

## APPLICATION FOR BENEFITS

Pub. L. 108-183, title I, §101(e), Dec. 16, 2003, 117 Stat. 2653, provided that: "In the case of an individual who but for having remarried would be eligible for benefits under title 38, United States Code, by reason of the amendment made by subsection (a) [amending this section] and whose remarriage was before the date of the enactment of this Act [Dec. 16, 2003] and after the individual had attained age 57, the individual shall be eligible for such benefits by reason of such amendment only if the individual submits an application for such benefits to the Secretary of Veterans Affairs not later than the end of the one-year period beginning on the date of the enactment of this Act."

Pub. L. 107-330, title I, §101(b), Dec. 6, 2002, 116 Stat. 2821, as amended by Pub. L. 108-183, title I, §101(f), Dec. 16, 2003, 117 Stat. 2653, provided that: "In the case of an individual who but for having remarried would be eligible for medical care under section 1781 of title 38, United States Code, and whose remarriage was before the date of the enactment of this Act [Dec. 6, 2002] and after the individual had attained age 55, the individual shall be eligible for such medical care by reason of the amendments made by subsection (a) [amending this section] only if an application for such medical care is received by the Secretary of Veterans Affairs before the end of the one-year period beginning on the date of the enactment of the Veterans Benefits Act of 2003 [Dec. 16, 2003]."

## LIMITATION ON PAYMENTS

Pub. L. 106-117, title V, §502(d), Nov. 30, 1999, 113 Stat. 1574, provided that: "No payment may be made to a person by reason of paragraphs (2) and (3) of section 103(d) of title 38, United States Code, as added by subsection (a), for any period before the effective date specified in subsection (c) [set out as an Effective Date of 1999 Amendment note above]."

## APPLICABILITY OF AMENDMENTS

Pub. L. 102-568, title I, §103, Oct. 29, 1992, 106 Stat. 4322, provided that:

"(a) EXCEPTION.—The amendments made by section 8004 of the Omnibus Budget Reconciliation Act of 1990 (105 Stat. 424) [Pub. L. 101-508, 104 Stat. 1388-343, amending this section] shall not apply to any case in which a legal proceeding to terminate an existing marital relationship was commenced before November 1, 1990, by an individual described in subsection (b) if that proceeding directly resulted in the termination of such marriage.

"(b) COVERED INDIVIDUALS.—An individual referred to in subsection (a) is an individual who, but for the marital relationship referred to in subsection (a), would be considered to be the surviving spouse of a veteran."

Pub. L. 102-86, title V, §502, Aug. 14, 1991, 105 Stat. 424, provided that: "The amendments made by section 8004 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) [amending this section] shall not apply with respect to any individual who on October 31, 1990, was a surviving spouse or child within the meaning of title 38, United States Code, unless after that date that individual (1) marries, or (2) in the case of a surviving spouse, begins to live with another person while holding himself or herself out openly to the public as that person's spouse."

## REINSTATEMENT OF BENEFITS SUBSEQUENT TO TERMINATION OF RELATIONSHIP OR CONDUCT RESTRICTING PAYMENT OF BENEFITS; EFFECTIVE DATE OF AWARD

Pub. L. 91-376, §5, Aug. 12, 1970, 84 Stat. 789, effective January 1, 1971, provided that:

"(a) If a widow terminates a relationship or conduct which resulted in imposition of a prior restriction on payment of benefits, in the nature of inference or presumption of remarriage, or relating to open and notorious adulterous cohabitation or similar conduct, she shall not be denied any benefits by the Veterans' Administration, other than insurance, solely because of such prior relationship or conduct.

"(b) The effective date of an award of benefits resulting from enactment of subsection (a) of this section shall not be earlier than the date of receipt of application therefor, filed after termination of the particular relationship or conduct and after December 31, 1970."

## § 104. Approval of educational institutions

(a) For the purpose of determining whether or not benefits are payable under this title (except chapter 35 of this title) for a child over the age of eighteen years and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institute, university, or other educational institution, the Secretary may approve or disapprove such educational institutions.

(b) The Secretary may not approve an educational institution under this section unless such institution has agreed to report to the Secretary the termination of attendance of any child. If any educational institution fails to report any such termination promptly, the approval of the Secretary shall be withdrawn.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1110; Pub. L. 91-24, §1(c), June 11, 1969, 83 Stat. 33; Pub. L. 99-576, title VII, §701(3), Oct. 28, 1986, 100 Stat. 3290; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

## Editorial Notes

## AMENDMENTS

1991—Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

1986—Subsec. (b). Pub. L. 99-576 substituted "report to the Administrator" for "report to him".

1969—Subsec. (a). Pub. L. 91-24 substituted "the age of twenty-three years" for "the age of twenty-one years".

## § 105. Line of duty and misconduct

(a) An injury or disease incurred during active military, naval, air, or space service will be deemed to have been incurred in line of duty and not the result of the veteran's own misconduct when the person on whose account benefits are claimed was, at the time the injury was suffered or disease contracted, in active military, naval, air, or space service, whether on active duty or on authorized leave, unless such injury or disease was a result of the person's own willful misconduct or abuse of alcohol or drugs. Venereal disease shall not be presumed to be due to willful misconduct if the person in service complies with the regulations of the appropriate service department requiring the person to report and receive treatment for such disease.

(b) The requirement for line of duty will not be met if it appears that at the time the injury was suffered or disease contracted the person on whose account benefits are claimed (1) was avoiding duty by deserting the service or by absenting himself or herself without leave materially interfering with the performance of military duties; (2) was confined under sentence of court-martial involving an unremitted dishonorable discharge; or (3) was confined under sentence of a civil court for a felony (as determined under the laws of the jurisdiction where the person was convicted by such court).

(c) For the purposes of any provision relating to the extension of a delimiting period under

any education-benefit or rehabilitation program administered by the Secretary, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1110; Pub. L. 99-576, title VII, §701(4), Oct. 28, 1986, 100 Stat. 3290; Pub. L. 100-689, title I, §109, Nov. 18, 1988, 102 Stat. 4170; Pub. L. 101-508, title VIII, §8052(a)(1), Nov. 5, 1990, 104 Stat. 1388-351; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 116-283, div. A, title IX, §926(a)(2), Jan. 1, 2021, 134 Stat. 3829.)

### Editorial Notes

#### AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283 substituted “air, or space service” for “or air service” in two places.

1991—Subsec. (c). Pub. L. 102-83 substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

1990—Subsec. (a). Pub. L. 101-508 substituted “a result of the person’s own willful misconduct or abuse of alcohol or drugs” for “the result of the person’s own willful misconduct”.

1988—Subsec. (c). Pub. L. 100-689 added subsec. (c).

1986—Subsec. (a). Pub. L. 99-576, §701(4)(A), substituted “result of the person’s” for “result of his” and “requiring the person” for “requiring him”.

Subsec. (b)(1). Pub. L. 99-576, §701(4)(B), substituted “service or by absenting himself or herself” for “service, or by absenting himself”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title VIII, §8052(b), Nov. 5, 1990, 104 Stat. 1388-351, provided that: “The amendments made by subsection (a) [amending this section and sections 310 and 331 [now 1110 and 1131] of this title] shall take effect with respect to claims filed after October 31, 1990.”

### § 106. Certain service deemed to be active service

(a)(1) Service as a member of the Women’s Army Auxiliary Corps for ninety days or more by any woman who before October 1, 1943, was honorably discharged for disability incurred or aggravated in line of duty which rendered her physically unfit to perform further service in the Women’s Army Auxiliary Corps or the Women’s Army Corps shall be considered active duty for the purposes of all laws administered by the Secretary.

(2) Any person entitled to compensation or pension by reason of this subsection and to employees’ compensation based upon the same service under subchapter I of chapter 81 of title 5 must elect which benefit she will receive.

(b) Any person—

(1) who has applied for enlistment or enrollment in the active military, naval, air, or space service and has been provisionally accepted and directed or ordered to report to a place for final acceptance into such service; or

(2) who has been selected or drafted for service in the Armed Forces and has reported pursuant to the call of the person’s local draft board and before rejection; or

(3) who has been called into the Federal service as a member of the National Guard, but has not been enrolled for the Federal service; and

who has suffered an injury or contracted a disease in line of duty while en route to or from, or at, a place for final acceptance or entry upon active duty, will, for the purposes of chapters 11, 13, 19, 21, 31, and 39 of this title, and for purposes of determining service-connection of a disability under chapter 17 of this title, be considered to have been on active duty and to have incurred such disability in the active military, naval, air, or space service.

(c) For the purposes of this title, an individual discharged or released from a period of active duty shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for that individual to proceed to that individual’s home by the most direct route, and in any event that individual shall be deemed to have continued on active duty until midnight of the date of such discharge or release.

(d)(1) For the purposes of this title, any individual—

(A) who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training; and

(B) who is disabled or dies from an injury or covered disease incurred while proceeding directly to or returning directly from such active duty for training or inactive duty training, as the case may be;

shall be deemed to have been on active duty for training or inactive duty training, as the case may be, at the time such injury or covered disease was incurred.

(2) In determining whether or not such individual was so authorized or required to perform such duty, and whether or not such individual was disabled or died from injury or covered disease so incurred, the Secretary shall take into account the hour on which such individual began so to proceed or to return; the hour on which such individual was scheduled to arrive for, or on which such individual ceased to perform, such duty; the method of travel employed; the itinerary; the manner in which the travel was performed; and the immediate cause of disability or death.

(3) Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this subsection, the burden of proof shall be on the claimant.

(4) For purposes of this subsection, the term “covered disease” means any of the following:

- (A) Acute myocardial infarction.
- (B) A cardiac arrest.
- (C) A cerebrovascular accident.

(e) Each person who has incurred a disability as a result of an injury or disease described in subsection (b) shall be entitled to the same rights, privileges, and benefits under title 5 as a preference eligible described in section 2108(3)(C) of title 5.

(f) Service as a member of the Alaska Territorial Guard during World War II of any individual who was honorably discharged therefrom under section 8147 of the Department of Defense Appropriations Act, 2001, shall be considered ac-