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Withdrawal does not preclude filing a new Notice of Disagreement and, after a Statement of the Case is issued, a new Substantive Appeal, as to any issue withdrawn, provided such filings would be timely under these rules if the appeal withdrawn had never been filed.

(Authority: 38 U.S.C. 7105(b), (d) (2016))

[68 FR 13236, Mar. 19, 2003, as amended at 81 FR 32649, May 24, 2016. Redesignated and amended at 84 FR 177, 179, Jan. 18, 2019]

§§ 19.56–19.74 [Reserved]

Subpart D [Reserved]

Subpart E—Simultaneously Contested Claims

§ 19.100 Notification of right to appeal in simultaneously contested claims.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.

(Authority: 38 U.S.C. 7105A(a) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 179, Jan. 18, 2019]

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The Statement of the Case so furnished will contain only information which directly affects the payment or potential payment of the benefit(s) which is (are) the subject of that contested claim. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 9, “Appeal to Board of Veterans’ Appeals.”

(Authority: 38 U.S.C. 7105A(b) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996; 84 FR 179, Jan. 18, 2019]

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§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

When a Substantive Appeal is filed in a simultaneously contested claim, the content of the Substantive Appeal will be furnished to the other contesting parties to the extent that it contains information which could directly affect the payment or potential payment of the benefit which is the subject of the contested claim.

(Authority: 38 U.S.C. 7105A(b) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 179, Jan. 18, 2019]

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AUTHORITY: 38 U.S.C. 501(a) and as noted in specific sections.

SOURCE: 57 FR 4109, Feb. 3, 1992, unless otherwise noted.

Subpart A—General

§ 20.1 Rule 1. Purpose and construction of Rules of Practice.

(a) *Purpose.* These rules establish the practices and procedures governing appeals to the Board of Veterans' Appeals (Board).

(Authority: 38 U.S.C. 501(a), 7102, 7104)

(b) *Construction.* These rules are to be construed to secure a just and speedy decision in every appeal.

(Authority: 38 U.S.C. 501(a), 5107, 7104)

[57 FR 4109, Feb. 3, 1992, as amended at 84 FR 179, Jan. 18, 2019]

§ 20.2 Rule 2. Procedure in absence of specific Rule of Practice.

Where in any instance there is no applicable rule or procedure, the Chairman may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules.

(Authority: 38 U.S.C. 501(a), 512(a), 7102, 7104)

§ 20.3 Rule 3. Definitions.

As used in these Rules:

(a) *Agency of original jurisdiction* means the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.

(b) *Agent* means a person who has met the standards and qualifications for accreditation outlined in § 14.629(b) of this chapter and who has been properly designated under the provisions of § 14.631 of this chapter. It does not include representatives accredited under § 14.629(a) of this chapter, attorneys accredited under § 14.629(b) of this chapter, or a person authorized to represent a claimant for a particular claim under § 14.630 of this chapter.

(c) *Appellant* means a claimant who has filed an appeal to the Board of Veterans' Appeals either as a legacy appeal or in the modernized review system, as those terms are defined in § 19.2 of this chapter, and Rule 4 (§ 20.4 of this part), respectively.

(d) *Attorney-at-law* means a member in good standing of a State bar.

(e) *Benefit* means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans and their dependents and survivors.

(f) *Claim* means a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs submitted on an application form prescribed by the Secretary.

(g) *Claimant* means a person who has filed a claim, as defined by paragraph (f) of this section.

(h) *Hearing on appeal* or *Board hearing* means a hearing conducted after a Notice of Disagreement has been filed in which testimony is presented concerning the determination, or determinations, by the agency of original jurisdiction being appealed.

(i) *Motion* means a request that the Board rule on some question which is subsidiary to the ultimate decision on the outcome of an appeal. For example, a request to correct a hearing transcript (see Rule 714 (§ 20.714)) is raised by motion. Unless raised orally at a personal hearing before Members of the Board, motions for consideration by the Board must be made in writing. No formal type of document is required. The motion may be in the form of a letter which contains the necessary information.

(j) *Past-due benefits* means a non-recurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim readjudicated after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(k) *Presiding Member* means that Member of the Board who presides over

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a hearing, whether conducted as a single Member or panel hearing.

(1) *Simultaneously contested claim* refers to the situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.

(m) *State* includes any State, possession, territory, or Commonwealth of the United States, as well as the District of Columbia.

(Authority: 38 U.S.C. 501(a))

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996; 67 FR 36104, May 23, 2002; 69 FR 53808, Sept. 3, 2004; 79 FR 57698, Sept. 25, 2014; 84 FR 179, Jan. 18, 2019]

§ 20.4 Rule 4. Appeal systems definitions and applicability provisions.

(a) *Appeal*—(1) *In general*. An appeal consists of a Notice of Disagreement timely filed to the Board on any issue or issues for which VA provided notice of a decision under 38 U.S.C. 5104 on or after the effective date, as defined in § 19.2(a) of this chapter.

(2) *Appellant's election for review of a legacy claim or appeal in the modernized review system*. The regulations applicable to appeals are also applicable to legacy claims and appeals, as those terms are defined in §§ 3.2400(b) and 19.2(c) of this chapter, where the claimant elects the modernized review system pursuant to § 19.2(d) of this chapter, and upon the timely filing to the Board of a Notice of Disagreement.

(b) *Applicability of parts 19 and 20*—(1) *Appeals*. Subparts C, D, E, and I of part 20 apply only to the processing and adjudication of appeals in the modernized review system.

(2) *Legacy claims and appeals*. Part 19 and subparts F, G, and J of part 20 apply only to the processing and adjudication of legacy claims and appeals.

(3) *Both appeals systems*. Except as otherwise provided in specific sections, subparts A, B, H, K, L, M, N, and O of part 20 apply to the processing and adjudication of both appeals and legacy claims and appeals.

(Authority: Sec. 2, Pub. L. 115-55; 131 Stat. 1105)

[84 FR 180, Jan. 18, 2019]

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§ 20.5 Rule 5. Right to representation.

An appellant will be accorded full right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person.

(Authority: 38 U.S.C. 5901-5905, 7105(a))

[57 FR 4104, Feb. 3, 1992. Redesignated and amended at 84 FR 184, Jan. 18, 2019]

§ 20.6 Rule 6. Withdrawal of services by a representative.

(a)(1) *Applicability*. The restrictions on a representative's right to withdraw contained in this paragraph apply only to those cases in which the representative has previously agreed to act as representative in an appeal. In addition to express agreement, orally or in writing, such agreement shall be presumed if the representative makes an appearance in the case by acting on an appellant's behalf before the Board in any way after the appellant has designated the representative as such as provided in § 14.630 or § 14.631 of this chapter. The preceding sentence notwithstanding, an appearance in an appeal solely to notify the Board that a designation of representation has not been accepted will not be presumed to constitute such consent.

(2) *Procedures*. Except as otherwise provided in paragraph (b) of this section, after an appeal to the Board of Veterans' Appeals has been filed, a representative may not withdraw services as representative in the appeal unless good cause is shown on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impossible, impractical, or unethical. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (*e.g.*, a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the reason why

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withdrawal should be permitted, and a signed statement certifying that a copy of the motion was sent by first-class mail, postage prepaid, to the appellant, setting forth the address to which the copy was mailed. Such motions should not contain information which would violate privileged communications or which would otherwise be unethical to reveal. Such motions must be filed at the following address: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. The appellant may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion and must include a signed statement certifying that a copy of the response was sent by first-class mail, postage prepaid, to the representative, setting forth the address to which the copy was mailed.

(b) *Withdrawal of services prior to certification of a legacy appeal.* A representative may withdraw services as representative in a legacy appeal at any time prior to certification of the appeal to the Board of Veterans' Appeals by the agency of original jurisdiction by complying with the requirements of § 14.631 of this chapter.

(Approved by the Office of Management and Budget under control number 2900-0085)

(Authority: 38 U.S.C. 5901-5904, 7105(a))

[84 FR 184, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

§§ 20.7-20.99 [Reserved]

Subpart B—The Board

§ 20.100 Rule 100. Establishment of the Board.

The Board of Veterans' Appeals is established by authority of, and functions pursuant to, title 38, United States Code, chapter 71.

[57 FR 4104, Feb. 3, 1992. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 180, Jan. 18, 2019]

§ 20.101 Rule 101. Composition of the Board; titles.

(a) The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members and professional, administrative, clerical and stenographic personnel. Deputy Vice Chairmen are

Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(b) A Member of the Board (other than the Chairman) may also be known as a Veterans Law Judge. An individual designated as an acting member pursuant to 38 U.S.C. 7101(c)(1) may also be known as an acting Veterans Law Judge.

(Authority: 38 U.S.C. 501(a), 512, 7101(a))

[68 FR 6625, Feb. 10, 2003. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 4336, Feb. 15, 2019]

§ 20.102 Rule 102. Name, business hours, and mailing address of the Board.

(a) *Name.* The name of the Board is the Board of Veterans' Appeals.

(b) *Business hours.* The Board is open during business hours on all days except Saturday, Sunday and legal holidays. Business hours are from 8 a.m. to 4:30 p.m.

(c) *Mailing address.* The mailing address of the Board is: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Mail to the Board that is not related to an appeal must be addressed to: Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420.

(Authority: 38 U.S.C. 7101(a))

[57 FR 4109, Feb. 3, 1992, as amended at 81 FR 32649, May 24, 2016. Redesignated and amended at 84 FR 177, 180, Jan. 18, 2019]

§ 20.103 Rule 103. Principal functions of the Board.

The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal.

(Authority: 38 U.S.C. 7102, 7104, 7107)

[57 FR 4104, Feb. 3, 1992. Redesignated at 84 FR 177, Jan. 19, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

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§ 20.104 Rule 104. Jurisdiction of the Board.

(a) *General.* All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans' Appeals. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:

(1) Entitlement to, and benefits resulting from, service-connected disability or death (38 U.S.C. chapter 11).

(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of inservice or service-connected deaths (38 U.S.C. 1312) and certification and entitlement to death gratuity (38 U.S.C. 1323).

(3) Benefits for survivors of certain veterans rated totally disabled at time of death (38 U.S.C. 1318).

(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. chapter 15).

(5) All-Volunteer Force Educational Assistance Program (38 U.S.C. chapter 30).

(6) Training and Rehabilitation for Veterans with Service-Connected Disabilities (38 U.S.C. chapter 31).

(7) Post-Vietnam Era Veterans' Educational Assistance (38 U.S.C. chapter 32).

(8) Veterans' Educational Assistance (38 U.S.C. chapter 34).

(9) Survivors' and Dependents' Educational Assistance (38 U.S.C. chapter 35).

(10) Veterans' Job Training (Pub. L. 98-77, as amended; 38 CFR 21.4600 *et seq.*).

(11) Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 106).

(12) Educational Assistance Test Program (10 U.S.C. chapter 107; 38 CFR 21.5701 *et seq.*).

(13) Educational Assistance Pilot Program (10 U.S.C. chapter 107; 38 CFR 21.5290 *et seq.*).

(14) Matters arising under National Service Life Insurance and United

States Government Life Insurance (38 U.S.C. chapter 19).

(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 1728).

(16) Burial benefits and burial in National Cemeteries (38 U.S.C. chapters 23 and 24).

(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 1151).

(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 5302).

(19) Waiver of recovery of overpayments (38 U.S.C. 5302).

(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 6102-6105).

(21) Character of discharge (38 U.S.C. 5303).

(22) Determinations as to duty status (38 U.S.C. 101(21)-(24)).

(23) Determinations as to marital status (38 U.S.C. 101(3), 103).

(24) Determination of dependency status as parent or child (38 U.S.C. 101(4), (5)).

(25) Validity of claims and effective dates of benefits (38 U.S.C. chapter 51).

(26) Apportionment of benefits (38 U.S.C. 5307).

(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 5503).

(28) Benefits for surviving spouses and children of deceased veterans under Public Law 97-377, section 156 (38 CFR 3.812(d)).

(29) Eligibility for automobile and automobile adaptive equipment assistance (38 U.S.C. chapter 39).

(b) *Appellate jurisdiction of determinations of the Veterans Health Administration.* The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical

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care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) *Authority to determine jurisdiction.* The Board shall decide all questions pertaining to its jurisdictional authority to review a particular case. When the Board, on its own initiative, raises a question as to a potential jurisdictional defect, all parties to the proceeding and their representative(s), if any, will be given notice of the potential jurisdictional defect(s) and granted a period of 60 days following the date on which such notice is mailed to present written argument and additional evidence relevant to jurisdiction and to request a hearing to present oral argument on the jurisdictional question(s). The date of mailing of the notice will be presumed to be the same as the date stamped on the letter of notification. The Board may dismiss any case over which it determines it does not have jurisdiction.

(d)(1) *Appeals as to jurisdiction in legacy claims and appeals.* All claimants in legacy appeals, as defined in §19.2 of this chapter, have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular case. Jurisdictional questions which a claimant may appeal, include, but are not limited to, questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal.

(Authority: Sec. 2, Pub. L. 115-55; 131 Stat. 1105)

(2) *Application of 20.904 and 20.1305.* Section 20.904 of this part shall not apply to proceedings to determine the Board's own jurisdiction. However, the Board may remand a case to an agency of original jurisdiction in order to obtain assistance in securing evidence of jurisdictional facts. The time restrictions on requesting a hearing and submitting additional evidence in §20.1305 of this part do not apply to a hearing

requested, or evidence submitted, under paragraph (c) of this section.

(Authority: 38 U.S.C. 511(a), 7104, 7105, 7108)

[57 FR 4109, Feb. 3, 1992, as amended at 66 FR 53339, Oct. 22, 2001. Redesignated and amended at 84 FR 177, 180, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§ 20.105 Rule 105. Criteria governing disposition of appeals.

In the consideration of appeals and in its decisions, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

[84 FR 4337, Feb. 15, 2019]

§ 20.106 Rule 106. Assignment of proceedings.

(a) *Assignment.* The Chairman may assign a proceeding instituted before the Board, including any motion, to an individual Member or to a panel of three or more Members for adjudication or other appropriate action. The Chairman may participate in a proceeding assigned to a panel of Members.

(Authority: 38 U.S.C. 7102)

(b) *Inability to serve.* If a Member is unable to participate in the disposition of a proceeding or motion to which the Member has been assigned, the Chairman may assign the proceeding or motion to another Member or substitute another Member (in the case of a proceeding or motion assigned to a panel).

(Authority: 38 U.S.C. 7101(a), 7102)

[61 FR 20448, May 7, 1996. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

§ 20.107 Rule 107. Disqualification of Members.

(a) *General.* A Member of the Board will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in which he or she participated or had supervisory responsibility in the agency of original jurisdiction prior to his or her appointment as a Member of the

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Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

(Authority: 38 U.S.C. 7102, 7104)

(b) *Disqualification of Members by the Chairman.* The Chairman of the Board, on his or her own motion, may disqualify a Member from acting in an appeal on the grounds set forth in paragraph (a) of this section and in those cases where a Member is unable or unwilling to act.

(Authority: 38 U.S.C. 7102, 7104, 7106)

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

§ 20.108 Rule 108. Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

The Chairman and/or Vice Chairman have authority delegated by the Secretary of Veterans Affairs to:

(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a benefit, and

(b) Order VA Central Office investigations of matters before the Board.

(Authority: 38 U.S.C. 303, 512(a))

[57 FR 4104, Feb. 3, 1992. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

§ 20.109 Rule 109. Delegation of authority to Vice Chairman, Deputy Vice Chairmen, or Members of the Board.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 106(b) and 107(b) (§§ 20.106(b) and 20.107(b)) may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 1004 and 1002(c) (§§ 20.1004 and 20.1002(c)) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§ 20.2), may

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also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

[84 FR 4337, Feb. 15, 2019]

§ 20.110 Rule 110. Computation of time limit for filing.

(a) *Acceptance of postmark date.* When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this 5-day period, Saturdays, Sundays and legal holidays will be excluded.

(b) *Computation of time limit.* In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

(Authority: 38 U.S.C. 7105)

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 182, Jan. 18, 2019]

§ 20.111 Rule 111. Legal holidays.

For the purpose of Rule 110 (§ 20.110), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day—January 1; Inauguration Day—January 20 of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Birthday of Martin Luther King, Jr.—Third Monday in January; Washington's Birthday—Third Monday in February; Memorial Day—Last Monday in May; Independence Day—July 4; Labor Day—First Monday in September; Columbus Day—Second Monday in October; Veterans Day—November 11; Thanksgiving Day—Fourth Thursday

in November; and Christmas Day—December 25. When a holiday occurs on a Saturday, the Friday immediately before is the legal public holiday. When a holiday occurs on a Sunday, the Monday immediately after is the legal public holiday.

(Authority: 5 U.S.C. 6103)

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 182, Jan. 18, 2019]

§§ 20.112–20.199 [Reserved]

Subpart C—Commencement and Filing of Appeals

SOURCE: 84 FR 180, Jan. 18, 2019, unless otherwise noted.

§ 20.200 Rule 200. Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits, pursuant to 38 U.S.C. 5104, 5104B, and 5108.

(Authority: 38 U.S.C. 7105(a))

§ 20.201 Rule 201. What constitutes an appeal.

An appeal of a decision by the agency of original jurisdiction consists of a Notice of Disagreement submitted to the Board in accordance with the provisions of §§ 20.202–20.204.

(Authority: 38 U.S.C. 7105)

§ 20.202 Rule 202. Notice of Disagreement.

(a) *In general.* A Notice of Disagreement must be properly completed on a form prescribed by the Secretary. If the agency of original jurisdiction decision addressed several issues, the Notice of Disagreement must identify the specific decision and issue or issues therein with which the claimant disagrees. The term issue means an adjudication of a specific entitlement as described in 38 CFR 3.151(c). The Board

will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to identify the specific decision and issue or issues therein with which the claimant disagrees.

(b) *Review options.* Upon filing the Notice of Disagreement, a claimant must indicate whether the claimant requests:

(1) Direct review by the Board of the record before the agency of original jurisdiction at the time of its decision, without submission of additional evidence or a Board hearing;

(2) A Board hearing, to include an opportunity to submit additional evidence at the hearing and within 90 days following the hearing; or

(3) An opportunity to submit additional evidence without a Board hearing with the Notice of Disagreement and within 90 days following receipt of the Notice of Disagreement.

(c)(1) The information indicated by the claimant in paragraph (b) of this section determines the evidentiary record before the Board as described in subpart D of this part, and the docket on which the appeal will be placed, as described in Rule 800 (§20.800). Except as otherwise provided in paragraph (2) of this section, the Board will not consider evidence as described in Rules 302 or 303 (§§20.302 and 20.303) unless the claimant requests a Board hearing or an opportunity to submit additional evidence on the Notice of Disagreement.

(2) A claimant may modify the information identified in the Notice of Disagreement for the purpose of selecting a different evidentiary record option as described in paragraph (b) of this section. Requests to modify a Notice of Disagreement must be made by completing a new Notice of Disagreement on a form prescribed by the Secretary, and must be received at the Board within one year from the date that the agency of original jurisdiction mails notice of the decision on appeal, or within 60 days of the date that the Board receives the Notice of Disagreement, whichever is later. Requests to modify a Notice of Disagreement will

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not be granted if the appellant has submitted evidence or testimony as described in §§ 20.302 and 20.303.

(d) *Standard form required.* The Board will not accept as a Notice of Disagreement an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result that is submitted in any format other than the form prescribed by the Secretary, including on a different VA form.

(e) *Alternate form or other communication.* The filing of an alternate form or other communication will not extend, toll, or otherwise delay the time limit for filing a Notice of Disagreement, as provided in § 20.203(b). In particular, returning the incorrect VA form does not extend, toll, or otherwise delay the time limit for filing the correct form.

(f) *Unclear Notice of Disagreement.* If within one year after mailing an adverse decision (or 60 days for simultaneously contested claims), the Board receives a Notice of Disagreement completed on the form prescribed by the Secretary, but the Board cannot identify which denied issue or issues the claimant wants to appeal or which option the claimant intends to select under paragraph (b) of this section, then the Board will contact the claimant to request clarification of the claimant's intent.

(g) *Response required from claimant—*
(1) *Time to respond.* The claimant must respond to the Board's request for clarification on or before the later of the following dates:

(i) 60 days after the date of the Board's clarification request; or

(ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).

(2) *Failure to respond.* If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered a Notice of Disagreement as to any claim for which clarification was requested. The Board will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.

(h) *Action following clarification.* The unclear Notice of Disagreement is

properly completed, and thereby filed, under paragraph (a) of this section when the Board receives the clarification.

(i) *Representatives and fiduciaries.* For the purpose of the requirements in paragraphs (f) through (h) of this section, references to the "claimant" include reference to the claimant or his or her representative, if any, or to his or her fiduciary, if any, as appropriate.

(Authority: 38 U.S.C. 7105)

(Approved by the Office of Management and Budget under control number 2900-0674)

§ 20.203 Rule 203. Place and time of filing of Notice of Disagreement.

(a) *Place of filing.* The Notice of Disagreement must be filed with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(b) *Time of filing.* Except as provided in § 20.402 for simultaneously contested claims, a claimant, or his or her representative, must file a properly completed Notice of Disagreement with a decision by the agency of original jurisdiction within one year from the date that the agency mails the notice of the decision. The date of mailing the letter of notification of the decision will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(c) *Extension of time of filing.* An extension of the period for filing a Notice of Disagreement or a request to modify a Notice of Disagreement may be granted for good cause. A request for such an extension must be in writing and must be filed with the Board. Whether good cause for an extension has been established will be determined by the Board.

(Authority: 38 U.S.C. 7105)

§ 20.204 Rule 204. Who can file a Notice of Disagreement.

(a) *Persons authorized.* A Notice of Disagreement may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney is on record or accompanies such Notice of Disagreement.

(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is

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not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 7105(b)(2)(A))

§ 20.205 Rule 205. Withdrawal of appeal.

(a) *When and by whom filed.* Only an appellant, or an appellant's authorized representative, may withdraw an appeal. An appeal may be withdrawn as to any or all issues involved in the appeal.

(b) *Filing—(1) Content.* Appeal withdrawals must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and a statement that the appeal is withdrawn. If the appeal involves multiple issues, the withdrawal must specify that the appeal is withdrawn in its entirety, or list the issue(s) withdrawn from the appeal.

(2) *Where to file.* Appeal withdrawals should be filed with the Board.

(3) *When effective.* An appeal withdrawal is effective when received by the Board. A withdrawal received after the Board issues a final decision under Rule 1100(a) (§20.1100(a)) will not be effective.

(c) *Effect of filing.* Withdrawal of an appeal will be deemed a withdrawal of the Notice of Disagreement as to all issues to which the withdrawal applies. Withdrawal does not preclude filing a new Notice of Disagreement pursuant to this subpart, a request for higher-level review under 38 U.S.C. 5104B, or a

supplemental claim under 38 U.S.C. 5108, as to any issue withdrawn, provided such filing would be timely under these rules if the withdrawn appeal had never been filed.

(Authority: 38 U.S.C. 7105)

§§ 20.206–20.299 [Reserved]

Subpart D—Evidentiary Record

§ 20.300 Rule 300. General.

(a) Decisions of the Board will be based on a de novo review of the evidence of record at the time of the agency of original jurisdiction decision on the issue or issues on appeal, and any additional evidence or testimony submitted pursuant to this subpart, as provided in §20.801.

(b) *Waiver of appellant's right to submit evidence.* For appeals described in 20.302 and 20.303, an appellant has a right to submit evidence during a period of 90 days, unless this right is waived by the appellant or representative at any time prior to the expiration of the applicable 90-day period. Such a waiver must be in writing or, if a hearing on appeal is conducted pursuant to 20.302, the waiver must be formally and clearly entered on the record orally at the time of the hearing.

(Authority: 38 U.S.C. 7104)

[84 FR 182, Jan. 18, 2019]

§ 20.301 Rule 301. Appeals with no request for a Board hearing and no additional evidence.

For appeals in which the appellant requested, on the Notice of Disagreement, direct review by the Board without submission of additional evidence and without a Board hearing, the Board's decision will be based on a review of the evidence of record at the time of the agency of original jurisdiction decision on the issue or issues on appeal.

(Authority: 38 U.S.C. 7105, 7107, 7113(a))

[84 FR 182, Jan. 18, 2019]

§ 20.302 Rule 302. Appeals with a request for a Board hearing.

(a) Except as described in paragraphs (b) and (c) of this section, for appeals in which the appellant requested, on the

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Notice of Disagreement, a Board hearing, the Board's decision will be based on a review of the following:

(1) Evidence of record at the time of the agency of original jurisdiction's decision on the issue or issues on appeal;

(2) Evidence submitted by the appellant or his or her representative at the hearing, to include testimony provided at the hearing; and

(3) Evidence submitted by the appellant or his or her representative within 90 days following the hearing.

(b) In the event that the hearing request is withdrawn pursuant to §20.704(e), the Board's decision will be based on a review of evidence described in paragraph (a)(1) of this section, and evidence submitted by the appellant or his or her representative within 90 days following receipt of the withdrawal.

(c) In the event that the appellant does not appear for a scheduled hearing, and the hearing is not rescheduled subject to §20.704(d), the Board's decision will be based on a review of evidence described in paragraph (a)(1) of this section, and evidence submitted by the appellant or his or her representative within 90 days following the date of the scheduled hearing.

(Authority: 38 U.S.C. 7105, 7107, 7113(b))

[84 FR 182, Jan. 18, 2019]

§ 20.303 Rule 303. Appeals with no request for a Board hearing, but with a request for submission of additional evidence.

For appeals in which the appellant requested, on the Notice of Disagreement, an opportunity to submit additional evidence without a Board hearing, the Board's decision will be based on a review of the following:

(a) Evidence of record at the time of the agency of original jurisdiction's decision on the issue or issues on appeal; and

(b) Evidence submitted by the appellant or his or her representative:

(1) With the Notice of Disagreement or within 90 days following receipt of the Notice of Disagreement; or,

(2) If the appellant did not request an opportunity to submit additional evidence on the Notice of Disagreement, but subsequently requested to submit additional evidence pursuant to Rule 202 (§20.202(c)(2)(ii)), within 90 days fol-

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lowing VA's notice that the appeal has been moved to the docket described in §20.800(a)(ii).

(Authority: 38 U.S.C. 7105, 7107, 7113(c))

[84 FR 182, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§§ 20.304–20.399 [Reserved]

Subpart E—Appeal in Simultaneously Contested Claims

SOURCE: 84 FR 182, Jan. 18, 2019, unless otherwise noted.

§ 20.400 Rule 400. Notification of the right to appeal in a simultaneously contested claim.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for submitting a Notice of Disagreement to the Board, as well as hearing and representation rights.

§ 20.401 Rule 401. Who can file an appeal in simultaneously contested claims.

In simultaneously contested claims, any claimant or representative of a claimant may file a Notice of Disagreement within the time limits set out in Rule 402 (§20.402).

(Authority: 38 U.S.C. 7105(b)(2), 7105A)

§ 20.402 Rule 402. Time limits for filing Notice of Disagreement in simultaneously contested claims.

In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 7105A)

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§ 20.403 Rule 403. Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the substance of the Notice of Disagreement. The notice will inform the contesting party or parties of what type of review the appellant who initially filed a Notice of Disagreement selected under § 20.202(b), including whether a hearing was requested.

(Authority: 38 U.S.C. 7105A)

§ 20.404 Rule 404. Time limit for response to appeal by another contesting party in a simultaneously contested claim.

A party to a simultaneously contested claim may file a brief, argument, or request for a different type of review under § 20.202(b) in answer to a Notice of Disagreement filed by another contesting party. Any such brief, argument, or request must be filed with the Board within 30 days from the date the content of the Notice of Disagreement is furnished as provided in § 20.403. Such content will be presumed to have been furnished on the date of the letter that accompanies the content.

(Authority: 38 U.S.C. 7105A(b)(1))

§ 20.405 Rule 405. Docketing of simultaneously contested claims at the Board.

After expiration of the 30-day period for response in § 20.404, the Board will place all parties of the simultaneously contested claim on the docket for the type of review requested under § 20.202(b). In the event the parties request different types of review, if any party requests a hearing the appeal will be placed on the docket described in § 20.800(a)(iii), and VA will notify the parties that a hearing will be scheduled. If no party requested a hearing, but any party requested the opportunity to submit additional evidence, the appeal will be placed on the docket described in § 20.800(a)(ii), and the parties will be notified of their oppor-

tunity to submit additional evidence within 90 days of the date of such notice.

(Authority: 38 U.S.C. 7105A(b)(1))

[84 FR 182, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§ 20.406 Rule 406. Notices sent to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

§ 20.407 Rule 407. Favorable findings are not binding in contested claims.

Where a claim is contested, findings favorable to either party, as described in Rule 801 (§ 20.801), are no longer binding on all agency of original jurisdiction and Board of Veterans' Appeals adjudicators during the pendency of the contested appeal.

(Authority: 38 U.S.C. 7105A(b)(2))

[84 FR 182, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§§ 20.408–20.499 [Reserved]

Subpart F—Legacy Appeal in Simultaneously Contested Claims

§ 20.500 Rule 500. Applicability.

The provisions of this subpart apply to legacy appeals, as defined in § 19.2 of this chapter.

[84 FR 183, Jan. 18, 2019]

§ 20.501 Rule 501. Who can file an appeal in simultaneously contested claims.

In a simultaneously contested claim, any claimant or representative of a claimant may file a Notice of Disagreement or Substantive Appeal within the time limits set out in Rule 502 (§ 20.502).

(Authority: 38 U.S.C. 7105(b)(2), 7105A (2016))

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 183, Jan. 18, 2019]

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§ 20.502 Rule 502. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.

(a) *Notice of Disagreement.* In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 7105A(a) (2016))

(b) *Substantive Appeal.* In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105A(b) (2016))

(c) *Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished by the agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement

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of the Case is optional and is not required for the perfection of an appeal.

(Authority: 38 U.S.C. 7105(d)(3), 7105A(b) (2016))

[57 FR 4109, Feb. 3, 1992, as amended at 68 FR 64806, Nov. 17, 2003. Redesignated and amended at 84 FR 183, Jan. 18, 2019; 84 FR 34788, July 19, 2019.]

§ 20.503 Rule 503. Time limit for response to appeal by another contesting party in a simultaneously contested claim.

A party to a simultaneously contested claim may file a brief or argument in answer to a Substantive Appeal filed by another contesting party. Any such brief or argument must be filed with the agency of original jurisdiction within 30 days from the date the content of the Substantive Appeal is furnished as provided in §19.102 of this chapter. Such content will be presumed to have been furnished on the date of the letter that accompanies the content.

(Authority: 38 U.S.C. 7105A(b) (2016))

[66 FR 60153, Dec. 3, 2001. Redesignated and amended at 84 FR 183, Jan. 18, 2019]

§ 20.504 Rule 504. Extension of time for filing a Substantive Appeal in simultaneously contested claims.

An extension of the 30-day period to file a Substantive Appeal in simultaneously contested claims may be granted if good cause is shown. In granting an extension, consideration will be given to the interests of the other parties involved. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal.

(Authority: 38 U.S.C. 7105A(b) (2016))

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 183, Jan. 18, 2019]

§ 20.505 Rule 505. Notices sent to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned

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and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 7105A(b) (2016))

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 183, Jan. 18, 2019]

§§ 20.506–20.599 [Reserved]

Subpart G—Legacy Hearings on Appeal

§ 20.600 Rule 600. Applicability.

(a) The provisions in this subpart apply to Board hearings conducted in legacy appeals, as defined in §19.2 of this chapter.

(b) Except as otherwise provided, Rules 700, 701, 704, 705, and 707–715 (§§ 20.700, 20.701, 20.704, 20.705, and 20.707–20.715) are also applicable to Board hearings conducted in legacy appeals.

[84 FR 184, Jan. 18, 2019]

§ 20.601 Rule 601. Methods by which hearings in legacy appeals are conducted; scheduling and notice provisions for such hearings.

(a) *Methods by which hearings in legacy appeals are conducted.* A hearing on appeal before the Board may be held by one of the following methods:

(1) In person at the Board's principal location in Washington, DC;

(2) By electronic hearing, through voice transmission or through picture and voice transmission, with the appellant appearing at a Department of Veterans Affairs facility or appropriate Federal facility; or

(3) At a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings.

(b) *Electronic hearings.* An appropriate Federal facility consists of a Federal facility having adequate physical resources and personnel for the support of such hearings.

(c) *Provisions for scheduling and providing notice of hearings in legacy appeals.*

(1) The procedures for scheduling and providing notice of Board hearings in legacy appeals conducted by the methods described in paragraphs (a)(1) and (a)(2) of this section are contained in Rule 704 (§ 20.704).

(2) The procedures for scheduling and providing notice of Board hearings in legacy appeals conducted at a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings under (a)(3) are contained in Rule 603 (§ 20.603).

(Authority: 38 U.S.C. 7107; Sec. 102, Pub. L. 114-315; 130 Stat. 1536)

[84 FR 186, Jan. 18, 2019]

§ 20.602 Rule 602. When a hearing before the Board of Veterans' Appeals may be requested in a legacy appeal; procedure for requesting a change in method of hearing.

(a) *How to request a hearing.* An appellant, or an appellant's representative, may request a hearing before the Board when submitting the substantive appeal (VA Form 9) or anytime thereafter, subject to the restrictions in Rule 1305 (§ 20.1305). Requests for such hearings before a substantive appeal has been filed will be rejected.

(b) *Board's determination of method of hearing.* Following the receipt of a request for a hearing, the Board shall determine, for purposes of scheduling the hearing for the earliest practical date, whether a hearing before the Board will be held at its principal location or at a facility of the Department or other appropriate Federal facility located within the area served by a regional office of the Department. The Board shall also determine whether the hearing will occur by means of an electronic hearing or by the appellant personally appearing before a Board member or panel. An electronic hearing will be in lieu of a hearing held by personally appearing before a Member or panel of Members of the Board and shall be conducted in the same manner as, and considered the equivalent of, such a hearing.

(c) *Notification of method of hearing.* The Board will notify the appellant and his or her representative of the method of a hearing before the Board.

(d) *How to request a change in method of hearing.* Upon notification of the method of the hearing requested pursuant to paragraph (c) of this section, an appellant may make one request for a

different method of the requested hearing. If the appellant makes such a request, the Board shall grant the request and notify the appellant of the change in method of the hearing.

(e) *Notification of scheduling of hearing.* The Board will notify the appellant and his or her representative of the scheduled time and location for the requested hearing not less than 30 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled hearing before the Board with good cause. The right to notice at least 30 days in advance will be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled hearing.

(Authority: Sec. 102, Pub. L. 114-315; 130 Stat. 1536)

[84 FR 186, Jan. 18, 2019]

§ 20.603 Rule 603. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities in a legacy appeal.

(a) *General.* Hearings may be conducted by a Member or Members of the Board during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings. Subject to paragraph (f) of this section, the hearings will be scheduled for each area served by a regional office in accordance with the place of each case on the Board's docket, established under § 20.902, relative to other cases for which hearings are scheduled to be held within that area.

(b) *Notification of hearing.* When a hearing at a Department of Veterans Affairs field facility is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative, or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled

date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the Board. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted for review by the Member who would have presided over the hearing. If the presiding Member determines that good cause has been shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date

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could not have been submitted. Such motions must be filed with: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Whether good cause for such failure to appear and the impossibility of timely requesting postponement have been established will be determined by the Member who would have presided over the hearing. If good cause and the impossibility of timely requesting postponement are shown, the hearing will be rescheduled for the next available hearing date at the same facility after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be submitted to the Board.

(f) *Advancement of the case on the hearing docket.* A hearing may be scheduled at a time earlier than would be provided for under paragraph (a) of this section upon written motion of the appellant or the representative. The same grounds for granting relief, motion filing procedures, and designation of authority to rule on the motion specified in Rule 902(c) (§20.902(c)) for advancing a case on the Board's docket shall apply.

(Approved by the Office of Management and Budget under control number 2900-0085)

(Authority: 38 U.S.C. 7107; Sec. 102, Pub. 114-315; 130 Stat. 1536)

[84 FR 184, Jan. 18, 2019]

§ 20.604 Rule 604. Designation of Member or Members to conduct the hearing in a legacy appeal.

The Member or panel to whom a proceeding is assigned under Rule 106 (§20.106) shall conduct any hearing before the Board in connection with that proceeding. Where a proceeding has been assigned to a panel, the Chairman, or the Chairman's designee, shall designate one of the Members as the presiding Member. The Member or Members who conduct the hearing

shall participate in making the final determination of the claim, subject to the exception in Rule 1004 (§20.1004) (relating to reconsideration of a decision).

(Authority: 38 U.S.C. 7102; 38 U.S.C. 7101 (2016))

[61 FR 20451, May 7, 1996. Redesignated and amended at 84 FR 187, Jan. 18, 2019]

§ 20.605 Rule 605. Procurement of additional evidence following a hearing in a legacy appeal.

If it appears during the course of a hearing that additional evidence would assist in the review of the questions at issue, the presiding Member may direct that the record be left open so that the appellant and his or her representative may obtain the desired evidence. The presiding Member will determine the period of time during which the record will stay open, considering the amount of time estimated by the appellant or representative as needed to obtain the evidence and other factors adduced during the hearing. Ordinarily, the period will not exceed 60 days, and will be as short as possible in order that appellate consideration of the case not be unnecessarily delayed.

(Authority: 38 U.S.C. 7102; 38 U.S.C. 7105, 7101 (2016))

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 187, Jan. 18, 2019]

§§ 20.606–20.699 [Reserved]

Subpart H—Hearings on Appeal

§ 20.700 Rule 700. General.

(a) *Right to a hearing.* A hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to testify before the Board. An appellant is limited to one Board hearing following the filing of a Notice of Disagreement with a decision of the agency of original jurisdiction. Requests for additional Board hearings may be granted for good cause shown.

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue or issues. It is contemplated that the appellant and witnesses, if any, will be present. A hearing will not normally be scheduled

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solely for the purpose of receiving argument by a representative. Such argument may be submitted in the form of a written brief. Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member assigned to conduct the hearing.

(c) *Nonadversarial proceedings.* Hearings conducted by the Board are ex parte in nature and nonadversarial. Parties to the hearing will be permitted to ask questions, including follow-up questions, of all witnesses but cross-examination will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained. The presiding Member may set reasonable time limits for the presentation of argument and may exclude documentary evidence, testimony, and/or argument which is not relevant or material to the issue, or issues, being considered or which is unduly repetitious.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27935, May 12, 1993; 61 FR 20450, May 7, 1996; 84 FR 184, Jan. 18, 2019]

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 7102, 7105, 7107)

[58 FR 27935, May 12, 1993]

§ 20.702 Rule 702. Methods by which hearings are conducted.

A hearing on appeal before the Board may be held by one of the following methods:

(a) In person at the Board's principal location in Washington, DC, or

(b) By electronic hearing, through picture and voice transmission, with

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the appellant appearing at a Department of Veterans Affairs facility.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[84 FR 186, Jan. 18, 2019]

§ 20.703 Rule 703. When a hearing before the Board of Veterans' Appeals may be requested; procedure for requesting a change in method of hearing.

(a) *How to request a hearing.* An appellant, or an appellant's representative, may request a hearing before the Board when submitting the Notice of Disagreement, or when requesting to modify the Notice of Disagreement, as provided in Rule 202 (§20.202). Requests for such hearings at any other time will be rejected.

(b) *Board's determination of method of hearing.* Following the receipt of a request for a hearing, the Board shall determine, for purposes of scheduling the hearing for the earliest practical date, whether a hearing before the Board will be held at its principal location or by picture and voice transmission at a facility of the Department located within the area served by a regional office of the Department.

(c) *Notification of method of hearing.* The Board will notify the appellant and his or her representative of the method of a hearing before the Board.

(d) *How to request a change in method of hearing.* If an appellant declines to participate in the method of hearing selected by the Board, the appellant's opportunity to participate in a hearing before the Board shall not be affected. Upon notification of the method of the hearing requested pursuant to paragraph (c) of this section, an appellant may make one request for a different method of the requested hearing. If the appellant makes such a request, the Board shall grant the request and notify the appellant of the change in method of the hearing.

(e) *Notification of scheduling of hearing.* The Board will notify the appellant and his or her representative of the scheduled time and location for the requested hearing not less than 30 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to

the prior failure of an appellant to appear at a scheduled hearing before the Board of Veterans' Appeals with good cause. The right to notice at least 30 days in advance will be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled hearing.

(Authority: 38 U.S.C. 7105(a), 7107)

[84 FR 186, Jan. 18, 2019]

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals.

(a)(1) *General.* To the extent that officials scheduling hearings for the Board determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. Subject to paragraph (f) of this section, electronic hearings will be scheduled for each area served by a regional office in accordance with the place of each case on the Board's docket, established under Rule 801 (§20.801) for appeals and under Rule 902 (§20.902) for legacy appeals, relative to other cases for which hearings are scheduled to be held within that area.

(2) *Special provisions for legacy appeals.* The procedures for scheduling and providing notice of Board hearings in legacy appeals conducted at a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings under paragraph (a)(3) of Rule 601 (§20.601(a)(3)) are contained in Rule 603 (§20.603).

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(c) *Requests for changes in hearing dates.* Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is

shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the Board. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted for review by the Member who would have presided over the hearing. If the presiding Member determines that good cause has been shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such

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motions must be filed with: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Whether good cause for such failure to appear and the impossibility of timely requesting postponement have been established will be determined by the Member who would have presided over the hearing. If good cause and the impossibility of timely requesting postponement are shown, the hearing will be rescheduled for the next available hearing date at the same facility after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be submitted to the Board.

(f) *Advancement of the case on the hearing docket.* A hearing may be scheduled at a time earlier than would be provided for under paragraph (a) of this section upon written motion of the appellant or the representative. The same grounds for granting relief, motion filing procedures, and designation of authority to rule on the motion specified in Rule 902(c) (§20.902(c)) for advancing a case on the Board's docket shall apply.

(Authority: 38 U.S.C. 7107)

(Approved by the Office of Management and Budget under control number 2900-0085)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27935, May 12, 1993; 61 FR 20450, May 7, 1996; 81 FR 32649, May 24, 2016. Redesignated and amended at 84 FR 185, Jan. 18, 2019]

§ 20.705 Rule 705. Functions of the presiding Member.

(a) *General.* The presiding Member is responsible for the conduct of a Board hearing in accordance with the provisions of subparts G and H of this part.

(b) *Duties.* The duties of the presiding Member include, but are not limited to, any of the following:

- (1) Conducting a prehearing conference, pursuant to §20.707;
- (2) Ruling on questions of procedure;

(3) Administering the oath or affirmation;

(4) Ensuring that the course of the Board hearing remains relevant to the issue or issues on appeal;

(5) Setting reasonable time limits for the presentation of argument;

(6) Prohibiting cross-examination of the appellant and any witnesses;

(7) Determining whether documentary evidence, testimony, and/or argument is relevant or material to the issue or issues being considered and not unduly repetitious;

(8) Terminating a Board hearing or directing that an offending party, representative, witness, or observer leave the hearing if that party persists or engages in disruptive or threatening behavior;

(9) Disallowing or halting the use of personal recording equipment being used by an appellant or representative if it becomes disruptive to the hearing; and

(10) Taking any other steps necessary to maintain good order and decorum.

(c) *Ruling on motions.* The presiding Member has the authority to rule on any Board hearing-related motion.

(Authority: 38 U.S.C. 501)

[84 FR 187, Jan. 18, 2019]

§ 20.706 Rule 706. Designation of Member or Members to conduct the hearing.

Hearings will be conducted by a Member or panel of Members of the Board. Where a proceeding has been assigned to a panel, the Chairman, or the Chairman's designee, shall designate one of the Members as the presiding Member.

(Authority: 38 U.S.C. 7102, 7107)

[84 FR 187, Jan. 18, 2019]

§ 20.707 Rule 707. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps

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which will make the hearing itself more efficient and productive.

(Authority: 38 U.S.C. 7102, 7107)

[84 FR 34788, July 19, 2019]

§ 20.708 Rule 708. Witness at hearings.

The testimony of witnesses, including appellants, will be heard. All testimony must be given under oath or affirmation. Oath or affirmation is not required for the sole purpose of presenting contentions and argument.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[61 FR 29028, June 7, 1996. Redesignated and amended at 84 FR 187, Jan. 18, 2019]

§ 20.709 Rule 709. Subpoenas.

(a) *General.* An appellant, or his or her representative, may arrange for the production of any tangible evidence or the voluntary appearance of any witnesses desired. When necessary evidence cannot be obtained in any other reasonable way, the appellant, or his or her representative, may move that a subpoena be issued to compel the attendance of witnesses residing within 100 miles of the place where a hearing on appeal is to be held and/or to compel the production of tangible evidence. A subpoena will not be issued to compel the attendance of Department of Veterans Affairs adjudicatory personnel.

(b) *Contents of motion for subpoena.* The motion for a subpoena must be in writing, must clearly show the name and address of each witness to be subpoenaed, must clearly identify all documentary or other tangible evidence to be produced, and must explain why the attendance of the witness and/or the production of the tangible evidence cannot be obtained without a subpoena.

(c) *Where filed.* Motions for a subpoena must be filed with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(d) *When motion for subpoena is to be filed in cases involving a hearing on appeal.* Motions for the issuance of a subpoena for the attendance of a witness, or the production of documents or other tangible evidence, at a hearing on appeal must be filed not later than 30 days prior to the hearing date.

(e) *Ruling on motion for subpoena—(1) To whom assigned.* The ruling on the

motion will be made by the Member or panel of Members to whom the case is assigned. Where the case has not been assigned, the Chairman, or the Chairman's designee, will assign the case to a Member or panel who will then rule on the motion.

(2) *Procedure.* If the motion is denied, the Member(s) ruling on the motion will issue an order to that effect which sets forth the reasons for the denial and will send copies to the moving party and his or her representative, if any. Granting the motion will be signified by completion of a VA Form 0714, "Subpoena," if attendance of a witness is required, and/or VA Form 0713, "Subpoena Duces Tecum," if production of tangible evidence is required. The completed form shall be signed by the Member ruling on the motion, or, where applicable, by any panel Member on behalf of the panel ruling on the motion, and served in accordance with paragraph (g) of this section.

(f) *Fees.* Any person who is required to attend a hearing as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. A subpoena for a witness will not be issued or served unless the party on whose behalf the subpoena is issued submits a check in an amount equal to the fee for one day's attendance and the mileage allowed by law, made payable to the witness, as an attachment to the motion for the subpoena. Except for checks on the business accounts of attorneys-at-law, agents, and recognized service organizations, such checks must be in the form of certified checks or cashiers checks.

(g) *Service of subpoenas.* The Board will serve the subpoena by certified mail, return receipt requested. The check for fees and mileage described in paragraph (f) of this section shall be mailed with the subpoena. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

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(h) *Motion to quash or modify subpoena*—(1) *Filing procedure.* Upon written motion of the party securing the subpoena, or of the person subpoenaed, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown. Relief may include, but is not limited to, requiring the party who secured the subpoena to advance the reasonable cost of producing books, papers, or other tangible evidence. The motion must specify the relief sought and the reasons for requesting relief. Such motions must be filed at the address specified in paragraph (c) of this section within 10 days after mailing of the subpoena or the time specified in the subpoena for compliance, whichever is less. The motion may be accompanied by such supporting evidence as the moving party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the motion, and any attachments thereto, were mailed to the party who secured the subpoena, or the person subpoenaed, as applicable;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed.

(2) *Response.* Not later than 10 days after the date that the motion was mailed to the responding party, that party may file a response to the motion at the address specified in paragraph (c) of this section. The response may be accompanied by such supporting evidence as the responding party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the response, and any attachments thereto, were mailed to the moving party;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed. If the subpoena involves testimony or the production of tangible evidence at a hearing before the Board and less than 30 days remain before the scheduled hearing date at the time the response is received by the Board, the Board may reschedule the hearing to permit disposition of the motion.

(3) *Ruling on the motion.* The Member or panel to whom the case is assigned will issue an order disposing of the mo-

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tion. Such order shall set forth the reasons for which a motion is either granted or denied. The order will be mailed to all parties to the motion. Where applicable, an order quashing a subpoena will require refund of any sum advanced for fees and mileage.

(i) *Disobedience.* In case of disobedience to a subpoena issued by the Board, the Board will take such steps as may be necessary to invoke the aid of the appropriate district court of the United States in requiring the attendance of the witness and/or the production of the tangible evidence subpoenaed. A failure to obey the order of such a court may be punished by the court as a contempt thereof.

(Authority: 38 U.S.C. 5711, 5713, 7102(a))

(Authority: 38 U.S.C. 5711, 7102(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20452, May 7, 1996; 66 FR 49538, Sept. 28, 2001; 81 FR 32650, May 24, 2016. Redesignated and amended 84 FR 187, Jan. 18, 2019; 84 FR 4337, Feb. 15, 2019]

§ 20.710 Rule 710. Expenses of appellants, representatives, and witnesses incident to hearings not reimbursable by the Government.

No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(Authority: 38 U.S.C. 111)

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 187, Jan. 18, 2019]

§ 20.711 Rule 711. Hearings in simultaneously contested claims.

(a) *General.* If a hearing is scheduled for any party to a simultaneously contested claim, the other contesting claimants and their representatives, if any, will be notified and afforded an opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes to do so may present testimony and argument. The appellant will then be allowed an opportunity to present testimony and argument in rebuttal. Cross-examination will not be allowed.

(b) *Requests for changes in hearing dates.* (1) *General.* Except as described

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in paragraphs (b)(2) and (3) of this section, any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 704, paragraph (c) (§ 20.704(c)).

(2)(i) A request under Rule 704, paragraph (c) must be made within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier.

(ii) In order to obtain a new hearing date under the provisions of Rule 704, paragraph (c) (§ 20.704(c)), the consent of all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. Whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member assigned to conduct the hearing.

(3) A copy of any motion for a new hearing date required by these rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion.

Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

(Authority: 38 U.S.C. 7105A)

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 187, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§ 20.712 Rule 712. Record of hearing.

(a) *General.* All Board hearings will be recorded. The Board will prepare a written transcript for each Board hearing conducted. The transcript will be the official record of the hearing and will be incorporated as a part of the record on appeal. The Board will not accept alternate transcript versions prepared by the appellant or representative.

(b) *Hearing recording.* The recording of the Board hearing will be retained for a period of 12 months following the date of the Board hearing as a duplicate record of the proceeding.

(c) *Copy of written transcript.* If the appellant or representative requests a copy of the written transcript in accordance with § 1.577 of this chapter, the Board will furnish one copy to the appellant or representative.

[84 FR 188, Jan. 18, 2019]

§ 20.713 Rule 713. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may only be authorized when prior written consent is obtained from all appellants and contesting claimants, if any, and made a matter of record. In no event will such additional equipment be used if it interferes with the conduct of the hearing or the official recording apparatus. In all such situations, advance arrangements must be made with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(Authority: 38 U.S.C. 7102, 7107)

[84 FR 34788, July 19, 2019]

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§ 20.714 Rule 714. Correction of hearing transcripts.

If an appellant wishes to seek correction of perceived errors in a hearing transcript, the appellant or his or her representative should move for correction of the hearing transcript within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. The motion must be filed with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. The ruling on the motion will be made by the presiding Member of the hearing.

(Authority: 38 U.S.C. 7102, 7107)

[84 FR 188, Jan. 18, 2019]

§ 20.715 Rule 715. Loss of hearing recordings or transcripts—request for new hearing.

(a) *Notification.* (1) The Board must notify the appellant and his or her representative in writing in the event the Board discovers that a Board hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available. The notice must provide the appellant with a choice of either of the following options:

(i) Appear at a new Board hearing, pursuant to Rules 703 and 704 (§§ 20.703 and 20.704) for appeals or Rules 602 and 603 (§§ 20.602 and 20.603) for legacy appeals, as defined in § 19.2 of this chapter; or

(ii) Have the Board proceed to appellate review of the appeal based on the evidence of record.

(2) The notice will inform the appellant that he or she has a period of 30 days to respond to the notice. If the appellant does not respond by requesting a new hearing within 30 days from the date of the mailing of the notice, then the Board will decide the appeal on the basis of the evidence of record. A request for a new Board hearing will not be accepted once the Board has issued a decision on the appeal.

(b) *Board decision issued prior to a loss of the recording or transcript.* The Board will not accept a request for a new

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Board hearing under this section if a Board decision was issued on an appeal prior to the loss of the recording or transcript of a Board hearing, and the Board decision considered testimony provided at that Board hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[84 FR 188, Jan. 18, 2019]

§§ 20.716–20.799 [Reserved]

Subpart I—Appeals Processing

§ 20.800 Rule 800. Order of consideration of appeals.

(a) *Docketing of appeals.* (1) Applications for review on appeal are docketed in the order in which they are received on the following dockets:

(i) A docket for appeals in which an appellant does not request a hearing or an opportunity to submit additional evidence on the Notice of Disagreement;

(ii) A docket for appeals in which the appellant does not request a hearing but does request an opportunity to submit additional evidence on the Notice of Disagreement; and

(iii) A docket for appeals in which the appellant requests a hearing on the Notice of Disagreement.

(2) An appeal may be moved from one docket to another only when the Notice of Disagreement has been modified pursuant to Rule 202, paragraph (c)(3) (§ 20.202(c)(3)). The request to modify the Notice of Disagreement must reflect that the appellant requests the option listed in § 20.202(b) that corresponds to the docket to which the appeal will be moved. An appeal that is moved from one docket to another will retain its original docket date.

(b) Except as otherwise provided, each appeal will be decided in the order in which it is entered on the docket to which it is assigned.

(c) *Advancement on the docket—(1) Grounds for advancement.* A case may be advanced on the docket to which it is assigned on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant

is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. “Other sufficient cause” shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case, administrative necessity, or the advanced age of the appellant. For purposes of this Rule, “advanced age” is defined as 75 or more years of age. This paragraph does not require the Board to advance a case on the docket in the absence of a motion of a party to the case or the party’s representative.

(2) *Requirements for motions.* Motions for advancement on the docket must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (*e.g.*, a veteran’s survivor, a guardian, a substitute appellant, or a fiduciary appointed to receive VA benefits on an individual’s behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with the Board of Veterans’ Appeals, P.O. Box 27063, Washington, DC 20038.

(3) *Disposition of motions.* If a motion is received prior to the assignment of the case to an individual Member or panel of Members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board’s decision when rendered.

(d) *Consideration of appeals remanded by the United States Court of Appeals for Veterans Claims.* A case remanded by the United States Court of Appeals for Veterans Claims for appropriate action will be treated expeditiously by the Board without regard to its place on the Board’s docket.

(Authority: 38 U.S.C. 7112; Sec. 302,103–446; 108 Stat. 4645)

(e) *Case remanded to correct duty to assist error and new Notice of Disagreement filed after readjudication.* A case will not be returned to the Board following the agency of original jurisdiction’s re-

adjudication of an appeal previously remanded by the Board pursuant to Rule 802, paragraph (c) (§20.802(c)), unless the claimant files a new Notice of Disagreement. Such cases will be docketed in the order in which the most recent Notice of Disagreement was received.

(f) *Cases involving substitution.* A case returned to the Board following the grant of a substitution request or pursuant to an appeal of a denial of a substitution request assumes the same place on the docket held by the deceased appellant at the time of his or her death. If the deceased appellant’s case was advanced on the docket prior to his or her death pursuant to paragraph (c) of this section, the substitute will receive the benefit of the advanced placement.

(Authority: 38 U.S.C. 5121A)

(g) *Postponement to provide hearing.* Any other provision of this Rule notwithstanding, a case may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(Authority: 38 U.S.C. 7105, 7107)

[84 FR 188, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§ 20.801 Rule 801. The decision.

(a) *General.* Decisions of the Board will be based on a de novo review of the evidence of record at the time of the agency of original jurisdiction decision on the issue or issues on appeal, and any additional evidence submitted pursuant to Rules 302 and 303 (§§20.302 and 20.303). Any findings favorable to the claimant as identified by the agency of original jurisdiction in notification of a decision or in a prior Board decision on an issue on appeal are binding on all agency of original jurisdiction and Board of Veterans’ Appeals adjudicators, unless rebutted by evidence that identifies a clear and unmistakable error in the favorable finding. For purposes of this section, findings means conclusions on questions of fact and application of law to facts made by an adjudicator concerning the issue under review.

(b) *Content.* The decision of the Board will be in writing and will set forth

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specifically the issue or issues under appellate consideration. Except with respect to appeals which are dismissed because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include:

(1) Findings of fact and conclusions of law on all material issues of fact and law presented on the record;

(2) The reasons or bases for those findings and conclusions;

(3) A general statement reflecting whether any evidence was received at a time when not permitted under subpart D, and informing the appellant that any such evidence was not considered by the Board and of the options available to have that evidence reviewed by the Department of Veterans Affairs; and

(4) An order granting or denying the benefit or benefits sought on appeal, dismissing the appeal, or remanding the issue or issues as described in Rule 802 (§ 20.802).

(c) *Panel decision.* A decision by a panel of Members will be by a majority vote of the panel Members.

(Authority: 38 U.S.C. 7104(d))

[84 FR 188, Jan. 18, 2019]

§ 20.802 Rule 802. Remand for correction of error.

(a) *Remand.* Unless the issue or issues can be granted in full, the Board shall remand the appeal to the agency of original jurisdiction for correction of an error on the part of the agency of original jurisdiction to satisfy its duties under 38 U.S.C. 5103A, if the error occurred prior to the date of the agency of original jurisdiction decision on appeal. The Board may remand for correction of any other error by the agency of original jurisdiction in satisfying a regulatory or statutory duty, if correction of the error would have a reasonable possibility of aiding in substantiating the appellant's claim. The remand must specify the action to be taken by the agency of original jurisdiction.

(b) *Advisory Medical Opinion.* If the Board determines that an error as described in paragraph (a) of this section may only be corrected by obtaining an advisory medical opinion from a med-

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ical expert who is not an employee of the Department of Veterans Affairs, the Board shall remand the case to the agency of original jurisdiction to obtain such an opinion, specifying the questions to be posed to the independent medical expert providing the advisory medical opinion.

(c) *Action by agency of original jurisdiction after receipt of remand.* After correction of any error identified in the Board's remand, the agency of original jurisdiction must readjudicate the claim and provide notice of the decision under 38 U.S.C. 5104, to include notice under 38 U.S.C. 5104C of a claimant's options for further review of the agency of original jurisdiction's decision. The agency of original jurisdiction must provide for the expeditious treatment of any claim that is remanded by the Board.

(Authority: 38 U.S.C. 5103A, 5109, 5109B, 7102, 7104(a), 7105)

[84 FR 188, Jan. 18, 2019]

§ 20.803 Rule 803. Content of Board decision, remand, or order in simultaneously contested claims.

The content of the Board's decision, remand, or order in appeals involving a simultaneously contested claim will be limited to information that directly affects the issues involved in the contested claim. Appellate issues that do not involve all of the contesting parties will be addressed in one or more separate written decisions, remands, or orders that will be furnished only to the appellants concerned and their representatives, if any.

(Authority: 5 U.S.C. 552a(b), 38 U.S.C. 5701(a))

[84 FR 188, Jan. 18, 2019]

§ 20.804 Rule 804. Opinions of the General Counsel.

(a) The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(b) *Filing of requests for the procurement of opinions.* The appellant or representative may request that the Board obtain an opinion under this section. Such request must be in writing and will be granted upon a showing of good cause, such as the identification of a

complex or controversial legal issue involved in the appeal which warrants such an opinion.

(c) *Notification of evidence to be considered by the Board and opportunity for response.* If the Board requests an opinion pursuant to this section, it will notify the appellant and his or her representative, if any. When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant's representative, if any. A period of 60 days from the date the Board furnishes a copy of the opinion will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes a copy will be presumed to be the same as the date of the letter or memorandum that accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(d) For purposes of this section, the term "the Board" includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of the Board before whom a case is pending.

(Authority: 38 U.S.C. 5107(a), 7102(c), 7104(a), 7104(c))

[84 FR 188, Jan. 18, 2019]

§§ 20.805–20.899 [Reserved]

Subpart J—Action by the Board in Legacy Appeals

§ 20.900 Rule 900. Applicability.

The provisions in this subpart apply to Board decisions and remands rendered in legacy appeals, as defined in § 19.2 of this chapter.

(Authority: Sec. 2.115–55; 131 Stat. 1105)

[84 FR 190, Jan. 18, 2019]

§ 20.901 Rule 901. Submission of additional evidence after initiation of appeal.

Subject to the limitations set forth in Rule 1304 (§ 20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal. The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter

to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 5902, 5903, 5904; 38 U.S.C. 5904, 7105(d)(1) (2016))

[57 FR 4109, Feb. 3, 1992, as amended at 73 FR 29879, May 22, 2008. Redesignated and amended at 84 FR 188, 190, Jan. 18, 2019; 84 FR 4337, Feb. 15, 2019]

§ 20.902 Rule 902. Order of consideration of appeals.

(a) *Docketing of appeals.* Applications for review on appeal are docketed in the order in which they are received.

(1) A case returned to the Board following action pursuant to a remand assumes its original place on the docket.

(2) A case returned to the Board following the grant of a substitution request or pursuant to an appeal of a denial of a substitution request assumes the same place on the docket held by the deceased appellant at the time of his or her death. Pursuant to paragraph (c) of this section, if the deceased appellant's case was advanced on the docket prior to his or her death, the substitute will receive the benefit of the advanced placement.

(b) *Appeals considered in docket order.* Except as otherwise provided in this Rule, appeals are considered in the order in which they are entered on the docket.

(c) *Advancement on the docket—(1) Grounds for advancement.* A case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. "Other sufficient cause" shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case, administrative necessity, or the advanced age of the appellant. For purposes of this Rule, "advanced age" is defined as 75 or more years of age. This paragraph does not require the Board to advance a case on the docket in the absence of a motion of a party to the case or the party's representative.

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(2) *Requirements for motions.* Motions for advancement on the docket must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, a substitute appellant, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(3) *Disposition of motions.* If a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

(d) *Consideration of appeals remanded by the United States Court of Appeals for Veterans Claims.* A case remanded by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action will be treated expeditiously by the Board without regard to its place on the Board's docket.

(Authority: Sec. 302, Pub. L. 103-446; 108 Stat. 4645)

(e) *Postponement to provide hearing.* Any other provision of this Rule notwithstanding, a case may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(Authority: 38 U.S.C. 5121A, 7107; 38 U.S.C. 7107 (2016))

[57 FR 4109, Feb. 3, 1992, as amended at 60 FR 51923, Oct. 4, 1995; 61 FR 20453, May 7, 1996; 65 FR 14472, Mar. 17, 2000; 68 FR 53683, Sept. 12, 2003; 79 FR 52984, Sept. 5, 2014; 81 FR 32650, May 24, 2016. Redesignated and amended at 84 FR 190, Jan. 18, 2019]

§ 20.903 Rule 903. The decision.

(a) *Decisions based on entire record.* The appellant will not be presumed to be in agreement with any statement of

fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 7104(a), 7105(d)(4))

(b) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the benefit or benefits sought on appeal or dismissing the appeal.

(c) A decision by a panel of Members will be by a majority vote of the panel Members.

(Authority: 38 U.S.C. 7104(d) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

§ 20.904 Rule 904. Remand or referral for further action.

(a) *Remand.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Veterans Law Judge or panel of Veterans Law Judges shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(b) *Referral.* The Board shall refer to the agency of original jurisdiction for appropriate consideration and handling in the first instance all claims reasonably raised by the record that have not been initially adjudicated by the agency of original jurisdiction, except for claims over which the Board has original jurisdiction.

(c) *Remand for a Statement of the Case.* In cases before the Board in which a claimant has timely filed a Notice of

Disagreement with a determination of the agency of original jurisdiction on a claim, but the record reflects that the agency of original jurisdiction has not subsequently granted the claim in full and has not furnished the claimant with a Statement of the Case, the Board shall remand the claim to the agency of original jurisdiction with instructions to prepare and issue a Statement of the Case in accordance with the provisions of part 19, subpart B of this chapter. A remand for a Statement of the Case is not required if the claimant, consistent with the withdrawal requirements of §19.55 of this chapter, withdraws the Notice of Disagreement.

(d) *Exceptions.* A remand or referral to the agency of original jurisdiction is not necessary for any of the following purposes:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Considering law not already considered by the agency of original jurisdiction, including, but not limited to, statutes, regulations, and court decisions;

(3) Reviewing additional evidence received by the Board, if, pursuant to Rule 1305 (§20.1305(c) of this part), the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal;

(4) Requesting an opinion under Rule 906 (§20.906 of this part);

(5) Supplementing the record with a recognized medical treatise; or

(6) Considering a matter over which the Board has original jurisdiction.

(Authority: 38 U.S.C. 7102, 7103(c); 38 U.S.C. 7104(a), 7105 (2016)).

[67 FR 3104, Jan. 23, 2002, as amended at 69 FR 53808, Sept. 3, 2004; 76 FR 17547, Mar. 30, 2011. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019; 84 FR 34788, July 19, 2019]

§ 20.905 Rule 905. Content of Board decision, remand, or order in simultaneously contested claims.

The content of the Board's decision, remand, or order in appeals involving a simultaneously contested claim will be limited to information that directly affects the issues involved in the contested claim. Appellate issues that do not involve all of the contesting parties will be addressed in one or more separate written decisions, remands, or orders that will be furnished only to the appellants concerned and their representatives, if any.

(Authority: 5 U.S.C. 552a(b), 38 U.S.C. 5701(a))

[61 FR 68666, Dec. 30, 1996. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

§ 20.906 Rule 906. Medical opinions and opinions of the General Counsel.

(a) *Opinion from the Veterans Health Administration.* The Board may obtain a medical opinion from an appropriate health care professional in the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 5103A(d), 7109)

(b) *Joint Pathology Center opinions.* The Board may refer pathologic material to the Joint Pathology Center and request an opinion based on that material.

(Authority: 38 U.S.C. 7109(a))

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(Authority: 38 U.S.C. 7104(c))

(d) *Independent medical expert opinions.* When, in the judgment of the Board, additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of the

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Department of Veterans Affairs. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics, or medical institutions with which arrangements for such opinions have been made by the Secretary of Veterans Affairs. An appropriate official of the institution will select the individual expert, or experts, to give an opinion.

(Authority: 38 U.S.C. 7109)

(e) For purposes of this section, the term “the Board” includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of the Board before whom a case is pending.

(Authority: 38 U.S.C. 5107(a), 7104(c), 7109)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20453, May 7, 1996; 66 FR 38159, July 23, 2001; 69 FR 19937, Apr. 15, 2004. Redesignated and amended at 84 FR 188, 190, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§ 20.907 Rule 907. Filing of requests for the procurement of opinions.

The appellant or representative may request that the Board obtain an opinion under Rule 906 (§20.906). The request must be in writing. It will be granted upon a showing of good cause, such as the identification of a complex or controversial medical or legal issue involved in the appeal which warrants such an opinion.

(Authority: 38 U.S.C. 5107(a), 7102(c), 7104(c), 7109)

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 188, 190, Jan. 18, 2019]

§ 20.908 Rule 908. Notification of evidence to be considered by the Board and opportunity for response.

(a) *If the Board obtains a legal or medical opinion.* If the Board requests an opinion pursuant to Rule 906 (§20.906), the Board will notify the appellant and his or her representative, if any. When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant’s representative, if any. A period of 60 days from the date the Board furnishes a copy of the opinion will be allowed for response, which may in-

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clude the submission of relevant evidence or argument. The date the Board furnishes a copy will be presumed to be the same as the date of the letter or memorandum that accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(b) *If the Board supplements the record with a recognized medical treatise—*(1) *General.* If, pursuant to Rule 904(d)(5) (§20.904(d)(5)), the Board supplements the record with a recognized medical treatise, the Board will notify the appellant and his or her representative, if any, that the Board will consider such recognized medical treatise in the adjudication of the appeal. The notice from the Board will contain a copy of the relevant portions of the recognized medical treatise. The appellant will be given 60 days after the date of the notice described in this section to file a response, which may include the submission of relevant evidence or argument. The date the Board gives the notice will be presumed to be the same as the date of the notice letter for purposes of determining whether a response was timely filed.

(2) *Exception.* The notice described in paragraph (b)(1) of this section is not required if the Board uses a recognized medical treatise or medical dictionary for the limited purpose of defining a medical term and that definition is not material to the Board’s disposition of the appeal.

(Authority: 38 U.S.C. 7104(a), 7109(c)).

[67 FR 3105, Jan. 23, 2002, as amended at 69 FR 53808, Sept. 3, 2004; 76 FR 17548, Mar. 30, 2011. Redesignated and amended at 84 FR 177, 190, Jan. 18, 2019]

§§ 20.909–20.999 [Reserved]

Subpart K—Vacatur and Reconsideration

§ 20.1000 Rule 1000. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans’ Appeals at any time upon request of the appellant or his or her representative, or on the Board’s own motion, on the following grounds:

(a) *Denial of due process.* Examples of circumstances in which denial of due process of law will be conceded are:

(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans' Appeals personnel,

(2) When there was a prejudicial failure to afford the appellant a personal hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.), and

(3) For a legacy appeal, as defined in §19.2 of this chapter, when a Statement of the Case or required Supplemental Statement of the Case was not provided.

(b) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

(Authority: 38 U.S.C. 7104(a))

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 177, 191, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

§ 20.1001 Rule 1001. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans' Appeals on motion by the appellant or his or her representative or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new evidence in the form of relevant records or reports of the service department concerned; or

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant.

(Authority: 38 U.S.C. 7103, 7104)

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 190, 191, Jan. 18, 2019]

§ 20.1002 Rule 1002. Filing and disposition of motion for reconsideration.

(a) *Application requirements.* A motion for Reconsideration must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision, or decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans' Appeals decision, or decisions, involved more than one issue on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a prior Board of Veterans' Appeals decision may be filed at any time. Such motions must be filed at the following address: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(c) *Disposition.* The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60 days from the date of mailing of the letter of notification to present additional arguments or evidence. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman

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will assign a Reconsideration panel in accordance with Rule 1004 (§ 20.1004).

(Authority: 38 U.S.C. 7103, 7108)

[57 FR 4109, Feb. 3, 1992, as amended at 81 FR 32650, May 24, 2016. Redesignated and amended at 84 FR 190, 191, Jan. 18, 2019]

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if the issue under reconsideration was considered on a docket for cases that may include a hearing, and an appellant requests a hearing before the Board. The hearing will be held by a Member or Members assigned to the reconsideration panel. A hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Requests for appearances by representatives alone to personally present argument to a Member or panel of Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member.

(Authority: 38 U.S.C. 7102, 7103, 7105(a))

[61 FR 20453, May 7, 1996, as amended at 84 FR 191, Jan. 18, 2019]

§ 20.1004 Rule 1004. Reconsideration panel.

(a) *Assignment of Members.* When a motion for reconsideration is allowed, the Chairman will assign a panel of three or more Members of the Board, which may include the Chairman, to conduct the reconsideration.

(b) *Number of Members constituting a reconsideration panel.* In the case of a matter originally decided by a single Member of the Board, the case shall be referred to a panel of three Members of the Board. In the case of a matter originally decided by a panel of Members of the Board, the case shall be referred to an enlarged panel, consisting of three or more Members than the original panel. In order to obtain a majority opinion, the number of Members assigned to a reconsideration panel may be increased in successive increments of three.

(c) *Members included in the reconsideration panel.* The reconsideration panel

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may not include any Member who participated in the decision that is being reconsidered. Additional Members will be assigned in accordance with paragraph (b) of this section.

(Authority: 38 U.S.C. 7102, 7103)

[61 FR 20449, May 7, 1996. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 4337, Feb. 15, 2019]

§§ 20.1005–20.1099 [Reserved]

Subpart L—Finality

§ 20.1100 Rule 1100. Finality of decisions of the Board.

(a) *General.* All decisions of the Board will be stamped with the date of mailing on the face of the decision. Unless the Chairman of the Board orders reconsideration, and with the exception of matters listed in paragraph (b) of this section, all Board decisions are final on the date stamped on the face of the decision. With the exception of matters listed in paragraph (b) of this section, the decision rendered by the reconsideration Panel in an appeal in which the Chairman has ordered reconsideration is final.

(b) *Exceptions.* Final Board decisions are not subject to review except as provided in 38 U.S.C. 1975 and 1984 and 38 U.S.C. chapters 37 and 72. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(Authority: 38 U.S.C. 511(a), 7103, 7104(a))

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20453, May 7, 1996]

§ 20.1101 Rule 1101. [Reserved]

§ 20.1102 Rule 1102. Harmless error.

An error or defect in any decision by the Board of Veterans' Appeals which does not affect the merits of the issue or substantive rights of the appellant will be considered harmless and not a basis for vacating or reversing such decision.

(Authority: 38 U.S.C. 7103)

Department of Veterans Affairs

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§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where issue is not appealed.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in §19.52 of this chapter. If no Notice of Disagreement is filed as prescribed in subpart C of this part, the claim shall not thereafter be readjudicated or allowed, except as provided by 38 U.S.C. 5104B or 5108, or by regulation.

[84 FR 191, Jan. 18, 2019]

§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans' Appeals, such determination is subsumed by the final appellate decision.

(Authority: 38 U.S.C. 7104(a))

§ 20.1105 Rule 1105. Supplemental claim after promulgation of appellate decision.

(a) After an appellate decision has been promulgated on a claim, a claimant may file a supplemental claim with the agency of original jurisdiction by submitting the prescribed form with new and relevant evidence related to the previously adjudicated claim as set forth in §3.2601 of this chapter, except in cases involving simultaneously contested claims under Subpart E of this part.

(Authority: 38 U.S.C. 5108, 7104)

(b) *Legacy appeals pending on the effective date.* For legacy appeals as defined in §19.2 of this chapter, where prior to the effective date described in Rule 4 (§20.4), an appellant requested that a claim be reopened after an appellate decision has been promulgated and submitted evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a basis for allowing the

claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 5108, 7104 (2016))

[84 FR 191, Jan. 18, 2019]

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1311(a)(2) and 1318, and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime. Cases in which a person substitutes for a deceased veteran under 38 U.S.C. 5121A are not claims for death benefits and are not subject to this section. Cases in which a person substitutes for a deceased death benefits claimant under 38 U.S.C. 5121A are claims for death benefits subject to this section.

(Authority: 38 U.S.C. 5121A, 7104(b)).

[79 FR 52984, Sept. 5, 2014]

§§ 20.1107–20.1199 [Reserved]

Subpart M—Privacy Act

§ 20.1200 Rule 1200. Privacy Act request—appeal pending.

When a Privacy Act request is filed under §1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed prior to appellate action on that individual's appeal.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 7107)

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1001 through 1004 (§§20.1001–20.1004). The

Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of §1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1001 through 1004 (§§20.1001–20.1004).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 7103, 7108)

[57 FR 4109, Feb. 3, 1992, as amended at 84 FR 191, Jan. 18, 2019]

§§ 20.1202–20.1299 [Reserved]

Subpart N—Miscellaneous

CROSS REFERENCE: In cases involving access to patient information relating to a Department of Veterans Affairs program for, or the treatment of, drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.1300 Rule 1300. Removal of Board records.

No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.

(Authority: 38 U.S.C. 5701)

[61 FR 29028, June 7, 1996]

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board for the full text of appellate decisions to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 5701, that information will be removed from the decision and the remaining text will be furnished to the appellant. A full-text appellate deci-

sion will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(b) *Legacy appeals.* For legacy appeals as defined in §19.2 of this chapter, the policy described in paragraph (a) of this section is also applicable to Statements of the Case and supplemental Statements of the Case.

(Authority: 38 U.S.C. 7105(d)(2))

(c) *Public availability of Board decisions—*(1) *Decisions issued on or after January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals on or after January 1, 1992, are electronically available for public inspection and copying on the Board's website. All personal identifiers are redacted from the decisions prior to publication. Specific decisions may be identified by a word and/or topic search, or by the Board docket number. Board decisions will continue to be provided in a widely-used format as future advances in technology occur.

(2) *Decisions issued prior to January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals prior to January 1, 1992, have been indexed to facilitate access to the contents of the decisions (BVA Index I-01-1). The index, which was published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Board of Veterans' Appeals in Washington, DC. Information on obtaining a microfiche copy of the index is also available from the Board. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it. The manner in which the locator number is written depends upon the age of the decision. Decisions archived prior to late 1989 have a number such as 82-07-0001. Decisions archived at a later date have a number such as BVA-90-12345. This number must be used when requesting a copy of that decision. These requests must be

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directed to the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(Authority: 5 U.S.C. 552(a)(2), 38 U.S.C. 501(a))
[57 FR 4109, Feb. 3, 1992, as amended at 71 FR 18009, Apr. 10, 2006; 81 FR 32650, May 24, 2016; 84 FR 191, Jan. 18, 2019]

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal before the Board.

(a) *General.* An appeal pending before the Board of Veterans' Appeals when the appellant dies will be dismissed without prejudice. A person eligible for substitution under § 3.1010 of this chapter may file with the agency of original jurisdiction a request to substitute for the deceased appellant. If the agency of original jurisdiction grants the request to substitute, the case will assume its original place on the docket pursuant to Rule 800, paragraph (f) (§ 20.800(f)) or, for legacy appeals, Rule 902, paragraph (a)(2) (§ 20.902(a)(2)). If the agency of original jurisdiction denies the request to substitute and the person requesting to substitute appeals that decision to the Board, the appeal regarding eligibility to substitute will assume the same place on the docket as the original claim pursuant to Rule 800, paragraph (f) (§ 20.800(f)) or, for legacy appeals, Rule 902, paragraph (a)(2) (§ 20.902(a)(2)).

(b) *Exception.* (1) If a hearing request is pending pursuant to Rule 704 (§ 20.704) when the appellant dies, the agency of original jurisdiction may take action on a request to substitute without regard to whether the pending appeal has been dismissed by the Board, if the request is submitted in accordance with § 3.1010 of this chapter.

(2) If the agency of original jurisdiction grants the request to substitute, the Board of Veterans' Appeals can then take the testimony of the substitute at a hearing held pursuant to Rules 700 through 717 (§§ 20.700 through 20.717). If the substitute desires representation at the hearing, he or she must appoint a representative prior to the hearing pursuant to § 14.631(g) of this chapter.

(Authority: 38 U.S.C. 5121A, 7104(a)).

[79 FR 52984, Sept. 5, 2014, as amended at 84 FR 191, Jan. 18, 2019]

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Although the Board strives for consistency in issuing its decisions, previously issued Board decisions will be considered binding only with regard to the specific case decided. Prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, but each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

(Authority: 38 U.S.C. 7104(a))

§ 20.1304 Rule 1304. Request for a change in representation.

(a) *Request for a change in representation within 90 days following Notice of Disagreement.* An appellant and his or her representative, if any, will be granted a period of 90 days following receipt of a Notice of Disagreement, or up to and including the date the appellate decision is promulgated by the Board, whichever comes first, during which they may submit a request for a change in representation.

(b) *Subsequent request for a change in representation.* Following the expiration of the period described in paragraph (a) of this section, the Board will not accept a request for a change in representation except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; and withdrawal of an individual representative. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (*e.g.*, a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf) or the name of any substitute claimant or appellant; the applicable Department of Veterans Affairs file number; and an explanation of

why the request for a change in representation could not be accomplished in a timely manner. Such motions must be filed at the following address: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation will be referred to the agency of original jurisdiction for association with the appellant's file for any pending or subsequently received claims upon completion of the Board's action on the pending appeal without action by the Board concerning the request.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation will be honored.

(Authority: 38 U.S.C. 5902, 5903, 5904, 7105, 7105A)

[84 FR 191, Jan. 18, 2019]

§ 20.1305 Rule 1305. Procedures for legacy appellants to request a change in representation, personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant in a legacy appeal, as defined in § 19.2 of this chapter, and his or her representative, if any, will be granted a period of 90 days following the mailing of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board, or up to and including the date the appellate decision is promulgated by the Board, whichever comes first, during which they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence should be submitted directly to the Board and not to the agency of original jurisdiction. If any such request or additional evidence is submitted to the agency of original jurisdiction instead of to the Board, the agency of original jurisdiction must

forward it to the Board in accordance with § 19.37(b) of this chapter. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (d) of this section if a simultaneously contested claim is involved.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence—(1) General rule.* Subject to the exception in paragraph (b)(2) of this section, following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf) or the name of any substitute claimant or appellant; the applicable Department of Veterans Affairs file number; and an explanation of why the request for a

change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Depending upon the ruling on the motion, action will be taken as follows:

(i) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(ii) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (d) of this section if a simultaneously contested claim is involved.

(2) *Exception.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to a notice described in § 20.908.

(c) *Consideration of additional evidence by the Board or by the agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, or is submitted by the appellant

or representative in response to a § 20.908 of this part, notification, as well as any such evidence referred to the Board by the agency of original jurisdiction under § 19.37(b) of this chapter, must be referred to the agency of original jurisdiction for review, unless this procedural right is waived by the appellant or representative, or unless the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal without such referral. Such a waiver must be in writing or, if a hearing on appeal is conducted, the waiver must be formally and clearly entered on the record orally at the time of the hearing. Evidence is not pertinent if it does not relate to or have a bearing on the appellate issue or issues.

(d) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence which directly affects payment, or potential payment, of the benefit sought is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. For matters over which the Board does not have original jurisdiction, a waiver of initial agency of original jurisdiction consideration of pertinent additional evidence received by the Board must be obtained from each claimant in accordance with paragraph (c) of this section. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.

(e) *Relationship to proceedings before the General Counsel to cancel accreditation or to review the reasonableness of fees and expenses.* The provisions of paragraphs (a), (b), and (d) of this section allowing appellants to submit additional evidence do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee

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agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 5121A, 5902, 5903; 38 U.S.C. 5904, 7104, 7105, 7105A (2016))

[57 FR 4109, Feb. 3, 1992, as amended at 60 FR 25851, May 15, 1995; 61 FR 20453, May 7, 1996; 67 FR 3105, Jan. 23, 2002; 69 FR 53808, Sept. 3, 2004; 73 FR 29880, May 22, 2008; 76 FR 17548, Mar. 30, 2011; 79 FR 52984, Sept. 5, 2014; 81 FR 32650, May 24, 2016. Redesignated and amended at 84 FR 191, 192, Jan. 18, 2019]

§§ 20.1306–20.1399 [Reserved]

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

SOURCE: 64 FR 2139, Jan. 13, 1999, unless otherwise noted.

§ 20.1400 Rule 1400. Motions to revise Board decisions.

(a) Review to determine whether clear and unmistakable error exists in a final Board decision may be initiated by the Board, on its own motion, or by a party to that decision (as the term “party” is defined in Rule 1401(b) (§20.1401(b) of this part) in accordance with Rule 1404 (§20.1404 of this part).

(b) All final Board decisions are subject to revision under this subpart except:

(1) Decisions on issues which have been appealed to and decided by a court of competent jurisdiction; and

(2) Decisions on issues which have subsequently been decided by a court of competent jurisdiction.

(Authority: 38 U.S.C. 501(a), 7111)

[64 FR 2139, Jan. 13, 1999, as amended at 64 FR 73414, Dec. 30, 1999]

§ 20.1401 Rule 1401. Definitions.

(a) *Issue.* Unless otherwise specified, the term “issue” in this subpart means a matter upon which the Board made a final decision (other than a decision under this subpart). As used in the preceding sentence, a “final decision” is one which was appealable under Chapter 72 of title 38, United States Code, or which would have been so appealable if such provision had been in effect at the time of the decision.

(b) *Party.* As used in this subpart, the term “party” means any party to the

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proceeding before the Board that resulted in the final Board decision which is the subject of a motion under this subpart.

(Authority: 38 U.S.C. 501(a), 7104(a))

[57 FR 4109, Feb. 3, 1992, as amended at 84 FR 192, Jan. 18, 2019]

§ 20.1402 Rule 1402. Inapplicability of other rules.

Motions filed under this subpart are not appeals and, except as otherwise provided, are not subject to the provisions of part 19 of this title or this part 20 which relate to the processing and disposition of appeals.

(Authority: 38 U.S.C. 501(a))

§ 20.1403 Rule 1403. What constitutes clear and unmistakable error; what does not.

(a) *General.* Clear and unmistakable error is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. Generally, either the correct facts, as they were known at the time, were not before the Board, or the statutory and regulatory provisions extant at the time were incorrectly applied.

(b) *Record to be reviewed—(1) General.* Review for clear and unmistakable error in a prior Board decision must be based on the record and the law that existed when that decision was made.

(2) *Special rule for Board decisions on legacy appeals issued on or after July 21, 1992.* For a Board decision on a legacy appeal as defined in §19.2 of this chapter issued on or after July 21, 1992, the record that existed when that decision was made includes relevant documents possessed by the Department of Veterans Affairs not later than 90 days before such record was transferred to the Board for review in reaching that decision, provided that the documents could reasonably be expected to be part of the record.

(c) *Errors that constitute clear and unmistakable error.* To warrant revision of a Board decision on the grounds of clear and unmistakable error, there must have been an error in the Board’s

adjudication of the appeal which, had it not been made, would have manifestly changed the outcome when it was made. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable.

(d) *Examples of situations that are not clear and unmistakable error*—(1) *Changed diagnosis.* A new medical diagnosis that “corrects” an earlier diagnosis considered in a Board decision.

(2) *Duty to assist.* The Secretary’s failure to fulfill the duty to assist.

(3) *Evaluation of evidence.* A disagreement as to how the facts were weighed or evaluated.

(e) *Change in interpretation.* Clear and unmistakable error does not include the otherwise correct application of a statute or regulation where, subsequent to the Board decision challenged, there has been a change in the interpretation of the statute or regulation.

(Authority: 38 U.S.C. 501(a), 7111)

[57 FR 4109, Feb. 3, 1992, as amended at 84 FR 192, Jan. 18, 2019]

§ 20.1404 Rule 1404. Filing and pleading requirements; withdrawal.

(a) *General.* A motion for revision of a decision based on clear and unmistakable error must be in writing, and must be signed by the moving party or that party’s representative. The motion must include the name of the veteran; the name of the moving party if other than the veteran; the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans’ Appeals decision to which the motion relates. If the applicable decision involved more than one issue on appeal, the motion must identify the specific issue, or issues, to which the motion pertains. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refile under this subpart.

(b) *Specific allegations required.* The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow

regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refile under this subpart.

(c) *Filing.* A motion for revision of a decision based on clear and unmistakable error may be filed at any time. Such motions should be filed at the following address: Board of Veterans’ Appeals, P.O. Box 27063, Washington, DC 20038.

(d) *Requests not filed at the Board.* A request for revision transmitted to the Board by the Secretary pursuant to 38 U.S.C. 7111(f) (relating to requests for revision filed with the Secretary other than at the Board) shall be treated as if a motion had been filed pursuant to paragraph (c) of this section.

(e) *Motions for reconsideration.* A motion for reconsideration, as described in subpart K of this part, whenever filed, will not be considered a motion under this subpart.

(f) *Withdrawal.* A motion under this subpart may be withdrawn at any time before the Board promulgates a decision on the motion. Such withdrawal shall be in writing, shall be filed at the address listed in paragraph (c) of this section, and shall be signed by the moving party or by such party’s representative. If such a writing is timely received, the motion shall be dismissed without prejudice to refile under this subpart.

(Authority: 38 U.S.C. 501(a), 7111)

[64 FR 2139, Jan. 13, 1999, as amended at 66 FR 35903, July 10, 2001; 81 FR 32650, May 24, 2016; 84 FR 192, Jan. 18, 2019]

§ 20.1405 Rule 1405. Disposition.

(a) *Docketing and assignment; notification of representative*—(1) *General.* Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 20.106 (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member

who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(2) *Advancement on the docket.* A motion may be advanced on the docket subject to the same substantive and procedural requirements as those applicable to an appeal under Rule 800, paragraph (c) (§20.800(c)) or, for legacy appeals, Rule 902, paragraph (c) (§20.902(c)).

(3) *Notification of representative.* When the Board receives a motion under this subpart from an individual whose claims file indicates that he or she is represented, the Board shall provide a copy of the motion to the representative before assigning the motion to a Member or panel. Within 30 days after the date on which the Board provides a copy of the motion to the representative, the representative may file a relevant response, including a request to review the claims file prior to filing a further response. Upon request made within the time allowed under this paragraph (a)(2), the Board shall arrange for the representative to have the opportunity to review the claims file, and shall permit the representative a reasonable time after making the file available to file a further response.

(b) *Evidence.* No new evidence will be considered in connection with the disposition of the motion. Material included in the record on the basis of Rule 1403(b)(2) (§20.1403(b)(2) of this part) is not considered new evidence.

(c) *Hearing—(1) Availability.* The Board may, for good cause shown, grant a request for a hearing for the purpose of argument. No testimony or other evidence will be admitted in connection with such a hearing. The determination as to whether good cause has been shown shall be made by the member or panel to whom the motion is assigned.

(2) *Submission of requests.* Requests for such a hearing shall be submitted to the following address: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(d) *Referral to ensure completeness of the record.* Subject to the provisions of paragraph (b) of this section, the Board

may use the various agencies of original jurisdiction to ensure completeness of the record in connection with a motion under this subpart.

(e) *General Counsel opinions.* The Board may secure opinions of the General Counsel in connection with a motion under this subpart. In such cases, the Board will notify the party and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the party's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the party if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(f) *Decision.* The decision of the Board on a motion under this subpart will be in writing. The decision will include separately stated findings of fact and conclusions of law on all material questions of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the motion.

(Authority: 38 U.S.C. 501(a), 7104(d), 7111)

[64 FR 2139, Jan. 13, 1999, as amended at 64 FR 7091, Feb. 12, 1999; 66 FR 37151, July 17, 2001; 68 FR 53682, Sept. 12, 2003; 81 FR 32650, May 24, 2016; 84 FR 192, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§ 20.1406 Rule 1406. Effect of revision; discontinuance or reduction of benefits.

(a) *General.* A decision of the Board that revises a prior Board decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(b) *Discontinuance or reduction of benefits.* Revision of a prior Board decision under this subpart that results in the discontinuance or reduction of benefits is subject to laws and regulations governing the reduction or discontinuance of benefits by reason of erroneous award based solely on administrative error or errors in judgment.

(Authority: 38 U.S.C. 7111(b))

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§ 20.1407 Rule 1407. Motions by the Board.

If the Board undertakes, on its own motion, a review pursuant to this subpart, the party to that decision and that party's representative (if any) will be notified of such motion and provided an adequate summary thereof and, if applicable, outlining any proposed discontinuance or reduction in benefits that would result from revision of the Board's prior decision. They will be allowed a period of 60 days to file a brief or argument in answer. The failure of a party to so respond does not affect the finality of the Board's decision on the motion.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1408 Rule 1408. Special rules for simultaneously contested claims.

In the case of a motion under this subpart to revise a final Board decision in a simultaneously contested claim, as that term is used in Rule 3(1) (§ 20.3(1) of this part), a copy of such motion shall, to the extent practicable, be sent to all other contesting parties. Other parties have a period of 30 days from the date of mailing of the copy of the motion to file a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy. Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 501(a))

[57 FR 4109, Feb. 3, 1992, as amended at 84 FR 193, Jan. 18, 2019]

§ 20.1409 Rule 1409. Finality and appeal.

(a) A decision on a motion filed by a party or initiated by the Board pursuant to this subpart will be stamped with the date of mailing on the face of the decision, and is final on such date. The party and his or her representative, if any, will be provided with copies of the decision.

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a)(§ 20.1404(a) of this part), Rule 1404(b)(§ 20.1404(b)), or Rule 1404(f)(§ 20.1404(f)), or a referral under

Rule 1405, paragraph (d) (§ 20.1405(d) of this part) is not a final decision of the Board.

(c) Once there is a final decision on a motion under this subpart relating to a prior Board decision on an issue, that prior Board decision on that issue is no longer subject to revision on the grounds of clear and unmistakable error. Subsequent motions relating to that prior Board decision on that issue shall be dismissed with prejudice.

(d) Chapter 72 of title 38, United States Code (relating to judicial review), applies with respect to final decisions on motions filed by a party or initiated by the Board pursuant to this subpart.

(Authority: 38 U.S.C. 501(a); Pub. L. 105-111)

[64 FR 2139, Jan. 13, 1999, as amended at 66 FR 35903, July 10, 2001; 84 FR 193, Jan. 18, 2019]

§ 20.1410 Rule 1410. Stays pending court action.

The Board will stay its consideration of a motion under this subpart upon receiving notice that the Board decision that is the subject of the motion has been appealed to a court of competent jurisdiction until the appeal has been concluded or the court has issued an order permitting, or directing, the Board to proceed with the motion.

(Authority: 38 U.S.C. 501(a))

§ 20.1411 Rule 1411. Relationship to other statutes.

(a) The "benefit of the doubt" rule of 38 U.S.C. 5107(b) does not apply to the Board's decision, on a motion under this subpart, as to whether there was clear and unmistakable error in a prior Board decision.

(b) For legacy appeals as defined in § 19.2 of this chapter, a motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (prior to the effective date described in Rule 4, paragraph (a) (§ 20.4(a) of this part) (relating to reopening claims on the grounds of new and material evidence).

(c) A motion under this subpart is not an application for benefits subject to any duty associated with 38 U.S.C. 5103(a) (relating to applications for benefits).

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(d) A motion under this subpart is not a claim for benefits subject to the requirements and duties associated with 38 U.S.C. 5103A (imposing a duty to assist).

(Authority: 38 U.S.C. 501(a))

[57 FR 4109, Feb. 3, 1992, as amended at 84 FR 193, Jan. 18, 2019]

§§ 20.1412–20.1499 [Reserved]

Subpart P [Reserved]

PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

Subpart A—Veteran Readiness and Employment

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