records, gain access to the records, or contest the contents of any records maintained in this system may inquire in accordance with instructions appearing in 31 CFR Part 1, Subpart C, Appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORDS ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORDS PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Customers, BEP employees, financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .046

SYSTEM NAME:

Automated Mutilated Currency Tracking System-Treasury/BEP

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SE, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and financial institutions sending in mutilated paper currency claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mutilated currency claimants' names, addresses, company names, amount of claims, amount paid, types of currency and condition of currency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purpose of the Automated Mutilated Currency Tracking System is to maintain historical information and to respond to claimants' inquiries, e.g., non-receipt of reimbursement, status of case, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and records in electronic media.

RETRIEVABILITY:

By claimant name, case number, address or registered mail number.

SAFEGUARDS:

Access is limited to those specific employees who process the mutilated currency cases, prepare payment, research inquiries or maintain the computer system. In addition, files and computer data are maintained in a secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Active claimant files are maintained for two years. Inactive files are maintained for seven years. After seven years, the files are purged from the system and then destroyed. (Inactive files are those for which final payments have been made.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Currency Standards, Bureau of Engraving and Printing, 14th and C Streets, SW, Room 344A, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals, banking institutions and BEP employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–15575 Filed 6–20–01; 8:45 am]

BILLING CODE 4840–01–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 Office of 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. They are being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

FOR FURTHER INFORMATION CONTACT: Susan P. Sokoll, Law Librarian, Department of Veterans Affairs (026H), 810 Vermont Ave., 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 Office of General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under the 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 which 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 7–2000

Question Presented: (a) Is pursuit of a degree from a foreign school for a ''Medical Doctor (M.D.)'' program always to be considered as evidence of pursuit of ''a program of education in a course of instruction beyond the baccalaureate degree level'' for purposes of 10 U.S.C. 16131(c)(1), as provided for training received prior to November 29, 1993?

(b) If not, what are the guidelines for determining whether a program of education is to be considered undergraduate training or graduate training for purposes of that section?

Held: For purposes of 10 U.S.C. 16131(c)(1), a Medical Doctor (M.D.) degree program will be considered to be a professional degree program offered at a level beyond the baccalaureate degree, except when the facts found demonstrate that the institution offering the program does not require that the candidate have been awarded a bachelor's degree to be admitted to the program.

Effective Date: June 16, 2000.

VAOPGCPREC 8–2000

Question Presented: (a) The veteran's surviving spouse seeks eligibility for dependency and indemnity compensation (DIC) under 38 U.S.C. 1304 and 38 CFR 3.54(c)(1). Where the veteran contracted a fatal disease during the first or second enlistment of three consecutive enlistments, may the date of termination of his last enlistment be considered the termination date of the enrollment in which the fatal disease was incurred?

(b) If the surviving spouse does not qualify for DIC, would the lapse of time between termination of the period of service and the date of the surviving spouse's marriage to the veteran be a bar to an award of death pension to the surviving spouse?

Held: (a) In a case where the veteran served consecutive enlistments and was discharged from each under conditions other than dishonorable, if the veteran was unconditionally discharged from the earlier enlistments at the end of the obligated periods of service, then the veteran's enlistments would be considered distinct periods of service for purposes of determining eligibility for VA compensation or pension benefits. However, if the veteran's discharges from the earlier enlistments are considered conditional discharges under 38 CFR 3.13(a), then the consecutive enlistment periods ending in discharges under conditions other than dishonorable may be considered one period of service under 38 C.F.R. 3.13(b) for purposes of determining eligibility for VA compensation or pension benefits.

(b) Under 38 U.S.C. 1541(f) and 38 C.F.R. 3.54(a), where a surviving spouse married a Vietnam-era veteran on or after May 8, 1985, was married to the veteran for less than one year, and had no child with the veteran, the surviving spouse is barred from eligibility for death pension benefits based on the marriage to the veteran, notwithstanding the veteran's wartime service.

Effective Date: July 25, 2000.

VAOPGCPREC 9–2000

Question Presented: Does the decision of the United States Court of Appeals for the Federal Circuit in *Hix and Pardue* v. *Gober,* Nos. 99–7094, –7102 (Fed. Cir. Sept. 20, 2000), require the Department of Veterans Affairs (VA) to accept evidence submitted after a veteran's death to establish, under 38 U.S.C. 1311 (a)(2), that the veteran was ''entitled to receive'' compensation from VA during his or her lifetime for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death?

Held: Under 38 U.S.C. 1311 (a)(2) and 1318(b), a survivor's right to certain dependency and indemnity compensation (DIC) benefits exists if the deceased veteran was ''entitled to receive'' certain benefits for a specified period prior to his or her death. In a series of precedential decisions, the United States Court of Appeals for Veterans Claims (CAVC) concluded that section 1318(b) authorizes payment of DIC when evidence in the veteran's claims file or in the custody of the Department of Veterans Affairs (VA) prior to the veteran's death establishes that the veterans was ''hypothetically'' entitled to the specified benefits. In *Hix* v. *West,* 12 Vet. App. 138 (1999), the CAVC concluded that section 1311(a)(2) must be construed in the same manner as section 1318(b). VA appealed the decision in Hix to the United States Court of Appeals for the Federal Circuit, arguing that entitlement to DIC under section 1311(a)(2) could not be predicated on a veteran's ''hypothetical'' entitlement, but could exist only if the veteran's entitlement were established by decisions during the veteran's lifetime or by correction of clear and unmistakable error in decisions rendered during the veteran's lifetime. In *Hix and Pardue* v. *Gober,* Nos. 99–7094, –7102 (Fed. Cir. Sept. 20, 2000), the Federal Circuit stated: ''[w]e affirm the ruling of the [CAVC] that the 'entitled to receive' provision of section 1311(a)(2) requires de novo determination of the veteran's disability, upon the entirety of the record including any new evidence presented by the surviving spouse.'' To the extent the Federal Circuit's decision refers to consideration of new evidence presented by the surviving spouse, it appears to conflict with statements in CAVC decisions indicating that ''hypothetical'' entitlement is to be determined upon the evidence that was in the veteran's claims file or in VA or the CAVC. The issue before the Federal Circuit in Hix was whether the CAVC erred in concluding that section 1311(a)(2) authorizes increased DIC in cases where the veteran's entitlement to certain benefits is merely ''hypothetical.'' The ancillary issue of whether evidence may be submitted after a veteran's death to establish the veteran's ''hypothetical'' entitlement to certain benefits was not raised or argued by the parties before the Federal Circuit and the Court's isolated statement concerning that issue was not necessary to its decision on the appeal.

For these reasons, the Federal Circuit's statement in Hix concerning the consideration of new evidence is dicta, and it is not binding on VA. Thus, the Federal Circuit's decision in Hix does not require VA to accept evidence submitted after a veteran's death offered to establish, under 38 U.S.C. 1311(a)(2), that the veteran was ''entitled to receive'' compensation from VA during his or her lifetime for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death.

Effective Date: December 8, 2000.

VAOPGCPREC 10–2000

Question Presented: Does the Board of Veterans' Appeals (the Board) have jurisdiction to consider an appeal by a

State home disputing a decision by the Secretary of the United States Department of Veterans Affairs (Secretary) that the State home is not eligible for per diem payments from the Department of Veterans Affairs (VA)?

Held: The Secretary's Decision that the State home does not meet VA's nursing home standards, is not recognized by VA and, therefore, is not eligible for VA per diem payments, is a decision that falls within the limitation on judicial review set forth in section 511(a). Pursuant to 38 U.S.C. 7104, the jurisdiction of the Board extends to all questions decided by the Secretary under section 511(a). Therefore, the Board has jurisdiction to consider this appeal.

Effective Date: December 14, 2000.

VAOPGCPREC 11–2000

Question Presented: Do the provisions of Pub. L. 106–475, for which that act does not specify an effective date, apply to claims filed before the date of enactment of the act but not finally decided as of that date?

Held: On November 9, 2000, the President approved the Veterans Claims Assistance Act of 2000, Public Law 106–475, 114 Stat. 2096, which made several changes to statutory provisions governing Department of Veterans Affairs (VA) benefit claims, VA's duties to inform claimants about the completion and substantiation of their claims, and VA's duties to assist claimants in obtaining evidence necessary to substantiate their claims. Among other things, the act amended 38 U.S.C. 5102, 5103, and 5107 and created new 38 U.S.C. 5100 and 5103A. Section 7(a) of the act, 114 Stat. At 2099, specifies that section 5107 as amended applies to claims filed on or after the date of the act's enactment or to claims filed before then but not finally decided as of that date. However, the act does not specify the effective date of the other provisions of title 38, United States Code, created or amended by the act. We conclude that all of the act's provisions apply to claims filed on or after November 9, 2000, as well as to claims filed before then but not finally decided as of that date.

Effective Date: November 27, 2000.

VAOPGCPREC 1–2001

Question Presented: Should a retroactive award of compensation that results from a finding of clear and unmistakable error (CUE) be retroactively attributed to the estate of a veterans for purposes of determining whether 38 U.S.C. 5503 and 38 C.F.R. 3.557 bar payment of compensation to the veteran for a prior period during which the veteran was hospitalized at government expense?

Held: Prior to a recent statutory amendment, the provisions of 38 U.S.C. 5503(b)(1)(A) and 38 C.F.R. 3.557(b) required that compensation not be paid in the case of an incompetent veteran without spouse or child who is being furnished hospital treatment or institutional or domiciliary care at government expense when the veteran's estate exceeds $1,500, until such time as the estate is reduced to $500. A retroactive award of compensation based on a finding of clear and unmistakable error in a prior decision denying service connection should not be retroactively attributed to the estate of the veteran for purposes of determining whether section 5503(b)(1)(A) and section 3.557(b) bar payment of compensation for the period subsequent to the effective date of the award of service connection and prior to the date of the veteran's release from a government facility.

Effective Date: January 4, 2001.

VAOPGCPREC 2–2001

Question Presented: May a veteran qualify for MGIB benefits under 38 U.S.C. 3011(a)(1)(B) and 38 C.F.R. 21.7020(b)(5) when the individual had an interruption of active duty service after June 30, 1985, and before July 1, 1988, which was of less than 90 days in length?

Held: (a) An individual having chapter 34 eligibility on December 31, 1989, must serve 3 continuous years on active duty after June 30, 1985, to become entitled to MGIB benefits under 38 U.S.C. 3011(a)(1)(B). Although an interruption of less than 90 days during that period would not constitute a ''break in service'' under 38 C.F.R. 21.7020(b)(5), it would violate the requirement that the individual have served 3 continuous years on active duty after June 30, 1985, since an interruption of any length (following a complete separation from service) would not meet the definition of ''continuous active duty'' under 38 C.F.R. 21.7020(b)(6).

(b) To qualify for MGIB entitlement under 38 U.S.C. 3011(a)(1)(B)(I), the individual must have served continuously on active duty from July 1, 1985, to June 30, 1988. Except as provided for certain cases of ''early out'' discharge covered under clause (ii) of that statute, the individual could not earn entitlement under chapter 30 based on any other period of continuous active duty service.

Effective Date: January 9, 2001.

VAOPGCPREC 3–2001

Questions Presented: (a) Who, if anyone, in the Department of Veterans Affairs (VA) other than the Secretary is authorized to move for readjudication of a finally denied claim under section 7(b) of the Veterans Claims Assistance Act of 2000?

(b) Who should first readjudicate such a claim, the entity that last adjudicated the claim or the agency of original jurisdiction?

(c) If a previously appealed claim is readjudicated under section 7(b), what must the claimant do, if anything, to appeal the decision upon readjudication?

(d) Must the Board of Veterans' Appeals vacate its prior decision on a claim that is readjudicated under section 7(b)?

Held: Under section 7(b) of the Veterans Claims Assistance Act of 2000, Public Law 106–475, § 7(b), 114 Stat. 2096, 2099, the Department of Veterans Affairs (VA), upon request of the claimant or upon the motion of the Secretary of Veterans Affairs, must readjudicate certain finally decided claims ''as if the denial or dismissal had not been made.'' Supervisory or adjudicative personnel of VA's Veterans Benefits Administration are authorized to initiate such readjudication on behalf of the Secretary, and other VA organizational elements, such as the Board of Veterans' Appeals (Board) and the Office of General Counsel, may refer to VBA cases involving those finally decided claims. If readjudication under section 7(b) is timely initiated, the first readjudication of the claim must be made by the agency of original jurisdiction. If the claimant wishes to appeal the decision made on readjudication, he or she must file a timely notice of disagreement with the decision, even if the original decision had been appealed. The Board of Veterans' Appeals need not vacate any prior Board decision on a claim being readjudicated under section 7(b).

Effective Date: January 22, 2001.

VAOPGCPREC 4–2001

Question Presented: Do 38 C.F.R. 3.322(a) and 4.22 apply to the rating of a disability for which compensation is payable under 38 U.S.C. 1151 as if the disability were service connected?

Held: Sections 3.322(a) and 4.22 of title 38, Code of Federal Regulations, require that, in rating disabilities aggravated by service, the degree of disability existing at the time of entrance into service, if ascertainable, be deducted from the present degree of disability unless the present degree of

disability is total, in which case no deduction is made. These provisions apply to the rating of disabilities compensated under 38 U.S.C. 1151, which, before its amendment effective October 1, 1997, authorized compensation for additional disability resulting from injury or aggravation of an injury as a result of Department of Veterans Affairs hospitalization, medical or surgical treatment, examination, or pursuit of a course of vocational rehabilitation, in the same manner as if the additional disability were service connected.

Effective Date: February 2, 2001.

VAOPGCPREC 5–2001

Question Presented: (a) For claims filed after November 25, 1991, and before October 1, 1997, does 38 U.S.C. § 1151 authorize compensation for additional disability alleged to have resulted from the omission or failure by the Department of Veterans Affairs (VA) to diagnose or treat an underlying disease or injury, or does section 1151 authorize compensation only for disability resulting from an act of commission by VA?

(b) If section 1151 authorizes compensation, with respect to claims filed during that time period, based on VA's omission or failure to diagnose or treat an underlying disease or injury, what are the essential elements of such a claim that must be established in order for a claimant to prevail?

Held: (a) Under the provisions of 38 U.S.C. 1151 applicable to claims filed prior to October 1, 1997, benefits may be paid for disability or death attributable to VA's failure to diagnose and/or treat a preexisting condition when VA provides treatment or an examination. Disability or death due to a preexisting condition may be viewed as occurring ''as a result of'' the VA treatment or examination only if a physician exercising the degree of skill and care ordinarily required of the medical profession reasonably should have diagnosed the condition and rendered treatment which probably would have avoided the resulting disability or death.

(b) The factual elements necessary to support a claim under section 1151 based on failure to diagnose or treat a preexisting condition may vary with the facts of each case and the nature of the particular injury and cause alleged by the claimant. As a general matter, however, entitlement to benefits based on such claims would ordinarily require a determination that: (1) VA failed to diagnose and/or treat a preexisting disease or injury; (2) a physician exercising the degree of skill and care ordinarily required of the medical profession reasonably should have diagnosed the condition and rendered treatment; and (3) the veteran suffered disability or death which probably would have been avoided if proper diagnosis and treatment had been rendered.

Effective Date: February 5, 2001.

VAOPGCPREC 6–2001

Question Presented: (a) Do 38 U.S.C. 3104(a)(15) and 38 CFR § 21.160 allow for, or preclude, authorization of the construction of an enclosed studio on the rear of a veteran's home as a component of an eligible veteran's program of independent living (IL) services?

(b) If those provisions do allow for authorization of such construction, may the construction be authorized independent of, and in addition to, the benefits provided under 38 U.S.C. 1717(a)(2) and 2101?

Held: (a) The Secretary has authority to provide the particular housing improvement services claimed in this case as part of the eligible veteran's independent living services program of rehabilitation under section 3120 of chapter 31, title 38, United States Code, if the Secretary finds the services are essential to enable the veteran to achieve maximum independence in daily living. *See, also,* 38 U.S.C. 3101(4), 3104(a)(15), and 38 CFR 21.160.

(b) The Secretary, pursuant to 38 U.S.C. 3104(a)(9), has authority to provide a chapter 31 participant who is in need of the home health services described in 38 U.S.C. 1717(a)(2) with those services regardless of whether the participant has remaining eligibility therefor under section 1717(a)(2).

(c) Since the IL services claimed by the veteran in this case are not the same as the services authorized him under chapter 21 of title 38, the prohibition in section 2104 of that chapter against authorizing the latter services more than once to the same veteran has no application.

Effective Date: February 5, 2001.

VAOPGCPREC 7–2001

Question Presented: Whether a recipient of military retired or retirement pay whom VA has determined is entitled to compensation under title 38, United States Code, and who has submitted a waiver of entitlement to that pay is a payee for purposes of 38 U.S.C. 3012(b)(6) (1964) (currently 38 U.S.C. 5112(b)(6)).

Held: (a) A ''payee'' for purposes of 38 U.S.C. 3012(b)(6) (1964) (currently 38 U.S.C. 5112(b)(6)) is a person who is in continuous receipt of VA compensation, dependency and indemnity compensation, or pension. The effective date of an award of VA compensation to a recipient of military pay or retirement pay who has submitted a waiver of entitlement to that pay is the date upon which the service department reduces such pay.

(b) Section 3012(b)(6) of title 38, United States Code (1964) (currently 38 U.S.C. 5112(b)(6)), does not apply where there is no reduction in the amount of compensation being paid to a claimant. Therefore, if a veteran's evaluation is reduced by VA while the veteran is receiving military retired or retirement pay during the period in which a service department is processing a waiver of such pay, section 3012(b)(6) is not applicable because, at the time of the reduction, the reduction decision does not result in the veteran getting any less retired or retirement pay than the veteran had been receiving before the decision was made.

Effective Date: February 14, 2001.

VAOPGCPREC 8–2001

Question Presented: Whether a former member of the Naval Reserve who reports having been sexually assaulted on two occasions during inactive duty training and who alleges suffering from resulting post-traumatic stress disorder (PTSD) may be considered to have been disabled by an injury in determining whether the member had active service for purposes of 38 U.S.C. 101(24)?

Held: Under 38 U.S.C. 101(2) and (24), inactive duty training may provide a basis for veteran status for purposes of benefits administered by the Department only if the individual incurred disability or death from an injury incurred or aggravated in line of duty. An individual who suffers from post-traumatic stress disorder as a result of a sexual assault that occurred during inactive duty training may be considered disabled by an ''injury'' for purposes of section 101(2) and (24).

Effective Date: February 26, 2001.

VAOPGCPREC 9–2001

Question Presented: If an individual has multiple periods of active duty military service, but the last such period does not culminate with an ''honorable'' discharge, when does the individual's ten year period of eligibility to receive benefits under the Montgomery GI Bill—Active Duty end?

Held: In the basic case, an individual who is awarded an ''honorable'' discharge upon completion of the minimum period of active duty required for MGIB benefits entitlement under 38 U.S.C. 3011 may use those benefits within 10 years after the date of such discharge. If that individual

subsequently serves one or more additional periods of active duty (generally, of not less than 90 days), then the individual would have 10 years from the date of the individual's last discharge from active duty within which to use his or her MGIB benefits. Provision of such later delimiting period is not conditioned upon the individual's having been awarded an ''honorable'' discharge from his or her last period of active duty.38 U.S.C. 3031(a) and (g).

Effective Date: March 20, 2001.

VAOPGCPREC 10–2001

Questions Presented: Whether a veteran is subject to reduction of Department of Veterans Affairs (VA) compensation and pension benefits, under 38 U.S.C. 5313 and 1505, where the veteran is convicted of a crime in a foreign country, incarcerated abroad, and subsequently transferred to a penal institution of the United States to serve the remainder of the criminal sentence?

What is the effective date of reduction, under 38 U.S.C. 5313 and 1505, where a veteran is convicted of a crime in a foreign country and incarcerated abroad, then transferred to a penal institution in the United States to serve the remainder of the criminal sentence?

Held: 1. A veteran is not subject to reduction of compensation and pension benefits, under 38 U.S.C. 5313 and 1505, while incarcerated in a foreign prison. However, a veteran who is transferred to a Federal, State, or local penal institution in the United States to serve the remainder of a sentence for a foreign conviction of an offense which is equivalent to a felony (or a misdemeanor under section 1505) under the laws of the United States is thereafter subject to reduction of compensation and pension benefits under 38 U.S.C. 5313 and 1505.

2. The effective date of reduction is the sixty-first day of incarceration in a Federal, State, or local penal institution in the United States.

Effective Date: May 24, 2001.

Withdrawn Precedent Opinion

VAOPGCPREC 4–99

1. This is to inform you that our opinion in VAOPGCPREC 4–99 is being withdrawn due to the recent enactment of the Veterans Claims Assistance Act of 2000, Public Law No. 106–475, 114 Stat. 2096. Under former 38 U.S.C. 5107(a), as interpreted by the United States Court of Appeals for Veterans Claims and the United States Court of Appeals for the Federal Circuit, a claimant was required to submit ''evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded'' before the Department of Veterans Affairs (VA) had any obligation to assist the claimant in developing the facts pertinent to the claim. Our opinion in VAOPGCPREC 4–99 responded to a question from the Chairman of the Board of Veterans' Appeals concerning the application of the well-grounded claim requirement to claims for compensation under 38 U.S.C. 1117 and 38 CFR 3.317 for disability due to an undiagnosed illness suffered by a veteran of the Persian Gulf War. Our opinion concluded that claimants seeking such benefits were required to submit competent evidence with respect to four factual elements in order to establish a well-grounded claim. But see *Neumann* v. *West,* 14 Vet. App. 12, 22–23 (2000) (stating a slightly different formulation of four factual elements of well-grounded claims under 38 U.S.C. 1117 and 38 CFR 3.317).

2. On November 9, 2000, the President signed into law the Veterans Claims Assistance Act of 2000. In pertinent part, this statute revised 38 U.S.C. 5107(a) by deleting the requirement that a claimant must submit a ''well grounded'' claim for benefits in order to obtain assistance from VA in developing the facts pertinent to the claim. This change applies to all future claims, as well as to any previously-filed claim which was not finally denied as of November 9, 2000, when the Veterans Claims Assistance Act was signed into law. Additionally, any individual whose claim was finally denied as being not ''well grounded'' between July 14, 1999, and November 9, 2000, may have their claim readjudicated under the new statute upon request to VA made within two years after November 9, 2000.

3. Because the Veterans Claims Assistance Act removes from 38 U.S.C. § 5107(a) the well-grounded claim requirement upon which the analysis and conclusion in VAOPGCPREC 4–99 were based, that opinion is hereby withdrawn.

Effective Date: November 28, 2000.

Dated: June 5, 2001.

By Direction of the Secretary.

Tim S. McClain,

General Counsel.

[FR Doc. 01–15653 Filed 6–20–01; 8:45 am]

BILLING CODE 8320–01–U