

applicable to a claim for increased rating based upon new and material evidence submitted prior to expiration of the appeal period or before an appellate decision is issued.

b.(2) When new and material evidence is submitted within the appeal period or prior to an appellate decision with regard to a claim for increased rating, the effective date for any increased rating is the date on which the facts establish the increase in disability occurred or the date of the original claim for increase, whichever is later. However, if the facts establish that a veteran's disability increased within one year prior to receipt by VA of the original claim for increased rating, the effective date of the increase is the date on which the increase in disability occurred.

*Effective Date:* September 23, 1998.

#### **VAOPGCPREC 13-98**

##### *Question Presented*

Does a surviving spouse who regains eligibility for dependency and indemnity compensation (DIC) under 38 U.S.C. 1311(e) as added by section 8207 of the Transportation Equity Act for the 21st Century also regain eligibility for medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA), for dependents' educational assistance, or for loan guaranty benefits?

Held

A surviving spouse who regains eligibility for dependency and indemnity compensation under 38 U.S.C. 1311(e), as added by section 8207 of the Transportation Equity Act for the 21st Century, Pub. L. 105-178, §8207, 112 Stat. 107, 495 (1998), either upon the termination of remarriage by death, divorce, or annulment, or upon the cessation of living with another person and holding himself or herself out openly to the public as that person's spouse, does not regain eligibility for medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA), for dependents' educational assistance, or for loan guaranty benefits.

*Effective Date:* September 23, 1998.

#### **VAOPGCPREC 14-98**

##### *Question Presented*

a(1). Does 38 U.S.C. 1112(a) establish a presumption of aggravation for a chronic disease which existed prior to service but was first shown to a compensable degree within the presumptive period following service?

a(2). If it does, must the incremental degree of disability allegedly resulting

from aggravation first shown during the presumptive period be itself compensable, or may aggravation be found by combining the degree of preservice disability with the degree of disability first presented during the presumptive period?

b. Is it lawful for an employee of the Board of Veterans' Affairs (Board) to remove, temporarily or permanently, an opinion of a Board medical advisor from a veteran's claims folder? As an alternative, could the Board cover such an opinion in the claims folder with opaque paper?

c. Is the Board required to provide directly to a represented veteran a copy of an opinion from an independent medical expert?

Held

a. Section 1112(a) of title 38, United States Code, does not establish a presumption of aggravation for a chronic disease which existed prior to service but was first shown to a compensable degree within the presumptive period following service.

b. Where the Board of Veterans' Appeals (Board) determines that it would be potentially prejudicial to a claimant for an independent medical expert to consider a Board medical advisor opinion which is in the claims file, the Board may temporarily remove that document from the claims file or temporarily cover the document with opaque paper prior to forwarding the file to the independent medical expert. Such action would not, in our view, violate 38 U.S.C. 7104(a) (requiring Board decisions to be based on the entire record) or 18 U.S.C. 2071 (prohibiting removal or concealment of Government records). If it is determined that the Board is precluded from relying upon a Board medical advisor opinion due to the potential for prejudice to the claimant, the Board may permanently remove the opinion from the claims folder without violating 38 U.S.C. 7104(a). Such removal would not, in our view, be unlawful under 18 U.S.C. 2071 as violative of title 38 requirements. If a claimant requests that a Board medical advisor opinion be permanently removed from his or her claims file, the Board may permanently remove the opinion pursuant to 5 U.S.C. 552a(d)(2) (permitting amendment of agency records that are not accurate, relevant, timely, or complete), and such action would not, in our view, violate 18 U.S.C. 2071.

c. The Board of Veterans' Appeals is not required to transmit a copy of an independent medical expert opinion directly to a represented claimant. Providing the opinion to the claimant's

representative, in accordance with 38 CFR 20.903, satisfies the requirement in 38 USC 7109(c) that the Board furnish the claimant with a copy of the opinion.  
*Effective Date:* October 2, 1998.

By Direction of the Secretary.

**John H. Thompson,**

*Acting General Counsel.*

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## **DEPARTMENT OF VETERANS AFFAIRS**

### **Advisory Committee on Former Prisoners of War Meeting**

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Former Prisoners of War will be held on November 16th through 18th, 1998, at the Department of Veterans Affairs, Ralph H. Johnson VA Medical Center, 109 Bee Street, Charleston, South Carolina, 29401. On November 16th, the meeting will be held in Room A139 (Auditorium), and on both November 17th and 18th in Room A527. Each day the meeting will convene at 8:30 a.m. and end at 4:30 p.m. The meeting is open to the public.

The purpose of the committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The agenda for November 16th will include an introduction of committee members and dignitaries, general discussions, and a period for POW veterans and/or the public to address the committee. The agenda on November 17th will include general business, discussion of successes of medical providers seminars and presentation of proposal for continuation of such seminars by a representative from the VA Employee Education Center, Birmingham, Alabama. The Committee will discuss and review the Veterans Services Officer training/certification project, "Decision Review Officers" pilot project, Dependency and Indemnity Compensation Project, status of Committee's recommendations made to the Secretary on ways to help VA improve services to our POW community, and establishment of POW Advisory Groups at local VA medical centers. The Committee has invited medical professionals from VA field activities (those who work with Ex-POW veterans) and medical professionals

from the National Institute of Health and from the Naval Aero Medical Institute, Pensacola, Florida, for their input to the Committee. On November 18th, there will be a discussion by a panel of experts on stroke research concerning the POW veteran. Committee members will review and analyze the comments that had been discussed throughout the meeting for

the purpose of assisting and compiling a final report to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee, at least 5 business days prior to the meeting, in writing only, to Mr. Robert J. Epley, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420. A report of the

meeting and roster of Committee members may be obtained from Mr. Epley.

By Direction of the Secretary.

Dated: October 13, 1998.

**Heyward Bannister,**

*Committee Management.*

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