

Signed at Washington, DC, this 27th day of October, 1998.

Meredith Miller,

*Deputy Assistant Secretary For Policy,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AJ44

Well Grounded Claims/Duty to Assist

AGENCY: Department of Veterans Affairs.
ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) to establish policy and guidance regarding what action, if any, VA should take to develop evidence pertaining to benefit claims that are not well grounded.

DATES: Written comments in response to this ANPRM must be received on or before January 28, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN: 2900-AJ44." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: Section 5107(a) of title 38, United States Code, states that, unless otherwise provided by the Secretary, it is the responsibility of any person who submits a claim for benefits under a law administered by VA to submit evidence to justify a belief by a fair and impartial individual that the claim is well grounded.

The U.S. Court of Veterans Appeals (the Court) has defined a well-grounded claim as a plausible claim, one which is meritorious on its own or capable of substantiation. To satisfy the initial

burden of 38 U.S.C. 5107(a), a claim need not be conclusive but only possible. The Court has further held that such a claim must be accompanied by supportive evidence and that such evidence must justify a belief by a fair and impartial individual that the claim is plausible. For example, generally for a claim for service-connected disability benefits to be well grounded there must be: (1) a medical diagnosis of a current disability; (2) medical evidence, or in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between an in-service disease or injury and the current disability.

After establishing the requirement that a claimant must submit a well-grounded claim, 38 U.S.C. 5107(a) requires the Secretary of Veterans Affairs to assist "such a claimant" in developing the facts pertinent to the claim. Both the Court and the U.S. Court of Appeals for the Federal Circuit have held that VA's statutory duty to assist attaches only after a claimant submits a well grounded claim.

In a substantial number of cases, both the Board of Veterans Appeals and the Court have found that claims developed and adjudicated at VA's regional offices were not well grounded.

This situation has raised concerns from a number of quarters. For example, some members of the Court have suggested that 38 U.S.C. 5107(a) reflects a statutory policy that implausible claims should not consume the limited resources of VA and force into backlog and delay well-grounded claims. The Veterans' Claims Adjudication Commission, established under Pub. L. 103-446, questioned whether it is prudent to invest the cost in time and resources of developing claims that are not well grounded. They maintained, among other things, that developing claims that are not well grounded (1) improperly lifts the burden of proof from the claimant and places it on VA; and (2) tends to unnecessarily expand issues and drive the adjudication system toward requesting and obtaining irrelevant evidence rather than concentrating resources on obtaining evidence focused on the issues.

Moreover, VA recognizes the need for clear claims-development guidelines that can be consistently applied. The Court has noted that if the Secretary, as a matter of policy, volunteers assistance to establish well groundedness, grave questions of due process can arise if there is apparent disparate treatment between claimants in this regard.

By this ANPRM, VA invites input as to what policies and procedures it

should adopt to govern the development of claims which are not well grounded.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: September 24, 1998.

Togo D. West, Jr.,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 63

RIN 0925-AA11

Traineeships

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend its regulations governing traineeships to reflect additional conditions under which NIH may terminate traineeship awards and to reflect changes in the authorities for the awards.

DATES: Comments on the proposed changes must be received on or before December 29, 1998 in order to ensure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Comments should be sent to Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20852. Comments may also be sent electronically by facsimile (301) 496-0169 or e-mail (jm40z@nih.gov).

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, at the address above, or telephone (301) 496-4607 (not a toll-free number). For information about traineeship awards contact James Alexander, Acting Director, Office of Education, Office of Intramural Research, National Institutes of Health, Building 10, Room 1C-129, 10 Center Dr MSC 1158, Bethesda, MD 20892-1158, telephone (301) 496-2427 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 405(b)(1)(C) of the Public Health Service (PHS) Act, as amended, authorizes the Secretary, acting through the directors of the national research institutes of NIH, to conduct and support research training for which fellowship support is