Public Law 87-666

AN ACT

September 19, 1962
[H. R. 857]

To improve due process in the consideration and final adjudication of disputed claims for veterans' benefits by providing that the claimant shall be furnished a brief statement of the facts and law applicable to the case appealed and afforded an opportunity to reply thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 71 of title 38, United States Code, is amended by deleting sections 4005 and 4007 thereof, redesignating section 4006 as 4007, and inserting after section 4004 the following new sections:

Veterans.
Appeals, statement of facts and law.
72 Stat. 1240.

"§ 4005. Filing of notice of disagreement and appeal

"(a) Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Administrator.

"(b)(1) Except in the case of simultaneously contested claims, notice of disagreement shall be filed within one year from the date of mailing of notice of the result of initial review or determination. Such notice, and appeals, must be in writing and be filed with the activity which entered the determination with which disagreement is expressed (hereafter referred to as the 'agency of original jurisdiction'). A notice of disagreement postmarked before the expiration of the one-year period will be accepted as timely filed.

"(2) Notices of disagreement, and appeals, must be in writing and may be filed by the claimant, his legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by him. Not more than one recognized organization, attorney, or agent will be recognized at any one time in the prosecution of a claim.

"(c) If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or determination shall become final and the claim will not thereafter be reopened or allowed, except as may otherwise be provided by regulations not inconsistent with this title.

"(d)(1) Where the claimant, or his representative, within the time specified in this chapter, files a notice of disagreement with the decision of the agency of original jurisdiction, such agency will take such development or review action as it deems proper under the provisions of regulations not inconsistent with this title. If such action does not resolve the disagreement either by granting the benefit sought or through withdrawal of the notice of disagreement, such agency will prepare a statement of the case consisting of—

"(A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed;

"(B) A citation or discussion of the pertinent law, regulations, and, where applicable, the provisions of the Schedule for Rating Disabilities;

"(C) The decision on such issue or issues and a summary of the reasons therefor.

"(2) A statement of the case, as required by this subsection, will not disclose matters that would be contrary to section 3301 of this title or otherwise contrary to the public interest. Such matters may be disclosed to a designated representative unless the relationship between the claimant and the representative is such that disclosure to the representative would be as harmful as if made to the claimant.

"(3) Copies of the 'statement of the case' prescribed in paragraph (1) of this subsection will be submitted to the claimant and to his

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representative, if there is one. The claimant will be afforded a period of sixty days from the date the statement of the case is mailed to file the formal appeal. This may be extended for a reasonable period on request for good cause shown. The appeal should set out specific allegations of error of fact or law, such allegations related to specific items in the statement of the case. The benefits sought on appeal must be clearly identified. The agency of original jurisdiction may close the case for failure to respond after receipt of the statement of the case, but questions as to timeliness or adequacy of response shall be determined by the Board of Veterans' Appeals.

"(4) The appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken.

"(5) The Board of Veterans' Appeals will base its decision on the entire record and may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

"§ 4005A. Simultaneously contested claims

"(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of a notice of disagreement shall be sixty days from the date notice of the adverse action is mailed. In such cases the agency of original jurisdiction shall promptly notify all parties in interest at the last known address of the action taken, expressly inviting attention to the fact that notice of disagreement will not be entertained unless filed within the sixty-day period prescribed by this subsection.

"(b) Upon the filing of a notice of disagreement, all parties in interest will be furnished with a statement of the case in the same manner as is prescribed in section 4005. The party in interest who filed a notice of disagreement will be allowed thirty days from the date of mailing of such statement of the case in which to file a formal appeal. Extension of time may be granted for good cause shown but with consideration to the interests of the other parties involved. The substance of the appeal will be communicated to the other party or parties in interest and a period of thirty days will be allowed for filing a brief or argument in answer thereto. Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.

"§ 4006. Administrative appeals

"Application for review on appeal may be made within the one-year period prescribed in section 4005 of this title by such officials of the Veterans' Administration as may be designated by the Administrator. An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter."

SEC. 2. The table of headings at the beginning of chapter 71 is amended by striking;

"4005. Applications for review on appeal.
"4006. Docketing of appeals.
"4007. Simultaneously contested claims."

and inserting in lieu thereof:

"4005. Filing of notice of disagreement and appeal.
"4005A. Simultaneously contested claims.
"4006. Administrative appeals.
"4007. Docketing of appeals."

Effective date.

SEC. 3. The amendments made by this Act shall be effective January 1, 1963.

Approved September 19, 1962.