

## § 20.1106

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. 1311(a)(2), 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)).

[70 FR 72221, Dec. 2, 2005]

### **§§ 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

## **38 CFR Ch. I (7–1–10 Edition)**

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

## Department of Veterans Affairs

## § 20.1304

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) *Public availability of Board decisions*—(1) *Decisions issued on or after January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals on or after January 1, 1992, are electronically available for public inspection and copying on the Internet at <http://www.index.va.gov/search/va/bva.html>. All personal identifiers are redacted from the decisions prior to publication. Specific decisions may be identified by a word and/or topic search, or by the Board docket number. Board decisions will continue to be provided in a widely-used format as future advances in technology occur.

(2) *Decisions issued prior to January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals prior to January 1, 1992, have been indexed to facilitate access to the contents of the decisions (BVA Index I-01-1). The index, which was 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. Information on obtaining a microfiche copy of the index is also available from the Board's Research Center. 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 depends upon the age of the decision. Decisions archived prior to late 1989 have a number such as 82-07-0001. Decisions archived at a later date 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 Research Center (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 5 U.S.C. 552(a)(2), 38 U.S.C. 501(a))  
[57 FR 4109, Feb. 3, 1992, as amended at 71 FR 18009, Apr. 10, 2006]

### § 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