



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

IN THE APPEAL OF  
ROBERT M. PAYAO



DOCKET NO. 10-441 22A                    )     *DATE*        *July 6, 2016*  
  )                                *KK*  
  )

On appeal from the  
Department of Veterans Affairs Regional Office in Muskogee, Oklahoma

**THE ISSUES**

1. Entitlement to an effective date earlier than August 12, 2010 for the award of service connection for kidney disease.
  
2. Entitlement to an effective date earlier than August 12, 2010 for the award of service connection for sinusitis.
  
3. Entitlement to an effective date earlier than March 21, 2012 for the award of service connection for sleep apnea.

**REPRESENTATION**

Appellant represented by: Veterans of Foreign Wars of the United States

**WITNESS AT HEARING ON APPEAL**

Appellant



ATTORNEY FOR THE BOARD

P. Wirth, Associate Counsel

INTRODUCTION

The Veteran served honorably on active duty in the United States Air Force from July 1975 to January 1998.

This case comes before the Board of Veterans' Appeals (Board) on appeal from a May 2013 Decision Review Officer Decision of the Department of Veterans Affairs (VA) Regional Office (RO) in Muskogee, Oklahoma. That decision granted service connection for kidney disease with an evaluation of 60 percent effective August 12, 2010, for sinusitis with an evaluation of 30 percent effective August 12, 2010, for sleep apnea with an evaluation of 50 percent effective March 21, 2012, and for a deviated septum with an evaluation of 0 percent effective August 12, 2010. It also established basic eligibility to Dependents' Educational Assistance effective August 12, 2010.

In April 2014, the Veteran filed a Notice of Disagreement regarding only the effective dates for the grants of service connection for kidney disease, sinusitis, and sleep apnea. The RO furnished the Veteran a Statement of the Case in June 2014, and the Veteran filed a Substantive Appeal (VA Form 9) in August 2014.

In October 2015, the Veteran testified at a hearing before the undersigned Veterans Law Judge (VLJ). A transcript of the hearing is associated with the claims file.

FINDINGS OF FACT

1. On August 12, 2010, the Veteran initially requested service connection for kidney disease and sinusitis.

IN THE APPEAL OF  
ROBERT M. PAYAO



2. The evidence of record reflects that the Veteran did not file a claim for service connection for kidney disease or sinusitis prior to August 12, 2010.
3. The Veteran was diagnosed with obstructive sleep apnea in October 2007.
4. The first time the Veteran submitted a claim for service connection for sleep apnea was in January 2009.
5. In a May 2009 rating decision, service connection for sleep apnea was denied.
6. In November 2009, the Veteran requested that his claim for sleep apnea be reconsidered on a secondary basis as being caused by his major depressive disorder.
7. A February 2010 rating decision continued the denial of service connection for sleep apnea, to include as secondary to depression/dysthymic disorder. The Veteran was notified of this determination by a February 2010 letter that included his appeal rights. He did not appeal the decision.
8. On March 21, 2012, VA received a February 2012 Independent Medical Examination that the RO construed as a request to reopen the Veteran's claim for service connection for sleep apnea.
9. The Veteran was granted service connection for sleep apnea and assigned an effective date of March 21, 2012.
10. There is no probative evidence of record that shows the Veteran was entitled to an effective date earlier than March 21, 2012, the date of receipt of the Independent Medical Examination that was used to reopen the Veteran's claim for sleep apnea.



### CONCLUSIONS OF LAW

1. The criteria for an effective date earlier than August 12, 2010 for the award of service connection for kidney disease have not been met. 38 U.S.C.A. §§ 5107, 5110 (West 2014); 38 C.F.R. §§ 3.102, 3.400 (2015).
2. The criteria for an effective date earlier than August 12, 2010 for the award of service connection for sinusitis have not been met. 38 U.S.C.A. §§ 5107, 5110 (West 2014); 38 C.F.R. §§ 3.102, 3.400 (2015).
3. The criteria for an effective date earlier than March 21, 2012 for the award of service connection for sleep apnea have not been met. 38 U.S.C.A. §§ 5107, 5110 (West 2014); 38 C.F.R. §§ 3.102, 3.400 (2015).

### REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Board has reviewed all of the evidence in the Veteran's claims file. Although the Board has an obligation to provide adequate reasons and bases supporting this decision, there is no requirement that the evidence submitted by the Veteran or obtained on his behalf be discussed in detail. Rather, the Board's analysis below will focus specifically on what evidence is needed to substantiate the Veteran's claims and what the evidence in the claims file shows, or fails to show, with respect to those claims. *See Gonzales v. West*, 218 F.3d 1378, 1380-81 (Fed. Cir. 2000). The Veteran must not assume that the Board has overlooked pieces of evidence that are not explicitly discussed herein. *Timberlake v. Gober*, 14 Vet. App. 122, 128-30 (2000).

#### I. VA'S Duty to Notify and Assist

Before addressing the merits of the Veteran's claims, the Board is required to ensure that VA has satisfied its duties to notify and assist the Veteran in substantiating his claims for VA benefits, as provided for by the Veterans Claims



Assistance Act of 2000 (VCAA). 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5106, 5107, 5126 (West 2014); 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a) (2015).

The Board begins by noting that, as service connection for kidney disease, sinusitis, and sleep apnea was awarded and initial ratings and effective dates were assigned during the appeal, the notice requirements of 38 U.S.C.A. § 5103(a) have been met. *Hartman v. Nicholson*, 483 F.3d 1311 (Fed. Cir. 2007).

VA also has fulfilled its duty to assist the Veteran. VA did not obtain any additional evidence in connection with the claims for earlier effective dates; however, such was not necessary. VA did substantial development in connection with the Veteran's claims for entitlement to service connection for kidney disease, sinusitis, and sleep apnea. Once service connection was awarded and the Veteran requested an earlier effective date, no additional evidence was needed to determine whether an earlier effective date was warranted.

As previously noted, the Veteran was provided an opportunity to set forth his contentions during a hearing before the undersigned VLJ in October 2015. In *Bryant v. Shinseki*, 23 Vet. App. 488 (2010), the court held that 38 C.F.R. § 3.103(c)(2) requires that the hearing officer explain the issues and suggest the submission of evidence that may have been overlooked. Neither the Veteran nor his representative has asserted that VA failed to comply with 38 C.F.R. § 3.103(c)(2), or identified any prejudice in the conduct of the Board hearing. The hearing focused on the evidence necessary to substantiate the claims for earlier effective dates and the Veteran, through his testimony, demonstrated that he had either actual knowledge of the evidence necessary to substantiate his claims, or that a reasonable person could be expected to understand from the notice what was needed. The VLJ asked relevant questions to draw out the evidence necessary to substantiate the Veteran's claims. As such, the Board finds that, consistent with *Bryant*, the VLJ complied with the duties set forth in 38 C.F.R. § 3.103(c)(2) and that any error in notice provided during the Veteran's hearing constitutes harmless error.

In sum, there is no evidence of any VA error in assisting the Veteran that reasonably affects the fairness of this adjudication. The Veteran was been afforded



a meaningful opportunity to participate in the adjudication of the claims. Hence, the case is ready for adjudication.

## II. Early Effective Dates

Generally, a specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA. 38 U.S.C.A. § 5101(a) (West 2014); 38 C.F.R. § 3.151(a) (2015). The term “claim” means a written communication requesting a determination of entitlement or evidencing a belief in entitlement to a VA benefit. 38 C.F.R. § 3.1(p) (2015).

The assignment of effective dates of awards is generally governed by 38 U.S.C.A. § 5110 and 38 C.F.R. § 3.400. Unless specifically provided otherwise, the effective date of an award based on an original claim or a claim reopened after final adjudication “shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.” 38 U.S.C.A. § 5110(a) (West 2014). The implementing regulation clarifies this to mean that the effective date of service connection based on an original claim or reopened claim will be the “date of receipt of the claim or the date entitlement arose, whichever is the later.” See 38 C.F.R. § 3.400(r) (2015). If there is a prior final RO or Board denial of the benefit sought, the effective date cannot be earlier than a subsequent claim to reopen. 38 C.F.R. § 3.400(q)(2) (2015); *Leonard v. Principi*, 17 Vet. App. 447 (2004).

### *Kidney Disease*

The Veteran’s claim for entitlement to an earlier effective date for the award of service connection for kidney disease stems from the May 2013 rating decision that granted him entitlement to service connection for kidney disease as secondary to his service-connected gout and assigned an effective date of August 12, 2010, the date of his initial claim for service connection of kidney disease.

The Veteran seeks an effective date of April 24, 2006, the date assigned for an increased rating of his service-connected gout. The Veteran relies on 38 C.F.R.



§ 3.310 to support his position, which provides “[w]hen service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.” He states that his appeal for an increased rating for his gout was continually prosecuted since April 24, 2006. *See* October 2015 Board Hearing Transcript at 4-5 and 11.

In July 2007, the Veteran brought claims for increased ratings of his service-connected hearing loss, gout, and major depressive disorder; however, there is no mention of kidney disease. *See* July 2007 Statement in Support of Claim (VA Form 21-4138). With respect to gout, a March 2008 rating decision increased the rating to 20 percent effective April 24, 2006, the date VA treatment provided objective evidence of treatment for more than one exacerbation of gout in one year. The Veteran did not appeal that rating decision.

In January 2009, the Veteran brought a new claim for an increased rating for his gout, but again made no mention of a claim for kidney disease. *See* January 2009 VA Form 21-4138.

On August 12, 2010, VA received Veteran’s Supplemental Claim (VA Form 21-526b) seeking, in relevant part, service connection for kidney disease. A February 2011 rating decision noted treatment for chronic kidney disease beginning in September 2007, but denied service connection because it was neither occurred in nor caused by his service. In his January 2012 Notice of Disagreement, the Veteran requested service connection for chronic kidney disease as secondary to prescribed medications to treat his gout, back, and chronic cervical degenerative disk disease with radiculopathy. The May 2013 rating decision then granted service connection on a secondary basis.

The Board finds that no evidence of record can be construed as a claim for service connection for kidney disease prior to the August 12, 2010 claim. Rather, the record reflects that the Veteran did not submit any statements, written or otherwise, prior to August 12, 2010 that mentioned kidney disease or showed an intent to claim benefits for such disability. Therefore, according to 38 U.S.C.A. § 5110(a)



and 38 C.F.R. § 3.400, August 12, 2010 is the appropriate effective date for the grant of service connection for kidney disease.

The Board notes that April 24, 2006 is not an appropriate effective date for the grant of service connection for kidney disease for several reasons. In addition to those discussed above, the Veteran did not appeal the March 2008 rating decision that increased the rating to 20 percent for his service-connected gout effective April 24, 2006. As such, that decision became final and was not continuously appealed as the Veteran suggests.

More importantly, 38 C.F.R. § 3.310 is a regulation that governs grants of service connection for disabilities that are caused by service-connected disabilities. It provides that the secondary condition is treated as a part of the original condition for purposes of granting service connection. It does not establish the effective date for grants of service connection, which is governed by 38 C.F.R. § 3.400. As such, the date that the Veteran was granted service connection for gout or an increased rating for gout is not relevant with respect to establishing the effective date of service connection for any disability that is caused by the gout.

Thus, the Board finds that in this case, the only date that could serve as a basis for the award of service connection for kidney disease is the date of receipt of the Veteran's initial application for service connection on August 12, 2010. There is no legal entitlement to an earlier effective date. Accordingly, the Board finds that the preponderance of the evidence is against the claim for an earlier effective date, and the claim must be denied.

*Sinusitis*

The May 2013 rating decision that granted entitlement to service connection for sinusitis assigned an effective date of August 12, 2010, the date of the initial claim for service connection of sinusitis.

The Veteran seeks an effective date of September 18, 1992, which is the date of a VA examination. The Veteran maintains that examination should be accepted as a





claim for benefits for sinusitis. *See* October 2015 Board Hearing Transcript at 7 and 11.

In June 1998, the Veteran filed claims seeking service connection for hearing loss, injured back, fractured right hand, and acute arthritis gout. *See* June 1998 Veteran's Application for Compensation or Pension (VA Form 21-526).

A VA examination was provided in September 1998. It is noted that the Veteran had "a complaint about sinus problems" and reported "a lot of congestion, especially seasonally in the springtime in Oklahoma." The diagnoses were high frequency sensorineural hearing loss, constant tinnitus bilaterally, deviated nasal septum, and 30 percent bilateral nasal obstruction.

A November 1998 rating decision granted service connection for depression/dysthymic disorder, high frequency hearing loss, tinnitus, lumbosacral strain, fracture of the fourth metacarpal right hand, and gout of the right great toe. It was silent as to a claim for sinusitis. The Veteran did not appeal that rating decision.

The first time the Veteran submitted a claim for sinusitis was on August 12, 2010. *See* August 2010 Veteran's Supplemental Claim (VA Form 21-526b). Specifically, he sought service connection for a deviated septum causing rhinitis and sinusitis. A February 2011 rating decision granted service connection for mild allergic rhinitis, but denied service connection for sinusitis and a deviated septum.

A March 2013 VA examination shows the Veteran was diagnosed with chronic sinusitis in September 1992 while in service. The examiner noted that service treatment records show multiple treatments for sinusitis over several years, indicating a chronic condition that also was related to his chronic allergic rhinitis. The examiner concluded that both conditions would persist post service. The May 2013 rating decision then granted service connection for sinusitis.

The Board finds that no evidence of record can be construed as a claim for service connection for sinusitis prior to the August 12, 2010 claim. Although the Veteran reported at his September 1998 VA examination that he had "sinus problems" and



“a lot of congestion,” he did not file a claim for sinusitis or file a notice of disagreement to the November 1998 rating decision that did not address sinusitis. As such, his actions do not suggest that he intended his report of sinus problems at the VA examination to be a claim for service connection of sinusitis.

In addition, no diagnosis of sinusitis was made by the November 1998 VA examiner. Generally, in order to prove service connection, there must be competent, credible evidence of a current disability. *See, e.g., Davidson v. Shinseki*, 581 F.3d 1313 (Fed. Cir. 2009);

Although the March 2013 VA examiner diagnosed chronic sinusitis beginning in September 1992, 38 C.F.R. § 3.400(r) makes clear that the effective date of service connection will be the “date of receipt of the claim or the date entitlement arose, whichever is the later.” The later date in this case is the date of receipt of the claim.

Therefore, August 12, 2010, the date of the Veteran’s initial claim, is the appropriate effective date for the grant of service connection for sinusitis. 38 U.S.C.A. § 5110(a) (West 2014); 38 C.F.R. § 3.400 (2015). There is no legal entitlement to an earlier effective date. Accordingly, the Board finds that the preponderance of the evidence is against the claim for an earlier effective date, and the claim must be denied.

#### *Sleep Apnea*

The May 2013 rating decision granted service connection for sleep apnea as secondary to service-connected mild allergic rhinitis and assigned an effective date of March 21, 2012, the date VA received a February 2012 Independent Medical Examination. The Veteran again seeks an effective date as of the September 18, 1992 VA examination. *See* October 2015 Board Hearing Transcript at 8-9 and 11.

As noted above, in June 1998, the Veteran filed claims for service connection, which did not include a claim for sleep apnea. *See* June 1998 VA Form 21-526. At the September 1998 VA examination, the Veteran reported that he had “a lot of congestion” and that he was able to breathe through his nose adequately well,



except with occasional congestion. The relevant diagnoses were deviated nasal septum and 30 percent bilateral nasal obstruction. The November 1998 rating decision did not include a claim for sleep apnea and the Veteran did not appeal that rating decision.

An October 2007 sleep study report shows that the Veteran was diagnosed with severe obstructive sleep apnea.

The first time the Veteran submitted a claim for sleep apnea was in January 2009. *See* January 2009 VA Form 21-4138. A May 2009 rating decision denied service connection for sleep apnea. In November 2009, the Veteran requested that his claim for sleep apnea be reconsidered on a secondary basis as being caused by his major depressive disorder. A February 2010 rating decision continued the denial of service connection for sleep apnea, to include as secondary to depression/dysthymic disorder. The Veteran was notified of this determination by a February 2010 letter that included his appeal rights. He did not appeal the decision.

On March 21, 2012, VA received a February 2012 Independent Medical Examination performed by E.C., M.D. in which the physician opined that the Veteran's chronic sinusitis and allergic rhinitis significantly contributed to his sleep apnea. The RO construed this report liberally and sympathetically as a request to reopen the Veteran's claim for sleep apnea.

The Board notes that the Veteran was first diagnosed with sleep apnea in October 2007; therefore, an October 2007 date is the earliest possible effective date for the Veteran's sleep apnea. As such, an effective date based on the September 1998 VA examination, which did not diagnose sleep apnea, is not warranted.

As noted above, the effective date of service connection based on a reopened claim will be the "date of receipt of the claim or the date entitlement arose, whichever is the later." *See* 38 C.F.R. § 3.400 (r) (2015). If there is a prior final RO or Board denial of the benefit sought, the effective date cannot be earlier than a subsequent



claim to reopen. 38 C.F.R. § 3.400(q)(2) (2014); *Leonard v. Principi*, 17 Vet. App. 447 (2004).

The Veteran did not file a notice of disagreement in response to the February 2010 rating decision that denied service connection for sleep apnea and it became final. 38 U.S.C.A. § 7105 (West 2014); 38 C.F.R. §§ 20.302, 20.1103 (2015). As such, the Veteran cannot obtain an effective date back his initial claim for sleep apnea in January 2009.

The next correspondence in the claims file that relates to sleep apnea is the February 2012 Independent Medical Examination received on March 21, 2012. Therefore, March 21, 2012, the date of receipt of the Independent Medical Examination that was used to reopen the Veteran's claim for sleep apnea, is the only date that could serve as a basis for the award of service connection for sleep apnea.

In sum, the Board finds that the preponderance of the evidence in this case does not support entitlement to service connection for sleep apnea prior to March 21, 2012, and the claim must be denied.

In reaching the conclusions above, the Board has considered the applicability of the benefit-of-the-doubt doctrine. However, as the preponderance of the evidence is against the Veteran's claims, that doctrine is not applicable in the instant appeal. *See* 38 U.S.C.A. § 5107(b); *Ortiz v. Principi*, 274 F.3d 1361, 1364 (Fed. Cir. 2001).

The Board is grateful to the Veteran for his honorable service, and regrets that more favorable outcomes could not be reached.

#### ORDER

Entitlement to an effective date earlier than August 12, 2010 for the award of service connection for kidney disease is denied.

IN THE APPEAL OF  
ROBERT M. PAYAO



Entitlement to an effective date earlier than August 12, 2010 for the award of service connection for sinusitis is denied.

Entitlement to an effective date earlier than March 21, 2012 for the award of service connection for sleep apnea is denied.

---

DEBORAH W. SINGLETON  
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](mailto: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).