

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

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

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

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

Sec.

- 19.1 Establishment of the Board.
- 19.2 Composition of the Board; Titles.
- 19.3 Assignment of proceedings.
- 19.4 Principal functions of the Board.
- 19.5 Criteria governing disposition of appeals.
- 19.6 [Reserved]
- 19.7 The decision.
- 19.8 Content of Board decision, remand, or order in simultaneously contested claims.
- 19.9 Remand or referral for further action.
- 19.10 [Reserved]
- 19.11 Reconsideration panel.
- 19.12 Disqualification of Members.
- 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.
- 19.14 Delegation of authority—Appeals regulations.

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

- 19.23 Applicability of provisions concerning Notice of Disagreement.
- 19.24 Action by agency of original jurisdiction on Notice of Disagreement required to be filed on a standardized form.
- 19.25 Notification by agency of original jurisdiction of right to appeal.
- 19.26 Action by agency of original jurisdiction on Notice of Disagreement.
- 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.
- 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.
- 19.29 Statement of the Case.
- 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

- 19.31 Supplemental statement of the case.
- 19.32 Closing of appeal for failure to respond to Statement of the Case.
- 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.
- 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.
- 19.35 Certification of appeals.
- 19.36 Notification of certification of appeal and transfer of appellate record.
- 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.
- 19.38 Action by agency of original jurisdiction when remand received.
- 19.39-19.49 [Reserved]

### **Subpart C—Administrative Appeals**

- 19.50 Nature and form of administrative appeal.
- 19.51 Officials authorized to file administrative appeals and time limits for filing.
- 19.52 Notification to claimant of filing of administrative appeal.
- 19.53 Restriction as to change in payments pending determination of administrative appeals.
- 19.54-19.74 [Reserved]

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

- 19.75 Hearing docket.
- 19.76 Notice of time and place of hearing before the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.
- 19.77-19.99 [Reserved]

### **Subpart E—Simultaneously Contested Claims**

- 19.100 Notification of right to appeal in simultaneously contested claims.
- 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.
- 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

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

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

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

**Subpart A—Operation of the Board of Veterans’ Appeals**

**§ 19.1 Establishment of the Board.**

The Board of Veterans’ Appeals is established by authority of, and functions pursuant to, title 38, United States Code, chapter 71.

**§ 19.2 Composition of the Board; Titles.**

(a) The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members and professional, administrative, clerical and stenographic personnel. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(b) A member of the Board (other than the Chairman) may also be known as a Veterans Law Judge. An individual designated as an acting member pursuant to 38 U.S.C. 7101(c)(1) may also be known as an acting Veterans Law Judge.

(Authority: 38 U.S.C. 501(a), 512, 7101(a))  
[68 FR 6625, Feb. 10, 2003]

**§ 19.3 Assignment of proceedings.**

(a) *Assignment.* The Chairman may assign a proceeding instituted before the Board, including any motion, to an individual Member or to a panel of three or more Members for adjudication or other appropriate action. The Chairman may participate in a proceeding assigned to a panel of Members.

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

(b) *Inability to serve.* If a Member is unable to participate in the disposition of a proceeding or motion to which the Member has been assigned, the Chairman may assign the proceeding or motion to another Member or substitute another Member (in the case of a proceeding or motion assigned to a panel).

(Authority: 38 U.S.C. 7101(a), 7102)  
[61 FR 20448, May 7, 1996]

**§ 19.4 Principal functions of the Board.**

The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applica-

tions on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal.

(Authority: 38 U.S.C. 7102, 7104, 7107)

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

In the consideration of appeals, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

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

**§ 19.6 [Reserved]**

**§ 19.7 The decision.**

(a) *Decisions based on entire record.* The appellant will not be presumed to be in agreement with any statement of fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 7104(a), 7105(d)(4))

(b) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include separately stated findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the benefit or benefits sought on appeal or dismissing the appeal.

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

## § 19.8

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

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

### § 19.8 Content of Board decision, remand, or order in simultaneously contested claims.

The content of the Board's decision, remand, or order in appeals involving a simultaneously contested claim will be limited to information that directly affects the issues involved in the contested claim. Appellate issues that do not involve all of the contesting parties will be addressed in one or more separate written decisions, remands, or orders that will be furnished only to the appellants concerned and their representatives, if any.

(Authority: 5 U.S.C. 552a(b), 38 U.S.C. 5701(a))  
[61 FR 68666, Dec. 30, 1996]

### § 19.9 Remand or referral for further action.

(a) *Remand.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Veterans Law Judge or panel of Veterans Law Judges shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(b) *Referral.* The Board shall refer to the agency of original jurisdiction for appropriate consideration and handling in the first instance all claims reasonably raised by the record that have not been initially adjudicated by the agency of original jurisdiction, except for claims over which the Board has original jurisdiction.

(c) *Remand for a Statement of the Case.* In cases before the Board in which a claimant has timely filed a Notice of Disagreement with a determination of the agency of original jurisdiction on a claim, but the record reflects that the agency of original jurisdiction has not subsequently granted the claim in full and has not furnished the claimant with a Statement of the Case, the Board shall remand the claim to the agency of original jurisdiction with instructions to prepare and issue a Statement of the Case in accordance with

## 38 CFR Ch. I (7-1-15 Edition)

the provisions of subpart B of this part. A remand for a Statement of the Case is not required if the claimant, consistent with the withdrawal requirements of § 20.204 of this chapter, withdraws the Notice of Disagreement.

(d) *Exceptions.* A remand or referral to the agency of original jurisdiction is not necessary for any of the following purposes:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Considering law not already considered by the agency of original jurisdiction, including, but not limited to, statutes, regulations, and court decisions;

(3) Reviewing additional evidence received by the Board, if, pursuant to § 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal;

(4) Requesting an opinion under § 20.901 of this chapter;

(5) Supplementing the record with a recognized medical treatise; or

(6) Considering a matter over which the Board has original jurisdiction.

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a), 7105)

[67 FR 3104, Jan. 23, 2002, as amended at 69 FR 53808, Sept. 3, 2004; 76 FR 17547, Mar. 30, 2011]

### § 19.10 [Reserved]

### § 19.11 Reconsideration panel.

(a) *Assignment of Members.* When a motion for reconsideration is allowed, the Chairman will assign a panel of three or more Members of the Board, which may include the Chairman, to conduct the reconsideration.

(b) *Number of Members constituting a reconsideration panel.* In the case of a matter originally heard by a single Member of the Board, the case shall be referred to a panel of three Members of the Board. In the case of a matter originally heard by a panel of Members of the Board, the case shall be referred

## Department of Veterans Affairs

## § 19.24

to an enlarged panel, consisting of three or more Members than the original panel. In order to obtain a majority opinion, the number of Members assigned to a reconsideration panel may be increased in successive increments of three.

(c) *Members included in the reconsideration panel.* The reconsideration panel may not include any Member who participated in the decision that is being reconsidered. Additional Members will be assigned in accordance with paragraph (b) of this section.

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

[61 FR 20449, May 7, 1996]

### § 19.12 Disqualification of Members.

(a) *General.* A Member of the Board will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in which he or she participated or had supervisory responsibility in the agency of original jurisdiction prior to his or her appointment as a Member of the Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

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

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

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

(c) *Disqualification of Members by the Chairman.* The Chairman of the Board, on his or her own motion, may disqualify a Member from acting in an appeal on the grounds set forth in paragraphs (a) and (b) of this section and in those cases where a Member is unable or unwilling to act.

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

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

### § 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

The Chairman and/or Vice Chairman have authority delegated by the Secretary of Veterans Affairs to:

(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a benefit, and

(b) Order VA Central Office investigations of matters before the Board.

(Authority: 38 U.S.C. 303, 512(a))

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

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

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

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

[57 FR 4104, Feb. 3, 1992, as amended at 70 FR 8930, Feb. 24, 2005]

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

### § 19.23 Applicability of provisions concerning Notice of Disagreement.

(a) Appeals governed by § 20.201(a) of this chapter shall be processed in accordance with § 19.24. Sections 19.26, 19.27 and 19.28 shall not apply to appeals governed by § 20.201(a) of this chapter.

(b) Appeals governed by § 20.201(b) of this chapter shall be processed in accordance with §§ 19.26, 19.27, and 19.28.

[79 FR 57697, Sept. 25, 2014]

### § 19.24 Action by agency of original jurisdiction on Notice of Disagreement required to be filed on a standardized form.

(a) *Initial action.* When a timely Notice of Disagreement in accordance with the requirements of § 20.201(a) of this chapter is filed, the agency of original jurisdiction will reexamine the

## § 19.25

## 38 CFR Ch. I (7–1–15 Edition)

claim and determine whether additional review or development is warranted.

(b) *Incomplete and complete appeal forms*—(1) *Incomplete appeal forms*. In cases governed by paragraph (a) of §20.201 of this chapter, if VA determines a form filed by the claimant is incomplete and requests clarification, the claimant must timely file a completed version of the correct form in order to initiate an appeal. A claimant is not required to cure or correct the filing of an incomplete form by filing a completed version of the correct form unless VA informs the claimant or his or her representative that the form is incomplete and requests clarification.

(2) *Complete appeal forms*. In general, a form will be considered complete if the following information is provided:

(i) Information to identify the claimant;

(ii) The claim to which the form pertains;

(iii) Any information necessary to identify the specific nature of the disagreement if the form so requires. For compensation claims, this criterion will be met if the form enumerates the issues or conditions for which appellate review is sought, or if it provides other information required on the form to identify the claimant and the nature of the disagreement (such as disagreement with disability rating, effective date, or denial of service connection); and

(iv) The claimant's signature.

(3) *Timeframe to complete correct form*. In general, a claimant who wishes to initiate an appeal must provide a complete form within the timeframe established by §20.302(a) of this chapter. When VA requests clarification of an incomplete form, the claimant must provide a complete form in response to VA's request for clarification within the later of the following dates:

(i) 60 days from the date of the request; or

(ii) 1 year from the date of mailing of the notice of the decision of the agency of original jurisdiction.

(4) *Failure to respond*. If the claimant fails to provide a completed form within the timeframe set forth in paragraph (b)(3) of this section, the decision of the

agency of original jurisdiction will become final.

(5) *Form timely completed*. If a completed form is received within the timeframe set forth in paragraph (b)(3) of this section, VA will treat the completed form as the Notice of Disagreement and VA will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, VA will prepare a Statement of the Case pursuant to §19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

(c) *Issues under appellate review*. If a form enumerates some but not all of the issues or conditions which were the subject of the decision of the agency of original jurisdiction, the form will be considered complete with respect to the issues for which appellate review is sought and identified by the claimant. Any issues or conditions not enumerated will not be considered appealed on the basis of the filing of that form and will become final unless the claimant timely files a separate form for those issues or conditions within the applicable timeframe set forth in paragraph (b)(3) of this section.

(d) *Disagreement concerning whether Notice of Disagreement has been filed*. Whether or not a claimant has timely filed a Notice of Disagreement is an appealable issue, but in such a case, appellate consideration shall be limited to the question of whether the correct form was timely filed.

[79 FR 57697, Sept. 25, 2014]

### § 19.25 Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits.

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

## Department of Veterans Affairs

## § 19.28

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

(a) *Initial action.* When a timely Notice of Disagreement (NOD) is filed, the agency of original jurisdiction (AOJ) must reexamine the claim and determine whether additional review or development is warranted.

(b) *Unclear communication or disagreement.* If within one year after mailing an adverse decision (or 60 days for simultaneously contested claims), the AOJ receives a written communication expressing dissatisfaction or disagreement with the adverse decision, but the AOJ cannot clearly identify that communication as expressing an intent to appeal, or the AOJ cannot identify which denied claim(s) the claimant wants to appeal, then the AOJ will contact the claimant to request clarification of the claimant's intent. This contact may be either oral or written.

(1) For oral contacts, VA will contact whoever filed the communication. VA will make a written record of any oral clarification request conveyed to the claimant including the date of the adverse decision involved and the response. In any request for clarification, the AOJ will explain that if a response to this request is not received within the time period described in paragraph (c) of this section, the earlier, unclear communication will not be considered an NOD as to any adverse decision for which clarification was requested.

(2) For written contacts, VA will mail a letter requesting clarification to the claimant and send a copy to his or her representative and fiduciary, if any.

(c) *Response required from claimant—*  
(1) *Time to respond.* The claimant must respond to the AOJ's request for clarification within the later of the following dates:

(i) 60 days after the date of the AOJ's clarification request; or

(ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).

(2) *Failure to respond.* If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered an NOD as to any claim for which clari-

fication was requested. The AOJ will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.

(d) *Action following clarification.* When clarification of the claimant's intent to file an NOD is obtained, the AOJ will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, the AOJ will prepare a Statement of the Case pursuant to § 19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

(e) *Representatives and fiduciaries.* For the purpose of the requirements in paragraphs (b) through (d) of this section, references to the "claimant" include reference to the claimant or his or her representative, if any, or to his or her fiduciary, if any, as appropriate.

(Authority: 38 U.S.C. 501, 7105, 7105A)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0674)

[71 FR 56871, Sept. 28, 2006]

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

If, after following the procedures set forth in 38 CFR 19.26, there remains within the agency of original jurisdiction a conflict of opinion or a question pertaining to a claim regarding whether a written communication expresses an intent to appeal or as to which denied claims a claimant wants to appeal, the procedures for an administrative appeal, as set forth in 38 CFR 19.50-19.53, must be followed.

(Authority: 38 U.S.C. 501, 7105, 7106)

[71 FR 56872, Sept. 28, 2006]

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

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination

## § 19.29

made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

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

### § 19.29 Statement of the Case.

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

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

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

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

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

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

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

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

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

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

### § 19.31 Supplemental statement of the case.

(a) *Purpose and limitations.* A "Supplemental Statement of the Case," so identified, is a document prepared by the agency of original jurisdiction to inform the appellant of any material

## 38 CFR Ch. I (7-1-15 Edition)

changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. In no case will a Supplemental Statement of the Case be used to announce decisions by the agency of original jurisdiction on issues not previously addressed in the Statement of the Case, or to respond to a notice of disagreement on newly appealed issues that were not addressed in the Statement of the Case. The agency of original jurisdiction will respond to notices of disagreement on newly appealed issues not addressed in the Statement of the Case using the procedures in §§ 19.29 and 19.30 of this part (relating to statements of the case).

(b) *When furnished.* The agency of original jurisdiction will furnish the appellant and his or her representative, if any, a Supplemental Statement of the Case if:

(1) The agency of original jurisdiction receives additional pertinent evidence after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued and before the appeal is certified to the Board of Veterans' Appeals and the appellate record is transferred to the Board;

(2) A material defect in the Statement of the Case or a prior Supplemental statement of the Case is discovered; or

(3) For any other reason the Statement of the Case or a prior Supplemental Statement of the Case is inadequate.

(c) *Pursuant to remand from the Board.* The agency of original jurisdiction will issue a Supplemental Statement of the Case if, pursuant to a remand by the Board, it develops the evidence or cures a procedural defect, unless:

(1) The only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case; or

(2) The Board specifies in the remand that a Supplemental Statement of the Case is not required.

(d) *Exception.* Paragraph (b)(1) of this section does not apply in proceedings before the General Counsel conducted

## Department of Veterans Affairs

## § 19.37

under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105(d); 38 U.S.C. 5902, 5903, 5904)

[67 FR 3104, Jan. 23, 2002, as amended at 73 FR 29879, May 22, 2008]

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

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

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

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

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

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

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

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

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

### § 19.35 Certification of appeals.

Following receipt of a timely Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals. Certification is accomplished by the completion of VA Form 8, "Certification of

Appeal." The certification is used for administrative purposes and does not serve to either confer or deprive the Board of Veterans' Appeals of jurisdiction over an issue.

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

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996; 66 FR 53339, Oct. 22, 2001]

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

When an appeal is certified to the Board of Veterans' Appeals for appellate review and the appellate record is transferred to the Board, the appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in Rule of Practice 1304 (§20.1304 of this chapter). Provisions in this section for submitting additional evidence and references to §20.1304 do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to suspend or cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105; 38 U.S.C. 5902, 5903, 5904)

[57 FR 4104, Feb. 3, 1992, as amended at 73 FR 29879, May 22, 2008]

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

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



## § 19.38

provided in §19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

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

(c) The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105(d)(1), 5902, 5903, 5904)

[57 FR 4104, Feb. 3, 1992, as amended at 73 FR 29879, May 22, 2008]

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

When a case is remanded by the Board of Veterans' Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development, together with the evidence which was previously of record, supports the allowance of all benefits sought on appeal. If so, the appellant and his or her representative, if any, will be promptly informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of §19.31 of this part. Following the 30-day period allowed for a response to the Supplemental Statement of the Case pursuant to Rule of Practice 302, paragraph (c) (§20.302(c) of this chapter), the case will

## 38 CFR Ch. I (7–1–15 Edition)

be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

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

[57 FR 4104, Feb. 3, 1992, as amended at 69 FR 53808, Sept. 3, 2004; 73 FR 40748, July 16, 2008]

### §§ 19.39–19.49 [Reserved]

## Subpart C—Administrative Appeals

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

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

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

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

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

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

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

(2) *Time limit.* Such officials must file an administrative appeal within 1 year

## Department of Veterans Affairs

## § 19.76

from the date of mailing notice of such determination to the claimant.

(b) *Agencies of original jurisdiction*—(1) *Officials.* Directors, adjudication officers, and officials at comparable levels in field offices deciding any claims for benefits, from any determination originating within their established jurisdiction.

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

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

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

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

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

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

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

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

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

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

§§ 19.54–19.74 [Reserved]

## Subpart D—Hearings Before the Board of Veterans’ Appeals at Department of Veterans Affairs Field Facilities

### § 19.75 Field hearing docket.

Hearings on appeal held at Department of Veterans Affairs field facilities will be scheduled for each area served by a regional office in accordance with the place of each case on the Board’s docket, established under § 20.900 of this chapter, relative to other cases for which hearings are scheduled to be held within that area. Such scheduling is subject to § 20.704(f) of this chapter pertaining to advancement of a case on the hearing docket.

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

[65 FR 14471, Mar. 17, 2000]

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

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a hearing before the Board of Veterans’ Appeals at a Department of Veterans Affairs field facility not less than 30 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled hearing before the Board of Veterans’ Appeals at a Department of Veterans Affairs field facility with good cause. The right to notice at least 30 days in advance will be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled hearing.

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

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

§§ 19.77–19.99 [Reserved]

**Subpart E—Simultaneously Contested Claims**

**§ 19.100 Notification of right to appeal in simultaneously contested claims.**

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.

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

**§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.**

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The Statement of the Case so furnished will contain only information which directly affects the payment or potential

payment of the benefit(s) which is (are) the subject of that contested claim. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 9, “Appeal to Board of Veterans’ Appeals.”

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

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

**§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.**

When a Substantive Appeal is filed in a simultaneously contested claim, the content of the Substantive Appeal will be furnished to the other contesting parties to the extent that it contains information which could directly affect the payment or potential payment of the benefit which is the subject of the contested claim.

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

APPENDIX A TO PART 19—CROSS-REFERENCES

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