

# Calendar No. 296

105TH CONGRESS  
1ST SESSION

# S. 464

**[Report No. 105-157]**

To amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error.

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## IN THE SENATE OF THE UNITED STATES

MARCH 18, 1997

Mrs. MURRAY (for herself, Mr. AKAKA, Mr. WELLSTONE, Mr. JOHNSON, and Mr. D'AMATO) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

NOVEMBER 13, 1997

Reported by Mr. SPECTER, without amendment

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## A BILL

To amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. REVISION OF DECISIONS BASED ON CLEAR**  
2 **AND UNMISTAKABLE ERROR.**

3 (a) ORIGINAL DECISIONS.—(1) Chapter 51 of title  
4 38, United States Code, is amended by inserting after sec-  
5 tion 5109 the following new section:

6 **“§ 5109A. Revision of decisions on grounds of clear**  
7 **and unmistakable error**

8 “(a) A decision by the Secretary under this chapter  
9 is subject to revision on the grounds of clear and unmis-  
10 takable error. If evidence establishes the error, the prior  
11 decision shall be reversed or revised.

12 “(b) For the purposes of authorizing benefits, a rat-  
13 ing or other adjudicative decision that constitutes a rever-  
14 sal or revision of a prior decision on the grounds of clear  
15 and unmistakable error has the same effect as if the deci-  
16 sion had been made on the date of the prior decision.

17 “(c) Review to determine whether clear and unmis-  
18 takable error exists in a case may be instituted by the Sec-  
19 retary on the Secretary’s own motion or upon request of  
20 the claimant.

21 “(d) A request for revision of a decision of the Sec-  
22 retary based on clear and unmistakable error may be made  
23 at any time after that decision is made.

24 “(e) Such a request shall be submitted to the Sec-  
25 retary and shall be decided in the same manner as any  
26 other claim.”.

1       (2) The table of sections at the beginning of such  
2 chapter is amended by inserting after the item relating  
3 to section 5109 the following new item:

“5109A. Revision of decisions on grounds of clear and unmistakable error.”.

4 (b) BVA DECISIONS.—(1) Chapter 71 of such title  
5 is amended by adding at the end the following new section:

8       “(a) A decision by the Board is subject to revision  
9 on the grounds of clear and unmistakable error. If evi-  
10 dence establishes the error, the prior decision shall be re-  
11 versed or revised.

12        "(b) For the purposes of authorizing benefits, a rat-  
13 ing or other adjudicative decision of the Board that con-  
14 stitutes a reversal or revision of a prior decision of the  
15 Board on the grounds of clear and unmistakable error has  
16 the same effect as if the decision had been made on the  
17 date of the prior decision.

18       “(c) Review to determine whether clear and unmis-  
19 takable error exists in a case may be instituted by the  
20 Board on the Board’s own motion or upon request of the  
21 claimant.

22        "(d) A request for revision of a decision of the Board  
23 based on clear and unmistakable error may be made at  
24 any time after that decision is made.

1       “(e) Such a request shall be submitted directly to the  
2 Board and shall be decided by the Board on the merits,  
3 without referral to any adjudicative or hearing official act-  
4 ing on behalf of the Secretary.

5       “(f) A claim filed with the Secretary that requests  
6 reversal or revision of a previous Board decision due to  
7 clear and unmistakable error shall be considered to be a  
8 request to the Board under this section, and the Secretary  
9 shall promptly transmit any such request to the Board for  
10 its consideration under this section.”.

11       (2) The table of sections at the beginning of such  
12 chapter is amended by adding at the end the following  
13 new item:

“7111. Revision of decisions on grounds of clear and unmistakable error.”.

14       (c) EFFECTIVE DATE.—(1) Sections 5109A and  
15 7111 of title 38, United States Code, as added by this  
16 section, apply to any determination made before, on, or  
17 after the date of enactment of this Act.

18       (2) Notwithstanding section 402 of the Veterans Ju-  
19 dicial Review Act (38 U.S.C. 7251 note), chapter 72 of  
20 title 38, United States Code, shall apply with respect to  
21 any decision of the Board of Veterans’ Appeals on a claim  
22 alleging that a previous determination of the Board was  
23 the product of clear and unmistakable error if that claim  
24 is filed after, or was pending before the Department of  
25 Veterans Affairs, the Court of Veterans Appeals, the

- 1 Court of Appeals for the Federal Circuit, or the Supreme
- 2 Court on, the date of enactment of this Act.



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