

July 2021

The Status of Disabled Veterans Under the Independent 1935 Offices Act

John C. Vivian

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

John C. Vivian, The Status of Disabled Veterans Under the Independent 1935 Offices Act, 12 Dicta 197 (1934-1935).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

THE STATUS OF DISABLED VETERANS UNDER THE INDEPENDENT 1935 OFFICES ACT

By JOHN C. VIVIAN, *of the Denver Bar*

DICTA, in its August, 1932, and February, 1934, editions, set forth brief resumes of legislation affecting disabled veterans of the World and Spanish wars. The exposition dealing with the law and regulations having to do with veterans as set forth in the February issue of this year was radically different from that concerning the World War Veterans' Act of 1924 with amendments, which appeared in the previous issue.

Changes affecting the basic law of veterans have been so kaleidoscopic in their nature that it has been extremely difficult for even those who pretend to keep themselves informed on this subject to correctly interpret the provisions governing the ex-soldiers so far as their claims against the government for compensation and pensions are concerned.

The act which gave the president large powers in determining what benefits should be accorded disabled veterans was a wide departure from the basic law of the land which was embodied in the veterans' act of 1924 aforesaid.

The overriding of the presidential veto of the 1935 Independent Offices Act on March 28, 1934, largely restores veterans' legislation to the status which existed prior to the Economy Act aforesaid. It enacts into law three of the four points of the American Legion program adopted at the national convention in Chicago last summer. It restores the service-connected cases to their previous status of compensation, together with the so-called presumptively connected cases and provides for hospitalization in government facilities of indigent non-service-connected cases who are unable financially to pay for such medical care.

The fourth point in the Legion program; namely, provision for the care of widows and dependents of World war veterans so as to conform to similar care extended widows and dependents of veterans of other wars, failed of passage and will be covered by a separate bill during the present session of Congress. All the Legion is asking in this connection is that World war widows and orphans be placed on a parity

with those of previous conflicts in which this country has been engaged. The widows and dependents of World war veterans are the only ones among the veteran class which are now uncared for by the government.

Incidentally, the act restores approximately 573 disabled presumptive cases to the compensation rolls in Colorado. Out of 1,215 such cases considered by the presumptive boards set up in this state last fall, 642 were retained and the 573 are now automatically restored to their former status as compensable cases.

It is estimated that approximately 330,000 World war veterans, 180,600 Spanish war veterans and 34,900 dependents of Spanish war veterans will be affected by this legislation. It is predicted by the Veterans' Administration that the increased cost of these changes will be approximately \$83,000,000 on an annual basis. The Legion computation shows that only \$31,308,000 will be necessary for strictly service-connected disabilities and \$10,900,000 for the 29,258 presumptives.

TOTALLY BLIND

Section 26 of the new law reinstates the former compensation rates for totally blind World war veterans except where the veteran is being furnished hospital care by the government, and except as to cases involving fraud, mistake or misrepresentation.

PRESUMPTIVES

Section 27 provides for the payment of compensation to those persons who on March 19, 1933, had established service connection under Section 20 of the World War Veterans' Act, 1924, as amended, and re-enacts the provisions of that section as to such cases, except where the person entered the service subsequent to November 11, 1918, where clear and unmistakable evidence discloses that the disease, injury, or disability had inception before or after the period of service, unless there was aggravation, or where the prior service connection had been established by fraud, clear or unmistakable error or misrepresentation. But, as to all cases embraced by these three exceptions, all reasonable doubt is to be resolved in favor of the veteran and the burden of proof is to

be upon the government. The payment is to be at 75 per cent of the amount payable in such cases on March 19, 1933.

SERVICE CONNECTION

Section 28 provides for the restoration of the World war rates in effect on March 19, 1933, for service-connected disability, except that reduction is permitted in accordance with regulations pertaining to payment of pension to men in hospitals. It perpetuates the rating schedule in effect on March 19, 1933, under which ratings are based as far as practicable upon the average impairment of earning capacity in civil occupations similar to the occupation of the veteran at time of enlistment. It further provides for service connection in death cases for the widows and children of those veterans who died prior to the enactment of the new act and who, if living, would be in a position to re-establish service connection thereunder.

The limitations as to receipt of pension and salary by government employees and as to the 50 per cent reduction of benefits while any person entitled thereto resides outside the continental limits of the United States are not for application in these cases.

HOSPITALIZATION

Section 29 amends Section 6 of the Economy Act of March 20, 1933, as amended, by adding a proviso authorizing hospitalization or domiciliary care within the limitations existing in Veterans' Administration facilities of any veteran of any war not dishonorably discharged who is suffering from disability, disease, or defect, and who is in need of hospitalization or domiciliary care and is unable to defray the necessary expense therefor, including transportation to and from the institution. It provides that the statement under oath of the applicant as to his inability to pay for the service sought shall be accepted as sufficient.

SPANISH-AMERICAN

Section 30 provides as to those veterans of the Spanish-American war, who entered service on or before August 12, 1898, and persons who served in the Boxer Rebellion or

Philippine Insurrection, who were on the rolls March 19, 1933, receiving pension for disability or age by virtue of the new law are entitled to receive not less than 75 per cent of the pension being paid them on March 19, 1933, subject to the limitation requiring exemption from federal income tax, and as to federal employees, the limitation that not more than \$6 per month can be paid such employees, if his salary, if single, exceeds \$1,000, or if married, \$2,500.

The provisions pertaining to payment of pension to men in hospitals as established under Public No. 2 (the Economy Act) and the Veterans' Regulations are applicable to these cases. The benefits of this amendment do not extend to disabilities resulting from wilful misconduct. The limitation as to the 50 per cent reduction of benefits while any person entitled thereto resides outside the continental limits of the United States is not for application in these cases.

INJURED IN TRAINING

Section 31 re-establishes the provisions of Section 213 of the World War Veterans' Act whereby a person who is injured as a result of training, hospitalization or medical or surgical treatment or examination, is awarded compensation on the same basis as if the condition were incurred in the military or naval service. The application must be made within two years after the injury or aggravation or death or after the passage of the act, whichever is the later date.

OTHER PROVISIONS

Section 32 repeals the last sentence of Section 9 of the Economy Act which barred persons in receipt of benefits from participating in any determination or decision with respect to claims for benefits.

Section 33 changes the title of payments to be made in service-connected cases of World war veterans from "pension" to "compensation."

Section 34 provides that payments shall be effective from date of passage of the act.

Section 35 provides for the payment of those insurance claims which have been determined to be payable prior to, but in which payment had not commenced on, March 19, 1933.