

UNITED STATES COURT OF VETERANS APPEALS

No. 94-881

JOHN A. McCAY,

APPELLANT,

v.

VA FILE No. 26 200 404

JESSE BROWN,

SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before NEBEKER, *Chief Judge*, and HOLDAWAY and IVERS, *Judges*.

ORDER

The Court issued an opinion in this case on November 1, 1995. The Court determined that the BVA had erred by not allocating an award of benefits effective one year prior to the date of the appellant's application or the date of administrative determination of the entitlement, whichever is earlier, under 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114(a)(3). On November 22, 1995, the Secretary filed a motion for reconsideration and for a stay of proceedings. The Secretary contends that 38 C.F.R. § 3.114(a) should be applied in this case. Section 3.114(a) states in pertinent part:

In order to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement.

38 C.F.R. § 3.114(a) (1994).

On consideration of the foregoing, it is

ORDERED that the Appellant, within 30 days after the date of this order, file with the Clerk and serve on the Secretary a response.

DATED: DEC 8, 1995

PER CURIAM