

DATE: 09-25-90

CITATION: VAOPGCPREC 94-90
Vet. Aff. Op. Gen. Couns. Prec. 94-90

TEXT:

Total Rating Requirement for Specially Adapted Housing Benefit under 38 U.S.C. § 801(a);

QUESTION PRESENTED:

Does a total rating based on individual unemployability, pursuant to 38 C.F.R. § 4.16, satisfy the requirement of 38 U.S.C. § 801(a) that a claimant must be entitled to chapter 11 compensation for total service-connected disability as a prerequisite for attaining financial assistance in the acquisition of specially adapted housing?

COMMENTS:

1. This is in response to your August 20, 1990 request for an opinion concerning the nature of the "total service-connected disability" required by 38 U.S.C. § 801(a). Please note that this opinion does not address the question of permanency or review the nature of this veteran's service-connected disabilities as those represent factual determinations which you acknowledge are not at issue.

2. Realizing the special housing needs of veterans with paralysis of the legs, Congress provided, in Public Law No. 80-702, that:

Any person who served in the active military or naval service of the United States who is entitled to compensation under the provisions of Veterans Regulation Numbered 1(a), as amended, for permanent and total service-connected disability due to spinal-cord disease or injury with paralysis of the legs and lower part of the body shall be entitled to assistance in acquiring a suitable housing unit .

..

62 Stat. 500 (June 19, 1948) (emphasis added). The current statutory language reflects a change in wording made at the time the benefit was extended to veterans with peacetime service. See Pub.L. No. 86-239, 73 Stat. 472 (1959). In pertinent part, the statute now provides that:

The Secretary is authorized, under such regulations as the Secretary may prescribe, to assist any veteran who is entitled to compensation under chapter 11 of this title for permanent and total service-connected disability ... in acquiring a suitable housing unit with special fixtures or movable facilities made necessary by the nature of the veteran's disability ...

38 U.S.C. § 801(a) (1982 & Supp.1990) (emphasis added).

3. Stated quite simply, the question raised is whether the monetary benefits received by veterans assigned a total rating pursuant to 38 C.F.R. § 4.16 represent "compensation under chapter 11." The compensation authorized by chapter 11 relates exclusively to monetary benefits payable for service-connected disability. See Pub.L. No. 79-494, 60 Stat. 524 (1946) (Congress decreed that the term "compensation," not "pension," would be used to refer to monetary benefits payable for service-connected disability). That chapter contains two subchapters relevant to this opinion. With virtually identical language, subchapter II provides compensation for wartime disability and subchapter IV provides for peacetime disability compensation. See 38 U.S.C. §§ 310 and 331. Both types of service-connected disability are compensated pursuant to the rates contained in 38 U.S.C. § 314. Only one amount is specified for those with total disability ratings, "if and while the disability is rated as total the monthly compensation shall be \$1,537." 38 U.S.C. § 314(j) (1982 & Supp.1990). Thus, compensation is extended to all veterans rated totally disabled by service-connected disability in the same manner, with no differentiation between veterans receiving total compensation for individual unemployability and those with a total schedular rating. Both groups are receiving compensation under chapter 11 and, therefore, the requirement of section 801(a) is satisfied.

4. Review of the legislative history of 38 U.S.C. § 801(a) does not demonstrate that Congress intended to limit the manner in which a veteran was assigned a total disability rating. At the time the special adapted housing program was created, the Veterans Administration, now the Department of Veterans Affairs (VA), was using the 1945 Rating Schedule. From its inception, that schedule contained a section entitled, "General Policy in Rating Disability," which included a provision that allowed assignment of a total disability rating "without regard to the specific provisions of the rating schedule." Schedule for Rating Disabilities, 1945 ed., pp 15-19. The current version of that policy statement is contained in 38 C.F.R. § 4.16(b) and provides that "it is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled."

5. After its creation, the specially adapted housing program was amended several times to include veterans with other types of disabilities. See Pub.L. No. 81-286, 63 Stat. 688 (1949); Pub.L. No. 86-239, 73 Stat. 472 (1959); Pub.L. No. 88-401, 78 Stat. 380 (1964); Pub.L. No. 91-22, 83 Stat. 32 (1969); and Pub.L. No. 95-117, 91 Stat. 1063, 1065 (1977). In all of these amendments, Congress focused on the nature of the veterans' disability, rather than the manner in which the total rating was assigned by VA. See, e.g., S.Rep. No. 747, 86th Cong., 1st Sess., reprinted in 1959 U.S.Code Cong. & Admin.News 2275, 2276 (law modified to include those with loss of use of both lower extremities resulting from peripheral vascular disease as their "need for specially adapted housing is equally strong").

6. Note is also taken of Administrator's Decision No. 994 (June 10, 1974) which has been recently republished as a precedent opinion of the General Counsel. O.G.C.Prec. 60-90. It held that functional, as opposed to organic, loss of use of the lower

extremities satisfied the requirements of 38 U.S.C. § 801. Although the matter was not discussed in any detail, it was noted that the veteran's disability was evaluated at seventy percent (70%), with a total rating assigned by reason of individual unemployability.

7. In view of the foregoing, we conclude that neither the language of 38 U.S.C. § 801 (a), nor the legislative history associated with the creation and revision of that provision, provides any indication that veterans who are otherwise entitled to chapter 11 compensation at the total rate are to be excluded from assistance in acquiring specially adapted housing merely because their disability evaluation is based on individual unemployability, rather than other rating schedule criteria.

HELD:

The requirement in 38 U.S.C. § 801 (a) that a veteran must be entitled to compensation under chapter 11 for total service-connected disability is satisfied if the veteran is entitled to a total rating based on individual unemployability due to service-connected disability pursuant to 38 C.F.R. § 4.16.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Op. Gen. Couns. Prec. 94-90