

Date: December 31, 1997

VAOPGCPREC 40-97

From: Acting General Counsel (022)

Subj: Effective Date of Amendments to 38 U.S.C. § 1151 Made by Pub. L. No. 104-204

To: Acting Chairman, Board of Veterans' Appeals (01)

**QUESTION PRESENTED:**

a. Do the amendments to 38 U.S.C. § 1151 made by section 422(a) of Pub. L. No. 104-204 apply in claims filed before October 1, 1996, which are still pending on October 1, 1997?

b. Do those amendments apply in claims filed on or after October 1, 1996, but before October 1, 1997, which are still pending on the latter date?

**COMMENTS:**

1. This opinion concerns the effective date of the amendments to 38 U.S.C. § 1151 made by section 422(a) of Pub. L. No. 104-204, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, 110 Stat. 2874, 2926 (1996). Generally, section 422(a) of that act amended 38 U.S.C. § 1151 to provide, in effect, that compensation and dependency and indemnity compensation on the basis of disability or death as a result of Department of Veterans Affairs (VA) medical treatment is payable under section 1151 only where disability or death is due to fault on the part of VA or an event not reasonably foreseeable. Section 422(b)(1) provides that the amendments made by subsection (a) shall take effect on October 1, 1996. However, section 422(c) states that "[n]otwithstanding subsection (b)(1), section 421(d) [governing spina bifida claims], or any other provision of this Act, section 421 and this section shall not take effect until October 1, 1997." Pub. L. No. 104-204, § 422(c), 110 Stat. at 2927 (emphasis added). In addition, section 422(b)(2) provides that the amended provisions of 38 U.S.C. § 1151 shall govern all determinations of eligibility under that statute that are made with respect to claims filed on or after the effective date set forth in section 422(b)(1).

2. It is unclear why Congress chose to structure the effective date provisions of sections 421 and 422 of Pub. L. No. 104-204 as it did. In particular, two provisions, sections 421(d) and 422(b)(1), establish effective dates for  
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amendments made to particular parts of title 38, United States Code, by sections 421(b) and 422(a), respectively, while a third effective date provision, in section 422(c), clearly changes the effective date of these provisions to a later date. The enactment of multiple effective dates in this statute raises a question of congressional intent. The central issue is whether the reference to "the effective date set forth in paragraph (1)" in section 422(b)(2) is to be interpreted as referring to October 1, 1996, or October 1, 1997. In resolving this issue we look first to the terms of the statute and the statutory scheme.

3. Section 422(b)(1) states that "[t]he amendments made by subsection (a) shall take effect on October 1, 1996." A literal reading of the language of section 422(b)(1) and the reference thereto in (b)(2) would suggest that claims under section 1151 filed on or after October 1, 1996, but not decided until October 1, 1997, or later, would be subject to the criteria of 38 U.S.C. § 1151 as amended by Pub. L. No. 104-204. However, the reading of an isolated statutory phrase alone is not sufficient to determine the intent of Congress. Rather, one must look beyond the specific statutory language at issue and examine the language and design of the statute as a whole. K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988). "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Davis v. Michigan Dep't. of the Treasury, 489 U.S. 803, 809 (1989). In other words, one must read section 422(b) in light of section 422(c). Because the effective date provision in section 422(c) supersedes those set forth in sections 421(d) and 422(b)(1), a literal reading of section 422(b)(2) would appear to lead to a conflict between section 422(b)(1) and section 422(c). Further, the reference in section 422(c) indicating that the effective date set forth in that provision applies "[n]otwithstanding . . . any other provision of this Act," creates an ambiguity as to whether that provision was intended to supersede section 422(b)(2) with regard to the claim determinations to which the amended section 1151 applies. Given the referenced conflict, and because the

structure and meaning of the statute is not clear and unambiguous, we must attempt to ascertain what Congress intended by analyzing the applicable effective date provisions in the context of the whole statutory scheme and in light of any expressions of congressional intent.

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4. Section 421 of Pub. L. No. 104-204 established a new chapter 18 in title 38, United States Code, to provide for the special needs of certain children of Vietnam veterans who were born with the birth defect spina bifida through the provision of health care, vocational training and rehabilitation, and monetary benefits. As indicated earlier, section 422 amended the provisions of 38 U.S.C. § 1151 to revise the criteria upon which claims for benefits for disability or death under that section are to be adjudicated. It is our view that Congress intended for each of these provisions to become effective simultaneously, i.e., on October 1, 1997. According to the conference report on what became Pub. L. No. 104-204, the conferees intended the amendments made by section 422 of that statute to offset the cost of enactment of the new spina bifida benefits program. H.R. Conf. Rep. No. 812, 104th Cong., 2d Sess. 84 (1996). The delay in the effective date of the amendments until

October 1, 1997, was intended to provide the committees of jurisdiction an opportunity to further address the matter. *Id.* There is no indication in the conference report or in any statement by a Member of Congress that an effective date other than October 1, 1997, was intended for any of the affected provisions.

5. Bearing further on the interpretation of these provisions is the question of whether the "notwithstanding" provision in section 422(c) has the legal effect of rendering section 422(b)(1) a nullity. The phrase "notwithstanding any other provision of law," or a variation thereof means exactly that; it effectively supersedes all previous laws. See Energy Transp. Group, Inc. v. Skinner, 752 F. Supp. 1, 10 (D.D.C. 1990), aff'd, 956 F.2d 1206 (D.C. Cir. 1992). A provision which supersedes another provision renders the former a nullity and supplants or replaces the other provision. See City of Los Angeles v. Gurdane, 59 F.2d 161, 163 (9th Cir. 1932). In this instance, since the October 1, 1996, effective date found in section 422(b)(1) is super-

seded by the language of section 422(c), i.e., by operation of the latter provision, the October 1, 1996, effective date in section 422(b)(1) is replaced with an effective date of October 1, 1997, the latter date necessarily becomes "the effective date" of the amendments to section 1151. Since section 422(b)(2) refers to "the effective date set forth in paragraph (1)," we find that the date referred to in section 422(b)(2) must be interpreted as being October 1, 1997.

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**HELD:**

All claims for benefits under 38 U.S.C. § 1151, which governs benefits for persons disabled by treatment or vocational rehabilitation, filed before October 1, 1997, must be adjudicated under the provisions of section 1151 as they existed prior to that date.

Robert E. Coy