

§ 19.27

(c) of this section, the earlier, unclear communication will not be considered an NOD as to any adverse decision for which clarification was requested.

(2) For written contacts, VA will mail a letter requesting clarification to the claimant and send a copy to his or her representative and fiduciary, if any.

(c) *Response required from claimant—*

(1) *Time to respond.* The claimant must respond to the AOJ's request for clarification within the later of the following dates:

(i) 60 days after the date of the AOJ's clarification request; or

(ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).

(2) *Failure to respond.* If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered an NOD as to any claim for which clarification was requested. The AOJ will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.

(d) *Action following clarification.* When clarification of the claimant's intent to file an NOD is obtained, the AOJ will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, the AOJ will prepare a Statement of the Case pursuant to §19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

(e) *Representatives and fiduciaries.* For the purpose of the requirements in paragraphs (b) through (d) of this section, references to the "claimant" include reference to the claimant or his or her representative, if any, or to his or her fiduciary, if any, as appropriate.

(Authority: 38 U.S.C. 501, 7105, 7105A)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0674)

[71 FR 56871, Sept. 28, 2006]

38 CFR Ch. I (7-1-08 Edition)

§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.

If, after following the procedures set forth in 38 CFR 19.26, there remains within the agency of original jurisdiction a conflict of opinion or a question pertaining to a claim regarding whether a written communication expresses an intent to appeal or as to which denied claims a claimant wants to appeal, the procedures for an administrative appeal, as set forth in 38 CFR 19.50-19.53, must be followed.

(Authority: 38 U.S.C. 501, 7105, 7106)

[71 FR 56872, Sept. 28, 2006]

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

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

§ 19.29 Statement of the Case.

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;

(b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and

(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 7105(d)(1))