

veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.  
O.G.C. Precedent 17-94

#### Question Presented

May a supervisor for a State Approving Agency (SAA) enroll in and pursue training at a for-profit flight school in a course approved for training under a VA administered education benefits program?

#### Held

1. An SAA officer or employee will be considered to have received "services" from a for-profit educational institution within the meaning of section 3683 of title 38, United States Code, when the individual receives instruction in a course approved for VA purposes at that institution, even though the official or employee is enrolled in and pursuing the course on the same basis as similarly circumstanced students not so employed.

2. A waiver may be granted by the Director, Education Service, or by the Secretary, pursuant to 38 CFR 21.4005, when the facts show no detriment to the United States, veterans, or eligible persons will ensue from the receipt of such services by the SAA officer or employee.

Effective date: July 18, 1994  
O.G.C. Precedent 18-94

#### Question Presented

Whether service as a precadet at the United States Air Force Academy Preparatory School may be considered "active duty" service for purposes of title 38, United States Code.

#### Held

Characterization of an individual's service at the United States Air Force Academy Preparatory School (USAFAPS) for purposes of entitlement to veterans' benefits depends upon the

status in which the individual enters the USAFAPS. Service by an individual who attends the USAFAPS as a reservist called to active duty for the sole purpose of attending the USAFAPS constitutes "active duty for training." This includes persons who are enlisted directly from civilian life or from the Air National Guard for the sole purpose of attending the USAFAPS, as well as members of reserve components who are called to active duty for this purpose. Service by an enlisted active-duty servicemember who is reassigned to the USAFAPS without a release from active duty constitutes a continuation of the servicemember's "active duty."  
Effective date: October 3, 1994  
O.G.C. Precedent 19-94

#### Question Presented

Is the prerequisite of 38 U.S.C. 5904(c)(1) and 38 CFR 20.609(c)(1) requiring a final decision by the Board of Veterans' Appeals (BVA) prior to charging an attorney fee satisfied when a "repeat" claim is filed after a final BVA decision has been issued regarding an earlier, similar claim, e.g., a claim for pension, an increased rating, a total rating based on individual unemployability, or service connection for a prisoner of war (POW) presumptive disease?

#### Held

The prerequisite of a final decision by the Board of Veterans' Appeals (BVA) prior to charging an attorney fee contained in 38 U.S.C. 5904(c)(1) and 38 CFR 20.609(c)(1) is satisfied when a "repeat claim" for benefits is filed after a final BVA decision has been issued regarding an earlier, similar claim, e.g., a claim for pension, an increased rating, a total rating based upon individual unemployability, or service connection for a prisoner of war presumptive disease.

Effective date: October 12, 1994  
O.G.C. Precedent 20-94

#### Question Presented

When and under what conditions may the Board of Veterans' Appeals decide issues in a claim following an appeal to the United States Court of Appeals for the Federal Circuit from a decision of the United States Court of Veterans Appeals affirming, or reversing or vacating in whole or in part and remanding, a decision of the Board?

#### Held

When an appellant files a timely appeal to the United States Court of Appeals for the Federal Circuit from a United States Court of Veterans Appeals decision to affirm or to reverse or vacate

in whole or in part and remand a Board of Veterans' Appeals decision, the Board's disposition of all aspects of the matter must await the issuance of the mandate of the Court of Veterans Appeals concluding the appeal.  
Effective date: December 2, 1994  
O.G.C. Precedent 21-94

#### Question Presented

Must the need for aid and attendance be permanent in order to qualify for a higher rate of improved pension?

#### Held

The statutory provisions in 38 U.S.C. 1502(b), 1521(d), and 1541(d), authorizing an increased improved-pension rate for persons in need of regular aid and attendance, do not require that the need be permanent as a predicate to an award of the increased rate. To the extent that the title of 38 CFR 3.352 suggests that the need must be permanent, that title is inconsistent with the governing statutes and should be revised. Increased improved pension based upon the need for regular aid and attendance may be awarded without regard to whether the need is permanent.

Effective date: December 13, 1994  
O.G.C. Precedent 22-94

#### Question Presented

What effect does the judicial invalidation of a portion of the regulations governing effective dates of awards of benefits under the Restored Entitlement Program for Survivors (REPS) have on the payment of benefits under that program?

#### Held

The United States Court of Veterans Appeals and the United States Court of Appeals for the Federal Circuit, in their decisions in the Skinner and Cole cases, found Department of Veterans Affairs regulations establishing time-specific filing requirements for claims under the Restored Entitlement Program for Survivors (REPS) to be invalid. For new claims filed after issuance of those decisions and for claims pending at the time those decisions were issued, REPS benefits may be awarded without regard to when the claims were filed. Where claimants whose claims were finally decided prior to issuance of those decisions file claims for previously-denied REPS benefits based on the change in interpretation of law reflected in those opinions or on regulations reflecting that changed interpretation, the claims may be considered new claims and previously-denied REPS benefits for which the claimants are otherwise entitled may be awarded