

CITATION: VAOPGCPREC 5-89
Vet. Aff. Op. Gen. Couns. Prec. 5-89

DATE: 3-23-89

TEXT:

Entitlement to Special Monthly Compensation For Anatomical Loss of a Creative Organ Following Elective Sterilization

1. You have asked us whether special monthly compensation under 38 U.S.C. § 314(k) may be awarded for the anatomical loss of a creative organ where nonservice-connected loss of use predates the service-connected anatomical loss. Specifically, you have requested our opinion on the following questions:

(a) Is a veteran, male or female, who has an elective sterilization procedure prior to service, and incurs an anatomical loss of a creative organ in service, entitled to special monthly compensation under 38 U.S.C. § 314(k)?

(b) Is a veteran, male or female, who has an elective sterilization procedure during service, either with surgical complications necessitating the removal of a creative organ, or removal of a creative organ because of injury or disease, entitled to special monthly compensation as contemplated by 38 U.S.C. § 314(k)?

(c) Is a veteran, male or female, who has an elective sterilization procedure prior to service and after discharge has a disease requiring removal of a creative organ which is directly traceable to service or can be service connected on a presumptive basis, entitled to special monthly compensation under 38 U.S.C. § 314(k)?

2. You presented us with following facts: While on active duty, a female veteran underwent surgery for elective sterilization (a bilateral tubal ligation).

Approximately two years later, she was re-hospitalized and underwent a vaginal hysterectomy. Following her honorable discharge, the veteran applied for and was granted compensation for the hysterectomy. However, special monthly compensation for anatomical loss of a creative organ, 38 U.S.C. § 314(k), was denied because sterilization on an elective basis was accomplished prior to the hysterectomy.

3. Generally, basic rates of disability compensation benefits are based on the Secretary's determination of the average impairment of earning capacity resulting from various disabilities. 38 U.S.C. § 335; 38 C.F.R. §§ 4.1-.150 (schedule for rating disabilities). In 1930, Congress amended section 202(3) of the World War Veterans' Act of 1924 to provide compensation 'independent of any other compensation' to 'any person who suffered the loss of the use of a creative organ

... as a result of an injury received in the active service.' Section 13, Pub. L. No. 522, 71st Cong., 46 Stat. 998 (1930). The provision was repealed by Pub. L. No. 2, 73d Congress (1933), but subsequently reinstated by Pub. L. No. 141, 73d Congress (1934). Congress extended this special benefit in 1952 to veterans of World War II and the Korean Conflict. Section 1(A), Pub. L. No. 427, 82d Cong., 66 Stat. 295 (1952) (now codified at 38 U.S.C. § 314(k)); see generally Op. G.C. 98-54 (Aug. 27, 1954); but added 'anatomical loss' of a creative organ as a basis for special compensation. Thus, section 314(k) provides, in relevant part, that special compensation is payable 'if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of one or more creative organs.

4. So-called 'statutory' awards are not predicated directly on the average reduction in earning capacity, but primarily upon consideration of noneconomic factors such as personal inconvenience, social inadaptability, or the profound nature of the disability. The purpose of the statutory award for loss or loss of use of a creative organ is to account for psychological factors, S. Rep. No. 1681, 82d Cong., 2d Sess. 2 (1952); as well as the loss of physical integrity, H.R. Rep. No. 6, 89th Cong, 1st Sess., 4 (1965). Commenting on the legislation which led to the current section 314(k), the National Director of Claims for the Disabled American Veterans stated:

A disability of this nature results in a permanent mental fixation which cannot be removed by the finest psychotherapy or rehabilitation processes in the world. While the industrial or employment handicap related to this disability may be negligible, the social maladjustment resulting therefrom must be considered. S. Rep. No. 1681, 82d Cong., 2d Sess., 130-31 (1952).

5. While Congress generally patterned the 1952 statute after the 1930 Act, its insertion of an additional basis for eligibility--anatomical loss--is unambiguous in its meaning. The statute's plain language must be taken literally; we need go no further to interpret Congress' express intent. See generally 2A Sutherland Statutory Construction §§ 46.01-.04 (4th ed. 1984). By its inclusion of 'anatomical loss' in the 1952 Act, Congress must be presumed to have intended to create a broader legal standard for special compensation with respect to creative organs. Id. at s 51.02. 'The general rule is that a change in phraseology indicates persuasively, and raises a presumption, that a departure from the old law was intended, particularly where the wording of the statute is radically different.' 73 Am. Jur.2d Statutes § 236 (1974).

6. Our opinion in Op. G.C. 22-60 (Nov. 17, 1960), is not the contrary. That opinion interpreted the meaning of statutory language--identical to that currently in section 314(k)--authorizing special compensation if a veteran 'has suffered . . . blindness of one eye.' In that case, a veteran's eye, which was sightless before he entered service, was removed during service. The Solicitor correctly concluded that because blindness of the eye pre-existed service, eligibility did

not arise when it was enucleated. With respect to eyes, however, section 314(k) compensates only loss of use--i.e., blindness--not anatomical loss, an obvious difference from the treatment of creative organs.

7. We conclude that Congress intentionally provided two bases for special monthly compensation with regard to creative organs: either anatomical loss or loss of use. The fact that loss of use is not service connected does not bar compensation for anatomical loss. For the above reasons, we answer each question posed in paragraph 1 in the affirmative.

HELD:

A female veteran, while on active duty, underwent an elective sterilization. Two years later, while still on active duty, she underwent a hysterectomy. Following her honorable discharge, she was awarded service- connected compensation for the hysterectomy. The issue presented was whether she was eligible for special monthly compensation under 38 U.S.C. § 314(k). Because 38 U.S.C. § 314(k) provides special monthly compensation for either anatomical loss or loss of use of a creative organ, the fact that a veteran has undergone elective, non-compensable sterilization does not bar entitlement to special monthly compensation for subsequent service-connected anatomical loss of a creative organ.

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