

AMENDING VETERANS REGULATION No. 1 (A), PARTS I AND II, AS AMENDED, TO ESTABLISH A PRESUMPTION OF SERVICE CONNECTION FOR CHRONIC AND TROPICAL DISEASES

JUNE 7 (legislative day, JUNE 1), 1948. — Ordered to be printed

Mr. MILLIKIN, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 3889]

The Committee on Finance, to whom was referred the bill (H. R. 3889) to amend Veterans Regulation No. 1 (a), parts I and II, as amended, to establish a presumption of service connection for chronic and tropical diseases, having considered the same, report favorably thereon with amendments, and recommend that the bill as amended do pass.

The amendments are as follows:

On page 1, line 10, after the word "hypertension", insert the following: "myocarditis,".

On page 2, lines 6 and 7, strike out the following "functional disorders of the nervous system;".

On page 2, line 7, before the word "scleroderma", insert the following: "encephalitis lethargica residuals;".

On page 2, line 12, strike out the following: ", amebic or bacillary",

On page 2, line 12, strike out the words "fungus diseases;".

On page 2, line 13, strike out the word "leishmaniasis", and insert the word "leishmaniasis".

On page 2, line 14, strike out the following "oracontiasis (or dracontiasis)" and insert the word "dracontiasis".

On page 2, line 15, strike out the following: "relapsing fever;".

On page 3, line 10, strike out the following: ", amebic or bacillary"

On page 3, line 10, strike out the following: "fungus diseases;".

On page 3, line 12, strike out the following: "oracontiasis (or dracontiasis)", and insert the word "dracontiasis".

On page 3, line 13, strike out the following: "relapsing fever;".

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EFFECTS OF THE BILL

The purpose of the first proviso in section 1 of the bill is to amend subparagraph (c), paragraph 1, part I, of Veterans Regulation No. 1 (a), as amended, to the effect that the term "chronic disease" as used in paragraph I of the regulation shall include certain specified diseases enumerated in the first proviso of section 1 of the bill and such others as the Administrator of Veterans' Affairs may add, which, when found within 1 year after termination of wartime service, shall be presumed to have been incurred in such service unless there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of such chronic disease has been suffered between the date of discharge and the onset of the chronic disease or unless the disability is due to the person's own misconduct.

Section 1 of the bill adds a second proviso to subparagraph (c) of paragraph 1, part I, Veterans Regulation No. 1 (a), as amended to the effect that subject to the limitations of paragraph 1 of the regulation certain specified tropical diseases enumerated in the bill and the resultant disorders or diseases originating because of therapy administered in connection with such diseases, or as a preventative thereof, shall be accorded service connection when shown to exist within 1 year after separation from active service, or at a time when standard and accepted treatises indicate that the incubation period thereof commenced during active service. It is provided that nothing in paragraph 1 of the regulation shall be construed to prevent service connection for any disease or disorder otherwise shown by sound judgment to have been incurred in or aggravated by active service.

The committee realizes that the Administrator of Veterans' Affairs has authority under subparagraph (c) of paragraph 1, part I, Veterans Regulation No. 1 (a), as amended, to include by regulation all of the diseases specified in section 1 of the bill as chronic diseases which are to be presumed to be service connected under the stated conditions. However, the committee believes it preferable to have the law specifically show that the diseases stated shall be presumed to be service connected when found to exist within a certain period after separation from active service.

The purpose of section 2 of the bill is to amend paragraph 1, part II, Veterans Regulation No. 1 (a), as amended, by adding thereto a new subparagraph (d) to provide similar presumption of service connection for the specified tropical diseases enumerated in the bill shown to exist after a period of six or more months of peacetime service.

There is no authority under paragraph 1, part II of Veterans Regulation No. 1 (a), as amended, for presuming service connection of any disease developing after a period of peacetime service. The committee is of the opinion that tropical diseases developing after separation of six or more months from peacetime service should be presumed to have been incurred in or aggravated by such service in the absence of clear and unmistakable evidence to the contrary when it is shown to exist within 1 year after separation from active service, or at a time when standard and accepted treatises indicate that the incubation period thereof commenced during active service.

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COST OF THE BILL

It may be stated that insofar as the bill proposes to enact into law, generally, provisions contained in regulations of the Veterans' Administration, no additional cost is anticipated. There are no available records on which to base an estimate of the cost of the presumption which would be extended by section 2 to veterans of the Regular Establishment for tropical diseases or disorders. However, it is believed this will be a small item.

The report of the Administrator of Veterans' Affairs on this bill is as follows:

NOVEMBER 18, 1947.

Hon. EUGENE D. MILLIKIN,
Chairman, Committee on Finance, United States Senate,
Washington, D. C.

DEAR SENATOR MILLIKIN: Further reference is made to our letter of September 3, 1947, requesting a report on H. R. 3889, Eightieth Congress, an act to amend Veterans Regulation No. 1 (a), parts I and II, as amended, to establish a presumption of service connection for chronic and tropical diseases.

The purpose of section 1 of the bill is to amend subparagraph (c) of paragraph I, part I, Veterans Regulation No. 1 (a), as amended, so that the existing rebuttable presumption of service connection for chronic diseases will include certain specified diseases and such other chronic diseases as the Administrator of Veterans' Affairs may add to such list; also to provide that, subject to the limitations of subparagraph (c), tropical diseases such as those named in the bill and others, and the resultant disorders or diseases originating because of therapy administered in connection with such diseases, or as a preventative thereof, shall be accorded service connection when shown to exist to a degree of 10 percent or more, within 1 year after separation from active service or at a time when standard and accepted treatises indicate that the incubation period thereof commenced during active service. Section 1 states that "Nothing in this paragraph shall be construed to prevent service connection for any disease or disorder otherwise shown by sound judgment to have been incurred in or aggravated by active service."

Section 2 of the bill would amend Veterans Regulation No. 1 (a), part II, paragraph I, as amended, by adding a new subparagraph (d) to provide a rebuttable presumption of incurrence of tropical diseases set out therein for any person who served in the military or naval service for 6 months or more and was honorably discharged, similar to that which would be afforded as to tropical diseases by the proposed amendment to part I for wartime veterans.

Veterans Regulation No. 1 (a), part I, paragraph I, subparagraph (c), presently provides that as to a chronic disease becoming manifest to a degree of 10 percent or more within 1 year from the date of separation from active service, such disease shall be considered to have been incurred in or aggravated by service, notwithstanding there is no record of evidence of such disease during the period of active service, and provided the person suffering from such disease served 90 days or more in the active service, as specified therein, and provided further that where there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of such chronic disease has been suffered between the date of discharge and the onset of a chronic disease, or the disability is due to the person's own willful misconduct, service connection will not be in order. This presumption is applicable to veterans of the Spanish-American War, including the Boxer Rebellion and the Philippine Insurrection, World War I, and World War II.

Under the authority of subparagraph (c), supra, this presumption is presently restricted to the following chronic diseases: Anemia, primary; arteriosclerosis; arthritis; cardiovascular-renal disease, including hypertension; diabetes mellitus; encephalitis lethargica residuals; endocarditis; endocrinopathies; epilepsies; Hodgkin's disease; leukemia; leprosy; myocarditis; nephritis; psychoses; tuberculosis, active; tumors, malignant; or of the brain; organic diseases of the nervous system; osteitis deformans (Paget's disease); and Buerger's disease. Also, to the following specified tropical diseases: Amoebic dysentery; bacillary dysentery; filariasis (Bancroft's type); leishmaniasis, including kalaazar; schistosomiasis; trypanosomiasis; yaws; and malaria. The Administrator may by appropriate regulation extend the list to include other diseases.

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The diseases which it is proposed to add to the list of chronic diseases are (1) bronchiectasis, (2) calculi of the kidney, bladder, or gall bladder, (3) Raynaud's disease, (4) cirrhosis of the liver, (5) coccidiomycosis (coccidioidomycosis), (6) osteomalacia, (7) functional disorders of the nervous system, and (8) scleroderma.

It is noted that existing instructions include as chronic diseases encephalitis lethargica residuals and myocarditis, which have been omitted from the list in the bill; also it may be noted that the bill transposes leprosy from the list of chronic diseases to the list of tropical diseases.

Section 2 of the bill, as heretofore noted, would create a presumption of incurrence of tropical diseases for the benefit of peacetime veterans. While there is a presumption of soundness at enlistment provided in subparagraph (b), paragraph I, part II, Veterans Regulation No. 1 (a), as amended, there is no provision extending a presumption of service incurrence or aggravation to a chronic disease becoming manifest after discharge.

The enactment of an extension of a presumption accorded tropical diseases to other than wartime service would be an innovation. It will be noted that the presumption which would be accorded by the new subparagraph (d), paragraph I, part II of Veterans Regulation No. 1 (a), as amended, would not be subject to the proviso contained in subparagraph (c), paragraph I, part I of such regulation that where the disability is due to the person's own willful misconduct, service connection will not be in order. Consequently, the presumption as to peacetime veterans would to that extent not be in accord with the provisions of subparagraph (c), paragraph I, part I. Moreover, the presumption would be applicable only to peacetime veterans who are honorably discharged, whereas a discharge under conditions other than dishonorable is the prerequisite for entitlement to benefits provided under Public No. 2, Seventy-third Congress, March 20, 1933, and the Veterans Regulations issued thereunder.

The basic reason for the presumption now embraced in subparagraph (c), supra, is that during time of war, emergency conditions exist and thorough medical examinations and complete records are not made. However, such conditions do not prevail with reference to persons enlisted in the Regular Establishment, and almost without exception complete medical and clinical records are available as to this group. Not infrequently during war, such records as are made become lost or destroyed. It may be noted also that the presumption proposed by section 2 of the bill will be applicable to all veterans of the Regular Establishment, otherwise eligible, regardless of places or dates of service.

The bill would not give wartime service connection to any case of malaria with or without "therapy administered" in connection with tropical diseases "or as a preventive thereof" not allowable under existing law and Veterans' Administration instructions and policies.

In order further to assist your committee in its consideration of the proposed legislation, it is believed advisable to incorporate in this report a brief review of the history of rating service connection of chronic constitutional diseases. Beginning in 1920, it was found that determinations of service connection of certain diseases, particularly those which might be deemed "chronic constitutional diseases," were not uniform. Service connection was determined upon the basis of all of the evidence, and by applying medical judgment to reach a conclusion. Service connections had been granted in many cases where the only evidence was a diagnosis a considerable time after discharge and the probability of inception after discharge was clearly apparent from the standpoint of accepted principles of medicine. Under date of November 12, 1921, Veterans' Bureau Regulation No. 11 was promulgated on the subject, Service Connection of Chronic Constitutional Diseases. While the regulation was similar to the provision now contained in Veterans Regulation No. 1 (a), as amended, part I, paragraph I (c), it was designed to preclude the granting of service connection where the disease arose more than 1 year after discharge, except where medical evidence in the case affirmatively established that service connection was warranted. In other words, the regulation was for the purpose of outlining the scope of application of medical judgment in determining service connection to a period within which generally accepted medical principles would support a rebuttable presumption. It should be noted that the original and present regulations apply to cases where there is no record evidence of the existence of such disease during the period of active service, and the presumption of service connection is rebuttable by affirmative evidence to the contrary or evidence sufficient to establish that an intercurrent disease or injury which is a recognized cause of such chronic constitutional disorder has been suffered between the date of discharge from active service and the onset of the chronic disease, or the disability is due to the person's own willful misconduct.

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Under the 1921 rating schedule, as amended, various diseases were listed as coming within the purview of the regulation. After the enactment of the World War Veterans' Act, June 7, 1924, the Schedule of Disability Ratings, 1925, was promulgated, containing a revised list of such diseases, and augmented to include diseases analogous to chronic constitutional diseases. This list was established more from a medical viewpoint of diagnostic relationship, without reference to whether such disease could reasonably be attributable to active military or naval service. The list included certain conditions which could not be considered generally to be attributable to active service, and particularly in cases of comparatively short periods of service. Following enactment of Public, No. 2, Seventy-third Congress, March 20, 1933, commonly referred to as the Economy Act, Veterans Regulation No. 1 (a) incorporated the presumption but included a requirement of 90 days' service. The Schedule of Disability Ratings, 1933, included a revised list of diseases, eliminating some of the less meritorious conditions. However, experience has shown that service connection has been granted in many instances where it is believed that the condition did not arise in service but it was impracticable or impossible to secure rebuttal evidence. This situation was also intensified by liberal application of presumption of soundness upon entry on active service.

It is believed that extreme care should be exercised in augmenting the list of diseases to be afforded the presumption. It is the view of the Veterans' Administration that this can best be accomplished by continuing the existing Veterans Regulation No. 1 (a), part I, paragraph I (c), and administrative authority to make the medical and adjudicatory determinations.

Determination governing the selection of diseases to be included under the regulation is essentially one of an involved medical and adjudicatory nature. If a list of diseases is provided by statute it is suggested that the consideration of additions to the present list or subsequent additions to any statutory list would require detailed technical considerations by the Congress which in the opinion of the Veterans' Administration can best be handled administratively. Considering all the facts and circumstances, it is believed that your committee will desire to consider the inadvisability of introducing statutory presumptions of service connection for specific diseases. This statement is made in the light of experience under the War Risk Insurance Act, as amended, and the World War Veterans' Act, 1924, as amended, pertaining to World War I. Section 200 of the World War Veterans' Act, 1924, provided a conclusive presumption of soundness, except for conditions made of record at the time of entry into active service, and in addition, provided presumptive service connection for certain diseases arising to a 10-percent degree or more before January 1, 1925. The latter presumption was made conclusive as to certain diseases. This particular provision was repealed by the Economy Act of March 20, 1933, and restored with limitations by Public, No. 141, Seventy-third Congress, March 28, 1934, as amended. It is believed that any proposals to add any particular diseases to the present list should be for administrative determination, bearing in mind the difficulties heretofore explained, and the large load of World War II cases.

As to cost, it may be stated that insofar as the bill proposes to enact into law, generally, provisions contained in regulations of the Veterans' Administration, no additional cost is anticipated. However, the provision in the bill requiring a finding of service connection for functional disorders of the nervous system becoming manifest within 1 year after separation from active service where a finding of service connection would not be in order under existing law, would result in additional cost which the Veterans' Administration is unable to estimate on available data. Also, there are no available records on which to base an estimate of the cost of the presumption which would be extended by section 2 to veterans of the Regular Establishment for tropical diseases or disorders.

For the foregoing reasons, the Veterans' Administration is unable to recommend favorable consideration by the Senate committee of H. R. 3889, Eightieth Congress.

The Veterans' Administration has been advised by the Bureau of the Budget that there would be no objection to the submission of this report to the committee, as the enactment of the bill could not be considered in accord with the program of the President.

Sincerely yours,

OMAR N. BRADLEY,
General, United States Army, Administrator