

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

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 I granted equitable relief in calendar year 2006.

The report summarizes the disposition of cases in which VA benefits were not provided because of administrative error by the Federal Government. I granted this type of relief in one case, under 38 U.S.C. § 503(a).

The report also covers cases where a VA beneficiary suffered a loss because of reliance upon an erroneous VA determination of eligibility, without knowing that it was erroneous. I granted this type of relief in three cases, under 38 U.S.C. § 503(b).

Specific dollar amounts awarded in these four cases total \$112,766.93.

Sincerely yours,

James R. Nicholson

Enclosure

Identical letter same date to:

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

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

DAS for Congressional Operations (60)

EQUITABLE RELIEF GRANTED BY THE
SECRETARY OF VETERANS AFFAIRS
IN CALENDAR YEAR 2006

CASE #1

In February 2006, the widow of a previously deceased veteran died. The family requested burial in Chattanooga National Cemetery but was unable to provide proof of Honorable Discharge. Both the Nashville VA Regional Office and the Eligibility Unit at Jefferson Barracks National Cemetery, which liaisons with the National Personnel Records Center (NPRC), were unable to locate a record of Honorable Discharge. The widow was denied burial in the National Cemetery and was interred in a private cemetery at family expense. In May the family contacted Chattanooga National Cemetery with an Honorable Discharge received from Nashville VA Regional Office and a Certification of Military Service received from NPRC. The family requested a Government-furnished marker for the widow's grave for placement in the private cemetery. The family was informed that a veteran's spouse buried in a private cemetery was not eligible for a Government-furnished marker. The family then requested that the spouse be disinterred and buried at Chattanooga National Cemetery, and that all expenses of the original interment as well as the disinterment be paid by VA. The Secretary granted equitable relief pursuant to 38 U.S.C. § 503(a) in the amount of \$1,804 to cover the costs of private interment paid by the family, and all costs incurred in disinterring the spouse from the private cemetery and reburying her in the National Cemetery, an estimated \$1,400.

CASE #2

The veteran was erroneously informed by Atlanta VA Regional Office in October 1994 that he was eligible under Category II of the Montgomery GI Bill-Active Duty Educational Assistance Program (Chapter 30). The veteran's service records showed he served on active duty from August 1977 through June 1995 with no evidence of a delayed enlistment obligation for active duty prior to January 1977. Eligibility for Chapter 30 benefits requires that a veteran must have met the requirements for Vietnam Era GI Bill (Chapter 34). The veteran could only have met the Chapter 34 requirement by having a delayed enlistment contract obligating him to serve on active duty prior 10 January 1977. Since this was not the case, the veteran was erroneously informed he was eligible for Chapter 30 benefits. The veteran received equitable relief in 2005 in the amount of \$208.57 for tuition paid in 1994 due to his reliance on this erroneous determination. The veteran also incurred a loss of \$480 for certification testing for which he expected reimbursement under Chapter 30. The Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of \$480 which represents payment the veteran made for certification testing.

CASE #3

The veteran served in the Army from January 1998 to October 2003 and was a participant in the Montgomery GI Bill (MGIB) program. The veteran's initial

service obligation was for three years. Prior to completion of that obligation, the veteran reenlisted in February 2000 for four years at the convenience of the government. The veteran was discharged in October 2003 with a General Discharge under Honorable Conditions, which is not a qualifying discharge for MGIB benefits. The veteran's first period of service from 1998 to February 2000 amounted to just over 24 months. The Code of Federal Regulations (38 C.F.R. § 21.7042(a)(5)(iv)) states that a veteran must complete at least 30 months of continuous service to obtain eligibility for MGIB benefits when discharged for the convenience of the government.

The veteran filed an initial claim for MGIB benefits in October 2004. The Atlanta Regional Processing Office (RPO) incorrectly determined that the veteran was eligible, and issued a Certificate of Eligibility in December 2004. The veteran terminated his employment and enrolled in college. In January 2005 the RPO received Enrollment Certification for the spring semester for the veteran. In March 2005, the RPO reviewed the original certification and determined the veteran was not eligible for MGIB benefits. The Secretary granted equitable relief under 38 U.S.C. § 503(b) for \$4,082.93 as full-time MGIB benefits for spring semester 2005.

CASE #4

The veteran is disabled suffering from multiple sclerosis and was determined by VA to be entitled to Specially Adapted Housing (SAH) assistance. 38 U.S.C. § 2101(a)(3)(B)(3) requires that VA determine that the nature and condition of the proposed housing modifications are suitable for the disability of the veteran. The veteran had plans drawn up for modification of her residence. VA reviewed these plans and found them to meet the criteria for suitability for this veteran. Relying on this determination, the veteran began renovation of the house. As the construction proceeded the veteran became concerned that the adaptations would not be suitable for her condition and brought this to the attention of VA. VA neglected to carry out a thorough investigation and continued to disburse funds to the contractor for the modifications. After construction was complete, the Regional Loan Center notified Central Office (CO) Loan Guaranty Service (LGS) of the problems with the veteran's home. CO determined that the veteran should not have received SAH for this construction since these plans did not meet suitability for her condition. Moreover, CO found that the contractor who had been recommended by VA had performed such substandard work that the result was unlivable for the veteran. The veteran's condition had continued to deteriorate, making it even more imperative that the house be modified to make it livable. A Construction Analyst from VA LGS met with the veteran in April 2005 to evaluate the repairs needed to make her house wheelchair accessible. The Secretary granted equitable relief under 38 U.S.C. § 503(b) of \$105,000 to cover the cost of the plans and specifications, as well as the actual modifications to the house to make it fully wheelchair accessible. This amount also includes the cost of having to relocate the veteran for a period of time when the corrective work commences in the bedroom area.