BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF [redacted]
HARMON CARTER, JR.

DOCKET NO. 08-05 474) DATE *18 FEB 11*
) *VT*
)

On appeal from the
Department of Veterans Affairs Regional Office in Huntington, West Virginia

THE ISSUE

Entitlement to service connection for degenerative disc disease of the lumbosacral spine.

REPRESENTATION

Appellant represented by: Disabled American Veterans

WITNESSES AT HEARING ON APPEAL

Appellant and spouse

ATTORNEY FOR THE BOARD

Thomas D. Jones, Counsel

INTRODUCTION

The Veteran served on active duty from November 1965 to November 1967.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a July 2006 rating decision of the Regional Office (RO) of the Department of Veterans Affairs (VA) in Huntington, West Virginia, which denied the Veteran service connection for a low back disability, claimed as degenerative disc disease and degenerative joint disease.

The Veteran testified before a Decision Review Officer at the RO in May 2007. Subsequently, the Veteran testified before the undersigned Acting Veterans Law Judge at a Travel Board hearing in June 2009. Transcripts of these proceedings are associated with the claims file.

This appeal was initially presented to the Board in September 2009, at which time the Board reopened the Veteran's service connection claim for a low back disability, and denied it on the merits. The Veteran subsequently appealed this determination to the U.S. Court of Appeals for Veterans Claims (Court). Within a July 2010 order, the Court granted a June 2010 Joint Motion for Remand which vacated the Board's denial of service connection, and remanded that issue back to the Board for further consideration. This action had no effect on the issue of entitlement to service connection for a left eye disability, remanded by the Board in September 2009.

FINDINGS OF FACT

1. The evidence demonstrates that the Veteran had a pre-existing low back disorder at the time of his entry into active service.

2. The Veteran's low back disorder, which existed prior to service, did not increase in severity or become permanently worsened during active military service.

CONCLUSION OF LAW

The presumption that the Veteran was of sound condition upon entry into service has been rebutted by clear and unmistakable evidence, and service connection for a low back disorder, claimed as degenerative disc disease of the lumbosacral spine, is not established. 38 U.S.C.A. §§ 1110, 1111, 1131, 1153, 5107 (West 2002); 38 C.F.R. §§ 3.303, 3.304, 3.306 (2010).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

The Veteran seeks service connection for a low back disorder, claimed as degenerative disc disease and/or degenerative joint disease of the lumbosacral spine. Specifically, he claims that he had a pre-existing back disorder upon entrance to military service and that this pre-existing condition was aggravated by his military service.

Legal Criteria

Service connection may be granted if the evidence demonstrates that a current disability resulted from an injury or disease incurred or aggravated in active military service. 38 U.S.C.A. § 1110; 38 C.F.R. § 3.303(a). In order to prevail on the issue of service connection there must be competent evidence of a current disability; medical evidence, or in certain circumstances, lay evidence of in-service occurrence or aggravation of a disease or injury; and competent evidence of a nexus between an in-service injury or disease and the current disability. *See Hickson v. West*, 12 Vet. App. 247, 253 (1999); *Jandreau v. Nicholson,* 492 F.3d 1372 (Fed. Cir. 2007); *Buchanan v. Nicholson*, 451 F.3d 1331 (Fed. Cir. 2006).

For purposes of service connection pursuant to § 1110, every veteran shall be taken to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities or disorders noted at the time of the examination,

acceptance and enrollment, or where clear and unmistakable evidence demonstrates that the injury or disease existed before acceptance and enrollment and was not aggravated by such service. 38 U.S.C.A. § 1112.

A preexisting injury or disease will be considered to have been aggravated by service where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease. 38 U.S.C.A. § 1153; 38 C.F.R. § 3.306.

Factual Background

In the present case, a pre-existing low back disability was clearly noted on the Veteran's August 1965 pre-service induction examination. Specifically, a prior history was noted of a back condition, consisting of a pulled muscle in the back in 1962. Since the 1962 injury, the Veteran reported experiencing occasional pain following initial diagnosis and treatment, but this occasional pain was not considered disabling. On physical examination for military service, slight scoliosis was observed, again not otherwise disabling. The Veteran's back was considered to be mildly symptomatic, likely due to a non-disabling case of probable myofascitis. The final impression was of an abnormality of the spine. On his concurrent report of medical history, the Veteran gave a history of having spent time in the hospital due to a back condition, and noted he had worn a back brace or back support in the past. However, the Veteran was found fit for military service and was accepted for the same.

Also of record in the Veteran's service treatment records is a December 1961 report from a private hospital, Logan General Hospital, regarding a 5 day admission for a 3-week history of low back pain in December 1961. No precipitating back injury was noted. On physical examination, his spine was normal in appearance, with pain noted on range of motion. X-rays demonstrated a right scoliosis but were otherwise within normal limits. He was admitted for pelvic traction and other conservative treatment, with positive results. The final impression was of a myofascial tear of the left L5 transverse process.

Following entrance into service, the Veteran first reported back pain in January 1966, when he sought treatment during basic training. Non-radiating low back pain of the lumbosacral region was reported by the Veteran over several days. On physical examination, he was tender across the lumbosacral spine. Range of motion was full, but with pain again reported. No deformity was observed. His deep tendon reflexes were equal bilaterally. The impression was of a lumbosacral strain, and he was given medication. In the orthopedic clinic, the Veteran was noted to be negative on straight leg raising testing, and no spasm was observed on motion. No neurological deficits were observed. An X-ray of the low back reflected loss of the normal lordosis, with resultant straightening of the spine. Spondylosis of the pars interarticularis of L5 with Grade 1 spondylolisthesis was also observed. The assessment was of no organic orthopedic pathology. He was given light duty, heat treatment, and medication.

In July 1967, the Veteran again reported low back pain, accompanied by a burning sensation on urination. A prior history of kidney infection was noted. He was given antibiotics. The record does not reflect follow-up treatment for a low back disability. On examination for service separation in September 1967, no abnormality of the spine was noted.

Post-service private treatment records indicate the Veteran was seen by a private physician in August 1989 for low back pain. A history of back pain since childhood was noted, with increased symptomatology in the past six months. On physical examination range of motion was good, but tenderness was reported in the lower extremities. X-rays indicated a bilateral defect of the pars interarticularis. A spondylolisthesis at L5-S1 was diagnosed. Physical therapy was recommended.

The Veteran next underwent two private examinations in May and June 1990, in conjunction with a claim for VA benefits. On those occasions, he reported severe low back pain, radiating into his right lower extremity. He was diagnosed with spondylolisthesis of the lumbosacral spine, and lumbar radicular syndrome.

Treatment records were also received from S.R.S., M.D., a private physician who treated the Veteran beginning in approximately 1987 for a variety of ailments. In

July 1989, the Veteran reported sudden onset of low back pain in the center of his back following bending over to pick up a shoe. He stated that while he had previously experienced pain in the right low back, this pain was different in that it was in the center. The impression was of a chronic lumbosacral strain with spondylosis at L5-S1.

On VA examination in August 1990, the Veteran gave a history of back pain since childhood, worsening recently. He denied any history of spinal surgery, but occasionally he used an orthopedic back band for support. He also used pain medication for his low back pain. Examination of the back reflected limitation of motion, and straight leg raising was positive on the right. The final diagnosis was of a lumbar strain with lumbar disc disease.

The Veteran submitted an April 1992 examination report and opinion from a private physician, P.A.S., M.D. Dr. P.A.S. stated that while the Veteran had a congenital back problem, this disability was aggravated during military service. Regarding his current disability, Dr. P.A.S. indicated the Veteran had a chronic lumbosacral strain with Grade 1 spondylolisthesis of the L5-S1.

In an April 1994 statement, the Veteran's wife wrote that she knew him prior to service and married him shortly after service separation. Prior to his military service, the Veteran did not report any disability of the low back, but after returning from service, he reported recurrent low back pain which gradually worsened over the years. This disability affected his ability to both work and perform normal activities.

A November 2005 letter was received from the Veteran's private physician, L.K., M.D., indicating the Veteran had recent reconstructive surgery of the lumbosacral spine for spondylolisthesis at L5-S1. According to the Veteran's report, he reported significant low back pain during military service, and was seen for the same. Prior to service, "he did not have symptoms in his back", according to the Veteran's own report. Thus, in Dr. L.K.'s opinion, the Veteran's low back disability was "more than likely present to a lesser degree while in the service" and this disability was "aggravated to a significant degree" therein. Dr. L.K.'s treatment records indicate

he first treated the Veteran in July 1995. In a May 2006 letter from Dr. L.K., the doctor again confirmed a current disability of the lumbosacral spine, diagnosed as spondylolisthesis. The doctor also noted that the Veteran had isthmic spondylolisthesis which predated service, but this low back disability was "significantly aggravated by his time in the service."

The Veteran was afforded a May 2006 VA medical examination to determine the etiology of his current low back disability. His claims file was reviewed in conjunction with the examination. The examiner noted the Veteran's in-service complaints of low back pain, as well as his post-service complaints beginning in approximately 1988. After reviewing the medical record and examining the Veteran, the VA physician confirmed degenerative disc disease of the Veteran's lumbosacral spine. However, the examiner found no evidence of aggravation of the Veteran's congenital low back disability during military service; while the Veteran did report low back pain during service, no disability of the low back was noted on service separation. Moreover, following service separation, the Veteran did not report or seek treatment for low back pain for many years, until the late 1980's. Based on these findings, the examiner concluded the Veteran did not experience permanent aggravation of his low back disability during military service.

Another VA examination was afforded the Veteran in November 2006. His claims file, including his service treatment records, were again reviewed by the examiner, a VA physician. His low back disability was again noted to have had its onset during childhood, prior to military service. On physical examination, the Veteran continued to experience significant low back pain, with radiculopathy into the lower extremities. X-rays of the lumbosacral spine confirmed a moderate compression fracture at L2, and status post-fusion at L1 and L5-S1. After physically examining the Veteran and reviewing the medical record, the VA physician found no evidence of permanent aggravation during military service. The examiner noted a back disability was not noted on service separation examination, and the Veteran was able to work for many years following service without complaints of significant back pain. Thus, due to this lengthy interval of time and the lack of findings noted on service separation, it was less likely than not the Veteran's pre-existing low back disability was aggravated during military service.

Analysis

As an initial matter, the Board finds the presumption of soundness does not apply in the instant case. As above, a pre-existing low back disability was clearly noted on the Veteran's August 1965 pre-service induction examination. The Veteran specifically acknowledged prior hospitalization for a low back strain, and a record of that treatment was received into the service treatment records. On examination for service entrance, scoliosis of the spine and probable myofascitis were observed; however, these disabilities were not considered disabling. As a pre-existing low back disability was noted on service entrance examination, the presumption of soundness does not apply. *See* 38 U.S.C.A. § 1111.

The Board also finds that the preponderance of the evidence is against the Veteran's claim for service connection based on aggravation of a pre-existing low back disorder. As noted above, the Veteran's pre-existing low back disability was clearly established at the time of service entrance, and was noted as such on his service entrance examination. Thus, the presumption of soundness does not apply. 38 U.S.C.A. § 1111. Moreover, his pre-service medical treatment records for his low back disorder have been obtained. On review of the medical history and physical examination of the Veteran, two separate VA physicians concluded in 2007 that the Veteran's pre-existing low back disorder was not aggravated by active military service. Both physicians noted that while the Veteran reported low back pain during military service, no low back disability was noted on his service separation examination, and he did not seek medical treatment for his back for many years thereafter. Such a lengthy period without evidence of pertinent diagnosis or treatment may be considered as evidence weighing against a service connection claim. *See Maxson v. Gober*, 230 F.3d 1330 (Fed. Cir. 2000) (ruling that a prolonged period without medical complaint can be considered, along with other factors, as evidence of whether an injury or a disease was incurred in or aggravated by service and resulted in any chronic or persistent disability). Thus, because the evidence does not indicate an increase in disability for this disorder in excess of that attributable to the natural progress of the disease, the Board also finds that the presumption of aggravation does not apply. 38 U.S.C.A. § 1153.

In support of his claim, the Veteran has submitted the aforementioned November 2005 and May 2006 letters from his private physician, Dr. L.K., and the April 1992 letter from Dr. P.A.S. "It is the responsibility of the BVA . . . to assess the credibility and weight to be given to evidence." *Hayes v. Brown*, 5 Vet. App. 60, 69 (1993) (*citing Wood v. Derwinski*, 1 Vet. App. 190, 192-93 (1992)). With regard to the weight to assign to these medical opinions, the Court has held that "[t]he probative value of medical opinion evidence is based on the medical expert's personal examination of the patient, the physician's knowledge and skill in analyzing the data, and the medical conclusion that the physician reaches . . . As is true with any piece of evidence, the credibility and weight to be attached to these opinions [are] within the province of the [BVA as] adjudicators . . ." *Guerrieri v. Brown*, 4 Vet. App. 467, 470-71 (1993).

Regarding these private opinions, the Board notes that while Drs. P.A.S. and L.K. appear to be credible and competent medical experts, their opinions are only as good as medical history upon which they are based. *See Kowalski v. Nicholson*, 19 Vet. App. 171 (2005).

In the present case, the Board observes that in the November 2005 letter, Dr. L.K. writes "[The Veteran] states that prior to entering the armed services, he did not have symptoms in his back and since then, he has had persistent symptoms." The Veteran's medical history as reported to his private physician contradicts his August 1965 service entrance examination, which clearly noted his back was "mildly symptomatic", with pain reported since the early 1960's, prior to service. This medical history also contradicts the Veteran's later statements to VA; within a March 1992 statement, the Veteran wrote, "I told the military doctors [at service entrance] that I had a lot of problems with my back, low back pain." That same month, the Veteran also stated he wore a back brace prior to service. Additionally, according to an August 1989 letter from B.S.S., M.D., the Veteran at that time reported a history of pain in the lumbar area "since childhood." As Dr. L.K.'s November 2005 opinion was premised on a demonstrably inaccurate factual history, that the Veteran's pre-existing low back disability was not symptomatic prior to

service, the Board gives it little probative value in considering the Veteran's claim. *See Reonal v. Brown*, 5 Vet. App. 458 at 461 (1993).

In a subsequent May 2006 letter, Dr. L.K. reports that while the Veteran's spondylolisthesis "pre-dated [the Veteran's] service time", it was "markedly aggravated by the vigorous activities" therein. However, Dr. L.K.'s records indicate he first began to treat the Veteran in 1995, over 25 years after service separation, and did not state he had reviewed the Veteran's service treatment records or any past treatment records. Therefore, Dr. L.K.'s opinion is essentially speculation regarding the Veteran's levels of disability at the time of service entrance and separation, as there is no indication he had the opportunity to review pre-service medical treatment records to determine either the Veteran's pre-service level of low back impairment, nor his in-service aggravation, if any.

Likewise, Dr. P.A.S. stated he saw the Veteran in April 1992, the same month he authored his opinion letter, and did not indicate either a prior treatment history or review of medical evidence contemporaneous to the Veteran's military service period. While Dr. P.A.S. conceded that the Veteran had a pre-existing low back disability at service entrance, he did not provide any basis for his finding of aggravation during military service. At no point did Dr. P.A.S. state he had reviewed the Veteran's service treatment records or other pre-service evidence to determine the Veteran's baseline low back disability at the time he entered military service; therefore, Dr. P.A.S. had no factual foundation to determine the Veteran's low back disability was in fact aggravated during military service. As already noted above, the Veteran's own statements regarding his degree of low back impairment prior to service are inconsistent, and thus any medical conclusion based on such statements is likewise of little probative value. In contrast, both VA medical opinions reflected review of the service treatment records, noted the lack of medical findings on the Veteran's service separation examination, and noted the significant amount of time between the Veteran's separation from military service and the first documented complaints of back pain. For this reason, the Board assigns little probative weigh to the April 1992 and May 2006 letters and medical opinions.

The Veteran himself, as well as his spouse, have alleged that his low back disorder was aggravated during military service and gradually increased in symptomatology since his discharge from military service. However, where lay statements are "vague" or "inconsistent with the evidence as a whole," they may be discounted by VA. *See Gardin v. Shinseki*, 613 F.3d 1374, 1380 (Fed. Cir. 2010). In the present case, the Veteran's and his wife's statements of aggravation of his low back disability during military service are vague, in that they have reported an increase in his low back pain during and following military service but have not cited to any specific incidents which would support this allegation. These statements are also inconsistent with the evidence as a whole as the earliest documented complaint of back pain after service is an August 1989 private treatment report wherein the Veteran reported a history of back pain since childhood with increased symptomatology in the past six months. Accordingly, the lay statements concerning the aggravation of the Veteran's low back disorder during military service do not constitute competent or credible medical evidence.

In conclusion, the Board finds the Veteran's service connection claim based on aggravation of his pre-existing low back disability during military service must be denied. As the preponderance of the evidence is against the Veteran's claim for service connection, the benefit-of- the-doubt doctrine does not apply. 38 U.S.C.A. § 5107(b); *Gilbert v. Derwinski*, 1 Vet. App 49, 55-57 (1990).

Notice and Assistance

Upon receipt of a complete or substantially complete application for benefits and prior to an initial unfavorable decision on a claim by an agency of original jurisdiction, VA is required to notify the appellant of the information and evidence not of record that is necessary to substantiate the claim. *See* 38 U.S.C.A. § 5103(a); 38 C.F.R. § 3.159; *Pelegrini v. Principi*, 18 Vet. App. 112 (2004); *Quartuccio v. Principi*, 16 Vet. App. 183 (2002); *Mayfield v. Nicholson*, 444 F.3d 1328 (Fed. Cir. 2006). The notice should also address the rating criteria or effective date provisions that are pertinent to the appellant's claim. *Dingess v. Nicholson*, 19 Vet. App. 473 (2006).

The RO provided the appellant pre-adjudication notice by letters dated in May 2005 and April 2006. Specifically, the April 2006 letter provided him with the general criteria for the assignment of an effective date and initial rating. Moreover, the record shows that the appellant was represented by a Veteran's Service Organization and its counsel throughout the adjudication of the claims. *Overton v. Nicholson*, 20 Vet. App. 427 (2006).

Regarding applications to reopen previously and finally denied service connection claims, the Board acknowledges that specific notification requirements must be met by VA prior to adjudicating such claims. *See Kent v. Nicholson*, 20 Vet. App. 1 (2006). However, in so much as VA may have failed to meet such requirements in its notice letters to the Veteran, such failure is rendered harmless by the Board's September 2009 decision which found that new and material evidence had been submitted and reopened the Veteran's claim for consideration on the merits.

The Board further finds that VA has complied with the duty to assist by aiding the appellant in obtaining evidence. It appears that all known and available records relevant to the issues on appeal have been obtained and are associated with the Veteran's claims files. The RO has obtained the Veteran's service treatment records, as well as VA and non-VA medical records. He has also been afforded VA medical examinations on several occasions, most recently in November 2007. The Veteran has reported receiving Social Security Disability benefits, and thus VA is required to obtain the Social Security Administration records associated therein. *See Baker v. West*, 11 Vet. App. 163, 169 (1998); *Murincsak v. Derwinski*, 2 Vet. App. 363, 370-72 (1992). Review of the record indicates such records were submitted by the Veteran himself, and these records appear to be complete. Further remand for this purpose is not required. In June 2009, the Veteran and his wife were afforded the opportunity to testify before the undersigned Veterans Law Judge at a Travel Board hearing. The Board is not aware, and the Veteran has not suggested the existence of, any additional pertinent evidence not yet received.

VA has substantially complied with the notice and assistance requirements and the appellant is not prejudiced by a decision on the claim at this time.

ORDER

Service connection based on aggravation of a pre-existing low back disability is denied.

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APRIL MADDOX
Acting Veterans Law Judge, Board of Veterans' Appeals

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (BVA or Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. We will return your file to your local VA office to implement the BVA's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. None of these things is mutually exclusive - you can do all five things at the same time if you wish. However, if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your case because of jurisdictional conflicts. If you file a Notice of Appeal with the Court ***before*** you file a motion with the BVA, the BVA will not be able to consider your motion without the Court's permission.

How long do I have to start my appeal to the Court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the Court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you,* you will then have another 120 days from the date the BVA decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, *it is your responsibility to make sure that your appeal to the Court is filed on time.*

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: http://www.uscourts.cavc.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court,** not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the BVA to reconsider any part of this decision by writing a letter to the BVA clearly explaining why you believe that the BVA committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that such letter be as specific as possible. A general statement of dissatisfaction with the BVA decision or some other aspect of the VA claims adjudication process will not suffice. If the BVA has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

Director, Management, Planning and Analysis (014)
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the BVA to vacate any part of this decision by writing a letter to the BVA stating why you believe you were denied due process of law during your appeal. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address above for the Director, Management, Planning and Analysis, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address above for the Director, Management, Planning and Analysis, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400 -- 20.1411, and *seek help from a qualified representative before filing such a motion.* See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. *See* 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the BVA, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: http://www.va.gov/vso. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before VA, then you can get information on how to do so by writing directly to the Court. Upon request, the Court will provide you with a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to represent appellants. This information, as well as information about free representation through the Veterans Consortium Pro Bono Program (toll free telephone at: (888) 838-7727), is also provided on the Court's website at: http://www.uscourts.cavc.gov.

Do I have to pay an attorney or agent to represent me? An attorney or agent may charge a fee to represent you after a notice of disagreement has been filed with respect to your case, provided that the notice of disagreement was filed on or after June 20, 2007. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636. If the notice of disagreement was filed before June 20, 2007, an attorney or accredited agent may charge fees for services, but only after the Board first issues a final decision in the case, and only if the agent or attorney is hired within one year of the Board's decision. *See* 38 C.F.R. 14.636(c)(2).

The notice of disagreement limitation does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court. VA cannot pay the fees of your attorney or agent, with the exception of payment of fees out of past-due benefits awarded to you on the basis of your claim when provided for in a fee agreement.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636(d).

Filing of Fee Agreements: In all cases, a copy of any fee agreement between you and an attorney or accredited agent must be sent to the Secretary at the following address:

Office of the General Counsel (022D)
810 Vermont Avenue, NW
Washington, DC 20420

The Office of the General Counsel may decide, on its own, to review a fee agreement or expenses charged by your agent or attorney for reasonableness. You can also file a motion requesting such review to the address above for the Office of the General Counsel. *See* 38 C.F.R. 14.636(i); 14.637(d).