

may be removed by the Secretary, upon the recommendation of the Chairman, for any other reason as determined by the Secretary.

(2) In the case of a removal of a member under this section for a reason other than job performance that would be covered by section 7521 of title 5 in the case of an administrative law judge, the removal of the member of the Board shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subsection. In such a removal action, a member shall have the rights set out in section 7513(b) of that title.

(f) The Chairman, subject to the approval of the Secretary, shall establish standards for the performance of the job of a member of the Board (other than the Chairman or a member of the Senior Executive Service). Those standards shall establish objective and fair criteria for evaluation of the job performance of a member of the Board.

(g) The Secretary shall prescribe procedures for the administration of this section, including deadlines and time schedules for different actions under this section.

(Added Pub. L. 103-446, title II, §201(a)(1), Nov. 2, 1994, 108 Stat. 4655; amended Pub. L. 105-368, title X, §1002, Nov. 11, 1998, 112 Stat. 3363.)

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368, §1002(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2). Pub. L. 105-368, §1002(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Upon removal from the Board under paragraph (1), a member of the Board (other than the Chairman) who was a career or career-conditional employee in the civil service before commencement of service as a member of the Board shall revert to the civil service grade and series held by the member immediately before the appointment of the member to the Board."

#### EFFECTIVE DATE

Pub. L. 103-446, title II, §201(c), Nov. 2, 1994, 108 Stat. 4657, provided that: "Section 7101A(b) of title 38, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning after December 31, 1994."

#### SAVE PAY PROVISION

Pub. L. 103-446, title II, §201(b), Nov. 2, 1994, 108 Stat. 4656, provided that: "The rate of basic pay payable to an individual who is a member of the Board of Veterans' Appeals on the date of the enactment of this Act [Nov. 2, 1994] may not be reduced by reason of the amendments made by this section [enacting this section and amending section 7101 of this title] to a rate below the rate payable to such individual on the day before such date."

#### DEADLINE FOR ESTABLISHMENT OF PERFORMANCE EVALUATION CRITERIA FOR BOARD MEMBERS

Pub. L. 103-446, title II, §202, Nov. 2, 1994, 108 Stat. 4657, provided that:

"(a) DEADLINE.—The job performance standards required to be established by section 7101A(f) of title 38, United States Code, as added by section 201(a), shall be established not later than 90 days after the date of the enactment of this Act [Nov. 2, 1994].

"(b) SUBMISSION TO CONGRESSIONAL COMMITTEES.—Not later than the date on which the standards referred to in subsection (a) take effect, the Secretary of Veterans Affairs shall submit to the Committees on Veterans'

Affairs of the Senate and House of Representatives a report describing the standards established by the Chairman of the Board of Veterans' Appeals."

#### § 7102. Assignment of members of Board

(a) A proceeding instituted before the Board may be assigned to an individual member of the Board or to a panel of not less than three members of the Board. A member or panel assigned a proceeding shall make a determination thereon, including any motion filed in connection therewith. The member or panel, as the case may be, shall make a report under section 7104(d) of this title on any such determination, which report shall constitute the final disposition of the proceeding by the member or panel.

(b) A proceeding may not be assigned to the Chairman as an individual member. The Chairman may participate in a proceeding assigned to a panel or in a reconsideration assigned to a panel of members.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, §4002; Pub. L. 98-223, title II, §208(c), (d), Mar. 2, 1984, 98 Stat. 44; renumbered §7102 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 103-271, §6(a), July 1, 1994, 108 Stat. 741.)

#### AMENDMENTS

1994—Pub. L. 103-271 amended section generally, substituting present provisions for provisions authorizing Chairman to divide Board into sections of three members and to assign proceedings thereto, and provisions relating to assignment where section is composed of fewer than three members, limiting annual period of service, prohibiting more than one member to be a temporary or acting member, and relating to hearing docket and report of determination.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4002 of this title as this section.

Subsec. (a)(2)(A)(ii). Pub. L. 102-83 substituted "Department" for "Veterans' Administration".

Subsec. (a)(3). Pub. L. 102-40, §402(d)(1), substituted "7101(c)" for "4001(c)".

1984—Subsec. (a)(1). Pub. L. 98-223, §208(d)(1), designated provision authorizing the Chairman from time to time to divide the Board into sections of three members, assign members to the Board thereto, and designated the chief thereof, as par. (1).

Subsec. (a)(2). Pub. L. 98-223, §208(d)(2), designated provision relating to authority of the Chairman in the case where a section is composed of fewer than three members as a result of absence, vacancy, or inability of a member to serve as subpar. (A), and in subpar. (A) as so designated, inserted provision authorizing the Chairman to designate an employee of the Veterans' Administration to serve as an acting member of the Board on such section for a period of not to exceed 90 days, and added subpar. (B).

Subsec. (a)(3). Pub. L. 98-223, §208(d)(2), added par. (3).

Subsec. (b). Pub. L. 98-223, §208(d)(3), designated provision relating to the maintenance of a hearing docket and the holding of formal recorded hearings upon which a final determination will be made as subsec. (b).

Pub. L. 98-223, §208(c), struck out "associate" before "member" in two places.

Subsec. (c). Pub. L. 98-223, §208(d)(4), designated provision relating to the section making a determination on any proceeding or motion in connection therewith assigned to the section by the Board and making a report on such determination, which report constitutes its final disposition of the proceeding, as subsec. (c).

### § 7103. Reconsideration; correction of obvious errors

(a) The decision of the Board determining a matter under section 7102 of this title is final unless the Chairman orders reconsideration of the decision in accordance with subsection (b). Such an order may be made on the Chairman's initiative or upon motion of the claimant.

(b)(1) Upon the order of the Chairman for reconsideration of the decision in a case, the case shall be referred—

(A) in the case of a matter originally heard by a single member of the Board, to a panel of not less than three members of the Board; or

(B) in the case of a matter originally heard by a panel of members of the Board, to an enlarged panel of the Board.

(2) A panel referred to in paragraph (1) may not include the member, or any member of the panel, that made the decision subject to reconsideration.

(3) A panel reconsidering a case under this subsection shall render its decision after reviewing the entire record before the Board. The decision of the panel shall be made by a majority vote of the members of the panel. The decision of the panel shall constitute the final decision of the Board.

(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, §4003; Pub. L. 100-687, div. A, title II, §202(a), Nov. 18, 1988, 102 Stat. 4110; renumbered §7103, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103-271, §6(a), July 1, 1994, 108 Stat. 741.)

#### AMENDMENTS

1994—Pub. L. 103-271 amended section generally. Prior to amendment, text read as follows:

“(a) Decisions by a section of the Board shall be made by a majority of the members of the section. The decision of the section is final unless the Chairman orders reconsideration of the case.

“(b) If the Chairman orders reconsideration in a case, the case shall upon reconsideration be heard by an expanded section of the Board. When a case is heard by an expanded section of the Board after such a motion for reconsideration, the decision of a majority of the members of the expanded section shall constitute the final decision of the Board.

“(c) Notwithstanding subsections (a) and (b) of this section, the Board on its own motion may correct an obvious error in the record.”

1991—Pub. L. 102-40 renumbered section 4003 of this title as this section.

1988—Pub. L. 100-687, in amending section generally, added subsec. (a), struck out former subsec. (a) which provided that determination of section, when unanimous, be final determination of Board, added subsec. (b), struck out former subsec. (b) which provided that when there is disagreement among members of section, concurrence of Chairman with majority of members of section shall constitute final determination of Board, and added subsec. (c).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Jan. 1, 1989, see section 401(d) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

### § 7104. Jurisdiction of the Board

(a) All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be reopened and allowed and a claim based upon the same factual basis may not be considered.

(c) The Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.

(d) Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record; and

(2) an order granting appropriate relief or denying relief.

(e)(1) After reaching a decision on a case, the Board shall promptly mail a copy of its written decision to the claimant at the last known address of the claimant.

(2) If the claimant has an authorized representative, the Board shall—

(A) mail a copy of its written decision to the authorized representative at the last known address of the authorized representative; or

(B) send a copy of its written decision to the authorized representative by any means reasonably likely to provide the authorized representative with a copy of the decision within the same time a copy would be expected to reach the authorized representative if sent by first-class mail.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, §4004; Pub. L. 87-97, §1, July 20, 1961, 75 Stat. 215; Pub. L. 100-687, div. A, title I, §101(b), title II, §§203(a), 204, 205, Nov. 18, 1988, 102 Stat. 4106, 4110, 4111; renumbered §7104 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(g)(2), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), (c), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 103-271, §§7(b)(1), 8, July 1, 1994, 108 Stat. 743; Pub. L. 104-275, title V, §509, Oct. 9, 1996, 110 Stat. 3344.)

#### AMENDMENTS

1996—Subsec. (e). Pub. L. 104-275 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “After reaching a decision in a case, the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and at the last known address of such representative (if any).”

1994—Subsec. (a). Pub. L. 103-271, §8, substituted “511(a)” for “211(a)”.

Pub. L. 103-271, §7(b)(1), struck out after second sentence “The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing.”