

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2017 AMENDMENT**

Amendment by Pub. L. 115–55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under this section on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115–55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115–55, set out as a note under section 101 of this title, and bracketed note thereunder.

EFFECTIVE DATE

Pub. L. 101–237, title I, §115(b), Dec. 18, 1989, 103 Stat. 2066, provided that: “Section 3004 [now 5104] of title 38, United States Code, as added by subsection (a), shall apply with respect to decisions by the Secretary of Veterans Affairs made after January 31, 1990.”

RULE OF CONSTRUCTION

Amendment by Pub. L. 117–168 not to be construed to apply subsec. (a) of this section to decisions of the Board of Veterans' Appeals under chapter 71 of this title, see section 807(b) of Pub. L. 117–168, set out as a note under section 5100 of this title.

§ 5104A. Binding nature of favorable findings

Any finding favorable to the claimant as described in section 5104(b)(4) of this title shall be binding on all subsequent adjudicators within the Department, unless clear and convincing evidence is shown to the contrary to rebut such favorable finding.

(Added Pub. L. 115–55, §2(f)(1), Aug. 23, 2017, 131 Stat. 1107.)

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Section applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115–55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115–55, set out as an Effective Date of 2017 Amendment note under section 101 of this title, and bracketed note thereunder.

§ 5104B. Higher-level review by the agency of original jurisdiction

(a) **IN GENERAL.**—(1) A claimant may request a review of the decision of the agency of original jurisdiction by a higher-level adjudicator within the agency of original jurisdiction.

(2) The Secretary shall approve each request for review under paragraph (1).

(b) **TIME AND MANNER OF REQUEST.**—(1) A request for higher-level review by the agency of original jurisdiction shall be—

(A) in writing in such form as the Secretary may prescribe; and

(B) made within one year of the notice of the agency of original jurisdiction's decision.

(2) Such request may specifically indicate whether such review is requested by a higher-

level adjudicator at the same office within the agency of original jurisdiction or by an adjudicator at a different office of the agency of original jurisdiction. The Secretary shall not deny such request for review by an adjudicator at a different office of the agency of original jurisdiction without good cause.

(c) **DECISION.**—Notice of a higher-level review decision under this section shall be provided to the claimant (and any representative of such claimant) and shall include a general statement—

(1) reflecting whether evidence was not considered pursuant to subsection (d); and

(2) noting the options available to the claimant to have the evidence described in paragraph (1), if any, considered by the Department.

(d) **EVIDENTIARY RECORD FOR REVIEW.**—The evidentiary record before the higher-level adjudicator shall be limited to the evidence of record in the agency of original jurisdiction decision being reviewed.

(e) **DE NOVO REVIEW.**—A review of the decision of the agency of original jurisdiction by a higher-level adjudicator within the agency of original jurisdiction shall be de novo.

(Added Pub. L. 115–55, §2(g)(1), Aug. 23, 2017, 131 Stat. 1107; amended Pub. L. 117–168, title VIII, §807(a)(3), Aug. 10, 2022, 136 Stat. 1806.)

Editorial Notes**AMENDMENTS**

2022—Subsec. (c). Pub. L. 117–168 substituted “to the claimant (and any representative of such claimant)” for “in writing” in introductory provisions.

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RULE OF CONSTRUCTION

Amendment by Pub. L. 117–168 not to be construed to apply section 5104(a) of this title to decisions of the Board of Veterans' Appeals under chapter 71 of this title, see section 807(b) of Pub. L. 117–168, set out as a note under section 5100 of this title.

§ 5104C. Options following decision by agency of original jurisdiction

(a) **WITHIN ONE YEAR OF DECISION.**—(1) Subject to paragraph (2), in any case in which the Secretary renders a decision on a claim, the claimant may take any of the following actions on or before the date that is one year after the date on which the agency of original jurisdiction issues a decision with respect to that claim:

(A) File a request for higher-level review under section 5104B of this title.