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38 USC CHAPTER 71 - BOARD OF VETERANS' APPEALS

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TITLE 38 - VETERANS' BENEFITS
 PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
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CHAPTER 71 - BOARD OF VETERANS' APPEALS

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Sec.

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AMENDMENTS

2003 - Pub. L. 108-183, title VII, Sec. 707(b)(2), Dec. 16, 2003, 117 Stat. 2673, added item 7112.

1997 - Pub. L. 105-111, Sec. 1(b)(2), Nov. 21, 1997, 111 Stat. 2272, added item 7111.

1994 - Pub. L. 103-446, title II, Sec. 201(a)(2), Nov. 2, 1994, 108 Stat. 4656, added item 7101A.

Pub. L. 103-271, Secs. 6(b), 7(a)(2), (b)(3), July 1, 1994, 108 Stat. 742, 743, substituted "Reconsideration; correction of obvious errors" for "Determinations by the Board" in item 7103, substituted "Appeals: dockets; hearings" for "Docketing of appeals" in item 7107, and struck out item 7110 "Traveling sections".

1991 - Pub. L. 102-40, title IV, Sec. 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 4001 to 4010 as 7101 to 7110, respectively.

1988 - Pub. L. 100-687, div. A, title II, Sec. 207(b), Nov. 18, 1988, 102 Stat. 4112, added item 4010.

1962 - Pub. L. 87-671, Sec. 3, Sept. 19, 1962, 76 Stat. 557, added item 4009.

Pub. L. 87-666, Sec. 2, Sept. 19, 1962, 76 Stat. 554, added item 4005A, and substituted "Filing of notice of disagreement and appeal" for "Applications for review on appeal" in item 4005, "Administrative appeals" for "Docketing of appeals" in item 4006, and "Docketing of appeals" for "Simultaneously contested claims" in item 4007.

-End-

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38 USC Sec. 7101

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-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
 PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
 CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7101. Composition of Board of Veterans' Appeals

-STATUTE-

(a) There is in the Department a Board of Veterans' Appeals (hereinafter in this chapter referred to as the "Board"). The Board is under the administrative control and supervision of a chairman directly responsible to the Secretary. The Board shall consist of a Chairman, a Vice Chairman, and such number of members as may be found necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board. The Board shall have sufficient personnel under the preceding sentence to enable the Board to conduct hearings and consider and dispose of appeals properly before the Board in a timely manner.

(b)(1) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of six years. The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States Court of Appeals for Veterans Claims.

(2) The Chairman may be removed by the President for misconduct, inefficiency, neglect of duty, or engaging in the practice of law or for physical or mental disability which, in the opinion of the President, prevents the proper execution of the Chairman's duties. The Chairman may not be removed from office by the President on any other grounds. Any such removal may only be made after notice and opportunity for hearing.

(3) The Chairman may be appointed under this subsection to more than one term. If, upon the expiration of the term of office for which the Chairman was appointed, the position of Chairman would become vacant, the individual serving as Chairman may, with the approval of the Secretary, continue to serve as Chairman until either appointed to another term or a successor is appointed, but not beyond the end of the Congress during which the term of office expired.

(4) The Secretary shall designate one member of the Board as Vice Chairman. The Vice Chairman shall perform such functions as the Chairman may specify. Such member shall serve as Vice Chairman at the pleasure of the Secretary.

(c)(1)(A) The Chairman may from time to time designate one or more employees of the Department to serve as acting members of the Board. Except as provided in subparagraph (B), any such designation shall be for a period not to exceed 90 days, as determined by the Chairman.

(B) An individual designated as an acting member of the Board may continue to serve as an acting member of the Board in the making of any determination on a proceeding for which the individual was designated as an acting member of the Board, notwithstanding the termination of the period of designation of the individual as an acting member of the Board under subparagraph (A) or (C).

(C) An individual may not serve as an acting member of the Board for more than 270 days during any one-year period.

(D) At no time may the number of acting members exceed 20 percent of the total of the number of Board members and acting Board members combined.

(2) In each annual report to the Congress under section 529 of this title, the Secretary shall provide detailed descriptions of the activities undertaken and plans made in the fiscal year for which the report is made with respect to the authority provided by paragraph (1) of this subsection. In each such report, the Secretary shall indicate, in terms of full-time employee equivalents, the number of acting members of the Board designated under such paragraph (1) during the year for which the report is made.

(d)(1) After the end of each fiscal year, the Chairman shall

prepare a report on the activities of the Board during that fiscal year and the projected activities of the Board for the fiscal year during which the report is prepared and the next fiscal year. Such report shall be included in the documents providing detailed information on the budget for the Department that the Secretary submits to the Congress in conjunction with the President's budget submission for any fiscal year pursuant to section 1105 of title 31.

(2) Each such report shall include, with respect to the preceding fiscal year, information specifying -

(A) the number of cases appealed to the Board during that year;
(B) the number of cases pending before the Board at the beginning and at the end of that year;

(C) the number of such cases which were filed during each of the 36 months preceding the current fiscal year;

(D) the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the preceding fiscal year;

(E) the number of members of the Board at the end of the year and the number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of the preceding fiscal year; and

(F) the number of employees of the Department designated under subsection (c)(1) to serve as acting members of the Board during that year and the number of cases in which each such member participated during that year.

(3) The projections in each such report for the current fiscal year and for the next fiscal year shall include (for each such year) -

(A) an estimate of the number of cases to be appealed to the Board; and

(B) an evaluation of the ability of the Board (based on existing and projected personnel levels) to ensure timely disposition of such appeals as required by section 7101(a) of this title.

(e) A performance incentive that is authorized by law for officers and employees of the Federal Government may be awarded to a member of the Board (including an acting member) by reason of that member's service on the Board only if the Chairman of the Board determines that such member should be awarded that incentive. A determination by the Chairman for such purpose shall be made taking into consideration the quality of performance of the Board member.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1240, Sec. 4001; Pub. L. 98-223, title II, Sec. 208(a)-(c), Mar. 2, 1984, 98 Stat. 43, 44; Pub. L. 100-687, div. A, title II, Secs. 201(a), 202(b), 208, 209, Nov. 18, 1988, 102 Stat. 4109, 4110, 4112; renumbered Sec. 7101 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, Sec. 14(e)(2), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, Secs. 2(c)(3), 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 402, 404, 405; Pub. L. 103-271, Secs. 2-5, July 1, 1994, 108 Stat. 740, 741; Pub. L. 103-446, title II, Secs. 201(d), 203, Nov. 2, 1994, 108 Stat. 4657; Pub. L. 105-368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

-MISC1-

AMENDMENTS

2001 - Subsec. (a). Pub. L. 107-14 substituted "hereinafter" for "hereafter".

1998 - Subsec. (b)(1). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1994 - Subsec. (a). Pub. L. 103-271, Sec. 2, struck out "(not

more than 65)" after "such number".

Subsec. (b). Pub. L. 103-446, Sec. 201(d)(1), (2), designated as par. (2) the text in par. (1) beginning "The Chairman may be removed" and struck out former par. (2) which read as follows:

"(2)(A) The other members of the Board (including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman. Each such member shall be appointed for a term of nine years.

"(B) A member of the Board (other than the Chairman) may be removed by the Secretary upon the recommendation of the Chairman. In the case of a removal that would be covered by section 7521 of title 5 in the case of an administrative law judge, a removal of a member of the Board under this paragraph shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subparagraph. In such a removal action, a member shall have the rights set out in section 7513(b) of such title."

Subsec. (b)(1). Pub. L. 103-271, Sec. 3, inserted after first sentence "The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States Court of Veterans Appeals."

Subsec. (b)(3). Pub. L. 103-446, Secs. 201(d)(3), 203, substituted "The Chairman" for "Members (including the Chairman)" and inserted at end "If, upon the expiration of the term of office for which the Chairman was appointed, the position of Chairman would become vacant, the individual serving as Chairman may, with the approval of the Secretary, continue to serve as Chairman until either appointed to another term or a successor is appointed, but not beyond the end of the Congress during which the term of office expired."

Subsec. (c)(1). Pub. L. 103-271, Sec. 4(a)(1), added par. (1) and struck out former par. (1) which read as follows: "Subject to paragraph (2) of this subsection, the Chairman may from time to time designate employees of the Department to serve as temporary members of the Board. Any such designation shall be for a period of not to exceed one year, as determined by the Chairman. An individual may not serve as a temporary member of the Board for more than 24 months during any 48-month period."

Subsec. (c)(2), (3). Pub. L. 103-271, Sec. 4(a)(2)-(4), redesignated par. (3) as (2), substituted "the number of acting members of the Board designated under such paragraph (1) during the year for which the report is made." for "the number of temporary Board members designated under this subsection and the number of acting Board members designated under section 7102(a)(2)(A)(ii) of this title during the year for which the report is made.", and struck out former par. (2) which read as follows: "Designation under paragraph (1) of this subsection of an individual as a temporary member of the Board may not be made when there are fewer than 65 members of the Board."

Subsec. (d)(2)(F). Pub. L. 103-271, Sec. 5, added subpar. (F).

Subsec. (d)(3)(B). Pub. L. 103-271, Sec. 4(b)(2), substituted "section 7101(a)" for "section 7103(d)".

Subsec. (e). Pub. L. 103-271, Sec. 4(b)(1), substituted "an acting member" for "a temporary or acting member".

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 4001 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "There is" for "There shall be" and ". The Board is under the administrative" for "under the administrative".

Subsec. (b)(2), (4). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (c)(1). Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (c)(3). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, Sec. 2(c)(3), substituted "section 529" for "section 214".

Pub. L. 102-40, Sec. 402(d)(1), substituted "7102(a)(2)(A)(ii)" for "4002(a)(2)(A)(ii)".

Subsec. (d)(1). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (d)(3)(B). Pub. L. 102-40, Sec. 402(d)(1), substituted "7103(d)" for "4003(d)".

1988 - Subsec. (a). Pub. L. 100-687, Sec. 202(b), inserted "and" after "Vice Chairman," substituted "necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have" for "necessary, and", and inserted provisions which required that Board have sufficient personnel to conduct hearings and consider and dispose of appeals.

Subsec. (b). Pub. L. 100-687, Sec. 201(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Members of the Board (including the Chairman and Vice Chairman) shall be appointed by the Administrator with the approval of the President."

Subsec. (d). Pub. L. 100-687, Sec. 208, added subsec. (d).

Subsec. (e). Pub. L. 100-687, Sec. 209, added subsec. (e).

1984 - Subsec. (a). Pub. L. 98-223, Sec. 208(a), (c), substituted "65" for "fifty" and struck out "associate" before "members".

Subsec. (c). Pub. L. 98-223, Sec. 208(b), added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 201(a) of Pub. L. 100-687 effective Feb. 1, 1989, amendment by section 202(b) of Pub. L. 100-687 effective Jan. 1, 1989, and amendment by sections 208 and 209 of Pub. L. 100-687 effective Nov. 18, 1988, see section 401(b)-(d) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

BOARD OF VETERANS' APPEALS

Section 201(c), (d) of Pub. L. 100-687 provided that:

"(c) Transition to New Board. - (1) Appointments of members of the Board of Veterans' Appeals under subsection (b)(2) of section 4001 [now 7101] of title 38, United States Code (as amended by subsection (a)), may not be made until a Chairman is appointed under subsection (b)(1) of that section.

"(2) An individual who is serving as a member of the Board on the date of the enactment of this Act [Nov. 18, 1988] may continue to serve as a member until the earlier of -

"(A) the date on which the individual's successor (as designated by the Administrator) is appointed under subsection (b)(2) of that section, or

"(B) the end of the 180-day period beginning on the day after the date on which the Chairman is appointed under subsection (b)(1) of such section.

"(d) Initial Terms of Office. - Notwithstanding the second sentence of section 4001(b)(2) [now 7101(b)(2)] of title 38, United States Code (as amended by subsection (a)), specifying the term for which members of the Board of Veterans' Appeals shall be appointed, of the members first appointed under that section -

"(A) 22 shall be appointed for a term of three years;

"(B) 22 shall be appointed for a term of six years; and

"(C) 22 shall be appointed for a term of nine years,

as determined by the Administrator [now Secretary] at the time of the initial appointments."

-End-

-CITE-

38 USC Sec. 7101A

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7101A. Members of Board: appointment; pay; performance review

-STATUTE-

(a)(1) The members of the Board of Veterans' Appeals other than the Chairman (and including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman.

(2) Each member of the Board shall be a member in good standing of the bar of a State.

(b) Members of the Board (other than the Chairman and any member of the Board who is a member of the Senior Executive Service) shall, in accordance with regulations prescribed by the Secretary, be paid basic pay at rates equivalent to the rates payable under section 5372 of title 5.

(c)(1)(A) The Chairman shall establish a panel to review the performance of members of the Board. The panel shall be comprised of the Chairman and two other members of the Board (other than the Vice Chairman). The Chairman shall periodically rotate membership on the panel so as to ensure that each member of the Board (other than the Vice Chairman) serves as a member of the panel for and within a reasonable period.

(B) Not less than one year after the job performance standards under subsection (f) are initially established, and not less often than once every three years thereafter, the performance review panel shall determine, with respect to each member of the Board (other than the Chairman or a member who is a member of the Senior Executive Service), whether that member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f). Each such determination shall be in writing.

(2) If the determination of the performance review panel in any case is that the member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f), the Chairman shall recertify the member's appointment as a member of the Board.

(3) If the determination of the performance review panel in any case is that the member's job performance does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall, based upon the individual circumstances, either -

(A) grant the member a conditional recertification; or

(B) recommend to the Secretary that the member be noncertified.

(4) In the case of a member of the Board who is granted a conditional recertification under paragraph (3)(A) or (5)(A), the performance review panel shall review the member's job performance record and make a further determination under paragraph (1) concerning that member not later than one year after the date of the conditional recertification. If the determination of the performance review panel at that time is that the member's job performance as a member of the Board still does not meet the performance standards for a member of the Board established under

subsection (f), the Chairman shall recommend to the Secretary that the member be noncertified.

(5) In a case in which the Chairman recommends to the Secretary under paragraph (3) or (4) that a member be noncertified, the Secretary, after considering the recommendation of the Chairman, may either -

- (A) grant the member a conditional recertification; or
- (B) determine that the member should be noncertified.

(d)(1) If the Secretary, based upon the recommendation of the Chairman, determines that a member of the Board should be noncertified, that member's appointment as a member of the Board shall be terminated and that member shall be removed from the Board.

(2)(A) Upon removal from the Board under paragraph (1) of a member of the Board who before appointment to the Board served as an attorney in the civil service, the Secretary shall appoint that member to an attorney position at the Board, if the removed member so requests. If the removed member served in an attorney position at the Board immediately before appointment to the Board, appointment to an attorney position under this paragraph shall be in the grade and step held by the removed member immediately before such appointment to the Board.

(B) The Secretary is not required to make an appointment to an attorney position under this paragraph if the Secretary determines that the member of the Board removed under paragraph (1) is not qualified for the position.

(e)(1) A member of the Board (other than the Chairman or a member of the Senior Executive Service) may be removed as a member of the Board by reason of job performance only as provided in subsections (c) and (d). Such a member may be removed by the Secretary, upon the recommendation of the Chairman, for any other reason as determined by the Secretary.

(2) In the case of a removal of a member under this section for a reason other than job performance that would be covered by section 7521 of title 5 in the case of an administrative law judge, the removal of the member of the Board shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subsection. In such a removal action, a member shall have the rights set out in section 7513(b) of that title.

(f) The Chairman, subject to the approval of the Secretary, shall establish standards for the performance of the job of a member of the Board (other than the Chairman or a member of the Senior Executive Service). Those standards shall establish objective and fair criteria for evaluation of the job performance of a member of the Board.

(g) The Secretary shall prescribe procedures for the administration of this section, including deadlines and time schedules for different actions under this section.

-SOURCE-

(Added Pub. L. 103-446, title II, Sec. 201(a)(1), Nov. 2, 1994, 108 Stat. 4655; amended Pub. L. 105-368, title X, Sec. 1002, Nov. 11, 1998, 112 Stat. 3363.)

-MISC1-

AMENDMENTS

1998 - Subsec. (a). Pub. L. 105-368, Sec. 1002(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2). Pub. L. 105-368, Sec. 1002(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Upon removal from the Board under paragraph (1), a member of the Board (other than the Chairman) who was a career or career-conditional employee in the civil service before commencement of service as a member of the Board shall revert to the civil service grade and

series held by the member immediately before the appointment of the member to the Board."

EFFECTIVE DATE

Section 201(c) of Pub. L. 103-446 provided that: "Section 7101A(b) of title 38, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning after December 31, 1994."

SAVE PAY PROVISION

Section 201(b) of Pub. L. 103-446 provided that: "The rate of basic pay payable to an individual who is a member of the Board of Veterans' Appeals on the date of the enactment of this Act [Nov. 2, 1994] may not be reduced by reason of the amendments made by this section [enacting this section and amending section 7101 of this title] to a rate below the rate payable to such individual on the day before such date."

DEADLINE FOR ESTABLISHMENT OF PERFORMANCE EVALUATION CRITERIA FOR BOARD MEMBERS

Section 202 of Pub. L. 103-446 provided that:

"(a) Deadline. - The job performance standards required to be established by section 7101A(f) of title 38, United States Code, as added by section 201(a), shall be established not later than 90 days after the date of the enactment of this Act [Nov. 2, 1994].

"(b) Submission to Congressional Committees. - Not later than the date on which the standards referred to in subsection (a) take effect, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report describing the standards established by the Chairman of the Board of Veterans' Appeals."

-End-

-CITE-

38 USC Sec. 7102

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-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7102. Assignment of members of Board

-STATUTE-

(a) A proceeding instituted before the Board may be assigned to an individual member of the Board or to a panel of not less than three members of the Board. A member or panel assigned a proceeding shall make a determination thereon, including any motion filed in connection therewith. The member or panel, as the case may be, shall make a report under section 7104(d) of this title on any such determination, which report shall constitute the final disposition of the proceeding by the member or panel.

(b) A proceeding may not be assigned to the Chairman as an individual member. The Chairman may participate in a proceeding assigned to a panel or in a reconsideration assigned to a panel of members.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, Sec. 4002; Pub. L. 98-223, title II, Sec. 208(c), (d), Mar. 2, 1984, 98 Stat. 44; renumbered Sec. 7102 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 103-271, Sec. 6(a), July 1, 1994, 108 Stat. 741.)

-MISC1-

AMENDMENTS

1994 - Pub. L. 103-271 amended section generally, substituting present provisions for provisions authorizing Chairman to divide Board into sections of three members and to assign proceedings thereto, and provisions relating to assignment where section is composed of fewer than three members, limiting annual period of service, prohibiting more than one member to be a temporary or acting member, and relating to hearing docket and report of determination.

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 4002 of this title as this section.

Subsec. (a)(2)(A)(ii). Pub. L. 102-83 substituted "Department" for "Veterans' Administration".

Subsec. (a)(3). Pub. L. 102-40, Sec. 402(d)(1), substituted "7101(c)" for "4001(c)".

1984 - Subsec. (a)(1). Pub. L. 98-223, Sec. 208(d)(1), designated provision authorizing the Chairman from time to time to divide the Board into sections of three members, assign members to the Board thereto, and designated the chief thereof, as par. (1).

Subsec. (a)(2). Pub. L. 98-223, Sec. 208(d)(2), designated provision relating to authority of the Chairman in the case where a section is composed of fewer than three members as a result of absence, vacancy, or inability of a member to serve as subpar. (A), and in subpar. (A) as so designated, inserted provision authorizing the Chairman to designate an employee of the Veterans' Administration to serve as an acting member of the Board on such section for a period of not to exceed 90 days, and added subpar. (B).

Subsec. (a)(3). Pub. L. 98-223, Sec. 208(d)(2), added par. (3).

Subsec. (b). Pub. L. 98-223, Sec. 208(d)(3), designated provision relating to the maintenance of a hearing docket and the holding of formal recorded hearings upon which a final determination will be made as subsec. (b).

Pub. L. 98-223, Sec. 208(c), struck out "associate" before "member" in two places.

Subsec. (c). Pub. L. 98-223, Sec. 208(d)(4), designated provision relating to the section making a determination on any proceeding or motion in connection therewith assigned to the section by the Board and making a report on such determination, which report constitutes its final disposition of the proceeding, as subsec. (c).

-End-

-CITE-

38 USC Sec. 7103

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7103. Reconsideration; correction of obvious errors

-STATUTE-

(a) The decision of the Board determining a matter under section 7102 of this title is final unless the Chairman orders reconsideration of the decision in accordance with subsection (b). Such an order may be made on the Chairman's initiative or upon motion of the claimant.

(b)(1) Upon the order of the Chairman for reconsideration of the decision in a case, the case shall be referred -

(A) in the case of a matter originally heard by a single member

of the Board, to a panel of not less than three members of the Board; or

(B) in the case of a matter originally heard by a panel of members of the Board, to an enlarged panel of the Board.

(2) A panel referred to in paragraph (1) may not include the member, or any member of the panel, that made the decision subject to reconsideration.

(3) A panel reconsidering a case under this subsection shall render its decision after reviewing the entire record before the Board. The decision of the panel shall be made by a majority vote of the members of the panel. The decision of the panel shall constitute the final decision of the Board.

(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, Sec. 4003; Pub. L. 100-687, div. A, title II, Sec. 202(a), Nov. 18, 1988, 102 Stat. 4110; renumbered Sec. 7103, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103-271, Sec. 6(a), July 1, 1994, 108 Stat. 741.)

-MISC1-

AMENDMENTS

1994 - Pub. L. 103-271 amended section generally. Prior to amendment, text read as follows:

"(a) Decisions by a section of the Board shall be made by a majority of the members of the section. The decision of the section is final unless the Chairman orders reconsideration of the case.

"(b) If the Chairman orders reconsideration in a case, the case shall upon reconsideration be heard by an expanded section of the Board. When a case is heard by an expanded section of the Board after such a motion for reconsideration, the decision of a majority of the members of the expanded section shall constitute the final decision of the Board.

"(c) Notwithstanding subsections (a) and (b) of this section, the Board on its own motion may correct an obvious error in the record."

1991 - Pub. L. 102-40 renumbered section 4003 of this title as this section.

1988 - Pub. L. 100-687, in amending section generally, added subsec. (a), struck out former subsec. (a) which provided that determination of section, when unanimous, be final determination of Board, added subsec. (b), struck out former subsec. (b) which provided that when there is disagreement among members of section, concurrence of Chairman with majority of members of section shall constitute final determination of Board, and added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Jan. 1, 1989, see section 401(d) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

-End-

-CITE-

38 USC Sec. 7104

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7104. Jurisdiction of the Board

-STATUTE-

(a) All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be reopened and allowed and a claim based upon the same factual basis may not be considered.

(c) The Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.

(d) Each decision of the Board shall include -

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record; and

(2) an order granting appropriate relief or denying relief.

(e)(1) After reaching a decision on a case, the Board shall promptly mail a copy of its written decision to the claimant at the last known address of the claimant.

(2) If the claimant has an authorized representative, the Board shall -

(A) mail a copy of its written decision to the authorized representative at the last known address of the authorized representative; or

(B) send a copy of its written decision to the authorized representative by any means reasonably likely to provide the authorized representative with a copy of the decision within the same time a copy would be expected to reach the authorized representative if sent by first-class mail.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, Sec. 4004; Pub. L. 87-97, Sec. 1, July 20, 1961, 75 Stat. 215; Pub. L. 100-687, div. A, title I, Sec. 101(b), title II, Secs. 203(a), 204, 205, Nov. 18, 1988, 102 Stat. 4106, 4110, 4111; renumbered Sec. 7104 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, Sec. 14(g)(2), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), (c), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 103-271, Secs. 7(b)(1), 8, July 1, 1994, 108 Stat. 743; Pub. L. 104-275, title V, Sec. 509, Oct. 9, 1996, 110 Stat. 3344.)

-MISC1-

AMENDMENTS

1996 - Subsec. (e). Pub. L. 104-275 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "After reaching a decision in a case, the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and at the last known address of such representative (if any)."

1994 - Subsec. (a). Pub. L. 103-271, Sec. 8, substituted "511(a)" for "211(a)".

Pub. L. 103-271, Sec. 7(b)(1), struck out after second sentence "The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing."

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 4004 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-54 made a technical correction to Pub. L. 100-687, Sec. 101(b). See 1988 Amendment note below.

Subsec. (b). Pub. L. 102-40, Sec. 402(d)(1), substituted "5108" for "3008".

Subsec. (c). Pub. L. 102-83, Sec. 4(c), substituted "chief legal officer of the Department" for "chief law officer".

Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

1988 - Subsec. (a). Pub. L. 100-687, Sec. 101(b), as amended by Pub. L. 102-54, substituted "All questions in a matter which under section 211(a) of this title is subject to decision by the Administrator" for "All questions on claims involving benefits under the laws administered by the Veterans' Administration".

Pub. L. 100-687, Sec. 203(a), inserted at end "The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation."

Subsec. (b). Pub. L. 100-687, Sec. 204, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "When a claim is disallowed by the Board, it may not thereafter be reopened and allowed, and no claim based upon the same factual basis shall be considered; however, where subsequent to disallowance of a claim, new and material evidence in the form of official reports from the proper service department is secured, the Board may authorize the reopening of the claim and review of the former decision."

Subsecs. (d), (e). Pub. L. 100-687, Sec. 205, added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows: "The decisions of the Board shall be in writing and shall contain findings of fact and conclusions of law separately stated."

1961 - Subsec. (d). Pub. L. 87-97 added subsec. (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 14(g)(2) of Pub. L. 102-54 provided that the amendment made by that section is effective Nov. 18, 1988.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 101(b) and 204 of Pub. L. 100-687 effective Sept. 1, 1989, and amendment by sections 203(a) and 205 of Pub. L. 100-687 effective Jan. 1, 1989, see section 401(a), (d) of Pub. L. 100-687, as amended, set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2 of Pub. L. 87-97 provided that: "The amendment made by this Act [amending this section] shall take effect as of January 1, 1962."

-End-

-CITE-

38 USC Sec. 7105

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7105. Filing of notice of disagreement and appeal

-STATUTE-

(a) Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Secretary.

(b)(1) Except in the case of simultaneously contested claims, notice of disagreement shall be filed within one year from the date of mailing of notice of the result of initial review or determination. Such notice, and appeals, must be in writing and be filed with the activity which entered the determination with which disagreement is expressed (hereinafter referred to as the "agency of original jurisdiction"). A notice of disagreement postmarked before the expiration of the one-year period will be accepted as timely filed.

(2) Notices of disagreement, and appeals, must be in writing and may be filed by the claimant, the claimant's legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian. Not more than one recognized organization, attorney, or agent will be recognized at any one time in the prosecution of a claim.

(c) If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or determination shall become final and the claim will not thereafter be reopened or allowed, except as may otherwise be provided by regulations not inconsistent with this title.

(d)(1) Where the claimant, or the claimant's representative, within the time specified in this chapter, files a notice of disagreement with the decision of the agency of original jurisdiction, such agency will take such development or review action as it deems proper under the provisions of regulations not inconsistent with this title. If such action does not resolve the disagreement either by granting the benefit sought or through withdrawal of the notice of disagreement, such agency shall prepare a statement of the case. A statement of the case shall include the following:

(A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed.

(B) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision.

(C) The decision on each issue and a summary of the reasons for such decision.

(2) A statement of the case, as required by this subsection, will not disclose matters that would be contrary to section 5701 of this title or otherwise contrary to the public interest. Such matters may be disclosed to a designated representative unless the relationship between the claimant and the representative is such that disclosure to the representative would be as harmful as if made to the claimant.

(3) Copies of the "statement of the case" prescribed in paragraph (1) of this subsection will be submitted to the claimant and to the claimant's representative, if there is one. The claimant will be afforded a period of sixty days from the date the statement of the case is mailed to file the formal appeal. This may be extended for a reasonable period on request for good cause shown. The appeal should set out specific allegations of error of fact or law, such as allegations related to specific items in the statement of the case. The benefits sought on appeal must be clearly identified. The agency of original jurisdiction may close the case for failure to respond after receipt of the statement of the case, but questions as to timeliness or adequacy of response shall be determined by the Board of Veterans' Appeals.

(4) The claimant in any case may not be presumed to agree with any statement of fact contained in the statement of the case to

which the claimant does not specifically express agreement.

(5) The Board of Veterans' Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

-SOURCE-

(Added Pub. L. 87-666, Sec. 1, Sept. 19, 1962, 76 Stat. 553, Sec. 4005; amended Pub. L. 99-576, title VII, Sec. 701(85), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title II, Secs. 203(b), 206, Nov. 18, 1988, 102 Stat. 4111; renumbered Sec. 7105 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107-14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

-MISC1-

AMENDMENTS

2001 - Subsec. (b)(1). Pub. L. 107-14 substituted "hereinafter" for "hereafter".

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 4005 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Secretary" for "Administrator".

Subsec. (d)(2). Pub. L. 102-40, Sec. 402(d)(1), substituted "5701" for "3301".

1988 - Subsec. (d)(1). Pub. L. 100-687, Sec. 206(a), substituted "shall prepare a statement of the case. A statement of the case shall include the following:" for "will prepare a statement of the case consisting of - ", added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

"(A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed;

"(B) A citation or discussion of the pertinent law, regulations, and, where applicable, the provisions of the Schedule for Rating Disabilities;

"(C) The decision on such issue or issues and a summary of the reasons therefor."

Subsec. (d)(4). Pub. L. 100-687, Sec. 206(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken."

Subsec. (d)(5). Pub. L. 100-687, Sec. 203(b), struck out "will base its decision on the entire record and" after "of Veterans' Appeals".

1986 - Subsec. (b)(2). Pub. L. 99-576, Sec. 701(85), substituted "the claimant's" for "his" and "the claimant or legal guardian" for "him".

Subsec. (d)(1), (3). Pub. L. 99-576, Sec. 701(85)(A), substituted "the claimant's" for "his".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Jan. 1, 1989, see section 401(d) of Pub. L. 100-687 set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE

Section 3 of Pub. L. 87-666 provided that: "The amendments made by this Act [enacting sections 4005, 4005A, and 4006 [now 7105, 7105A, and 7106] of this title, redesignating former section 4006 as 4007 [now 7107] of this title, and repealing former sections 4005 and 4007 of this title] shall be effective January 1, 1963."

-End-

-CITE-

38 USC Sec. 7105A

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7105A. Simultaneously contested claims

-STATUTE-

(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of a notice of disagreement shall be sixty days from the date notice of the adverse action is mailed. In such cases the agency of original jurisdiction shall promptly notify all parties in interest at the last known address of the action taken, expressly inviting attention to the fact that notice of disagreement will not be entertained unless filed within the sixty-day period prescribed by this subsection.

(b) Upon the filing of a notice of disagreement, all parties in interest will be furnished with a statement of the case in the same manner as is prescribed in section 7105. The party in interest who filed a notice of disagreement will be allowed thirty days from the date of mailing of such statement of the case in which to file a formal appeal. Extension of time may be granted for good cause shown but with consideration to the interests of the other parties involved. The substance of the appeal will be communicated to the other party or parties in interest and a period of thirty days will be allowed for filing a brief or argument in answer thereto. Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.

-SOURCE-

(Added Pub. L. 87-666, Sec. 1, Sept. 19, 1962, 76 Stat. 554, Sec. 4005A; renumbered Sec. 7105A and amended Pub. L. 102-40, title IV, sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 4007 of this title, prior to the general amendment of sections 4005 to 4007 by Pub. L. 87-666.

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 4005A of this title as this section and substituted "7105" for "4005" in subsec. (b).

EFFECTIVE DATE

Section effective Jan. 1, 1963, see section 3 of Pub. L. 87-666, set out as a note under section 7105 of this title.

-End-

-CITE-

38 USC Sec. 7106

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7106. Administrative appeals

-STATUTE-

Application for review on appeal may be made within the one-year period prescribed in section 7105 of this title by such officials of the Department as may be designated by the Secretary. An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter.

-SOURCE-

(Added Pub. L. 87-666, Sec. 1, Sept. 19, 1962, 76 Stat. 554, Sec. 4006; renumbered Sec. 7106 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in subsec. (c)(2) of former section 4005 of this title, prior to the general amendment of sections 4005 to 4007 by Pub. L. 87-666.

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 4006 of this title as this section and substituted "7105" for "4005".

Pub. L. 102-83 substituted "Secretary" for "Administrator" and "Department" for "Veterans' Administration".

-End-

-CITE-

38 USC Sec. 7107

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7107. Appeals: dockets; hearings

-STATUTE-

(a)(1) Except as provided in paragraphs (2) and (3) and in subsection (f), each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket.

(2) A case referred to in paragraph (1) may, for cause shown, be advanced on motion for earlier consideration and determination. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only -

(A) if the case involves interpretation of law of general application affecting other claims;

(B) if the appellant is seriously ill or is under severe financial hardship; or

(C) for other sufficient cause shown.

(3) A case referred to in paragraph (1) may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(b) The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.

(c) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as

the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing shall, except in the case of a reconsideration of a decision under section 7103 of this title, participate in making the final determination of the claim.

(d)(1) An appellant may request that a hearing before the Board be held at its principal location or at a facility of the Department located within the area served by a regional office of the Department.

(2) A hearing to be held within an area served by a regional office of the Department shall (except as provided in paragraph (3)) be scheduled to be held in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.

(3) A hearing to be held within an area served by a regional office of the Department may, for cause shown, be advanced on motion for an earlier hearing. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only -

(A) if the case involves interpretation of law of general application affecting other claims;

(B) if the appellant is seriously ill or is under severe financial hardship; or

(C) for other sufficient cause shown.

(e)(1) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location.

(2) When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or panel as provided in subsection (d). Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of the appellant to a hearing as provided in such subsection (d) shall not be affected.

(f) Nothing in this section shall preclude the screening of cases for purposes of -

(1) determining the adequacy of the record for decisional purposes; or

(2) the development, or attempted development, of a record found to be inadequate for decisional purposes.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1242, Sec. 4006; renumbered Sec. 4007, Pub. L. 87-666, Sec. 1, Sept. 19, 1962, 76 Stat. 553; renumbered Sec. 7107, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103-271, Sec. 7(a)(1), July 1, 1994, 108 Stat. 742; Pub. L. 103-446, title III, Sec. 303, Nov. 2, 1994, 108 Stat. 4658; Pub. L. 105-368, title X, Sec. 1003, Nov. 11, 1998, 112 Stat. 3363.)

-MISC1-

AMENDMENTS

1998 - Subsec. (a)(1). Pub. L. 105-368, Sec. 1003(a)(1), inserted "in paragraphs (2) and (3) and" after "Except as provided".

Subsec. (a)(2). Pub. L. 105-368, Sec. 1003(a)(2), added second and third sentences and struck out former second sentence which read as follows: "Any such motion shall set forth succinctly the grounds upon which it is based and may not be granted unless the case involves interpretation of law of general application

affecting other claims or for other sufficient cause shown."

Subsec. (a)(3). Pub. L. 105-368, Sec. 1003(a)(3), added par. (3).

Subsec. (d)(2). Pub. L. 105-368, Sec. 1003(b)(1), substituted "in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area." for "in the order in which requests for hearings within that area are received by the Department."

Subsec. (d)(3). Pub. L. 105-368, Sec. 1003(b)(2), added par. (3) and struck out former par. (3) which read as follows: "In a case in which the Secretary is aware that the appellant is seriously ill or is under severe financial hardship, a hearing may be scheduled at a time earlier than would be provided for under paragraph (2)."

1994 - Pub. L. 103-446 substituted "Except as provided in subsection (f), each case" for "Each case" in subsec. (a)(1) and added subsec. (f).

Pub. L. 103-271 amended section generally. Prior to amendment, text read as follows: "All cases received pursuant to application for review on appeal shall be considered and decided in regular order according to their places upon the docket; however, for cause shown a case may be advanced on motion for earlier consideration and determination. Every such motion shall set forth succinctly the grounds upon which it is based. No such motion shall be granted except in cases involving interpretation of law of general application affecting other claims, or for other sufficient cause shown."

1991 - Pub. L. 102-40 renumbered section 4007 of this title as this section.

1962 - Pub. L. 87-666 renumbered section 4006 of this title as this section.

-End-

-CITE-

38 USC Sec. 7108

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7108. Rejection of applications

-STATUTE-

An application for review on appeal shall not be entertained unless it is in conformity with this chapter.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1243, Sec. 4008; renumbered Sec. 7108, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 4008 of this title as this section.

-End-

-CITE-

38 USC Sec. 7109

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7109. Independent medical opinions

-STATUTE-

(a) When, in the judgment of the Board, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in an appeal case, the Board may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Board shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Board.

-SOURCE-

(Added Pub. L. 87-671, Sec. 1, Sept. 19, 1962, 76 Stat. 557, Sec. 4009; amended Pub. L. 100-687, div. A, title I, Sec. 103(b), Nov. 18, 1988, 102 Stat. 4107; renumbered Sec. 7109, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 4009 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Subsec. (b). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1988 - Subsec. (a). Pub. L. 100-687, Sec. 103(b)(1), substituted "Board may" for "Board is authorized to".

Subsec. (b). Pub. L. 100-687, Sec. 103(b)(2), substituted "Any such arrangement shall" for "Such arrangement will", and "an individual case shall" for "any individual case will".

Subsec. (c). Pub. L. 100-687, Sec. 103(b)(3), added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1963, see section 4 of Pub. L. 87-671, set out as an Effective Date of 1962 Amendment note under section 5701 of this title.

-End-

-CITE-

38 USC Sec. 7110

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7110. Repealed.

-MISC1-

[Sec. 7110. Repealed. Pub. L. 103-271, Sec. 7(b)(2), July 1, 1994, 108 Stat. 743].

Section, added Pub. L. 100-687, div. A, title II, Sec. 207(a), Nov. 18, 1988, 102 Stat. 4111, Sec. 4010; renumbered Sec. 7110, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404, authorized hearing before traveling sections of the Board.

-End-

-CITE-

38 USC Sec. 7111

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7111. Revision of decisions on grounds of clear and unmistakable error

-STATUTE-

(a) A decision by the Board is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

(b) For the purposes of authorizing benefits, a rating or other adjudicative decision of the Board that constitutes a reversal or revision of a prior decision of the Board on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Board on the Board's own motion or upon request of the claimant.

(d) A request for revision of a decision of the Board based on clear and unmistakable error may be made at any time after that decision is made.

(e) Such a request shall be submitted directly to the Board and shall be decided by the Board on the merits, without referral to any adjudicative or hearing official acting on behalf of the Secretary.

(f) A claim filed with the Secretary that requests reversal or revision of a previous Board decision due to clear and unmistakable error shall be considered to be a request to the Board under this section, and the Secretary shall promptly transmit any such request to the Board for its consideration under this section.

-SOURCE-

(Added Pub. L. 105-111, Sec. 1(b)(1), Nov. 21, 1997, 111 Stat. 2271.)

-MISC1-

EFFECTIVE DATE

Section applicable to any determination made before, on, or after Nov. 21, 1997, see section 1(c)(1) of Pub. L. 105-111, set out as a

38C71
note under section 5109A of this title.

-End-

-CITE-

38 USC Sec. 7112

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES
CHAPTER 71 - BOARD OF VETERANS' APPEALS

-HEAD-

Sec. 7112. Expedited treatment of remanded claims

-STATUTE-

The secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Board of any claim that is remanded to the Secretary by the Court of Appeals for Veterans Claims.

-SOURCE-

(Added Pub. L. 108-183, title VII, Sec. 707(b)(1), Dec. 16, 2003, 117 Stat. 2673.)

-End-