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

IN THE APPEAL OF [redacted]
MELBA J. SAUNDERS
(A.K.A. MELBA ARNETTE THORNTON)
(A.K.A. MELBA ARNETTE JOHNSON)

DOCKET NO. 10-13 091) DATE *15 DEC 2014*
) *MDP*
)

On appeal from the
Department of Veterans Affairs Regional Office in Roanoke, Virginia

THE ISSUES

1. Whether new and material evidence has been received to reopen a claim of service connection for right and left knee disorders.

2. Entitlement to an initial compensable disability rating for service-connected right fifth toe arthroplasty with scar.

3. Entitlement to an initial compensable disability rating for service-connected left fifth toe arthroplasty with scar.

REPRESENTATION

Appellant represented by: The American Legion

IN THE APPEAL OF [redacted]
MELBA J. SAUNDERS
(A.K.A. MELBA ARNETTE THORNTON)
(A.K.A. MELBA ARNETTE JOHNSON)

ATTORNEY FOR THE BOARD

D. Orfanoudis, Counsel

INTRODUCTION

The Veteran had active service from November 1987 to October 1994.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from January 2009 and February 2010 rating decisions of the Department of Veterans Affairs (VA), Regional Office (RO), in Roanoke, Virginia.

The Veteran had requested that she be scheduled for a hearing before a Veterans Law Judge of the Board. However, in July 2012, she withdrew her request for a personal hearing. 38 C.F.R. § 20.704 (2014).

The Veteran presently seeks to reopen a claim of service connection for right and left knee disorders, last denied in January 1995. The Veteran did not appeal the decision, and in order for VA to review the merits of the claim, the Veteran must submit new and material evidence. The Board is required to address this aspect of the issue despite the RO's findings. *See Jackson v. Principi*, 265 F.3d 1366 (Fed. Cir. 2001); *Barnett v. Brown*, 83 F.3d 1380, 1383-1384 (Fed. Cir. 1996). As such, the issue before the Board is as captioned above.

In addition to the paper claims file, there is a Virtual VA paperless claims file associated with the Veteran's claim. All records in such file have been considered by the Board in adjudicating this matter.

The issues of an increased disability rating for residuals of right and left fifth toe arthroplasties with scar are addressed in the REMAND portion of the decision below and are REMANDED to the agency of original jurisdiction.

FINDINGS OF FACT

1. By rating action dated in January 1995, the RO denied service connection for right and left knee disorders; the Veteran did not submit a timely notice of disagreement and new and material evidence was not received during the relevant appeal period.

2. Evidence received since the January 1995 rating decision that denied service connection for right and left knee disorders relates to an unestablished fact necessary to substantiate the claim, and raises a reasonable possibility of substantiating the underlying claim.

3. Chronic right knee disability did not have its clinical onset in service and is not otherwise related to active duty.

3. Chronic left knee disability did not have its clinical onset in service and is not otherwise related to active duty.

CONCLUSIONS OF LAW

1. The unappealed January 1995 RO decision that denied service connection for right and left knee disorders is final. 38 U.S.C.A. § 7105 (West 2014); 38 C.F.R. §§ 3.104(a), 3.160(d), 20.302, 20.1103 (2014).

2. The additional evidence received since the January 1995 rating decision that denied service connection for right and left knee disorders is new and material, and the claim is reopened. 38 U.S.C.A. §§ 5108 (West 2014); 38 C.F.R. § 3.156(a) (2014).

3. Chronic right knee disability was not incurred or aggravated in service. 38 U.S.C.A. §§ 1110, 5103, 5103A, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.303 (2014).

3. Chronic left knee disability was not incurred or aggravated in service. 38 U.S.C.A. §§ 1110, 5103, 5103A, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.303 (2014).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

VA's Duties to Notify and Assist

The *Veterans Claims Assistance Act of 2000* (VCAA) and implementing regulations impose obligations on VA to provide claimants with notice and assistance. 38 U.S.C.A. §§ 5102, 5103, 5103A, 5107, 5126 (West 2014); 38 C.F.R §§ 3.102, 3.156(a), 3.159, 3.326(a) (2014).

The Board is reopening the previously denied claim of service connection for right and left knee disorders. *See Kent v. Nicholson*, 20 Vet. App. 1 (2006). In light of the foregoing, there is no need of further discussion regarding whether notice and assistance provisions regarding reopening claims were followed.

The duty to notify was satisfied prior to the initial RO decision by way of a letter sent to the Veteran in February 2008 that informed her of her duty and VA's duty for obtaining evidence as well as the evidence needed to substantiate her claim for an increased rating. *Pelegrini v. Principi*, 18 Vet. App. 112 (2004). She was also notified of all elements of the service connection, including the disability-rating and effective-date elements of the claim.

VA also has a duty to assist the Veteran in the development of a claim, which includes assisting the Veteran in the procurement of pertinent treatment records and providing an examination when necessary. 38 U.S.C.A. § 5103A; 38 C.F.R. § 3.159. Her service treatment records, VA and private treatment records, and lay statements have been obtained. She was provided with a VA examination in August 2011. The Board finds that the medical opinion evidence is adequate as it is based on physical examination and review of the Veteran's statements and contains clear findings. *Stefl v. Nicholson*, 21 Vet. App. 120 (2007); *Nieves-Rodriguez v. Peake*, 22 Vet. App. 295 (2008).

Reopening Right and Left Knee Disorders

Service connection will be granted for a disability resulting from an injury sustained or disease incurred in the line of duty or for aggravation of a pre-existing injury or disease in the line of duty. 38 U.S.C.A. §§ 1110, 1131 (West 2014); 38 C.F.R. §§ 3.303, 3.304 (2014).

In order to prevail on the issue of service connection for any particular disability, there must be evidence of a current disability; evidence of in-service occurrence or aggravation of a disease or injury; and medical evidence, or in certain circumstances, lay evidence, of a nexus between an in-service injury or disease and the current disability. *See Hickson v. West*, 12 Vet. App. 247, 253 (1999); *see also Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004); *Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009); *Jandreau v. Nicholson*, 492 F.3d 1372, 1377 (Fed. Cir. 2007) (holding that "[w]hether lay evidence is competent and sufficient in a particular case is a factual issue to be addressed by the Board").

The Board must assess the credibility and weight of all the evidence, including the medical evidence, to determine its probative value, accounting for evidence which it finds to be persuasive or unpersuasive, and providing reasons for rejecting any evidence favorable to the claimant. *See Masors v. Derwinski*, 2 Vet. App. 181 (1992); *Wilson v. Derwinski*, 2 Vet. App. 614, 618 (1992); *Hatlestad v. Derwinski*,

1 Vet. App. 164 (1991); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). Equal weight is not accorded to each piece of evidence contained in the record; every item of evidence does not have the same probative value.

A January 1995 rating decision denied the Veteran's claim of service connection for right and left knee disorders. The RO denied the Veteran's claim as the Veteran had not appeared for a VA examination and there was insufficient evidence of record for rating purposes.

The Veteran did not timely submit a notice of disagreement within one year of the January 1995 decision. No relevant evidence was received within the appeal period after the decision. As such, the decision became final based on the evidence then of record. 38 U.S.C.A. § 7105 (West 2014); *cf.* 38 C.F.R. § §§ 3.104(a), 3.156(b), 3.160(d), 20.302 (2014) (new and material evidence received within the appeal period after a decision is considered as having been received in conjunction with the prior claim); *Bond v. Shinseki*, 659 F.3d 1362 (Fed. Cir. 2011) (VA must determine whether evidence received during the appeal period after a decision contains new and material evidence per 3.156(b) and failure to readjudicate the appeal after receipt of such evidence renders the decision non-final). If new and material evidence is presented or secured with respect to a claim that has been disallowed VA shall reopen the claim and review the former disposition of the claim. 38 U.S.C.A. § 5108; *see Manio v. Derwinski*, 1 Vet. App. 140, 145 (1991).

Under 38 C.F.R. § 3.156(a), evidence is considered "new" if it was not previously submitted to agency decision makers. "Material" evidence is evidence which, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

For the purpose of determining whether a case should be reopened, the credibility of the evidence added to the record is to be presumed. *Justus v. Principi*, 3 Vet. App. 510, 513 (1992).

At the time of the January 1995 rating decision, the evidence of record included the Veteran's available service treatment records, which showed intermittent treatment for right and left knee pain, as well as, diagnoses of patellofemoral pain syndrome. However, there was no medical evidence of record of a current disability.

Following the January 1995 rating decision, in January 2008, the Veteran sought to reopen her claim, asserting that she had disability in both knees that began in January 1992.

A VA examination report dated in August 2011 shows that the Veteran experienced pain in both knees while running, squatting, bending, and ascending and descending stairs during service. She denied any specific trauma. She would treat her symptoms with over-the-counter medication. X-rays of the knees were negative. The diagnosis was subjective bilateral knee pain. A problem associated with the diagnosis was listed as bilateral knee condition. The examiner opined that the Veteran had a bilateral knee condition that was at least as likely as not caused by a result of active service. The rationale for the opinion was review of the claims file, Patient Records System (CPRS), history and physical examination.

In an addendum dated in March 2012, the VA examiner explained that there was no pathology to render a diagnosis for the claimed right and left knee conditions. The examiner also explained that the rationale as to why the bilateral knee condition was at least as likely as not caused by or result of service was based upon chronological order of events or timeline Veteran provided active service.

In light of the evidence associated with the record following the January 1995 decision, the Board finds that the newly received evidence pertains to an element of the claim that was previously found to be lacking. In this regard, the medical

evidence of record includes an impression of bilateral knee condition that was likely caused by or a result of service.

As such, the above evidence bears directly and substantially upon the specific matter under consideration, is neither cumulative nor redundant, and by itself or in connection with the evidence previously assembled is so significant that it must be considered in order to fairly decide the merits of the Veteran's claim of service connection for right and left knee disorders. Therefore, the claim is reopened.

As the Board has determined that new and material evidence has been submitted, it is necessary to consider whether the veteran would be prejudiced by the Board proceeding to a decision on the merits. In this case, the statement of the case provided the veteran with the laws and regulations pertaining to consideration of the claim on the merits. The discussion in the statement of the case essentially considered the veteran's claim on the merits. Additionally the veteran has provided argument addressing his claim on the merits. Accordingly, the Board finds that the veteran would not be prejudiced by its review of the merits at this time. *See Bernard v. Brown*, 4 Vet. App. 384 (1993).

There was an inservice diagnosis of patellofemoral pain syndrome and the Veteran has complained of knee pain that has been continuous since service. As indicated above, in August 2011, it was reported that the Veteran had a bilateral knee condition manifested by subjective knee pain. The VA examiner concluded that such was likely related to the Veteran's period of active service. However, pain alone is not a disability for the purpose of VA disability compensation. *See Sanchez-Benitez v. West*, 13 Vet. App. 282, 285 (1999) (pain alone without a diagnosed or identifiable underlying disability does not in and of itself constitute a disability for which service connection may be granted). Accordingly, the examiner was asked to clarify the diagnosis and in an addendum, indicated that the Veteran did not exhibit pathology to warrant a diagnosis. Testing, including x-ray studies, revealed normal findings except for pain. There is no other evidence of record establishing a current diagnosis of knee disability. In the absence of knee

pathology, there is no basis to grant service connection. *Brammer v. Derwinski*, 3 Vet. App. 223, 225 (1992); *Caluza v. Brown*, 7 Vet. App. 498, 505 (1995) (recognizing that "[a] service connection claim must be accompanied by evidence which establishes that the claimant currently has the claimed disability").

ORDER

New and material evidence having been received, the Veteran's claim of entitlement to service connection for right and left knee disorders is reopened; to this limited extent, the appeal of this issue is granted.

Service connection for right knee disability is denied.

Service connection for left knee disability is denied.

REMAND

With regard to the issue of an increased disability rating for the service-connected right and left fifth toe arthroplasties with scar, the Veteran's most recent VA examination was conducted in April 2011. In a Statement Of Accredited Representative In Appealed Case (VA Form 646) dated in July 2012, the Veteran's representative asserted that her symptoms had increased in severity since the most recent VA examination. In this regard, the Veteran's representative noted that there had been increased pain and symptoms leading to excessive absenteeism from work.

The duty to conduct a contemporaneous examination is triggered when the evidence indicates that there has been a material change in disability or that the currently assigned disability rating may be incorrect. *See Caffrey v. Brown*, 6 Vet. App. 377, 381 (1994); *see also Snuffer v. Gober*, 10 Vet. App. 400, 403 (1997) (a Veteran is

entitled to a new examination after a two year period between the last VA examination and the Veteran's contention that the pertinent disability had increased in severity). In the present case, it has been more than four years since the Veteran was last examined for her service-connected disability. Since she and her representative have suggested a change in her current level of disability, she should be scheduled for a new VA examination to determine the current level of severity of her service-connected right and left fifth toe arthroplasties with scar.

Finally, as this matter is being remanded for the reasons set forth above, any additional VA treatment records of the Veteran for her asserted disabilities should also be obtained. *See* 38 U.S.C.A. § 5103A(b), (c); 38 C.F.R. § 3.159(b); *see also Bell v. Derwinski*, 2 Vet. App. 611 (1992) (VA medical records are in constructive possession of the agency, and must be obtained if the material could be determinative of the claim).

Accordingly, the case is REMANDED for the following action:

1. The agency of original jurisdiction shall ask the Veteran to identify all locations of VA treatment or evaluation for her asserted disabilities and contact each VA medical facility identified by the Veteran to obtain ongoing medical treatment records pertaining thereto. All records obtained must be associated with the Veteran's claims file.

2. The agency of original jurisdiction shall afford the Veteran a VA examination to ascertain the nature and severity of her service-connected right and left fifth toe arthroplasties with scar. The relevant evidence in the claims file shall be made available to and reviewed by the examiner. All indicated tests should be performed and all findings reported.

The examiner is requested to review all pertinent records associated with the claims file and offer comments and an opinion as to the severity of the service-connected disabilities.
All manifestations of the Veteran's right and left fifth toe arthroplasties with scar shall be described in detail. The examiner is asked to conduct a full clinical evaluation of the Veteran's right and left toe symptomatology, to include whether there are manifestations of a moderate, moderately severe or severe injury.

The examiner must determine whether there are objective clinical indications of pain or painful motion; weakened movement; premature or excess fatigability; or incoordination; and, if feasible, these determinations must be expressed in terms of the degree of additional range of motion loss due to such factors. This includes instances when these symptoms "flare-up" or when the right and left feet are used repeatedly over a period of time. This determination shall also be portrayed, if feasible, in terms of the degree of additional range of motion loss due to these factors.

The examiner shall also report all symptoms due to any scarring associated with the service-connected disabilities, to include whether any scar causes any loss of function, scar size, and whether any scar is unstable, or painful on examination.

The examiner shall also review pertinent aspects of the Veteran's medical and employment history, and comment

> on the effects of the service-connected right and left fifth toe arthroplasties with scar upon her ordinary activity and the effect, if any, on her current level of occupational functioning. An opinion should be provided concerning the impact of the disability on the Veteran's ability to work, to include whether it is productive of severe economic inadaptability.
>
> A complete rationale for any opinion expressed shall be provided. It is requested that the examiner discuss the prior medical evidence in detail and reconcile any contradictory evidence.
>
> 3. The agency of original jurisdiction will then readjudicate the Veteran's claims. If the benefits sought on appeal remain denied, the Veteran and her representative should be provided with a Supplemental Statement of the Case. An appropriate period of time should be allowed for response.

No action is required of the Veteran until notified by the RO; however, the Veteran is advised that failure to report for any scheduled examination may result in denial of the claim. 38 C.F.R. § 3.655 (2014). She has the right to submit additional evidence and argument on the matter or matters the Board has remanded. *Kutscherousky v. West*, 12 Vet. App. 369 (1999).

This claim must be afforded expeditious treatment. The law requires that all claims that are remanded by the Board of Veterans' Appeals or by the United States Court of Appeals for Veterans Claims for additional development or other appropriate

action must be handled in an expeditious manner. *See* 38 U.S.C.A. §§ 5109B, 7112 (West 2014).

_____

THOMAS J. DANNAHER
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 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).