



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

IN THE APPEAL OF
ROBERT M. HUDICK



DOCKET NO. 09-12 233

)
)
)

DATE *SEPTEMBER 24, 2015*
VEM

On appeal from the
Department of Veterans Affairs Regional Office in Fort Harrison, Montana

THE ISSUE

Entitlement to service connection for prostate cancer, to include as secondary to exposure to herbicides.

REPRESENTATION

Appellant represented by: Disabled American Veterans

ATTORNEY FOR THE BOARD

M. Purdum, Counsel



INTRODUCTION

The Veteran served on active duty from September 1962 to June 1983.

This appeal to the Board of Veterans' Appeals (Board) is from a November 2006 rating decision of a Department of Veterans Affairs (VA) Regional Office (RO) that denied the claim on appeal.

Most recently, in December 2013, the Board remanded this case for additional development. The file has now been returned to the Board for further consideration.

FINDINGS OF FACT

The most probative evidence of record indicates that the Veteran had no active service in the Republic of Vietnam during the Vietnam Era and was not exposed to herbicides while on active duty at the Royal Thai Air Force Base (RTAFB) in Udorn, Thailand.

CONCLUSION OF LAW

The criteria for service connection for prostate cancer, to include as secondary to herbicide exposure, have not been met. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 1116, 1131, 1133 (West 2002 & Supp. 2015); 38 C.F.R. §§ 3.303, 3.307, 3.309, 3.313 (2015).

REASONS AND BASES FOR FINDING AND CONCLUSION

Duty to Notify and Assist

VA has met all statutory and regulatory notice and duty to assist provisions set forth in the Veterans Claims Assistance Act of 2000 (VCAA). 38 U.S.C.A. §§ 5100,



5102, 5103, 5103A, 5107, 5126 (West 2002 and Supp. 2015); 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a) (2015). Prior to initial adjudication, July 2006 and October 2006 letters satisfied the duty to notify provisions with regard to the Veteran's service connection claim. After the initial adjudication, a May 2012 letter additionally notified the Veteran, and he was provided a subsequent Supplemental Statement of the Case (SSOC) in November 2012. *Mayfield v. Nicholson*, 444 F. 3d 1328, 1333-34 (Fed. Cir. 2006). The Veteran's pertinent records have been obtained and the efforts to secure verification of the Veteran's exposure to herbicides in Vietnam and Thailand are detailed herein.

The Veteran's sole assertion is that his disability was caused by exposure to herbicides in Vietnam and Thailand. As discussed below, the Board finds that no such exposure can be verified. Therefore, because there is no event, injury, or disease in service or a service-connected disability to which prostate cancer could be presumed related, the Board finds that a VA examination is unnecessary. 38 C.F.R. § 3.159(c)(4)(i); *cf. Duenas v. Principi*, 18 Vet. App. 512, 517 (2004), *citing Paralyzed Veterans of Am. v. Sec'y of Veterans Affairs*, 345 F.3d 1334, 1355-57 (Fed. Cir. 2003) (noting that a medical examination conducted in connection with claim development could not aid in substantiating a claim when the record does not already contain evidence of an in-service event, injury, or disease).

As there is no indication that any failure on the part of VA to provide additional notice or assistance reasonably affects the outcome of this case, the Board finds that any such failure is harmless. *See Mayfield v. Nicholson*, 20 Vet. App. 537 (2006); *see also Dingess/Hartman v. Nicholson*, 19 Vet. App. 473 (2006). Further, the purpose behind the notice requirement has been satisfied because the Veteran has been afforded a meaningful opportunity to participate effectively in the processing of his claims, to include the opportunity to present pertinent evidence. *Shinseki v. Sanders*, 556 U. S. 396, 129 S. Ct. 1696 (2009).

Additionally, the Board finds there has been substantial compliance with its December 2013 remand directives. The U.S. Court of Appeals for Veterans Claims (Court) has held that "only substantial compliance with the terms of the Board's engagement letter would be required, not strict compliance." *See D'Aries v. Peake*,



22 Vet. App. 97, 105 (2008); *see also Dymont v. West*, 13 Vet. App. 141, 146-47 (1999) (holding that there was no *Stegall* (*Stegall v. West*, 11 Vet. App. 268 (1998)) violation when the examiner made the ultimate determination required by the Board's remand.) The record indicates that the AMC conducted exhaustive research, including obtaining the Veteran's pay records, as to his temporary duty assignments while stationed at the RTAFB in Udorn, Thailand, as well as the circumstances of his receipt of the Vietnam Gallantry Cross with Palm. The AMC later issued a SSOC in July 2014. *See Stegall, supra*, (finding that a remand by the Board confers on the appellant the right to compliance with its remand orders). Therefore, the Board will proceed to review and decide the claim based on the evidence that is of record consistent with 38 C.F.R. § 3.655 (2015).

Service Connection

Service connection is granted for current disability resulting from a disease contracted or an injury sustained in the line of duty during active military service. 38 U.S.C.A. §§ 1110, 1131; 38 C.F.R. § 3.303(a). Service connection may be granted for a disease diagnosed after discharge, when the evidence, including that pertinent to service, establishes the disease was incurred in service. 38 C.F.R. § 3.303(d). Service connection on a direct-incurrence basis requires competent and credible evidence showing: (1) the Veteran has the alleged disability or, at the very least, indicating he has at some point since the filing of his claim; (2) in-service incurrence or aggravation of a relevant disease or an injury; and (3) a causal relationship or nexus between the present disability and the disease or injury incurred or aggravated during service. *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004), *citing Hansen v. Principi*, 16 Vet. App. 110, 111 (2002).

Certain conditions, including malignant tumors, are considered chronic and therefore will be presumed to have been incurred in or aggravated by service if manifested to a compensable degree within a year after the Veteran's discharge from service. 38 U.S.C.A. §§ 1101, 1112, 1113, 1131, 1133; 38 C.F.R. §§ 3.307, 3.309(a). Continuity of symptomatology is required where the condition noted during service is not shown to be chronic, or where the diagnosis of chronicity may be legitimately questioned. In this circumstance, a showing of continuity of



symptomatology since service is required establish chronicity of disease or injury in service and in turn link current disability to service. 38 C.F.R. § 3.303(b). This concept of continuity of symptomatology is limited to where involving those specific diseases denoted as “chronic” and for which presumptive service connection is otherwise available under 38 C.F.R. § 3.309(a). *Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013).

A Veteran who served in the Republic of Vietnam during the Vietnam era shall be presumed to have been exposed during such service to an herbicide agent (i.e., Agent Orange). 38 U.S.C.A. § 1116; 38 C.F.R. § 3.307(a)(6)(iii). Service in the Republic of Vietnam means actual service in country in Vietnam from January 9, 1962, through May 7, 1975, and includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. 38 C.F.R. §§ 3.307(a)(6)(iii), 3.313(a). VA regulations provide for presumptive service connection for specific diseases associated with exposure to herbicide agents, including prostate cancer. 38 C.F.R. § 3.309(e).

With regard to exposure to herbicides outside of Vietnam, VA’s Adjudication Procedures Manual, M21, states that if a Veteran served with the Air Force at several RTAFBs, including Udorn, during the Vietnam Era and was stationed near the air base perimeter as shown by evidence of daily work duties, performance evaluation reports, or other credible evidence, then herbicide exposure should be conceded. M21, IV.ii.2.C.10.q.

Additionally, the Veterans Benefits Administration, Compensation and Pension Service issued a “Memorandum for the Record” on herbicide use in Thailand during the Vietnam Era. The DoD reported that only limited testing of tactical herbicides was conducted in Thailand from April 2, 1964, to September 8, 1964, and specifically identified that location as the Pranburi Military Reservation. The Memorandum noted that tactical herbicides, such as Agent Orange, were used and stored in Vietnam, not Thailand. A letter from the Department of the Air Force indicated that, other than the 1964 tests on the Pranburi Military Reservation, there were no records of tactical herbicide storage or use in Thailand. However, there were records indicating that commercial herbicides were frequently used for



vegetation control within the perimeters of air bases during the Vietnam era, but all such use required approval of both the Armed Forces Pest Control Board and the Base Civil Engineer (BCE). The Memorandum noted that in Vietnam, tactical herbicides were aerially applied by aircraft in “Operation RANCH HAND” or by helicopters under the control of the U.S. Army Chemical Corps; however, the BCE were not permitted to purchase or apply tactical herbicides.

The Memorandum noted that there were no records of tactical herbicide spraying by RANCH HAND or ACC aircraft in Thailand after 1964, and RANCH HAND aircraft that sprayed herbicides in Vietnam were stationed in Vietnam, not in Thailand. However, there are records indicating that modified RANCH HAND aircraft flew 17 insecticide missions in Thailand from August 30, 1963, to September 16, 1963, and from October 14, 1966, to October 17, 1966. Also, the Memorandum reviewed the Project CHECO Southeast Asia Report: Base Defense in Thailand produced during the Vietnam era. While the Report did not discuss the use of tactical herbicides on allied bases in Thailand, it did indicate sporadic use of non-tactical, or commercial, herbicides within fenced perimeters. The Memoriam determined, therefore, that if a Veteran’s MOS or unit was one that regularly had contact with the base perimeter, there was a greater likelihood of exposure to commercial pesticides, including herbicides. The Memorandum specifically identified security police units, as those known to have walked the perimeters, especially dog handlers. However, there were no records to show that the same tactical herbicides used in Vietnam were used in Thailand.

The Memorandum advised that if the Veteran’s claim was based on servicing or working on aircraft that flew bombing missions over Vietnam, that there was no presumption of “secondary exposure” based on being near or working on aircraft that flew over Vietnam or handling equipment once used in Vietnam, as aerial spraying of tactical herbicides in Vietnam did not occur everywhere and it would be inaccurate to find that herbicides covered every aircraft and piece of equipment associated with Vietnam. Additionally, the Memorandum noted that the high altitude jet aircraft stationed in Thailand generally flew far above the low and slow flying UC-123 aircraft that sprayed tactical herbicides over Vietnam during



Operation RANCH HAND, and that were no studies showing harmful health effects for any such secondary or remote herbicide contact that may have occurred.

Notwithstanding the foregoing presumptive provisions, the United States Court of Appeals for the Federal Circuit (Federal Circuit) has determined that a claimant is not precluded from establishing service connection with proof of direct causation. *Combee v. Brown*, 34 F.3d 1039, 1042 (Fed. Cir. 1994); *Brock v. Brown*, 10 Vet. App. 155, 160-61 (1997).

The determination as to whether the requirements for service connection are met is based on an analysis of all the relevant evidence of record, medical and lay, and the evaluation of its competency and credibility to determine its ultimate probative value in relation to other evidence. *See Baldwin v. West*, 13 Vet. App. 1, 8 (1999).

The Veteran asserts that he had temporary duty in Vietnam. In a June 2006 statement, the Veteran reported that he had special duty assignments at Tan Son Nhut Air base near Saigon in South Vietnam during 1967, and flew in a C-124 to those assignments, while he was stationed at the RTAFB in Udorn, Thailand. At the time of his April 2009 Substantive Appeal, the Veteran asserted again that he had temporary duty in Vietnam, and that not all temporary duty assignments were properly recorded as troop movements were classified.

The Veteran's service personnel records indicate that the Veteran's only foreign service was service in Thailand, from January 7, 1967, to January 1, 1968. The Veteran's service separation document, his DD-214, indicates that he was awarded, in pertinent part, the Republic of Vietnam Gallantry Cross with Palm, the Republic of Vietnam Campaign Medal, and the Vietnam Service Medal. However, none of these decorations definitively denote in-country service during the Vietnam era. His DD-214 indicates that his MOSs included supply operations officer, missile launch officer, missile operations officer, and missile operations staff officer. His chronological list of service includes a combat report indicating that the Veteran was involved in the Vietnam Air Offensive Campaign (BSS) from January 7, 1967, to March 8, 1967, and Phase II of the same from January 1, 1967, to January 1, 1968. However, this notation does not confirm the Veteran's presence in Vietnam,



as it simply indicates that the Veteran performed in the service of the Campaign. The Veteran's service personnel records indicate that he received travel pay for temporary duty assignments dated from February 27, 1966, to March 31, 1966, and from July 24, 1967, to July 30, 1967. However, there is no indication as to the location of the temporary duty assignments. The Veteran's available pay records are hand-written and do not include notations that he received combat pay or pay that would otherwise confirm his presence in Vietnam.

A number of performance reviews covering the period of time during which the Veteran was in Udorn, Thailand are of record. Also of record is a citation for meritorious service as a Munitions Accounting Supply Officer of the 432nd Munitions Maintenance Squadron at the RTAFB in Udorn, Thailand, from January 10, 1967, to December 24, 1967. However such are silent for notations that the Veteran had a temporary duty assignment in Vietnam.

The National Personnel Records Center (NPRC), in an August 2006 response, reported that there were no records related to the Veteran and exposure to herbicide, and concluded that they were unable to confirm whether or not the Veteran had in-country service in Vietnam.

The Department of the Air Force Historical Research Agency, in a June 2008 response, reported that they had reviewed the Veteran's unit histories and the only mention of the Veteran was found in the October through December 1967 edition as he was listed as leaving the 432nd Munitions Maintenance Squadron. The Supply Squadron histories do not mention him nor any temporary duty deployments to Vietnam. The Munitions Maintenance Squadron histories however do mention that in the summer of 1967, due to manning problems, they could no longer send Explosive Ordnance Disposal (EOD) personnel in support of out-of-country taskings. Unfortunately, the term out-of-country was not defined as being Laos, Cambodia, or Vietnam, or a combination of any one or all three. They concluded that the histories do not state one way or another as to whether their personnel went to Vietnam or not. An archivist of the Air Force Historical Research Agency, in a March 2014 response, confirmed that the 432nd EOD personnel performed their duties in Thailand and in Laos, but not in Vietnam.



The Veteran, in his July 2009 Substantive Appeal, asserts that the findings noted as to EOD personnel conducting out-of-country tasking, in itself, serves as evidence that personnel from his unit were performing temporary duty in Vietnam.

Significantly, the Veteran was not an EOD personnel and does not assert otherwise and information indicating that there was at one time a system where EOD personnel assigned to the Veteran's unit went out-of-country, does not confirm the Veteran's presence in Vietnam.

In February 2009, the Veteran submitted descriptions from the internet of medals he received, the Republic of Vietnam Campaign Medal and the Vietnam Gallantry Cross, as evidence that such confirmed his service in Vietnam. However, his internet research describing the medals does not posit that in-country service in Vietnam was required to earn any of the medals he received. He also submitted a December 1974 General Orders of the Headquarters of the Department of the United States Army as to the award of the Republic of Vietnam Gallantry Cross Unit Citation. However, the Veteran was not a member of the United States Army, he was a member of the United States Air Force, and thus, Army orders are not relevant evidence in the current appeal.

An archivist of the Air Force Historical Research Agency, in a January 2014 response, confirmed that United States military units were individually cited for award of the Republic of Vietnam Gallantry Cross; however, the Vietnamese Government issued the award to all units subordinate to the Military Assistance Command (MACV) during the period dated from February 8, 1962, to March 28, 1973, which the 432nd Tactical Reconnaissance Wing, the unit to which the 432nd Munitions Maintenance Squadron was assigned, was. The archivist concluded that it appears that in his case, the award of the Vietnam Gallantry Cross with Palm was made because the served Veteran in a unit which supported other units in the 432nd Tactical Reconnaissance Wing in aerial combat over Vietnam.

Despite exhaustive research, there is no evidence to confirm that the Veteran had in-country service in Vietnam. The Board has considered the Veteran's assertions as to his temporary duty assignments in Vietnam while stationed at the RTAFB in Udorn,



Thailand, his receipt of the specific medals, and his receipt of combat pay; however, his service personnel records and a specific review of his unit history by a number of parties does not reveal in-country service in Vietnam.

The Veteran also asserts that he was exposed to herbicides while along the perimeter at the RTAFB in Udorn, Thailand. In a June 2006 statement, the Veteran reported that from January 1, 1967, to December 24, 1967, he was assigned to the 432nd Munitions Maintenance Squadron at the RTAFB in Udorn, Thailand, and was assigned to handle the requisition, storage, and shipment of all base munitions. In a December 2012 statement, the Veteran asserted that his actual duty location at the RTAFB in Udorn, Thailand, was the munition storage area located one and one-half miles from the central base, and that he rode his motorcycle from his sleeping quarters to the munitions storage on the outer base perimeter. He reported that the perimeter fence surrounded his office area and storage facilities, as he had to store munitions away from the central base for safety reasons. He noted that he went to the flight line frequently to receive supplies and was near contaminated aircraft.

As discussed above, the Veteran's service personnel records confirm that he had foreign service in Thailand, from January 7, 1967, to January 1, 1968, and that his DD-214 indicates that his MOSs included supply operations officer, missile launch officer, missile operations officer, and missile operations staff officer. The above-referenced performance reviews from the period dated during the time in which the Veteran was in Thailand discuss his duties and assignments dealing with the management of the supply of munitions. However, such are silent for the assignment of security duties or other duties along the perimeter of the RTAFB in Udorn, Thailand.

In addition, a Memorandum for the record regarding herbicide use in Thailand during the Vietnam Era was associated with the claims file. The RO contacted the Center for Unit Records Research (CURR) (currently the U.S. Army and Joint Services Records Research Center (JSRRC)) to determine whether the Veteran was exposed to herbicides. In a July 2012 response, the JSRRC reported that they had reviewed the available unit histories submitted by the 432nd Tactical Reconnaissance Wing, the higher headquarters for the 432nd Supply Squadron and

the 432nd Munitions Maintenance Squadron, stationed at the RTAFB in Udorn, Thailand, and additional available historical data. The JSRRC concluded that after a review of the data they were unable to document or verify that the Veteran was exposed to herbicides while serving at Udorn or that his duties required him to be on or near the perimeter of the base. They reported that the historical data did not report on the Veteran's or the unit's proximity to the base perimeter, and that to date, the available historical data does not document Agent Orange spraying testing or storage at the RTAFB in Udorn, Thailand, during the 1967 and 1968 time frame.

Also, an archivist of the Air Force Historical Research Agency, in a May 2014 response, concluded that herbicides were not used on any United States Air Force Base in Thailand until April 1969, long after the Veteran was at the RTAFB in Udorn, Thailand.

Here, the Veteran's MOSs were not in security, such as security policeman, security patrol dog handler, or member of a security police squadron, and the Veteran does not assert otherwise. To the extent that he asserts that his duties took him to munition storage facilities removed from the central base that were near the perimeter, no perimeter duty is confirmed. Without security duty or other duty along the base perimeter, the Board finds that the Veteran was not near the base perimeter on a regular basis. Further, there is no evidence or assertion that the Veteran was at the Pranburi Military Reservation in Thailand from April 2, 1964, to September 8, 1964, or that he was in Thailand from August 30, 1963, to September 16, 1963, and from October 14, 1966, to October 17, 1966. To the extent that the Veteran asserts exposure by receiving munitions from planes along the flight line, as noted above, the VA Memorandum provided that there was no presumption of "secondary exposure" based on being near or working on aircraft that flew over Vietnam or handling equipment once used in Vietnam.

The Board has considered the Veteran's assertions as to his duties at the RTAFB in Udorn, Thailand, and his work near the perimeter of the base; however, his service personnel records and a specific review of his unit history does not reveal that he had security or other duty that placed him along the base perimeter.



The Veteran is competent to report traveling to Vietnam from Thailand and working at a munitions storage area away from the central base near the base perimeter in Thailand, as well as handling supplies on the flight line, as he has personal knowledge of such. *Layno*, 6 Vet. App. 465, 470. However, the Board must assess the credibility and resultant probative value of such lay evidence in light of the other evidence of record. In this regard, the Board finds that the probative value of such lay evidence is outweighed by review of the Veteran's service personnel records and exhaustive research efforts which resulted in conclusions that contradicted his own and serve as the most probative evidence in the current appeal as such as based on records kept contemporaneous to the claimed events and historical research conducted by professionals.

In light of the foregoing, the Board finds that the probative evidence of record is against the Veteran's claim that he was exposed to herbicides while in service and therefore that he cannot be presumed to be service-connected for prostate cancer. The Veteran does not contend, and the evidence of record does not show, in-service complaints, diagnosis, or treatment of prostate cancer, or treatment of such within one year of separation from service. His private treatment records demonstrate that he was diagnosed with prostate cancer in approximately April 2006, and the Veteran does not assert otherwise. He has not alleged any symptoms or manifestations of prostate cancer occurring on a chronic or continuous basis since his separation from service. Therefore, the Board finds that entitlement to service connection for prostate cancer on a direct or presumptive basis as a chronic disease is not warranted. *See* 38 C.F.R. §§ 3.303(a), (b), 3.309(a).

In conclusion, the Board finds that the weight of the evidence is against a finding of service connection for prostate cancer, to include as secondary to herbicide exposure. In reaching this conclusion, the Board has considered the applicability of the benefit of the doubt doctrine; however, as the preponderance of the evidence is against the Veteran's claim, the doctrine is not applicable. *See* 38 U.S.C.A. § 5107(b); *Gilbert v. Derwinski*, 1 Vet. App. 49, 55-57 (1990).



ORDER

Service connection for prostate cancer, to include as secondary to exposure to herbicides, is denied.

S. L. Kennedy
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.cave.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 (855) 446-9678.

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 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 General Counsel. *See* 38 C.F.R. 14.636(i); 14.637(d).