DEPARTMENT OF VETERANS AFFAIRS 8320–01

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Office of the General Counsel involving Veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters involving the same legal issues. The summary is published to provide the public, and, in particular, Veterans' benefits claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

FOR FURTHER INFORMATION CONTACT: Susan P. Sokoll, Law Librarian, Department of Veterans Affairs, 810 Vermont Avenue, N.W. (026H), Washington, DC 20420, (202) 461-7623.

SUPPLEMENTARY INFORMATION: A VA regulation at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential and 38 CFR 14.507(b) specifies that precedential opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees, not only

in the matter at issue, but also in future adjudications and appeals involving the same legal issues, 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 that must be followed in future benefit matters and to assist Veterans' benefits 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 or by accessing the opinions on the internet at http://www.va.gov/ogc/precedentopinions.asp.

VAOPGCPREC 3-2014

Questions Presented:

On September 4, 2013, the Attorney General announced that the President directed the Executive Branch to cease enforcement of the definitions of "spouse" and "surviving spouse" in title 38, United States Code, to the extent that they limit recognition of marital status to couples of the opposite sex. Given the President's instruction, how should VA determine effective dates for benefits based on same-sex marriage?

Held:

1. The President's directive to cease enforcement of the definitions of "spouse" and "surviving spouse" in title 38, United States Code, to the extent that those definitions preclude recognition of same-sex marriages, should be given retroactive

effect as it relates to claims still open on direct review as of September 4, 2013. If VA awards benefits in such a case, the effective date of the award should be determined under 38 U.S.C. § 5110 as if the statutes barring recognition of same-sex marriage were not in effect when the claim was filed.

2. For new claims or reopened claims received after September 4, 2013, VA should apply 38 U.S.C. § 5110(g) to assign an effective date if to do so would be to the claimant's benefit. However, if a new claim establishes entitlement to an effective date earlier than September 4, 2013, by operation of 38 U.S.C. § 5110(d)-(f), (h), (j)-(l), or (n), then section 5110(g) should not be applied to limit the availability of that earlier effective date.

Effective Date: June 17, 2014.

Will A. Gunn,
General Counsel,
Department of Veterans Affairs.

VAOPGCPREC 4-2014

Question Presented:

How will the Department of Veterans Affairs (VA) administer spousal benefits in accordance with 38 U.S.C. § 103(c) in light of variances in state law on the issue of same-sex marriage?

Held:

1. The plain language of section 103(c) requires that a person be married to a Veteran to be considered the "spouse" of the Veteran and requires VA to look to state law to determine the validity of a marriage. A domestic partnership or civil union that is

not recognized as a “marriage” under state law cannot be considered a valid marriage for VA purposes.

2. Section 103(c) provides two alternative bases for determining the validity of a marriage. Section 103(c) provides that VA shall look to “the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued” (emphasis added). Under this standard, if a marriage is valid in one of the places of residence identified in the statute, it will be valid for VA purposes, even if it was not recognized as valid under the laws of any other place in which the parties resided.

3. Under section 103(c), “at the time of the marriage” means when the parties entered into the marriage. If the parties’ marriage is valid under the law of the place where they resided at the time of the inception of their marriage, it is valid for VA purposes.

4. We construe the term “when the right to benefits accrued” in section 103(c) to refer to: (1) the point in time at which the claimant filed a claim that is ultimately found to be meritorious in establishing entitlement to a benefit or increased benefit for which a marriage to a Veteran is a prerequisite; or (2) if entitlement cannot be established as existing at the time the claim is submitted, then at such later date as of which all requirements of entitlement are met. Once VA has determined a marriage valid under section 103(c), such determination shall be recognized in subsequent adjudicatory decisions involving the same or other VA benefits unless there is a change in marital status through death or judicial action.

5. The phrase “place where the parties resided” is interpreted to mean the place where the parties regularly lived or had their home, as distinguished from a place in which they were present on a temporary basis. The provision includes parties who lived in a place continuously for a reasonable period of time and those who relocated to a place with the intent to live there either permanently or for a reasonable period of time. A party’s temporary absence from the place they ordinarily lived would not defeat the finding that they resided in that place. If the parties resided in different jurisdictions at their time of marriage, VA may consider the marriage valid for VA purposes if it is valid under the law of either jurisdiction. In addition to U.S. states, the term “place” may include U.S. territories and possessions, the District of Columbia, foreign nations, and other areas governed by a recognized system of laws pertaining to marriage, such as tribal laws.

6. The plain language of section 103(c) applies only to determine the validity of a marriage to a Veteran. It thus applies for purposes of establishing eligibility or ineligibility for benefits or services provided on the basis of the marriage of a “veteran” (including, in some instances, active-duty service members and others defined to be “veterans” under certain statutory provisions). In other instances, however, when VA provides benefits or services based on the marital status of an individual who is not considered a Veteran, section 103(c) generally would not apply in determining the validity of a marriage to such an individual.

Effective Date: June 17, 2014.

Will A. Gunn,
General Counsel,
Department of Veterans Affairs.

Signing Authority

On June 17, 2014, Will A. Gunn, General Counsel, approved this document and authorized the undersigned to sign and submit this notice to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

_____

Robert C. McFetridge
Director,
Office of Office of Regulations Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

[FR Doc. 2014-14476 Filed 06/19/2014 at 8:45 am; Publication Date: 06/20/2014]