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Title 38 – Pensions, Bonuses, and Veterans' Relief

Chapter I – Department of Veterans Affairs

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PART 19—BOARD OF VETERANS' APPEALS: LEGACY APPEALS REGULATIONS

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Source: 57 FR 4104, Feb. 3, 1992, unless otherwise noted.

Subpart A—Applicability

§ 19.1 Provisions applicable to legacy appeals.

Part 19 and subparts F, G, and J of part 20 apply only to the processing and adjudication of legacy appeals, as defined in § 19.2. Except as otherwise provided in specific sections, subparts A, B, H, K, L, M, N, and O of part 20 apply to the processing and adjudication of both appeals and legacy appeals. For applicability provisions concerning appeals in the modernized review system, see § 20.4 of this chapter.

[84 FR 177, Jan. 18, 2019]

§ 19.2 Appellant's election for review of a legacy appeal in the modernized system.

- (a) **Effective date.** As used in this section, *the effective date* means February 19, 2019.
- (b) **Modernized review system.** The modernized review system refers to the current statutory framework for claims and appeals processing, set forth in Public Law 115-55, and any amendments thereto, applicable on the effective date. The modernized review system applies to all claims, requests for reopening of finally adjudicated claims, and requests for revision based on clear and unmistakable error for which VA issues notice of an initial decision on or after the effective date, or as otherwise provided in paragraph (d) of this section.

- (c) **Legacy appeals.** A legacy appeal is an appeal of a legacy claim, as defined in 38 CFR 3.2400(b), where a claimant has not elected to participate in the modernized review system as provided in paragraph (d) of this section. A legacy appeal is initiated by the filing of a Notice of Disagreement and is perfected to the Board with the filing of a Substantive Appeal pursuant to applicable regulations in accordance with 38 CFR parts 19 and 20.
- (d) **Election into the modernized review system.** The modernized review system applies to legacy claims and appeals where:
- (1) A claimant with a legacy claim or appeal elects the modernized review system pursuant to 38 CFR 3.2400(c)(1);
 - (2) A claimant with a legacy claim or appeal elects the modernized review system, following issuance, on or after the effective date, of a VA Statement of the Case or Supplemental Statement of the Case. The election is made by filing, on a form prescribed by the Secretary, an appeal in accordance with 38 CFR 20.202, or a review option in accordance with 38 U.S.C. 5108 or 5104B, as implemented by 38 CFR 3.2500 and other applicable regulations. The election must be filed within the time allowed for filing a substantive appeal under § 19.52(b); or
 - (3) VA issued notice of a decision prior to the effective date, and, pursuant to the Secretary's authorization to participate in a test program, the claimant elects the modernized review system by filing an appeal in accordance with 38 U.S.C. 7105, or a review option in accordance with 38 U.S.C. 5108 or 5104B.

(Authority: Pub. L. 115-55; 131 Stat. 1105; 38 U.S.C. 5104B, 5104C(a); 5108; 38 U.S.C. 7105)

[84 FR 177, Jan. 18, 2019]

§§ 19.3-19.19 [Reserved]

Subpart B—Legacy Appeals and Legacy Appeals Processing by Agency of Original Jurisdiction

§ 19.20 What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement submitted in accordance with the provisions of § 19.21, and either § 19.52(a) or § 20.501(a) of this chapter, as applicable and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

(Authority: 38 U.S.C. 7105 (2016))

[79 FR 57698, Sept. 25, 2014. Redesignated and amended at 84 FR 177, 178, Jan. 18, 2019]

§ 19.21 Notice of Disagreement.

- (a) Cases in which a form is provided by the agency of original jurisdiction for the purpose of initiating an appeal.
- (1) **Format.** For every case in which the agency of original jurisdiction (AOJ) provides, in connection with its decision, a form for the purpose of initiating an appeal, a Notice of Disagreement consists of a completed and timely submitted copy of that form. VA will not accept as a notice of disagreement

an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result that is submitted in any other format, including on a different VA form.

- (2) **Provision of form to the claimant.** If a claimant has established an online benefits account with VA, or has designated an email address for the purpose of receiving communications from VA, VA may provide an appeal form pursuant to paragraph (a)(1) of this section electronically, whether by email, hyperlink, or other direction to the appropriate form within the claimant's online benefits account. VA may also provide a form pursuant to paragraph (a)(1) of this section in paper format.
 - (3) **Presumption form was provided.** This paragraph (a) applies if there is any indication whatsoever in the claimant's file or electronic account that a form was sent pursuant to paragraph (a)(1) of this section.
 - (4) **Specificity required by form.** If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified to the extent a form provided pursuant to paragraph (a)(1) of this section so requires. If the claimant wishes to appeal all of the issues decided by the agency of original jurisdiction, the form must clearly indicate that intent. Issues not identified on the form will not be considered appealed.
 - (5) **Alternate form or other communication.** The filing of an alternate form or other communication will not extend, toll, or otherwise delay the time limit for filing a Notice of Disagreement, as provided in § 19.52(a). In particular, returning the incorrect VA form, including a form designed to appeal a different benefit does not extend, toll, or otherwise delay the time limit for filing the correct form.
- (b) **Cases in which no form is provided by the agency of original jurisdiction for purpose of initiating an appeal.** A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement relating to a claim for benefits in any case in which the agency of original jurisdiction does not provide a form identified as being for the purpose of initiating an appeal. The Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified.
- (c) **Simultaneously contested claims.** The provisions of paragraph (b) of this section shall apply to appeals in simultaneously contested claims under Rules 500 and 501 (§§ 20.500 and 20.501 of this chapter), regardless of whether a standardized form was provided with the decision of the agency of original jurisdiction.

(Authority: 38 U.S.C. 7105 (2016))

[79 FR 57698, Sept. 25, 2014. Redesignated and amended at 84 FR 177, 178, Jan. 18, 2019]

§ 19.22 Substantive Appeal.

A Substantive Appeal consists of a properly completed VA Form 9, "Appeal to Board of Veterans' Appeals," or correspondence containing the necessary information. If the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed. The Substantive Appeal

should set out specific arguments relating to errors of fact or law made by the agency of original jurisdiction in reaching the determination, or determinations, being appealed. To the extent feasible, the argument should be related to specific items in the Statement of the Case and any prior Supplemental Statements of the Case. The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to allege specific error of fact or law in the determination, or determinations, being appealed. The Board will not presume that an appellant agrees with any statement of fact contained in a Statement of the Case or a Supplemental Statement of the Case which is not specifically contested. Proper completion and filing of a Substantive Appeal are the last actions the appellant needs to take to perfect an appeal.

(Approved by the Office of Management and Budget under control number 2900-0085)

(Authority: 38 U.S.C. 7105(d)(3)-(5) (2016))

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20450, May 7, 1996. Redesignated and amended at 84 FR 177, 178, Jan. 18, 2019]

§ 19.23 Applicability of provisions concerning Notice of Disagreement.

- (a) Appeals governed by § 19.21(a) shall be processed in accordance with § 19.24. Sections 19.26 and 19.28 shall not apply to appeals governed by § 19.21(a).
- (b) Appeals governed by § 19.21(b) shall be processed in accordance with §§ 19.26 and 19.28.

[79 FR 57697, Sept. 25, 2014, as amended at 84 FR 178, Jan. 18, 2019]

§ 19.24 Action by agency of original jurisdiction on Notice of Disagreement required to be filed on a standardized form.

- (a) **Initial action.** When a timely Notice of Disagreement in accordance with the requirements of § 19.21(a) is filed, the agency of original jurisdiction will reexamine the claim and determine whether additional review or development is warranted.
- (b) **Incomplete and complete appeal forms** —
 - (1) **Incomplete appeal forms.** In cases governed by § 19.21(a), if VA determines a form filed by the claimant is incomplete and requests clarification, the claimant must timely file a completed version of the correct form in order to initiate an appeal. A claimant is not required to cure or correct the filing of an incomplete form by filing a completed version of the correct form unless VA informs the claimant or his or her representative that the form is incomplete and requests clarification.
 - (2) **Complete appeal forms.** In general, a form will be considered complete if the following information is provided:
 - (i) Information to identify the claimant;
 - (ii) The claim to which the form pertains;

(iii) Any information necessary to identify the specific nature of the disagreement if the form so requires. For compensation claims, this criterion will be met if the form enumerates the issues or conditions for which appellate review is sought, or if it provides other information required on the form to identify the claimant and the nature of the disagreement (such as disagreement with disability rating, effective date, or denial of service connection); and

(iv) The claimant's signature.

(3) **Timeframe to complete correct form.** In general, a claimant who wishes to initiate an appeal must provide a complete form within the timeframe established by § 19.52(a). When VA requests clarification of an incomplete form, the claimant must provide a complete form in response to VA's request for clarification within the later of the following dates:

(i) 60 days from the date of the request; or

(ii) 1 year from the date of mailing of the notice of the decision of the agency of original jurisdiction.

(4) **Failure to respond.** If the claimant fails to provide a completed form within the timeframe set forth in paragraph (b)(3) of this section, the decision of the agency of original jurisdiction will become final.

(5) **Form timely completed.** If a completed form is received within the timeframe set forth in paragraph (b)(3) of this section, VA will treat the completed form as the Notice of Disagreement and VA will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, VA will prepare a Statement of the Case pursuant to § 19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

(c) **Issues under appellate review.** If a form enumerates some but not all of the issues or conditions which were the subject of the decision of the agency of original jurisdiction, the form will be considered complete with respect to the issues for which appellate review is sought and identified by the claimant. Any issues or conditions not enumerated will not be considered appealed on the basis of the filing of that form and will become final unless the claimant timely files a separate form for those issues or conditions within the applicable timeframe set forth in paragraph (b)(3) of this section.

(d) **Disagreement concerning whether Notice of Disagreement has been filed.** Whether or not a claimant has timely filed a Notice of Disagreement is an appealable issue, but in such a case, appellate consideration shall be limited to the question of whether the correct form was timely filed.

[79 FR 57697, Sept. 25, 2014, as amended at 84 FR 178, Jan. 18, 2019]

§ 19.25 Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits.

(Authority: 38 U.S.C. 7105(a) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 178, Jan. 18, 2019]

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

- (a) **Initial action.** When a timely Notice of Disagreement (NOD) is filed, the agency of original jurisdiction (AOJ) must reexamine the claim and determine whether additional review or development is warranted.
- (b) **Unclear communication or disagreement.** If within one year after mailing an adverse decision (or 60 days for simultaneously contested claims), the AOJ receives a written communication expressing dissatisfaction or disagreement with the adverse decision, but the AOJ cannot clearly identify that communication as expressing an intent to appeal, or the AOJ cannot identify which denied claim(s) the claimant wants to appeal, then the AOJ will contact the claimant to request clarification of the claimant's intent. This contact may be either oral or written.
 - (1) For oral contacts, VA will contact whoever filed the communication. VA will make a written record of any oral clarification request conveyed to the claimant including the date of the adverse decision involved and the response. In any request for clarification, the AOJ will explain that if a response to this request is not received within the time period described in paragraph (c) of this section, the earlier, unclear communication will not be considered an NOD as to any adverse decision for which clarification was requested.
 - (2) For written contacts, VA will mail a letter requesting clarification to the claimant and send a copy to his or her representative and fiduciary, if any.
- (c) **Response required from claimant –**
 - (1) **Time to respond.** The claimant must respond to the AOJ's request for clarification within the later of the following dates:
 - (i) 60 days after the date of the AOJ's clarification request; or
 - (ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).
 - (2) **Failure to respond.** If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered an NOD as to any claim for which clarification was requested. The AOJ will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.
- (d) **Action following clarification.** When clarification of the claimant's intent to file an NOD is obtained, the AOJ will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, the AOJ will prepare a Statement of the Case pursuant to § 19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.
- (e) **Representatives and fiduciaries.** For the purpose of the requirements in paragraphs (b) through (d) of this section, references to the "claimant" include reference to the claimant or his or her representative, if any, or to his or her fiduciary, if any, as appropriate.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0674)

(Authority: 38 U.S.C. 501; 38 U.S.C. 7105, 7105A (2016))

[71 FR 56871, Sept. 28, 2006, as amended at 84 FR 178, Jan. 18, 2019]

§ 19.27 [Reserved]

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 7105 (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 178, Jan. 18, 2019]

§ 19.29 Statement of the Case.

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

- (a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;
- (b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and
- (c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 7105(d)(1) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 178, Jan. 18, 2019]

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

- (a) *To whom the Statement of the Case is furnished.* The Statement of the Case will be forwarded to the appellant at the latest address of record and a separate copy provided to his or her representative (if any).
- (b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a substantive appeal; information on hearing and representation rights; a VA Form 9, "Appeal to Board of Veterans' Appeals"; and a statement describing the available review options if the appellant elects review of the issue or issues on appeal in the modernized review system.

(Authority: Sec. 2, Pub. L. 115-55; 131 Stat. 1105; 38 U.S.C. 7105 (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996; 84 FR 178, Jan. 18, 2019; 84 FR 34788, July 19, 2019]

§ 19.31 Supplemental statement of the case.

- (a) *Purpose and limitations.* A "Supplemental Statement of the Case," so identified, is a document prepared by the agency of original jurisdiction to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. The

information furnished with the Supplemental Statement of the Case shall include a statement describing the available review options if the appellant elects review of the issue or issues on appeal in the modernized system. In no case will a Supplemental Statement of the Case be used to announce decisions by the agency of original jurisdiction on issues not previously addressed in the Statement of the Case, or to respond to a notice of disagreement on newly appealed issues that were not addressed in the Statement of the Case. The agency of original jurisdiction will respond to notices of disagreement on newly appealed issues not addressed in the Statement of the Case using the procedures in §§ 19.29 and 19.30 of this part (relating to statements of the case).

- (b) **When furnished.** The agency of original jurisdiction will furnish the appellant and his or her representative, if any, a Supplemental Statement of the Case if:
- (1) The agency of original jurisdiction receives additional pertinent evidence after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued and before the appeal is certified to the Board of Veterans' Appeals and the appellate record is transferred to the Board;
 - (2) A material defect in the Statement of the Case or a prior Supplemental statement of the Case is discovered; or
 - (3) For any other reason the Statement of the Case or a prior Supplemental Statement of the Case is inadequate.
- (c) **Pursuant to remand from the Board.** The agency of original jurisdiction will issue a Supplemental Statement of the Case if, pursuant to a remand by the Board, it develops the evidence or cures a procedural defect, unless:
- (1) The only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case; or
 - (2) The Board specifies in the remand that a Supplemental Statement of the Case is not required.
- (d) **Exception.** Paragraph (b)(1) of this section does not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 5902, 5903, 5904; 38 U.S.C. 7105(d) (2016))

[67 FR 3104, Jan. 23, 2002, as amended at 73 FR 29879, May 22, 2008; 84 FR 178, Jan. 18, 2019]

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.

(Authority: 38 U.S.C. 7105(d)(3) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 178, Jan. 18, 2019]

§ 19.33 [Reserved]

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 7105 (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 178, Jan. 18, 2019]

§ 19.35 Certification of appeals.

Following receipt of a timely Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals. The certification is used for administrative purposes and does not serve to either confer or deprive the Board of Veterans' Appeals of jurisdiction over an issue.

(Authority: 38 U.S.C. 7105 (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996; 66 FR 53339, Oct. 22, 2001; 84 FR 178, Jan. 18, 2019]

§ 19.36 Notification of certification of appeal and transfer of appellate record.

When an appeal is certified to the Board of Veterans' Appeals for appellate review and the appellate record is transferred to the Board, the appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in Rule 1305 (§ 20.1305 of this chapter). Provisions in this section for submitting additional evidence and references to § 20.1305 do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to suspend or cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 5902, 5903; 38 U.S.C. 5904, 7105 (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 73 FR 29879, May 22, 2008; 84 FR 178, Jan. 18, 2019]

§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

- (a) ***Evidence received prior to transfer of records to Board of Veterans' Appeals.*** Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans' Appeals after an appeal has been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

- (b) **Evidence received after transfer of records to the Board of Veterans' Appeals.** Additional evidence received by the agency of original jurisdiction after the records have been transferred to the Board of Veterans' Appeals for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue or issues. The Board will then determine what action is required with respect to the additional evidence.
- (c) The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 5902, 5903, 5904; 38 U.S.C. 7105(d)(1) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 73 FR 29879, May 22, 2008; 84 FR 178, Jan. 18, 2019]

§ 19.38 Action by agency of original jurisdiction when remand received.

When a case is remanded by the Board of Veterans' Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development, together with the evidence which was previously of record, supports the allowance of all benefits sought on appeal. If so, the appellant and his or her representative, if any, will be promptly informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of § 19.31 of this part. Following the 30-day period allowed for a response to the Supplemental Statement of the Case pursuant to § 19.52(c), the case will be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

(Authority: 38 U.S.C. 7105(d)(1) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 69 FR 53808, Sept. 3, 2004; 73 FR 40748, July 16, 2008; 84 FR 179, Jan. 18, 2019]

§§ 19.39-19.49 [Reserved]

Subpart C—Claimant Action in a Legacy Appeal

§ 19.50 Who can file an appeal.

- (a) **Persons authorized.** A Notice of Disagreement and/or a Substantive Appeal may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney or declaration of representation, as applicable, is on record or accompanies such Notice of Disagreement or Substantive Appeal.
- (b) **Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.** If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement and a Substantive Appeal may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

- (c) **Claimant under disability and able to file.** Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 7105(b)(2) (2016))

[57 FR 4109, Feb. 3, 1992. Redesignated and amended at 84 FR 177, 179, Jan. 18, 2019]

§ 19.51 Place of filing Notice of Disagreement and Substantive Appeal.

The Notice of Disagreement and Substantive Appeal must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed unless notice has been received that the applicable Department of Veterans Affairs records have been transferred to another Department of Veterans Affairs office. In that case, the Notice of Disagreement or Substantive Appeal must be filed with the Department of Veterans Affairs office which has assumed jurisdiction over the applicable records.

(Authority: 38 U.S.C. 7105(b)(1), (d)(3) (2016))

[57 FR 4109, Feb. 3, 1992. Redesignated at 84 FR 177, Jan. 18, 2019, as amended at 84 FR 34788, July 19, 2019]

§ 19.52 Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

- (a) **Notice of Disagreement.** Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105(b)(1) (2016))

(b) **Substantive Appeal –**

- (1) **General.** Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.
- (2) **Special rule in certain cases where additional evidence is submitted.** Except in the case of simultaneously contested claims, if
- (i) a claimant submits additional evidence within 1 year of the date of mailing of the notification of the determination being appealed, and
 - (ii) that evidence requires, in accordance with § 19.31 of this title, that the claimant be furnished a Supplemental Statement of the Case, then the time to submit a Substantive Appeal shall end not sooner than 60 days after such Supplemental Statement of the Case is mailed to the appellant, even if the 60-day period extends beyond the expiration of the 1-year appeal period.

(Authority: 38 U.S.C. 7105(b)(1), (d)(3) (2016))

- (c) **Response to Supplemental Statement of the Case.** Where a Supplemental Statement of the Case is furnished, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal.

(Authority: 38 U.S.C. 7105(d)(3) (2016))

[57 FR 4109, Feb. 3, 1992, as amended at 66 FR 50318, Oct. 3, 2001; 68 FR 64806, Nov. 17, 2003; 73 FR 40748, July 16, 2008. Redesignated and amended at 84 FR 177, 179, Jan. 18, 2019]

§ 19.53 Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

An extension of the 60-day period for filing a Substantive Appeal, or the 30-day period for responding to a Supplemental Statement of the Case, may be granted for good cause. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal or the response to the Supplemental Statement of the Case. The request for extension must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed, unless notice has been received that the applicable records have been transferred to another Department of Veterans Affairs office. A denial of a request for extension may be appealed to the Board.

(Authority: 38 U.S.C. 7105(d)(3) (2016))

[57 FR 4109, Feb. 3, 1992, as amended at 73 FR 40748, July 16, 2008. Redesignated and amended at 84 FR 177, 179, Jan. 18, 2019]

§ 19.54 Filing additional evidence does not extend time limit for appeal.

Except as provided in § 19.52(b), the filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination.

(Authority: 38 U.S.C. 7105 (2016))

[57 FR 4109, Feb. 3, 1992, as amended at 66 FR 50318, Oct. 3, 2001. Redesignated by correction at 84 FR 4336, Feb. 15, 2019, as amended at 84 FR 179, Jan. 18, 2019]

§ 19.55 Withdrawal of Appeal.

- (a) **When and by whom filed.** Only an appellant, or an appellant's authorized representative, may withdraw an appeal. An appeal may be withdrawn as to any or all issues involved in the appeal.
- (b) **Filing** —

- (1) **Content.** Appeal withdrawals must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and a statement that the appeal is withdrawn. If the appeal involves multiple issues, the withdrawal must specify that the appeal is withdrawn in its entirety, or list the issue(s) withdrawn from the appeal.
 - (2) **Where to file.** Appeal withdrawals should be filed with the agency of original jurisdiction until the appellant or representative filing the withdrawal receives notice that the appeal has been transferred to the Board. Thereafter, file the withdrawal at the Board.
 - (3) **When effective.** Until the appeal is transferred to the Board, an appeal withdrawal is effective when received by the agency of original jurisdiction. Thereafter, it is not effective until received by the Board. A withdrawal received by the Board after the Board issues a final decision under Rule 1100(a) (§ 20.1100(a) of this chapter) will not be effective.
- (c) **Effect of filing.** Withdrawal of an appeal will be deemed a withdrawal of the Notice of Disagreement and, if filed, the Substantive Appeal, as to all issues to which the withdrawal applies. Withdrawal does not preclude filing a new Notice of Disagreement and, after a Statement of the Case is issued, a new Substantive Appeal, as to any issue withdrawn, provided such filings would be timely under these rules if the appeal withdrawn had never been filed.

(Authority 38 U.S.C. 7105(b), (d) (2016))

[68 FR 13236, Mar. 19, 2003, as amended at 81 FR 32649, May 24, 2016. Redesignated and amended at 84 FR 177, 179, Jan. 18, 2019]

§§ 19.56-19.74 [Reserved]

Subpart D [Reserved]

Subpart E—Simultaneously Contested Claims

§ 19.100 Notification of right to appeal in simultaneously contested claims.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.

(Authority: 38 U.S.C. 7105A(a) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 179, Jan. 18, 2019]

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The Statement of the Case so furnished will contain only information which directly affects the payment or potential payment of the benefit(s) which is (are) the

subject of that contested claim. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 9, "Appeal to Board of Veterans' Appeals."

(Authority: 38 U.S.C. 7105A(b) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996; 84 FR 179, Jan. 18, 2019]

§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

When a Substantive Appeal is filed in a simultaneously contested claim, the content of the Substantive Appeal will be furnished to the other contesting parties to the extent that it contains information which could directly affect the payment or potential payment of the benefit which is the subject of the contested claim.

(Authority: 38 U.S.C. 7105A(b) (2016))

[57 FR 4104, Feb. 3, 1992, as amended at 84 FR 179, Jan. 18, 2019]

§§ 19.103-19.199 [Reserved]