

Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Advisory Committee for CARES Business Plan Studies. The Secretary of Veterans Affairs has determined that establishing the Committee is both necessary and in the public interest.

The Committee will continue the Capital Asset Realignment for Enhanced Services (CARES) process by providing site-specific advice as the process moves into its implementation phase. Thus far, the CARES process has included a February 2004 report by the CARES Commission, a federal advisory committee that conducted 38 public hearings and 81 site visits in 2003, and the Secretary's CARES Decision in May 2004 (based largely upon recommendations in the CARES Commission report).

The Secretary's CARES Decision identified implementation issues that required further study, to include additional stakeholder input, at selected sites. The Committee will fulfill the pledge to consult with stakeholders at those sites during implementation of the Secretary's CARES Decision. The Committee will ensure that the full range of stakeholder interests and concerns are assembled, publicly articulated, accurately documented, and considered in the development of site-level business plans.

Subcommittees will be established to perform duties and functions within the Committee's purview. The Committee or designated subcommittee will collect and consider stakeholder input related to the development and selection of business plans at the 21 sites designated for further study by the Secretary's CARES Decision in May 2004. The Committee or designated subcommittee will provide advice on proposed business plans or alternative business plans to be considered, and may relay any general concerns that the Department should consider during CARES implementation.

The Committee or designated subcommittee will hold public meetings at each site to seek stakeholder input. In addition to the public meetings, the Committee or designated subcommittee will gather stakeholder input through other means, such as advertising and Web site communications.

The Committee and its subcommittees may consist of representatives from veterans service organizations, governmental agencies, health care providers, planning agencies, and community organizations with a direct interest in the CARES process. The Committee and its subcommittees are expected to carry out their functions through December 2005.

Dated: September 29, 2004.

By Direction of the Secretary.

**E. Philip Riggan,**

*Committee Management Officer.*

[FR Doc. 04-22440 Filed 10-5-04; 8:45 am]

**BILLING CODE 8320-01-M**

## DEPARTMENT OF VETERANS AFFAIRS

### Office of Research and Development

#### Government Owned Invention Available for Licensing

**AGENCY:** Office of Research and Development.

**ACTION:** Notice of government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:**

Technical and licensing information on the invention may be obtained by writing to: Mindy L. Aisen, M.D., Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202-254-0473; e-mail at:

*mindy.aisen@mail.va.gov*. Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is:

U.S. Patent Application No. 10/324,374 "Method of Predicting Cytokine Response to Tissue Injury".

Dated: September 27, 2004.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 04-22435 Filed 10-5-04; 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 Office of 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. They are being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

**FOR FURTHER INFORMATION CONTACT:**

Susan P. Sokoll, Law Librarian, Department of Veterans Affairs (026H), 810 Vermont Ave., NW., Washington, DC 20420, (202) 273-6558.

**SUPPLEMENTARY INFORMATION:** VA regulations at 38 CFR 2.6(e)(8) and 14.507 authorize the Department's Office of General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under the 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, which 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 or by accessing them on the Internet at <http://www1.va.gov/OGC/>.

#### VAOPGPCREC 4-2004

*Question Presented:* How can the Department of Veterans Affairs (VA) reconcile the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Moody v. Principi*, 360 F.3d 1306 (Fed. Cir. 2004), and law on claims alleging clear and

unmistakable error (CUE) in final VA decisions?

*Held:* For a final Department of Veterans Affairs (VA) or Board of Veterans' Appeals decision to be reversed or revised under 38 U.S.C. 5109A or 7111 (clear and unmistakable error) on the ground that VA failed to recognize a claim for veterans benefits, it must be concluded that: (1) It is obvious or undebatable that, when prior filings are construed in the claimant's favor, the pleadings constitute an earlier claim for the veterans benefit that was subsequently awarded by VA; and (2) VA's failure to recognize that claim manifestly affected the subsequent award of benefits. VAOPGCPREC 12-2001 is hereby superseded by this opinion.

*Effective Date:* May 28, 2004.

#### VAOPGCPREC 5-2004

##### *Question Presented:*

A. Does 38 U.S.C. 5103(a) require the Department of Veterans Affairs (VA) to provide notice of any information and evidence necessary to substantiate a claim where the claim cannot be substantiated under the law or based on the application of the law to undisputed facts?

B. Does 38 U.S.C. 5103A require VA to assist a claimant in obtaining evidence where the claim cannot be substantiated under the law or based on the application of the law to undisputed facts?

##### *Held:*

A. Under 38 U.S.C. 5103(a), the Department of Veterans Affairs (VA) is not required to provide notice of the information and evidence necessary to substantiate a claim where that claim cannot be substantiated because there is no legal basis for the claim or because undisputed facts render the claimant ineligible for the claimed benefit.

B. Under 38 U.S.C. 5103A, VA is not required to assist a claimant in developing evidence to substantiate a claim where there is no reasonable possibility that such aid could substantiate the claim because there is no legal basis for the claim or because undisputed facts render the claimant ineligible for the claimed benefit.

*Effective Date:* June 23, 2004.

#### VAOPGCPREC 6-2004

##### *Question Presented:*

A. Is the determination of the character of discharge of a National Guard member who seeks disability compensation for an injury incurred during active duty for training (ADT) based only on discharge or release from the ADT period or must the determination be based on the member's

discharge from the entire period of service in the National Guard?

B. If the character of a National Guard member's discharge is based on the member's discharge from the entire period of service in the National Guard, must the Department of Veterans Affairs reconsider an award of disability compensation made before the member separated from the National Guard if, at the time the member is separated from the National Guard, the member's discharge is characterized as less than honorable?

##### *Held:*

A. When an individual applies for benefits based on an injury incurred during active duty for training (ADT) while in the National Guard, the Department of Veterans Affairs must determine under 38 CFR 3.12 whether the individual was discharged or released from the ADT period under conditions other than dishonorable.

B. If VA has awarded disability compensation to an individual based on a disability incurred in a period of ADT while the individual was in the National Guard and the individual is subsequently discharged from the National Guard under other than honorable conditions, VA need not reconsider the earlier award unless the facts underlying the subsequent discharge specifically relate to the ADT period and suggest that the earlier determination regarding character of discharge or release was clearly and unmistakably erroneous.

*Effective Date:* July 12, 2004.

#### VAOPGCPREC 7-2004

*Question Presented:* What did the United States Court of Appeals for Veterans Claims hold in *Pelegri v. Principi*, No. 01-944, 2004 WL 1403714 (Vet. App. June 24, 2004), regarding the Department of Veterans Affairs' obligation to provide notice pursuant to 38 U.S.C. 5103(a)?

*Held:* The only holdings in *Pelegri v. Principi*, No. 01-944, 2004 WL 1403714 (Vet. App. June 24, 2004), regarding the obligation of the Department of Veterans Affairs (VA) to provide notice pursuant to 38 U.S.C. 5103(a) are the following:

1. Section 5103(a) of title 38, United States Code, and § 3.159(b)(1) of title 38, Code of Federal Regulations, generally require that a claimant for service connection be provided notice before an initial unfavorable decision by a VA agency of original jurisdiction (AOJ).

2. Section 5103(a) of title 38, United States Code, and 38 CFR 3.159(b)(1) apply to Mr. Pelegri's claim, which the AOJ had denied before November 9,

2000, but which was still pending before VA on that date.

3. A VA AOJ did not err by not providing notice that complies with 38 U.S.C. 5103(a) prior to the initial denial of Mr. Pelegri's claim before the date on which the statute was enacted.

4. If the United States Court of Appeals for Veterans Claims (CAVC) remands a case for VA to provide notice consistent with 38 U.S.C. 5103(a) and 38 CFR 3.159(b)(1) (notice that informs the claimant of any information and evidence not of record that is necessary to substantiate the claim, indicates which party is responsible for obtaining which portion of such evidence, and requests that the claimant provide any evidence in the claimant's possession that pertains to the claim), the Board must ensure that complying notice is provided unless the Board makes findings regarding the completeness of the record or as to other facts that would permit the CAVC to conclude that the notice error was harmless, including an enumeration of all evidence now missing from the record that must be part of the record for the claimant to prevail on the claim.

*Effective Date:* July 16, 2004.

#### VAOPGCPREC 8-2004

##### *Question Presented:*

(a) Does the age limitation for payment of chapter 35 benefits contained at 38 CFR 21.3040(d) and 21.304(d) apply to the exception to the basic eligibility period for receipt of chapter 35 benefits contained at 38 U.S.C.A. 3512(a)(3)?

(b) What is the effect of revision of a rating under 38 CFR 3.105(a) as regards the period of eligibility for chapter 35 benefits? Did VA "first find" the veteran in this case permanently and totally disabled in November 1999, when the corrected decision was made, or in August 1986, which was the effective date under 38 CFR 3.400(k) for that rating?

##### *Held:*

(a) An extension of an eligible child's chapter 35 eligibility period under 38 U.S.C. 3512(a)(3) may be granted beyond age 31. To the extent 38 CFR 3041(d) purports to bar extensions of the basic eligibility period beyond age 31 in circumstances other than as described in either 38 U.S.C. 3512(a)(4) (following service on active duty); section 3512(a)(5) (following the date the child became eligible based on the parent being a member of the Armed Forces missing in action, captured by a hostile force, or forcibly detained or interned by a foreign government or power pursuant to section 3501(a)(1)(A)(iii)); or section 3512(c) (following suspension of the

child's program for reasons beyond the child's control, it is ultra vires and of no effect.

(b) The effect of finding clear and unmistakable error ("CUE") is that the corrected decision is considered made on the date of the reversed decision. 38 CFR 3.105(a). Based on CUE, the veteran in this case was found entitled to compensation for permanent and total service-connected disability ("P&T") effective August 19, 1986. As of the same date, each of the veteran's sons thereby became an "eligible person" (defined in 38 U.S.C. 3501(a)(1)(A)(ii)) entitled to chapter 35 education benefits. Such entitlement may be used during an 8-year eligibility period determined pursuant to 38 U.S.C. 3512, but in no event before the date when the affected child became an "eligible person" (i.e., August 19, 1986).

(c) The basic chapter 35 eligibility period under section 3512(a) runs from the child's 18th birthday to the child's 26th birthday, but exceptions exist. Under the "first finds" exception, when the effective date of the veteran's P&T disability is between the child's 18th and 26th birthdays, section 3512(a)(3), as in force in November 1999, establishes, by operation, the beginning date for the child's eligibility period as the date the Secretary first finds that the parent from who eligibility is derived has a service-connected disability permanent in nature. The term "first finds" is defined in subsection 3512(d) to mean the effective date of the parent's P&T rating or the date of notification to the parent, whichever is more advantageous to the eligible person. Thus, a child's chapter 35 eligibility period must be determined on the facts found and based on the eligibility-period-beginning date that is more advantageous to the child pursuant to the application of both section 3512(a)(3) and section 3512(d). In addition, an award of chapter 35 benefits is predicated on the timely filing of a claim therefor. 38 U.S.C. 3513; 38 CFR 21.1029. The date of claim is an integral factor in determining the date from which benefits may be awarded, pursuant to 38 U.S.C. 5113, for pursuit of an approved program of education pursued during the child's established chapter 35 eligibility period.

*Effective Date:* July 27, 2004.

#### VAOPGCPREC 9-2004

*Question Presented:* Can a veteran receive separate ratings under Diagnostic Code (DC) 5260 (leg, limitation of flexion) and DC 5261 (leg, limitation of extension) for disability of the same joint?

*Held:* Separate ratings under DC 5260 (leg, limitation of flexion) and DC 5261 (leg, limitation of extension), both currently codified at 38 CFR 4.71a, may be assigned for disability of the same joint.

*Effective Date:* September 17, 2004.

Dated: September 27, 2004.

By Direction of the Secretary.

**John H. Thompson,**

*Deputy General Counsel.*

[FR Doc. 04-22436 Filed 10-5-04; 8:45 am]

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#### DEPARTMENT OF VETERANS AFFAIRS

##### Research Advisory Committee on Gulf War Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on October 25-26, 2004, at the Department of Veterans Affairs, 811 Vermont Avenue, NW., Room 819, Washington, DC. The session on October 25 will convene at 8 a.m. and adjourn at 5 p.m. The session on October 26 will convene at 8 a.m. and adjourn at 3 p.m. Both sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses. The Committee will also hear presentations on data collection related to exposures and troop locations during the 1991 Gulf War and the current deployments in Iraq. There will be an update on scientific research on Gulf War illnesses published since the last committee meeting. Additionally there will be preliminary information on treatment research for Gulf War illnesses, research related to possible health effects of exposure to oil well fires and other combustible petroleum products during the 1991 Gulf War, and discussion of committee business and activities.

Members of the public may submit written statements for the Committee's review to Ms. Preeti Hans, Designated Federal Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional

information should contact Ms. Preeti Hans at (202) 254-0223.

Dated: September 28, 2004.

By Direction of the Secretary.

**E. Philip Riggan,**

*Committee Management Officer.*

[FR Doc. 04-22439 Filed 10-6-04; 8:45 am]

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#### DEPARTMENT OF VETERANS AFFAIRS

##### Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet October 19-21, 2004, from 8:15 a.m. to 3:30 p.m. in room C-7-C, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On October 19, the agenda will include briefings and updates on issues related to women veterans' issues in the Veterans Health Administration (VHA), including any treatment issues related to Operation Iraqi Freedom and Operation Enduring Freedom combat veterans and briefings from VHA's Women Veterans Health Program Deputy Field Directors on issues in the Veterans Benefits Administration, including outreach efforts and the role of the Women Veterans Coordinator in VA Regional Offices; presentation of Certificates of Appointment to four new Committee members; and discussion of the 2004 Report of the Advisory Committee on Women Veterans. On October 20, the Committee will be briefed on legislative issues affecting women veterans, VA research on women's health issues, upcoming initiatives of the Center for Women Veterans, and general ethics information related to Committee membership. On October 21, the Committee will be briefed by a representative from the Department of Labor Veterans' Employment and Training Service (VETS) on employment opportunities for women veterans, next steps and implementation of the National Capital Asset Realignment of Enhanced Services (CARES) recommendations, and will