

103^D CONGRESS
2^D SESSION

S. 1904

To amend title 38, United States Code, to improve the organization and procedures of the Board of Veterans' Appeals.

IN THE SENATE OF THE UNITED STATES

MARCH 8 (legislative day, FEBRUARY 22), 1994

Mr. ROCKEFELLER (for himself, Mr. MURKOWSKI, Mr. DECONCINI, Mr. GRAHAM, Mr. AKAKA, Mr. DASCHLE, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the organization and procedures of the Board of Veterans' Appeals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ORGANIZATION AND PROCEDURES OF BOARD**
4 **OF VETERANS' APPEALS.**

5 (a) NUMBER OF MEMBERS.—Subsection (a) of sec-
6 tion 7101 of title 38, United States Code, is amended by
7 striking out “(not more than 65)”.

8 (b) ACTING AND TEMPORARY MEMBERS.—(1) Such
9 section is further amended—

1 (1) in subsection (c)—

2 (A) by striking out paragraph (1) and in-
3 serting in lieu thereof the following new para-
4 graph (1):

5 “(1)(A) The Chairman may from time to time des-
6 ignate one or more employees of the Department to serve
7 as acting members of the Board. Except as provided in
8 subparagraph (B), any such designation shall be for a pe-
9 riod not to exceed 90 days, as determined by the Chair-
10 man.

11 “(B) An individual designated as an acting member
12 of the Board may continue to serve as an acting member
13 of the Board in the making of any determination on a
14 proceeding for which the individual was designated as an
15 acting member of the Board, notwithstanding the termi-
16 nation of the period of designation of the individual as
17 an acting member of the Board under subparagraph (A)
18 or (C).

19 “(C) An individual may not serve as an acting mem-
20 ber of the Board for more than 270 days during any 1-
21 year period.”;

22 (B) by striking out paragraph (2);

23 (C) by redesignating paragraph (3) as
24 paragraph (2); and

1 (D) in paragraph (2), as so redesignated,
2 by striking out “the number of temporary
3 Board members” and all that follows through
4 the period at the end and inserting in lieu
5 thereof “the number of acting members of the
6 Board designated under such paragraph (1)
7 during the year for which the report is made.”;
8 and

9 (2) in subsection (e), by striking out “a tem-
10 porary or” and inserting in lieu thereof “an”.

11 (c) REPORT ON BOARD ACTIVITIES.—Subsection (d)
12 of such section is amended—

13 (1) in paragraph (2)—

14 (A) by striking out “and” at the end of
15 subparagraph (D);

16 (B) by striking out the period at the end
17 of subparagraph (E) and inserting in lieu there-
18 of “; and”; and

19 (C) by adding at the end the following new
20 subparagraph:

21 “(F) the number of employees of the Depart-
22 ment designated under subsection (c)(1) of this sec-
23 tion to serve as acting members of the Board during
24 that year and the number of cases in which each
25 such member participated during that year.”; and

1 (2) in paragraph (3)(B), by striking out “as re-
2 quired by section 7103(d) of this title”.

3 (d) APPEALS DECISIONS.—(1) Chapter 71 of such
4 title is amended by striking out sections 7102 and 7103
5 and inserting in lieu thereof the following new sections
6 7102 and 7103:

7 **“§ 7102. Decisions by the Board**

8 “A proceeding instituted before the Board may be as-
9 signed to one or more members of the Board. A proceeding
10 assigned to more than one member shall be assigned to
11 a panel of not less than three members of the Board. A
12 member or panel assigned a proceeding shall make a de-
13 termination thereon, including any motion filed in connec-
14 tion therewith. The member or panel, as the case may be,
15 shall make a report under section 7104(d) of this title on
16 any such determination, which report shall constitute the
17 final disposition of the proceeding by the member or panel.

18 **“§ 7103. Reconsideration; correction of obvious errors**

19 “(a) Subject to subsections (b) and (c) of this section,
20 the decision of the Board determining a matter under sec-
21 tion 7102 of this title is final.

22 “(b) The Chairman may order reconsideration of the
23 decision in a case in accordance with subsection (c) of this
24 section. Such an order may be made on the Chairman’s
25 initiative or upon motion of the claimant.

1 “(c)(1) Upon the order of the Chairman for reconsid-
2 eration of a decision in a case, the case shall be referred—

3 “(A) in the case of a matter originally heard by
4 a single member of the Board, to a panel of not less
5 than three members of the Board.

6 “(B) in the case of a matter originally heard by
7 a panel of members of the Board, to an enlarged
8 panel of the Board.

9 “(2) A panel referred to in paragraph (1) of this sub-
10 section may not include the member or members who
11 made the original decision subject to reconsideration.

12 “(3) A panel reconsidering a matter under this sub-
13 section shall render its decision after reviewing the entire
14 record before the Board. The decision of a majority of the
15 members of the panel shall be final.

16 “(d) The Board on its own motion may correct an
17 obvious error in the record, without regard to whether
18 there has been a motion or order for reconsideration.”.

19 (2) The table of sections at the beginning of such
20 chapter is amended by striking out the items relating to
21 sections 7102 and 7103 and inserting in lieu thereof the
22 following:

 “7102. Decisions by the Board.

 “7103. Reconsideration; correction of obvious errors.”.

23 (e) PROCEDURES RELATING TO APPEALS.—(1)(A)
24 Section 7107 of such title is amended to read as follows:

1 **“§ 7107. Appeals: dockets; hearings**

2 “(a)(1) All cases received pursuant to application for
3 review on appeal shall be considered and decided in regu-
4 lar order according to their places upon the docket.

5 “(2) A case referred to in paragraph (1) of this sub-
6 section may, for cause shown, be advanced on motion for
7 earlier consideration and determination. Any such motion
8 shall set forth succinctly the grounds upon which it is
9 based and may not be granted unless the case involves
10 interpretation of law of general application affecting other
11 claims, or for other sufficient cause shown.

12 “(b) The Board shall decide any appeal only after af-
13 fording the appellant an opportunity for a hearing.

14 “(c) A hearing docket shall be maintained and formal
15 recorded hearings shall be held by such member or mem-
16 bers of the Board as the Chairman may designate. Such
17 member or members designated by the Chairman to con-
18 duct the hearing shall participate in making the final de-
19 termination of the claim.

20 “(d)(1) An appellant may request a hearing before
21 the Board at its principal location or at a regional office
22 of the Department.

23 “(2)(A) Except as provided in subparagraph (B) of
24 this paragraph, hearings shall be scheduled in the order
25 in which requests for such hearings are received by the
26 Department.

1 “(B) In a case in which the Secretary is aware that
2 the appellant is seriously ill or is under severe financial
3 hardship, a hearing may be scheduled at a time earlier
4 than would be provided for under subparagraph (A) of this
5 paragraph.

6 “(e)(1) At the request of the Chairman, the Secretary
7 may provide suitable facilities and equipment to the Board
8 or other components of the Department to enable an ap-
9 pellant located at a facility within the area served by a
10 regional office to participate, through voice transmission
11 or through picture and voice transmission, by electronic
12 or other means, in a hearing with a Board member or
13 members sitting at the Board’s principal location.

14 “(2) When such facilities and equipment are avail-
15 able, the Chairman may afford the appellant an oppor-
16 tunity to participate in a hearing before the Board
17 through the use of such facilities and equipment in lieu
18 of a hearing held by personally appearing before a Board
19 member or panel as provided in subsection (d) of this sec-
20 tion. Any such hearing shall be conducted in the same
21 manner as, and shall be considered the equivalent of, a
22 personal hearing. If the appellant declines to participate
23 in a hearing through the use of such facilities and equip-
24 ment, the opportunity of the appellant to a hearing as pro-
25 vided in such subsection (d) shall not be affected.”.

1 (B) The item relating to section 7107 in the table
2 of sections at the beginning of chapter 71 of such title
3 is amended to read as follows:

“7107. Appeals: dockets; hearings.”.

4 (2)(A) Section 7110 of such title is repealed.

5 (B) The table of sections at the beginning of chapter
6 71 of such title is amended by striking out the item relat-
7 ing to section 7110.

8 (f) TECHNICAL CORRECTION.—Section 7104(a) of
9 such title is amended by striking out “211(a)” and insert-
10 ing in lieu thereof “511(a)”.

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