

7105 of this title by such officials of the Department as may be designated by the Secretary. An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter.

(Added Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 554, §4006; renumbered §7106 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), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in subsec. (c)(2) of former section 4005 of this title, prior to the general amendment of sections 4005 to 4007 by Pub. L. 87-666.

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4006 of this title as this section and substituted “7105” for “4005”.

Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Department” for “Veterans’ Administration”.

§ 7107. Appeals; dockets; hearings

(a)(1) Except as provided in paragraphs (2) and (3) and in subsection (f), each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket.

(2) A case referred to in paragraph (1) may, for cause shown, be advanced on motion for earlier consideration and determination. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

(A) if the case involves interpretation of law of general application affecting other claims;

(B) if the appellant is seriously ill or is under severe financial hardship; or

(C) for other sufficient cause shown.

(3) A case referred to in paragraph (1) may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(b) The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.

(c) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing shall, except in the case of a reconsideration of a decision under section 7103 of this title, participate in making the final determination of the claim.

(d)(1) An appellant may request that a hearing before the Board be held at its principal location or at a facility of the Department located within the area served by a regional office of the Department.

(2) A hearing to be held within an area served by a regional office of the Department shall (except as provided in paragraph (3)) be scheduled to be held in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.

(3) A hearing to be held within an area served by a regional office of the Department may, for

cause shown, be advanced on motion for an earlier hearing. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

(A) if the case involves interpretation of law of general application affecting other claims;

(B) if the appellant is seriously ill or is under severe financial hardship; or

(C) for other sufficient cause shown.

(e)(1) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board’s principal location.

(2) When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or panel as provided in subsection (d). Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of the appellant to a hearing as provided in such subsection (d) shall not be affected.

(f) Nothing in this section shall preclude the screening of cases for purposes of—

(1) determining the adequacy of the record for decisional purposes; or

(2) the development, or attempted development, of a record found to be inadequate for decisional purposes.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1242, §4006; renumbered §4007, Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 553; renumbered §7107, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103-271, §7(a)(1), July 1, 1994, 108 Stat. 742; Pub. L. 103-446, title III, §303, Nov. 2, 1994, 108 Stat. 4658; Pub. L. 105-368, title X, §1003, Nov. 11, 1998, 112 Stat. 3363.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-368, §1003(a)(1), inserted “in paragraphs (2) and (3) and” after “Except as provided”.

Subsec. (a)(2). Pub. L. 105-368, §1003(a)(2), added second and third sentences and struck out former second sentence which read as follows: “Any such motion shall set forth succinctly the grounds upon which it is based and may not be granted unless the case involves interpretation of law of general application affecting other claims or for other sufficient cause shown.”

Subsec. (a)(3). Pub. L. 105-368, §1003(a)(3), added par. (3).

Subsec. (d)(2). Pub. L. 105-368, §1003(b)(1), substituted “in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.” for “in the order in which requests for hearings within that area are received by the Department.”

Subsec. (d)(3). Pub. L. 105-368, §1003(b)(2), added par. (3) and struck out former par. (3) which read as follows: “In a case in which the Secretary is aware that the appellant is seriously ill or is under severe financial hard-

ship, a hearing may be scheduled at a time earlier than would be provided for under paragraph (2)."

1994—Pub. L. 103-446 substituted "Except as provided in subsection (f), each case" for "Each case" in subsec. (a)(1) and added subsec. (f).

Pub. L. 103-271 amended section generally. Prior to amendment, text read as follows: "All cases received pursuant to application for review on appeal shall be considered and decided in regular order according to their places upon the docket; however, for cause shown a case may be advanced on motion for earlier consideration and determination. Every such motion shall set forth succinctly the grounds upon which it is based. No such motion shall be granted except in cases involving interpretation of law of general application affecting other claims, or for other sufficient cause shown."

1991—Pub. L. 102-40 renumbered section 4007 of this title as this section.

1962—Pub. L. 87-666 renumbered section 4006 of this title as this section.

§ 7108. Rejection of applications

An application for review on appeal shall not be entertained unless it is in conformity with this chapter.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1243, § 4008; renumbered § 7108, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4008 of this title as this section.

§ 7109. Independent medical opinions

(a) When, in the judgment of the Board, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in an appeal case, the Board may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Board shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Board.

(Added Pub. L. 87-671, § 1, Sept. 19, 1962, 76 Stat. 557, § 4009; amended Pub. L. 100-687, div. A, title I, § 103(b), Nov. 18, 1988, 102 Stat. 4107; renumbered § 7109, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4009 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1988—Subsec. (a). Pub. L. 100-687, § 103(b)(1), substituted "Board may" for "Board is authorized to".

Subsec. (b). Pub. L. 100-687, § 103(b)(2), substituted "Any such arrangement shall" for "Such arrangement will", and "an individual case shall" for "any individual case will".

Subsec. (c). Pub. L. 100-687, § 103(b)(3), added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE

Section effective Jan. 1, 1963, see section 4 of Pub. L. 87-671, set out as an Effective Date of 1962 Amendment note under section 5701 of this title.

§ 7110. Repealed. Pub. L. 103-271, § 7(b)(2), July 1, 1994, 108 Stat. 743]

Section, added Pub. L. 100-687, div. A, title II, § 207(a), Nov. 18, 1988, 102 Stat. 4111, § 4010; renumbered § 7110, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404, authorized hearing before traveling sections of the Board.

§ 7111. Revision of decisions on grounds of clear and unmistakable error

(a) A decision by the Board is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

(b) For the purposes of authorizing benefits, a rating or other adjudicative decision of the Board that constitutes a reversal or revision of a prior decision of the Board 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.

(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Board on the Board's own motion or upon request of the claimant.

(d) A request for revision of a decision of the Board based on clear and unmistakable error may be made at any time after that decision is made.

(e) Such a request shall be submitted directly to the Board and shall be decided by the Board on the merits, without referral to any adjudicative or hearing official acting on behalf of the Secretary.

(f) A claim filed with the Secretary that requests reversal or revision of a previous Board decision due to clear and unmistakable error shall be considered to be a request to the Board under this section, and the Secretary shall promptly transmit any such request to the Board for its consideration under this section.

(Added Pub. L. 105-111, § 1(b)(1), Nov. 21, 1997, 111 Stat. 2271.)

EFFECTIVE DATE

Section applicable to any determination made before, on, or after Nov. 21, 1997, see section 1(c)(1) of Pub. L. 105-111, set out as a note under section 5109A of this title.

§ 7112. Expedited treatment of remanded claims

The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Board of any claim that is re-