

### § 3.951

#### § 3.951 Preservation of disability ratings.

(a) A readjustment to the Schedule for Rating Disabilities shall not be grounds for reduction of a disability rating in effect on the date of the readjustment unless medical evidence establishes that the disability to be evaluated has actually improved.

(Authority: 38 U.S.C. 1155)

(b) A disability which has been continuously rated at or above any evaluation of disability for 20 or more years for compensation purposes under laws administered by the Department of Veterans Affairs will not be reduced to less than such evaluation except upon a showing that such rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes which has been in force for 20 or more years will not be reduced except upon a showing that the rating was based on fraud. The 20-year period will be computed from the effective date of the evaluation to the effective date of reduction of evaluation.

(Authority: 38 U.S.C. 110)

[34 FR 11970, July 16, 1969, as amended at 57 FR 10426, Mar. 26, 1992]

#### § 3.952 Protected ratings.

Ratings under the Schedule of Disability Ratings, 1925, which were the basis of compensation on April 1, 1946, are subject to modification only when a change in physical or mental condition would have required a reduction under the 1925 schedule, or an increased evaluation has been assigned under the Schedule for Rating Disabilities, 1945 (looseleaf edition), after which time all evaluations will be under the 1945 schedule (loose-leaf edition) only. Such increased evaluations must be of an other than temporary nature (due to hospitalization, surgery, etc.). When a temporary evaluation is involved, the 1925 schedule evaluation will be restored after the period of increase has elapsed unless the permanent residuals would have required reduction under that schedule, or unless an increased evaluation would be assignable under a 1945 schedule (looseleaf edition) rating. In any instance where the changed condition represents an increased degree of

### 38 CFR Ch. I (7-1-11 Edition)

disability under either rating schedule but the evaluation provided by the 1945 schedule (looseleaf edition) is less than the evaluation in effect under the 1925 schedule on April 1, 1946, the 1925 schedule evaluation and award are protected.

[26 FR 12766, Dec. 30, 1961]

#### § 3.953 Pub. L. 85-56 and Pub. L. 85-857.

(a) *In receipt of or entitled to receive benefits on December 31, 1958.* Any person receiving or entitled to receive benefits under any public law administered by the Department of Veterans Affairs on December 31, 1958, may, except where there was fraud, clear and unmistakable error of fact or law, or misrepresentation of material facts, continue to receive such benefits as long as the conditions warranting such payment under those laws continue. The greater benefit under the previous law or the corresponding section of title 38 U.S.C., will be paid in the absence of an election to receive the lesser benefit.

(Authority: Section 10, Pub. L. 85-857)

(b) *Emergency officers' retirement pay.* Any person who was receiving, or entitled to receive, emergency officers' retirement pay, or other privileges or benefits as a retired emergency officer of World War I, on December 31, 1958, under the laws in effect on that day, will, except where there was fraud, clear and unmistakable error as to conclusion of fact or law, or misrepresentation of material facts, continue to receive, or be entitled to receive, emergency officers' retirement pay at the rate otherwise payable on December 31, 1958, and such other privileges and benefits, so long as the conditions warranting such pay, privileges, and benefits under those laws continue.

(Authority: Section 11, Pub. L. 85-857)

(c) *Service connection established under prior laws.* In the absence of fraud, misrepresentation of material facts or clear and unmistakable error, all cases where compensation was payable on December 31, 1957, for disability service connected under prior laws, repealed by Pub. L. 85-56, including those service connected under the second proviso of