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CITATION: VAOPGCPREC 100-90
Vet. Aff. Op. Gen. Couns. Prec. 100-90

TEXT:

Subj: Impact of Pub.L. No. 101-237 on 38 U.S.C. §362, Clothing Allowance

QUESTION PRESENTED:

Does the amendment to 38 U.S.C. §362 made by Pub.L. No. 101-237 bar payment of the clothing allowance to an otherwise eligible veteran whose disability is treated "as if" service connected under 38 U.S.C. §351?

COMMENTS:

1. Section 112 of Pub.L. No. 101-237, 103 Stat. 2062, 2065, the Veterans' Benefits Amendments of 1989, amended 38 U.S.C. §362 to authorize a clothing allowance to veterans who use medication for service-connected skin conditions which damages their outer garments. The amendment also modified the terms of the provision of section 362 authorizing a clothing allowance for certain veterans using prosthetic or orthopedic devices which wear out or tear clothing. Prior to this amendment, the provision authorized such an allowance based on any disability "which is compensable under the provisions of this chapter chapter 11 ." The amended language drops this reference to chapter 11 and instead authorizes payment of a clothing allowance to each veteran who "because of a service-connected disability" wears or uses a prosthetic or orthopedic device (including a wheelchair) which the Secretary determines tends to wear out or tear clothing.

2. Section 351 authorizes disability or death compensation or dependency and indemnity compensation based on injuries resulting from medical or surgical treatment, hospitalization, or pursuit of vocational rehabilitation provided by VA "as if such disability, aggravation, or death were service-connected." Since section 351 is a part of chapter 11 of title 38, prior to the 1989 amendment to section 362 injuries compensable under section 351 clearly fell within the scope of section 362. Use of the term "service-connected disability" in the 1989 amendment to section 362, in place of the reference to disabilities "compensable under" chapter 11, raises the question of whether the clothing allowance is still available to qualified veterans eligible for compensation under section 351. We conclude that the clothing allowance remains available to this group of veterans.

3. In O.G.C.Prec. **80-90**, we stated:

Both the language and history of the provision section 351 make clear that Congress intended that all veterans' monetary benefits payable for service-connected disability or death be payable for qualifying disability or death resulting from, among other things,

medical examination or treatment in the same manner as though the disability or death had been a result of military service.

(Emphasis in original). In so holding, we rejected a literal reading of 38 U.S.C. §410(b)(1), which, prior to amendment by Pub.L. No. 100-687, §1403, 102 Stat. 4105, 4130 (1988), authorized payment of dependency and indemnity compensation (DIC) where, at the time of death, a veteran was in receipt of compensation for a "service-connected disability" continuously rated totally disabling for a period of ten or more years immediately preceding death. We determined that reading section 410 together with section 351 required a broader construction of the term "service-connected disability" as used in the former statute in order to effectuate congressional intent in establishing quasi-service connection under the latter provision. On this basis, we held that disability considered quasi-service connected under section 351 could provide a basis for entitlement under then-section 410(b)(1).

4. Op.G.C. 12-86 (1-26-88), which has not been reissued as a General Counsel precedent opinion, addressed the issue of the interaction of 38 U.S.C. §351 with other sections of title 38, United States Code in light of Op.G.C. 5-86 (3-27-86) (reissued as O.G.C.Prec. **80-90**). The opinion responded to the question whether section 351 entitlement could confer entitlement, where otherwise appropriate, to compensation under 38 U.S.C. §360 (relating to paired organs) and to special or ancillary service-connected benefits. The General Counsel noted the need for clarification of the statement that "all veterans' monetary benefits payable for service-connected disability or death" are available to those entitled under section 351. The General Counsel explained that this statement was generally intended to encompass all disability and death compensation and DIC benefits. The General Counsel went on to indicate that section 351 entitlement may also provide entitlement to certain ancillary and special service-connected benefits depending on congressional intent.

5. An established rule of statutory interpretation referenced in O.G.C.Prec. **80-90**, relating to statutes in pari materia, holds that another statute which relates to the same class of persons or things, or has the same purpose or object may be read together with the statute being construed in order to discover the true intent of the drafters. This rule is supported by the assumption that when the legislature enacts a provision it has in mind previous statutes relating to the same subject matter and purpose. 2A N. Singer, Sutherland Statutory Construction §§ 51.01-51.03 (4th ed. 1984). In light of the relationship between sections 351 and 362 of title 38, in particular the object and purpose of these sections, application of the in pari materia closely-related-subject-matter test indicates a continuing nexus between the two sections and supports entitlement for the latter based on quasi-service connection established under the former. Significantly, sections 351 and 362 are both "General Compensation Provisions" in subchapter VI of chapter 11 and have the same general purpose, i.e., to authorize monetary benefits for, as the chapter heading indicates, "Compensation for Service-Connected Disability or Death." The unquestionable objective of both is to satisfy the financial needs of persons suffering from conditions which the Government

considers connected to military service.

6. Further, the legislative history of the 1989 amendment to section 362 reveals no evidence of congressional intent to withdraw entitlement to the clothing allowance from those otherwise eligible under section 351. The 1989 amendment to section 362 developed from legislation introduced at the request of VA in past Congresses. As a follow up to such legislation under consideration at the close of the prior Congress, Senator Alan Cranston introduced a bill, S. 13, at the beginning of the 101st Congress, section 111 of which provided for amendment of 38 U.S.C. §362 to authorize a clothing allowance for damage caused by medication for skin conditions. In describing the disabilities to be covered, the bill employed the wording "compensable under this chapter," a phrase nearly identical to the then-extant statutory language governing clothing allowance for disabilities requiring use of prosthetic or orthopedic appliances. On September 13, 1989, the SVAC reported S. 13 with the language expanding the clothing allowance moved to section 102. On October 3, 1989, the Senate passed S. 13 as reported retaining the "compensable under this chapter" language. It then substituted the text of the Senate-passed bill for the text of H.R. 901 and passed it, returning it to the House. When the House acted on H.R. 901 on November 20, 1989, section 112 of its bill did not include the "compensable under this chapter" language. In its stead, the language "because of a service-connected disability," which eventually became part of Pub.L. No. 101-237, was substituted without explanation.

7. There is no indication in the legislative history of Pub.L. No. 101- 237 that Congress focused on the interaction of sections 351 and 362 in amending the latter statute. The few short references to the amendment in the various reports, the floor remarks in both the Senate and House, and the title of the amendatory provision in the bill itself simply explain the amendment as an "expansion" of the clothing allowance. See S.Rep. No. 101-126, 101st Cong., 1st Sess. 96, reprinted in 1989 U.S.Code Cong. & Admin.News 1470, 1507; Joint Explanatory Statement, 135 Cong.Rec. H9110 (daily ed. Nov. 20, 1989), reprinted in 1989 U.S.Code Cong. & Admin.News 1856, 1858; 135 Cong.Rec. S235 (daily ed. Jan. 25, 1989) (statement of Senator Cranston); 135 Cong.Rec. H9107 (daily ed. Nov. 20, 1989) (statement of Congressman Montgomery). The Senate Report, the Joint Explanatory Statement, and the remarks made in both Houses during consideration of the clothing-allowance amendment all fail to mention the distinction between service-connected disability and disability treated "as if" service connected under section 351. Instead, these sources refer to "current law" as providing for payment of a clothing allowance based on "service- connected disability." The same blurring of this distinction appears in the August 10, 1989, letter from the Secretary of Veterans Affairs to Senator Alan Cranston, Chairman of the Senate Committee on Veterans' Affairs, expressing the Department's support for the expanded clothing allowance as provided in S. 13. See S.Rep. No. 101-126 at 338, reprinted in 1989 U.S.Code Cong. & Admin.News at 1736. This meager legislative record contains no evidence of an intention to curtail then-existing benefits under chapter 11. Rather, it suggests an intention to maintain benefits for those entitled under the then-existing law, while extending entitlement to new categories of veterans.

8. In view of the foregoing, we conclude that Congress did not intend to withdraw entitlement to the clothing allowance under what is now 38 U.S.C. §362(1) for claims involving disability treated as if service connected under 38 U.S.C. §351. Thus, disability treated as if service connected under section 351 continues to provide a basis for entitlement, if otherwise appropriate, to benefits authorized in section 362(1), notwithstanding the removal from the latter statute of the reference to disabilities "compensable under" chapter 11.

9. With regard to clothing allowance under section 362(2), where medication for a skin condition due to "service-connected disability" causes damage to clothing, we believe that the above-referenced principles of statutory construction lead to the same result. Under these principles, we cannot attribute to Congress an intention to ascribe to the term "service-connected disability" one meaning for purposes of section 362(1) and another for purposes of section 362(2). We note further that payment of additional compensation for clothing damage due to medication or wear and tear from prosthetic devices including wheelchairs is closely analogous to other supplementary disability-compensation benefits such as the aid-and-attendance allowance authorized under 38 U.S.C. §314(r) and the house-bound allowance authorized under section 314(s). We would not question that both of these benefits are available to those otherwise qualified based on disability treated as if service connected under section 351. Thus, we conclude that benefits under section 362(2) may also be based on disability treated as if service connected under section 351.

10. We note for your information that on September 19, 1990, a proposed amendment to 38 C.F.R. §3.810(a) was published in the Federal Register (55 Fed.Reg. 38564) with our concurrence. The language of that proposed amendment is consistent with this opinion.

HELD:

Section 112 of Pub.L. No. 101-237, 103 Stat. 2062, 2065, the Veterans' Benefits Amendments of 1989, amended 38 U.S.C. §362 to authorize payment of a clothing allowance to veterans who "because of service-connected disability" wear or use a prosthetic or orthopedic appliance which tends to wear out or tear clothing or who use medication for a skin condition "due to service-connected disability" which causes irreparable damage to outergarments. Section 351 of title 38, United States Code, authorizes disability or death compensation or dependency and indemnity compensation based on injuries resulting from medical or surgical treatment, hospitalization, or pursuit of vocational rehabilitation provided by VA "as if" disability or death were service-connected. Payment of the clothing allowance under 38 U.S.C. §362 may be based on disability treated as if service connected under 38 U.S.C. §351.

VETERANS ADMINISTRATION GENERAL COUNSEL
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