



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
SAM BUTLER

Represented by
Stacey P. Clark, Attorney

C [REDACTED]

Docket No. 16-27 236

Advanced on the Docket

DATE: November 21, 2019

ORDER

The reduction of the rating for residuals of prostate cancer from 100 percent to 60 percent, effective May 1, 2016, was proper.

Entitlement to a rating in excess of 60 percent for residuals of prostate cancer is denied.

FINDINGS OF FACT

1. A December 2015 rating decision proposed a reduction of the disability rating assigned for residuals of prostate cancer from 100 percent to 40 percent.
2. A February 2016 rating decision effectuated the proposed reduction of the disability rating for residuals of prostate cancer from 100 percent to 40 percent, effective May 1, 2016.
3. An April 2016 rating decision increased the disability rating for residuals of prostate cancer from 40 percent to 60 percent, effective May 1, 2016.
4. At the time of the reduction, the preponderance of the evidence showed an improvement in the severity of the Veteran's prostate cancer, specifically that his prostate cancer was in remission and no longer required surgical treatment.

5. Since May 1, 2016, the Veteran's residuals of prostate cancer have been manifested by wearing of absorbent materials which must be changed more than four times a day; there is no evidence of renal dysfunction or active prostate cancer.

CONCLUSIONS OF LAW

1. The reduction of the rating for residuals of prostate cancer from 100 percent to 60 percent, effective May 1, 2016, was proper. 38 U.S.C. §§ 1155, 5103, 5107; 38 C.F.R. §§ 3.102, 3.105, 3.344, 4.115a, 4.115b, Diagnostic Codes 7528, 7527.

2. Since May 1, 2016, the criteria for a rating in excess of 60 percent for residuals of prostate cancer have not been met. 38 U.S.C. §§ 1155, 5103, 5107; 38 C.F.R. §§ 3.102, 3.159, 4.1, 4.2, 4.3, 4.7, 4.115a, 4.115b, Diagnostic Code 7527.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from December 1965 to December 1967.

The matter comes before the Board of Veterans' Appeals (Board) on appeal from a February 2016 rating decision by a Department of Veterans Affairs (VA) Regional Office (RO), which decreased the rating for the Veteran's residuals of prostate cancer from 100 percent to 40 percent, effective May 1, 2016.

In an April 2016 rating decision, the RO increased the Veteran's residuals of prostate cancer to 60 percent, effective May 1, 2016.

In an April 2017 decision, the Board held that the reduction in rating for residuals of prostate cancer was proper. Subsequently, the Veteran appealed this decision to the United States Court of Appeals for Veterans Claims (Court). In March 2018, pursuant to a Joint Motion for Remand (JMR), the Court vacated the Board's April 2017 decision and remanded the case for action consistent with the JMR.

In September 2018, the Board issued a decision confirming that the reduction in rating for residuals of prostate cancer was proper pursuant to the March 2018 JMR. The Board also held that a rating in excess of 60 percent for residuals of prostate cancer was not warranted.

The Veteran appealed the Board's September 2018 decision to the Court. In June 2019, pursuant to a JMR, the Court vacated the Board's September 2018 decision and remanded the case for action consistent with the JMR. Specifically, the Court instructed the Board to discuss whether the December 2015 and February 2017 VA examiners were competent to address matters of urology.

Rating Reduction

The Veteran was granted a 100 percent rating for prostate cancer effective October 30, 2013, under Diagnostic Code 7528. The RO reduced the Veteran's residuals for prostate cancer to 60 percent, effective May 1, 2016, pursuant to Diagnostic Code 7527.

Under Diagnostic Code 7528, a 100 percent rating may be assigned for malignant neoplasms of the genitourinary system. Following cessation of surgical, x-ray, antineoplastic chemotherapy, or other therapeutic procedure, the 100 percent rating shall continue with a mandatory VA examination at the expiration of six months. If there has been no local reoccurrence or metastasis, the disorder should be rated based on the residuals, such as voiding dysfunction or renal dysfunction, whichever is predominant. 38 C.F.R. § 4.115b.

Pursuant to Diagnostic Code 7527, postoperative residuals of prostate gland injuries are evaluated as either voiding dysfunction, or renal dysfunction, whichever is predominant. A review of the record demonstrates that the Veteran's 60 percent rating was analyzed under the voiding dysfunction criteria. *See* 38 C.F.R. § 4.115a.

Ordinarily, if a diagnostic code requires an assignment of a 100 percent evaluation for a finite period of time, followed by the requirement that the disorder be rated based on residuals, the assignment of a lower disability rating based on those

residuals does not constitute a reduction. *See Rossiello v. Principi*, 3 Vet. App. 430 (1992). However, pursuant to Diagnostic Code 7528, any change in evaluation based on examination shall be subject to the provisions of 38 C.F.R. § 3.105(e), which outlines the due process requirement for reduction of rating. Therefore, as a preliminary matter, the Board must ensure compliance with the due process requirements of reduction of rating before reaching the merits of the claim.

To that end, where a reduction in an evaluation of a service-connected disability is warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction or discontinuance must be prepared setting forth all material facts and reasons, and the RO must notify the veteran that he has 60 days to present additional evidence showing that compensation should be continued at the present level. The veteran is also to be informed that he may request a predetermination hearing, provided that the request is received by VA within 30 days from the date of the notice. If no additional evidence is received within the 60-day period and no hearing is requested, final rating action will be taken, and the award will be reduced or discontinued effective the last day of the month in which the 60-day period from the date of notice to the veteran expires. 38 C.F.R. § 3.105(e).

The rating reduction in this case complies with the due process requirements of 38 C.F.R. § 3.105(e). That is, in December 2015, the RO proposed reduction of evaluation for the Veteran's prostate cancer. A December 2015 letter notified the Veteran that he had 60 days to present additional evidence showing that compensation should be continued at the prior level and that he could request a predetermination hearing. He did not submit additional evidence or request a hearing within 60 days. Subsequently, the RO issued a rating decision in February 2016 reducing the rating to 40 percent effective May 1, 2016. In an April 2016 rating decision, the RO increased the rating to 60 percent effective May 1, 2016. Considering this procedural history, the Board finds that the RO complied with the procedures required under 38 C.F.R. § 3.105(e). Thus, the analysis proceeds to whether the reduction was factually warranted.

The Veteran was afforded a VA examination in December 2015, in which he was diagnosed with prostate cancer status-post prostatectomy (inactive) and erectile

dysfunction. The examiner noted that the Veteran underwent radical prostatectomy in 2007 and had resulting urinary incontinence, requiring the use of two to four pads per day. No evidence of renal dysfunction was noted. The examiner indicated that the Veteran was in remission as there was no indication of metastasis or recurrence of prostate cancer.

The Veteran underwent another VA examination in February 2017. The examiner confirmed that the Veteran's prostate cancer was in remission and that there was no renal dysfunction. The examiner further noted that the Veteran's most recent August 2016 prostate-specific antigen test (PSA) was 0.1; which is considered normal.

The Veteran's private treatment records showed urinary incontinence, problems with erectile dysfunction and emptying his bladder. The Veteran reported having to urinate every hour as well as wearing three to four pads per day. The Veteran's private urologist noted that the Veteran's PSA blood tests had been low since his prostate cancer treatment started. *See* November 2016, April 2018, and June 2019 treatment records. Additionally, results of a CT examination performed in November 2016 revealed unremarkable adrenal glands and kidneys, without evidence of obstruction or suspicious mass.

In statements submitted in support of his claim, the Veteran reported that he had trouble starting his urinary stream and would go to the bathroom several times during the day and night; he also experienced incontinence whenever he coughed or sneezed and while he was mowing the lawn. A November 2016 statement submitted by the Veteran's wife also attested to his limitations due to urinary incontinence.

In September 2019, the Veteran submitted a statement from his private urologist, Dr. D.R., who opined that despite his prostate cancer being in remission, the Veteran has not had any improvement in ability to function under the ordinary conditions of life and work. Dr. D.R. noted that the Veteran has longterm incontinence impairment that requires pad use and frequent trips to the bathroom. He also noted that the Veteran experiences bladder neck contracture, hematuria, and erectile dysfunction.

The Board finds that the reduction for prostate cancer from 100 percent to 60 percent, effective May 1, 2016, was proper. Here, the evidence of record indicates that the Veteran's prostate cancer was neither active nor recurring or metastasizing.

Furthermore, the Board finds the December 2015 and February 2017 VA examinations to be adequate and probative in establishing that an evaluation of 100 percent is not warranted, as the Veteran's prostate cancer was not active. The Board notes that the VA examiners were competent to review the Veteran's claims file, to include the Veteran's VA and private treatment records, and assess whether the Veteran's prostate cancer was in remission. Both examiners noted a review of the Veteran's most recent PSA blood tests and indicated that the Veteran's cancer was no longer active. Specifically, the February 2017 VA examiner noted a review of the Veteran's treatment records from his private urologist, who has been providing treatment for the Veteran's residuals of prostate cancer throughout the appeal period. Even assuming, *arguendo*, that the VA examiners were less qualified than a urologist, the Veteran submitted a statement from his private urologist confirming that his prostate cancer was in remission. As detailed in greater below, the evidence of record is adequate upon which to determine that there is no active cancer and that a higher rating based on kidney dysfunction is not warranted. As detailed below, there are specific evidence regarding kidney function. The attorney-representative has not provided a basis for finding that this testing of record is incomplete or otherwise inadequate. Moreover, the Veteran does not contend or present argument that his prostate cancer was not in remission. Thus, considering the totality of the evidence of record, the Board finds that the preponderance of the evidence weighs against continuing a 100 percent rating after May 1, 2016, and as such, reduction of rating was appropriate.

The September 2019 private medical record indicates that the disability has not had functional improvement. The Veteran's residuals and severity of the disability are further addressed below. Although the Board has fully considered the September 2019, the basis of the reduction is the cessation of an active cancer. The evidence of record clearly documents that there is not a current active cancer. The 100 percent rating was based on the presence of an active cancer, and based on the clear evidence of its cessation, the 100 percent is no longer warranted.

In summary, the Board is sympathetic to the Veteran's claim. However, the Board is bound by laws and regulations that limit an award of 100 percent disability rating to prostate cancer that is currently active under Diagnostic Code 7528. Because the Veteran's prostate cancer is in remission, and not manifested by reoccurrence or metastasis, it must be rated based on the residual effects of the cancer. Therefore, the Veteran's disability rating for prostate cancer residuals was properly reduced from 100 percent to 60 percent, effective May 1, 2016, and appropriately rated based on voiding dysfunction.

Increased Rating

A disability rating is determined by the application of VA's Schedule for Rating Disabilities (Rating Schedule), 38 C.F.R. Part 4. The percentage ratings contained in the Rating Schedule represent, as far as can be practicably determined, the average impairment in earning capacity resulting from diseases and injuries incurred or aggravated during military service and their residual conditions in civil occupations. Separate diagnostic codes identify the various disabilities. 38 U.S.C. § 1155; 38 C.F.R. § 4.1. VA has a duty to acknowledge and consider all regulations that are potentially applicable through the assertions and issues raised in the record, and to explain the reasons and bases for its conclusions. *Schafrath v. Derwinski*, 1 Vet. App. 589 (1991).

Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria for that rating. Otherwise, the lower rating will be assigned. 38 C.F.R. § 4.7. The Board will consider whether separate ratings may be assigned for separate periods of time based on the facts found, a practice known as 'staged ratings.' *Fenderson v. West*, 12 Vet. App. 119, 126-27 (1999); *Hart v. Mansfield*, 21 Vet. App. 505 (2007).

Pursuant to Diagnostic Code 7527, prostate gland injuries, infections, hypertrophy, or postoperative residuals are rated as voiding dysfunction or urinary tract infection, whichever is predominant.

Under 38 C.F.R. § 4.115a, voiding dysfunction is rated as urine leakage, frequency, or obstructed voiding. Of note, these provisions are expressed using the disjunctive, indicating that a veteran is to be rated under only one of the three categories of urine leakage, urinary frequency, or obstructed voiding. Thus, the assignment of separate ratings for urine leakage, urinary frequency, or obstructed voiding would be pyramiding and is not permissible under 38 C.F.R. § 4.14.

A 60 percent rating is warranted for continual urine leakage, post-surgical urinary diversion, urinary incontinence, or stress incontinence requiring the use of an appliance or the wearing of absorbent materials which must be changed more than four times per day. 38 C.F.R. § 4.115a.

The Veteran has been assigned the maximum schedular rating of 60 percent for urinary leakage since May 1, 2016. The Board notes that because the maximum schedular rating for urinary frequency is 40 percent, and the maximum schedular rating for obstructive voiding is 30 percent, rating the Veteran on such bases would be less beneficial. Thus, the Veteran has been in receipt of the maximum rating possible under voiding dysfunction for the entire appellate period.

The Board has considered the application of alternative diagnostic codes in evaluating the symptoms associated with the Veteran's residuals of prostate cancer and notes that a rating in excess of 60 percent can only be granted for evidence of renal dysfunction. Pursuant to 38 C.F.R. § 4.115a., an 80 percent evaluation for renal dysfunction is warranted for persistent edema and albuminuria with BUN 40 to 80mg%; or creatinine 4 to 8mg%; or, generalized poor health characterized by lethargy, weakness, anorexia, weight loss, or limitation of exertion. A 100 percent rating for renal dysfunction is warranted for renal dysfunction requiring regular dialysis or precluding more than sedentary activity from one of the following: persistent edema and albuminuria; or, BUN more than 80mg%; or, creatinine more than 8mg%; or, markedly decreased function of kidney or other organ systems, especially cardiovascular.

The evidence of record does not indicate that an 80 percent evaluation is warranted under renal dysfunction. The Veteran's VA and private treatment record are silent as to any renal dysfunction. Moreover, there is no indication of persistent edema

and albuminuria with BUN 40 to 80mg%; or creatinine 4 to 8mg%; or, generalized poor health characterized by lethargy, weakness, anorexia, weight loss, or limitation of exertion.

The Veteran was hospitalized in September 2014 due to syncope and a fall. A treatment note indicated that the Veteran experienced fluctuating swelling of the scrotal area since his hernia operation. Upon examination, the physician found bilateral hydroceles, right testicular atrophy, and bilateral testicular microlithiasis. The Veteran declined surgical intervention for the hydroceles and the physician recommended supportive underwear for scrotal support. The examiner also noted that his PSA was .01, which remained low as expected after prostatectomy. His discharge instructions did not indicate activity was restricted in any way.

Lab results throughout the appellate period are not consistent with findings of renal dysfunction. For example, a November 2014 VA medical record showed measurements of creatinine at 0.8, albumin at 4.1 and BUN at 9. A November 2016 private treatment note indicated measurements of creatinine at 0.7 and BUN at 8. Additionally, a May 2019 private medical record showed measurements of creatinine at 1.1 and BUN at 12.7. Thus, the Board notes that the Veteran's measurements have been well less than indicative of an 80 percent disability rating.

Results of a CT examination performed in November 2016 revealed unremarkable adrenal glands, gallbladder, spleen and kidneys, without evidence of obstruction or suspicious masses.

Additionally, the Veteran denied weakness, fatigue, lower extremity edema, and changes in weight on several occasions during the appeal period, which is noted throughout his VA medical records.

Furthermore, none of the evidence of record has indicated that a 100 percent disability rating for renal dysfunction is warranted. The record contains no findings of markedly decreased function of the kidney or other organ systems. Moreover, the Veteran does not allege, and the evidence of record does not indicate that he underwent dialysis, suffers from persistent edema and albuminuria, or that he is limited to sedentary activity.

In sum, in the absence of local recurrence or metastasis of prostate cancer, residuals are to be rated as voiding dysfunction or renal dysfunction, whichever is predominant. Here, the evidence of record indicates that the Veteran's predominant residual for prostate cancer has been voiding dysfunction, for which he has been assigned the maximum schedular rating of 60 percent for the appeal period. Accordingly, the Board finds that a disability rating in excess of 60 percent is not warranted for the Veteran's residuals of prostate cancer. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102; *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990).

Extraschedular Consideration

The Board has considered whether the Veteran is entitled to a greater level of compensation on an extraschedular basis.

Ordinarily, there is a three-step inquiry for determining whether a veteran is entitled to an extraschedular rating. Initially, the Board must determine whether the evidence presents such an exceptional disability picture that the available schedular ratings for the service-connected disability are inadequate. *See Doucette v. Shulkin*, 28 Vet. App. 366 (2017) (holding that either the veteran must assert that a schedular rating is inadequate or the evidence must present exceptional or unusual circumstances). Second, if the schedular rating does not contemplate the veteran's level of disability and symptomatology and is found inadequate, the Board must determine whether the veteran's disability picture exhibits other related factors such as those provided by the regulation as "governing norms." Third, if the rating schedule is inadequate to evaluate a veteran's disability picture and that picture has attendant thereto related factors such as marked interference with employment or frequent periods of hospitalization, then the case must be referred to the Under Secretary for Benefits or the Director of the Compensation and Pension Service to determine whether, to accord justice, the veteran's disability picture requires the

assignment of an extraschedular rating. *Thun v. Peake*, 22 Vet. App. 111, 115–16 (2008).

With respect to the first prong in *Thun*, the evidence of record does not show such an exceptional disability picture that the available schedular evaluation for the Veteran’s residuals of prostate cancer is inadequate.

The Veteran has reported incontinence, bladder neck contracture, hydroceles, hematuria, and erectile dysfunction. The Board notes that the Veteran is in receipt of adequate ratings for both his voiding and erectile dysfunction (SMC). Moreover, as discussed above, the assignment of a separate rating for urine leakage, urinary frequency, or obstructed voiding would be pyramiding and is not permissible under 38 C.F.R. § 4.14. The Veteran is currently assigned a 60 percent disability rating, under voiding dysfunction, which is the maximum rating under that diagnostic code. The Veteran’s VA treatment records indicate diagnosis of microscopic hematuria in 2013; however, in later examinations, the condition was considered stable and physicians have indicated that there is no etiology to explain the condition. *See* November 2013 VA treatment records. As for the Veteran’s hydroceles, there is no indication that the condition is related to his prostate or any other residual condition.

Consequently, the Board finds that the available schedular evaluation is adequate to fully compensate the Veteran for his disability on appeal. In the absence of this threshold finding, there is no need to consider whether there are “related factors” such as marked interference with employment or frequent periods of hospitalization. *See Thun*, 22 Vet. App. at 118–19. Therefore, referral for extraschedular consideration is not warranted.



Nathaniel J. Doan
Veterans Law Judge
Board of Veterans’ Appeals

Attorney for the Board

C. Robinson, Associate Counsel

The Board’s decision in this case is binding only with respect to the instant matter decided. This decision is not precedential, and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.



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).