

§ 5108, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3008 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator”.

EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.

§ 5109. Independent medical opinions

(a) When, in the judgment of the Secretary, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in a case being considered by the Department, the Secretary may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Secretary shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Secretary.

(Added Pub. L. 100-687, div. A, title I, § 103(a)(1), Nov. 18, 1988, 102 Stat. 4107, § 3009; renumbered § 5109, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3009 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration” wherever appearing.

Subsecs. (b), (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.

§ 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

Pub. L. 105-111, § 1(c)(1), Nov. 21, 1997, 111 Stat. 2272, 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)(A) The effective date of an award of disability compensation to a veteran who submits an application therefor that sets forth an original claim that is fully-developed (as determined by the Secretary) as of the date of submittal shall be fixed in accordance with the facts found, but shall not be earlier than the date that is one year before the date of receipt of the application.

(B) For purposes of this paragraph, an original claim is an initial claim filed by a veteran for disability compensation.

(C) This paragraph shall take effect on the date that is one year after the date of the enactment of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 and shall not apply with respect to claims filed after the date that is three years after the date of the enactment of such Act.