

Public Law 103-271
103d Congress

An Act

July 1, 1994
[S. 1904]

To amend title 38, United States Code, to improve the organization and procedures of the Board of Veterans' Appeals.

Board of
Veterans'
Appeals
Administrative
Procedures
Improvement
Act of 1994.
38 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994".

SEC. 2. NUMBER OF MEMBERS OF BOARD OF VETERANS' APPEALS.

Section 7101(a) of title 38, United States Code, is amended by striking out "(not more than 65)".

SEC. 3. ETHICAL AND LEGAL LIMITATIONS ON CHAIRMAN.

Section 7101(b)(1) of title 38, United States Code, is amended by inserting after the first sentence the following new sentence: "The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States Court of Veterans Appeals."

SEC. 4. ACTING AND TEMPORARY MEMBERS OF BOARD OF VETERANS' APPEALS.

(a) **IN GENERAL.**—Subsection (c) of section 7101 of title 38, United States Code, is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1)(A) The Chairman may from time to time designate one or more employees of the Department to serve as acting members of the Board. Except as provided in subparagraph (B), any such designation shall be for a period not to exceed 90 days, as determined by the Chairman.

"(B) An individual designated as an acting member of the Board may continue to serve as an acting member of the Board in the making of any determination on a proceeding for which the individual was designated as an acting member of the Board, notwithstanding the termination of the period of designation of the individual as an acting member of the Board under subparagraph (A) or (C).

"(C) An individual may not serve as an acting member of the Board for more than 270 days during any one-year period.

"(D) At no time may the number of acting members exceed 20 percent of the total of the number of Board members and acting Board members combined.";

(2) by striking out paragraph (2);
 (3) by redesignating paragraph (3) as paragraph (2); and
 (4) in paragraph (2), as so redesignated, by striking out
 “the number of temporary Board members” and all that follows
 through the period at the end and inserting in lieu thereof
 “the number of acting members of the Board designated under
 such paragraph (1) during the year for which the report is
 made.”.

(b) CONFORMING AMENDMENTS.—(1) Subsection (e) of such section is amended by striking out “a temporary or” and inserting in lieu thereof “an”.

(2) Subsection (d)(3)(B) of such section is amended by striking “section 7103(d)” and inserting in lieu thereof “section 7101(a)”.

SEC. 5. CHAIRMAN'S ANNUAL REPORT ON BOARD ACTIVITIES.

Section 7101(d)(2) of title 38, United States Code, is amended—

- (1) by striking out “and” at the end of subparagraph (D);
- (2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof “; and”; and
- (3) by adding at the end the following new subparagraph:
 “(F) the number of employees of the Department designated under subsection (c)(1) to serve as acting members of the Board during that year and the number of cases in which each such member participated during that year.”.

SEC. 6. DECISIONS BY THE BOARD.

(a) ACTION BY BVA.—Sections 7102 and 7103 of title 38, United States Code, are amended to read as follows:

“§ 7102. Assignment of members of Board

“(a) A proceeding instituted before the Board may be assigned to an individual member of the Board or to a panel of not less than three members of the Board. A member or panel assigned a proceeding shall make a determination thereon, including any motion filed in connection therewith. The member or panel, as the case may be, shall make a report under section 7104(d) of this title on any such determination, which report shall constitute the final disposition of the proceeding by the member or panel.

Reports.

“(b) A proceeding may not be assigned to the Chairman as an individual member. The Chairman may participate in a proceeding assigned to a panel or in a reconsideration assigned to a panel of members.

“§ 7103. Reconsideration; correction of obvious errors

“(a) The decision of the Board determining a matter under section 7102 of this title is final unless the Chairman orders reconsideration of the decision in accordance with subsection (b). Such an order may be made on the Chairman’s initiative or upon motion of the claimant.

“(b)(1) Upon the order of the Chairman for reconsideration of the decision in a case, the case shall be referred—

“(A) in the case of a matter originally heard by a single member of the Board, to a panel of not less than three members of the Board; or

“(B) in the case of a matter originally heard by a panel of members of the Board, to an enlarged panel of the Board.

“(2) A panel referred to in paragraph (1) may not include the member, or any member of the panel, that made the decision subject to reconsideration.

“(3) A panel reconsidering a case under this subsection shall render its decision after reviewing the entire record before the Board. The decision of the panel shall be made by a majority vote of the members of the panel. The decision of the panel shall constitute the final decision of the Board.

“(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of such title is amended by striking out the item relating to section 7103 and inserting in lieu thereof the following:

“7103. Reconsideration; correction of obvious errors.”

SEC. 7. PROCEDURES RELATING TO APPEALS.

(a) IN GENERAL.—(1) Section 7107 of title 38, United States Code, is amended to read as follows:

“§ 7107. Appeals; dockets; hearings

“(a)(1) Each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket.

“(2) A case referred to in paragraph (1) may, for cause shown, be advanced on motion for earlier consideration and determination. Any such motion shall set forth succinctly the grounds upon which it is based and may not be granted unless the case involves interpretation of law of general application affecting other claims or for other sufficient cause shown.

“(b) The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.

“(c) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing shall, except in the case of a reconsideration of a decision under section 7103 of this title, participate in making the final determination of the claim.

“(d)(1) An appellant may request that a hearing before the Board be held at its principal location or at a facility of the Department located within the area served by a regional office of the Department.

“(2) A hearing to be held within an area served by a regional office of the Department shall (except as provided in paragraph (3)) be scheduled to be held in the order in which requests for hearings within that area are received by the Department.

“(3) In a case in which the Secretary is aware that the appellant is seriously ill or is under severe financial hardship, a hearing may be scheduled at a time earlier than would be provided for under paragraph (2).

“(e)(1) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission or through picture and voice trans-

mission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location.

"(2) When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or panel as provided in subsection (d). Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of the appellant to a hearing as provided in such subsection (d) shall not be affected."

(2) The item relating to section 7107 in the table of sections at the beginning of chapter 71 of such title is amended to read as follows:

"7107. Appeals: dockets; hearings."

(b) CONFORMING AMENDMENTS.—(1) Section 7104(a) of such title is amended by striking out the third sentence.

(2) Section 7110 of such title is repealed.

(3) The table of sections at the beginning of chapter 71 of such title is amended by striking out the item relating to section 7110.

SEC. 8. CROSS-REFERENCE CORRECTION.

Section 7104(a) of title 38, United States Code, is amended by striking out "211(a)" and inserting in lieu thereof "511(a)".

SEC. 9. REVISION TO INCOME VERIFICATION REQUIREMENTS.

(a) PARENTS DIC.—Section 1315(e) of title 38, United States Code, is amended—

(1) in the first sentence—

(A) by striking out "shall" and inserting in lieu thereof "may"; and

(B) by striking out "each year" and inserting in lieu thereof "for a calendar year"; and

(2) in the second sentence—

(A) by striking out "file with the Secretary a revised report" and inserting in lieu thereof "notify the Secretary"; and

(B) by striking out "the estimated".

(b) PENSION.—Section 1506 of such title is amended—

(1) in paragraph (2)—

(A) by striking out "shall" and inserting in lieu thereof "may"; and

(B) by striking out "each year" and inserting in lieu thereof "for a calendar year"; and

(2) in paragraph (3)—

(A) by striking out "file a revised report" and inserting in lieu thereof "notify the Secretary";

(B) by striking out "estimated" each place it appears; and

(C) by striking out “such applicant’s or recipient’s estimate of”.

Approved July 1, 1994.

LEGISLATIVE HISTORY—S. 1904:

CONGRESSIONAL RECORD, Vol. 140 (1994):

Apr. 21, considered and passed Senate.

June 13, considered and passed House, amended.

June 15, Senate concurred in House amendments.