

## Department of Veterans Affairs

## § 3.105

VA has denied a benefit sought will include a summary of the evidence considered.

(Authority:38 U.S.C. 501, 1115, 1506, 5104)

[55 FR 13527, Apr. 11, 1990; 55 FR 17530, Apr. 25, 1990, as amended at 55 FR 20148, May 15, 1990; 55 FR 25308, June 21, 1990; 57 FR 56993, Dec. 2, 1992; 58 FR 16360, Mar. 26, 1993; 58 FR 59366, Nov. 9, 1993; 59 FR 6218, Feb. 10, 1994; 59 FR 6901, Feb. 14, 1994; 66 FR 56613, Nov. 9, 2001; 76 FR 52574, Aug. 23, 2011; 77 FR 23129, Apr. 18, 2012]

### § 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 and § 3.2600 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

[29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964; 56 FR 65846, Dec. 19, 1991; 66 FR 21874, May 2, 2001]

### § 3.105 Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his or her knowledge (§ 3.500(b)); there is a change in law or a Department of Veterans Affairs issue, or a change in interpretation of law or a Department of Veterans Affairs issue (§ 3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended,

and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.

(a) *Error.* Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

(b) *Difference of opinion.* Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. However, a decision may be revised under § 3.2600 without being recommended to Central Office.

(c) *Character of discharge.* A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of paragraph (d) of this section.

(d) *Severance of service connection.* Subject to the limitations contained in §§ 3.114 and 3.957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). (Where service connection is severed because of a change in or interpretation of a law or Department of Veterans Affairs issue, the provisions of § 3.114 are for application.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical