

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.

#### 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.

##### 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.

(B) File a supplemental claim under section 5108 of this title.

(C) File a notice of disagreement under section 7105 of this title.

(2)(A) Once a claimant takes an action set forth in paragraph (1), the claimant may not take another action set forth in that paragraph with respect to the same claim or same issue contained within the claim until—

(i) the higher-level review, supplemental claim, or notice of disagreement is adjudicated; or

(ii) the request for higher-level review, supplemental claim, or notice of disagreement is withdrawn.

(B) Nothing in this subsection shall prohibit a claimant from taking any of the actions set forth in paragraph (1) in succession with respect to a claim or an issue contained within the claim.

(C) Nothing in this subsection shall prohibit a claimant from taking different actions set forth

in paragraph (1) with respect to different claims or different issues contained within a claim.

(D) The Secretary may, as the Secretary considers appropriate, develop and implement a policy for claimants who—

(i) take an action under paragraph (1);

(ii) wish to withdraw the action before the higher-level review, supplemental claim, or notice of disagreement is adjudicated; and

(iii) in lieu of such action take a different action under paragraph (1).

(b) **MORE THAN ONE YEAR AFTER DECISION.**—In any case in which the Secretary renders a decision on a claim and more than one year has passed since the date on which the agency of original jurisdiction issues a decision with respect to that claim, the claimant may file a supplemental claim under section 5108 of this title.

(Added Pub. L. 115-55, §2(h)(1), Aug. 23, 2017, 131 Stat. 1108.)

#### 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.

#### § 5105. Joint applications for social security and dependency and indemnity compensation

(a) The Secretary and the Commissioner of Social Security may jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing application for benefits under chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). Such forms shall request information sufficient to constitute an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.).

(b) When an application on any document indicating an intent to apply for survivor benefits is filed with either the Secretary or the Commissioner of Social Security, it shall be deemed to be an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). A copy of each such application filed with either the Secretary or the Commissioner, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary or the Commissioner with such application, and which may be needed by the other official in connection therewith, shall be transmitted by the Secretary or the Commissioner receiving the application to the other official. The preceding sentence shall not prevent the Secretary and the Commissioner of Social Security from requesting the applicant, or any other individual, to furnish such additional information as may be necessary for pur-

poses of chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.), respectively.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1226, §3005; Pub. L. 97-295, §4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-160, title VII, §702(16), Nov. 21, 1983, 97 Stat. 1010; renumbered §5105, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(9), Aug. 6, 1991, 105 Stat. 405; Pub. L. 103-296, title I, §108(k), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 112-154, title V, §503, Aug. 6, 2012, 126 Stat. 1191.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

##### PRIOR PROVISIONS

Prior section 5105 was renumbered section 8305 of this title.

##### AMENDMENTS

2012—Subsec. (a). Pub. L. 112-154, §503(1), substituted “may jointly” for “shall jointly” and “Such forms” for “Each such form”.

Subsec. (b). Pub. L. 112-154, §503(2), substituted “on any document indicating an intent to apply for survivor benefits” for “on such a form”.

1994—Subsec. (a). Pub. L. 103-296, §108(k)(1), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”.

Subsec. (b). Pub. L. 103-296, §108(k), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services” in two places and amended second sentence generally. Prior to amendment, second sentence read as follows: “A copy of each such application filed with either Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by that Secretary with such application, and which may be needed by the other Secretary in connection therewith, shall be transmitted by the Secretary receiving the application to the other Secretary.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3005 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(9)(A)–(C), substituted “(a) The Secretary” for “The Administrator” at the beginning of text and substituted “401 et seq.” for “401 et seq.”; and “in second sentence.

Subsec. (b). Pub. L. 102-83, §4(b)(9)(D)–(J), substituted “(b) When an application on such a form is filed with either the Secretary” for “when an application on such form has been filed with either the Administrator”, “filed with either Secretary” for “filed with the Administrator”, “received by that Secretary” for “received by the Administrator”, “needed by the other Secretary” for “needed by the Secretary”, and “by the Secretary receiving the application to the other Secretary.” for “by the Administrator to the Secretary.”; struck out “and a copy of each such application filed with the Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary with such form, and which may be needed by the Administrator in connection therewith, shall be transmitted by the Secretary to the Administrator.” before “The preceding sentence”, and substituted “the Secretary and the Secretary of Health and Human Services” for “the Secretary and the Administrator”.

1983—Pub. L. 98-160 substituted “title II of the Social Security Act (42 U.S.C. 401 et seq.)” for “subchapter II of chapter 7 of title 42” wherever appearing.