

**§ 14.637 Payment of the expenses of agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.**

(a) *Applicability of rule.* The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any agent or attorney may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before VA. Whether such an agent or attorney will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the agent or attorney and the claimant or appellant in the fee agreement filed with the Office of the General Counsel under § 14.636 of this part. Expenses are not payable directly to the agent or attorney by VA out of benefits determined to be due to a claimant or appellant.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include non-recurring expenses incurred directly in the prosecution of a claim for benefits on behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, and the cost of obtaining the services of an expert witness or an expert opinion. "Expenses" do not include normal overhead costs of the agent or attorney such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, and the cost of office supplies.

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of an agent or attorney may be obtained only if the expenses are reasonable. The Office of the General Counsel may review the expenses charged by an agent or attorney upon its own motion or the motion of

the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. The Office of the General Counsel's review of expenses under this paragraph will address the issues of eligibility under § 14.636(c) and reasonableness. The Office of the General Counsel will limit its review and decision under this paragraph to the issue of reasonableness if another agency of original jurisdiction has reviewed the fee agreement between the claimant and the agent or attorney and determined that the agent or attorney is eligible for reimbursement of expenses. Motions for review of expenses must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable and must be accompanied by all evidence the claimant or appellant desires to submit. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, and whether travel expenses are in keeping with expenses normally incurred by other representatives.

(1) A claimant's or appellant's motion for review of expenses must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Assistant General Counsel shall initiate the Office of the General Counsel's review of expenses on its own

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motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record in proceedings to review expenses 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. Unless either party files a Notice of Disagreement with the General Counsel's decision, the attorney or agent must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under §14.633 of this part to terminate the agent's or attorney's accreditation to practice before VA.

(f) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supple-

mental Statement of the Case under 38 CFR 19.31.

(Authority: 38 U.S.C. 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0085)

[73 FR 29878, May 22, 2008]

### PERSONNEL CLAIMS

#### § 14.664 Scope of authority and effective date.

Pub. L. 88-558 (78 Stat. 767), approved August 31, 1964, as amended, authorizes the Secretary or the Secretary's designee to settle and pay a claim for not more than \$40,000 made by a civilian officer or employee of the Department of Veterans Affairs for damage to, or loss of personal property incident to such person's service. Authority is delegated by §2.6(e)(5) of this chapter to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group III), and the Deputy Assistant General Counsel, of said staff group and the Regional Counsel and those acting for them to settle and pay such claims on behalf of the Secretary, and such settlement shall be final and conclusive.

(Authority: 31 U.S.C. 3721(b))

[42 FR 41421, Aug. 17, 1977, as amended at 49 FR 47005, Nov. 30, 1984; 55 FR 48841, Nov. 23, 1990]

#### § 14.665 Claims.

(a) The claim must be presented in writing on VA Form 2-4760, Employee's Claim for Reimbursement for Personal Property Damaged or Lost Incident to Employment. It will be submitted to the personnel office where the claim originates within 2 years after it accrues except that if the claim accrues in time of war or in time of armed conflict in which any Armed Force of the United States is engaged or if such war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist. The claim must be executed and certified by the officer or the employee suffering the loss or damage, or in the event of his or her death, by the surviving spouse, children, father