

*Title:* Application for Designation as Management Broker, VA Form 26-6685.  
*OMB Control Number:* 2900-0191.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* It is the general policy of the VA to utilize the services of local brokers in the sale and management of VA-owned properties. Generally management activities are conducted by staff personnel only when the property is in close proximity to a VA field station and no reputable local brokers are willing to represent the VA. Each management broker wishing to represent the VA must submit a signed VA Form 26-6685. The information collected on the form, as well as other relevant material, such as a credit report, is used to determine the qualifications and acceptability of those management brokers who apply to participate in this program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 22, 1999, at page 33344.

*Affected Public:* Business or other for profit.

*Estimated Annual Burden:* 63 hours.  
*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* Generally one-time.

*Estimated Number of Respondents:* 250.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0191" in any correspondence.

Dated: September 1, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.  
[FR Doc. 99-25129 Filed 9-27-99; 8:45 am]  
BILLING CODE 8320-01-P

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0458]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before October 28, 1999.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8030 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0458."

#### SUPPLEMENTARY INFORMATION:

*Title:* Certification of School Attendance or Termination, VA Form 21-8960.

*OMB Control Number:* 2900-0458.  
*Type of Review:* Extension of a currently approved collection.

*Abstract:* The VA Form 21-8960 is used to confirm the continued entitlement of a child ages 18 to 23 who is attending school.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 15, 1999 at pages 32101-32102.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 11,667 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* Generally one time.

*Estimated Number of Respondents:* 70,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-4650. Please refer to "OMB Control No. 2900-0458" in any correspondence.

Dated: September 2, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.  
[FR Doc. 99-25130 Filed 9-27-99; 8:45 am]  
BILLING CODE 8320-01-P

## DEPARTMENT OF VETERANS AFFAIRS

### Summary of Precedent Opinions of the General Counsel

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

**FOR FURTHER INFORMATION CONTACT:** Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6558.

**SUPPLEMENTARY INFORMATION:** VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

### VAOPGCPREC 04-99

#### Question Presented

What evidence is necessary to establish a well-grounded claim for

compensation under 38 U.S.C. 1117 and 38 CFR 3.317 for disability due to an undiagnosed illness suffered by a veteran of the Persian Gulf War?

*Held*

A well-grounded claim for compensation under 38 U.S.C. 1117(a) and 38 CFR 3.317 for disability due to undiagnosed illness generally requires the submission of some evidence of: (1) Active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War; (2) the manifestation of one or more signs or symptoms of undiagnosed illness; (3) objective indications of chronic disability during the relevant period of service or to a degree of disability of 10 percent or more within the specified presumptive period; and (4) a nexus between the chronic disability and the undiagnosed illness. With respect to the second and fourth elements, evidence that the illness is "undiagnosed" may consist of evidence that the illness cannot be attributed to any known diagnosis or, at minimum, evidence that the illness has not been attributed to a known diagnosis by physicians providing treatment or examination. The type of evidence necessary to establish a well-grounded claim as to each of those elements may depend upon the nature and circumstances of the particular claim. For purposes of the second and third elements, the manifestation of one or more signs or symptoms of undiagnosed illness or objective indications of chronic disability may be established by lay evidence if the claimed signs or symptoms, or the claimed indications, respectively, are of a type which would ordinarily be susceptible to identification by lay persons. If the claimed signs or symptoms of undiagnosed illness or the claimed indications of chronic disability are of a type which would ordinarily require the exercise of medical expertise for their identification, then medical evidence would be required to establish a well-grounded claim. With respect to the third element, a veteran's own testimony may be considered sufficient evidence of objective indications of chronic disability, for purposes of a well-grounded claim, if the testimony relates to non-medical indicators of disability within the veteran's competence and the indicators are capable of verification from objective sources. Medical evidence would ordinarily be required to satisfy the fourth element, although lay evidence may be sufficient in cases where the nexus between the chronic disability

and the undiagnosed illness is capable of lay observation.

*Effective Date:* May 3, 1999.

**VAOPGCPREC 05-99**

*Question Presented*

For purposes of benefits authorized by section 421 of Pub. L. 104-204, does the term "spina bifida" include neural tube defects, such as encephalocele and anencephaly, which do not involve the spinal column?

*Held*

Pursuant to 38 U.S.C. 1802, chapter 18 of title 38, United States Code, applies with respect to all forms of spina bifida other than spina bifida occulta. For purposes of that chapter, the term "spina bifida" refers to a defective closure of the bony encasement of the spinal cord, but does not include other neural tube defects such as encephalocele and anencephaly.

*Effective Date:* May 3, 1999.

**VAOPGCPREC 06-99**

*Question Presented*

a. May a claim for a total disability rating based on individual unemployability for a particular service-connected disability be considered when a schedular 100-percent rating is already in effect for another service-connected disability?

b. Would any additional benefit be available in the case of a veteran having one service-connected disability rated 100-percent disabling under the rating schedule and another, separate disability for which the veteran has been awarded a TDIU rating?

*Held*

a. A claim for a total disability rating based on individual unemployability for a particular service-connected disability may not be considered when a schedular 100-percent rating is already in effect for another service-connected disability.

b. No additional monetary benefit would be available in the hypothetical case of a veteran having one service-connected disability rated 100-percent disabling under the rating schedule and another, separate disability rated totally disabling due to individual unemployability under 38 CFR 4.16(a). Further, the availability of additional procedural protections applicable under 38 CFR 3.343(c) in the case of a total disability rating based on individual unemployability would not provide a basis for consideration of a rating under section 4.16(a) where a veteran already has a service-connected disability rated

100-percent disabling under the rating schedule.

*Effective Date:* June 7, 1999.

**VAOPGCPREC 07-99**

*Question Presented*

A. In view of the amendments made by section 8052 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), can a disability due to substance abuse caused by a service-connected disability be service connected under 38 CFR 3.310(a)?

B. Can the aggravation by a service-connected disability of a nonservice-connected disability arising out of substance abuse be service connected under 38 CFR 3.310(a)?

C. In light of the decision of the United States Court of Appeals for Veterans Claims (Veterans Court) in *Barela v. West*, 11 Vet. App. 280 (1998), and VAOPGCPREC 2-98, may dependency and indemnity compensation (DIC) be considered "disability compensation"?

D. May the Department of Veterans Affairs (VA) award DIC based either on a veteran's death caused by a disability due to substance abuse that was itself secondary to a service-connected disability or on a veteran's death while receiving or entitled to receive compensation for such a substance-abuse disability that was continuously rated totally disabling for an extended period immediately preceding death?

*Held*

A. The amendments made by section 8052 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, § 8052, 104 Stat. 1388, 1388-351, which are applicable to claims filed after October 31, 1990, prohibit the payment of compensation to a veteran under 38 U.S.C. 1110 or 1131 for service-connected disability ("disability compensation") for a disability that is a result of a veteran's own abuse of alcohol or drugs (a "substance-abuse disability"), and they preclude direct service connection of a substance-abuse disability for purposes of all VA benefits, including dependency and indemnity compensation. The amendments do not preclude service connection under 38 CFR 3.310(a) of a substance-abuse disability that is proximately due to or the result of a service-connected disease or injury. A substance-abuse disability caused by a service-connected disability can be service connected under section 3.310(a) for purposes of all VA benefits. However, disability compensation cannot be paid for such a disability.

B. The aggravation of a substance-abuse disability by a service-connected

disability can be service connected under section 3.310(a) for purposes of all VA benefits. However, disability compensation cannot be paid for such aggravation.

C. Dependency and indemnity compensation is a benefit distinct from disability compensation for purposes of the amendments made by section 8052 of the Omnibus Budget Reconciliation Act of 1990 and is not affected by that Act's prohibition on payment of disability compensation for substance-abuse disability.

D. VA may award dependency and indemnity compensation to a veteran's survivors based on either the veteran's death from a substance-abuse disability secondarily service connected under 38 CFR 3.310(a) (entitlement established under 38 U.S.C. 1310) or based on a veteran's death while in receipt of or entitled to receive compensation for a substance-abuse disability secondarily service connected under section 3.310(a) and continuously rated totally disabling for an extended period immediately preceding death (entitlement established under 38 U.S.C. 1318).

*Effective Date:* June 9, 1999.

#### **VAOPGCPREC 08-99**

##### *Question Presented*

Whether 38 U.S.C. 1910 prohibits the Department of Veterans Affairs (VA) from contesting a Government life insurance policy issued as a result of administrative error on the basis that the insured carries more than \$10,000 of Government life insurance in contravention of 38 U.S.C. 1903?

##### *Held*

a. Where, as a result of administrative error, Government life insurance policies issued to the same insured total in excess of \$10,000 in violation of 38 U.S.C. 1903, the policies are

incontestable pursuant to 38 U.S.C. 1910 except for fraud or nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States.

b. A contract for National Service Life Insurance (NSLI) cannot be created by the doctrine of promissory estoppel. To give rise to an NSLI contract, there must be a meeting of the minds of the contracting parties. Where veterans paid premiums on additional NSLI policies which did not belong to them because of erroneous billing by the Department of Veterans Affairs (VA), additional NSLI policies in favor of these individuals were not created.

*Effective Date:* August 11, 1999.

#### **VAOPGCPREC 09-99**

##### *Question Presented*

a. Does the Board of Veterans' Appeals (BVA) have the authority to adjudicate or address in the first instance the question of timeliness of a substantive appeal? If not, what is the appropriate course of action for the BVA to take when it raises the issue of timeliness of the substantive appeal for the first time on appeal?

b. What is the appropriate course of action for the BVA to take when it discovers for the first time on appeal that no substantive appeal has been filed on an issue certified to the BVA for appellate review by the agency of original jurisdiction (AOJ)?

##### *Held*

a. The BVA has the authority to adjudicate or address in the first instance the question of timeliness of a substantive appeal and may dismiss an appeal in the absence of a timely-filed substantive appeal. It should, however, afford the claimant appropriate procedural protections to assure

adequate notice and opportunity to be heard on the question of timeliness.

b. When the BVA discovers in the first instance that no substantive appeal has been filed in a case certified to the BVA for appellate review by the agency of original jurisdiction, it may dismiss the appeal. Again, it should afford the claimant appropriate procedural protections.

*Effective Date:* August 18, 1999.

#### **VAOPGCPREC 10-99**

##### *Question Presented*

Should the accelerated course measurement provisions of 38 CFR 21.4272(g) be used in determining the total number of credit hours for which mitigating circumstances are presumed pursuant to 38 U.S.C. 3680(a)(3)(B) and 10 U.S.C. 16136(b)?

(**Note:** For convenience, this opinion discusses the regulation's application to 38 U.S.C. 3680(a)(3)(B) and does not further reference 10 U.S.C. 16136(b) since the latter statute merely requires that the former will apply to persons eligible under the chapter 1606, title 10, program.)

##### *Held*

VA regulation, 38 CFR 21.4272(g), which provides a basis (*i.e.*, "equivalent credit hours") for measuring training time when courses are pursued during nonstandard terms, is inapplicable to, and should not be used in determining whether nonpunitive course withdrawals exceed the equivalent of six semester hours for purposes of applying the mitigating circumstances exception under 38 U.S.C. 3680(a)(3)(B).

*Effective Date:* August 24, 1999.

By direction of the Secretary.

**Leigh A. Bradley,**

*General Counsel.*

[FR Doc. 99-25131 Filed 9-27-99; 8:45 am]

BILLING CODE 8320-01-P