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

IN THE APPEAL OF ROBERT E. SCHMOKER

SS [redacted]

DOCKET NO. 14-20 083) DATE *October 7, 2016*
) *QLJ*
)

Received from the
Department of Veterans Affairs Regional Office in Los Angeles, California

THE ISSUES

1. Entitlement to service connection for bilateral hearing loss.

2. Entitlement to service connection for tinnitus, to include as due to bilateral hearing loss.

REPRESENTATION

Appellant represented by: The American Legion

ATTORNEY FOR THE BOARD

Ashley Martin, Associate Counsel

INTRODUCTION

The Veteran had active military service from October 1961 to October 1963.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a September 2013 rating decision of a Department of Veterans Affairs (VA) Regional Office (RO).

On his VA Form 9, the Veteran initially requested a hearing before a member of the Board at the RO; however, by written notice received in June and September of 2014, the Veteran withdrew this request for a hearing. Thus, the Veteran's hearing request was cancelled and his representative was given an opportunity to submit written argument in favor of the Veteran's claims, which it did in April 2015 and April 2016.

In a September 2016 appellate brief, the Veteran's representative submitted additional evidence. However, this evidence is subject to initial review by the Board, since the Veteran perfected his appeal May 2014, and did not request that the agency of original jurisdiction (AOJ) initially review the evidence. *See* Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Pub. L. No. 112-154, 126 Stat. 1165 (amending 38 U.S.C.A. § 7015(e)(1) to provide an automatic waiver of initial AOJ review of evidence at the time of or subsequent to the submission of a substantive appeal where the substantive appeal is filed on or after February 2, 2013). Thus, the Board accepts this evidence for inclusion in the record.

The Board remanded this matter in April 2016. As there has been substantial compliance with the remand directives, the Board may proceed with adjudicating the issues on appeal. *Stegall v. West*, 11 Vet. App. 268 (1998).

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c) (2015). 38 U.S.C.A. § 7107(a)(2) (West 2014).

FINDINGS OF FACT

1. The preponderance of the evidence weighs against a finding that the Veteran's current bilateral hearing loss is related to service.

2. The preponderance of the evidence weighs against a finding that the Veteran's tinnitus is related to acoustic trauma sustained in service or was proximately caused or aggravated by a service-connected disability.

CONCLUSION OF LAW

1. The criteria for service connection for bilateral hearing loss have not been met. 38 U.S.C.A. §§ 1110, 1111, (West 2014); 38 C.F.R. §§ 3.303, 3.309, 3.385 (2015).

2. The criteria for service connection for tinnitus, to include as secondary to a service-connected disability have not been met. 38 U.S.C.A. §§ 1110 , 1111 (West 2014); 38 C.F.R. §§ 3.303 , 3.310 (2015).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

With respect to the Veteran's claim herein, VA has met all statutory and regulatory notice and duty to assist provisions. See 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5106, 5107, 5126; 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326; *see also Scott v. McDonald*, 789 F.3d 1375 (Fed. Cir. 2015).

Establishing service connection generally requires medical or, in certain circumstances, lay evidence of (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a link between the claimed in-service disease or injury and the present disability. *See Davidson v. Shinseki*, 581 F.3d 1313 (Fed.Cir.2009); *Shedden v. Principi*, 381 F.3d 1163 (Fed.Cir.2004); *Hickson v. West*, 12 Vet.App. 247 (1999). For chronic diseases listed in 38 C.F.R. § 3.309 (a), (including sensorineural hearing loss and tinnitus) the linkage element of

service connection may also be established by demonstrating continuity of symptoms since service. 38 C.F.R. § 3.303 (b); *see Walker v. Shinseki*, 708 F.3d 1331 (Fed.Cir.2013). 38 C.F.R. § 3.307 (a)(3) provides for presumptive service connection for chronic diseases that become manifest to a degree of 10 percent or more within 1 year from the date of separation from service.

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

Service connection may also be granted under a theory of secondary service connection, where there is: (1) evidence of a current disorder; (2) evidence of a service-connected disability; and, (3) nexus evidence establishing a connection between the service-connected disability and the current disorder. S*ee Wallin v. West*, 11 Vet. App. 509, 512 (1998).

In addition, the regulations provide that service connection is warranted for a disorder that is aggravated by, proximately due to, or the result of a service-connected disease or injury. 38 C.F.R. § 3.310.

For VA purposes, impaired hearing will be considered a disability when the auditory threshold for any of the frequencies of 500, 1000, 2000, 3000 and 4000 Hertz is 40 decibels or greater; the auditory thresholds for at least three of these frequencies are 26 decibels or greater; or speech recognition scores using the Maryland CNC Test are less than 94 percent. 38 C.F.R. § 3.385. The threshold for normal hearing is between 0 and 20 decibels and higher thresholds show some degree of hearing loss. *Hensley v. Brown*, 5 Vet. App. 155 (1993).

The Veteran seeks service connection for bilateral hearing loss and tinnitus, which he attributes to in-service noise exposure.

The service treatment records do not show that the Veteran had any complaints of or treatment for hearing loss or tinnitus during service. At the Veteran's August 1961 enlistment examination audiometric testing was not conducted, however, a

whisper test shows normal results. Audiometric test results (converted to ISO units) at that time were as follows:

	HERTZ				
	500	**1000**	**2000**	**3000**	**4000**
RIGHT	25	20	35	X	20
LEFT	25	20	20	X	15

Test results (converted) at 8000 hertz were 45 decibels in the right ear; 20 in the left ear. On the September 1963 separation examination report, “deafness partial, one ear” was noted under the Summary of Defects and Diagnoses.

The earliest post-service evidence of bilateral hearing loss is a September 2000 VA Audiology consultation, which showed the Veteran had the following pure tone thresholds upon audiometric evaluation:

	HERTZ				
	500	**1000**	**2000**	**3000**	**4000**
RIGHT	30	35	40	55	50
LEFT	15	20	35	50	45

The impression was mild sensorineural hearing loss through 2000 Hertz with a moderate to severe loss from 3000 to 8000 Hertz in the right ear and normal hearing through 1000 Hertz with a mild to moderate sensorineural hearing loss from 2000 to 8000 Hertz in the left ear. At that time, the Veteran denied having tinnitus.

In December 2011, the Veteran was seen in the VA ENT Clinic on referral from his primary care physician. He complained of hearing loss since service and reported he was in the Artillery, "8 inch guns in Germany - bigger during training." He was assessed to have cerumen impaction and hearing loss. He was referred to the Audiology Clinic for consultation, which was conducted in February 2012. At that time, the Veteran reported gradual onset and progression of bilateral hearing loss, right worse than left, and tinnitus in the right ear that was periodic and described as "chirping." The only noise exposure the Veteran related was during his military

service while in the Army and exposed to artillery without hearing protection. The actual audiometric test results are not of record. The impression was mild sloping to severe mixed hearing loss from 250 to 8000 Hertz with good word recognition for amplified speech on the right, and normal hearing from 250 to 1000 Hertz sloping to mild to moderately-severe sensorineural hearing loss from 1500 to 8000 Hertz with good word recognition for conversational speech on the left. This represented a 10 to 35 decibel decrease in the right ear and a 15 to 20 decibel decrease in the left ear when compared to the September 2000 audiometry. He was referred back to the ENT Clinic for evaluation for his mixed hearing loss in the right ear and asymmetrical tinnitus.

He seen again in the ENT Clinic about a week later and reported decreased hearing loss since in the service and noise exposure in service to artillery with the right ear being more exposed. He also reported tinnitus on the right described as "chirping" that was worse at night. The Veteran declined having a magnetic resonance imaging (MRI) study for further evaluation of his asymmetric hearing loss. He was determined not to be a surgical candidate for his mixed hearing loss.

The Veteran underwent audiologic evaluation again in April 2013; however, it was noted that there were no significant threshold changes from the prior audiogram from February 2012 although his speech recognition scores were decreased in both ears.

In a February 2014 ENT note, a VA nurse practitioner stated: “asymmetric hearing loss/tinnitus - most likely related to noise exposure in the service.”

The Veteran underwent VA examination in August 2013. There is no discussion in the examination report of the Veteran's reported history; however, the history as seen in the claims file was submitted to the examiner in the examination request. The diagnosis was right ear mixed hearing loss and left ear sensorineural hearing loss. As for etiology, the examiner (an audiologist) stated that, in the absence of documentation of an induction audiogram other than a non-valid evaluation of hearing (whisper test) and no documentation of hearing thresholds at 3000 and 6000 Hz at the time of military separation, it is impossible to provide a medical opinion

regarding etiology of the hearing loss without resorting to speculation. As for tinnitus, the examiner opined that it was less likely than not that the Veteran's tinnitus was related to service as he reported having recurrent tinnitus but he could not identify a specific incident/circumstance of onset and reported it started 5 to 10 years ago.

Thereafter, the Veteran's case was referred to a medical doctor who provided a definitive medical opinion in September 2013. In setting forth her opinion, the doctor noted that the "separation examination, dated 9/28/63, contains a statement, '71. #3983-Deafness partial, one ear.' It is not certain how this statement was arrived at, as there is no objective data to support it, given the normal audiogram listed on the same page. There is a 35dB loss at 8000Hz, but this does not count, for VA purposes." Thus, she concluded that, as hearing loss is not shown at discharge, for VA purposes, it is less likely as not that the current hearing loss, bilateral, is related to in-service noise exposure, and more likely is due to post service noise exposure, aging, etc. She further cited to a "landmark study" by the Institute of Medicine on military noise exposure released in September 2005 that "there is no scientific basis for delayed or late onset noise-induced hearing loss, i.e. hearing normal at discharge and causally attributable to military noise exposure 20-30 years later. In cases where there were entrance and separation audiograms and such tests were normal, there was no scientific basis for concluding that hearing loss that develops 20 or 30 years later is causally related to military service. Therefore, audiologists have no scientific basis for concluding that delayed onset hearing losses exist." Thus she stated that, because there was no hearing loss at separation in this case, this study concludes that there is no evidence to suggest the Veteran's hearing status would be impacted later in life because of the noise events in service.

The Veteran was afforded another VA examination in January 2016. The diagnosis was tinnitus, sensorineural hearing loss in the left ear and mixed hearing loss in the right ear. The examiner opined that the Veteran's hearing loss and tinnitus are less likely than not caused by or the result of military service. In providing this opinion, the examiner noted that the Veteran's separation examination shows no hearing loss bilaterally and that the Veteran's military noise history does not include live combat. It was also noted that the record does not document any significant

threshold shifts in service. With regard to tinnitus, the examiner opined that the Veteran's tinnitus is at least as likely as not a symptom associated with hearing loss.

In an April 2016 remand, the Board found that the January 2016 opinion was inadequate and remanded for a new medical opinion addressing 1) the Veteran's reports of hearing loss since service, 2) the conversion of the audiometric test results on the September 1963 separation examination from American National Standards Institute (ANSI) to International Standard Organization (ISO) units, 3) that the evidence upon separation from service need not establish that the Veteran had a hearing loss disability for VA compensation purposes, and 4) the change in diagnosis from sensorineural hearing loss of the right ear given in September 2000 to mixed hearing loss of the right ear given in February 2012. The examiner was also instructed to specifically address a February 2014 favorable opinion provided by the nurse practitioner.

Pursuant to the Board's remand, a Disability Benefits Questionnaire (DBQ) was completed in June 2016. The examiner acknowledged the Veteran's consistent reports of hearing loss since service. However, he noted that the Veteran's reports do not substantiate the onset of bilateral hearing loss in service, especially in light of the Veteran's normal separation examination. Next, the examiner converted the Veteran's September 1963 audiometric findings from American National Standards Institute (ANSI) to International Standard Organization (ISO) units. Because the Veteran's enlistment examination consisted of only a whisper test, the examiner noted that it was impossible to assess any changes in threshold measures.

The examiner acknowledged that the evidence upon separation from service need not establish that the Veteran had a hearing loss disability for VA compensation purposes. However, because there is no audiometric evidence dated between 1963 and 2000, the examiner opined that it is less likely than not that that the Veteran's current hearing loss is casually related to service. The examiner also discussed the change in the Veteran's diagnosis from sensorineural hearing loss of the right ear given in September 2000 to mixed hearing loss of the right ear given in February 2012. In this regard, the examiner noted that findings for the Veteran's right ear, according to the January 2016 VA examination, are consistent with a middle ear

pathological condition known as otosclerosis. Service treatment records make no mention of any middle ear pathology or bilateral hearing loss. In fact, the Veteran's separation examination showed no bilateral hearing loss as per VA standards. Treatment records from September 2000 show a diagnosis of bilateral sensorineural hearing loss. The examiner assumed that the September 2000 audio evaluation was valid and with good reliability to the obtained data. Thus, the most viable explanation for the bilateral sensorineural hearing loss diagnosis in September 2000 is that the pathology causing the air- bone gap (the conductive component with audiometric findings evidenced by the air- bone gap in the right ear that are consistent with otosclerosis) had not manifested itself. Therefore, it is at least as likely as not that the conductive pathology evidenced in the right ear developed after the September 2000 evaluation.

Lastly, the examiner discussed the positive opinion provided by the nurse practitioner in February 2014. The examiner noted that the nurse practitioner did not provide a rationale for the opinion that the current hearing loss was related to noise exposure in service while consulting with the Veteran for use of a nasal steroid spray and removal of cerumen in both ears. Thus, the examiner opined that the nurse practitioner was likely as not resorting to speculation when providing an etiology opinion regarding the Veteran's asymmetric hearing loss. The examiner opined that the nurse practitioner's statement did not meet the standards of multiple VA examinations performed by licensed audiologist following extensive VA testing and audiological medical review protocols prior to rendering medical opinions.

After reviewing the medical evidence, the Board finds that service connection for bilateral hearing loss and tinnitus is not warranted on a direct basis. There is competent, credible evidence that the Veteran currently has bilateral hearing loss and tinnitus. The VA examination reports show a diagnosis of tinnitus and bilateral hearing loss in accordance with 38 C.F.R. §3.385. There is also evidence that the Veteran suffered acoustic trauma in service. The Board notes that the Veteran's military occupational specialty (MOS) of Field Artillery Basic and the units he was assigned to in service (a tank regiment and a Howitzer battalion) are consistent with his report of noise exposure. Therefore, in-service acoustic trauma is conceded. 38 U.S.C.A. § 1154 (a).

However, there is no evidence linking the Veteran's hearing loss and tinnitus to service, to include acoustic trauma. The Veteran's service treatment records are silent for any complaints or diagnoses of hearing loss and tinnitus. While the Veteran's separation examination includes the examiner's reference to partial deafness in one ear, the examiner did not specify which ear. .

Generally, once VA determines that a Veteran has a disease or injury that was incurred or aggravated in service, service connection can be granted without regard to severity. However, hearing loss is an exception. A minimum degree of hearing loss is a prerequisite for entitlement to service connection. *McKinney v. McDonald*, 28 Vet. App. 15 (2016). A change in hearing as a result of service is a disability if it exceeds the levels specified in 38 C.F.R. § 3.385. Additionally, 38 C.F.R. § 3.385 applies before a service connection determination is made. Even with the examiner's reference to partial deafness on the separation examination, the findings do not meet the criteria of 38 C.F.R. § 3.385; no hearing loss disability for VA compensation purposes was shown at separation.

Post-service treatment records begin to show complaints of hearing loss in September 2000, more than 30 years after separation. With regard to tinnitus, the Veteran has not claimed that he has had tinnitus in service. In fact, at the August 2013 VA examination, the Veteran reported that his tinnitus began 5 to 10 years ago. The June 2016 VA examiner also opined that the Veteran's hearing loss and tinnitus are not at least as likely as not caused by or the result of military service. The examiner noted that there is no documentation to support the Veteran's contentions of hearing loss since service or evidence of hearing loss for 30 years after service. The examiner also noted that the Veteran right ear is consistent with a middle ear pathological condition known as otosclerosis. The Board finds this opinion to be highly probative. *See Nieves-Rodriguez v. Peake*, 22 Vet. App. 295 (2008). The reference to hearing loss more than 30 years after separation, the Veteran's middle ear pathological condition and the IOM study indicates the opinion was not based solely on normal hearing at separation. *Cf. Hensley*, 5 Vet. App. at 155. Furthermore, the examiner is an audiologist who possesses the necessary education, training, and expertise to provide the requested opinion. In

addition, the examiner considered the Veteran's history of noise exposure in service and provided an adequate rationale for the opinion.

In contrast, the February 2014 notation on the ENT note by the nurse practitioner does not have a rationale. To have probative value, a medical opinion must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two. *Nieves-Rodriguez*, 22 Vet. App. at 295.

Service connection is also not warranted on a presumptive basis, as there is no evidence suggesting that the Veteran's current hearing loss or tinnitus manifested within one year of service separation. 38 C.F.R. § 3.307. Service connection is not warranted under 38 C.F.R. § 3.303 (b), as there is no evidence showing that the Veteran's hearing loss manifested in service.

With regard to tinnitus, the VA examiner opined that it is at least as likely as not related to the Veteran's bilateral hearing loss. However, as the Veteran is not service-connected for bilateral hearing loss, the Board finds no basis for granting secondary service connection.

The Board is sympathetic to the Veteran's assertions that his hearing loss and tinnitus should be service connected. Lay persons are competent to provide opinions on some medical issues. *Kahana v. Shinseki*, 24 Vet. App. 428 (2011). However, the disability at issue in this case could have multiple possible causes and thus, falls outside the realm of common knowledge of a lay person. *Jandreau v. Nicholson*, 429 F.3d 1372 (Fed. Cir. 2007).

In light of the above discussion, the Board finds that the service connection claims for hearing loss and tinnitus must be denied. In reaching this conclusion, the Board has considered the applicability of the benefit-of-the-doubt doctrine. However, as the preponderance of the evidence is against the Veteran's claims, that doctrine is not applicable. *See* 38 U.S.C.A. § 5107 (b).

ORDER

Entitlement to service connection for bilateral hearing loss is denied.

Entitlement to service connection for tinnitus is denied.

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M.E. LARKIN
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).