

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-432 effective Sept. 30, 1976, see section 405(a) of Pub. L. 94-432, set out as a note under section 1521 of this title.

§ 103. Special provisions relating to marriages

(a) Whenever, in the consideration of any claim filed by a person as the widow or widower of a veteran for gratuitous death benefits under laws administered by the Secretary, it is established by evidence satisfactory to the Secretary that such person, without knowledge of any legal impediment, entered into a marriage with such veteran which, but for a legal impediment, would have been valid, and thereafter cohabited with the veteran for one year or more immediately before the veteran's death, or for any period of time if a child was born of the purported marriage or was born to them before such marriage, the purported marriage shall be deemed to be a valid marriage, but only if no claim has been filed by a legal widow or widower of such veteran who is found to be entitled to such benefits. No duplicate payments shall be made by virtue of this subsection.

(b) Where a surviving spouse has been legally married to a veteran more than once, the date of original marriage will be used in determining whether the statutory requirement as to date of marriage has been met.

(c) In determining whether or not a person is or was the spouse of a veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.

(d)(1) The remarriage of the surviving spouse of a veteran shall not bar the furnishing of benefits to such person as the surviving spouse of the veteran if the remarriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Secretary determines that the annulment was secured through fraud by either party or collusion.

(2)(A) The remarriage of the surviving spouse of a veteran shall not bar the furnishing of benefits specified in paragraph (5) to such person as the surviving spouse of the veteran if the remarriage has been terminated by death or divorce unless the Secretary determines that the divorce was secured through fraud or collusion.

(B) The remarriage after age 57 of the surviving spouse of a veteran shall not bar the furnishing of benefits specified in paragraph (5) to such person as the surviving spouse of the veteran. Notwithstanding the previous sentence, the remarriage after age 55 of the surviving spouse of a veteran shall not bar the furnishing of benefits under section 1781 of this title to such person as the surviving spouse of the veteran.

(3) If the surviving spouse of a veteran ceases living with another person and holding himself or herself out openly to the public as that person's spouse, the bar to granting that person benefits as the surviving spouse of the veteran shall not apply in the case of the benefits specified in paragraph (5).

(4) The first month of eligibility for benefits for a surviving spouse by reason of paragraph (2)(A) or (3) shall be the month after—

(A) the month of the termination of such remarriage, in the case of a surviving spouse described in paragraph (2)(A); or

(B) the month of the cessation described in paragraph (3), in the case of a surviving spouse described in that paragraph.

(5) Paragraphs (2)(A) and (3) apply with respect to benefits under the following provisions of this title:

(A) Section 1311, relating to dependency and indemnity compensation.

(B) Section 1781, relating to medical care for survivors and dependents of certain veterans.

(C) Chapter 35, relating to educational assistance.

(D) Chapter 37, relating to housing loans.

(e) The marriage of a child of a veteran shall not bar recognition of such child as the child of the veteran for benefit purposes if the marriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Secretary determines that the annulment was secured through fraud by either party or collusion.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1109; Pub. L. 87-674, §2, Sept. 19, 1962, 76 Stat. 558; Pub. L. 90-77, title I, §101(b), Aug. 31, 1967, 81 Stat. 178; Pub. L. 91-376, §4, Aug. 12, 1970, 84 Stat. 789; Pub. L. 93-527, §9(a), Dec. 21, 1974, 88 Stat. 1705; Pub. L. 99-576, title VII, §701(2), Oct. 28, 1986, 100 Stat. 3290; Pub. L. 101-508, title VIII, §8004(a), Nov. 5, 1990, 104 Stat. 1388-343; Pub. L. 102-83, §4(a)(1), (2)(A)(i), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 106-117, title V, §502(a), Nov. 30, 1999, 113 Stat. 1574; Pub. L. 107-135, title II, §208(e)(1), Jan. 23, 2002, 115 Stat. 2463; Pub. L. 107-330, title I, §101(a), Dec. 6, 2002, 116 Stat. 2821; Pub. L. 108-183, title I, §101(a), title VII, §708(a)(1), Dec. 16, 2003, 117 Stat. 2652, 2673.)

AMENDMENTS

2003—Subsec. (d)(2)(B). Pub. L. 108-183, §101(a), substituted “The remarriage after age 57 of the surviving spouse of a veteran shall not bar the furnishing of benefits specified in paragraph (5) to such person as the surviving spouse of the veteran. Notwithstanding the previous sentence, the remarriage after age 55” for “The remarriage after age 55”.

Subsec. (d)(4). Pub. L. 108-183, §708(a)(1)(A)(i), substituted “paragraph (2)(A) or (3)” for “this subsection” in introductory provisions.

Subsec. (d)(4)(A). Pub. L. 108-183, §708(a)(1)(A)(ii), substituted “paragraph (2)(A)” for “paragraph (2)”.

Subsec. (d)(5). Pub. L. 108-183, §708(a)(1)(B), substituted “Paragraphs (2)(A)” for “Paragraphs (2)” in introductory provisions.

2002—Subsec. (d)(2). Pub. L. 107-330 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(5)(B). Pub. L. 107-135 substituted “1781” for “1713”.

1999—Subsec. (d). Pub. L. 106-117 designated existing provisions as par. (1) and added pars. (2) to (5).

1991—Subsec. (a). Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), substituted “administered by the Secretary” for “administered by the Veterans' Administration” and “Secretary” for “Administrator”.

Subsec. (c). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans' Administration”.

Subsecs. (d), (e). Pub. L. 102-83, §4(a)(2)(A)(i), substituted “Secretary” for “Veterans' Administration”.

1990—Subsec. (d). Pub. L. 101-508, §8004(a)(1), designated par. (1) as entire subsec. (d) and struck out pars. (2) and (3) which read as follows:

“(2) The remarriage of the surviving spouse of a veteran shall not bar the furnishing of benefits to such person as the surviving spouse of the veteran if the remarriage has been terminated by death or has been dissolved by a court with basic authority to render divorce decrees unless the Veterans' Administration determines that the divorce was secured through fraud by the surviving spouse or collusion.

“(3) If a surviving spouse ceases living with another person and holding himself or herself out openly to the public as that person's spouse, the bar to granting that person benefits as the surviving spouse of the veteran shall not apply.”

Subsec. (e). Pub. L. 101-508, §8004(a)(2), designated par. (1) as entire subsec. (e) and struck out par. (2) which read as follows: “The marriage of a child of a veteran shall not bar the recognition of such child as the child of the veteran for benefit purposes if the marriage has been terminated by death or has been dissolved by a court, with basic authority to render divorce decrees unless the Veterans' Administration determines that the divorce was secured through fraud by either party or collusion.”

1986—Subsec. (a). Pub. L. 99-576, §701(2)(A), substituted “person as the widow or widower” for “woman as the widow”, “such person” for “she”, “the veteran” for “him”, “the veteran's” for “his”, and “legal widow or widower” for “legal widow”.

Subsec. (b). Pub. L. 99-576, §701(2)(B), substituted “surviving spouse” for “widow”.

Subsec. (c). Pub. L. 99-576, §701(2)(C), substituted “person is or was the spouse” for “woman is or was the wife”.

Subsec. (d)(1). Pub. L. 99-576, §701(2)(D), substituted “surviving spouse of a veteran shall not bar the furnishing of benefits to such person as the surviving spouse” for “widow of a veteran shall not bar the furnishing of benefits to her as the widow”.

Subsec. (d)(2). Pub. L. 99-576, §701(2)(E), substituted “surviving spouse” for “widow” wherever appearing, and “such person” for “her”.

Subsec. (d)(3). Pub. L. 99-576, §701(2)(F), substituted “surviving spouse” for “widow” wherever appearing, “person” for “man”, “himself or herself” for “herself”, “that person's spouse” for “his wife”, and “that person” for “her”.

1974—Subsec. (e). Pub. L. 93-527 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (d). Pub. L. 91-376 designated existing provisions as par. (1) and added pars. (2) and (3).

1967—Subsec. (a). Pub. L. 90-77 reduced cohabitation period from five years to one year for purposes of deeming a purported marriage valid and provided for cohabitation for any period of time if a child was born of the purported marriage or was born before the marriage.

1962—Subsecs. (d), (e). Pub. L. 87-674 added subsecs. (d) and (e).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-183, title I, §101(c), Dec. 16, 2003, 117 Stat. 2653, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1311 of this title] shall take effect on January 1, 2004.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-330, title I, §101(c), Dec. 6, 2002, 116 Stat. 2821, provided that: “The amendments made by this section [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [Dec. 6, 2002].”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-117, title V, §502(c), Nov. 30, 1999, 113 Stat. 1574, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1311 of this title] shall take effect on the first day of the first month beginning after the month in which this Act is enacted [November 1999].”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 8004(b) of Pub. L. 101-508 provided that: “The amendments made by subsection (a) [amending this

section] shall apply with respect to claims filed after October 31, 1990, and shall not operate to reduce or terminate benefits to any individual whose benefits were predicated on section 103(d)(2), 103(d)(3), or 103(e)(2) before the effective date of those amendments.”

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-527 effective Jan. 1, 1975, see section 10 of Pub. L. 93-527, set out as a note under section 1521 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-376 effective Jan. 1, 1971, see section 9 of Pub. L. 91-376, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-77 effective first day of first calendar month which begins more than ten days after Aug. 31, 1967, see section 405 of Pub. L. 90-77, set out as a note under section 101 of this title.

RETROACTIVE BENEFITS PROHIBITED

Pub. L. 108-183, title I, §101(d), Dec. 16, 2003, 117 Stat. 2653, provided that: “No benefit may be paid to any person by reason of the amendments made by subsections (a) and (b) [amending this section and section 1311 of this title] for any period before the effective date specified in subsection (c) [set out as an Effective Date of 2003 Amendment note above].”

APPLICATION FOR BENEFITS

Pub. L. 108-183, title I, §101(e), Dec. 16, 2003, 117 Stat. 2653, provided that: “In the case of an individual who but for having remarried would be eligible for benefits under title 38, United States Code, by reason of the amendment made by subsection (a) [amending this section] and whose remarriage was before the date of the enactment of this Act [Dec. 16, 2003] and after the individual had attained age 57, the individual shall be eligible for such benefits by reason of such amendment only if the individual submits an application for such benefits to the Secretary of Veterans Affairs not later than the end of the one-year period beginning on the date of the enactment of this Act.”

Pub. L. 107-330, title I, §101(b), Dec. 6, 2002, 116 Stat. 2821, as amended by Pub. L. 108-183, title I, §101(f), Dec. 16, 2003, 117 Stat. 2653, provided that: “In the case of an individual who but for having remarried would be eligible for medical care under section 1781 of title 38, United States Code, and whose remarriage was before the date of the enactment of this Act [Dec. 6, 2002] and after the individual had attained age 55, the individual shall be eligible for such medical care by reason of the amendments made by subsection (a) [amending this section] only if an application for such medical care is received by the Secretary of Veterans Affairs before the end of the one-year period beginning on the date of the enactment of the Veterans Benefits Act of 2003 [Dec. 16, 2003].”

LIMITATION ON PAYMENTS

Pub. L. 106-117, title V, §502(d), Nov. 30, 1999, 113 Stat. 1574, provided that: “No payment may be made to a person by reason of paragraphs (2) and (3) of section 103(d) of title 38, United States Code, as added by subsection (a), for any period before the effective date specified in subsection (c) [set out as an Effective Date of 1999 Amendment note above].”

APPLICABILITY OF AMENDMENTS

Pub. L. 102-568, title I, §103, Oct. 29, 1992, 106 Stat. 4322, provided that:

“(a) EXCEPTION.—The amendments made by section 8004 of the Omnibus Budget Reconciliation Act of 1990 (105 Stat. 424) [Pub. L. 101-508, 104 Stat. 1388-343, amending this section] shall not apply to any case in which a legal proceeding to terminate an existing marital re-

relationship was commenced before November 1, 1990, by an individual described in subsection (b) if that proceeding directly resulted in the termination of such marriage.

“(b) COVERED INDIVIDUALS.—An individual referred to in subsection (a) is an individual who, but for the marital relationship referred to in subsection (a), would be considered to be the surviving spouse of a veteran.”

Pub. L. 102-86, title V, § 502, Aug. 14, 1991, 105 Stat. 424, provided that: “The amendments made by section 8004 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) [amending this section] shall not apply with respect to any individual who on October 31, 1990, was a surviving spouse or child within the meaning of title 38, United States Code, unless after that date that individual (1) marries, or (2) in the case of a surviving spouse, begins to live with another person while holding himself or herself out openly to the public as that person's spouse.”

REINSTATEMENT OF BENEFITS SUBSEQUENT TO TERMINATION OF RELATIONSHIP OR CONDUCT RESTRICTING PAYMENT OF BENEFITS; EFFECTIVE DATE OF AWARD

Section 5 of Pub. L. 91-376, effective January 1, 1971, provided that:

“(a) If a widow terminates a relationship or conduct which resulted in imposition of a prior restriction on payment of benefits, in the nature of inference or presumption of remarriage, or relating to open and notorious adulterous cohabitation or similar conduct, she shall not be denied any benefits by the Veterans' Administration, other than insurance, solely because of such prior relationship or conduct.

“(b) The effective date of an award of benefits resulting from enactment of subsection (a) of this section shall not be earlier than the date of receipt of application therefor, filed after termination of the particular relationship or conduct and after December 31, 1970.”

§ 104. Approval of educational institutions

(a) For the purpose of determining whether or not benefits are payable under this title (except chapter 35 of this title) for a child over the age of eighteen years and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institute, university, or other educational institution, the Secretary may approve or disapprove such educational institutions.

(b) The Secretary may not approve an educational institution under this section unless such institution has agreed to report to the Secretary the termination of attendance of any child. If any educational institution fails to report any such termination promptly, the approval of the Secretary shall be withdrawn.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1110; Pub. L. 91-24, § 1(c), June 11, 1969, 83 Stat. 33; Pub. L. 99-576, title VII, § 701(3), Oct. 28, 1986, 100 Stat. 3290; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

1986—Subsec. (b). Pub. L. 99-576 substituted “report to the Administrator” for “report to him”.

1969—Subsec. (a). Pub. L. 91-24 substituted “the age of twenty-three years” for “the age of twenty-one years”.

§ 105. Line of duty and misconduct

(a) An injury or disease incurred during active military, naval, or air service will be deemed to have been incurred in line of duty and not the result of the veteran's own misconduct when the

person on whose account benefits are claimed was, at the time the injury was suffered or disease contracted, in active military, naval, or air service, whether on active duty or on authorized leave, unless such injury or disease was a result of the person's own willful misconduct or abuse of alcohol or drugs. Venereal disease shall not be presumed to be due to willful misconduct if the person in service complies with the regulations of the appropriate service department requiring the person to report and receive treatment for such disease.

(b) The requirement for line of duty will not be met if it appears that at the time the injury was suffered or disease contracted the person on whose account benefits are claimed (1) was avoiding duty by deserting the service or by absenting himself or herself without leave materially interfering with the performance of military duties; (2) was confined under sentence of court-martial involving an unremitted dishonorable discharge; or (3) was confined under sentence of a civil court for a felony (as determined under the laws of the jurisdiction where the person was convicted by such court).

(c) For the purposes of any provision relating to the extension of a delimiting period under any education-benefit or rehabilitation program administered by the Secretary, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1110; Pub. L. 99-576, title VII, § 701(4), Oct. 28, 1986, 100 Stat. 3290; Pub. L. 100-689, title I, § 109, Nov. 18, 1988, 102 Stat. 4170; Pub. L. 101-508, title VIII, § 8052(a)(1), Nov. 5, 1990, 104 Stat. 1388-351; Pub. L. 102-83, § 4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

AMENDMENTS

1991—Subsec. (c). Pub. L. 102-83 substituted “administered by the Secretary” for “administered by the Veterans' Administration”.

1990—Subsec. (a). Pub. L. 101-508 substituted “a result of the person's own willful misconduct or abuse of alcohol or drugs” for “the result of the person's own willful misconduct”.

1988—Subsec. (c). Pub. L. 100-689 added subsec. (c).
1986—Subsec. (a). Pub. L. 99-576, § 701(4)(A), substituted “result of the person's” for “result of his” and “requiring the person” for “requiring him”.

Subsec. (b)(1). Pub. L. 99-576, § 701(4)(B), substituted “service or by absenting himself or herself” for “service, or by absenting himself”.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 8052(b) of Pub. L. 101-508 provided that: “The amendments made by subsection (a) [amending this section and sections 310 and 331 [now 1110 and 1131] of this title] shall take effect with respect to claims filed after October 31, 1990.”

§ 106. Certain service deemed to be active service

(a)(1) Service as a member of the Women's Army Auxiliary Corps for ninety days or more by any woman who before October 1, 1943, was honorably discharged for disability incurred or aggravated in line of duty which rendered her physically unfit to perform further service in the Women's Army Auxiliary Corps or the Women's Army Corps shall be considered active duty for the purposes of all laws administered by the Secretary.