

proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title and shall—

(1) take due account of the Secretary's application of section 5107(b) of this title; and

(2) take due account of the rule of prejudicial error.

(c) In no event shall findings of fact made by the Secretary or the Board of Veterans' Appeals be subject to trial de novo by the Court.

(d) When a final decision of the Board of Veterans' Appeals is adverse to a party and the sole stated basis for such decision is the failure of the party to comply with any applicable regulation prescribed by the Secretary, the Court shall review only questions raised as to compliance with and the validity of the regulation.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4115, §4061; amended Pub. L. 101-237, title VI, §602(c), Dec. 18, 1989, 103 Stat. 2095; renumbered §7261, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(e)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-330, title IV, §401(a), (b), Dec. 6, 2002, 116 Stat. 2832.)

#### AMENDMENTS

2002—Subsec. (a)(4). Pub. L. 107-330, §401(a), inserted “adverse to the claimant” after “material fact” and “or reverse” after “and set aside”.

Subsec. (b). Pub. L. 107-330, §401(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In making the determinations under subsection (a) of this section, the Court shall take due account of the rule of prejudicial error.”

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals” in introductory provisions.

1991—Pub. L. 102-40 renumbered section 4061 of this title as this section.

Subsec. (a)(1) to (3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (a)(4). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans Administration”.

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans Administration”.

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

Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “Court” for “court”.

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

1989—Subsec. (a)(2). Pub. L. 101-237 inserted “or unreasonably delayed” after “withheld”.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-330, title IV, §401(c), Dec. 6, 2002, 116 Stat. 2832, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 6, 2002].

“(2) The amendments made by this section shall apply with respect to any case pending for decision before the United States Court of Appeals for Veterans Claims other than a case in which a decision has been entered before the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov.

11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

#### § 7262. Fee for filing appeals

(a) The Court of Appeals for Veterans Claims may impose a fee of not more than \$50 for the filing of any appeal with the Court. The Court shall establish procedures under which such a fee may be waived in the case of an appeal filed by or on behalf of a person who demonstrates that the requirement that such fee be paid will impose a hardship on that person. A decision as to such a waiver is final and may not be reviewed in any other court.

(b) The Court may from time to time adjust the maximum amount permitted for a fee imposed under subsection (a) of this section based upon inflation and similar fees charged by other courts established under Article I of the Constitution.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4115, §4062; renumbered §7262, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40 renumbered section 4062 of this title as this section.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

#### § 7263. Representation of parties; fee agreements

(a) The Secretary shall be represented before the Court of Appeals for Veterans Claims by the General Counsel of the Department.

(b) Representation of appellants shall be in accordance with the rules of practice prescribed by the Court under section 7264 of this title. In addition to members of the bar admitted to practice before the Court in accordance with such rules of practice, the Court may allow other persons to practice before the Court who meet standards of proficiency prescribed in such rules of practice.

(c) A person who represents an appellant before the Court shall file a copy of any fee agreement between the appellant and that person with the Court at the time the appeal is filed. The Court, on its own motion or the motion of any party, may review such a fee agreement.

(d) In reviewing a fee agreement under subsection (c) of this section or under section 5904(c)(2) of this title, the Court may affirm the finding or order of the Board and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable. An order of the Court under this subsection is final and may not be reviewed in any other court.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4116, §4063; renumbered §7263 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; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

## AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4063 of this title as this section.

Subsec. (a). 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".

Subsec. (b). Pub. L. 102-40, §402(d)(1), substituted "7264" for "4064".

Subsec. (d). Pub. L. 102-40, §402(d)(1), substituted "5904(c)(2)" for "3404(c)(2)".

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

**§ 7264. Rules of practice and procedure**

(a) The proceedings of the Court of Appeals for Veterans Claims shall be conducted in accordance with such rules of practice and procedure as the Court prescribes.

(b) The mailing of a pleading, decision, order, notice, or process in respect of proceedings before the Court shall be held sufficient service of such pleading, decision, order, notice, or process if it is properly addressed to the address furnished by the appellant on the notice of appeal filed under section 7266 of this title.

(c) Section 455 of title 28 shall apply to judges and proceedings of the Court.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4116, §4064; renumbered §7264 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-82, §4, Aug. 6, 1991, 105 Stat. 376; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

## AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4064 of this title as this section.

Subsec. (b). Pub. L. 102-40, §402(d)(1), substituted "7266" for "4066".

Subsec. (c). Pub. L. 102-82 added subsec. (c).

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

## INTERIM RULES OF COURT OF VETERANS APPEALS

Pub. L. 101-94, title II, §203, Aug. 16, 1989, 103 Stat. 627, provided that the Federal Rules of Appellate Procedure (28 U.S.C. App.) would be interim rules of United States Court of Veterans Appeals unless otherwise provided by the Court in accordance with this chapter, and if there was a conflict between a provision of Federal Rules of Appellate Procedure and procedures set forth in this chapter, procedures set forth in this chapter would apply.

**§ 7265. Contempt authority; assistance to the Court**

(a) The Court shall have power to punish by fine or imprisonment such contempt of its authority as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(b) The Court shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for a district in which the Court is sitting shall, if requested by the chief judge of the Court, attend any session of the Court in that district.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4116, §4065; renumbered §7265, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4065 of this title as this section.

**§ 7266. Notice of appeal**

(a) In order to obtain review by the Court of Appeals for Veterans Claims of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.

(b) An appellant shall file a notice of appeal under this section by delivering or mailing the notice to the Court.

(c) A notice of appeal shall be deemed to be received by the Court as follows:

(1) On the date of receipt by the Court, if the notice is delivered.

(2) On the date of the United States Postal Service postmark stamped on the cover in which the notice is posted, if the notice is properly addressed to the Court and is mailed.

(d) For a notice of appeal mailed to the Court to be deemed to be received under subsection (c)(2) on a particular date, the United States Postal Service postmark on the cover in which the notice is posted must be legible. The Court shall determine the legibility of any such postmark and the Court's determination as to legibility shall be final and not subject to review by any other Court.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4116, §4066; renumbered §7266 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. 103-446, title V, §511(a), Nov. 2, 1994, 108 Stat. 4670; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-103, title V, §507, Dec. 27, 2001, 115 Stat. 997.)

## AMENDMENTS

2001—Pub. L. 107-103 struck out "(1)" before "In order to", redesignated par. (2) of subsec. (a) as subsec. (b),