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

IN THE APPEAL OF XC [redacted]
MARION S. MILLER-BATES

IN THE CASE OF
JOE BATES, JR.

DOCKET NO. 04-44 363) DATE *February 12, 2015*
) *CJ*
)

On appeal from the
Department of Veterans Affairs Regional Office in Newark, New Jersey

THE ISSUES

1. Entitlement to service connection for a low back disorder for purposes of accrued benefits.

2. Entitlement to service connection for a cardiovascular disorder for purposes of accrued benefits.

3. Entitlement to service connection for lung cancer, including as due to asbestos exposure, for purposes of accrued benefits.

4. Entitlement to service connection for a gastrointestinal disorder, to include stomach asbestosis and abdominal aortic aneurysm, as due to asbestos exposure, for purposes of accrued benefits.

IN THE APPEAL OF XC [redacted]
MARION S. MILLER-BATES

IN THE CASE OF
JOE BATES, JR.

REPRESENTATION

Appellant represented by: George J. Singley, Attorney

WITNESS AT HEARING ON APPEAL

The Appellant

ATTORNEY FOR THE BOARD

A. Johnson, Associate Counsel

INTRODUCTION

The Veteran served on active duty from September 1943 to December 1945. He died in January 2002 at age 76 and the appellant is his surviving spouse. In January 2010, she testified in a travel board hearing before the undersigned Veterans Law Judge (VLJ). A copy of the hearing transcript is associated with the claims file.

In May 2012, the Board granted service connection for the cause of the Veteran's death but denied the issues reflected above. The appellant appealed to the Veterans Claims Court. In July 2013, the Court Clerk granted a Joint Motion for Remand (JMR), vacating the Board's May 2012 decision in part and remanding the claims for further development.

In May 2014, the Board remanded the issues on appeal as directed to obtain treatment records from the Philadelphia Naval Hospital between 1945 and 1954. The AOJ requested the records but the mailed request was returned. It was

determined that the hospital had been torn down in 2001 and there was no information concerning the whereabouts of the medical records, even if available after 60 years, from that facility. Therefore, the Board finds the AOJ made all available attempts to obtain the records and the matter has been properly returned for appellate consideration. *See Stegall v. West,* 11 Vet. App. 268 (1998).

FINDINGS OF FACT

1. The evidence of record at the time of the Veteran's death does not establish his low back disorder began during and continued since, or was otherwise caused by, his active duty service.

2. The evidence of record at the time of the Veteran's death does not establish his cardiovascular disorder began during and continued since, or was otherwise caused by, his active duty service.

3. The evidence of record at the time of the Veteran's death does not establish his lung cancer, as due to asbestos exposure, began during, or was otherwise caused by, his active duty service.

4. The evidence of record at the time of the Veteran's death does not establish his gastrointestinal disorder began during, or was otherwise caused by, his active duty service.

CONCLUSIONS OF LAW

1. A low back disorder was not incurred in or aggravated by service for purposes of accrued benefits. 38 U.S.C.A. §§ 1110, 5107, 5121 (West 2014); 38 C.F.R. §§ 3.303, 3.304, 3.307, 3.309, 3.1000 (2014).

2. A cardiovascular disorder was not incurred in or aggravated by service for purposes of accrued benefits. 38 U.S.C.A. §§ 1110, 5107, 5121 (West 2014); 38 C.F.R. §§ 3.303, 3.304, 3.307, 3.309, 3.1000 (2014).

3. Lung cancer, as due to asbestos exposure, was not incurred in or aggravated by service for purposes of accrued benefits. 38 U.S.C.A. §§ 1110, 5107, 5121 (West 2014); 38 C.F.R. §§ 3.303, 3.304, 3.307, 3.309, 3.1000 (2014).

4. A gastrointestinal disorder, to include stomach asbestosis and abdominal aortic aneurysm, as due to asbestos exposure, was not incurred in or aggravated by service for purposes of accrued benefits. 38 U.S.C.A. §§ 1110, 5107, 5121 (West 2014); 38 C.F.R. §§ 3.303, 3.304, 3.307, 3.309, 3.1000 (2014).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The appellant is seeking service connection for accrued benefit purposes for a low back disorder, a cardiovascular disorder, lung cancer as due to asbestos exposure, and a gastrointestinal disorder. She has argued that these disorders were caused by the Veteran's service.

Accrued benefits are benefits to which a veteran was entitled at his death, based on evidence on file at the date of death, and due and unpaid, to be paid to survivors as provided by law. 38 U.S.C.A. § 5121; 38 C.F.R. § 3.1000. For a claimant to prevail on an accrued benefits claim, the record must show that (i) the appellant has standing to file a claim for accrued benefits, (ii) the veteran had a claim pending at the time of death, (iii) the veteran would have prevailed on the claim if he had not died; and (iv) the claim for accrued benefits was filed within one year of the veteran's death. 38 U.S.C.A. §§ 5121, 5101(a); 38 C.F.R. § 3.1000; *Jones v. West*, 136 F.3d 1299 (Fed. Cir. 1998).

In considering a claim for accrued benefits, generally only evidence contained in the claims file at the time of a veteran's death is evaluated. 38 U.S.C.A. § 5121; 38 C.F.R. § 3.1000. However, in *Hayes v. Brown*, 4 Vet. App. 353, 360-61 (1993), the Court held that service department and certain VA medical records are considered as being constructively of record at the date of death, although they may not physically be in the claims file until after that date.

In this case, the Veteran died in January 2002 at age 76. At the time of his death, claims were pending to determine whether entitlement to service connection for a low back injury, a heart disorder, lung cancer as due to asbestos exposure, and a stomach disorder (claimed as stomach asbestosis), as due to asbestos exposure were warranted. The RO did not adjudicate the claims listed above prior to his death; however, some developmental actions were taken, which are discussed below.

In February 2002, the appellant filed a claim for accrued benefits. As she has standing to file a claim for accrued benefits, the Veteran had claims pending at the time of death, and the claim for accrued benefits was filed within one year of his death, the only issue is whether he would have prevailed on the claims if he had not died.

Service connection basically means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. 38 C.F.R. § 3.303.

Establishing service connection generally requires (1) medical evidence of a current disability; (2) medical or, in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between the claimed in-service disease or injury and the present disability. *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004). Service connection may

also be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

In this case, the Veteran's service treatment records are not available. In November 2000, the National Personnel Records Center (NPRC) indicated that the service treatment records were unavailable due to a fire. When service treatment records are unavailable through no fault of the veteran, VA has a heightened duty to assist, as well as an obligation to explain its findings and conclusions and carefully consider the benefit-of-the-doubt rule. *Washington v. Nicholson*, 19 Vet. App. 362, 369-70 (2005); *Cuevas v. Principi*, 3 Vet. App. 542, 548 (1992); *O'Hare v. Derwinksi*, 1 Vet. App. 365, 367 (1991).

Here, the evidence is limited to what was associated with the claims file at the time of the Veteran's death in January 2002. It includes his November 1978 claim for back and heart disorders, his statements of where and when he received back and heart treatment, a Separation Qualification Report, a Report of Separation, some service personnel records, some private treatment reports, his November 2000 and January 2002 claims, and the report from an August 2001 VA examination.

Letters from the Veteran's treating physician, Dr. S.A., discussed at length in the prior May 2012 decision granting service connection for cause of death, were dated variously in 1998. However, these letters were not received by the RO until February 2002, after he died in January 2002, as evidenced by the clear date stamp included on the back of those records. Additionally, these are not VA medical records or service department records which would fall under the *Hayes* exception.

Similarly, additional private treatment reports (specifically from the 1990s) were not received by the RO until January 2009, long after the Veteran had died. Therefore, although these records are included in the claims file before the Board,

because they were received after the his death these records may not be considered in adjudication of the claims for service connection on an accrued basis on appeal.

As will be discussed below, the Board finds the evidence of record at the time of the Veteran's death does not establish any of the disorders on appeal began during and continued since, or were otherwise caused by, his active duty service.

Throughout the period on appeal, the appellant and her attorneys have consistently asserted that the Veteran received treatment for his heart and back disorders shortly after service from the Philadelphia Naval Hospital. The Board notes on his original November 1978 claim, he described two back injuries in service, one in late 1943 and one in 1944. On his November 2000 application, he again indicated he injured his back in 1944 and also stated he developed a heart disorder in January of 1946, the month after his separation from active service.

Unfortunately, the claims file does not include any evidence of such medical treatment shortly after the Veteran's separation from active service. As discussed above, the service treatment records and any records from the Philadelphia Naval Hospital are no longer available. Additionally, neither his statements before his death nor the appellant's statements during the course of this appeal were able to describe the treatment he received at the Philadelphia Naval Hospital. Instead, she was able to testify only that he was treated for "his heart, shortness of breath, and back injuries" at that time.

Additionally, the Board notes that although the Veteran reported symptoms since active service, he did not file any claim for benefits until 1978, more than thirty years after his separation from active service. At that time, he only filed claims regarding to his back and heart disorders.

The available post-service medical records reflect the Veteran was diagnosed with all disorders on appeal prior to his death. Accordingly, the presence of these

disorders prior to his death is established; however, as will be discussed, the evidence does not relate these diagnosed disorders to his active service.

Regarding his back disorder, the earliest available post-service medical records relating to the Veteran's back pain is a private record from July 1999 which reflects he had severe degenerative joint and disc disease in the lumbar spine and spinal stenosis of the back. At that time, he reported he had an old back injury "since childhood" and the private physician explicitly noted he reported "no new injury." Significantly, he made no mention of in-service pain in his back or injury or any previous post-service treatment at this time.

In a later June 2000 note, the Veteran noted that his back symptoms were improving. At that time, he also corrected his history of prior injury and informed his physician that his symptoms did not start in childhood, but rather started when he was in the service in 1943. He then filed a claim for service connection a few months later.

In an August 2001, the Veteran reported back pain in 1943, during active service, but indicated he did not remember a specific fall or injury. However, later he reported being diagnosed with back strain after participating in an obstacle course during service. After service, he worked in construction and reported occasional low back pain he would treat with over-the counter medication. He estimated that he experienced back pain for the last 45 years, or since approximately 1956.

Accordingly, by the Veteran's own estimate, his back pain started more than a decade after his separation from active service. The examiner opined that the Veteran had lumbar sprain and strain; however, he did not provide an opinion regarding etiology or any relation to active service.

Therefore, although the Veteran was diagnosed with degenerative disc and joint disease in his lumbar spine prior to his death, post-service treatment records reflect

a gap of multiple years between separation from service and reporting experiencing back pain or seeking any relevant medical treatment. Additionally, the evidence does not include any medical opinion relating the back disorders to active duty service. Therefore, the elements of service connection for a back disorder are not met based on the evidence of record at the time of the Veteran's death.

Regarding his heart disorder, the appellant has asserted that the Veteran was treated for a heart disorder since his separation from active service. During the January 2010 hearing, she testified that he was already on medication for heart problems when they met in the mid-1970s. However, the earliest available post-service treatment records are from approximately 2000, when in September a private treatment record diagnosing chronic atrial fibrillation, tachy-brady variety, status post pacemaker implantation, benign prostatic hyperplasia, history of transient ischemic attack, and coronary artery disease with old infarction.

In an August 2001 VA examination, the Veteran reported that he was first diagnosed with high blood pressure in 1957, although the examiner indicated there was no history of continued blood pressure evaluation. He also stated that he was diagnosed with an irregular and fast heartbeat in 1945 during active service. He reported he received treatment for his disorder from the VA hospital and the Naval Hospital and was placed on medication, he believes digoxin.

The Veteran related that he was fitted with a pacemaker in 1992 after experiencing heart problems during a surgery for his enlarged prostate. He reported subsequently passing out on a few occasions due to complications from his heart problems. The examiner opined that the Veteran currently had atrial fibrillation and syncopal episodes; however, he did not provide an opinion regarding etiology of these disorders or establish any relation to active service.

The Veteran described experiencing irregular heartbeat during active duty service and was diagnosed with atrial fibrillation during his 2001 examination; however,

the evidence does not establish that symptoms of irregular and fast heartbeat during active service continued consistently until he was diagnosed with atrial fibrillation more than 50 years later. Additionally, the length of time between his separation from active duty in 1945 and his first complaints in November 1978, when he submitted his first claim for benefits for a heart disorder, to be compelling evidence against a finding of continuity of symptoms. *See Maxson v. Gober*, 230 F.3d 1330, 1333 (Fed. Cir. 2000).

Therefore, based on the foregoing, the evidence at the time of the Veteran's death did not establish his diagnosed heart disorders began during and continued since, or were otherwise caused by, his active duty service. Accordingly, the elements of service connection have not been met.

Regarding lung cancer, the post-service treatment records reflect that the Veteran was first diagnosed with lung cancer in approximately 1999 or 2000. For example, a chest CT from October 2000 reflects that he had an enlarging right mid-lung lesion which likely represented lung carcinoma. Additionally, the appellant testified that his lung cancer began in approximately 1999. Accordingly, the evidence reflects the lung cancer was not diagnosed until more than fifty years after his separation from active service.

Additionally, the post-service medical records available at the time of the Veteran's death do not otherwise relate lung cancer to active service. During the 2001 examination, the examiner indicated the Veteran was diagnosed with asbestosis in 1999. However, this diagnosis is not reflected in the post-service treatment records included in the claims file prior to his death. Instead, the available records are silent for asbestos-related illnesses. For example, the October 2000 chest CT did not note any indication of asbestos-related lung diseases. Therefore, the Board finds the post-service medical records available at the time of the Veteran's death do not establish he was diagnosed with asbestosis.

Because the evidence does not relate the Veteran's diagnosed lung cancer to his active duty service, the elements of service connection for a lung disorder have not been met.

Finally, the appellant is also seeking accrued benefits for the Veteran's claim for service connection for a gastrointestinal disorder. The evidence does not establish and she has not asserted that he developed a gastrointestinal illness during his active service. Notably, he did not include any gastrointestinal complaints on his initial November 1978 claim for VA benefits, providing probative evidence suggesting he was not experiencing any symptoms at the time.

The available medical evidence reflects the Veteran developed and was treated for an abdominal aortic aneurysm in January 1979, more than thirty years after his separation from active service. The available medical records do not relate this disorder his active service. Later, private treatment records from 2000 and the report from the 2001 VA examination reflect that he was diagnosed with peptic ulcer disease. However, none of these records contain any medical opinion relating the Veteran's peptic ulcers to his active duty service.

Therefore, the evidence does not establish that the Veteran developed any gastrointestinal disorder until several decades after his separation from active service, and does not otherwise relate his diagnosed-gastrointestinal diseases to his active duty service. Therefore, the elements of service connection have not been met based on the evidence of record at the time of the Veteran's death.

Therefore, for each of the above disorders, none of the evidence at the time of the Veteran's death provides a medical opinion as to whether his disorders were related to active service, to include exposure to asbestos. Even if the Board assumes that he had back and heart problems in service and was exposed to asbestos in service, the record at the time of his death remains absent for medical opinions establishing

the nexus between that asbestos exposure and assumed in-service problems and his disorders.

Considering the evidence of record at the time of the Veteran's death, given the absence of continuity of symptomatology and importantly, no medical nexus opinions regarding his complaints and active duty or asbestos exposure, the Board finds that the preponderance of the evidence is against a grant of service connection for purposes of accrued benefits, and the benefit-of-the-doubt-rule is inapplicable. As the weight of evidence is against the claims, the appeals are denied.

Finally, under applicable criteria, VA has certain notice and assistance obligations to veterans. *See* 38 U.S.C.A. §§ 5102, 5103, 5103A, 5107; 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a). Notice must be provided to a veteran before the initial unfavorable agency of original jurisdiction (AOJ) decision on a claim for VA benefits and must: (1) inform the veteran about the information and evidence not of record that is necessary to substantiate the claim; (2) inform the veteran about the information and evidence that VA will seek to provide; and (3) inform the veteran about the information and evidence the veteran is expected to provide. *Pelegrini v. Principi*, 18 Vet. App. 112, 120-21 (2004) (*Pelegrini II*).

In this case, VA has made all reasonable efforts to assist the appellant in the development of her claim, has notified her of the information and evidence necessary to substantiate the claims, and has fully disclosed VA's duties to assist her. Specifically, in October 2002 and September 2007 letters, she was notified of the information and evidence needed to substantiate and complete the claims on appeal. Although this notice was not provided prior to the initial AOJ determination, these claims have been readjudicated on several occasions following her receipt of fully compliant notice. Consequently, the Board finds that the duty to notify has been satisfied.

As to VA's duty to assist, the Board finds that all necessary development has been accomplished, and therefore appellate review may proceed without prejudice to the appellant. *See Bernard v. Brown*, 4 Vet. App. 384 (1993). Available service personnel records, and post-service VA and available private treatment records have been obtained. As discussed above, the service treatment records were lost in a fire at the NPRC and further efforts to obtain these records would be futile. Similarly, any treatment records from the Philadelphia Naval Hospital are no longer available, as the hospital itself has been demolished, and any further attempts to obtain these records would be futile.

Also, the claims for accrued benefits are unique in that they are decided on the basis of the evidence contained in the claims folder at the time of the Veteran's death. Only evidence considered to be constructively in the possession of VA, such as VA hospital and treatment records, may be obtained. *Bell v. Derwinski*, 2 Vet. App. 611 (1992). This has been accomplished in this case.

In January 2010, the appellant was provided with a hearing before the undersigned VLJ which was compliant with *Bryant v. Shinseki*, 23 Vet. App. 488 (2010). Moreover, prior to his death, the Veteran was also provided with a VA examination, the report of which has been associated with the claims file. The VA examiner personally interviewed and examined the Veteran, including eliciting a history from him. Therefore, the Board finds this examination was thorough and adequate.

In sum, VA has satisfied its duties to notify and assist, and additional development efforts would serve no useful purpose. *See Soyini v. Derwinski*, 1 Vet. App. 540, 546 (1991); *Sabonis v. Brown*, 6 Vet. App. 426, 430 (1994). Because VA's duties to notify and assist have been met, there is no prejudice to the appellant in adjudicating this appeal.

IN THE APPEAL OF XC [redacted]
MARION S. MILLER-BATES

IN THE CASE OF
JOE BATES, JR.

ORDER

Service connection for a low back disorder for purposes of accrued benefits is denied.

Service connection for a cardiovascular disorder for purposes of accrued benefits is denied.

Service connection for lung cancer, including as due to asbestos exposure, for purposes of accrued benefits, is denied.

Service connection for a gastrointestinal disorder, to include stomach asbestosis and abdominal aortic aneurysm, as due to asbestos exposure, for purposes of accrued benefits, is denied.

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L. HOWELL
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).