

Department of Veterans Affairs

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will be considered harmless and not a basis for vacating or reversing such decision.

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

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in Rule 302 (§20.302 of this part).

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

§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans' Appeals, such determination is subsumed by the final appellate decision.

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

§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.

When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a basis for allowing the claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 5108, 7104)

§ 20.1106 Rule 1106. Claim for death benefits by survivor-prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1311(a)(2), 1318, and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition

of those issues during the veteran's lifetime.

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

[67 FR 16317, Apr. 5, 2002]

§§ 20.1107–20.1199 [Reserved]

Subpart M—Privacy Act

§ 20.1200 Rule 1200. Privacy Act request—appeal pending.

When a Privacy Act request is filed under §1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed prior to appellate action on that individual's appeal.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 7107)

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§20.1000–20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of §1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§20.1000–20.1003 of this part).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 7103, 7108)

§§ 20.1202–20.1299 [Reserved]

Subpart N—Miscellaneous

CROSS-REFERENCE: In cases involving access to patient information relating to a Department of Veterans Affairs program for, or

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the treatment of, drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.1300 Rule 1300. Removal of Board records.

No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.

(Authority: 38 U.S.C. 5701)

[61 FR 29028, June 7, 1996]

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board of Veterans' Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 5701, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(Authority: 38 U.S.C. 7105(d)(2))

(b) *Index to decisions.* The appellate decisions of the Board of Veterans' Appeals have been indexed to facilitate access to the contents of the decisions (BVA Index I-01-1). The index, which is published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Research Center at the Board of Veterans' Appeals in Washington, DC. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number as-

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signed to it. The manner in which the locator number is written will depend upon the age of the decision. Decisions archived prior to late 1989 will have a number such as *82-07-0001*. Decisions archived at a later date will have a number such as *BVA-90-12345*. This number must be used when requesting a paper copy of that decision. These requests must be directed to the Appellate Index and Retrieval Staff (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Microfiche copies of BVA Index I-01-1 can be obtained from Promisel and Korn, Inc., 7201 Wisconsin Avenue, suite 480, Bethesda, MD 20814.

(Authority: 5 U.S.C. 552(a)(2))

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal.

An appeal pending before the Board of Veterans' Appeals when the appellant dies will be dismissed.

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

[62 FR 55170, Oct. 23, 1997]

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Although the Board strives for consistency in issuing its decisions, previously issued Board decisions will be considered binding only with regard to the specific case decided. Prior decisions in other appeals may be considered in a case to the extent that they 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