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

IN THE APPEAL OF FREDDIE M. EDMUNDS

SS [redacted]

DOCKET NO. 12-07 824) DATE *September 12, 2016*
) *MBJ*
)

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

THE ISSUES

1. Entitlement to service connection for a left shoulder disability.

2. Entitlement to service connection for a right shoulder disability.

3. Entitlement to service connection for a bilateral foot disability, to include pes planus.

REPRESENTATION

Veteran represented by: The American Legion

ATTORNEY FOR THE BOARD

A. Hemphill, Associate Counsel

INTRODUCTION

The Veteran served in active duty from May 1988 to August 1988.

This matter comes to the Board of Veterans' Appeals (Board) on appeal from a March 2011 rating decision issued by the Department of Veterans Affairs (VA) Regional Office (RO) in Roanoke, Virginia.

In his March 2012 substantive appeal (VA Form 9), the Veteran indicated that he wanted a Travel Board hearing and that he did not want a Board hearing. Hearing clarification correspondence was sent to the Veteran's representative and in an August 2016 letter, the representative reported that the Veteran did not wish to have a hearing. *See* the August 2016 hearing clarification letter.

This appeal has been processed entirely electronically using the Veterans Benefits Management System (VBMS) and Virtual VA.

FINDINGS OF FACT

1. A left shoulder disability was not manifested during service and is not otherwise related to service.

2. A right shoulder disability was not manifested during service and is not otherwise related to service.

3. The Veteran had a preexisting bilateral foot disability, to include pes planus that was noted on examination at entrance into service, did not increase in severity in service beyond the natural progression, and was not otherwise aggravated by service.

CONCLUSIONS OF LAW

1. A left shoulder disability was not incurred in or aggravated by service and may not be presumed as such. 38 U.S.C.A. §§ 1101, 1131, 5103, 5103A, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.159, 3.303 (2015).

2. A right shoulder disability was not incurred in or aggravated by service and may not be presumed as such. 38 U.S.C.A. §§ 1101, 1131, 5103, 5103A, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.159, 3.303 (2015).

3. The Veteran's preexisting bilateral foot disability, to include pes planus was not aggravated by active service. 38 U.S.C.A. §§ 1111, 1131, 5103A, 5107 (West 2014); 38 C.F.R. §§ 3.102, 3.159, 3.303, 3.304, 3.306 (2015).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

Duties to Notify and Assist

Under the Veterans Claims Assistance Act (VCAA), when VA receives a complete or substantially complete application for benefits, it must notify the claimant of the information and evidence not of record that is necessary to substantiate the claim, including apprising him of the information and evidence VA will obtain versus the information and evidence he is expected to provide. 38 C.F.R. § 3.159 (2015).

The Veteran was mailed appropriate VCAA notice in July 2010, prior to the initial March 2011 rating decision. That letter advised the Veteran of the information necessary to substantiate his claim, and of his and VA's respective obligations for obtaining specified different types of evidence. See *Quartuccio v. Principi*, 16 Vet. App. 183 (2002); 38 C.F.R. § 3.159(b). The letter also explained how disability ratings and effective dates are determined. *See Dingess v. Nicholson*, 19 Vet. App. 473 (2006), *aff'd sub nom. Hartman v. Nicholson*, 483 F.3d 1311 (2007). Thereafter, the bilateral shoulder claim was readjudicated in a statement of the case (SOC) issued in March 2012 and the bilateral foot claim was readjudicated in an

April 2012 supplemental statement of the case (SSOC). The Veteran has not alleged that VA failed to comply with the notice requirements of the VCAA, and he was afforded a meaningful opportunity to participate effectively in the processing of his claim. *Id*. VA's duty to notify has been satisfied.

VA's duty to assist has also been satisfied. The Veteran's treatment records (STRs) and post-service medical treatment records have been associated with the electronic claims file. Additionally, the Veteran underwent VA examinations to determine the etiology of this bilateral shoulder and bilateral foot disabilities. The examiners discussed the Veteran's medical history, described his disabilities and associated symptoms in detail, and supported all conclusions with analyses based on objective testing and observations. The examiners provided sufficient detail for the Board to make a decision and the reports are deemed adequate with respect to these issues. *Stefl v. Nicholson*, 21 Vet. App. 120, 124 (2007).

All necessary development has been accomplished, and therefore appellate review may proceed without prejudice to the Veteran. *See Bernard v. Brown*, 4 Vet. App. 384 (1993). The Veteran has not made the RO or the Board aware of any additional evidence that must be obtained in order to fairly decide the appeal. He has been given ample opportunity to present evidence and argument in support of his claim. General due process considerations have been complied with by VA. *See* 38 C.F.R. § 3.103 (2015).

Merits of the Service Connection Claims

In general, service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by service. 38 U.S.C.A §§ 1110, 1131; 38 C.F.R. § 3.303(a). Service connection may also be granted for any disease diagnosed after discharge when all of the evidence establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

Establishing service connection generally requires medical evidence or, in certain circumstances, lay evidence showing (1) a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship

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; *see also Hickson v. West*, 12 Vet. App. 247, 253 (1999); *Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009). The requirement of a current disability is "satisfied when a claimant has a disability at the time a claim for VA disability compensation is filed or during the pendency of that claim." *See McClain v. Nicholson*, 21 Vet. App. 319, 321 (2007).

A Veteran will be considered to have been in sound condition when examined, accepted, and enrolled for active service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service. Only such conditions as are recorded in examination reports are to be considered as noted. 38 U.S.C.A. § 1111; 38 C.F.R. § 3.304 (b). The defect, infirmity, or disorder must be detected and noted at entrance examination by a person who is qualified through education, training, or experience to offer medical diagnosis, statement or opinions. See 38 C.F.R. § 3.304 (b); *Bagby v. Derwinski*, 1 Vet. App. 225, 227 (1991).

A pre-existing injury or disease will be considered to have been aggravated by active military, naval or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease. 38 U.S.C.A. § 1153; 38 C.F.R. § 3.306 (a). Temporary or intermittent flare-ups during service of a pre-existing injury or disease are not sufficient to be considered aggravation in service unless the underlying disability, as contrasted to the symptoms of that disability, has worsened. *See Crowe v. Brown*, 7 Vet. App. 238, 247-48 (1994); *Hunt v. Derwinski*, 1 Vet. App. 292, 297 (1991). Clear and unmistakable evidence (obvious and manifest) is required to rebut the presumption of aggravation where the pre-service disability underwent an increase in severity during service. 38 C.F.R. § 3.306 (b).

Insofar as the Veteran presents an argument of continuity of symptomatology, the U.S. Court of Appeals for the Federal Circuit has held that service connection can

be based on continuity of symptomatology only with respect to the specific chronic diseases listed in 38 C.F.R. § 3.309 (a). *Walker v. Shinseki*, 708 F.3d 1331, 1337 (Fed. Cir. 2013). Pes planus, tendonitis and bursitis are not listed as chronic conditions under 38 C.F.R. § 3.309 (a).

In its determinations whether service connection is warranted for a disability, the Board must fully consider the lay assertions of record. A layperson is competent to report on the onset and continuity of his current symptomatology. *See Layno v. Brown*, 6 Vet. App. 465, 470 (1994) (finding that a Veteran is competent to report on that of which he or she has personal knowledge). Lay evidence can also be competent and sufficient evidence of a diagnosis or to establish etiology if (1) the layperson is competent to identify the medical condition, (2) the layperson is reporting a contemporaneous medical diagnosis, or (3) lay testimony describing symptoms at the time supports a later diagnosis by a medical professional. *Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed.Cir.2009); *Jandreau v. Nicholson*, 492 F.3d 1372, 1376-77 (Fed. Cir. 2007). When considering whether lay evidence is competent, the Board must determine, on a case by case basis, whether the Veteran's particular disability is the type of disability for which lay evidence may be competent. *Kahana v. Shinseki*, 24 Vet. App. 428 (2011); *see also Jandreau v. Nicholson*, 492 F.3d 1372, 1376-77.

When there is an approximate balance of positive and negative evidence regarding a material issue, the Veteran is given the benefit of the doubt. 38 U.S.C.A. § 5107. To deny a claim on its merits, the evidence must preponderate against the claim. *Alemany v. Brown*, 9 Vet. App. 518, 519 (1996).

Left and Right Shoulder Disabilities

The Veteran contends that he developed a bilateral shoulder disability as a result of doing push-ups during basic training in service. He indicated that he sought medical attention and after two weeks, he returned to full duty. *See* the November 2010 VA examination.

Taking into account all relevant evidence, the Board finds that service connection is not warranted for the Veteran's bilateral shoulder disability. Although the Veteran has a current diagnosis of tendonitis of the bilateral shoulders and service treatment records note in-service injury and treatment of the bilateral shoulders, there is no evidence that the Veteran's current disability is related to his active service.

STRs show that the Veteran was treated for bilateral shoulder pain in May 1988. The clinician diagnosed the Veteran with bilateral shoulder muscle strain and spasms of the supraspinatus muscle. The following day, the clinician determined that the Veteran had exertional rhabdomyolysis (muscle breakdown). *See* the May 1988 STR notes. X-ray views of both shoulders were normal as no significant radiographic abnormalities of the bones or joints were identified. No subsequent pain, treatment or diagnoses of the bilateral shoulders are noted.

Post-service private treatment records show that the Veteran was treated for a left shoulder sprain in July 2005. He received an injection for the pain. A July 2007 private treatment note shows that he Veteran was treated for left shoulder stiffness and pain. He was diagnosed with bursitis of the left shoulder at that time. In December 2009, the Veteran was treated for back pain caused by shoveling snow. There was no notation regarding bilateral shoulder pain.

The Veteran was afforded a VA examination in November 2010. X-rays showed "normal bilateral shoulder." Upon review of the record and examination of the Veteran, the examiner determined that the Veteran's current left shoulder bursitis and bilateral tendonitis were not related to his in-service injury. Rather, he found that the Veteran's bilateral shoulder disability were more likely related to his post-service employment that required lifting, pushing and pulling. The examiner noted the Veteran's report of injury to his left shoulder following a post-service motor vehicle accident (in approximately 2009 or 2010) and the single incident of bursitis. However, upon consideration of the complete record, he determined that the 17 year gap between the in-service injury and the complaints of the current disability, the Veteran's post-service employment and the reported motor vehicle accident were more likely the causes of his current bilateral shoulder disability. Additionally, the

examiner reasoned that record did not support a finding that there was recurrence of rhabdomyolysis because his recent creatine phosphokinase (CPK) was near normal.

The Board has reviewed the service treatment records, post-service medical records, and the VA examination. Additionally, the Board has reviewed the March 2011 statement from the Veteran's mother, in which she indicates that the Veteran informed her of the in-service injury. These records do not include any competent opinion linking the claimed disabilities to service. There is no competent evidence or opinion that the Veteran's bilateral shoulder disability is related to his military service.

The VA medical opinion is persuasive and warrants being assigned great probative weight. The opinion was rendered by a medical professional with the expertise to opine on the matter at issue in this case. In addition, the examiner addressed the Veteran's contentions and based her opinion following a review of the claims folder as well as a complete physical examination. There is no pertinent opinion to the contrary.

The most probative evidence of record is against finding that the Veteran's bilateral shoulder disability is related to service. In making this decision the Board notes that the Veteran is competent to report shoulder pain symptoms and the circumstances surrounding such. Although lay persons are competent to provide opinions on some medical issues, *see Kahana v. Shinseki*, 24 Vet. App. 428, 435 (2011), the specific issues in this case, the etiology of the Veteran's bilateral shoulder disability falls outside the realm of common knowledge of a lay person. *See Jandreau v. Nicholson*, 492 F.3d 1372, 1377 n.4 (Fed. Cir. 2007) (explaining in footnote 4 that a Veteran is competent to provide a diagnosis of a simple condition such as a broken leg, but not competent to provide evidence as to more complex medical questions).

The Board has considered the applicability of the benefit-of-the-doubt doctrine; however, because the preponderance of the evidence is against the claim, that doctrine is not applicable. 38 U.S.C.A. § 5107 (b).

Bilateral Pes Planus

The Veteran contends that his bilateral foot condition, pes planus, was aggravated by active duty service (i.e., beyond the natural progress of the disease). Specifically, he asserts that although he did not seek treatment in service or after service, wearing boots during basic training caused his bilateral foot pain. *See* the August 2012 VA examination.

Taking into account all lay and medical relevant evidence, the Board finds that service connection is not warranted for the Veteran's bilateral pes planus. In this regard, the evidence of record shows that the Veteran's bilateral pes planus condition preexisted service and was not aggravated therein.

In the March 1988 examination for the Veteran's enlistment into military service, it was clinically noted that the Veteran abnormality of his feet. In this regard, the examiner noted that the Veteran had "pes planus no symptoms" in the summary section of the enlistment examination. As such, the evidence shows that the Veteran's bilateral pes planus condition was noted on examination when he was accepted and enrolled into service, and the presumption of soundness on induction as to bilateral flat feet therefore is not applicable. 38 U.S.C.A. § 1111; 38 C.F.R. § 3.304 (b). Thus, his claim of service connection for bilateral pes planus will be considered based on a theory of aggravation of a preexisting disability. 38 U.S.C.A. § 1153; 38 C.F.R. § 3.306. In order for the presumption of aggravation to arise, the evidence must show that there was a permanent increase in the severity of bilateral pes planus during service.

Although the service treatment records (STRs) reflect a diagnosis of "pes planus no symptoms" upon enlistment examination in March 1988 and there is no separation examination, there is no indication of any foot trouble in-service.

Post-service treatment records from August 2004 through May 2010 contain no discussion or findings as to the likely etiology or progression of the Veteran's bilateral foot condition.

The Veteran was afforded a VA examination in April 2012. The VA examiner diagnosed the Veteran with bilateral pes planus. The VA examiner opined that the Veteran's current foot condition pre-existed prior to service and was clearly and unmistakably not aggravated beyond its natural progression by an in-service injury, event or illness. He reasoned that there was no medical documentation of complaints or treatment for pes planus in service and no evidence of chronicity as the first instance of treatment for his feet is 16 years later in 2004. The examiner noted that the 2004 treatment was for callouses and it was then noted that the Veteran had a varus foot type with equinus. Foot inserts were recommended. No further treatment is noted is noted since 2010. He explained that there was no specific injury in-service that could have permanently worsened the pre-existing foot condition beyond its natural progression.

The Board places substantial probative weight on the negative nexus VA opinion. Although there is no separation examination, the service records are entirely negative for any indication of aggravation. Moreover, the medical evidence of record during the period on appeal shows no foot disability which is related to service. The VA examiner did not find that the Veteran's foot condition was aggravated by service beyond its natural progress, even in consideration of the Veteran's lay contentions of ongoing pain. The examiner's opinion that there was no service aggravation is probative and persuasive because the examiner reviewed the entirety of the record and conducted full physical examination, finding no indication of current residuals related to service, or any indication that the pre-existing pes planus had been permanently aggravated by service. In this regard, read as a whole, the evidence shows that the Veteran’s pre-existing pes planus underwent no increase in severity during service.

The Board has considered that the Veteran has contended on his own behalf that his foot condition was aggravated by his military service. The Board has also considered Veteran's mother's statement that the Veteran did not complain about foot pain before his active service. *See* the March 2011 buddy statement. Lay witnesses are competent to provide testimony or statements relating to symptoms or facts of events that the lay witness observed and is within the realm of his or her personal knowledge but not competent to establish that which would require

specialized knowledge or training, such as medical expertise. Lay evidence may also be competent to establish medical etiology or nexus. *Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009). However, "VA must consider lay evidence but may give it whatever weight it concludes the evidence is entitled to" and mere conclusory generalized lay statement that service event or illness caused the claimant's current condition is insufficient to require the Secretary to provide an examination. *Waters v. Shinseki*, 601 F.3d 1274, 1278 (2010).

While the Veteran is competent to describe his symptoms and treatment for his foot, and the observable symptoms, the Board accords his statements regarding whether the underlying disability worsened in service little probative value as he is not competent to opine on such complex medical questions. The Board makes the same findings regarding his mother's statement. Consequently, the Board finds that the Veteran's contentions are outweighed by the competent and probative VA examiner's findings.

In weighing the competent evidence of record on the matter of whether there was a permanent increase in severity of bilateral pes planus during service, the Board also places the most probative value on the lack of complaints or treatment of pes planus in service after it was documented during enlistment examination, the lack of complaints or treatment for 16 years after service, and the April 2012 VA examiner's opinion. As such, the Board finds that the disability underwent no increase in severity during service. The claim of service connection for bilateral pes planus must therefore be denied.

As the preponderance of the evidence is against the claim, the benefit of the doubt rule is not for application. 38 U.S.C.A. § 5107 (b), 38 C.F.R. § 3.102.

ORDER

Service connection for a left shoulder disability is denied.

Service connection for a right shoulder disability is denied.

Service connection for a bilateral foot disability, to include pes planus is denied.

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Nathaniel J. Doan
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).