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Sec.	Cross-reference	Title of cross-referenced material or comment
19.27	38 CFR 19.50–19.53	See re administrative appeals.
19.30	38 CFR 20.202	*Rule 202. Substantive Appeal.*
19.32	38 CFR 20.302	*Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.*
	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.*
19.33	38 CFR 19.50–19.53	See re administrative appeals.
19.50	38 CFR 19.53	*Restriction as to change in payments pending determination of administrative appeals.*
19.76	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.*
19.100	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
19.101	38 CFR 19.30	*Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.*

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

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APPENDIX A TO PART 20—CROSS-REFERENCES

AUTHORITY: 38 U.S.C. 501(a) and as noted in specific sections.

SOURCE: 57 FR 4109, Feb. 3, 1992, unless otherwise noted.

Subpart A—General

§20.1 Rule 1. Purpose and construction of Rules of Practice.

(a) *Purpose.* These rules establish the practices and procedures governing appeals to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 501(a), 7102, 7104)

(b) *Construction.* These rules are to be construed to secure a just and speedy decision in every appeal.

(Authority: 38 U.S.C. 501(a), 5107, 7104)

§20.2 Rule 2. Procedure in absence of specific Rule of Practice.

Where in any instance there is no applicable rule or procedure, the Chairman may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules.

(Authority: 38 U.S.C. 501(a), 512(a), 7102, 7104)

§20.3 Rule 3. Definitions.

As used in these Rules:

(a) *Agency of original jurisdiction* means the Department of Veterans Affairs regional office, medical center, clinic, cemetery, or other Department of Veterans Affairs facility which made the initial determination on a claim or, if the applicable records are later permanently transferred to another Department of Veterans Affairs facility, its successor.

(b) *Agent* means a person who has met the standards and qualifications for accreditation outlined in §14.629(b) of this chapter and who has been properly designated under the provisions of Rule 604 (§20.604 of this part). It does not include representatives recognized under Rules 602, 603, or 605 (§20.602, 20.603, or §20.605 of this part).

(c) *Appellant* means a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 7105.

(d) *Attorney-at-law* means a member in good standing of a State bar.

(e) *Benefit* means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans and their dependents and survivors.

(f) *Claim* means application made under title 38, United States Code, and implementing directives for entitlement to Department of Veterans Affairs benefits or for the continuation or increase of such benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) *Claimant* means a person who has filed a claim, as defined by paragraph (f) of this section.

(h) *Electronic hearing* means a hearing on appeal in which an appellant or a representative participates, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Member or Members sitting at the Board's principal location in Washington, DC.

(i) *Hearing on appeal* means a hearing conducted after a Notice of Disagreement has been filed in which argument and/or testimony is presented concerning the determination, or determinations, by the agency of original jurisdiction being appealed.

(j) *Law student* means an individual pursuing a Juris Doctor or equivalent

degree at a school approved by a recognized accrediting association.

(k) *Legal intern* means a graduate of a law school, which has been approved by a recognized accrediting association, who has not yet been admitted to a State bar.

(l) *Motion* means a request that the Board rule on some question which is subsidiary to the ultimate decision on the outcome of an appeal. For example, the questions of whether a representative's fees are reasonable or whether additional evidence may be submitted more than 90 days after certification of an appeal to the Board are raised by motion (see Rule 609, paragraph (i), and Rule 1304, paragraph (b) §§ 20.609(i) and 20.1304(b) of this part). Unless raised orally at a personal hearing before Members of the Board, motions for consideration by the Board must be made in writing. No formal type of document is required. The motion may be in the form of a letter which contains the necessary information.

(m) *Paralegal* means a graduate of a course of paralegal instruction given by a school which has been approved by a recognized accrediting association, or an individual who has equivalent legal experience.

(n) *Presiding Member* means that Member of the Board who presides over a hearing, whether conducted as a single Member or panel hearing.

(o) *Simultaneously contested claim* refers to the situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.

(p) *State* includes any State, possession, territory, or Commonwealth of the United States, as well as the District of Columbia.

(Authority: 38 U.S.C. 501(a))

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996]

§§ 20.4–20.99 [Reserved]

Subpart B—The Board

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.

(a) *Name.* The name of the Board is the Board of Veterans' Appeals.

(b) *Business hours.* The Board is open during business hours on all days except Saturday, Sunday and legal holidays. Business hours are from 8 a.m. to 4:30 p.m.

(c) *Mailing address.* Except as otherwise noted in these Rules, mail to the Board must be addressed to: Chairman (01), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7101(a))

§ 20.101 Rule 101. Jurisdiction of the Board.

(a) *General.* All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans' Appeals. In its decisions, the Board is bound by applicable statutes, the regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:

(1) Entitlement to, and benefits resulting from, service-connected disability or death (38 U.S.C. chapter 11).

(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of inservice or service-connected deaths (38 U.S.C. 1312) and certification and entitlement to death gratuity (38 U.S.C. 1323).

(3) Benefits for survivors of certain veterans rated totally disabled at time of death (38 U.S.C. 1318).

(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. chapter 15).

(5) All-Volunteer Force Educational Assistance Program (38 U.S.C. chapter 30).

(6) Training and Rehabilitation for Veterans with Service-Connected Disabilities (38 U.S.C. chapter 31).

(7) Post-Vietnam Era Veterans' Educational Assistance (38 U.S.C. chapter 32).

(8) Veterans' Educational Assistance (38 U.S.C. chapter 34).

(9) Survivors' and Dependents' Educational Assistance (38 U.S.C. chapter 35).

(10) Veterans' Job Training (Pub. L. 98–77, as amended; 38 CFR 21.4600 *et seq.*).

(11) Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 106).

(12) Educational Assistance Test Program (10 U.S.C. chapter 107; 38 CFR 21.5701 *et seq.*).

(13) Educational Assistance Pilot Program (10 U.S.C. chapter 107; 38 CFR 21.5290 *et seq.*).

(14) Matters arising under National Service Life Insurance and United States Government Life Insurance (38 U.S.C. chapter 19).

(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 1728).

(16) Burial benefits and burial in National Cemeteries (38 U.S.C. chapters 23 and 24).

(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 1151).

(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 5302).

(19) Waiver of recovery of overpayments (38 U.S.C. 5302).

(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 6102–6105).

(21) Character of discharge (38 U.S.C. 5303).

(22) Determinations as to duty status (38 U.S.C. 101(21)–(24)).

(23) Determinations as to marital status (38 U.S.C. 101(3), 103).

(24) Determination of dependency status as parent or child (38 U.S.C. 101(4), (5)).

(25) Validity of claims and effective dates of benefits (38 U.S.C. chapter 51).

(26) Apportionment of benefits (38 U.S.C. 5307).

(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 5503).

(28) Benefits for surviving spouses and children of deceased veterans under Public Law 97–377, section 156 (38 CFR 3.812(d)).

(29) Eligibility for automobile and automobile adaptive equipment assistance (38 U.S.C. chapter 39).

(b) *Appellate jurisdiction of determinations of the Veterans Health Administration.* The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) *Appeals as to jurisdiction.* All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular issue. This includes questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal. Subject to review by courts of competent jurisdiction, only the Board of Veterans' Appeals will make final

decisions with respect to its jurisdiction.

(Authority: 38 U.S.C. 511(a), 7104)

§ 20.102 Rule 102. Delegation of authority—Rules of Practice.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 900(c) (§ 20.900(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 Rules 608(b), 717(d), and 1001(c) (§§ 20.608(b), 20.717(d), and 20.1001(c) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 2 and 606(e) (§§ 20.2, and 20.606(e) of this part), may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.

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

[57 FR 4109, Feb. 3, 1992; 57 FR 20055, May 11, 1992; 57 FR 38443, Aug. 25, 1992; 61 FR 20449, May 7, 1996]

§§ 20.103–20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

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

§ 20.201 Rule 201. Notice of Disagreement.

A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear.

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

§ 20.202 Rule 202. Substantive Appeal.

A Substantive Appeal consists of a properly completed VA Form 9, ''Appeal to Board of Veterans' Appeals,'' or correspondence containing the necessary information. If the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed. The Substantive Appeal should set out specific arguments relating to errors of fact or law made by the agency of original jurisdiction in reaching the determination, or determinations, being appealed. To the extent feasible, the argument should be related to specific items in the Statement of the Case and any prior Supplemental Statements of the Case. The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to allege specific error of fact or law in the determination, or determinations, being appealed. The Board will not presume that an appellant agrees with any statement of fact contained in a Statement of the Case or a Supplemental Statement of the Case which is not specifically contested. Proper completion and filing of a Substantive Appeal are

the last actions the appellant needs to take to perfect an appeal.

(Authority: 38 U.S.C. 7105(d)(3)–(5))

(Approved by the Office of Management and Budget under control number 2900–0085)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996]

§ 20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.

A decision as to the adequacy of allegations of error of fact or law in a Substantive Appeal will be made by the Board of Veterans' Appeals. When the Board raises the issue of adequacy of the Substantive Appeal, the appellant and representative, if any, will be given notice of the issue and a period of 60 days following the date on which such notice is mailed to present written argument or to request a hearing to present oral argument on this question. The date of mailing of the notice will be presumed to be the same as the date of the letter of notification.

(Authority: 38 U.S.C. 7105(d)(3), 7108)

§ 20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.

(a) *Notice of Disagreement.* A Notice of Disagreement may be withdrawn in writing before a timely Substantive Appeal is filed.

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

(b) *Substantive Appeal.* A Substantive Appeal may be withdrawn in writing at any time before the Board of Veterans' Appeals promulgates a decision.

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

(c) *Who May Withdraw.* Withdrawal may be by the appellant or by his or her authorized representative, except that a representative may not withdraw either a Notice of Disagreement or Substantive Appeal filed by the appellant personally without the express written consent of the appellant. The agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal after filing of either or both.

(Authority: 38 U.S.C. 7105(b)(2))

§§ 20.205–20.299 [Reserved]

Subpart D—Filing

§ 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.

The Notice of Disagreement and Substantive Appeal must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed unless notice has been received that the applicable Department of Veterans Affairs records have been transferred to another Department of Veterans Affairs office. In that case, the Notice of Disagreement or Substantive Appeal must be filed with the Department of Veterans Affairs office which has assumed jurisdiction over the applicable records.

(Authority: 38 U.S.C. 7105 (b)(1), (d)(3))

§ 20.301 Rule 301. Who can file an appeal.

(a) *Persons authorized.* A Notice of Disagreement and/or a Substantive Appeal may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney or declaration of representation, as applicable, is on record or accompanies such Notice of Disagreement or Substantive Appeal.

(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement and a Substantive Appeal may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for

a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

(a) *Notice of Disagreement.* Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

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

(b) *Substantive Appeal.* Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105 (b)(1), (d)(3))

(c) *Response to Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished, a period of 60 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 60 days in order to perfect an appeal with respect to the additional issues.

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

§ 20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

An extension of the 60-day period for filing a Substantive Appeal, or the 60-day period for responding to a Supplemental Statement of the Case when such a response is required, may be granted for good cause. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal or the response to the Supplemental Statement of the Case. The request for extension must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed, unless notice has been received that the applicable records have been transferred to another Department of Veterans Affairs office. A denial of a request for extension may be appealed to the Board.

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

§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.

The filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination.

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

§ 20.305 Rule 305. Computation of time limit for filing.

(a) *Acceptance of postmark date.* When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this 5-day period, Saturdays, Sundays and legal holidays will be excluded.

(b) *Computation of time limit.* In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

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

§ 20.306 Rule 306. Legal holidays.

For the purpose of Rule 305 (§ 20.305 of this part), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day—January 1; Inauguration Day—January 20 of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Birthday of Martin Luther King, Jr.—Third Monday in January; Washington's Birthday—Third Monday in February; Memorial Day—Last Monday in May; Independence Day—July 4; Labor Day—First Monday in September; Columbus Day—Second Monday in October; Veterans Day—November 11; Thanksgiving Day—Fourth Thursday in November; and Christmas Day—December 25. When a holiday occurs on a Saturday, the Friday immediately before is the legal public holiday. When a holiday occurs on a Sunday, the Monday immediately after is the legal public holiday.

(Authority: 5 U.S.C. 6103)

§§ 20.307–20.399 [Reserved]

Subpart E—Administrative Appeals

§ 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.

When an official of the Department of Veterans Affairs enters an administrative appeal, the claimant and his or her representative, if any, are notified and given a period of 60 days from the date of mailing of the letter of notification to join in the administrative appeal. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. If the claimant, or the representative acting on his or her behalf, elects to join in the administrative appeal, it becomes a ''merged appeal'' and the rules governing an appeal initiated by a claimant are for application. The presentation of evidence or argument by the claimant or his or her representative in response to notification of the right to join in the administrative appeal will be construed as an election to join in the administrative appeal. If the claimant does not authorize the merger, he or she must hold such evidence or argument in abeyance until resolution of the administrative appeal.

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

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

(a) *Merged appeal.* If the administrative appeal is merged, the appellate decision on the merged appeal will constitute final disposition of the claimant's appellate rights.

(b) *Appeal not merged.* If the claimant does not authorize merger, normal appellate rights on the same issue are preserved, and the Chairman will assign the proceeding to a Member or panel of Members of the Board who did not make the decision on the administrative appeal. The period of time from the date of notification to the claimant of the administrative appeal to the date of the Board's decision on the administrative appeal is not chargeable

to the claimant for purposes of determining the time limit for perfecting his or her separate appeal.

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

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996]

§§ 20.402–20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

§ 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.

In a simultaneously contested claim, any claimant or representative of a claimant may file a Notice of Disagreement or Substantive Appeal within the time limits set out in Rule 501 (§ 20.501 of this part).

(Authority: 38 U.S.C. 7105(b)(2), 7105A)

§ 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.

(a) *Notice of Disagreement.* In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

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

(b) *Substantive Appeal.* In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case for purposes of determining whether an appeal has been timely filed.

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

(c) *Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished by the agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 30 days of the date of mailing of the Supplemental Statement of the Case in order to perfect an appeal with respect to the additional issues.

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

§ 20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.

Notice of an appeal by another contesting party in a simultaneously contested claim is given by sending a copy of that party's Substantive Appeal to all other contesting parties. A period of 30 days from the date of mailing of the copy of the Substantive Appeal is allowed for filing a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy.

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

§ 20.503 Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.

An extension of the 30-day period to file a Substantive Appeal in simultaneously contested claims may be

granted if good cause is shown. In granting an extension, consideration will be given to the interests of the other parties involved. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal.

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

§ 20.504 Rule 504. Notices sent to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

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

§§ 20.505–20.599 [Reserved]

Subpart G—Representation

CROSS-REFERENCE: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.600 Rule 600. Right to representation.

An appellant will be accorded full right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person.

(Authority: 38 U.S.C. 5901–5905, 7105(a))

§ 20.601 Rule 601. Only one representative recognized.

A specific claim may be prosecuted at any one time by only one recognized organization, attorney, agent or other person properly designated to represent the appellant.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.602 Rule 602. Representation by recognized organizations.

In order to designate a recognized organization as his or her representative, an appellant must execute a VA Form 21–22, ''Appointment of Veterans Service Organization as Claimant's Representative.'' This form gives the organization power of attorney to represent the appellant. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked by the appellant or unless the representative has properly withdrawn.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.603 Rule 603. Representation by attorneys-at-law.

(a) *Designation.* An attorney-at-law may be designated as an appellant's representative through a properly executed VA Form 22a, ''Appointment of Attorney or Agent as Claimant's Representative.'' This form gives the attorney power of attorney to represent the appellant. In lieu thereof, an attorney may state in writing on his or her letterhead that he or she is authorized to represent the appellant in order to have access to information in the appellant's file pertinent to the particular claim presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed consent from the appellant or the appellant's guardian. Such consent shall be equivalent to an executed power of attorney. The designation must be of an individual attorney, rather than a firm or partnership. An appellant may limit an attorney's right to act as his or her representative in an appeal to representation with respect to a specific claim for one or more specific benefits by noting the restriction in the written designation. Unless specifically noted to the contrary, however, designations of an attorney as a representative will extend to all matters with respect to claims for benefits under laws administered by the Department of Veterans Affairs. Designations are effective when they are received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn. Legal interns, law students, and paralegals

may not be independently accredited to represent appellants under this Rule.

(b) *Attorneys employed by recognized organization.* A recognized organization may employ an attorney-at-law to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellant for the substitution of representatives must be obtained and submitted to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. When the signed consent is received by the agency of original jurisdiction or the Board, as applicable, the attorney will be recognized as the appellant's representative in lieu of the organization.

(c) *Participation of associated or affiliated attorneys.* With the specific written consent of the appellant, an attorney associated or affiliated with the appellant's attorney of record, including an attorney employed by the same legal services office as the attorney of record, may assist in representation of the appellant and may have access to the appellant's Department of Veterans Affairs records to the same extent as the attorney of record. Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or an attorney employed by the same legal services office. The consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the name of the attorney of record; the consent of the appellant for the use of the services of the associated or affiliated attorney and for that individual to have access to applicable Department of Veterans Affairs records; and the name of the associated or affiliated attorney who will be assisting in the case. The consent must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans' Appeals. The presiding Member at a hearing on appeal may require that not more than one attorney participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(Authority: 38 U.S.C. 5901, 5904)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996]

§ 20.604 Rule 604. Representation by agents.

(a) *Designation.* The designation of an agent will be by a duly executed power of attorney, VA Form 22a, ''Appointment of Attorney or Agent as Claimant's Representative,'' or its equivalent. The designation must be of an individual, rather than a firm or partnership. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(b) *Admission to practice.* The provisions of 38 U.S.C. 5904 and of § 14.629(b) of this chapter are applicable to the admission of agents to practice before the Department of Veterans Affairs. Authority for making determinations concerning admission to practice rests with the General Counsel of the Department of Veterans Affairs, and any questions concerning admissions to practice should be addressed to: Office of the General Counsel (022A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 5904)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996]

§ 20.605 Rule 605. Other persons as representative.

(a) *Scope of rule.* This section applies to representation other than by a recognized organization, an agent admitted to practice before the Department of Veterans Affairs, or an attorney-at-law.

(b) *Who may act as representative.* Any competent person may be recognized as a representative for a particular claim, unless that person has been barred

from practice before the Department of Veterans Affairs.

(c) *Designation.* The designation of an individual to act as an appellant's representative may be made by executing a VA Form 22a, ''Appointment of Attorney or Agent as Claimant's Representative.'' This form gives the individual power of attorney to represent the appellant in all matters pertaining to the presentation and prosecution of claims for any and all benefits under laws administered by the Department of Veterans Affairs. In lieu of using the form, the designation may be by a written document signed by both the appellant and the individual representative, which may be in the form of a letter, which authorizes a named individual to act as the appellant's representative only with respect to a specific claim involving one or more specific benefits. The document must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the appellant's consent for the individual representative to have access to his or her Department of Veterans Affairs records; the name of the individual representative; a description of the specific claim for benefits to which the designation of representation applies; and a certification that no compensation will be charged or paid for the individual representative's services. The designation, in either form, must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans' Appeals. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(d) *Representation of more than one appellant.* An individual recognized as an appellant's representative under this Rule may represent only one appellant. If an individual has been recognized as a representative for one appellant and wishes to represent another appellant, he or she must obtain permission to do so from the Office of the General Counsel as provided in § 14.630 of this chapter.

(Authority: 38 U.S.C. 5903)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996]

§ 20.606 Rule 606. Legal interns, law students and paralegals.

(a) *Consent of appellant.* If it is contemplated that a legal intern, law student, or paralegal will assist in the appeal, written consent must be obtained from the appellant. The written consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable Department of Veterans Affairs records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings before a Member or Members of the Board at Department of Veterans field facilities, the consent must be presented to the presiding Member of the hearing as noted in paragraph (d). Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or another attorney employed by the same legal services office.

(b) *Supervision.* Legal interns, law students and paralegals must be under the direct supervision of a recognized attorney-at-law in order to prepare and present cases before the Board of Veterans' Appeals.

(c) *Hearings.* Legal interns, law students and paralegals who desire to participate at a hearing before the Board in Washington, DC, must make advance arrangements with the Director of the Administrative Service (014) and submit written authorization from the attorney naming the individual who will be participating in the hearing. In the case of hearings before a Member or Members of the Board at Department of Veterans field facilities in the field, the attorney-at-law not less than 10 days prior to the scheduled hearing date must inform the office of the Department of Veterans Affairs official who gave notice of the Travel Board hearing date and time that the services of a legal intern, law student, or paralegal will be used at the hearing. At the same time, a prehearing conference with the presiding Member of the hearing must be requested. At the conference, the written consent of the appellant for the use of the services of such an individual required by paragraph (a) must be presented and agreement reached as to the individual's role in the hearing. Legal interns, law students or paralegals may not present oral arguments at hearings either in the field or in Washington, DC, unless the recognized attorney-at-law is present. Not more than two such individuals may make presentations at a hearing. The presiding Member at a hearing on appeal may require that not more than one such individual participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(d) *Withdrawal of permission for legal interns, law students, and paralegals to assist in the presentation of an appeal.* When properly designated, the attorney-at-law is the recognized representative of the appellant and is responsible for ensuring that an appeal is properly presented. Legal interns, law students, and paralegals are permitted to assist in the presentation of an appeal as a courtesy to the attorney-at-law. Permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman or presiding Member at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual.

(Authority: 38 U.S.C. 5904, 7105(b)(2))

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996; 61 FR 29028, June 7, 1996]

§ 20.607 Rule 607. Revocation of a representative's authority to act.

Subject to the provisions of § 20.1304 of this part, an appellant may revoke a representative's authority to act on his or her behalf at any time, irrespective of whether another representative is concurrently designated. Written notice of the revocation must be given to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. The revocation is effective when notice of the revocation is received by the agency of original jurisdiction or the Board, as applicable. An appropriate designation of a new representative will automatically revoke any prior designation of representation. If an appellant has limited a designation of representation by an attorney-at-law to a specific claim under the provisions of Rule 603, paragraph (a) (§ 20.603(a) of this part), or has limited a designation of representation by an individual to a specific claim under the provisions of Rule 605, paragraph (c) (§ 20.605(c) of this part), such specific authority constitutes a revocation of an existing representative's authority to act only with respect to, and during the pendency of, that specific claim. Following the final determination of that claim, the existing representative's authority to act will be automatically restored in full, unless otherwise revoked.

(Authority: 38 U.S.C. 5901–5904)

§ 20.608 Rule 608. Withdrawal of services by a representative.

(a) *Withdrawal of services prior to certification of an appeal.* A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans' Appeals by the agency of original jurisdiction. The representative must give written notice of such withdrawal to the appellant and to the agency of original jurisdiction. The withdrawal is effective when notice of

the withdrawal is received by the agency of original jurisdiction.

(b) *Withdrawal of services after certification of an appeal*—(1) *Applicability.* The restrictions on a representative's right to withdraw contained in this paragraph apply only to those cases in which the representative has previously agreed to act as representative in an appeal. In addition to express agreement, orally or in writing, such agreement shall be presumed if the representative makes an appearance in the case by acting on an appellant's behalf before the Board in any way after the appellant has designated the representative as such as provided in §§ 20.602 through 20.605 of this part. The preceding sentence notwithstanding, an appearance in an appeal solely to notify the Board that a designation of representation has not been accepted will not be presumed to constitute such consent.

(2) *Procedures.* After the agency of original jurisdiction has certified an appeal to the Board of Veterans' Appeals, a representative may not withdraw services as representative in the appeal unless good cause is shown on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impossible, impractical, or unethical. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the reason why withdrawal should be permitted. Such motions should not contain information which would violate privileged communications or which would otherwise be unethical to reveal. Such motions must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The representative must mail a copy of the motion to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the motion. The appellant may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion. The appellant must mail a copy of any such response to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the response.

(Authority: 38 U.S.C. 5901–5904, 7105(a))

(Approved by the Office of Management and Budget under control number 2900–0085)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996]

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only agents and attorneys-at-law may receive fees from claimants or appellants for their services. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized pursuant to Rule 605 (§ 20.605 of this part) are not permitted to receive fees. An attorney-at-law or agent who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as representative in accordance with Rule 603(a) or Rule 604(a) (§ 20.603(a) or § 20.604(a) of this part) in his or her individual capacity.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if all of the following conditions have been met:

(1) A final decision has been promulgated by the Board of Veterans' Appeals with respect to the issue, or issues, involved;

(2) The Notice of Disagreement which preceded the Board of Veterans' Appeals decision with respect to the issue, or issues, involved was received by the agency of original jurisdiction on or after November 18, 1988; and

(3) The attorney-at-law or agent was retained not later than one year following the date that the decision by the Board of Veterans' Appeals with respect to the issue, or issues, involved was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(4) For the purposes of this section, in the case of a motion under subpart O of this part (relating to requests for revision of prior Board decisions on the grounds of clear and unmistakable error), the ''issue'' referred to in this paragraph (c) shall have the same meaning as ''issue'' in Rule 1401(a) (§ 20.1401(a) of this part).

(d) *Exceptions*—(1) *Chapter 37 loans.* With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) *Payment of fee by disinterested third party.* An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met.

(e) *Fees permitted.* Fees permitted for services of an attorney-at-law or agent admitted to practice before the Department of Veterans Affairs must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained;

(7) Rates charged by other representatives for similar services; and

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in paragraph (h)(3) of this section, will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC

20420. (Also see paragraph (h)(4) for information concerning additional filing requirements when fees are to be paid by the Department of Veterans Affairs from past-due benefits.)

(h) *Payment of fees by Department of Veterans Affairs directly to an attorney-at-law from past-due benefits.* (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an attorney-at-law may enter into a fee agreement providing that payment for the services of the attorney-at-law will be made directly to the attorney-at-law by the Department of Veterans Affairs out of any past-due benefits awarded as a result of a successful appeal to the Board of Veterans' Appeals or an appellate court or as a result of a reopened claim before the Department following a prior denial of such benefits by the Board of Veterans' Appeals or an appellate court. Such an agreement will be honored by the Department only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and § 3.750 *et seq.* of this chapter.))

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, ''past-due benefits'' means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the ''past-due benefits'' will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the attorney-at-law represents the claimant or appellant in that phase of the claim, the attorney-at-law will be paid a supplemental payment based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the attorney-at-law, the attorney-at-law's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Board of Veterans' Appeals as required by paragraph (g) of this section, the attorney-at-law must notify the agency of original jurisdiction within 30 days of the

date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due and provide that agency with a copy of the fee agreement.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable. Such motions (other than motions by the Board) must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. They should be accompanied by all such evidence as the moving party desires to submit. The moving party must mail a copy of the motion and accompanying evidence to all other parties to the agreement, with return receipts requested. The receipts, which must bear the signatures of the other parties, must then be filed with the Board at the same address as proof of service of the motion. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. A copy of any such response and any accompanying evidence must be mailed to the moving party, with a return receipt requested. The receipt, which must bear the signature of the moving party, must then be filed with the Board at the same address as proof of service of the response. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the United States Court of Appeals for Veterans Claims. Failure to do so may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals and/or prosecution under the provisions of 38 U.S.C. 5905.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900–0085)

[57 FR 4109, Feb. 3, 1992, as amended at 57 FR 38443, Aug. 25, 1992; 59 FR 25330, May 16, 1994; 64 FR 2138, Jan. 13, 1999; 65 FR 14472, Mar. 17, 2000]

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any representative may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before the Department of Veterans Affairs. Whether such a representative will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the representative and the claimant or appellant. Expenses are not payable directly

to the representative by the Department of Veterans Affairs out of benefits determined to be due to a claimant or appellant. Unless required in conjunction with a motion for the review of expenses filed in accordance with paragraph (d) of this section, agreements for the reimbursement of expenses need not be filed with the Department of Veterans Affairs or the Board of Veterans' Appeals.

(c) *Nature of expenses subject to reimbursement.* ''Expenses'' include nonrecurring expenses incurred directly in the prosecution of a claim for benefits upon behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, the cost of obtaining the services of an expert witness or an expert opinion, etc. ''Expenses'' do not include normal overhead costs of the representative such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, the cost of office supplies, etc.

(d) *Expense charges permitted—motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing. They must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. They must specifically identify which expenses charged are felt to be unreasonable and the reason, or reasons, why the amount of the expenses is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. They should be accompanied by all such evidence as the moving party desires to submit. The appellant or claimant, as applicable, must mail a copy of the motion and any accompanying evidence to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the motion. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. The representative must mail a copy of any such response and any accompanying evidence to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the response. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(Authority: 38 U.S.C. 5904)

(Approved by the Office of Management and Budget under control number 2900–0085)

[57 FR 4109, Feb. 3, 1992, as amended at 57 FR 38443, Aug. 25, 1992]

§§ 20.612–20.699 [Reserved]

Subpart H—Hearings on Appeal

§ 20.700 Rule 700. General.

(a) *Right to a hearing.* A hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to appear in person.

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue. It is contemplated that the appellant and witnesses, if any,

will be present. A hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with paragraph (d) of this section. Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member assigned to conduct the hearing.

(c) *Nonadversarial proceedings.* Hearings conducted by the Board are ex parte in nature and nonadversarial. Parties to the hearing will be permitted to ask questions, including follow-up questions, of all witnesses but cross-examination will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained. The presiding Member may set reasonable time limits for the presentation of argument and may exclude documentary evidence, testimony, and/or argument which is not relevant or material to the issue, or issues, being considered or which is unduly repetitious.

(d) *Informal hearings.* This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative may present oral arguments, not exceeding 30 minutes in length, to the Board on an audio cassette without personally appearing before the Board of Veterans Appeals. These arguments will be transcribed by Board personnel for subsequent review by the Member or Members to whom the appeal has been assigned for a determination. This procedure will not be construed to satisfy an appellant's request to appear in person.

(e) *Electronic hearings.* When suitable facilities and equipment are available, an appellant may be scheduled for an electronic hearing. Any such hearing will be in lieu of a hearing held by personally appearing before a Member or panel of Members of the Board and shall be conducted in the same manner as, and considered the equivalent of, such a hearing. If an appellant declines to participate in an electronic hearing, the appellant's opportunity to participate in a hearing before the Board shall not be affected.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27935, May 12, 1993; 61 FR 20450, May 7, 1996]

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 7102, 7105, 7107)

[58 FR 27935, May 12, 1993]

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC.

(a) *General.* To the extent that officials scheduling hearings for the Board of Veterans' Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(c) *Requests for changes in hearing dates.* (1) The appellant or the representative may request a different date for the hearing within 60 days

from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, such requests for a new hearing date must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. In the case of a hearing conducted by the Board of Veterans' Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion for a new hearing date must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. In the case of hearings before the Board of Veterans' Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member assigned to conduct the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by

an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the notice of withdrawal must be sent to: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(Approved by the Office of Management and Budget under control number 2900–0085)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27935, May 12, 1993; 61 FR 20450, May 7, 1996]

§ 20.703 Rule 703. When a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility may be requested.

An appellant, or an appellant's representative, may request a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility when submitting the substantive appeal (VA Form 9) or anytime thereafter, subject to the restrictions in Rule 1304 (§ 20.1304 of this part). Requests for such hearings before a substantive appeal has been filed will be rejected.

(Authority: 38 U.S.C. 7105(a), 7107)

[61 FR 43009, Aug. 20, 1996]

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

(a) *General.* Hearings are conducted by a Member or Members of the Board of Veterans' Appeals during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings. Subject to paragraph (f) of this section, the hearings will be scheduled in the order specified in § 19.75 of this chapter. Requests for such hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted for review by the Member who would have presided over the hearing. If the presiding Member determines that good cause has been shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request

for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Whether good cause for such failure to appear and the impossibility of timely requesting postponement have been established will be determined by the Member who would have presided over the hearing. If good cause and the impossibility of timely requesting postponement are shown, the hearing will be rescheduled for the next available hearing date at the same facility after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be submitted to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(f) *Advancement of the case on the hearing docket.* A hearing may be scheduled at a time earlier than would be provided for under § 19.75 of this chapter upon written motion of the appellant or the representative. The same grounds for granting relief, motion filing procedures, and designation of authority to rule on the motion specified in Rule 900(c) (§ 20.900(c) of this part) for advancing a case on the Board's docket shall apply.

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

(Approved by the Office of Management and Budget under control number 2900–0085)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20451, May 7, 1996; 65 FR 14471, Mar. 17, 2000]

§ 20.705 Rule 705. Where hearings are conducted.

A hearing on appeal before the Board of Veterans' Appeals may be held in one of the following places at the option of the appellant:

(a) In Washington, DC, or

(b) At a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[58 FR 27936, May 12, 1993, as amended at 61 FR 20451, May 7, 1996]

§ 20.706 Rule 706. Functions of the presiding Member.

The presiding Member of a hearing panel is responsible for the conduct of the hearing, administration of the oath or affirmation, and for ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

§ 20.707 Rule 707. Designation of Member or Members to conduct the hearing.

The Member or panel to whom a proceeding is assigned under § 19.3 of this part shall conduct any hearing before the Board in connection with that proceeding. Where a proceeding has been assigned to a panel, the Chairman, or the Chairman's designee, shall designate one of the Members as the presiding Member. The Member or Members who conduct the hearing shall participate in making the final determination of the claim, subject to the exception in § 19.11(c) of this part (relating to reconsideration of a decision).

(Authority: 38 U.S.C. 7102, 7107)

[61 FR 20451, May 7, 1996]

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and productive. With respect to hearings to be held before the Board at Washington, DC, arrangements for a prehearing conference must be made through: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before the Board at Department of Veterans Affairs field facilities must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[61 FR 20452, May 7, 1996]

§ 20.709 Rule 709. Procurement of additional evidence following a hearing.

If it appears during the course of a hearing that additional evidence would assist in the review of the questions at issue, the presiding Member may direct that the record be left open so that the appellant and his or her representative may obtain the desired evidence. The presiding Member will determine the period of time during which the record will stay open, considering the amount of time estimated by the appellant or representative as needed to obtain the evidence and other factors adduced during the hearing. Ordinarily, the period will not exceed 60 days, and will be as short as possible in order that appellate consideration of the case not be unnecessarily delayed.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

§ 20.710 Rule 710. Witnesses at hearings.

The testimony of witnesses, including appellants, will be heard. All testimony must be given under oath or affirmation. Oath or affirmation is not required for the sole purpose of presenting contentions and argument.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[61 FR 29028, June 7, 1996]

§ 20.711 Rule 711. Subpoenas.

(a) *General.* An appellant, or his or her representative, may arrange for the production of any tangible evidence or the voluntary appearance of any witnesses desired. When necessary evidence cannot be obtained in any other reasonable way, the appellant, or his or her representative, may move that a subpoena be issued to compel the attendance of witnesses residing within 100 miles of the place where a hearing on appeal is to be held and/or to compel the production of tangible evidence. A subpoena will not be issued to compel the attendance of Department of Veterans Affairs adjudicatory personnel.

(b) *Contents of motion for subpoena.* The motion for a subpoena must be in writing, must clearly show the name and address of each witness to be subpoenaed, must clearly identify all documentary or other tangible evidence to be produced, and must explain why the attendance of the witness and/or the production of the tangible evidence cannot be obtained without a subpoena.

(c) *Where motion for subpoena is to be filed.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, motions for a subpoena must be filed with the Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In those cases where the appellate record has not been transferred to the Board, such motions must be filed with the Director of the Department of Veterans Affairs facility where the appellate record is located.

(d) *When motion for subpoena is to be filed in cases involving a hearing on appeal.* Motions for the issuance of a subpoena for the attendance of a witness, or the production of documents or other tangible evidence, at a hearing on appeal must be filed not later than 30 days prior to the hearing date.

(e) *Ruling on motion for subpoena.* Where the Chairman has assigned the appeal to a Member or panel, the ruling on the motion will be made by that Member or panel. Where the appeal has not been assigned, the Chairman will assign the matter for the purpose of ruling on the motion. Where the moving party seeks production of documents or other tangible evidence, the Member or panel may condition the granting of the motion upon the advancement by the moving party of the reasonable cost of producing the books, paper, documents, or other tangible evidence requested.

(f) *Fees.* Any person who is required to attend a hearing as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. A subpoena will not be served unless that party on whose behalf the subpoena is issued delivers a check in an amount equal to the fee for one day's attendance and the mileage allowed by law, made payable to the witness, to the official issuing the subpoena. Except for checks on the business accounts of attorneys-at-law, agents, and recognized service organizations, such checks must be in the form of certified checks or cashiers checks.

(g) *Service of subpoenas.* The official issuing the subpoena will serve the subpoena by certified mail, return receipt requested. The check for fees and mileage described in paragraph (f) of this section shall be mailed with the subpoena. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

(h) *Motion to quash or modify subpoena.* If an individual served with a subpoena considers the subpoena to be unreasonable or oppressive, he or she may move that the subpoena be quashed or modified. Such motions must be in writing and must explain why the subpoena is unreasonable or oppressive and what relief is sought. Such motions must be filed with the Board not more than 10 days following receipt of the subpoena. Rulings on such motions will be made by the Member or panel authorizing the subpoena, who will inform all interested parties of the ruling in writing. The quashing of any subpoena will be conditional upon the return of the check for fees and mileage to the party on whose behalf the subpoena was issued.

(Authority: 38 U.S.C. 5711, 7102(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20452, May 7, 1996]

§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings not reimbursable by the Government.

No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(Authority: 38 U.S.C. 111)

§ 20.713 Rule 713. Hearings in simultaneously contested claims.

(a) *General.* If a hearing is scheduled for any party to a simultaneously contested claim, the other contesting claimants and their representatives, if any, will be notified and afforded an opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes to do so may present testimony and argument. The appellant will then be allowed an opportunity to present testimony and argument in rebuttal. Cross-examination will not be allowed.

(b) *Requests for changes in hearing dates.* Any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 702, paragraph (c) (§ 20.702(c) of this part), or Rule 704, paragraph (c) (§ 20.704(c) of this part), as applicable. In order to obtain a new hearing date under the provisions of Rule 702, paragraph (c)(1), the consent of all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, paragraph (c)(2) of that rule will apply even though the request is submitted within 60 days from the date of the letter of notification of the time and place of the hearing. A copy of any motion for a new hearing date required by these

rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion. Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

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

§ 20.714 Rule 714. Record of hearing.

(a) *Board of Veterans' Appeals.* A hearing before a Member or panel of Members of the Board, whether held in Washington, DC, or at a Department of Veterans Affairs field facility, will be recorded on audio tape. In those instances where a complete written transcript is prepared, that transcript will be the official record of the hearing and the tape recording will be retained at the Board for a period of 12 months following the date of the hearing as a duplicate record of the hearing. Tape recordings of hearings that have not been transcribed will be maintained by the Board as the official record of hearings and retained in accordance with retention standards approved by the National Archives and Records Administration. A transcript will be prepared and incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder if one or more of the following conditions have been met:

(1) The appellant or representative has shown good cause why such a written transcript should be prepared. (The presiding Member will determine whether good cause has been shown. Requests that recordings of hearing proceedings be transcribed may be made orally at the time of the hearing. Requests made subsequent to the hearing must be in writing and must explain why transcription is necessary. They must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.)

(2) Testimony and/or argument has been presented at the hearing pertaining to an issue which is to be remanded to the agency of original jurisdiction for further development or an issue which is not in appellate status which is to be referred to the agency of original jurisdiction for consideration.

(3) The hearing involves an issue relating to National Service Life Insurance or United States Government Life Insurance.

(4) With respect to hearings conducted by a Member or Members of the Board at a Department of Veterans Affairs field facility :

(i) An issue on appeal involves radiation, Agent Orange, or asbestos exposure;

(ii) The appeal involves reconsideration of a prior Board of Veterans' Appeals decision on the same issue; or

(5) The Board's decision on an issue addressed at the hearing has been appealed to the United States Court of Appeals for Veterans Claims.

(b) *Copy of hearing tape recording or written transcript.* One copy of the tape recording of hearing proceedings before the Board of Veterans' Appeals, or the written transcript of such proceedings when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, shall be furnished without cost to the appellant or representative if a request is made in accordance with § 1.577 of this chapter.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27936, May 12, 1993; 61 FR 20452, May 7, 1996; 65 FR 14472, Mar. 17, 2000]

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may only be authorized when prior written consent is obtained from all appellants and contesting claimants, if any, and made a matter of record. In no event will such additional equipment be used if it interferes with the conduct of the hearing or the official recording apparatus.

In all such situations, advance arrangements must be made. In the case of hearings held before the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the Director of the Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before the Board at Department of Veterans Affairs field facilities, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[58 FR 27936, May 12, 1993, as amended at 61 FR 20452, May 7, 1996]

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans' Appeals or a transcript prepared by the Board of Veterans' Appeals is the only official record of a hearing before the Board. Alternate transcript versions prepared by the appellant and representative will not be accepted. If an appellant wishes to seek correction of perceived errors in a hearing transcript, the appellant or his or her representative should move for the correction of the hearing transcript within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be made by the presiding Member of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[58 FR 27936, May 12, 1993, as amended at 61 FR 20452, May 7, 1996]

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

(a) *Motion for new hearing.* In the event that a hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available, an appellant or his or her representative may move for a new hearing. The motion must be in writing and must specify why prejudice would result from the failure to provide a new hearing.

(b) *Time limit for filing motion for a new hearing.* The motion will not be granted if there has been no request for a new hearing within a period of 120 days from the date of a final Board of Veterans' Appeals decision or, in cases appealed to the United States Court of Appeals for Veterans Claims, if there has been no request for a new hearing within a reasonable period of time after the appeal to that Court has been filed.

(c) *Where motion for a new hearing is filed.* In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(d) *Ruling on motion for a new hearing.* The ruling on the motion for a new hearing will be made by the Member who presided over the hearing. If the presiding Member is no longer available, the ruling on the motion may be made by the Member or Members to whom the case has been assigned for a determination. In cases in which a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question, the Chairman will assign the matter in accordance with § 19.3 of this title. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board of Veterans' Appeals decision

has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27936, May 12, 1993; 61 FR 20452, May 7, 1996; 65 FR 14472, Mar. 17, 2000]

§§ 20.718–20.799 [Reserved]

Subpart I—Evidence

§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.

Subject to the limitations set forth in Rule 1304 (§ 20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal.

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

§§ 20.801–20.899 [Reserved]

Subpart J—Action by the Board

§ 20.900 Rule 900. Order of consideration of appeals.

(a) *Docketing of appeals.* Applications for review on appeal are docketed in the order in which they are received. Cases returned to the Board following action pursuant to a remand assume their original places on the docket.

(b) *Appeals considered in docket order.* Except as otherwise provided in this Rule, appeals are considered in the order in which they are entered on the docket.

(c) *Advancement on the docket.* A case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. ''Other sufficient cause'' shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case. Such motions must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (*e.g.*, a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Where a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

(d) *Consideration of appeals remanded by the United States Court of Appeals for Veterans Claims.* A case remanded by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action will be treated expeditiously by the Board without regard to its place on the Board's docket.

(e) *Postponement to provide hearing.* Any other provision of this Rule notwithstanding, a case may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(Authority: 38 U.S.C. 7107, Pub. Law No. 103–446, § 302)

[57 FR 4109, Feb. 3, 1992, as amended at 60 FR 51923, Oct. 4, 1995; 61 FR 20453, May 7, 1996; 65 FR 14472, Mar. 17, 2000]

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) *Opinion of the Chief Medical Director.* The Board may obtain a medical opinion from the Chief Medical Director of the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 5107(a))

(b) *Armed Forces Institute of Pathology opinions.* The Board may refer pathologic material to the Armed Forces Institute of Pathology and request an opinion based on that material.

(Authority: 38 U.S.C. 7109(a))

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

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

(d) *Independent medical expert opinions.* When, in the judgment of the Board, additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of the Department of Veterans Affairs. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics, or medical institutions with which arrangements for such opinions have been made by the Secretary of Veterans Affairs. An appropriate official of the institution will select the individual expert, or experts, to give an opinion.

(Authority: 38 U.S.C. 7109)

(e) For purposes of this section, the term ''the Board'' includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of the Board before whom a case is pending.

(Authority: 38 U.S.C. 5107(a), 7104(c), 7109)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20453, May 7, 1996]

§ 20.902 Rule 902. Filing of requests for the procurement of opinions.

The appellant or representative may request that the Board obtain an opinion under Rule 901 (§ 20.901 of this part). The request must be in writing. It will be granted upon a showing of good cause, such as the identification of a complex or controversial medical or legal issue involved in the appeal which warrants such an opinion.

(Authority: 38 U.S.C. 5107(a), 7102(c), 7104(c), 7109)

§ 20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.

When an opinion is requested by the Board pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the appellant if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(Authority: 38 U.S.C. 7109(c))

§ 20.904 Rule 904. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans' Appeals at any time upon request of the appellant or his or her representative, or on the Board's own motion, on the following grounds:

(a) *Denial of due process.* Examples of circumstances in which denial of due process of law will be conceded are:

(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans' Appeals personnel,

(2) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and

(3) When there was a prejudicial failure to afford the appellant a personal hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.)

(b) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within

the judgment of the Board, the false or fraudulent evidence was material.

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

§§ 20.905–20.999 [Reserved]

Subpart K—Reconsideration

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans' Appeals on motion by the appellant or his or her representative or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned; or

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant.

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

§ 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

(a) *Application requirements.* A motion for Reconsideration must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision, or decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans' Appeals decision, or decisions, involved more than one issue on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a prior Board of Veterans' Appeals decision may be filed at any time. Such motions must be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(c) *Disposition.* The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60 days from the date of mailing of the letter of notification to present additional arguments or evidence. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman will assign a Reconsideration panel in accordance with § 19.11 of this chapter.

(Authority: 38 U.S.C. 7103, 7108)

§ 20.1002 Rule 1002. [Reserved]

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant requests a hearing before the Board. The hearing will be held by a Member or Members assigned to the reconsideration panel. A hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with Rule 700(d) (§ 20.700(d) of this part). Requests for appearances by representatives alone to personally present argument to a Member or panel of Members of the Board may be granted if good cause is shown. Whether

good cause has been shown will be determined by the presiding Member.

(Authority: 38 U.S.C. 7102, 7103, 7105(a))

[61 FR 20453, May 7, 1996]

§§ 20.1004–20.1099 [Reserved]

Subpart L—Finality

§ 20.1100 Rule 1100. Finality of decisions of the Board.

(a) *General.* All decisions of the Board will be stamped with the date of mailing on the face of the decision. Unless the Chairman of the Board orders reconsideration, and with the exception of matters listed in paragraph (b) of this section, all Board decisions are final on the date stamped on the face of the decision. With the exception of matters listed in paragraph (b) of this section, the decision rendered by the reconsideration Panel in an appeal in which the Chairman has ordered reconsideration is final.

(b) *Exceptions.* Final Board decisions are not subject to review except as provided in 38 U.S.C. 1975 and 1984 and 38 U.S.C. chapters 37 and 72. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(Authority: 38 U.S.C. 511(a), 7103, 7104(a))

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20453, May 7, 1996]

§ 20.1101 Rule 1101. [Reserved]

§ 20.1102 Rule 1102. Harmless error.

An error or defect in any decision by the Board of Veterans' Appeals which does not affect the merits of the issue or substantive rights of the appellant will be considered harmless and not a basis for vacating or reversing such decision.

(Authority: 38 U.S.C. 7103)

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in Rule 302 (§ 20.302 of this part).

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

§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans' Appeals, such determination is subsumed by the final appellate decision.

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

§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.

When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a basis for allowing the claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 5108, 7104)

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1318 and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.

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

§§ 20.1107–20.1199 [Reserved]

Subpart M—Privacy Act

§ 20.1200 Rule 1200. Privacy Act request—appeal pending.

When a Privacy Act request is filed under § 1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed

prior to appellate action on that individual's appeal.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 7107)

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of § 1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 7103, 7108)

§§ 20.1202–20.1299 [Reserved]

Subpart N—Miscellaneous

CROSS-REFERENCE: In cases involving access to patient information relating to a Department of Veterans Affairs program for, or the treatment of, drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.1300 Rule 1300. Removal of Board records.

No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.

(Authority: 38 U.S.C. 5701)

[61 FR 29028, June 7, 1996]

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board of Veterans' Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 5701, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(Authority: 38 U.S.C. 7105(d)(2))

(b) *Index to decisions.* The appellate decisions of the Board of Veterans' Appeals have been indexed to facilitate access to the contents of the decisions (BVA Index I–01–1). The index, which is published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Research Center at the Board of Veterans' Appeals in Washington, DC. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it. The manner in which the locator number is written will depend upon the age of the decision. Decisions archived prior to late 1989 will have a number such as *82–07–0001.* Decisions archived at a later date will have a number such as *BVA–90–12345.* This number must be used when requesting a paper copy of that decision. These requests must be directed to the Appellate Index and Retrieval Staff (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Microfiche copies of BVA Index I–01–1 can be obtained from Promisel

and Korn, Inc., 7201 Wisconsin Avenue, suite 480, Bethesda, MD 20814.

(Authority: 5 U.S.C. 552(a)(2))

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal.

An appeal pending before the Board of Veterans' Appeals when the appellant dies will be dismissed.

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

[62 FR 55170, Oct. 23, 1997]

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Although the Board strives for consistency in issuing its decisions, previously issued Board decisions will be considered binding only with regard to the specific case decided. Prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, but each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

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

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 90 days following the mailing of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board, or until the date the appellate decision is promulgated by the Board of Veterans' Appeals, whichever comes first, during which they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence must be submitted directly to the Board and not to the agency of original jurisdiction. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence.* Following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Director, Administrative Service

(014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(c) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, as well as any such evidence referred to the Board by the originating agency under § 19.37(b) of this chapter, must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or representative or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writing or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(d) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence which directly affects payment, or potential payment, of the benefit sought is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 7104, 7105, 7105A)

[57 FR 4109, Feb. 3, 1992, as amended at 60 FR 25851, May 15, 1995; 61 FR 20453, May 7, 1996]

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

SOURCE: 64 FR 2139, Jan. 13, 1999, unless otherwise noted.

§ 20.1400 Rule 1400. Motions to revise Board decisions.

(a) Review to determine whether clear and unmistakable error exists in a final Board decision may be initiated by the Board, on its own motion, or by a party to that decision (as the term ''party'' is defined in Rule 1401(b) (§ 20.1401(b) of this part) in accordance with Rule 1404 (§ 20.1404 of this part).

(b) All final Board decisions are subject to revision under this subpart except:

(1) Decisions on issues which have been appealed to and decided by a court of competent jurisdiction; and

(2) Decisions on issues which have subsequently been decided by a court of competent jurisdiction.

(Authority: 38 U.S.C. 501(a), 7111)

[64 FR 2139, Jan 13, 1999, as amended at 64 FR 73414, Dec. 30, 1999]

Sec. 20.1401 Rule 1401. Definitions.

(a) *Issue.* Unless otherwise specified, the term ''issue'' in this subpart means a matter upon which the Board made a final decision (other than a decision under this subpart). As used in the preceding sentence, a ''final decision'' is one which was appealable under Chapter 72 of title 38, United States Code, or which would have been so appealable if such provision had been in effect at the time of the decision.

(b) *Party.* As used in this subpart, the term ''party'' means any party to the proceeding before the Board that resulted in the final Board decision which is the subject of a motion under this subpart, but does not include officials authorized to file administrative appeals pursuant to § 19.51 of this title.

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

20.1402 Rule 1402. Inapplicability of other rules.

Motions filed under this subpart are not appeals and, except as otherwise provided, are not subject to the provisions of part 19 of this title or this part 20 which relate to the processing and disposition of appeals.

(Authority: 38 U.S.C. 501(a))

§ 20.1403 Rule 1403. What constitutes clear and unmistakable error; what does not.

(a) *General.* Clear and unmistakable error is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. Generally, either the correct facts, as they were known at the time, were not before the Board, or the statutory and regulatory provisions extant at the time were incorrectly applied.

(b) *Record to be reviewed*—(1) *General.* Review for clear and unmistakable error in a prior Board decision must be based on the record and the law that existed when that decision was made.

(2) *Special rule for Board decisions issued on or after July 21, 1992.* For a Board decision issued on or after July 21, 1992, the record that existed when that decision was made includes relevant documents possessed by the Department of Veterans Affairs not later than 90 days before such record was transferred to the Board for review in reaching that decision, provided that the documents could reasonably be expected to be part of the record.

(c) *Errors that constitute clear and unmistakable error.* To warrant revision of a Board decision on the grounds of clear and unmistakable error, there must have been an error in the Board's adjudication of the appeal which, had it not been made, would have manifestly changed the outcome when it was made. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable.

(d) *Examples of situations that are not clear and unmistakable error*—(1) *Changed diagnosis.* A new medical diagnosis that ''corrects'' an earlier diagnosis considered in a Board decision.

(2) *Duty to assist.* The Secretary's failure to fulfill the duty to assist.

(3) *Evaluation of evidence.* A disagreement as to how the facts were weighed or evaluated.

(e) *Change in interpretation.* Clear and unmistakable error does not include the otherwise correct application of a statute or regulation where, subsequent to the Board decision challenged, there has been a change in the interpretation of the statute or regulation.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1404 Rule 1404. Filing and pleading requirements; withdrawal.

(a) *General.* A motion for revision of a decision based on clear and unmistakable error must be in writing, and must be signed by the moving party or that party's representative. The motion must include the name of the veteran; the name of the moving party if other than the veteran; the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision to which the

motion relates. If the applicable decision involved more than one issue on appeal, the motion must identify the specific issue, or issues, to which the motion pertains. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refiling under this subpart.

(b) *Specific allegations required.* The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be denied.

(c) *Filing.* A motion for revision of a decision based on clear and unmistakable error may be filed at any time. Such motions should be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(d) *Requests not filed at the Board.* A request for revision transmitted to the Board by the Secretary pursuant to 38 U.S.C. 7111(f) (relating to requests for revision filed with the Secretary other than at the Board) shall be treated as if a motion had been filed pursuant to paragraph (c) of this section.

(e) *Motions for reconsideration.* A motion for reconsideration, as described in subpart K of this part, whenever filed, will not be considered a motion under this subpart.

(f) *Withdrawal.* A motion under this subpart may be withdrawn at any time before the Board promulgates a decision on the motion. Such withdrawal shall be in writing, shall be filed at the address listed in paragraph (c) of this section, and shall be signed by the moving party or by such party's representative. If such a writing is timely received, the motion shall be dismissed without prejudice to refiling under this subpart.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1405 Rule 1405. Disposition.

(a) *Docketing and assignment; notification of representative*—(1) *General.* Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 19.3 of this title (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(2) *Notification of representative.* When the Board receives a motion under this subpart from an individual whose claims file indicates that he or she is represented, the Board shall provide a copy of the motion to the representative before assigning the motion to a Member or panel. Within 30 days after the date on which the Board provides a copy of the motion to the representative, the representative may file a relevant response, including a request to review the claims file prior to filing a further response. Upon request made within the time allowed under this paragraph, the Board shall arrange for the representative to have the opportunity to review the claims file, and shall permit the representative a reasonable time after making the file available to file a further response.

(b) *Evidence.* No new evidence will be considered in connection with the disposition of the motion. Material included in the record on the basis of Rule 1403(b)(2) (§ 20.1403(b)(2) of this part) is not considered new evidence.

(c) *Hearing*—(1) *Availability.* The Board may, for good cause shown, grant a request for a hearing for the purpose of argument. No testimony or other evidence will be admitted in connection with such a hearing. The determination as to whether good cause has been shown shall be made by the member or panel to whom the motion is assigned.

(2) *Submission of requests.* Requests for such a hearing shall be submitted to

the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(d) *Decision to be by the Board.* The decision on a motion under this subpart shall be made by the Board. There shall be no referral of the matter to any adjudicative or hearing official acting on behalf of the Secretary for the purpose of deciding the motion.

(e) *Referral to ensure completeness of the record.* Subject to the provisions of paragraph (b) of this section, the Board may use the various agencies of original jurisdiction to ensure completeness of the record in connection with a motion under this subpart.

(f) *General Counsel opinions.* The Board may secure opinions of the General Counsel in connection with a motion under this subpart. In such cases, the Board will notify the party and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the party's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the party if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(g) *Decision.* The decision of the Board on a motion will be in writing. The decision will include separately stated findings of fact and conclusions of law on all material questions of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the motion.

(Authority: 38 U.S.C. 501(a), 7104(d), 7111)

[64 FR 2139, Jan. 13, 1999, as amended at 64 FR 7091, Feb. 12, 1999

§ 20.1406 Rule 1406. Effect of revision; discontinuance or reduction of benefits.

(a) *General.* A decision of the Board that revises a prior Board decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(b) *Discontinuance or reduction of benefits.* Revision of a prior Board decision under this subpart that results in the discontinuance or reduction of benefits is subject to laws and regulations governing the reduction or discontinuance of benefits by reason of erroneous award based solely on administrative error or errors in judgment.

(Authority: 38 U.S.C. 7111(b))

§ 20.1407 Rule 1407. Motions by the Board.

If the Board undertakes, on its own motion, a review pursuant to this subpart, the party to that decision and that party's representative (if any) will be notified of such motion and provided an adequate summary thereof and, if applicable, outlining any proposed discontinuance or reduction in benefits that would result from revision of the Board's prior decision. They will be allowed a period of 60 days to file a brief or argument in answer. The failure of a party to so respond does not affect the finality of the Board's decision on the motion.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1408 Rule 1408. Special rules for simultaneously contested claims.

In the case of a motion under this subpart to revise a final Board decision in a simultaneously contested claim, as that term is used in Rule 3(o) (§ 20.3(o) of this part), a copy of such motion shall, to the extent practicable, be sent to all other contesting parties. Other parties have a period of 30 days from the date of mailing of the copy of the motion to file a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy. Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 501(a))

§ 20.1409 Rule 1409. Finality and appeal.

(a) A decision on a motion filed by a party or initiated by the Board pursuant to this subpart will be stamped with the date of mailing on the face of the decision, and is final on such date. The party and his or her representative, if any, will be provided with copies of the decision.

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part) or Rule 1404(f) (§ 20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.

(c) Once there is a final decision on a motion under this subpart relating to a prior Board decision on an issue, that prior Board decision on that issue is no longer subject to revision on the grounds of clear and unmistakable error. Subsequent motions relating to that prior Board decision on that issue shall be dismissed with prejudice.

(d) Chapter 72 of title 38, United States Code (relating to judicial review), applies with respect to final decisions on motions filed by a party or initiated by the Board pursuant to this subpart.

(Authority: 38 U.S.C. 501(a); Pub. L. 105–111)

§ 20.1410 Rule 1410. Stays pending court action.

The Board will stay its consideration of a motion under this subpart upon receiving notice that the Board decision that is the subject of the motion has been appealed to a court of competent jurisdiction until the appeal has been concluded or the court has issued an order permitting, or directing, the Board to proceed with the motion.

(Authority: 38 U.S.C. 501(a))

§ 20.1411 Rule 1411. Relationship to other statutes.

(a) The ''benefit of the doubt'' rule of 38 U.S.C. 5107(b) does not apply to the Board's decision, on a motion under this subpart, as to whether there was clear and unmistakable error in a prior Board decision.

(b) A motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (relating to reopening claims on the grounds of new and material evidence).

(c) A motion under this subpart is not an application for benefits subject to any duty associated with 38 U.S.C. 5103(a) (relating to applications for benefits).

(d) A motion under this subpart is not a claim for benefits subject to the requirements and duties associated with 38 U.S.C. 5107(a) (requiring ''well-grounded'' claims and imposing a duty to assist).

(Authority: 38 U.S.C. 501(a))

APPENDIX A TO PART 20—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	*Statement of policy.*
20.100	38 CFR 20.306	*Rule 306. Legal holidays.*
20.200	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
	38 CFR 20.202	*Rule 202. Substantive Appeal.*
	38 CFR 20.300–20.306	See re filing Notices of Disagreement and Substantive Appeals.
20.202	38 CFR 19.29	*Statement of the Case.*
	38 CFR 19.31	*Supplemental Statement of the Case.*
20.301	38 CFR 20.500	*Rule 500. Who can file an appeal in simultaneously contested claims.*
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.302	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.*
20.303	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.503	*Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.*
20.305	38 CFR 20.306	*Rule 306. Legal holidays.*
20.400	38 CFR 19.50–19.53	See also re administrative appeals.
20.401	38 CFR 19.50–19.53	See also re administrative appeals.
	38 CFR 20.302–20.306	See re time limits for perfecting an appeal.
	38 CFR 20.501, 20.503	See re time limits for perfecting an appeal in simultaneously contested claims.
20.500	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.501	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*

Sec.	Cross-reference	Title of cross-referenced material or comment
	38 CFR 20.306	*Rule 306. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.502	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.503	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.504	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.600	38 CFR 14.626 et seq	See also re representation.
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.602	38 CFR 14.628	*Recognition of organizations.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.603	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.604	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.605	38 CFR 14.630	*Authorization for a particular claim.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.606	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
20.607	38 CFR 14.631(d)	See also re revocation of powers of attorney.
20.609	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.610	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.611	38 CFR 1.525(d), 14.631(e)	See also re continuation of authority conferred by powers of attorney upon the death of a claimant.
20.701	38 CFR 20.710	*Rule 710. Witnesses at hearings.*
20.702	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 facilities.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.703	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
20.704	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.*
20.706	38 CFR 20.700(c)	See also re the presiding Member's role in the conduct of hearings.
	38 CFR 20.708	*Rule 708. Prehearing conference.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
20.707	38 CFR 19.11	*Reconsideration Section.*
20.708	38 CFR 20.606(d)	See re the prehearing conference required when a legal intern, law student, or paralegal is to participate in a hearing held before a traveling Section of the Board.

Sec.	Cross-reference	Title of cross-referenced material or comment
20.709	38 CFR 19.37	*Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.*
20.710	38 CFR 20.711	*Rule 711. Subpoenas.*
20.711	38 CFR 2.1	See for further information on subpoenas, including action to be taken in the event of noncompliance.
20.713	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.*
	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 facilities.*
20.715	38 CFR 20.706	*Rule 706. Functions of the presiding Member.*
20.800	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.*
20.901	38 CFR 14.507	See re opinions of the General Counsel of the Department of Veterans Affairs.
20.903	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
20.1003	38 CFR 20.700(b)	See re submission of written brief and of oral argument on audio cassette.
20.1105	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.1304(b)(1)	See re request for a personal hearing or submission of additional evidence more than 60 days after a case has been certified to the Board of Veterans' Appeals as possible basis for a reopened claim.
20.1106	38 CFR 3.22(a)(2)	See re correction of a rating, after a veteran's death, based on clear and unmistakable error, in cases involving claims for benefits under the provisions of 38 U.S.C. 1318.
20.1300	38 CFR 1.500–1.527	See re the release of information from Department of Veterans Affairs claimant records.
	38 CFR 1.550–1.559	See re the release of information from Department of Veterans Affairs records other than claimant records.
	38 CFR 1.575–1.584	See re safeguarding personal information in Department of Veterans Affairs records.
	38 CFR 20.1301	*Rule 1301. Disclosure of information.*
20.1301	38 CFR 1.577	*Access to records.*
20.1302	38 CFR 20.611	*Rule 611. Continuation of representation following death of a claimant or appellant.*
20.1304	38 CFR 3.103(c), 20.700–20.717.	See also re hearings.
	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

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