

CITATION: VAOPGCPREC 20-90
Vet. Aff. Op. Gen. Couns. Prec. 20-90

DATE: 06-19-90

TEXT:

SUBJECT: Deemed-Valid Marriage; 38 U.S.C. § 103(a)

QUESTION PRESENTED:

May a claimant be recognized as the "deemed-valid" widow or widower of a veteran for purposes of survivors' pension, when another claimant has been recognized by VA as the legal surviving spouse of the veteran but has been denied pension due to excessive income?

COMMENTS:

1. The current claimant was "married" to the veteran in 1975, although the veteran had never filed for divorce from the veteran's first spouse. The first spouse was recognized as the veteran's legal widow upon filing a claim for survivors' pension shortly after the veteran's death in March 1977. Benefits were denied at that time solely because the first spouse's income exceeded the maximum allowable for a claimant without dependents. Therefore, while there is no question that the first spouse was found to be "eligible" for pension, this person was never found entitled to receive pension benefits, due to excessive income. Accordingly, we conclude that the current claimant may be considered the veteran's "deemed-valid" spouse under the provisions of 38 U.S.C. § 103(a).

2. Section 103(a) is an equitable provision which allows for the recognition of relationships other than valid legal marriages. Enacted in 1957, it has been continued in force with only minor changes since that time. Of importance in this case is the restriction found at the close of 38 U.S.C. § 103(a) precluding recognition of a purported marriage if a "claim has been filed by a legal widow or widower of such veteran who is found to be entitled to such benefits."

3. In reaching the stated conclusion, this office is departing from earlier VA interpretations of the phrase "who is found to be entitled to such benefits." Specifically, that phrase was examined by the General Counsel in a February 1963 opinion. Digested Opinion, 2-8-63 (Pension-Eligibility and Entitlement). The General Counsel noted that provisions similar to those in 38 U.S.C. § 103(a) were proposed in H.R. 6889, 84th Congress, with the qualification, "unless to do so would require concurrent payment of death compensation or pension to more than one person as the widow of the person who served." A substitute measure

was proposed in the VA report of December 14, 1955, to the House Committee on Veterans' Affairs. The VA-recommended language specified that benefits would be payable "unless a claim has been filed by a legal widow who is found to be entitled to such benefits." (Emphasis added). VA's report on H.R. 6889 commented that " i n this connection, it is important to note that basic entitlement of the legal widow would not be affected by her ineligibility for payment of the benefit because of, for example, excessive income in a pension claim." The General Counsel concluded that existence of a bar to payment of benefits, such as excess income in a pension claim, did not negate the fact that the legal widow had been "found to be entitled" to such benefits. This construction was also reflected in Transmittal Sheet 190, May 29, 1959, a non-regulatory document which accompanied issuance of 38 C.F.R. § 3.52. However, we do not consider these non-binding interpretations to be consistent with Congress' objectives in enacting section 103(a).

4. Although it is clear that the VA-recommended language, contained in VA's December 1955 report, was intended by the agency to preclude payment of benefits to claimants in the position of the current claimant, no bill was passed on the matter by the 84th Congress. Instead, the matter was reintroduced as H.R. 3658 in the 85th Congress and was enacted as Public Law No. 85-209, 71 Stat. 485 (1957). The legislative history concerning H.R. 3658 does not support the assumption that the 85th Congress endorsed VA's interpretation of the phrase in question or that it was conscious of the views expressed in VA's prior report.

5. Our interpretation of 38 U.S.C. § 103(a) is guided by the necessity of giving it the beneficial effect intended by Congress. See 2A N.J. Singer, Sutherland Statutory Construction § 45.05 (4th ed. 1984). Statutes enacted to relieve personal hardship are generally accorded liberal construction. Id. § 58.04. After closely examining section 103(a) and its legislative history, we find that the primary concern of Congress was to provide relief to claimants whose marriages to veterans were somehow flawed through no fault of their own. Specifically, S. Rep. No. 849, 85th Cong., 1st Sess. reprinted in 1957 U.S. Code Cong. & Admin. News 1711, 1712, stated that the law would modify existing requirements to authorize the recognition of marriages "which the woman entered into without knowledge of any legal impediment." The report noted that this provision was intended to relieve the "hardship which has been worked on individual widows in these cases without any fault on their part." Id. It appears that the only restriction envisioned was that in no case would duplicate benefits be paid. We note that the final sentence of 38 U.S.C. § 103(a), forbidding duplicate payments, while appearing redundant with the preceding reference to "a legal widow or widower ... found to be entitled," is in fact important in preventing double payment when there are two or more individuals who could be recognized as "deemed-valid" widows or widowers. To better effectuate the Congressional purpose behind 38 U.S.C. § 103(a), we interpret the phrase "found to be entitled to such benefits" as referring to full entitlement to payment of benefits, i.e., that no legal impediment exists to payment of benefits.

6. We note that the definition of "basic entitlement" to survivors' pension contained in 38 C.F.R. § 3.3(b)(3) and (4) includes meeting the applicable income and net-worth limitations. However, we do not consider this decisive of the issue. When these regulations became effective January 1, 1979, implementing Public Law No. 95-588, 92 Stat. 2497 (1978), income limitations were, without explanation and contrary to prior regulations, included within the meaning of the term "basic entitlement." This change was not based on any statutory change in the nature of pension entitlement brought about by the new law. However, this regulatory definition of "basic entitlement" is certainly consistent with our interpretation of section 103(a).

7. Clearly, this interpretation could result in VA being required to stop payments to a "deemed-valid" spouse in the event the legal spouse's situation changes by reduction of income leading to entitlement to benefits. However, even under a narrow interpretation of section 103(a), a similar situation could arise where a legal surviving spouse does not apply for benefits until after a deemed-valid spouse is found entitled to those benefits. In either case, the deemed-valid widow or widower stands to lose the benefits granted under 38 U.S.C. § 103(a) once a claimant with a superior claim comes forward. Quite simply stated, the possibility that benefits may have to be discontinued in the future does not justify denial of such benefits to an individual who qualifies for them. To hold otherwise would undermine Congress' objective to provide relief to deemed-valid spouses.

8. Although not necessary for resolution of this issue, a question has been raised as to the meaning of the final phrase of 38 C.F.R. § 3.52(d). The phrase "other than accrued monthly benefits covering a period prior to the veteran's death" was added to section 3.52(d) in 1962. See 27 Fed. Reg. 1215 (1962) (effective February 9, 1962). Apparently, it was added to reflect a General Counsel's opinion which held that "a different claimant may be entitled to each benefit--the legal widow to the accrued and the other claimant to the running award i.e., pension benefits " because " t he test for entitlement of a widow to a running award is not the same as the test for entitlement to accrued benefits" due to the absence of a continuous cohabitation requirement for accrued benefits. Op. G.C. 39-58 (12-19-58); see 38 C.F.R. § 3.1000(a)(1) and (d)(1). The interpretation of the deemed-valid-marriage provisions expressed herein is consistent with section 3.52(d), which allows a legal surviving spouse not entitled to a running award to establish entitlement to accrued benefits without precluding a deemed-valid spouse from seeking other types of gratuitous death benefits.

HELD:

Pursuant to the provisions of 38 U.S.C. § 103(a), VA may deem a purported marriage to a veteran valid for purposes of a claim for gratuitous death benefits by a widow or widower of the veteran, if the claimant entered the marriage without knowledge of a legal impediment to the marriage and thereafter

cohabited with the veteran for one year or more immediately prior to the veteran's death, but only if no claim has been filed by a legal widow or widower of the veteran who is found to be entitled to such benefits. A claimant who is recognized as the "deemed-valid" widow or widower of a veteran will not be precluded from receiving survivors' pension by the fact that another individual has sought such benefits and has been recognized by VA as the veteran's surviving spouse, if the surviving spouse was never found entitled to receive the benefits due to excessive income.

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