UNITED STATES VETERANS' BUREAU SERVICE LETTER

DIRECTOR'S OFFICE

Obsolete S.L. 1243

May 23, 1929.

Subject: INTERPRETATION OF SECTIONS 7155 and 7156 REGULATION 187.

Re 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, 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. 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+PR1074

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-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-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.

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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 Diability 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

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. MP 96

S.L. 5-23-29 **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) [redacted] G.C. 3-11-69

See new 1009(A)

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MF 734

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)

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 disease or injury. 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.

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1006. DECISIONS TO CONFORM TO EXISTING LAWS - REGULATIONS - AND DEFINED POLICIES.--All decisions will conform strictly to the laws, regulations, Administrator's Decisions and defined policies as enunciated by the Administrator. (January 25, 1936.)

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 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. 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.)

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, 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 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 [where required by subparagraph (D) hereof], 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 requisite medical certificate accepted as showing that the previous diagnosis was not correct be of record in the case file. (November 26, 1945.)

(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.)

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

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-1176, 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.)

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

38 CFR 3.105(a)

VB Reg 187, Sec 7155
07/05/28

R&PR 1074
05/19/30

R&PR 1009(A)
01/25/36

R&PR 1009(A)
revised 07/10/42

R&PR 1009(A)
revised 11/26/45

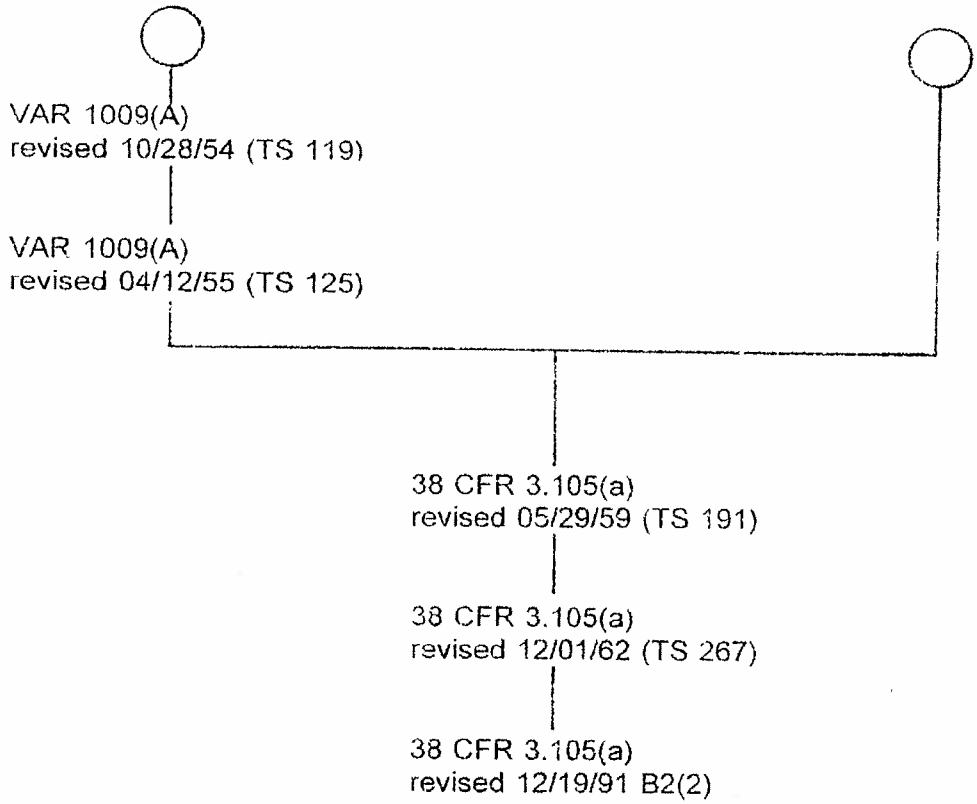
VAR 1009(A)
revised 05/13/47

R&PR 2670(C)
08/15/47

VAR 2670(C)
revised 06/14/49

VAR 2670(B)
revised 08/13/54

38 CFR 3.105(a)


VAR 1009(A)
revised 10/28/54 (TS 119)
VAR 1009(A)
revised 04/12/55 (TS 125)
38 CFR 3.105(a)
revised 05/29/59 (TS 191)
38 CFR 3.105(a)
revised 12/01/62 (TS 267)
38 CFR 3.105(a)
revised 12/19/91 B2(2)

EFF: 7-5-28

VB Reg. 187

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§ 7155

(Regulation No. 186)

FORMS OF POLICIES TO BE USED IN THE GRANTING OF UNITED STATES GOVERNMENT LIFE INSURANCE

JUNE 4, 1928.

Cancels and supersedes sections 5000 to 5004, inclusive, of Treasury Decision No. 42-A, W. R., dated April 30, 1920.

SEC. 5001. The forms of policies of insurance described and designated below, bearing the signature of and now on file in the office of the Director of the United States Veterans' Bureau, are hereby prescribed for use in granting United States Government life insurance applied for in accordance with the provisions of the World War veterans' act and amendments thereto. Contracts of insurance are hereby authorized to be made in accordance with the terms and conditions set forth in the forms of policies described and designated below:

Ordinary life policy, Form 741.
Five-year convertible term policy, Form 745.
Twenty-payment life policy, Form 747.
Thirty-payment life policy, Form 748.
Twenty-year endowment policy, Form 749.
Thirty-year endowment policy, Form 750.
——-year endowment policy, Form 751.

Said forms are hereby substituted for those bearing the same numbers mentioned in Treasury Decision No. 42-A, W. R., of April 30, 1920, which said new forms, and not those referred to in said Treasury Decision No. 42-A, shall be used in granting United States Government life insurance. (June 4, 1928.)

SEC. 5002. Additions to or modifications of said policies may hereafter be made by the Director of the United States Veterans' Bureau. (June 4, 1928.)

SEC. 5003. Applications to convert yearly renewable term insurance into the forms of insurance described and designated above in those instances where yearly renewable term insurance may be converted subsequent to July 2, 1927, shall contain provisions equivalent in effect to those set forth in the form on file in the office of the Director of the United States Veterans' Bureau, and described and designated as application for conversion of Government war risk insurance, Form 739. (June 4, 1928.)

SEC. 5004. Contracts for the conversion of yearly renewable term insurance, which may be converted subsequent to July 2, 1927, as provided for in section 301 of the World War veterans' act, 1924, as amended, are hereby authorized to be made in the terms and conditions set forth in the forms of application and policies above described and designated. (June 4, 1928.)

FRANK T. HINES, *Director*.

(Regulation No. 187)

ESTABLISHMENT AND FUNCTIONS OF REGIONAL RATING BOARDS

R4PR-1070

JUNE 20, 1928.

(Cancels and supersedes sections 7151 to 7161, inclusive, of Regulations Nos. 74, 97, and 116.)

SEC. 7151. 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 approval 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. (July 5, 1928.)

SEC. 7152. 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. (July 5, 1928.)

SEC. 7153. 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 diseases 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. (July 5, 1928.)

SEC. 7154. 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. (July 5, 1928.)

SEC. 7155. 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

7-5-28

VB Reg. 187

37155

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 central board of appeals with a tentative rating for a decision, except where the prior decision was rendered by the director, the central board of appeals will make recommendations only to the director. (July 5, 1928.)

SEC. 7156. 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, but the director will require the central board of appeals to make recommendations in reference thereto. This section 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 section will not be applicable to dental conditions wherein service connection has been allowed and such conditions are not now compensable. (July 5, 1928.) R+PR 1075

SEC. 7157. The rating board as a group, and each rating specialist, will at all times be governed by the laws, regulations, orders, instructions, rules, and defined policies of the bureau, in order that complete uniformity of criteria may be preserved. Rating boards will not render any decision involving a new interpretation or establishing a new policy without the approval of the director. (July 5, 1928.) R+PR 1076

SEC. 7158. A rating made by a duly constituted rating board will, upon the evidence then in file, for rating purposes be final and binding upon all regional offices and will not be subject to revision except by duly constituted appellate authorities or as outlined in section 7155 hereof. When a decision has been reached by a rating board and adjudicative action has been taken thereon, a written notice of the decision and of the adjudicative action will be promptly mailed by the regional adjudication officer to the claimant or guardian at his latest address of record as shown by the regional case file. (July 5, 1928.) R+PR 1077

SEC. 7159. Appeal to the central board of appeals from the decision of a rating board may be made by a written notice of appeal by the claimant, his guardian, or his agent duly authorized over the claimant's signature, within six months from the date the written notice of the rating board action from which appeal is made is mailed to the claimant at his last address of record; by the regional manager or the regional adjudication officer, provided such appeal is forwarded within 15 days from the date the rating board decision is rendered; by the director, or the assistant director, or a field supervisor of the adjudication service at any time. Any employee of the regional office may bring to the attention of the regional adjudication officer, by proper written statement any case that in his opinion should be appealed, and it will be the duty of the regional adjudication officer to take such action as may be indicated by the merits of the case and to initiate an appeal when proper; such cases as are not appealed by the regional adjudication officer will be forwarded with his recommendation to the regional manager. (July 5, 1928.) R+PR 1078

SEC. 7160. In the event an appeal from the rating board decision is taken by the claimant, payment based on the decision will be continued until the appeal has been decided by the appellate authority and the case returned to the regional office. (July 5, 1928.) R+PR 1079

SEC. 7161. In the event of a dissenting opinion by a rating specialist, no payment will be made, based upon the decision, until it has been authoritatively determined whether an appeal will be taken. If appeal from any decision is taken by the regional adjudication officer, or the regional manager, no change in payments, based on the decision appealed from, will be made until a decision is rendered by the appropriate appellate authority and the case file is returned to the regional office. (July 5, 1928.) R+PR 1080

(Regulation No. 188)

IDENTIFICATION OF VETERANS FOR LOANS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED

JUNE 23, 1928.

Cancels and supersedes section 13503, of regulation 183.

SEC. 13503. *Identification.*—Before a loan is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the certificate offered as security. Such identification, if made in the United States or possessions, will be accepted if the certification is made by a United States postmaster or assistant postmaster over an impression of the post office cancellation stamp; a commissioned officer of the regular establishment of the Army, Navy, or Marine Corps; a Member of the United States Senate or the House of Representatives; an officer, over his official title, of a post, chapter, or other comparable unit of an organization recognized under section 500 of the World War veterans' act, 1924, as amended, or an officer, over his official title, of the State or national body of such organization, or any person who is legally authorized to administer oaths in a State, Territory, District of Columbia, or in a Federal judicial district of the United States. If the identification is made in a foreign country, it will be certified by an American consul, a recognized representative of an American embassy, or legation, or by a person authorized to administer oaths under the laws of the place where identification is made: *Provided*, There be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that such officer was authorized to administer oaths in the place where certification was made. A medical officer in charge of a United States veterans' hospital is authorized to identify patients or employees of the hospital over which he has charge. No identification will be made by any employee of the United States Veterans' Bureau in his official capacity, other than by a medical officer in charge of a hospital as authorized above. However, such other employees of the bureau as are specifically designated in writing to do so by the regional managers, medical officers in charge of United States veterans' hospitals, managers of the suboffices in the insular and Territorial possessions, or the head of an activity in central office, may identify applicants during official hours and upon the premises of the United States Veterans' Bureau, such identifications by the employee so designated to be in his individual capacity and from his personal knowledge that the applicant is the person he claims to be. Official records on file with the bureau will not be used by the employee making such identification. No employee of the finance service in central office, or the finance activity of a field station of the bureau will be so designated. (July 9, 1928.)

FRANK T. HINES, *Director.*

(Regulation No. 186)

FORMS OF POLICIES TO BE USED IN THE GRANTING OF UNITED STATES GOVERNMENT LIFE INSURANCE

JUNE 4, 1928.

Cancels and supersedes sections 5000 to 5004, inclusive, of Treasury Decision No. 42–A, W. R., dated April 30, 1920.

SEC. 5001. The forms of policies of insurance described and designated below, bearing the signature of and now on file in the office of the Director of the United States Veterans' Bureau, are hereby prescribed for use in granting United States Government life insurance applied for in accordance with the provisions of the World War veterans' act and amendments thereto. Contracts of insurance are hereby authorized to be made in accordance with the terms and conditions set forth in the forms of policies described and designated below:

Ordinary life policy, Form 741.
Five-year convertible term policy, Form 745.
Twenty-payment life policy, Form 747.
Thirty-payment life policy, Form 748.
Twenty-year endowment policy, Form 749.
Thirty-year endowment policy, Form 750.
———-year endowment policy, Form 751..

Said forms are hereby substituted for those bearing the same numbers mentioned in Treasury Decision No. 42–A, W. R., of April 30, 1920, which said new forms, and not those referred to in said Treasury Decision No. 42–A, shall be used in granting United States Government life insurance. (June 4, 1928.)

SEC. 5002. Additions to or modifications of said policies may hereafter be made by the Director of the United States Veterans' Bureau. (June 4, 1928.)

SEC. 5003. Applications to convert yearly renewable term insurance into the forms of insurance described and designated above in those instances where yearly renewable term insurance may be converted subsequent to July 2, 1927, shall contain provisions equivalent in effect to those set forth in the form on file in the office of the Director of the United States Veterans' Bureau, and described and designated as application for conversion of Government war risk insurance, Form 739. (June 4, 1928.)

SEC. 5004. Contracts for the conversion of yearly renewable term insurance, which may be converted subsequent to July 2, 1927, as provided for in section 301 of the World War veterans' act, 1924, as amended, are hereby authorized to be made in the terms and conditions set forth in the forms of application and policies above described and designated. (June 4, 1928.)

FRANK T. HINES, *Director.*

(Regulation No. 187)

ESTABLISHMENT AND FUNCTIONS OF REGIONAL RATING BOARDS

JUNE 20, 1928.

(Cancels and supersedes sections 7151 to 7161, inclusive, of Regulations Nos. 74, 97, and 116.)

SEC. 7151. 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 approval 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. (July 5, 1928.)

SEC. 7152. 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. (July 5, 1928.)

SEC. 7153. 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 diseases 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. (July 5, 1928.)

SEC. 7154. 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. (July 5, 1928.)

SEC. 7155. 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 central board of appeals with a tentative rating for a decision, except where the prior decision was rendered by the director, the central board of appeals will make recommendations only to the director. (July 5, 1928.)

SEC. 7156. 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, but the director will require the central board of appeals to make recommendations in reference thereto. This section 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 section will not be applicable to dental conditions wherein service connection has been allowed and such conditions are not now compensable. (July 5, 1928.)

SEC. 7157. The rating board as a group, and each rating specialist, will at all times be governed by the laws, regulations, orders, instructions, rules, and defined policies of the bureau, in order that complete uniformity of criteria may be preserved. Rating boards will not render any decision involving a new interpretation or establishing a new policy without the approval of the director. (July 5, 1928.)

SEC. 7158. A rating made by a duly constituted rating board will, upon the evidence then in file, for rating purposes be final and binding upon all regional offices and will not be subject to revision except by duly constituted appellate authorities or as outlined in section 7155 hereof. When a decision has been reached by a rating board and adjudicative action has been taken thereon, a written notice of the decision and of the adjudicative action will be promptly mailed by the regional adjudication officer to the claimant or guardian at his latest address of record as shown by the regional case file. (July 5, 1928.)

SEC. 7159. Appeal to the central board of appeals from the decision of a rating board may be made by a written notice of appeal by the claimant, his guardian, or his agent duly authorized over the claimant's signature, within six months from the date the written notice of the rating board action from which appeal is made is mailed to the claimant at his last address of record; by the regional manager or the regional adjudication officer, provided such appeal is forwarded within 15 days from the date the rating board decision is rendered; by the director, or the assistant director, or a field supervisor of the adjudication service at any time. Any employee of the regional office may bring to the attention of the regional adjudication officer, by proper written statement any case that in his opinion should be appealed, and it will be the duty of the regional adjudication officer to take such action as may be indicated by the merits of the case and to initiate an appeal when proper; such cases as are not appealed by the regional adjudication officer will be forwarded with his recommendation to the regional manager. (July 5, 1928.)

SEC. 7160. In the event an appeal from the rating board decision is taken by the claimant, payment based on the decision will be continued until the appeal has been decided by the appellate authority and the case returned to the regional office. (July 5, 1928.)

SEC. 7161. In the event of a dissenting opinion by a rating specialist, no payment will be made, based upon the decision, until it has been authoritatively determined whether an appeal will be taken. If appeal from any decision is taken by the regional adjudication officer, or the regional manager, no change in payments, based on the decision appealed from, will be made until a decision is rendered by the appropriate appellate authority and the case file is returned to the regional office. (July 5, 1928.)

FRANK T. HINES, *Director*.

(Regulation No. 188)

IDENTIFICATION OF VETERANS FOR LOANS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED

JUNE 23, 1928.

Cancels and supersedes section 13503, of regulation 183.

SEC. 13503. *Identification.*—Before a loan is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the certificate offered as security. Such identification, if made in the United States or possessions, will be accepted if the certification is made by a United States postmaster or assistant postmaster over an impression of the post office cancellation stamp; a commissioned officer of the regular establishment of the Army, Navy, or Marine Corps; a Member of the United States Senate or the House of Representatives; an officer, over his official title, of a post, chapter, or other comparable unit of an organization recognized under section 500 of the World War veterans' act, 1924, as amended, or an officer, over his official title, of the State or national body of such organization, or any person who is legally authorized to administer oaths in a State, Territory, District of Columbia, or in a Federal judicial district of the United States. If the identification is made in a foreign country, it will be certified by an American consul, a recognized representative of an American embassy, or legation, or by a person authorized to administer oaths under the laws of the place where identification is made: *Provided*, There be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that such officer was authorized to administer oaths in the place where certification was made. A medical officer in charge of a United States veterans' hospital is authorized to identify patients or employees of the hospital over which he has charge. No identification will be made by any employee of the United States Veterans' Bureau in his official capacity, other than by a medical officer in charge of a hospital as authorized above. However, such other employees of the bureau as are specifically designated in writing to do so by the regional managers, medical officers in charge of United States veterans' hospitals, managers of the suboffices in the insular and Territorial possessions, or the head of an activity in central office, may identify applicants during official hours and upon the premises of the United States Veterans' Bureau, such identifications by the employee so designated to be in his individual capacity and from his personal knowledge that the applicant is the person he claims to be. Official records on file with the bureau will not be used by the employee making such identification. No employee of the finance service in central office, or the finance activity of a field station of the bureau will be so designated. (July 9, 1928.)

FRANK T. HINES, *Director*.

R+PR 1074 Eff. 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

S.L. 5-23-29

See new 1009(A)

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) G.C. 3-11-69

5-19-30

MF 734

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.

C.M. 1-1-19

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)

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 disease or injury. 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.

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

S.L. 5-23-29 **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) [redacted] G.C. 3-11-69

5-19-30

See new 1009(A)

MF 734

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)

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 disease or injury. 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

R+PR 1009(A) 1-25-36

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.)

(From S.L. 10-20-34)

ADJUDICATION OF APPLICATIONS.

1010. Applications for disability compensation or pension under Public No. 2, 73d Congress and Public No. 141, 73d Congress, if no claim for monetary benefits previously has been filed, will be adjudicated in the appropriate field station when disability compensation or pension is claimed by reason of service on or after April 6, 1917, and prior to July 2, 1921, except that the application of a veteran who is an employee

followed by 5

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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.) (Formerly R & P. R-1086)

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.) (Formerly R & P. R-1445)

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.) (Formerly R & P. R-1077)
From V.B. Reg. 1874 A1, Inst. (6-A, V.R. 2(a))

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.)
(A1, Inst. 6-A, V.R. 2(a))

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.) M7734

(Formerly VB Reg. 1872, R & P. R. No. 74-(1073) M7736)

(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.)
(From S.L. 16-20-34)

ADJUDICATION OF APPLICATIONS.

1010. Applications for disability compensation or pension under Public No. 2, 73d Congress and Public No. 141, 73d Congress, if no claim for monetary benefits previously has been filed, will be adjudicated in the appropriate field station when disability compensation or pension is claimed by reason of service on or after April 6, 1917, and prior to July 2, 1921, except that the application of a veteran who is an employee

Followed by 5

R+PR 1009(4)

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(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, 1939.)

1006. DECISIONS TO CONFORM TO EXISTING LAWS, REGULATIONS, AND DEFINED POLICIES.—All decisions will conform strictly to the laws, regulations, Administrator's decisions and defined policies as enunciated by the Administrator. (January 25, 1936.)

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 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.)

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, 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 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

 Followed by 4a-5R

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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 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.

(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 10, 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.)

 Followed by 5-5A 5-6A

Rec'd & Dist 12-6-45

R+PR 1009 (A) Eff. 11-26-45

1006. DECISIONS TO CONFORM TO EXISTING LAWS - REGULATIONS - AND DEFINED POLICIES.—All decisions will conform strictly to the laws, regulations, Administrator's Decisions and defined policies as enunciated by the Administrator. (January 25, 1936.)

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 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. 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.)

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, 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 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 [where required by subparagraph (D) hereof], 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 requisite medical certificate accepted as showing that the previous diagnosis was not correct be of record in the case file. (November 26, 1945.) M-7-6-19

(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.)

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(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 10, 1942.)

(D) In those instances wherein the severance of service connection is involved (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 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. [Severance of service connection not affecting the rate of pension, i.e., severance where the disability is less than 10% or where after due consideration of the remaining service-connected disabilities, the award will be continued at the same or an increased rate, will not be referred for central office consideration. Final action will be accomplished locally with notification to the veteran of his right of appeal. Severance of service connection under any law, where the error is discovered on the occasion of the first rerating following the initial rating granting service connection, will be similarly accomplished locally. In all other instances the cases will be referred for central office consideration and the notice provided above will be given after return of the case file by central office. (See R. & P. 1291.)] (November 26, 1945.)

(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.) Set. 3a(4) Bishop Inc Exp. 6

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.)

1011. ADJUDICATION OF APPLICATIONS OF VETERANS RESIDING WITHOUT THE CONTINENTAL LIMITS OF THE UNITED STATES.--Applications for disability compensation or pension received from veterans who reside outside the continental limits of the United States,

4-b followed by 5-7R

R & PR 1009 (4) 5-13-47

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followed as a matter of consistency in the adjudication of claims under the law or regulations applicable.] (May 13, 1947.) (From old R. & P. 1007)

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 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. 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. [Claims which involve this provision will be forwarded with a summary of the facts and a recommendation by the adjudication officer or assistant adjudication officer, in field cases, to the director, claims service, branch office, or, in central office cases, by the chief or assistant chief of the division concerned to the director, veterans claims service, or the director, dependents and beneficiaries claims service, depending upon the subject matter, for appropriate action.] (May 13, 1947.)

M7 627

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 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 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.] Par. 3, 4, 5 + 25 Ltr. 6-11-48

M7 659 TBS-56

(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 effected in any such case pending the return of the case file following [branch or] 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. Digest A-296; applicable administrative review only.

6, 8 8.8

(Followed by 5-9R) 46-2R

* 1. Relates to Veterans Claims only. G.S.L. 10-30-42 L.O. 10/25/44

2. Applicable under Pub. 361, 77th Cong. L.P. 4/24/42 (Cohen)

1009 R+PR1009(A) Dist. 5-13-47 5-13-47

(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 [the branch 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) [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 rehabilitation training under VR 1 (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 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 VA issue; or (4) where the evidence establishes the service connection to be clearly illegal. [ ] (See R. & P. 1291.) (May 13, 1947.) Par. 3, 5, + 25, Cir. 6-11-48

(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. 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 sixty-day period following the date of rating. The reduction or discontinuance of the award shall become effective, in accordance with Veterans Regulation No. 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 sixty-day period. If the veteran submits additional evidence within the sixty-day period, the rating and all award or approval action processed in accordance with the foregoing shall be reconsidered and confirmed, modified or

Par. 86, M8-5 A.D. 5-50 S.O. 5-28-50 Brown Cir. 2-22-46 Par. 37 Cir.

5-89

This is not applicable to ratings made under Cir. 1945 Schedule. See Par. 2 of the Cir.
Corrected TR reductions, TR 5-88 + 5-96

R&PR 1009(4) 5-13-47

Par. 10, 38.13 1009

canceled as required. The rating sheet will bear the following notation: "R. & P. R-1009 (E), as amended." (August 5, 1946.) O.M. 7-21-38, O.M. 66+67-A

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.)

1011. ADJUDICATION OF APPLICATIONS OF VETERANS RESIDING WITHOUT THE CONTINENTAL LIMITS OF THE UNITED STATES.—Applications for disability compensation or pension received from veterans who reside outside the continental limits of the United States, with the exception of the Territory of Alaska, [Hawaii, Puerto Rico, or the Republic of the Philippines,] will be adjudicated in the claims division, veterans claims service, central office. Accordingly, these applications will be forwarded to central office. This provision does not apply to transients inasmuch as residence beyond the continental limits of the United States must be satisfactorily established. However, such residence will be presumed if three consecutive monthly checks are received at the same address. (V. R. No. 10.) (May 13, 1947.)

Sec. I, Cir. 239, 1946

1012. ADJUDICATION OF APPLICATIONS OF EMPLOYEE-CLAIMANTS.—Applications for disability compensation [or pension,] presented by veterans in the employ of the VA will be adjudicated in the claims division, veterans claims service, central office. Accordingly, all such applications will be transferred by field offices to central office when an employee-claimant in either the classified or unclassified service or a member-employee has been continuously employed for ninety days provided that no adjudication is necessary during such period. If any adjudication is necessary in the case of an employee-claimant during the ninety-day period, such claim will be transferred to central office immediately. (See R. & P. S71.) (May 13, 1947.)

1013. ADJUDICATION OF APPLICATIONS OF VETERANS RESIDING IN WASHINGTON, D. C.—Applications for disability compensation [or pension,] submitted by veterans residing in Washington, D. C., other than in the United States Soldiers Home, will be adjudicated in the regional office, Washington, D. C. (May 13, 1947.)

[1014. PUBLIC NO. 140, 73D CONGRESS (AERIAL TRANSPORTATION OF MAIL).—Compensation at the rates provided by Veterans Regulation No. 1 (a), Part I, is payable to any officer (including warrant and reserve officers), or any enlisted man or his dependents where injury or death occurs while serving pursuant to the provisions of Public No. 140, 73d Congress. In the event of injury of any such officer or enlisted man the degree of disability resulting therefrom will be evaluated in accordance with the applicable Schedule for Rating Disabilities promulgated pursuant to Public No. 2, 73d Congress. The officer or enlisted man may elect to receive either the compensation under Veterans Regulation No. 1 (a), Part I, or the benefits provided by section 5 of Public No. 140, 73d Congress.] (May 13, 1947.)

[1023 canceled May 13, 1947.]

DELEGATION OF AUTHORITY

1024. DELEGATION OF AUTHORITY TO CERTAIN EMPLOYEES.—(A) All adjudication officers, assistant adjudication officers, authorization officers, employees designated to act as authorization officers, attorney reviewers, [ ] employees designated

6-8h [6-8Re] Followed by 6a-4R 6a-5R

R+PR 2670 (C)

(2) Any veteran who was formerly rated incompetent and a lump sum was withheld because a period of six months had not expired following a finding of competency (section 1 (B), Public Law 662, 79th Congress). (December 17, 1946.)

(D) The provisions of R. & P. R-2660 (B) shall apply in any case in which a check for a lump sum, as described herein, is received by the payee. (April 11, 1947.)

ACCRUED BENEFITS PAYABLE TO FOREIGN BENEFICIARIES.

2665. (A) Except as provided in subparagraphs (B) and (C), in case of the death of the payee of any check in payment of pension, compensation or emergency officers' retirement pay accruing under laws administered by the VA, while the amount thereof remains in the special deposit account established by Public No. 828, 78th Congress, such amount shall be payable under the provisions of section 3 of this Act: Provided, That the accrued amount shall be payable only if the person on whose behalf checks were issued and the person claiming the accrued amount have not been guilty of any of the offenses mentioned in section 4, Public Law 144, 78th Congress.

(B) In case of the death of any person primarily entitled prior to receiving the full amount of benefits withheld pursuant to the provisions of Public No. 828, 78th Congress, as amended, or not paid because of the provisions of section 5, Public Law 144, 78th Congress, payment shall be made under the provisions of R. & P. R-2660 except as to the one-year limitation on the period covered by the award, if a claim for this amount together with satisfactory evidence that neither the claimant nor the deceased person was guilty of any of the offenses mentioned in section 4, Public Law 144, 78th Congress, shall have been filed prior to August 8, 1947: Provided, That a claim filed prior to August 7, 1946, shall be considered a claim under this law. In any case in which payment of the accrued benefit may not be made under the provisions of this subparagraph, the provisions of subparagraph (A) shall apply. (Public Law 622, 79th Congress.)

(C) No payments shall be made under this paragraph to German or Japanese citizens or subjects while residing in Germany or Japan. (April 11, 1947.)

[DEATH RATINGS]

[2670. REVISION OF RATING DECISIONS.—(A) The dependents pension boards in branch offices and the central dependents pension board will be governed, generally, by the provisions of R. & P. R-1009 (A), (B), (C), and (D) in the reversal or amendment of prior rating decisions.

(B) The submissions required by R. & P. R-1009 (B) will be made to the director, dependents and beneficiaries claims service.

(C) Authority to sever service connection upon the basis of clear and unmistakable error is vested in agencies of original jurisdiction in central office and branch offices.

(D) Contemplated reversal or amendment of prior rating decisions, which would result in a reduction or discontinuance of a running award of death compensation or pension, will require the same notice to the claimant provided by R. & P. R-1009 (D), subject to the same exceptions outlined therein.] (August 15, 1947.)

130-11R, 131-12R, 132-12R, 133-9R, 134-9R

Add Amend Leg 135-9R
135-10R

VAR 2670 (C)

Veterans Administration
Washington 25, D. C.

June 14, 1949

VA REGULATIONS

CLAIMS--Transmittal Sheet 17

Remove pages	Insert pages
119-8R and 120-8R	119-9R and 120-9R
131-13R and 132-13R	131-14R and 132-14R

Paragraphs revised	Paragraphs added	Paragraphs deleted
R-2591 (D)	None	None
R-2592 (B)		
R-2678 (A), (C), (D)		

By direction of the Administrator:

O. W. CLARK
Deputy Administrator

VAR 2670 (C) 6-14-49

2665

period covered by the award, if a claim for this amount together with satisfactory evidence that neither the claimant nor the deceased person was guilty of any of the offenses mentioned in section 4, Public Law 144, 78th Congress, shall have been filed prior to August 8, 1947: Provided, That a claim filed prior to August 7, 1946, shall be considered a claim under this law. In any case in which payment of the accrued benefit may not be made under the provisions of this subparagraph, the provisions of subparagraph (A) shall apply (Pub. L. 622, 79th Cong.).

(C) No payments shall be made under this paragraph to German or Japanese citizens or subjects while residing in Germany or Japan. (April 11, 1947) E-18

DEATH RATINGS

2670. REVISION OF RATING DECISIONS

(A) The Dependents Pension Boards in [district] offices and the Central Dependents Pension Board will be governed, generally, by the provisions of R&P R-1009 (A), (B), (C), and (D), in the reversal or amendment of prior rating decisions. (June 14, 1949). Par. 10, I 8-32 Par. 23 + 38, " 8, I 8-42

(B) The submissions required by R&P R-1009 (B) will be made to the Director, Dependents and Beneficiaries Claims Service. (August 15, 1947) Par. 10, I 8-32; Par. 4+5, I 8-7

(C) Authority to sever service-connection upon the basis of clear and unmistakable error is vested in agencies of original jurisdiction in Central Office and [district] offices. Par. 19, I 8-32

(D) Contemplated reversal or amendment of prior rating decisions [not involving severance of service-connection], which would result in a reduction or discontinuance of a running award of death compensation or pension, will require the same notice to the claimant provided by R&P R-1009 (D) [in severance of service-connection], subject to the same exceptions outlined therein. (June 14, 1949) See Par. 19, 2682 (B)

2673. SERVICE-CONNECTION IN DEATH CASES FOR CORONARY OCCLUSION OR CORONARY THROMBOSIS

(A) When the death certificate shows that a veteran died from coronary occlusion or coronary thrombosis within 1 year after termination of

VAR 2670 (B)

Veterans Administration
Washington 25, D. C.

Sep. : August 13, 1954

VA REGULATIONS

CLAIMS--Transmittal Sheet 118

Remove pages	Insert pages
114-24Re and 114-24Rf	114-25Re and 114-25Rf
130a	130a-R and 130b
	130c and 130d
131-16R and 132-16R	131-17R and 132-17R
133-15R and 134-15R	133-16R and 134-16R
134a-3R and 134b-R	134a-4R and 134b-2R

Paragraphs revised	Paragraphs added	Paragraphs canceled
2578 (B)	2668	2670 (D)--see note
2670 (A), (B)	2669	2676 (D)
2678 (D)	2685	

NOTE: In VA Regulation 2670, subparagraph (B) has been canceled and subparagraphs (C) and (D) renumbered (B) and (C), respectively.

By direction of the Administrator:

J. C. PALMER
Acting Deputy Administrator

Distribution in accordance with VA Form 3-3040, Mailing or Distribution List.

VAR 2670 (B) 8-13-54

(a) Served in the Army of the Commonwealth of the Philippines.

(b) Enlisted on or after October 6, 1945, in the Philippine Scouts under Public Law 190, 79th Congress.

(c) Served as an alleged or recognized guerrilla in the Philippine Islands. (See VA Regulation 1001 (C) on requirement that recognized guerrilla service is guerrilla service affirmatively determined as such by the Department of the Army.)

(5) Common accident cases: Where two or more veterans incurred disability or death in the same accident or disaster.

(6) Revival of insurance cases under section 305, World War Veterans' Act, 1924, as amended.

(7) Any death claim involving service records marked "Confidential--Security Information" requiring handling by personnel who have obtained security clearance.

(8) Any death claim not otherwise under the jurisdiction of other field offices or over which jurisdiction is specially vested in the Veterans Benefits Office, D. C., for completion of certain actions prior to decentralization.] (August 13, 1954) from M8-3 (to M21-1)

2670. REVISION OF RATING DECISIONS

Became VAR 1105. Par. (C) cancelled - 1105(A) applies. Note on T.S. 1

(A) [The reversal or amendment of prior rating decisions will be governed by the provisions of VA Regulation 1009 (A), (B), (C), and (D).] (August 13, 1954) Par. 8, IB 8-42; Par. 23 & 25, M 8-3; Par. 8, IB 8-61; Par. 10, IB 8-69; Par. 10, IB 8-78; Par. 6, IB 8-103

[(B)] Authority to sever service-connection upon the basis of clear and unmistakable error is vested in agencies of original jurisdiction [ ]. (August 13, 1954)

[(C)] Contemplated reversal or amendment of prior rating decisions not involving severance of service-connection, which would result in a reduction or discontinuance of a running award of death compensation or pension, will require the same notice to the claimant provided by VA Regulation 1009 (D) in severance of service-connection, subject to the same exceptions outlined therein. (August 13, 1954) See Par. 2682(B) Revised [illegible]

2673. SERVICE-CONNECTION IN DEATH CASES FOR CORONARY OCCLUSION OR CORONARY THROMBOSIS

(A) When the death certificate shows that a veteran died from coronary occlusion or coronary thrombosis within 1 year after termination of

Veterans Administration
Washington 25, D. C.

VAR 1009(A)

Eff. October 28, 1954

VA REGULATIONS

CLAIMS--Transmittal Sheet 119

Remove pages	Insert pages
3-15R and 4-15R	3-16R and 4-16R [4-14Ra]
4-13Ra	
4a-12R and 4b-5R	4a-13R and 4b-6R [4c-R]
4c	
5-11R and 6-11R	5-12R and 6-12R [6a-9R, 6b-6R, 6b-6Ra, 6c-5R, 6d-3R]
6a-8R and 6b-5R	
6b-5Ra	
6c-4R and 6d-2R	
7-12R and 8-12R	7-13R and 8-13R
8a-3R and 8b	8a-4R and 8b-R
	8c
9-9R and 9a-R	9-10R [9a-2R] and [9b-4R] 10-12R
9b-3R and 10-11R	10a and 10b
11b-6R and 12-15R	11b-7R and 12-16R
12a-11R and 12b-8R	12a-12R and 12b-9R
13a-7Ra and 13a-7Rb	13a-8Ra and 13a-8Rb
13b-4R and 14-13R	13b-5R and 14-14R
14a-7R and 14b-5R	14a-8R and 14b-6R
14c	14c-R
16-6Ra and 16a-3R	[16-7Ra] 16a-4R and 16b-4R
16b-3R	
16c-3R and 16d-3R	16c-4R and 16d-4R
16e-2R and 16f-2R	16e-3R and 16f-3R
17-7R and 18-7R	17-8R and 18-8R
19-8R and 20-8R	19-9R and 20-9R
20a-3R and 20b-3R	20a-4R and 20b-4R
20c-3R and 20d-3R	20c-4R, 20d-4R
21-13R and 22-13R	21-14R and 22-14R
22a-8R and 22b-6R	22a-9R and 22b-7R [22c-2R]
22c-R	
23-7R and 24-7R	23-8R and 24-8R [24-8Ra]
24-7Ra	
24a-2R and 24b-2R	24a-3R and 24b-3R
24c-5R and 24d-5R	24c-6R [24d-6R]
25-6R and 26-6R	25-7R and 26-7R
27-8R and 28-8R	27-9R and 28-9R
28a-7R and 28b-7R	28a-8R and 28b-8R [28c-R]
28c	
29-6R and 30-6R	29-7R and 30-7R
30a-2R and 30b-2R	30a-3R and 30b-3R
31-8R and 32-8R	31-9R and 32-9R

VAR 1009 (4) 10-28-54

Remove pages	Insert pages
32a-3R and 32b-3R	32a-4R and 32b-4R [32c-3R, 32d-R]
32c-2R and 32d	
34c-R and 34d	34c-2R and 34d-R
35-9R and 36-9R	35-10R and 36-10R
36a-11R and 36b-7R	36a-12R and 36b-8R [36b-7Ra]
36b-6Ra	
36c-R and 36d-R	36c-2R and 36d-2R
37-8R and 38-8R	37-9R and 38-9R
38a-3R and 38b-2R	38a-4R and 38b-3R
39-14R and 40-12R	39-15R and 40-13R [40-12Ra, 40-12Rb]
40-11Ra and 40-11Rb	
40a-12R and 40b-10R	40a-13R and 40b-11R
40b-10Ra and 40b-10Rb	40b-11Ra [40b-11Rb]
41-10R and 42-10R	41-11R and 42-11R
42a-6R and 42b-4R	42a-7R and 42b-5R
43-12R and 44-12R	43-13R and 44-13R
45-17R and 46-17R	45-18R and 46-18R [46-17Ra]
46-16Ra	
46a-2R and 46b-2R	46a-3R and 46b-3R [46c-R]
46c	
47-9R and 48-9R	47-10R and 48-10R
48a-6R and 48b-5R	48a-7R and 48b-6R
49-10R and 50-10R	49-11R and 50-11R
51-12R and 52-12R	51-13R and 52-13R [52a-R]
52a	
53-15R and 54-14R	53-16R and 54-15R
54a-7R and 54b-4R	54a-8R and 54b-5R [54c-R]
54c	
55-12R and 56-12R	55-13R and 56-13R
57-8R and 58-8R	57-9R and 58-9R [58-8Ra]
58-7Ra	
58a-8R and 58b-4R	58a-9R [58b-5R, 58c-R]
58c	
59-5R and 60-4R	59-6R and 60-5R
60a-3R and 60b-4R	60a-4R and 60b-5R

Paragraphs revised	Paragraphs added	Paragraphs canceled
1002 (A)	1028 (B)	1011
1003	1053	1012
1004	1062 (C)	1025
1005 (A), (D), (E)	1087	1032 (C)
1006	1088 (C) (See Note 2.)	1055
1007	1106 (C)	1075
1009 (A), (B), (D)		1079
1010		

of appearance or representation before the rating board or the Board of Veterans' Appeals. [ ] 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, such election will be deemed to be an appeal and the two appeals will be merged and considered in accordance with the provisions of VA Regulation 1328. (October 28, 1954) C. M. 8-26-59; M 1-1

1006. DECISIONS TO CONFORM TO EXISTING LAWS, REGULATIONS, AND DEFINED POLICIES.--All decisions will conform strictly to the laws, regulations, Administrator's Decisions, and defined policies as enunciated by the Administrator. All opinions of the [General Counsel] 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. (October 28, 1954) Reg. 2517 + 2055; M 2170 + 724; C. M. 10-26-51 (Headline Fine); J Reg. 4-8-4

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 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 nonentitlement thereunder, and of his right of appeal, and of the time within which appeal must be taken. [ ] Failure to receive written notice of right to, and time for, appeal will not extend the time for filing appeal. [ ] (October 28, 1954) ~~M 2-22~~ Par 9, IB 8-69 authority to field offices - Motion Like T.S. 119,

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 VA Regulation 1009. (January 25, 1936) M 7170, S.C. 2-17-43

1009. REVISION OF RATING BOARD DECISIONS

For annotations see 5 x 8 cards on "VA Regulations 1009-1009(E.

(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

VAR 1009 (A)

10-28-54

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. [ ] (See also VA Regulation 1201.) Where the severance of service-connection is considered warranted on the facts of record, see subparagraph (D) hereof. (October 28, 1954)

Par. ~~544~~ 51.09, M8-1

(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, 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 to the [Deputy Administrator for Veterans Benefits.] A rating decision will not be effected in any such case pending the return of the claims folder following Central Office consideration. The commencing date of benefits in such cases if otherwise payable will be the date of the action by Central Office authority authorizing a favorable rating based on a difference of opinion. [ ] The foregoing is applicable regardless of whether there is a pending claim in file. Where the initial rating for death compensation or pension purposes is favorable, the commencing date of death benefits will be determined without regard to the fact that the death rating may reverse, on a difference of opinion, an unfavorable rating for disability purposes, entered by a rating agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death. (October 28, 1954)

(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 Law 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)

(D) Authority to sever service-connection upon the basis of clear and unmistakable error (the burden of proof being upon the Government), [ ] is vested in regional offices [ ]. 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 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,

4b-6R [4c-R] Followed by 5-12R

For [illegible] see [illegible] "Va reg[illegible]

YAR 1009(A) 10-28-54

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 par. [123], VA Manual M8-5, Revised.) (October 28, 1954)

(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 paragraph III (b), part I, Veterans Regulation No. 2 (a), 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. If the veteran submits additional evidence within the 60-day period, the rating and all award or approval action processed in accordance with the foregoing shall be reconsidered and confirmed, modified, or canceled as required. The rating sheet will bear the following notation: "VA Regulation 1009 (E), as amended." (August 5, 1946)

For annotations, see 5 x 8 cards on "VA Reg. 1009-1009(E).

1010. ADJUDICATION OF APPLICATIONS.--Applications for disability compensation or pension will be adjudicated in the appropriate [regional office] 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 [the Veterans Benefits Office, D. C.,] under VA Regulation 2025. (October 28, 1954)

[1011 and 1012 canceled October 28, 1954.]

Veterans Administration
Washington 25, D. C.

VAR 1009(A) Eff.: April 12, 1955

VA REGULATIONS

COMPENSATION AND PENSION--Transmittal Sheet 125

Remove pages	Insert pages
4a-13R and 4b-6R [4c-R]	4a-14R and 4b-7R
36c-2R and 36d-2R	36c-3R and 36d-3R
59-6R and 60-5R	59-7R and 60-6R
97-9R and 98-9R	97-10R and 98-10R
98-9Ra and 98-9Rb	98-10Ra and 98-10Rb

Paragraphs revised	Paragraphs added	Paragraphs canceled
1009 Title, (A) (B)	None	None
1201 Title, (C), (D), (E)		
1330		
1333		
2500 (A)		

By direction of the Administrator:

JOHN S. PATTERSON
Deputy Administrator

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VAR 1009(A) 4-12-55

of appearance or representation before the rating board or the Board of Veterans' Appeals. 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, such election will be deemed to be an appeal and the two appeals will be merged and considered in accordance with the provisions of VA Regulation 1328. (Oct. 28, 1954) O.M. 8-26-39; 8-30-50; 311-1

1006. DECISIONS TO CONFORM TO EXISTING LAWS, REGULATIONS, AND DEFINED POLICIES.--All decisions will conform strictly to the laws, regulations, Administrator's decisions, and defined policies as enunciated by the Administrator. All opinions of the General Counsel 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. (Oct. 28, 1954) VAR 2517 and 12058, MF 170 and 724; O.M. 10-26-51 (Philippine File); ~~Per. 2, IB 8-5~~

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 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 nonentitlement thereunder, and of his right of appeal, and of the time within which appeal must be taken. Failure to receive written notice of right to, and time for, appeal will not extend the time for filing appeal. (Oct. 28, 1954) Per. 2, IB 8-69 Authority to field - history file T.S. 119.

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 VA Regulation 1009. (Jan. 25, 1936) MF 170; S.O. 2-17-43

1009. REVISION OF [ ] DECISIONS
For annotations, see 5 x 8 cards on "VA Reg. 1009-1009(F)".

(A) No rating board [or other agency of original jurisdiction] will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board, [adjudicative agency] 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 [or other adjudicative agency] may reverse or amend a decision by the same or any other rating board [or adjudicative agency] where such reversal or amendment is obviously warranted by a clear and unmistakable error shown

VAR 1009 (A) 4-12-55

by the evidence in file at the time the prior decision was rendered. [A 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.] (See also VA Regulation 1201.) Where the severance of service-connection is considered warranted on the facts of record, see subparagraph (D) hereof. (April 12, 1955)

(B) Whenever a rating board [or other adjudicative agency] 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, 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, to the Deputy Administrator for Veterans Benefits. A rating [or other adjudicative] decision will not be effected in any such case pending the return of the claims folder following Central Office consideration. The commencing date of benefits in such cases if otherwise payable will be the date of the action by the Central Office authority authorizing a favorable [decision] based on a difference of opinion. The foregoing is applicable regardless of whether there is a pending claim in file. Where the initial rating for death compensation or pension purposes is favorable, the commencing date of death benefits will be determined without regard to the fact that the death rating may reverse, on a difference of opinion, an unfavorable rating for disability purposes, entered by a rating agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death. (April 12, 1955)

(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 Law 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. (Oct. 19, 1949)

(D) Authority to sever service-connection upon the basis of clear and unmistakable error (the burden of proof being upon the Government), is vested in regional offices. 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 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.

 Followed by 5-12A

For

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 par. [123], VA Manual M8-5, Revised.) (October 28, 1954)

(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 paragraph III (b), part I, Veterans Regulation No. 2 (a), 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. If the veteran submits additional evidence within the 60-day period, the rating and all award or approval action processed in accordance with the foregoing shall be reconsidered and confirmed, modified, or canceled as required. The rating sheet will bear the following notation: "VA Regulation 1009 (E), as amended." (August 5, 1946)

For annotations, see 5 x 8 cards on "VA Reg. 1009-1009(E).

1010. ADJUDICATION OF APPLICATIONS.--Applications for disability compensation or pension will be adjudicated in the appropriate [regional office] 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 [the Veterans Benefits Office, D. C.,] under VA Regulation 2025. (October 28, 1954)

[1011 and 1012 canceled October 28, 1954.]

Veterans Administration
Washington 25, D.C.

38 CFR 3.105(a)

Eff: May 29, 1959

VA REGULATIONS

COMPENSATION AND PENSION--Transmittal Sheet 191

Remove pages	Insert pages
See explanation Transmittal Sheet 189.	35-1 35 and 36 37 and 38 39 and 40,41,42,43,44

Paragraphs revised	Paragraphs added	Paragraphs canceled
None	1100 (See explanation Transmittal Sheet 189.) 1101 1102 1103 1104 1105 1106 1107 1108 1109 1110 1111 1112 1113	None

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.

38 CFR 3.105(a) 5-29-59

* 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).

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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 72 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) MP 170; S.O. 2-27-43; p.18 Formerly 1008)

[(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 on upon the other in the absence of clear and unmistakable error.] (May 29, 1959) Par. 6, IB 8-42; Par. 2, IB 8-120; G.C. 5-6-59

Formerly 1053, 1064(E) + 1066(B)) IB 21-12

[(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) Par. 2, IB 21-29,

1400(Q)

MP 511, 1-21-38; S.O. 2-6-60 (Formerly 1330)

[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 a

Followed by 37

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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) ~~T.O. 24-42~~ (Formerly 1064(E))

[(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) 1400(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(E) + 2670 PG 21-1, D-1-1, Par. 2 1400(K)

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

[1106 (§ 3.106). RENOUNCEMENT 1400(Q)

Par. 13, Let. 2-10-48; C.C. 4-13-4[illegible], 4-6-4[illegible], 1-1-48, 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

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Washington 25, D.C.

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VA REGULATIONS

COMPENSATION AND PENSION--Transmittal Sheet 267

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

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

Page 35-i (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).

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

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

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

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

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

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

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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 1000-Series" & "VAR 1100-Series".

see Note on T.S. 267 36-2R

followed by 37-2R

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(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

(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

(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(B) 13003

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

For annotations, see cards in "VA 1000-Series" [illegible]
(Digests and 5 x 8s)

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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)

1500(R)
1501(E)
(G)

See TS 267.

[(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)

1501(E)
(G)

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

(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)

1500(Q)

(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)

1400(S)

(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)

 Followed by 39-3R

HIGHLIGHTS

Modifications in this supplement include the following:

1. Section 3.7(x) was amended on 19 December 1991 by adding [as §§3.7(x)(20) and (21)] two additional groups concerning persons who are included as having served on active duty.

2. Sections 3.104(a) and 3.105(a) were amended on 19 December 1991 to define the point at which VA decisions become final and binding.

3. Section 3.272(k) was amended on 19 December 1991 to because current regulations excluded payments from the Older American Community Service Program from countable income for VA purposes.

4. Section 3.500(q) was amended on 19 December 1991 to establish a specific effective date of discontinuance when compensation, pension, or dependency and indemnity compensation benefits are renounced.

5. Sections 3.501(i), 3.454, and 3.551 were amended on 19 December 1991 to modify regulations concerning reductions of pensions of certain veterans receiving institutional care (based on recently enacted legislation and further consideration of previous legislation).

6. Sections 3.342(c) and 3.1612(b), (c), and (e) were amended on 19 December 1991 to effect a change concerning payment of a monetary allowance in lieu of a government-furnished headstone or marker, and eligibility for the temporary program of vocational training available to certain pension beneficiaries.

7. Sections 3.501(n) and 3.853 were added on 19 December 1991 to prohibit the payment of compensation to incompetent veterans without dependents whose estates exceed $25,000, and to clarify how VA will compute the value of the estates of these incompetent veterans.

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TITLE 38 -- PENSIONS, BONUSES, AND VETERANS' RELIEF;
REVISED AS OF SEPTEMBER 1, 1992

CHAPTER I -- DEPARTMENT OF VETERANS AFFAIRS

PART 3 -- ADJUDICATION
SUBPART A -- PENSION, COMPENSATION, AND DEPENDENCY AND INDEMNITY COMPENSATION ADMINISTRATIVE

§ **3.105** Revision of decisions.

38 CFR **3.105**

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 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 § 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)(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 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. 5112)

(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, 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.

38 CFR 3.105(a)
eff: 12/19/91

SOURCE: [26 FR 1569, Feb. 24, 1961, as amended at 27 FR 11886, Dec. 1, 1962; 39 FR 17222, May 14, 1974; 55 FR 13528, Apr. 11, 1990; 56 FR 65846, Dec. 19, 1991]

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