

claimant or the claimant's representative, if any, submits evidence to either the agency of original jurisdiction or the Board of Veterans' Appeals for consideration in connection with the issue or issues with which disagreement has been expressed, such evidence shall be subject to initial review by the Board unless the claimant or the claimant's representative, as the case may be, requests in writing that the agency of original jurisdiction initially review such evidence.

“(2) A request for review of evidence under paragraph (1) shall accompany the submittal of the evidence.”

2012—Subsec. (e). Pub. L. 112-154 added subsec. (e).

2001—Subsec. (b)(1). Pub. L. 107-14 substituted “hereinafter” for “hereafter”.

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

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Subsec. (d)(2). Pub. L. 102-40, §402(d)(1), substituted “5701” for “3301”.

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

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

“(B) A citation or discussion of the pertinent law, regulations, and, where applicable, the provisions of the Schedule for Rating Disabilities;

“(C) The decision on such issue or issues and a summary of the reasons therefor.”

Subsec. (d)(4). Pub. L. 100-687, §206(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken.”

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

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

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

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 2012 AMENDMENT

Pub. L. 112-154, title V, §501(b), Aug. 6, 2012, 126 Stat. 1190, provided that: “Subsection (e) of such section [38 U.S.C. 7105(e)], as added by subsection (a), shall take effect on the date that is 180 days after the date of the enactment of this Act [Aug. 6, 2012], and shall apply with respect to claims for which a substantive appeal is filed on or after the date that is 180 days after the date of the enactment of this Act.”

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 87-666, §3, Sept. 19, 1962, 76 Stat. 554, provided that: “The amendments made by this Act [enacting sections 4005, 4005A, and 4006 [now 7105, 7105A, and 7106] of this title, redesignating former section 4006 as 4007 [now 7107] of this title, and repealing former sections 4005 and 4007 of this title] shall be effective January 1, 1963.”

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.

§ 7105A. Simultaneously contested claims

(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of a notice of disagreement shall be sixty days from the date notice of the adverse action is issued. In such cases the agency of original jurisdiction shall promptly notify all parties in interest at the last known address of the action taken, expressly inviting attention to the fact that notice of disagreement will not be entertained unless filed within the sixty-day period prescribed by this subsection.

(b)(1) The substance of the notice of disagreement shall be communicated to the other party or parties in interest and a period of thirty days shall be allowed for filing a brief or argument in response thereto.

(2) Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.

(Added Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 554, §4005A; renumbered §7105A and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 115-55, §2(r), Aug. 23, 2017, 131 Stat. 1112; Pub. L. 117-168, title VIII, §807(a)(7), Aug. 10, 2022, 136 Stat. 1806.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 4007 of this title, prior to the general amendment of sections 4005 to 4007 by Pub. L. 87-666.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117-168 substituted “issued” for “mailed”.

2017—Subsec. (b). Pub. L. 115-55 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Upon the filing of a notice of disagreement, all parties in interest will be furnished with a statement of the case in the same manner as is prescribed in section 7105. The party in interest who filed a notice of disagreement will be allowed thirty days from the date of mailing of such statement of the case in which to file a formal appeal. Extension of time may be granted for good cause shown but with consideration to the interests of the other parties involved. The substance of the appeal will be communicated to the other party or parties in interest and a period of thirty days will be allowed for filing a brief or argument in answer thereto. Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.”

1991—Pub. L. 102-40 renumbered section 4005A of this title as this section and substituted “7105” for “4005” in subsec. (b).

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

Section effective Jan. 1, 1963, see section 3 of Pub. L. 87-666, set out as a note under section 7105 of this title.

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.

[§ 7106. Repealed. Pub. L. 115-55, § 2(s)(1), Aug. 23, 2017, 131 Stat. 1112]

Section, added Pub. L. 87-666, § 1, Sept. 19, 1962, 76 Stat. 554, § 4006; renumbered § 7106 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-33, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405, related to application for administrative appeals.

Provisions similar to those comprising this section were contained in subsec. (c)(2) of former section 4005 of this title, prior to the general amendment of sections 4005 to 4007 by Pub. L. 87-666.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF REPEAL**

Repeal 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.

§ 7107. Appeals: dockets; hearings

(a) DOCKETS.—(1) Subject to paragraph (2), the Board shall maintain at least two separate dockets.

(2) The Board may not maintain more than two separate dockets unless the Board notifies the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives of any additional docket, including a justification for maintaining such additional docket.

(3)(A) The Board may assign to each docket maintained under paragraph (1) such cases as the Board considers appropriate, except that cases described in clause (i) of subparagraph (B) may not be assigned to any docket to which cases described in clause (ii) of such paragraph are assigned.

(B) Cases described in this paragraph are the following:

- (i) Cases in which no Board hearing is requested.
- (ii) Cases in which a Board hearing is requested in the notice of disagreement.

(4) Except as provided in subsection (b), each case before the Board will be decided in regular order according to its respective place on the docket to which it is assigned by the Board.

(b) ADVANCEMENT ON THE DOCKET.—(1) A case on one of the dockets of the Board maintained under subsection (a) may, for cause shown, be advanced on motion for earlier consideration and determination.

(2) Any such motion shall set forth succinctly the grounds upon which the motion is based.

- (3) Such a motion may be granted only—
 - (A) if the case involves interpretation of law of general application affecting other claims;
 - (B) if the appellant is seriously ill or is under severe financial hardship; or
 - (C) for other sufficient cause shown.

(c) MANNER AND SCHEDULING OF HEARINGS FOR CASES ON A DOCKET THAT MAY INCLUDE A HEARING.—(1) For cases on a docket maintained by the Board under subsection (a) that may include a hearing, in which a hearing is requested in the notice of disagreement, the Board shall notify the appellant whether a Board hearing will be held—

- (A) at its principal location; or
- (B) by picture and voice transmission at a facility of the Department where the Secretary has provided suitable facilities and equipment to conduct such hearings.

(2)(A) Upon notification of a Board hearing at the Board's principal location as described in subparagraph (A) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (B) of such paragraph or subparagraph (C) of this paragraph. If so requested, the Board shall grant such request.

(B) Upon notification of a Board hearing by picture and voice transmission as described in subparagraph (B) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (A) of such paragraph or subparagraph (C) of this paragraph. If so requested, the Board shall grant such request.

(C)(i) Upon notification of a Board hearing under subparagraph (A) or (B) of paragraph (1), the appellant may alternatively request a hearing by picture and voice transmission—

- (I) at a location selected by the appellant; and

(II) via a secure internet platform established and maintained by the Secretary that protects sensitive personal information from a data breach.

(ii) If an appellant makes a request under clause (i), the Board shall grant such request.

(d) SCREENING OF CASES.—Nothing in this section shall be construed to preclude the screening of cases for purposes of—

- (1) determining the adequacy of the record for decisional purposes; or

(2) the development, or attempted development, of a record found to be inadequate for decisional purposes.