

LAW REVIEW 13163
December 2013

**Disability Benefits for Officers of the National Oceanic and Atmospheric
Administration (NOAA) and the Public Health Service (PHS)**

By 1stLt. K.N. Barrett, USMC¹

11.0—Veterans claims

Q: I am an officer of the National Oceanic and Atmospheric Administration (NOAA) commissioned corps. I was recently injured in the line of duty while aboard my assigned vessel. I am about to be medically separated from NOAA because I am no longer able to fulfill my duties. Once separated, am I eligible for disability benefits administered by the Department of Veterans Affairs (VA)?

A: Yes.

There are presently seven uniformed services for the United States of America, and five of these seven uniformed services are known as the armed forces. All armed forces are uniformed services, but not all uniformed services are armed forces. The five armed forces are the Army, Navy, Marine Corps, Air Force, and Coast Guard.² The seven uniformed services are, of course, the five armed forces plus the NOAA Corps and the commissioned corps of the Public Health Service (PHS).³ NOAA is part of the Department of Commerce, and PHS is part of the Department of Health and Human Services.

There is a common misconception that to be eligible for disability compensation from the VA an individual must have been a member of one of the armed forces. This is not the case. A person who served in any one of the seven uniformed services can be eligible for veterans' disability benefits.

The language of the law establishes that "The term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."⁴ That portion of the law that adds "naval or air service" was established to include both the NOAA corps

¹ First Lieutenant Barrett is a 2013 graduate of the William & Mary School of Law in Williamsburg, Virginia and a member of ROA. In 2014, he will report to active duty in the Marine Corps as a judge advocate. The views expressed in this article are those of the author and should not be attributed to the United States Marine Corps, the Department of the Navy, the Department of Defense, or the United States Government.

² 10 U.S.C. 101(a)(4)

³ 10 U.S.C. 101(a)(5)

⁴ 38 U.S.C. § 101(2)

and the PHS corps. This section goes on to define what qualifying active duty in NOAA is: “full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey on or after July 29, 1945...⁵” So upon being separated from active service with NOAA an officer may apply to the VA for disability benefits and compensation.⁶

The VA will conduct its own separate medical evaluation of claims filed by the veteran and will assign a disability rating separate from the rating assigned during the Physical Evaluation Board (PEB) process. The PEB may determine that the veteran is to be separated with a disability rating lower than 30% (the minimum required for disability retirement), but the VA, after its own evaluation, can assign any disability rating it deems appropriate. So a veteran may very well receive a 10% disability rating from the PEB evaluation and a 50% disability rating from the VA for the same injury.

Like the PHS commissioned corps, the NOAA corps has no enlisted members, only commissioned officers. NOAA vessels are operated by NOAA officers and NOAA civilian employees, working together. NOAA civilian employees are not eligible for disability benefits administered by the VA. If a NOAA civilian employee is hurt in the course and scope of his or her employment, he or she would be eligible for benefits under the Federal Employees Compensation Act (FECA).⁷ The Office of Workers' Compensation Programs of the Department of Labor is responsible for the adjudication of FECA claims.

FECA provides federal civilian employees injured in the line of duty with workers' compensation benefits. These benefits include wage-loss benefits for total or partial disability, medical care, compensation for permanent loss of use of a limb or organ, and vocational rehabilitation. This Act also provides survivor benefits to eligible dependents if the injury causes the employee's death.

A NOAA officer is not eligible for FECA benefits. An officer of NOAA will fall under the exclusion provision that specifically exempts a commissioned officer of the Environmental Science Services Administration from compensation benefits.⁸ NOAA was known as the Environmental Science Services Administration (ESSA) Corps from 1965 to 1970 and is the organization to which the statute is refers.⁹

⁵ 38 USC § 101(21)(c)

⁶ Similarly, a person who served full-time as a member of the PHS commissioned corps can qualify for VA disability benefits.

⁷ 5 U.S.C. § 8101.

⁸ 5 USC § 8101(1)(E)(iii)

⁹ Reorganization Plan No. 4 of 1970, reprinted with amendments in 5 U.S.C. app. at 1557-61.