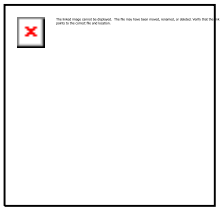

BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF
WARREN B. COOK

SS [redacted]

DOCKET NO. 08-01 113) DATE *February 20, 2015*
) *SMR*
)

On appeal from the
Department of Veterans Affairs Regional Office in Manchester, New Hampshire

THE ISSUES

1. Entitlement to service connection for a lumbar spine disorder.

2. Entitlement to a total disability evaluation based on individual unemployability due to a service-connected disability (TDIU).

REPRESENTATION

Appellant represented by: Penelope E. Gronbeck, Attorney at Law

WITNESS AT HEARING ON APPEAL

The Veteran

IN THE APPEAL OF SS [redacted]
WARREN B. COOK

ATTORNEY FOR THE BOARD

K. L. Wallin, Counsel

INTRODUCTION

The Veteran served on active duty from December 1972 to November 1973.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from rating decisions of the Department of Veteran's Affairs (VA) Regional Office (RO) in Manchester, New Hampshire.

The Board notes the Veteran requested a hearing in November 2013 so he could present "further evidence." He again requested a hearing in November 2014. "***A*** hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to appear in person." 38 C.F.R. § 20.700(a) (*emphasis added*). The Veteran was afforded a Board hearing in June 2012. He also presented testimony before the RO in September 2007. The transcripts have been associated with the record. As the Veteran has been afforded a Board hearing, no further hearing is necessary.

The claims were previously before the Board in October 2012. At that time, the Board determined that new and material evidence had been submitted to reopen the previously denied claim of service connection for a lumbar spine disorder. The *de novo* claim, as well as the claim for TDIU, was remanded to the RO for further development.

In February 2014, the Board denied the claims for service connection for a lumbar spine disorder and TDIU. The Veteran appealed the denial to the United States Court of Appeals for Veterans Claims (Court). In an October 2014 Order, the Court vacated the February 2014 decision finding the Board failed to discuss a medical report and remanded the claims for action consistent with the terms of the Joint

Motion for Vacatur and Remand. The instant decision is undertaken with the instructions set forth in the Joint Motion.

FINDINGS OF FACT

1. The competent and probative medical evidence of record preponderates against a finding that the Veteran's lumbar spine disability is due to events in active service; degenerative joint disease (DJD) of the lumbar spine was not diagnosed within one year following the Veteran's discharge from active service in November 1973.

2. Service connection is not currently in effect for any disability; a service-connected disability alone has not precluded substantially gainful employment consistent with the Veteran's educational and occupational background.

CONCLUSIONS OF LAW

1. The criteria for service connection for a lumbar spine disability have not been met. 38 U.S.C.A. §§ 1101, 1110, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.159, 3.303, 3.307, 3.309, 3.310 (2014).

2. The schedular criteria for TDIU are not met; a TDIU rating is not warranted; referral for extraschedular consideration is not warranted. 38 U.S.C.A. §§ 1155, 5107 (West 2002); 38 C.F.R. §§ 3.340, 3.341, 4.16, 4.19, 4.25 (2013).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

I. Notice and Assistance

Upon receipt of a complete or substantially complete application for benefits and prior to an initial unfavorable decision on a claim by an agency of original jurisdiction, VA is required to notify the appellant of the information and evidence

not of record that is necessary to substantiate the claim. *See* 38 U.S.C.A. § 5103(a); 38 C.F.R. § 3.159; *Pelegrini v. Principi*, 18 Vet. App. 112 (2004); *Quartuccio v. Principi*, 16 Vet. App. 183 (2002); *Mayfield v. Nicholson*, 444 F.3d 1328 (Fed. Cir. 2006). The notice should also address the rating criteria or effective date provisions that are pertinent to the Veteran's claims. *Dingess v. Nicholson*, 19 Vet. App. 473 (2006).

The RO provided the Veteran pre-adjudication notice by letters dated in November 2004, January 2005, November 2005, December 2005, and November 2009. Additional letters were sent in July 2009, November 2012, January 2013, April 2013, and June 2013.

VA has obtained service treatment records, assisted the Veteran in obtaining post-service VA and private outpatient treatment records, and afforded the Veteran VA examination. The Veteran has submitted lay statements on his behalf. The Veteran was also afforded the opportunity to give testimony (before the Board and the RO) in support of his appeal, the transcripts are of record.

The Veteran has made it known in multiple statements that records of YS (an acupuncturist) were not available as the provider moved back to Korea and took his treatment records with him. Records from the Social Security Administration are not available. *See response dated November 2012.* Any further efforts to obtain these records would be futile. 38 C.F.R. § 3.159(c)(1), (2).

All known and available records relevant to the issues on appeal have been obtained and associated with the Veteran's claims file; and the Veteran has not contended otherwise.

VA has substantially complied with the notice and assistance requirements and the Veteran is not prejudiced by a decision on the claims at this time.

II. Analysis

The Board has reviewed all the evidence in the Veteran's paper claims file and virtual record. Although the Board has an obligation to provide adequate reasons and bases supporting this decision, there is no requirement that the evidence submitted by the Veteran or obtained on his behalf be discussed in detail. Rather, the Board's analysis will focus specifically on what evidence is needed to substantiate each claim and what the evidence in the claims file shows, or fails to show, with respect to each claim. *See Gonzales v. West*, 218 F.3d 1378, 1380-81 (Fed. Cir. 2000) and *Timberlake v. Gober*, 14 Vet. App. 122, 128-30 (2000).

Service Connection for Lumbar Spine Disorder

Establishing service connection generally requires medical evidence or, in certain circumstances, lay evidence of the following: (1) A current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) nexus between the claimed in-service disease and the present disability. *See Davidson v. Shinseki*, 581 F.3d 1313 (Fed.Cir.2009); *Jandreau v. Nicholson*, 492 F.3d 1372 (Fed.Cir.2007); *Hickson v. West*, 12 Vet. App. 247 (1999); *Caluza v. Brown*, 7 Vet. App. 498 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed.Cir.1996) (table).

For some 'chronic diseases,' such as arthritis, presumptive service connection is available. 38 U.S.C.A. §§ 1101, 1112, 1113; 38 C.F.R. §§ 3.307, 3.309. With 'chronic disease' shown as such in service (or within the presumptive period under § 3.307), so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. 38 C.F.R. § 3.303(b). For the showing of a 'chronic disease' in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time. 38 C.F.R. § 3.303(b). If chronicity in service is not established, a showing of continuity of symptoms after discharge is required to support the claim. *Id.* If not manifest during service, where a veteran served continuously for 90 days or more during a period of war, or during peacetime

service after December 31, 1946, and the 'chronic disease' became manifest to a degree of 10 percent within 1 year from date of termination of such service, such disease shall be presumed to have been incurred in service, even though there is no evidence of such disease during the period of service. 38 C.F.R. § 3.307. The term 'chronic disease', whether as shown during service or manifest to a compensable degree within a presumptive window following service, applies only to those disabilities listed in 38 C.F.R. § 3.309(a). *Walker v. Shinseki*, 708 F.3d 1331, Fed. Cir. 2013).

In this decision, the Board has considered all lay and medical evidence as it pertains to the issue. 38 U.S.C.A. §§ 5107(b), 7104(a); 38 C.F.R. § 3.303(a). In rendering a decision on appeal, the Board must analyze the credibility and probative value of the evidence, account for the evidence which it finds to be persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. *See Gabrielson v. Brown*, 7 Vet. App. 36, 39-40 (1994); *Gilbert v. Derwinski*, 1 Vet. App. 49, 57 (1990). Competency of evidence differs from weight and credibility. Competency is a legal concept determining whether testimony may be heard and considered by the trier of fact, while credibility is a factual determination going to the probative value of the evidence to be made after the evidence has been admitted. *Rucker v. Brown*, 10 Vet. App. 67, 74 (1997); *Layno v. Brown*, 6 Vet. App. 465, 469 (1994); *see also Cartright v. Derwinski*, 2 Vet. App. 24, 25 (1991) ("although interest may affect the credibility of testimony, it does not affect competency to testify"). In determining whether statements submitted by a veteran are credible, the Board may consider internal consistency, facial plausibility, consistency with other evidence, and statements made during treatment. *Caluza v. Brown*, 7 Vet. App. 498 (1995).

The Veteran claims that he sustained a low back injury in approximately 1973 when he was lifting supplies onto docked Navy ships in Norfolk, Virginia. He further asserts that he sought immediate medical assistance and remained on bed rest for two days, followed by a period of light duty.

X-rays dated in 2000 revealed DJD of L3-4, which is clearly outside the one-year presumptive period for arthritis. 38 C.F.R. § 3.307, 3.309. He has also been

variously diagnosed with degenerative disc disease (DDD), lumbar radiculopathy, facet joint arthropathy, history of laminectomy and discectomy, and spondylolisthesis. *See May 2013 entry from Paincare Centers.* Thus, the question of whether the Veteran has a current back disability is not in dispute. What is in dispute however, is whether such disability had its onset in service or is otherwise causally related to the Veteran's service. After review of the evidence, the Board finds service connection must be denied because the preponderance of the evidence is against such a finding.

First, the Board shall discuss service incurrence. Arthritis is a "chronic disease" under 38 C.F.R. § 3.309(a). Thus, consideration under 38 C.F.R. § 3.303(b) is warranted. Where a combination of manifestations sufficient to identify a 'chronic disease' in service, and establish chronicity at the time are present, any later manifestation of the same 'chronic disease' is subject to service connection unless attributable to an intercurrent cause. 38 C.F.R. § 3.303(b).

The Veteran's service treatment records show the Veteran was treated for low back pain beginning in August 1973. He was diagnosed with mild muscle pull/strain. He was prescribed medication and told to return as needed. Later in August 1973 he complained of low back pain of two weeks duration with no relief from medication. He denied radicular pain and was again diagnosed with mild sprain. There was a follow-up visit in September 1973. The Veteran complained of continued back pain, but the physical examination was negative. There were no further back complaints during service. The September 1973 separation examination was negative for complaints or diagnosis of a low back disability. Thus, a chronic back disability, to include arthritis, was not established during service. If chronicity in service is not established, a showing of continuity of symptoms after discharge is required to support the claim. *Id.*

Despite his statements and testimony to the contrary, continuous symptoms have not been shown since service in the objective medical evidence. In fact, post-service records show the Veteran has been plagued by occupational injuries, some even necessitating surgery. The first post-service complaints pertaining to the back are dated in August 1982. This alone is nine years after the Veteran's separation

from service and the long time lapse can be considered, along with other factors, as evidence of whether an injury or disease was incurred in service which resulted in any chronic or persistent disability. *See Maxson v. Gober*, 230 F.3d 1330 (Fed. Cir. 2000).

Nevertheless, Worker's Compensation records dated in 1982 show the Veteran injured his back when he leaned over to pick up a pipe and strained his back. He was diagnosed with acute thoracic lumbar spine strain/sprain. X-rays taken in August 1983 were negative. Thereafter, in August 1996 he injured his back when carrying a steel beam. At the time, the Veteran informed the provider that he had remote problems with his back, but they had resolved 15 years prior. The Veteran had a herniated disc and underwent discectomy.

VA hospitalization records dated in September 1996 further reveal that the Veteran reported back pain in approximately 1972, but it had resolved after a couple of weeks without specific therapy. Again, this is contrary to current statements that he has had back problems since service. Moreover, the Veteran has repeatedly told VA treatment providers that he has had low back pain since 1996 (23 years after his separation from service). The Veteran sustained additional injuries in 1999 (lifting an air conditioner) and 2000 (driving a rental car).

The Veteran has additionally claimed that he began seeking treatment from an acupuncturist for low back pain beginning in the 1970s. He has also submitted lay statements to support his claim. However, a letter from YS dated in June 2000 reveals he began treating the Veteran in 1983. YS further indicated that he treated the Veteran off and on with acupressure and body balance for low back and elbow pain. He last saw the Veteran in May 1999. The Veteran claims YS is mistaken as to the dates of treatment, but the onset of treatment appears consistent with the first injury for which the Veteran sought Worker's Compensation in 1982 and 1983.

While competent evidence indicates that the Veteran has a current diagnosis of lumbar spine DDD/DJD, the preponderance of the probative medical evidence is against a finding that the current disorder is related to service. In support of his claim, the Veteran submitted a February 2012 statement from Dr. FG. The doctor

indicated the Veteran reported repetitive lifting, twisting, and the passing of heavy cases of food during service. The doctor also noted the Veteran stated he experienced low back pain after this activity, reported to sickbay, was given Percocet, and put on bed rest. The Veteran informed the provider that though he was promised medical care when he returned to port, he was processed for discharge and no medical care took place. Dr. FG indicated the Veteran endorsed continuous pain since his discharge from service. The doctor noted the two work-related injuries after service, as well as the subsequent surgeries.

Dr. FG diagnosed the Veteran with chronic lumbosacral and right lower extremity pain, numbness and "tingliness", status post L3-4 and L4-5 discectomy. The doctor opined "there is a causal nexus between this individual's experience of pain after repetitive twisting and lifting during his active duty in the US Navy." No rationale was provided for the opinion and the doctor failed to address the impact of the post-service occupational injuries. Dr. FG also did not specifically opine that the Veteran's current disability was related to service. Instead, the doctor reiterated the Veteran's complaints of back pain in service, which is not in dispute.

The Board finds substantially more probative the April 2013 VA examiner's opinion that the Veteran's lumbar spine condition was less likely than not (less than 50 percent probability) incurred in or caused by the claimed in-service injury. This opinion was rendered after a thorough review of the Veteran's claims file, including his service treatment records and pertinent post-service medical records (specifically delineated in the report), and physical examination of the Veteran; the opinions are clearly based on an accurate history. *See Prejean v. West*, 13 Vet. App. 444, 448-49 (2000) (finding that a physician's access to the claims file and the thoroughness and detail of the opinion are important factors in assessing the probative value of a medical opinion).

The examiner reasoned that lumbar DDD and arthritis may develop as a result of cumulative stresses and strain on the spine over a period of years. The examiner indicated that after review of the evidence it would be his opinion that the etiology of the Veteran's current back condition was the cumulative effects of his lifetime of working at physical construction type jobs and not due to any event in service. The

examiner found no evidence of continuity of low back symptoms in the immediate post discharge period or even in the period leading up to the 1996 disc herniation. There was no objective evidence of arthritis or DDD until 1996. The examiner found that review of service treatment records did not indicate any injury of a degree of severity that would medically be likely to lead to DDD or DJD of the lumbar spine years later. There was also no showing of arthritis in the one-year period immediately after service. The examiner specifically noted that x-rays taken in 1983, after a work injury, were negative for arthritis and that a negative x-ray would not be expected in 1983 had the Veteran had any evidence of arthritis of the lumbar spine during this one year period after service.

The examiner also specifically addressed the February 2012 letter from Dr. FG and indicated that there was no rationale given for the opinion expressed. The examiner stated that there was no dispute the Veteran had a current disability of the lower spine, but what was at issue was the relationship to service and Dr. FG's letter contained nothing to lead him to alter his opinion.

Dr. FG failed to support his conclusion (or adequately explain his conclusion) and thus, the February 2012 letter is not probative of the matter on appeal. *Stefl v. Nicholson*, 21 Vet. App. 120, 124 (2007) ("[A]medical opinion ... must support its conclusion with an analysis that the Board can consider and weigh against contrary opinions").

In sum, a chronic lumbar spine disorder was not diagnosed during service or for many years thereafter. The competent and probative evidence does not establish a link between a back condition and active service and in fact suggests the cause of the Veteran's back problems were the multiple post-service injuries. Thus, the Board finds service connection for a lumbar spine disorder is not warranted.

The evidence is not in relative equipoise. Thus, the preponderance of the evidence is against the claim, and the appeal must therefore be denied. 38 U.S.C.A § 5107(b).

TDIU

TDIU may be assigned, where the schedular rating is less than total, when the disabled person is unable to secure or follow a substantially gainful occupation as a result of service connected disability. 38 C.F.R. §§ 3.340 , 3.341, 4.16. The regulations further provide that if there is only one such disability, it must be rated at 60 percent or more; and if there are two or more disabilities, at least one disability must be rated at 40 percent or more, and sufficient additional disability must bring the combined rating to 70 percent or more. 38 C.F.R. § 4.16(a).

Furthermore, it is the policy of VA that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service connected disability shall be rated totally disabled. 38 C.F.R. § 4.16(b). Thus, if a Veteran fails to meet the applicable percentage standards enunciated in 38 C.F.R. § 4.16(a) , an extra-schedular rating is for consideration where the Veteran is unemployable due to service connected disability. 38 C.F.R. § 4.16(b); *see also Fanning v. Brown*, 4 Vet. App. 225 (1993). Neither nonservice-connected disabilities nor advancing age may be considered in the determination. 38 C.F.R. §§ 3.341 , 4.19; *Van Hoose v. Brown*, 4 Vet. App. 361, 363 (1993). Thus, the Board may not consider the effects of the Veteran's nonservice-connected disabilities on his ability to function.

The Veteran does not have any service-connected disabilities. The claim for service connection for a lumbar spine disorder was denied in the instant decision. Thus, the schedular percentage requirements for TDIU under 38 C.F.R. § 4.16(a) are not met.

Referral of this matter for extraschedular consideration is not necessary as there are no service-connected disabilities. 38 C.F.R. § 4.16(b).

The preponderance of the evidence is against this claim. Therefore, there is no

reasonable doubt to be resolved. The appeal in the matter must be denied. 38 U.S.C.A. § 5107(b), 38 C.F.R. § 4.3.

ORDER

Entitlement to service connection for a lumbar spine disorder is denied.

Entitlement to TDIU is denied.

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MILO H. HAWLEY
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs

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 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*. Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

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. *See* 38 C.F.R. 20.904. 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 the VA, you can get information on how to do so at the Court's website at: http://www.uscourts.cavc.gov. The Court's website provides a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to the represent appellants. You may also request this information by writing directly to the Court. Information about free representation through the Veterans Consortium Pro Bono Program is also available at the Court's website, or at: http://www.vetsprobono.org, mail@vetsprobono.org, or (888) 838-7727.

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).