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

IN THE APPEAL OF
ROY E. ANANIA [redacted]

DOCKET NO. 07-12 241) DATE *SEPTEMBER 22, 2017*
) *VEM*
)

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

THE ISSUE

Whether a timely substantive appeal was filed with respect to the effective date of June 22, 2008, assigned for the award of o a total disability rating based on individual unemployability (TDIU) in a February 2009 rating decision.

REPRESENTATION

Veteran represented by: Kenneth M. Carpenter, Attorney

ATTORNEY FOR THE BOARD

Michael Wilson, Counsel

INTRODUCTION

The Veteran served on active duty from August 1972 to August 1975.

This appeal to the Board of Veterans' Appeals (Board) arose from a February 2009 rating decision in which the RO, *inter alia*, granted entitlement to a TDIU, effective June 22, 2008. In September 2009, the Veteran filed a notice of disagreement (NOD). A statement of the case (SOC) was issued in December 2009, and the Veteran, via his representative filed a substantive appeal (via a statement in lieu of a VA Form 9, Appeal to the Board of Veterans' Appeals) in June 2012. The timeliness of this substantive appeal is at issue before the Board.

This matter was previously before the Board in March 2013, June 2014, and May 2015. In a March 2013 decision, issued by a Veterans Law Judge (VLJ) other than the undersigned, the Board denied entitlement to an earlier effective date for the grant of a TDIU on the basis that the Veteran had not filed a timely substantive appeal with respect to the February 2009 rating decision that granted entitlement to a TDIU. The Veteran appealed the Board's March 2013 decision to the United States Court of Appeals for Veterans Claims (Court), which in a February 2014 order, granted the parties' joint motion for remand, vacating the Board's March 2013 decision and remanding the case for compliance with the terms of the joint motion.

In a June 2014 remand, issued by again another VLJ, other than the undersigned, the Board, in turn, remanded the appeal to the agency of original jurisdiction (AOJ) in order for the AOJ to consider the issue of the timeliness of the Veteran's substantive appeal in the first instance. In a July 2014 supplemental SOC (SSOC), the AOJ determined that a timely substantive appeal had not been received with respect to the appeal of the effective date of the grant of the TDIU in the February 2009 rating decision.

In a May 2015 decision, issued by yet another VLJ (other than the undersigned), the Board again determined that a timely substantive appeal was not received by VA as to the effective date assigned for the award of a TDIU in the February 2009 rating decision. The Veteran subsequently appealed the Board's May 2015 decision

to the Court, and in an April 2017 memorandum decision, the Court vacated the Board's May 2015 decision which determined that a timely substantive appeal had not been received; and remanded the issue to the Board for further proceedings consistent with the Court's decision. The appeal has now returned to the Board and has been reassigned to the undersigned VLJ for further appellate review.

In August and September 2016, the Veteran's representative submitted written argument, consisting of the appellate brief previously submitted to the Court, directly to the Board for review. Although this argument was submitted without a waiver of initial review by the AOJ, where the Veteran has merely summarized evidence that was already considered by the AOJ, this evidence is essentially duplicative of the evidence of record. The Board concludes that there is no prejudice in proceeding with consideration of this case and a remand for initial AOJ review of the submissions is not required. *See* 38 C.F.R. §§ 20.800; 20.1304 (2016).

While the Veteran previously had a paper claims file, this appeal is now being processed utilizing the paperless, electronic Veterans Benefits Management System (VBMS) and Virtual VA paperless claims processing systems.

FINDINGS OF FACT

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

2. In a February 2009 rating decision, the RO granted entitlement to a TDIU, effective June 22, 2008, and the RO notified the Veteran of its decision, and of his appellate rights, in a letter dated March 3, 2009.

3. In September 2009, the Veteran filed a NOD with respect to the effective date assigned for the award of a TDIU; and on December 9, 2009, the RO sent to the Veteran and his representative an SOC addressing the assigned effective date for the award of a TDIU.

4. No document was received within the remaining one-year appeal period following the March 2009 issuance of the February 2009 rating decision (allowing a longer time to respond than the alternative 60-day period following issuance of the December 2009 SOC) that can be construed as a timely substantive appeal or a timely request for an extension of time to file a substantive appeal, with respect to the assigned effective date of the award of a TDIU.

5. A letter received from the Veteran's representative on June 29, 2012, included a purported copy of the Veteran's substantive appeal that the representative reportedly mailed on January 18, 2010.

6. The Veteran's representative submitted an affidavit signed in November 2014, attesting that he mailed the Veteran's substantive appeal to the Waco RO on January 18, 2010, but did not provide any independent proof of a postmark, a dated receipt, or other evidence of the mailing, other than his own testimony.

CONCLUSION OF LAW

The Veteran did not file a timely substantive appeal with respect of the effective date of June 22, 2008, assigned for the award of TDIU in the February 2009 rating decision.. 38 U.S.C.A. § 5107, 7105 (West 2014); 38 C.F.R. §§ 3.102, 20.200, 20.202, 20.302, 20.303 (2016).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

I. Due Process Considerations

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

regulations implementing the VCAA were codified as amended at 38 C.F.R. §§ 3.102, 3.156(a), 3.159, and 3.326(a) (2016).

In this appeal, the Veteran has been advised of the bases of the denial of his claim, and afforded the opportunity to present information and evidence pertinent to the claim. The Board finds that these actions satisfy any fundamental due process owed the Veteran. Nevertheless, as will be explained below, the claim on appeal lacks legal merit. As the law, and not the facts, is dispositive of the claim, the duties to notify and assist imposed by the VCAA are not applicable. *See Mason v. Principi*, 16 Vet. App. 129, 132 (2002). *See also Manning v. Principi*, 16 Vet. App. 534, 542-543 (2002) (the provisions of the VCAA have no effect on an appeal where the law, and not the underlying facts or development of the facts are dispositive in a matter).

II. Timeliness of the June 2012 Substantive Appeal

Pursuant to applicable law and regulation, an appeal consists of a timely filed NOD in writing and, after an SOC has been furnished, a timely filed substantive appeal. 38 U.S.C.A. § 7105; 38 C.F.R. § 20.200.

A substantive appeal perfects the appeal to the Board and frames the issues to be considered. *Myers v. Derwinski*, 1 Vet. App. 127, 129 (1991). A substantive appeal consists of a properly completed VA Form 9 (Appeal to Board of Veterans' Appeals) or other correspondence containing the necessary information. The substantive appeal must also indicate what issues are being perfected. Proper completion and filing of a substantive appeal are the last actions a Veteran needs to take to perfect an appeal. 38 C.F.R. § 20.202.

A substantive appeal must be filed within sixty days from the date that the RO mails the SOC to the Veteran, or within the remainder of the one-year period from the date of mailing of the notification of the determination being appealed, whichever comes later. 38 U.S.C.A. § 7105; 38 C.F.R. § 20.302. Where a Veteran files a timely NOD but fails to timely file a substantive appeal, the appeal is untimely. *See Roy v. Brown*, 5 Vet. App. 554, 556 (1993).

An extension of the sixty-day period for filing a substantive appeal may be granted for good cause. A request for such an extension must be made in writing and must be made prior to expiration of the time limit for filing the substantive appeal. 38 C.F.R. § 20.303.

The failure to timely file a substantive appeal is not an absolute bar to the Board's jurisdiction and does not automatically foreclose an appeal. *See Rowell v. Principi*, 4 Vet. App. 9, 17 (1993) (holding that there was "no problem, with regard to the timeliness of the filing of the Appeal, which would deprive the Board of jurisdiction over [the] case as an original claim" where the RO appears to have treated the appeal as timely.); *see also* 38 C.F.R. § 19.32 (agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to an SOC within the period allowed, and, if appellant files substantive appeal within the one-year period, the appeal will be reactivated).

More recently, the United States Court of Appeals for Veterans Claims (Court) held that VA waives any objection to the timeliness of a substantive appeal by taking actions that would lead an appellant to believe that the appeal was perfected. *Percy v. Shinseki*, 23 Vet. App. 37, 46-47 (2009) (holding that if VA treats an appeal as timely filed, the Veteran is entitled to expect that "VA means what it says").

The essential facts in this case are not in dispute. The record reflects that the Veteran was notified of the RO's February 2009 rating decision which granted entitlement to a TDIU, with an effective, date of June 22, 2008, on March 3, 2009. He filed d a timely NOD which was received in September 2009, Thereafter, the RO provided the Veteran with an SOC that was date stamped December 9, 2009.

Nearly two-and-a-half years after issuance of the December 2009 SOC, a letter dated June 26, 2012, and date stamped as received on June 29, 2012, was received from the Veteran's representative. The letter purported to be a "[r]equest for confirmation that the [V]eteran's claim for an earlier effective date for the grant of-a [TDIU] is docketed for appeal before the Board of Veterans' Appeals." The Veteran's representative stated that he was including a copy of his January 18, 2010,

substantive appeal. Indeed, a copy of a letter, with an apparent date of January 18, 2010, which purported to be a substantive appeal of the issue of entitlement to an earlier effective date for the award of the Veteran's TDIU, in response to the December 2009 SOC, was included. The date stamp on the purposed copy of the substantive appeal was June 29, 2012, the same date stamped on the Veteran's inquiry letter.

Pursuant to 38 C.F.R. § 20.302, the Veteran had until March 3, 2010, (or, one year after the date of mailing of the notification of the RO's decision, which was later than the alternative 60-day period) to file a substantive appeal. The record includes no document filed by the Veteran with the RO that constitutes a timely-filed substantive appeal as to the earlier effective date issue addressed in the December 2009 SOC. Nor was any document indicating a request for an extension of the 60-day period for filing a substantive appeal, prior to the expiration of the time limit for filing the substantive appeal. There is simply no record of receipt of a substantive appeal in January 2010, as the Veteran's representative has contended in this appeal. As such, no timely appeal as to this issue has been perfected. Under these circumstances, the Board must conclude that the Veteran has failed to timely perfect an appeal with respect to the effective date issue addressed in the December 2009 SOC.

Unlike the facts in *Percy*, the RO has never taken any action that would lead the Veteran or his representative to believe that the appeal was perfected; nor has the Veteran's representative contended as much. Moreover, the RO has not treated the claim as if a timely substantive appeal had been filed. In this case, the RO took no action with respect to the Veteran's appeal. Rather, the Board, on its own accord took jurisdiction over the issue in the March 2013 decision, for the purpose of making a determination that a timely appeal had not been submitted as to the earlier effective date claim for the award of the TDIU. Notably, the RO did not certify the issue as on appeal to the Board in a January 2012 VA Form 8 (certification of appeal) that included the other issues adjudicated by the Board in the March 2013 decision.

Additionally, to the extent that a purported copy of the Veteran's substantive appeal was received in June 2012, review of the record reveals that there is no basis for finding that VA waived objecting to the timelines of the Veteran's substantive appeal. The RO did not treat the Veteran's 2012 substantive appeal as if it were timely, or accommodate any request from him to be allowed to proceed despite it being untimely, by continuing to adjudicate the claim on the merits; and again, neither the Veteran nor his representative have contended as much.

A .Common Law Mailbox Rule

The Veteran's representative provided an affidavit signed in November 2014 attesting that he filed the substantive appeal in question by regular mail on January 18, 2010, with the Waco, Texas, RO, and that the substantive appeal that he provided later was a copy, rather than a printout, of the appeal that he filed. His primary contention raised in the appeal before the Court was that the common law mailbox rule raised a rebuttable presumption that the substantive appeal was received by the RO and that there was no evidence to rebut this presumption.

"Under the common law mailbox rule, if a letter properly directed is proved to have been either put into the post office or delivered to the postman, it is presumed, from the known course of business in the post office department, that it reached its destination at the regular time, and was received by the person to whom it was addressed." *Rios v. Nicholson* (*Rios I*), 490 F.3d 928, 930-31 (Fed. Cir. 2007) (quoting *Rosenthal v. Walker*, 111 U.S. 185, 193 (1884)). If the presumption is properly invoked "[a]n issue of fact arises when the intended recipient alleges that the letter was never actually received." *Id.* When the presumption "'is opposed by evidence that the letters never were received, [it] must be weighed with all the other circumstances of the case, by the [trier of fact] in determining the question whether the letters were actually received or not.'" *Id.* (quoting Rosenthal, 111 U.S. at 194).

Notably, in order for the mailbox rule presumption to attach, an appellant must provide evidence demonstrating that his filing was properly addressed, stamped, and mailed in adequate time to reach the recipient in the normal course of post office business. *See id.* As the Court declared in *Rios v. Mansfield* (*Rios II*),

21 Vet. App. 481, 482 (2007), the mailbox rule presumption is "not invoked lightly" and "requires proof of mailing, such as an independent proof of a postmark, a dated receipt, or evidence of mailing apart from a party's own self-serving testimony."

As the Board noted in its May 2015, decision, the facts of this appeal are analogous to those presented in *Fithian v. Shinseki*, 24 Vet.App. 146 (2010). In that case, the appellant submitted a sworn affidavit stating that he mailed a motion for reconsideration by a specific dated, and that he assumed it was delivered, thereby tolling the period for the filing of his notice of appeal (NOA) to the Court. The Court determined that the sworn affidavit was "not sufficient to establish the presumption of receipt under the common law mailbox rule." *Fithian*, 24 Vet.App. at 151.

In this appeal, the Board similarly finds that the mailbox rule presumption does not attach. While the Veteran's representative has averred that he mailed the required substantive appeal on January 18, 2010, he has provided no evidence of this mailing other than his own sworn affidavit. There is no tangible evidence of mailing such as a proof of postmark or dated receipt to support his contention that he mailed the substantive appeal on that date. Notably, in arguments raised before the Board and before the Court, the representative does not raise any contention, or claim to have any tangible evidence, indicating that he mailed the substantive appeal as alleged in January 2010. Rather, the only evidence cited by the representative as proof of the mailing is his own sworn affidavit. Unfortunately, the representative's affidavit amounts to no more than self-serving testimony, as described by the Court in *Rios II*. As the mailbox rule presumption does not attach to this appeal, there is no need for the Board to embark on a factual determination as to the question of whether the Veteran's substantive appeal was actually received by the RO, as such would presume that the mailing of the substantive appeal took place as contended, which would thereby contradict the Board's determination that the presumption was not properly invoked.

To the extent that the Veteran's representative argues that the holding of the Court in *Rios II* supports the Veteran's position in this appeal, where the Court held that the Veteran in that case had established that an NOA to the Court had been mailed

with the United States Postal Service, and that the fact that the Veteran's NOA was not logged in by the Court was insufficient to rebut the presumption, the Board notes that the argument fails to circumvent the controlling issue in this appeal—that is, that the Veteran and his representative have not provided sufficient evidence that the substantive appeal in question was mailed, as contended. Thus, the fact that the evidence clearly indicates that the RO did not receive the Veteran's substantive appeal in a timely matter is most probative.

In its May 2015 decision, the Board additionally relied on the presumption of regularity in concluding that if the Veteran's representative had timely mailed the substantive appeal as he has contended, the RO would have been presumed to have received the substantive appeal and associated it would with the Veteran's claims file. *See Ashley v. Derwinski*, 2 Vet.App. 62, 64 (1992) (citing *United States v. Chem. Found. Inc*., 272 U.S. 1, 14-15 (1926)) (the presumption of regularity "supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties"). As noted, however, where. as here, the Board has found that the mailbox rule presumption has not been properly invoked in this appeal, it is not required to weigh the evidence as to the question of whether the Veteran's substantive appeal was actually received.

B. Equitable Tolling

Lastly, the Veteran, through his representative, contends that the doctrine of equitable tolling should apply, including consideration of 38 C.F.R. § 3.109(b), which permits an extension of time to perfect an appeal for good cause shown. While the Board notes that an extension to the time period for filing a substantive appeal may be granted for good cause, such request for an extension must be in writing and "must be made prior to expiration of the time limit for filing the [s]ubstantive [a]ppeal..." 38 C.F.R. § 20.303. Further, when a claimant requests an extension after the expiration of a time limit, "the action required of the claimant… must be taken concurrent with or prior to the filing of the request for extension of a time limit, and good cause must be shown as to why the required action could not have been take during the original time period…" 38 C.F.R. § 3.109(b).

Unfortunately, in this appeal, neither the Veteran nor his representative has made any request for VA to extend the time limit for filing the required substantive appeal. Even assuming, *arguendo*, that the representative's June 2012 letter could be considered a request for extending the time limit for submitting the substantive appeal, there has been no showing of good cause for why the substantive appeal could not have been submitted in a timely manner. Thus, there is no basis for accepting the June 2012 copy of the Veteran's substantive appeal as timely filed.. *Cf.* 38 C.F.R. § 20.304 (2016).

C. Conclusion

Based on consideration of all the foregoing, the Board must conclude that the copy of the Veteran's substantive appeal, filed on June 29, 2012, was not timely, and, that, thus, the Veteran has failed to timely perfect an appeal with respect to matter of the assigned effective date for the award of a TIDU. As the law is dispositive of this claim, it must be denied for lack of legal merit. *See Sabonis v. Brown*, 6 Vet. App. 426, 430 (1994).

ORDER

As a substantive appeal with respect to the effective date of June 22, 2008, assigned for the award of a TDIU in a February 2009 rating decision was not timely filed, the appeal is denied.

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JACQUELINE E. MONROE
Veterans Law Judge, Board of Veterans' Appeals

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (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. Your local VA office will implement the Board'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. Please note that if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your appeal at the Court because of jurisdictional conflicts. If you file a Notice of Appeal with the Court ***before*** you file a motion with the Board, the Board will not be able to consider your motion without the Court's permission or until your appeal at the Court is resolved.

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 Board 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 Board to reconsider any part of this decision by writing a letter to the Board clearly explaining why you believe that the Board 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 your letter be as specific as possible. A general statement of dissatisfaction with the Board decision or some other aspect of the VA claims adjudication process will not suffice. If the Board 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:

Litigation Support Branch
Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038

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 Board to vacate any part of this decision by writing a letter to the Board 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 on the previous page for the Litigation Support Branch, 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 on the previous page for the Litigation Support Branch, 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 Board, 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: If you hire an attorney or agent to represent you, a copy of any fee agreement must be sent to VA. The fee agreement must clearly specify if VA is to pay the attorney or agent directly out of past-due benefits. See 38 C.F.R. 14.636(g)(2). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the direct-pay fee agreement must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. See 38 C.F.R. 14.636(g)(3).

The Office of the 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 the General Counsel. See 38 C.F.R. 14.636(i); 14.637(d).