

§ 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.

(3) The effective date of an award of increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received within one year from such date.

(4)(A) The effective date of an award of disability pension to a veteran described in subparagraph (B) of this paragraph shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date, whichever is to the advantage of the veteran.

(B) A veteran referred to in subparagraph (A) of this paragraph is a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled.

(c) The effective date of an award of disability compensation by reason of section 1151 of this title shall be the date such injury or aggravation was suffered if an application therefor is received within one year from such date.

(d) The effective date of an award of death compensation, dependency and indemnity compensation, or death pension for which application is received within one year from the date of death shall be the first day of the month in which the death occurred.

(e)(1) Except as provided in paragraph (2) of this subsection, the effective date of an award of dependency and indemnity compensation to a child shall be the first day of the month in which the child's entitlement arose if application therefor is received within one year from such date.

(2) In the case of a child who is eighteen years of age or over and who immediately before becoming eighteen years of age was counted under section 1311(b) of this title in determining the amount of the dependency and indemnity compensation of a surviving spouse, the effective date of an award of dependency and indemnity compensation to such child shall be the date the child attains the age of eighteen years if application therefor is received within one year from such date.

(f) An award of additional compensation on account of dependents based on the establishment of a disability rating in the percentage evaluation specified by law for the purpose shall be payable from the effective date of such rating; but only if proof of dependents is received within one year from the date of notification of such rating action.

(g) Subject to the provisions of section 5101 of this title, where compensation, dependency and indemnity compensation, or pension is awarded or increased pursuant to any Act or administrative issue, the effective date of such award or increase shall be fixed in accordance with the facts found but shall not be earlier than the effective date of the Act or administrative issue. In no event shall such award or increase be retroactive for more than one year from the date of application therefor or the date of administrative determination of entitlement, whichever is earlier.

(h) Where an award of pension has been deferred or pension has been awarded at a rate

based on anticipated income for a year and the claimant later establishes that income for that year was at a rate warranting entitlement or increased entitlement, the effective date of such entitlement or increase shall be fixed in accordance with the facts found if satisfactory evidence is received before the expiration of the next calendar year.

(i) Whenever any disallowed claim is reopened and thereafter allowed on the basis of new and material evidence resulting from the correction of the military records of the proper service department under section 1552 of title 10, or the change, correction, or modification of a discharge or dismissal under section 1553 of title 10, or from other corrective action by competent authority, the effective date of commencement of the benefits so awarded shall be the date on which an application was filed for correction of the military record or for the change, modification, or correction of a discharge or dismissal, as the case may be, or the date such disallowed claim was filed, whichever date is the later, but in no event shall such award of benefits be retroactive for more than one year from the date of reopening of such disallowed claim. This subsection shall not apply to any application or claim for Government life insurance benefits.

(j) Where a report or a finding of death of any person in the active military, naval, or air service has been made by the Secretary concerned, the effective date of an award of death compensation, dependency and indemnity compensation, or death pension, as applicable, shall be the first day of the month fixed by that Secretary as the month of death in such report or finding, if application therefor is received within one year from the date such report or finding has been made; however, such benefits shall not be payable to any person for any period for which such person has received, or was entitled to receive, an allowance, allotment, or service pay of the deceased.

(k) The effective date of the award of benefits to a surviving spouse or of an award or increase of benefits based on recognition of a child, upon annulment of a marriage shall be the date the judicial decree of annulment becomes final if a claim therefor is filed within one year from the date the judicial decree of annulment becomes final; in all other cases the effective date shall be the date the claim is filed.

(l) The effective date of an award of benefits to a surviving spouse based upon a termination of a remarriage by death or divorce, or of an award or increase of benefits based on recognition of a child upon termination of the child's marriage by death or divorce, shall be the date of death or the date the judicial decree or divorce becomes final, if an application therefor is received within one year from such termination.

[m] Repealed. Pub. L. 103-446, title XII, § 1201(i)(8), Nov. 2, 1994, 108 Stat. 4688.]

(n) The effective date of the award of any benefit or any increase therein by reason of marriage or the birth or adoption of a child shall be the date of such event if proof of such event is received by the Secretary within one year from the date of the marriage, birth, or adoption.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1226, § 3010; Pub. L. 87-674, § 3, Sept. 19, 1962, 76 Stat. 558;

Pub. L. 87-825, §1, Oct. 15, 1962, 76 Stat. 948; Pub. L. 91-376, §7, Aug. 12, 1970, 84 Stat. 790; Pub. L. 91-584, §13, Dec. 24, 1970, 84 Stat. 1578; Pub. L. 93-177, §6(a), Dec. 6, 1973, 87 Stat. 696; Pub. L. 93-527, §9(b), Dec. 21, 1974, 88 Stat. 1705; Pub. L. 94-71, title I, §104, Aug. 5, 1975, 89 Stat. 396; Pub. L. 97-66, title II, §204(b), Oct. 17, 1981, 95 Stat. 1029; Pub. L. 98-160, title VII, §703(1), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98-223, title II, §213(3), Mar. 2, 1984, 98 Stat. 46; Pub. L. 98-369, div. B, title V, §2501(a), July 18, 1984, 98 Stat. 1116; Pub. L. 99-576, title VII, §701(63), Oct. 28, 1986, 100 Stat. 3296; renumbered §5110 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§4(a)(2)(A)(vi), (b)(4)(B), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 405, 406; Pub. L. 103-446, title XII, §1201(i)(8), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 108-454, title III, §305, Dec. 10, 2004, 118 Stat. 3611; Pub. L. 112-154, title V, §506, Aug. 6, 2012, 126 Stat. 1193.)

REFERENCES IN TEXT

The date of the enactment of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, referred to in subsec. (b)(2)(C), is the date of enactment of Pub. L. 112-154, which was approved Aug. 6, 2012.

AMENDMENTS

2012—Subsec. (b)(2) to (4). Pub. L. 112-154 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

2004—Subsec. (d). Pub. L. 108-454 struck out par. (1) designation after subsec. (d) designation, substituted “death compensation, dependency and indemnity compensation, or death pension” for “death compensation or dependency and indemnity compensation”, and struck out par.(2) which read as follows: “The effective date of an award of death pension for which application is received within 45 days from the date of death shall be the first day of the month in which the death occurred.”

1994—Subsec. (m). Pub. L. 103-446 struck out subsec. (m) which read as follows: “The effective date of an award of benefits to a surviving spouse based upon termination of actions described in section 103(d)(3) of this title shall not be earlier than the date of receipt of application therefor filed after termination of such actions and after December 31, 1970.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3010 of this title as this section.

Subsec. (c). Pub. L. 102-83, §5(c)(1), substituted “1151” for “351”.

Subsec. (e)(2). Pub. L. 102-83, §5(c)(1), substituted “1311(b)” for “411(b)”.

Subsec. (g). Pub. L. 102-40, §402(d)(1), substituted “5101” for “3001”.

Subsec. (j). Pub. L. 102-83, §4(b)(4)(B), substituted “that Secretary” for “the Secretary” after “month fixed by”.

Subsec. (n). Pub. L. 102-83, §4(a)(2)(A)(vi), substituted “Secretary” for “Veterans’ Administration”.

1986—Subsec. (b)(1). Pub. L. 99-576 substituted “the veteran’s” for “his”.

1984—Subsec. (b)(3)(A). Pub. L. 98-369, §2501(a)(1), designated existing provisions as subpar. (A), inserted “described in subparagraph (B) of this paragraph” after “to a veteran”, substituted “the veteran applies for a retroactive award” for “an application therefor is received”, and added subpar. (B).

Subsec. (d). Pub. L. 98-369, §2501(a)(2), designated existing provisions as par. (1), substituted “dependency and indemnity compensation for which application is received” for “, dependency and indemnity compensation, or death pension, where application is received”, and added par. (2).

Subsec. (m). Pub. L. 98-223 substituted “section” for “subsection”.

1983—Subsecs. (k) to (m). Pub. L. 98-160 substituted “surviving spouse” for “widow” wherever appearing.

1981—Subsec. (e). Pub. L. 97-66 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2) of this subsection, the” for “The”, and added par. (2).

1975—Subsec. (b)(2), (3). Pub. L. 94-71 added par. (2) and redesignated former par. (2) as (3).

1974—Subsec. (l). Pub. L. 93-527 inserted provisions relating to an award or increase of benefits based on recognition of a child upon termination of the child’s marriage by death or divorce.

1973—Subsec. (b). Pub. L. 93-177 designated existing provisions as par. (1) and added par. (2).

1970—Subsecs. (l), (m). Pub. L. 91-376 added subsecs. (l) and (m).

Subsec. (n). Pub. L. 91-584 added subsec. (n).

1962—Subsec. (a). Pub. L. 87-825 inserted “based on an original claim, a claim reopened after final adjudication, or a claim for increase”.

Subsec. (c). Pub. L. 87-825 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 87-825 redesignated former subsec. (c) as (d) and substituted first day of month in which the death occurred, for the day after the day of death, as the effective date. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 87-825 redesignated former subsec. (d) as (e), substituted “first day of the month” for “date”, and struck out “the entitlement arose” after “from such date.” Former subsec. (e) redesignated (j).

Subsec. (f). Pub. L. 87-825 added subsec. (f). A prior subsec. (f) added by Pub. L. 87-674 was redesignated (k) by Pub. L. 87-825.

Subsecs. (g) to (i). Pub. L. 87-825 added subsecs. (g) to (i).

Subsec. (j). Pub. L. 87-825 redesignated former subsec. (e) as (j), and substituted “first day of the month” for “day after the date”, and “month of death” for “date of death”.

Subsec. (k). Pub. L. 87-825 redesignated former subsec. (f), added by Pub. L. 87-674, as (k).

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. B, title V, §2501(b), July 18, 1984, 98 Stat. 1117, provided that: “The amendments made by subsection (a)(1) [amending this section] and the provisions of paragraph (2) of section 3010(d) [now 5110(d)] of title 38, United States Code, as added by subsection (a)(2), shall take effect with respect to applications that are first received after September 30, 1984, for benefits under chapter 15 of title 38, United States Code.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-66 effective Oct. 1, 1981, see section 701(a) of Pub. L. 97-66, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-71 effective Aug. 1, 1975, see section 301 of Pub. L. 94-71, set out as a note under section 1114 of this title.

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 1973 AMENDMENT

Pub. L. 93-177, §6(b), Dec. 6, 1973, 87 Stat. 696, provided that: “Subsection (a) of this section [amending this section] shall apply to applications filed after its effective date [Jan. 1, 1974], but in no event shall an award made thereunder be effective prior to such effective date.”

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 1962 AMENDMENT

Amendment by Pub. L. 87-825 effective first day of second calendar month which begins after Oct. 15, 1962, see section 7 of Pub. L. 87-825, set out as a note under section 110 of this title.

§ 5111. Commencement of period of payment

(a)(1) Notwithstanding section 5110 of this title or any other provision of law and except as provided in paragraph (2) and subsection (c), payment of monetary benefits based on an award or an increased award of compensation, dependency and indemnity compensation, or pension may not be made to an individual for any period before the first day of the calendar month following the month in which the award or increased award became effective as provided under section 5110 of this title or such other provision of law.

(2)(A) In the case of a veteran who is retired or separated from the active military, naval, or air service for a catastrophic disability or disabilities, payment of monetary benefits based on an award of compensation based on an original claim shall be made as of the date on which such award becomes effective as provided under section 5110 of this title or another applicable provision of law.

(B) For the purposes of this paragraph, the term "catastrophic disability", with respect to a veteran, means a permanent, severely disabling injury, disorder, or disease that compromises the ability of the veteran to carry out the activities of daily living to such a degree that the veteran requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others.

(b)(1) Except as provided in paragraph (2) of this subsection, during the period between the effective date of an award or increased award as provided under section 5110 of this title or other provision of law and the commencement of the period of payment based on such award as provided under subsection (a) of this section, an individual entitled to receive monetary benefits shall be deemed to be in receipt of such benefits for the purpose of all laws administered by the Secretary.

(2) If any person who is in receipt of retired or retirement pay would also be eligible to receive compensation or pension upon the filing of a waiver of such pay in accordance with section 5305 of this title, such waiver shall not become effective until the first day of the month following the month in which such waiver is filed, and nothing in this section shall prohibit the receipt of retired or retirement pay for any period before such effective date.

(c)(1) This section shall not apply to payments made pursuant to section 5310 of this title.

(2) In the case of a temporary increase in compensation for hospitalization or treatment where such hospitalization or treatment commences and terminates within the same calendar month, the period of payment shall commence on the first day of such month.

(d) For the purposes of this section, the term "award or increased award" means—

- (1) an original or reopened award; or

(2) an award that is increased because of an added dependent, increase in disability or disability rating, or reduction in income.

(Added Pub. L. 97-253, title IV, § 401(a)(1), Sept. 8, 1982, 96 Stat. 801, § 3011; amended Pub. L. 98-223, title I, § 113, Mar. 2, 1984, 98 Stat. 40; renumbered § 5111 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 111-275, title VI, § 605(a), Oct. 13, 2010, 124 Stat. 2885; Pub. L. 112-154, title V, § 507(b), Aug. 6, 2012, 126 Stat. 1194.)

AMENDMENTS

2012—Subsec. (c)(1). Pub. L. 112-154 substituted "not apply to payments made pursuant to section 5310 of this title" for "apply to payments made pursuant to section 5310 of this title only if the monthly amount of dependency and indemnity compensation or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received, but for such veteran's death, for the month in which such veteran's death occurred".

2010—Subsec. (a). Pub. L. 111-275 designated existing provisions as par. (1), substituted "in paragraph (2) and subsection (c)" for "in subsection (c) of this section", and added par. (2).

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3011 of this title as this section.

Subsec. (a). Pub. L. 102-40, § 402(d)(1), substituted "5110" for "3010" in two places.

Subsec. (b)(1). Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-40, § 402(d)(1), substituted "5110" for "3010".

Subsec. (b)(2). Pub. L. 102-40, § 402(d)(1), substituted "5305" for "3105".

Subsec. (c)(1). Pub. L. 102-40, § 402(d)(1), substituted "5310" for "3110".

1984—Subsec. (c). Pub. L. 98-223 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title V, § 507(c), Aug. 6, 2012, 126 Stat. 1194, provided that: "The amendments made by this section [amending this section and section 5310 of this title] shall take effect on the date of the enactment of this Act [Aug. 6, 2012], and shall apply with respect to deaths that occur on or after that date."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-275, title VI, § 605(b), Oct. 13, 2010, 124 Stat. 2886, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2011, and shall apply with respect to awards of compensation based on original claims that become effective on or after that date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-223 effective Oct. 1, 1983, see section 114 of Pub. L. 98-223, set out as a note under section 1112 of this title.

EFFECTIVE DATE

Pub. L. 97-253, title IV, § 401(b), Sept. 8, 1982, 96 Stat. 802, provided that: "Section 3011 [now 5111] of title 38, United States Code, as added by subsection (a), shall apply to awards and increased awards the effective dates of which are after September 30, 1982."

§ 5112. Effective dates of reductions and discontinuances

(a) Except as otherwise specified in this section, the effective date of reduction or discontinuance of compensation, dependency and