

Register on September 21, 1998, at 63 FR 50145, is adopted as a final rule without change.

Dated: June 1, 1999.

John Hart,

Principal Deputy Director.

[FR Doc. 99-15203 Filed 6-17-99; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AJ50

Pension Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect statutory provisions extending the date through which VA will limit the pension benefits of certain veterans and surviving spouses receiving Medicaid-covered nursing home care to \$90 per month.

DATES: *Effective Date:* August 5, 1997.

FOR FURTHER INFORMATION CONTACT: Donald England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: Section 8003 of Pub. L. 101-508 required VA to limit the pension benefits of any veteran having neither spouse nor child and who receives Medicaid-covered nursing home care to no more than \$90 per month. This statutory provision expired September 30, 1992. Section 601 of Pub. L. 102-568 extended the expiration date of that statutory provision until September 30, 1997. In addition, it imposed a similar limitation on payment of death pension to surviving spouses who receive Medicaid-covered nursing home care and have no children. Section 12005 of Pub. L. 103-66 further extended the expiration date until September 30, 1998, for these limitations on payment of pension benefits to veterans and surviving spouses. Section 8015 of the Balanced Budget Act of 1997, Pub. L. 105-33, extends the expiration date until September 30, 2002. This document amends 38 CFR 3.551(i) to reflect this statutory change, which is effective August 5, 1997, the date of enactment of Pub. L. 105-33.

This final rule reflects statutory requirements. Accordingly, there is a

basis for dispensing with the prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 11, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.551 [Amended]

2. Section 3.551(i) is amended by removing "September 30, 1998" and adding, in its place, "September 30, 2002".

[FR Doc. 99-15521 Filed 6-17-99; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AI97

Direct Service Connection (Post-Traumatic Stress Disorder)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the type of evidence required to establish service connection for post-traumatic stress disorder (PTSD). This amendment

implements a decision by the United States Court of Veterans Appeals (the Court) which stated that current regulations do not adequately reflect the governing statute.

DATES: *Effective Date:* March 7, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: PTSD is classified by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) as an anxiety disorder resulting from exposure to an extreme traumatic stressor involving direct personal experience of an event that involved actual or threatened death or serious injury or other threat to one's physical integrity; witnessing an event that involved death, injury, or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate. The person's response to the event must involve intense fear, helplessness, or horror. PTSD is characterized by persistent reexperiencing of the traumatic event, persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness, and persistent symptoms of increased arousal.

VA regulations at 38 CFR 3.304(f) provide that service connection for PTSD requires medical evidence establishing a clear diagnosis of the condition, credible supporting evidence that the claimed in-service stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed in-service stressor. If the claimed stressor is related to combat, service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed in-service stressor.

Section 1154(b) of title 38, United States Code, which is the statutory authority for § 3.304(f), provides that, where a veteran engaged in combat with the enemy, VA must accept as sufficient proof of service-connection for a claimed disease or injury satisfactory lay or other evidence of service incurrence or aggravation of such disease or injury, if consistent with the

circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of the incurrence or aggravation of the claimed disease or injury. In *Cohen v. Brown*, 10 Vet. App. 128 (1997), the Court of Veterans Appeals found a deficiency in § 3.304(f) in that it does not adequately reflect, for the purposes of establishing an in-service stressor, the relaxed adjudicative evidentiary requirements provided by 38 U.S.C. 1154(b) for establishing service incurrence of an event. The Court noted that, although § 3.304(f) states that proof of an in-service stressor that is claimed to be related to combat may be shown by service department evidence that the veteran engaged in combat, or that the veteran received a particular decoration or award, § 3.304(f) does not expressly provide that a combat veteran's lay testimony alone may establish an in-service stressor pursuant to 38 U.S.C. 1154(b). The Court reiterated its conclusion in *Zarycki v. Brown*, 6 Vet. App. 91, 98 (1993), that, under 38 U.S.C. 1154(b), where it is determined that the veteran engaged in combat with the enemy and the claimed stressor is related to such combat, the veteran's lay testimony regarding the claimed stressor must be accepted as conclusive as to its occurrence and that no further development for corroborative evidence is required, provided that the testimony is "satisfactory" and consistent with the circumstances, conditions, or hardships of the veteran's service. VA has amended § 3.304(f) accordingly to provide that, if a veteran engaged in combat and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, occurrence of the claimed stressor may be established by the veteran's lay testimony alone.

Previously 38 CFR 3.304(f) provided that "service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation" was conclusive evidence of "the claimed in-service stressor." In fact, service department evidence that the veteran engaged in combat or received combat citations serves to establish that the veteran engaged in combat rather than that the claimed stressor occurred. We have therefore removed the references to service department evidence of combat or receipt of specific combat citations and revised the regulation to state that

if evidence establishes that the veteran engaged in combat, the veteran's lay testimony, subject to the restrictions cited above, is sufficient to establish that the claimed combat-related stressor actually occurred.

Additionally, we have amended that portion of § 3.304(f) regarding prisoner-of-war-related stressors in a similar manner. 38 U.S.C. 1154(a) requires that the Secretary include in regulations pertaining to service-connection for disabilities provisions requiring that due consideration be given to the places, types, and circumstances of the veteran's military service. Prisoner-of-War (POW) experience is another type of situation where events often can never be fully documented and therefore warrants the same relaxed adjudication requirements for service connection of PTSD as for those veterans who engaged in combat.

The Court in *Cohen v. Brown* also pointed out that, although on October 8, 1996, VA issued a final rule amending the Schedule for Rating Disabilities (38 CFR Part 4) pertaining to mental disorders which adopted the nomenclature of DSM-IV (See 61 FR 52695-702), no amendment to § 3.304(f) was made. The Court noted that § 3.304(f) does not specifically set forth any requirements regarding the sufficiency of a stressor and the adequacy of symptomatology to support a diagnosis of PTSD. We have therefore amended § 3.304(f) to require that the medical evidence diagnosing PTSD comply with 38 CFR 4.125(a), which requires that diagnoses of mental disorders conform to DSM-IV.

VA is issuing a final rule, effective March 7, 1997, the date of the *Cohen v. Brown* decision, to make the above described amendments. Because these amendments reflect a decision of the Court, publication as a proposal for public comment is unnecessary.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits,

Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: November 20, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.304, paragraph (f) is revised to read as follows:

§ 3.304 Direct service connection; wartime and peacetime.

* * * * *

(f) *Post-traumatic stress disorder.* Service connection for post-traumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. If the evidence establishes that the veteran was a prisoner-of-war under the provisions of § 3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(Authority: 38 U.S.C. 1154(b))

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