BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
BRIAN W. CALMON [redacted]
REPRESENTED BY
John P. Dorrity, Agent

Docket No. 16-02 366

DATE: July 9, 2019

ORDER

Service connection for a deviated nasal septum with residuals is granted.

Service connection for sleep apnea is denied.

Service connection for hypertension is denied.

REMANDED

Service connection for bilateral hearing loss is remanded.

FINDINGS OF FACT

1. The Veteran's deviated nasal septum with residuals is caused by or related to active duty service.

2. The Veteran's sleep apnea is not caused by or related to active duty service or a service-connected disability.

3. The Veteran's hypertension is not caused by or related to active duty service or a service-connected disability.

CONCLUSIONS OF LAW

1. The criteria for service connection for a deviated nasal septum with residuals have been met. 38 U.S.C. §§ 1131, 5103, 5107, 5103A; 38 C.F.R. §§ 3.159, 3.303, 3.304.

2. The criteria for service connection for sleep apnea have not been met. 38 U.S.C. §§ 1131, 5103, 5107, 5103A; 38 C.F.R. §§ 3.159, 3.303, 3.304, 3.310.

3. The criteria for service connection for hypertension have not been met. 38 U.S.C. §§ 1112, 1113, 1131, 1137, 5103, 5107, 5103A; 38 C.F.R. §§ 3.159, 3.303, 3.304, 3.307, 3.309, 3.310.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty in the Marine Corps from September 1977 to September 1981. These matters come before the Board of Veterans' Appeals (Board) from a May 2013 rating decision.

The Veteran testified before the Board at a hearing in March 2019. A transcript of the hearing has been associated with the claims file.

Service Connection

Under the relevant laws and regulations, service connection may be granted for a disability resulting from disease or injury incurred in or aggravated by active service. 38 U.S.C. § 1131. Generally, the evidence must show the existence of (1) 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, 1166-67 (Fed. Cir. 2004). A disability may also be found service connected on a secondary basis by demonstrating that the disability is either (1) proximately due to or the result of an already service-connected disease or injury or

(2) aggravated by an already service-connected disease or injury. *Allen v. Brown*, 7 Vet. App. 439, 448 (1995); 38 C.F.R. § 3.310.

Certain chronic diseases are subject to presumptive service connection if the disease manifests to a compensable degree within one year from separation from service even though there is no evidence of such disease during the period of service. This presumption is rebuttable by affirmative evidence to the contrary. 38 U.S.C. §§ 1112, 1113, 1137; 38 C.F.R. §§ 3.307(a)(3), 3.309(a). Moreover, for such chronic diseases, an alternative method of establishing the second and third *Shedden* element is through a demonstration of continuity of symptomatology if the disability claimed qualifies as a chronic disease listed in 38 C.F.R. § 3.309(a); 38 C.F.R. § 3.303(b); *Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2014). Additionally, evidence of continuous symptoms since active duty is a factor for consideration as to whether a causal relationship exists between an in-service injury or incident and the current disorder as is contemplated under 38 C.F.R. § 3.303(a).

Deviated Nasal Septum

The Veteran contends that his deviated nasal septum with residuals is related to service. Specifically, he contends that his nasal septum was injured during service requiring septoplasty surgery.

The Board has reviewed the evidence of record and finds that service connection is warranted for the Veteran's deviated nasal septum with residuals.

First, the Board finds that the Veteran's service treatment records (STRs) exhibit treatment for a deviated nasal septum. The January 1979 records indicate a diagnosis of a deviated nasal septum requiring septoplasty surgery. The Board finds that this evidence demonstrates an in-service occurrence of a deviated nasal septum injury.

Next, in the March 2019 hearing before the Board, the Veteran provided credible testimony regarding the deviated nasal septum injury. He described helping to break-up a fight on base when he was injured. He further stated that he did not immediately seek medical attention and only applied ice to the injury. When he

experienced trouble breathing through his nose, he eventually sought treatment and underwent surgery while still in service. Additionally, the Veteran stated that he still experiences deviated nasal septum related symptoms including a running nose, increased snoring, difficulty sleeping, and difficulty breathing through his nose, especially during the winter. The Board finds that this evidence demonstrates an in-service occurrence of a deviated nasal septum injury and demonstrates present deviated nasal septum symptoms related to the in-service injury.

Next, in March 2013, the Veteran underwent an in-person examination with claims file review regarding his deviated nasal septum injury. The examiner noted that the Veteran's January 1979 STRs indicate septoplasty surgery for a deviated nasal septum. The Veteran reported recurrent nasal congestion and difficulty of nasal breathing since 1979. The examiner opined that the Veteran's deviated nasal septum condition is at least as likely as not due to the in-service injury. Moreover, the examiner also opined that the Veteran's sinusitis is at least as likely as not caused by the in-service septoplasty surgery for the deviated nasal septum. Subsequently, in a May 2013 rating decision, the Veteran was granted secondary service connection for sinusitis and denied direct service connection for the deviated nasal septum with residuals. The rating decision stated that the examiner indicated that the deviated septum was the result of prolong sinusitis treated in service.

The Board finds the conclusions of the March 2013 examiner to be of highly probative value. The examiner specifically concluded that the Veteran's deviated nasal septum condition is at least as likely as not due to service and relied on the STRs, which clearly indicate a septoplasty surgery for a deviated nasal septum. The examiner's conclusions establish a nexus relationship between the Veteran's in-service deviated nasal septum injury and his present deviated nasal septum symptoms. Additionally, the Board finds that the May 2013 rating decision misstates the evidence of record, and thus has no probative value.

Therefore, the Board finds that the evidence demonstrates the *Shedden* elements required to establish service connection for the Veteran's deviated nasal septum injury. Resolving any remaining reasonable doubt in the Veteran's favor, the Board finds that service connection for a deviated nasal septum with residuals is

warranted. *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). Therefore, the appeal is granted.

Sleep Apnea

The Veteran contends that his sleep apnea is caused by or related to his in-service septoplasty surgery for a deviated nasal septum.

The Board has reviewed the evidence of record and finds that service connection is not warranted for the Veteran's sleep apnea.

Initially, the Veteran's STRs do not reflect complaints, treatment, or a diagnosis related to sleep apnea during service. Significantly, the Veteran's physical examinations, including entrance and separation examinations, fail to document any complaints of or observed symptoms related to sleep apnea, or any other chronic sleep complaints. The first evidence of sleep apnea related treatment in the record is from April 2010, which is nearly 29 years after the Veteran's discharge from service.

In April 2010, the Veteran's private treatment records demonstrate that he underwent a sleep study, and obstructive sleep apnea was diagnosed. He was prescribed CPAP therapy, which improved daytime hypersomnolence. The Veteran continues to treat with CPAP therapy for sleep apnea. The Board finds that the significant lapse in time between the Veteran's discharge and post-service medical treatment weighs against the Veteran's claim of service connection. *Maxson v. West*, 12 Vet. App. 453 (1999), *aff'd*, 230 F.3d 1330 (Fed. Cir. 2000). Additionally, service connection by demonstrating continuity of symptoms has not been shown based on the clinical evidence.

In March 2013, the Veteran underwent an in-person VA examination with claims file review regarding sleep apnea. The Veteran reported a history of intermittent loud snoring and apnoeic spells at night. The examiner documented that the Veteran is obese, noted a diagnosis of obstructive sleep apnea in April 2010, and documented good treatment results with CPAP therapy. The examiner opined that the Veteran's sleep apnea is less likely than not related to his history of septoplasty for a deviated nasal septum. The examiner explained that the cause of obstructive

sleep apnea is usually due to intermittent upper airway obstructive pathology and is also related to obesity.

The Board finds the results of the March 2013 VA examination to be highly probative in reaching its conclusion that the Veteran's sleep apnea is not related to service. Specifically, the examiner found that there was no nexus between the Veteran's in-service septoplasty surgery for a deviated nasal septum and his sleep apnea. Rather, the examiner explained that the Veteran's sleep apnea is likely caused by intermittent upper airway obstructive pathology and obesity. Thus, the Board finds that the results of the March 2013 VA examination do not demonstrate the Veteran's sleep apnea was caused by or is related to the in-service septoplasty surgery nor do the results support service connection by demonstrating continuing symptoms.

In May 2012, the Veteran submitted a letter from his private physician stating that the Veteran's sleep apnea may be related to his deviated nasal septum. The physician did not provide further explanation. Further, in April 2019, the Veteran submitted a letter from a VA physician, in which the physician stated that the Veteran's nasal issues, the deviated septum, may be contributing to his sleep apnea. The Board finds the May 2012 and April 2019 letters to be of little probative value as the physicians merely states that the Veteran's nasal symptoms may be contributing to or related to his sleep apnea, rather than the necessary standard of it is at least as likely as not that sleep apnea is caused by or related to the deviated nasal septum with septoplasty. Therefore, the Board finds the conclusions of the March 2013 VA examiner to be more probative regarding whether a nexus relationship exists between the Veteran's deviated nasal septum with septoplasty and the present sleep apnea.

In summary, the evidence of record does not demonstrate service connection by demonstrating continuing sleep apnea symptoms since separation from service and does not demonstrate that the sleep apnea is caused by or related to the in-service deviated nasal septum with septoplasty surgery. Thus, the Board concludes that the preponderance of the evidence is against the claim for service connection for sleep apnea, and there is no doubt to be otherwise resolved. 38 U.S.C. § 5107(b); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). Therefore, the appeal is denied.

Hypertension

The Veteran contends that his hypertension is related to service. Specifically, he contends that his hypertension first manifested during bootcamp, which is demonstrated by high blood pressure readings, and that it was caused by in-service septoplasty surgery for a deviated nasal septum.

The Board has reviewed the evidence of record and finds that service connection is not warranted for the Veteran's hypertension.

First, the Veteran's STRs do not exhibit a diagnosis or a finding of hypertension. The records do indicate an isolated incident of two high blood pressure readings taken on the same day in September 1977; however, the readings on the following two consecutive days do not indicate high blood pressure. Further, later blood pressure readings taken in April 1978, December 1980, January 1981, May 1981, and August 1981 all indicate normal blood pressure readings. As the STRs merely indicate one isolated incident with high blood pressure readings and all subsequent readings indicate normal blood pressure, the Board finds that this evidence does not demonstrate an in-service incurrence or manifestation of hypertension.

Next, in December 2015, the Veteran was afforded a VA examination based on a review of the claims file. The examiner explained that high blood pressure is having systolic blood pressure of greater than 160 or diastolic blood pressure of greater than 90. Further, the examiner explained that a diagnosis of hypertension requires high blood pressure readings taken on three separate days. The examiner noted that the STRs demonstrate only one day with isolated high blood pressure readings. The first reading indicated systolic blood pressure of 162 and diastolic blood pressure of 94, and the second reading indicated systolic blood pressure of 118 and diastolic blood pressure of 92. The examiner documented that the blood pressure readings taken on the following two consecutive days indicated that the systolic blood pressure was not greater than 160 and diastolic blood pressure was not greater than 90. The examiner stated that hypertension cannot be diagnosed from these isolated high blood pressure readings as the Veteran's blood pressure readings did not indicate high blood pressure on three separate days. Therefore, the examiner opined that it is less likely than not that the isolated high blood pressure

readings during service were the first manifestations of a subsequent diagnosis of hypertension.

The Board finds the results of the December 2015 VA examination to be highly probative in reaching its conclusion that the Veteran's hypertension is not related to service. Specifically, the examiner found that there was no nexus relationship between the Veteran's in-service high blood pressure readings and the subsequent diagnosis of hypertension. Rather, the examiner found that the isolated high blood pressure readings did not indicate a diagnosis of hypertension or even the first manifestations of hypertension. Thus, the Board finds that the evidence of record does not support a finding of a nexus relationship between the Veteran's in-service high blood pressure readings and the subsequently diagnosed hypertension.

In the March 2019 hearing before the Board, the Veteran testified that he had high blood pressure while in bootcamp. He stated that he was not given any treatment, and that his blood pressure was only taken and documented. He stated that he did not follow up further regarding the high blood pressure readings because he did not want to repeat bootcamp. Additionally, he stated that he did not start treatment for hypertension until approximately five years after separation from service. The Board finds that this evidence does not support a finding of an in-service incurrence or manifestation of hypertension because the Veteran did not describe more than an isolated incident of high blood pressure readings, and the evidence does not support continuing hypertension symptoms since separation from service because the Veteran did not begin treatment until 5 years after separation.

Additionally, in March 2013, the Veteran underwent an in-person VA examination with claims file review regarding hypertension. The examiner noted that the Veteran contends that his hypertension is caused by or related to the in-service septoplasty surgery for a deviated nasal septum. The examiner opined that it is less likely than not that the Veteran's hypertension is caused by or related to the septoplasty surgery. The examiner explained that septoplasty does not cause or aggravate hypertension. The Board finds the examiner's conclusions to be of highly probative value as this evidence demonstrates that a nexus relationship does not exist between the septoplasty surgery and hypertension. Thus, service connection for hypertension secondary to the in-service septoplasty surgery for a deviated nasal septum has not been established.

Therefore, the Board finds that the evidence of record does not demonstrate service connection by establishing a nexus relationship between the in-service high blood pressure readings and the subsequent diagnosis of hypertension, it does not demonstrate secondary service connection by demonstrating that the hypertension was caused by the septoplasty surgery for a deviated nasal septum, and it does not demonstrate service connection by demonstrating continuing symptoms since separation from service. Accordingly, the Board concludes that the preponderance of the evidence is against the claim of service connection and there is no doubt to be otherwise resolved. 38 U.S.C. § 5107(b); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). Therefore, the appeal is denied.

REASONS FOR REMAND

Bilateral Hearing Loss

The Board finds that further development is required regarding the Veteran's claim of service connection for bilateral hearing loss.

In March 2013, the Veteran underwent an in-person VA examination with claims file review regarding bilateral hearing loss and tinnitus. The examiner determined that the Veteran had significant in-service noise exposure due to his military occupational specialty (MOS) as an engineer equipment mechanic with exposure to loud machinery, including forklifts, cranes, and diesel engines. The examiner noted that the STRs containing the audiological evaluation conducted during the separation examination were unavailable. The examiner determined that the Veteran did not have bilateral hearing loss for VA purposes but did have hearing sensitivity, demonstrating decreased hearing. The examiner found that the Veteran's hearing sensitivity was at least as likely as not caused by or a result of in-service exposure to acoustic trauma. Subsequently, service connection for tinnitus was granted; however, service connection for bilateral hearing loss was denied, as the audiological evaluation indicated that Veteran did not have hearing loss for VA purposes.

Next, in December 2015, the Veteran was afforded a second VA examination based on record review only, in which the examiner noted that the Veteran's audiological evaluation at the time of separation had been located and indicated normal hearing for VA purposes. The examiner also noted varied shifts in hearing throughout audiological evaluations contained in the STRs. The Board notes that this evidence indicates decreased hearing during service and notes that the examiner failed to asses or discuss the Veteran's in-service exposure to loud machinery. The examiner concluded that bilateral hearing loss was not caused by or related to service.

In the Veteran's January 2016 VA Form 9, he contends that his conditions, including bilateral hearing loss, have become increasingly debilitating causing an adverse impact on his well-being. Further, in the March 2019 hearing before the Board, the Veteran again consistently described in-service exposure to significant acoustic trauma from cranes, forklifts, bulldozers, and generators. The Veteran also stated that he was seeking additional VA treatment for worsening hearing loss.

Thus, considering that significant in-service noise exposure is conceded, that the STRs contain evidence of decreased hearing, and that the December 2015 examination is now inadequate as the Veteran's hearing has worsened and the examiner failed to properly consider in-service noise exposure, the Board finds that it is within VA's duty to assist to afford the Veteran a new examination in order to accurately assess the severity of his hearing loss. *Snuffer v. Gober*, 10 Vet. App. 400, 402-403 (1997); *Barr v. Nicholson*, 21 Vet. App. 303 (2007). Thus, the matter must be remanded for a new examination.

The matter is REMANDED for the following action:

> 1. Obtain all treatment records from any VA facility from which the Veteran has received treatment.
>
> If the Veteran has received additional private treatment, he should be afforded an appropriate opportunity to submit the medical records of such treatment.

2. Following the completion of the above, schedule the Veteran for an examination to determine the nature, etiology, and severity of his bilateral hearing loss. The claims folder must be made available to and be reviewed by the examiner. The examiner should offer the following opinions:

Is it at least as likely as not (50 percent or greater probability) that the Veteran's bilateral hearing loss, had its onset during active duty service or is otherwise related to such service?

Is it at least as likely as not (50 percent or greater probability) that the Veteran's bilateral hearing loss was caused by the conceded in-service noise exposure?

The examiner should also consider all lay statements submitted by the Veteran regarding his disorder.

A rationale for all opinions is to be provided. If the examiner cannot provide any of the requested opinions without resorting to speculation, he or she should provide an explanation stating why this is so. In so doing, the examiner should explain whether the inability to provide a more definitive opinion is the result of a need for additional information or that he or she has exhausted the limits of current medical knowledge in providing an answer to that particular question(s).

IN THE APPEAL OF [redacted]
BRIAN W. CALMON Docket No. 16-02 366



JAMES L. MARCH
Veterans Law Judge
Board of Veterans' Appeals

ATTORNEY FOR THE BOARD A. Page-Nelson, 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

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).