Date: August 29, 1997

From: General Counsel (022)

Subj: Entitlement to Special Monthly Compensation for Disarticulation of the Hips Following Preexisting Paraplegia XXXXXX, XXXXXXX X. X XX XXX XXX

To: Director, Compensation and Pension Service (212C)

## QUESTION PRESENTED:

What level of special monthly compensation (SMC) should be awarded to a claimant with nonservice-connected paraplegia who is entitled to compensation under 38 U.S.C. § 1151 for disarticulation of the hips?

## COMMENTS:

- 1. This question arises in the case of a veteran who has had nonservice-connected paraplegia since 1964. In 1966, the veteran was hospitalized at a Veterans Administration (now Department of Veterans Affairs) (VA) facility for excision of a pressure ulcer overlying the right trochanteric area. During the hospitalization, he developed a hematoma that became infected and resulted in purulent arthritis of both hip joints. Consequently, he required amputation of both legs at the hips.
- 2. If the veteran is entitled to compensation for bilateral hip disarticulation under 38 U.S.C. § 1151, the proper level of SMC under 38 U.S.C. § 1114 must be determined. Section 1114(1) of title 38, United States Code, authorizes SMC for "anatomical loss or loss of use of both feet". A higher rate of compensation is authorized under 38 U.S.C. § 1114(n) for "anatomical loss of both legs so near the hip as to prevent the use of prosthetic appliances". The vet-eran in this case appears to satisfy the literal require-ments of section 1114(n).
- 3. The General Counsel addressed an analogous situation in VAOPGCPREC 93-90 and 5-89 (O.G.C. Prec. 93-90 and 5-89). In those opinions, the General Counsel held that SMC may be awarded under former 38 U.S.C.  $\S$  314(k) (now  $\S$  1114(k)) for anatomical loss of a creative organ where nonservice-

connected loss of use predated the service-connected anatomical loss. Former section 314(k) provided that SMC is payable "if the veteran, as the result of service-connected <Page 2>

disability, has suffered the anatomical loss or loss of use of one or more creative organs". In VAOPGCPREC 93-90 and 5-89, the General Counsel noted that the plain language of the statute supported an award of SMC for the veteran's service-connected anatomical loss. The opinions reflect that the plain, unambiguous language should be taken literally. See also 2A Sutherland Statutory Construction §§ 46.01-.04 (5th ed. 1992). They do not suggest that the award of SMC should be reduced to discount the veterans' preexisting loss of procreative power.

4. The present case also involves preexisting "loss of use" and subsequent anatomical loss. Congress clearly authorized SMC for disarticulation of the hips. Neither the plain language nor the legislative history of section 1114 reveals any intent to reduce an award due to preexisting paraplegia. In light of VAOPGCPREC 93-90 and 5-89, we conclude that under these circumstances SMC is payable at the higher rate prescribed in 38 U.S.C. § 1114(n).

## HELD:

Regardless of preexisting paraplegia, SMC is payable at the rate prescribed in 38 U.S.C. § 1114(n) to a claimant who is entitled to compensation for bilateral disarticulation of the hips under 38 U.S.C. § 1151.

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