

103^D CONGRESS
1ST SESSION

H. R. 3269

To amend title 38, United States Code, to make improvements in the procedures used by the Department of Veterans Affairs in adjudicating claims for veterans benefits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 1993

Mr. EVANS introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make improvements in the procedures used by the Department of Veterans Affairs in adjudicating claims for veterans benefits, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38,**

4 **UNITED STATES CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Veterans Adjudication Procedures Act of 1993”.

7 (b) REFERENCES TO TITLE 38, UNITED STATES
8 CODE.—Except as otherwise expressly provided, whenever

1 in this Act an amendment or repeal is expressed in terms
2 of an amendment to, or repeal of, a section or other provi-
3 sion, the reference shall be considered to be made to a
4 section or other provision of title 38, United States Code.

5 **SEC. 2. WORK RATE STANDARDS FOR ADJUDICATIVE EM-**
6 **PLOYEES.**

7 (a) IN GENERAL.—(1) Chapter 7 is amended by add-
8 ing at the end the following new section:

9 **“§ 713. Work rate standards for adjudicative employ-**
10 **ees**

11 “(a) The Secretary shall provide that under the work
12 rate standards that apply to employees of the Department
13 who adjudicate claims for benefits that have been submit-
14 ted to the Secretary, those employees do not receive credit
15 for work on a claim until the decision on the claim be-
16 comes final. Such a decision shall not be considered to
17 have become final until the claimant has exhausted, or
18 failed to timely exercise, the right to appellate review by
19 the Board of Veterans’ Appeals.”.

20 (2) The table of sections at the beginning of such
21 chapter is amended by adding at the end the following
22 new item:

“713. Work rate standards for adjudicative employees.”.

23 (b) EFFECTIVE DATE.—Section 713 of title 38,
24 United States Code, as added by subsection (a), shall
25 apply with respect to claims for benefits that are submit-

1 ted to the Secretary of Veterans Affairs after the end of
2 the 180-day period beginning on the date of the enactment
3 of this Act.

4 **SEC. 3. ANNUAL REPORT ON STATUS OF CLAIMS FOR BENE-**
5 **FITS.**

6 (a) IN GENERAL.—(1) Chapter 5 is amended by in-
7 serting after section 529 the following new section:

8 **“§ 530. Annual report on status of claims for benefits**

9 “(a) The Secretary shall submit to the Congress an
10 annual report on the status of claims for benefits before
11 the Department during the preceding fiscal year (begin-
12 ning with the third fiscal year ending after the date of
13 the enactment of this section). The report for any fiscal
14 year shall be submitted in conjunction with the report
15 under section 7101(d) of this title for that year. Each such
16 report shall separately set forth, with regard to claims for
17 benefits in which a decision of the agency of original juris-
18 diction or the Board of Veterans’ Appeals became final
19 during the preceding fiscal year, the average number of
20 days that passed from the date on which the claim was
21 initially received by the Department until the following
22 dates, as applicable:

23 “(1) The date on which the notice of decision
24 was provided to the claimant, for those cases in

1 which the claimant did not file a timely notice of dis-
2 agreement (along with the number of such cases).

3 “(2) The date on which the statement of the
4 case was provided to the claimant, for those cases in
5 which the claimant filed a timely notice of disagree-
6 ment, and the agency of original jurisdiction did not
7 conduct a hearing, and the claimant did not file a
8 timely substantive appeal to the Board of Veterans’
9 Appeals (along with the number of such cases).

10 “(3) The date on which the statement of the
11 case was provided to the claimant or the date on
12 which the notice of the decision rendered after the
13 conduct of a hearing of the agency of original juris-
14 diction, whichever is later, for those cases in which
15 the claimant filed a timely notice of disagreement,
16 and agency of original jurisdiction conducted a hear-
17 ing, and the claimant did not file a timely sub-
18 stantive appeal to the Board of Veterans’ Appeals
19 (along with the number of such cases).

20 “(4) The date on which the notice of the Board
21 of Veterans’ Appeals decision was provided to the
22 claimant, for those cases in which the Board of Vet-
23 erans’ Appeals did not remand to the agency of
24 original jurisdiction before issuing its decision and
25 neither the agency of original jurisdiction nor the

1 Board of Veterans' Appeals conducted a formal
2 hearing (along with the number of such cases).

3 “(5) The date on which the notice of the Board
4 of Veterans' Appeals decision was provided to the
5 claimant, for those cases in which the agency of
6 original jurisdiction conducted a hearing, and the
7 Board of Veterans' Appeals issued a decision on the
8 appeal of the claim without conducting a formal
9 hearing and without remanding the appeal to the
10 agency of original jurisdiction before issuing its deci-
11 sion (along with the number of such cases).

12 “(6) The date on which the notice of the Board
13 of Veterans' Appeals decision was provided to the
14 claimant, for those cases in which the agency of
15 original jurisdiction conducted a hearing and the
16 Board of Veterans' Appeals issued a decision on the
17 appeal of the claim after conducting a formal hear-
18 ing and without remanding the appeal to the agency
19 of original jurisdiction before issuing its decision
20 (along with the number of such cases).

21 “(7) The date on which the notice of the Board
22 of Veterans' Appeals decision was provided to the
23 claimant, for those cases in which the agency of
24 original jurisdiction did not conduct a hearing, and
25 the Board of Veterans' Appeals issued a decision on

1 the appeal of the claim after conducting a formal
2 hearing and without remanding the appeal to the
3 agency of original jurisdiction before issuing its deci-
4 sion (along with the number of such cases).

5 “(8) The date on which the notice of the Board
6 of Veterans’ Appeals final decision was provided to
7 the claimant, for those cases in which the Board of
8 Veterans’ Appeals did not conduct a formal hearing
9 and remanded the case on one or more occasions to
10 the agency of original jurisdiction before issuing its
11 final decision (along with the number of such cases).

12 “(9) The date on which the notice of the Board
13 of Veterans’ Appeals final decision was provided to
14 the claimant, for those cases in which the Board of
15 Veterans’ Appeals conducted a formal hearing and
16 remanded the case on one or more occasions to the
17 agency of original jurisdiction before issuing its final
18 decision (along with the number of such cases).

19 “(b) Each such report shall also set forth the number
20 of claims for benefits pending a final decision as of the
21 end of the fiscal year preceding the submission of the
22 report.”.

23 (2) The table of sections at the beginning of such
24 chapter is amended by inserting after the item relating
25 to section 529 the following new item:

“530. Annual report on status of claims for benefits.”.

1 (b) EFFECTIVE DATE.—Section 530 of title 38,
2 United States Code, as added by subsection (a), shall
3 apply only with respect to claims for benefits that are re-
4 ceived by the Secretary of Veterans Affairs more than 180
5 days after the date of the enactment of this Act.

6 **SEC. 4. OFFICIALS DETERMINING ORIGINAL AND RE-**
7 **OPENED CLAIMS FOR BENEFITS.**

8 (a) IN GENERAL.—Subchapter I of chapter 51 is
9 amended by adding at the end the following:

10 **“§ 5109A. Officials acting on behalf of Secretary**

11 “(a) The functions of the Secretary under this chap-
12 ter in making determinations on a claim for benefits filed
13 under this chapter shall be carried out in each case by
14 a single official (known as a ‘rating official’). A single rat-
15 ing official (rather than a board of officials) shall make
16 the initial determination of the Secretary on all original
17 and reopened claims filed with the Secretary.

18 “(b) Whenever a hearing is requested following a de-
19 cision of a rating official denying (in whole or in part)
20 a claim for benefits, the official who conducts the hearing
21 shall make a determination in the case without referring
22 the case back to the rating official who initially decided
23 the case (or another rating official) and shall issue a deci-
24 sion on the case in the manner prescribed in section 5104
25 of this title.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is amended by inserting
3 after the item relating to section 5109 the following new
4 item:

“5109A. Officials acting on behalf of Secretary.”.

5 **SEC. 5. BOARD OF VETERANS’ APPEALS PROCEDURES.**

6 (a) TERMINATION OF ACTION BY BVA THROUGH
7 SECTIONS.—(1) Sections 7102 and 7103 are amended to
8 read as follows:

9 **“§ 7102. Decisions by the Board**

10 “A proceeding instituted before the Board shall be
11 assigned to an individual member of the Board (other than
12 the Chairman). A member who is assigned a proceeding
13 shall make a determination thereon, including any motion
14 filed in connection therewith. The member shall make a
15 report under section 7104(d) of this title on any such de-
16 termination, which report shall constitute the member’s
17 final disposition of the proceeding.

18 **“§ 7103. Reconsideration; correction of obvious errors**

19 “(a) The decision of the member of the Board deter-
20 mining a matter under section 7102 of this title is final
21 unless the Chairman order reconsideration of the case.
22 Such an order may be made on the Chairman’s initiative
23 or upon motion of the claimant.

24 “(b) If the Chairman orders reconsideration in a
25 case, the case shall upon reconsideration be heard by a

1 section of the Board. Any such section shall consist of not
2 less than three members (and may include the Chairman).
3 The member of the Board who made the decision under
4 reconsideration may not serve as a member of the section.

5 “(c) When a case is heard by a section of the Board
6 after such an order for reconsideration, the decision of a
7 majority of the members of the section shall constitute the
8 final decision of the Board.

9 “(d) The Board on its own motion may correct an
10 obvious error in the record, without regard to whether
11 there has been a motion or order for reconsideration.”.

12 (2) The items relating to sections 7102 and 7103 in
13 the table of sections at the beginning of chapter 71 are
14 amended to read as follows:

“7102. Decisions by the Board.

“7103. Reconsideration; correction of obvious errors.”.

15 (b) CONFORMING AMENDMENTS.—(1) Section 7110
16 is amended by striking out “section” both places it ap-
17 pears and inserting in lieu thereof “member”.

18 (2)(A) The heading of section 7110 is amended to
19 read as follows:

20 “§ 7110. **Traveling members**”.

21 (B) The item relating to section 7110 in the table
22 of sections at the beginning of chapter 71 is amended to
23 read as follows:

“7110. Traveling members.”.

1 **SEC. 6. REVISION OF DECISIONS BASED ON CLEAR AND UN-**
2 **MISTAKABLE ERROR.**

3 (a) ORIGINAL DECISIONS.—(1) Chapter 51 is amend-
4 ed by inserting after section 5109A, as added by section
5 4, the following new section:

6 **“§5109B. Revision of decisions on grounds of clear**
7 **and unmistakable error**

8 “(a) A decision by the Secretary under this chapter
9 is subject to revision on the grounds of clear and unmis-
10 takable error. If evidence establishes the error, the prior
11 decision shall be reversed or revised.

12 “(b) For the purposes of authorizing benefits, a rat-
13 ing or other adjudicative decision that constitutes a rever-
14 sal or revision of a prior decision on the grounds of clear
15 and unmistakable error has the same effect as if the deci-
16 sion had been made on the date of the prior decision.

17 “(c) Review to determine whether clear and unmis-
18 takable error exists in a case may be instituted by the Sec-
19 retary on the Secretary’s own motion or upon request of
20 the claimant.

21 “(d) A request for revision of a decision of the Sec-
22 retary based on clear and unmistakable error may be made
23 at any time after that decision is made.

24 “(e) Such a request shall be submitted to the Sec-
25 retary and shall be decided in the same manner as any
26 other claim.”.

1 “(e) Such a request shall be submitted directly to the
2 Board and shall be decided by the Board on the merits,
3 without referral to any adjudicative or hearing official act-
4 ing on behalf of the Secretary.

5 “(f) A claim filed with the Secretary that requests
6 reversal or revision of a previous Board decision due to
7 clear and unmistakable error shall be considered to be a
8 request to the Board under this section, and the Secretary
9 shall promptly transmit any such request to the Board for
10 its consideration under this section.”.

11 (2) The table of sections at the beginning of such
12 chapter is amended by adding at the end the following
13 new item:

“7111. Revision of decisions on grounds of clear and unmistakable error.”.

14 (c) EFFECTIVE DATE.—(1) Section 5109B and 7110
15 of title 38, United States Code, apply to any determination
16 made before, on, or after the date of the enactment of
17 this Act.

18 (2) Notwithstanding section 402 of the Veterans Ju-
19 dicial Review Act (38 U.S.C. 7251 note), chapter 72 of
20 title 38, United States Code, shall apply with respect to
21 any decision of the Board of Veterans’ Appeals on a claim
22 alleging that a previous determination of the Board was
23 the product of clear and unmistakable error if that claim
24 is filed after, or was pending before the Department of
25 Veterans Affairs, the Court of Veterans Appeals, the

- 1 Court of Appeals for the Federal Circuit, or the Supreme
- 2 Court on the date of the enactment of this Act.

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