

Date: April 1, 1998

VAOPGCPREC 4-98

From: Acting General Counsel (022)

Subj: Applicability of 38 U.S.C. § 2305 in Claims for Burial Benefits Based upon Service in the Commonwealth Army of the Philippines During World War II

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

QUESTION PRESENTED:

Does 38 U.S.C. § 2305 have any application in claims for burial benefits involving veterans who served in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the United States Armed Forces during World War II?

COMMENTS:

1. This question arose as a result of the Court of Veterans Appeals' (CVA) single-judge decision in *Cornel v. Brown*, No. 94-1190 (Vet. App. Oct. 4, 1996) (mem.). In *Cornel*, the CVA affirmed in part and remanded in part a decision of the Board of Veterans' Appeals (BVA) denying a claim brought by a Philippine veteran's surviving spouse for non-service-connected burial benefits. The CVA recognized that the veteran served in the organized forces of the Philippine government prior to July 1, 1946, and that, "[u]nder section 107(a), such service constitutes active military service in the Armed Forces of the United States for purposes of chapter 23 of title 38." *Cornel*, slip op. at 1. However, the court went on to find that, even though the claimant's deceased spouse had service which qualified him as a veteran for certain purposes, that status did not in and of itself make him eligible for burial benefits. *Id.* The CVA determined that the claimant did not meet any of various criteria giving rise to eligibility for Department of Veterans Affairs (VA) burial benefits. The CVA also stated, however, that, "[b]ecause the veteran's status arose prior to 1958, the BVA should have addressed . . . the possible applicability of section 2305." *Cornel*, slip op. at 3. The CVA remanded the matter to the BVA for consideration of that issue.

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2. Section 2305 of title 38, United States Code, states as follows:

The death of any person who had a status which would, under the laws in effect on December 31, 1957, afford entitlement to the burial benefits and other benefits provided for in [chapter 23 of title 38], but who did not meet the service requirements contained in [that] chapter, shall afford entitlement to such benefits, notwithstanding the failure of such person to meet such service requirements.

Section 2305 derives from the Veterans' Benefits Act of 1957 (Veterans' Benefits Act), Pub. L. No. 85-56, § 805, 71 Stat. 83, 118.¹ The Veterans' Benefits Act, which was enacted on June 17, 1957, but did not become effective until January 1, 1958, was comprehensive legislation which consolidated various veterans' benefit laws. While the primary purpose of the Veterans' Benefits Act was organizational, Congress intended several substantive changes to the veterans' benefits laws. See H.R. Rep. No. 279, 85th Cong., 1st Sess. (1957), *reprinted in* 1957 U.S.C.C.A.N. 1214, 1215-16; S. Rep. No. 332, 85th Cong., 1st Sess. (1957), *reprinted in* 1957 U.S.C.C.A.N. 1241, 1242-43. The legislation contained several saving clauses to preserve eligibility for persons affected by changes in the law. A May 16, 1957, letter to the Chairman of the Senate Committee on Finance from the Administrator of Veterans Affairs concerning the bill (H.R. 53, 85th Cong., 1st Sess. (1957)) which ultimately became the Veterans' Benefits Act noted that, "in each of the 'benefit' titles, provision is made for extending entitlement to all classes of persons who prior to the enactment of the bill had an eligibility status for the benefit, not-

¹ The burial-benefit provision which appeared as section 805 of the Veterans' Benefits Act was originally codified as 38 U.S.C. § 2805. See 38 U.S.C.A. § 2805 (West Supp. 1957). This provision was recodified as 38 U.S.C. § 905 in 1958

and renumbered in 1991 as 38 U.S.C. § 2305. See Pub. L. No. 85-857, 72 Stat. 1105, 1170 (1958), and the Department of Veterans Affairs Codification Act, Pub. L. No. 102-83, § 5(a), 105 Stat. 378, 406 (1991).

withstanding specific service requirements of the bill."
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No. 332, 85th Cong., reprinted in 1957 U.S.C.C.A.N. at 1245, 1247.² The title of section 805 of the Veterans' Benefits Act, the saving provision applicable to burial benefits, was "Persons Eligible Under Prior Law," giving further evidence that the provision was intended only to preserve eligibility for persons already eligible under laws in effect prior to the effective date of the new statute.

3. The foregoing makes clear that section 2305 is a saving provision which preserves burial-benefit eligibility which predated the effective date of the Veterans' Benefits Act. As a result of 38 U.S.C. § 2305, veterans who cannot meet the current criteria for chapter 23 burial benefits may still be eligible for such benefits if they had been potentially eligible for burial benefits under laws in effect on December 31, 1957, but did not meet service requirements for burial benefits imposed by the Veterans' Benefits Act. Section 2305 would thus only be of assistance to individuals who served in the Philippine Commonwealth Army prior July 1, 1946, if such persons were potentially eligible for burial benefits under laws in effect on December 31, 1957.

4. The benefits eligibility of individuals who served in the Philippine Commonwealth Army during World War II was initially defined by the Act of Feb. 18, 1946, ch. 30, title II, 60 Stat. 6, 14, which was codified, as amended, as former 38 U.S.C. § 38. See 38 U.S.C.A. § 38 (1954). The Veterans' Benefits Act, Pub. L. No. 85-56, § 2202(185),

² Those involved in development of the legislation may have been concerned that changes in terminology describing service requirements would have the effect of rendering certain persons ineligible who may have been eligible for particular benefits under laws replaced by the Veterans' Benefits Act. Compare, e.g., section 101 (Definitions) and title VIII (Burial Benefits) of Pub. L. No. 85-56, 71 Stat. at 88-89, 117-18 with Vet. Reg. Nos. 9(A) (Payment of Burial Expenses for Deceased War Veterans) and 10 (defining various terms) (both of which were repealed by Pub. L. No. 85-56, § 2202(129), 71 Stat. at 167, and had used somewhat different terminology and definitions in describing service requirements).

71 Stat. at 170, repealed former section 38, as amended, but amended and incorporated the terms of former 38 U.S.C. § 38 in section 2105 of that statute. Pub. L. No. 85-56,

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§ 2105, 71 Stat. at 156. This provision was amended again in 1958 and codified as 38 U.S.C. § 107(a). See Pub. L. No. 85-857, 72 Stat. 1105, 1111 (1958).

5. Section 107(a) lists burial benefits provided under chapter 23 of title 38, United States Code, as one of the benefits available to individuals who served in the Philippine Commonwealth Army during World War II. 38 U.S.C. § 107(a)(3). However, pursuant to 38 U.S.C. § 2305, the terms of the predecessor provision, as in effect on December 31, 1957, must be examined in order to determine if 38 U.S.C. § 2305 has any application in current claims for burial benefits based upon service in the Philippine Commonwealth Army during World War II.

6. Former section 38 of title 38, as amended by the Servicemen's and Veterans' Survivor Benefits Act, ch. 837, § 501(i), 70 Stat. 857, 884 (1956), effective January 1, 1957, § 603(a), 70 Stat. at 887, stated, in pertinent part, as follows:

Service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof, except benefits under (1) the National Service Life Insurance Act of 1940, as amended, under contracts heretofore entered into, (2) laws administered by the Veterans' Administration providing for the payment of compensation or dependency and indemnity compensation on account of service-connected disability or death, and (3) the Missing Persons Act (56 Stat. 143) as amended

Former section 38 was not amended between August 1, 1956, (the enactment date of the Servicemen's and Veterans' Survivor Benefits Act) and June 17, 1957, (the enactment date of the Veterans' Benefits Act).

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7. A review of the terms of former section 38, as set out above, reveals that it contained three exceptions to its general prohibition against payment of VA benefits based upon service in the Philippine Commonwealth Army during World War II. Those exceptions permitted eligibility for National Service Life Insurance benefits, VA disability compensation and dependency and indemnity compensation, and benefits under the Missing Persons Act to be based on qualifying service in the Philippine Commonwealth Army.³ Significantly, however, former 38 U.S.C. § 38 did not except burial benefits from the general preclusion against payment of VA benefits based upon service in the Philippine Commonwealth Army.

8. The exception for burial-benefit eligibility for qualifying Philippine service appeared *for the first time* in section 2105 of the Veterans' Benefits Act (codified at 38 U.S.C.A. § 2125 (West Supp. 1957)). This statute, which was later replaced by 38 U.S.C. § 107(a), effectively precluded provision of VA benefits based upon service in the Philippine Commonwealth Army during World War II, except for benefits under: (1) the National Service Life Insurance Act of 1940; (2) the Missing Persons Act; and (3) VA benefit statutes governing compensation for service connected disability or death, dependency and indemnity compensation, and burial benefits.

9. Based on the foregoing, we conclude that 38 U.S.C. § 2305 has no application in claims for burial benefits involving individuals who served in the Philippine Common-

³ The "Missing Persons Act" was originally enacted to provide continuing payment of pay and allowances to members of the United States Armed Forces and certain Federal civilian employees who were officially reported to be missing in action, captured by the enemy, or interned in a neutral country. Act of March 7, 1942, ch. 166, 56 Stat. 143. The "Missing Persons Act" has been substantially amended since originally enacted and is currently codified at 37 U.S.C. ch. 10 and 5 U.S.C. ch. 55, subch. VII. It has no bearing on the question presented here.

wealth Army during World War II. Section 2305 is a saving provision applicable to persons potentially eligible for burial benefits under the laws "in effect on December 31, 1957." Under former 38 U.S.C. § 38, as in effect on that date, burial benefits were not among the benefits available based on service in the Philippine Commonwealth Army during <Page 6>

World War II. Burial benefits were not available based on such service until the Veterans' Benefits Act became effective on January 1, 1958. Accordingly, individuals whose only service was in the Philippine Commonwealth Army during World War II had no potential eligibility which could be preserved by section 2305, and, consequently, that statute has no application in their claims.

HELD:

The saving provision currently codified at 38 U.S.C. § 2305 preserved potential eligibility for burial benefits under chapter 23 of title 38, United States Code, for individuals who could have qualified for those benefits under "the laws in effect on December 31, 1957." The statute governing benefits eligibility based upon service in the Philippine Commonwealth Army in World War II that was in effect on that date did not confer potential eligibility for burial benefits for individuals with such service. Consequently, section 2305 has no application in claims for burial benefits based on service in the Philippine Commonwealth Army during World War II.

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