

Union Calendar No. 37

105TH CONGRESS
1ST SESSION

H. R. 1090

[Report No. 105-52]

To amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1997

Mr. EVANS (for himself, Mr. STUMP, Mr. FILNER, Mr. FRANK of Massachusetts, Mrs. MALONEY of New York, Mr. PAYNE, Mr. ENGLISH of Pennsylvania, and Mr. LIPINSKI) introduced the following bill; which was referred to the Committee on Veterans' Affairs

APRIL 14, 1997

Additional sponsors: Ms. PELOSI, Mr. FOX of Pennsylvania, Mr. REGULA, Mr. PARKER, Mr. QUINN, Mr. SMITH of New Jersey, Mr. BILIRAKIS, Mr. SPENCE, Mr. EVERETT, Mr. BUYER, Mr. BACHUS, Mr. STEARNS, Mr. MORAN of Kansas, Mr. COOKSEY, Mr. HUTCHINSON, Mr. HAYWORTH, Mr. KENNEDY of Massachusetts, Mr. GUTIERREZ, Mr. CLYBURN, Mr. DOYLE, Mr. MASCARA, Mr. PETERSON of Minnesota, Ms. CARSON, Mr. REYES, Mr. SNYDER, Ms. BROWN of Florida, Mr. DAN SCHAEFER of Colorado, Mrs. CHENOWETH, Mr. LAHOOD, Mr. DELLUMS, Mr. LUTHER, Mr. SCOTT, Mr. BARRETT of Wisconsin, Ms. WATERS, Mr. WEXLER, Mrs. ROUKEMA, Ms. SLAUGHTER, Mr. WATTS of Oklahoma, and Mr. FATTAH

APRIL 14, 1997

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error.

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. REVISION OF DECISIONS BASED ON CLEAR**
4 **AND UNMISTAKABLE ERROR.**

5 (a) ORIGINAL DECISIONS.—(1) Chapter 51 of title
6 38, United States Code, is amended by inserting after sec-
7 tion 5109 the following new section:

8 **“§ 5109A. Revision of decisions on grounds of clear**
9 **and unmistakable error**

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

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

19 “(c) Review to determine whether clear and unmis-
20 takable error exists in a case may be instituted by the Sec-

1 “(c) Review to determine whether clear and unmis-
2 takable error exists in a case may be instituted by the
3 Board on the Board’s own motion or upon request of the
4 claimant.

5 “(d) A request for revision of a decision of the Board
6 based on clear and unmistakable error may be made at
7 any time after that decision is made.

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

12 “(f) A claim filed with the Secretary that requests
13 reversal or revision of a previous Board decision due to
14 clear and unmistakable error shall be considered to be a
15 request to the Board under this section, and the Secretary
16 shall promptly transmit any such request to the Board for
17 its consideration under this section.”.

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

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

21 (c) EFFECTIVE DATE.—(1) Sections 5109A and
22 7111 of title 38, United States Code, as added by this
23 section, apply to any determination made before, on, or
24 after the date of the enactment of this Act.

1 (2) Notwithstanding section 402 of the Veterans Ju-
2 dicial Review Act (38 U.S.C. 7251 note), chapter 72 of
3 title 38, United States Code, shall apply with respect to
4 any decision of the Board of Veterans' Appeals on a claim
5 alleging that a previous determination of the Board was
6 the product of clear and unmistakable error if that claim
7 is filed after, or was pending before the Department of
8 Veterans Affairs, the Court of Veterans Appeals, the
9 Court of Appeals for the Federal Circuit, or the Supreme
10 Court on, the date of the enactment of this Act.

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