§ 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