

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 if a simultaneously contested claim is involved.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence—(1) General rule.* Subject to the exception in paragraph (b)(2) of this section, following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Ap-

peals 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, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Depending upon the ruling on the motion, action will be taken as follows:

(i) *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.

(ii) *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 if a simultaneously contested claim is involved.

(2) *If the Board obtains evidence or considers law not considered by the agency of original jurisdiction.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to the notice described in paragraph (b) or (c) of Rule 903 (paragraph (b) or (c) of §20.903 of this part).

(c) *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; 67 FR 3105, Jan. 23, 2002]

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