Veterans Affairs Canada | Anciens Combattants Canada

Review of Part 3 Decisions

Issuing Authority: Director General, Policy and Research
Effective Date: 1 April 2019
Document ID: 1558

Table of Contents

Purpose
Policy
General
Criteria for Review
Notification to the Applicant/Person
Limitation - Decisions rendered under Part 3 of the VWA
Administrative Reviews
References

Purpose

The purpose of this policy is to provide guidance on the review of decisions under Part 3 by the Department officials on the Department's own motion or on application.

Policy

General

1. A Department official, who has been delegated the Minister's authority, may do a review of a decision made by the Department or the Commission on the Department's own motion if there is an error in the interpretation of the law or in the finding of fact, or on application if new evidence is provided to the Department. The review is done under the authority of section 82 of the *Pension Act* or section 84 of the *Veterans Well-being Act* (VWA) at the discretion of the Department official.
2. The applicant/person may proceed to the Veterans Review and Appeal Board (VRAB) if the Department official decides not to review a decision. The Department and VRAB may not simultaneously review the same decision.

Criteria for Review

3. An "error in the interpretation of the law" includes the following:
    a. an error in the interpretation of legislation (i.e. inappropriately applying or not applying a provision of legislation to a set of circumstances);
    b. a jurisdictional error (i.e. performing an action which is not authorized by statute); and
    c. an error with respect to the requirements of natural justice and procedural fairness.
4. An "error of the finding of fact" usually occurs where the facts do not support a finding made by the Department.

5. An alleged error may be brought to the attention of the appropriate Department official by any member of the Department.
6. Normally “new evidence” will be evidence that is:
    a. relevant to the applicant's case;
    b. not previously submitted to the Department; and
    c. not merely a restatement of information that was previously submitted to the Department or the Commission.
7. A change in policy alone is not considered “new evidence".

Notification to the Applicant/Person

8. When a Department official decides not to exercise its discretion to review a decision, the applicant/person will be informed of his or her right to proceed to VRAB.
9. When a Department official reviews a decision whether on the Department’s own motion or on application, a written review decision shall be provided that confirms, amends or rescinds the original decision. The review decision must provide reasons for the decision and the applicant/person’s review/appeal rights.
10. An applicant/person affected by a review on the Department’s own motion which will result in a reduction or cancellation of a benefit will be provided with the information in the Department’s possession and will be given an opportunity to provide his or her position prior to the benefit being reduced or cancelled.

Limitation - Decisions rendered under Part 3 of the VWA

11. Whether the review is done on the Department's own motion or on application, only one review under section 84 of the *Veterans Well-being Act* is allowed per decision that is provided under Part 3 of the *Veterans Well-being Act* whether the review is done on the Department’s own motion or on application. Specifically, this applies to decisions in respect of the disability award, pain and suffering compensation, additional pain and suffering compensation, death benefit, detention benefit, clothing allowance and critical injury benefit.

Administrative Reviews

12. A Department official may also do an administrative review of a decision to correct administrative mistakes which do not affect the substance of the decision, e.g. spelling mistakes, and clerical omissions. This type of review does not fall under the authority of section 82 of the *Pension Act* or section 84 of the *Veterans Well-being Act*.
    a. For example, a decision letter contains numerous errors in spelling and word omissions, including a mistake in the applicant/person’s name. A Department official can perform an administrative review to correct these mistakes.
13. An administrative review cannot be used to correct critical errors, such as references to legislative authorities, effective dates and assessment percentages, which must be addressed by a formal review as discussed in paragraphs 1-11 of this policy.

References

Pension Act, subsections 82(1) and (2)

Veterans Well-being Regulations, section 84

Award Regulations, sections 6 and 7

Veterans Well-being Regulations, sections 70, 71 and 72

Date Payable – Disability Benefits, Allowances, and Prisoner of War/Detention Benefit Compensation

Clothing Allowance

Critical Injury Benefit

Pain and Suffering Compensation

Additional Pain and Suffering Compensation