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REPORT  
No. 1843

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## VETERANS APPELLATE PROCEDURES—FURNISHING CLAIMANTS WITH A “STATEMENT OF THE CASE”

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AUGUST 6, 1962.—Ordered to be printed

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Mr. BYRD of Virginia, from the Committee on Finance, submitted  
the following

### R E P O R T

[To accompany H.R. 857]

The Committee on Finance, to whom was referred the bill (H.R. 857) to amend section 4005 of title 38, United States Code, to provide that cases appealed to the Board of Veterans' Appeals shall contain a brief statement of the facts of the case appealed, with a citation and application of the law, together with the recommendations of the office appealed from, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended do pass.

#### PURPOSE OF BILL

The bill would require that the Administrator of Veterans' Affairs furnish claimants who are appealing to the Board of Veterans' Appeals with a summary of the evidence in the file applicable to their case, together with an explanation of the law and the regulations.

#### PURPOSE OF AMENDMENT

The committee amendment, as recommended by the Veterans' Administration, merely clarifies the language applicable to the new procedure but does not change its basic intent.

#### GENERAL EXPLANATION

The bill will afford an added measure of due process in the consideration and final adjudication of disputed claims for veterans' benefits. It will require that in all cases which a claimant files a timely notice of disagreement with a decision by the Veterans' Administration agency of original jurisdiction on any issue, the

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Veterans' Administration will furnish the claimant or his representative with a statement which would provide a summary of the evidence in the case pertinent to the issue, the citation of the pertinent law and regulation, and the decision on such issues with a summary of the reasons therefor.

The committee has approved an amendment recommended by the Veterans' Administration which clarifies the language applicable to the new procedure without changing its basic content.

As explained by the Veterans' Administration, the essential elements of the veterans' appellate procedures as they will exist after the enactment of this bill are:

(1) A timely filing of a notice of disagreement. (The appeal period would not be changed.)

(2) Review and development of the case by the agency which denied the original claim to the extent proper, and the modification of the original decision to allow the claim, in whole or in part, if such action is found to be in order;

(3) Preparation of the "statement of the case" as proposed by H.R. 857, if the disagreement is not resolved to the satisfaction of the claimant by the agency of original jurisdiction;

(4) The furnishing of such statement to the claimant with notice of his right to perfect his appeal to the Board of Veterans Appeals; and

(5) Consideration of the case by the Board of Veterans Appeals on the basis of the entire record, including the "statement of the case" and the claimant's response thereto as contained in his formal appeal.

This bill will place the veteran or his survivor in a better position to develop new evidence available and to fully prepare and present his appeal. Moreover, the issue should be more clearly delineated which should facilitate appellate procedures in many cases. And as a practical matter some appeals which will go to the Board will be eliminated once the committee fully understands the basis for the decision.

In its report to this committee on the bill, the Veterans' Administration concluded:

In weighing all considerations, we recommend favorable consideration of H.R. 857, if amended as we have suggested in this report. We estimate that the bill, as worded, would require the preparation of approximately 60,000 "statements of the case" per year at an administrative expense of approximately \$1.5 million. The number of statements to be prepared and, consequently, the added expense would be reduced as the result of the changes we have proposed.

The full report of the Veterans' Administration and the comments of the Bureau of the Budget thereon follow:

VETERANS' ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,  
*August 3, 1962.*

HON. HARRY F. BYRD,  
*Chairman, Committee on Finance,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: We are pleased to furnish the following comments in response to your request for a report on H.R. 857, 87th Congress, as passed by the House of Representatives on April 2, 1962.

H.R. 857 seeks to afford an added measure of due process in the consideration and final adjudication of disputed claims for veterans' benefits. The procedures proposed are a modification of the practice which has been followed in Great Britain for many years. The report of the House Committee on Veterans' Affairs to accompany this bill (H. Rept. 1454, 87th Cong.) contains a brief discussion of this aspect.

The bill would require that in all cases in which a claimant for veterans' benefits expresses in writing dissatisfaction with, or objection to, a decision of the agency of original jurisdiction on any issue, the agency will furnish the claimant or his representative, if there is one, a "statement of the case." This statement would provide a summary of the evidence in the case pertaining to the issue or issues as to which dissatisfaction has been expressed. In addition, it would provide a citation or discussion of the pertinent law, governing regulations, and where applicable the provisions of the schedule for rating disabilities. And, finally, it would provide a statement of the decision on the issue or issues, and a summary of the reasons therefor.

Copies of the "statement of the case" would be forwarded to the claimant and his representative, with information as to appellate rights. The claimant would be afforded a period of 30 days from the date of mailing of the statement or the remainder of the appeal period (whichever is greater) "to perfect his appeal." Any statement of fact contained in the "statement of the case" to which no exception is taken by the claimant would be prima facie evidence as to the correctness of such statement.

While the bill does not specifically so state, it is our interpretation that it would in no way diminish the existing right of the office which initially denied a claim to review and develop a case after an expression of dissatisfaction is received but prior to certification to the Board of Veterans' Appeals and to allow the benefits claimed, in whole or in part, if such is proper. Moreover, it is our understanding of this bill that once a case has been certified to the Board of Veterans' Appeals appellate consideration would be, as at present, upon the basis of a de novo review of the entire record.

In evaluating this legislation, we must weigh its desirable objectives against the significant expense which would be involved. On one hand the bill would accomplish a definite improvement in due process by furnishing the claimant the specific facts, an explanation of the applicable law, and the basis for the decision. Thus it would place the veteran, or his survivor, in a better position to develop any evidence available, and to fully prepare and present his appeal. Issues would be more clearly delineated which would facilitate appellate procedures in many cases. And, as a practical matter, some appeals which now would go to the Board would be eliminated once the claim-

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ant fully understood the basis for the decision, although that number could not be predicted.

On the other hand the bill would increase the administrative costs in our Department of Veterans Benefits alone by approximately \$1.5 million. There might be some additional administrative costs in our Departments of Insurance and of Medicine and Surgery. However, the number of appeals emanating from the actions of those Departments is so small that any additional cost would not be significant. (The revision of the bill which we are proposing in this report would reduce the number of "statements of the case" which would need to be prepared and would thus decrease the aforementioned administrative costs to some extent.)

Considering all factors, we believe the procedure of furnishing the "statement of the case" would be sufficiently beneficial to the claimant and to the Government as to warrant the additional expense. We, therefore, recommend favorable consideration of this bill, if it is clarified in several particulars.

Since, for the most part, the need for clarification arises from the difficulty of fitting the new concept of a "statement of the case" into the language of existing law pertaining to appellate procedures, we are proposing a redraft of the bill which integrates the new provisions into their logical position in the law.

The essential elements of veterans' appellate procedures as they would exist in H.R. 857 is enacted in the form we recommend would be:

(1) A timely filing of a notice of disagreement. (The appeal period would not be changed.)

(2) Review and development of the case by the agency which denied the original claim to the extent proper, and the modification of the original decision to allow the claim, in whole or in part, if such action is found to be in order;

(3) Preparation of the "statement of the case" as proposed by H.R. 857, if the disagreement is not resolved to the satisfaction of the claimant by the agency of original jurisdiction;

(4) The furnishing of such statement to the claimant with notice of his right to perfect his appeal to the Board of Veterans Appeals; and

(5) Consideration of the case by the Board of Veterans Appeals on the basis of the entire record, including the "statement of the case" and the claimant's response thereto as contained in his formal appeal.

A principal difference, outside of language, between the bill as passed by the House of Representatives and the redraft we propose is the specific recognition in the redraft of the right of the agency of original jurisdiction to promptly allow the claim, in whole or in part, if such is proper, without the necessity of preparing the "statement of the case" and referring the case to the Board of Veterans Appeals for final disposition. (As noted earlier, we believe this procedure is inherent in the existing bill but is not clearly spelled out.) Secondly, the redraft makes it clear that the claimant is not expected to develop and file his formal appeal until he has been furnished a "statement of the case." A major purpose of the bill would be lost if the claimant were required to develop his specific allegations as to mistakes of fact or errors of law and his arguments on appeal before he has had available to him the "statement of the case."

Finally, we have suggested a modification in the language on page 3 of the bill, lines 17-20, which would provide that any statement of fact contained in the "statement of the case" to which no exception is taken by the claimant, or his representative, would be prima facie evidence of the correctness of the facts so stated. The words "prima facie evidence" have proved to be a source of uncertainty in determining the precise weight to be placed upon claimant's failure to take exception to a factual statement in the "statement of the case." We believe the language we have proposed—that if a claimant or his representative fails to take exception to any statement in the "statement of the case" he will be presumed to have agreed with such statement—would be more understandable to the claimant.

In weighing all considerations, we recommend favorable consideration of H.R. 857, if amended as we have suggested in this report. We estimate that the bill, as worded, would require the preparation of approximately 60,000 "statements of the case" per year at an administrative expense of approximately \$1.5 million. The number of statements to be prepared and, consequently, the added expense would be reduced as the result of the changes we have proposed.

The Bureau of the Budget has advised that it has no objection to the submission of this report to your committee. The Bureau, however, requested that we enclose with our report a copy of its letter of August 3, 1962, which contains the Bureau's comments with respect to certain aspects of this bill.

Sincerely,

A. H. MONK  
(For and in the absence of  
W. J. Driver, Deputy Administrator).

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., August 3, 1962.

Hon. JOHN S. GLEASON, Jr.,  
*Administrator of Veterans Affairs,*  
*Veterans' Administration, Washington, D.C.*  
(Attention: Mr. Cyril F. Brickfield.)

DEAR MR. GLEASON: This will acknowledge your letter of June 25, 1962, transmitting copies of a proposed report on H.R. 857, a bill to amend section 4005 of title 38, United States Code, to provide that cases appealed to the Board of Veterans' Appeals shall contain a brief statement of the facts of the case appealed, with a citation and application of the law, together with the recommendations of the office appealed from, and for other purposes.

We believe that the bill is unnecessary since such procedural modifications as the bill envisages can be accomplished without legislation.

Also, we cannot agree, on the basis of the information available to us, that the proposed change in procedure should result in an increase in the annual administrative cost of the Department of Veterans' Benefits in the order of \$1.5 million. First, this figure is premised on a unit cost of about \$22 which seems to us excessive for the work involved. Further, any additional costs should be either fully or partially offset, particularly taking into account the fact that the new procedure would substitute for certain procedures and that other economies should be possible in administrative expenses.

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Accordingly, while the Bureau of the Budget has no objection to the submission of such report as you deem appropriate, we believe that the legislation is unnecessary and cannot now agree that the Veterans' Administration appropriations will have to be increased for the purposes of the bill if it is enacted.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

### CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

## Title 38

### VETERANS BENEFITS

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#### CHAPTER 71—BOARD OF VETERANS' APPEALS

Sec.

- 4001. Composition of Board of Veterans' Appeals.
- 4002. Assignment of members of Board.
- 4003. Determinations by the Board.
- 4004. Jurisdiction of the Board.
- 4005. Applications for review on appeal.
- 4006. Docketing of appeals.
- 4007. Simultaneously contested claims. ]
- 4005, *Filing of Notice of Disagreement and Appeal.*
- 4005 A. *Simultaneously Contested Claims.*
- 4006. *Administrative Appeals.*
- 4007. *Docketing of Appeals.*
- 4008. Rejection of applications.

#### § 4005. Applications for review on appeal

[(a) Except in the case of simultaneously contested claims, applications for review on appeal shall be filed within one year from the date of mailing of notice of the result of initial review or determination. Such applications must be filed with the activity which entered the denial. If such an application is timely filed, a reasonable time thereafter will be allowed, if requested, for the perfection of the appeal and the presentation of additional evidence before final determination or decision is made. Applications postmarked before the expiration of the one-year period will be accepted as timely filed.

[(b) If no application for review on appeal is filed in accordance with this chapter within the one-year period, the action taken on initial review or determination shall become final and the claim will not thereafter be reopened or allowed, except that 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.

[(c) (1) 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.

[(2) Application for review on appeal may be made within the one-year period prescribed by this section by such officials of the Veterans' Administration as may be designated by the Administrator. An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter.

[(d) In each application for review on appeal the name and service of the veteran on account of whose service the claim is based must be stated, together with the number of the claim and the date of the action from which the appeal is taken. The application must clearly identify the benefit sought.

[(e) Each application for review on appeal should contain specific assignments of the alleged mistake of fact or error of law in the adjudication of the claim. Any application which is insufficient may be dismissed.]

#### § 4005. *Filing of notice of disagreement and appeal*

(a) *Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Administrator.*

(b)(1) *Except in the case of simultaneously contested claims, notice of disagreement shall be filed within one year from the date of mailing of notice of the result of initial review or determination. Such notice, and appeals, must be in writing and be filed with the activity which entered the determination with which disagreement is expressed, (hereafter referred to as the "agency of original jurisdiction.") A notice of disagreement postmarked before the expiration of the one-year period will be accepted as timely filed.*

(2) *Notices of disagreement, and appeals, must be in writing and may be filed by the claimant, his legal guardian, or such accredited representative, attorney or authorized agent as may be selected by him. Not more than one recognized organization, attorney, or agent will be recognized at any one time in the prosecution of a claim.*

(c) *If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or determination shall become final and the claim will not thereafter be reopened or allowed, except as may otherwise be provided by regulations not inconsistent with this title.*

(d)(1) *Where the claimant, or his representative, within the time specified in this chapter, files a notice of disagreement with the decision of the agency of original jurisdiction, such agency will take such development or review action as it deems proper under the provisions of regulations not inconsistent with this title. If such action does not resolve the disagreement either by granting the benefit sought or through withdrawal of the notice of disagreement, such agency will prepare a statement of the case consisting of—*

(A) *A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed;*

(B) *A citation or discussion of the pertinent law, regulations and, where applicable, the provisions of the Schedule for Rating Disabilities;*

(C) *The decision on such issue or issues and a summary of the reasons therefor.*

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(2) A statement of the case, as required by this subsection, will not disclose matters that would be contrary to section 3301 of this title or otherwise contrary to the public interest. Such matters may be disclosed to a designated representative unless the relationship between the claimant and the representative is such that disclosure to the representative would be as harmful as if made to the claimant.

(3) Copies of the "statement of the case" prescribed in paragraph (1) of this subsection will be submitted to the claimant and to his representative, if there is one. The claimant will be afforded a period of sixty days from the date the statement of the case is mailed to file the formal appeal. This may be extended for a reasonable period on request for good cause shown. The appeal should set out specific allegations of error of fact or law, such allegations related to specific items in the statement of the case. The benefits sought on appeal must be clearly identified. The agency of original jurisdiction may close the case for failure to respond after receipt of the statement of the case, but questions as to timeliness or adequacy of response shall be determined by the Board of Veterans Appeals.

(4) The appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken.

(5) The Board of Veterans Appeals will base its decision on the entire record and may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

### § 4005A. Simultaneously Contested Claims.

(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of a notice of disagreement shall be sixty days from the date notice of the adverse action is mailed. In such cases the agency of original jurisdiction shall promptly notify all parties in interest at the last known address of the action taken, expressly inviting attention to the fact that notice of disagreement will not be entertained unless filed within the sixty-day period prescribed by this subsection.

(b) Upon the filing of a notice of disagreement, all parties in interest will be furnished with a statement of the case in the same manner as is prescribed in section 4005. The party in interest who filed a notice of disagreement will be allowed thirty days from the date of mailing of such statement of the case in which to file a formal appeal. Extension of time may be granted for good cause shown but with consideration to the interests of the other parties involved. The substance of the appeal will be communicated to the other party or parties in interest and a period of thirty days will be allowed for filing a brief or argument in answer thereto. Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.

### § 4006. Administrative appeals

Application for review on appeal may be made within the one year period prescribed in section 4005 of this title by such officials of the Veterans Administration as may be designated by the Administrator. An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter.

**§ [4006] 4007. Docketing of appeals**

【All cases received pursuant to application for review on appeal shall be considered and decided in regular order according to their places upon the docket; however, for cause shown a case may be advanced on motion for earlier consideration and determination. Every such motion shall set forth succinctly the grounds upon which it is based. No such motion shall be granted except in cases involving interpretation of law of general application affecting other claims, or for other sufficient cause shown.

**【§ 4007. Simultaneously contested claims**

【(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of an application for review on appeal shall be sixty days from the date notice is mailed of the original action to the claimant to whom the action is adverse. In such cases the activity concerned shall promptly notify all parties in interest of the original action taken, expressly inviting attention to the fact that an application for review on appeal will not be entertained unless filed within the sixty-day period prescribed by this subsection. Such notices shall be forwarded to the parties in interest to the last known address of record.

【(b) Upon the filing of an application for review on appeal in simultaneously contested claims, all parties other than the applicant for review on appeal whose interest may be adversely affected by the decision, shall be notified of the substance thereof and allowed thirty 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 on appeal. Such notice shall be forwarded to the last known address of record of the parties whose interests may be adversely affected, and such action shall constitute sufficient evidence of notice.】

