§ 7104. Jurisdiction of the Board

(a) All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be reopened and allowed and a claim based upon the same factual basis may not be considered.

(c) The Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.

(d) Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record; and

(2) an order granting appropriate relief or denying relief.

(e)(1) After reaching a decision on a case, the Board shall promptly mail a copy of its written decision to the claimant at the last known address of the claimant.

(2) If the claimant has an authorized representative, the Board shall—

(A) mail a copy of its written decision to the authorized representative at the last known address of the authorized representative; or

(B) send a copy of its written decision to the authorized representative by any means reasonably likely to provide the authorized representative with a copy of the decision within the same time a copy would be expected to reach the authorized representative if sent by first-class mail.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1241, § 4004; Pub. L. 87–97, § 1, July 20, 1961, 75 Stat. 215; Pub. L. 100–687, div. A, title I, § 101(b), title II, §§ 203(a), 204, 205, Nov. 18, 1988, 102 Stat. 4106, 4110, 4111; renumbered § 7104 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, § 14(g)(2), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, § 4(a)(3), (4), (b)(1), (2)(E), (c), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–271, §§ 7(b)(1), 8, July 1, 1994, 108 Stat. 743; Pub. L. 104–275, title V, § 509, Oct. 9, 1996, 110 Stat. 3344.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–275 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''After reaching a decision in a case, the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and at the last known address of such representative (if any).''

1994—Subsec. (a). Pub. L. 103–271, § 8, substituted ''511(a)'' for ''211(a)''.

Pub. L. 103–271, § 7(b)(1), struck out after second sentence ''The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing.''

1991—Pub. L. 102–40, § 402(b)(1), renumbered section 4004 of this title as this section.

Subsec. (a). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator'' in two places.

Pub. L. 102–54 made a technical correction to Pub. L. 100–687, § 101(b). See 1988 Amendment note below.

Subsec. (b). Pub. L. 102–40, § 402(d)(1), substituted ''5108'' for ''3008''.

Subsec. (c). Pub. L. 102–83, § 4(c), substituted ''chief legal officer of the Department'' for ''chief law officer''.

Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator''.

Pub. L. 102–83, § 4(a)(3), (4), substituted ''Department'' for ''Veterans' Administration''.

1988—Subsec. (a). Pub. L. 100–687, § 101(b), as amended by Pub. L. 102–54, substituted ''All questions in a matter which under section 211(a) of this title is subject to decision by the Administrator'' for ''All questions on claims involving benefits under the laws administered by the Veterans' Administration''.

Pub. L. 100–687, § 203(a), inserted at end ''The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.''

Subsec. (b). Pub. L. 100–687, § 204, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''When a claim is disallowed by the Board, it may not thereafter be reopened and allowed, and no claim based upon the same factual basis shall be considered; however, where subsequent to disallowance of a claim, new and material evidence in the form of official reports from the proper service department is secured, the Board may authorize the reopening of the claim and review of the former decision.''

Subsecs. (d), (e). Pub. L. 100–687, § 205, added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows: ''The decisions of the Board shall be in writing and shall contain findings of fact and conclusions of law separately stated.''

1961—Subsec. (d). Pub. L. 87–97 added subsec. (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 14(g)(2) of Pub. L. 102–54 provided that the amendment made by that section is effective Nov. 18, 1988.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 101(b) and 204 of Pub. L. 100–687 effective Sept. 1, 1989, and amendment by sections 203(a) and 205 of Pub. L. 100–687 effective Jan. 1, 1989, see section 401(a), (d) of Pub. L. 100–687, as amended, set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2 of Pub. L. 87–97 provided that: ''The amendment made by this Act [amending this section] shall take effect as of January 1, 1962.''

§ 7105. 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 Secretary.

(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 en-

tered the determination with which disagreement is expressed (hereinafter 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, the claimant's legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian. 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 the claimant's 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 shall prepare a statement of the case. A statement of the case shall include the following:

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

(B) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision.

(C) The decision on each issue and a summary of the reasons for such decision.

(2) A statement of the case, as required by this subsection, will not disclose matters that would be contrary to section 5701 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 the claimant's 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 claimant in any case may not be presumed to agree with any statement of fact contained in the statement of the case to which the claimant does not specifically express agreement.

(5) The Board of Veterans' Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

(Added Pub. L. 87–666, §1, Sept. 19, 1962, 76 Stat. 553, §4005; amended Pub. L. 99–576, title VII, §701(85), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100–687, div. A, title II, §§203(b), 206, Nov. 18, 1988, 102 Stat. 4111; renumbered §7105 and amended Pub. L. 102–40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107–14, §8(a)(16), June 5, 2001, 115 Stat. 35.)

AMENDMENTS

2001—Subsec. (b)(1). Pub. L. 107–14 substituted ''hereinafter'' for ''hereafter''.

1991—Pub. L. 102–40, §402(b)(1), renumbered section 4005 of this title as this section.

Subsec. (a). Pub. L. 102–83 substituted ''Secretary'' for ''Administrator''.

Subsec. (d)(2). Pub. L. 102–40, §402(d)(1), substituted ''5701'' for ''3301''.

1988—Subsec. (d)(1). Pub. L. 100–687, §206(a), substituted ''shall prepare a statement of the case. A statement of the case shall include the following:'' for ''will prepare a statement of the case consisting of—'', added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

''(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.''

Subsec. (d)(4). Pub. L. 100–687, §206(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''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.''

Subsec. (d)(5). Pub. L. 100–687, §203(b), struck out ''will base its decision on the entire record and'' after ''of Veterans' Appeals''.

1986—Subsec. (b)(2). Pub. L. 99–576, §701(85), substituted ''the claimant's'' for ''his'' and ''the claimant or legal guardian'' for ''him''.

Subsec. (d)(1), (3). Pub. L. 99–576, §701(85)(A), substituted ''the claimant's'' for ''his''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–687 effective Jan. 1, 1989, see section 401(d) of Pub. L. 100–687 set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE

Section 3 of Pub. L. 87–666 provided that: ''The amendments made by this Act [enacting sections 4005, 4005A, and 4006 [now 7105, 7105A, and 7106] of this title, redesignating former section 4006 as 4007 [now 7107] of this title, and repealing former sections 4005 and 4007 of this title] shall be effective January 1, 1963.''

§7105A. 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