

out as a note under section 101 of this title, and bracketed note thereunder.

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 Repealed.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.

Statutory Notes and Related Subsidiaries

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, and bracketed note thereunder.

§ 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 or subparagraph (C) of this 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 or subparagraph (C) of this paragraph. If so requested, the Board shall grant such request.

(C)(i) Upon notification of a Board hearing under subparagraph (A) or (B) of paragraph (1), the appellant may alternatively request a hearing by picture and voice transmission—

(I) at a location selected by the appellant; and

(II) via a secure internet platform established and maintained by the Secretary that protects sensitive personal information from a data breach.

(ii) If an appellant makes a request under clause (i), 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; Pub. L. 116-137, §2(a), Apr. 10, 2020, 134 Stat. 616.)

Editorial Notes

AMENDMENTS

2020—Subsec. (c)(2)(A). Pub. L. 116-137, §2(a)(1), inserted “or subparagraph (C) of this paragraph” after “subparagraph (B) of such paragraph”.

Subsec. (c)(2)(B). Pub. L. 116-137, §2(a)(2), inserted “or subparagraph (C) of this paragraph” after “subparagraph (A) of such paragraph”.

Subsec. (c)(2)(C). Pub. L. 116-137, §2(a)(3), added subpar. (C).

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.

Statutory Notes and Related Subsidiaries

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, and bracketed note thereunder.

DEADLINE FOR IMPLEMENTATION

Pub. L. 116-137, §2(b), Apr. 10, 2020, 134 Stat. 616, provided that: “The Secretary shall implement the amendments made by subsection (a) [amending this section] not later than 180 days after the date of the enactment of this Act [Apr. 10, 2020].”

COLLABORATION

Pub. L. 116-137, §2(d), Apr. 10, 2020, 134 Stat. 617, provided that: “In developing the capacity and procedures to conduct hearings under subparagraph (C) of paragraph (2) of subsection (c) of section 7101 [probably should be “7107”] of title 38, United States Code, as added by subsection (a), the Secretary of Veterans Affairs shall collaborate with, partner with, and give weight to the advice of veterans service organizations and such other stakeholders as the Secretary considers appropriate.”

§ 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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 de-