

103^D CONGRESS
1ST SESSION

H. R. 2574

To amend title 38, United States Code, to revise and improve adjudication and appeals procedures relating to claims for benefits under the jurisdiction of the Secretary of Veterans Affairs.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1993

Mr. SLATTERY (for himself and Mr. BILIRAKIS) introduced the following bill;
which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to revise and improve adjudication and appeals procedures relating to claims for benefits under the jurisdiction of the Secretary of Veterans Affairs.

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, UNIT-**
4 **ED STATES CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Veterans’ Adjudication and Appeals Improvements Act
7 of 1993”.

1 (b) REFERENCES TO TITLE 38, UNITED STATES
2 CODE.—Except as otherwise expressly provided, whenever
3 in this Act an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion, the reference shall be considered to be made to a
6 section or other provision of title 38, United States Code.

7 **TITLE I—ADJUDICATION** 8 **IMPROVEMENTS**

9 **SEC. 101. ELIMINATION OF REQUIREMENT FOR ANNUAL IN-** 10 **COME QUESTIONNAIRES.**

11 Section 1506 is amended—

12 (1) in paragraph (2), by striking out “shall”
13 and inserting in lieu thereof “may”; and

14 (2) in paragraph (3), by striking out “file a re-
15 vised report” and inserting in lieu thereof “notify
16 the Secretary”.

17 **SEC. 102. TIME PERIOD FOR RESPONDING TO NOTICE OF** 18 **INCOMPLETE APPLICATION.**

19 Section 5103(a) is amended by striking out “one
20 year” and inserting in lieu thereof “120 days”.

21 **SEC. 103. RESTATEMENT OF BURDEN OF PROOF, DUTY TO** 22 **ASSIST, AND BENEFIT OF DOUBT.**

23 The text of section 5107 is amended to read as fol-
24 lows:

1 “(a) Except as otherwise provided in this title, a per-
2 son who submits a claim for benefits under a law adminis-
3 tered by the Secretary shall bear the burden of establish-
4 ing such claim by submitting evidence sufficient to justify
5 a belief by a fair and impartial individual that the claim
6 is well grounded. A claim shall be considered to be well
7 grounded if the evidence presented is sufficient to evoke
8 a reasonable probability that the claim is valid. Mere alle-
9 gations, unsupported by evidence, shall not form the basis
10 for a conclusion that the claim is well grounded.

11 “(b) The Secretary shall provide reasonable assist-
12 ance to a claimant in developing the facts pertinent to the
13 claim. Except in the case of evidence or information within
14 the control of the Department or other Federal depart-
15 ment or agency, the duty to provide such assistance shall
16 be considered to be met upon a showing of a good faith
17 effort by the Secretary to obtain such evidence. Nothing
18 in this subsection shall be construed as shifting from the
19 claimant to the Secretary the burden specified in sub-
20 section (a).

21 “(c) When, after consideration of all evidence and
22 material of record in a case before the Department with
23 respect to benefits under law administered by the Sec-
24 retary, there is an approximate balance of positive and
25 negative evidence regarding the merits of an issue material

1 to the determination of the matter, the benefit of doubt
2 in resolving each such issue shall be given to the claim-
3 ant.”.

4 **SEC. 104. CLARIFICATION OF REVIEW ON REOPENED**
5 **CLAIMS.**

6 Section 5108 is amended by adding at the end the
7 following: “Such review shall be limited to the issue to
8 which the new and material evidence is related.”.

9 **SEC. 105. LIMIT ON RETROACTIVE AWARDS.**

10 Section 5110 is amended by adding at the end the
11 following:

12 “(o) The effective date of an award or an increased
13 award based on a finding of clear and unmistakable error
14 in fact or law in a prior decision shall be in accordance
15 with the facts found, but shall not be retroactive for more
16 than ten years before receipt of the allegation of error.”.

17 **SEC. 106. PLAN FOR REORGANIZATION OF ADJUDICATION**
18 **DIVISIONS IN REGIONAL OFFICES.**

19 Not later than 180 days after the date of the enact-
20 ment of this Act, the Secretary of Veterans Affairs shall
21 submit to the Committees on Veterans’ Affairs of the Sen-
22 ate and House of Representatives a plan to provide for
23 the reorganization of adjudication divisions located within
24 the regional offices of the Veterans Benefits Administra-
25 tion to a number of such divisions that would result in

1 greater efficiency in the processing of claims filed by veter-
2 ans, their survivors, or other eligible persons for benefits
3 administered by the Secretary.

4 **SEC. 107. TRANSFER OF MILITARY MEDICAL RECORDS**
5 **FROM DEPARTMENT OF DEFENSE.**

6 The Secretary of Veterans Affairs shall, not later
7 than 90 days after the date of the enactment of this Act,
8 seek to enter into an agreement with the Secretary of De-
9 fense to implement a plan to provide for the immediate
10 transfer to the Department of Veterans Affairs, upon the
11 separation of a member of the Armed Forces from active
12 duty, of the service medical records of that member.

13 **TITLE II—BOARD OF VETERANS’**
14 **APPEALS IMPROVEMENTS—**

15 **SEC. 201. COMPOSITION OF BOARD OF VETERANS’ AP-**
16 **PEALS.**

17 (a) REPEAL OF LIMITATION ON SIZE OF BOARD.—
18 Section 7101(a) is amended by striking out “(not more
19 than 65)”.

20 (b) ETHICAL AND LEGAL LIMITATIONS ON CHAIR-
21 MAN.—Section 7101(b)(1) is amended by inserting after
22 the first sentence the following: “The Chairman shall be
23 subject to the same ethical and legal limitations and re-
24 strictions concerning involvement in partisan political ac-

1 tivities as apply to judges of the United States Court of
2 Veterans Appeals.”.

3 (c) TEMPORARY MEMBERS OF THE BOARD.—Section
4 7101(c)(1) is amended to read as follows:

5 “(1) The number of temporary members of the Board
6 may not exceed 10 percent of the total number of Board
7 members at any time.”.

8 (d) REPEAL OF REPORT REQUIREMENT.—Paragraph
9 (3) of section 7101(c) is repealed.

10 **SEC. 202. ASSIGNMENT OF MATTERS BEFORE THE BOARD.**

11 Section 7102 is redesignated as section 7103 and is
12 amended to read as follows:

13 **“§ 7103. Assignment of matters before the Board**

14 “(a) Subject to subsection (b), the Chairman may de-
15 termine any matter before the Board, rule on any motion
16 in connection therewith, or may assign any such matter
17 or motion to any other Board member or a panel of mem-
18 bers for determination. Any such assignment by the Chair-
19 man shall not be reviewed by any other official or by any
20 court, whether by an action in the nature of mandamus
21 or otherwise.

22 “(b) The authority granted under subsection (a) shall
23 expire on September 30, 1995.”.

1 **SEC. 203. DETERMINATIONS BY THE BOARD.**

2 Section 7103 is redesignated as section 7104 and the
3 text thereof is amended to read as follows:

4 “(a) When the Chairman retains a matter or submits
5 it to another Board member or panel of members for de-
6 termination in accordance with section 7102 of this title,
7 or to a panel of Board members in accordance with sub-
8 section (e), the Board member or members shall do the
9 following:

10 “(1) Issue an order dismissing any appeal, in
11 whole or in part, which fails to allege specific error
12 of fact or law in the determination being appealed
13 or in which the determination being appealed has be-
14 come moot. Each order of dismissal shall include a
15 written statement of the Board’s findings and con-
16 clusions, and the reasons and bases for those find-
17 ings and conclusions, in support of the dismissal.

18 “(2) Issue an order remanding the case, in
19 whole or in part, to the agency of original jurisdic-
20 tion for such additional development as the member
21 or panel of members may consider necessary for
22 proper disposition of the case.

23 “(3) Render a written decision with respect to
24 any issues not dismissed or remanded, which shall
25 constitute the Board’s final disposition of the issues
26 so decided. Such decision shall be based on the en-

1 tire record in the proceeding, upon consideration of
2 all evidence and material of record, and upon appli-
3 cable provisions of law and regulation.

4 “(b) Each decision of a Board member or of a panel
5 of members shall include—

6 “(1) a written statement of the Board’s find-
7 ings and conclusions, and the reasons and bases for
8 those findings and conclusions, on all material issues
9 of fact and law presented on the record; and

10 “(2) an order granting appropriate relief or de-
11 nying relief.

12 “(c)(1) Decisions by a panel of Board members under
13 this section shall be based on a majority vote of the mem-
14 bers of the panel.

15 “(2) The decision of a Board member or of a panel
16 of members is final unless the Chairman grants an admin-
17 istrative allowance as authorized under subsection (d) or
18 orders reconsideration of the case pursuant to subsection
19 (e).

20 “(d) Except in the case of a claim which has been
21 the subject of reconsideration pursuant to subsection (e),
22 if a Board member other than the Chairman is of the opin-
23 ion that an otherwise final denial of a claim should be
24 revised or amended to allow the claim in whole or in part
25 based on a difference of opinion as to how the evidence

1 should be evaluated rather than on any error in the prior
2 decision, the Board member may recommend allowance of
3 the claim to the Chairman. If the Chairman agrees with
4 the Board member, the Chairman shall approve the award
5 of any benefit or increase therein, on the basis of such
6 difference of opinion.

7 “(e)(1) A claimant may seek reconsideration of a
8 final decision of the Board by filing a motion for reconsid-
9 eration with the Board within 120 days after the date on
10 which notice of the Board’s decision is mailed pursuant
11 to section 7104(e) of this title.

12 “(2) The Chairman or Vice Chairman shall review
13 each motion for reconsideration and may order such recon-
14 sideration upon a showing of good cause. The decision of
15 the Chairman or Vice Chairman to order reconsideration
16 or to deny such reconsideration shall not be reviewed by
17 any other official or by any court by an action in the na-
18 ture of mandamus or otherwise. If a motion for reconsid-
19 eration is granted, there shall be no further review by the
20 Board of the matter except as provided in this subsection.

21 “(3) If the Chairman or Vice Chairman orders recon-
22 sideration of an appeal, the matter shall be referred to
23 a panel of not less than three Board members, not includ-
24 ing the Board member who rendered the initial decision,

1 which shall render its decision after reviewing the entire
2 record before the Board.

3 “(4) The standard of review upon reconsideration
4 shall be whether the decision under consideration involved
5 an obvious error in fact or law affecting the result.

6 “(f) After reaching a determination under any of the
7 provisions of this section, the Board shall promptly mail
8 a copy of its written decision to the claimant and the
9 claimant’s authorized representative (if any) at the last
10 known address of the claimant and the last known address
11 of such representative (if any).

12 “(g) The Board shall be bound in its decisions by reg-
13 ulations of the Department, and precedent opinions of the
14 chief legal officer of the Department.

15 “(h) A claim disallowed by the Board may not there-
16 after be reopened except as provided in section 5108 of
17 this title.”.

18 **SEC. 204. JURISDICTION OF THE BOARD.**

19 Section 7104 is transferred so as to appear after sec-
20 tion 7101, redesignated as section 7102, and amended to
21 read as follows:

22 **“§ 7102. Jurisdiction of the Board**

23 “All questions in a matter which under section 511(a)
24 of this title is subject to decision by the Secretary shall

1 be subject to one review on appeal to the Secretary. Final
2 decisions on such appeals shall be made by the Board.”.

3 **SEC. 205. FILING OF NOTICE OF DISAGREEMENT AND AP-**
4 **PEAL.**

5 (a) PERIOD FOR FILING NOTICE OF DISAGREE-
6 MENT.—Section 7105(b)(1) is amended—

7 (1) by striking out “one year” in the first sen-
8 tence and inserting in lieu thereof “120 days”; and

9 (2) by striking out “one-year” in the second
10 sentence and inserting in lieu thereof “120-day”.

11 (b) FINALITY OF ACTION OR DETERMINATION.—Sec-
12 tion 7105(d)(3) is amended by adding after the third sen-
13 tence the following: “If no formal appeal is received within
14 this time period, the action or determination shall become
15 final and the claim may not thereafter be reopened or al-
16 lowed, except as may otherwise be provided by regulations
17 not inconsistent with this title.”.

18 (c) REPEAL OF GROUNDS FOR DISMISSAL.—Section
19 7105(d) is amended by striking out paragraph (5).

20 **SEC. 206. PERIOD FOR ADMINISTRATIVE APPEAL.**

21 Section 7106 is amended by striking out “one-year”
22 and inserting in lieu thereof “120-day”.

23 **SEC. 207. HEARINGS.**

24 Section 7110 is amended to read as follows:

1 **“§ 7110. Hearings**

2 “(a) The Board shall decide an appeal only after af-
3 fording a claimant an opportunity for a hearing.

4 “(b) A hearing docket shall be maintained and formal
5 recorded hearings shall be held by such member or mem-
6 bers of the Board as the Chairman may designate. Such
7 Board member or members conducting such hearing shall
8 participate in the final determination in the claim.

9 “(c) A claimant may request a personal hearing be-
10 fore the Board at either its principal location or at a re-
11 gional office of the Department. Any hearing held at a
12 regional office of the Department shall be scheduled for
13 hearing in the order in which the requests for hearings
14 in that area are received by the Department. Other than
15 a hearing authorized under subsection (d), the Chairman
16 may not authorize more than 1,000 hearings by Board
17 members at regional offices in any fiscal year.

18 “(d) At the request of the Chairman, the Secretary
19 may provide suitable facilities and equipment to the Board
20 or other components of the Department to enable a claim-
21 ant located at a regional office to participate, through pic-
22 ture or voice transmission (or both) by electronic or other
23 means, in a hearing with a Board member or members
24 sitting at the Board’s principal location. When such facili-
25 ties and equipment are available, the Chairman may af-
26 ford a claimant an opportunity to participate in a hearing

1 before the Board through the use of such facilities and
2 equipment in lieu of a personal appearance before the
3 Board member or members. Any such hearing shall be
4 conducted in the same manner as, and be considered the
5 equivalent of, a personal hearing.”.

6 **SEC. 208. CLERICAL AMENDMENT.**

7 The table of sections at the beginning of chapter 71
8 is amended—

9 (1) by striking out the items relating to sections
10 7102, 7103, and 7104 and inserting in lieu thereof
11 the following:

“7102. Jurisdiction of the Board.

“7103. Assignment of matters before the Board.

“7104. Filing of notice of disagreement and appeal.”; and

12 (2) by striking out the item relating to section
13 7110 and inserting in lieu thereof the following:

“7110. Hearings.”.

14 **SEC. 209. EFFECTIVE DATE.**

15 The amendments made by this title shall take effect
16 60 days after the date of the enactment of this Act.

17 **TITLE III—COURT OF VETERANS**
18 **APPEALS IMPROVEMENTS**

19 **SEC. 301. RECORD BEFORE COURT.**

20 Section 7252(b) is amended by inserting “entire”
21 after “shall be on the”.

1 **SEC. 302. SCOPE OF REVIEW.**

2 Section 7261(c) is amended by striking out the period
3 at the end and inserting in lieu thereof the following: “,
4 nor shall the Court consider an issue not presented on ap-
5 peal to the Board of Veterans’ Appeals.”.

6 **SEC. 303. EFFECTIVE DATE.**

7 The amendments made by this title shall apply with
8 respect to cases for which an appeal is filed with the Unit-
9 ed States Court of Veterans Appeals after the end of the
10 60-day period beginning on the date of the enactment of
11 this Act.

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