

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 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 readjudicated 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;

(2) a general statement—

(A) reflecting whether evidence was not considered in making the decision because the evidence was received at a time when not permitted under section 7113 of this title; and

(B) noting such options as may be available for having the evidence considered by the Department; and

(3) 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; Pub. L. 115-55, § 2(p), (w)(2), Aug. 23, 2017, 131 Stat. 1111, 1114.)

APPLICABILITY OF AMENDMENT

Amendment of section by section 2(p), (w)(2) 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—Subsec. (b). Pub. L. 115-55, § 2(p), substituted “readjudicated” for “reopened”.

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 404 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).

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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 sections 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.