

Department of Veterans Affairs

§ 20.702

present the appeal at a hearing before the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 7102, 7105, 7107)

[58 FR 27935, May 12, 1993]

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC.

(a) *General.* To the extent that officials scheduling hearings for the Board of Veterans' Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(c) *Requests for changes in hearing dates.* (1) The appellant or the representative may request a different date for the hearing within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, such requests for a new hearing date must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. In the case of a hearing conducted by the Board of Veterans' Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion for a new hearing date must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request

§ 20.703

for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. In the case of hearings before the Board of Veterans' Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member assigned to conduct the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the notice of withdrawal must be sent to: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(Approved by the Office of Management and Budget under control number 2900-0085)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27935, May 12, 1993; 61 FR 20450, May 7, 1996]

38 CFR Ch. I (7-1-04 Edition)

§ 20.703 Rule 703. When a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility may be requested.

An appellant, or an appellant's representative, may request a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility when submitting the substantive appeal (VA Form 9) or anytime thereafter, subject to the restrictions in Rule 1304 (§20.1304 of this part). Requests for such hearings before a substantive appeal has been filed will be rejected.

(Authority: 38 U.S.C. 7105(a), 7107)

[61 FR 43009, Aug. 20, 1996]

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

(a) *General.* Hearings are conducted by a Member or Members of the Board of Veterans' Appeals during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings. Subject to paragraph (f) of this section, the hearings will be scheduled in the order specified in §19.75 of this chapter. Requests for such hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who