

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 23, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00-13458 Filed 5-26-00; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0001]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of

a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility, dependency, and income, as appropriate, for compensation and/or pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 31, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0001" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Application for Compensation and/or Pension, VA Form 21-526.

OMB Control Number: 2900-0001.

Type of Review: Revision of a currently approved collection.

Abstract: This form is used as an original application for veterans to apply for compensation and/or pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 592,500 hours.

Estimated Average Burden Per Respondent: 1 hour and 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 395,000.

Dated: March 17, 2000.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00-13396 Filed 5-26-00; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel; Republication

Editorial Note: FR Doc. 00-12867 was originally published in the issue of Tuesday, May 23, 2000. The corrected document is republished in its entirety due to the omission of text.

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers

deleted, may be obtained by contacting the VA official named above.

New Precedent Opinions

VAOPGCPREC 01-2000

Question Presented

a. Is the last sentence of 38 CFR 3.272(h) consistent with 38 U.S.C. 1503(a)(3) in providing that expenses of a veterans' last illness paid by a surviving spouse subsequent to the veteran's death, but prior to the date of entitlement to improved death pension, may not be excluded from countable income for the purpose of determining death pension entitlement?

b. If so: (1) What is the basis for the differing treatment accorded by section 3.272(h) to expenses paid prior to the date of death and those paid after the date of death but before the date of entitlement; and, (2) does Congress' intent in enacting Pub. L. No. 98-369 to limit retroactive payments of pension in the case of claimants who file claims more than 45 days after the date of a veteran's death provide an adequate basis for prohibiting consideration of expenses in determining prospective entitlement for the period following the date of claim?

Held

a. The last sentence of 38 CFR 3.272(h) is inconsistent with 38 U.S.C. 1503(a)(3) in providing that expenses of a veteran's last illness paid by the veteran's surviving spouse subsequent to the veteran's death, but prior to the date of the surviving spouse's entitlement to death pension, may not be deducted from countable income for the purpose of determining entitlement to improved death pension. VA may not rely upon the last sentence of 38 CFR 3.272(h) as a basis for denying a death pension claim or reducing the amount of benefits payable.

b. (1) There is no basis for the differing treatment currently accorded under 38 CFR 3.272(h) for expenses of a veteran's last illness paid prior to the date of a veteran's death and those paid after the date of death but before the date of a surviving spouse's entitlement to death pension.

(2) Congress' intent in enacting Pub. L. No. 98-369 to limit retroactive payments of pension in the case of claimants who file claims more than 45 days after the date of a veteran's death does not provide an adequate basis for prohibiting consideration of expenses of a veteran's last illness in determining prospective entitlement for the period following the date of a claim for improved death pension.

Effective Date: March 28, 2000

VAOPGCPREC 02-2000

Question Presented

May the Department of Veterans Affairs (VA) through rulemaking authorize special monthly compensation under 38 U.S.C. 1114(k) (k-rate SMC) for a service-connected mastectomy?

Held

Section 1114(k) of title 38, United States Code, authorizes a special rate of compensation for the disabilities specified in that provision. Neither section 1114(k) nor VA's general rulemaking authority, 38 U.S.C. 501(a), delegates to VA authority to recognize by rulemaking additional injuries or conditions not specified in section 1114(k) "for which the special rate of compensation will be paid. By authorizing that rate of compensation for anatomical loss or loss of use of one or more creative organs," Congress intended to compensate for loss of a procreative, or reproductive, organ, which does not include the breast. Therefore, VA may not by rulemaking authorize special monthly compensation under section 1114(k) for a service-connected mastectomy.

Effective Date: April 3, 2000

VAOPGCPREC 03-2000

Question Presented

a. When the Department of Veterans Affairs (VA) issues an amendment to a provision of its rating schedule while a claim for an increased rating is pending, what is the proper analysis for determining whether, and to what extent, the pending claim is governed by the prior rating-schedule provision or the revised rating-schedule provision?

b. When the Board of Veterans' Appeals (Board) addresses an increased-rating claim involving a disability for which the rating criteria have changed during the pendency of the appeal, should the Board make separate findings of fact and conclusions of law, and provide reasons or bases in its decision, with respect to application of both the old and the new rating criteria?

c. Where there has been a change in rating criteria during the pendency of an appeal, should all evidence of record be considered when determining whether an increased rating is warranted, or should only the evidence which pre-dates or post-dates the effective date of the change in law be taken into consideration when addressing the rating prior to and after the change in law, respectively?

Held

a. When a provision of the Department of Veterans Affairs (VA) rating schedule is amended while a claim for an increased rating under that provision is pending, the Board should first determine whether the amended regulation is more favorable to the claimant. It may be necessary for the Board to separately apply the pre-amendment and post-amendment version of the regulation to the facts of the case in order to determine which provision is more favorable, unless it is clear from a facial comparison of both versions that one version is more favorable. If the amended regulation is more favorable to the claimant, then the retroactive reach of the regulation is governed by 38 U.S.C. 5110(g), which provides that VA may, if warranted by the facts of the claim, award an increased rating based on a change in law retroactive to, but no earlier than, the effective date of the change. Accordingly, the Board should apply the amended regulation to rate the veteran's disability for periods from and after the effective date of the amendment. The Board should apply the prior version of the regulation to rate the veteran's disability for any period preceding the effective date of the amendment.

b. Pursuant to 38 U.S.C. 7104(d)(1), decisions of the Board of Veterans' Appeals (Board) must contain separate findings, conclusions, and statements of the reasons or bases therefore, with respect to findings and conclusions on issues "material" to the Board's decision. Determinations of which version of an amended rating-schedule provision is more favorable to a claimant and rating of a disability using the rating criteria applicable for a particular period are issues material to a claim for an increased rating. Accordingly, the Board would be required to comply with 38 U.S.C. 7104(d)(1) in making those determinations.

c. Pursuant to 38 U.S.C. 7104(a), the Board's decisions must be based on consideration of all evidence and material of record, rather than merely evidence which pre-dates or post-dates a pertinent change to VA's rating schedule. In determining the extent of disability existing prior to a regulatory change, the Board may not simply ignore documents post-dating the regulatory change, since such documents could provide evidence that an increase in disability occurred at an earlier time. Likewise, in determining the level of disability existing subsequent to a regulatory change, the

Board may not simply ignore evidence pre-dating the change, since such evidence may bear upon the level of disability existing subsequently.

Effective Date: April 10, 2000.

VAOPGCPREC 04-2000

Question Presented

A. Do provisions of paragraph 7.21 in Veterans Benefits Administration (VBA) Adjudication Procedure Manual M21-1 (Manual M21-1), Part VI, pertaining to claims involving asbestos-related diseases constitute regulations which are binding on the Department of Veterans Affairs (VA)?

B. Is medical-nexus evidence required to establish a well-grounded claim for service connection for an asbestos-related disease referenced in paragraph 7.21 of VBA Manual M21-1, Part VI, and allegedly due to in-service asbestos exposure?

Held

A. (1) Paragraph 7.21a., b., c., and d.(3) of Veterans Benefits Administration Adjudication Procedure Manual M21-1, Part VI, and the fourth and fifth sentences of paragraph 7.21d.(1) of that manual are not substantive in nature. However, relevant factors discussed in paragraphs 7.21a., b., and c. must be considered and addressed by the Board in assessing the evidence regarding an asbestos-related claim in order to fulfill the Board's obligation under 38 U.S.C. 7104(d)(1) to provide an adequate statement of the reasons and bases for a decision.

(2) The first three sentences of paragraph 7.21d (1) of Veterans Benefits Administration Adjudication Procedure Manual M21-1, Part VI, establish a procedure which, in light of current case law, adjudicators are required to follow in claims involving asbestos-related diseases. However, to the extent that paragraph 7.21d(1) of that manual establishes claim-development procedures, those procedures are only applicable in the case of a well-grounded claim.

(3) Paragraph 7.21d.(2) of Veterans Benefits Administration Adjudication Procedure Manual M21-1, Part VI, should be regarded as substantive. However, that paragraph should not be treated as binding to the extent it may adversely affect a claimant by requiring that a particular asbestos-related disease be rated by analogy to a specified condition, where a rating more favorable to the claimant would be obtained by reference to current rating criteria for the particular disease in VA's rating schedule. Similarly, where the current rating schedule contains no criteria specific to the asbestos-related disease, paragraph 7.21d.(2) should be treated as binding to the extent it would adversely affect a claimant by requiring that asbestos-related disease be rated by analogy to a particular condition, where a rating more favorable to the claimant would be obtained by rating by analogy to another disease pursuant to 38 CFR 4.20.

B. Medical-nexus evidence is required to establish a well-grounded claim for service connection for an asbestos-

related disease referenced in paragraph 7.21 of Veterans Benefits Administration Adjudication Procedure Manual M21-1, Part VI, and allegedly due to in-service asbestos exposure.

Effective Date: April 13, 2000.

Withdrawn Precedent Opinion

VAOPGCPREC 13-94

“* * * G.C. Prec. 13-94 [VAOPGCPREC 13-94] held the following:

Service connection may not be established for a disability incurred following the date on which a veteran was discharged from active-duty credit granted by a Board for Correction of Military Records to a date after the date on which injury occurred, because the veteran was not engaged in active service at that time.”

VAOPGCPREC 13-94 was overruled by *Spencer v. West*, 2000 WL 266117 (Vet. App., March 13, 2000). Accordingly, VAOPGCPREC 13-94 is hereby withdrawn.

Effective Date: March 13, 2000.

By Direction of the Secretary.
Leigh A. Bradley,
General Counsel.

Editorial Note: FR Doc. 00-12867 was originally published in the issue of Tuesday, May 23, 2000. The corrected document is republished in its entirety due to the omission of text.

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