EQUITABLE RELIEF GRANTED BY THE SECRETARY OF VETERANS AFFAIRS IN CALENDAR YEAR 2002

Case #1

The veteran retired from military service in March 1983. In May 1983, a rating decision for service-connected left knee disorder was evaluated as 10% disabling. In September 1983, service-connection for arthritis of lumbar spine was granted increasing the evaluation to 20%. The increased rate of pay was never paid to the veteran. The veteran filed a claim for increased benefits in April 2000. Based on an oversight by the Regional Office, the increased evaluation was not corrected until January 2001. Retroactive benefits were withheld. Since the veteran paid income taxes on a portion of his retired pay, which would have been waived, had the VA timely processed the rating decision, he requested reimbursement for the additional taxes he paid. The veteran was entitled to retroactive benefits in the amount of $15,345.00 for the period April 1, 1983 to January 1, 2001. This was withheld in its entirety because the veteran is in receipt of retired pay, and the law prohibits duplication of benefits. The veteran paid income taxes on a portion of his retired pay that would have been nontaxable had the September 1983 rating decision been processed in a timely manner. The Secretary granted equitable relief under 38 USC section 503(a) in the amount of $2,301.75, representing the amount of tax savings owed had the rating decision dated May 3, 1983, been processed in a timely manner and his military retirement pay adjusted to reflect an increase in disability compensation.

Case #2

The veteran properly filed a claim for Veterans Educational Assistance Program (VEAP). He had contributed $2,700 to the Post-Vietnam Era VEAP on September 1, 2000. The Department of Defense (DOD) misplaced the veteran's payment and found it in February 2001. The veteran properly filed a claim for VEAP benefits while on active duty. VA did not approve his claim for VEAP because DOD did not timely locate and record his contribution. VA disallowed his claim for VEAP benefits. This disallowance was due solely to an error by DOD and had DOD timely credited his VEAP payment, the veteran would have received a VEAP payment of $440. The portion of this payment equal to the veteran's contribution would have been $146.47. The portion of the payment equal to the Government's matching contribution would have been $293.33. The Secretary granted equitable relief in the amount of $293.33 under 38 USC § 503(a). This is the government's share of the VEAP benefits he would have received for his training from October 16, 2000 through November 29, 2000.

Case #3
According to 38 USC § 2104, the veteran had obtained the maximum one-time entitlement of $38,000 under the Specially Adapted Housing (SAH) grant program for adaptations to construct a ramp and associated decking for wheelchair use. Even though the contractor adhered to VA building instructions and SAH requirements, with adverse weather conditions and no cover protection for the fire-retardant wood, accelerated deterioration of structural soundness and material failure occurred in advance of normal expectancy. The field report submitted by the regional office revealed that weather had severely damaged the fire-retardant lumber making it a safety hazard. Using personal funds, the veteran recently had the ramp and deck replaced since they were potential safety hazards. Equitable relief has been granted to reimburse the veteran for costs already paid for structural repairs to the ramp and associated decking. The Secretary has granted equitable relief in the amount of $4,635 according to 38 USC § 503(b).

Case #4
The World War II veteran and his wife were eligible for burial in a VA national cemetery. Because of an error in eligibility determination, these benefits had been denied when the funeral director refused burial based on the veteran not being eligible as there was no DD-214. The veteran and his wife were buried in a private cemetery. Since the veteran has an honorable discharge and his service also appears in BIRS, the Secretary granted equitable relief under 38 USC § 503(a) and (b). Equitable relief is granted in the amount of $6,309 for those items the VA would have provided had there been no denial of the burial plot for the veteran, his spouse, the headstone, perpetual care, and an outer burial receptacle. This is reimbursement for the costs incurred by the family as a result of the private burial expenses of the veteran and his wife.

Case #5
The veteran was awarded a one-time auto allowance of $1600 in November 1955. In September 2000, the veteran was notified of an increase in his disability compensation and issued an application for the automobile allowance. He affirmatively answered that he had previously applied for an automobile allowance. In November 2000, the Regional Office issued the veteran a certificate of eligibility for an automobile allowance in the amount of $8,000. The allowance was used as a down payment on a vehicle that the veteran purchased on February 20, 2001. The Regional Office discovered the veteran had previously received the one-time allowance in 1955. When the oversight was discovered, the seller asked the veteran to pay the outstanding balance of the down payment. The veteran paid this amount in June 2001. The veteran claims he would not have purchased a new vehicle if the VA had not found him eligible for the automobile allowance. The veteran incurred a financial loss as a result of VA's erroneous determination of the second allowance. The Secretary has granted equitable relief in the amount of $8,000 under the authority of 38 USC § 503(b).

Case #6
The service member was mistakenly considered eligible for VA health care. The administrative error was discovered on May 1, 2002 when it was verified that the former service member had only served on active duty for training purposes. The VA is prohibited from funding any medical care for an individual once it is know that they are ineligible for services. The service member had cancelled his health insurance based on VA's erroneous representation about his eligibility. The lack of health insurance is due to administrative error by VA staff. The service member is currently undergoing treatment for cancer and requires immediate surgery. The Secretary has granted equitable relief under 38 USC § 503(b) for the veteran's continued care under the VA health care system and is relieved of any indebtedness accrued since March 2001 when he first received care for his illness. Care may be continued until the service member obtains a non-VA provider and a means of payment is found for his health insurance.

Case #7
The VA erroneously determined that the former service member was a veteran eligible for VA medical care on April 24, 1978. Because of this determination, the service member has relied on the VA health care system since that date. His only active duty time in the Army National Guard of two months and several days was for training. He received an Honorable Discharge for not meeting medical fitness standards at the time of enlistment. Due to a failing health condition, he is a candidate for a lung transplant and is also uninsurable. The Secretary has granted equitable relief under 38 USC § 503(b) for continued medical care until the former service member obtains Medicare coverage for post-operative care. This approval is contingent on VAMC Puerto Rico covering all current and future costs for this procedure without any supplemental funding.

Case #8
The veteran was authorized a one-time benefit payment automobile allowance under the provisions of 38 USC § 3902. The Regional Office erroneously approved a second application. Upon review of the claim for payment, the Regional Office discovered the administrative error. The Regional Office failed to properly review the claims folder to determine entitlement. The veteran incurred an additional financial obligation, which was an unanticipated burden. This represents reimbursement for an automobile allowance payment promised the veteran, but could not be authorized because a previous payment of this one time benefit had already been made. The Secretary has granted equitable relief in the amount of $5,418.75 according to 38 USC § 503(b). This represents the amount of the automobile allowance he was erroneously informed he was entitled.

Case #9
The surviving widow of a veteran received Survivor Benefit Plan (SBP) funds from Defense Finance and Accounting Service (DFAS) pending approval of Dependency and Indemnity Compensation (DIC). DIC was approved in February 1999 retroactive to August 1, 1997. Since the law prohibits concurrent payment of DIC and SBP, an overpayment was created in the SBP account by DFAS in the amount of $17,592 (the total DIC benefits to which the surviving spouse was entitled from August 1997 to March 1999) to be credited by transfer of DIC back payments from Atlanta Regional Office's Finance Activity. Action was taken on April 5, 1999, to release any remaining benefits owed the surviving spouse and commence payment of her regular monthly DIC benefit. In June, the spouse was notified that the DIC benefits had not been transferred by to cover the SBP overpayment. The transfer was not completed until May 25, 2000, resulting in the spouse being charged $833.44 (interest and penalties) for the unpaid SBP overpayment. The surviving spouse was not responsible for the delay in the transfer, yet was charged interest because of the dilatory action of the Atlanta Regional Office's Finance Activity. Equitable relief was granted pursuant to 38 U.S.C. § 503(a) to the surviving spouse in the amount of $833.44 as reimbursement for interest and penalties paid as a result of VA's delay in transferring funds to eliminate the overpayment in her SBP account.

Case #10
The veteran used his VA home loan guaranty entitlement to finance the purchase of a home in May 1989. Prior to closing, a VA fee appraiser issued a Certificate of Reasonable Value (CRV) in which it was noted that the replacement of the roof was a condition of sale. A Compliance Inspection Report signed by the Chief of Appraisals for VA Winston-Salem Regional Office was issued noting that the roof had been replaced and the terms of the CRV had been met. The veteran closed on the home on May 26, 1989. On July 21, 1989, the veteran notified the Winston-Salem Regional Office that the roof had not been replaced and continued to leak. There is no evidence that Winston-Salem Regional Office conducted any follow-up action in response to this letter. On July 26, 1989, the lender submitted the case for guaranty. The veteran defaulted on the loan in July 1991. When VA attempted to contact the veteran, it was found that the veteran and his family had been forced to vacate the home because of uninhabitability caused by a leaking roof as declared by the State. The veteran could not afford to repair the roof nor obtain legal satisfaction from the home seller (realtor), who had declared bankruptcy. The home was sold in a foreclosure sale in 1992. In 1993 the veteran sought restoration of his home loan guaranty entitlement. The Winston-Salem Regional Office (1996) and the Board of Veterans Appeals (1997) denied the restoration of entitlement. VA Central Office Loan Guaranty Service immediately restored the entitlement. The veteran sought restitution of financial losses totaling $175,000 incurred as the result of this home purchase. VA granted equitable relief under 38 U.S.C. § 503(a) of $45,156.18 to the veteran for the amount spent: (1) trying to repair the house; (2) seeking compensation from the previous owners; (3) paying for alternative housing while paying the mortgage for the house which had been declared uninhabitable; and, (4) covering medical bills for health care needed for family members caused or aggravated by the moisture in the house.

Case #11
Various states submitted timely application documents for State Home Construction Grants in time to be placed on the FY 2002 Priority List of Pending State Home Construction Grant Applications. The Secretary approved all states on November 19, 2001, and notified the states in December 2001 that funds were available and must meet VA requirements before the end of FY 2002. The requirements included internal reviews, bid opening evaluations and approval on the appropriate contractor. The completed packages were submitted to VA for review and concurrence. Unexpected delays in VA's processing resulted in the grant award packages not reaching the Secretary prior to the end of FY 2002. Each state met all program requirements and target dates established in 38 CFR § 59. Equitable relief was granted pursuant to 38 U.S.C. § 503(a) for the subject states depicted in the table below in the total amount of

State	Application Number	Purpose of Grant	Grant Amount
Massachusetts	FAI 25-045	ADA renovation at Holyoke (Phase I)	$303,275
Massachusetts	FAI 25-046	Roof replacement at Holyoke	$458,649
Massachusetts	FAI 25-051	ADA renovations at Holyoke (Phase III)	$425,284
Massachusetts	FAI 25-052	Renovation of elevators at Chelsea	$1,511,090
New Jersey	FAI 34-024	New nursing home and domiciliary at Vineland	$32,805,867
Rhode Island	FAI 44-007	Heating, ventilation & air conditioning upgrade at Bristol	$1,373,368
Wyoming	FAI 56-004	New activiy hall, renovation of existing activity hall for use as rehabilitation area, and expansion of hobby shop at Buffalo	$334,344
			$37,211,877

$37,211,877. Not granting equitable relief would have placed the state grant application back in the FY 2003 prioritization phase. Depending on where the project ranked on the 2003 Priority List, the state home construction grant funding for these projects could be delayed significantly or not funded at all by VA.

Case #12
Various states submitted timely application documents to VA and requested conditional approval for State Home Construction Grants. The applications met VA requirements and the Secretary approved their ranking on the FY 2002 Priority List. The states were notified in December 2001 of possible grant awards, and in reliance on such notification, attempted to complete all VA grant requirements prior to the end of the fiscal year. These states determined that all VA grant requirements could not be met prior to the end of the fiscal year and requested a 180-day time extension. Unexpected delays in VA's processing resulted in the conditional approval packages not reaching the Secretary prior to the end of FY 2002. Each state met designated program target dates established in 38 CFR § 59 and none was at fault in processing these requests for conditional approval. Equitable relief was granted pursuant to 38 U.S.C. § 503(a) for the subject states depicted in the table below in the total amount of $60,084,475. Not granting equitable relief would have placed the state grant application back in the FY 2003 prioritization phase. Depending on where the project ranked on the 2003 Priority List, the state home construction grant funding for these projects could be either delayed significantly or not funded at all by VA.

State	Application Number	Purpose of Grant	Grant Amount
Colorado	FAI 08--011	Renovation of nursing home facility at Florence	$5,357,430
Colorado	FAI 08-012	Upgrade to heating plant at Homelanke	$830,440
Massachusetts	FAI 25-050	New air conditioning system at Holyoke	$4,889,300
Nebraska	FAI 31-010	New multipurpose building at Scottsbluff	$915,469
Texas	FAI 48-005 & 48-006	Two 160-bed nursing homes at locations to be determined	$17,361,136
Washington	FAI 53-029	240-bed nursing home in Retsil	$30,730,700
			$60,084,475

Case #13

The veteran retired from active duty as a commissioned officer of the Public Health Service in March 1997. He submitted an application for veteran's compensation or pension (VA Form 21-526) on December 14, 1996. This application was received at VA Regional Office in North Little Rock, Arkansas, on February 12, 1999. During the intervening years, this application acquired a Privacy Act Information Request in Rockville, Maryland on May 2, 1997, and was forwarded to the VA Regional Office closest to the veteran's home. The application was routed to the VA Regional Office on 200 N.W. 5th Street in Oklahoma City, Oklahoma in May 1997 where the address for the Murrah Federal Building was destroyed on April 19, 1995. This address was found in the 1996 booklet "Federal Benefits for Veterans and Dependents." Later, the Murrah Building address was crossed out and the application was readdressed to the VA Regional Office in North Little Rock, Arkansas, which received it on February 12, 1999. A September 1999 rating decision granted a total disability rating based on individual unemployability effective from February 12, 1999, the date the application was received at VA Regional Office. The statutory provisions state that the effective date for an award of disability compensation is the date of receipt of claim or the date of the veteran's discharge if the claim is received within one year from that date. 38 U.S.C. § 5110. No statutory provisions exist to allow a grant of retroactive benefits based on this situation. In order to provide compensation for the period from May 1997 to February 1999 during which period his application was lost in internal VA mail, equitable relief pursuant to 38 U.S.C. § 503(a) in the amount of $7,940 is granted to the veteran.

Case #14

The veteran applied for and received an automobile allowance under the provisions of 38 U.S.C. § 3902 in 1970. This is a one-time payment benefit allowed under § 3903. The veteran submitted a second application for an automobile allowance in February 2001. The Regional Office approved the allowance for the veteran. When the application was submitted for payment, the Regional Office realized they were unable to make payment because of the previous authorized claim for this allowance. The veteran relied on VA's approval of the automobile allowance in purchasing his new vehicle. In addition to the handicap that underlies the automobile allowance, the veteran is in a poor physical and mental state, which could lead to him forgetting the allowance, granted more than 30 years earlier. Pursuant to 38 U.S.C. § 503(b), the veteran is granted equitable relief in the amount of $8,000.

Case #15

The veteran served in the U.S. Navy for two periods – the first period from February 27, 1996 through April 27, 1998, ending with an Honorable Discharge, and the second period from April 28, 1998 through August 31, 2000, ending with a Bad Conduct Discharge. The veteran initially filed for Chapter 30 benefits in April 2001 that were denied because of the Bad Conduct Discharge. He filed additional information in May 2001 about his previous period of military service that resulted in approval of benefits at the full-time rate for January 2001 through June 1, 2001. The veteran subsequently enrolled full-time from July 16, 2001 through August 18, 2001, and August 20, 2001 through December 20, 2001. The veteran quit full-time work on July 31, 2001 to attend classes on a full-time basis. On August 28, 2001, the Muskogee Regional Office sent a letter to the veteran indicating that he was not eligible for Montgomery G.I. Bill benefits because he did not complete the necessary 30-month period of service before his reenlistment. The veteran would have had to drop his classes by August 31, 2001 to receive a refund of his tuition and fees for the fall term. Since the letter was mailed on August 28, 2001, this did not allow him time to terminate his enrollment. The veteran suffered a loss as a result of his reliance on the erroneous determination. Equitable relief in the amount of $3,417 was provided pursuant to 38 U.S.C. § 503(b) to cover the amount he would have been paid for the two additional terms that he enrolled before he was notified of the denial of eligibility.

Case #16

The veteran applied for and received an automobile allowance under the provisions of 38 U.S.C. § 3902 in 1988. This is a one-time payment benefit allowed under § 3903. The veteran submitted a second application for an automobile allowance in February 2001. The Regional Office approved the second allowance. When the application was submitted for payment, the Regional Office realized they were unable to make the payment because of the previous authorized claim for this allowance. The veteran relied on VA's approval of the automobile allowance in purchasing his new vehicle. Pursuant to 38 U.S.C. § 503(b), the veteran is granted equitable relief in the amount of $8,000, the amount originally approved by the Regional Office.