



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON
April 9, 2012

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

Dear Senator Burr:

In accordance with the provisions of 38 United States Code (U.S.C.) § 503(c), I am submitting a report on the disposition of those cases recommended to me for equitable relief in calendar year 2011. Also enclosed is the cost estimate for preparing the report.

The report describes the one instance in which I granted relief under 38 U.S.C. § 503(a), in which the Department of Veterans Affairs (VA) did not pay VA benefits to a Veteran because of an administrative error by the Government. I granted relief in that case in the amount of \$6,981.12.

The report also describes the one instance in which I granted relief under 38 U.S.C. § 503(b), in which a VA beneficiary relied on an erroneous VA determination of eligibility for benefits, without knowing that it was erroneous, and suffered a loss. I granted relief in that case in the amount of \$11,621.33.

These were the only cases recommended to me for equitable relief in calendar year 2011.

Thank you for your continued support of our mission.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric K. Shinseki". The signature is fluid and cursive, with a large initial "E" and "S".

Eric K. Shinseki

Enclosures



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON
April 9, 2012

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

Dear Mr. Chairman:

In accordance with the provisions of 38 United States Code (U.S.C.) § 503(c), I am submitting a report on the disposition of those cases recommended to me for equitable relief in calendar year 2011. Also enclosed is the cost estimate for preparing the report.

The report describes the one instance in which I granted relief under 38 U.S.C. § 503(a), in which the Department of Veterans Affairs (VA) did not pay VA benefits to a Veteran because of an administrative error by the Government. I granted relief in that case in the amount of \$6,981.12.

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THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

April 9, 2012

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

Dear Congressman Filner:

In accordance with the provisions of 38 United States Code (U.S.C.) § 503(c), I am submitting a report on the disposition of those cases recommended to me for equitable relief in calendar year 2011. Also enclosed is the cost estimate for preparing the report.

The report describes the one instance in which I granted relief under 38 U.S.C. § 503(a), in which the Department of Veterans Affairs (VA) did not pay VA benefits to a Veteran because of an administrative error by the Government. I granted relief in that case in the amount of \$6,981.12.

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THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON
April 9, 2012

The Honorable Patty Murray
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Chairman Murray:

In accordance with the provisions of 38 United States Code (U.S.C.) § 503(c), I am submitting a report on the disposition of those cases recommended to me for equitable relief in calendar year 2011. Also enclosed is the cost estimate for preparing the report.

The report describes the one instance in which I granted relief under 38 U.S.C. § 503(a), in which the Department of Veterans Affairs (VA) did not pay VA benefits to a Veteran because of an administrative error by the Government. I granted relief in that case in the amount of \$6,981.12.

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DISPOSITION OF RECOMMENDATIONS FOR
EQUITABLE RELIEF SUBMITTED TO THE
SECRETARY OF VETERANS AFFAIRS
IN CALENDAR YEAR 2011

CASE #1

In 1996, the Department of Veterans Affairs (VA) granted a Veteran non-service connected disability pension. In August 2002, a VA regional office (RO) proposed to rate the Veteran incompetent based on a private medical report indicating that he could not manage his own affairs, but the RO did not implement the proposal. In February 2008, the VARO awarded compensation for service-connected disabilities and later assigned January 10, 2005, as the effective date, which resulted in a retroactive compensation award of \$174,528.02. In February 2009, without developing for any contemporaneous evidence concerning the Veteran's ability to manage his affairs, the VARO decided to finalize the August 2002 proposal, rated him incompetent as of February 10, 2009, and appointed a bank as his Federal fiduciary to handle his VA benefits. A fiduciary fee of \$6,981.12, which is 4 percent of the total retroactive compensation award, was deducted from the Veteran's compensation and paid to the bank. The Veteran contested the incompetency rating and submitted medical evidence indicating that he was able to manage his financial affairs. A VA psychologist examined the Veteran and concluded that he could manage his financial affairs. Based on this evidence, the VARO reversed its prior decision and rated the Veteran competent from March 17, 2009, the date the RO received the evidence on which the RO based its rating of competent.

The VARO's failure to give the Veteran an opportunity to present contemporaneous evidence to rebut the RO's proposed incompetency rating before finalizing its proposal 6.5 years later deprived the Veteran of \$6,981.12 of compensation (i.e., the fiduciary fee paid to the bank) he otherwise would have received. Under the authority of 38 United States Code (U.S.C.) § 503(a), the Secretary of Veterans Affairs granted the Veteran equitable relief in the amount of \$6,981.12.

CASE #2

On March 13, 2005, a Veteran who had served on active duty in the U.S. Army from October 1, 1985, to June 27, 1988, and from December 30, 1988, to December 12, 1991, returned to active duty with the Army. While on active duty, on July 28, 2009, the Veteran, who had previously received VA education benefits under the Montgomery GI Bill (chapter 30 of title 38, U.S.C.), filed with VA an election of benefits under the Post-9/11 GI Bill (chapter 33 of title 38, U.S.C.). On August 5, 2009,

a dependent of the Veteran filed with VA an application to use the Veteran's transferred education benefits. On August 28, 2009, a VARO sent to the Veteran a Certificate of Eligibility, stating that she had 17 months and 22 days of entitlement under chapter 33. On October 1, 2009, the Veteran requested approval to transfer 17 months of entitlement to education benefits to her dependent. The Department of Defense approved the entitlement transfer. On December 1, 2009, the VARO approved chapter 33 benefits for the Veteran's dependent for the period from September 1, 2009, to December 21, 2009, the fall 2009 term at her university. On February 10, 2010, the VARO approved chapter 33 benefits for the Veteran's dependent for the period from January 13, 2010, to March 13, 2010, the first part of the spring 2010 term at her university. At that time, the VARO informed the Veteran that her chapter 33 entitlement would be exhausted on March 14, 2010, and that VA would not pay education benefits for her dependent for the period from March 15, 2010, to May 10, 2010. When the Veteran inquired about the apparent discrepancy in her entitlement to benefits, VA determined that the VARO in August 2009 had miscalculated the Veteran's months of entitlement under the Post-9/11 GI Bill and thus the amount of entitlement that she could transfer to her dependent. The Veteran was only eligible for 5 months and 22 days of Post-9/11 GI Bill entitlement. The VARO had erroneously added 12 months to the award. VA also determined that the Veteran and her dependent had not known that the determination was erroneous.

As a result of the VARO's erroneous determination of eligibility for benefits under the Post-9/11 GI Bill, the Veteran's dependent entered the spring 2010 term at her university anticipating that she would receive VA benefits for the full term. She suffered the loss of \$9,347.03 in tuition and fees and \$2,274.30 in housing allowance that she reasonably relied on VA to pay for the period from March 15, 2010, to May 10, 2010. Under the authority of 38 U.S.C. § 503(b), the Secretary of Veterans Affairs granted the Veteran's dependent equitable relief in the amount of \$11,621.33.

Cost Estimate to Prepare the Secretary's Equitable Relief Report – CY 2011

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 required by 38 U.S.C. § 503(c).

Office/Grade	Number of Hours	Hourly Rate*	Extension
02/GS-14/7	12.0	60.49	725.88
02/GS-15-4	.5	65.23	32.62
02/GS-15-6	3.0	69.18	207.54
02/SES	1.0	69.84	69.84
02/SES	1.0	72.12	72.12
02/SES	.5	86.10	43.05
00B/14-4	3.0	55.45	166.35
00B/14-4	.5	55.45	27.73
00B/15-5	.5	67.21	33.61
00B/ES-IV	.5	74.50	37.25
00B/ES-III	.5	79.20	39.60
00A/ES-I	.5	95.68	47.84
00	.5	106.69	53.35
Subtotal			1,556.78
16%*			249.08
TOTAL			\$1,805.86

*The methodology of the Freedom of Information Act (5 U.S.C. § 552) requires the addition of 16% to calculate the actual hourly cost time of Federal employees, so as to include the cost of employee benefits.