

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 fol-

lows: "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 address 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.

(4) Except as provided in subsection (b), each case before the Board will be decided in regular order according to its respective place on the docket to which it is assigned by the Board.

(b) **ADVANCEMENT ON THE DOCKET.**—(1) A case on one of the dockets of the Board maintained under subsection (a) may, for cause shown, be advanced on motion for earlier consideration and determination.

(2) Any such motion shall set forth succinctly the grounds upon which the motion is based.

(3) 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.

(c) **MANNER AND SCHEDULING OF HEARINGS FOR CASES ON A DOCKET THAT MAY INCLUDE A HEARING.**—(1) For cases on a docket maintained by the Board under subsection (a) that may include a hearing, in which a hearing is requested in the notice of disagreement, the Board shall notify the appellant whether a Board hearing will be held—

(A) at its principal location; or

(B) by picture and voice transmission at a facility of the Department where the Secretary has provided suitable facilities and equipment to conduct such hearings.

(2)(A) Upon notification of a Board hearing at the Board's principal location as described in subparagraph (A) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (B) of such paragraph. If so requested, the Board shall grant such request.

(B) Upon notification of a Board hearing by picture and voice transmission as described in subparagraph (B) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (A) of such paragraph. If so requested, the Board shall grant such request.

(d) **SCREENING OF CASES.**—Nothing in this section shall be construed to 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.

(e) **POLICY ON CHANGING DOCKETS.**—The Secretary shall develop and implement a policy allowing an appellant to move the appellant's case from one docket to another docket.

(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; Pub. L. 114-315, title I, §102, Dec. 16, 2016, 130 Stat. 1540; Pub. L. 115-55, §2(t), Aug. 23, 2017, 131 Stat. 1112.)

APPLICABILITY OF AMENDMENT

Amendment of section by section 2(t) 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.

AMENDMENTS

2017—Pub. L. 115-55 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to order of cases, opportunity for hearing, maintenance of hearing docket and holding of hearings by the Board, location and type of hearings, hearings conducted by electronic or other means, and screening of cases, respectively.

2016—Subsec. (d)(1). Pub. L. 114-315, §102(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "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."

Subsec. (e)(2). Pub. L. 114-315, §102(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "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."

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 hardship, 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.

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.

§ 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. Repealed. Pub. L. 115-55, § 2(u)(1), Aug. 23, 2017, 131 Stat. 1113]

Section, 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, related to advisory medical opinions from one or more independent medical experts who are not employees of the Department.

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.

[§ 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.

(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; amended Pub. L. 115-55, § 2(v), Aug. 23, 2017, 131 Stat. 1113.)

APPLICABILITY OF AMENDMENT

Amendment of section by section 2(v) 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.

AMENDMENTS

2017—Subsec. (e). Pub. L. 115-55 struck out “, without referral to any adjudicative or hearing official acting on behalf of the Secretary” after “merits”.

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.