

**DATE:** 07-18-90

**CITATION:** VAOPGCPREC 73-90  
Vet. Aff. Op. Gen. Couns. Prec. 73-90

**TEXT:**

Subject: Scope of 38 U.S.C. § 360 in Relation to 38 U.S.C. § 351

(This opinion, previously issued as General Counsel Opinion 11-87, dated October 2, 1987, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

**Question Presented:**

Whether the provisions of 38 U.S.C. § 360 are applicable where a veteran's loss of use of an extremity is compensable under 38 U.S.C. § 351 and loss of use of the other paired extremity is neither service-connected nor quasi-service-connected under section 351.

Comments: For reasons set out herein, section 351 eligibility confers entitlement to disability compensation provided under section 360, if eligibility otherwise exists, that is, absent expression of congressional intent that such entitlement not be conferred.

The facts presenting this issue are as follows: The veteran has lost the use of the left upper extremity due to VA medical care. That disability is, under 38 U.S.C. § 351, considered as if service connected. Additionally, the veteran has lost the use of the right upper extremity due to nonservice causes. Section 351 provides, in effect, that where a veteran is disabled or dies because of injury resulting from VA medical treatment or examination, or a VA- financed course of vocational rehabilitation, disability or death compensation or dependency and indemnity compensation, as appropriate, shall be awarded "as if" such disability or death were service-connected. The other pertinent provision, section 360, permits disability of a specified organ, which arose from nonservice causes, to be considered "as if" service-connected if the corresponding organ is disabled due to service-connected causes. In such instances, section 360 provides that "the Administrator shall assign and pay to the veteran the applicable rate of compensation under this chapter chap. 11 as if the combination of disabilities were the result of service-connected disability."

The present opinion request referred to Op. G.C. 12-86, which rested on and clarified Op. G.C. 5-86. The later opinion held, in part, that section 351 eligibility confers entitlement, if otherwise appropriate, to all disability and death compensation and dependency and indemnity compensation benefits unless the legislative history is clear that Congress did not intend such entitlement. More specifically, the opinion permitted the nonservice-connected blindness of an eye to be considered under section 360 as if

it were service- connected, for disability compensation purposes, where blindness of the other eye, though not service-connected, was being compensated under section 351. This office was asked to reconsider Op. G.C. 12-86 because of changes made in section 360 by Pub.L. No. 99-576, title I, § 109(a)(1) (1986).

Section 360 derived from Pub.L. No. 87-610, § 1 (1962). Its purpose was, in cases of disability to specified paired organs, to equate claims where one organ was disabled due to service and the paired organ was not with claims where both paired organs were disabled due to service. It was intended to permit the granting of a combined service-connected-disability evaluation for a specified service-disabled organ and its nonservice-disabled paired organ where, before the enactment, disability of the service-disabled organ could only be compensated as a unilateral loss. S. Rep. No. 1845, 87th Cong., 2d Sess. 1, reprinted in 1962 U.S. Code Cong. & Ad. News 2191. The major thrust of the amendment made by Pub.L. No. 99-576 was to add to the existing list of organs which could, under section 360, be considered as if service-connected for compensation purposes. While the amendment did make some refinements of section 360, the legislative history of Pub.L. No. 99-576 does not indicate a change in the basic purpose of the provision. See Explanatory Materials on the Compromise Agreement on H.R.5299, the "Veterans' Benefits Improvement and Health-Care Authorization Act of 1986," before the House and Senate Committees on Veterans' Affairs, 99th Cong., 2d Sess. 3-4 (S. Prt. 99-188, 1986). Neither does it, nor other history of the provision, indicate that Congress intended that section 351 entitlement not confer eligibility under section 360. Accordingly, the principles of Op. G.C. 5-86, as clarified by Op. G.C. 12-86, are for application.

**HELD:**

Section 351 eligibility confers entitlement to disability compensation provided under section 360, if eligibility otherwise exists.

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