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

IN THE APPEAL OF [redacted]
HUBERT D. BONE

DOCKET NO. 11-21 019A) DATE *14 JAN 2016*
) *MDP*
)

On appeal from the
Department of Veterans Affairs (VA) Regional Office (RO)
in Chicago, Illinois

THE ISSUES

1. Entitlement to an initial rating in excess of 10 percent for service-connected posttraumatic stress disorder (PTSD), prior to January 11, 2008.

2. Entitlement to a rating in excess of 30 percent for service-connected PTSD, from January 11, 2008 to May 20, 2015.

3. Entitlement to a total disability rating based on individual unemployability due to service-connected disabilities (TDIU).

4. Entitlement to an effective date earlier than May 20, 2015, for the award of special monthly compensation based on housebound criteria.

REPRESENTATION

Veteran represented by: Christopher J. Boudi, Attorney

WITNESS AT HEARING ON APPEAL

The Veteran

ATTORNEY FOR THE BOARD

A. Barbier, Associate Counsel

INTRODUCTION

The Veteran served on active duty from November 1968 to November 1971.

This appeal to the Board of Veterans' Appeals (Board) arose from a February 2007 rating decision in which the RO granted service connection for PTSD and assigned an initial 10 percent rating, effective February 1, 2005, and a September 2009 rating decision in which the RO denied entitlement to a TDIU.

In January 2008, the Veteran filed a notice of disagreement with the initial PTSD rating and in September 2009 with respect to the TDIU denial. The RO issued a statement of the case in August 2011, and the Veteran filed a substantive appeal with respect to both issues (via a VA Form 9, Appeal to the Board of Veterans' Appeals) in August 2011.

In July 2013, the Veteran testified during a Board hearing before the undersigned Veterans Law Judge at the RO. A transcript of the hearing has been associated with the claims file.

Because the Veteran disagreed with the initial rating assigned following the award of service connection for PTSD, the Board has characterized this matter consistent with *Fenderson v. West*, 12 Vet. App. 119, 126 (1999) (distinguishing initial rating

claims from claims for increased ratings for already service-connected disability) and *AB v. Brown*, 6 Vet. App. 35, 38 (1993).

In November 2014, the Board remanded these matters for further development.

The Board notes that on remand, in May 20, 2015, the Veteran was granted a 70 percent rating for PTSD as of that date. In a November 2015 statement, the Veteran's attorney noted that the Veteran did not take issue with that rating. Hence, as noted in the prior remand, evaluation of the Veteran's PTSD involves the periods referenced on the title page.

For reasons expressed below, the Board's decision addressing the Veteran's claims for higher ratings for PTSD is set forth below. The remand following the order addresses the claim for a TDIU, as well as the claim for earlier effective date for the award of special monthly compensation—for which the Veteran has completed the first of two actions required to place this matter in appellate status. VA will notify the Veteran when further action, on his part, is required.

FINDINGS OF FACT

1. All notification and development actions needed to fairly adjudicate each claim herein decided have been accomplished.

2. From the February 1, 2005 effective date of the award of service connection but prior to January 11, 2008, the Veteran's psychiatric symptoms included difficulty sleeping, depressed mood, suspiciousness, nightmares and flashbacks, low energy, and difficulty concentrating with mildly impaired memory; collectively, these symptoms are of the type and extent, frequency, or severity (as appropriate) that suggest no more than occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily with routine behavior, self-care, and conversation normal).

3. For the period from January 11, 2008 to May 20, 2015, the Veteran's psychiatric symptoms included anxiety, depressed mood, suspiciousness, sleep impairment, anger and irritability, mildly impaired memory, loss of interest in activities, and difficulty concentrating; collectively, these symptoms of the type and extent, frequency or severity (as appropriate) that are indicative of no more than occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily with routine behavior, self-care, and conversation normal).

4. The schedular criteria are adequate to evaluate the Veteran's PTSD at all points pertinent to this appeal.

CONCLUSIONS OF LAW

1. Resolving all reasonable doubt in the Veteran's favor, the criteria for an initial 30 percent, but no higher, rating for PTSD, from February 1, 2005 to January 10, 2008, are met. 38 U.S.C.A. §§ 1155, 5103, 5103A, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.159, 4.1, 4.3, 4.7, 4.10, 4.126, 4.130, Diagnostic Code 9411 (2015).

2. The criteria for a rating in excess of 30 percent for PTSD, prior to May 20, 2015, are not met. 38 U.S.C.A. §§ 1155, 5103, 5103A, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.159, 4.1, 4.3, 4.7, 4.10, 4.126, 4.130, Diagnostic Code 9411 (2015).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

I. Due Process Considerations

The Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106-475, 114 Stat. 2096 (Nov. 9, 2000) (codified at 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5106, 5107, and 5126 (West 2014)) includes enhanced duties to notify and assist

claimants for VA benefits. VA regulations implementing the VCAA were codified as amended at 38 C.F.R. §§ 3.102, 3.156(a), 3.159, and 3.326(a) (2015).

Notice requirements under the VCAA essentially require VA to notify a claimant of any evidence that is necessary to substantiate the claim, as well as the evidence that VA will attempt to obtain and which evidence he or she is responsible for providing. *See, e.g. Quartuccio v. Principi*, 16 Vet. App. 183 (2002) (addressing the duties imposed by 38 U.S.C.A. § 5103(a) and 38 C.F.R. § 3.159(b)). As delineated in *Pelegrini v. Principi*, 18 Vet App. 112 (2004), after a substantially complete application for benefits is received, proper VCAA notice must inform the claimant of any information and evidence not of record (1) that is necessary to substantiate the claim(s); (2) that VA will seek to provide; (3) that the claimant is expected to provide; and (4) must ask the claimant to provide any evidence in her or his possession that pertains to the claim(s), in accordance with 38 C.F.R. § 3.159(b)(1).

The Board notes that effective May 30, 2008, 38 C.F.R. § 3.159 has been revised, in part. *See* 73 Fed. Reg. 23.353-23.356 (April 30, 2008). Notably, the final rule removes the third sentence of 38 C.F.R. § 3.159(b)(1), which had stated that VA will request that a claimant provide any pertinent evidence in his or her possession.

In rating cases, a claimant must be provided with information pertaining to assignment of disability ratings (to include the rating criteria for all higher ratings for a disability), as well as information regarding the effective date that may be assigned. *Dingess/Hartman v. Nicholson*, 19 Vet. App. 473 (2006).

VCAA-compliant notice must be provided to a claimant before the initial unfavorable decision on a claim for VA benefits by the AOJ (in this case, the RO, to include the AMC). *Id.*; *Pelegrini*, 18 Vet. App. at 112. *See also Disabled American Veterans v. Secretary of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003). However, the VCAA notice requirements may, nonetheless, be satisfied if any errors in the timing or content of such notice are not prejudicial to the claimant. *Id.*

In this appeal, in pre-rating letters dated in February 2005 and March 2006, the RO provided notice to the Veteran explaining what information and evidence must be submitted by the Veteran and what information and evidence would be obtained by VA, as well as general information pertaining to VA's assignment of disability ratings and effective dates, and the type of evidence that impacts those determinations, consistent with *Dingess/Hartman*. As this is an appeal arising from an award of service connection, the notice that was provided before service connection was granted was legally sufficient and the VCAA's notice requirements have been satisfied. *See Hartman v. Nicholson*, 483 F.3d 1311 (2006). *See also Dunlap v. Nicholson*, 21 Vet. App. 112 (2007). The September 2009 RO rating decision reflects the initial adjudication of the claim after issuance of this letter.

Furthermore, although no additional notice for the downstream initial rating issue was required under 38 U.S.C.A. § 5103A (*see* VAOPGCPREC 8-2003, 69 Fed. Reg. 25180 (May 5, 2004)), in this case, after the award of service connection and the Veteran's disagreement with the initial rating assigned., the August 2011 SOC set forth the criteria for higher ratings and rating considerations relevant to PTSD (the timing and form of which suffices, in part, for *Dingess/Hartman*), and included the provisions of 38 C.F.R. § 3.321, governing extra-schedular consideration. Thereafter, the Veteran was afforded appropriate opportunity to respond to the additional notice provided.

The record also reflects that VA has made reasonable efforts to obtain or to assist in obtaining all relevant records pertinent to the matter herein decided. Pertinent medical evidence associated with the claims file includes VA and private treatment records and reports of VA examinations. Also of record and considered in connection with the appeal are various written statements provided by the Veteran and by his representative, on his behalf. The Board finds that no additional AOJ action to further develop the record in connection with this matter, prior to appellate consideration, is required.

As regards the Board hearing, the Veteran was provided an opportunity to set forth his contentions during a hearing before the undersigned Veterans Law Judge in July 2013. In *Bryant v. Shinseki*, 23 Vet. App. 488 (2010), the United States Court of

Appeals for Veterans Claims (Court) held that 38 C.F.R. § 3.103(c)(2) requires that the Decision Review Officer or Veterans Law Judge who chairs a hearing fulfill two duties: (1) the duty to fully explain the issues and (2) the duty to suggest the submission of evidence that may have been overlooked. In this case, the Board finds that there has been substantial compliance with the duties set forth in 38 C.F.R. § 3.103(c)(2), and that the hearing was legally sufficient.

Here, during the July 2013 hearing, the undersigned identified the issues on appeal and solicited testimony from the Veteran with respect to the nature of his claimed disability, current treatment, and whether there is any outstanding evidence to support the claims. Therefore, not only was the issue "explained . . . in terms of the scope of the claim for benefits," but "the outstanding issues material to substantiating the claim" were fully explained. *See Bryant*, 23 Vet. App. at 497. Although the undersigned did not *explicitly* suggest the submission of any specific, additional evidence, such omission was harmless, inasmuch as, following the hearing, action to further develop the claims was directed and undertaken.

The Board sought further development of the claims on appeal in November 2014, to include obtaining additional medical evidence and providing the Veteran with a VA examination. A remand by the Board confers upon the Veteran, as a matter of law, the right to compliance with the remand instructions and imposes upon the VA a concomitant duty to ensure compliance with the terms of the remand. *See Stegall v. West*, 11 Vet. App. 268, 271 (1998).

In the November 2014 remand, the Board instructed the AOJ to obtain and associate with the claims file any VA treatment records from the VA Medical Center in Danville, Illinois dated since June 2013. These records have been associated with the claims file. The AOJ was also directed to request any additional information from the Veteran regarding medical treatment, to include authorization to obtained outstanding private treatment records from various sources. The AOJ sent a letter to the Veteran in this regard in November 2014, requesting information concerning medical treatment. The Veteran subsequently indicated that all medical records had been obtained. The AOJ was then to arrange for the Veteran to undergo a VA examination with respect to his PTSD. As noted above, this examination was

completed in May 2015. The claims were readjudicated in a July 2015 supplemental statement of the case.

Accordingly, the Board finds that, with respect to these higher rating claims, the AOJ substantially complied with the Board's remand directives. *See Dyment v. West*, 13 Vet. App. 141, 146-47 (1999) (remand not required under *Stegall*, 11 Vet. App. 268, where Board's remand instructions were substantially complied with); *see also D'Aries v. Peake*, 22 Vet. App. 97, 105-06 (2008) (finding that substantial compliance, rather than strict compliance, with the terms of a Board engagement letter requesting a medical opinion is required).

In summary, the duties imposed by the VCAA have been considered and satisfied. The Veteran has been notified and made aware of the evidence needed to substantiate his claims, the avenues through which he might obtain such evidence, and the allocation of responsibilities between himself and VA in obtaining such evidence. There is no additional notice that should be provided, nor is there any indication that there is additional existing evidence to obtain or development required to create any additional evidence to be considered in connection with the claims. Consequently, any error in the sequence of events or content of the notice is not shown to prejudice the Veteran or to have any effect on the appeal. Any such error is deemed harmless and does not preclude appellate consideration of the matters herein decided, at this juncture. *See Mayfield v. Nicholson*, 20 Vet. App.537, 543 (2006) (rejecting the argument that the Board lacks authority to consider harmless error). *See also ATD Corp. v. Lydall, Inc*., 159 F.3d 534, 549 (Fed. Cir. 1998).

II. Evaluation of PTSD

Disability evaluations are determined by the application of VA's Schedule of Rating Disabilities, which is based on average impairment of earning capacity. 38 U.S.C.A. § 1155; 38 C.F.R., Part 4. Where there is a question as to which of two evaluations shall be applied, a higher rating will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower

rating will be assigned. 38 C.F.R. § 4.7. After careful consideration of the evidence, any reasonable doubt remaining is resolved in favor of the Veteran. 38 C.F.R. § 4.3.

The Veteran's entire history is to be considered when making disability evaluations. *See generally* 38 C.F.R. § 4.1; *Schafrath v. Derwinski*, 1 Vet. App. 589 (1995). When an increase in the level of a service-connected disability is at issue, the primary concern is the present level of disability. *Francisco v. Brown*, 7 Vet. App. 55 (1994). However, where the question for consideration is entitlement to a higher initial rating assigned following the grant of service connection, evaluation of the medical evidence since the effective date of the grant of service connection and consideration of the appropriateness of "staged rating" (assignment of different ratings for distinct periods of time, based on the facts found) is required. *Fenderson*, 12 Vet. App. at 126. As the AOJ has already assigned staged ratings for the Veteran's PTSD, the Board will consider the propriety of the rating at each stage, as well as whether any further staged rating is warranted.

The RO has assigned the ratings for the Veteran's PTSD under Diagnostic Code 9411. However, psychiatric disabilities other than eating disorders are actually rated pursuant to the criteria of a General Rating Formula. *See* 38 C.F.R. § 4.130.

Under the General Rating Formula, a 10 percent rating contemplates occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by continuous medication.

A 30 percent rating contemplates occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal) due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events). *Id.*

A 50 percent rating contemplates occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairments of short-and long-term memory; impaired judgment; impaired abstract thinking; disturbance of motivation and mood; and difficulty in establishing and maintaining effective work and social relationships. *Id.*

A 70 percent rating is warranted for occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; intermittently illogical, obscure, or irrelevant speech; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a work like setting); inability to establish and maintain effective relationships. *Id.*

A 100 percent rating is warranted for total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name. *Id.*

As the United States Court of Appeals for the Federal Circuit has explained, evaluation under 38 C.F.R. § 4.130 is "symptom-driven," meaning that "symptomatology should be the fact-finder's primary focus when deciding entitlement to a given disability rating" under that regulation. *Vazquez–Claudio v. Shinseki*, 713 F.3d 112, 116–17 (Fed. Cir. 2013). The symptoms listed are not exhaustive, but rather "serve as examples of the type and degree of symptoms, or their effects, that would justify a particular rating." *Mauerhan v. Principi*, 16 Vet.

App. 436, 442 (2002). In the context of determining whether a higher disability evaluation is warranted, the analysis requires considering "not only the presence of certain symptoms[,] but also that those symptoms have caused occupational and social impairment in most of the referenced areas" - i.e., "the regulation ... requires an ultimate factual conclusion as to the Veteran's level of impairment in 'most areas.'" *Vazquez-Claudio*, 713 F.3d at 117-18; 38 C.F.R. § 4.130, Diagnostic Code 9411.

When evaluating a mental disorder, the Board must consider the "frequency, severity, and duration of psychiatric symptoms, the length of remissions, and the Veteran's capacity for adjustment during periods of remission," and must also "assign an evaluation based on all the evidence of record that bears on occupational and social impairment rather than solely on the examiner's assessment of the level of disability at the moment of the examination." 38 C.F.R. § 4.126(a).

Psychiatric examinations frequently include assignment of a GAF score. According to the Fourth Edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV), GAF is a scale reflecting the "psychological, social, and occupational functioning on a hypothetical continuum of mental health illness." There is no question that the GAF score and interpretations of the score are important considerations in rating a psychiatric disability. *See e.g., Richard v. Brown*, 9 Vet. App. 266, 267 (1996); *Carpenter v. Brown*, 8 Vet. App. 240 (1995). However, the GAF score assigned in a case, like an examiner's assessment of the severity of a condition, is not dispositive of the evaluation issue; rather, the GAF score must be considered in light of the actual symptoms of the Veteran's disorder, which provide the primary basis for the rating assigned. *See* 38 C.F.R. § 4.126(a). {Parenthetically, the Board notes that the, revised DSM-5, which among other things, eliminates GAF scores, applies to certified to the Board after August 4, 2014. *See* 79 Fed. Reg. 45 ,093 (Aug, 4, 2014))].

Considering the pertinent evidence of record in light of the above-cited provisions, the Board finds that, with resolution of all reasonable doubt in the Veteran's favor, an initial, 30 percent rating for the Veteran's PTSD is warranted prior to January 11, 2008, but that no higher rating is warranted at any point prior to May 20, 2015 (the

effective date of assignment of the 70 percent rating for PTSD for which the Veteran, through his attorney, has expressed satisfaction).

Pertinent evidence prior to January 11, 2008, includes private treatment records, a VA examination report, and documents reflecting the Veteran's statements.

In his January 2005 claim, the Veteran reported that he could not sleep and that he experienced nightmares and woke up sweating. A March 2005 VA examiner noted the Veteran's survivor's guilt since coming back from Vietnam. The Veteran reported feeling worried and panicky at times about dying. He reported feeling alienated from some family members. He reported losing track of dates and that he enjoyed his hobbies, such as golf, less often. He reported going out with only a few people. He noted that his sleep was erratic. A mental status examination found the Veteran to be well-oriented with normal memory, judgment, insight and impulse control. The Veteran's affect was broad, congruent with the topic of discussion, and stable. General appearance and psychomotor behavior were appropriate. Speech was fluent and articulate with no disturbance in thought process or communication. The Veteran was noted to have no suicidal or homicidal intent. Moments of anxiety and depression were noted. The Veteran reported taking care of all household activities independently and participating in some social and recreational activity, to include volunteer work with the VFW. The examiner assigned a GAF score of 65.

A private treatment record dated in July 2005 references the Veteran's reports of significant mistrust of people, difficulty sleeping, and constant thoughts of killing himself or dying. The Veteran reported not talking to his mother in years. He reported a problem with authority, crying for no reason, and feeling uncomfortable unless he had a gun in the vicinity. He noted that he did not go out and did not like being around other people, choosing to isolate himself. He further reported nightmares. The private treating source noted a mild push of speech, with fair attention and concentration. No evidence of hallucinations, delusions, and suicidal or homicidal ideas was noted. The psychiatrist noted that the Veteran's thinking was logical, coherent and goal directed. He noted no memory deficits but impaired judgment and insight. The psychiatrist assigned a GAF score of 39.

An October 2006 VA examination report includes notations that the Veteran stayed in his house most of the time and had lost interest in many activities he formerly enjoyed. The Veteran described feeling listless and depressed with thoughts of suicide. He reported having only a few casual friends and no close family relationships. On mental status examination, the VA examiner described the Veteran's general appearance, speech, eye contact, and motor movements as appropriate. Affect was tense, irritable and depressed. A frequent urge to kill himself was noted but without a formulated intention to do so. The Veteran was noted to feel anhedonic, having lost interest in former hobbies and recreational and social pursuits. Sleep was described as often poor. The examiner noted no impairment of thought process or communication and no signs of delusions or hallucinations. The examiner noted the following symptoms of PTSD: intrusive memories of trauma, loss of intimacy with others, nightmares and sleep disturbance, trouble concentrating, and irritability. The examiner further noted the following symptoms of depression: loss of interest in social recreational activities, pessimism, ideas of hopelessness and helplessness, feelings of low self-worth, and lethargy. The examiner noted a GAF score of 60 when considering symptoms of both PTSD and depression. The examiner noted mild impairment due to PTSD symptoms, alone.

In a December 2007 letter, the Veteran's private psychiatrist opined that the extent of the Veteran's social and occupational impairment exceeded the assigned 10 percent rating. In this regard, it was noted that the Veteran's PTSD affected him every day, in every relationship, socially and occupationally. The Veteran reported helplessness, panic, nightmares and flashbacks. The Veteran was noted to always feel the need to protect himself and not get close to people. The Veteran stopped making friends and cut himself off from his family. He was also noted to find it very difficult to function occupationally in the face of authority. The Veteran was also noted to have several failed marriages. The Veteran was described as argumentative and avoiding people whenever possible. He was noted to think of suicide and dying. He described being angry all the time and finding security only when having firearms nearby. The Veteran was noted to have chronic anxiety,

causing him to ramble and digress when speaking. Constricted affect, low energy, and poor concentration were also noted.

At the outset, the Board notes that, although the October 2006 VA examiner purported to differentiate between the Veteran's symptoms due to PTSD and those due to depression, the Board notes that other contemporaneous evidence of record did not make such a distinction. Notably, moreover in assigning a 70 percent rating in July 2015, the AOJ considered all psychiatric symptoms/impairment. As such, the Board finds that the October 2006 VA examiner's opinion with respect to distinguishing the Veteran's PTSD symptoms from his depression-related symptoms is not persuasive, and the Board will resolve reasonable doubt in the Veteran's favor in evaluating his PTSD based on consideration of all psychiatric symptoms/impairment. *Cf. Mittlieder v. West*, 11, Vet. App. 181 (1998) (holding that if it is not medically possible to distinguish the effects of service-connected and nonservice-connected conditions, the reasonable doubt doctrine mandates that all signs and symptoms be attributed to the Veteran's service-connected condition).

Collectively, the above-described evidence reflects that, prior to January 11, 2008, he Veteran's psychiatric symptoms included anxiety, depressed mood, suspiciousness, sleep impairment, recurring thoughts and nightmares, irritability, fair impulse control, mildly impaired memory, low energy, and difficulty concentrating. Impairment of social functioning was indicated by the Veteran's tendency to keep to himself, have few friends, and cutting ties with his family. Furthermore, he has occupational limitations, as indicated by his difficulty concentrating, trouble relating to others, and difficulty with authority.

While such symptoms resulted in occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, the Veteran was generally able to function satisfactorily with routine behavior, self-care, and normal conversation. Collectively, these symptoms are of the type, extent, severity and/or frequency, as appropriate, indicative of the level of impairment warranting a 30 percent, but no higher, rating.

Notably, the assigned GAF scores during this time period vary but are generally consistent with no more than the level of impairment contemplated in a 30 percent rating. In this regard, the Board notes that the Veteran was assigned GAF scores of 65 in March 2005, 39 in July 2005, and 60 in October 2006. Under DSM-IV, GAF scores ranging from 31 to 40 are indicative of some impairment in reality testing or communication (e.g., speech is at time illogical, obscure, or irrelevant) or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed man avoids friends, neglect family, and is unable to work). GAF scores ranging between 51 and 60 are indicative of moderate symptoms (such as flat affect and circumstantial speech, and occasional panic attacks), or moderate difficulty in social occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers). GAF scores ranging from 61 to 70 are indicative of some mild symptoms (e.g., depressed mood and mild insomnia) or some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household) but generally functioning pretty well, has some meaningful interpersonal relationships.

The Board finds that the GAF score of 39 is largely inconsistent with the symptoms of PTSD described in the evidence of record, to include the symptoms as described by the July 2005 psychiatrist who assigned it. Conversely, the GAF scores of 60 and 65 seem to be more in line with the symptoms reported by the Veteran and described by the evidence of record. In this regard, the Board finds these scores more probative and consistent with a 30 percent rating.

The Board finds that at no point prior to January 11, 2008 did the Veteran's PTSD symptoms and resulting impairment meet, or more nearly approximate, the level of impairment contemplated in the next higher, 50 percent rating. As indicated, under the rating formula, such a rating is assigned for occupational and social impairment with reduced reliability and productivity. However, for the period in question, the evidence shows normal speech, no impaired thinking, no difficulty understanding complex commands, and normal memory– symptoms listed in the rating criteria examples of those of the type, extent, frequency or severity, as appropriate, that are indicative of the level of impairment for which the 50 percent rating is assignable.

While some constricted affect was noted, the Veteran has was found to have normal affect, indicating that such symptoms are not of the frequency and duration contemplated in a 50 percent rating. The evidence reflects disturbances in mood, in the form of anger, irritability, and depressed mood, as well as motivation disturbances, as the Veteran reported loss of interest in activities. The Veteran reported some thoughts about death and suicide but was found on multiple mental status examinations to have no suicidal ideation. Thus, the Veteran's disturbance in mood is the only identified symptom listed among those of the type and extent, frequency or severity, as appropriate, for the 50 percent rating. Additionally, while the Veteran reported a loss of interest in activities, he was still noted to play golf and volunteer with the VFW during that time period. Thus, the Board finds that any disturbance in motivation did not rise to the level of impairment contemplated in the 50 percent rating.

The Board acknowledges that the evidence of record supports a finding that the Veteran had some problems in establishing and maintaining effective work and social relationships. However, the Veteran reported going out with friends, playing golf, and volunteering with the VFW during this time. These social activities indicate an ability to establish and maintain effective work and social relationships, despite the Veteran's other symptomatology.

Therefore, the Board finds that the weight of the evidence supports a finding that, prior to January 11, 2008, the Veteran the level of impairment resulting from the Veteran's psychiatric symptoms did not meet, or more nearly approximate, the level of impairment required for the next higher, 50 percent rating.. This is especially true when considering the effect of the Veteran's symptoms on occupational and social functioning. As noted above, prior to January 11, 2008, the Veteran engaged in social activities and hobbies. He was noted to be able to take care of all household activities independently. Furthermore, he worked at a part-time job during that time. Under these circumstances, the Board finds that the Veteran is not shown to have experienced symptoms of the type, extent, and frequency or severity, as appropriate, to result in reduced reliability and productivity in occupational and social functioning as required by criteria for a 50 percent rating.

Likewise, with respect to the period from January 11, 2008 to May 20, 2015, the Board also finds that Veteran's PTSD warrants no more than a 30 percent rating. For this time period, the pertinent evidence includes contemporaneous VA and private treatment records, VA examination reports, and lay statements from the Veteran, his sons, and friend.

A March 2008 VA examination report indicates that the Veteran was not taking any psychotropic medications at that time. The Veteran then reported a hard time sleeping, which he drank alcohol to help with. He reported that he enjoyed spending time with friends. The Veteran reported no contact with his siblings or mother. He reported drinking with friends three or four times per week. He reported that he once enjoyed golfing but had lost interest in that. He reported difficulty trusting others. The VA examiner noted the Veteran had mild impairment in occupational functioning due to PTSD symptoms. The examiner further noted no significant change in the Veteran's overall level of occupational and social functioning since his last VA examination.

The examiner noted the Veteran's grooming and hygiene were good and that his attention, concentration, and memory were within normal limits. Speech was normal with rational, relevant, coherent, and goal-directed thought content. Mood was neutral with appropriate affect. The Veteran reported temper problems but that he was never violent. He indicated suicidal thoughts in the past but none currently or recently. He reported sleep disturbance and occasional nightmares. The Veteran's insight, judgment and impulse controls were noted to be intact. The examiner noted the Veteran had the following symptoms associated with PTSD: intrusive thoughts, diminished interest in significant activities, and irritability. The examiner assigned a GAF score of 65.

In a July 2009 VA examination report, the Veteran reported having problems with his sleep and increased anxiety. The Veteran reported that he was not involved in any kind of romantic relationship at that time and that he had no contact with his siblings. He reported that he continued to drink with friends several times per week. He also noted doing some golfing with one of his friends at times. He noted

that he did all of his own chores and was independent in his activities of daily living.

The Veteran's grooming and hygiene were good, and he was described as alert and fully oriented. The examiner noted his attention, concentration, and memory were within average range. Speech was normal as was thought content. Mood was neutral with appropriate affect. The Veteran noted symptoms of anxiety, mostly related to ongoing health problems. The Veteran reported suicidal thoughts in the past but none currently or recently. He noted that while at times he yelled, he had no violent acting out. Insight, judgment and impulse controls were adequate.

Statements dated in July 2010 from the Veteran's son, stepson and old friend document some of the Veteran's PTSD symptoms. His son noted that the Veteran gets upset very quickly, is argumentative and suspicious of people. He noted that the Veteran's friends no longer come around to visit anymore. He reported that the Veteran throws things and can be violent at times. He noted that the Veteran's memory had gotten worse. He reported that when going to a restaurant, the Veteran had to sit with his back to the wall so he can see everything. He noted the Veteran had weapons in his house and kept his doors locked due to his paranoia. He further noted the Veteran did not sleep well and had poor concentration. He noted the Veteran mostly stayed at home and had withdrawn. The Veteran's son noted they did not spend a lot of time together. He reported the Veteran had a girlfriend but they did not see each other often. The Veteran's stepson and friend confirmed his son's statements, noting similar symptoms.

An April 2011 VA examiner noted that the Veteran saw his son often, had a few friends, and enjoyed golf. His speech was unremarkable with appropriate affect. The examiner noted intermittent anxiety, irritability, and sadness with respect to mood. The Veteran's judgment and insight were normal. The examiner noted no sleep impairment, panic attacks, homicidal or suicidal thoughts, or inappropriate behavior. The Veteran's memory was found to be normal. The examiner further noted feelings of detachment or estrangement from others, a restricted range of affect, irritability or outbursts of anger, hypervigilance and exaggerated startle response. The VA examiner noted that the Veteran had trouble with authority,

which leads to arguments and frustration. The Veteran reported that he did not think he could work without aggravation and following the rules. The VA examiner concluded that the Veteran's PTSD symptoms caused limitations on his abilities in a work environment. The examiner assigned a GAF score of 65. The examiner noted that the Veteran's level of functioning was essentially unchanged since his July 2009 VA examination.

VA treatment records dated in September 2011 reflect the Veteran's reports of feeling depressed with nightmares, anxious mood and appropriate affect. In June 2011, the Veteran described himself as helpless at times. His mood was noted to be anxious and depressed with a flat affect. He was noted not to have suicidal ideation.

In a May 2013 VA treatment record, the Veteran reported mood swings, increased energy, and nightmares. He denied racing thoughts. He was noted to have limited judgment and insight. In June 2013, he reported going to dinner and movies with friends occasionally. He further noted that his sleep was better. He was noted to be alert, oriented with euthymic mood and full range affect. He reported being paranoid about people out to get him. His insight and judgment were noted to be fair. The Veteran denied being suicidal.

During the July 2013 Board hearing, the Veteran testified that he had no relationship with his siblings. He said he had a relationship with his son but not a very good one. He reported that he golfed once or twice a year but did not go with friends, as he had a falling out with his golf buddy. He reported a problem being motivated to do things. In describing chores, he noted that he gets them done but often puts them off and has no desire to do them. The Veteran reported having multiple firearms around his house for protection due to his feeling paranoid in his own home. He denied homicidal thoughts as well as recent suicidal thoughts, which he had had in the past. He reported having a sketchy memory, often getting to the grocery store and forgetting what he had gone to buy. He described occasional panic attacks that were often triggered by events. He noted that he socialized for holidays maybe and that although he was a member of the VFW, he did not participate.

VA treatment records dated in September 2013 reference the Veteran losing his temper. He reported wanting to hit somebody and almost doing so. He described his sleep as good. He reported feeling anxious. He noted he experienced nightmares four times a week and flashbacks four or five times a month. The Veteran's insight and judgment were described as limited.

In May 2014, the Veteran reported no nightmares and fewer flashbacks than in the past. He described racing thoughts and paranoia. He was noted to have a restricted affect and depressed mood. In October 2014, VA treatment records noted the Veteran was very anxious with lack of motivation, normal speech, restricted affect, and fair judgment and insight. In April 2015, the Veteran was noted to have normal speech, mood swings, anger, and racing thoughts. He was also noted to be verbally abusive to the medical staff at his VA facility.

Collectively, the above-described evidence reflects that, for the period from January 11, 2008 to May 20, 2015, the Veteran's psychiatric symptoms included anxiety, depressed mood, suspiciousness, sleep impairment, anger and irritability, mildly impaired memory, and difficulty concentrating. Impairment of social functioning had been indicated by the Veteran's lack of contact with family and friends and loss of interest in former hobbies. Furthermore, he had occupational limitations, as indicated by his anger, difficulty concentrating, and lack of motivation.

While such symptoms resulted in occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, the Veteran was generally able to function satisfactorily with routine behavior, self-care, and normal conversation. Collectively, these symptoms are of the type and extent, frequency, or severity (as appropriate), to indicate no more than the level of impairment warranting the next higher, 30 percent rating. 3

Likewise, the assigned GAF scores of 65 are consistent with no more than the level of impairment contemplated in the assigned 30 percent rating, as outlined by the GAF score descriptions above.

The Board further finds that at no pertinent point have the Veteran's PTSD symptoms and resulting impairment met, or more nearly approximated, the level of impairment contemplated in the next higher, 50 percent rating. The evidence has shown normal speech, infrequent panic attacks (less than once a week), no difficulty in understanding complex commands, and no impairment in thinking – symptoms listed in the rating criteria as indicative of the level of impairment for which the 50 percent rating is assignable.

While there is some indication of flattened affect and impairment of judgment, overall, the Board finds that the Veteran's affect and judgment was more often reported as normal. Thus, the evidence reflects that such did not rise to the severity, duration and frequency anticipated by a 50 percent rating. While some memory impairment was noted, such was generally described as mild, which does not rise to the level of retention of only highly learned material, as required by a 50 percent rating.

Additionally, the evidence reflects disturbances in mood, in the form of anger and irritability, sometimes resulting in outbursts. Furthermore, the Veteran reported motivation disturbances, as reported in his loss of desire to engage in activities or do household chores. However, the Veteran's disturbance in mood and motivation is the only identified symptom listed among those of the type, extent and frequency or severity, as appropriate, for the 50 percent rating.

The Board acknowledges that the evidence of record supports a finding that the Veteran has problems in establishing and maintaining relationships. However, it was noted that the Veteran went out to eat with his sons and friends on occasion and participated in golf as well. These activities indicate some ability to establish and maintain relationships, despite the Veteran's other symptomatology. Therefore, the Board finds that the weight of the evidence supports a finding that the level of impairment resulting from the Veteran's psychiatric symptoms does not meet, or more nearly approximate, the level of impairment required for the 50 percent rating criteria. This is especially true when considering the effect of the Veteran's symptoms on occupational and social functioning. As noted above, the Veteran still

sees his sons and others on occasions, such as holidays. He further still participates in golf as well. Furthermore, the Veteran held part-time jobs during this time period and indicated that he was unsure if he would be able to work despite his PTSD symptoms. The VA examiners consistently found that, while his PTSD symptoms caused some limitations, they did not preclude employment. Under these circumstances, thus, the Board finds that the Veteran was not shown to have experienced symptoms of the type, extent, and frequency or severity, as appropriate, to result in reduced reliability and productivity in occupational and social functioning as required for a 50 percent rating.

In conclusion, the Board finds that, from the February 1, 2005 effective date of the award of service connection to May 20, 2015, the Veteran's PTSD resulted in psychiatric symptoms of the type and extent, frequency, or severity, as appropriate, to indicate the level of impairment contemplated in the schedular 30 percent but no higher rating for PTSD.

Because, at no point prior to May 20, 2015 did the Veteran's PTSD symptoms result in reduced reliability and productivity in occupational and social functioning—the level of impairment contemplated in the higher, 50 percent disability rating—it logically follows that such symptoms were not of the type and extent, frequency or severity (as appropriate) to warrant an even higher, 70 percent rating, (which requires more severe symptoms resulting in occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking and mood), or the maximum, 100 percent rating (which requires symptoms resulting in total occupational and social impairment).

In reaching the above conclusions, the Board reiterates that the symptoms listed in the rating schedule under the criteria for the 50 percent rating, as well as higher 70 percent and 100 percent ratings, are essentially examples of the type and degree of symptoms indicative of the level of impairment required for each such rating, and that the Veteran need not demonstrate those exact symptoms to warrant a higher rating. *See Vazquez–Claudio* and *Mauerhan*, *supra.* However, as discussed above, the Board finds that the evidence of record simply does not show that the Veteran has manifested sufficient symptoms of the type, extent and frequency or severity, as

appropriate, to result in a level of impairment that meets, or more nearly approximates, the level of impairment contemplated in the 50 percent rating or any even higher rating under VA's rating schedule.

Additionally, the Board finds at no point from the February 1, 2005 effective date of the award of service connection to May 20, 2015 was the Veteran's PTSD been shown to be so exceptional or unusual to warrant the assignment of any higher rating on an extra-schedular basis. *See* 38 C.F.R. § 3.321(b)(1) (cited in the August 2011 SOC).

The threshold factor for extra-schedular consideration is a finding on the part of the RO or the Board that the evidence presents such an exceptional disability picture that the available schedular ratings for the service-connected disability at issue are inadequate. *See Fisher v. Principi*, 4 Vet. App. 57, 60 (1993). *See also* 38 C.F.R. § 3.321(b)(1); VA Adjudication Procedure Manual, Pt. III, Subpart iv, Ch. 6, Sec. B(5)(c). Therefore, initially, there must be a comparison between the level of severity and the symptomatology of the claimant's disability with the established criteria provided in the rating schedule for this disability. If the criteria reasonably describe the claimant's disability level and symptomatology, then the disability picture is contemplated by the rating schedule, the assigned rating is therefore adequate, and no referral for extra-schedular consideration is required. *See* VAOGCPREC 6-96 (Aug. 16, 1996); *Thun v. Peake*, 22 Vet. App. 111 (2008).

If the rating schedule does not contemplate the claimant's level of disability and symptomatology, and is found inadequate, the RO or Board must determine whether the claimant's exceptional disability picture exhibits other related factors such as those provided by the regulation as "governing norms" (including marked interference with employment and frequent periods of hospitalization). 38 C.F.R. § 3.321(b)(1). If so, then the case must be referred to the Under Secretary for Benefits or the Director of the Compensation and Pension Service for completion of the third step: a determination of whether, to accord justice, the claimant's disability picture requires the assignment of an extra-schedular rating. *Thun, supra*.

In this case, however, the Board finds that schedular criteria are adequate to rate the Veteran's PTSD at all times pertinent to this appeal. As discussed above, the Veteran's predominant subjective and objective psychiatric symptoms impact his overall social and occupational functioning. A comparison between the Veteran's symptoms and the criteria of the rating schedule indicates that the rating criteria reasonably describe his level of impairment. The psychiatric symptoms present in this case are either listed in the schedular criteria or are similar in kind to those listed, as discussed above. Review of the record does not reveal that the Veteran suffers from any symptoms of PTSD that are not contemplated in the nonexhaustive list of symptoms found in the schedular criteria. Further, as noted, the rating schedule provides higher ratings based on evidence demonstrating more severe impairment, and there is no evidence or argument indicating that the schedular criteria are *not* adequate to evaluate the disability.

Furthermore, the Board notes that under *Johnson v. McDonald*, 762 F.3d 1362 (Fed. Cir. 2014), a Veteran may be awarded an extra-schedular rating based upon the combined effect of multiple conditions in an exceptional circumstance where the evaluation of the individual conditions fails to capture all the symptoms associated with service-connected disabilities experienced. However, in this case, the Veteran's PTSD is appropriately rated as a single disability. As the evaluation of multiple service-connected disabilities is not currently at issue, the holding of *Johnson* is inapposite here.

As the threshold requirement for invoking the procedures of 38 C.F.R. § 3.321 are not met, referral for extra-schedular consideration is not required. *See Bagwell v. Brown*, 9 Vet. App. 337, 338-39 (1996); *Floyd v. Brown*, 9 Vet. App. 88, 96 (1996); *Shipwash v. Brown*, 8 Vet. App. 218, 227 (1995).

The Board notes that the matter of the Veteran's entitlement to a total disability rating due to individual unemployability (TDIU) may be considered a component of a rating claim when such is expressly raised by the Veteran or reasonably raised by the record. *See Rice v. Shinseki*, 22 Vet. App. 447 (2009). In this case, the matter of the Veteran's entitlement to a TDIU, in part, due to PTSD is being remanded, below.

For all the foregoing reasons, the Board finds that there is no basis for staged rating of the Veteran's PTSD at any point prior to May 20, 2015. Rather, the Board finds that, resolving all reasonable doubt in the Veteran's favor, an initial, 30 percent rating is warranted from the February 1, 2005 effective date of the award of service connection to May 20, 2015, but that the preponderance of the evidence is against assignment of any higher rating at any pertinent point. *See* 38 U.S.C.A. § 5107(b); 38 C.F.R. § 3.102; *Gilbert v. Derwinski*, 1 Vet. App. 49, 53-56 (1990).

ORDER

An initial, 30 percent rating for PTSD, from February 1, 2005 to May 20. 2015, is granted, subject to the legal authority governing the payment of compensation.

A rating in excess of 30 percent for PTSD, prior to May 20, 2015, is denied.

REMAND

The Board's review of the claims file reveals that further AOJ action in this appeal is warranted.

With regard to the Veteran's TDIU claim, the Board notes that, given the decision to award an initial 30 percent rating for PTSD from February 1, 2005, readjudication of the claim in light of this award is warranted. The Board also notes, however, that, in a December 2015 statement, the Veteran's attorney asserted the Veteran's entitlement to an effective date for the award of service connection for ischemic heart disease (coronary artery disease (CAD)) earlier than May 6, 2012. Inasmuch as the period for consideration and outcome of the TDIU claim could well be impacted by the AOJ's decision on the earlier effective date claim for service connection for CAD, the claims are inextricably intertwined. *See Parker v. Brown*, 7 Vet. App. 116 (1994); *Harris v. Derwinski*, 1 Vet. App. 180, 183 (1991) (holding that two issues are "inextricably intertwined" when they are so closely tied

together that a final Board decision cannot be rendered unless both are adjudicated). Hence, readjudication of the TDIU claim should be deferred pending adjudication of the earlier effective date claim.

The Board notes further notes that review of the claims file reveals that in a July 2015 rating decision, the RO granted special monthly compensation based on housebound criteria from May 20, 2015. In August 2015, the Veteran filed a notice of disagreement with respect to the effective date assigned. However, the AOJ has not yet issued an SOC with respect to this claim, the next step in the appellate process. *See* 38 C.F.R. § 19.29; *Manlincon v. West*, 12 Vet. App 238, 240-41 (1999); *Holland v. Gober*, 10 Vet. App. 433, 436 (1997). Consequently, this matter must be remanded to the AOJ for issuance of an SOC. The Board emphasizes, however, that to obtain appellate review of any issue not currently in appellate status, a perfected appeal must be filed. *See* 38 U.S.C.A. § 7105 (West 2014); 38 C.F.R. §§ 20.200, 20.201, 20.202 (2015).

Accordingly, these matters are hereby REMANDED for the following action:

> 1. Furnish to the Veteran and his attorney an SOC on the claim for an earlier effective date for special monthly compensation based on housebound criteria, along with a VA Form 9, and afford them the appropriate opportunity to file a substantive appeal to perfect an appeal as to that issue.
>
> 2. After undertaking any notification and/or development action deemed appropriate, adjudicate the claim for an earlier effective date for the award of service connection for ischemic heart disease (CAD).
>
> If the claim is denied, furnish to the Veteran and his attorney notice of the denial, and afford them the appropriate opportunity to perfect an appeal as to that

matter (consistent with the actions directed paragraph 1, above).

3. After accomplishing the above, readjudicate the claim for a TDIU in light of all pertinent facts, evidence and legal authority—to include the Board's award of an initial 30 percent rating for PTSD, and any decision(s) with respect to the earlier effective date claims referenced in paragraphs 1 and 2, above.

4. To help avoid future remand, ensure that all requested actions have been accomplished (to the extent possible) in compliance with this REMAND. If any action is not undertaken, or is taken in a deficient manner, appropriate corrective action should be undertaken. *Stegall v. West*, 11 Vet. App. 268 (1998).

5. ***In the interests of judicial economy, and to avoid piecemeal litigation and further delays, if the claim referenced in paragraph 1 continues to be denied, and the claim referenced in paragraph 2 is denied, do not return the claims file to the Board until the Veteran has either perfected an appeal with respect to both decisions, or the time period for doing so for each decision has expired, whichever occurs first.***

The purpose of this REMAND is to afford due process and to accomplish additional development and adjudication; it is not the Board's intent to imply whether the benefits requested should be granted or denied. The Veteran need take no action until otherwise notified, but he may furnish additional evidence and/or argument during the appropriate time frame. *See Kutscherousky v. West*, 12 Vet. App. 369 (1999).

This REMAND must be afforded expeditious treatment. The law requires that all claims 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). ***The AOJ is reminded that this appeal has been advanced on the Board's docket.***

_____

JACQUELINE E. MONROE
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 (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).