

ex parte communications prohibited by §18b.92. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible agency official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of part 18 of this chapter are not prohibited.

**§18b.95 Filing of ex parte communications.**

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if the memorandum is considered to be incorrect.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10387, Mar. 26, 1986]

**PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS**

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#### APPENDIX A TO PART 19—CROSS-REFERENCES

AUTHORITY: 38 U.S.C. 501(a), unless otherwise noted.

SOURCE: 57 FR 4104, Feb. 3, 1992, unless otherwise noted.

### Subpart A—Operation of the Board of Veterans' Appeals

#### § 19.1 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.

#### § 19.2 Composition of the Board.

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.

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

[61 FR 20448, May 7, 1996]

#### § 19.3 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]

#### § 19.4 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)

#### § 19.5 Criteria governing disposition of appeals.

In the consideration of appeals, 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.

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

#### § 19.6 [Reserved]

#### § 19.7 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 separately stated 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.

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

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

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996]

**§ 19.8 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]

**§ 19.9 Remand for further development.**

(a) *General.* If further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Member or panel of Members of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken. A remand is not required to clarify procedural matters before the Board, including appellant's choice of representative before the Board, the issues on appeal, and requests for hearings before the Board.

(b) *Scope.* This section does not apply to:

(1) The Board's requests for opinions under Rule 901 (§ 20.901 of this chapter);

(2) The Board's supplementation of the record with recognized medical treatises; and

(3) Matters over which the Board has original jurisdiction described in Rules 609 and 610 (sections 20.609 and 20.610 of this chapter).

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

[62 FR 52503, Oct. 8, 1997]

**§ 19.10 [Reserved]**

**§ 19.11 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 heard 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 heard 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 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]

**§ 19.12 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 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) *Appeal on same issue subsequent to decision on administrative appeal.* Any Member of the Board who made the decision on an administrative appeal will disqualify himself or herself from acting on a subsequent appeal by the claimant on the same issue.

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

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(c) *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 paragraphs (a) and (b) 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]

**§ 19.13 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))

**§ 19.14 Delegation of authority—Appeals regulations.**

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(b), 19.3(c), and 19.12(c) of this part 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 §§ 19.3(d) and 19.11 of this part may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

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

**Subpart B—Appeals Processing by Agency of Original Jurisdiction**

**§ 19.25 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 nonentitle-

ment to Department of Veterans Affairs benefits.

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

**§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.**

When a Notice of Disagreement is timely filed, the agency of original jurisdiction must reexamine the claim and determine if additional review or development is warranted. When a Notice of Disagreement is received following a multiple-issue determination and it is not clear which issue, or issues, the claimant desires to appeal, clarification sufficient to identify the issue, or issues, being appealed should be requested from the claimant or his or her representative. If no preliminary action is required, or when it is completed, the agency of original jurisdiction must prepare a Statement of the Case pursuant to § 19.29 of this part, unless the matter is resolved by granting the benefits sought on appeal or the Notice of Disagreement is withdrawn by the appellant or his or her representative.

(Authority: 38 U.S.C. 7105(d)(1))

**§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.**

If, within the agency of original jurisdiction, there is a question as to the adequacy of a Notice of Disagreement, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 7105, 7106)

**§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.**

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

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

**§ 19.29 Statement of the Case.**

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;

(b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and

(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 7105(d)(1))

**§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.**

(a) *To whom the Statement of the Case is furnished.* The Statement of the Case will be forwarded to the appellant at the latest address of record and a separate copy provided to his or her representative (if any).

(b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a Substantive Appeal; information on hearing and representation rights; and a VA Form 9, "Appeal to Board of Veterans' Appeals."

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

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996]

**§ 19.31 Supplemental Statement of the Case.**

A Supplemental Statement of the Case, so identified, will be furnished to the appellant and his or her representative, if any, when additional pertinent evidence is received after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued, when a material defect in the Statement of the Case or a prior Supplemental Statement of the Case is discovered, or when, for any other reason, the Statement of the Case or a prior

Supplemental Statement of the Case is inadequate. A Supplemental Statement of the Case will also be issued following development pursuant to a remand by the Board unless the only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case or unless the Board specifies in the remand that a Supplemental Statement of the Case is not required. If the case is remanded to cure a procedural defect, a Supplemental Statement of the Case will be issued to assure full notification to the appellant of the status of the case, unless the Board directs otherwise.

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

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996]

**§ 19.32 Closing of appeal for failure to respond to Statement of the Case.**

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.

(Authority: 38 U.S.C. 7105(d)(3))

**§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.**

If, within the agency of original jurisdiction, there is a question as to the timely filing of a Notice of Disagreement or Substantive Appeal, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 7105, 7106)

**§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.**

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative

protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

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

**§ 19.35 Certification of appeals.**

Following receipt of the Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals. Certification is accomplished by the completion of VA Form 8, "Certification of Appeal." The certification is used for administrative purposes and does not serve to either confer or deprive the Board of Veterans' Appeals of jurisdiction over an issue.

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

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996]

**§ 19.36 Notification of certification of appeal and transfer of appellate record.**

When an appeal is certified to the Board of Veterans' Appeals for appellate review and the appellate record is transferred to the Board, the appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in Rule of Practice 1304 (§ 20.1304 of this chapter).

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

**§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.**

(a) *Evidence received prior to transfer of records to Board of Veterans' Appeals.* Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans' Appeals after an appeal has been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared

before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

(b) *Evidence received after transfer of records to the Board of Veterans' Appeals.* Additional evidence received by the agency of original jurisdiction after the records have been transferred to the Board of Veterans' Appeals for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue or issues. The Board will then determine what action is required with respect to the additional evidence.

(Authority: 38 U.S.C. 7105(d)(1))

**§ 19.38 Action by agency of original jurisdiction when remand received.**

When a case is remanded by the Board of Veterans' Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development, together with the evidence which was previously of record, supports the allowance of all benefits sought on appeal. If so, the Board and the appellant and his or her representative, if any, will be promptly informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of § 19.31 of this part. Following the 60-day period allowed for a response to the Supplemental Statement of the Case pursuant to Rule of Practice 302, paragraph (c) (§ 20.302(c) of this chapter), the case will be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all

benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

(Authority: 38 U.S.C. 7105(d)(1))

**§§ 19.39—19.49 [Reserved]**

**Subpart C—Administrative Appeals**

**§ 19.50 Nature and form of administrative appeal.**

(a) *General.* An administrative appeal from an agency of original jurisdiction determination is an appeal taken by an official of the Department of Veterans Affairs authorized to do so to resolve a conflict of opinion or a question pertaining to a claim involving benefits under laws administered by the Department of Veterans Affairs. Such appeals may be taken not only from determinations involving dissenting opinions, but also from unanimous determinations denying or allowing the benefit claimed in whole or in part.

(b) *Form of Appeal.* An administrative appeal is entered by a memorandum entitled “Administrative Appeal” in which the issues and the basis for the appeal are set forth.

(Authority: 38 U.S.C. 7106)

**§ 19.51 Officials authorized to file administrative appeals and time limits for filing.**

The Secretary of Veterans Affairs authorizes certain officials of the Department of Veterans Affairs to file administrative appeals within specified time limits, as follows:

(a) *Central Office—(1) Officials.* The Under Secretary for Benefits or a service director of the Veterans Benefits Administration, the Under Secretary for Health or a service director of the Veterans Health Administration, and the General Counsel.

(2) *Time limit.* Such officials must file an administrative appeal within 1 year from the date of mailing notice of such determination to the claimant.

(b) *Agencies of original jurisdiction—(1) Officials.* Directors, adjudication officers, and officials at comparable levels

in field offices deciding any claims for benefits, from any determination originating within their established jurisdiction.

(2) *Time limit.* The Director or comparable official must file an administrative appeal within 6 months from the date of mailing notice of the determination to the claimant. Officials below the level of Director must do so within 60 days from such date.

(c) *The date of mailing.* With respect to paragraphs (a) and (b) of this section, the date of mailing notice of the determination to the claimant will be presumed to be the same as the date of the letter of notification to the claimant.

(Authority: 38 U.S.C. 7106)

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996]

**§ 19.52 Notification to claimant of filing of administrative appeal.**

When an administrative appeal is entered, the claimant and his or her representative, if any, will be promptly furnished a copy of the memorandum entitled “Administrative Appeal,” or an adequate summary thereof, outlining the question at issue. They will be allowed a period of 60 days to join in the appeal if they so desire. The claimant will also be advised of the effect of such action and of the preservation of normal appeal rights if he or she does not elect to join in the administrative appeal.

(Authority: 38 U.S.C. 7106)

**§ 19.53 Restriction as to change in payments pending determination of administrative appeals.**

If an administrative appeal is taken from a review or determination by the agency of original jurisdiction pursuant to §§ 19.50 and 19.51 of this part, that review or determination may not be used to effect any change in payments until after a decision is made by the Board of Veterans’ Appeals.

(Authority: 38 U.S.C. 7106)

**§§ 19.54—19.74 [Reserved]**

**§§ 19.77—19.99 [Reserved]**

**Subpart D—Hearings Before the Board of Veterans' Appeals at Department of Veterans Affairs Field Facilities**

**Subpart E—Simultaneously Contested Claims**

**§ 19.75 Hearing docket.**

Hearings on appeal held at Department of Veterans Affairs field facilities will be scheduled for each area served by a regional office in the order in which requests for such hearings within that area are received by the Department except when a motion to advance the case on the hearing docket is granted under Rule of Practice 704(f) (38 CFR 20.704(f)).

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

[61 FR 20449, May 7, 1996]

**§ 19.76 Notice of time and place of hearing before the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.**

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility 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 at a Department of Veterans Affairs field facility 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. 7107)

[61 FR 20449, May 7, 1996, as amended at 61 FR 43008, Aug. 20, 1996]

**§ 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))

**§ 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))

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996]

**§ 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

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the benefit which is the subject of the  
contested claim.

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

APPENDIX A TO PART 19—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
19.5	38 CFR 14.507(b)	See re "precedent opinions" of the General Counsel of the Department of Veterans Affairs.
19.7	38 CFR 20.1303	Rule 1303. Nonprecedential nature of Board decisions.
19.13	38 CFR 20.905	Rule 905. Vacating a decision.
19.25	38 CFR 2.66	Contains similar provisions.
19.26	38 CFR 19.52	Notification to claimant of filing of administrative appeal.
19.27	38 CFR 19.100	Notification of right to appeal in simultaneously contested claims.
19.30	38 CFR 20.302	Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
19.32	38 CFR 19.50-19.53	See re administrative appeals.
19.33	38 CFR 20.202	Rule 202. Substantive Appeal.
19.50	38 CFR 20.302	Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
19.76	38 CFR 20.501	Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.
19.100	38 CFR 19.50-19.53	See re administrative appeals.
19.101	38 CFR 19.53	Restriction as to change in payments pending determination of administrative appeals.
	38 CFR 20.704	Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.
	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
	38 CFR 19.30	Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.