

Department of Veterans Affairs

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(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 Further development.

(a) *General.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Board Member or panel of Members may:

(1) Remand the case to the agency of original jurisdiction, specifying the action to be undertaken; or

(2) Direct Board personnel to undertake the action essential for a proper appellate decision.

(i) Any such action shall comply with the provisions of § 3.159(a) and (c)-(f) of this chapter (relating to VA's assistance to claimants in developing claims).

(ii) If the Board undertakes to provide the notice required by 38 U.S.C. 5103(a) and/or § 3.159(b)(1) of this chapter, the appellant shall have not less than 30 days to respond to the notice. If, following the notice, the Board denies a benefit sought in the pending appeal and the appellant submits relevant evidence after the Board's decision but before the expiration of one year following the notice, that evidence shall be referred to the agency of original jurisdiction. If any evidence so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that

benefit, the award's effective date will be the same as if the Board had granted the benefit in the appeal pending when the notice was provided.

(b) *Examples.* A remand to the agency of original jurisdiction is not necessary:

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

(2) For the Board to consider an appeal in light of law, including but not limited to statute, regulation, or court decision, not already considered by the agency of original jurisdiction.

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

(1) The Board's request for an opinion under Rule 901 (§ 20.901 of this chapter);

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

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

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

[67 FR 3104, Jan. 23, 2002]

§ 19.10 [Reserved]

§ 19.11 Reconsideration panel.

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

(b) *Number of Members constituting a reconsideration panel.* In the case of a matter originally heard by a single Member of the Board, the case shall be referred to a panel of three Members of the Board. In the case of a matter originally heard by a panel of Members of the Board, the case shall be referred to an enlarged panel, consisting of three or more Members than the original panel. In order to obtain a majority opinion, the number of Members assigned to a reconsideration panel may be increased in successive increments of three.

(c) *Members included in the reconsideration panel.* The reconsideration panel

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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))

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§ 19.14 Delegation of authority—Appeals regulations.

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

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

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

Subpart B—Appeals Processing by Agency of Original Jurisdiction

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

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

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

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

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