

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 Repealed.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-

isions 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.

[§ 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.)

Editorial Notes

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".

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.

EFFECTIVE DATE

Section applicable to any determination made before, on, or after Nov. 21, 1997, see section 1(c)(1) of Pub. L. 105-111, set out as a note under section 5109A of this title.

§ 7112. Expedited treatment of certain claims

(a) REMANDED CLAIMS.—The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Board of any claim that is remanded to the Secretary by the Court of Appeals for Veterans Claims.

(b) CLAIMS INVOLVING MILITARY SEXUAL TRAUMA.—The Board shall promptly determine whether a notice of disagreement filed with the Board is a covered case.

(c) DEFINITIONS.—In this section:

(1) The term “covered case” means a case—

(A) that concerns a claim for compensation based on military sexual trauma; and

(B) for which the appellant has requested a hearing in the notice of disagreement filed with the Board pursuant to section 7105 of this title.

(2) The term “military sexual trauma” has the meaning given that term in section 1166 of this title.

(Added Pub. L. 108-183, title VII, §707(b)(1), Dec. 16, 2003, 117 Stat. 2673; amended Pub. L. 117-300, §2(a)(1), (2)(A), Dec. 27, 2022, 136 Stat. 4379, 4380.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-300 substituted “certain” for “remanded” in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsecs. (b) and (c).

§ 7113. Evidentiary record before the Board of Veterans’ Appeals

(a) CASES WITH NO REQUEST FOR A HEARING OR ADDITIONAL EVIDENCE.—For cases in which a hearing before the Board of Veterans’ Appeals is not requested in the notice of disagreement and no request was made to submit evidence, the evidentiary record before the Board shall be limited to the evidence of record at the time of the decision of the agency of original jurisdiction on appeal.

(b) CASES WITH A REQUEST FOR A HEARING.—(1) Except as provided in paragraph (2), for cases in which a hearing is requested in the notice of disagreement, the evidentiary record before the Board shall be limited to the evidence of record at the time of the decision of the agency of original jurisdiction on appeal.

(2) The evidentiary record before the Board for cases described in paragraph (1) shall include each of the following, which the Board shall consider in the first instance:

(A) Evidence submitted by the appellant and his or her representative, if any, at the Board hearing.

(B) Evidence submitted by the appellant and his or her representative, if any, within 90 days following the Board hearing.

(c) CASES WITH NO REQUEST FOR A HEARING AND WITH A REQUEST FOR ADDITIONAL EVIDENCE.—(1) Except as provided in paragraph (2),

for cases in which a hearing is not requested in the notice of disagreement but an opportunity to submit evidence is requested, the evidentiary record before the Board shall be limited to the evidence considered by the agency of original jurisdiction in the decision on appeal.

(2) The evidentiary record before the Board for cases described in paragraph (1) shall include each of the following, which the Board shall consider in the first instance:

(A) Evidence submitted by the appellant and his or her representative, if any, with the notice of disagreement.

(B) Evidence submitted by the appellant and his or her representative, if any, within 90 days following receipt of the notice of disagreement.

(Added Pub. L. 115-55, §2(w)(1), Aug. 23, 2017, 131 Stat. 1114.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section 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.

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