

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

(a) A decision by the Secretary under this chapter is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

(b) For the purposes of authorizing benefits, a rating or other adjudicative decision that constitutes a reversal or revision of a prior decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Secretary on the Secretary's own motion or upon request of the claimant.

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

(e) Such a request shall be submitted to the Secretary and shall be decided in the same manner as any other claim.

(Added Pub. L. 105-111, §1(a)(1), Nov. 21, 1997, 111 Stat. 2271.)

**EFFECTIVE DATE**

Section 1(c)(1) of Pub. L. 105-111 provided that: "Sections 5109A and 7111 of title 38, United States Code, as added by this section, apply to any determination made before, on, or after the date of the enactment of this Act [Nov. 21, 1997]."

**§ 5109B. Expedited treatment of remanded claims**

The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the appropriate regional office of the Veterans Benefits Administration of any claim that is remanded to a regional office of the Veterans Benefits Administration by the Board of Veterans' Appeals.

(Added Pub. L. 108-183, title VII, §707(a)(1), Dec. 16, 2003, 117 Stat. 2672.)

**SUBCHAPTER II—EFFECTIVE DATES**

**§ 5110. Effective dates of awards**

(a) Unless specifically provided otherwise in this chapter, the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.

(b)(1) The effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release if application therefor is received within one year from such date of discharge or release.

(2) The effective date of an award of increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received within one year from such date.

(3)(A) The effective date of an award of disability pension to a veteran described in subparagraph (B) of this paragraph shall be the date of

application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date, whichever is to the advantage of the veteran.

(B) A veteran referred to in subparagraph (A) of this paragraph is a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled.

(c) The effective date of an award of disability compensation by reason of section 1151 of this title shall be the date such injury or aggravation was suffered if an application therefor is received within one year from such date.

(d) The effective date of an award of death compensation, dependency and indemnity compensation, or death pension for which application is received within one year from the date of death shall be the first day of the month in which the death occurred.

(e)(1) Except as provided in paragraph (2) of this subsection, the effective date of an award of dependency and indemnity compensation to a child shall be the first day of the month in which the child's entitlement arose if application therefor is received within one year from such date.

(2) In the case of a child who is eighteen years of age or over and who immediately before becoming eighteen years of age was counted under section 1311(b) of this title in determining the amount of the dependency and indemnity compensation of a surviving spouse, the effective date of an award of dependency and indemnity compensation to such child shall be the date the child attains the age of eighteen years if application therefor is received within one year from such date.

(f) An award of additional compensation on account of dependents based on the establishment of a disability rating in the percentage evaluation specified by law for the purpose shall be payable from the effective date of such rating; but only if proof of dependents is received within one year from the date of notification of such rating action.

(g) Subject to the provisions of section 5101 of this title, where compensation, dependency and indemnity compensation, or pension is awarded or increased pursuant to any Act or administrative issue, the effective date of such award or increase shall be fixed in accordance with the facts found but shall not be earlier than the effective date of the Act or administrative issue. In no event shall such award or increase be retroactive for more than one year from the date of application therefor or the date of administrative determination of entitlement, whichever is earlier.

(h) Where an award of pension has been deferred or pension has been awarded at a rate based on anticipated income for a year and the claimant later establishes that income for that year was at a rate warranting entitlement or increased entitlement, the effective date of such entitlement or increase shall be fixed in accordance with the facts found if satisfactory evidence is received before the expiration of the next calendar year.