collection of information should be received on or before December 21, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0496'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Claim for Veterans Mortgage Life Insurance, VA Form 29–0549.

OMB Control Number: 2900–0496.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the mortgage holder to claim the proceeds of Veterans Mortgage Life Insurance and to provide the information needed to authorize payment of the insurance. The information requested is required by law, Title 38, U.S.C., Section 2106, and is used by VA to process the mortgage holder's claim.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Dated: August 14, 1998.

By direction of the Secretary

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–28296 Filed 10–21–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 8–98

Question Presented

a. Does 38 CFR 3.317 preclude compensation for an illness manifested by symptoms that could, in some circumstances, be attributable to a known clinical diagnosis, even if no such diagnosis has been made with respect to the individual seeking compensation?

b. May the Department of Veterans Affairs (VA) pay compensation under 38 U.S.C. 1117 for disability manifested by symptoms that either elude diagnosis or are attributed to a poorly-defined disease such as chronic fatigue syndrome or fibromyalgia?

Held

a. Compensation may be paid under 38 CFR 3.317 for disability which cannot, based on the facts of the particular veteran's case, be attributed to any known clinical diagnosis. The fact that the signs or symptoms exhibited by the veteran could conceivably be attributed to a known clinical diagnosis under other circumstances not presented in the particular veteran's case does not preclude compensation under section 3.317.

b. Section 1117(a) of title 38, United States Code, authorizes service connection on a presumptive basis only for disability arising in Persian Gulf veterans due to ''undiagnosed illness'' and may not be construed to authorize presumptive service connection for any diagnosed illness, regardless of whether the diagnosis may be characterized as poorly defined.

Effective Date: August 3, 1998.

VAOPGCPREC 9–98

Question Presented

1. When a knee disorder is rated under Diagnostic Code (DC) 5257 (instability of the knee), must the claimant have compensable limitation of motion under DC 5260 or DC 5261 in order to obtain a separate rating for arthritis?

2. Must 38 CFR 4.40, 4.45, and 4.59 be considered when assigning an evaluation for degenerative or traumatic arthritis under DC 5003 or DC 5010, and if so, how?

3. When a disability is rated under a specific diagnostic code that does not appear to involve limitation of motion, must 38 CFR 4.40, 4.45, and 4.59 be considered to determine the applicability of another diagnostic code that does involve limitation of motion?

4. What determines whether a particular diagnostic code is predicated on loss of range of motion so that sections 4.40 and 4.45 apply?

5. Are DC 5259 (removal of the semilunar cartilage) and DC 5284 (foot injuries) based on loss of range of motion, requiring consideration of sections 4.40 and 4.45?

Held

1. For a knee disability rated under DC 5257 to warrant a separate rating for arthritis based on X-ray findings and limitation of motion, limitation of motion under DC 5260 or DC 5261 need not be compensable but must at least meet the criteria for a zero-percent rating. A separate rating for arthritis could also be based on X-ray findings and painful motion under 38 CFR 4.59.

2. The provisions of 38 CFR 4.40, 4.45, and 4.59 must be considered in assigning an evaluation for degenerative or traumatic arthritis under DC 5003 or DC 5010. Rating personnel must consider functional loss and clearly explain the impact of pain upon the disability.

3. If a musculoskeletal disability is rated under a specific diagnostic code that does not involve limitation of motion and another diagnostic code based on limitation of motion may be applicable, the latter diagnostic code must be considered in light of sections 4.40, 4.45, and 4.59.

4. The medical nature of the particular disability to be rated under a given diagnostic code determines whether the diagnostic code is predicated on loss of range of motion. Reference should be made to appropriate medical authorities.

5. DC 5259 requires consideration of sections 4.40 and 4.45 because removal of the semilunar cartilage may result in complications producing loss of motion. Depending on the nature of the foot injury, DC 5284 may involve limitation of motion and therefore require consideration under sections 4.40 and 4.45.

Effective Date: August 14, 1998.

VAOPGCPREC 10–98

Question Presented

a. Does the condition in 38 U.S.C. 5310(b)(1) that a deceased veteran's surviving spouse not be entitled to death benefits under 38 U.S.C. ch. 11, 13, or 15 for the month of the veteran's death require a decision on the merits of whether the surviving spouse is entitled to death benefits or may VA consider the condition satisfied based on the lack of a claim by the surviving spouse for death benefits?

b. May a veteran's surviving spouse apply for only the benefit provided by 38 U.S.C. 5310(b)? If so, may he or she use VA Form 21–534 for such a claim?

c. If a claimant uses VA Form 21–534 to claim only the benefit provided by 38 U.S.C. 5310(b), must VA also treat the claim as one for dependency and indemnity compensation, death pension, and accrued benefits? What effect does Isenhart v. Derwinski, 3 Vet. App. 177 (1992), have on using VA Form 21–534?

d. If a veteran's surviving spouse is awarded the benefit provided under 38 U.S.C. 5310(b) and later establishes entitlement to death benefits for the month of the veteran's death at a rate higher than the veteran would have received in compensation or pension for that month if he or she had not died, is the surviving spouse still entitled to the section 5310(b) benefit? What, if any, effect do 38 U.S.C. 5111(c) and 38 CFR 3.20(b) and 3.31 have?

Held

a. Subsection (b) of section 5310, title 38, United States Code, as added by section 506 of the Veterans' Benefits Improvements Act of 1996, Pub. L. 104–275, § 506, 110 Stat. 3322, 3343, provides a benefit for the month of a veteran's death if the veteran's surviving spouse is not entitled to death compensation, dependency of indemnity compensation, or death pension for the month of death. It would be reasonable to interpret the condition of nonentitlement to death benefits as being satisfied by the lack of any claim for death benefits filed by the surviving spouse or by a decision on the merits on the question of whether the surviving spouse is entitled to death benefits for the month of death. Whichever interpretation the Department of Veterans Affairs chooses to adopt, it should be adopted through properly issued regulations.

b. A surviving spouse may apply for only the benefit provided by 38 U.S.C. 5310(b) and may do so using any form VA prescribes for the purpose of applying for that benefit. The form to be used should be prescribed by issuing an appropriate regulation.

c. If, in accordance with VA's prescription, a surviving spouse uses VA Form 21–534, Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation If Applicable), to apply for only the benefit provided by 38 U.S.C. 5310(b), VA need not consider the claim as one for dependency and indemnity compensation, death pension, or accrued benefits.

d. The establishment of entitlement to death benefits for the month of death by surviving spouse who has already been paid the benefit provided by 38 U.S.C. 5310(b) negates the entitlement to the section 5310(b) benefit. If the surviving spouse is entitled to death benefits for the month of death at a rate higher than the rate of compensation or pension the veteran would have received for that month but for his or her death, 38 U.S.C. 5111(c)(1) and 38 CFR 3.20(b) and 3.31 prohibit payment on the death benefits award for any period before the first day of the month following the calendar month of death.

Effective Date: September 8, 1998.

VAOPGCPREC 11–98

Question Presented

May a veteran with a catastrophic, nonservice-connected disability, whose income is above the means test threshold and who would otherwise be enrolled in priority group 7, be placed in priority group 4 in VA's patient enrollment system on the basis of his or her catastrophic disability?

Held

The rules of statutory construction and associated case law support enrolling all catastrophically disabled veterans in enrollment category four, as directed by section 1705(a)(4), regardless of whether the veterans are mandatory or discretionary veterans for purposes of section 1710(a).

Effective Date: September 17, 1998.

VAOPGCPREC 12–98

Question Presented

a. What is the effective date for an award of increased disability compensation pursuant to 38 CFR 3.400(o)(2) where a veteran files a claim for increased rating alleging an increase in disability within one year prior to receipt by the Department of Veterans Affairs (VA) of the claim and a VA examination subsequently substantiates an increase in disability?

b. Is 38 CFR 3.400(q)(1)(i) applicable to a claim for an increased rating which is based upon new and material evidence received within the appeal period or prior to an appellate decision, and if so, what is the effective date for an award of increased compensation pursuant to section 3.400(q)(1)(i)?

Held

a. Pursuant to 38 U.S.C. 5110(b)(2) and 38 CFR 3.400(o)(2), where a veteran files a claim for increased rating alleging an increase in disability within one year prior to receipt by VA of the claim and a VA examination or other medical evidence subsequently substantiates an increase in disability, the effective date of the award of increased disability compensation is the date as of which it is ascertainable based on all of the evidence of record that the increase occurred.

b.(1) Section 3.400(q)(1)(i) of title 38, Code of Federal Regulations, is

applicable to a claim for increased rating based upon new and material evidence submitted prior to expiration of the appeal period or before an appellate decision is issued.

b.(2) When new and material evidence is submitted within the appeal period or prior to an appellate decision with regard to a claim for increased rating, the effective date for any increased rating is the date on which the facts establish the increase in disability occurred or the date of the original claim for increase, whichever is later. However, if the facts establish that a veteran's disability increased within one year prior to receipt by VA of the original claim for increased rating, the effective date of the increase is the date on which the increase in disability occurred.

Effective Date: September 23, 1998.

VAOPGCPREC 13–98

Question Presented

Does a surviving spouse who regains eligibility for dependency and indemnity compensation (DIC) under 38 U.S.C. 1311(e) as added by section 8207 of the Transportation Equity Act for the 21st Century also regain eligibility for medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA), for dependents' educational assistance, or for loan guaranty benefits?

Held

A surviving spouse who regains eligibility for dependency and indemnity compensation under 38 U.S.C. 1311(e), as added by section 8207 of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, § 8207, 112 Stat. 107, 495 (1998), either upon the termination of remarriage by death, divorce, or annulment, or upon the cessation of living with another person and holding himself or herself out openly to the public as that person's spouse, does not regain eligibility for medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA), for dependents' educational assistance, or for loan guaranty benefits.

Effective Date: September 23, 1998.

VAOPGCPREC 14–98

Question Presented

a(1). Does 38 U.S.C. 1112(a) establish a presumption of aggravation for a chronic disease which existed prior to service but was first shown to a compensable degree within the presumptive period following service?

a(2). If it does, must the incremental degree of disability allegedly resulting from aggravation first shown during the presumptive period be itself compensable, or may aggravation be found by combining the degree of preservice disability with the degree of disability first presented during the presumptive period?

b. Is it lawful for an employee of the Board of Veterans' Affairs (Board) to remove, temporarily or permanently, an opinion of a Board medical advisor from a veteran's claims folder? As an alternative, could the Board cover such an opinion in the claims folder with opaque paper?

c. Is the Board required to provide directly to a represented veteran a copy of an opinion from an independent medical expert?

Held

a. Section 1112(a) of title 38, United States Code, does not establish a presumption of aggravation for a chronic disease which existed prior to service but was first shown to a compensable degree within the presumptive period following service.

b. Where the Board of Veterans' Appeals (Board) determines that it would be potentially prejudicial to a claimant for an independent medical expert to consider a Board medical advisor opinion which is in the claims file, the Board may temporarily remove that document from the claims file or temporarily cover the document with opaque paper prior to forwarding the file to the independent medical expert. Such action would not, in our view, violate 38 U.S.C. 7104(a) (requiring Board decisions to be based on the entire record) or 18 U.S.C. 2071 (prohibiting removal or concealment of Government records). If it is determined that the Board is precluded from relying upon a Board medical advisor opinion due to the potential for prejudice to the claimant, the Board may permanently remove the opinion from the claims folder without violating 38 U.S.C. 7104(a). Such removal would not, in our view, be unlawful under 18 U.S.C. 2071 as violative of title 38 requirements. If a claimant requests that a Board medical advisor opinion be permanently removed from his or her claims file, the Board may permanently remove the opinion pursuant to 5 U.S.C. 552a(d)(2) (permitting amendment of agency records that are not accurate, relevant, timely, or complete), and such action would not, in our view, violate 18 U.S.C. 2071.

c. The Board of Veterans' Appeals is not required to transmit a copy of an independent medical expert opinion directly to a represented claimant. Providing the opinion to the claimant's representative, in accordance with 38 CFR 20.903, satisfies the requirement in 38 USC 7109(c) that the Board furnish the claimant with a copy of the opinion.

Effective Date: October 2, 1998.

By Direction of the Secretary.

John H. Thompson,

Acting General Counsel.

[FR Doc. 98–28294 Filed 10–21–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held on November 16th through 18th, 1998, at the Department of Veterans Affairs, Ralph H. Johnson VA Medical Center, 109 Bee Street, Charleston, South Carolina, 29401. On November 16th, the meeting will be held in Room A139 (Auditorium), and on both November 17th and 18th in Room A527. Each day the meeting will convene at 8:30 a.m. and end at 4:30 p.m. The meeting is open to the public.

The purpose of the committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The agenda for November 16th will include an introduction of committee members and dignitaries, general discussions, and a period for POW veterans and/or the public to address the committee. The agenda on November 17th will include general business, discussion of successes of medical providers seminars and presentation of proposal for continuation of such seminars by a representative from the VA Employee Education Center, Birmingham, Alabama. The Committee will discuss and review the Veterans Services Officer training/certification project, ''Decision Review Officers'' pilot project, Dependency and Indemnity Compensation Project, status of Committee's recommendations made to the Secretary on ways to help VA improve services to our POW community, and establishment of POW Advisory Groups at local VA medical centers. The Committee has invited medical professionals from VA field activities (those who work with Ex-POW veterans) and medical professionals