BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF
JACK SUCIC

[redacted]

DOCKET NO. 09-02 218) DATE *25 SEPTEMBER 2012*
) *VT*
)

On appeal from the
Department of Veterans Affairs Regional Office in St. Louis, Missouri

THE ISSUE

Entitlement to an effective date prior to January 24, 2003, for the grant of service connection for posttraumatic stress disorder (PTSD).

REPRESENTATION

Appellant represented by: Kenneth M. Carpenter, Attorney

ATTORNEY FOR THE BOARD

D.M. Donahue, Associate Counsel

INTRODUCTION

The Veteran served on active duty from July 1973 to August 1979 and from December 1982 to October 1984.

This appeal to the Board of Veterans' Appeals (Board) is from a June 2007 decision at the Department of Veterans Affairs (VA) Regional Office (RO) in St. Louis, Missouri, which granted service connection for PTSD effective from January 24, 2003. The Veteran appealed that decision by requesting an effective date back to June 30, 1992, for that award.

In a January 2011 decision, the Board denied the claim. The Veteran appealed that Board decision to the United States Court of Appeals for Veterans Claims (Court). In a January 2012 Joint Motion for Remand, the parties moved to vacate the Board decision and remand the case to the Board. The Court granted the motion by an Order dated in January 2012.

FINDINGS OF FACT

1. On June 30, 1992, the RO received the Veteran's original claim for service connection for a nervous condition, to include PTSD.

2. In a December 1992 decision, the RO denied service connection for a nervous condition, to include PTSD, on the basis that there was no medical diagnosis of PTSD and no confirmed in-service stressor.

3. The Veteran was notified of the December 1992 RO decision in a letter dated January 1993, but he made no attempt to appeal that decision by filing a notice of disagreement (NOD) within one year of the notification letter.

4. In a Statement in Support of Claim, VA Form 21-4138, received at the RO on March 30, 1993, the Veteran indicated he was applying for nonservice-connected

pension benefits and explained that he had been treated for a nervous condition at the VA Medical Center in Columbia, Missouri.

5. In connection with the Veteran's pension claim, the RO obtained a VA discharge summary showing that he had been hospitalized from March to April 1993 for diagnoses involving alcohol and cannabis abuse, with no other psychiatric disorder identified.

6. On January 24, 2003, the Veteran filed another claim for service connection for PTSD, which the RO properly considered as a petition to reopen his claim on the basis of new and material evidence.

7. During the intervening period from the December 1992 RO decision until January 24, 2003, neither a formal nor an informal communication in writing was received from the Veteran requesting service connection for PTSD.

8. In a June 2007 decision, the RO granted service connection for PTSD, effective January 24, 2003, the date he filed his most recent claim for service connection.

CONCLUSION OF LAW

The criteria are not met for an effective date earlier than January 24, 2003, for the grant of service connection for PTSD. 38 U.S.C.A. § 5110 (West 2002 & Supp. 2011); 38 C.F.R. §§ 3.1, 3.155, 3.157, 3.159, 3.400 (2011).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

I. The Duties to Notify and Assist

Pursuant to the Veterans Claims Assistance Act of 2000 (VCAA), before addressing the merits of a claim for VA disability benefits, the Board is generally required to ensure that VA's duties to notify and assist obligations have been satisfied.

See 38 U.S.C.A. §§ 5103, 5103A (West 2002 & Supp. 2011); 38 C.F.R. § 3.159 (2011).

As service connection for PTSD has been granted, and an initial rating and effective date have been assigned, the notice requirements of the VCAA have been met. In other words, additional VCAA notice is not required concerning these downstream elements of the claim because the initial intended purpose of the notice has been served. *Hartman v. Nicholson*, 483 F.3d 1311 (Fed. Cir. 2007); *Dunlap v. Nicholson*, 21 Vet. App. 112 (2007).

VA's General Counsel has clarified that no additional VCAA notice is required for a downstream issue, including the effective date, and that a Court decision suggesting otherwise is not binding precedent. VAOPGCPREC 8-2003, 69 Fed. Reg. 25180 (May 5, 2004). Instead of issuing an additional VCAA notice in this situation, the provisions of 38 U.S.C.A. § 7105(d) require VA to issue a statement of the case (SOC) if the disagreement is not resolved. And since the RO issued an SOC in November 2008 addressing the downstream earlier-effective-date claim, no further notice is required. *See Goodwin v. Peake*, 22 Vet. App. 128 (2008) and *Huston v. Principi*, 17 Vet. App. 195 (2003).

Consequently, the Board finds that all necessary development of the downstream earlier-effective-date claim has been accomplished, and therefore appellate review of this claim may proceed without prejudicing the Veteran. Moreover, resolution of this claim ultimately turns on when he filed this claim, so an examination and opinion are not needed to fairly decide the current claim for an earlier effective date. *See* 38 U.S.C.A. § 5103A(d)(2)(A)-(C); 38 C.F.R. § 3.159(c)(4)(A)-(C). *See also Chotta v. Peake*, 22 Vet. App. 80, 85-86 (2008) (discussing situations when it may be necessary to obtain a retrospective medical opinion to determine the date of onset or severity of a condition in years past).

II. Analysis

In a June 2007 decision, the RO granted service connection for PTSD, effective retroactively back to January 24, 2003, the date the Veteran filed his claim to

reopen after an unappealed rating decision had denied that claim in December 1992. The Veteran now wants an earlier effective back to when he filed his original claim on June 30, 1992. For the reasons discussed below, however, the Board finds no basis to assign an effective date earlier than January 24, 2003.

The statutory guidelines for the determination of an effective date of an award of disability compensation are set forth in 38 U.S.C.A. § 5110. Except as otherwise provided, the effective date of an evaluation and award of compensation based on an original claim, a claim reopened after a final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. 38 C.F.R. § 3.400 (2011). In cases involving direct service connection, the effective date will be the day following separation from active service or the date entitlement arose if the claim is received within one year after separation from service. Otherwise, the effective date will be the date of receipt of the claim or the date entitlement arose, whichever is later. 38 C.F.R. § 3.400(b)(2)(i).

The effective date of a successful claim to reopen is the date of receipt of the claim to reopen or the date entitlement arose, whichever is later. *Id*; *Spencer v. Brown*, 4 Vet. App. 283, 293 (1993), *aff'd* 17 F.3d 368 (Fed. Cir. 1994). When a claim is denied, and the claimant fails to timely appeal the decision by filing a notice of disagreement (NOD) within the one-year period prescribed in 38 U.S.C.A. § 7105(b)(1), or by submitting a timely Substantive Appeal (VA Form 9 or equivalent statement) in response to the SOC, the decision becomes final and binding on him based on the evidence then of record, and the claim may not thereafter be reopened or allowed except upon the submission of new and material evidence or a showing that the prior final and binding decision contained clear and unmistakable error (CUE). *See* 38 U.S.C.A. §§ 7104(b), 7105(c) (West Supp. 2005); 38 C.F.R. §§ 3.104(a), 3.160(d), 3.105(a) (2011). The only exception to the above finality rules arises when an apparently final prior decision was not in fact final. *See Juarez v. Peake*, 21 Vet. App. 537, 543 (2008) (*citing Myers v. Principi*, 16 Vet. App. 228 (2002)). In *Myers*, the appellant had filed a timely appeal from a prior RO decision and VA failed to recognize the appeal. *Id*. The *Myers* Court held that because of the unacted upon appeal, neither the prior RO decision nor its

subsequent denial of reopening of the claim had become final, thus allowing a claim for an earlier effective date based on disagreement with a later decision. *Id*.

A specific claim in the form prescribed by the Secretary of VA must be filed in order for benefits to be paid to any individual under the laws administered by VA. 38 U.S.C.A. § 5101(a). Any communication or action indicating intent to apply for one or more VA benefits may be considered an informal claim. 38 C.F.R. § 3.155. An informal claim must identify the benefit sought, however, but need not be specific. *See Stewart v. Brown*, 10 Vet. App. 15, 18 (1997); *Servello v. Derwinski*, 3 Vet. App. 196, 199 (1992). The term "application" is used interchangeably with "claim" and defined as a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement to a benefit. 38 C.F.R. § 3.1(p) (2011); *see also Rodriguez v. West*, 189 F.3d. 1351 (Fed. Cir. 1999).

While VA must interpret a claimant's submissions broadly, VA is not required to conjure up issues not raised by claimant. That is to say, VA is not required to anticipate any potential claim for a particular benefit where no intention to raise it was expressed. *Brannon v. West*, 12 Vet. App. 32, 35 (1998); *Talbert v. Brown*, 7 Vet. App. 352, 356-57 (1995).

In this case, the RO received the Veteran's original claim for service connection for a nervous condition, to include PTSD, on June 30, 1992. The law at that time provided that, in order to establish service connection for a claimed disability, the facts, as shown by the evidence, must demonstrate that a particular injury or disease resulting in a current disability was incurred in or aggravated coincident with service in the Armed Forces. *See* 38 U.S.C.A. § 1110 (West 1991); 38 C.F.R. § 3.303(a) (1992). Service connection for PTSD required medical evidence establishing a clear diagnosis of the condition, credible supporting evidence that the claimed in-service stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed in-service stressor. 38 C.F.R. § 3.304(f) (1992).

In a December 1992 decision, the RO denied service connection for a nervous condition, to include PTSD, on the basis that "[t]here was no diagnosis of such

condition and the evidence of record does not indicate adequate objective evidence of an in-service stressor likely to account for any such diagnosis." The Veteran was notified of that decision in a letter dated January 1993. However, he made no attempt to appeal that decision by submitting an NOD within one year of receiving notice.

The only correspondence received within one year of the January 1993 notice letter pertains to other unrelated claims. A VA Form 9 (Appeal to Board of Veterans Appeals) received on March 30, 1993, pertains to other claims on appeal at that time, with no mention of a nervous disorder, to include PTSD. In a VA Form 21-4138 (Statement in Support of Claim), also received on March 30, 1993, the Veteran indicated that he wanted nonservice-connected pension benefits, and in support of that claim, he explained that he had been treated for a nervous condition at the VA Medical Center (VAMC) in Columbia, Missouri. A discharge summary obtained from the Columbia VAMC notes that the Veteran had been hospitalized from March until April 1993 for diagnoses involving alcohol abuse and cannabis abuse.

Unfortunately, neither the VA Form 9 nor the VA Form 21-4138 can be accepted as an NOD concerning the December 1992 RO decision to deny service connection for a nervous condition, to include PTSD. An NOD is "[a] written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the [RO] and a desire to contest the result"; it "must be in terms which can be reasonably construed as [expressing] disagreement with that determination and a desire for appellate review." *See Gallegos v. Principi*, 283 F.3d 1309 (Fed. Cir. 2002). But the Veteran did not express dissatisfaction or disagreement with the December 1992 RO decision. At most, in the VA Form 21-4138, he merely mentioned his nervous condition in connection with an entirely unrelated claim for nonservice-connected pension benefits, which was ultimately considered and denied by the RO in a June 1993 decision. In this case, the Veteran's attorney concedes that the VA Form 21-4138 submitted in March 1993 does not constitute an NOD with the December 1992 RO decision. In sum, since the Veteran did not file an NOD within the one-year period

following notification, the December 1992 RO decision is final. *See* 38 U.S.C.A. § 7105(c); 38 C.F.R. §§ 3.160(d), 20.200, 20.302, 20.1103.

But the Veteran, through his attorney, argues that the June 1992 claim remains pending because the VA Form 21-4138 indicating that VA treatment records exist for his nervous condition was submitted within one year of the December 1992 RO decision, but VA took no action. In other words, because the Veteran submitted new and material evidence prior to the expiration of the appeal period from the December 1992 RO decision, VA was required to issue a new rating decision based on that evidence, and since a new rating decision was never issued, the June 1992 claim remains pending. In support of this argument, the Veteran's attorney cites to 38 C.F.R. § 3.156(b), which states:

> New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board without consideration in that decision in accordance with the provisions of § 20.1304(b)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(Authority: 38 U.S.C 501).

Applying the provisions of 38 C.F.R. § 3.156(b) to the facts of this case, however, the Board finds that the Veteran's argument has no merit. Neither the Veteran's statement in his VA Form 21-4138 concerning treatment for a nervous condition nor the VA discharge summary obtained in response to that statement is material to the central issue in this case. The RO denied the Veteran's claim in December 1992 on the basis that "there is no diagnosis of such condition [PTSD] and the evidence of record does not indicate adequate objective evidence of an in-service stressor likely to account for any such diagnosis." Therefore, to be new and material, at the very least, the evidence would have to show a diagnosed psychiatric disorder, to include PTSD. *See* 38 C.F.R. § 3.156(a) ("Material" evidence means existing

evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim").

However, neither the Veteran's statement in his VA Form 21-4138 nor the VA discharge summary establishes that he had a psychiatric disorder for which service connection may be established. As noted, the only confirmed diagnoses were alcohol abuse and cannabis abuse, neither of which is a disability for VA purposes. *See* 38 C.F.R. § 3.1(n). *See also* VAOPGCPREC 7-99 (1999), published at 64 Fed. Reg. 52,375 (June 9, 1999); VAOPGCPREC 2-98 (1998), published at 63 Fed. Reg. 31,263 (February 10, 1998) (VA's General Counsel confirming that direct service connection for a disability that is a result of a claimant's own abuse of alcohol or drugs is precluded for purposes of all VA benefits for claims filed after October 31, 1990). Simply stated, neither the VA Form 21-4138 nor the VA discharge summary was material to the central issue concerning the claim for service connection for a nervous condition, to include PTSD. Therefore, the RO was not required to issue a new rating decision based on this evidence. *See* 38 C.F.R. § 3.156(b).

In support of this claim, the Veteran's attorney also argues that a July 1995 Board remand in connection with other, unrelated claims recognized the Veteran's pending claim from June 30, 1992, when it referred the issue of entitlement to service connection for PTSD back to the RO for appropriate action. In particular, in the remand, the Board noted:

> The veteran has further contended that service connection is warranted for post-traumatic stress disorder (PTSD). Service connection for this disability was denied in a December 1992 rating action with notice in January 1993 and no disagreement received thereafter. Such issue was not developed for appellate review and no action by the Board is warranted. It is referred to the Department of Veterans Affairs (VA) Regional Office (RO) for appropriate action.

It is unclear why the Board referred this matter back to the RO, since the Board explained that the December 1992 RO decision was final, with no reference to

another claim, either explicit or implied, which could be construed as a petition to reopen on the basis of new and material evidence or a claim alleging CUE in the December 1992 RO decision. The Board notes that, as explained previously, a claim must be initiated by the Veteran, and, in this case, there is no communication from the Veteran in the year subsequent to the December 1992 RO decision denying service connection for PTSD which would indicate an intention to file a claim, or any intention to file a application to reopen a claim for service connection. Thus, this reference to the Veteran's PTSD claim appears misplaced and does not establish a pending claim for PTSD since June 30, 1992. In any event, unlike a remand order, the Board is not bound by a finding made in the body of a prior Board decision. *See Stegall v. West*, 11 Vet. App. 268 (1998) (holding that where the remand orders of the Board or the Court are not complied with, the Board itself errs in failing to ensure compliance). The Board notes that, upon further reflection, the statement in its July 1995 decision is dicta to the extent that it had no reasonable basis to infer a claim for service connection for PTSD within a claim for nonservice connected pension.

Even if the July 1995 referral created some kind of duty upon the RO for action, there is no indication that the RO did not react to the statement. As the Board referred the claim for "appropriate action," the Board can assume that the RO reviewed the issue, determined that there was no claim and, therefore, had no action to take. The Board notes that there is a presumption of regularity with regard to processes and procedures throughout the VA administrative process. *See Marsh v. Nicholson*, 19 Vet. App. 381, 386-87 (2005). If the Veteran had intended to file a claim, it is likely that he would have sought some kind of follow-up prior to January 2003; more than six years after the Board's supposed July 1995 recognized contention and more than nine years after the original denial of service connection. Thus, in the absence of additional evidence to the contrary, the Board has no basis to find that an unadjudicated claim for service connection for PTSD was initiated in a July 2005 Board decision.

In light of these findings, the claim filed on June 30, 1992, is not a pending claim. 38 C.F.R. § 3.160(c) (a "pending claim" means an application, formal or informal, which has not been finally adjudicated). Rather, the evidence shows that this claim

was adjudicated by the RO in a December 1992 decision, and since the Veteran made no attempt to appeal the December 1992 RO decision, this constitutes a finally adjudicated claim. 38 C.F.R. § 3.160(d) (a "finally adjudicated claim" means an application, formal or informal, which has been allowed or disallowed by the agency of original jurisdiction, the action having become final by the expiration of one year after the date of notice of an award or disallowance, or by denial on appellate review, whichever is earlier). Additionally, as the December 1992 RO decision is final, the *Myers* holding is inapplicable. *See Myers v. Principi*, 16 Vet. App 228 (2002).

Based on the foregoing, there is no basis to assign an effective date prior to the final December 1992 RO decision. Instead, the effective date must be the date the Veteran filed a new claim after the final December 1992 RO decision. The Court has held that the rule of finality regarding an original claim implies that the date of that claim is not to be a factor in determining an effective date if the claim is later reopened. The Court held that the term "new claim," as it appears in 38 C.F.R. § 3.400(q)(1)(ii), means a claim to reopen a previously and finally denied claim. *See Sears v. Principi*, 16 Vet. App. 244, (2002); *see also Livesay,* 15 Vet. App. at 172 (holding that the plain meaning of § 5110 to be that "the phrase 'application therefor' means the application which resulted in the award of disability compensation that is to be assigned an effective date under section 5110."); *Cook v. Principi*, 258 F.3d 1311, 1314 (Fed. Cir. 2001) (affirming assignment of an effective date for a service-connection award based upon the reopened claim as the date on which the veteran "first sought to reopen his claim").

As the Federal Circuit Court reiterated in *Leonard v. Nicholson*, 405 F.3d 1333, 1336-37 (Fed. Cir. 2005), "no matter how [a Veteran] tries to define 'effective date,' the simple fact is that, absent a showing of CUE, he cannot receive disability payments for a time frame earlier than the application date of his claim to reopen, even with new evidence supporting an earlier disability date"). In other words, because the December 1992 RO decision is final and binding, it will be accepted as correct in the absence of collateral attack by showing it involved CUE. *See* 38 C.F.R. § 3.105(a). Here, the Veteran has not made any specific allegation of CUE in the December 1992 RO decision. CUE must be pled with specificity. *See*

Andre v. West, 14 Vet. App. 7, 10 (2000) (per curium), *aff'd sub nom*., *Andre v. Principi*, 301 F.3d 1354 (Fed. Cir. 2002).

It was not until January 24, 2003, that the Veteran filed another claim for service connection for PTSD, which the RO properly considered as a petition to reopen his claim on the basis of new and material evidence. Evidence developed in connection with that claim showed that the Veteran had recently been diagnosed with PTSD. Consequently, in an October 2006 decision, the Board found that new and material evidence had been submitted to reopen the Veteran's claim since the final December 1992 RO decision. The Board then remanded the claim for additional evidentiary development to determine whether the Veteran actually had PTSD based on an in-service stressor. Based on evidence received in connection with that development, the RO issued a June 2007 decision in which it granted service connection for PTSD, effective from the date the Veteran filed his petition to reopen on January 24, 2003.

Since the Veteran filed his petition to reopen his claim on January 24, 2003, there is no basis to award an effective date prior to this date. The Board has reviewed the record but finds no document during the intervening period between the final December 1992 RO decision and the date the RO received the Veteran's petition to reopen his claim on January 24, 2003, which could be construed as either an informal or a formal claim for service connection for PTSD or any other diagnosed psychiatric disorder. *Clemons v. Shinseki*, 23 Vet. App. 1 (2009) (per curiam) (holding that the scope of a mental health disability claim includes any mental disability that reasonably may be encompassed by the claimant's description of the claim, reported symptoms, and the other information of record).

According to 38 U.S.C.A. § 5110(a), the effective date can be no earlier than January 24, 2003, the date the Veteran filed his petition to reopen which ultimately resulted in the grant of benefits. Since the December 1992 RO decision is final, the original claim filed on June 30, 1992, is not a pending claim. *See Ingram v. Nicholson*, 21 Vet. App. 232, 249, 255 (2007) and *McGrath v. Gober*, 14 Vet. App. 28, 35 (2000) (indicating a claim that has not been finally adjudicated remains pending for purposes of determining the effective date for that disability, but

conversely, that a claim which has become final and binding in the absence of an appeal does not remain pending and subject to an earlier effective date). Hence, the appeal is denied.

ORDER

The claim for an effective date prior to January 24, 2003, for the grant of service connection for posttraumatic stress disorder is denied.

_____

JENNIFER HWA
Acting Veterans Law Judge, Board of Veterans' Appeals

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (BVA or Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. We will return your file to your local VA office to implement the BVA's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. None of these things is mutually exclusive - you can do all five things at the same time if you wish. However, if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your case because of jurisdictional conflicts. If you file a Notice of Appeal with the Court ***before*** you file a motion with the BVA, the BVA will not be able to consider your motion without the Court's permission.

How long do I have to start my appeal to the Court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the Court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you,* you will then have another 120 days from the date the BVA decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, *it is your responsibility to make sure that your appeal to the Court is filed on time.*

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: http://www.uscourts.cavc.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court,** not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the BVA to reconsider any part of this decision by writing a letter to the BVA clearly explaining why you believe that the BVA committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that such letter be as specific as possible. A general statement of dissatisfaction with the BVA decision or some other aspect of the VA claims adjudication process will not suffice. If the BVA has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

Director, Management, Planning and Analysis (014)
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the BVA to vacate any part of this decision by writing a letter to the BVA stating why you believe you were denied due process of law during your appeal. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address above for the Director, Management, Planning and Analysis, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address above for the Director, Management, Planning and Analysis, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400 -- 20.1411, and *seek help from a qualified representative before filing such a motion.* See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. *See* 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the BVA, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: http://www.va.gov/vso. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before VA, then you can get information on how to do so by writing directly to the Court. Upon request, the Court will provide you with a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to represent appellants. This information, as well as information about free representation through the Veterans Consortium Pro Bono Program (toll free telephone at: (888) 838-7727), is also provided on the Court's website at: http://www.uscourts.cavc.gov.

Do I have to pay an attorney or agent to represent me? An attorney or agent may charge a fee to represent you after a notice of disagreement has been filed with respect to your case, provided that the notice of disagreement was filed on or after June 20, 2007. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636. If the notice of disagreement was filed before June 20, 2007, an attorney or accredited agent may charge fees for services, but only after the Board first issues a final decision in the case, and only if the agent or attorney is hired within one year of the Board's decision. *See* 38 C.F.R. 14.636(c)(2).

The notice of disagreement limitation does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court. VA cannot pay the fees of your attorney or agent, with the exception of payment of fees out of past-due benefits awarded to you on the basis of your claim when provided for in a fee agreement.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636(d).

Filing of Fee Agreements: In all cases, a copy of any fee agreement between you and an attorney or accredited agent must be sent to the Secretary at the following address:

Office of the General Counsel (022D)
810 Vermont Avenue, NW
Washington, DC 20420

The Office of the General Counsel may decide, on its own, to review a fee agreement or expenses charged by your agent or attorney for reasonableness. You can also file a motion requesting such review to the address above for the Office of the General Counsel. *See* 38 C.F.R. 14.636(i); 14.637(d).