

response, which may include the submission of relevant evidence or argument. The date the Board furnishes the notice will be presumed to be the same as the date of the letter or memorandum that accompanies the notice for purposes of determining whether a response was timely filed.

(c) *If the Board considers law not already considered by the agency of original jurisdiction.* If the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. The notice from the Board will contain a copy or summary of the law to be considered. A period of 60 days from the date the Board furnishes the notice will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes the notice will be presumed to be the same as the date of the letter that accompanies the notice for purposes of determining whether a response was timely filed. No notice is required under this paragraph if the Board intends to grant the benefit being sought or if the appellant or the appellant's representative has advanced or otherwise argued the applicability of the law in question.

(Authority: 38 U.S.C. 7104(a), 7109(c)).

[67 FR 3105, Jan. 23, 2002]

§ 20.904 Rule 904. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans' Appeals at any time upon request of the appellant or his or her representative, or on the Board's own motion, on the following grounds:

(a) *Denial of due process.* Examples of circumstances in which denial of due process of law will be conceded are:

(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans' Appeals personnel,

(2) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and

(3) When there was a prejudicial failure to afford the appellant a personal hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.)

(b) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

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

§§ 20.905–20.999 [Reserved]

Subpart K—Reconsideration

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans' Appeals on motion by the appellant or his or her representative or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned; or

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant.

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

§ 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

(a) *Application requirements.* A motion for Reconsideration 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 the date of the Board of Veterans' Appeals decision, or

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decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans' Appeals decision, or decisions, involved more than one issue on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a prior Board of Veterans' Appeals decision may be filed at any time. 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.

(c) *Disposition.* The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60 days from the date of mailing of the letter of notification to present additional arguments or evidence. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman will assign a Reconsideration panel in accordance with §19.11 of this chapter.

(Authority: 38 U.S.C. 7103, 7108)

§ 20.1002 Rule 1002. [Reserved]

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant requests a hearing before the Board. The hearing will

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be held by a Member or Members assigned to the reconsideration panel. A hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with Rule 700(d) (§20.700(d) of this part). Requests for appearances by representatives alone to personally present argument to a Member or panel of Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member.

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

[61 FR 20453, May 7, 1996]

§§ 20.1004-20.1099 [Reserved]

Subpart L—Finality

§ 20.1100 Rule 1100. Finality of decisions of the Board.

(a) *General.* All decisions of the Board will be stamped with the date of mailing on the face of the decision. Unless the Chairman of the Board orders reconsideration, and with the exception of matters listed in paragraph (b) of this section, all Board decisions are final on the date stamped on the face of the decision. With the exception of matters listed in paragraph (b) of this section, the decision rendered by the reconsideration Panel in an appeal in which the Chairman has ordered reconsideration is final.

(b) *Exceptions.* Final Board decisions are not subject to review except as provided in 38 U.S.C. 1975 and 1984 and 38 U.S.C. chapters 37 and 72. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(Authority: 38 U.S.C. 511(a), 7103, 7104(a))

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20453, May 7, 1996]

§ 20.1101 Rule 1101. [Reserved]

§ 20.1102 Rule 1102. Harmless error.

An error or defect in any decision by the Board of Veterans' Appeals which does not affect the merits of the issue or substantive rights of the appellant