

107TH CONGRESS
2D SESSION

H. R. 4018

To amend title 38, United States Code, to make improvements in judicial review of administrative decisions of the Department of Veterans Affairs.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2002

Mr. EVANS (for himself, Mr. REYES, Mr. GUTIERREZ, Ms. BROWN of Florida, Ms. BERKLEY, Mr. LYNCH, Mr. UDALL of New Mexico, Mr. PASCRELL, and Ms. CARSON of Indiana) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make improvements in judicial review of administrative decisions of the Department of Veterans Affairs.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Judicial Re-
5 view Improvement Act of 2002”.

1 **SEC. 2. STANDARD FOR REVERSAL OF ERRONEOUS FIND-**
2 **INGS OF FACT.**

3 (a) CHANGE TO “CLEARLY ERRONEOUS” STAND-
4 ARD.—Section 7261 of title 38, United States Code, is
5 amended—

6 (1) in subsection (a)(4)—

7 (A) by inserting “adverse to a claimant”
8 after “material fact”; and

9 (B) by striking “is clearly erroneous” and
10 inserting “is not supported by a preponderance
11 of the evidence”; and

12 (2) by striking subsection (b) and inserting the
13 following:

14 “(b) In making the determinations under subsection
15 (a), the Court shall review the record of proceedings before
16 the Secretary and the Board, as provided for in section
17 5107(b) and section 7252(b) of this title.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall apply with respect to any action
20 brought under chapter 72 of title 38, United States Code,
21 that is not final under section 7291 of such title as of
22 after the date of the enactment of this Act.

23 **SEC. 3. JURISDICTION OF COURT OF APPEALS FOR VET-**
24 **ERANS CLAIMS.**

25 Section 7252 of title 38, United States Code, is
26 amended—

1 (1) in subsection (b), by inserting “under sub-
 2 section (a)” in the second sentence after “The ex-
 3 tent of the review”;

4 (2) by redesignating subsection (c) as sub-
 5 section (d); and

6 (3) by inserting after subsection (b) the fol-
 7 lowing new subsection (c):

8 “(c) If the Court determines that the Secretary has
 9 unlawfully withheld or unreasonably delayed action on a
 10 claim or has failed to plead or otherwise defend in accord-
 11 ance with the rules of the Court, the Court may enter a
 12 default judgment against the Secretary. A default judg-
 13 ment may not be entered against the Secretary unless the
 14 Secretary has been provided notice of such a proposed
 15 judgment and the Court finds that the claim or right to
 16 relief has been established.”.

17 **SEC. 4. JURISDICTION OF COURT OF APPEALS FOR THE**
 18 **FEDERAL CIRCUIT TO REVIEW DECISIONS OF**
 19 **THE COURT OF APPEALS FOR VETERANS**
 20 **CLAIMS.**

21 (a) EXPANSION OF JURISDICTION.—Section 7292 of
 22 title 38, United States Code, is amended—

23 (1) in subsection (a)—

24 (A) by inserting “(1)” after “review of the
 25 decision”; and

1 (B) by inserting before the period at the
 2 end of the first sentence the following: “, or (2)
 3 with respect to any question of law, or of an ap-
 4 plication of the law to the facts, that was relied
 5 on by the Court in making the decision”

6 (2) in subsection (d)(2)—

7 (A) by striking “(A)”; and

8 (B) by striking “, or (B)” and all that fol-
 9 lows through “particular case”.

10 (b) **EFFECTIVE DATE.**—The amendments made by
 11 subsection (a) shall apply with respect to any case for
 12 which an appeal is filed with the United States Court of
 13 Appeals for the Federal Circuit on or after the date of
 14 the enactment of this Act or for which an appeal was filed
 15 with that court before such date and which is not final
 16 under section 7291 of title 38, United States Code, as of
 17 that date.

18 **SEC. 5. CODIFICATION OF REQUIREMENT FOR EXPEDI-**
 19 **TIOUS TREATMENT OF CASES ON REMAND.**

20 (a) **CASES REMANDED BY BOARD OF VETERANS’ AP-**
 21 **PEALS.**—(1) Chapter 51 of title 38, United States Code,
 22 is amended by adding at the end of subchapter I the fol-
 23 lowing new section:

1 **“§ 5109B. Expedited treatment of remanded claims**

2 “The Secretary shall take such actions as may be
3 necessary to provide for the expeditious treatment by the
4 appropriate regional office of the Veterans Benefits Ad-
5 ministration of any claim that is remanded to that office
6 by the Board of Veterans’ Appeals.”.

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

“5109B. Expedited treatment of remanded claims.”.

10 (b) CASES REMANDED BY COURT OF APPEALS FOR
11 VETERANS CLAIMS.—(1) Chapter 71 of title 38, United
12 States Code, is amended by adding at the end the fol-
13 lowing new section:

14 **“§ 7112. Expedited treatment of remanded claims**

15 “The Secretary shall take such actions as may be
16 necessary to provide for the expeditious treatment by the
17 Board of any claim that is remanded to the Secretary by
18 the Court of Appeals for Veterans Claims.”.

19 (2) The table of sections at the beginning of such
20 chapter is amended by adding at the end the following
21 new item:

“7112. Expedited treatment of remanded claims.”.

22 (c) REPEAL OF SOURCE SECTION.—Section 302 of
23 the Veterans’ Benefits Improvement Act of 1994 (Public

1 Law 103–446; 108 Stat. 4658; 38 U.S.C. 5101 note) is
2 repealed.

3 **SEC. 6. AUTHORITY FOR COURT OF APPEALS FOR VET-**
4 **ERANS CLAIMS TO ORDER PAYMENT OF IN-**
5 **TERIM BENEFITS ON REMANDED CLAIMS.**

6 (a) **AUTHORITY TO ORDER PAYMENT.**—Section 7267
7 of title 38, United States Code, is amended by adding at
8 the end the following new subsection:

9 “(d)(1) Whenever the Court remands to the Sec-
10 retary a case involving a claim for compensation, depend-
11 ency and indemnity compensation, or pension, the Court
12 may include in its order remanding the case an order that
13 if the remanded claim is not decided by the Secretary
14 within 180 days of the date of the remand, the Secretary
15 shall pay interim benefits under that claim in such amount
16 as may be provided in the court order, not in excess of
17 the amount specified in the claim (or the amount for the
18 rating specified in the claim). Payments pursuant to such
19 an order shall commence effective with the next month be-
20 ginning after the end of such 180–day period and shall
21 terminate as provided in the Court order, but not later
22 than the last day of the month in which the final decision
23 resolving the claim is made.

1 “(2) An order of the Court under paragraph (1) for
2 the payment of interim benefits is final and is not subject
3 to review by any other court.

4 “(3) In a case for which interim benefits are paid
5 pursuant to an order under paragraph (1)—

6 “(A) if benefits are awarded as part of the final
7 decision on the claim, the amount of interim benefits
8 paid for any month shall be deducted from the
9 amount of any retroactive benefit otherwise payable
10 for that month under the final decision on the claim;
11 and

12 “(B) if benefits are not awarded as part of the
13 final decision on the claim, the amount of interim
14 benefits paid shall not be considered to be an over-
15 payment and shall not otherwise be subject to recov-
16 ery by the United States.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply with respect to any action
19 brought under chapter 72 of title 38, United States Code,
20 that is not final under section 7291 of such title as of
21 the date of the enactment of this Act.

1 **SEC. 7. AUTHORITY FOR COURT TO EXTEND TIME TO FILE**
2 **NOTICE OF APPEAL.**

3 (a) **AUTHORITY.**—Section 7266(a) of title 38, United
4 States Code, is amended by adding at the end the fol-
5 lowing new paragraph:

6 “(5) The Court, upon a showing of excusable neglect
7 or good cause, may extend the time for filing a notice of
8 appeal. A copy of any motion for such an extension of time
9 for filing shall be provided to the Secretary and to any
10 other party to the case in accordance with the Court’s
11 rules of practice and procedure.”.

12 (b) **EFFECTIVE DATE.**—The amendment made by
13 subsection (a) shall not apply to any case for which the
14 time for filing a notice of appeal under section 7266 of
15 title 38, United States Code, has elapsed before the date
16 of the enactment of this Act.

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