Secretary's Annual Reports – just a narrative of the numbers and a chart.

Comptroller General Report to Congress July 1954, focuses on Comp & Pen, doesn't look promising.

American Law of Veterans, Lawyers Co-operative Publishing Co, 1946, has a 5 page section on Appeals. Attached document ending in 5442

The Provision of Federal Benefits for Veterans: An Historical Analysis of Major Veterans' Legislation, 1862 – 1954. No index entry for Board of Veterans Appeals, nor for Appeals. Generally reviewed the book and didn't see anything relevant.

Handbook for Servicemen and Servicewomen of World War II and Their Dependents, Including Rights and Benefits of Veterans of World War I and Their Dependents. This is a House Document which was published in every Congress for some number of years. I have 1943 and 1946. It is in a question and answer form. Question 229 (1941) and Question 189 (1946) asks about recourse for a claimant whose claim has been denied. Attached document ending in 1235 - 1946; 1222 – 1943.

There is a December 15, 1955, pamphlet from Veterans' Administration, No. 44. There is a discussion of appeals, relevant pages attached as document ending in 20142.

There is a 1948 Manual which was a House Document. Again the portion which is indexed to appeals is attached as 20149.

AMERICAN LAW *of* VETERANS

AN ENCYCLOPEDIA OF THE RIGHTS AND BENEFITS OF VETERANS OF WORLD WAR II AND THEIR DEPENDENTS, WITH STATUTES, REGULATIONS, FORMS, AND GUIDE TO PROCEDURE

BY

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§ 82. Claims of Government Which May Be Basis of Setoff, Counterclaim or Withholding.—The type of government claims which may be asserted by way of setoff or counterclaims are mentioned in the statute discussed in the next preceding section. The statute rendering veterans' benefits immune from creditor process has been held to apply to claims of the United States against the veteran, except the class of claims expressly excepted.[4] Hence, the United States was held not to be entitled to setoff against sums awarded a veteran as disability compensation, or to withhold from payments of such compensation, sums due the United States from the veteran on account of a fine imposed upon the veteran in a criminal prosecution.[5]

4. Adjudication of Claim

§ 83. Generally.—The adjudication of claims for benefits under laws administered by the Veterans' Administration will be made by the proper division, unit, officer, or board in the office having jurisdiction of the claim.[6] The adjudication division in each Regional Office or facility, under the direction of an adjudication officer, is responsible for the preparation and adjudication of claims for disability and death pension and burial allowances.[7] The authorization unit has jurisdiction over the determination of basic eligibility for monetary benefits, the development of claims, the adjudication of all claims upon completion of rating actions, the maintenance of such follow-up procedure as may be necessary, and the adjudication of such matters as may be assigned to it by the Central Office.[8] The rating boards are vested with author-

efits be insurance payable by reason of yearly renewable term or United States Government life (converted) insurance issued by the United States, the exemption herein provided shall be inapplicable to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness be in the form of liens to secure unpaid premiums, or loans, or interest on such premiums or loans, or indebtedness arising from overpayment of dividends, refunds, loans, or other insurance benefits." 38 USC, § 454a, supra.

[4] McElhaney v. United States (1944) 101 Ct Cl 286.

It was stated in the majority opinion in McElhaney v. United States (1944) 101 Ct Cl 286: "That Act plainly manifests the purpose of preserving for the support of the veteran all benefits under the . . . Act, whatever his financial obligations or desires. It makes them nonassignable, exempts them from taxation, and makes them immune from all creditor process. Obviously claims of the United States come as much within the purpose of the statute—to preserve the benefits for the support of the veteran—as the claims of private creditors, and, therefore, although the sovereign was not expressly named, it would seem its claims would be included therein. It was evidently so intended because the benefits are made expressly exempt even from the sovereign's claim for taxes. If exempt from such a claim, it would seem they would be exempt from all. Indeed the Act provides for only one demand to which they are subject, that is one due the 'United States arising under such laws,' to wit, the veterans' benefit Acts. This is the only exception made. Under a familiar maxim, it is to be presumed that no other one was intended."

[5] McElhaney v. United States (1944) 101 Ct Cl 286. So, where a veteran had been awarded certain monthly sums as disability compensation, and was entitled to receive the same except insofar as the United States had a right to a setoff on account of a fine imposed upon the veteran for the violation of the White Slave Act, the application, by direction of the Comptroller General, of the accrued awards toward the payment of the fine, was held to be unauthorized, and the veteran was held to be entitled to recover the amount of the awards in an action in the Court of Claims. Ibid.

[6] As to the jurisdiction of the Central Office and the Regional Offices respectively, of the Veterans' Administration, see §§ 64, 66, supra.

[7] 38 CFR, § 2.1003.

[8] 38 CFR, § 2.1004 (Cum Supp).

ity to determine questions of service connection, to determine the necessity for and type and sufficiency of examinations and re-examinations; to determine and evaluate the disability resulting from each and all diseases and injuries, and to perform certain other duties.[9]

§ 84. Notice to Claimant of Disposition of Claim.—In every instance where a claim is disallowed, the veteran or his duly authorized representative will be notified of the action taken.[10]

5. Finality and Conclusiveness of Decision; Review by Courts

§ 85. Generally.—Federal statutes provide that, notwithstanding any other provisions of law, except as to claims for Government and National Service life insurance,[11] the decisions of the Administrator of Veterans' Affairs on any question of law or fact concerning a claim for benefits or payments under any act administered by the Veterans' Administration, shall be final and conclusive, and that no other official or any court of the United States shall have power or jurisdiction to review any such decisions.[12] Congress has the power to make the decisions of the Administrator final and conclusive.[13]

A decision of a rating board of the Veterans' Administration is given finality by administrative regulations.[14]

[9] 38 CFR, § 2.1005 (10 Fed. Reg. 2479; effective March 3, 1945).

[10] 38 CFR, § 3.1200. In all cases in which a claimant appears personally before a rating board, he will be informed of the decision reached and the reason therefor. He will also be advised upon completion of adjudicative action of the result and provisions thereof, and his entitlement or nonentitlement thereunder, as well as of his right to appeal. 38 CFR, § 2.1007 (Cum Supp). While a failure to receive written notice of right to appeal, and of time therefor, will not extend the time for filing an appeal, it will not preclude an administrative review in a meritorious case upon a proper authorization. Ibid.

[11] In this connection, see §§ 540 et seq, infra.

[12] 38 USC, § 11a-2 (October 17, 1940, chap. 893, § 11, 54 Stat. 1197).

Public Law No. 2, 73d Congress, provides that all decisions rendered by the Administrator of Veterans' Affairs under the provisions thereof or the regulations issued pursuant thereto shall be final and conclusive on all questions of law and fact, and that no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision. 38 USC, § 705 (March 20, 1933, chap. 3, title I, § 5, 48 Stat. 9).

Another statute specifically provides that, except in insurance cases, a finding of death made by the Administrator of Veterans' Affairs, based on the presumption arising from seven years' unexplained absence, shall be final and conclusive. 38 USC, § 32a (June 5, 1942, chap. 351, 56 Stat. 325).

The decision of the Administrator of Veterans' Affairs, concerning a claim for benefits or payments under any act administered by the Veterans' Administration, is final and conclusive. United States v. Judewicz (1942; DC) 45 F Supp 787. And see United States v. Scott (1885; CC) 25 F 470; United States v. Brownley (1940; DC) 34 F Supp 923. See also § 86, infra.

[13] Van Horne v. Hines (1941; App DC) 122 F2d 207 (writ of certiorari denied in (1941) 314 US 689, 86 L ed 552, 62 S Ct 360). And see Ex parte Rickell's Estate (1930) 158 Md 654, 149 A 446. See also § 86, infra.

[14] 38 CFR, § 2.1008, provides that the decision of a duly constituted rating board, in a case properly before the board, will be final and binding upon all field offices of the Veterans' Administration and not subject to revision except by duly constituted appellate authorities, or as provided in § 2.1009. And 38 CFR, § 3.1330 provides that a decision of a rating board unappealed within one year shall be final.

The circumstances under which a revision of rating board decisions may be had are outlined in 38 CFR, Cum Supp, § 2.1009.

§ 86. Actions in Courts, Generally.[15]—The decisions of administrative officers in connection with pensions were held to be beyond the scope of judicial review long before the enactment of the statutes now in force.[16] Under the present Federal statutes now in effect,[17] decisions of the Veterans' Administration upon questions concerning pensions, compensation allowances, and special privileges, all of which are gratuities, are final and not subject to judicial review.[18]

The statutes have the effect of depriving the Federal courts of any jurisdiction over decisions of the Administrator of Veterans' Affairs, and extend to every final decision of the Administrator in relation to benefit payments in the nature of gratuities.[19] As to gratuities payable to veterans, Congress has the power to deny judicial review of the decisions of the Administrator.[20] The statutes are held to preclude judicial relief from decisions of the Administrator, even where such decision is wholly unsupported by evidence, wholly dependent upon a question of law, or clearly arbitrary or capricious.[1]

§ 87. Mandamus.—It is well settled, of course, that the courts have the power to issue the writ of mandamus to compel administrative bodies, boards, and commissions to act and to exercise their powers and perform their plain ministerial duties.[2] It was formerly held that while the courts would not control the exercise by the Commissioner of Pensions of his discretionary powers, it would compel the performance of purely ministerial duties.[3] Under the pres-

[15] The subject of suits in court on National Service life insurance is discussed in sections 540, et seq, infra.

[16] United States ex rel. Dunlap v. Black (1888) 128 US 40, 32 L ed 354, 9 S Ct 12; Baily v. United States (1881) 17 Ct Cl 144; Stokely v. De Camp (1849) 2 Grant Cas (Pa) 17.

As stated by the court in United States v. Scott (1885; CC) 25 F 470: "Nothing is plainer than that the Interior Department is a special tribunal of judicial or quasi judicial powers appointed by law to ascertain and determine all facts, and to adjudicate and allow a pension to the party entitled, and that its action is final and conclusive."

The general subject of judicial review of decisions, on merits, of claim upon public pension fund, including pensions to veterans, is treated in an annotation in 117 ALR 1408.

[17] 38 USC, §§ 11a–2, 705. See § 85, supra.

[18] United States v. Robinson (1939; CCA 9th) 103 F2d 713.

[19] Van Horne v. Hines (1941 App DC) 122 F2d 207 (writ of certiorari denied in (1941) 314 US 689, 86 L ed 552, 62 S Ct 360). The court said: "There can be no doubt that veterans' benefits are gratuities and establish no vested rights in the recipient. . . . And this being so, such benefits may be withdrawn at any time by act of Congress, and to make the withdrawal effective, Congress may in turn withdraw jurisdiction from the courts over decisions of the Administrator in relation thereto." And it was held not to be of any consequence that the act became effective after the trial in the court below and during the pendency of the appeal. To the same effect is Smith v. United States (1936; CCA 8th) 83 F2d 631.

It was stated by the court in Lynch v. United States (1934) 292 US 571, 78 L ed 1434, 54 S Ct 840, that the purpose of 38 USC, § 705 appeared to have been to remove the possibility of judicial relief in that class of cases involving gratuities to veterans, even under the special circumstances suggested in Crouch v. United States (1924) 266 US 180, 69 L ed 233, 45 S Ct 71; Silverschein v. United States (1924) 266 US 221, 69 L ed 256, 45 S Ct 69; and United States v. Williams (1929) 278 US 255, 73 L ed 314, 49 S Ct 97.

[20] Barnett v. Hines (1939) 70 App DC 217, 105 F2d 96 (writ of certiorari denied in (1939) 308 US 573, 84 L ed 480, 60 S Ct 88); Van Horne v. Hines (1941; App DC) 122 F2d 207. See also § 85, supra.

[1] United States v. Mroch (1937; CCA 6th) 88 F2d 888.

[2] 34 Am Jur, Mandamus, §§ 126, 127.

[3] 34 Am Jur, Mandamus, § 153.

At the time when the Commissioner of Pensions was in charge of the administration of pension affairs, it was settled by

ent statutes,[4] mandamus will not lie to review, control or upset the decisions of the Administrator of Veterans' Affairs. Mandamus will not lie to compel the Administrator to resume payment of benefits to a veteran, although the stoppage thereof was wrongful.[5]

§ 88. Scope and Limitations of Rule Against Court Action.[6]—Finality and conclusiveness are accorded decisions of the Administrator by state courts as well as by Federal courts.[7] By treating as conclusive the decisions of the Administrator, state courts avoid "the absurdity of the state courts attempting to interfere in a field where the Federal courts have been precluded".[8] And a state court may refuse, by indirection, to review or re-examine a decision of the Administrator by adjudicating the right to veterans' benefits as between two individual litigants or by enjoining one of the litigants from claiming the benefit.[9] The decision of the Administrator as to the unlawfulness of

the Supreme Court that mandamus would not lie to compel him to allow a pension claim, where he did not refuse or fail to act, but decided adversely to the claimant. United States ex rel. Dunlap v. Black (1888) 128 US 40, 32 L ed 354, 9 S Ct 12. The court said: "Whether if the law were properly before us for consideration, we should be of the same opinion, or of a different opinion, is of no consequence in the decision of this case. We have no appellate power over the Commissioner, and no right to review his decision. That decision and his action taken thereon were made and done in the exercise of his official functions. They were by no means merely ministerial acts."

Where, however, the Secretary of the Interior overruled the decision of the Commissioner of Pensions, and decided that the claimant was entitled to pension, it was held that mandamus would lie to compel the Commissioner to carry out the decision of his superior. United States ex rel. Dunlap v. Black (1888) 128 US 40, 32 L ed 354, 9 S Ct 12.

[4] 38 USC, §§ 11a-2, 705. See § 85, supra.

[5] Van Horne v. Hines (1941; App DC) 122 F2d 207 (writ of certiorari denied in (1941) 314 US 689, 86 L ed 552, 62 S Ct 360).

Under a prior statute, no court might control the action of the Administrator of Veterans' Affairs by mandamus, in the absence of capricious or arbitrary rulings. United States ex rel. Bowling v. Hines (1931) 60 App DC 180, 50 F2d 330.

It was held in Hines v. United States (1939) 70 App DC 206, 105 F2d 85, that where nothing remained to be done by the Administrator except the purely ministerial duty of making payments to a veteran, that duty could be commanded by mandamus. And mere ministerial duties of the Administrator of Veterans' Affairs, enjoined upon him by statute, were held to be enforceable by mandamus, at least in so far as they relate to government insurance, which may be made the subject of court action. United States ex rel. Lyons v. Hines (1939) 70 App DC 36, 103 F2d 737, 122 ALR 674.

But it was observed in Van Horne v. Hines (1941; App DC) 122 F2d 207, that 38 USC, § 11a-2, supra, was approved about a year and a half after the decision in Hines v. United States, supra, was sponsored by the Veterans' Administration, and was clearly intended to stop the gaps created by that decision.

[6] As to the distinction between mere ministerial acts and decisions or acts involving judicial discretion, as regards the jurisdiction of courts, see § 87, supra.

[7] See Corkum v. Clark (1928) 263 Mass 378, 161 NE 912.

[8] Re Rosa's Estate (1939) 172 Misc 808, 16 NYS2d 285. The surrogate pointed out that "questions involving the determination of the Federal department, made final and conclusive by Federal statutes, are not justiciable in the courts of this state".

[9] It was held in Corkum v. Clark (1928) 263 Mass 378, 161 NE 912, that the question whether one claiming a pension as the widow of a war veteran was entitled thereto was a matter exclusively within the jurisdiction of the Federal administrative officers and that a litigant could not obtain relief in the state court from a decision of the Veterans' Bureau and the Commissioner of Pensions that the plaintiff was not the lawful widow of the veteran. And the court held that as it could not do this directly, it could not do so by indirection through enjoining the defendant from making a claim for the pension, and that it would be, in sub-

payments of benefits to a veteran, alleged to have been made under a mistake of fact and of law, has been held to be conclusive in an action in a state court to recover back such payments.[10]

However, where awards of disability compensation due a veteran were withheld by the Veterans' Administration and were applied, by direction of the Comptroller General, upon a fine imposed on the veteran by the United States in a criminal prosecution, on the erroneous theory that the Government had a right to set off its claim against the awards, the veteran was held to have the right to maintain an action in the Court of Claims to recover the amount of the awards.[11]

6. Reopening or Reconsideration of Claim on New Evidence; Revision of Decision

§ 89. **Generally.**—Independently of the right to appeal,[12] a claimant may procure a reconsideration of his claim on new or additional evidence. Additional material and pertinent evidence may be submitted within the appeal period, and if submitted, will be considered by the rating agency of original jurisdiction and an appropriate determination made.[13] New evidence relating to the same factual basis will be treated as a new claim and will have all the attributes thereof.[14] The procedure followed in connection with the submission of new evidence is treated in Veterans' Administration regulations.[15]

stance, as much a review of the decision of the administrative officers for the court to compel the defendant to account for the sums received as pension on the ground that she was not entitled thereto, as to adjudicate directly by mandate to the administrative officers respecting the person to whom they should make the payments.

[10] Re Rosa's Estate (1939) 172 Misc 808, 16 NYS2d 285.

[11] McElhaney v. United States (1944) 101 Ct Cl 286. The court said: "These Acts make the decision of the Administrator of Veterans' Affairs final and conclusive on all questions of law and fact 'concerning a claim for benefits', but plaintiff is not contesting the Administrator's decision on his claim for benefits. He accepts it and sues on it. What he does question is the action of the Administrator and the Comptroller General in doing something outside of the veterans' Acts, the setting off of amounts admittedly due him under those Acts against an extraneous demand against him. The right to decide such a question is not conferred on the Administrator."

[12] The subject of appeals is treated in §§ 90, et seq., infra.

[13] 38 CFR, § 3.1333. The submission of additional evidence will not, however, extend the period within which an appeal may be taken, the appeal period in any event beginning to run as of the date of notice of the original decision. Ibid.

[14] 38 CFR, § 3.1201.

[15] 38 CFR, § 3.1201, is as follows: "New and material evidence, relating to the same factual basis (such as, in the case of a living veteran, the same disease or injury) as that of the disallowed claim, submitted subsequent to the final disallowance of the claim, will constitute a new claim and have all the attributes thereof; Provided, That the evidence or the accompanying communication meets the requirements as to what shall constitute an informal claim under § 2.1027, and will be handled as follows:

"(a) Where the benefits claimed were denied previously by an adjudicating agency or original jurisdiction and where no appeal to the board of veterans' appeals has been filed within the period provided for appeal, or where the benefits claimed were denied previously by a decision of the board of veterans' appeals, the claims folder together with the evidence will be referred to the appropriate adjudicating agency of original jurisdiction which will determine whether the evidence is new and material and, if determined to be so, will proceed with adjudication upon the basis of all the evidence.

"(b) For the purpose of this section a formal application will not be required, but where informative data comprehended in the questions enumerated in the ap-

Evidence which is solely cumulative or repetitious in character will not serve as the basis for reconsideration of the previous decision. When evidence relates to the same specific fact of which proof was before adduced of a like character it is cumulative but not when it relates to a new fact respecting the general question or point in issue. To constitute material evidence the facts offered must relate and go to the issue, or have a legitimate and effective influence or bearing on the decision in question.[16]

Under certain circumstances, a rating board of the Veterans' Administration may reverse or amend a decision of that or another rating board.[17]

7. Appeals

a. In General

§ 90. Generally; Matters Subject to Review.[18]—Provision is made for the review, by appeal within the Veterans' Administration, of decisions on claims within the jurisdiction of the Administration. All questions on claims involving benefits under laws administered by the Veterans' Administration are subject to one review on appeal to the Administrator of Veterans' Affairs.[19] Interested persons have a right to a review of a veteran's discharge or dismissal from service.[20]

§ 91. Regular Order of Review; Advancement of Hearing. Cases received for review on appeal will ordinarily be considered and decided in regular order, according to their places on the docket. However, for cause shown, a case may be advanced on motion for earlier consideration and determination. A

propriate application form are considered essential to further adjudicative action in the claim, the informative data will be required.

"(c) Awards pursuant to claims comprehended under this section will be governed by the provisions of § 35.021, effective laws, and § 3.1212 relating to the effective dates of awards based upon original claims: Provided, That new and material evidence received prior to March 19, 1935, will be construed as a claim effective as of March 19, 1935, if a request for consideration is submitted within 1 year from the date of receipt of the evidence, or March 19, 1935, whichever is the later date.

"(d) Decisions of adjudicating agencies of original jurisdiction do not become final until the expiration of the time within which an appeal may be filed. Accordingly, evidence received prior to the expiration of the appeal period will be considered by the adjudicating agency of original jurisdiction and an appropriate determination made."

[16] 38 CFR, § 3.1205.

[17] 38 CFR, § 2.1009. This regulation provides that no rating board will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board, or by any appellate authority, unless such reversal or amendment is clearly warranted by a change in law or by a specific change in interpretation thereof specifically provided for by the Veterans' Administration. There may be such reversal or amendment, where it is obviously warranted by a clear and unmistakable error shown by the evidence in the file at the time the prior decision was rendered. The procedure followed by the Veterans' Administration in such a review or revision is treated in considerable detail in this regulation.

[18] Questions as to review by courts of decisions of the Administrator of Veterans' Affairs, are treated in sections 85 et seq., supra.

[19] Vets Reg No. 2 (a), Part II, par. II. Such appeals are heard by the Board of Veterans' Appeals at the Central Office of the Veterans' Administration. See §§ 93 et seq., infra.

It is provided in 38 USC, § 11a (July 3, 1930, chap. 863, § 2, 46 Stat. 1016), that "all final decisions or orders of any division, bureau, or board in the Veterans' Administration shall be subject to review, on appeal, by such Administrator".

[20] **Reviews of the types and grounds of discharges** are conducted by the War and Navy Departments, respectively, and are treated in sections 196 et seq., infra.

motion for advancement will be granted only in cases involving the interpretation of law of general application affecting other claims, or for other sufficient cause shown.[1]

b. Board of Veterans' Appeals

§ 92. **Generally; Creation and Composition of Board.**—A Board of Veterans' Appeals has been created under the administrative control and supervision of a chairman directly responsible to the Administrator of Veterans' Affairs. The law provides that the Board shall be composed of a chairman, a vice chairman, and not more than thirty associate members, and such other professional, administrative, clerical, and stenographic personnel as may be necessary in conducting hearings and considering and disposing of appeals. Members of the Board, including the chairman and the vice chairman, are appointed by the Administrator with the approval of the President.[2]

The chairman is authorized to divide the Board from time to time into sections of three members, to assign the members of the board thereto, and to designate the chief thereof. A regulation governs the procedure of the Board and the manner of its deliberations.[3] The determination of the section, when unanimously concurred in by the members of that section, constitutes the final determination of the Board, except that the Board, on its own motion, may correct an obvious error in the record, or may, upon the basis of additional official information from the War or Navy Departments, reach a contrary conclusion.[4]

§ 93. **Jurisdiction of Board; Finality and Reopening of Decisions.**—All questions in connection with claims under laws administered by the Veterans' Administration are subject to one review on appeal to the Board of Veterans' Appeals.[5] The Board has general appellate jurisdiction of questions relating to claims under such laws.[6] The Board has authority to correct errors in con-

[1] Vets Reg No. 2 (a), Part II, par. IX. The motion for advancement must set forth succinctly the grounds upon which it is based. Ibid.

[2] Vets Reg No. 2 (a), Part II, par. I.

[3] Vets Reg No. 2 (a), Part II, par. I, provides in part as follows: "If a section as a result of a vacancy or absence or inability of a member assigned thereto to serve thereon is composed of a number of members less than designated for the section, the chairman may assign other members to the section or direct the section to proceed with the transaction of business without awaiting any additional assignment of members thereto. A hearing docket shall be maintained and formal recorded hearings shall be held by such associate member or members as the chairman may designate, the associate member or members being of the section which will make final determination in the claim. A section of the board shall make a determination on any proceeding instituted before the board and on any motion in connection therewith assigned to such section by the chairman and shall make a report of any such determination, which report shall constitute its final disposition of the proceeding. The determination of the section, when unanimously concurred in by the members of the section, shall be the final determination of the board except that such board on its own motion may correct an obvious error in the record, or may upon the basis of additional official information from the War or Navy Department reach a contrary conclusion. In the event of a disagreement among the members of the section the concurrence of the chairman with the majority of members of such section shall constitute the final determination of the board, subject to correction only on a showing of obvious error, or when in the opinion of the board, a contrary conclusion is justified on the basis of additional official information furnished by the War or Navy Department."

[4] Ibid.

[5] See § 90, supra.

[6] Vets Reg No. 2 (a), Part II, par. II; 38 CFR, § 30.9800.

Exclusive jurisdiction for the review of

nection with any question at issue.[7]

The several titles of the Servicemen's Readjustment Act of 1944, involving different types of veterans' benefits, are not placed on the same basis so far as concerns the right to appeal. Decisions on questions of basic eligibility are subject to appeal to the Board of Veterans' Appeals, as a matter of right, whether the claim is under Title II, relating to education and training, Title III, relating to Government guaranty of loans, or Title V, relating to unemployment allowances.[8] And as to Title II, relating to education and training, all decisions on claims rendered by agencies of original jurisdiction are subject to appeal as a matter of right and according to the regular appeal machinery of the Veterans' Administration.[9] However, on questions other than that of basic eligibility, appeals from decisions under Title III relating to loans, or under Title V, relating to unemployment benefits, are on a different footing. There is no appeal to the Administrator as a matter of right in such cases. Appeals in these cases are allowed only in the discretion of the Administrator, and he may designate the tribunal or officer to consider such appeals.[10]

When a claim is disallowed by the Board, it may not thereafter be reopened and allowed, except that where subsequent to disallowance new and material evidence in the form of official reports from the proper service department is secured, the Board may authorize the reopening of the claim and may review the former decision.[11] The Board is bound by the regulations of the Veterans' Administration, instructions of the Administrator of Veterans' Affairs, and the precedent opinions of the solicitor of the Veterans' Administration.[12]

c. Application for Review

§ 94. Generally; Time and Manner of Filing.—Applications for review on appeal, with certain exceptions,[13] must be filed within one year from the date of mailing of notice of the result of the initial review or determination.[14] If no application for review on appeal is filed in accordance with the regulation within the time limit specified, the action taken on the initial review or determination will become final and the claim will not thereafter be reopened or allowed, except under the circumstances discussed above.[15]

emergency officers' retirement claims covered by section 10, Public Law No. 2, 73d Congress, is vested in such persons as shall be designated by the Administrator of Veterans' Affairs. Following initial determination, the same rules and regulations governing applications for review to the Administrator of Veterans' Affairs as provided in this regulation will be applied. Vets Reg No. 2 (a), Part II, par. IV.

[7] 38 CFR, § 30.9804, is as follows: "The Board of Veterans' Appeals shall have authority to correct clear and unmistakable errors in any question at issue. If the board finds a clear and unmistakable error on any question not at issue, such error will be brought to the attention of the proper service by memorandum from the chairman of the board."

[8] Admr Dec 618 (January 12, 1945). Appeals in such cases are pursuant to the provisions of Vets Reg No. 2 (a). Ibid.

[9] Ibid.

[10] Admr Dec 618 (January 12, 1945). See, in this connection, divisions VI and VIII, infra.

[11] Vets Reg No. 2 (a), Part II, par. II.

[12] Ibid.

[13] The exceptions relate to simultaneously contested claims, and are discussed in § 96, infra.

[14] Vets Reg No. 2 (a), Part II, par. III. Application for review on appeal, filed with the activity which entered the denial of claim, which is postmarked prior to the expiration of the one-year period, will be accepted as having been filed within the time limit. Ibid.

[15] Ibid. The exceptions are discussed in § 93, supra.

If application for review on appeal is entered within the specified time limit, a reasonable time thereafter will be allowed, if requested, for the perfection of the appeal and the presentation of additional evidence before a final determination or decision is made.[16]

The application for review must be filed with the activity, board, or unit which entered the denial of the claim.[17] An application will not be entertained unless it is in conformity with the regulation.[18] The application may be made on a form furnished by the Veterans' Administration.[19]

§ 95. **Allegations, Form and Contents.**—The application for review on appeal should be made in writing,[20] and must state the name and service of the veteran on whose service the claim is based, together with the number of the claim and the date of the action from which the appeal is taken, and must clearly identify the benefit sought.[1] The application should contain specific assignments of the alleged mistake of fact or error of law in the adjudication of the claim. Insufficiency of the application in this respect is a ground for dismissal.[2] The appeal may be perfected on a form furnished by the Veterans' Administration.[3]

§ 96. **Simultaneously Contested Claims.**—Where there are simultaneously contested claims, of which one is allowed and one rejected, the time allowed for filing an application for review on appeal is sixty days from the date of mailing notice of the original action to the claimant to whom the action is adverse. In such cases, the Veterans' Administration will promptly notify the parties in interest of the action taken.[4]

Upon the filing of an application for review on appeal in simultaneously contested claims, all parties other than the applicant for review, whose interests may be adversely affected by the decision must be notified of the substance thereof, and allowed thirty days from the date of mailing such notice within which to file brief or argument in answer thereto, before the record is forwarded on application for review.[5]

[16] Vets Reg No. 2 (a), Part II, par. III.

[17] Vets Reg No. 2 (a), Part II, par. III.

[18] Vets Reg No. 2 (a), Part II, par. XI.

[19] This form, No. P-9, is set out on page 125, infra.

[20] Vets Reg No. 2(a), Part II, par. V.

[1] Vets Reg No. 2 (a), Part II, par. VII.

[2] Vets Reg No. 2 (a), Part II, par. VIII.

[3] See Form P-9, shown on p. 125, infra.

[4] Vets Reg No. 2 (a) Part II, par. X. Such notices will be forwarded to the parties in interest to their last known address of record, and will invite attention to the fact that application for review will not be entertained unless it is filed within the sixty-day period. Ibid.

Effect of interruption of mail service. While this regulation technically requires a deposit of notice in the mails, this procedure may be dispensed with where the person to be notified resides in a country to which mails cannot be delivered, because it is enemy territory or is occupied by enemy forces (for example, the Philippine Islands during the Japanese occupation thereof). The deposit of notice in the mail in such a case would serve no useful purpose, but would merely result in the return of the notice to the Veterans' Administration. The requirement of notice under such circumstances will be met by placing in the file of the Administration a notation that the notice is not being mailed because of the interruption of mail service. Payment of the allowed claim in such case will not be made until the expiration of the sixty-day period. Admr Dec 494 (July 4, 1942).

[5] This notice is required to be forwarded to the last known address of record of the parties whose interest may be adversely affected, and such action will be sufficient evidence of notice. Ibid.

d. Who May Appeal; Effect of Administrative Appeal

§ 97. **Generally; Claimant, Guardian or Representative.**—Application for review on appeal may be made in writing by the claimant, his legal guardian, or such accredited representative or authorized agent as may be selected by him. No more than one organization or agent will be recognized at any one time in the prosecution of a claim.[6]

§ 98. **Appeal by Veterans' Administration Officer.**—An application for review on appeal may be made by any member of certain Special Review Boards,[7] and by such officials of the Veterans' Administration as are designated by the Administrator of Veterans' Affairs.[8]

§ 99. **—Effect of Administrative Appeal; Merger in Veteran's Appeal.**—An application for review on appeal by an official of the Veterans' Administration will not operate to deprive the claimant of the right to review on appeal.[9] Where an administrative appeal is entered and there is also entered, prior to the release of the case folder to the Board of Veterans' Appeals, an appeal by the claimant or his representative, the administrative appeal will be treated as merged in the claimant's appeal, and the case will be handled accordingly.[10]

[6] Vets Reg No. 2 (a) Part II, par. V.

[7] See Vets Reg No. 2 (a), Part III.

[8] Vets Reg No. 2 (a), Part II, par. VI. Application in such a case must be made within the time limits pointed out in §§ 94, 96, supra.

38 CFR, § 2.1005, is, in part, as follows: "(d) In the event of a dissenting opinion by a rating specialist or a member of the central disability board, no payment will be made based upon the decision, until it has been authoritatively determined whether an appeal will be taken. If appeal from any decision is taken by the adjudication officer, the manager, or the chief, claims division in cases adjudicated by the central disability board, no change in payments, based on the decision appealed from, will be made until a decision is rendered by the Board of Veterans' Appeals and the case file is returned to the appropriate activity.

"(e) If it is decided that an appeal is to be taken by the adjudication officer, the manager, or the chief, claims division in central office cases, the claimant or his representative will be promptly informed concerning the question at issue and concerning his right of appearance or representation before the rating board or the Board of Veterans' Appeals. As provided in current adjudication procedure the formal hearing in the field office will be in lieu of a formal hearing before the Board of Veterans' Appeals except in the unusual case when a special appearance by the veteran or his representative before the Board of Veterans' Appeals may be considered necessary. The hearing will not be accepted to serve as a basis for reversal of the majority decision, but such action as may be indicated will be taken where new and material evidence is submitted or where the further development of evidence would appear to be advisable on information submitted by or in behalf of the claimant. A transcribed record of the hearing will be filed. If, upon being informed of the administrative appeal, the claimant or his representative elects to present additional evidence or argument in support of the administrative appeal, such election will be deemed to be an appeal, and the two appeals will be merged and considered in accordance with the provisions of § 3.1328."

[9] Vets Reg No. 2 (a), Part II, par. VI.

[10] The regulation on this subject, 38 CFR, § 3.1328, is as follows: "If an administrative appeal is entered and there is also entered prior to the release of the case folder to the chairman of the Board of Veterans' Appeals, an appeal by the claimant or his accredited representative, the administrative appeal will be considered as merged in the claimant's appeal and the case will be handled in accordance with procedure governing appeals by claimants or their accredited representatives. In the event the case file is received by the Board of Veterans' Appeals by reason of an administrative appeal, but prior to the rendition of appellate decision in such a case there is received in the Board of Veterans' Appeals an appeal entered by the claimant or his accredited

In the event of an administrative appeal, no change in payments based on the result of the review or determination will be made until a decision is rendered by the Board of Veterans' Appeals.[11]

C. Payment of Claims or Benefits; Recovery Back

§ 100. Generally.—Pensions, insurance, and other allowances and benefits provided for by laws administered by the Veterans' Administration, are paid by checks drawn, pursuant to certification by the Administrator of Veterans' Affairs, by the Treasury Department, and are payable by the Treasurer of the United States.[12] Cashiers at Veterans' Administration facilities are authorized to cash Government checks in favor of hospitalized and domiciled beneficiaries.[13]

Under some circumstances, payments of benefits due persons under disability are made to his guardian or other fiduciary,[14] and in some instances institutional awards are made on behalf of such persons.[15]

§ 101. Time, Medium and Manner of Payment.—As noted above,[16] payments of veterans' benefits are made by checks drawn on the Treasurer of the United States, pursuant to certification by the Administrator of Veterans' Affairs.[17] Such checks are transmitted by mail to the payee thereof at his last known address.[18] The envelope or cover may bear a notice prohibiting the delivery thereof if the addressee has died or removed, or, in certain cases, where the addressee, a widow, has remarried.[19] Payment of pensions are required to be

representative, the administrative appeal will be considered as merged in the claimant's appeal and the procedure governing appeals by claimants or their accredited representatives will be for application. An administrative appeal will not be merged with a claimant's appeal if the matters in issue refer to the application of different statutes and the regulations issued pursuant thereto."

[11] 38 CFR, § 3.1329.

[12] 38 USC, § 50 (August 17, 1912, chap. 301, § 3, 37 Stat. 312; May 29, 1920, chap. 214, § 1, 41 Stat. 654; July 3, 1930, chap. 863, § 2, 46 Stat. 1016; June 3, 1936, chap. 482, § 1, 49 Stat. 1396).

[13] VA Serv Let, June 7, 1945. Cashiers are directed to exercise care in the identification of beneficiaries who present checks to be cashed. Ibid.

A beneficiary cashing a check at a Veterans' Administration facility may make arrangements to receive a part of the proceeds in cash and to transmit the remainder to a dependent relative. Ibid.

[14] See §§ 122, et seq., infra.

[15] See §§ 133, 134, infra.

[16] See § 100, supra.

[17] 38 USC, § 50 (August 17, 1912, chap. 301, § 3, 37 Stat. 312; May 29, 1920, chap. 214, § 1, 41 Stat. 654; July 3, 1930, chap. 863, § 2, 46 Stat. 1016; June 3, 1936, chap. 482, § 1, 49 Stat. 1396).

[18] Ibid.

[19] 38 USC, § 50, is, in part, as follows: "Postmasters, delivery clerks, letter carriers, and all other postal employees are prohibited from delivering any mail addressed by the United States bearing such notice and containing any such check (except that in the case of checks in payment of allowances and benefits other than pensions, compensation or insurance, the prohibition shall apply only in so far as the Administrator of Veterans' Affairs deems it necessary to protect the United States against loss), to any person whomsoever, if the addressee has died or removed, or in the case of a widow believed by the postal employee intrusted with the delivery of such mail to have remarried (unless such mail is addressed by the United States in the name which the widow shall have acquired by remarriage); and the postmaster in every such case shall forthwith return such mail with a statement of the reasons for so doing, and if because of death or remarriage, the date thereof, if known. Checks returned as herein provided on account of death or remarriage shall be canceled."

The Postal regulations relating to the handling of pension mail are embraced in 39 CFR, § 12.19.

LAW-VE.007

78th Congress, 1st Session - - - - - - House Document No. 285

HANDBOOK

FOR

SERVICEMEN AND SERVICEWOMEN OF WORLD WAR II AND THEIR DEPENDENTS, INCLUDING RIGHTS AND BENEFITS OF VETERANS OF WORLD WAR I AND THEIR DEPENDENTS

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1943

disability, aggravation, or death was service-connected within the meaning of such laws. Application for this benefit has to be made within 2 years from date of injury, aggravation, or death. Section 4 of the act of March 24, 1943, provides that where a person while following a course of vocational rehabilitation as provided for in the act suffers an injury or aggravation of an injury as the result of the pursuit of such course of vocational rehabilitation and not the result of his or her own misconduct or such injury or aggravation results in disability or death of such person, the benefits applicable to veterans of World War II shall be awarded in the same manner and extent as if such disability, aggravation, or death were service-connected within the meaning of such laws. Application for this benefit has to be made within 2 years from the date of injury, aggravation, or death.

227. Question. When a veteran dies as a result of a disability contracted in World War II, or during peacetime, what are the amounts payable to dependents?

Answer. When a member or former member of the armed forces dies of a service-connected disability, his widow, children, and parents may file claim for pension. In case of death which has been connected with World War II service or extrahazardous service while the United States was not engaged in war, the dependents—widow, children, parents—are entitled to draw pension in amounts from $25 a month to an aggregate of $150.

In the case of a death which has been connected with service which was rendered during a time of peace, and which was not extrahazardous, the dependents—widow, children, parents—are entitled to draw pension in amounts from $19 a month to an aggregate of $115.

228. Question. Can the children of veterans receive compensation after reaching the age of 18?

Answer. Yes; if they are pursuing a course of instruction in an approved institution, and until the completion of education, or training, but not after the child marries or reaches 21 years of age, whichever is the earlier date; or if prior to reaching the age of 18 the children become or have become permanently incapable of self-support by reason of physical or mental defect.

229. Question. What recourse is open to a claimant whose claim for compensation or pension has been denied?

Answer. Claimants may appeal from a decision rendered by a rating board, provided the appeal is taken within 1 year; otherwise the decision becomes final. The appeal application must be signed by the claimant or his accredited representative, and must contain alleged mistakes of facts or errors of law in the adjudication of the claim.

230. Question. Do the dependents of a member of the armed forces who dies in service receive any other benefits?

Answer. Yes; his dependents may be entitled to receive, in addition to the payments made by the Veterans' Administration, 6 months of the service pay at the rank of the member at the time of his death. This benefit is administered by the department under which the member was serving.

LAW-VE.000

VETERANS' BENEFITS

INFORMATION CONCERNING MONETARY AND OTHER BENEFITS AVAILABLE TO PERSONS WHO HAVE SERVED IN THE ARMED FORCES OF THE UNITED STATES AND TO THE DEPENDENTS OF SUCH PERSONS

December 15, 1944

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1945

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.
Price 15 cents

date of commencement of such absence. The act of March 7, 1942 (Public Law 490, 77th Cong.) as amended by the act of December 24, 1942 (Public Law 848, 77th Cong.) and by the act of July 1, 1944 (Public Law 408, 78th Cong.), applies.

AFFIDAVITS

To be of value an affidavit should clearly and concisely set forth the facts sought to be proved. The use of legal headings and phraseology should be avoided unless prepared by an attorney. If the affiant is a layman, have him set forth the facts as simply as possible, in chronological order, and with due regard to any necessary details. All affidavits from physicians should state whether the evidence is furnished from office records or from memory. Such affidavits should specifically show the symptoms and findings rather than merely a diagnosis, since the former are facts and the diagnosis is an opinion.

Foreign affidavits.—Affidavits or other documents from foreign countries in which the United States has consular representatives must be executed before a United States consular officer in that country or by or before an official of that country having authority for that purpose. In the event the execution is by or before a foreign officer, the signature of that official must be authenticated either by the United States consular officer in that jurisdiction or by the Department of State, except that documents submitted through and approved by the Deputy Minister, Department of Veterans Affairs, Ottawa, Canada, will be accepted without being authenticated in such manner.

Where there is no consular representative, the signature and seal of the official of the country may be authenticated by a diplomatic or consular officer of a friendly country, or the document may be forwarded to the nearest American consul for a certificate concerning its authenticity.

CHAPTER XIV. MISCELLANEOUS PROVISIONS RELATING TO BENEFITS ADMINISTERED BY THE VETERANS' ADMINISTRATION

APPEALS

Claimants may appeal from a decision rendered on any claim. Except in simultaneously contested claims the appeal must be taken within one year from the date of the mailing of the notice of the initial decision. The appeal must be filed with the Veterans' Administration office which has custody of the case file. If no appeal is filed within the 1-year period mentioned herein, the action taken becomes final and the claim may not thereafter be reopened and allowed. This, however, does not preclude the filing of a new claim provided it is supported by new and material evidence. The requirement for filing an appeal within 1 year from the date of the mailing of the notice of the initial decision will be met if the appeal is postmarked prior to the expiration of such period. The claimant may be allowed a reasonable period of time after the filing of the appeal in which to submit additional evidence or argument in support thereof.

In simultaneously contested claims (e. g., where husband or wife contends that there was desertion on the part of the other spouse)

where one of the claims is allowed and the other rejected, the appeal must be filed within 60 days from the date of the mailing of notice. In such cases, the law requires that all claimants interested in the subject of the appeal should be given notice of the original decision and the appeal taken from it, and allowed thirty days from the date of mailing of such notice to file briefs or arguments in answer to the appeal.

All appeals must be made in writing and must be signed by the claimant, his guardian or representative. The application for review on appeal must state clearly the benefits sought and must contain a specific assignment of the alleged mistake of fact or error of law in the initial decision.

When a claim is denied by the Board of Veterans' Appeals, it may not thereafter be reopened or allowed except in case of an obvious error in the record or where new and material information is received from the War or Navy Department.

BENEFITS NOT SUBJECT TO TAXATION OR SEIZURE

Act of August 12, 1935 as amended by the act of October 17, 1940

Section 3 of the act of August 12, 1935 (Public Law 262, 74th Cong.) provides that payments of benefits due or to become due are not assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans are exempt from taxation, are exempt from the claims of creditors, and are not liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. This provision does not attach to claims of the United States arising under such laws nor does the exemption as to taxation extend to any property purchased in part or wholly out of such payments. This section does not prohibit the assignment by any person, to whom converted insurance may be payable under title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries.

The act of October 17, 1940 (Public Law 866, 76th Cong.) added other provisions to section 3 of the act of August 12, 1935. Under this amendment no collection by set-off or otherwise will be made from any benefits payable under any law administered by the Veterans' Administration and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (a) any person other than the indebted beneficiary or his estate, or (b) any beneficiary or his estate, except amounts due the United States by such beneficiary or his estate by reason of overpayments or illegal payments made under such laws relating to veterans, to such beneficiary or his estate or his dependents as such. If the benefits be yearly renewable term, United States Government life (converted), or National Service life insurance, issued by the United States, the exemption will be inapplicable to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness be in the form of liens to secure unpaid premiums, or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

LAW-VE.005

79th Congress, 2d Session - - - - - - House Document No. 772

MANUAL

EXPLANATORY

OF THE

PRIVILEGES, RIGHTS, AND BENEFITS

PROVIDED FOR

PERSONS WHO SERVED IN THE ARMED FORCES OF THE UNITED STATES DURING WORLD WAR I, WORLD WAR II, OR PEACETIME (AFTER APRIL 20, 1898), AND THOSE DEPENDENT UPON THEM, WITH SPECIAL REFERENCE TO THOSE BENEFITS, RIGHTS, AND PRIVILEGES ADMINISTERED BY THE VETERANS' ADMINISTRATION

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1946

93750°

accepted for the good of the service. The bar will not operate against a person if it is established to the satisfaction of the Administrator that at the time of the commission of the offense he was insane. This statute does not apply to any war risk, Government (converted) or national service life insurance policy. (38 U. S. C. 693g.)

Part B. Procedure for Adjudication of Claims

SECTION 909. BASIS FOR ADJUDICATION OF CLAIMS

The laws, legal precedents, regulations and procedure, and instructions constitute the basis for adjudicating claims.

Following the enactment of legislation, the Veterans' Administration promulgates instructions required to place the law in effect. In some instances such instructions are supplemented later, and finally many of them become part of the present regulations and procedure of the Veterans' Administration. In many instances separate instructions are not indicated and the law is placed in effect by immediate amendments to the printed regulations and procedure. In addition to the foregoing, questions arising under the laws give rise to opinions of the Solicitor, many of which are precedent forming and when approved by the Administrator become Administrator's decisions which are printed for general distribution. In connection with insurance, there are court decisions which govern application of the laws to individual groups of cases. In addition, there are many instances where authority exists to handle matters in more than one way; and in such instances it is necessary for the Administrator to adopt one way, which is then applied uniformly, and which becomes the policy. The general practice is to adopt that way which is most favorable to the veteran and his dependents.

SECTION 910. DISALLOWED CLAIMS

When a claim is disallowed, the claimant or his duly authorized representative is informed of the action taken and of his right to appeal from the decision rendered.

SECTION 911. APPEALS

All questions on claims involving benefits under laws administered by the Veterans' Administration are subject to one review on appeal to the Administrator of Veterans' Affairs, decisions in such cases to be made by the Board of Veterans' Appeals. The law provides that the Board of Veterans' Appeals shall be composed of a Chairman, a Vice Chairman, such number of associate members as may be found necessary not to exceed 50, and such other professional, administrative, clerical and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals. Members of the Board, including the Chairman and the Vice Chairman, are appointed by the Administrator of Veterans' Affairs with the approval of the President (Public Law 425, 79th Cong., June 22, 1946).

Applications for review on appeal (except in those cases involving simultaneously contested claims) must be filed within 1 year from the date of mailing of the notice of the result of the initial review or determination. If no application for review on appeal is filed

within 1 year, the action taken on the initial review or determination will become final and the claim will not thereafter be reopened or allowed, except where subsequent to such disallowance new and material evidence in the form of official reports from the proper service department is secured the Administrator may authorize the reopening of the claim and review of the former decision. The application for review on appeal must be filed with the activity which entered the denial of the claim. If application for review on appeal is entered within the specified time limit, a reasonable time thereafter will be allowed for the perfection of the appeal and the presentation of additional evidence before a final decision or determination is made (38 U. S. C. ch. 12, Veterans Regulations).

Where there are simultaneously contested claims, one of which is allowed and one rejected, the time allowed for filing an application for review on appeal is 60 days from the date of mailing notice of the original action to the claimant to whom the action is adverse. In such cases the Veterans' Administration will promptly notify the parties in interest of the action taken. Upon the filing of an application for review on appeal in simultaneously contested claims, all parties other than the applicant for review, whose interests may be adversely affected by the decision, will be notified of the substance thereof and allowed 30 days from the date of mailing of such notice within which to file brief or argument in answer thereto, before the record is forwarded on application for review (38 U. S. C., ch. 12, Veterans Regulations).

Application for review on appeal may be made in writing by the claimant, his legal guardian, or such accredited representative, or authorized agent as may be selected by him. Not more than one recognized organization or authorized agent will be recognized at any one time in the prosecution of a claim. The application for review must state the name and service of the veteran on whose service the claim is based, together with the number of the claim and the date of the action from which the appeal is taken, and should clearly identify the benefit sought. Each application should contain specific assignments of the alleged mistake of fact or error of law in the adjudication of the claim, and any application for review on appeal insufficient in this respect may be dismissed (38 U. S. C., ch. 12, Veterans Regulations).

When a claim is disallowed by the Board of Veterans' Appeals it may not thereafter be reopened and allowed, except that where subsequent to disallowance new and material evidence in the form of official reports from the proper service department is secured, the Board may authorize the reopening of the claim and review of the former decision. The Board of Veterans' Appeals is bound by the regulations of the Veterans' Administration, instructions of the Administrator of Veterans' Affairs, and the precedent opinions of the Solicitor of the Veterans' Administration (38 U. S. C., ch. 12, Veterans Regulations).

SECTION 912. FINALITY OF DECISIONS

Notwithstanding any other provisions of law, except as to claims for United States Government life insurance and national service life insurance the decisions of the Administrator of Veterans' Affairs on any question of law or fact concerning a claim for benefits or pay-

ments under any act administered by the Veterans' Administration, are final and conclusive, and no other official nor any court of the United States has power or jurisdiction to review any such decision (38 U. S. C. 11a-2, 705).

SECTION 913. SCHEDULE FOR RATING DISABILITIES

On and after April 1, 1946, all initial ratings in claims for disability compensation or pension and awards based thereon under Public Law 2, Seventy-third Congress, March 20, 1933, and the Veterans Regulations issued pursuant thereto (38 U. S. C. 701-721, ch. 12, Veterans Regulations) will be determined under the revised Schedule for Rating Disabilities, 1945, whether the claim covers a period before or after that date. In any case in which the revised schedule authorizes an increase in the rating previously made by a rating board of original jurisdiction under the Schedule for Rating Disabilities, 1933, such increased rating and award thereon will be effective as of April 1, 1946. Nothing in the revised Schedule for Rating Disabilities, 1945, will be construed as requiring any reduction or discontinuance of compensation in cases rated and awarded under the Schedule of Disability Ratings, 1925, or as requiring denial of entitlement to any statutory award or rating, but on and after April 1, 1946, except as to statutory awards and ratings provided under the World War Veterans' Act, 1924, as amended, as restored with limitations by the act of March 8, 1934, Public Law 141, Seventy-third Congress, as amended, awards in all cases will be based on the degree of disability determined in accordance with the revised schedule, 1945 (Public Law 458, 79th Cong., June 27, 1946).

SECTION 914. INCREASES AND REDUCTIONS IN RATINGS

It is the policy of the Veterans' Administration to handle cases affected by changes of medical findings or diagnoses, where service connection or entitlement is in effect, so as to produce the greatest degree of stability of disability evaluations consistent with the laws and regulations governing disability compensation and pensions. When a rating has been assigned it will not thereafter be changed except to correct previous error or on the basis of a subsequent medical examination showing that the disability has become worse or better, justifying an increase or decrease in the rating.

SECTION 915. PHYSICAL EXAMINATIONS

Every person applying for or in receipt of compensation or pension for disability must, as frequently and at such times and places as may reasonably be required, submit himself to examination by a duly authorized medical examiner of the Veterans' Administration, including a period of hospitalization if necessary.

At the present time, if filed within 6 months from date of discharge, claims are rated initially on the records of the service departments, without an examination, unless it is clear that error would result from such rating.

Reexaminations for compensation ratings in service-connected cases are not requested in cases conforming to the standards of permanence

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HANDBOOK

FOR

VETERANS OF WORLD WAR II AND THEIR DEPENDENTS, INCLUDING RIGHTS AND BENEFITS OF VETERANS OF WORLD WAR I AND THEIR DEPENDENTS

UNITED STATES
GOVERNMENT PRINTING OFFICE
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90346

Marine Corps, or Coast Guard, after serving at least one enlistment, or discharged for disability incurred in line of duty, may be issued by postmasters at any county seat post office or any other post office designated by the Veterans' Administration, or by field stations of the Veterans' Administration. Application may be made by relatives or undertakers. Such a flag shall be given to the next of kin after burial (Public Law 166, 76th Cong., approved July 11, 1939, as amended). A flag may also be issued by the above agencies in the case of any person who has died while in the military or naval service of the United States after May 27, 1941, and prior to the end of the wars in which the United States is now engaged, to the nearest relative of such person, or to such other person as the Administrator of Veterans' Affairs deems most appropriate, if no person is otherwise entitled to receive a flag of the United States used at the funeral of the deceased person (Public Law 187, 78th Cong., approved November 22, 1943). Application for a flag under either of the foregoing provisions should be made on Veterans' Administration Form 2008. Reimbursement will not be made for flags privately purchased by relatives, friends, or other persons, nor will flags be issued to undertakers, organizations, or individuals to replace flags loaned or donated by them.

188. Q. To whom may a person write for information about national cemeteries or headstones?

A. To the Quartermaster General, United States Army, Washington 25, D. C. (See questions 203 and 204.)

APPEALS

189. Q. How may an appeal be filed from a decision rendered on a claim before the Veterans' Administration?

A. Claimants may appeal from a decision rendered on any claim. Except in simultaneously contested claims the appeal must be taken within 1 year from the date of the mailing of the notice of the initial decision. The appeal must be filed with the Veterans' Administration office which has custody of the case file. If no appeal is filed within the 1-year period mentioned herein, the action taken becomes final and the claim may not thereafter be reopened and allowed. This, however, does not preclude the filing of a new claim provided it is supported by new and material evidence. The requirement for filing an appeal within 1 year from the date of the mailing of the notice of the initial decision will be met if the appeal is postmarked prior to the expiration of such period. The claimant may be allowed a reasonable period of time after the filing of the appeal in which to submit additional evidence or argument in support thereof.

In simultaneously contested claims (e. g., where husband or wife contends that there was desertion on the part of the other spouse) where one of the claims is allowed and the other rejected, the appeal must be filed within 60 days from the date of the mailing of notice. In such cases, the law requires that all claimants interested in the subject of the appeal should be given notice of the original decision and the appeal taken from it, and allowed 30 days from the date of mailing of such notice to file briefs or arguments in answer to the appeal.

All appeals must be made in writing and must be signed by the claimant, his guardian, or representative. The application for review on appeal must state clearly the benefits sought and must contain a specific assignment of the alleged mistake of fact or error of law in the initial decision.

When a claim is denied by the Board of Veterans' Appeals, it may not thereafter be reopened or allowed except in case of an obvious error in the record or where new and material information is received from the War or Navy Departments.