

INCREASED COMPENSATION FOR CERTAIN SERVICE-  
CONNECTED VETERANS

August 6, 1962.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted the  
following

R E P O R T

[To accompany H.R. 3728]

The Committee on Finance, to whom was referred the bill (H.R. 3728), to amend title 38, United States Code, so as to authorize the Administrator to assign a total rating for compensation to a veteran granted service-connection for blindness of one eye who subsequent to separation from active duty incurs blindness in the remaining eye, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

EXPLANATION OF THE BILL

Under existing law, if a veteran enters military service with blindness of one eye and incurs blindness in the other eye as the result of that service he is considered to have service-connected blindness of both eyes and certain statutory rates of compensation are payable. On the other hand, if another veteran incurs blindness of one eye in service and then subsequent to service he suffers blindness of the other eye as the result of non-service-connected cause he is entitled to compensation only for unilateral blindness. This is the present situation even though the ultimate resulting total blindness is the same in both of these cases. In each case the loss of a veteran's sight of one eye in service was a direct causative factor in such total blindness. The equitable purpose of this bill is to equate both types of cases.

EXPLANATION OF AMENDMENT

The committee amendment would extend the same principle to cases involving the loss or loss of use of one kidney in the service where the veteran, following service, suffers a severe involvement of the other

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kidney from a non-service-connected cause. Under the present law the disability rating in this type of case cannot be more than 30 percent—the rate for unilateral loss only—even though the veteran is in fact totally disabled. The committee amendment would authorize a rating of total service-connected disability in this type of case.

### COST OF BILL

It has been ascertained that the bill, if enacted, would affect some 40 blinded veteran cases during the first year at an additional cost of approximately \$118,000. This additional cost would continue in about the same amount for each of the four succeeding years. The Veterans' Administration indicates that there are only five known cases of the type of dual kidney involvement which would be benefited by the bill and that they would involve a total additional cost of not more than \$10,000 annually.

### AGENCY REPORT

The favorable report of the Administrator of Veterans' Affairs on this bill, in which he recommends the kidney involvement amendment, follows:

MARCH 31, 1962.

HON. HARRY F. BYRD,  
*Chairman, Committee on Finance,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reference to your request for a report by the Veterans' Administration on H.R. 3728, 87th Congress.

The bill proposes that any veteran who has suffered blindness of one eye as a result of service-connected disability and blindness of the other eye as a result of non-service-connected disability, not the result of his own willful misconduct, shall be entitled to the disability compensation rate for service-connected blindness of both eyes.

In accordance with existing law and the Veterans' Administration schedule for rating disabilities, 1945, a veteran who enters service with blindness of one eye and incurs blindness in the other eye as a result of service is entitled to the statutory rate of compensation payable for service-connected blindness of both eyes. However, if a veteran enters service with two good eyes, incurs blindness of one eye in service, and then subsequent to service suffers blindness of the other eye as a result of a non-service-connected cause, he is entitled to compensation only for unilateral blindness. The ultimate resulting total blindness is the same in both of these cases. In each case the loss of a veteran's sight of one eye in service was a direct causative factor in such total blindness. It is our opinion that the two cases should be equally compensated.

A comparable situation exists in connection with bilateral kidney involvement. Currently, if a person enters service with the loss or loss of use of one kidney and while in service incurs severe involvement of the other kidney he may be given a total disability rating for compensation purposes. However, where a person incurs the loss or loss of use of one kidney in service and subsequent to service suffers a severe involvement of the other kidney as the result of a non-service-connected cause, the disability rating cannot be more than 30 per-

cent—the rate for unilateral loss only—even though the veteran is actually totally disabled. The resulting disability is again the same in each case. We believe that they should be equally compensated.

In this connection, your attention is invited to H.R. 11100, 87th Congress, which is pending before the Committee on Veterans' Affairs, House of Representatives. This bill, if enacted, would accomplish the purpose of H.R. 3728 and, in addition, would authorize payment of disability compensation in the mentioned cases of bilateral kidney involvement as though the bilateral involvement were service-connected. The Veterans' Administration endorses H.R. 3728, but suggests that it be broadened to include the cases of bilateral kidney involvement by adopting provisions substantially similar to those of H.R. 11100.

It is estimated that H.R. 3728, if enacted, would affect some 40 cases during the first year at an additional compensation cost of approximately \$118,000. This additional cost would continue in about the same amount for the 4 succeeding years. It is estimated that as the result of the provision concerning bilateral kidney involvement H.R. 11100 would affect a negligible number of additional cases (five) at a further compensation cost the first year of approximately \$10,000. This cost would also continue in the same amount for each of the succeeding 4 years.

In connection with a similar report on this bill to the House Committee on Veterans' Affairs, the Bureau of the Budget advised that there was no objection from the standpoint of the administration's program to the presentation of such report.

Sincerely,

J. S. GLEASON, Jr., *Administrator.*

#### CHANGES IN EXISTING LAW

In compliance with subsection 4 of the XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

#### Subchapter VI—General Compensation Provisions

##### § 351. Benefits for persons disabled by treatment or vocational rehabilitation

Where any veteran shall have suffered an injury, or an aggravation of an injury, as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation under chapter 31 of this title, awarded him under any of the laws administered by the Veterans' Administration, or as a result of having submitted to an examination under any such law, and not the result of his own willful misconduct, and such injury or aggravation results in additional disability to or the death of such veteran, disability or death compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded in the same manner as if such disability, aggravation, or death were service-connected; except that no benefits shall be awarded unless application be made therefor within two years after such injury or aggravation was suffered, or such death occurred.

**§ 352. Persons heretofore having a compensable status**

The death and disability benefits of this chapter shall, notwithstanding the service requirements thereof, be granted to persons heretofore recognized by law as having a compensable status, including persons whose claims are based on war or peacetime service rendered before April 21, 1898.

**§ 353. Aggravation**

A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

**§ 354. Consideration to be accorded time, place, and circumstances of service**

(a) The Administrator shall include in the regulations pertaining to service-connection of disabilities, additional provisions in effect requiring that in each case where a veteran is seeking service-connection for any disability due consideration shall be given to the places, types, and circumstances of his service as shown by his service record, the official history of each organization in which he served, his medical records, and all pertinent medical and lay evidence.

(b) In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Administrator shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.

**§ 355. Authority for schedule for rating disabilities**

The Administrator shall adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations. The schedule shall be constructed so as to provide ten grades of disability and no more, upon which payments of compensation shall be based, namely, 10 per centum, 20 per centum, 30 per centum, 40 per centum, 50 per centum, 60 per centum, 70 per centum, 80 per centum, 90 per centum, and total, 100 per centum. The Administrator shall from time to time readjust this schedule of ratings in accordance with experience.

**§ 356. Minimum rating for arrested tuberculosis**

Any veteran shown to have active tuberculosis which is compensable under this chapter, who in the judgment of the Administrator has reached a condition of complete arrest, shall be rated as totally disabled for a period of two years following such date of arrest, as 50

per centum disabled for an additional period of four years, and 30 per centum for a further five years. Following far advanced active lesions the permanent rating shall be 30 per centum, and following moderately advanced lesions, the permanent rating, after eleven years, shall be 20 per centum, provided there is continued disability, dyspnea on exertion, impairment of health, and so forth; otherwise the rating shall be zero per centum. The total disability rating herein provided for the two years following a complete arrest may be reduced to 50 per centum for failure to follow prescribed treatment or to submit to examination when requested. This section shall not be construed as requiring a reduction of compensation authorized under any other provision of this chapter.

**§ 357. Combination of certain ratings**

The Administrator shall provide for the combination of ratings and pay compensation at the rates prescribed in subchapter II of this chapter to those veterans who served during a period of war and during any other time, who have suffered disability in line of duty in each period of service.

**§ 358. Disappearance**

Where a veteran receiving compensation under this chapter disappears, the Administrator, in his discretion, may pay the compensation otherwise payable to the veteran, to his wife, children, and parents. Payments made to a wife, child, or parent under the preceding sentence shall not exceed the amounts payable to each if the veteran had died from service-connected disability.

**§ 359. Protection of service connection**

Service connection for any disability or death granted under this title which has been in force for ten or more years shall not be severed on or after January 1, 1962, except upon a showing that the original grant of service connection was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge.

**§ 360. *Special consideration for certain cases of blindness or bilateral kidney involvement***

*Where any veteran has suffered (1) blindness in one eye as a result of service-connected disability and has suffered blindness in the other eye as a result of non-service-connected disability not the result of his own willful misconduct, or (2) has suffered the loss or loss of use of one kidney as a result of service-connected disability, and has suffered severe involvement of the other kidney such as to cause total disability, as a result of non-service-connected disability not the result of his own willful misconduct, the Administrator shall assign and pay to the veteran concerned the applicable rate of compensation under this chapter as if his blindness in both eyes or such bilateral kidney involvement were the result of service-connected disability.*

