1708
Par. 29.21, M 21-1

[Date authorized by applicable law, subject to any payments made by the Bureau of Employees' Compensation over the same period of time.] (Dec. 1, 1962) B.C. 5-31-62 1500(E)

(G) Correction of Military Records
(38 U.S.C. [3010(i); PL 87-825])

Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, [by a board established under 10 U.S.C. 1552 or 1553,] or because of other corrective action by competent military, naval, or air authority, the award will be effective from the [latest] of these dates: (Dec. 1, 1962)

(Par. 31E) 1156 (14131(A)) A.D. 665 807 G.C. 3-14-58 7-11-62 7-29-68

(1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;

(2) Date of receipt of claim if claim was disallowed; or (May 29, 1959)

(3) [1 year prior to date of reopening of disallowed claim]. (Dec. 1, 1962)

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5215
~~2906~~

(H) Difference of Opinion
VA Regulation 1105

A.D. 970

Dec. 1/1/62

(1) As to decisions not final prior to date of receipt in Central Office, the date from which benefits would have been payable if the former decision had been favorable.

(2) As to decisions final prior to date of receipt in Central Office, date of Central Office approval authorizing a favorable decision.

Pa. 3.12, M21-1

(3) Where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death. (July 20, 1962)

Digest 62-13

(I) Disability or Death Due to Hospitalization, etc.
[(38 U.S.C. 3010 (c), (d); PL 87-825)]
VA Regulation 1800

(1) Disability

Date [injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.] Digest 0-37

Par. 24, 52, M21-1

(2) Death

[First day of month in which the veteran's death occurred] if a claim is received within 1 year following the date of death [; otherwise, date of receipt of claim]. (Dec. 1, 1962)

Philippine file.

(J) Election of VA Benefits
VA Regulation 1700 series

(1) Unless otherwise provided, the date of receipt of election, subject to prior payments.

 Followed by 133-4R

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(2) July 1, 1960, as to pension payable under Public Law 86-211, where pension is payable for June 30, 1960, under the law in effect on that date, including an award approved after that date, if the election is filed within (generally) 120 days from date of notice of the award. The award will be subject to prior payments over the same period of time. (PL 86-211) (July 20, 1962) 1711

(K) Error
VA Regulation 1105

Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision. (May 29, 1959) A.D. 970

(L) Foreign Residence

See VA Regulation 1653. (May 29, 1959)

(M) Forfeiture
VA Regulations 1901, 1902

Day following date of last payment on award to payee who forfeited. (May 29, 1959)

(N) Guardian

Day following date of last payment to prior payee or fiduciary.

NOTE: Award to guardian shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients. (May 29, 1959)

(O) Increases
[(38 U.S.C. 3010(a); PL 87-825)]
VA Regulations [1109,] 1156, 1157

[Except as provided in VA Regulation 1401(B)(2), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.] (Dec. 1, 1962) 1401(B)

See note on T 3 [illegible]

S.O. 11-13-36, 5-26-49, 11-10-49, 5-9-50
MF 533, 578
Par. 3, let. 1-28-48; let. 8-8-49; let. to VFW 4-21-58
IB 8-52, Par. 4, IB 21-7; Par. 2, IB 21-9; Par. 8, IB 22-5; Par. 14, IB 21-29
G.C. 7-15-55, 6-5-59
L-26; P-45, 60-29, 62-2
Par. 8, Inst. 1, PL 86-146

133-3R

Par. 24 [illegible] Inst. 1

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(P)	Liberalizing [Laws and VA] Issues	[See VA Regulation 1114.] (Dec. 1, 1962)

(Q) New and Material Evidence
VA Regulation 1156

(1) Other than service department records

(a) Received within appeal period or prior to appellate decision	The effective date will be as though the [former] decision had not been rendered[. See] VA Regulation 1104(C).
Par. 2, IB 8-69; MF 511, 578; I-104 and 61-15 (Digests)	
(b) Received after [final disallowance]	Date of receipt of [ ] new claim or date entitlement arose, whichever is later.
S.O. 7-22-49	
140(1)(2) Par. 3.040(a) (2) Service department records	To agree with evaluation (since it is considered these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made, whichever is later, subject to rules on original claims filed within 1 year after separation from service. [See subparagraph (G) as to correction of military records.] (Dec. 1, 1962)
MF 291, 8-6-48 MF 578, 8-31-50 Par. 15, let. 1-28-48; let. 7-19-56 Par. 8, IB 8-61 Recorded decision 11-18-52 Par. 48, "Conferences BVA" file.	
(R) [Reopened Claims VA Regulations 1109, 1156, 1157]	[Date of receipt of claim or date entitlement arose, whichever is later.] (Dec. 1, 1962)
Digest 62-26; (S) Renouncement VA Regulation 1106 Par. 29, 28, M21-1	See note on T 5.320 Date of receipt of new claim. (May 29, 1959)
(T) Servicemen's Indemnity VA Regulation 1705(C)	Dependency and indemnity compensation may begin if otherwise in order the day following the due date of the final installment of servicemen's indemnity which is payable. (May 29, 1959)

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(U) Whereabouts Now Known
VA Regulation 1158

(1) Whereabouts unknown for less than 1 year — Day following date of last payment. (Aug. 10, 1961)

(2) Whereabouts unknown for 1 year or more — Date the evidence showing the payee's present whereabouts is received in the VA. (May 29, 1959)

See note on T.S. 270.

[(V) Void or Annulled Marriage (or Remarriage)
(38 U.S.C. 3010(f), PL 87-674; 3010(a), (k), PL 87-825)
VA Regulation 1055

(1) Void: Date the parties ceased to cohabit or date of receipt of claim, whichever is later. 1207

(2) Annulled: Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.] (Dec. 1, 1962)

New — See note on T.S. 270.

Former rule now del 1402(C)

1401 (§3.401). VETERANS.--Awards of pension or compensation payable to or for a veteran will be effective as follows:

(A) Aid and Attendance
VA Regulation 1552

(1) Date of receipt of claim or date entitlement arose, whichever is later.
See also VA Regulation 1400(B)(2).

(2) Date of departure from hospital, institution, or domiciliary. (May 29, 1959)

(B) Dependents, Additional [Compensation] for
VA Regulation 1004(B)(2)

The earlier of the following dates: 1403(A)

(1) Commencing date of veteran's award if dependent shown on claim and evidence is received within 1 year after date of request. (July 20, 1962) 1257

(2) For compensation, effective date of the qualifying evaluation if basic proof of dependents [in existence on that date]

Advance dist. by memo. 9-11-74 with TS 550

Veterans Administration
Washington, D.C. 20420

38CFR3.400(p)

~~September 9, 1974~~
Eff. 1-1-74

VA REGULATIONS

COMPENSATION AND PENSION—Transmittal Sheet 551

Remove pages	Insert pages
129-8R and 130-8R	129-9R and 130-9R

Paragraph revised	Paragraphs added	Paragraphs canceled
1400(B), C]	None	None

EXPLANATION

The purpose of the following comment on the changes included in this amendment of VA Regulations is to inform all concerned why these changes are being made. This comment is not regulatory.

Public Law 93-177 effected a general increase in rates of disability and death pension and dependency and indemnity compensation for parents. Additional provisions of the Act provide for awards of disability pension effective the date the veteran became permanently and totally disabled, if application is filed within 1 year from that date, and reduction of awards to $50 instead of $30 when a veteran receiving pension is without dependents and is hospitalized by the VA. Transmittal sheets 550 through 552 implement these provisions of Public Law 93-177.

Paragraph 1400. The preamble has been amended to eliminate an apparent inconsistency with the lettered subparagraphs relative to effective dates of evaluations. Subparagraph (B)(1) has been amended to implement the provision of Public Law 93-177 which permits award of disability pension effective the date permanent and total disability arose when the claim is filed within 1 year from that date. This amendment is effective January 1, 1974, the effective date of the Public Law 93-177, and is applicable to claims filed after that date. Benefits may not be awarded under this amendment for any period prior to its effective date.

These provisions are qualified by the requirement that the award will be effective the date entitlement arose when this is a later date. This could occur where the veteran's income for all portions of the year in which he became permanently and totally disabled and filed his claim is excessive but his income for the following year will not be excessive. In such a case the date of entitlement is January 1, of the following year and the award would be made effective that date.

Subparagraphs (B)(2)(c) and (C)(3)(d) which were historical only have been deleted.

RichRoudebush

RICHARD L. ROUDEBUSH
Acting Administrator

Distribution: RPC. 2210
FD

1-1-74

38 CFR 3.400(p)

EFFECTIVE DATES

Intro Change Only

1400 (§3.400). GENERAL. Except as otherwise provided, the effective date of an [evaluation and] award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. [ ] (38 U.S.C. 3010(a); PL 87-825) (Jan. 1, 1974)

Par. 37.04, M 21-3

(A) Unless Specifically Provided	On basis of facts found. (May 29, 1959)
(B) Disability Benefits	
(1) Disability Pension VA Regulation 1003(C)	Date of receipt of claim or date [on which the veteran became permanently and totally disabled, if claim is filed within 1 year from such date], whichever is [to the advantage of the veteran; provided that, an award of pension may not be effective prior to the date entitlement arose. PL 93-177] (Jan. 1, 1974) P. 4, G.C. 12-31-59; decision & notes added to Digest 0-21; Digests P-23 & 61-15; MF 642
(2) Disability Compensation	
(a) Direct service connection VA Regulation 1004(B)	Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated. S.O. 7-2-43; G.C. 12-19-58 & 4-21-60, 8-16-63, 11-3-64; ltr. 3-4-64; with Digest 70-7
(b) Presumptive service connection VA Regulations 1307, 1308, 1309	Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty. (June 12, 1964) S.O. 9-17-47; MF 608

[ ] Was historical. See TS 551.

1-1-74

38 CFR 3.400(p)

(C) Death Benefits

10 3 14 3 (1) Death in service (38 U.S.C. 3010(j); PL 87-825) VA Regulations 1004(C), 1005(B)	First day of the month fixed by the Secretary concerned as the date of actual or presumed death, if claim is received within 1 year after the date the initial report of actual death or finding of presumed death was made; however, benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran. Par. 41.11 & 39.04, M 21-1; ltr. 5-18-71
14 2(C) (2) Death after separation from service 14 (38 U.S.C. 3010(d); PL 87-825) VA Regulations 1003(D), 1004(C), 1005(B)	First day of the month in which the veteran's death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim. (Dec. 1, 1962) Phil. file (MF 730); ltr. 7-3-67; Digest 68-4; G.C. 3-17-70
(3) Dependency and indemnity compensation	
14)(J) (a) Deaths prior to January 1, 1957 (T 17 VA Regulation 1702	Date of receipt of election or date dependency and indemnity compensation becomes the greater monthly benefit if election is received within (generally) 120 days before that date. (May 29, 1959) Sec. A-7, M 21-1
11 (C) (b) Child (38 U.S.C. 3010(e); PL 87-825)	First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim. (Dec. 1, 1962) II 21-70-18
(c) Deaths on or after May 1, 1957 (in-service waiver cases) VA Regulations 1005(B)(3) and 1702.	Date of receipt of election or date dependency and indemnity compensation becomes the greater benefit payable under VA Regulation 1005(B)(3) if election is received within 120 days before that date. (Effective June 25, 1970) (June 25, 1970)

Cross-Reference: VA Regulation 1114(A)

Was historical.
See TS 551.

Appendix at 078

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(D) Age–Veteran 65, Widow 70
VA Regulation 1208

In other than original claims date of receipt of claim or 65th (or 70th) birthday, whichever is later, if evidence filed within 1 year after date of request. (Dec. 1, 1962) 1152 1155 1403

(E) Apportionment
VA Regulations 1450 through 1461, 1551, 1557

On original claims, in accordance with the facts found. On other than original claims from the first day of the month following the month in which: (Dec. 9, 1963) 10137

G.C. 6-3-63; Par. 26.05, and 39.10, M 21-1

(1) Claim is received for apportionment of a veteran's award, except that where payments to him have been interrupted, apportionment will be

38 CFR 3.400(p) 1-1-74

effective the day following date of last payment if a claim for apportionment is received within 1 year after that date;

(2) notice is received that a child included in a widow's award is not in the widow's custody, except that where payments to her have been interrupted, apportionment will be effective the day following date of last payment if such notice is received within 1 year after that date. (Sept. 1, 1962)

Par. 39.10, M 21-1; G.C. 1-21-63

(F) Bureau of Employees' Compensation Cases VA Regulation 1708

Date authorized by applicable law, subject to any payments made by the Bureau of Employees' Compensation over the same period of time. (Dec. 1, 1962) 1500(E)

Par. 29.21, M 21-1, G.C. 5-31-62

(G) Correction of Military Records (38 U.S.C. 3010(i); PL 87-825)

Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, by a board established under 10 U.S.C. 1552 or 1553, or because of other corrective action by competent military, naval, or air authority, the award will be effective from the latest of these dates: (Dec. 1, 1962) 1156 10131(E) 14131(C)

G.C. 3-14-58, 7-11-62, 7-29-65 August 68-13

(1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;

(2) Date of receipt of claim if claim was disallowed; or (May 29, 1959)

(3) 1 year prior to date of reopening of disallowed claim. (Dec. 1, 1962)

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969
5215

(H) Difference of Opinion
VA Regulation 1105

(1) As to decisions not final prior to receipt [of an application for reconsideration or to reopen, or prior to reconsideration on VA initiative,] the date from which benefits would have been payable if the former decision had been favorable.

A.D. 970; ltr. 7-3-67; G.C. 3-11-69
modifying A.D. 970

(2) As to decisions [which have become final (by appellate decision or failure to timely initiate and perfect an appeal) prior to receipt of an application for reconsideration or to reopen, the date of receipt of such application or the date entitlement arose, whichever is later.]

Par. 3.12, MBVA-1; G.C. 9-18-72

(DeFRANCESCO)

(3) [As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) and reconsideration is undertaken solely on VA initiative, the date of Central Office approval authorizing a favorable decision or the date of the favorable Board of Veterans Appeals decision.]

G.C. 3-11-69
SEE TS 437; Par. 3.12, MBVA-1

[(4)] Where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans Appeals which was in effect at the date of the veteran's death. (Dec. 1, 1962)

Digest 62-13; Sec. A-2, PG 71-1

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(I) Disability or Death Due to Hospitalization, etc.
(38 U.S.C. 3010 (c), (d);
PL 87-825;
VA Regulation 1800

(1) Disability — Date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.

Digest 0-37; Par. 29.52, M 21-1

(2) Death — First day of month in which the veteran's death occurred if a claim is received within 1 year following the date of death; otherwise, date of receipt of claim. (Dec. 1, 1962)

Philippine file.

(J) Election of VA Benefits
VA Regulation 1700 series

(1) Unless otherwise provided, the date of receipt of election, subject to prior payments.

466477

38CFR 3.400(p) 12-1-62

(2) July 1, 1960, as to pension payable under Public Law 86-211, where pension is payable for June 30, 1960, under the law in effect on that date, including an award approved after that date, if the election is filed within (generally) 120 days from date of notice of the award. The award will be subject to prior payments over the same period of time. (PL 86-211) (July 20, 1962) 1711

(3) January 1, 1965, as to pension payable under Public Law 86-211 as amended by Public Law 88-664 if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election is filed prior to May 1, 1965.

(4) January 1, 1965, as to pension payable under Public Law 86-211 as amended by Public Law 88-664 if there was basic eligibility on that date for pension on the basis of service in the Indian wars or Spanish-American War and an election is filed prior to May 1, 1965. (Jan. 1, 1965)

(5) January 1, 1969, as to pension payable under Public Law 86-211 as amended by Public Law 90-275 if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election is filed prior to May 1, 1969. (Aug. 15, 1968)

[(6) August 1, 1972, as to pension payable under Public Law 86-211 as amended by Public Law 92-328 if there was basic eligibility on that date based on death of a veteran of the Spanish-American War and an election is filed prior to December 1, 1972.] (Aug. 1, 1972) See TS 497

(K) Error
VA Regulation 1105

Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision. (May 29, 1959)

A.O. 970 as amd. by G.C. 3-11-65; A.O. 8-16-67 & 3-19-65; ltr. 9-1-64 & 11-12-65 & 7-25-67; MF 578, 8-31-66; Par. 3.12, MRVA-1

(L) Foreign Residence

See VA Regulation 1653. (May 29, 1959)

(M) Forfeiture
VA Regulations 1901, 1902

Day following date of last payment on award to payee who forfeited. (May 29, 1959)

38 CFR 3.400(p) 12-1-62

(N) **Guardian**

Day following date of last payment to prior payee or fiduciary.

NOTE. Award to guardian shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients. (May 29, 1959)

1321
1401(B)
1905(D)
1953(C)

(O) **Increases**
(38 U.S.C. 3010(a); PL 87-825)
VA Regulations 1109, 1156, 1157

3-11-69

Except as provided in VA Regulation 1401(B), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection. (Dec. 24, 1970)

S.O. 11-13-36, 5-26-49, 11-10-49; MF 533; MF 578, 1-11-65 & 8-31-66 ~~& 3-11-69~~; Par. 3, ltr. 1-28-48; ltr. 8-8-49, 11-12-65, 7-13-67; ltr. to VFW 4-21-58; O.C. 7-15-55, 8-5-59, 12-31-62; Digests I-45, 62-[illegible]; ~~Par. 24.06, 25.23, M 21-1~~

(P) **Liberalizing Laws and VA Issues** See VA Regulat[illegible] 14. (Dec. 1, 1962)

[illegible]st 64-3

(Q) **New and Material Evidence**
VA Regulation 1156

(1) Other than service department records

(a) Received within appeal period or prior to appellate decision

The effective date will be as though the former decision had not been rendered. See VA Regulations 9953, 9954. (Jan. 1, 1965)

MF 511 & 578; Digests I-104 & 61-15; ltr. 3-14-60 & 12-15-71

(b) Received after final disallowance

Date of receipt of new claim or date entitlement arose, whichever is later.

S.O. 7-22-49; MF 419; O.C. 2-17-70

(2) Service department records

MF 291, 8-6-48; MF 578, 8-31-50; Par. 15, ltr. 1-28-48; ltr. 7-19-56; ~~Rxxxx~~ recorded decision 11-18-52, Par. ~~xx~~ 3.12d, MBVA-1

To agree with evaluation (since it is considered these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made, whichever is later, subject to rules on original claims filed within 1 year after separation from service. See subparagraph (G) as to correction of military records (Dec. 1, 1962)

(R) **Reopened Claims**
VA Regulations 1109, 1156, 1157

Date of receipt of claim or date entitlement arose, whichever is later. (Dec 1, 1962)

MF 419; Digest 62-26; Par. 29.28, M 21-1; ltr. 2-4-65; O.C. 2-17-70

(S) **Renouncement**
VA Regulation 1106

Date of receipt of new claim (May 29, 1959)

[ ] TS 542

[(T)] Whereabouts Now Known (May 31, 1974)
(Formerly in U)

See VA Regulation 1158(C). (Dec. 1, 1962)

[(U)] **Void or Annulled Marriage of a Child**
(38 U.S.C. 3010(f), PL 87-674; 3010(a), (k), PL 87-825)
VA Regulation 1055
(May 31, 1974)
(Formerly in V)

(1) Void: Date the parties ceased to cohabit or date of receipt of claim, whichever is later. 1207

(2) Annulled: Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. (Dec. 1, 1962) Par. 8.10, M 21-1; G.C. 2-26-71; Digest 71-4

[(V)] **Termination of Remarriage of Widow (Widower)**
(38 U.S.C. 3010(f), PL 87-674; 3010(a), (k), PL 87-825; 38 U.S.C. 103(d)(2) and 3010(1), PL 91-376, effective January 1, 1971, VA Regulation 1055)
(May 31, 1974)
(Formerly in W)

(1) Void: Date the parties ceased to cohabit or date of receipt of claim, whichever is the later. 1700(B)

(2) Annulled: Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. (Dec. 1, 1962)

(3) Death: Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. (Effective January 1, 1971)

(4) Divorce: Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. (Effective January 1, 1971) (Aug. 12, 1970) Par. 8.10, M 21-1

[(W)] **Termination of Relationship or Conduct Resulting in Restriction on Payment of Benefits**
(38 U.S.C. 103(d)(3), 3010(m), PL 91-376, effective January 1, 1971, VA Regulation 1050(B)(2), and 1055) (May 31, 1974)
(Formerly in X)

Date of receipt of application filed after termination of relationship and after December 31, 1970. (Aug. 12, 1970) 1700(B)

1401 (§3.401). VETERANS. Awards of pension or compensation payable to or for a veteran will be effective as follows:

Par. 37.04, M 21-1

(A) **Aid and Attendance**
VA Regulation 1552

(1) Date of receipt of claim or date entitlement arose, whichever is later. See also VA Regulation 1400(B)(2). Digest 71-5

38 CFR 19.5

VR #2(a), Pt II, Par II
07/28/33

VA Pamp, BVA Rules
of Practice, Pg 1
rev 07/12/41

VA Pamp, BVA Rules
of Practice, Pg 1
rev 03/04/46

VA Pamp 1-1, BVA Rules
of Practice, Pg 1
rev 06/23/50

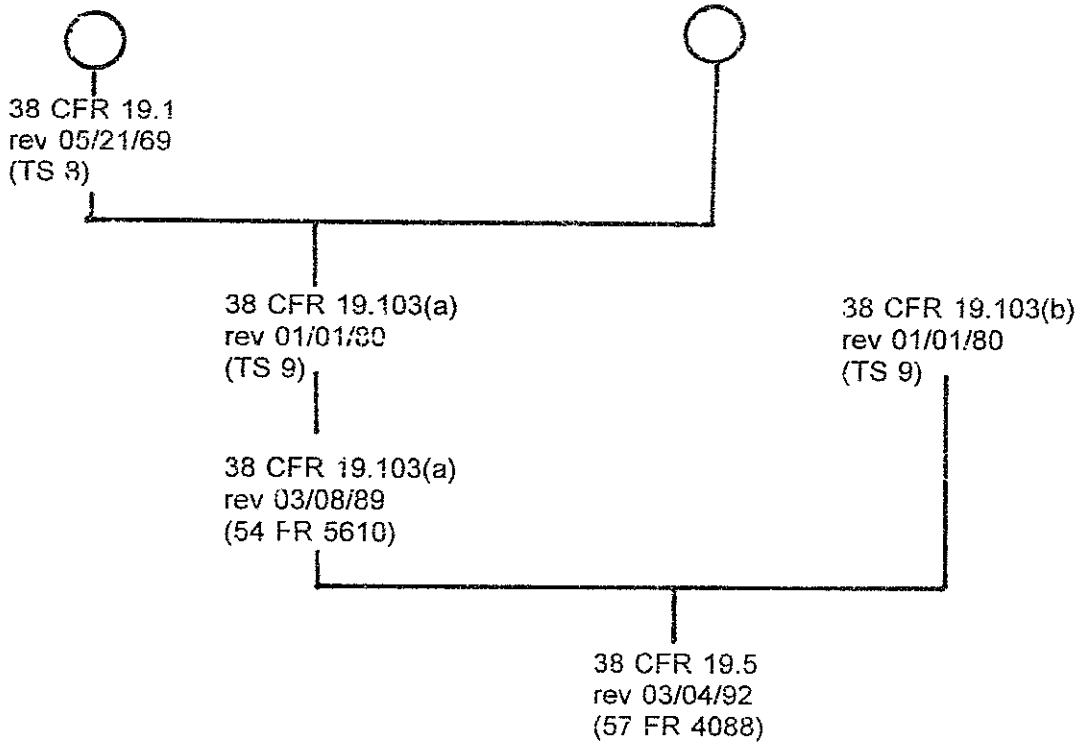
38 CFR 19.0
rev 10/04/60
(TS 2)

38 CFR 19.0
rev 01/01/63
(TS 3)

38 CFR 19.1
rev 01/22/64
(TS 4)

38 CFR 19.103
rev 01/22/64
(TS 4)

38 CFR 19.5


38 CFR 19.1
rev 05/21/69
(TS 8)
38 CFR 19.103(a)
rev 01/01/80
(TS 9)
38 CFR 19.103(b)
rev 01/01/80
(TS 9)
38 CFR 19.103(a)
rev 03/08/89
(54 FR 5610)
38 CFR 19.5
rev 03/04/92
(57 FR 4088)

EXECUTIVE ORDER

VETERANS REGULATION NO.2 (a)

EFFECTIVE DATES OF AWARDS OF DISABILITY AND DEATH PENSIONS; PROVISIONS FOR FILING CLAIMS; REVIEW OF PRESUMPTIVE CLAIMS BY SPECIAL REVIEW BOARDS

WHEREAS, Section 9, Title I, of Public No. 2, 73d Congress, entitled "An Act To maintain the credit of the United States Government", provides:

> "Claims for benefits under this title shall be filed with the Veterans' Administration under such regulations, including provisions for hearing, determination, and administrative review, as the President may approve, and payments shall not be made for any period prior to date of application. When a claim shall be finally disallowed under this title and the regulations issued thereunder, it may not thereafter be reopened or allowed."

AND WHEREAS, Paragraphs 1 and 3 of Section 20, Public No. 78, 73d Congress, entitled "An Act Making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1934, and for other purposes", provides:

> "The President is hereby authorized under the provisions of Public Law Numbered 2, Seventy-third Congress, to establish such number of special boards (the majority of the members of which were not in the employ of the Veterans' Administration at the date of enactment of this Act), as he may deem necessary to review all claims (where the veteran entered service prior to November 11, 1918, and whose disability is not the result of his own misconduct), in which presumptive service connection has heretofore been granted under the World War Veterans' Act, 1924, as amended, wherein payments were being made on March 20, 1933, and which are held not service connected under the regulations issued pursuant to Public Law Numbered 2, Seventy-third Congress. Members of such boards may be appointed without regard to the Civil Service laws and regulations, and their compensation fixed without regard to the Classification Act of 1923, as amended. Such special boards shall determine, on all available evidence, the question whether service connection shall be granted under the provisions of the regulations issued pursuant to Public Law Numbered 2, Seventy-third Congress (notwithstanding the evidence may not clearly demonstrate the existence of the disease or any specific clinical findings within the terms of or period prescribed by regulation 1, part 1, subparagraph (c), or instruction numbered 2, regulation numbered 1, issued under Public Law Numbered 2, Seventy-third Congress), and shall in their deciding resolve all reasonable doubts in favor of the veteran, the burden of proof in such cases being on the Government.

RECEIVED
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(c) Pension to or for a child shall continue only until the child's eighteenth birthday or marriage, or, if permanently and totally incapable of self-support, as outlined in Veterans Regulation No. 10(a), until the child's marriage or death, but only during the continuance of such permanent and total incapacity or until completion of education or training (but not after the child marries or reaches the age of twenty-one years, whichever is the earlier date), when the child is or may hereafter be pursuing a course of instruction at a school, college, academy, seminary, technical institute or university particularly designated by him and approved by the Administrator.

V. Pension or emergency officers' retirement pay, not paid during the lifetime of the person entitled thereto, shall upon the death of such person be paid as follows: (a) Upon death of the veteran, first to the widow; second, if there is no widow, to his child or children under the age of eighteen years at his death; (b) upon death of the widow, to her children under the age of eighteen years at her death; (c) upon the death, prior to payment of all or any part of the apportioned amount, of an apportionee of a part of the veteran's pension or emergency officers' retirement pay, such apportioned amount not paid shall be payable to the veteran; (d) in all other cases no payment whatsoever of such pension or emergency officers' retirement pay shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of burial, provided, however, that no payment shall be made unless claim therefor be filed within one year from the date of the death of the person entitled and perfected by the submission of the necessary evidence within six months from the date of the request of the Veterans' Administration therefor. Such pension shall include only payments due and unpaid at the time of death under then existing ratings or decisions.

VI. A specific claim on the form prescribed by the Administrator of Veterans' Affairs must be filed by a veteran, who is not already on the rolls of the Veterans' Administration, with the Veterans' Administration for benefits under Public No. 2, 73d Congress, involving disabilities and deaths resulting from injury or disease incurred or aggravated in line of duty in wartime or peace-time service and disabilities and deaths not incurred in service.

PART II

APPEALS

Ex. Order Reg 2(b) 01/2/34

I. There is hereby created in the Veterans' Administration a Board of Veterans' Appeals under the administrative control and supervision of a Chairman directly responsible to the Administrator of Veterans' Affairs. The Board shall be composed of the Chairman, a Vice Chairman and not to exceed fifteen (15) associate members and such other professional, administrative, clerical and stenographic personnel as are necessary in conducting hearings and in the consideration and disposition of appeals properly before such Board in accordance with the instructions herein provided. Members of the Board, including the Chairman and the Vice Chairman, shall be appointed by the Administrator of Veterans' Affairs with the approval of the President.

(a) The Chairman may from time to time divide the Board into sections of three members, assign the members of the Board thereto and designate the chief thereof. If a section as a result of a vacancy or absence or inability of a member assigned thereto to serve thereon is composed of a number of members less than designated for the section, the Chairman may assign other members to the section or direct the section to proceed with the transaction of business without awaiting any additional assignment of members thereto. A hearing docket shall be maint[illegible] and formal recorded hearings shall be held by such associate member [illegible] members as the Chairman may designate, th[illegible] associate member or members [illegible]ng of the section which will make final determination in the claim. A section of the Board shall make a determination on any proceeding instituted before the Board and on any motion in connection therewith assigned to such section by the Chairman and shall make a report of any such determination, which report shall constitute its final disposition of the proceeding.

(b) The determination of the section, when unanimously concurred in by the members of the section, shall be the final determination of the Board except that such Board on its own motion may correct an obvious error in the record, or may upon the basis of additional official information from the War or Navy Department reach a contrary conclusion. In the event of a disagreement among the members of the section the concurrence of the Chairman with the majority of members of such section shall constitute the final determination of the Board, subject to correction only on a showing of obvious error, or when in the opinion of the Board, a contrary conclusion is justified on the basis of additional official information furnished by the War or Navy Department.

II. All questions on claims involving benefits under the laws administered by the Veterans' Administration shall be subject to one review on appeal to the Administrator of Veterans' Affairs, decisions in such cases to be made by the Board of Veterans' Appeals. Jurisdiction to render final decisions on questions so reviewed on appeal shall vest in the Board of Veterans' Appeals in accordance with the provisions of paragraph 1. When a claim shall be disallowed by the Board of Veterans' Appeals it may not thereafter be reopened and allowed and no claim based upon the same factual basis shall be considered, except that where subsequent to such disallowance new and material evidence in the form of official reports from the proper Service Department is secured, the Board of Veterans' Appeals may authorize the reopening of the claim and review of the former decision. The Board of Veterans' Appeals shall in its decisions be bound by the Regulations of the Veterans' Administration, instructions of the Administrator of Veterans' Affairs, and the precedent opinions of the Solicitor.

III. Applications for review on appeal to the Administrator of Veterans' Affairs shall be filed (excepting in those claims involving simultaneously contested claims, (see paragraph 9 (a) hereof)) within six months from the date of mailing of notice of the result of initial review or determination or from July 1, 1933, whichever is the later date. Applications for review must be filed with the activity which entered the denial. If no application for review on appeal is filed in accordance with this regulation within the time limit specified, the action taken on initial review or determination shall become final and the claim will not thereafter be reopened

(c) The Boards in resolving all reasonable doubts in favor of the claimant will not indulge in speculative theory in reaching their conclusion. The Boards will, however, give due consideration to lay evidence as well as medical evidence of record, bearing in mind that the evidence should be viewed in the light of the facts set forth rather than the conclusions stated and that the weight to be given the evidence must depend largely upon the knowledge and capacity of the individual giving the testimony concerning the subject or fact about which he testifies.

(d) That provision of the law which placed the burden of proof on the Government in denying benefits will not be construed to mean that affirmative evidence only may be used as rebuttal evidence, but such rebuttal may also be predicated upon sound medical judgment, negative evidence of the War or Navy Department, or any other competent evidence available relating to the question at issue.

VI. The procedure covering the operation of the Special Review Boards will be provided by the Administrator of Veterans' Affairs in an appropriate instruction issued pursuant to provisions of this regulation.

VII. The provisions in this regulation covering the review of claims on appeal shall apply to the decisions of the Special Review Boards.

VIII. Service connection granted by Special Review Boards will not thereafter be discontinued except in the event of an appeal, or for fraud, misrepresentation, or when it is found by the Administrator that such grant is clearly contrary to this regulation and instructions governing the operation of the Special Review Boards.

FRANKLIN D. ROOSEVELT.

The White House,
July 28, 1933.

RULES OF PRACTICE

BOARD OF VETERANS' APPEALS

SEAL

Gen. Records
removing history from
Sec. 1 - Rules of Practice
B.V.A.; sending to
Miss Isaacson.

Approved by the
Administrator of
Veterans' Affairs

July 12, 1941

cj
5/9/61

Rules of Practice
Board of Veterans' Appeals

The Board of Veterans' Appeals is established by authority of, and functions under, Executive Orders dated July 28, 1933, and January 2, 1934 (38 U.S. Code, c. 12). Its membership comprises a Chairman, Vice Chairman, and Associate Members not exceeding thirty in number.

The duties of the Board of Veterans' Appeals are to decide appeals on all questions in claims involving benefits under the laws administered by the Veterans Administration. The law provides that appeals shall be made to the Administrator of Veterans' Affairs, decisions to be made by the Board of Veterans' Appeals.

The Board is divided into sections of three members each, one of whom is designated Chairman. Each section has authority to make decisions on the questions that come before it, being governed by the Regulations of the Veterans Administration, instructions of the Administrator of Veterans' Affairs, and precedent opinions of the Solicitor. A unanimous decision by a section is final on the question involved, except that it may reconsider its action and reach a contrary conclusion upon a showing of obvious error in the record at

RULES OF PRACTICE

BOARD OF VETERANS' APPEALS

APPROVED BY THE ADMINISTRATOR OF
VETERANS' AFFAIRS

1946

Rules of Practice

Board of Veterans' Appeals

The Board of Veterans' Appeals is established by authority of, and functions under, Executive Orders dated July 28, 1933, and January 2, 1934 (38 U. S. Code, c. 12). Its membership comprises a chairman, vice chairman, and associate members.

The duties of the Board of Veterans' Appeals are to decide appeals on all questions in claims involving benefits under the laws administered by the Veterans' Administration. The law provides that appeals shall be made to the Administrator of Veterans' Affairs, decisions to be made by the Board of Veterans' Appeals.

The Board is divided into sections of three members each, one of whom is designated chairman. Each section has authority to make decisions on the questions that come before it, being governed by the regulations of the Veterans' Administration, instructions of the Administrator of Veterans' Affairs, and precedent opinions of the solicitor. A unanimous decision by a section is final on the question involved, except that it may reconsider its action and reach a contrary conclusion upon a showing of obvious error in the record at the time the decision was rendered or upon the basis of additional official information from the War or Navy Department.

A claimant or his duly authorized representative may have a hearing in connection with an appeal. Hearings may be held either before a section of the Board or before a regional rating board of the field office of the Veterans' Administration having original jurisdiction over the claim. When a hearing on an appeal is held before a regional rating board, that board merely acts as a hearing agency for the Board of

VA PAMPHLET 1-1

RULES OF PRACTICE
BOARD OF VETERANS APPEALS

Approved by
The Administrator of Veterans Affairs
1950

Rules of Practice

Board of Veterans Appeals

The Board of Veterans Appeals is established by authority of, and functions under, Executive Order 6230 dated July 28, 1933, and Public Law 425, Seventy-ninth Congress (38 U. S. Code, c. 12). Its membership comprises a chairman, vice chairman, and associate members.

The Board of Veterans Appeals decides appeals on all questions in claims involving benefits under the laws administered by the Veterans Administration. The law provides that appeals shall be made to the Administrator of Veterans Affairs; decisions to be made by the Board of Veterans Appeals.

The Board is divided into sections of three members, one of whom is designated chief. Each section has authority to make decisions on the questions that com before it, being governed by the regulations of the Veterans Administration, instructions of the Administrator of Veterans Affairs, and precedent opinions of the Solicitor. A unanimous decision by a section is final on the question involved, except that it may reconsider its action and reach a contrary conclusion upon a showing of obvious error in the record at the time the decision was entered or upon the basis of additional official information from the service department.

A claimant or his duly authorized representative may have a hearing in connection with an appeal. The hearing may be requested to be held before a section of the Board or before a rating board or other appropriate personnel of the office of the Veterans Administration having original jurisdiction over the claim or of the regional or district office in which the hearing is desired. When a hearing on an appeal

Veterans Administration
Washington 25, D.C.

October 4, 1960

VA REGULATIONS

APPEALS--Transmittal Sheet 2

See att. 7
J.C. 3-11-69

Remove pages	Insert pages
1-7R and 2-7R, 3-5R, 4-5R, 5-4R, 6-4R, 7-4R, 8-4R, 9-4R, 10-4R, 11-6R, 12-6R, 13-7R, and 14-7R	1-8R and 2-8R 3-6R and 4-6R, [5-5R, 6-5R, 7-5R, 8-5R, 9-5R, 10-5R, 11-7R, 12-7R, 13-8R, and 14-8R]

Paragraphs revised	Paragraphs added	Paragraph canceled
9800	9800.1	9806
9801	9808	
9802	9809	
9803	9810	
9807		

EXPLANATION

The purpose of the following comment on the changes included in this amendment to the VA regulations is to inform all concerned why these changes are being made. This comment is not regulatory.

Paragraph 9800. This regulation has been amended primarily to reflect the responsibility of the Board of Veterans Appeals to apply and exercise all of the adjudicative criteria and authority derived from the VA regulations, instructions of the Administrator and precedent opinions of the General Counsel relating to claims for benefits under laws administered by the VA. This is considered implicit in the broad statutory authority placed in the Board to decide "all questions in claims involving benefits" on appeals to the Administrator.

The instruction against removal of a case from appellate channels for submission to Central Office under VA Regulation 1142 (old) was deleted by revision of that regulation dated June 16, 1960, for the reason that adjudicative determinations under VA Regulation 1142 as to compensation or pension are within the statutory definition of jurisdiction contained in 38 U.S.C. 4004(a) and this regulation. Accordingly, extra-schedular determinations under VA Regulation 1142 by the department having original adjudicative responsibility for the issue are subject to appeal.

Paragraph 9800.1. The primary purpose of this regulation is to consolidate in the VA regulations appropriate delegations of authority relating to the Board of Veterans Appeals. These delegations extend to both the chairman and vice chairman.

Subparagraphs (A) and (B) continue the delegated authority to authorize consideration of unappealed questions involved in cases properly before the Board. The chairman or vice chairman may authorize assumption of jurisdiction of such unappealed questions not finally disallowed and administrative action when finally disallowed. Subparagraph (A) is liberalizing in that effective dates of benefits allowed will be fixed as though the issues over which jurisdiction is assumed were specifically appealed.

Subparagraph (C) continues without change the authority contained in VA Regulation 1350 (old) for the Board of Veterans Appeals to make determinations as a body of original jurisdiction on any remaining questions of entitlement to emergency officers' retirement pay.

The delegation of authority referred to in VA Regulation 452(B) to authorize Central Office investigations is incorporated in subparagraph (D).

Paragraph 9801. This paragraph has been amended to include as coming under the Board's appellate jurisdiction benefits enacted subsequent to the last revision.

Paragraph 9802. This paragraph has been revised to include additional regulatory material, now contained in VA Regulation 1111(A) (new) and VA Manual M1-1.

Paragraph 9803. This is a clarifying amendment to show specifically that a claimant, his authorized representative, or both, may be heard at a hearing on appeal along with such witnesses as he may present, and to place in the regulation the well-established practice that a claimant who has filed an appeal is entitled to a hearing upon request.

Paragraph 9807. This regulation is being amended to reflect changes in organization and titles, and to establish uniform appeal periods for comparable employees of the Veterans Benefits Office, district and regional offices and centers with adjudication activities, and separate VA clinics and hospitals with which regional office medical divisions have been consolidated.

Paragraph 9808. Restatement of VA Regulation 1328 (old).

Paragraph 9809. This gives regulatory sanction to a long established practice.

Paragraph 9810. Restatement of VA Regulation 1329 (old).

NOTE: Each paragraph number is followed by a parentheses containing the number of the section in which it appears in the Code of Federal Regulations.

By direction of the Administrator:

Robert J. Lamphere
ROBERT J. LAMPHERE
Acting Deputy Administrator

Distribution in accordance with VA Form 3-3040.

38 CFR 19.0
eff: 10/4/60

APPEALS

THE BOARD OF VETERANS APPEALS

~~- Par. 2, ID 8-6 ; VAR 10000; # 1-1~~

9800 (§19.0). GENERAL APPELLATE JURISDICTION.--All questions on claims involving benefits under the laws administered by the VA are subject to review on appeal to the Administrator of Veterans Affairs, decisions in such cases to be made by the Board of Veterans Appeals. Jurisdiction [ ] is vested [by statute] in the Board [to make final decisions on all questions reviewed on appeal. (38 U.S.C. 4004(a))] in its decisions, the Board is bound by the regulations of the VA, instructions of the Administrator and precedent opinions of the chief law officer. The statutory jurisdiction vests responsibility in the Board to apply and exercise all the adjudicative criteria and authority in such controlling media properly for application by the department having original adjudicative responsibility for claims for benefits.] (Oct. 4, 1960)

~~-Sec. 7-5-58~~

[9800.1 (§19.0a). DELEGATION OF AUTHORITY TO CHAIRMAN AND VICE CHAIRMAN, BOARD OF VETERANS APPEALS.--In addition to the authority vested in the Chairman and Vice Chairman, Board of Veterans Appeals, by law, VA regulations and manuals, authority is delegated to each as follows:

(A) To authorize assumption of jurisdiction of an adjudicative determination not involved in an appeal before the Board where the determination has not become final.

(B) To authorize administrative action on an adjudicative determination not involved in an appeal before the Board where the determination has become final.

(C) To authorize determinations as a body of original jurisdiction on questions of entitlement to emergency officers' retirement pay under the provisions of section 11, Public Law 85-857. Canceled - to conform with VAR 1754 as of 1-3-63 - original jurisdiction to DVB. See note on TD 3.

(D) To approve Central Office investigations of matters before the Board.] (Oct. 4, 1960)

9801 (§19.1). SUBJECT MATTER OF APPEALS.--More specifically, the Board's appellate jurisdiction covers questions of entitlement to compensation for service-connected disabilities; pension for disability without regard to service connection; death compensation and pension; [dependency and indemnity compensation;] vocational rehabilitation, including need therefor; education [and training allowance; subsistence allowance; educational assistance allowance and special training allowance (38 U.S.C. ch. 35); special allowance (38 U.S.C. 412); death gratuity (38 U.S.C. 423);] insurance benefits, including maturity of contracts, waiver of premiums, and legal beneficiary; payment or reimbursement for unauthorized medical expenses; burial allowances; disability suffered as the result of examination, treatment

For annotations, see [illegible] "[illegible]" to.

Veterans Administration
Washington 25, D.C.

January 1, 1963

VA REGULATIONS

APPEALS--Transmittal Sheet 3

Remove pages	Insert pages
1-8R and 2-8R	1-9R and 2-9R
3-6R and 4-6R, [5-5R, 6-5R, 7-5R, 8-5R, 9-5R, 10-5R, 11-7R, 12-7R, 13-8R, and 14-8R]	3-7R and 4-7R
	5-6R and 6-6R, 7-6R, 8-6R, 9-6R, 10-6R, 11-8R, 12-8R, 13-9R, 14-9R

Paragraphs revised	Paragraphs added	Paragraph canceled
9800	9801.1	9800.1(D) (See explanation)
9802(A),(B),(C),(D)	9801.2	
9803 (See explanation)	9801.3 (See explanation)	
9804	9801.4 (See explanation)	
9805	9801.5	
9807	9802(E),(F)	
9808		

EXPLANATION

The purpose of the following comment on the changes included in this amendment to the VA Regulations is to inform all concerned why these changes are being made. This comment is not regulatory.

Paragraph 9800. This paragraph has been amended to reflect the statutory exception to finality of decisions of the Board of Veterans Appeals where claims involve insurance contracts.

Paragraph 9800.1. This paragraph has been amended to conform with VA Regulation 1754 (compensation and pension--transmittal sheet 277). Original jurisdiction on claims for emergency officers' retirement pay is vested in the Compensation and Pension Service, Department of Veterans Benefits, subject to the usual appellate review. In this paragraph, former subparagraph (C) is canceled and subparagraph (D) is redesignated (C).

Paragraph 9801.1. This paragraph reflects the appellate steps, under Public Law 87-666, after January 1, 1963. This procedure will be for application in any case in which an appeal is received on or after January 1, 1963.

Paragraph 9801.2. The right to representation in all stages of the appeal is placed in the regulations for the first time, although it is not new. It is currently covered in Rule 30, Rules of Practice, Board of Veterans Appeals (1962 Edition).

Paragraph 9801.3. This is a restatement of VA Regulation 9803.

Paragraph 9801.4. This is a revision of subparagraph (A) of VA Regulation 9802. It reflects the requirements after January 1, 1963, for furnishing claimants and their representatives information as to appellate rights at all stages of an appeal, and a copy of the statement of the case.

Paragraph 9801.5. This places in the regulations information as to who is authorized to file an appeal. It is currently covered by Rule 9, Rules of Practice, Board of Veterans Appeals (1962 Edition).

Paragraph 9802. This is a complete revision of VA Regulation 9802 (B), (C), and (D) reflecting the time limits for initiating and filing a substantive appeal on and after January 1, 1963, under the provisions of Public Law 87-666.

Paragraph 9803. This paragraph is new. Former VA Regulation 9803 has been restated as VA Regulation 9801.3.

Paragraph 9804. This paragraph has been revised to reflect the provision of 38 U.S.C. 4005(d)(4), added by Public Law 87-666 and 38 U.S.C. 4004(d), added by Public Law 87-97.

Paragraph 9805. This paragraph has been amended to update organizational change.

Paragraph 9807. This paragraph has been amended to reflect the new code citation and to update organizational change.

Paragraph 9808. This paragraph has been amended to make it clear that both the claimant and his representative can merge an appeal.

By direction of the Administrator:

W. J. DRIVER
Deputy Administrator

Distribution:

DVB Publications Code 0081.
All other same as VA Regulations for Appeals.

38 CFR 19.0
eff: 1/1/63

APPEALS

THE BOARD OF VETERANS APPEALS

9800 (§19.0). GENERAL APPELLATE JURISDICTION.--All questions on claims involving benefits under the laws administered by the VA are subject to review on appeal to the Administrator of Veterans Affairs, decisions in such cases to be made by the Board of Veterans Appeals. Jurisdiction is vested by statute in the Board to make final decisions on all questions reviewed on appeal [, with the exception of those involving insurance contracts.] (38 U.S.C. [784,]4004(a)) In its decisions, the Board is bound by the regulations of the VA, instructions of the Administrator and precedent opinions of the chief law officer. The statutory jurisdiction vests responsibility in the Board to apply and exercise all the adjudicative criteria and authority in such controlling media properly for application by the department having original adjudicative responsibility for claims for benefits. (Jan. 1, 1963)

Became 9801

9800.1 (§19.0a). DELEGATION OF AUTHORITY TO CHAIRMAN AND VICE CHAIRMAN, BOARD OF VETERANS APPEALS.--In addition to the authority vested in the Chairman and Vice Chairman, Board of Veterans Appeals, by law, VA regulations and manuals, authority is delegated to each as follows:

(A) To authorize assumption of jurisdiction of an adjudicative determination not involved in an appeal before the Board where the determination has not become final. (Oct. 4, 1960)

(B) To authorize administrative action on an adjudicative determination not involved in an appeal before the Board where the determination has become final. (Oct. 4, 1960)

[(C)] To approve Central Office investigations of matters before the Board. (Jan. 1, 1963)

Became 9802

9801 (§19.1). SUBJECT MATTER OF APPEALS.--More specifically, the Board's appellate jurisdiction covers questions of entitlement to compensation for service-connected disabilities; pension for disability without regard to service connection; death compensation and pension; dependency and indemnity compensation; vocational rehabilitation, including need therefor; education and training allowance; subsistence allowance; educational assistance allowance and special training allowance (38 U.S.C. ch. 35); special allowance (38 U.S.C. 412); death gratuity (38 U.S.C. 423); insurance benefits, including maturity of contracts, waiver of premiums, and legal beneficiary; payment or reimbursement for unauthorized medical expenses; burial allowances; disability suffered as the result of examination, treatment or hospitalization or vocational training; emergency officers' retirement benefits; basic eligibility to loans and unemployment compensation; adjusted compensation; waiver or recovery of overpayments; forfeiture of rights; and all related mixed questions of fact and law, such as character and type of

For annotations, see cards on "VA 9800" etc.

38 CFR 19.1/38 CFR 19.103

Advance dist. by memo. 1-30-64 above (re publication in Federal Register 1-29-64).

Veterans Administration
Washington, D.C. 20420

January 22, 1964

VA REGULATIONS

See ltr. to S.C. 3-11-69

APPEALS--Transmittal Sheet 4

Remove pages	Insert pages
1-9R and 2-9R	1-i 1-10R and 2-10R 3-i and 3-ii 3-iii and 3-iv
3-7R and 4-7R	3-8R and 4-8R
5-6R and 6-6R, 7-6R, 8-6R, 9-6R, 10-6R, 11-8R, 12-8R, 13-9R, 14-9R	5-7R and 6-7R 7-7R and 8-7R 9-7R and 10-7R 11-9R and 12-9R 13-10R and 14-10R 15 and 16 17 and 18 19 and 20 21

Paragraphs revised	Paragraphs added	Paragraphs canceled
9800 9800.1 9801 9804 9810 (See explanation for renumbering)	9901 through 9956	9801.1 9801.2 9801.3 9801.4 9801.5 9802 9803 9805 9807 9808 9809

EXPLANATION

The purpose of the following comment on the changes included in this amendment of VA Regulations is to inform all concerned why the changes are being made. This comment is not regulatory.

The appellate regulations issued by the Board of Veterans Appeals have been contained in the 9800 series of the VA Regulations. The Board's Rules of Practice have been published in VA Pamphlet 1-1 and VA Manual M1-1.

In the past, the departments administering benefits have included provisions relating to appeals in their sections of the VA Regulations. The primary purpose of this revision is to consolidate all appellate provisions in the "Appeals" section, eliminating them from other sections, except for

necessary references. Substantive revisions and editorial changes have been made as necessary. Those regulations of a general nature are incorporated in the VA Regulations 9800 series, entitled "Appeals--General," and those governing practice before the Board are incorporated in the Rules of Practice, which are published in the VA Regulations 9900 series, entitled "Appeals--Rules of Practice."

APPEALS--General

Paragraph 9801. VA Regulation 9800 renumbered. No change in text.

Paragraph 9802. VA Regulation 9800.1 renumbered. No change in text.

Paragraph 9803. VA Regulation 9801 renumbered and revised to include restatement of VA Regulation 5076(B) relating to the subject matter of appeals from determinations of the Chief Attorney under 38 U.S.C. 3203(b)(3).

Paragraph 9804. Restatement of VA Regulation 1103(G).

Paragraph 9805. VA Regulation 9810 renumbered. No change in text.

APPEALS--Rules of Practice
(VA Regulations 9900 Series)

The Rules of Practice, Board of Veterans Appeals, published in VA Pamphlet 1-1 (1962 edition), have been revised to reflect the new appellate procedure provided by Public Law 87-666, which was effective January 1, 1963. Regulatory provisions governing the obtaining of independent medical opinions provided by Public Law 87-671 have also been included. In addition, the Rules of Practice published herein reflect consolidation of VA Regulations governing appellate rights and practice before the Board, to facilitate their use within the VA and to assist service organizations, attorneys and other persons outside the VA.

The Rules of Practice, Board of Veterans Appeals, will be published in a revised edition of VA Pamphlet 1-1.

Revisions and rescissions to regulations dealing with other programs resulting from these changes are being separately published.

Paragraph 9955. Restatement of rule 29, VA Pamphlet 1-1 (1962 edition). If additional evidence is filed and it is determined that such evidence does not change the factual basis so as to warrant a change in the prior

decision, the statement of the case on appeal from that determination is inherently limited to the issue of whether the additional evidence established a new factual basis.

See the following:

Compensation and Pension--Transmittal Sheets 306 and 307
Insurance--Transmittal Sheet 97
Chief Attorneys--Transmittal Sheet 22
Medical--Transmittal Sheet 47
Vocational Rehabilitation and Training--Transmittal Sheet 202

RESCISSION: VA Pamphlet 1-1 (1962 edition).

By direction of the Administrator:

W. J. Driver

W. J. DRIVER
Deputy Administrator

Distribution: DVB Publications Code 0081
FD All other same as VA Regulations for Appeals

38 CFR 19.1
eff: 1/22/64

APPEALS

(Copy to MLVA-1)

THE BOARD OF VETERANS APPEALS

For annotations, see f x 3 index cards on "VAR ----".

[GENERAL]

[9801 (§19.1).] GENERAL APPELLATE JURISDICTION.--All questions on claims involving benefits under the laws administered by the VA are subject to review on appeal to the Administrator of Veterans Affairs, decisions in such cases to be made by the Board of Veterans Appeals. Jurisdiction is vested by statute in the Board to make final decisions on all questions reviewed on appeal, with the exception of those involving insurance contracts. (38 U.S.C. 784, 4004(a)) In its decisions, the Board is bound by the regulations of the VA, instructions of the Administrator and precedent opinions of the chief law officer. The statutory jurisdiction vests responsibility in the Board to apply and exercise all the adjudicative criteria and authority in such controlling media properly for application by the department having original adjudicative responsibility for claims for benefits. (Jan. 22, 1964)

1101 9003 1964 1834

Formerly 9[illegible].

[9802 (§19.2).] DELEGATION OF AUTHORITY TO CHAIRMAN AND VICE CHAIRMAN, BOARD OF VETERANS APPEALS.--In addition to the authority vested in the Chairman and Vice Chairman, Board of Veterans Appeals, by law, VA regulations and manuals, authority is delegated to each as follows: (Jan. 22, 1964)

1101 9902

(A) To authorize assumption of jurisdiction of an adjudicative determination not involved in an appeal before the Board where the determination has not become final. (Oct. 4, 1960)

(B) To authorize administrative action on an adjudicative determination not involved in an appeal before the Board where the determination has become final. (Oct. 4, 1960)

(C) To approve Central Office investigations of matters before the Board. (Jan. 1, 1963)

Formerly 9[illegible].

[9803 (§19.3)] SUBJECT MATTER OF APPEALS.--More specifically, the Board's appellate jurisdiction covers questions of entitlement to compensation for service-connected disabilities; pension for disability without regard to service connection; death compensation and pension; dependency and indemnity compensation; vocational rehabilitation, including need therefor; education and training allowance; subsistence allowance; educational assistance allowance and special training allowance (38 U.S.C. ch. 35); special allowance (38 U.S.C. 412); death gratuity (38 U.S.C. 423); insurance benefits, including maturity of contracts, waiver of premiums, and legal beneficiary; payment or reimbursement for unauthorized medical expenses; burial allowances; disability suffered as the result of examination, treatment or hospitalization or vocational training; emergency officers' retirement benefits, basic eligibility to loans and

38 CFR 19.103
eff: 1/22/64

[RULES OF PRACTICE]

For annotations, see 5 x 8 index cards on "VA: ——".
[GENERAL]

[9901 (§19.101). RULE 1. AUTHORITY

Pursuant to the authority vested in the Administrator of Veterans Affairs (38 U.S.C. 210(c)) there are hereby issued revised Rules of Practice which govern proceedings in appeals to the Board of Veterans Appeals.] (Jan. 22, 1964)

[9902 (§19.102). RULE 2. JURISDICTION

(A) Statutory. The Board's jurisdiction extends to all questions on claims involving benefits under the laws administered by the VA. (38 U.S.C. 4004(a))] (Jan. 22, 1964)

[(B) Delegated Authority. The Board may assume jurisdiction of an unappealed issue on its own motion in a case properly before the Board, as provided in VA Regulation 9802.] (Jan. 22, 1964)

[9903 (§19.103). RULE 3. GOVERNING CRITERIA

In the consideration of appeals, the Board shall be bound by the regulations of the VA, instructions of the Administrator, and precedent opinions of the General Counsel. (38 U.S.C. 4004(c))] (Jan. 22, 1964)

[9904 (§19.104). RULE 4. FINALITY OF DECISIONS

Decisions of the Board of Veterans Appeals are final, with the exception that claims involving insurance contracts are subject to court review. (38 U.S.C. 211(a), 784, 4004(a)) Reconsideration by the Board may be accorded under Rule 48 (VA Regulation 9948; 38 CFR 19.148).] (Jan. 22, 1964)

[ESTABLISHMENT AND COMPOSITION OF BOARD]

[9905 (§19.105). RULE 5. ESTABLISHMENT OF BOARD

The Board of Veterans Appeals is established by authority of and functions pursuant to 38 U.S.C. ch. 71.] (Jan. 22, 1964)

Misc & Hrg Rm. 824

Veterans Administration
Washington, D.C. 20420

May 21, 1969

VA REGULATIONS

APPEALS--Transmittal Sheet 8

Remove pages	Insert pages
3-iii and 3-iv	3-iii-R and 3-iv-R
1-12R and 2-12R	1-13R and 2-13R
19-R and 20-R	19-2R and 20-2R

Paragraphs revised	Paragraph added	Paragraphs canceled
9801	9948(C)	None
9802		
9948 Introduction, (A), (B)		
9949		
9950		
9951		
9953		

EXPLANATION

The purpose of the following comments on the changes included in this amendment of VA Regulations is to inform all concerned why these changes are being made. These comments are not regulatory.

APPEALS--GENERAL

Paragraph 9801. The sentence relating to finality of decisions deleted inasmuch as it duplicated Rule 4, Rules of Practice, Board of Veterans Appeals (VA Regulation 9904; 38 CFR 19.104).

Paragraph 9802. The changes made are editorial and clarifying in nature. In particular, subparagraph (B) is clarified to specifically show that the Board can administratively review a determination which became final either by an appellate decision or for failure to timely initiate and perfect an appeal. No substantive change has been made.

APPEALS--RULES OF PRACTICE

Paragraph 9948(A) (Rule 48(a)). In addition to editorial changes, subparagraph (A) is clarified to show that a "representative" can request reconsideration of an appellate decision. This is in accord with existing practice.

Paragraph 9948(C) (Rule 48(c)). Subparagraph (C) added to make it clear that a final appellate decision may be administratively reviewed under authority delegated in VA Regulation 9802(B). This is not a substantive change, but the addition makes it clear to the public, without the necessity of reference to VA Regulation 9802(B).

Paragraph 9949 (Rule 49). Editorial change.

Paragraph 9950 (Rule 50). This paragraph, currently restricted to "error", has been broadened to make it clear that the same rule as to evidence considered on reconsideration of an appellate decision is applicable to all cases reconsidered by the Board of Veterans Appeals. In addition, it has been modified to make it clear that the Board can obtain any needed expert medical or legal opinion when reconsidering an appellate decision.

Paragraph 9951 (Rule 51). As heretofore worded, this paragraph would apply only to a request for a hearing to show error. The language has been amended to take into account the possibility of an administrative review reconsideration as authorized by VA Regulation 9802(B).

Paragraph 9953 (Rule 53). Editorial change.

W. J. Driver

W. J. DRIVER
Administrator

Distribution: RPC: 0110
FD

APPEALS

THE BOARD OF VETERANS APPEALS

For annotations, see [illegible]

GENERAL

9801 (§19.1). GENERAL APPELLATE JURISDICTION.--All questions on claims involving benefits under the laws administered by the VA are subject to review on appeal to the Administrator of Veterans Affairs, decisions in such cases to be made by the Board of Veterans Appeals. [ ] (38 U.S.C. [ ]4004(a)) In its decisions, the Board is bound by the regulations of the VA, instructions of the Administrator and precedent opinions of the chief law officer. The statutory jurisdiction vests responsibility in the Board to apply and exercise all the adjudicative criteria and authority in such controlling media properly for application by the department having original adjudicative responsibility for claims for benefits. (May 21, 1969)

9802 (§19.2). DELEGATION OF AUTHORITY TO CHAIRMAN AND VICE CHAIRMAN, BOARD OF VETERANS APPEALS.--In addition to the authority vested in the Chairman and Vice Chairman, Board of Veterans Appeals, by law, VA regulations and manuals, authority is delegated to each as follows: (Jan. 22, 1964)

(A) To authorize assumption of [appellate] jurisdiction of an adjudicative determination [which] has not become final. (May 21, 1969)

(B) To authorize administrative action on an adjudicative determination [which] has become final [by appellate decision or failure to timely appeal.] (May 21, 1969)

(C) To [authorize] Central Office investigations of matters before the Board. (May 21, 1969)

9803 (§19.3). SUBJECT MATTER OF APPEALS.--More specifically, the Board's appellate jurisdiction covers questions of entitlement to: compensation for service-connected disabilities; pension for disability without regard to service connection; death compensation and pension; dependency and indemnity compensation; vocational rehabilitation, including need therefor; education and training allowance; subsistence allowance; educational assistance allowance and special training allowance (38 U.S.C. ch. 35); special allowance (38 U.S.C. 412); death gratuity (38 U.S.C. 423); insurance contracts, including total disability income provision, reinstatements, conversions, and changes of plan, and all insurance benefits; payment or reimbursement for unauthorized medical expenses; burial allowances; disability suffered as the result of examination, treatment or hospitalization or vocational training; emergency officers' retirement benefits; basic eligibility to loans and unemployment compensation; adjusted compensation; waiver or recovery of overpayments; waiver of payment of loan guaranty indebtedness (38 U.S.C. 1820(a)(4)); forfeiture of rights; and all related mixed questions of fact and law, such as

38 CFR 19.103(a) and (b)

Veterans Administration
Washington, D.C. 20420

~~February 4, 1985~~

VA REGULATIONS—TITLE 38 CODE OF FEDERAL REGULATIONS

Part 19 APPEALS—Transmittal Sheet 9

Remove pages	Insert pages
1-i	1-i-R
1-13R and 2-13R	1-14R and 2-14R
3-i-R and 3-ii-R	2a
3-iii-R and 3-iv-R	3-i-2R and 3-ii-2R
3-8R and 4-8R	3-iii-2R and 3-iv-2R
5-8R and 6-8R	3-v and 3-vi
7-7R and 8-7R	3-vii
9-8R and 10-8R	3-9R and 4-9R
10a	5-9R and 6-9R
11-9R and 12-9R	7-8R and 8-8R
13-11R and 14-11R	9-9R and 10-9R [10a]
15-R and 16-R	11-10R and 12-10R
17-R and 18-R	13-12R and 14-12R
19-2R and 20-2R	15-2R and 16-2R
21	17-2R and 18-2R
	19-3R and 20-3R
	21-R and 22
	23 and 24
	25 and 26
	27 and 28
	29 and 30

Sections revised	Sections added	Sections canceled
19.1		
19.2	19.6	None
19.3	19.157 through 19.200	
19.4		
19.5		
19.101 through 19.156		

EXPLANATION

The purpose of the following comments on this revision to VA Regulations is to inform all concerned why these changes are being made. These comments are not regulatory.

The Appeals Regulations—General and the Board of Veterans Appeals Rules of Practice have been completely revised to make them more readily understandable and to clarify certain practices of the Board. The major changes are listed below:

§19.1. Revised for clarity. A new paragraph (b) was added concerning appeals as to jurisdiction.

VA REGULATIONS—TITLE 38 CODE OF FEDERAL REGULATIONS

Part 19 APPEALS—Transmittal Sheet 9—Continued

§19.2. Formerly § 19.3 Common examples of issues over which the Board has jurisdiction have been listed, together with appropriate citations.

§19.3. This new regulation reiterates the BVA's jurisdiction over DM&S determinations.

§19.4. Formerly §19.5. Revised for clarity.

§19.5. Formerly §19.2. Revised for clarity.

§19.6. Formerly §19.4. The Board's liberal policy with respect to releasing decisions has been clarified.

Rule 1. New paragraphs (b) and (c) have been added to include the scope of the rules and the manner in which the rules will be construed.

Rule 2. This new rule establishes January 1, 1980, as the effective date for the revised rules.

Rule 3. New paragraph (b) makes note of the fact that, in its decisions, the Board is not bound by administrative issues not approved by the Administrator and is not bound by medical opinions.

Rule 4. Old Rule 4. Editorial.

Rule 5. Formerly Rule 22.

Rule 6. This new rule sets forth the procedure wherein an appellant or representative may request that a case be advanced on the docket.

Rule 7. This rule was added to assist appellants or representatives in corresponding with the Board of Veterans Appeals.

Rule 8. Formerly Rule 5.

Rule 9. Formerly Rule 6. Editorial.

Rule 10. Formerly Rule 7.

Rule 11. Formerly Rule 8. This rule was amended to specify that the Board of Veterans Appeals makes jurisdictional determinations.

Rule 12. Formerly Rule 2. Editorial.

Rule 91. New. The finding of harmless error will not require that the decision be vacated.

Rule 92. Formerly Rule 53. Revised for clarity.

Rule 93. Formerly Rule 54. Revised for clarity.

Rule 94. Formerly Rule 55. This has been restated to stress that a reopened claim involves both questions of materiality and the question of whether a new factual basis is provided warranting an allowance.

Rule 95. Formerly Rule 56. Revised for clarity.

Rule 96. New. This rule allows the Board to review "de novo" service-connection cause of death cases notwithstanding the fact that a final appellate decision had been rendered during the veteran's lifetime.

Rule 97. New. Although Board decisions should be consistent, the decisions of any given section are not binding upon the other sections of the Board.

Rule 98. New. This rule concerns Privacy Act requests for records in the custody of the Board.

Rule 99. This rule sets forth the procedure for amendment of records under the Privacy Act, particularly as such requests pertain to amending BVA decisions.

Rule 100. This rule was added to inform the public of the existence of the BVA Index to Appellate Decisions (BVA Index 1-01-1).

These regulations are effective January 1, 1980.

These regulations appear in the FEDERAL REGISTER of February 17, 1983 (48 FR 6961).

By direction of the Administrator

EVERETT ALVAREZ, Jr.
Deputy Administrator

Distribution: RPC: 0110
FD

38 CFR 19.103(a) and (b)
eff: 1/1/80

§ 19.5 Delegation of authority to Chairman and Vice Chairman, Board of Veterans Appeals.

The Chairman and/or Vice Chairman have authority delegated by the Administrator to:

(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a favorable benefit.

(b) Approve an administrative allowance on an adjudicative determination which has become final by appellate decision or failure to timely appeal.

(c) Order Central Office investigations of matters before the Board. (38 U.S.C. 210(b), 212(a))

§ 19.6 Disclosure of information.

It is the policy of the Board of Veterans Appeals for the full text of appellate decisions and statements of the case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 3301, that information will be removed from the decision or statement of the case and the remaining text will be furnished the appellant. A full-text appellate decision or statement of the case, however, will be disclosed to the designated representative unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant. (38 U.S.C. 4005(d)(2))

Cross-Reference: Access to records. See § 1.577(d).

Subpart B -- Appeals -- Rules of Practice

General

§ 19.101 Rule 1; Authority, scope of rules, and construction.

(a) *Authority*. Pursuant to the authority vested in the Administrator of Veterans Affairs (38 U.S.C. 210(c)(1)) there are hereby issued revised Rules of Practice which govern proceedings in appeals to the Board of Veterans Appeals.

(b) *Scope*. These rules govern the practices and procedures for processing appeals for the Board of Veterans Appeals. Where in any instance there is no applicable rule or procedure, the presiding Board member before whom the matter is pending may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules. (38 U.S.C. 4002)

(c) *Construction*. In accordance with the agency's policy of providing assistance to the appellant, these rules shall be construed to secure a just and speedy decision in every appeal. (38 U.S.C. 210)

Cross-References: Reasonable doubt. See § 3.102. Due process -- procedural and appellate rights with regard to disability and death benefits and related relief. See § 3.103.

§ 19.102 Rule 2; Effective date.

These rules are effective as of January 1, 1980. They govern all proceedings in cases filed on or after January 1, 1980.

§ 19.103 Rule 3, Governing criteria

(a) *General*. In the consideration of appeals, the Board shall be bound by the laws and regulations of the Veterans Administration, decisions and instructions of the Administrator of Veterans Affairs, and precedent opinions of the General Counsel. (38 U.S.C. 4004(c))

(b) *Manuals, circulars and opinions*. In its appellate decisions, the Board is not bound by agency manuals, circulars and similar administrative issues not approved by the Administrator. Opinions of the Chief Medical Director, Armed Forces Institute of Pathology, and independent medical experts obtained pursuant to Rules 76 and 77 (§§ 19.176 and 19.177) are only advisory in nature. (38 U.S.C. 4004(c), 4009)

Cross-Reference: Nonprecedential nature of Board decisions. See Rule 97, § 19.197.

§ 19.104 Rule 4; Finality of decisions

(a) A decision of the Board of Veterans Appeals is final (38 U.S.C. 211(a), 4004(a)), with the exception of a claim involving an insurance contract. (38 U.S.C. 784)

38 CFR 19.103(a)

Source: All Sources > Federal Legal - U.S. > **Federal Register**
Terms: **54 fr 5610** (Edit Search)

54 FR 5610

VETERANS ADMINISTRATION

AGENCY. Veterans Administration

38 CFR Parts 2, 3, 14, and 19

General Counsel Opinions

54 FR 5610

February 6, 1989

ACTION: Final rules.

SUMMARY: The Veterans Administration (VA) is issuing final regulatory amendments governing legal opinions of the VA General Counsel. These amendments include delegation of authority to the General Counsel to designate certain legal opinions involving veterans' benefits under laws administered by the VA as precedential. The amendments also authorize the General Counsel to issue legal opinions involving veterans' benefits under laws administered by the VA which are binding on Agency officials with respect to the matter at issue, but not precedential. Opinions of this type which are designated as "advisory only" will not have such binding effect. The regulatory action is intended to assist VA officials, benefit claimants and claimants' representatives by defining the status and effect of particular classes of General Counsel opinions.

EFFECTIVE DATE: These rules are effective March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Andrew J. Mullen, Deputy Assistant General Counsel, Office of the General Counsel, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2440.

TEXT:
SUPPLEMENTARY INFORMATION: On March 15, 1988, the VA published in the Federal Register (53 FR 8471) a notice proposing amendment of Parts 2, 3, and 14 of Title 38, Code of Federal Regulations, to define the status and effect of certain legal opinions of the General Counsel. The VA proposed adding a specific delegation of authority in Part 2 of Title 38 under which the General Counsel would be authorized to designate, in accordance with standards established in an amended § 14.507(b), certain legal opinions as having precedential effect in Agency adjudications and appellate reviews of benefit claims under laws administered by the VA. The Agency also proposed amendment of § 14.507 to provide that a written legal opinion of the General Counsel, as defined in a new paragraph (c) of that section, would be conclusive as to all Agency officials and employees with respect to the matter at issue unless designated "advisory only" or superseded by a change in statute or regulation or by a subsequent opinion. Finally, the VA proposed modification of § 3.101, governing adjudications, to recognize the General Counsel's authority to issue precedent opinions. Interested persons were given until April 14, 1988, to submit written comments, suggestions, or objections concerning the proposed regulatory action.

The VA received three comments on the proposed rules, two from congressional sources and one from a veterans' service organization. The comments were in general agreement as to the need to clarify the status and effect of General Counsel opinions and offered several suggestions for changes in the proposed amendments.

Two commenters asserted that the VA is required by the Freedom of Information Act, 5 U.S.C. 552, to publish all precedent opinions of the General Counsel in the Federal Register. Section 522(a)(1)(D) of Title 5, United States Code, provides for publication in the Federal Register, for the guidance of the public, of "interpretations of general applicability formulated and adopted by the agency." Under the terms of section 552(a)(1), a person may not be required to resort to or be adversely affected by matter required to be published in the Federal Register and not so published, except to the extent the person has actual and timely notice of its contents.

The VA concludes that opinions designated as precedential pursuant to new 38 CFR 14.507(b) will fall

38 CFR 19.103(a)
eff: 3/8/89

(Authority: 38 U.S.C. 210, 212)

* * * * *

PART 3 -- [AMENDED]

2. In 38 CFR Part 3, Adjudication, § 3.101 is revised to read as follows:

§ 3.101 Decisions to conform.

All decisions will conform to the statutes and regulations of the Veterans Administration and to the precedent opinions of the General Counsel. Unless designated as precedent opinions under § 14 507(b) of this chapter, legal opinions in individual cases will not be required to be followed as precedents in subsequent cases.

(Authority: 38 U S.C. 210)

PART 14 -- [AMENDED]

3. In 38 CFR Part 14, Legal Services, General Counsel, § 14.507 is revised to read as follows:

§ 14.507 Opinions.

(a) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Veterans Administration shall be conclusive as to all Agency officials and employees with respect to the matter at issue, unless there is a change in controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as "advisory only" by the General Counsel or the Deputy General Counsel acting as or for the General Counsel. Written legal opinions having conclusive effect under this section and not designated as precedent opinions pursuant to paragraph (b) of this section shall be considered by the Veterans Administration to be subject to the provisions of 5 U.S.C. 552(a)(2) Advice, recommendations, or conclusions on matters of Government or Agency policy, contained within a written legal opinion, shall not be binding on Agency officials and employees merely because of their being contained within a written legal opinion. Written legal opinions will be maintained in the Office of the General Counsel. Written legal opinions involving veterans' benefits under laws administered by the Veterans Administration, which pertain to a particular benefit matter, in addition to being maintained in the Office of the General Counsel, will be filed in the individual claim folder.

(b) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Veterans Administration which, in the judgment of the General Counsel or the Deputy General Counsel acting as or for the General Counsel, necessitates regulatory change, interprets a statute or regulation as a matter of first impression, clarifies or modifies a prior opinion, or is otherwise of significance beyond the matter at issue, may be designated a "precedent opinion" for purposes of such benefits. Written legal opinions designated as precedent opinions under this section shall be considered by Veterans Administration to be subject to the provisions of 5 U S.C. 552(a,,1).

(c) For purposes of this section, the term "written legal opinion of the General Counsel" means a typed or printed memorandum or letter signed by the General Counsel or by the Deputy General Counsel acting as or for the General Counsel, addressed to an official or officials of the Veterans Administration, stating a conclusion on a legal issue pertaining to Veterans Administration activities

(Authority: 38 U.S.C. 210)

PART 19 -- [AMENDED]

4. In 38 CFR Part 19, Board of Veterans Appeals, § 19 103, paragraph (a) is revised to read as follows

§ 19.103 Rule 3; Governing criteria.

(a) *General.* In the consideration of appeals, the Board shall be bound by the laws and regulations of the Veterans Administration and precedent opinions of the General Counsel

(Authority 38 U S C 4004(c))

Source: All Sources : Federal Legal - U S : Federal Register
Terms. 57 fr 4088 (Edit Search)

57 FR 4088

DEPARTMENT OF VETERANS AFFAIRS

AGENCY: Department of Veterans Affairs

38 CFR Parts 14, 19, and 20

Appeals Regulations; Rules of Practice

RIN 2900-AE02

57 FR 4088

February 3, 1992

ACTION: Final regulations

SUMMARY: The Department of Veterans Affairs (VA) is issuing final regulatory amendments revising the Board of Veterans' Appeals' (BVA) Appeals Regulations and Rules of Practice governing appeals practices and procedures within VA. Conforming amendments have also been made to other related VA regulations. The effect of these amendments will be to revise and update these regulations to reflect current law and practices and to provide information needed by individuals who wish to appeal decisions made by VA adjudicatory bodies to the BVA. The revisions are necessary in order to provide appellate procedures which conform to current law and to inform the public about those procedures.

EFFECTIVE DATE: These rules are effective March 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Keller, Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2978

TEXT:

SUPPLEMENTARY INFORMATION: On August 18, 1989, VA published in the Federal Register (54 FR 34334) a notice proposing amendment of part 19 and the addition of part 20 of title 38, Code of Federal Regulations, to update the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals. Conforming revisions to part 14 were also proposed.

VA received ten comments on the proposed regulations -- four from service organizations, two from legal services organizations allied with a service organization, two from Members of the Board of Veterans' Appeals, one from a VA employee, and one from a private attorney-at-law.

Some commenters have referred to various sections of the Veterans' Judicial Review Act (Pub. L. 100-687). In the remarks which follow, provisions of the Act which have been codified will be referred to by their section numbers in title 38, United States Code (as amended by Pub. L. 100-687), rather than by section numbers of the Act. All references to section numbers in title 38, United States Code, throughout this document have been revised to reflect the renumbering accomplished by recent legislation.

There were several general comments, in addition to specific comments concerning individual amendments.

One commenter objected to moving the cross-references from individual sections, where they are currently located, to appendices to parts 19 and 20 -- asserting that this format was less helpful to the user of the regulations. VA agrees that this method of setting out cross-references is somewhat less desirable, but the change was made at the direction of the Office of the Federal Register. The BVA plans to issue an updated version of a pamphlet which includes these regulations (VA Pamphlet 1-1) within the next few months. This pamphlet version will use the old cross-reference format.

The same commenter suggested that the Rule of Practice references in part 20 be abandoned and that only the CFR citation be used. This suggestion has not been adopted. The Rule of Practice terminology is widely used by judicial and quasijudicial bodies, such as the BVA. The use of Rule numbers, as opposed to

1. The authority citation for part 14 is revised to read as follows:

Authority: 38 U.S.C. 501, 5901-5905

§§ 14.634 and 14.635 [Removed]

§§ 14.636 and 14.637 [Redesignated as §§ 14.634 and 14.635]

2. Sections 14.634 and 14.635 are removed and §§ 14.636 and 14.637 are redesignated as new §§ 14.634 and 14.635 respectively.

3. In newly designated § 14.634, the last sentence is removed and an authority citation and cross-references are added at the end of the section to read as follows

§ 14.634 Banks or trust companies acting as guardians.

* * * * *

(Authority: 38 U.S.C. 5903, 5904)

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.610 of this chapter.

4. In newly designated § 14.635, cross-references are added at the end of the section to read as follows:

§ 14.635 Office space and facilities.

* * * * *

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.610 of this chapter.

5. 38 CFR Part 19, Board of Veterans' Appeals, is revised to read as follows.

PART 19 -- BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

Subpart A -- Operation of the Board of Veterans' Appeals

Sec.

19.1 Establishment of the Board.

19.2 Composition of the Board.

19.3 Appointment, assignment, and rotation of Members.

19.4 Principal functions of the Board.

19.5 Criteria governing disposition of appeals.

19.6 [Reserved]

19.7 The decision.

38 CFR 19.5
eff: 3/4/92

(Authority: 38 U.S.C. 501(a), 512, 7101(a))

§ 19.3 Appointment, assignment, and rotation of Members.

(a) *Appointment of Members.* The Chairman is appointed by the President of the United States, by and with the advice and consent of the United States Senate. Members of the Board, including the Vice Chairman, are appointed by the Secretary upon the recommendation of the Chairman with the approval of the President of the United States. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(Authority: 38 U.S.C. 501(a), 512, 7101(b))

(b) *Assignment.* The Chairman may divide the Board into Sections of three Members, assign Members of the Board to each such Section, and designate the Chief Member of each such Section. From time to time, a Member may be designated as a Chief Member or a Chief Member may be redesignated as a Member.

(Authority: 38 U.S.C. 7102)

(c) *Rotation.* The Chairman may from time to time rotate the Members of the Sections.

(Authority: 38 U.S.C. 7102)

(d) *Inability to serve.* If, as a result of a vacancy, absence, or for reasons set forth in § 19.12 of this part, a Member of a Section of the Board is unable to participate in the disposition of an appeal before the Section, the Chairman may assign or substitute another Member or direct the Section to proceed without any additional assignment or substitution of Members.

(Authority: 38 U.S.C. 7102)

§ 19.4 Principal functions of the Board.

The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal.

(Authority: 38 U.S.C. 7102, 7104)

§ 19.5 Criteria governing disposition of appeals.

In the consideration of appeals, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

(Authority: 38 U.S.C. 501(a), 7104(c))

§ 19.6 [Reserved]

§ 19.7 The decision.

(a) *Decisions based on entire record.* The appellant will not be presumed to be in agreement with any statement of fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 7104(a), 7105(d)(4))

(b) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include separately stated findings of fact and conclusions of law on all

Chg. - Index to Pub. 11-1-63

November 29, 1949

IB 8-31

CLAIMS
INFORMATION BULLETIN

REVIEW UNDER VA TECHNICAL BULLETIN TB 8-132

In view of inquiries received, the following excerpt, in substance, of a teletype from this office dated November 4, 1949, to one of the district offices is published for information and guidance:

> "A representative of a service organization has reported that your office has taken position that you have no authority to review cases under TB 8-132. No general review contemplated by Central Office of such cases. Any case however may be reviewed under TB 8-132 at request of claimants or their authorized representatives. The effective date of any award will be governed by R&P R-2553 following procedure set forth in R&P R-1214 (B)(2). This will be equally applicable to any future liberalizing issue or criteria unless otherwise specified therein."

Willis Howard

WILLIS HOWARD
Assistant Administrator for Claims

VETERANS ADMINISTRATION
Washington 25, D. C.

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Veterans Administration, Washington 25, D. C.

Dist. 12-19-49

VA-D.C.-88027

Obs. - Index to Pub. 11-1-68

March 9, 1951

IB 8-53

(NF 511)

IB 3-R-53

CLAIMS
INFORMATION BULLETIN

EFFECTIVE DATES OF AWARDS OF DISABILITY COMPENSATION AND PENSION

1. In view of inquiries received, the following excerpts, in substance, of a letter dated February 23, 1951, from this office to a district office are published to supplement information on the above subject in paragraph 5, VA Information Bulletin IB 8-52.

2. It may be stated that opinions of the solicitor do not constitute new criteria but rather concern the proper application of existing criteria. The restrictive provisions of R&P R-1214 (B)(2) and R-2553 have no application to an opinion of the Solicitor except in so far as the opinion may concern an interpretation of a VA issue which contained new criteria limited in application by the regulations cited.

3. In those cases where a claim had been filed under Veterans Regulation No. 1 (a), part III, and disallowed, the claim is reopened by a report of VA examination or hospitalization. This is governed by the last sentence of R&P R-1216 (A) which was promulgated effective April 7, 1938.

4. In view of the opinions of the Solicitor dated July 22, 1949, in the case of McNEIL, Henry, C-1 669 209, and June 20, 1950, in the case of GEARY, John F., XC-4 541 045, the question of whether or not a veteran was on the rolls March 19, 1933, as an "allowed claim" is not of any significance in determining effective dates under Veterans Regulation No. 1 (a), part III.

5. In regard to your comment on the instructions under Public Law 573, 81st Congress, relative to effective dates, you are advised that such instructions were influenced by considerations entailed in the general review authorized thereunder and have no import by comparison or otherwise in questions of effective dates under Veterans Regulation No. 1 (a), part III.

Willis Howard

WILLIS HOWARD
Assistant Administrator for Claims

VETERANS ADMINISTRATION
Washington 25, D. C.

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VA-DC-116008

March 4, 1952

IB 8-69

CLAIMS

INFORMATION BULLETIN

EXCERPTS FROM EXPLANATORY LETTERS RE DEATH RATINGS

1. Purpose. For information and guidance of personnel responsible for rating claims for death compensation and pension, there are published excerpts from Central Office letters to district offices as the result of administrative review or request for advisory opinion in individual cases.

2. Appeals in Accrued Claims. Verbal request was also made for an expansion of remarks on appeals in accrued claims both in regard to the appellate rights of the death claimant in regard to the veteran's claim as constituted at death and the death claimant's appellate rights in his or her own right in regard to decisions made after death for the specific purpose of section 12, Public Law 144, 78th Congress, as amended. Paragraph 18b (4), VA Manual M8-3, as issued October 25, 1951, reflected the opinion of the Solicitor of June 6, 1945, in the case of_____ _____, XC-3 290 124, and the inclusion of such subparagraph in the manual was occasioned by inquiries raising a question as to whether such opinion was in the possession of all offices. Paragraph 18b (4), supra, has application only to the particular situation specified therein, and the application requires that the appeal be timely filed. However, paragraph 18, supra, concerns procedural matters primarily and must be read in the light of the basic regulatory material in Veterans Regulation No. 2 (a), part II (as modified by Veterans Regulation No. 2 (c) and 2 (d)), VA Regulations 1007, 1201 (E), and 9800 through 9807, and also regulatory material indirectly affecting appellate rights in accrued claims such as VA Regulation 1214 (B)(2). It is not believed that any particular problem should be involved in cases where a claim (original, reopened, or increase) was pending at death and a rating after death for the specific purpose of section 12, supra, is in order.

There are a number of situations, however, in which the claimant may have appellate rights in the accrued claim where at death no rating action had been taken in the year preceding death in regard to a previously allowed or disallowed claim and no action initiated by the veteran was pending at death. For example, where the instructions in veterans' claims under a particular law or a change in VA criteria provide for a review without action on the part of the veteran with effective dates not being contingent on a new claim, formal or informal, and such review is applicable to the veteran's claim but was not made prior to the veteran's death, it is the obligation of the death rating agency to conduct such review after death for the purpose of section 12, supra, observing the specific limitations of the law "for a period not to exceed one year prior to death . . . based on evidence in the file at date of death." Instructions which might require a review of the nature outlined in the preceding sentence, depending on the facts in the individual case, would include Instruction No. 1-A, Public Law 458, 79th Congress, Instruction No. 1, Public Law 573, 81st Congress, and Instruction No. 1, Public Law 28, 82d Congress. However, such issues as the instructions under Public Law 439, 78th Congress, even though unapplied in a previously disallowed claim, with death occurring after the enactment of the law, would not be for application in an accrued claim where no action was pending at death and the appeal period had expired, for in such cases a specific claim by the veteran is required for reopening under the issue with effective date of favorable action being limited accordingly

* * * * *

Office of the Assistant Administrator for Claims
Veterans Administration, Washington 25, D. C.

DIST. 3-20-52

and any attempted rating for the purposes of section 12, supra, would be to no effect. The same is true in regard to liberalizing issues, such as changes in the rating schedule or VA Regulations or other authoritative criteria, in view of the provisions of VA Regulation 1214 (B)(2), except where there was a pending claim or where the liberalizing issue contains a specific provision providing for a review without action on the part of the veteran. Comment is made that paragraph 11 (a) and (b), Extension 4, 1945 Schedule, did not provide for any review of disallowed claims. Extension 6 and 6-A, 1945 Schedule, specifically provided that the effective date of increased compensation thereunder would be December 1, 1949. VA Technical Bulletin TB 8-174 (now incorporated in VA Regulations 1080, 1086, 1096, and 1212) was generally limited by VA Regulation 1214 (B)(2). The discussion in this paragraph and the preceding paragraph concerns accrued disability claims only and does not purport to cover all possible situations.

3. Coding

a. Death Due to War Service. In the rating decision war service-connection previously established was continued for the cause of death, cardiovascular disease, by use of basic code 1 (a) and supplementary code 4. It is noted, however, that in basic code 1 (a) there were included several service-connected conditions which had no relationship to the cause of death. Such procedure is not contemplated by paragraph 39a, VA Manual M8-3, Revised, which states:

> "Cases in which death is due to a wartime service-connected disability will show the basic and supplementary allowance codes for the cause of death under the law most favorable to the case. The case will not be coded for other conditions not service-connected or service-connected but not a factor in producing death . . . ."

It is appreciated that the inclusion of the additional material of the type mentioned in basic code 1 (a) is not harmful in the sense that erroneous award action might be taken by reason thereof, however, the cumulative effect of inclusion in rating decisions of material not required by the controlling regulations and instructions represents wasted effort and time on the part of both the rating personnel and the typist.

b. Minor Conditions Where "Death Due to Service" Only Is in Issue. The question has been presented as to the necessity of showing minor service-connected conditions in the case of a World War I veteran who had 90 days or more active service and the only determination to be made is whether the death was due to service. All conditions previously service-connected or presently entitled to service-connection should be reflected in an adverse code decision. However, acute conditions shown in service which left no residuals should be disposed of in the explanation without coding. The coding necessary in a particular case is determined by the issues presented by the various periods of service involved together with the applicable laws, the type of claim, and the facts of record. The provisions of paragraphs 37 through 43, VA Manual M8-3, should be closely observed, and the variations mentioned in paragraph 38 were intended to cover only exceptional cases as may be necessary to clearly show entitlement or nonentitlement during transitional periods, when there has been a change in laws or rating criteria. Generally, paragraph 43, VA Manual M8-3, would be controlling in the situation mentioned at the beginning of this paragraph. Further comment is made that it is not considered that the nature of an end conclusion justifies departure from an orderly and uniform coding practice, that is, a determination in the minds of the rating board members that a certain factor or factors were or were not a basis for entitlement or nonentitlement does not obviate the necessity of expressing the determination on the rating sheet in the form prescribed by VA Manual M8-3 and other applicable issues; otherwise, there would be some prejudging of the case known definitely only to the board members participating in the rating and not reflected in the official decision and such is not considered sound rating practice, except where specifically authorized as outlined in paragraph 37 through 43, supra.

4. Evidence--VA Regulation 1030 (A), Revised November 2, 1951

a. Substantial Compliance. Sound discretion and judgment should be used by the rating agencies as to the acceptability of testimony under VA Regulation 1030, as revised November 2, 1951, particularly in the transition period while veterans' organizations and other cooperating agencies are becoming familiar with the amendment. Testimony,

otherwise acceptable, should not be returned for further certification by reason of technical variations from the approved methods, when the rating agency is satisfied that there has been substantial compliance as to certification.

b. Claim for Accrued Benefits Under Section 12, Public Law 144, 78th Congress, as Amended. Attention is called to the fact that in claims involving accrued benefits, in which it is required that such evidence be of record prior to death, it would not be proper in any event to return any statements for certification pursuant to VA Regulation 1030 (A), but no case will be denied solely by reason of lack of certification when the evidence is otherwise acceptable under VA Regulation 2660 (C)(4) (a) and VA Technical Bulletin TB 8-191. (Also see par. 12, VA Manual M8-2.)

c. Reports for Evaluation Purposes. VA Regulation 1030 (A), as amended November 2, 1951, concerns only evidence submitted for the purpose of service-connection as specified therein and as emphasized in the telegram dated November 27, 1951, from this office to all regional and district offices. "Duly certified," as employed in VA Regulation 1030 (A), refers to action by the person giving testimony, whereas, "certified," as employed in VA Regulation 1216 (C), refers to action by VA medical officials as to medical adequacy of reports of the type involved. Attention is also invited to the procedures approved for death cases in paragraph 11c and d, VA Manual M8-3, relative to determinations as to medical adequacy of the reports in question and as to the adequacy of medical reports in general for rating purposes.

It will be observed that paragraph 21, VA Manual M8-3, relative to helpless children, makes specific cross-reference to paragraph 11 thereof which cites VA Regulation 1216 (C). Under the criteria cited reports comprehended in VA Regulation 1216 (C), when submitted for evaluation purposes, including determination as to alleged helpless children, need not be either sworn to or duly certified and no change is contemplated presently. Such reports, however, should meet the general qualifications outlined in VA Regulation 1216 (C), subject to the precedures in paragraph 11c and d, VA Manual M8-3, and should bear the signature (either on the report or a covering communication) of a responsible official of the hospital or institution, such as the chief of staff, clinical director, lay superintendent, librarian, or other like official identified as custodian of the records submitted.

5. Explanations. In the rating decision, supplementary code X-1 (a) was assigned for the purposes of section 4, Public Law 312, 78th Congress, as amended, in regard to World War II service-connected disability of chronic dermatitis of fingers. VA Regulation 2678 was cited in support of the assignment of supplementary code X-1 (a), and the explanatory matter in the decision stated in part:

> "Under date of 1-16-51 three affidavits of _____ _____, _____ _____, and_____ _____were received. These affadivits have been considered in conjunction with all other evidence previously of record. The affidavits received 1-16-51, are considered in the nature of new and material evidence for the purpose of amending prior rating of 3-13-50, the Board concluding that the veteran's service connected conditions constituted a disability, at time of death within the meaning of Sec. 4, Public Law 312."

A general statement of the type quoted is not considered an adequate explanation within the meaning of paragraphs 6e (5) and 15a (2), VA Manual M8-3. A mere citation of certain evidence or the expression of a conclusion does not constitute an explanation but rather there should be a concise discussion of the facts and influencing reasons relied upon in the conclusion.

6. Helpless Children--Determination as to Need of a Fiduciary. On the basis of all the evidence of record, it is the opinion of this Service that the rating decisions holding that the child is incompetent are correct under the controlling criteria. It is believed that there may have been a misconception in this case as to the effect of VA Regulation 1173 (E)(2). Such Regulation in regard to living veterans provides in effect that the finding of the Chief Attorney of the regional office having jurisdiction that the payee is sufficiently competent to administer the funds payable will be binding on the rating agency. The Solicitor in a letter dated August 14, 1947, to the Chief Attorney of the former branch office, San Francisco, California, in the case of_____ _____, XC-2 570 073, stated in pertinent part:

"It is the policy of the VA to avoid the appointment of guardians wherever possible, without sacrificing the interests of the beneficiary. This policy for application whether beneficiaries are dependents or veterans. R&P R-1173 (E) or paragraph 141, M2-2, cited by the Regional Chief Attorney are primarily for application to veterans and not helpless children, as in this case." (Underscoring supplied.)

7. Jurisdiction--Death During Duty of Type Specified in Public Law 108, 81st Congress. It will be observed that paragraph 8, VA Manual M8-2 (change 6, effective November 9, 1951), contains no exceptions as to cases affected by Public Law 108, 81st Congress. When a case meets the requirements of paragraph 8c, VA Manual M8-2, for decentralization, such will be accomplished and, with the statement in the preceding sentence in mind, it will be apparent from the items listed under paragraph 8c, supra, that there will be a number of circumstances in which the district office will have initial jurisdiction in claims involving Public Law 108, supra.

8. Pulmonary Tuberculosis--Application of VA Regulations 1096 (A) and 1212 (F) in Death Cases for Purpose of Section 4, Public Law 312, 78th Congress, as Amended. When the conditions of VA Regulation 1096 (A) are met, service-connection may be established for inactive, reinfection-type pulmonary tuberculosis and a subsequent showing of active pulmonary tuberculosis by approved methods, including physical examination of the veteran, is not essential to the favorable determination. The same is true in regard to service-connection under VA Regulation 1086 (D)(2). VA Regulation 1212 (F) has no application in death cases, except where the subsequent diagnosis of active pulmonary tuberculosis by approved methods is a condition precedent to the establishment of service-connection, as under VA Regulation 1086 (C), (D)(1), and (E).

In the instant case the conditions of VA Regulation 1096 (A) are met in that the X-ray film of chest made at induction is not available, there is no other evidence indicative of the existence of reinfection pulmonary tuberculosis, active or inactive, prior to enlistment and inactive, reinfection-type pulmonary tuberculosis was shown in service beyond the period prescribed for the degree of advancement shown; therefore, establishment of service-connection for the disease is in order under the criteria outlined. War service-connection having been established for pulmonary tuberculosis, favorable action for the purpose of section 4, Public Law 312, 78th Congress, as amended, is in order by virtue of the provisions of VA Regulations 2678 (B) and 2676 (B)(2) (c).

9. Rebuttal of Service-Connection, Veterans Regulation No. 1 (a), Part I, Paragraph I (c)

Par. 7, IB 8-103

a. Residuals of Endocarditis and Rheumatic Fever. Residuals of rheumatic fever and endocarditis first definitely shown after service with identification of acute intercurrent episodes are subject to strong considerations of rebuttal under VA Regulations 1080 (B) and 1086 (F), although in some cases the facts and time element may support favorable action under VA Regulation 1078. Direct service-connection may be in order for the diseases named or residuals thereof on showing of an acute phase in service or aggravation of preexisting residuals within the meaning of VA Regulation 1063 (I) as to wartime service, or VA Regulation 1063 (K) as to peacetime service. Also service-connection may be established for the diseases mentioned, when secondary to other service-connected disease or injury for which service-connection has been properly established on any basis.

b. Silicosis as Predisposition to Pulmonary Tuberculosis. It is recognized medically that silicosis predisposes to pulmonary tuberculosis. It is not considered, however, that a predisposition as distinguished from direct etiological factors is acceptable as showing intercurrent cause within the meaning of VA Regulation 1080 (A) and (B). On the facts in this case, service-connection for pulmonary tuberculosis with tuberculous meningitis should be conceded under Public Law 573, 81st Congress.

10. Reversal on Clear Error (VA Regulations 2670 and 1009 (A))

a. Favorable Decision. It has been the policy of the VA to consider a favorable rating which constitutes a reversal of a prior unfavorable rating on the ground of clear and unmistakable error shown by evidence in file at the time the prior decision was rendered to have the same effect as if the correct rating had been made on the date of the reversed

rating subject to limitations imposed by section 12, Public Law 144, 78th Congress, if made after death. In order to give such an effect to a rating made after death reversing a rating made prior to death on that basis, it is necessary to make the reversal on an accrued rating under section 12, Public Law 144, 78th Congress, as amended. The fact that an evaluation of 0% is assigned is a rating question and is not apparent until considered.

b. Severance of Service-Connection With VA Regulation 2682 Involved. This Service concurs in the opinion of the Director, Veterans Claims Service, dated July 11, 1951, that service-connection previously granted for bronchiectasis was clearly and unmistakably in error and should be severed under the provisions of VA Regulation 1009 (A) and (D). The action of the rating board dated August 3, 1951, in the regional office severing such service-connection was of no legal force and effect due to the fact of the veteran's death on July 25, 1951. Inasmuch as the Dependents Pension Board of your office was in accord with the proposed severance of service-connection, such board did have authority to initiate and complete appropriate death rating action under VA Regulation 1009 (A) and (D). The death rating decision dated October 3, 1951, was in error, however, in the use of the codes 1 (a) and X-1 (a), as it was intended to show entitlement only under VA Regulation 2682 (A) based upon the fact that the veteran was in receipt of compensation at the time of his death. In such situation the proper procedure would have been to prepare a memorandum rating reciting the fact of proposed severance of service-connection but concluding with a statement to the general effect "that irrespective of the outcome of the proposed action, the protective provisions of VA Regulation 2682 (A) are for application." Such a statement would assure appropriate award action.

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In view of the above, a memorandum rating should be prepared proposing severance of service-connection for bronchiectasis under the provisions of VA Regulation 1009 (A), with care being taken to provide for the notice to the claimant required by the provisions of VA Regulation 1009 (D). Final death rating action denying service-connection for bronchiectasis under VA Regulation 1009 (A) should be based upon a determination that the establishment of service-connection for such condition was clearly and unmistakably in error, and a further determination that the death rating decision dated October 3, 1951, was clearly and unmistakably in error in continuing service-connection for bronchiectasis, provided, of course, that no additional evidence or other factors cause the board to recede from the proposed action. There should also be included in the final rating decision a determination of the claimant's entitlement to death benefits under the provisions of VA Regulation 2682 (A) and the Administrator's Decisions mentioned therein.

11. Syphilis--Assignment of Supplementary Code X-1 (a) Under Section 4, Public Law 312, 78th Congress, as Amended. A question was raised as to whether the disease of syphilis properly connected with service under the provisions of Public No. 2, 73d Congress, as amended by Public Law 439, 78th Congress, could be assumed to have constituted disability in existence at death for the purposes of section 4, Public Law 312, 78th Congress, as amended. By reason of the provisions of VA Regulation 2678 (B), there is for consideration the provisions of VA Regulation 2676 (B) in determining entitlement under section 4, supra. Disability in existence at death may be assumed only under VA Regulation 2676 (B)(2). Under VA Regulation 2676 (B)(1), (3), and (4) there must be an affirmative showing of existence of ascertainable disability at death keeping in mind the provisions of paragraph 15a (2), VA Manual M8-3. Syphilis, as such, does not come within any of the provisions of VA Regulation 2676 (B)(2), nor does it come within subparagraphs 3 or 4 of the same paragraph. In this connection comment is made that on consideration of VA Regulation 2676 (B)(2) (c), syphilis sometimes involves secondary neuropsychiatric disability which is included within the provisions of that subparagraph, but syphilis in itself as a disease entity does not come within such provisions. In the absence of neuropsychiatric disability secondary to syphilis, recourse must be had to the provisions of VA Regulation 2676 (B)(1) where, as previously indicated, favorable action under section 4, Public Law 312, 78th Congress, as amended, is in order only on the basis of affirmative evidence as interpreted by paragraph 15a (2), VA Manual M8-3, and syphilis is not considered a static disability within the meaning of that term as used in the last named citation. Furthermore, under VA Regulation 2676 (B)(1), on consideration of the provisions of pages 85, 91, and 99, 1925 Schedule of Disability Ratings, in regard to syphilis, such provisions contemplate the existence of current symptoms or residuals for the assignment of evaluations outlined therein, and in the absence of symptoms or residuals the evaluation would be no percent. It is desired to emphasize that the discussion in this paragraph concerns only syphilis properly service-connected under Public Law 439, 78th Congress, and the criteria in VA

Regulation 1065 (D). When the service-connection is with benefit of Public No. 196, 76th Congress, as amended, or section 26, Public No. 141, 73d Congress, as amended, the explanatory matter in paragraph 10, VA Information Bulletin IB 8-42 should be reviewed.

Par. 5, IB 8-120

12. Suicide in Presence of Diagnosis of Psychosis (Service-Connected). In the rating decision, World War II service-connection previously established was continued for schizophrenic reaction, paranoid type, by use of basic code 1 (a), with service-connection being denied for the suicidal death by use of basic code 2 (a) and (b) and supplementary code 6.

Attention is invited to paragraph 3c, VA Technical Bulletin TB 8-132, stating in part:

> "In instances of suicide not otherwise attributable to an intent to secure monetary benefits, to escape punishment or disgrace, or to other environmental stresses, mental unsoundness should generally be conceded when medical examination has demonstrated a psychosis or a psychoneurosis with disturbance of behaivor or other psychiatric manifestations frequently symptomatic of an acquired mental disorder recognized as causing mental unsoundness, and it is held that the person had such mental disorder at the time of suicide." (Underscoring supplied.)

In the application of the material quoted and in the presence of a diagnosis of psychosis, unsoundness of mind at suicidal death would properly be conceded, unless subsequent to the initial diagnosis medical evidence was of record which would in effect establish that the diagnosis of psychosis had not been correct.

Par. 5, IB 8-120

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