

Subsec. (d)(2), (3). Pub. L. 115-55, §2(w)(2), added par. (2) and redesignated former par. (2) as (3).

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."

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4004 of this title as this section.

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

Pub. L. 102-54 made a technical correction to Pub. L. 100-687, §101(b). See 1988 Amendment note below.

Subsec. (b). Pub. L. 102-40, §402(d)(1), substituted "5108" for "3008".

Subsec. (c). Pub. L. 102-83, §4(c), substituted "chief legal officer of the Department" for "chief law officer".

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

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

1988—Subsec. (a). Pub. L. 100-687, §101(b), as amended by Pub. L. 102-54, substituted "All questions in a matter which under section 211(a) of this title is subject to decision by the Administrator" for "All questions on claims involving benefits under the laws administered by the Veterans' Administration".

Pub. L. 100-687, §203(a), inserted at end "The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing. 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."

Subsec. (b). Pub. L. 100-687, §204, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "When a claim is disallowed by the Board, it may not thereafter be reopened and allowed, and no claim based upon the same factual basis shall be considered; however, where subsequent to disallowance of a claim, new and material evidence in the form of official reports from the proper service department is secured, the Board may authorize the reopening of the claim and review of the former decision."

Subsecs. (d), (e). Pub. L. 100-687, §205, added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows: "The decisions of the Board shall be in writing and shall contain findings of fact and conclusions of law separately stated."

1961—Subsec. (d). Pub. L. 87-97 added subsec. (d).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115-55, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-54, §14(g)(2), June 13, 1991, 105 Stat. 288, provided that the amendment made by that section is effective Nov. 18, 1988.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 101(b) and 204 of Pub. L. 100-687 effective Sept. 1, 1989, and amendment by sec-

tions 203(a) and 205 of Pub. L. 100-687 effective Jan. 1, 1989, see section 401(a), (d) of Pub. L. 100-687, as amended, set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-97, §2, July 20, 1961, 75 Stat. 215, provided that: "The amendment made by this Act [amending this section] shall take effect as of January 1, 1962."

§ 7105. Filing of appeal

(a) Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Secretary.

(b)(1)(A) Except in the case of simultaneously contested claims, a notice of disagreement shall be filed within one year from the date of the mailing of notice of the decision of the agency of original jurisdiction pursuant to section 5104, 5104B, or 5108 of this title.

(B) A notice of disagreement postmarked before the expiration of the one-year period shall be accepted as timely filed.

(C) A question as to timeliness or adequacy of the notice of disagreement shall be decided by the Board.

(2)(A) Notices of disagreement shall be in writing, shall identify the specific determination with which the claimant disagrees, and may be filed by the claimant, the claimant's legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian.

(B) Not more than one recognized organization, attorney, or agent may be recognized at any one time in the prosecution of a claim.

(C) Notices of disagreement shall be filed with the Board.

(3) The notice of disagreement shall indicate whether the claimant requests—

(A) a hearing before the Board, which shall include an opportunity to submit evidence in accordance with section 7113(b) of this title;

(B) an opportunity to submit additional evidence without a hearing before the Board, which shall include an opportunity to submit evidence in accordance with section 7113(c) of this title; or

(C) a review by the Board without a hearing or the submittal of additional evidence.

(4) The Secretary shall develop a policy to permit a claimant to modify the information identified in the notice of disagreement after the notice of disagreement has been filed under this section pursuant to such requirements as the Secretary may prescribe.

(c) If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or decision of the agency of original jurisdiction shall become final and the claim shall not thereafter be readjudicated or allowed, except—

(1) in the case of a readjudication or allowance pursuant to a higher-level review that was requested in accordance with section 5104B of this title;

(2) as may otherwise be provided by section 5108 of this title; or

(3) as may otherwise be provided in such regulations as are consistent with this title.

(d) The Board may dismiss any appeal which fails to identify the specific determination with which the claimant disagrees.

(Added Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 553, §4005; amended Pub. L. 99-576, title VII, §701(85), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title II, §§203(b), 206, Nov. 18, 1988, 102 Stat. 4111; renumbered §7105 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(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 112-154, title V, §501(a), Aug. 6, 2012, 126 Stat. 1190; Pub. L. 115-55, §2(q)(1), Aug. 23, 2017, 131 Stat. 1111.)

APPLICABILITY OF AMENDMENT

Amendment of section by section 2(q)(1) of Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims. See 2017 Amendment notes below.

AMENDMENTS

2017—Pub. L. 115-55, §2(q)(1)(F), struck out “notice of disagreement and” before “appeal” in section catchline.

Subsec. (a). Pub. L. 115-55, §2(q)(1)(A), substituted “Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary.” for “Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section.”

Subsec. (b). Pub. L. 115-55, §2(q)(1)(B), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) Except in the case of simultaneously contested claims, notice of disagreement shall be filed within one year from the date of mailing of notice of the result of initial review or determination. Such notice, and appeals, must be in writing and be filed with the activity which entered the determination with which disagreement is expressed (hereinafter referred to as the “agency of original jurisdiction”). A notice of disagreement postmarked before the expiration of the one-year period will be accepted as timely filed.

“(2) Notices of disagreement, and appeals, must be in writing and may be filed by the claimant, the claimant’s legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian. Not more than one recognized organization, attorney, or agent will be recognized at any one time in the prosecution of a claim.”

Subsec. (c). Pub. L. 115-55, §2(q)(1)(C), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or determination shall become final and the claim will not thereafter be reopened or allowed, except as may otherwise be provided by regulations not inconsistent with this title.”

Subsec. (d). Pub. L. 115-55, §2(q)(1)(D), added subsec. (d) and struck out former subsec. (d) which related to

development and review actions, statement of the case, and dismissal of appeal.

Subsec. (e). Pub. L. 115-55, §2(q)(1)(E), struck out subsec. (e) which read as follows:

“(1) If, either at the time or after the agency of original jurisdiction receives a substantive appeal, the claimant or the claimant’s representative, if any, submits evidence to either the agency of original jurisdiction or the Board of Veterans’ Appeals for consideration in connection with the issue or issues with which disagreement has been expressed, such evidence shall be subject to initial review by the Board unless the claimant or the claimant’s representative, as the case may be, requests in writing that the agency of original jurisdiction initially review such evidence.

“(2) A request for review of evidence under paragraph (1) shall accompany the submittal of the evidence.”

2012—Subsec. (e). Pub. L. 112-154 added subsec. (e). 2001—Subsec. (b)(1). Pub. L. 107-14 substituted “hereinafter” for “hereafter”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4005 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator”.

Subsec. (d)(2). Pub. L. 102-40, §402(d)(1), substituted “5701” for “3301”.

1988—Subsec. (d)(1). Pub. L. 100-687, §206(a), substituted “shall prepare a statement of the case. A statement of the case shall include the following:” for “will prepare a statement of the case consisting of—”, added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

“(A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed;

“(B) A citation or discussion of the pertinent law, regulations, and, where applicable, the provisions of the Schedule for Rating Disabilities;

“(C) The decision on such issue or issues and a summary of the reasons therefor.”

Subsec. (d)(4). Pub. L. 100-687, §206(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken.”

Subsec. (d)(5). Pub. L. 100-687, §203(b), struck out “will base its decision on the entire record and” after “of Veterans’ Appeals”.

1986—Subsec. (b)(2). Pub. L. 99-576, §701(85), substituted “the claimant’s” for “his” and “the claimant or legal guardian” for “him”.

Subsec. (d)(1), (3). Pub. L. 99-576, §701(85)(A), substituted “the claimant’s” for “his”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115-55, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title V, §501(b), Aug. 6, 2012, 126 Stat. 1190, provided that: “Subsection (e) of such section [38 U.S.C. 7105(e)], as added by subsection (a), shall take effect on the date that is 180 days after the date of the enactment of this Act [Aug. 6, 2012], and shall apply with respect to claims for which a substantive appeal is filed on or after the date that is 180 days after the date of the enactment of this Act.”

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.

EFFECTIVE DATE

Pub. L. 87-666, §3, Sept. 19, 1962, 76 Stat. 554, provided that: "The amendments made by this Act [enacting sections 4005, 4005A, and 4006 [now 7105, 7105A, and 7106] of this title, redesignating former section 4006 as 4007 [now 7107] of this title, and repealing former sections 4005 and 4007 of this title] shall be effective January 1, 1963."

§ 7105A. Simultaneously contested claims

(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of a notice of disagreement shall be sixty days from the date notice of the adverse action is mailed. In such cases the agency of original jurisdiction shall promptly notify all parties in interest at the last known address of the action taken, expressly inviting attention to the fact that notice of disagreement will not be entertained unless filed within the sixty-day period prescribed by this subsection.

(b)(1) The substance of the notice of disagreement shall be communicated to the other party or parties in interest and a period of thirty days shall be allowed for filing a brief or argument in response thereto.

(2) Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.

(Added Pub. L. 87-666, §1, Sept. 19, 1962, 76 Stat. 554, §4005A; renumbered §7105A and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 115-55, §2(r), Aug. 23, 2017, 131 Stat. 1112.)

APPLICABILITY OF AMENDMENT

Amendment of section by section 2(r) of Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims. See 2017 Amendment note below.

PRIOR PROVISIONS

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

AMENDMENTS

2017—Subsec. (b). Pub. L. 115-55 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Upon the filing of a notice of disagreement, all parties in interest will be furnished with a statement of the case in the same manner as is prescribed in section 7105. The party in interest who filed a notice of disagreement will be allowed thirty days from the date of mailing of such statement of the case in which to file a formal appeal. Extension of time may be granted for good cause shown but with consideration to the interests of the other parties involved. The substance of the appeal will be communicated to the other party or parties in interest and a period of thirty days will be allowed for filing a brief or argument in answer thereto. Such notice shall be forwarded to the last known ad-

dress of record of the parties concerned, and such action shall constitute sufficient evidence of notice."

1991—Pub. L. 102-40 renumbered section 4005A of this title as this section and substituted "7105" for "4005" in subsec. (b).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115-55, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1963, see section 3 of Pub. L. 87-666, set out as a note under section 7105 of this title.

[§ 7106. Repealed. Pub. L. 115-55, §2(s)(1), Aug. 23, 2017, 131 Stat. 1112]

Section, 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, related to application for administrative appeals.

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.

EFFECTIVE DATE OF REPEAL

Repeal applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115-55, set out as an Effective Date of 2017 Amendment note under section 101 of this title.

§ 7107. Appeals: dockets; hearings

(a) **DOCKETS.**—(1) Subject to paragraph (2), the Board shall maintain at least two separate dockets.

(2) The Board may not maintain more than two separate dockets unless the Board notifies the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives of any additional docket, including a justification for maintaining such additional docket.

(3)(A) The Board may assign to each docket maintained under paragraph (1) such cases as the Board considers appropriate, except that cases described in clause (i) of subparagraph (B) may not be assigned to any docket to which cases described in clause (ii) of such paragraph are assigned.

(B) Cases described in this paragraph are the following:

(i) Cases in which no Board hearing is requested.

(ii) Cases in which a Board hearing is requested in the notice of disagreement.