

118TH CONGRESS
2D SESSION

H. R. 8136

To amend title 38, United States Code, to improve the processes by which a veteran may appeal decisions affecting the provision of benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2024

Mrs. PELTOLA (for herself, Mr. MOYLAN, and Mr. GOTTHEIMER) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 38, United States Code, to improve the processes by which a veteran may appeal decisions affecting the provision of benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “VA Appeals Reform
5 Act of 2024”.

1 **SEC. 2. IMPROVEMENTS TO SYSTEM FOR ADJUDICATION**
2 **OF CLAIMS FOR BENEFITS UNDER THE LAWS**
3 **ADMINISTERED BY THE SECRETARY OF VET-**
4 **ERANS AFFAIRS.**

5 (a) DUTY TO ASSIST; SUPPLEMENTAL CLAIMS; EX-
6 PEDITED TREATMENT OF CERTAIN CLAIMS.—Chapter 51
7 of title 38, United States Code, is amended—

8 (1) in section 5103A—

9 (A) by redesignating subsections (b)
10 through (i) as subsections (c) through (j), re-
11 spectively;

12 (B) by inserting after subsection (a) the
13 following new subsection:

14 “(b) ASSISTANCE UPON REQUEST OF THE CLAIM-
15 ANT.—As part of the assistance provided under subsection
16 (a), the Secretary shall, not later than 90 days after the
17 claimant makes a request for assistance under this sub-
18 section, provide any of the following documents:

19 “(1) The veteran’s claims file.

20 “(2) A paginated copy of each component of
21 each document in the evidence of record that the
22 Secretary determines is relevant to the claim.

23 “(3) The contact information of the individual
24 adjudicating the claim.

25 “(4) The contact information and curriculum
26 vitae of any independent medical expert described in

1 section 5109 of this title offering an advisory med-
2 ical opinion in connection with the claim.

3 “(5) A copy of any correspondence relating to
4 the claim between—

5 “(A) one or more employees of the Depart-
6 ment; and

7 “(B) an employee of the Department and
8 any other individual.

9 “(6) Upon the request of the claimant, a copy
10 of any document relevant to the claim that the
11 claimant adequately identifies and authorizes the
12 Secretary to obtain that is in the possession of—

13 “(A) the Secretary; or

14 “(B) the head of any Federal department
15 or agency.”.

16 (C) in subsection (f) (as so redesignated),
17 by adding at the end the following new para-
18 graph:

19 “(3) The duty of the Secretary to provide assistance
20 under this section to a claimant with respect to a claim
21 under this section shall continue until such time as the
22 agency of original jurisdiction schedules a hearing to adju-
23 dicate the claim.”; and

24 (D) in subsection (i) (as so redesignated),
25 by striking “except when new and relevant evi-

1 dence is presented or secured, as” and inserting
2 “except as provided under the conditions”;
3 (2) in section 5104(b)—

4 (A) in paragraph (2), by inserting before
5 the period at the end “, including citations to
6 applicable page numbers.”;

7 (B) in paragraph (3), by inserting “, in-
8 cluded as an appendix” after “regulations”;

9 (C) in paragraph (5), by striking “denial”
10 and all that follows through the end of the
11 paragraph and inserting “denial—

12 “(A) an identification of elements not sat-
13 isfied leading to the denial; and

14 “(B) a summary of the rights of the vet-
15 eran to appeal such denial.”; and

16 (D) in paragraph (7), by inserting “, in-
17 cluding the diagnostic codes used in the deter-
18 mination of the disability percentage and a cita-
19 tion to the applicable regulation” after “com-
20 pensation”;

21 (3) in section 5104B, by amending subsection
22 (c) to read as follows:

23 “(c) EVIDENTIARY RECORD FOR REVIEW.—(1) In
24 the course of a higher-level review, the veteran may sup-

1 plement the evidentiary record before the higher-level re-
2 viewer.

3 “(2) If, during review of the agency of original juris-
4 diction decision, the higher-level reviewer identifies an
5 error on the part of the agency of original jurisdiction that
6 constitutes a failure to satisfy its duties under section
7 5103A of this title, and that error occurred prior to the
8 agency of original jurisdiction decision being reviewed, the
9 higher-level reviewer shall return the claim to the agency
10 of original jurisdiction.”;

11 (4) in section 5108, by amending subsection (a)
12 to read as follows:

13 “(a) IN GENERAL.—The Secretary shall readjudicate
14 a supplemental claim, taking into consideration all of the
15 evidence of record when, with respect to such supple-
16 mental claim—

17 “(1) new and material evidence is presented or
18 secured;

19 “(2) the Board of Veterans Appeals identifies a
20 clear and unmistakable error on the part of the
21 agency of original jurisdiction; or

22 “(3) a law or regulation enacted after the date
23 of the denial of the original claim permits the vet-
24 eran to bring such supplemental claim.”;

1 (5) in section 5109A, by adding at the end the
2 following new subsection:

3 “(f) In this section, the term ‘clear and unmistakable
4 error’ includes, with respect to a decision by the Secretary,
5 any of the following:

6 “(1) Any error of law, fact, or application of
7 law to fact—

8 “(A) that is manifest on the face of such
9 decision; and

10 “(B) affected the outcome of such decision.

11 “(2) The misinterpretation or misapplication of
12 a statute, regardless of whether such decision other-
13 wise complies with regulations issued by the Sec-
14 retary in effect as of the date of such decision.

15 “(3) The misinterpretation or misapplication of
16 an unambiguous regulation, regardless of whether
17 such decision otherwise complies with the regulations
18 described in paragraph (2).”; and

19 (6) by striking section 5109B and inserting the
20 following new section 5109B:

21 **“§ 5109B. Expedited treatment of returned and re-**
22 **manded claims**

23 “(a) IN GENERAL.—The Secretary shall take such
24 actions as may be necessary to provide for the expeditious

1 treatment by the Veterans Benefits Administration of any
2 claim that is—

3 “(1) returned by a higher-level adjudicator
4 under section 5104B of this title; or

5 “(2) remanded by the Board of Veterans’ Ap-
6 peals.

7 “(b) DEADLINE.—(1) Except as provided in para-
8 graph (2), with respect to any claim described in sub-
9 section (a), the Secretary shall take the actions under such
10 subsection not later than 90 days after the date on
11 which—

12 “(A) a higher-level adjudicator returned such
13 claim; or

14 “(B) the Board of Veterans’ Appeals remanded
15 such claim.

16 “(2) The Board of may, upon motion of the claimant,
17 extend the deadline under paragraph (1) if the Board de-
18 termines there is good cause for such extension.”.

19 (b) ATTORNEY FEES FOR FILING OF NOTICE OF IN-
20 TENT TO APPEAL CERTAIN DECISIONS.—Section 5904(c)
21 of title 38, United States Code is amended—

22 (1) in paragraph (4)—

23 (A) by striking the enumerator and insert-
24 ing “(4)(A)”; and

1 (B) by striking “under this paragraph”
2 and inserting “under this subparagraph”; and
3 (2) by adding at the end, the following new sub-
4 paragraph:

5 “(B) A reasonable fee, not to exceed the lesser of
6 \$200 or 20 percent of the initial payment from the claim-
7 ant to the attorney, may be charged or paid in connection
8 with the filing of a notice of intent to appeal a decision
9 by the Secretary under section 511 of this title affecting
10 the provision of benefits to a claimant.”.

11 (c) APPOINTMENT OF ADMINISTRATIVE LAW
12 JUDGES; PERFORMANCE REVIEWS; SCHEDULING CON-
13 FERENCES.—Chapter 71 of title 38, United States Code,
14 is amended as follows:

15 (1) In section 7101—

16 (A) in subsection (c)(1)—

17 (i) by amending subparagraph (A) to
18 read as follows:

19 “(A) The Chairman may from time to time designate
20 a retired officer of the Armed Forces who previously
21 served as a military judge (as defined in section 801 of
22 title 10 (article 1 of the Uniform Code of Military Jus-
23 tice)) to serve as an acting member of the Board. Except
24 as provided in subparagraph (B), any such designation

1 shall be for a period not to exceed 180 days, as determined
 2 by the Chairman.”; and

3 (ii) by adding at the end the following
 4 new subparagraph:

5 “(E) An individual designated pursuant to subpara-
 6 graph (A) shall complete a program of training with re-
 7 spect to the laws administered by the Secretary that the
 8 Secretary determines appropriate.”; and

9 (B) in subsection (d)—

10 (i) in subparagraph (F), by striking “;
 11 and” and inserting a semicolon;

12 (ii) by redesignating subparagraph
 13 (G) as subparagraph (H); and

14 (iii) by inserting after subparagraph
 15 (F), the following new subparagraph:

16 “(G) the number of decisions of the Board re-
 17 manded or returned to the Board, disaggregated by
 18 the Board member who issued the final decision so
 19 remanded or returned; and”.

20 (2) In section 7101A—

21 (A) in subsection (a)(2), by striking “shall
 22 be” and all that follows through the end of the
 23 paragraph and inserting “shall be—

24 “(A) an administrative law judge appointed
 25 under section 3105 of title 5; and

1 “(B) a member in good standing of the bar of
2 a State.”; and

3 (B) in subsection (c)(1)—

4 (i) in subparagraph (B), by striking

5 “Not less than one year after the job per-

6 formance standards under subsection (f)

7 are initially established, and not less often

8 than once every three years thereafter”

9 and inserting “Under the conditions de-
10 scribed in subparagraph (C)”; and

11 (ii) by adding at the end the following
12 new subparagraph:

13 “(C) The performance review panel shall review the
14 job performance of a member of the Board—

15 “(i) not less than one year after the job per-
16 formance standards under subsection (f) are initially
17 established;

18 “(ii) not less often than once every three years
19 after such standards are established; and

20 “(iii) when, during any 12-month-period, the
21 Court of Appeals for Veterans Claims or a higher
22 authority remands to the Board more than 60 per-
23 cent of the decisions issued by such member.”.

24 (3) In section 7102—

1 (A) by redesignating subsection (c) as sub-
2 section (d); and

3 (B) by inserting after subsection (b) the
4 following new subsection:

5 “(c) In the case of a decision of the Board that is
6 remanded to the Board by the Court of Appeals for Vet-
7 erans Claims or a higher authority, any subsequent pro-
8 ceeding associated with the decision so remanded may not
9 be assigned to the member of the Board who issued such
10 decision.”.

11 (4) In section 7105—

12 (A) in the heading, by inserting “**; sched-**
13 **uling conferences**” after “**Filing of ap-**
14 **peal**”;

15 (B) by redesignating subsections (c) and
16 (d) as subsections (d) and (e), respectively; and

17 (C) by inserting after subsection (b) the
18 following new subsection:

19 “(c)(1) Not later than 90 days after a veteran files
20 a notice of disagreement under subsection (a), the Board
21 of Veterans Appeals shall hold, by picture and voice trans-
22 mission, a conference with such veteran and the represent-
23 ative of such veteran, if any, to schedule such hearing.

24 “(2) During the conference under paragraph (1), the
25 Board shall—

1 “(A) provide the veteran—

2 “(i) not fewer than 30 days for such vet-
3 eran to request a hearing;

4 “(ii) not fewer than 30 days to secure
5 counsel for such hearing;

6 “(iii) not fewer than 60 days for such vet-
7 eran to submit to the Board the specific deter-
8 minations or findings of the Board with which
9 the claimant disagrees;

10 “(iv) not fewer than 120 days for such vet-
11 eran to submit evidence relating to the deter-
12 minations described in clause (iii);

13 “(v) information relating to the rules gov-
14 erning an appeal under this chapter; and

15 “(vi) contact information for a representa-
16 tive of the Board, including an electronic mail
17 address; and

18 “(B) schedule a tentative date for such hearing.

19 “(3) The Secretary may, upon motion of the veteran,
20 extend the deadlines described in clauses (i) through (iv)
21 of subparagraph (A) for good cause, including the failure
22 of the Secretary to provide requested relevant or material
23 information.”.

24 (5) In section 7107—

25 (A) in subsection (a)—

1 (i) by striking “two separate dockets”
2 each place it appears and inserting “one
3 docket”; and

4 (ii) in paragraph (3)—

5 (I) by striking “(A)”;

6 (II) by striking “, except that
7 cases” and all that follows through
8 “are assigned”; and

9 (III) by striking subparagraph
10 (B); and

11 (B) in subsection (e), by inserting “, if ap-
12 plicable” before the period at the end; and

13 (C) by adding at the end the following new
14 subsection:

15 “(f) HEARING TRANSCRIPTS.—The Board, upon the
16 request of the veteran and at no cost to such veteran, pro-
17 vide such veteran with a copy of the transcript of the hear-
18 ing and a digital recording of any picture and voice trans-
19 mission considered during such hearing.”.

20 (6) In section 7111, by adding at the end the
21 following new subsection:

22 “(g) In this section, the term ‘clear and unmistakable
23 error’ includes, with respect to a decision of the Board,
24 any of the following:

1 “(1) Any error of law, fact, or application of
2 law to fact—

3 “(A) that is manifest on the face of such
4 decision; and

5 “(B) affected the outcome of such decision.

6 “(2) The misinterpretation or misapplication of
7 a statute, regardless of whether such decision other-
8 wise complies with regulations issued by the Sec-
9 retary in effect as of the date of such decision.

10 “(3) The misinterpretation or misapplication of
11 an unambiguous regulation, regardless of whether
12 such decision otherwise complies with the regulations
13 described in paragraph (2).”;

14 (7) By adding at the end the following new sec-
15 tion (and conforming the table of chapters at the be-
16 ginning of such chapter accordingly):

17 **“§ 7114. Program to establish electronic case manage-**
18 **ment and filing system**

19 “(a) IN GENERAL.—The Secretary shall establish an
20 electronic filing and case management system for the pur-
21 poses of processing appeals under this chapter.

22 “(b) ELEMENTS.—The system required by subsection
23 (a) shall include—

24 “(1) an internet database of documents relating
25 to appeals under this chapter;

1 “(2) subject to subsection (d), a mechanism by
2 which attorneys approved by the Office of the Gen-
3 eral Counsel of the Department to represent a vet-
4 eran before the Board of Veterans Appeals may ac-
5 cess such internet database to an extent the Sec-
6 retary determines appropriate; and

7 “(3) a mechanism by which a veteran, or the
8 attorney or representative of a veteran, can submit
9 to the Board of Veterans Appeals documents relat-
10 ing to an appeal under this chapter, in portable doc-
11 ument format or other commercially available for-
12 mat, through such internet database.

13 “(c) TRAINING.—Not later than one year after the
14 date on which the Secretary establishes the program re-
15 quired by subsection (a), the Secretary shall make avail-
16 able to attorneys described in subsection (b)(2) training
17 on such program.

18 “(d) CERTIFICATION OF GOOD STANDING.—As a
19 condition of access to the internet database described in
20 subsection (b)(2), the Secretary may require an attorney
21 to provide to the Secretary a certificate of good standing
22 from a State court or Federal district court.

23 “(e) REQUIRED CONSIDERATION.—In carrying out
24 subsection (a), the Secretary shall consider the case man-

1 agement/electronic filing system (CM/ECF) administered
2 by United States District Courts.”.

3 (d) DISCLOSURE OF CERTAIN MEDICAL RECORDS.—
4 Section 7332(b)(2) of title 38, United States Code, is
5 amended by adding at the end the following new subpara-
6 graphs:

7 “(J) To the patient, and the attorney of such
8 patient, if any, for the purposes of using such record
9 in connection with an appeal under chapter 71 of
10 this title.

11 “(K) To the Court of Appeals for Veterans
12 Claims, for purposes of filing an appeal under chap-
13 ter 72 of this title.”.

14 (e) DEADLINE FOR CERTAIN MECHANISM.—The Sec-
15 retary of Veterans Affairs shall establish the mechanism
16 described in paragraph (3) of subsection (b) of section
17 7112 of title 38, United States Code, as added by sub-
18 section (c)(7), by not later than 180 after the date of the
19 enactment of this Act.

20 **SEC. 3. EXPANSION OF JURISDICTION OF UNITED STATES**
21 **COURT OF APPEALS FOR VETERANS CLAIMS**
22 **AND UNITED STATES COURT OF APPEALS**
23 **FOR THE FEDERAL CIRCUIT.**

24 (a) UNITED STATES COURT OF APPEALS FOR VET-
25 ERANS CLAIMS.—

1 (1) EXPANSION.—Section 502 of title 38,
2 United States Code, is amended by striking “the
3 Federal Circuit” and inserting “Veterans Claims”.

4 (2) SCOPE OF REVIEW OF CERTAIN CLAIMS.—
5 Section 7261 of such title is amended—

6 (A) in paragraph (4) of subsection (a), by
7 striking “clearly erroneous” and inserting “ar-
8 bitrary and capricious”;

9 (B) by striking subsection (c);

10 (C) by redesignating subsection (d) as sub-
11 section (c); and

12 (D) in subsection (c) (as so redesignated),
13 by striking “shall review only questions raised
14 as to compliance with and the validity of the
15 regulation” and inserting “shall review such de-
16 cision and the accompanying findings of fact by
17 trial de novo”.

18 (b) UNITED STATES COURT OF APPEALS FOR THE
19 FEDERAL CIRCUIT.—

20 (1) EXPANSION.—Section 1295(a) of title 28,
21 United States Code, is amended—

22 (A) in paragraph (13), by striking “; and”;

23 (B) in paragraph (14), by striking the pe-
24 riod at the end and inserting “; and”; and

1 (C) by adding at the end the following new
2 paragraph:

3 “(15) of an appeal from a final decision of the
4 United States Court of Appeals for Veterans
5 Claims.”.

6 (2) REPEAL OF CERTAIN PROVISION.—Section
7 7292 of title 38, United States Code, is repealed.

8 (3) CONFORMING AMENDMENTS.—Section 7252
9 of such title is amended by striking subsection (c).

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