

Subsec. (a)(2). Pub. L. 98-223, §208(d)(2), designated provision relating to authority of the Chairman in the case where a section is composed of fewer than three members as a result of absence, vacancy, or inability of a member to serve as subpar. (A), and in subpar. (A) as so designated, inserted provision authorizing the Chairman to designate an employee of the Veterans' Administration to serve as an acting member of the Board on such section for a period of not to exceed 90 days, and added subpar. (B).

Subsec. (a)(3). Pub. L. 98-223, §208(d)(2), added par. (3).

Subsec. (b). Pub. L. 98-223, §208(d)(3), designated provision relating to the maintenance of a hearing docket and the holding of formal recorded hearings upon which a final determination will be made as subsec. (b).

Pub. L. 98-223, §208(c), struck out “associate” before “member” in two places.

Subsec. (c). Pub. L. 98-223, §208(d)(4), designated provision relating to the section making a determination on any proceeding or motion in connection therewith assigned to the section by the Board and making a report on such determination, which report constitutes its final disposition of the proceeding, as subsec. (c).

Statutory Notes and Related Subsidiaries

FIRST TRAINING

Pub. L. 117-300, §1(b), Dec. 27, 2022, 136 Stat. 4379, provided that: “The Secretary of Veterans Affairs shall ensure that each member of the Board of Veterans’ Appeals is offered the first annual training under section 7102(c) of title 38, United States Code, as amended by subsection (a), by not later than 180 days after the date of the enactment of this Act [Dec. 27, 2022].”

APPLICABILITY OF LIMITATION UNDER SUBSECTION (c)(2)

Pub. L. 117-300, §1(c), Dec. 27, 2022, 136 Stat. 4379, provided that: “The limitation under section 7102(c)(2) of title 38, United States Code, as added by subsection (a), shall apply with respect to the assignment of proceedings on or after the date that is 180 days after the date of the enactment of this Act [Dec. 27, 2022].”

§ 7103. Reconsideration; correction of obvious errors

(a) The decision of the Board determining a matter under section 7102 of this title is final unless the Chairman orders reconsideration of the decision in accordance with subsection (b). Such an order may be made on the Chairman’s initiative or upon motion of the claimant.

(b)(1) Upon the order of the Chairman for reconsideration of the decision in a case, the case shall be referred—

(A) in the case of a matter originally decided by a single member of the Board, to a panel of not less than three members of the Board; or

(B) in the case of a matter originally decided by a panel of members of the Board, to an enlarged panel of the Board.

(2) A panel referred to in paragraph (1) may not include the member, or any member of the panel, that made the decision subject to reconsideration.

(3) A panel reconsidering a case under this subsection shall render its decision after reviewing the entire record before the Board. The decision of the panel shall be made by a majority vote of the members of the panel. The decision of the panel shall constitute the final decision of the Board.

(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, §4003; Pub. L. 100-687, div. A, title II, §202(a), Nov. 18, 1988, 102 Stat. 4110; renumbered §7103, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103-271, §6(a), July 1, 1994, 108 Stat. 741; Pub. L. 115-55, §2(o), Aug. 23, 2017, 131 Stat. 1111.)

Editorial Notes

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115-55 substituted “decided” for “heard” in subpars. (A) and (B).

1994—Pub. L. 103-271 amended section generally. Prior to amendment, text read as follows:

“(a) Decisions by a section of the Board shall be made by a majority of the members of the section. The decision of the section is final unless the Chairman orders reconsideration of the case.

“(b) If the Chairman orders reconsideration in a case, the case shall upon reconsideration be heard by an expanded section of the Board. When a case is heard by an expanded section of the Board after such a motion for reconsideration, the decision of a majority of the members of the expanded section shall constitute the final decision of the Board.

“(c) Notwithstanding subsections (a) and (b) of this section, the Board on its own motion may correct an obvious error in the record.”

1991—Pub. L. 102-40 renumbered section 4003 of this title as this section.

1988—Pub. L. 100-687, in amending section generally, added subsec. (a), struck out former subsec. (a) which provided that determination of section, when unanimous, be final determination of Board, added subsec. (b), struck out former subsec. (b) which provided that when there is disagreement among members of section, concurrence of Chairman with majority of members of section shall constitute final determination of Board, and added subsec. (c).

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 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 a note under section 101 of this title, and bracketed note thereunder.

EFFECTIVE DATE OF 1988 AMENDMENT

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

§ 7104. Jurisdiction of the Board; decisions; notice

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

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board,

the claim may not thereafter be readjudicated and allowed and a claim based upon the same factual basis may not be considered.

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

(d) Each decision of the Board shall include—

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

(2) a general statement—

(A) reflecting whether evidence was not considered in making the decision because the evidence was received at a time when not permitted under section 7113 of this title; and

(B) noting such options as may be available for having the evidence considered by the Department; and

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

(e) After reaching a decision on an appeal, the Board shall promptly issue notice (as that term is defined in section 5100 of this title) of such decision to the following:

(1) The appellant.

(2) Any other party with a right to notice of such decision.

(3) Any authorized representative of the appellant or party described in paragraph (2).

(f)(1) The Secretary may provide notice under subsection (e) electronically if a claimant (or the claimant's representative) elects to receive such notice electronically.

(2) A claimant (or the claimant's representative) may revoke such an election at any time, by means prescribed by the Secretary.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, § 4004; Pub. L. 87-97, § 1, July 20, 1961, 75 Stat. 215; Pub. L. 100-687, div. A, title I, § 101(b), title II, §§ 203(a), 204, 205, Nov. 18, 1988, 102 Stat. 4106, 4110, 4111; renumbered § 7104 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, § 14(g)(2), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), (c), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 103-271, §§ 7(b)(1), 8, July 1, 1994, 108 Stat. 743; Pub. L. 104-275, title V, § 509, Oct. 9, 1996, 110 Stat. 3344; Pub. L. 115-55, § 2(p), (w)(2), Aug. 23, 2017, 131 Stat. 1111, 1114; Pub. L. 117-168, title VIII, § 807(a)(5), Aug. 10, 2022, 136 Stat. 1806.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-168, § 807(a)(5)(A), inserted “; decisions; notice” after “Board” in section catchline.

Subsecs. (e), (f). Pub. L. 117-168, § 807(a)(5)(B), added subsecs. (e) and (f) and struck out former subsec. (e) which related to mailing a copy of a written decision to the claimant or mailing or otherwise sending a copy to an authorized representative of the claimant.

2017—Subsec. (b). Pub. L. 115-55, § 2(p), substituted “readjudicated” for “reopened”.

Subsec. (d)(2), (3). Pub. L. 115-55, § 2(w)(2), added par. (2) and redesignated former par. (2) as (3).

1996—Subsec. (e). Pub. L. 104-275 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as fol-

lows: “After reaching a decision in a case, the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and at the last known address of such representative (if any).”

1994—Subsec. (a). Pub. L. 103-271, § 8, substituted “511(a)” for “211(a)”.

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

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

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

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

Subsec. (b). Pub. L. 102-40, § 402(d)(1), substituted “5108” for “3008”.

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

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

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

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

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

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

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

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

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 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 a note under section 101 of this title, and bracketed note thereunder.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-54, § 14(g)(2), June 13, 1991, 105 Stat. 288, provided that the amendment made by that section is effective Nov. 18, 1988.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 101(b) and 204 of Pub. L. 100-687 effective Sept. 1, 1989, and amendment by sec-

tions 203(a) and 205 of Pub. L. 100-687 effective Jan. 1, 1989, see section 401(a), (d) of Pub. L. 100-687, as amended, set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-97, §2, July 20, 1961, 75 Stat. 215, provided that: “The amendment made by this Act [amending this section] shall take effect as of January 1, 1962.”

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.

§ 7105. Filing of appeal

(a) Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Secretary.

(b)(1)(A) Except in the case of simultaneously contested claims, a notice of disagreement shall be filed within one year from the date of the issuance of notice of the decision of the agency of original jurisdiction pursuant to section 5104, 5104B, or 5108 of this title.

(B) A notice of disagreement postmarked before the expiration of the one-year period shall be accepted as timely filed.

(C) A question as to timeliness or adequacy of the notice of disagreement shall be decided by the Board.

(2)(A) Notices of disagreement shall be in writing, shall identify the specific determination with which the claimant disagrees, and may be filed by the claimant, the claimant’s legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian.

(B) Not more than one recognized organization, attorney, or agent may be recognized at any one time in the prosecution of a claim.

(C) Notices of disagreement shall be filed with the Board.

(3) The notice of disagreement shall indicate whether the claimant requests—

(A) a hearing before the Board, which shall include an opportunity to submit evidence in accordance with section 7113(b) of this title;

(B) an opportunity to submit additional evidence without a hearing before the Board, which shall include an opportunity to submit evidence in accordance with section 7113(c) of this title; or

(C) a review by the Board without a hearing or the submittal of additional evidence.

(4) The Secretary shall develop a policy to permit a claimant to modify the information identified in the notice of disagreement after the notice of disagreement has been filed under this section pursuant to such requirements as the Secretary may prescribe.

(c) If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or decision of the agency of original jurisdiction shall become final and the claim shall not thereafter be readjudicated or allowed, except—

(1) in the case of a readjudication or allowance pursuant to a higher-level review that was requested in accordance with section 5104B of this title;

(2) as may otherwise be provided by section 5108 of this title; or

(3) as may otherwise be provided in such regulations as are consistent with this title.

(d) The Board may dismiss any appeal which fails to identify the specific determination with which the claimant disagrees.

(Added Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 553, §4005; amended Pub. L. 99-576, title VII, §701(85), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title II, §§203(b), 206, Nov. 18, 1988, 102 Stat. 4111; renumbered §7105 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 112-154, title V, §501(a), Aug. 6, 2012, 126 Stat. 1190; Pub. L. 115-55, §2(q)(1), Aug. 23, 2017, 131 Stat. 1111; Pub. L. 117-168, title VIII, §807(a)(6), Aug. 10, 2022, 136 Stat. 1806.)

Editorial Notes

AMENDMENTS

2022—Subsec. (b)(1)(A). Pub. L. 117-168 substituted “issuance” for “mailing”.

2017—Pub. L. 115-55, §2(q)(1)(F), struck out “notice of disagreement and” before “appeal” in section catchline.

Subsec. (a). Pub. L. 115-55, §2(q)(1)(A), substituted “Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary.” for “Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section.”

Subsec. (b). Pub. L. 115-55, §2(q)(1)(B), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

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

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

Subsec. (c). Pub. L. 115-55, §2(q)(1)(C), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or determination shall become final and the claim will not thereafter be reopened or allowed, except as may otherwise be provided by regulations not inconsistent with this title.”

Subsec. (d). Pub. L. 115-55, §2(q)(1)(D), added subsec. (d) and struck out former subsec. (d) which related to development and review actions, statement of the case, and dismissal of appeal.

Subsec. (e). Pub. L. 115-55, §2(q)(1)(E), struck out subsec. (e) which read as follows:

“(1) If, either at the time or after the agency of original jurisdiction receives a substantive appeal, the