

EQUITABLE RELIEF GRANTED BY THE
SECRETARY OF VETERANS AFFAIRS
IN CALENDAR YEAR 2003

Case #1

The veteran served in the military from July 17, 1990 to August 9, 1994 and received a "general" discharge. A "general" discharge disqualifies a veteran from receiving Montgomery GI Bill (MGIB) benefits. VA's Regional Processing Office (RPO) erroneously found the veteran eligible for MGIB benefits. Upon receiving a Certificate of Eligibility, the veteran enrolled in college. The RPO, on a subsequent review, found the veteran not eligible for MGIB benefits. The veteran withdrew from the school and incurred a fee for the late withdrawal. The Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of \$1,940.00, due to the veteran having suffered a loss because of his reliance on an erroneous eligibility determination from the VA. This amount represents education benefits the veteran would have received under the Montgomery GI Bill (MGIB) program for the period March 18, 2002, through May 26, 2002, plus the fee for late withdrawal from classes.

Case #2

The veteran entered on active duty on June 8, 1966, and was discharged on April 30, 1995. He submitted a Veteran's Application for Compensation and Pension to DOD on April 30, 1996. A DOD employee informed him that VA benefits could be awarded effective the first day following his service separation since the form was submitted within one year of his retirement date. The VA Regional Office, however, awarded compensation for service-connected disabilities effective May 20, 1996; the day the application was processed at VA. The veteran disputed the later effective date based on reliance on the information provided by the DOD employee. Because of administrative error, the veteran lost approximately one year of entitlement to VA compensation benefits, which would, had they been awarded, have had to be offset by his military retirement pay. Because no waiver of military retired pay was in effect during this period, no direct monetary benefits would accrue to the veteran from an adjustment to his effective date. Accordingly, the Secretary granted equitable relief under 38 U.S.C. § 503(a) in a non-monetary award of an earlier effective date of May 1, 1995, the day after his service separation, for his VA compensation benefits.

Case #3

The veteran's service representative filed four times (November 2001 and March, April and May 2002) for a letter indicating that the veteran had total and permanent service-connected PTSD. The veteran could use this letter to obtain exemption from homestead taxes and hunting and fishing license fees. The VA Regional Office (VARO) mistakenly informed the veteran that he was not entitled to these exemptions because his PTSD was not permanent. The VARO did subsequently issue the letter, but it was not received until May 30, 2002, too late for the veteran to receive the exemptions. The veteran was assessed costs as a result of the untimely receipt of the letter. The veteran paid \$546.11 for his fishing and hunting licenses and a \$241.38 homestead tax. The failure of the VARO to properly review the veteran's claim folder resulted in his paying for exempt services. The Secretary has granted equitable relief under 38 U.S.C. § 503(b) in the amount of \$787.49. This amount represents a reimbursement for homestead exemption and fees for fishing and hunting licenses incurred for the year 2002.

Case #4

The veteran received, in 1992, a total disability rating based on individual unemployability (TDIU), which included eligibility for dependents Chapter 35 educational benefits. The VA Regional Office, however, failed to notify the veteran of such eligibility in a timely manner as required by 38 U.S.C. § 7722. As a result, the veteran's dependent was denied Chapter 35 benefits. The dependent appealed to the Board of Veterans Appeals (BVA). The Secretary granted equitable relief under section 503(a) in an amount equal to the amount of the Chapter 35 benefits the dependent was entitled to receive for educational assistance from June 1992 to December 1997, contingent upon withdrawal of the BVA appeal.

Case #5

The VARO office awarded the veteran an entitlement to automobile and adaptive equipment and approved his application for financial assistance in purchasing an automobile. The VARO office authorized a payment of \$5,500 toward the purchase price of a vehicle. At the time of the sale, the authorizing signature for the Certificate of Eligibility (VA Form 21-4502) was missing. When the veteran submitted the form to the VARO for signature, he was told he was only eligible for the adaptive equipment not automobile and adaptive equipment. The veteran had already signed a contract to purchase the vehicle when VA notified him the award letter had been sent in error and that he was not entitled to the automobile allowance. The Secretary granted equitable relief in the amount of \$5,500 pursuant to 38 U.S.C. § 503(b). This amount is based on the veteran's reliance on a notification from VARO that incorrectly informed him that he was entitled to the automobile allowance.

Case #6

The veteran submitted a VA Form 21-4502 requesting an automobile allowance and the VARO issued him a Certificate of Eligibility. The veteran purchased an automobile, took ownership of the vehicle, and submitted the certificate for reimbursement. At that point, the VARO realized the veteran was not eligible and called the automobile dealership to inform them of the mistake. The dealer indicated that the veteran could either return the vehicle as used, incurring a loss of funds, or a modification could be made to increase the loan agreement. The failure of the VARO to properly review the claims folder resulted in his incurring an unanticipated financial obligation. The Secretary has granted equitable relief in the amount of \$9,000 as reimbursement for an automobile allowance according to provisions of 38 U.S.C. § 503(b). This represents the amount of the automobile allowance to which he was erroneously informed that he was entitled.

Case #7

The veteran filed a second VA Form 21-4502 for adaptive equipment, having already received the one-time-only automobile allowance three years earlier. The VARO, however, in response to his adaptive equipment application, told the veteran that he was eligible for an automobile allowance. In reliance on this determination, the veteran purchased an automobile and submitted the Certificate of Eligibility for reimbursement. The VARO then realized its mistake and denied payment based on his having already received this one-time benefit. The failure of VARO to properly review the claims folder to discover that he had previously received the allowance, resulted in his incurring an unanticipated financial obligation. The Secretary has granted equitable relief in the amount of \$9,000 according to 38 U.S.C. § 503(b) for a second allowance since VARO failed to inform him that this was a one-time benefit.

Case #8

The veteran died on December 24, 1989, after having been rated totally disabled due to individual unemployability (TDIU) for approximately 9 years and 10 months. Such a TDIU rating, if in effect for 10 years prior to a veteran's death, would entitle the surviving spouse to Dependency and Indemnity Compensation (DIC). The VARO told the widow's daughter that the widow was not eligible because the rating had not been in effect for 10 years. In 2001, the widow filed a request for reconsideration of the effective date of the veteran's total disability rating, and VA did determine, based on Clear and Unmistakable Error, that an earlier effective date was warranted. The widow promptly filed for DIC in May 2001, and was awarded those benefits effective the date of claim, but VA was precluded from awarding them from the month of the veteran's death because such claims must be filed within one year. Therefore, the VA's error in establishing the correct effective date for the veteran's disability rating prevented the widow from filing a timely claim for the DIC benefit and, that, in turn, prevented awarding DIC benefits from the month of the veteran's death because of the requirement to file claims within one year of death. The Secretary, accordingly, granted equitable relief to the widow under 38 U.S.C. § 503(a), by establishing the effective date for a retroactive award of DIC benefits, in an amount to be calculated, as of the first of the month of the veteran's death.

Case #9

The National Cemetery Association (NCA) erred in denying burial in a national cemetery for the veteran. NCA contacted the National Personnel Records Center (NPRC) to determine eligibility. The veteran had two periods of service resulting in an Honorable discharge. His third period of service resulted in a Bad Conduct discharge with a bar to VA benefits. The cemetery director called the NPRC and concluded that based on his last period of service, which barred VA benefits; the veteran was not entitled to burial in a national cemetery. As a result, the family buried the veteran privately. An individual with a period of honorable service and a subsequent period of service under dishonorable conditions is still eligible for burial, provided that the individual is not guilty of certain offenses listed in 38 U.S.C. § 6105(b). The veteran met the criteria for burial in a national cemetery because he had two periods of Honorable service and had not committed any of the specified offenses. All proposed denials of burial must be forwarded to VA Central Office (VACO) for review. In this case, however, the burial director did not do so. Accordingly, the veteran was denied burial in a national cemetery because of administrative error. The Secretary has granted equitable relief under 38 U.S.C. § 503(a) in the total amount of \$2,617. Of this amount, \$1,382 is for reimbursement for the cost of a burial plot, opening and closing the veteran's grave, and an outer burial receptacle. The balance of \$1,235 is for costs to disinter, transport the veteran's remains, and inter them at a national cemetery.

Case #10

The veteran has a service-connected disability rating of 60% for a back condition and consulted a VA physician for surgery at a VA medical facility. After several cancellations by VA medical facilities that were treating the veteran and failure to promptly reschedule his appointments, the veteran sought advice from the patient representative. The patient representative mistakenly advised the veteran to seek care from a non-VA facility if he could not wait for treatment. The veteran followed the advice of the patient representative and received care, including surgery, at non-VA facilities. After receiving care, the veteran submitted his expenses to VA for reimbursement. Reimbursement was denied. Because of an administrative error in improperly recommending non-VA care, failures in proper coordination of patient care issues, as well as an erroneous determination by VA, the veteran incurred an unnecessary financial obligation for care of a service-connected condition. The Secretary has granted equitable relief under 38 USC section 503(a) in the amount of \$6,531 to reimburse the veteran for his out-of-pocket medical expenses.

Case #11

The veteran mistakenly received a Certificate of Eligibility determination for an automobile allowance from a VARO. The veteran purchased a vehicle, of which \$8,000 was to be paid by the VA. The VARO then corrected the initial error in determining eligibility, which resulted in the veteran being responsible for the debt. The veteran was unaware of the VARO error and had incurred the debt through reliance on an erroneous determination of eligibility. The debt represents a financial loss suffered as a result of an erroneous determination by VARO. The Secretary has granted equitable relief in the amount of \$8,000 according to 38 U.S.C. § 503(b), payable to the automobile dealership.

Case #12

When the veteran died, the surviving spouse filed an application for Dependency and Indemnity Compensation (DIC) or death. The surviving spouse also sent VA a court order of custody with a birth certificate for a dependent. The VARO failed to inform the surviving spouse of the requirement for adopting the child within two years of the veteran's death for the child to be considered the veteran's surviving dependent for VA purposes. By the time the VARO corrected its advice, there remained only 45 days in the two-year time limit, which was insufficient to process an adoption application. The service organization representative asked that the time limit be extended to allow the surviving spouse sufficient time to formally adopt the child. The Secretary has granted equitable relief under 38 U.S.C. § 503(a) so that the two-year time limit could be met under 38 C.F.R. § 3.57(c) for a judgment of formal adoption.

Case #13

A VARO approved a second automobile allowance for the veteran by mistake. An initial rating decision established that the veteran was entitled to the automobile allowance. Several years later, a subsequent rating decision for increased disability was issued and the VARO enclosed the VA Form 21-4501 with the revised rating decision. The VARO made an error in notifying the veteran that he was entitled to a second automobile allowance and then erred in approving the application for the purchase of a vehicle, even though the veteran stated on his application that he had previously received the allowance. After the veteran purchased and modified the vehicle, the VARO discovered the error. The VARO informed the veteran that he was not entitled to the allowance because he had previously received the benefit. The veteran incurred an unanticipated financial obligation because of the veteran's detrimental reliance on the VARO's approval of a second allowance. The veteran had no knowledge that the determination was an error. The Secretary has granted equitable relief in the amount of \$9,000 according to 38 U.S.C. § 503(b) which is payable to the dealership.

Case #14

The veteran completed a second VA Form 21-4502 requesting the automobile allowance. The VARO had notified the veteran that he was eligible to receive the allowance even though he had already received this one-time benefit. A Certificate of Eligibility was issued and the veteran purchased the car with the understanding that he would receive the allowance. Because the veteran relied on the VARO's approval of the application, the veteran incurred an unexpected financial hardship. The Secretary determined that the veteran relied on a second determination of eligibility that was mistakenly approved by the VARO. The Secretary granted equitable relief in the amount of \$9,000 under 38 U.S.C. § 503(b) which is payable to the dealership.

Case #15

The veteran received a Certificate of Eligibility based on his approved application for an automobile allowance in 2002. He had previously applied for and received the one-time automobile allowance in 1971. When the veteran received the approval for a second allowance, he purchased a vehicle and awaited receipt of the reimbursement. While awaiting reimbursement, the vehicle was repossessed. The failure of the VARO to review the claims folder properly prior to approving the allowance in 2002 resulted in the veteran incurring an additional financial obligation. The Secretary has granted equitable relief in the amount of \$5,500 under 38 U.S.C. § 503(b). This is based on the veteran's detrimental reliance on VARO's erroneous approval of a second car allowance.

Case #16

An Army reservist applied for medical care after presenting his discharge document at a VA Medical Center (VAMC). The facility approved his enrollment for medical care, conducted medical tests and evaluations, and ultimately performed a coronary artery bypass graft. During this course of treatment, the VAMC further reviewed his file and this time, determined he was not eligible for VA medical care. The VAMC found that he was a member of the U.S. Army Reserve and that he did not meet the particular requirements for Reservists to be eligible for medical treatment. The VAMC accordingly informed the patient and advised his medical care team to arrange a safe transition to other alternative care when his condition became stable. Based on the erroneous eligibility determination made by VAMC, the VAMC Director requested equitable relief to allow continued VA treatment for the reservist until he could transition to a non-VA facility. The Director indicated that the reservist enrolled in the VA health care system with an understanding that he was eligible. His condition since enrollment has made it impossible for him to seek private health care coverage and he is not eligible for Medicare or Medicaid. The Secretary accordingly provided equitable relief under 38 U.S.C. § 503(a) to allow the VAMC to complete treatment, provide a discharge plan, and discharge the reservist from VA care when he is medically stable.
