



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

March 6, 2009

The Honorable Bob Filner  
Chairman  
Committee on Veterans' Affairs  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

In accordance with the provisions of 38 U.S.C. § 503(c), I am submitting a report covering those cases in which my predecessor granted equitable relief in calendar year 2008.

The report covers three instances under 38 U.S.C. § 503(a) that involved benefits not being provided because of administrative error by the Government. My predecessor granted relief in three such cases totaling \$493,522.62.

The report also covers cases under 38 U.S.C. § 503(b) in which a Department of Veterans Affairs (VA) beneficiary suffered a loss because of reliance upon an erroneous VA determination of eligibility, without knowing that it was erroneous. My predecessor granted relief in three such cases, totaling \$25,084.25.

I believe this report fully summarizes the cases in which my predecessor granted equitable relief in calendar year 2008.

Thank you for your interest in our Nation's Veterans.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric K. Shinseki".

Eric K. Shinseki

Enclosures



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

March 6, 2009

The Honorable Daniel Akaka  
Chairman  
Committee on Veterans' Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

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THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

March 6, 2009

The Honorable Steve Buyer  
Ranking Republican Member  
Committee on Veterans' Affairs  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Buyer:

In accordance with the provisions of 38 U.S.C. § 503(c), I am submitting a report covering those cases in which my predecessor granted equitable relief in calendar year 2008.

The report covers three instances under 38 U.S.C. § 503(a) that involved benefits not being provided because of administrative error by the Government. My predecessor granted relief in three such cases totaling \$493,522.62.

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Eric K. Shinseki

Enclosures



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

March 6, 2009

The Honorable Richard M. Burr  
Ranking Member  
Committee on Veterans' Affairs  
United States Senate  
Washington, DC 20510

Dear Senator Burr:

In accordance with the provisions of 38 U.S.C. § 503(c), I am submitting a report covering those cases in which my predecessor granted equitable relief in calendar year 2008.

The report covers three instances under 38 U.S.C. § 503(a) that involved benefits not being provided because of administrative error by the Government. My predecessor granted relief in three such cases totaling \$493,522.62.

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Thank you for your interest in our Nation's Veterans.

Sincerely,

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Eric K. Shinseki

Enclosures

EQUITABLE RELIEF GRANTED BY THE  
SECRETARY OF VETERANS AFFAIRS  
IN CALENDAR YEAR 2008

CASE #1

The Veteran received notice in March 2003 of a rating decision granting entitlement to service connection for multiple joints arthritis and entitlement to individual unemployability effective May 2002. The Veteran submitted an application for an automobile adaptive allowance based on the loss of the use of his left foot. The Department of Veterans Affairs (VA) granted an automobile allowance of \$11,000, which the Veteran used to purchase a car in November 2007. Further review of the claims folder by VA Regional Office (VARO) personnel revealed that the application was lacking the supporting medical documentation. Two subsequent physical examinations failed to show that the Veteran had sufficient loss of use of an extremity to meet eligibility criteria. VA informed the Veteran 2 days after purchase of the automobile that he was not entitled to the automobile allowance.

The failure of the VARO to properly review the claims folder of the Veteran caused the Veteran to spend \$10,899.50 for a vehicle based on receipt of a VA automobile allowance. The Secretary granted equitable relief in the amount of \$10,899.50 under the authority of 38 U.S.C. § 503(b) for an automobile allowance since the Veteran incurred a financial obligation in reliance on VARO's determination based on incomplete information.

CASE #2

The Veteran has been receiving service connected disability payments for bipolar disorder at 100 percent since 1995. In October 2000, the Veteran was found to be permanently disabled due to this affliction. Although the VARO notified the Veteran of this and the benefits due his dependents, they failed to notify the Veteran at that time that he qualified for Civilian and Health Medical Program of Veterans Affairs (CHAMPVA). In April 2007, the fiduciary of the Veteran contacted VARO about his eligibility for CHAMPVA and submitted a list of premiums paid to a private insurance company from January 2001 to June 2007 totaling \$31,409.02. The Veteran was authorized CHAMPVA benefits in March 2001 on application of the fiduciary.

The failure of the VARO to provide notification to the Veteran in October 2000 that he was eligible for CHAMPVA benefits caused the Veteran to pay for private health insurance coverage. The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(a) for the \$31,409.02 expended on private health insurance premiums.

### CASE #3

Under 38 U.S.C. § 1741(d), VA may only pay per diem retroactively for care that was provided in a home after completion of the VA inspection of the home. A Texas nursing home admitted residents beginning August 1, 2005. A VA inspection of the home was not completed until September 15, 2005. In May 2006 VA recognized the home for purposes of receiving per diem payments, and authorized payment of per diem retroactive to September 15, 2005. The Texas nursing home incurred per diem charges of \$10,214.10 for the period August 1 to September 14, 2005. The Texas nursing home also incurred administrative expenses of \$951 in accounting for the missing per diem amounts.

The Director of Texas Veterans Land Board's Veterans Home program requested reconsideration as the inspection of the nursing home was not performed in a timely manner by VA. VA had been informed of the need for the inspection months prior to the opening of the home, and should have been able to complete the inspection prior to the home opening in August 2005. The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(a) for \$11,165.10, the amount expended on per diem and processing between the admittance of Veterans to the home and the completion of the VA inspection.

### CASE #4

In June 2007 the Veteran filed a request for automobile adaptive equipment allowance although he had already received the one-time-only automobile allowance in 1969. The VARO informed the Veteran that he was eligible for an automobile allowance of \$11,000 in June 2007. In reliance on this determination, the Veteran purchased an automobile and submitted the Certificate of Eligibility for reimbursement. VARO responded that the allowance could not be paid as the records revealed that the Veteran had received his one-time allowance in 1969. The Secretary granted equitable relief in the amount of \$11,000 under the authority of 38 U.S.C. § 503(b) for a second allowance since the Veteran incurred a financial obligation in reliance on VARO's erroneous initial determination.

## CASE #5

Under 38 U.S.C. § 1741(d), VA may only pay per diem retroactively for care that was provided in a nursing home after completion of the VA inspection of the home. In October 2006, VA conducted an "operational walk through" of a South Carolina nursing home. The administrators of the home were informed that it was ready to admit patients, although no written copy of this determination was recorded. The nursing home admitted Veterans beginning November 1, 2006. In March 2007, VA notified the State that payment of per diem would only be retroactive to completion of the full inspection. A VA inspection of the home was completed on April 10, 2007. The South Carolina nursing home incurred per diem charges for the period November 1, 2006, to April 11, 2007, of \$450,948.60.

The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(a) for \$450,948.60, the amount expended on per diem in the 6 months between the admittance of Veterans to the home and the completion of the VA inspection.

## CASE #6

The Veteran applied to receive Chapter 30 education benefits in June 2006. The Veteran listed an approved educational institution in the United Kingdom as the location where he would be pursuing his MBA via independent study. While the Veteran did not specify that he would be in an independent study program, the application clearly listed his address in Colorado. An independent study program is one that does not require the registrant to attend classes on a campus, but instead allows the registrant to complete coursework from his home. The VARO issued a Certificate of Education (COE) for the Veteran that did not specify program or location. The Veteran enrolled in the U.K. institution to pursue a MBA. In November the VARO received an enrollment certificate for the Veteran from the educational institution. In December 2006, VARO notified the Veteran that his Chapter 30 benefits claim was denied. A change to the Higher Education Act effective July 1, 2006, precluded Federal assistance for any training programs at foreign schools provided through independent study. VA did not notify the Veteran or the educational institution of this change in policy until the Veteran was informed of his denial of benefits in December 2006.

The Veteran expended \$3,184.75 in tuition and fees associated with his pursuit of a MBA, based on a COE issued by VA. The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(b) for \$3,184.75, the amount the Veteran spent on tuition and fees based on an incorrect determination by VARO as to his eligibility to use Chapter 30 benefits for his educational program.

## Cost Estimate to Prepare the Secretary's Equitable Relief Report – CY 2008

In compliance with 38 U.S.C. § 116, the following provides an estimate of the cost to prepare the Secretary's Annual Report on Equitable Relief Cases as required by 38 U.S.C. § 503.

Office/Grade	Number of Hours	Hourly Rate*	Extension
02/GS-13/5	18.0	44.64	803.46
02/GS-14-4	1.0	51.19	51.19
02/GS-14-6	2.0	67.28	108.22
02/SES	1.0	69.84	69.84
02/SES	.5	75.95	37.98
00B/14-4	3.0	51.19	153.57
00B/14-4	.5	51.19	25.60
00B/15-5	.5	62.03	31.03
00B/ES-1	.5	75.96	37.98
00B/ES-2	.5	81.08	40.54
00A/ES-3	.5	86.11	43.05
00	.5	106.69	53.34
<b>TOTAL</b>			<b>\$1,455.80</b>

\*these figures include an additional 16% to cover the cost of benefits, following the methodology required by the Freedom of Information Act (5 U.S.C. § 552) in calculating the actual hourly cost the time of Federal employees