BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
CHARLES A. SMITH
Represented by
Sara K. Hill, Attorney

C [redacted]
Docket No. 17-34 200

DATE: March 16, 2020

ORDER

Entitlement to service connection for hypertension, to include as due to herbicide agent exposure, is denied.

Entitlement to service connection for congestive heart failure, to include as due to herbicide agent exposure, is denied.

Entitlement to service connection for diabetes mellitus type II (hereinafter "diabetes"), to include as due to herbicide agent exposure, is denied.

Entitlement to service connection for stroke, to include as due to herbicide agent exposure, is denied.

Entitlement to service connection for atrial fibrillation, to include as due to herbicide agent exposure, is denied.

FINDINGS OF FACT

1. The Veteran did not have service in the Republic of Vietnam or Korea, and there is no probative evidence that he was otherwise exposed to herbicide agents during service, including in Thailand.

2. The Veteran's hypertension did not originate in service, was not manifest to a compensable degree within one year of service, and is not otherwise etiologically related to the Veteran's active service

3. The Veteran's congestive heart failure did not originate in service, was not manifest to a compensable degree within one year of service, and is not otherwise etiologically related to the Veteran's active service.

4. The Veteran's diabetes did not originate in service, was not manifest to a compensable degree within one year of service, and is not otherwise etiologically related to the Veteran's active service.

5. The Veteran's stroke did not originate in service, was not manifest to a compensable degree within one year of service, and is not otherwise etiologically related to the Veteran's active service.

6. The Veteran's atrial fibrillation did not originate in service, was not manifest to a compensable degree within one year of service, and is not otherwise etiologically related to the Veteran's active service.

CONCLUSIONS OF LAW

1. The criteria for service connection for hypertension, to include as due to herbicide agent exposure, have not been met. 38 U.S.C. §§ 1110, 5107 (2012); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2019).

2. The criteria for service connection for congestive heart failure, to include as due to herbicide agent exposure, have not been met. 38 U.S.C. §§ 1110, 5107 (2012); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2019).

3. The criteria for service connection for diabetes, to include as due to herbicide agent exposure, have not been met. 38 U.S.C. §§ 1110, 5107 (2012); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2019).

4. The criteria for service connection for stroke, to include as due to herbicide agent exposure, have not been met. 38 U.S.C. §§ 1110, 5107 (2012); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2019).

5. The criteria for service connection for atrial fibrillation, to include as due to herbicide agent exposure, have not been met. 38 U.S.C. §§ 1110, 5107 (2012); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2019).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty in the United States Army from May 1967 to May 1971. These matters come before the Board of Veterans' Appeals (Board) on appeal from a June 2014 rating decision by the Department of Veterans Affairs (VA) Regional Office (RO). In a January 2020 letter, the Veteran, through his authorized representative, indicated that he wished to withdraw his request for a travel Board hearing. Accordingly, his Board hearing request is considered withdrawn. 38 C.F.R. § 20.704(e) (2019).

Service Connection

Service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active military service. 38 U.S.C. § 1110; 38 C.F.R. § 3.303. Generally, the evidence must show: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service. *Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004). Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

Service connection may also be granted for chronic disabilities, such as hypertension and stroke, if such are shown to have been manifested to a compensable degree within one year after the veteran was separated from service. 38 U.S.C. §§ 1101, 1112, 1113, 1137; 38 C.F.R. §§ 3.307, 3.309. As an alternative

to the nexus requirement, service connection for these chronic disabilities may be established through a showing of continuity of symptomatology since service. 38 C.F.R. § 3.303(b). The option of establishing service connection through a demonstration of continuity of symptomatology rather than through a finding of nexus is specifically limited to the chronic disabilities listed in 38 C.F.R. § 3.309(a). *See Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013).

Service connection may be granted on a presumptive basis for specific diseases associated with exposure to herbicide agents, to include congestive heart failure and diabetes. 38 C.F.R. § 3.309(e). These disabilities will be considered to have been incurred in or aggravated by service despite any lack of evidence of such disease during service. 38 C.F.R. § 3.307(a). This presumption applies to veterans who served in the Republic of Vietnam during January 9, 1962 to May 7, 1975, even if there is no record of evidence of such disease during the period of service. *See* 38 U.S.C. § 1116; 38 C.F.R. § 3.307(a)(6). 38 C.F.R. § 3.309(f).

Additionally, VA has established a procedure for verifying exposure to herbicide agents in Thailand during the Vietnam Era. VA has determined that Veterans who served on Royal Thai Air Force Bases (RTAFBs) at U-Tapao, Ubon, Nakhon Phanom, Udorn, Takhli, Korat, and Don Muang, near the air base perimeter anytime during the Vietnam Era, may have been exposed to herbicide agents. Particularly, to benefit from the presumption of herbicide agent exposure at one of the above listed air bases, a Veteran must have served as a security policeman, security patrol dog handler, member of a security police squadron, or otherwise served near the air base perimeter, as shown by military occupational specialty, performance evaluation, or other credible evidence.

The claims of entitlement to service connection for hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation.

The Veteran seeks service connection for hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation, which he asserts are related to service, to include herbicide agent exposure in Thailand. The record does not reflect, nor does the Veteran allege, service in the Republic of Vietnam or Korea.

There is no dispute that the Veteran has current diagnoses of hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation, as evidenced by his post-service VA treatment records. Further, the Veteran's service in Thailand is also not in dispute, as his military personnel records (MPRs) establish his service in Thailand from February 1968 to March 1969. The remaining questions for the Board are whether the Veteran served on a RTAFB where his military duties placed him near the air base perimeter, and whether the Veteran's hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation began during service, were compensably disabling within one year of separation from service, or are otherwise related thereto.

Review of the Veteran's MPRs reflect that he served as an Engineer Equipment Repairman/Mechanic stationed at Uda Poa Air Base in Thailand from February 1968 to March 1969.

The Veteran's service treatment records (STRs) are silent for diagnoses of or treatment for hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation, and his MPRs do not confirm use of herbicide agents at Uda Poa Air Base.

Post-service VA treatment records from August 2013 reflect that the Veteran underwent a medical evaluation as to his claimed presumed exposure to Agent Orange (AO). The Veteran reported that, while serving in Thailand, he was not involved in handling or spraying AO, that he was in an area that was recently sprayed with AO, that he was unsure as to whether he was sprayed directly with AO, and that he was unsure as to whether he was exposed to herbicide agents other than AO. The examining VA physician noted "presumed exposure to AO."

In an April 2014 Statement in Support of Claim, the Veteran asserted that while stationed in Thailand, he walked the flight line each day to and from his duties as an Engine Equipment Repairman.

An April 2014 Report of General Information indicates that the Veteran alleged exposure to herbicide agents due to his duties as a mechanic working on air base vehicles and aircraft while stationed at Uda Poa Air Base. An April 2014 request was made through the Defense Personnel Records Information Retrieval System

(DPRIS) to verify the Veteran's contentions. A June 2014 response from DPRIS indicated that it could not verify that, as a mechanic, the Veteran was exposed to vehicles and aircraft that were contaminated with AO, or that the Veteran was exposed to AO or to other tactical herbicides while stationed at Camp Lightning during 1968, which is approximately 231 miles from Korat. The DPRIS response stated that a declassified Department of Defense report entitled "Project CHECO Southeast Asia Report: Base Defense in Thailand 1968-1972" shows evidence that there was a significant use of herbicide agents on the fenced-in perimeters of Thailand military bases to remove foliage. However, review of this report does not confirm use of herbicide agents at Uda Poa Air Base, where the Veteran was stationed.

In his October 2014 notice of disagreement, the Veteran stated that, as a Combat Engineer, he was tasked with cleaning up perimeter areas in Thailand that were sprayed with defoliant.

In a February 2015 Statement in Support of Claim, the Veteran indicated that he was stationed near U-Tapao Air Base while serving in Thailand. He stated that he worked on heavy equipment, clearing the outer perimeter for the air base where AO was frequently sprayed, and that he also helped clear brush to make way for roads and to create holding ponds for water catchment.

In an October 2019 Statement in Support of Claim, the Veteran stated that he did not recall seeing any vegetation where he was stationed in Thailand, and at night, the Thai Army would spray for bugs and mosquitoes. He asserted that herbicide agents were sprayed at the Thai basic training camp.

In February 2020, the Veteran submitted June 2005 correspondence from the Department of the Air Force in support of his claims. The correspondence highlights that C-123 aircraft were never based at any of the Thailand air bases, that there is no evidence that herbicide agents were stored in Thailand, and that insecticides were used during a 1962 locust eradication project and for mosquito control from 1966-1967.

After consideration of the entire record and relevant law, the Board finds that service connection for hypertension, congestive heart failure, diabetes, stroke, and

atrial fibrillation is not warranted on a direct or presumptive basis. The Board has reviewed all of the evidence of record, to include in-service and post-service VA treatment records, MPRs, and statements submitted by the Veteran, which does not support the finding that the Veteran was exposed to herbicide agents while serving at Uda Poa Air Base in Thailand, that hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation were demonstrated during the Veteran's military service, that these claimed disabilities were compensably disabling within one year of separation from active duty, or that there is a nexus between the claimed disabilities and service.

The Board finds that the Veteran was not exposed to herbicide agents to warrant service connection for congestive heart failure and diabetes on a presumptive basis. Here, the Veteran's MPRs reflect service at Uda Poa Air Base from February 1968 to March 1969, which is not included among the list of RTAFBs where herbicide agent exposure can be presumed. His MPRs and STRs are also silent for evidence of herbicide agent exposure. Moreover, the Veteran served as an Engineer Equipment Repairman/Mechanic at Uda Poa Air Base, which is not recognized by VA as a military occupational specialty (MOS) which would likely be performed near the air base perimeter. While the Veteran is competent to report his beliefs that he was exposed to herbicide agents while serving at Uda Poa Air Base in Thailand, his lay evidence is outweighed by the absence of documentation of such exposure at Uda Poa Air Base. Although the Veteran indicated that Uda Poa Air Base was within close proximity to U-Tapao RTAFB, the evidence reflects that he did not serve on a RTAFB, nor was his MOS one that was found to be associated with herbicide agent exposure. While the Veteran submitted June 2005 correspondence from the Department of the Air Force, as well, as the Department of Defense's unclassified "Project CHECO Southeast Asia Report: Base Defense in Thailand 1968-1972" report in support of his claim, this evidence is not persuasive, as these materials do not reflect use of herbicide agents at Uda Poa Air Base, nor do they show that an Engineer Equipment Repairman's duties would be performed near the air base perimeter. Therefore, the Board affords this evidence no probative weight. Further, VA's April 2014 request to DPRIS yielded a negative result that does not support the Veteran's claim of herbicide agent exposure at Uda Poa Air Base. Lastly, the August 2013 VA treatment record which reflects "presumed exposure to AO," is also afforded no probative weight, as it is based

entirely off of the Veteran's self-reports to the examiner, with no other supporting rationale. The Board finds that the information submitted by the Veteran is insufficient to show actual exposure to an herbicide agent during active duty service. The Board clarifies that herbicide exposure for these purposes means Agent Orange, and does not refer to other defoliants or insecticides for which there is no disease presumption in the regulation. Nor is there evidence in the record that these types of chemicals caused the Veteran's appealed disabilities. As such, service connection for congestive heart failure and diabetes is not warranted on a presumptive basis.

The Board also finds that service connection for hypertension and stroke is not warranted on a presumptive basis. Here, the Veteran's STRs are silent for complaints of, symptoms related to, or a diagnosis of and treatment for hypertension and stroke. Additionally, while hypertension and stroke are chronic diseases subject to the one-year presumption, the evidence does not show a manifestation of these disabilities to a compensable degree within one year of the Veteran's active service, as post-service treatment records during this timeframe are silent for complaints of or a diagnosis of hypertension and stroke. Thus, while the Veteran has been diagnosed with hypertension and stroke, which are chronic diseases under 38 C.F.R. § 3.309(a), these disabilities did not have their onset in active service or within one year thereafter. As such, service connection for hypertension and stroke is not warranted on a presumptive basis.

Although the Veteran has not established service connection on a presumptive basis, he is not precluded from establishing service connection as to his claims of hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation with proof of direct causation. *Combee v. Brown*, 34 F.3d 1039, 1044 (Fed. Cir. 1994). Here, the evidence does not indicate that the Veteran's hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation manifested during service or within one year of discharge from service. The Veteran's STRs are silent for diagnoses of or treatment for hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation. Further, post-service VA treatment records reflect a diagnosis of hypertension in 2003, a diagnosis of congestive heart failure in 2010, a diagnosis of diabetes in 2011, a diagnosis of stroke in 2010, and a diagnosis of atrial fibrillation in 2013. The Board notes a gap of approximately 32-42 years

exists in the Veteran's treatment records from the time of separation from service up until the Veteran's diagnosis of hypertension, diabetes, congestive heart failure, stroke, and atrial fibrillation. This period without treatment for these disabilities is evidence that there has not been a continuity of symptoms. *See Mense v. Derwinski*, 1 Vet. App. 354, 356 (1991).

Lastly, there is no medical or other competent evidence of a nexus between the Veteran's hypertension, diabetes, congestive heart failure, stroke, and atrial fibrillation. Although an examination or medical opinion was not obtained in this case, the Board finds that VA was not under an obligation to provide one, as such is not necessary to make a decision on the claims. VA is obligated to provide the Veteran with a VA examination when the record: (1) contains competent evidence of a current disability or persistent or recurrent symptoms of a disability, and (2) indicates that the disability or symptoms may be associated with the veteran's active duty service, but (3) does not contain sufficient medical evidence for VA to make a decision on the claim. *McLendon v. Nicholson*, 20 Vet. App. 79, 83 (2006). While the threshold for requiring a medical opinion is low, a VA examination is not necessary in this case because there is no competent evidence that the Veteran's hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation were incurred in service or are otherwise related to any disease, injury or event in service. Here, the record is absent for any evidence of hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation in service or for many years thereafter. While the Veteran asserts that his hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation are due to herbicide agent exposure while serving at Uda Poa Air Base in Thailand, there is no competent evidence that he was exposed to herbicide agents in Thailand, nor is there any indication that his hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation are associated with any such exposure. Thus, there is no reasonable possibility that a medical opinion would aid in substantiating the claims since it could not provide evidence of a past event.

The Board acknowledges the Veteran's contentions that his hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation are related to service. The Veteran is considered competent to report the observable manifestations of his claimed disabilities. *See Charles v. Principi*, 16 Vet.

App. 370, 374-75 (2002); *Layno v. Brown*, 6 Vet. App. 465, 469-70 (1994). While the Veteran is competent to report observable symptoms, the Board finds that determining the etiology of hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation requires more than a layperson can be expected to competently address. In this case, the etiology of hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation is a complex medical question that is not within the competence of a lay person and requires medical expertise. As there is no indication that the Veteran has any medical training, education or expertise, the Board finds he is not competent to etiologically link any such symptoms to a current diagnosis. Therefore, the Board finds that the Veteran's statements as to the etiology of his hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation is not sufficient to satisfy the requisite nexus requirement. As such, service connection is not warranted on a direct basis.

Taking into account all the relevant evidence of record, the Board finds that the weight of the evidence is against the Veteran's claims of service connection for hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation. Absent medical or other competent evidence of a nexus between the Veteran's hypertension, congestive heart failure, diabetes, stroke, and atrial fibrillation and service, the Veteran's claims for service connection must be denied. Although the Veteran is entitled to the benefit of the doubt where the evidence is in approximate balance, the benefit of the doubt doctrine is inapplicable where, as here, the preponderance of the evidence is against the claims. *Gilbert v. Derwinski*, 1 Vet. App. 49, 53 (1990).

R. Erdheim
Acting Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board D. Houle, 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.

Department of Veterans Affairs

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).