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SENATE COMMITTEE PRINT NO. 40

ANNUAL REPORT FOR 1975

ON

RELIEF FROM ADMINISTRATIVE ERROR

AN ANNUAL REPORT

PREPARED BY THE

VETERANS' ADMINISTRATION

(Pursuant to Section 210(c)(3)(B) of Title 38, U.S. Code, as amended by Public Law 92–328)

SUBMITTED TO THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

VANCE HARTKE, *Chairman*

JUNE 11, 1976

Printed for the use of the Committee on Veterans' Affairs

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94th Congress, 2d Session } SENATE COMMITTEE PRINT NO. 40

AN ANNUAL REPORT

OF

THE LEGISLATIVE ACTIVITIES OF THE

COMMITTEE ON VETERANS' AFFAIRS

FOR THE YEAR 1975

COMMITTEE ON VETERANS' AFFAIRS

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JUNE 11, 1976

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EXCERPT FROM PUBLIC LAW 92-328

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TITLE II—RELIEF FROM ADMINISTRATION ERROR, OVERPAYMENTS, AND FORFEITURE

SEC. 201. Section 210(c) of title 38, United States Code, is amended by adding an additional subsection (3), reading as follows:

"(3)(A) If the Administrator determines that any veteran, widow, child of a veteran, or other person, has suffered loss as a consequence of reliance upon a determination by the Veterans' Administration of eligibility or entitlement to benefits, without knowledge that it was erroneously made, he is authorized to provide such relief on account of such error as he determines equitable, including the payment of moneys to any person whom he determines equitably entitled thereto.

"(B) The Administrator shall submit an annual report to the Congress on January 1, 1973, and each succeeding year containing a brief summary, including a statement as to the disposition of each case recommended to him for equitable relief under this paragraph."

* * * * * * *

LETTER OF TRANSMITTAL

VETERANS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,
Washington, D.C., June 4, 1976.

Hon. NELSON A. ROCKEFELLER,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: In accordance with the provisions of 38 U.S.C. 210(c)(3)(B), I have the honor of submitting a report covering those cases recommended for equitable relief under paragraph 210(c)(3)(A) during calendar year 1975.

Equitable relief was granted in 27 out of 28 cases during calendar year 1975 in the total amount of $44,564.75 as compared to 33 out of 34 cases in the total amount of $45,071 for calendar year 1974.

Sincerely,

ODELL W. VAUGHN,
(For Richard L. Roudebush, Administrator).

Enclosure.

Relief From Administrative Error

During the calendar year 1975, there were 27 cases recommended to the Administrator of Veterans Affairs for equitable relief under 38 U.S.C. 210(c)(3)(A). The facts of those cases are as follows:

CASE 1

Claimant had served as a midshipman at the Naval Academy and on June 4, 1971, was issued a Certificate of Eligibility showing entitlement to 25½ months of educational benefits. Relying on this, he enrolled in a flight training course, and on February 9, 1973, he was notified that his Certificate of Eligibility was erroneously issued since midshipman service is not qualifying for educational benefits. Since the claimant incurred a loss in reliance on administrative error by the VA, legal justification existed for granting equitable relief under 38 U.S.C. 210(c)(3)(A) for $953.90 which is 90 percent of the obligation incurred.

CASE 2

Veteran was notified on February 6, 1974, that his wife and daughter were eligible for medical care under CHAMPVA and eligibility cards were issued as a result of an erroneous interpretation by the processing eligibility clerk at the VA Hospital that the veteran was rated P. & T. At the time, veteran was notified of the error, veteran's wife had been treated four times at a total cost of $828.18, of which CHAMPVA would have paid $583.64. Since the veteran suffered a loss by relying on an erroneous determination as to his dependents' eligibility for CHAMPVA benefits, legal justification existed for granting equitable relief under 38 U.S.C. 210(c)(3)(A) in the amount of $583.64.

CASE 3

Veteran was issued an authorization for dental treatment in the amount of $665. After veteran had been treated and the bill for treatment was submitted to the VA for payment, it was determined that the charge exceeded the maximum amount allowable under the VA Dental Fee Schedule by $240. Since the fee dentist acted in reliance on this erroneous authorization by providing treatment of a greater value than actually could be authorized, without knowledge of the error, legal justification existed for granting equitable relief under 38 U.S.C. 210(c)(3)(A) in the amount of $240, representing the unpaid balance of the fee dentist's bill.

CASE 4

The claimant served on active duty for training and on November 15, 1973, was issued a Certificate of Eligibility showing entitlement

to 36 months of educational benefits. He enrolled in a flight training program and had incurred charges of $747.45 by the time he was notified on August 19, 1974, that his certificate had been issued in error (he had active duty for training rather than active duty). Since the claimant incurred a loss in reliance on administrative error by the VA, legal justification existed for granting equitable relief under 38 U.S.C. 210(c)(3)(A) in the amount of $672.71 which is 90 percent of the cost of the obligation incurred.

CASE 5

The claimant served on active duty for training and on November 26, 1974, was issued a Certificate of Eligibility showing entitlement to 10½ months of educational benefits. He enrolled in a flight training program and had incurred charges of $145.20 at the time he was notified that his certificate was issued in error (he had active duty for training rather than active duty). Since the claimant incurred a loss in reliance on administrative error by the VA, legal justification existed for granting equitable relief under 38 U.S.C. 210(c)(3)(A) in the amount of 90 percent of the cost of the obligation he incurred.

CASE 6

Veteran was issued a Certificate of Eligibility for 13½ months educational benefits when he was entitled to only 4½ months assistance. The veteran had enrolled in, and completed, a flight training course when notified by the VA that his entitlement was $990 although the cost of the course was $2,195.77. Since the veteran incurred a loss in reliance on administrative error by the VA, legal justification existed for granting equitable relief under section 210(c)(3)(A) for $986.19 which is 90 percent of the obligation incurred.

CASE 7

Veteran received an automobile allowance in 1946. In February 1975, veteran submitted an application for automobile in which he indicated that he had previously received the automobile allowance. Certificate of Eligibility was erroneously issued by VA Regional Office, San Diego. Veteran returned automobile to the dealer upon notification of his ineligibility. Veteran, having incurred a loss in reliance on administrative error on the part of VA, without knowledge of the error, was entitled to equitable relief under section 210(c)(3)(A) in the amount of $55.90.

CASE 8

A Certificate of Eligibility was issued veteran showing entitlement to a correspondence course program which constituted his third change of program. He completed 8 lessons before being informed that the certificate was in error since his third change of program was not necessitated by circumstances beyond his control. Since the veteran incurred a loss in reliance on administrative error by the VA, legal justification existed under section 210(c)(3)(A) for granting equitable relief in the amount of $188.74, the loss incurred.

CASE 9

Subsequent to counseling, a child of a veteran was issued a Certificate of Eligibility for entitlement to educational benefits. After completion of the course, she was advised of ineligibility because the veteran's service-connected disability was not permanent. Since the claimant incurred a loss in reliance on administrative error of the VA, legal justification existed for granting equitable relief under section 210(c)(3)(A) for $815.05, the loss incurred.

CASE 10

After veteran had had a renal transplant at VA Hospital, Ann Arbor, Mich., VA Hospital, Ann Arbor social worker arranged authorization for veteran to receive post-transplant care on a fee basis at University of Texas Medical Branch Hospital on a temporary basis. Veteran received outpatient and inpatient care at University of Texas Medical Branch Hospital. VA Hospital, Houston, disallowed veteran's claims as unauthorized since it was determined that there was no evidence that a medical emergency existed or that the treatment could not have provided at Houston VA Hospital. Because of administrative error on part of VA medical personnel, veteran was entitled to equitable relief under section 210(c)(3)(A) in the amount of $2,032.27 for loss incurred.

CASE 11

In July 1970, claimant was issued a Certificate of Eligibility by the VA for an automotive mechanics course. After claimant requested a change of program for a correspondence course in truck driving, he was issued another Certificate of Eligibility. In May 1974, after claimant had enrolled for 25 lessons in the truck driving course, he was advised that he was not entitled to receive educational benefits because of his military discharge under conditions other than honorable. Administrative error occurred when claimant was first issued a Certificate of Eligibility in July 1970. Since claimant relied on this determination of eligibility by enrolling in a course approved for eligible veterans, and incurred a loss, he was entitled to equitable relief under section 210(c)(3)(A) in the amount of $805.50.

CASE 12

On April 1, 1975, veteran's wife was informed by VA that veteran's hospitalization at a private facility in Texas was authorized at VA expense. In fact, veteran did not qualify for treatment in a private facility. Veteran underwent open heart surgery at St. Anthony's Hospital in Amarillo, Tex. Since the veteran's wife relied on erroneous advice given by a VA employee, thus incurring unnecessary hospital expenses, veteran was entitled to administrative relief under section 210(c)(3)(A) in the amount of $6,144.32.

CASE 13

Veteran was certified as being eligible for an automobile allowance in November 1948, and he purchased an automobile the same month.

Veteran applied in February 1975 for an automobile, indicating his previous 1948 application. In March 1975, VA erroneously issued a Certificate of Eligibility showing the veteran to be entitled to an automobile. Veteran purchased an automobile in reliance on the VA certification and was entitled to administrative relief under section 210(c)(3)(A) in the amount of $3,300.

CASE 14

Veteran exhausted his educational benefits and then submitted a claim for further benefits. He was issued a Certificate of Eligibility and enrolled in a bachelor's degree course, unaware that he was not entitled to additional benefits because he had previously received a bachelor's degree. After completing part of the course, the veteran was notified of nonentitlement. Since the veteran incurred a loss in reliance on administrative error by the VA, legal justification existed for granting equitable relief under 38 U.S.C. 210(c)(3)(A) in the amount of $410.90, the loss incurred.

CASE 15

Claimant was issued a Certificate of Eligibility for 9 months of entitlement to educational benefits. He enrolled in a degree program at the University of Wisconsin for 12 credit hours. Claimant was informed that his claim was disallowed after an administrative decision that his discharge from the Air Force was issued under dishonorable conditions. Claimant, having relied on the VA determination of eligibility by enrolling in a course of study without knowledge of the error, was entitled to equitable relief under section 210(c)(3)(A) in the amount of $1,000, which represents the full amount of loss claimed to have been suffered.

CASE 16

In 1952, a voucher was issued by the VA for $1,600 for payment of an automobile which had been purchased by the veteran. In 1975, veteran filed an application for Automobile or Other Conveyance and Adaptive Equipment, indicating that he had previously made application for an automobile or other conveyance. The VA Regional Office, Columbia, S.C., erroneously certified the veteran's eligibility for an automobile allowance. Veteran purchased an automobile without knowledge of the administrative error committed by VA employees and was entitled under section 210(c)(3)(A) to relief in the amount of $2,002.80.

CASE 17

Veteran, service-connected for enucleation, left eye, with prosthesis due to shell fragment wounds, filed an application for Automobile or Other Conveyance and Adaptive Equipment. VA Regional Office certified veteran's eligibility for automobile allowance, when he, in fact, was not eligible. Veteran purchased a 1975 automobile. When the error was discovered, veteran relinquished the car to the dealer for resale. Since but for the administrative error committed by VA employees, veteran would not have purchased the automobile, he was entitled to equitable relief under section 210(c)(3)(A) in the amount of

$1,137.08, representing the difference between the amount owed on the loan and the amount he would receive from the dealer on resale.

CASE 18

Veteran's dentist examined veteran and submitted to VA a list of the conditions found and the work proposed to correct same. VA inserted in the form a total price of $2,098 as amount of work authorized and returned the form to dentist. In fact, only $1,245 of the work was authorized. The dentist performed all of the work and thus suffered a loss in reliance on the administrative error by VA. Equitable relief under section 210(c)(3)(A) was granted in the amount of $853.

CASE 19

Veteran was issued a Certificate of Eligibility showing entitlement to 25½ months of educational benefits. He enrolled in a flight training course but discontinued his course when informed of nonentitlement, because his service was prior to January 1955, and, therefore, not qualifying service. Since the veteran incurred a loss in reliance on administrative error by the VA, legal justification existed for granting equitable relief under section 210(c)(3)(A) for $583.92, which is 90 percent of the obligation incurred.

CASE 20

Veteran died in the VA Hospital, Long Beach, Calif. Arrangements for burial were made by the hospital with a funeral director. Deceased veteran was buried in the Sawtelle National Cemetery, Los Angeles, Calif. It was subsequently discovered that the determination of eligibility of the deceased veteran for burial benefits was based on the records of another individual. The funeral director suffered a loss as a result of his reliance, in good faith, upon the erroneous determination of eligibility by the VA and equitable relief was granted under section 210(c)(3)(A).

CASE 21

Veteran's entitlement to educational benefits was exhausted as of June 8, 1973, while he was pursuing a Physician's Assistant Program. On January 9, 1975, veteran was issued a Certificate of Eligibility and awarded an extension of benefits from January 6, 1975, through April 23, 1975. However, the veteran was not entitled to this extension since he was not pursuing an undergraduate degree at the time his entitlement was exhausted. Veteran incurred a loss in reliance on this administrative error by VA by enrolling in the course of study and equitable relief was granted under section 210(c)(3)(A) in the amount of $240.41, representing the $281.27 loss incurred, minus $40.86 already paid to him.

CASE 22

Veteran was notified by VA Regional Office on February 26, 1975, that he had 14¼ months of remaining entitlement when he had, in fact, only one-fourth month remaining. Based upon this determina-

tion, veteran enrolled in and completed a flight training course. Equitable relief was granted under section 210(c)(3)(A) in the amount of $3,945.79, which constitutes 90 percent of the total charges for the course, minus $171.71, which the veteran had already been paid based on his actual remaining entitlement.

CASE 23

Veteran filed an application for automobile allowance in 1975, indicating that he had previously applied for the allowance. Veteran was informed that his application for allowance had been approved. On March 31, 1975, veteran purchased an automobile. Since the veteran had previously received an automobile allowance in 1970, the allowance could not be paid and veteran sold the car to his brother. Since the dealer would not have sustained the loss but for the administrative error committed by the VA employees, he was entitled to administrative relief under section 210(c)(3)(A) in the amount of $3,300 representing the amount of the automobile allowance erroneously certified.

CASE 24

After receipt of an automobile allowance in 1947, veteran submitted, in May 1975, an application for a second allowance in which he indicated previous application for the allowance. A certificate of eligibility was issued and veteran purchased an automobile. Since the veteran relied on the erroneous information of VA by purchasing an automobile without knowledge of the error, he was entitled to equitable relief under section 210(c)(3)(A) in the amount of $3,300.

CASE 25

After receipt of an automobile allowance in November 1969, veteran made a second application for automobile allowance in which he indicated prior receipt of the allowance. A second certification of eligibility was made by VA. In reliance on this certification, without knowledge of the error, veteran purchased a vehicle in April 1975, at a cost of $3,109. Administrative relief under section 210(c)(3)(A) was granted in the amount of $190 as payment to the veteran and $786.75 as payment to the car dealer.

CASE 26

The Seattle VA Hospital contracted with St. Joseph Hospital in Takoma, Wash., where veteran lived, to dialize three times a week. The veteran was instructed by VA medical personnel to report directly to St. Joseph Hospital whenever he felt it medically necessary. However, veteran was not entitled to medical care at a private facility. He acted on erroneous advice on the VA by reporting to St. Joseph Hospital for acute renal failure without knowledge of the error. Administrative relief was granted under section 210(c)(3)(A) in the amount of $3,738.20, representing the cost of veteran's care at the private medical facility.

CASE 27

Veteran was admitted to VA Hospital, Sepulveda, Calif., on May 1, 1975, following a cerebal vascular accident. Arrangements were subsequently made by VA personnel to have the veteran transferred to a private facility and the veteran was advised that the VA would arrange for payment of expenses at that facility. However, veteran was not entitled to private care. Since the veteran relied on the erroneous determination of entitlement to care at a private facility, administrative relief in the amount of $9,157 was provided to the private facility for medical care furnished to the veteran.

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