BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
JOHN C. PIERREL
Represented by
Carol J. Ponton, Attorney

[redacted]
Docket No. 15-42 038

DATE: February 25, 2020

ORDER

Entitlement to service connection for a tremor disorder, to include essential tremor, but not Parkinson's disease, is granted.

Entitlement to service connection for diabetes mellitus, type 2 is denied.

FINDINGS OF FACT

1. The Veteran did not have service in the Republic of Vietnam or Korean during the Vietnam era and is not presumed to have been exposed to Agent Orange or other herbicide agents.

2. The Veteran has experienced continuity of symptomatology related to essential tremor, but not to Parkinson's disease, from the time of his active duty to the present.

3. The preponderance of the evidence of record is against finding that the Veteran has had diabetes mellitus, type 2 at any time during or approximate to the pendency of the claim.

CONCLUSIONS OF LAW

1. The criteria for Entitlement to service connection for a tremor disorder, to include essential tremor, but not Parkinson's disease, have been met.

2. The criteria for service connection for diabetes mellitus, type 2 are not met. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty in the United States Navy from January 1966 to June 1981.

These matters come before the Board of Veterans' Appeals (Board) on appeal from August 2012 and February 2015 rating decisions of the Department of Veterans Affairs (VA) Regional Office (RO) in St. Petersburg, Florida.

The board notes that the matters of entitlement to an earlier effective date for erectile dysfunction, service connection for chronic right sided epididymitis, special monthly compensation and a compensable evaluation for residuals of erectile dysfunction were removed from the legacy appeal system via a May 10, 2018 election to participate in the Rapid Appeals Modernization Program. As such, these will be the subject of a separate decision.

The Veterans Claims Assistance Act of 2000 (VCAA) and implementing regulations impose obligations on VA to provide claimants with notice and assistance. 38 U.S.C. §§ 5102, 5103, 5103A, 5107; 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a).

The appellant in this case has not referred to any deficiencies in either the duties to notify or assist; therefore, the Board may proceed to the merits of the claim. *See*, *Scott v. McDonald*, 789 F.3d 1375, 1381 (Fed.Cir. 2015, cert denied, U.S.C. Oct.3, 2016) (holding that "the Board's obligation to read filings in a liberal manner does not require the Board....to search the record and address procedural arguments when the [appellant] fails to raise them before the Board"); *Dickens v. McDonald*,

814 F.3d 1359, 1361 (Fed. Cir. 2016) (applying *Scott* to an appellant's failure to raise a duty to assist argument before the Board).

The Board has reviewed all of the evidence in the Veteran's claims file. Although the Board has an obligation to provide adequate reasons and bases supporting this decision, there is no requirement that the evidence submitted by the Veteran or appellant or obtained on his or her behalf be discussed in detail. Rather, the Board's analysis below will focus specifically on what evidence is needed to substantiate the claim and what the evidence in the claims file shows, or fails to show, with respect to the claim. *See*, *Gonzales v. West*, 218 F.3d 1378, 1380-81 (Fed. Cir. 2000) and *Timberlake v. Gober*, 14 Vet. App. 122, 128-130 (2000).

Service Connection

1. Entitlement to service connection for a tremor disorder, to include essential tremor and/or Parkinson's disease

The Veteran contends that he is entitled to service connection for Parkinson's disease. Essentially, the Veteran asserts that he has had a right-hand tremor since he was on active duty that has continued to this day and worsened.

Initially, the Board notes that there has been considerable disagreement regarding the actual diagnosis or diagnoses regarding the nature and etiology of the Veteran's tremors. As such, the Board has recharacterized the claim for entitlement to service connection for Parkinson's disease to service connection for a tremor disorder, to include essential tremor and/or Parkinson's disease. *Clemons v. Shinseki*, 23 Vet. App. 1, 5 (2009).

The Board further notes that the Veteran's service treatment records do not record any complaints, diagnoses or treatments of any tremors.

Certain chronic diseases will be presumed related to service if they were shown as chronic in service; or, if they manifested to a compensable degree within a presumptive period following separation from service; or, if they were noted in service, with continuity of symptomatology since service that is attributable to the

chronic disease. 38 U.S.C. §§ 1101, 1112, 1113, 1137; 38 C.F.R. §§ 3.303, 3.307, 3.309. *Walker v. Shinseki*, 708 F.3d 1331, 1338 (Fed. Cir. 2013).

The Veteran has current diagnoses of essential tremor and Parkinson's disease as evidenced by an April 19, 2019 VA treatment record. Both are enumerated conditions under 38 C.F.R. § 3.309(a); *Walker*, 708 F.3d 1331.

In a letter dated February 2004 from the Veteran's daughter, K. S. P., who stated that she first noticed her father's hand's shaking when she was 5 years old. She described 3 other instances of noticing his hands shaking and then stated that "as the years have gone by that the shaking has gotten 10 times worse."

A July 24, 2006 VA treatment record notes the Veteran and his wife reported that he has had tremors of his hands intermittently for over 3 decades with gradual progression in the past 2 years. It was noted that the tremors were present at rest but intensified with fine motor activity of hands or under stress. He asserted being exposed to Agent orange while in the service. Benign essential tremors of both hands with fine motor activity historically was noted. It was further noted that the tremors are not likely related to exposure to Agent orange, noting that 50 percent of cases of essential tremor have a genetic link. The Board notes that no evidence of a genetic link was offered. As such, the Board notes that this opinion is of no probative value.

A September 7, 2010 VA treatment record notes the Veteran was diagnosed with essential tremor in 2006. The Veteran reported an onset of tremor as after he returned from the Philippines while in the service. The Board notes that the Veteran's service personnel records indicate that he was stationed in the Philippines from February 8, 1967 to May 25, 1968.

A November 16, 2010 VA treatment record notes the Veteran reported an onset of 1968 for tremors that have gradually worsened. Diagnoses of essential tremor, longstanding and maximized on target medications, as well as tremor predominant Parkinson's disease were noted.

A December 27, 2010 VA treatment record notes the Veteran had diagnoses of chronic essential tremors and rest tremors suggestive of tremor predominant Parkinson's with symptoms improved on anticholinergic medication.

In a March 2017 private opinion, Dr. M. L Cesta, a private psychiatrist, stated that he had reviewed the Veteran's records and stated that the Veteran "has had severe movement disorder symptomatology since 2004 that exist through the present day." The doctor noted that the Veteran has had multiple diagnoses regarding this movement disorder, including essential tremor, Parkinson's disease and functional (psychogenic) tremor and that he has been "intolerant to pharmacologic management." Numerous medical records regarding the nature of the Veteran's tremors were discussed, including an August 28, 2016 treatment record from Dr. Wong who opined that the veteran's tremor was entrainable and distractable, strongly suggesting that Parkinson's disease was not the cause of the tremor but indicated a diagnosis of psychogenic tremor. The doctor reviewed further medical records regarding the nature of the Veteran's tremor and opined that the Veteran "has a diagnosis of a psychogenic movement disorder" and not a diagnosis of Parkinson's disease or essential tremor. He further opined that the Veteran's "psychogenic tremor is a secondary diagnosis associated with his concomitant primary psychiatric illness including PTSD and a depressive disorder." He cited an article entitled "Psychogenic Movement Disorders" which provided a broad definition of psychogenic movement disorder, further noting that the term itself is the subject of controversy. The doctor then quoted further medical articles describing the relationship between psychological conditions and physical manifestations. The doctor then stated that there is no clear objective clinical evidence that the veteran had a diagnosis of Parkinson's or essential tremor.

In a September 2018 private opinion, Dr. M. L Cesta, a private psychiatrist, stated that he had reviewed the Veteran's record for a second time and stated that nothing had changed regarding his conclusions. He noted that records indicate the Veteran had clinically deteriorated over the eighteen months since his prior opinion and he noted the evidence showed worsening PTSD and depression and that the Veteran has not enjoyed a remission in his psychiatric, neurologic or medical symptomatology. He further noted that the Veteran still remains without a definitive diagnosis of either Parkinson's or essential tremor. He concluded that

the Veteran has a tremor consistent with a functional movement disorder causally related to his PTSD, anxiety and depressive symptomatology.

The Veteran was afforded a VA examination in January 2019. The examiner reviewed a May 31, 2018 VA neurology consult which noted that the Veteran was initially diagnosed with essential tremor and treated with medications for over a decade until he moved to Gainesville and was started on Sinemet with optimal control of tremors. That record further noted that the Veteran has since moved back from Gainesville to South Florida and has been physically independent in all of his activities of daily life (ADL's). That record then noted that there was no history of confusion, hallucinations, memory impairment, speech or swallowing impairment. A diagnosis of mixed tremors, chronic essential and rest tremors were noted. The examiner noted that the Veteran has a chronic movement disorder which has been variably characterized as benign essential tremor and/or Parkinson's disease and that medical treatment for Parkinson's disease has resulted in improvement of symptoms. The examiner then stated that he "doubt[s] this is Parkinson's disease" as the Veteran has no other clinical features, such as hypokinetic movement, rigidity, bradykinesia, speech or swallowing impairment or gait shuffling to suggest such. Furthermore, the examiner stated that Parkinson's disease is not caused by or the result of major depressive disorder. The examiner also stated that the Veteran's current movement disorder has not been precisely diagnosed at the time of the examination and, as such, "etiology is uncertain." Here, the VA examiner only reviewed one VA treatment record and did not address the private opinions of Dr. M. L. Cesta. As such, this opinion is of no probative value.

An April 18, 2019 VA treatment record notes the Veteran "has requested yet another change of neurologist." It was further noted that "[t]he consensus of no less than 5 neurologists is that [the Veteran] has both historically essential tremor since 1968 and Parkinson disease since 2010."

A July 2, 2019 VA neurology clinic record notes the Veteran has had benign essential tremor since 1968 and in 2010 developed Parkinson's disease. It was noted that the Veteran has had "dramatic improvement when he was started on Parkinson drugs." A fast tremor, more prominent on the right was noted. Slight

shuffling of his gait was noted as well. Diagnoses of essential tremor and Parkinson's disease were noted.

Here, the medical evidence is mixed. The private opinions of Dr. M. L. Cesta rely on the proposition that no definitive diagnosis of either essential tremor or Parkinson's has been made. The Board notes that VA treatment records have been at odds regarding which of the two disorders is the correct diagnoses, however, as of April 19, 2019, it seems obvious that diagnoses of both disorders have been definitively rendered. As such, the Board places little probative value in the opinions of Dr. M. L. Cesta.

As noted above, the April 18, 2019 VA treatment record notes that "[t]he consensus of no less than 5 neurologists is that [the Veteran] has both historically essential tremor since 1968 and Parkinson disease since 2010." Additionally, a July 2, 2019 VA treatment record again notes the Veteran has had benign essential tremor since 1968 and that his Parkinson's disease had developed in 2010.

In as much as the Veteran, his wife and daughter have described what were observable symptoms of hand tremors, the Board finds these statements to be competent. *See*, *Layno v. Brown*, 6 Vet. App., 465 (1994). However, although lay persons are competent to provide opinions on some medical issues, *see*, *Kahana v. Shinseki*, 24 Vet. App. 428, 435 (2011), the specific issue in this case, the etiology and onset of the Veteran's tremor disorder, to include essential tremor and/or Parkinson's disease, falls outside the realm of common knowledge of a lay person and required medical expertise that the Veteran has not demonstrated. *Jandreau v. Nicholson*, 492 F.3d 1372, 1377 (Fed. Cir. 2007).

In this case, there is evidence of continuity of symptomatology of a tremor disorder since service. *See* 38 C.F.R. § 3.307 (a)(3); 38 C.F.R. §§ 3.303 (b), 3.309; *Walker v. Shinseki*, 708 F.3d 1331 (2013). Although the Veteran first filed a claim for service connection in January 2011, he has consistently asserted that he has had a tremor since his active duty and the board finds his and his family's lay statements of record to be credible and competent evidence of continuity of symptomatology. Furthermore, VA treatment records document that the Veteran has a current diagnosis of benign essential tremor that had its onset in 1968, while the Veteran was on active duty. Therefore, recognizing that continuity of symptomatology

requires the chronic disease to have manifested in service, and resolving reasonable doubt in the Veteran's favor, the Board finds a nexus between the Veteran's current benign essential tremor and his active duty service, thus warranting a grant of entitlement to service connection. *See* 38 C.F.R. §§ 3.303 (b), 3.309; *see also* 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. §§ 3.102, 3.303.

Regarding his diagnosis of Parkinson's disease, the Board notes that the record clearly shows that the Veteran was diagnosed with essential tremor years before being diagnosed with Parkinson's and again notes that an April 18, 2019 VA treatment record notes that "[t]he consensus of no less than 5 neurologists is that [the Veteran] has both historically essential tremor since 1968 and Parkinson disease since 2010." As such, the Board finds that there is no continuity of symptomatology of Parkinson's since his service, nor is there any indication of Parkinson's being diagnosed in service. While the Board notes that Parkinson's in an enumerated disease under 38 C.F.R. § 3.307 (e), the record does not show, nor does the Veteran claim, to have service in the Republic of Vietnam or on the Korean DMZ. Instead, the Veteran asserts exposure while stationed in the Philippines and/or Guam. Exposure to herbicide agents is not presumed in such instances, but the exposure to one of the herbicides listed at 38 C.F.R. § 3.307 (a)(6)(i) can still be established if shown by the facts of the case.

The Veteran relies on numerous lay statements that are not related to his particular claim but purport to show that Agent Orange was stored on a pier in the Philippines while the Veteran was there. Furthermore, the Veteran has claimed that he had to clean up a spill of Agent Orange in a storage shed while stationed in the Philippines. However, these lay statements are largely conclusory in that they state that what they observed in barrels was Agent Orange, but provided nothing in the way of documentation of any such substance.

A January 9, 2005 article stated that a government minister from New Zealand stated that his country "supplied Agent Orange chemicals to the United States military during the Vietnam war". He further stated that "products used to make Agent Orange were shipped from New Plymouth to Subic Bay in the Philippines." The Board notes that the article did not state which chemicals were supplied and shipped to Subic Bay or when, other than "during the 1960's." As such, the Board finds that this is not probative evidence of exposure to herbicides.

In a January 15, 2019 email, it was noted that the Department of Defense has provided VA Compensation Service with a listing of locations outside Vietnam and the Korean DMZ where Agent Orange was used, tested, or stored. It was noted that the Philippines were not identified in that list.

Regarding his service in Guam, the Board notes that the Veteran's service personnel records indicate that he was stationed at Andersen Air Force Base on Guam from February 1977 to June 1978.

The Veteran submitted lay statements from service members who assert that Agent Orange was sprayed on Guam to control the vegetation. The Board notes that these service members again provide only conclusory statements that Agent Orange was sprayed. Further, the dates of the alleged spraying indicate that it was done so from 1969 to 1971. The Veteran further provided documents showing that testing of the ground wells in Guam were done in 1983 which showed the presence of 4,4-DDT; Arsenic; TCE; and tetrachlorodibenzo-P-dioxins (TCDD). The Board notes that this testing was performed years after the Veteran left Guam and provides no dates regarding when such contaminants may have entered the water wells.

While lay persons are competent to provide personal observations, they are not competent to state that they were actually exposed to herbicide agents. *See*, *Layno v. Brown*, 6 Vet. App. 465 (1994). This is because neither the Veteran nor any of the service members whose lay statements were used have demonstrated any experience with herbicide agents or chemicals that would have allowed them to recognize it in service, nor have they provided any indication that they is competent to identify or distinguish the herbicide agents listed in 38 C.F.R. § 3.307 (a)(6)(i). *See*, *Bardwell v. Shinseki*, 24 Vet. App. 36 (2010) (a layperson's assertions indicating exposure to gases or chemicals during service were not sufficient evidence alone to establish that such an event actually occurred during service).

Finally, the Veteran has cited several prior Board decisions for other Veterans in which the Board granted service connection based on exposure to herbicide agents outside of Vietnam. It must be noted that Board decisions are not precedential, and the undersigned is not bound by the determination of another Veterans Law Judge

in another case for another Veteran, based on entirely different evidence. 38 C.F.R. § 20.1303. Each decision by the Board is necessarily based on review of the evidence of record in a particular claims file and has no precedential value toward adjudication of appeals by other claimants, even those who may appear to be similarly situated. *Id*. Simply stated, the Board decision in this claim, as in every other claim, rests on the specific facts of the case at hand. *McDowell v. Shinseki*, 23 Vet. App. 207, 228 (2009). Here, the present appeal can be distinguished from the earlier cases before the Board because the record in the present case contains no credible or competent evidence of the presence of herbicide agents on Guam or the Philippines that outweighs the Veteran's uncorroborated reports.

As such, the Board finds that the preponderance of the evidence shows that the Veteran was not diagnosed with Parkinson's disease while on active duty or before 2010, that he has not had continuity of symptoms of such since service and was not exposed to herbicides while stationed in the Philippines or Guam. As the preponderance of the evidence is against the claim, the benefit of the doubt rule in inapplicable. 38 U.S.C. § 5107; 38 C.F.R. § 3.102.

2. Entitlement to service connection for diabetes mellitus, type 2

The Veteran contends that he is entitled to service connection for diabetes mellitus, type 2, to include as due to alleged exposure to herbicides.

Service connection may be granted for disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131, 5107; 38 C.F.R. § 3.303. The three-element test for service connection requires evidence of: (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the current disability and the in-service disease or injury. *Shedden v. Principi*, 381 F.3d 1163, 1166 -67 (Fed. Cir. 2004).

The question for the Board is whether the Veteran has a current disability that began during service or is at least as likely as not related to an in-service injury, event, or disease.

Here, the evidence of record consistently shows that the Veteran does not have a diagnosis of diabetes mellitus, type 2. No evidence suggesting such a diagnosis has been received by VA and voluminous medical records clearly state the Veteran is not diabetic.

The Board concludes that the Veteran does not have a current diagnosis of diabetes mellitus, type 2 and has not had one at any time during the pendency of the claim or recent to the filing of the claim. *Romanowsky v. Shinseki*, 26 Vet. App. 289, 294 (2013); *McClain v. Nicholson*, 21 Vet. App. 319, 321 (2007).

While the Veteran believes he has a current diagnosis of diabetes mellitus, type 2, he is not competent to provide a diagnosis in this case. The issue is medically complex, as it requires specialized medical education and the ability to interpret complicated diagnostic medical testing. *Jandreau v. Nicholson*, 492 F.3d 1372, 1377, 1377 n.4 (Fed. Cir. 2007). Consequently, the Board gives more probative weight to the competent medical evidence.

For the reasons stated above, the Board finds that the Veteran does not have diabetes mellitus nor has such been shown at any time during the pendency of his claim. Therefore, the claim fails on this basis.

As the preponderance of the evidence is against the claim, the benefit of the doubt rule is inapplicable. 38 U.S.C. § 5107 (b); 38 C.F.R. § 3.102.

C. TRUEBA
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board Brian P. Keeley

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

CONTINUED ON NEXT PAGE

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).