

- US Vet's Bureau Svc Ltr Dir's Ofc, 5/23/29 – Interpretation of Secs 715f
- Reg & Procedure 1071, 5/19/30
- R&P Index, 1/1/50
- R&P 1071, 7/31/42
- R & P 1009(a), 5/13/47

Fyi is the 38 CFR 3.105 but 3.105(a) referenced to the 7/5/28 VB Reg 187, Sec 715 clicking the pdf icon:

1. 

38 CFR 3.105(e)

History:

- 3/25/1937 - R&PR 1009(E)
- 7/10/1942 - R&PR 1009(E) revised
- 4/19/1944 - R&PR 1009(E) revised
- 8/5/1946 - R&PR 1009(E) revised
- 4/12/1955 - VAR 1009(E) revised by TS 125
- 5/29/1959 - 38 CFR 3.105(e) added by TS 191
- 5/8/1962 - 38 CFR 3.105(e) revised by TS 236
- 12/1/1962 - 38 CFR 3.105(e) revised by TS 267; Ref: PL 87-825, 27 FR
- 12/1/1962 - 38 CFR 3.105(e) revised by TS 539; Ref: 39 FR 17222
- 5/11/1990 - 38 CFR 3.105(e) revised by 55 FR 13522; Ref: TS 763
- 8/6/1991 - 38 CFR 3.105(e) revised by 57 FR 31006; Ref: PL 102-83; re
- 10/1/1997 - 38 CFR 3.105(e) revised by 62 FR 51278; Ref: B31(1)

VADEX Subjects:

EFFECTIVE DATE, IR BENEFITS
REDUCTION OF AWARDS

2 

38 CFR 3.105(g)

History:

8/6/1991 - 38 CFR 3.105(g) revised by 57 FR 31006; Ref: PL 102-83; revision published 7/13/92
10/1/1997 - 38 CFR 3.105(g) added by B31(1); Ref: 62 FR 51278
7/31/2002 - 38 CFR 3.105(g) revised by B54(2); Ref: 67 FR 49585; revision applicable 12/01/01
2/24/2011 - 38 CFR 3.105(g) revised by 76 FR 4245; Ref: PL 108-183

VADEX Subjects:

REDUCTION OF AWARDS
SPINA BIFIDA

3 

38 CFR 3.105(d)

History:

10/28/1936 - R&PR 1009(D)
3/25/1937 - R&PR 1009(D) revised
7/10/1942 - R&PR 1009(D) revised
11/26/1945 - R&PR 1009(D) revised
5/13/1947 - R&PR 1009(D) revised
3/6/1951 - VAR 1009(D) revised by TS 49
10/28/1954 - VAR 1009(D) revised by TS 119
4/12/1955 - VAR 1009(D) revised by TS 125
9/14/1955 - VAR 1009(D) revised by TS 134
5/29/1959 - 38 CFR 3.105(d) added by TS 191
5/8/1962 - 38 CFR 3.105(d) revised by TS 236
12/1/1962 - 38 CFR 3.105(d) revised by TS 267; Ref: PL 87-825, 27 FR 11886
5/7/1974 - 38 CFR 3.105(d) revised by TS 539; Ref: 39 FR 17222
5/11/1990 - 38 CFR 3.105(d) revised by 55 FR 13522; Ref: TS 763
8/6/1991 - 38 CFR 3.105(d) revised by 57 FR 31006; Ref: PL 102-83; revision published 7/13/92
10/1/1997 - 38 CFR 3.105(d) revised by 62 FR 51274; Ref: B31(1); PL 104-204

VADEX Subjects:

38 USC 3012
SERVICE CONNECTION, SEVERANCE

4 

38 CFR 3.105(f)

History:

12/1/1962 - 38 CFR 3.105(f) added by TS 267; Ref: PL 87-825, 27 FR 11886
12/1/1962 - 38 CFR 3.105(f) revised by TS 539; Ref: 39 FR 17222; revision published 5/7/74
5/11/1990 - 38 CFR 3.105(f) revised by TS 763; Ref: 55 FR 13528
8/6/1991 - 38 CFR 3.105(f) revised ; Ref: 57 FR 31009
10/1/1997 - 38 CFR 3.105(f) revised by 62 FR 51278; Ref: B31(1)

VADEX Subjects:
EFFECTIVE DATE, PENSION
REDUCTION OF AWARDS

5 

38 CFR 3.105(b)

History:

5/13/1947 - R&PR 1009(B)
10/19/1949 - VAR 1009(B) revised by TS 19
4/5/1950 - VAR 1009(B) revised by TS 31
10/28/1954 - VAR 1009(B) revised by TS 119
4/12/1955 - VAR 1009(B) revised by TS 125
5/29/1959 - 38 CFR 3.105(b) added by TS 191
6/1/2001 - 38 CFR 3.105(b) revised by B45(1)

VADEX Subjects:
CORRECTED DECISIONS
DIFFERENCE OF OPINION

6 

38 CFR 3.105(a)

History:

7/5/1928 - VB Reg 187, Sec 7155
5/19/1930 - R&PR 1074
1/25/1936 - R&PR 1009(A)
7/10/1942 - R&PR 1009(A) revised
11/26/1945 - R&PR 1009(A) revised
5/13/1947 - R&PR 1009(A) revised
8/15/1947 - R&PR 2670(C)
6/14/1949 - VAR 2670(C) revised by TS 17
8/13/1954 - VAR 2670(B) revised by TS 118
10/28/1954 - VAR 1009(A) revised by TS 119
4/12/1955 - VAR 1009(A) revised by TS 125
5/29/1959 - 38 CFR 3.105(a) revised by TS 191
12/1/1962 - 38 CFR 3.105(a) revised by TS 267; Ref: PL 87-825; 27 FR 11886
12/19/1991 - 38 CFR 3.105(a) revised by B2(2); Ref: 56 FR 65846

VADEX Subjects:
ADMINISTRATIVE ERROR
CLEAR & UNMISTAKABLE ERROR
CORRECTED DECISIONS

7 

38 CFR 3.105(Intro)

History:

3/25/1937 - R&PR 1009(D)
10/28/1954 - VAR 1009(D) revised by TS 119
5/29/1959 - 38 CFR 3.105(Intro) revised by TS 191
12/1/1962 - 38 CFR 3.105(Intro) revised by TS 267; Ref: PL 87-825; 27 FR 11886
3/15/1989 - 38 CFR 3.105(Intro) revised ; Ref: 54 FR 34977

VADEX Subjects:

CORRECTED DECISIONS
EFFECTIVE DATE
LEGISLATION, CHANGE OF

8 

38 CFR 3.105(i)

History:

5/11/1990 - 38 CFR 3.105(h) added by TS 763; Ref: 55 FR 13528
12/2/1992 - 38 CFR 3.105(h) revised by B5(2); Ref: 57 FR 56993
10/1/1997 - 38 CFR 3.105(i) revised by B31(1); Ref: 62 FR 51278

VADEX Subjects:

HEARINGS
REDUCTION OF AWARDS
SERVICE CONNECTION, SEVERANCE

9 

38 CFR 3.105(c)

History:

6/17/1952 - VAR 1064(E) added by TS 71
5/29/1959 - 38 CFR 3.105(c) revised by TS 191

VADEX Subjects:

CHARACTER OF DISCHARGE
CORRECTED DECISIONS

10 

38 CFR 3.105(h)

History:

5/11/1990 - 38 CFR 3.105(g) added by TS 763; Ref: 55 FR 13528
10/1/1997 - 38 CFR 3.105(h) revised by B31(1); Ref: 62 FR 51278

VADEX Subjects:

REDUCTION OF AWARDS

UNITED STATES VETERANS' BUREAU SERVICE LETTER

DIRECTOR'S OFFICE

Obsolete
S.L. 22/43

May 23, 1929.

Subject: INTERPRETATION OF SECTIONS 7155 and 7156
REGULATION 187.

R-DR-1009



1. Section 7156 Regulation (187) in providing that "Where an existing disease or injury has been previously connected with service action will not be final in severing such service connection until approved by the Director" does not contemplate reference to the Director of any case in which the action of the Rating Authority does not result in a complete severance of the relationship to service of the disease or injury.
2. Accordingly it will not be necessary to forward for the consideration of the Director those cases in which service connection has heretofore been established directly, by presumption or by aggravation and the subsequent decision proposes to merely change the code but not to sever the relationship to service.
3. The proviso to the first sentence of Section 7155 Regulation (187) reads in part as follows: "Provided that the Rating Board may reverse or amend a decision by the same or any other Rating Board where such reversal or amendment is obviously warranted by a clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered." The last sentence of the same section, however, provides further that "When a revision or amendment of a previous decision is considered to be warranted by the facts in the case, the case will be forwarded to the Central Board of Appeals - -." This last provision is to be interpreted as contra-distinguishing those cases, where in the element of opinion would indicate a change in the rating upon the same evidence, from those cases wherein the previous action was clearly and unmistakably erroneous at the time taken. It will be readily seen, therefore, that the last sentence of Section 7155 Regulation 187 does not require the submission through appellate channels of changes made pursuant to the proviso to the first sentence of the Section.

R-DR-1074

Frank T. Hines

FRANK T. HINES,
Director.

To All Regional Offices.

members of the family under legal age, and of the earnings received by such father or mother or such other members of the family under legal age. Account will not be taken of the incomes of other members of the family of legal age, but only of the actual contributions made by such members of the family.

1049. The fact that the person on account of whose death or disability compensation is claimed has made habitual contributions to his father or mother, or both, is not conclusive evidence that dependency existed. (Became R&P 1057)

1050. The fact that the father or mother or other member of the family is a beneficiary of any insurance granted under the war risk insurance act or World War veterans' act, 1924 as amended, should be disregarded in determining dependency, as should also the receipt of any donations or assistance from charitable sources. (Became R&P 1057)

Illegitimate children: Parents, brothers and sisters of.

1052. The mother of an illegitimate child will be deemed to be within the meaning of the word "mother" and "parent" as used in the war risk insurance act, or World War veterans' act, 1924, as amended. (From T.D. 43)

1053. The father of an illegitimate child will be deemed to be within the meaning of the word "father" as used in the said acts if he shows that the family relationship usual between parent and child existed between him and the child at the time the child entered the service.

1054. Children of the same mother, whether legitimate or illegitimate, will be deemed brothers and sisters to each other, as the case may be, within the meaning of the terms "brother" and "sister" as used in the said acts.

1057. The maternal grandfather or maternal grandmother of an illegitimate child will be deemed to be within the meaning of the word "grandfather" or "grandmother" as used in said acts. (From T.D. 56)

1058. The paternal grandfather or paternal grandmother of an illegitimate child will be deemed to be within the meaning of the word "grandfather" or "grandmother" as used in the acts, if it is shown to the satisfaction of the director that the family relationship usual between grandparent and the child existed at the time the child entered the service.

1059. The maternal grandfather or paternal grandfather of a child, though never legally married to the grandmother of such child, will be deemed to be within the meaning of the word "grandfather" as used in the acts, if it is shown to the satisfaction of the director that the family relationship usual between grandparent and grandchild existed between him and the child at the time the child entered the service.

1060. The maternal grandmother or paternal grandmother of the child, though never legally married to the grandfather of such child, will be deemed to be within the meaning of the word "grandmother" as used in the acts.

1061. An illegitimate child having legitimate or illegitimate half brothers or half sisters by the same father but a different mother will be deemed to be within the meaning of the word "brother" or "sister" as used in the acts if it is shown to the satisfaction of the director that the family relationship usual between brothers and sisters existed between them and the child at the time the child entered the service.

RATING BOARD

Organization and functions.

1070. There are hereby established, in each regional office, such rating boards as are necessary and approved by the assistant director, adjudication service, each rating board to consist of three rating specialists; a rating specialist, claims; a rating specialist, occupational; and a rating specialist, medical. Each rating board will operate under the immediate direction of the regional adjudication officer. Each rating specialist will be recommended by the regional adjudication officer, and the regional manager and approved by the assistant director, in charge of the adjudication service. One of the rating specialists of each rating board will, upon recommendation by the regional adjudication officer and regional manager and approved by the assistant director, in charge of the adjudication service, be the chairman thereof. In the event of the temporary absence from the regional office of any rating specialist, the regional adjudication officer will recommend, and the regional manager will appoint, as a temporary rating specialist, an employee having qualifications similar to those of the absentee, to serve during his absence.

(From Reg. 187)

Became R&P 1065.

Issued 5-19-30

Executive sessions.

1071. All decisions of the rating board will be rendered in executive session only after group deliberation participated in by each of the three rating specialists and will represent a group decision, for the completeness and accuracy of which each of the three rating specialists will be responsible; and two concurring votes will constitute the decision. (From Reg. 187)

Jurisdiction, examinations, service connection, evaluation of disability, etc.

1072. The rating board will have jurisdiction to determine the necessity for, type of, sufficiency of, and approximate date of examinations, including hospitalization for observation, for rating purposes; to determine service connection of disease and injuries, and the occupations of claimants at time of enlistment; and to determine and to evaluate the disability resulting from each and from all such diseases and injuries and to determine whether any such disease or injury is due to the willful misconduct of the claimant. (From Reg. 187)

Jurisdiction, rehabilitation cases, central office cases, etc.

1073. The rating board will have original jurisdiction to rate claims involving disability compensation, other than allowance by reason of dependents and suspension and forfeitures under section 203. The rating board will also have original jurisdiction to determine questions previously decided by the rehabilitation survey group. The rating board will render tentative decisions in claims involving section 23, World War veterans' act, 1924, as amended, in which it is alleged that the claimant was insane at the time of the commission of the offense, claims involving section 213 of the World War veterans' act, 1924, as amended, claims filed by persons employed by the United States Veterans' Bureau, and claims wherein jurisdiction is otherwise specifically provided by regulation. (From Reg. 187)

Reversals and amendments. MF 96

1074. No rating board will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board, in the same or any other regional office, or of any appellate authority, except where such reversal or amendment is obviously warranted by a change in law or by a definite change in interpretation thereof clearly contained in a bureau issue: *Provided*, That the rating board may reverse or amend a decision by the same or any other rating board where such reversal or amendment is obviously warranted by a clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered, but in each such case there shall be attached to each copy of the rating a signed explanation by the rating board definitely fixing the responsibility for the erroneous decision. When a revision or amendment of a previous decision is considered to be warranted by the facts in the case, the case will be forwarded to the proper section of the central board of appeals, with a tentative rating, for a decision, except, where the prior decision was rendered by the director or the council on appeals, the section of the central board of appeals will make recommendations only to the division of appeals. (From Reg. 187)

S.L.
5-23-29
See new 1009(A)
MF 734

5-19-30

NOTE.—The provision in the last sentence of Regulations, paragraph 1074, contradistinguishes those cases wherein the element of opinion would indicate a change in the rating upon the same evidence, from those cases wherein the previous action was clearly and unmistakably erroneous at the time taken. Therefore, this last sentence does not require the submission through appellate channels of changes made pursuant to the proviso to the first sentence of Regulations, paragraph 1074.

Breaking service connection.

1075. Where an existing disease or injury has been previously connected with service, action will not be final in severing such service connection until approved by the proper section of the central board of appeals. This paragraph will not be applicable to cases wherein compensation has been denied or discontinued because of fraud, or wherein the disability is shown to be the result of the intemperate use of drugs or alcoholic liquors, or of the claimant's willful misconduct. This paragraph will not be applicable to dental conditions wherein service connection has been allowed and such conditions are not now compensable. (From Reg. 187)

2-12-1922

NOTE.—This paragraph does not contemplate reference to the central board of appeals of any case in which the action of the rating authority does not result in a complete severance of the relationship to service of the disability. Accordingly, it will not be necessary to forward for the consideration of the central board of appeals those cases in which service connection has heretofore been established directly, by presumption, or by aggravation, and the subsequent decision proposes merely to change the code but not to sever the relationship to service.

Issued 5-19-30

INDEX

to Veterans Administration

REGULATIONS



January 1, 1950

Veterans Administration

Washington 25, D. C.

INDEX TO VA REGULATIONS

January 1, 195

Blind—Blindness—Continued

Reader service, trainee under Part VII..... 10279,
10448 (E), 10459
Service-connection, direct or presumptive..... 1077

Board:

Appeals, Veterans:

Certification of case, power of attorney
executed by claimant..... 5628
Hearing, right of claimant to appear..... 9803
Jurisdiction..... 9800-9807
Dependents pension, revision of death rating
decisions..... 2670 (A)

Rating:

Decisions to conform to existing laws..... 1006
Finality of decision..... 1008, 1330
Information on decision, to be furnished
veteran..... 1007
Jurisdiction..... 1005
Revision of decision..... 1009, 2670
Tuition Appeals, Veterans..... 11000-11040

Body, unclaimed, transportation and burial and
funeral expenses..... 2698, 2706

Bond:

Guardianship:

Adequacy, determination and certification
by chief attorney..... 5263
Certified copy, cost of procuring..... 5229
Indemnity, issuance of duplicate adjusted
service certificate..... 3703
Legal custodian, required to furnish..... 5210, 5312
Loan guaranty cases, authority of Solicitor or
chief attorney to contract for and execute. 5515 (C)
Sureties, management of estates, guardian-
ship cases..... 5317
Valuc, in determining assets of insane veteran's
estate..... 5326

Book:

Account, fiduciaries, supply and distribution. 5300,
5301
Furnishing for education or training. (See
Supplies.)
Institutional on-farm training, furnishing to
trainee..... 10324
Residency course in hospitals, furnishing..... 10237 (B),
10317 (B)
2041 (C)

Bounty, excess, defined..... 2703 (A)(3)(4)

Box, shipping remains of deceased veteran,
allowances..... 2703 (A)(3)(4)

Boxer Rebellion. (See Spanish-American War.)
Braille writers and recording machines, furnish-
ing for blinded trainees..... 10241 (B)

Brief case, furnishing for education or training
purposes..... 10241 (B), 10322 (B), 10539 (D)(3)

Brother or sister, relationship, insured illegiti-
mate..... 3471(C)

Burial:

Application for statutory allowance..... 1026 (B)

Expenses:

Allowable items..... 2700 (A) (3), 2703
Application for statutory allowance..... 1026 (B)
Assets in excess of \$1,000, deceased veter-
an's..... 2699

Burial—Continued

Expenses—Continued

Authorization..... 2692
Body unclaimed..... 2698, 2706 (A)(1)
Death occurring while traveling under prior
authorization or while hospitalized by
VA..... 2696, 2703
Eligibility..... 2694, 2695
Filing and perfecting claim, limitation as to
time..... 2692 (D)

Flag, reimbursement for cost..... 2705 (B)
Forfeiture of benefits, effect on payment. 2705 (C)
Nonallowable items..... 2702
Paid from veteran's or other deceased per-
son's estate, payment to one heir..... 2700 (C)
Payment by lodge, union, political division,
Federal agency, etc., effect on statutory
allowance..... 2704

Persons bearing, reimbursement from ac-
crued amounts due and unpaid at
death..... 2660 (A)(5)

Rates. (See Rates.)

Services furnished by VA, cost to be de-
ducted from burial allowance..... 2705 (A)
Unauthorized, filing of claim..... 2700

Flag:

Cost, reimbursement..... 2705 (B)
Eligibility for and disposition of..... 10
Information necessary, disclosure to under-
taker from VA records..... 516
in National cemeteries, allowances provided.. 2706
Representation, official, at funeral..... 2707
"Veteran of any war" and other "veteran,"
definitions..... 2694, 2695

Cadet:

Benefits under Part VIII:

Concurrent with training at Academy, not
entitled..... 10112 (B)(7)
Time at Academy deducted from service
credits..... 10033 (B)
Civil War, not included in Acts..... 2015 (D)
Coast Guard, not included in Acts..... 1002 (A)
Discharge from Academy, eligibility for hos-
pital treatment or domiciliary care.... 6047 (B)(1)
Included in Acts..... 1001 (L)
Cameras, furnishing for education or train-
ing..... 10241 (A), 10322 (A)
Camp, training, members eligible for benefits.. 1001 (K)
Carelessness, not willful misconduct..... 2044 (A)

Cash value:

NSLI policy, other than 5-year level premium
term..... 3427
USGLI policy..... 3115-3117

Categories, termination of training..... 10209, 10280
Cemetery, National, allowances provided for
burials..... 2706

Certificate:

Adjusted compensation. (See Adjusted serv-
ice certificate.)
Civil Aeronautics Administration, obtaining.
flight courses to be contracted and paid
for..... 10601 (A)

the date of veteran's discharge from last period of service; and the names and complete addresses of physicians and witnesses who are to be contacted by the field examiner. If such information, or any part thereof, is not available, the best possible leads will be given. When verification of a previous statement is wanted, a copy of the statement will be attached to the request, and when there is a question of authenticity, the original statement or a photostat thereof will be furnished to avoid unnecessary delay. When pay-roll records or police records are to be examined, it is essential that the date and place of birth of the veteran, the name and address of his parents (if of record), his color, weight, height, and any other identifying information in the file should be supplied, in recognition of the fact that it may be necessary to distinguish the veteran in question from a number of persons of the same name. When the records show the veteran, claimant, or witnesses to be colored, the designation (c) will be shown after the name or names. (September 15, 1937.)

USE OF FRANKED ENVELOPES:

1062. When it is necessary to request from disinterested persons or organizations official information or documentary evidence required by the Veterans Administration, there should be enclosed with the request a self-addressed franked envelope, and a statement to the effect that the envelope is to be used only for the purpose of forwarding the information or evidence requested. (September 15, 1937.)

RATING BOARD

ORGANIZATION OF RATING BOARD.

1065. There are established in each regional office and facility having regional office activities, such rating boards as are necessary and approved by the assistant administrator in charge of compensation and pensions, each rating board to consist of three rating specialists; a rating specialist, claims; a rating specialist, occupational; and a rating specialist, medical. Rating boards will operate under the immediate direction of the adjudication officer. Each rating specialist will be recommended by the adjudication officer and the manager and approved by the assistant administrator in charge of compensation and pensions. One of the rating specialists of each rating board will, upon recommendation by the adjudication officer and manager and upon approval by the assistant administrator in charge of compensation and pensions, be the chairman thereof. In the event of the temporary absence from the field office of any rating specialist, the adjudication officer will recommend, and the manager will designate, as a temporary rating specialist, an employee having the necessary qualifications. (September 15, 1937.)

FUNCTIONS AND RESPONSIBILITIES OF THE RATING BOARD

RESPONSIBILITIES OF INDIVIDUAL RATING SPECIALISTS.

1067. Prior to the adjudication of any case by a rating board, each rating specialist will review all the evidence on file. In so far as it is practicable this review should be made in all cases before a claimant reports for any scheduled hearing. Each rating specialist will be responsible in every case considered for

developing the pertinent facts bearing upon his particular specialty. If the review, in the opinion of a rating specialist, reveals inadequacy of information or conflicting evidence relating to his specialty, request will be made of the adjudication officer by memorandum for the information or evidence deemed necessary to insure fullest consideration of the claimant's rights. (September 15, 1937.)

1068. RESPONSIBILITIES OF CHAIRMAN.—The chairman of each rating board will, in addition to his other duties, conduct all personal hearings before the board and will be responsible to the adjudication officer for the proper and efficient functioning of the board. (September 15, 1937.)

1069. RESPONSIBILITY OF THE RATING SPECIALIST, CLAIMS.—The rating specialist, claims, will be responsible for reviewing the file of every case before the board, in order to advise the board as to its jurisdiction; as to the admissibility of evidence; as to the proper application of the provisions of all regulations, procedure, approved legal and administrative decisions, and legislation, applicable to the rating of the claim presented. In collaboration with the other rating specialists, he will determine the sufficiency of evidence to establish service connection of diseases and injuries [in claims of living veterans and will be responsible for making rating determinations in death cases, including determinations as to the relationship between service-connected conditions and causes of death]; determine the claimant's occupation at enlistment, the proper occupational variant; evaluate the degree of impairment in earning capacity flowing from each disease and injury shown to be connected with service, and the combined impairment in earning capacity; determine whether permanent total disability exists for the purpose of non-service connected pension; [determine the insanity and incompetency of claimants, where necessary; decide the question of the permanent incapacity of children by reason of physical or mental defect for the purpose of continuance of benefits after attainment to the age of eighteen years;] and review the evidence to insure that the decision is in accordance with the evidence in file. He will assist in all inquiries from a legal point of view, and explain any action of the board which requires a thorough knowledge of the several acts of Congress, legal and administrative decisions, Veterans Administration issues, the Schedule of Disability Ratings, 1925, and Extensions thereto, Schedule for Rating Disabilities, 1933, [and Extensions thereto,] and the procedure in general followed in the adjudication of claims. He will be chosen by reason of his actual experience and qualifications in the preparation and adjudication of [] compensation or pension claims and in the handling of the technical problems of field adjudication work and his familiarity with the acts of Congress under which the Veterans Administration operates. (July 31, 1942.)

1070. RESPONSIBILITY OF THE RATING SPECIALISTS, OCCUPATIONAL.—The rating specialist, occupational, will be responsible for advising the board concerning the claimant's occupation at time of enlistment, and securing and presenting to the board information necessary to show the extent of the similarity or analogy between the claimant's occupation, if not listed in the Schedule of Disability Ratings, 1925, and Extensions thereto, and those listed therein, by comparison of the employment requirements; advising the board as to the evidence in the claimant's file, including affidavits, disclosing the claimant's true occupation at enlistment; advising the board as to whether the evidence is conclusive or whether it is conflicting; and advising the board as to any additional evidence required. In collaboration with the other rating specialists, he will determine the sufficiency of evidence to establish

service connection of diseases and injuries [in claims of living veterans and will be responsible for making rating determinations in death cases, including determinations as to the relationship between service-connected conditions and causes of death;] determine the claimant's occupation at enlistment, the proper occupational variant; evaluate the degree of impairment in earning capacity flowing from each disease and injury shown to be connected with service, and the combined impairment in earning capacity; determine whether permanent total disability exists for the purpose of a non-service connected pension; [determine the insanity and incompetency of claimants, where necessary; decide the question of the permanent incapacity of children by reason of physical or mental defect for the purpose of continuance of benefits after attainment to the age of eighteen years;] review the evidence to insure that the decision is in accordance with the evidence in file; and serve as recorder of the board, maintaining the daily journal of board actions on all cases before the board. The rating specialist, occupational, will be chosen by reason of his familiarity with occupations, vocations, and employment requirements and their effect upon the application of the Schedule of Disability Ratings, 1925, and Extensions thereto, and the Schedule for Rating Disabilities, 1933, [and Extensions thereto,] in evaluating the disabling effect resulting from diseases and injuries. (July 31, 1942.)

1071. RESPONSIBILITY OF RATING SPECIALIST, MEDICAL.—The rating specialist, medical, will be responsible for reviewing every case before the board, in order to advise the board as to the medical aspects of the questions presented; as to the proper interpretation of the rating schedules from the medical standpoint; as to the combination of ratings; as to the identity of and service connection of diseases and injuries; as to the competency from a medical standpoint of the evidence presented; as to the sufficiency of medical data and as to the anatomical location of the disease or injury. In personal appearance cases, he may make a physical examination of the claimant and consult with the medical examiners, when necessary in the opinion of the board, in order that the board may better determine the identity of the disease or injury, and the extent to which it incapacitates the claimant. He will interrogate the claimant in connection with the medical questions involved in the determination of a proper rating. He will advise the board as to any additional disability resulting from hospitalization, or medical or surgical treatment granted by the Veterans Administration. In collaboration with the other rating specialists, he will determine the sufficiency of evidence to establish service connection of diseases and injuries [in claims of living veterans and will be responsible for making rating determinations in death cases, including determinations as to the relationship between service-connected conditions and causes of death;] the claimant's occupation at enlistment, the proper occupational variant, and the degree of impairment or average reduction in earning capacity, flowing from each disease and injury shown to be connected with service, and the combined impairment in earning capacity; determine whether permanent total disability exists for the purpose of a non-service connected pension; [determine the insanity and incompetency of claimants, where necessary; decide the question of the permanent incapacity of children by reason of physical or mental defect for the purpose of continuance of benefits after attainment to the age of eighteen years;] and review the evidence to insure that the decision is in accordance with the evidence in file. The rating specialist, medical, will be chosen by reason of his actual experience in and knowledge of medicine and the procedure and policy in regard to the handling of [rating] problems. (July 31, 1942.)

1072. DUTIES OF RATING BOARD SECRETARY.—There will be a secretary of the rating board who will perform such secretarial and clerical duties as may be required by the board, including the assistance of the claimant in the execution of Form 569 series, occupational statement and supporting affidavits, if such form is required, and will be responsible for the control of cases flowing to the rating board, and for directing the claimant or his representative to the rating board for personal appearance. (September 15, 1937.)

1075. REASONABLE DOUBT RESOLVED IN FAVOR OF VETERAN.—The personnel engaged in the rating of cases will bear in mind the statement of the general policy in rating disabilities on page 11 of the Schedule of Disability Ratings, 1925, and page 2 of the Schedule for Rating Disabilities, 1933, regarding the resolution of the reasonable doubt in favor of veterans. (September 15, 1937.)

1078. DECISION BY RATING BOARD AND ACTION THEREON.—The rating board will set forth its decision as to the service connection of each disease and injury shown to exist and will evaluate the disabling effect flowing from each service-connected disease and injury, in accordance with the official disability rating schedules. The rating board will also determine permanent total disability for purposes of Veterans Regulation No. 1 series, Part III. When all possible reconciliation of individual opinions has been made, the rating board, after considering all phases of the case, will make a rating on each disease or injury, adhering to the provisions of the Schedule of Disability Ratings, 1925, and Extensions thereto and the Schedule for Rating Disabilities, 1933, [and Extensions,] and then will combine the individual ratings in accordance therewith. The case file, with the rating and reports of the medical examination, will be routed to the authorization unit, which will proceed with the preparation and authorization of any necessary awards, disallowance, or discontinuance of compensation or pension. (July 31, 1942.)

1079. DISSENTING OPINIONS.—In all cases wherein there is a memorandum by a non-concurring rating specialist, the case will be referred to the adjudication officer for determination as to whether or not appeal will be taken. If such an appeal is made within the prescribed time limit, no adjudicative action will be taken on the rating until the appeal has been decided. (September 15, 1937.)

1081. CLAIMANT OR REPRESENTATIVE MAY APPEAR PERSONALLY BEFORE RATING BOARD.—Upon receipt of a specific request therefor, claimants or their personal representatives may be permitted to appear personally before rating boards provided no expense to the Government is incurred. Rating boards will conduct personal hearings by fixed appointment which will be arranged in such a manner as to obviate the necessity for unreasonably detaining claimants. Under no circumstances will claimants reporting to a regional office or facility for physical examination in connection with a claim be held over at Government expense in order to appear before a rating board. The adjudication officers and the managers will be held responsible for any lack of business-like or orderly procedure in connection with the conduct of personal hearings. (September 15, 1937.)

1082. ACTION BY RATING BOARD WHEN CLAIMANT OR REPRESENTATIVE APPEARS PERSONALLY.—
(A) Upon appearance the claimant or his personal representative will be acquainted with the purpose thereof, and given a full and complete hearing on all matters material and relevant to the claim. When it is considered necessary by the chairman of the rating board, a stenographic report of the hearing may be made. Any new and material evidence, developed orally, during the hearing shall be reduced to writing, signed

Corrected PAGE - Correction underlined.

by the witness under oath, and incorporated in the permanent record of the case. A claimant may produce witnesses at a hearing without expense to the Government. Before concluding the hearing the board will ascertain from the claimant or his representative that all the evidence he desired considered has been presented. At the conclusion of the hearing the board will go into executive session to consider the evidence and arrive at a decision. If further examination is considered necessary for rating purposes, it will be effected immediately while the claimant is in the office or facility.

(B) Where the chief medical officer determines, following a reexamination, that there is no change in physical condition warranting rerating (see R. & P. 1137 (D)) and the claimant, while in the office for reexamination, desires to present to the rating board any phase of his case pertaining to the evaluation of reduction in earning capacity, service connection of additional disability or any other matter over which the rating board has jurisdiction, the case and the claimant will be referred to the adjudication officer or such person as he may designate for the arrangement of any special hearing found to be in order. A memorandum report of any hearing conducted, showing briefly the points raised and the decision of the board, will be prepared unless a new rating is necessary to correct previous errors or accomplish further action found appropriate upon the basis of new and material evidence, etc. (September 15, 1937.)

1083. CLAIMANT TO BE ADVISED OF DECISION BY RATING BOARD.—When the board as a whole in executive session reaches a decision, the claimant will be recalled and will be informed of the decision in clear, non-technical terms and the reasons therefor, particular care being taken to avoid giving the claimant any information which might prove injurious to his physical or mental health. He will be further informed that he will receive by mail a written notice of the action taken. The decision of the board will immediately thereafter be reduced to writing and signed by each concurring rating specialist. The decision of the majority will constitute the decision of the board and will be final as to the regional office or facility, unless appeal therefrom is made in accordance with existing regulations. (September 15, 1937.)

1084. PROCEDURE WHERE CLAIMANT IS DISSATISFIED WITH DECISION OF RATING BOARD.—If the claimant should express dissatisfaction when informed of the decision, every reasonable effort will be made by the board to convince him of the correctness thereof by explaining to him in non-technical language the action taken by the board. If, following an explanation, he remains dissatisfied and indicates a desire to appeal, he will be referred to the adjudication officer or an employee designated by him for further conference regarding the decision in question. It will be the duty of the adjudication officer or the employee designated by him to ascertain and note carefully the exact reasons for the claimant's dissatisfaction; to ascertain the possibility of securing additional evidence in support of the case, from the War or Navy Department or other sources; and to initiate appropriate action to assist in the procurement of all available evidence of a material character. If the claimant still expresses a desire to appeal, he will be assisted in the execution of Form P-9 and the action indicated in R. & P. 1325 and 9804 will be taken. (September 15, 1937.)

1087. SOLICITOR'S OPINION IN INDIVIDUAL CASES NOT TO BE TAKEN AS CONTROLLING PRECEDENTS UNLESS APPROVED BY THE ADMINISTRATOR.—All opinions of the solicitor which constitute a precedent are embodied either in Administrator's Decisions or opinions

which are approved by the Administrator. Conclusions reached in individual cases are frequently influenced by peculiar facts or local statutes and consequently will not be followed as precedents. However, where it is apparent beyond question that the situation is identical, such conclusions may be followed as a matter of consistency in the adjudication of claims under the law or regulations applicable. (September 15, 1937.)

1090. PROCEDURE IN CLAIMS FOR ADDITIONAL ALLOWANCE FOR NURSE OR ATTENDANT.—When an application is made by or in behalf of a claimant for an additional allowance for a nurse or attendant, the principles enunciated in R. & P. R-1175, R-1237 and R-1238 are for application. In cases in which the additional allowance is authorized, the rating board will, except as herein provided, request periodic physical reexaminations, the time and frequency of which is to be determined by such board upon the basis of the disability found. Where the additional allowance for a nurse or attendant has been made to patients with amputations, or in those cases wherein the basic condition requiring a nurse or attendant is essentially permanent as defined in R. & P. 1162, the condition of such patients is so stabilized that follow-up physical reexaminations to determine the necessity for continuance of the allowance for a nurse or attendant are not required. (September 15, 1937.)

1091. PROCEDURE IN DETERMINING ENTITLEMENT TO STATUTORY AWARD UNDER SECTION 202 (3), SECOND PARAGRAPH.—It is necessary that a full compliance be made with the provisions of R. & P. R-6065 in all cases in which the statutory award under a total rating for a period of three years is for consideration. See also R. & P. R-1235 (B) (2). (September 15, 1937.)

1092. REQUESTS FOR HOSPITAL REPORTS AND CLINICAL RECORDS.—(A) Hospital reports and clinical records pertaining to veterans who have been hospitalized, since discharge from service, at Walter Reed General Hospital, Washington, D. C.; William Beaumont General Hospital, El Paso, Texas; Army and Navy General Hospital, Hot Springs, Arkansas; Letterman General Hospital, San Francisco, California; and Station Hospital, Fort Sam Houston, San Antonio, Texas, will be requested from the chief clerk.

(B) Hospital reports and clinical records pertaining to veterans who are not in active service but are undergoing hospitalization in Walter Reed General Hospital, Soldiers Home, Washington, D. C., or in any Army or Navy Hospital, or who are being or have been hospitalized in any Veterans Administration facility, will be requested by memorandum to the medical director in central office cases or by letter over the signature of the manager addressed to the commanding officer (or manager) in field cases.

(C) Reports and clinical records from the Fitzsimons General Hospital, Denver, Colorado, and St. Elizabeth's Hospital, Washington, D. C., will be requested by memorandum to the medical director in central office cases or by a letter over the signature of the manager addressed to the commanding officer in field cases.

(D) Hospital and clinical records pertaining to veterans who are being or have been hospitalized in hospitals maintained by any of the several States or political subdivisions thereof will be requested directly from the institutions concerned.

(E) On requests for clinical records of closed hospitals, see R. & P. 797 and 798. (September 15, 1937.)

1093. REQUEST FOR INFORMATION FROM THE MAYO CLINIC, ROCHESTER, MINNESOTA.—Request for information from the records of the Mayo Clinic, Rochester, Minnesota, for use in the adjudication of claims should be accompanied by the written authority of the veteran or his legal guardian to furnish such information to the Veterans Administration. (September 15, 1937.)

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1008. FINALITY OF DECISIONS.--The decision of a duly constituted rating board, in a case properly before the board, will be final and binding upon all field offices of the VA and will not be subject to revision except by duly constituted appellate authorities or except as provided in R&P R-1009. (January 25, 1936)

1009. REVISION OF RATING BOARD DECISIONS

47659 (A) No rating board will reverse or amend, except upon new and
7-B material evidence, a decision rendered by the same or any other rating
8-86 board, or by an appellate authority, except where such reversal or amend-
ment is clearly warranted by a change in law or by a specific change in
Par. interpretation thereof specifically provided for in a VA issue; Provided, That
3,4,5 a rating board may reverse or amend a decision by the same or any other
rating board where such reversal or amendment is obviously warranted by
+25, a clear and unmistakable error shown by the evidence in file at the time the
Let. prior decision was rendered, but in each such case there shall be attached
to each copy of the rating a signed statement by the rating board definitely
6-11-48 fixing the responsibility for the erroneous decision. (See also R&P R-1201.)
Where the severance of service-connection is considered warranted on the
facts of record, see subparagraph (D) hereof. *Relates to Veterans Claims*
only. G.S.L. 10-30-42. Applicable under Pub. 361, 77th. S.O. 4-24-42
(B) Whenever a rating board may be of the opinion that a revision
or an amendment of a previous decision is warranted on the facts of record
in the case at the time the decision in question was rendered, a difference
of opinion being involved rather than a finding of clear and unmistakable
error, the complete file will be forwarded to the Director, Claims Service,
branch office, accompanied by a complete and comprehensive statement of
the facts in the case and a detailed explanation of the matters supporting the
conclusion that a revision or amendment of the prior decision is in order.
All cases in which difference of opinion on the same factual basis involves a
rating agency in Central Office, or exists between rating agencies in different
branch office territories, will be submitted directly by the Director, Claims
Service, branch office, to the Assistant Administrator for Claims, Attention
of the Director, Veterans Claims Service. A rating decision will not be ef-
fected in any such case pending the return of the case file following branch
or Central Office consideration. The effective date of the rating authorizing
TB benefits in such cases will be the date of administrative determination, ex-
8-87 cept where otherwise provided. *G. 296; applies to administrative*
review only - S.O. 10-26-44 (Cable)
(C) Determinations in effect on March 19, 1933, will not be re-
versed in those cases comprehended within the provisions of sections 27 and
28, Public No. 141, 73d Congress, except as provided in these sections.
These cases, therefore, will not be referred to the branch office under sub-
paragraph (B) above upon a difference of opinion. In the event clear and un-
mistakable error is discovered the rating board will take action as provided
in subparagraph (A) above.

4b-3R followed by 5-9R

1008. FINALITY OF DECISIONS.--The decision of a duly constituted rating board, in a case properly before the board, will be final and binding upon all field offices of the VA and will not be subject to revision except by duly constituted appellate authorities or except as provided in R&P R-1009. (January 25, 1936)

1009. REVISION OF RATING BOARD DECISIONS.

(A) No rating board will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board, or by an appellate authority, except where such reversal or amendment is clearly warranted by a change in law or by a specific change in interpretation thereof specifically provided for in a VA issue; Provided, That a rating board may reverse or amend a decision by the same or any other rating board where such reversal or amendment is obviously warranted by a clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered, but in each such case there shall be attached to each copy of the rating a signed statement by the rating board definitely fixing the responsibility for the erroneous decision. (See also R&P R-1201.) Where the severance of service connection is considered warranted on the facts of record, see subparagraph (D) hereof. (May 13, 1947) *Related to Veterans Claims only in case of L. 100. 2. 10. 1947*

(B) Whenever a rating board may be of the opinion that a revision or amendment of a previous decision is warranted on the facts of record in the case at the time the decision in question was rendered, a difference of opinion being involved rather than a finding of clear and unmistakable error, the complete file will be forwarded, [] accompanied by a complete and comprehensive statement of the facts in the case and a detailed explanation of the grounds supporting the conclusion that a revision or amendment of the prior decision is in order, [] to the Assistant Administrator for Claims, and Beneficiaries Claims Service, Veterans Claims Service; for Director, Dependents and Beneficiaries Claims Service, as the case may be. A rating decision will not be affected in any such case pending the return of the case file, following [] Central Office consideration. The effective date of the rating authorizing benefits in such cases will be the date of administrative determination, except where otherwise provided, [] regardless of whether there is a pending claim in file]. *Administrative determination*

(C) Determinations in effect on March 19, 1933, will not be referred to those cases comprehended within the provisions of sections 27 and 28, Public No. 141, 73d Congress, except as provided in these sections. These cases therefore, will not be referred [] under subparagraph (B) above upon a difference of opinion. In the event clear and unmistakable error is discovered, the rating board will take action as provided in subparagraph (A) above. (October 19, 1949)

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(D) Authority to sever service-connection upon the basis of clear and unmistakable error (the burden of proof being upon the Government), even in those instances where veterans are pursuing courses of vocational re-habilitation training under Veterans Regulation 2 (a), part VII, as amended, is vested in regional offices and centers. Service-connection will not be severed in any case on a change of diagnosis in the absence of the certification hereinafter provided. Accordingly, in reports of examinations submitted for rating purposes, where a change in diagnosis of a service-connected disability is made, the examining physician or physicians, or other proper medical authority, will be required to certify, in the light of all accumulated medical evidence, that the prior diagnosis on which service-connection was predicated, was not correct. This certification will be accompanied by a summary of the facts, findings, and reasons supporting the conclusion reached. When the examining physician or physicians, or other proper medical authority, are unable to make the certification provided herein, service-connection will be continued by the rating agency. Where this certification is made, the case will be carefully considered by the rating agency and in the event it is determined in consideration of all the accumulated evidence that service-connection should be continued, a decision to that effect will be rendered, citing this regulation as authority. If, in the light of all the accumulated evidence, it is determined that service-connection may not be maintained, it will be severed. The claimant will be immediately notified in writing of the contemplated action and the detailed reasons therefor and will be given a reasonable period, not to exceed 60 days from the date on which such notice is mailed to his last address of record, for the presentation of additional evidence pertinent to the question. This procedure is for application, except (1) in case of fraud; (2) in case of a change in law; (3) in case of a change of interpretation of law specifically provided in a VA issue; or (4) where the evidence establishes the service-connection to be clearly illegal. (See R&E 1291.) (May 13, 1947) Par. 35 + 25, Let. 6-11-48, Dec 4, IBB-19, Par. 315, Let. 1-28-48, Par. 10, IBB-32

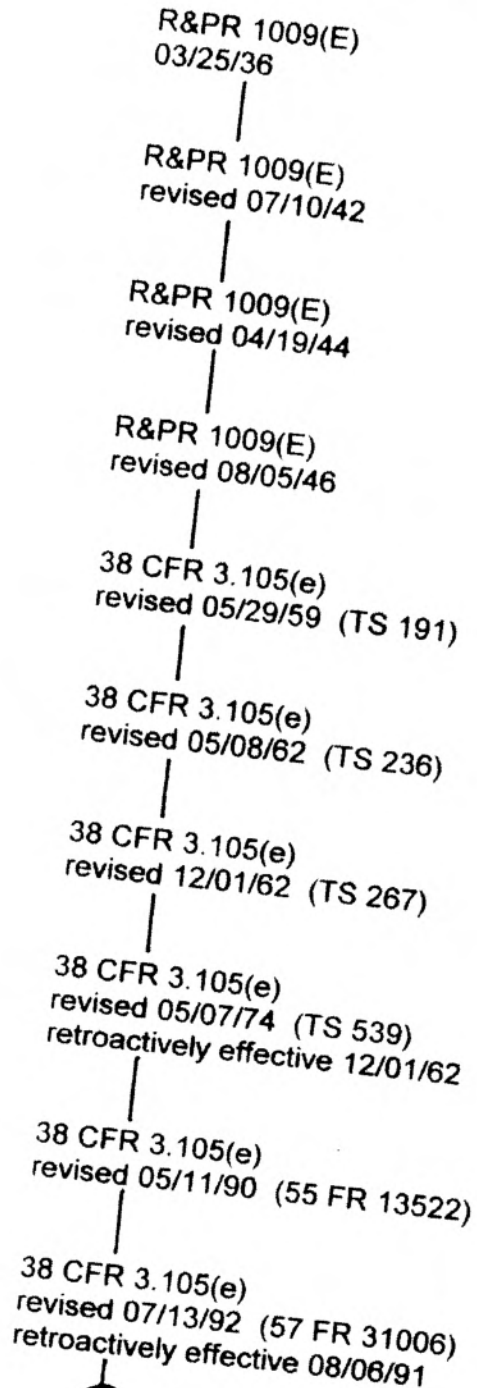
(E) When the reduction of an award for a service-connected disability is considered warranted by a change in physical condition, the rating agency will prepare an appropriate rating extending the present evaluation 60 days from the date of rating, followed by the reduced evaluation. In all such cases award action and approval will be processed at the time of rating, but the date of submission and approval entered on the award form will be the date following expiration of the 60-day period following the date of rating. The reduction or discontinuance of the award shall become effective, in accordance with Veterans Regulation 2 (a), part I, paragraph III (b), on the last day of the month in which the approval of the award is effective. In view of the time limitation the veteran will be promptly notified in writing at the time that such award action and approval are processed that the reduction or discontinuance will be effective as provided above, without further notice, if additional evidence is not submitted within the 60-day period.

5-9R

Not applicable to ratings made under Ext. 2-A, 1945 Schedule.
See par. 2 of the Ext.
Arrested TB reductions - TB 8-38 and 8-70
Application

Par 37
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38 CFR 3.105(e)



38 CFR 3.105(e)

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38 CFR 3.105(e)
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1005

from any decision is taken by the adjudication officer, the manager, or the chief, claims division in cases adjudicated by the central disability board, no change in payments, based on the decision appealed from, will be made until a decision is rendered by the board of veterans appeals and the case file is returned to the appropriate activity. (January 25, 1936.)

DECISIONS TO CONFORM TO EXISTING LAWS, REGULATIONS, AND DEFINED POLICIES.

1006. All decisions will conform strictly to the laws, regulations, Administrator's decisions and defined policies as enunciated by the Administrator. (January 25, 1936.)

INFORMATION ON ALL DECISIONS TO BE FURNISHED TO VETERANS.

1007. The claimant will, in all cases in which he appears personally before a rating board, be informed by the board of the decision reached and the reason therefor. The claimant will also be advised upon completion of adjudicative action based upon the decision of the provisions thereof, and his entitlement or non-entitlement thereunder and of his right of appeal, and of the time within which appeal must be taken. (January 25, 1936.)

FINALITY OF DECISIONS

1008. The decision of a duly constituted rating board, in a case properly before the board, will be final and binding upon all field offices of the Veterans Administration and will not be subject to revision except by duly constituted appellate authorities or except as provided in R. & P. R-1009. (January 25, 1936.)

REVISION OF RATING BOARD DECISIONS

1009. (A) No rating board will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board, or by any appellate authority, except where such reversal or amendment is clearly warranted by a change in law or by a specific change in interpretation thereof specifically provided for in a Veterans Administration issue; provided, that a rating board may reverse or amend a decision by the same or any other rating board where such reversal or amendment is obviously warranted by a clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered, but in each such case there shall be attached to each copy of the rating a signed statement by the rating board definitely fixing the responsibility for the erroneous decision. (See also R. & P. R-1201.)

(B) Whenever a rating board may be of the opinion that a revision or an amendment of a previous decision is warranted on the facts of record in the case at the time the decision in question was rendered, the complete file will be forwarded to the director, veterans claims service, accompanied by a complete and comprehensive statement of the facts in the case and a detailed explanation of the matters supporting the conclusion that a revision or amendment of the prior decision is in order. A rating decision will not be effected in any such case. (January 25, 1936.)

(C) Determinations in effect on March 19, 1933 will not be reversed in those cases comprehended within the provisions of Sections 27 and 28, Public No. 141, 73d Congress, except as provided in these Sections. These cases therefore, will not be

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or amendment is obviously warranted by a clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered, but in each such case there shall be attached to each copy of the rating a signed statement by the rating board definitely fixing the responsibility for the erroneous decision. (See also R. & P. K-120.)

(B) Whenever a rating board may be of the opinion that a revision or an amendment of a previous decision is warranted on the facts of record in the case at the time the decision in question was rendered, the complete file will be forwarded to the director, veterans claims service, accompanied by a complete and comprehensive statement of the facts in the case and a detailed explanation of the matters supporting the conclusion that a revision or amendment of the prior decision is in order. A rating decision will not be effected in any such case. (January 25, 1936.)

(C) Determinations in effect on March 19, 1933 will not be reversed in those cases comprehended within the provisions of sections 27 and 28, Public No. 141, 73d Congress, except as provided in these sections. These cases therefore, will not be referred to central office under subparagraph (B) above upon a difference of opinion. In the event clear and unmistakable error is discovered the rating board will take action as provided in subparagraph (A) above. (July 8, 1935.)

(D) When the decision of a rating agency involves breaking of service connection (the burden of proof being on the Government), the claimant will be immediately notified in writing of the contemplated action and the detailed reasons therefor and will be given a reasonable period, not to exceed 60 days, from the date on which such notice is mailed to his last address of record, for the presentation of additional evidence pertinent to the question. This procedure is for application except (1) in case of fraud; (2) in case of a change in law; (3) in case of a change of interpretation of law specifically provided in a Veterans Administration issue; or (4) where the evidence establishes the service connection to be clearly illegal.

(E) When a reduction of an award for a service-connected disability is considered warranted by reason of a change in the physical condition, the claimant will be notified in writing of the proposed action and the detailed reasons therefor and will be informed that sixty days from the date on which such notice is mailed to him his case will be reviewed upon the basis of any evidence that he may desire to submit in the meantime as to why such reduction should not be effectuated. The claimant will also be given the opportunity to appear before the rating agency which reviews his case at the expiration of the sixty day period. The rating agency, after consideration of the representations made by the veteran at the hearing or of any additional evidence submitted, will take such action as may be indicated to develop the evidence further, if necessary, but if it is considered that the available evidence warrants a reduction, an appropriate rating will be rendered, and the provisions of Veterans Regulation No. 2(a), Part I, Paragraph III(b), will be applied as to the effective date of reduction upon the basis of such rating. (March 25, 1937.)

ADJUDICATION OF APPLICATIONS.

1010. Applications for disability compensation or pension under Public No. 2, 73d Congress and Public No. 141, 73d Congress, [will be adjudicated in the appropriate field station when the applicant served in the military or naval forces on or after April 6, 1917 and prior to July 2, 1921, except:

(A) Applicant has a claim on file in central office for pension under the general pension law or various service pension acts.

claims division in cases adjudicated by the central disability board, no change in payments, based on the decision appealed from, will be made until a decision is rendered by the board of veterans appeals and the case file is returned to the appropriate activity. (January 25, 1936.)

(E) If it is decided that an appeal is to be taken by the adjudication officer, the manager, or the chief, claims division in central office cases, the claimant or his representative will be promptly informed concerning the question at issue and concerning his right of appearance or representation before the rating board or the board of veterans appeals. As provided in R. & P. 1326 (C) the formal hearing in the field office will be in lieu of a formal hearing before the board of veterans appeals except in the unusual case when a special appearance by the veteran or his representative before the board of veterans appeals may be considered necessary. The hearing will not be accepted to serve as a basis for reversal of the majority decision, but such action as may be indicated will be taken where new and material evidence is submitted or where the further development of evidence would appear to be advisable on information submitted by or in behalf of the claimant. A transcribed record of the hearing will be filed. If, upon being informed of the administrative appeal, the claimant or his representative elects to present additional evidence or argument in support of the administrative appeal, such election will be deemed to be an appeal, and the two appeals will be merged and considered in accordance with the provisions of R. & P. R-1328. (July 20, 1936.)

DECISIONS TO CONFORM TO EXISTING LAWS, REGULATIONS, AND DEFINED POLICIES.

1006. All decisions will conform strictly to the laws, regulations, Administrator's decisions and defined policies as enunciated by the Administrator. (January 25, 1936.)

INFORMATION ON ALL DECISIONS TO BE FURNISHED TO VETERANS

1007. The claimant will, in all cases in which he appears personally before a rating board, be informed by the board of the decision reached and the reason therefor. The claimant will also be advised upon completion of adjudicative action based upon the decision, of the provisions thereof, and his entitlement or non-entitlement thereunder and of his right of appeal, and of the time within which appeal must be taken. (January 25, 1936.)

FINALITY OF DECISIONS.

1008. The decision of a duly constituted rating board, in a case properly before the board, will be final and binding upon all field offices of the Veterans Administration and will not be subject to revision except by duly constituted appellate authorities or except as provided in R. & P. R-1009. (January 25, 1936.)

REVISION OF RATING BOARD DECISIONS.

1009. (A) No rating board will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board, or by any appellate authority, except where such reversal or amendment is clearly warranted by a change in law or by a specific change in interpretation thereof specifically provided for in a Veterans Administration issue; provided, that a rating board may reverse or amend a decision by the same or any other rating board where such reversal

R+PR 1009 (E)

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requisite medical certificate accepted as showing that the previous diagnosis was not correct be of record in the case file.]

(B) Whenever a rating board may be of the opinion that a revision or an amendment of a previous decision is warranted on the facts of record in the case at the time the decision in question was rendered, [a severance of service connection not being involved, the complete file will be forwarded to the director of the service concerned in central office, accompanied by a complete and comprehensive statement of the facts in the case and a detailed explanation of the matters supporting the conclusion that a revision or amendment of the prior decision is in order. A rating decision will not be affected in any such case pending the return of the case file following central office consideration. The effective date of the rating authorizing benefits in such cases will be the date of administrative determination, except where otherwise provided. (R. & P. 1115.)]

(C) Determinations in effect on March 19, 1933 will not be reversed in those cases comprehended within the provisions of sections 27 and 28, Public No. 141, 73d Congress, except as provided in these sections. These cases, therefore, will not be referred to central office under subparagraph (B) above upon a difference of opinion. In the event clear and unmistakable error is discovered the rating board will take action as provided in subparagraph (A) above.

(D) [In those instances wherein the severance of service connection is involved (the burden of proof being on the Government), and the case file upon submission to the central office under subparagraph (A) hereof has been returned for appropriate action hereunder,] the claimant will be immediately notified in writing of the contemplated action and the detailed reasons therefor and will be given a reasonable period, not to exceed 60 days, from the date on which such notice is mailed to his last address of record, for the presentation of additional evidence pertinent to the question. This procedure is for application except (1) in case of fraud; (2) in case of a change in law; (3) in case of a change of interpretation of law specifically provided in a Veterans Administration issue; or (4) where the evidence establishes the service connection to be clearly illegal.

(E) When a reduction of an award for a service-connected disability is considered warranted by reason of a change in the physical condition, the claimant will be notified in writing of the proposed action and the detailed reasons therefor and will be informed that sixty days from the date on which such notice is mailed to him his case will be reviewed upon the basis of any evidence that he may desire to submit in the meantime as to why such reduction should not be effectuated. The claimant will also be given the opportunity to appear before the rating agency which reviews his case at the expiration of the sixty day period. The rating agency, after consideration of the representations made by the veteran at the hearing or of any additional evidence submitted, will take such action as may be indicated to develop the evidence further, if necessary, but if it is considered that the available evidence warrants a reduction, an appropriate rating will be rendered, and the provisions of Veterans Regulation No. 2(a), Part I, Paragraph III(b), will be applied as to the effective date of reduction upon the basis of such rating. (July 16, 1942.)

1010. ADJUDICATION OF APPLICATIONS.—Applications for disability compensation or pension will be adjudicated in the appropriate field station when the applicant's entire military or naval service was subsequent to July 15, 1903, or Coast Guard service subsequent to January 27, 1915, except when jurisdiction is otherwise vested in central office under R. & P. R-2025. (February 1, 1942.)

R+PR 1009 (E)

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1005

(E) If it is decided that an appeal is to be taken by the adjudication officer, the manager, or the chief, claims division, in central office cases, the claimant or his representative will be promptly informed concerning the question at issue and concerning his right of appearance or representation before the rating board or the board of veterans appeals. As provided in R. & P. 1326 (C) the formal hearing in the field office will be in lieu of a formal hearing before the board of veterans appeals except in the unusual case when a special appearance by the veteran or his representative before the board of veterans appeals may be considered necessary. The hearing will not be accepted to serve as a basis for reversal of the majority decision, but such action as may be indicated will be taken where new and material evidence is submitted or where the further development of evidence would appear to be advisable on information submitted by or in behalf of the claimant. A transcribed record of the hearing will be filed. If, upon being informed of the administrative appeal, the claimant or his representative elects to present additional evidence or argument in support of the administrative appeal, such election will be deemed to be an appeal, and the two appeals will be merged and considered in accordance with the provisions of R. & P. R-1326. (July 20, 1939.)

1006. DECISIONS TO CONFORM TO EXISTING LAWS, REGULATIONS, AND DEFINED POLICIES.—All decisions shall conform strictly to the laws, regulations, Administrator's decisions and defined policies as announced by the Administrator. (January 25, 1930.)

1007. INFORMATION ON ALL DECISIONS TO BE FURNISHED TO VETERANS.—The claimant will, in all cases in which he appears personally before a rating board, be informed by the board of a decision reached and the reason therefor. The claimant will also be advised upon completion of adjudicative action based upon the decision, of the provisions thereof, and his entitlement or non entitlement thereunder and of his right of appeal, and of the time within which appeal must be taken. [While failure to receive written notice of right to, and time for, appeal will not extend the time for filing appeal, it will not preclude an administrative review in a meritorious case upon a proper authorization.] (January 18, 1943.) *Trans. 425713 with A.S. 4/26/43*

1008. FINALITY OF DECISIONS.—The decision of a duly constituted rating board, in a case properly before the board, will be final and binding upon all field offices of the Veterans Administration and will not be subject to revision except by duly constituted appellate authorities or except as provided in R. & P. R-1009. (January 25, 1930.)

1009. REVISION OF RATING BOARD DECISIONS.—(A) No rating board will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board, or by any appellate authority, except where such reversal or amendment is clearly warranted by a change in law or by a specific change in interpretation thereof specifically provided for in a Veterans Administration issue; provided, that a rating board may reverse or amend a decision by the same or any other rating board where such reversal or amendment is obviously warranted by a clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered, but in each such case there shall be attached to each copy of the rating a signed statement by the rating board definitely fixing the responsibility for the erroneous decision. (See also R. & P. R-1201.) Provided, further, that where the severance of service connection is considered warranted on the facts of record the case file will be forwarded without rating to the director of the service concerned in central office, for review, accompanied by a full and clear statement of the underlying reasons and facts. Where the submission with recommendation for severance of service connection is based upon a change of diagnosis it is essential that the

4-TR followed by 4a-5k and 4a-6k

R+PR 1009(E)

Rec'd & Dist 4-10-44

4-19-44

1009

requisite medical certificate accepted as showing that the previous diagnosis was not correct be of record in the case file.

(B) Whenever a rating board may be of the opinion that a revision or an amendment of a previous decision is warranted on the facts of record in the case at the time the decision in question was rendered, a severance of service connection not being involved, the complete file will be forwarded to the director of the service concerned in central office, accompanied by a complete and comprehensive statement of the facts in the case and a detailed explanation of the matters supporting the conclusion that a revision or amendment of the prior decision is in order. A rating decision will not be effected in any such case pending the return of the case file following central office consideration. The effective date of the rating authorizing benefits in such cases will be the date of administrative determination, except where otherwise provided. (R. & P. 1115.)

(C) Determinations in effect on March 19, 1933, will not be reversed in those cases comprehended within the provisions of sections 27 and 28, Public No. 141, 73d Congress, except as provided in these sections. These cases, therefore, will not be referred to central office under subparagraph (B) above upon a difference of opinion. In the event clear and unmistakable error is discovered the rating board will take action as provided in subparagraph (A) above. *Let. R-19-36*

(D) In those instances wherein the severance of service connection is involved (the burden of proof being on the Government), and the case file upon submission to the central office under subparagraph (A) hereof has been returned for appropriate action hereunder, the claimant will be immediately notified in writing of the contemplated action and the detailed reasons therefor and will be given a reasonable period, not to exceed sixty days from the date on which such notice is mailed to his last address of record, for the presentation of additional evidence pertinent to the question. This procedure is for application except (1) in case of fraud; (2) in case of a change in law; (3) in case of a change of interpretation of law specifically provided in a Veterans Administration issue; or (4) where the evidence establishes the service connection to be clearly illegal. (July 10, 1942.)

(E) When the reduction of an award for a service-connected disability is considered warranted by a change in physical condition, the rating agency will prepare an appropriate rating extending the present evaluation sixty days from the date of rating, followed by the reduced evaluation, and in view of the time limitation the veteran will be promptly notified in writing of the proposed action and that unless he submits evidence showing the proposed reduction to be unwarranted within sixty days from the date on which the notice is mailed to him, the reduction will be effected as indicated without further correspondence with him. Evidence received within sixty days from the date of notice will be referred to the rating agency for rating. If the veteran fails to submit evidence within sixty days from the date of notice, the reduction of the award will be effected without further rating action, in accordance with the provisions of Veterans Regulation No. 2 (a), Part I, paragraph III (b). The rating sheet will bear the following notation: "R. & P. R-1009 (E), as amended" (April 19, 1944.)

1010. ADJUDICATION OF APPLICATIONS.--Applications for disability compensation or pension will be adjudicated in the appropriate field station when the applicant's entire military or naval service was subsequent to July 15, 1903, or Coast Guard service subsequent to January 27, 1915, except when jurisdiction is otherwise vested in central office under R. & P. R-2025. (February 1, 1942.)

44-5R Followed by 5-6R

*See how cut 10/20/44 R+PR 1174 (C) (D) (E)
Old into New Reg 1944 - Jan 7/44*

May 29, 1959

VA REGULATIONS

COMPENSATION AND PENSION--Transmittal Sheet 191

Remove pages

Insert pages

See explanation
Transmittal Sheet 189.

35-i
35 and 36
37 and 38
39 and 40,41,42,43,44

Paragraphs revised

Paragraphs added

Paragraphs canceled

None

None

- ✓ 1100 (See explanation
- ✓ 1101 Transmittal
- ✓ 1102 Sheet 189.)
- ✓ 1103
- ✓ 1104
- ✓ 1105
- ✓ 1106
- ✓ 1107
- ✓ 1108
- ✓ 1109
- ✓ 1110
- ✓ 1111
- ✓ 1112
- ✓ 1113

EXPLANATION

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

Paragraph 1100. No change of VA Regulation 1024 other than organizational designations. Terminology "an authorization officer" includes attorney-reviewers and persons authorized to approve awards based on claims for reimbursement for expenses of last illness or burial.

A. J. ...

VA Regulations
Compensation and Pension--Transmittal Sheet 191

* A determination is being made as to whether this paragraph may be codified in accordance with the revised "Preparation of documents subject to Codification" published by the Division of the Federal Register or be printed in the Notices Section of the Federal Register as VA Regulation 1024 was.

Paragraph 1101. No change of VA Regulation 1006.

Paragraph 1102. Statement of rule of reasonable doubt.

Paragraph 1103. Restatement of VA Regulation 1007. Last sentence moved to new VA Regulation 1109.

Paragraph 1104. Subparagraph (A): Restatement of VA Regulation 1008 to extend rule to all adjudicative decisions including ratings. Subparagraph (B): Consolidation of VA Regulations 1053, 1064(E), and 1066(B). Determinations as to homicide and death added. Subparagraph (C): No change of 1330.

Paragraph 1105. Restatement of VA Regulations 1009 and 2670. Subparagraph (C) is based on VA Regulation 1064(E). The provisions of VA Regulation 2670(C), which required 60 days notice in reduction or discontinuance of ratings for death benefits, are canceled. The provisions of VA Regulation 1105(A) are for application in such cases.

Paragraph 1106. Restatement of VA Regulations 2554 and 2922.1.

Paragraph 1107. Restatement of VA Regulations 2593 (A) and (B) and 2953 (A) and (B). This paragraph now includes live cases.

Paragraph 1108. Restatement of VA Regulation 1026(A), last sentence. Reference to evidence added.

Paragraph 1109. Restatement of VA Regulations 1007, 1214(A), 2500.1(E) (1) and (2), 2932 (A) and (B). Applicable to disability and death cases. Statement added in subparagraph (A) showing the 1-year time limit for furnishing evidence is applicable to claims for additional benefits or resumption of benefits as well as to original claims.

Paragraph 1110. Restatement of VA Regulations 1029 and 2932(C).

Paragraph 1111. Restatement of VA Regulation 2555(B). Rules apply to both live and death cases. Subparagraph (A): 38 U.S.C. 4007(a) provides that the 60-day period will run "from the date notice is mailed." Therefore, the letter will bear the date it is mailed. The same phrasing was contained in Veterans Regulation No. 2 (a), part II, paragraph X (a). Subparagraph (B): No change. Subparagraph (C): Extends to 60 days the period allowed to residents of foreign countries for filing an answer to evidence submitted by a person who is protesting a proposed award.

Paragraph 1112. No change of VA Regulation 2593(C) and 2954.

Paragraph 1113. Previously found in VA Manual M8-1, paragraph 7.02.

By direction of the Administrator:

BRADFORD MORSE
Deputy Administrator

Distribution in accordance with VA Form 3-3040.

1103

VA Regulations
Compensation and Pension--Trans. Sheet 191

in a fair and impartial mind that his claim is well-grounded. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not a justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships.] (May 29, 1959) *Formerly in 1063(A)*

[1103 (§ 3.103). INFORMATION TO BE FURNISHED CLAIMANTS.--The claimant will be informed of his entitlement or nonentitlement, the reason, his right of appeal, and of the time limit within which an appeal may be filed.] (May 29, 1959) *Formerly 1067 1007*

[1104 (§ 3.104). FINALITY OF DECISIONS

(A) The decision of a duly constituted rating agency or other agency of original jurisdiction will be final and binding upon all field offices of the VA and will not be subject to revision except by duly constituted appellate authorities or except as provided in VA Regulation 1105.] (May 29, 1959) MF 170; S.O. 2-17-43; P-18 *Formerly 1008*

6.17.44-9
IB 21-12
(B) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions by either an Adjudication activity, a Vocational Rehabilitation and Education activity, or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.] (May 29, 1959) Par. 6, *Formerly 1053, 1064(E) + 1066(2)* IB 8-42; Par. 8, IB 8-120; G.C. 5-6-59

1400(Q)
(C) A decision of an agency of original jurisdiction which is not appealed within 1 year from the date of notice of the disallowance will be final. Where an appeal is timely filed, the disallowance, if affirmed, does not become final until the date of the appellate decision. (38 U.S.C. 4004(a) and 4005(b)) (May 29, 1959) MF 511, 1-21-38. *Formerly 1330*
Digest 6.15-1960 Par. 2, IB 21-29;

[1105 (§ 3.105). REVISION OF DECISIONS.--The provisions of this paragraph apply except where there is fraud; a change in law; a change in interpretation of law specifically stated in a VA issue; or the evidence establishes that service connection was clearly illegal. *(From 1009(D))*
For annotations see cards on "VAR 1009-Series" and "VAR 1105 Series".

(A) Error. Previous determinations on which an action was predicated, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. The rating or other adjudicative decision which constitutes a

*Followed by 37
37-R*

reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision.] (May 29, 1959) (Formerly VAR 1009 & 2670) 1400(K)

[(B) Difference of Opinion. Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office.] (May 29, 1959) (Formerly 1009 + 2670) 1400(K)

[(C) Character of Discharge. A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of subparagraph (D).] (May 29, 1959) ~~1009 + 2670~~ (Formerly 1064(6))

[(D) Severance of Service Connection. Service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons and submitted to Central Office for review without notice to claimant or representative. Ratings for carious or missing teeth, pyorrhea, or Vincent's disease will not be submitted. If the proposal is approved on review by Central Office, the claimant will be notified of the contemplated action and furnished detailed reasons therefor and will be given a reasonable period, not to exceed 60 days from the date on which notice is mailed to his last address of record, for the presentation of additional evidence.] (May 29, 1959) (Formerly 1009(D) and 2670) 1500(K)

[(E) Reduction in Disability Evaluation. Where the reduction in rating a service-connected disability is considered warranted by a change in physical or mental condition, the reduction will not be effected for 60 days from date of rating to permit submission of additional evidence. The letter of notification to the veteran will bear the same date as the rating.] (May 29, 1959) Was in 1009(6) + 2670. PG 21-1, D-1-1, Par. 2 1500(K)

[Cross-Reference: VA Regulation 1400 series, EFFECTIVE DATES]

[1106 (§ 3.106). RENOUNCEMENT

Par. 13, let. 2-10-48; S.O. 2-13-45, 6-6-45, 5-21-48, 8-14-50, 1-11-51
(A) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the VA may 1500(Q)

Veterans Administration
Washington 25, D.C.

May 8, 1962

VA REGULATIONS

COMPENSATION AND PENSION-- Transmittal Sheet 236

Remove pages

37 and 38
39-R and 40-R, 41-R, 42-R,
43-R, 44-R

Insert pages

37-R and 38-R
39-2R and 40-2R, 41-2R, 42-2R,
43-2R, 44-2R

Paragraphs revised

1105 (D), (E)
1113

Paragraphs added

None

Paragraphs canceled

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.

Paragraph 1105. Subparagraph (D) has been revised to exclude determinations of service connection which have been in effect for 10 or more years, and which are protected from severance by Public Law 86-501. The last clause in the preamble of VA Regulation 1105 "... or the evidence establishes that service connection was clearly illegal." is for application unless the 10-year period has expired. A cross-reference to the regulation relating to this protection (VA Regulation 1957) has been added at the end of the paragraph.

Subparagraph (E) has been amended to show clearly that the 60-day grace period for a proposed reduction in disability evaluation is applicable only to running awards. This procedure is not for application where, for example, there is no change in the rate of disability compensation being paid because the reduction in evaluation for one disability is offset by assignment of the same or a higher evaluation for another service-connected disability or where the award has been suspended because of a veteran's failure to report for examination.

Paragraph 1113. This revision permits acceptance of a signature by mark or thumbprint which has been certified by an authorized official.

By direction of the Administrator:

W. J. DRIVER
Deputy Administrator

Distribution in accordance with VA Form 3-3040.

W. J. Driver 5/12/62

in a fair and impartial mind that his claim is well-grounded. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not a justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships.] (May 29, 1959) *Formerly in 1063(A)*

[1103 (§ 3.103). INFORMATION TO BE FURNISHED CLAIMANTS.--The claimant will be informed of his entitlement or nonentitlement, the reason, his right of appeal, and of the time limit within which an appeal may be filed.] (May 29, 1959) *Formerly VA R 1007*

[1104 (§ 3.104). FINALITY OF DECISIONS

(A) The decision of a duly constituted rating agency or other agency of original jurisdiction will be final and binding upon all field offices of the VA and will not be subject to revision except by duly constituted appellate authorities or except as provided in VA Regulation 1105.] (May 29, 1959) MF 170; S.O. 2-17-43; P-18 *(Formerly 1008)*

0.17. 4/4-9
IB 21-12
(B) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions by either an Adjudication activity, a Vocational Rehabilitation and Education activity, or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.] (May 29, 1959) Par. 6, *Formerly 1053, 1064(E) + 1066(B)* IB 8-42; Par. 8, IB 8-120; *G.C. 5-6-59*

1400(Q)
(C) A decision of an agency of original jurisdiction which is not appealed within 1 year from the date of notice of the disallowance will be final. Where an appeal is timely filed, the disallowance, if affirmed, does not become final until the date of the appellate decision. (38 U.S.C. 4004(a) and 4005(b)) (May 29, 1959) MF 511, 1-21-38. *(Formerly 1330)* *Digest 6-15-1; S.C. 4/60* Par. 2, IB 21-29;

[1105 (§ 3.105). REVISION OF DECISIONS.--The provisions of this paragraph apply except where there is fraud; a change in law; a change in interpretation of law specifically stated in a VA issue; or the evidence establishes that service connection was clearly illegal. *(Formerly 1009(D))* For annotations see cards on "VAR 1009-Series" and "VAR 1105 Series".

(A) Error. Previous determinations on which an action was predicated, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. The rating or other adjudicative decision which constitutes

John ...

reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. (May 29, 1959)

1400(K)

(B) Difference of Opinion. Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. (May 29, 1959)

1400(H)

(C) Character of Discharge. A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of subparagraph (D). (May 29, 1959)

(D) Severance of Service Connection. [Subject to the limitations contained in VA Regulation 1957,] service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons and submitted to Central Office for review without notice to claimant or representative. Ratings for carious or missing teeth, pyorrhea, or Vincent's disease will not be submitted. If the proposal is approved on review by Central Office, the claimant will be notified of the contemplated action and furnished detailed reasons therefor and will be given a reasonable period, not to exceed 60 days from the date on which notice is mailed to his last address of record, for the presentation of additional evidence. (May 8, 1962)

1500(R)

See note on T. S. 236
(E) Reduction in Disability Evaluation. Where the reduction in [evaluation of] a service-connected disability is considered warranted [and the lower evaluation would result in a reduction or discontinuance of payments currently being made,] the reduction will not be effected for 60 days from date of rating to permit submission of additional evidence. The letter of notification to the veteran will bear the same date as the rating. (May 8, 1962)

1500(R)

Cross-References: VA Regulation 1400, EFFECTIVE DATES
[VA Regulation 1500, REDUCTIONS AND DISCONTINUANCES
VA Regulation 1957, PROTECTION--SERVICE CONNECTION]

38 CFR 3.105(e)

Veterans Administration
Washington 25, D.C.

December 1, 1962

VA REGULATIONS
COMPENSATION AND PENSION--Transmittal Sheet 267

Remove pages

35-R and 36-R
37-R and 38-R
39-2R and 40-2R, 41-2R, 42-2R,
43-2R, 44-2R

Insert pages

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

Paragraph revised

1105 Introduction, (A),
(D), (E)

Paragraphs added

1105(F)
1114

Paragraphs canceled

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).

VA Regulations
 Compensation and Pension--Transmittal Sheet 267--Continued

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

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.

1103

VA Regulations
Compensation and Pension--Trans. Sheet 267

justify a belief in a fair and impartial mind that his claim is well grounded. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not a justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (May 29, 1959)

1103 (§3.103). INFORMATION TO BE FURNISHED CLAIMANTS.--The claimant will be informed of his entitlement or nonentitlement, the reason, his right of appeal, and of the time limit within which an appeal may be filed. (May 29, 1959) Par. 18.02a(6), M 21-1

1104 (§3.104). FINALITY OF DECISIONS

(A) The decision of a duly constituted rating agency or other agency of original jurisdiction will be final and binding upon all field offices of the VA and will not be subject to revision except by duly constituted appellate authorities or except as provided in VA Regulation 1105. (May 29, 1959) MF 170; S.O. 2-17-43; P-18

(B) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions by either an Adjudication activity, a Vocational Rehabilitation and Education activity, or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error. (May 29, 1959) Par. 6, IB 8-42; Par. 8, IB 8-120; G.C. 5-6-59; O.M. 9-4-59; IB 21-12

1400(Q)

(C) A decision of an agency of original jurisdiction which is not appealed within 1 year from the date of notice of the disallowance will be final. Where an appeal is timely filed, the disallowance, if affirmed, does not become final until the date of the appellate decision. (38 U.S.C. 4004(a) and 4005(b)) (May 29, 1959) MF 511, 1-21-38; G.C. 3-8-60; Par. 2, IB 21-29; Digest 61-15

1105 (§3.105). REVISION OF DECISIONS.--The provisions of this paragraph apply except where [an award was based on an act of commission or omission by the payee, or with his knowledge (VA Regulation 1500(B)); there is a change in law or a VA issue, or a change in interpretation of law or a VA issue (VA Regulation 1114)]; or the evidence establishes that service connection was clearly illegal. [The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.] (Dec. 1, 1962) For annotations, see cards on "VAR 1009-Series" & "VAR 1105-Series".

see note on TS 267, 38-2R

followed by 37-2R

(A) Error. Previous determinations on which an action was predicated, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. [For the purpose of authorizing benefits,] the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. [Except as provided in subparagraphs (D) and (E), where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of VA Regulation 1500 (B)(2) will apply.] (Dec. 1, 1962)

1400(K)
2906
5215
13003

See TS 267

(B) Difference of Opinion. Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. (May 29, 1959)

1400(H)
2906
5215
13003

2-C 2-1-64

(C) Character of Discharge. A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of subparagraph (D). (May 29, 1959)

13003

(D) Severance of Service Connection. Subject to the limitations contained in VA Regulations [1114 and] 1957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). [(Where service connection is severed because of a change in or interpretation of a law or VA issue, the provisions of VA Regulation 1114 are for application.)] A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons, and submitted to Central Office for review without notice to the claimant or representative. Ratings for carious or missing teeth, pyorrhea, or Vincent's disease will not be submitted. If the proposal is approved on review by Central Office, the claimant 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 [to show that service connection should be maintained. If additional evidence is not received within that period, rating action will be taken and the award will be 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)

1500(R)
13003

See TS 267

(E) Reduction in [] Evaluation--[Compensation]. Where the reduction in evaluation of a service-connected disability [or employability] 37-2R

For annotations, see cards on "VAR 1009-Series" & "VAR 1105-Series" (Digests and 5 x 8s)

1500(R)
1501(E)
(G)

status] is considered warranted and the lower evaluation would result in a reduction or discontinuance of [compensation] payments currently being made, [rating action will be taken. The reduction will be made effective the last day of the month in which a 60-day period] from date of [notice to the payee expires. The veteran will be notified at his latest address of record of the action taken and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. (38 U.S.C. 3012(b)(6); PL 87-825)] (Dec. 1, 1962)

See TS 267

1501(E)
(G)

[(F) Reduction in Evaluation--Pension. Where a reduction in evaluation is considered warranted because of a change in non-service-connected disability or employability and the lower evaluation would result in a reduction or discontinuance of pension payments currently being made, the award will be reduced or discontinued effective the last day of the month in which reduction or discontinuance of the award is approved. The veteran will be notified at his latest address of record of the action taken and furnished detailed reasons therefor, and the conditions under which his claim may be reopened. (38 U.S.C. 3012(b)(5); PL 87-825)] (Dec. 1, 1962)

See TS 267

Cross-References: VA Regulation 1400, EFFECTIVE DATES
VA Regulation 1500, REDUCTIONS AND DISCONTINUANCES
VA Regulation 1957, PROTECTION--SERVICE CONNECTION

For annotations, see cards (including digest) on "VAR 1009-Series" & "VAR 1105-Series".

1106 (§3.106). RENOUNCEMENT

Par. 13, 1tr. 2-10-48; S.O. 2-13-45, 6-6-45, 5-21-48, 8-14-50, 1-11-51;
G.C. 1-12-66

1500(Q)

(A) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the VA may renounce his right to that benefit. The renouncement will be in writing over the person's signature. Upon receipt of such renouncement in the VA, payment of such benefits and the right thereto will be terminated, and such person will be denied any and all rights thereto from such filing. (38 U.S.C. 3106(a)) (May 29, 1959)

1400(S)

(B) The renouncement will not preclude the person from filing a new application for pension, compensation, or dependency and indemnity compensation at any future date. Such new application will be treated as an original application, and no payments will be made thereon for any period before the date such new application is received in the VA. (38 U.S.C. 3106(b)) (May 29, 1959)

(C) The renouncement of dependency and indemnity compensation by one beneficiary will not serve to increase the rate payable to any other beneficiary in the same class. (May 29, 1959)

38-2R Followed by 39-3R

38CFR 3.105(e)

Summary sheet att. to memo. above.

Veterans Administration
Washington, D.C. 20420

May 7, 1974

VA REGULATIONS
COMPENSATION AND PENSION - Transmittal Sheet 539

Remove pages

35-i
36a
37-3R and 38-3R

Insert pages

35-i-R
[36a-R] 37-4R and 38-4R

Paragraphs revised

1105(D), (E), (F)
1105(A)

Paragraphs added

None

Paragraphs canceled

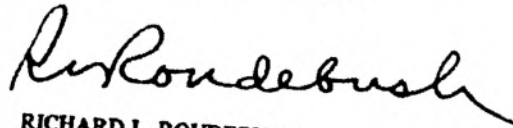
None

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.

Paragraph 1105. Subparagraph (D) has been amended to delete the requirement for submitting proposals to sever service connection to Central Office. When severance of service connection is determined to be in order the necessary ratings will be prepared and approved in the field station. This change does not eliminate the requirement that the claimant be allowed 60 days in which to submit additional evidence in support of his claim prior to effectuation of the severance. All current instructions except those providing for submission to Central Office remain in effect.

By direction of the Administrator:



RICHARD L. ROUDEBUSH
Deputy Administrator

Distribution: RPC: 2210
FD

6/10/74

1105 (§3.105). **REVISION OF DECISIONS.** The provisions of this paragraph apply except where an award was based on an act of commission or omission by the payee, or with his knowledge (VA Regulation 1500(B)); there is a change in law or a VA issue, or a change in interpretation of law or a VA issue (VA Regulation 1114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment. (Dec. 1, 1962)

(A) **Error.** Previous determinations on which an action was predicated, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in subparagraphs (D) and (E), where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of VA Regulation 1500(B)(2) will apply. (Dec. 1, 1962)

(B) **Difference of Opinion.** Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. (May 29, 1959)

(C) **Character of Discharge.** A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of subparagraph (D). (May 29, 1959)

(D) **Severance of Service Connection.** Subject to the limitations contained in VA Regulations 1114 and 1957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). (Where service connection is severed because of a change in or interpretation of a law or VA issue, the provisions of VA Regulation 1114 are for application.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons. [] The claimant 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 to show that service connection should be maintained. If additional evidence is not received within that period, rating action will be taken and the award will be 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) (May 7, 1974)

(E) **Reduction in Evaluation—Compensation.** Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, rating action will be taken. The reduction will be made effective the last day of the month in which a 60-day period from date of notice to the payee expires. The veteran will be notified at his [or her] latest address of record of the action taken and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. (38 U.S.C. 3012(b)(6); PL 87-825) (Dec. 1, 1962)

(F) **Reduction in Evaluation—Pension.** Where a reduction in evaluation is considered warranted because of a change in non-service-connected disability or employability and the lower evaluation would result in a reduction or discontinuance of pension payments currently being made, the award will be reduced or discontinued effective the last day of the month in which reduction or discontinuance of the award is approved. The veteran will be notified at his [or her] latest address of record of the action taken and furnished detailed reasons therefor, and the conditions under which his claim may be reopened (38 U.S.C. 3012(b)(5); PL 87-825) (Dec. 1, 1962)

Cross-References: VA Regulation 1400, EFFECTIVE DATES
VA Regulation 1500, REDUCTIONS AND DISCONTINUANCES
VA Regulation 1957, PROTECTION—SERVICE CONNECTION

1106 (§3.106). RENOUNCEMENT

(A) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the VA may renounce his [or her] right to that benefit but may not renounce less than all of the component items which together comprise the total amount of the benefit to which [the person] is entitled nor any fixed monetary amounts less than the full amount of entitlement. The renouncement will be in writing over the person's signature. Upon receipt of such renouncement in the VA, payment of such benefits and the right thereto will be terminated, and such person will be denied any and all rights thereto from such filing. (38 U.S.C. 3106(a)) (Mar. 9, 1972)

(B) The renouncement will not preclude the person from filing a new application for pension, compensation, or dependency and indemnity compensation at any future date. Such new application will be treated as an original application, and no payments will be made thereon for any period before the date such new application is received in the VA. (38 U.S.C. 3106(b)) (May 29, 1959)

(C) The renouncement of dependency and indemnity compensation by one beneficiary will not serve to increase the rate payable to any other beneficiary in the same class. (May 29, 1959)

published in the Federal Register on Wednesday, December 6, 1989 (54 FR 50367) as Treasury Decision 8278. The rules related to compliance with the new reporting requirements imposed by section 6050M for returns relating to persons receiving contracts from Federal executive agencies.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley at 202-566-3367 (not a toll-free number).

SUPPLEMENTARY INFORMATION:
Background

The final regulations that are the subject of these corrections relate to section 6050M, which was added to the Internal Revenue Code by the Tax Reform Act of 1986.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which were the subject of FR Doc. 89-28396, is corrected as follows:

Para. 1. On page 50366, in the preamble, first column, line 10, the language "(including into (or treated as entered)" is corrected to read "(including their contract actions treated as new contracts entered into (or treated as entered)".

§ 1.5050M (Amended)

Par. 2. On page 50370, second column, § 1.5050M-1(b)(2)(iv) should read:

(iv) *Certain schedule contracts.* For purposes of this section, any of the following contracts entered into on behalf of one or more Federal executive agencies is not a "contract" to be reported by the General Services Administration or the Department of Veteran's Affairs at the time of execution:

(A) A Federal Supply Schedule Contract entered into by the General Services Administration,

(B) An Automated Data Processing Schedule Contract entered into by the General Services Administration, or

(C) A schedule contract entered into by the Department of Veteran's Affairs.

Instead, an order placed by a Federal executive agency, including the General Services Administration or the Department of Veteran's Affairs, under such a schedule contract is a "contract" for purposes of this section.

§ 1.5050M (Amended)

Par. 3. On page 50371, second column, line 4 of § 1.5050M-1(d)(5)(i)(A) which

reads "28 CFR 1.6060M-1(d)(5), to make, on the" should read "28 CFR 1.6060M-1(d)(5) to make, on the".

Par. 4. On page 50372, second column, immediately following the text of § 301.6050M-1, the language "Approved: November 6, 1989. Lawrence B. Gibbs, Commissioner of Internal Revenue." should read as follows:

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: November 6, 1989.
Kenneth W. Gideon,
Assistant Secretary of the Treasury.

Dale D. Goode,
Chief, Regulations Unit, Assistant Chief
Counsel (Corporate).

[FR Doc. 89-8135 Filed 4-10-90; 8:45 am]
BILLING CODE 4820-01-2

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CODE-90-02]

**Drawbridge Operation Regulations;
Lake Pontchartrain, LA**

AGENCY: U.S. Coast Guard, DOT.
ACTION: Final rule; revocation.

SUMMARY: This amendment revokes the regulations for the Southern Railway Systems south drawspan on Lake Pontchartrain, in Orleans and St. Tammany Parishes, Louisiana, because the drawspan has been replaced with a fixed span. Notices and public procedure have been omitted from this action due to the conversion of the span.

EFFECTIVE DATE: This regulation becomes effective on May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2065.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge span that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 28, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, and because this action will not have a significant impact on a substantial number of small entities, this rulemaking is exempt from

the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Commander J.A. Unsicker, project attorney.

List of Subjects in 33 CFR Part 117
Bridges.

Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

**PART 117—DRAWBRIDGE
OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 408; 46 CFR 1.46 and 33 CFR 1.06-1(g).

2. Section 117.467(a) is revised to read as follows:

§ 117.467 Lake Pontchartrain

(a) The south draw of the 811 bridge near New Orleans shall open on signal if at least 48 hours notice is given. In case of emergency, the draw shall open within 12 hours and shall be kept in condition for immediate operation until the emergency is over.

Dated: March 22, 1990.

W.F. Meeks,
Rear Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.

[FR Doc. 89-8328 Filed 4-10-90; 8:45 am]
BILLING CODE 4710-14-2

**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Part 3

RIN 2900-AC54

Procedural Due Process

AGENCY: Department of Veterans Affairs.

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) 233-3008.

SUPPLEMENTARY INFORMATION: On pages 37797 through 37801 of the Federal Register of September 26, 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 Advocates 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.

VA does not agree that inclusion of this wording in the regulation would provide any additional benefit for VA claimants with regard to their general right to notice of decisions on their claims. Barring an error or a delay in processing a notification of a change of address, all written communications to a claimant are sent to his or her last known address. Insertion of this requirement in VA regulations would not lessen the number of errors or reduce delays. For this reason no changes are being made based on this comment. Since additional protection against erroneous deprivation of benefits would not be afforded to claimants through adoption of this suggestion, the Government's burden in implementing the suggestion is not being discussed.

Both commenters recommended a requirement for VA to furnish a copy of

any notice to a claimant to the properly designated representative of the claimant.

The regulatory requirement for furnishing copies of notices to designated representatives is contained in 38 CFR 1.525(d), and inclusion in this section would be redundant. Therefore, no change is being made based on these comments.

One commenter recommended that this section include a requirement that a claimant and his or her properly designated representative be provided notification of submissions from VA regional offices to VA Central Office (VACO) for advisory opinions, administrative reviews, administrative appeals, legal opinions, and medical opinions from VA health care professionals, and that copies of such submissions and resulting replies be routinely furnished to the claimants and representatives prior to decisions being rendered. The commenter states the belief that advisory opinions from the Director, Compensation and Pension Service, are binding on regional office rating boards and Hearing Officers, and that an opportunity to examine and rebut such opinions prior to the decision is required in order to adequately provide procedural due process.

The majority of claims processed in VA regional offices are of a routine nature involving relatively simple issues of entitlement, but some claims involve extremely complex and/or novel issues and require application of a variety of laws and regulations. In some cases, due to circumstances arising from the complexity of an issue, a regional office may request an advisory opinion from VACO, a medical opinion, and/or a legal opinion. Administrative reviews and administrative appeals are actions which occur following a decision by a regional office, and therefore, have no relationship to procedural due process within the context of this section.

Advisory opinions are advisory only and, while such opinions should be given considerable weight by regional offices in reaching a determination on a particular claim, are not binding on the regional offices. The same is true of medical opinions from VA health care professionals. There is no issue of a lack of opportunity to be heard by the decisionmaker where an advisory or medical opinion has been issued because the decision making authority is retained by the regional office. VA does not believe that due process includes a requirement that such nonbinding advice be communicated to claimants and/or beneficiaries prior to an initial, appealable decision being made. VA believes the appellate process, which

provides Statements of the Case detailing the basis and rationale for a denial of benefits, affords claimants and/or beneficiaries ample opportunity to argue their views.

Information from, or copies of, these opinions or other evidence considered by VA in reaching decisions may be made available to claimants and/or duly authorized agents or representatives under the authority of 38 CFR 1.500 et seq. These regulations also apply to requests for copies of legal opinions, which are an important part of the VA decision making process, and are rendered based on facts of record at the time of the opinion. Legal opinions may be challenged following regional office decisions as part of the appellate process or through the submission of additional evidence.

Regulatory requirements for providing detailed reasons for decisions and additional procedural safeguards are also being adopted with publication of this notice concerning proposed benefit reductions. VA finds these regulatory provisions to be adequate to guard against erroneous deprivation of benefits. Marginal gains in that regard, if any, afforded to claimants by the commenter's suggestions would be far outweighed by the costs of implementation to the Government. Such costs would include employee time required to copy and mail documents to claimants and beneficiaries. In addition, decisions would be delayed pending reply or expiration of a period allowed for reply. For these reasons the recommended changes are not being adopted.

One commenter recommended requiring that VA include citations of all applicable regulations in notices of proposed or final decisions, and that the reasons for the proposed or final decision include a statement of the exact change in the claimant's circumstances on which the change is proposed or based.

VA does not agree that the recommended changes would provide any additional benefit for VA claimants with regard to their general right to notice of decisions on their claims. The recommended changes would require VA to include detailed statements and regulatory citations on favorable as well as unfavorable decisions. Clearly, there is no risk of erroneous deprivation with favorable decisions, and the suggested changes provide no additional protection to successful claimants while being extremely burdensome on the Government in terms of the impact on automated claims processing and timeliness of decisions. Implementation

arguments and contentions with respect to the facts and applicable law which the claimant may consider pertinent. It is the responsibility of the VA personnel conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by VA and the physician's observations will be read into the record.

(d) *Submission of evidence.* Any evidence whether documentary, testimonial, or in other form, offered by the claimant in support of a claim and any issue a claimant may raise and any contention or argument a claimant may offer with respect thereto are to be included in the records.

(e) *The right to representation.* Subject to the provisions of §§ 14.836 through 14.837 of this title, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.

(f) *Notification of decisions.* The claimant or beneficiary will be notified in writing of decisions affecting the payment of benefits or granting relief. Notice will include the reason for the decision and the date it will be effective as well as the right to a hearing subject to paragraph (c) of this section. The notification will also advise the claimant or beneficiary of the right to initiate an appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for assistance in perfecting an appeal. Further, the notice will advise him or her of the periods in which an appeal must be initiated and perfected. (See part 18, subpart B of this chapter, on appeals.)

2. Section 3.105 is amended by revising the last sentence in paragraph (d), paragraphs (e) and (f), and adding paragraphs (g) and (h), to read as follows:

§ 3.105 Revision of Decision.

(d) . . . Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued, if in order, effective the last day of the month in

which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

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

(e) *Reduction in evaluation—compensation.* Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that compensation payments should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

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

(f) *Reduction in evaluation—pension.* Where a change in disability or employability warrants a reduction or discontinuance of pension payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that pension benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which the final rating action is approved.

(Authority: 38 U.S.C. 3012(b)(5))

(g) *Other reductions/discontinuances.* Except as otherwise specified at § 3.103(b)(3) of this part, when a reduction or discontinuance of benefits is warranted by reason of information received concerning income, net worth, dependency, or marital or other status, a proposal for the reduction or discontinuance will be prepared setting forth all material facts and reasons. The

beneficiary 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 to show that the benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final adverse action will be taken and the award will be reduced or discontinued effective as specified under the provisions of §§ 3.500 through 3.503 of this part.

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

(h) *Predetermination hearings.* [1] In the advance written notice concerning proposed actions under paragraphs (d) through (g) of this section, the beneficiary will be informed that he or she will have an opportunity for a predetermination hearing, provided that a request for such a hearing is received by VA within 30 days from the date of the notice. If a timely request is received, VA will notify the beneficiary in writing of the time and place of the hearing at least 10 days in advance of the scheduled hearing date. The 10 day advance notice may be waived by agreement between VA and the beneficiary or representative. The hearing will be conducted by VA personnel who did not participate in the proposed adverse action and who will bear the decision-making responsibility. If a predetermination hearing is timely requested, benefit payments shall be continued at the previously established level pending a final determination concerning the proposed action.

(2) Following the predetermination procedures specified in this paragraph and paragraph (d), (e), (f) or (g) of this section, whichever is applicable, final action will be taken. If a predetermination hearing was not requested or if the beneficiary failed without good cause to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant or beneficiary, death of an immediate family member, etc. If a predetermination hearing was conducted, the final action will be based on evidence and testimony adduced at the hearing as well as the other evidence of record including any additional evidence obtained following the hearing pursuant to necessary development. Whether or not a predetermination hearing was conducted, a written notice of the final

38 CFR 3.105(e)

action shall be issued to the beneficiary, setting forth the reasons therefor and the evidence upon which it is based. Where a reduction or discontinuance of benefits is found warranted following consideration of any additional evidence submitted, the effective date of such reduction or discontinuance shall be as follows:

(i) Where reduction or discontinuance was proposed under the provisions of paragraph (d) or (e) of this section, the effective date of final action shall be the last day of the month in which a 90-day period from the date of notice to the beneficiary of the final action expires.

(ii) Where reduction or discontinuance was proposed under the provisions of paragraph (f) of this section, the effective date of final action shall be the last day of the month in which such action is approved.

(iii) Where reduction or discontinuance was proposed under the provisions of paragraph (g) of this section, the effective date of final action shall be as specified under the provisions of §§ 3.500 through 3.503 of this part.

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

3. In § 3.100, paragraph (b) is revised and an authority citation is added, to read as follows:

§ 3.100 Time limit.

(b) *Extension of time limit.* Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. Where an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrent with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 210(c))

4. Section 3.110 is revised and an authority citation is added, to read as follows:

§ 3.110 Computation of time limit.

(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, 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.

(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. 90-6279 Filed 4-10-90; 8:45 am] BILLING CODE 8320-01-01

38 CFR Parts 3, 21

RIN 2900-AE06

Veterans Education; Disabling Effects of Chronic Alcoholism

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans Benefits and Programs Improvement Act of 1988 provides among other things that for the purposes of any provision relating to the extension of a delimiting period under any education benefit or rehabilitation program administered by the Department of Veterans Affairs, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct. These final regulations will inform the public of the way in which the Department of Veterans Affairs (VA) will implement this provision of law with respect to the Post-Korean Conflict GI Bill. The change to 38 CFR 3.301(b) is made to conform to a provision of the Veterans' and Survivors' Pension Improvement Act of 1978.

EFFECTIVE DATE: The effective date of the amendment to § 3.301(b), is April 11, 1990. The effective date of all other amended regulations, like the provision of law they implement, is November 18, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (229), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2002.

SUPPLEMENTARY INFORMATION: On pages 31950 through 31952 of the Federal Register of August 3, 1988, there was published interim regulations with a request for public comment which are part of part 3, 38 CFR and part 21, 38 CFR. Section 3.301(b) is corrected to conform to a provision of Public Law 95-588 which amended 38 U.S.C. 521 to delete a reference to "vicious habits." The remainder of these regulations implemented section 109 of the Veterans Benefits and Programs Improvement Act of 1988 (Pub. L. 100-680). That section states that for the purposes of extending the eligibility period for educational assistance under any of the educational laws or vocational rehabilitation laws administered by the Department of Veterans Affairs, the disabling effects of chronic alcoholism will not be

38 CFR 3.105(e)
ff: 5/11/90

Department of Veterans Affairs

§ 3.105

ship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

[29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7947, June 12, 1964]

§ 3.106 Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his or her knowledge (§ 3.500(b)); there is a change in law or a Department of Veterans Affairs issue, or a change in interpretation of law or a Department of Veterans Affairs issue (§ 3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.

(a) *Error.* Previous determinations on which an action was predicated, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

(b) *Difference of opinion.* Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a

difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office.

(c) *Character of discharge.* A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of paragraph (d) of this section.

(d) *Severance of service connection.* Subject to the limitations contained in §§ 3.114 and 3.957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). (Where service connection is severed because of a change in or interpretation of a law or Department of Veterans Affairs issue, the provisions of § 3.114 are for application.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons. The claimant 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 to show that service connection should be maintained. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued, if in order, effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

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

(e) *Reduction in evaluation—compensation.* Where the reduction in evaluation of a service-connected disability or employability status is con-

38 CFR 3.105(e)
eff: 5/11/90

§ 3.105

38 CFR Ch. I (7-1-90 Edition)

considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that compensation payments should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

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

(f) *Reduction in evaluation—pension.* Where a change in disability or employability warrants a reduction or discontinuance of pension payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that pension benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which the final rating action is approved.

(Authority: 38 U.S.C. 3012(b)(5))

(g) *Other reductions/discontinuances.* Except as otherwise specified at § 3.103(b)(3) of this part, where a reduction or discontinuance of benefits is warranted by reason of information received concerning income, net worth, dependency, or marital or other status, a proposal for the reduc-

tion or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that the benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final adverse action will be taken and the award will be reduced or discontinued effective as specified under the provisions of §§ 3.500 through 3.503 of this part.

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

(h) *Predetermination hearings.* (1) In the advance written notice concerning proposed actions under paragraphs (d) through (g) of this section, the beneficiary will be informed that he or she will have an opportunity for a predetermination hearing, provided that a request for such a hearing is received by VA within 30 days from the date of the notice. If a timely request is received, VA will notify the beneficiary in writing of the time and place of the hearing at least 10 days in advance of the scheduled hearing date. The 10 day advance notice may be waived by agreement between VA and the beneficiary or representative. The hearing will be conducted by VA personnel who did not participate in the proposed adverse action and who will bear the decision-making responsibility. If a predetermination hearing is timely requested, benefit payments shall be continued at the previously established level pending a final determination concerning the proposed action.

(2) Following the predetermination procedures specified in this paragraph and paragraph (d), (e), (f) or (g) of this section, whichever is applicable, final action will be taken. If a predetermination hearing was not requested or if the beneficiary failed without good cause to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record. Examples of good cause include, but are not limited to, the illness or hospitalization of the



Department of Veterans Affairs

§ 3.107

claimant or beneficiary, death of an immediate family member, etc. If a predetermination hearing was conducted, the final action will be based on evidence and testimony adduced at the hearing as well as the other evidence of record including any additional evidence obtained following the hearing pursuant to necessary development. Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the beneficiary, setting forth the reasons therefor and the evidence upon which it is based. Where a reduction or discontinuance of benefits is found warranted following consideration of any additional evidence submitted, the effective date of such reduction or discontinuance shall be as follows:

(i) Where reduction or discontinuance was proposed under the provisions of paragraph (d) or (e) of this section, the effective date of final action shall be the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final action expires.

(ii) Where reduction or discontinuance was proposed under the provisions of paragraph (f) of this section, the effective date of final action shall be the last day of the month in which such action is approved.

(iii) Where reduction or discontinuance was proposed under the provisions of paragraph (g) of this section, the effective date of final action shall be as specified under the provisions of §§ 3.500 through 3.503 of this part.

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

[26 FR 1569, Feb. 24, 1961, as amended at 27 FR 11888, Dec. 1, 1962; 39 FR 17222, May 14, 1974; 55 FR 13528, Apr. 11, 1990]

Cross References: Effective dates. See § 3.400. Reductions and discontinuances. See § 3.500. Protection; service connection. See § 3.887.

§ 3.106 Renunciation.

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Department of Veterans Affairs may renounce his or her right to that benefit but may not renounce less than all of the component items which together

comprise the total amount of the benefit to which the person is entitled nor any fixed monetary amounts less than the full amount of entitlement. The renunciation will be in writing over the person's signature. Upon receipt of such renunciation in the Department of Veterans Affairs, payment of such benefits and the right thereto will be terminated, and such person will be denied any and all rights thereto from such filing.

(Authority: 38 U.S.C. 3106(a))

(b) The renunciation will not preclude the person from filing a new application for pension, compensation, or dependency and indemnity compensation at any future date. Such new application will be treated as an original application, and no payments will be made thereon for any period before the date such new application is received in the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3106(b))

(c) The renunciation of dependency and indemnity compensation by one beneficiary will not serve to increase the rate payable to any other beneficiary in the same class.

(d) The renunciation of dependency and indemnity compensation by a widow will not serve to vest title to this benefit in children under the age of 18 years or to increase the rate payable to a child or children over the age of 18 years.

[26 FR 1569, Feb. 24, 1961, as amended at 37 FR 5384, Mar. 15, 1972; 39 FR 17222, May 14, 1974]

§ 3.107 Awards where all dependents do not apply.

Except as provided in § 3.251(a)(4), in any case where claim has not been filed by or on behalf of all dependents who may be entitled, the awards (original or amended) for those dependents who have filed claim will be made for all periods at the rates and in the same manner as though there were no other dependents. However, if the file reflects the existence of other dependents who have not filed claim and there is potential entitlement to benefits for a period prior to the date

DEPARTMENT OF VETERANS
AFFAIRS

38 CFR Parts 0, 1, 2, 3, 4, 6, 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 effected 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, 610 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 effected 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 28, 1992.

B. Michael Berger,

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. 1783" and add in its place "38 U.S.C. 3663", 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. 901" 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(e), (h)(2)(A) and (D)" and add in its place "38 U.S.C. 5701(e), (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. 651-654" and add in its place "38 U.S.C. 1751-1754", 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. 3102, 3114" and add in its place "38 U.S.C. 5302, 5314", wherever it appears.
36. Remove the citation "38 U.S.C. 1828" and add in its place "38 U.S.C. 3728", 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. 543" 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 508(a)" and add in its place "38 U.S.C. 1351(e) and 1508(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), 509(a)(1)" and add in its place "38 U.S.C. 501, 1509(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. 521(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.

§ 3.104

38 CFR Ch. I (7-1-93 Edition)

of benefits or granting relief. Notice will include the reason for the decision and the date it will be effective as well as the right to a hearing subject to paragraph (c) of this section. The notification will also advise the claimant or beneficiary of the right to initiate an appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for assistance in perfecting an appeal. Further, the notice will advise him or her of the periods in which an appeal must be initiated and perfected. (See part 20 of this chapter, on appeals.)

(55 FR 13527, Apr. 11, 1990; 55 FR 17530, Apr. 25, 1990, as amended at 55 FR 20148, May 18, 1990; 55 FR 25308, June 21, 1990; 57 FR 56993, Dec. 2, 1992; 58 FR 16360, Mar. 28, 1993)

§ 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

(29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964; 56 FR 65646, Dec. 19, 1991)

§ 3.105 Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his or her knowledge (§ 3.500(b)); there is a change in law or a Department of Veterans Affairs issue, or a change in interpreta-

tion of law or a Department of Veterans Affairs issue (§ 3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.

(a) *Error.* Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

(b) *Difference of opinion.* Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office.

(c) *Character of discharge.* A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of paragraph (d) of this section.

(d) *Severance of service connection.* Subject to the limitations contained in §§ 3.114 and 3.957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). (Where service connection is severed because of a change in or interpretation of a law or Department of Veterans Affairs issue, the provisions of

eff: 8/6/91

Department of Veterans Affairs

§ 3.105

§ 3.114 are for application.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons. The claimant 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 to show that service connection should be maintained. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued, if in order, effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

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

(e) *Reduction in evaluation—compensation.* Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that compensation payments should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-

day period from the date of notice to the beneficiary of the final rating action expires.

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

(f) *Reduction in evaluation—pension.* Where a change in disability or employability warrants a reduction or discontinuance of pension payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that pension benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which the final rating action is approved.

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

(g) *Other reductions/discontinuances.* Except as otherwise specified at § 3.103(b)(3) of this part, where a reduction or discontinuance of benefits is warranted by reason of information received concerning income, net worth, dependency, or marital or other status, a proposal for the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that the benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final adverse action will be taken and the award will be reduced or discontinued effective as specified under the provisions of §§ 3.500 through 3.503 of this part.

(Authority: 38 U.S.C. 5117)

§ 3.106

38 CFR Ch. I (7-1-93 Edition)

(h) *Predetermination hearings.* (1) In the advance written notice concerning proposed actions under paragraphs (d) through (g) of this section, the beneficiary will be informed that he or she will have an opportunity for a predetermination hearing, provided that a request for such a hearing is received by VA within 30 days from the date of the notice. If a timely request is received, VA will notify the beneficiary in writing of the time and place of the hearing at least 10 days in advance of the scheduled hearing date. The 10 day advance notice may be waived by agreement between VA and the beneficiary or representative. The hearing will be conducted by VA personnel who did not participate in the proposed adverse action and who will bear the decision-making responsibility. If a predetermination hearing is timely requested, benefit payments shall be continued at the previously established level pending a final determination concerning the proposed action.

(2) Following the predetermination procedures specified in this paragraph and paragraph (d), (e), (f) or (g) of this section, whichever is applicable, final action will be taken. If a predetermination hearing was not requested or if the beneficiary failed without good cause to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant or beneficiary, death of an immediate family member, etc. If a predetermination hearing was conducted, the final action will be based on evidence and testimony adduced at the hearing as well as the other evidence of record including any additional evidence obtained following the hearing pursuant to necessary development. Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the beneficiary and his or her representative, setting forth the reasons therefor and the evidence upon which it is based. Where a reduction or discontinuance of benefits is found warranted following consideration of any additional evidence submitted, the effective date of such re-

duction or discontinuance shall be as follows:

- (i) Where reduction or discontinuance was proposed under the provisions of paragraph (d) or (e) of this section, the effective date of final action shall be the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final action expires.
- (ii) Where reduction or discontinuance was proposed under the provisions of paragraph (f) of this section, the effective date of final action shall be the last day of the month in which such action is approved.
- (iii) Where reduction or discontinuance was proposed under the provisions of paragraph (g) of this section, the effective date of final action shall be as specified under the provisions of §§ 3.500 through 3.503 of this part.

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

[26 FR 1509, Feb. 24, 1961, as amended at 27 FR 11899, Dec. 1, 1962; 28 FR 17322, May 14, 1974; 28 FR 12523, Apr. 11, 1969; 56 FR 55846, Dec. 19, 1991; 57 FR 56983, Dec. 2, 1992]

Cross REFERENCES: Effective dates. See § 3.400. Reductions and discontinuances. See § 3.500. Protection; service connection. See § 3.957.

§ 3.106 Renoucement.

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Department of Veterans Affairs may renounce his or her right to that benefit but may not renounce less than all of the component items which together comprise the total amount of the benefit to which the person is entitled nor any fixed monetary amounts less than the full amount of entitlement. The renoucement will be in writing over the person's signature. Upon receipt of such renoucement in the Department of Veterans Affairs, payment of such benefits and the right thereto will be terminated, and such person will be denied any and all rights thereto from such filing.

(Authority: 38 U.S.C. 5308(a))

(b) The renoucement will not preclude the person from filing a new ap-

DEPARTMENT OF VETERANS
AFFAIRS

38 CFR Part 3

RIN 2900-A170

**Monetary Allowance Under 38 U.S.C.
1805 for a Child Suffering From Spina
Bifida Who Is a Child of a Vietnam
Veteran**AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance to a child suffering from spina bifida who is a child of a Vietnam veteran. The intended effect of this amendment is to implement legislation authorizing VA to provide such benefits.

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) 273-7230.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Pub. L. 102-4, 105 Stat. 11, directed the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academy of Sciences (NAS) for a series of reports to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era, and each disease suspected to be associated with such exposure. In its most recent report, entitled "Veterans and Agent Orange: Update 1996," which was released on March 14, 1996, NAS noted what it considered "limited/suggestive evidence of an association" between herbicide exposure and spina bifida in the offspring of Vietnam veterans.

Since VA did not have the statutory authority to provide benefits to children of veterans based on birth defects, the Secretary announced on May 28, 1996, that he would seek legislation to provide an appropriate remedy. VA submitted proposed legislation to Congress in July of that year. Section 421 of Pub. L. 104-204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children suffering from spina bifida who are the natural children of veterans who served in the Republic of Vietnam during the Vietnam era. VA published a proposal to

implement section 421 of Pub. L. 104-204 in the Federal Register of May 1, 1997 (62 FR 23724-23731). Interested persons were invited to submit written comments on or before June 30, 1997. We received a total of thirty-two comments from: the Vietnam Veterans of America, Inc.; the Vietnam Veterans of America (Illinois State Council Service Program); a combined comment from the National Veterans Legal Services Program (NVLSP), the Spina Bifida Association of America, and the National Alliance of Veteran Family Service Organizations; the Veterans of Foreign Wars of the United States (VFW); The American Legion; the Paralyzed Veterans of America (PVA); Senator Tom Daschle; Senator John D. Rockefeller IV; and twenty-four other concerned individuals.

A number of commenters specifically recommended changes to the statutory language of title 38, United States Code, chapter 18. Others recommended that in the regulation we change the amount of the monetary allowance associated with the three levels of disability; add additional payment levels for the monetary allowance; pay the monetary allowance retroactive to dates prior to October 1, 1997; provide automobile adaptive equipment or an automobile allowance and specially adapted housing to children with spina bifida; pay the benefit to children with spina bifida occulta; pay the benefit to grandchildren of Vietnam veterans; and pay the benefit to the children of certain individuals who do not meet the statutory definition of the term "veteran." No changes are made based on these comments. VA has no legal authority to make any of these changes.

One commenter suggested that in the regulation VA use the term "biological child" of a Vietnam veteran rather than "natural child."

Section 1801(1) of title 38, United States Code, defines the term "child" for purposes of this benefit as meaning, among other things, a "natural child" of a Vietnam veteran. The term "natural" as used in the statute means relating naturally rather than by adoption (Webster's New World Dictionary, Third College Ed., 1988, 903), so in our judgment the terms "natural child" and "biological child" are synonymous. Using a term in the regulation that is inconsistent with the statutory language might imply a difference that we do not intend. Therefore, we make no change based on this suggestion.

One commenter stated that a child with spina bifida who is the legally adopted child of a Vietnam veteran should be eligible for this benefit.

The statute clearly defines the term "child" as used in determining eligibility for spina bifida benefits as meaning the natural child of a Vietnam veteran (see 38 U.S.C. 1801 (1)). Since VA has no authority to expand that statutory definition, we make no change based on this comment.

We proposed to terminate the monetary allowance effective the last day of the month before the month in which the beneficiary dies. A commenter suggested that we terminate not only this benefit, but benefits to veterans and survivors as well, effective the first day of the month following the month of death.

Because 38 U.S.C. 5112(b)(1) requires VA to discontinue compensation, dependency and indemnity compensation, or pension payments on the last day of the month before the death of the beneficiary, we have no discretion with respect to these benefits. Although Pub. L. 104-204 is silent on the issue of effective dates for discontinuing the monetary allowance, there is no indication in chapter 18 of title 38, United States Code, or its legislative history that Congress intended VA to administer the monetary allowance for children with spina bifida any differently than compensation, dependency and indemnity compensation, or pension in this respect, and we make no change based on this suggestion.

We proposed to define the term "Vietnam veteran," for purposes of this benefit, to include an individual with service in the waters offshore and service in other locations "if the conditions of service involved duty or visitation in the Republic of Vietnam." One commenter recommended that we eliminate the phrase "if the conditions of service involved duty or visitation in the Republic of Vietnam."

VA defines the term *service in the Republic of Vietnam*, for the purposes of presuming herbicide exposure, to include service in the waters offshore and service in other locations "if the conditions of service involved duty or visitation in the Republic of Vietnam" (see 38 CFR 3.307(a)(6)(iii)). Because herbicides were not applied in waters off the shore of Vietnam, limiting the scope of the term *service in the Republic of Vietnam* to persons whose service involved duty or visitation in the Republic of Vietnam limits the focus of the presumption of exposure to persons who may have been in areas where herbicides could have been encountered. Since the purpose of this rulemaking is to provide a monetary allowance to the children of those same veterans that VA presumes to be

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at the end of the affected section of the regulations.

Two collection of information comments were received and are discussed above.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This final rule would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to § (U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

List of Subjects in 38 CFR Part 3

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

Approved: September 11, 1997.

Hershel W. Gober,
Acting 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 § 3.27, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and newly redesignated paragraph (d) and its authority citation are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

(c) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(b)(3))

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. 1805 for a child suffering from spina bifida made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 5312(c)(1), 1805(b)(3))

3. In § 3.105, paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively; in paragraphs (d), (e), (f) and newly redesignated paragraph (h) remove "paragraph (h)" each time it appears and add, in its place, "paragraph (i)"; in newly redesignated paragraph (i)(1) remove "paragraphs (d) through (g)" and add, in its place, "paragraphs (d) through (h)"; in newly redesignated paragraph (i)(2) introductory text remove "paragraph (d), (e), (f) or (g)" and add, in its place, "paragraph (d), (e), (f), (g) or (h)"; in

newly redesignated paragraph (i)(2)(ii) remove "paragraph (f)" and add, in its place, "paragraphs (f) and (g)"; in newly redesignated paragraph (i)(2)(iii) remove "paragraph (g)" and add, in its place, "paragraph (h)"; and add a new paragraph (g) to read as follows:

§ 3.105 Revision of decisions.

(g) *Reduction in evaluation—monetary allowance to a child suffering from spina bifida under 38 U.S.C. 1805.* Where a change in disability level warrants a reduction of the monthly allowance currently being paid, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monthly allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following sixty days from the date of notice to the payee of the proposed reduction.

(Authority: 38 U.S.C. 501)

§ 3.158 [Amended]

4. In § 3.158, paragraphs (a) and (c) are amended by removing "or dependency and indemnity compensation" and adding, in its place, "dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. 1805".

5. In § 3.261, paragraph (a)(40) is added to read as follows:

§ 3.261 Character of income; exclusions and estates.

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
(40) Monetary allowance under 38 U.S.C. 1805 for children suffering from spina bifida who are children of Vietnam Veterans (38 U.S.C. 1805(d)).	Excluded	Excluded	Excluded	Excluded	§ 3.262(y).

6. In § 3.262, paragraph (y) is added immediately preceding the final authority citation at the end of the section to read as follows:

§ 3.262 Evaluation of income.

(y) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam*

veteran. There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina

§ 3.104

be present. The Veterans Benefits Administration will not normally schedule a hearing for the sole purpose of receiving argument from a representative. It is the responsibility of the VA employee or employees conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by VA and the physician's observations will be read into the record.

(Authority: 38 U.S.C. 501)

(d) *Submission of evidence.* Any evidence whether documentary, testimonial, or in other form, offered by the claimant in support of a claim and any issue a claimant may raise and any contention or argument a claimant may offer with respect thereto are to be included in the records.

(e) *The right to representation.* Subject to the provisions of §§ 14.626 through 14.637 of this title, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.

(f) *Notification of decisions.* The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting relief. All notifications will advise the claimant of the reason for the decision; the date the decision will be effective; the right to a hearing subject to paragraph (c) of this section; the right to initiate an appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for assistance in perfecting an appeal; and the periods in which an appeal must be initiated and perfected (See part 20 of this chapter, on appeals). Further, any notice that VA has denied a benefit sought will in-

38 CFR Ch. I (7-1-99 Edition)

clude a summary of the evidence considered.

(Authority: 38 U.S.C. 5104)

[56 FR 13537, Apr. 11, 1991; 56 FR 17539, Apr. 23, 1991, as amended at 56 FR 20144, May 15, 1991; 56 FR 25308, June 21, 1991; 57 FR 50063, Dec. 2, 1992; 58 FR 16389, Mar. 26, 1993; 58 FR 58386, Nov. 9, 1993; 59 FR 6318, Feb. 10, 1994; 59 FR 6901, Feb. 14, 1994]

§ 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

[29 FR 1492, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964; 56 FR 6596, Dec. 19, 1991]

§ 3.105 Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his or her knowledge (§ 3.500(b)); there is a change in law or a Department of Veterans Affairs issue, or a change in interpretation of law or a Department of Veterans Affairs issue (§ 3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.

38 CFR 3.105(e)
eff: 10/1/97

Department of Veterans Affairs

§ 3.105

(a) *Error.* Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

(b) *Difference of opinion.* Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office.

(c) *Character of discharge.* A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of paragraph (d) of this section.

(d) *Severance of service connection.* Subject to the limitations contained in §§ 3.114 and 3.987, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). (Where service connection is severed because of a change in or interpretation of a law or Department of Veterans Affairs issue, the provisions of § 3.114 are for application.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion.

When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons. The claimant 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 to show that service connection should be maintained. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued, if in order, effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

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

(e) *Reduction in evaluation—compensation.* Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that compensation payments should be continued at their present level. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

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

(f) *Reduction in evaluation—pension.* Where a change in disability or employability warrants a reduction or discontinuance of pension payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material

§ 3.105

38 CFR Ch. I (7-1-99 Edition)

facts and reasons. The beneficiary 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 to show that pension benefits should be continued at their present level. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which the final rating action is approved.

(Authority: 38 U.S.C. 5112(b)(5))

(g) *Reduction in evaluation—monetary allowance to a child suffering from spina bifida under 38 U.S.C. 1605.* Where a change in disability level warrants a reduction of the monthly allowance currently being paid, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monthly allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following sixty days from the date of notice to the payee of the proposed reduction.

(Authority: 38 U.S.C. 501)

(h) *Other reductions/discontinuances.* Except as otherwise specified at § 3.103(b)(3) of this part, where a reduction or discontinuance of benefits is warranted by reason of information received concerning income, net worth, dependency, or marital or other status, a proposal for the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary 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 to show that the benefits should be continued at their present level. Unless otherwise pro-

vided in paragraph (i) of this section, if additional evidence is not received within that period, final adverse action will be taken and the award will be reduced or discontinued effective as specified under the provisions of §§ 3.500 through 3.503 of this part.

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

(i) *Predetermination hearings.* (1) In the advance written notice concerning proposed actions under paragraphs (d) through (h) of this section, the beneficiary will be informed that he or she will have an opportunity for a predetermination hearing, provided that a request for such a hearing is received by VA within 30 days from the date of the notice. If a timely request is received, VA will notify the beneficiary in writing of the time and place of the hearing at least 10 days in advance of the scheduled hearing date. The 10 day advance notice may be waived by agreement between VA and the beneficiary or representative. The hearing will be conducted by VA personnel who did not participate in the proposed adverse action and who will bear the decision-making responsibility. If a predetermination hearing is timely requested, benefit payments shall be continued at the previously established level pending a final determination concerning the proposed action.

(2) Following the predetermination procedures specified in this paragraph and paragraph (d), (e), (f), (g) or (h) of this section, whichever is applicable, final action will be taken. If a predetermination hearing was not requested or if the beneficiary failed without good cause to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant or beneficiary, death of an immediate family member, etc. If a predetermination hearing was conducted, the final action will be based on evidence and testimony adduced at the hearing as well as the other evidence of record including any additional evidence obtained following the hearing pursuant to necessary development. Whether or not a predetermination hearing was conducted, a written

Department of Veterans Affairs

§ 3.107

notice of the final action shall be issued to the beneficiary and his or her representative, setting forth the reasons therefor and the evidence upon which it is based. Where a reduction or discontinuance of benefits is found warranted following consideration of any additional evidence submitted, the effective date of such reduction or discontinuance shall be as follows:

(i) Where reduction or discontinuance was proposed under the provisions of paragraph (d) or (e) of this section, the effective date of final action shall be the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final action expires.

(ii) Where reduction or discontinuance was proposed under the provisions of paragraphs (f) and (g) of this section, the effective date of final action shall be the last day of the month in which such action is approved.

(iii) Where reduction or discontinuance was proposed under the provisions of paragraph (h) of this section, the effective date of final action shall be as specified under the provisions of §§ 3.500 through 3.503 of this part.

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

[26 FR 1509, Feb. 24, 1961, as amended at 27 FR 11898, Dec. 1, 1962; 39 FR 17222, May 14, 1974; 55 FR 13326, Apr. 11, 1990; 56 FR 62966, Dec. 19, 1991; 57 FR 50963, Dec. 2, 1992; 62 FR 51278, Sept. 30, 1997]

CROSS REFERENCES: Effective dates. See § 3.400. Reductions and discontinuances. See § 3.500. Protection; service connection. See § 3.967.

§ 3.106 Renunciation.

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Department of Veterans Affairs may renounce his or her right to that benefit but may not renounce less than all of the component items which together comprise the total amount of the benefit to which the person is entitled nor any fixed monetary amounts less than the full amount of entitlement. The renunciation will be in writing over the person's signature. Upon receipt of such renunciation in the Department of Veterans Affairs, payment of such benefits and the right thereto will be

terminated, and such person will be denied any and all rights thereto from such filing.

(Authority: 38 U.S.C. 5306(a))

(b) The renunciation will not preclude the person from filing a new application for pension, compensation, or dependency and indemnity compensation at any future date. Such new application will be treated as an original application, and no payments will be made thereon for any period before the date such new application is received in the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5306(b))

(c) Notwithstanding the provisions of paragraph (b) of this section, if a new application for pension or parents' dependency and indemnity compensation is filed within one year after the date that the Department of Veterans Affairs receives a renunciation of that benefit, such application shall not be treated as an original application and benefits will be payable as if the renunciation had not occurred.

(Authority: 38 U.S.C. 5306(c))

(d) The renunciation of dependency and indemnity compensation by one beneficiary will not serve to increase the rate payable to any other beneficiary in the same class.

(e) The renunciation of dependency and indemnity compensation by a surviving spouse will not serve to vest title to this benefit in children under the age of 18 years or to increase the rate payable to a child or children over the age of 18 years.

[26 FR 1509, Feb. 24, 1961, as amended at 37 FR 5394, Mar. 15, 1972; 39 FR 17222, May 14, 1974; 60 FR 18355, Apr. 11, 1995; 62 FR 5629, Feb. 8, 1997]

§ 3.107 Awards where not all dependents apply.

Except as provided in § 3.251(a)(4), in any case where claim has not been filed by or on behalf of all dependents who may be entitled, the awards (original or amended) for those dependents who have filed claim will be made for all periods at the rates and in the same manner as though there were no other dependents. However, if the file reflects the existence of other dependents who