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SENATE

{ REPORT
No. 91-219

PROTECTION OF DISABILITY EVALUATION IN EFFECT FOR 20 OR MORE YEARS

MAY 29, 1969.—Ordered to be printed

Mr. LONG of Louisiana, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 4622]

The Committee on Finance, to which was referred the bill (H.R. 4622) to amend section 110 of title 38, United States Code, to insure preservation of all disability compensation evaluations in effect for 20 or more years, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

EXPLANATION OF BILL

By law, compensation is paid to veterans who suffer disabling conditions as a result of military service. As the name implies, the purpose of the payments is to compensate the veteran for the average economic loss resulting from the disease or injury sustained during his military service. Thus compensation payments are based not on need, but on the degree of disability of the veteran. On the basis of a medical evaluation, the veteran's disability is rated between 10 percent and 100 percent (total disability). Under present law, monthly compensation rates for disabilities incurred in time of war range from \$23 for veterans with a 10-percent disabling condition to \$400 for totally disabled veterans. Higher compensation payments are authorized for certain very serious disabilities; for example, a blind veteran requiring regular aid and attendance receives \$550 in monthly compensation.

The law also provides for additional compensation payments for the loss or loss of use of certain specified limbs or organs. For example, a veteran who lost an arm in wartime military service would receive \$47 monthly in addition to his basic disability compensation.

In 1954, the Congress enacted a law (Public Law 311, 83d Congress) which guaranteed that a veteran rated as totally disabled for 20 or

more years could not have this rating reduced thereafter unless fraud could be shown.

Ten years later, another law was enacted (Public Law 88-445) which prevented the reduction of any disability rating of 10 to 90 percent which had been in effect for 20 or more years.

Because the law speaks of preserving the "percentage" of disability, however, the higher payments to totally disabled veterans and the additional compensation payments for a specific anatomical loss or loss of use are not presently included with the guarantee provision. Thus: for example, the Veterans' Administration could decide that a \$47 award for loss of use of a foot, even though received for more than 20 years, was no longer payable because the foot was now usable.

This bill, which the Committee on Finance approves, without amendment, would preserve higher or additional compensation payments received for 20 or more years in the same way as disability ratings are preserved under present law.

The cost of the bill is nominal.

REPORT OF VETERANS' ADMINISTRATION

The Veterans' Administration report on the bill follows:

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,
Washington, D.C., April 24, 1969.

HON. RUSSELL B. LONG,
*Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for a report by the Veterans' Administration on H.R. 4622, 91st Congress.

Section 110 of title 38, United States Code, provides that (1) a rating of total disability or permanent total disability which has been made for compensation, pension, or insurance purposes under laws administered by the Veterans' Administration and which has been continuously in force for 20 or more years shall not be reduced thereafter, and (2) a disability which has been continuously rated at or above any percentage for 20 or more years for compensation purposes under laws which we administer shall not thereafter be rated at less than such percentage. In both provisions, an exception is provided upon a showing that the rating concerned was based on fraud.

The existing provision protecting total and permanent total disability levels (10 percent through 100 percent) of disability, compensable by Public Law 311, 83d Congress. The provision preserving disability ratings less than total in degree was added by Public Law 88-445, effective August 19, 1964. This provision applies only to cases which have been continuously rated at one of the basic percentage disability ratings that have been in effect for 20 years was originally established under 38 U.S.C. 314 (a)-(j), for 20 years or more.

H.R. 4622, by substituting "evaluation" for "percentage" each time it occurs in 38 U.S.C. 110, would have the effect of extending the protection afforded by that provision to those cases which have been continuously rated as entitled to one of the special statutory rates of compensation provided by 38 U.S.C. 314 (k)-(s), for 20 years or more.

Under existing law (38 U.S.C. 355), the Administrator of Veterans' Affairs is required to adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combinations of injuries. The law provides that the ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations. The evaluations range by tens from zero percent to 100 percent and are assigned on the basis of findings elicited during physical examination. Compensation is then awarded in the amount fixed by law for the degree of disablement shown to exist. Currently, monthly wartime rates of compensation payable for service-connected disabilities range from \$23 for a 10-percent disability (38 U.S.C. 314(a)) to \$400 for a 100-percent disability (38 U.S.C. 314(j)).

In addition, certain higher statutory wartime rates are payable for specified combinations of disabilities involving the anatomical loss or loss of use of more than one extremity; blindness; deafness, and need for regular aid and attendance. These range from \$500 monthly (38 U.S.C. 314(l)) to \$1,000 (38 U.S.C. 314(r)). Also, a special monthly wartime rate of \$450 is payable (38 U.S.C. 314(s)) to veterans who have a service-connected disability rated as total and an additional service-connected disability or disabilities independently ratable at 60 percent or more, or by reason of their service-connected disability or disabilities are permanently housebound. A special wartime rate of \$47 monthly, independent of any other compensation provided in subsections (a) through (j), is payable under 38 U.S.C. 314(k) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of a creative organ, or one foot or one hand, or both buttocks, or blindness of one eye, having only light perception, or has suffered complete organic aphonia with constant inability to communicate by speech, or deafness of both ears, having absence of air and bone conduction.

Prior to the enactment of Public Law 311, 83d Congress and Public Law 88-445, the continuance or reduction of a rating depended on the facts in the case. In other words, no matter how long a disability rating had continued in effect, it could be reduced if the Veterans' Administration found that there had been material improvement in the veteran's physical or mental condition; that such reduction was required in the light of a reevaluation of the disability in accordance with more modern and improved medical technology; that the rating stemmed originally from error or misrepresentation; or that a change in the law or regulation justified the reduction. This, of course, is still true with respect to such ratings that have not been in force for 20 years and with respect to the special statutory awards under 38 U.S.C. 314(k)-(s). The mentioned laws, in effect, created a conclusive presumption of the continuance of any degree of disability once a disability has been rated at or above that percentage for 20 years, regardless of the facts in the case, unless fraud can be shown. H.R. 4622, if enacted, would extend the same conclusive presumption to the mentioned statutory awards.

At the time the bills which were ultimately enacted as Public Law 311, 83d Congress and Public Law 88-445 were pending before the Congress, the Veterans' Administration pointed out that we were not aware of the justification for departing from the basic concept that

service-connected disability ratings represent the average impairment in earning capacity resulting from diseases and injuries, and their residual conditions, in civil occupations and permanently protecting such disability ratings merely because of the lapse of time. We urged that the bills be not favorably considered. Notwithstanding our recommendations, the measures were enacted into law.

However, by employing the term "percentage" in that law, the Congress did not afford the same protection to those veterans whose very serious service-connected disabilities render them eligible for compensation under 38 U.S.C. 314(k)-(s). The Veterans' Administration still believes that the reduction or discontinuance of a disability evaluation should be permitted, no matter how long it has been in effect, if the evidence demonstrates that its continuance is not warranted. However, we also recognize that the existing situation is discriminatory in that the more seriously disabled veterans are not afforded the protection extended those with less serious conditions.

Advice has been received from the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

W. J. DRIVER,
Administrator.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, 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) :

TITLE 38, UNITED STATES CODE

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§ 110. Preservation of disability ratings

A rating of total disability or permanent total disability which has been made for compensation, pension, or insurance purposes under laws administered by the Veterans' Administration, and which has been continuously in force for twenty or more years, shall not be reduced thereafter except upon a showing that such rating was based on fraud. A disability which has been continuously rated at or above any **[percentage]** *evaluation* for twenty or more years for compensation purposes under laws administered by the Veterans' Administration shall not thereafter be rated at less than such **[percentage.]** *evaluation*, except upon a showing that such rating was based on fraud. The mentioned period shall be computed from the date determined by the Administrator as the date on which the status commenced for rating purposes.

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