

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-433 effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-197 effective Jan. 1, 1972, see section 10 of Pub. L. 92-197, set out as a note under section 1311 of this title.

§ 1142. Rates of peacetime death compensation

For the purposes of section 1141 of this title, the monthly rates of death compensation payable shall be those specified in section 1122 of this title.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, § 342; Pub. L. 93-295, title II, § 206(a), May 31, 1974, 88 Stat. 183; renumbered § 1142 and amended Pub. L. 102-83, § 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

Editorial Notes

AMENDMENTS

1991—Pub. L. 102-83, § 5(a), renumbered section 342 of this title as this section.

Pub. L. 102-83, § 5(c)(1), substituted “1141” for “341” and “1122” for “322”.

1974—Pub. L. 93-295 substituted “those specified in section 322 of this title” for “equal to 80 per centum of the rates prescribed by section 322 of this title, adjusted upward or downward to the nearest dollar, counting fifty cents and over as a whole dollar”.

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EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-295 effective May 1, 1974, see section 401 of Pub. L. 93-295, set out as a note under section 1114 of this title.

[§ 1143. Vacant]**Editorial Notes**

CODIFICATION

Prior to renumbering of sections 301 to 363 of this chapter as sections 1101 to 1163 by Pub. L. 102-83, § 5(a), Aug. 6, 1991, 105 Stat. 406, section 343 of this chapter, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, which prescribed conditions under which wartime rates of compensation were payable, was repealed by Pub. L. 93-295, title II, § 206(b), title IV, § 401, May 31, 1974, 88 Stat. 183, 184, effective May 1, 1974.

**SUBCHAPTER VI—GENERAL
COMPENSATION PROVISIONS****§ 1151. Benefits for persons disabled by treatment or vocational rehabilitation**

(a) Compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded for a qualifying additional disability or a qualifying death of a veteran in the same manner as if such additional disability or death were service-connected. For purposes of this section, a disability or death is a qualifying additional disability or qualifying death if the disability or death was not the result of the veteran's willful misconduct and—

(1) the disability or death was caused by hospital care, medical or surgical treatment, or

examination furnished the veteran under any law administered by the Secretary, either by a Department employee or in a Department facility as defined in section 1701(3)(A) of this title, and the proximate cause of the disability or death was—

(A) carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination; or

(B) an event not reasonably foreseeable; or

(2) the disability or death was proximately caused (A) by the provision of training and rehabilitation services by the Secretary (including by a service-provider used by the Secretary for such purpose under section 3115 of this title) as part of an approved rehabilitation program under chapter 31 of this title, or (B) by participation in a program (known as a “compensated work therapy program”) under section 1718 of this title.

(b)(1) Where an individual is, on or after December 1, 1962, awarded a judgment against the United States in a civil action brought pursuant to section 1346(b) of title 28 or, on or after December 1, 1962, enters into a settlement or compromise under section 2672 or 2677 of title 28 by reason of a disability or death treated pursuant to this section as if it were service-connected, then (except as otherwise provided in paragraph (2)) no benefits shall be paid to such individual for any month beginning after the date such judgment, settlement, or compromise on account of such disability or death becomes final until the aggregate amount of benefits which would be paid but for this subsection equals the total amount included in such judgment, settlement, or compromise.

(2) In the case of a judgment, settlement, or compromise covered by paragraph (1) that becomes final on or after the date of the enactment of this paragraph and that includes an amount that is specifically designated for a purpose for which benefits are provided under chapter 21 or 39 of this title (hereinafter in this paragraph referred to as the “offset amount”), if such judgment, settlement, or compromise becomes final before the date of the award of benefits under chapter 21 or 39 for the purpose for which the offset amount was specifically designated—

(A) the amount of such award shall be reduced by the offset amount; and

(B) if the offset amount is greater than the amount of such award, the excess amount received pursuant to the judgment, settlement or compromise, shall be offset against benefits otherwise payable under this chapter.

(c) A qualifying additional disability under this section shall be treated in the same manner as if it were a service-connected disability for purposes of the following provisions of this title:

(1) Chapter 21, relating to specially adapted housing.

(2) Chapter 39, relating to automobiles and adaptive equipment.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, § 351; Pub. L. 87-825, § 3, Oct. 15, 1962, 76 Stat. 950; Pub.

L. 91-24, § 3, June 11, 1969, 83 Stat. 33; Pub. L. 94-433, title IV, § 404(19), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98-223, title II, § 213(1), Mar. 2, 1984, 98 Stat. 46; renumbered § 1151 and amended Pub. L. 102-83, §§ 4(a)(1), 5(a), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 104-204, title IV, § 422(a), Sept. 26, 1996, 110 Stat. 2926; Pub. L. 106-419, title III, § 303, Nov. 1, 2000, 114 Stat. 1853; Pub. L. 108-454, title III, § 304(a),(c), Dec. 10, 2004, 118 Stat. 3611.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2), is the date of enactment of Pub. L. 108-454, which was approved Dec. 10, 2004.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-454, § 304(c), designated existing provision as par. (1), inserted “(except as otherwise provided in paragraph (2))” after “service-connected, then”, and added par. (2).

Subsec. (c). Pub. L. 108-454, § 304(a), added subsec. (c). 2000—Subsec. (a)(2). Pub. L. 106-419 inserted “(A)” after “proximately caused” and added cl. (B).

1996—Subsec. (a). Pub. L. 104-204, § 422(a)(1), added subsec. (a) and struck out former first sentence of section which read as follows: “Where any veteran shall have suffered an injury, or an aggravation of an injury, as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation under chapter 31 of this title, awarded under any of the laws administered by the Secretary, or as a result of having submitted to an examination under any such law, and not the result of such veteran’s own willful misconduct, and such injury or aggravation results in additional disability to or the death of such veteran, disability or death compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded in the same manner as if such disability, aggravation, or death were service-connected.”

Subsec. (b). Pub. L. 104-204, § 422(a)(2), designated second sentence of section as subsec. (b), struck out “, aggravation,” after “disability” in two places, and substituted “this subsection equals the total amount” for “this sentence equals the total amount”.

1991—Pub. L. 102-83, § 5(a), renumbered section 351 of this title as this section.

Pub. L. 102-83, § 4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

1984—Pub. L. 98-223 substituted “title 28” for “title 28, United States Code,” in two places.

1976—Pub. L. 94-433 struck out “him” before “under any of the laws” and substituted “such veteran’s” for “his” in first sentence.

1969—Pub. L. 91-24 substituted “, on or after December 1, 1962,” for “hereafter” wherever appearing.

1962—Pub. L. 87-825 provided that where an individual is awarded a judgment under section 1346(b) of title 28, enters a settlement or compromise under section 2672 or 2677 of such title by reason of a disability, aggravation, or death treated pursuant to this section as if service-connected, then no benefits shall be paid such individual for any month beginning after such judgment, settlement or compromise becomes final until the aggregate amount of benefits equals the total amount included in such judgment, settlement, or compromise, and struck out provisions which required that no benefits were to be awarded unless application was made therefor within two years after an injury or aggravation was suffered, or a death occurred.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-454, title III, § 304(b), Dec. 10, 2004, 118 Stat. 3611, provided that: “Subsection (c) of section 1151

of title 38, United States Code, as added by subsection (a), shall apply with respect to eligibility for benefits and services provided by the Secretary of Veterans Affairs on or after the date of the enactment of this Act [Dec. 10, 2004].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-204, title IV, § 422(b), (c), Sept. 26, 1996, 110 Stat. 2927, provided that:

“(b)(1) The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1996.

“(2) Section 1151 of title 38, United States Code (as amended by subsection (a)), shall govern all administrative and judicial determinations of eligibility for benefits under such section that are made with respect to claims filed on or after the effective date set forth in paragraph (1) [Oct. 1, 1996], including those based on original applications and applications seeking to reopen, revise, reconsider, or otherwise readjudicate on any basis claims for benefits under such section 1151 or any provision of law that is a predecessor of such section.

“(c) Notwithstanding [sic] subsection (b)(1), section 421(d) [set out as a note under section 1801 of this title], or any other provision of this Act [see Tables for classification], section 421 [enacting sections 1801 to 1806 of this title, amending section 5312 of this title, and enacting provisions set out as notes under section 1801 of this title] and this section [amending this section] shall not take effect until October 1, 1997, unless legislation other than this Act is enacted to provide for an earlier effective date.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-433 effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as a note under section 1101 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.

§ 1152. Persons heretofore having a compensable status

The death and disability benefits of this chapter shall, notwithstanding the service requirements thereof, be granted to persons heretofore recognized by law as having a compensable status, including persons whose claims are based on war or peacetime service rendered before April 21, 1898.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, § 352; renumbered § 1152, Pub. L. 102-83, § 5(a), Aug. 6, 1991, 105 Stat. 406.)

Editorial Notes

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 352 of this title as this section.

§ 1153. Aggravation

A preexisting injury or disease will be considered to have been aggravated by active military, naval, air, or space service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, § 353; renumbered § 1153, Pub. L. 102-83, § 5(a), Aug. 6,