

Department of Veterans Affairs

§ 20.1410

reasons or bases for those findings and conclusions, and an order granting or denying the motion.

(Authority: 38 U.S.C. 501(a), 7104(d), 7111)

[64 FR 2139, Jan. 13, 1999, as amended at 64 FR 7091, Feb. 12, 1999; 66 FR 37151, July 17, 2001; 68 FR 53682, Sept. 12, 2003]

§ 20.1406 Rule 1406. Effect of revision; discontinuance or reduction of benefits.

(a) *General.* A decision of the Board that revises a prior Board decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(b) *Discontinuance or reduction of benefits.* Revision of a prior Board decision under this subpart that results in the discontinuance or reduction of benefits is subject to laws and regulations governing the reduction or discontinuance of benefits by reason of erroneous award based solely on administrative error or errors in judgment.

(Authority: 38 U.S.C. 7111(b))

§ 20.1407 Rule 1407. Motions by the Board.

If the Board undertakes, on its own motion, a review pursuant to this subpart, the party to that decision and that party's representative (if any) will be notified of such motion and provided an adequate summary thereof and, if applicable, outlining any proposed discontinuance or reduction in benefits that would result from revision of the Board's prior decision. They will be allowed a period of 60 days to file a brief or argument in answer. The failure of a party to so respond does not affect the finality of the Board's decision on the motion.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1408 Rule 1408. Special rules for simultaneously contested claims.

In the case of a motion under this subpart to revise a final Board decision in a simultaneously contested claim, as that term is used in Rule 3(o) (§ 20.3(o) of this part), a copy of such motion shall, to the extent practicable, be sent to all other contesting parties. Other parties have a period of 30 days from the date of mailing of the copy of the

motion to file a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy. Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 501(a))

§ 20.1409 Rule 1409. Finality and appeal.

(a) A decision on a motion filed by a party or initiated by the Board pursuant to this subpart will be stamped with the date of mailing on the face of the decision, and is final on such date. The party and his or her representative, if any, will be provided with copies of the decision.

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part), Rule 1404(b) (§ 20.1404(b)), or Rule 1404(f) (§ 20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.

(c) Once there is a final decision on a motion under this subpart relating to a prior Board decision on an issue, that prior Board decision on that issue is no longer subject to revision on the grounds of clear and unmistakable error. Subsequent motions relating to that prior Board decision on that issue shall be dismissed with prejudice.

(d) Chapter 72 of title 38, United States Code (relating to judicial review), applies with respect to final decisions on motions filed by a party or initiated by the Board pursuant to this subpart.

(Authority: 38 U.S.C. 501(a); Pub. L. 105-111)

[64 FR 2139, Jan. 13, 1999, as amended at 66 FR 35903, July 10, 2001]

§ 20.1410 Rule 1410. Stays pending court action.

The Board will stay its consideration of a motion under this subpart upon receiving notice that the Board decision that is the subject of the motion has been appealed to a court of competent jurisdiction until the appeal has been concluded or the court has issued an

order permitting, or directing, the Board to proceed with the motion.

(Authority: 38 U.S.C. 501(a))

§ 20.1411 Rule 1411. Relationship to other statutes.

(a) The “benefit of the doubt” rule of 38 U.S.C. 5107(b) does not apply to the Board’s decision, on a motion under this subpart, as to whether there was clear and unmistakable error in a prior Board decision.

(b) A motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (relating to reopening

claims on the grounds of new and material evidence).

(c) A motion under this subpart is not an application for benefits subject to any duty associated with 38 U.S.C. 5103(a) (relating to applications for benefits).

(d) A motion under this subpart is not a claim for benefits subject to the requirements and duties associated with 38 U.S.C. 5107(a) (requiring “well-grounded” claims and imposing a duty to assist).

(Authority: 38 U.S.C. 501(a))

APPENDIX A TO PART 20—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	<i>Statement of policy.</i>
20.100	38 CFR 20.306	<i>Rule 306. Legal holidays.</i>
20.200	38 CFR 20.201	<i>Rule 201. Notice of Disagreement.</i>
	38 CFR 20.202	<i>Rule 202. Substantive Appeal.</i>
	38 CFR 20.300–20.306	See re filing Notices of Disagreement and Substantive Appeals.
20.202	38 CFR 19.29	<i>Statement of the Case.</i>
	38 CFR 19.31	<i>Supplemental Statement of the Case.</i>
20.301	38 CFR 20.500	<i>Rule 500. Who can file an appeal in simultaneously contested claims.</i>
	38 CFR 20.602	<i>Rule 602. Representation by recognized organizations.</i>
	38 CFR 20.603	<i>Rule 603. Representation by attorneys-at-law.</i>
	38 CFR 20.604	<i>Rule 604. Representation by agents.</i>
	38 CFR 20.605	<i>Rule 605. Other persons as representative.</i>
20.302	38 CFR 20.501	<i>Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.</i>
20.303	38 CFR 20.304	<i>Rule 304. Filing additional evidence does not extend time limit for appeal.</i>
	38 CFR 20.503	<i>Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.</i>
20.305	38 CFR 20.306	<i>Rule 306. Legal holidays.</i>
20.400	38 CFR 19.50–19.53	See also re administrative appeals.
20.401	38 CFR 19.50–19.53	See also re administrative appeals.
	38 CFR 20.302–20.306	See re time limits for perfecting an appeal.
	38 CFR 20.501, 20.503	See re time limits for perfecting an appeal in simultaneously contested claims.
20.500	38 CFR 20.713	<i>Rule 713. Hearings in simultaneously contested claims.</i>
20.501	38 CFR 20.305	<i>Rule 305. Computation of time limit for filing.</i>
	38 CFR 20.306	<i>Rule 306. Legal holidays.</i>
	38 CFR 20.713	<i>Rule 713. Hearings in simultaneously contested claims.</i>
20.502	38 CFR 20.305	<i>Rule 305. Computation of time limit for filing.</i>
	38 CFR 20.306	<i>Rule 306. Legal holidays.</i>
	38 CFR 20.713	<i>Rule 713. Hearings in simultaneously contested claims.</i>
20.503	38 CFR 20.713	<i>Rule 713. Hearings in simultaneously contested claims.</i>
20.504	38 CFR 20.713	<i>Rule 713. Hearings in simultaneously contested claims.</i>
20.600	38 CFR 14.626 et seq	See also re representation.
	38 CFR 20.602	<i>Rule 602. Representation by recognized organizations.</i>
	38 CFR 20.603	<i>Rule 603. Representation by attorneys-at-law.</i>
	38 CFR 20.604	<i>Rule 604. Representation by agents.</i>
	38 CFR 20.605	<i>Rule 605. Other persons as representative.</i>
20.602	38 CFR 14.628	<i>Recognition of organizations.</i>
	38 CFR 14.631	<i>Powers of attorney.</i>
	38 CFR 20.100	<i>Rule 100. Name, business hours, and mailing address of the Board.</i>
	38 CFR 20.607	<i>Rule 607. Revocation of a representative’s authority to act.</i>
	38 CFR 20.608	<i>Rule 608. Withdrawal of services by a representative.</i>
	38 CFR 20.609	<i>Rule 609. Payment of representative’s fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans’ Appeals.</i>
	38 CFR 20.610	<i>Rule 610. Payment of representative’s expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans’ Appeals.</i>
20.603	38 CFR 14.629	<i>Requirements for accreditation of representatives, agents, and attorneys.</i>
	38 CFR 14.631	<i>Powers of attorney.</i>
	38 CFR 20.100	<i>Rule 100. Name, business hours, and mailing address of the Board.</i>
	38 CFR 20.606	<i>Rule 606. Legal interns, law students and paralegals.</i>