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

IN THE APPEAL OF [redacted]
WILLIE J. THREATT, JR.

DOCKET NO. 10-13 096 ) DATE *20 FEB 2003*
) *MDP*
)

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

THE ISSUES

1. Whether new and material evidence has been received to reopen a claim of service connection for a right hip disorder.

2. Whether new and material evidence has been received to reopen a claim of service connection for a left hip disorder.

3. Whether new and material evidence has been received to reopen a claim of service connection for a back disorder.

4. Entitlement to service connection for a headache disorder.

5. Entitlement to a compensable rating for epididymitis.

6. Entitlement to a total disability rating based on individual unemployability due to service connected disability (TDIU).

IN THE APPEAL OF [redacted]
WILLIE J. THREATT, JR.

## REPRESENTATION

Appellant represented by: Stacey-Rae Simcox, Attorney

## ATTORNEY FOR THE BOARD

K. Hughes, Counsel

## INTRODUCTION

The appellant is a Veteran who served on active duty from June 1968 to January 1970. This matter is before the Board of Veterans' Appeals (Board) on appeal from a June 2008 rating decision of the Roanoke, Virginia Department of Veterans Affairs (VA) Regional Office (RO). The Veteran had also appealed denials of service connection for epididymitis, major depressive disorder with psychotic features and posttraumatic stress disorder (PTSD). A June 2012 rating decision granted service connection for epididymitis; an April 2013 rating decision granted service connection for mood disorder and psychotic disorder; and a March 2014 rating decision granted service connection for PTSD and major depressive disorder (combined with the mood and psychotic disorders). Therefore, those issues are no longer before the Board. In August 2013 the case was remanded to schedule the Veteran for a Travel Board hearing he requested. His attorney withdrew the request in an October 2013 letter,.

In July 2012, the Veteran's attorney submitted a notice of disagreement (NOD) with the 0 percent rating assigned for epididymitis by the June 2012 rating decision.

**The issues of service connection for a headache disorder and entitlement to a TDIU rating are REMANDED to the Agency of Original Jurisdiction (AOJ). VA will notify the Veteran if action on his part is required.**

## FINDINGS OF FACT

1. A final February 2003 Board decision denied the Veteran service connection for a right hip disorder, based essentially on findings that such disability pre-existed his active military service, and was not aggravated therein.

2. Evidence received since the February 2003 Board decision does not tend to show that the Veteran's right hip disorder either did not pre-exist service or was aggravated therein; does not relate to an unestablished fact necessary to substantiate the claim of service connection for a right hip disorder; and does not raise a reasonable possibility of substantiating such claim.

3. A final February 2003 Board decision denied the Veteran service connection for left hip and back disorders, based essentially on findings that such disorders began many years after, and were not causally related to, his service.

4. Evidence received since the February 2003 Board decision does not tend to relate any left hip or back disorder to the Veteran's service; does not relate to unestablished facts necessary to substantiate the claims of service connection for left hip and/or back disorders; and does not raise a reasonable possibility of substantiating such claims.

## CONCLUSIONS OF LAW

1. New and material evidence has not been received, and the claim of service connection for a right hip disorder may not be reopened. 38 U.S.C.A. §§ 5108, 7104, 7105 (West 2002); 38 C.F.R. § 3.156 (2013).

2. New and material evidence has not been received, and the claim of service connection for a left hip disorder may not be reopened. 38 U.S.C.A. §§ 5108, 7104, 7105 (West 2002); 38 C.F.R. § 3.156 (2013).

3. New and material evidence has not been received, and the claim of service connection for a back disorder may not be reopened. 38 U.S.C.A. §§ 5108, 7104, 7105 (West 2002); 38 C.F.R. § 3.156 (2013).

## REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

*The Veterans Claims Assistance Act of 2000 (VCAA)*

The VCAA, in part, describes VA's duties to notify and assist claimants in substantiating a claim for VA benefits. 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5106, 5107, 5126; 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a). The VCAA applies to the instant claims. Upon receipt of a complete or substantially complete application for benefits, VA is required to notify the claimant and his or her representative of any information, and any medical or lay evidence, that is necessary to substantiate the claim. 38 U.S.C.A. § 5103(a); 38 C.F.R. § 3.159(b); *Quartuccio v. Principi*, 16 Vet. App. 183 (2002). Proper VCAA notice must inform the claimant of any information and evidence not of record (1) that is necessary to substantiate the claim; (2) that VA will seek to provide; and (3) that the claimant is expected to provide. 38 C.F.R. § 3.159(b)(1). VCAA notice requirements apply to all five elements of a service connection claim: 1) veteran status; 2) existence of a disability; 3) a connection between the Veteran's service and the disability; 4) degree of disability; and 5) effective date of the disability. *Dingess/Hartman v. Nicholson,* 19 Vet. App. 473, 484-86 (2006), aff'd, 483 F.3d 1311 (Fed. Cir. 2007). VCAA notice should be provided to a claimant before the initial unfavorable agency of original jurisdiction decision on a claim. *Mayfield v. Nicholson*, 444 F.3d 1328 (Fed. Cir. 2006).

In *Kent v. Nicholson*, 20 Vet. App. 1 (2006), the United States Court of Appeals for Veterans Claims (Court) held that in a claim to reopen a previously finally denied claim, VCAA notice must notify the claimant of the meaning of new and material evidence and of what evidence and information (1) is necessary to reopen the claim; (2) is necessary to substantiate each element of the underlying service connection claim; and (3) is specifically required to substantiate the element or elements

needed for service connection that were found insufficient in the prior final denial on the merits.

The appellant was advised of VA's duties to notify and assist in the development of the claims prior to the initial adjudication of these claims. A July 2007 letter provided him *Kent*-compliant notice, explained the evidence VA was responsible for providing and the evidence he was responsible for providing, and informed him of disability rating and effective date criteria. He has had ample opportunity to respond, and has not alleged that notice was less than adequate.

The Veteran's service treatment records (STRs) and pertinent post-service treatment records have been secured. In a claim to reopen the duty to assist by arranging for a VA examination or obtaining a medical opinion does not attach until the previously denied claim is in fact reopened. 38 C.F.R. § 3.159 (c)(4)(iii). The Veteran has not identified any pertinent evidence that is outstanding. VA's duty to assist is met.

*Factual Background, Legal Criteria and Analysis*

Initially, the Board notes that it has reviewed all of the evidence of record with an emphasis on the evidence relevant to this appeal. Although the Board has an obligation to provide reasons and bases supporting its decision, there is no need to discuss, in detail, every piece of evidence of record. *Gonzales v. West*, 218 F.3d 1378, 1380-81 (Fed. Cir. 2000) (VA must review the entire record, but does not have to discuss each piece of evidence). Hence, the Board will summarize the relevant evidence as appropriate, and the Board's analysis will focus specifically on what the evidence shows, or fails to show, as to the claims.

A February 2003 Board decision denied the Veteran service connection for back and bilateral hip disorders, finding that a right hip disorder pre-existed service and did not increase in severity/was not aggravated therein, and that left hip and back disorders became manifest many years after, and were not shown to have been causally related to, his service. [Notably, a prior (December 1998) Board decision that had denied such claims was appealed to the Court, which endorsed a Joint Motion by the parties, and vacated and remanded the matters to the Board.]

The February 2003 Board decision was not appealed to the Court, and is final based on the evidence then of record. 38 U.S.C.A. § 7104. Hence, new and material evidence is required to reopen the claims. 38 U.S.C.A. § 5108.

"New evidence" means existing evidence not previously submitted to agency decision makers; "material evidence" means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. "New and material evidence" can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim. 38 C.F.R. § 3.156(a).

For the purpose of determining whether new and material evidence has been received, new evidence received is presumed to be credible. *Justus v. Principi,* 3 Vet. App. 510, 513 (1992).

The Court has endorsed a low threshold standard for reopening a claim. See *Shade v. Shinseki,* 24 Vet. App. 110 (2010).

The evidence of record at the time of the February 2003 Board decision included the Veteran's STRs, postservice VA and private treatment records and examination reports and his statements.

The STRs show that the Veteran had been treated for mild right hip pain since March 1968 (prior to enlistment) and the condition was aggravated by bending and stooping. His service enlistment examination report notes a painful right hip "off and on" and that the lower extremity condition might impose some limitations on his classification and assignment. The STRs show treatment for complaints of recurrent right hip pain. On January 1970 service separation examination, the Veteran's lower extremities, spine, and musculoskeletal system were listed as normal and he denied a history of swollen or painful joints, arthritis or rheumatism, bone, joint, or other deformity. The STRs are silent as to left hip and/or back complaints or treatment.

The initial documented postservice complaint regarding hip and/or back disabilities is in the Veteran's October 1996 claim for service connection, 26 years after service. On December 1996 VA examination, he reported that he sustained a hip injury during basic training and had back trouble associated with his hip trouble for 20 years. He also reported a postservice injury in 1991, when a box fell on either his head or back and resulted in a crushed disc, degenerative joint disease, and degenerative disc disease. The diagnoses were limitation of motion of the hips, possibly degenerative joint disease or avascular necrosis or other; low back pain with some limitation of motion of the lumbar-thoracic spine; and a thoracic spine injury related to a civilian job. In an addendum, the examiner noted that lumbar, thoracic, and pelvic X-ray studies showed significant degenerative changes in the lower thoracic spine and mild degenerative changes in the upper thoracic and lumbar spine.

In a March 1997 letter, the Veteran stated that he did not deny a pre-service right hip injury, but stated that his right hip disorder was aggravated during boot camp, to the point that his left hip and back were injured. He submitted copies of private medical records dated from October 1981 to March 1986 (which are silent for treatment of the hips and/or back).

In a May 1997 statement, the Veteran claimed that his left hip disability was due to his right hip disability and back disability. In a later May 1997 statement, he stated that his pre-service right hip pain was not a chronic condition and was not due to a pre-service injury but was noted as a physical ailment. He also claimed that he injured both hips during basic training when he fell from a fifteen-foot rope ladder.

A July 2001 RO informal hearing report notes that the Veteran reported he was injured at work in 1991.

Pertinent evidence received since the February 2003 Board decision includes VA records (including some from 1977 to 1985, which were not previously associated with the record), records from the Social Security Administration (SSA) in connection with the Veteran's March 2001 claim for SSA benefits (to include

private treatment records from May 1992 to September 2002), and statements by the Veteran and his attorney.

The 1977 to 1985 VA treatment records from are silent for back or hips complaints or treatment. VA treatment records dated after the February 2003 Board decision show ongoing treatment for complaints of bilateral hip and back pain.

Pertinent SSA records show treatment for low back complaints; they are silent regarding hip complaints or treatment. A November 2004 SSA determination found that the Veteran's disabling "severe impairments" were major depression with psychosis, degenerative disc disease and spinal stenosis.

A July 2012 VA examination report includes diagnoses of moderate right hip degenerative joint disease (DJD) and severe left hip DJD. The examiner opined that the Veteran's right hip DJD was not aggravated beyond its natural progression by disease, injury or other event that occurred during active service.

In a Brief in Support of Additional Evidence received in July 2013, the Veteran's attorney argues that service connection a for right hip disorder is warranted based on a presumption of aggravation in service and service connection for left hip and back disorder is warranted because such disorders are secondary to his right hip disorder. The attorney did not present any argument as to why these previously denied (by a final February 2003 Board decision) claims should be reopened.

Reviewing the additional evidence received since the February 2003 Board decision the Board finds that no new evidence is material to the Veteran's claims, i.e., none of the evidence pertains to an unestablished fact necessary to substantiate any of the claims. Because the claim pertaining to a right hip disability was previously denied on the bases that such disability pre-existed, and was not aggravated by the Veteran's service, the unestablished facts that must be shown to reopen the claims are that such disability did not pre-exist service, or that such disability was indeed aggravated in or by service, or evidence supporting some alternate theory of entitlement. *See Shade*, 24 Vet. App. at 118. No additional evidence received tends to show that a right hip disorder did not pre-exist service, that a right hip disorder

was aggravated in or by service, or that a right hip disorder may somehow otherwise be related to service. Rather, the additional evidence documents ongoing treatment for bilateral hip and back problems many years (decades) after the Veteran's discharge. Such evidence is cumulative, and (under 38 C.F.R. § 3.156) cumulative evidence is not new and material evidence. Furthermore, the arguments presented by the Veteran and his attorney do not advance any new (not previously considered) theory of entitlement to the benefits sought; they reiterate arguments which were advanced by and on behalf of the Veteran at the time of the February 2003 Board decision, apparently seeking readjudication of the claim based on the same evidence that was previously considered, which is prohibited by governing law. *See* 38 U.S.C.A. §§ 7104, 7105.

Regarding the back and left hip disabilities, the primary theory of entitlement to such benefits proposed at this time is that the disabilities are secondary to a service connected right hip disability. *See* July 2013 brief by the Veteran's attorney. Because the right hip disability to which the left hip and back disabilities are claimed to be secondary has not been found to be service connected, this theory of entitlement lacks legal merit. *See* 38 C.F.R. § 3.310. It is not argued that any additional evidence received since February 2003 somehow otherwise relates these claimed disabilities directly to the Veteran's service (which is the unestablished fact that must be addressed to reopen any direct service connection theory of entitlement claim).

In summary, the evidence added to the record since the February 2003 Board decision is for the most part cumulative evidence, and no additional evidence pertains to an unestablished fact that is necessary to substantiate any of the claims of service connection for bilateral hip and/or back disabilities (or raises a reasonable possibility of substantiating any such claim). Accordingly, the Board finds that new and material evidence has not been received, and that the claims of service connection for bilateral hip and back disabilities may not be reopened.

ORDER

The appeal to reopen a claim of service connection for a right hip disability is denied.

The appeal to reopen a claim of service connection for a left hip disability is denied.

The appeal to reopen a claim of service connection for a back disability is denied.

REMAND

The Veteran claims that his headache condition is secondary to his service-connected psychiatric disabilities (PTSD, major depressive disorder, mood disorder and psychotic disorder). Service connection is warranted for a disability that is "proximately due to or the result of a service-connected disease or injury." 38 C.F.R. § 3.310(a). Any increase in severity of a nonservice-connected disease or injury that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service-connected. 38 C.F.R. § 3.310(b). Therefore, secondary service connection may be established by demonstrating that a claimed disability is either (1) caused or (2) aggravated by an already service-connected disease or injury, "whether or not the additional impairment is itself a separate disease or injury caused by the service-connected condition . . ." *Allen v. Brown*, 7 Vet. App. 439, 448 (1995) (en banc).

Although the Veteran was afforded a VA headaches examination in June 2012, the opinion offered did not address whether or not his service connected psychiatric disability has caused or aggravated the headache disability for which service connection is sought (a theory of entitlement that must be addressed under governing caselaw cited above). [*Notably, the VA headaches examination took place prior to the April 2013 rating decision which granted service connection for mood disorder and psychotic disorder and the March 2014 rating decision which granted service connection for PTSD and major depressive disorder*] Hence, a

remand to secure a medical nexus opinion that addresses the aggravation aspect of the secondary service connection claim is necessary. *See Barr v. Nicholson,* 21 Vet. App. 303 (2007).

Furthermore, as was noted above, a timely NOD has been filed initiating an appeal of the 0 percent rating assigned for epididymitis. A review of the record found that an SOC has not been issued addressing this matter. A remand for such action is necessary. *Manlincon v. West,* 12 Vet. App. 238 (1999). Notably, this claim is not before the Board at this time and will only be before the Board if the Veteran timely files a substantive appeal after issuance of an SOC.

There may be additional pertinent VA and private treatment records not yet associated with the record (the most recent VA treatment records available for review are dated in February 2013). Any such records must be secured; notably, VA treatment records are constructively of record.

The matter of entitlement to a TDIU rating, is inextricably intertwined with the other claims being remanded, and appellate consideration of that matter must be deferred pending resolution of the other claims.

Accordingly, the case is REMANDED for the following:

> 1. The AOJ should ask the Veteran to identify the providers of all evaluations and/or treatment he has received for headaches and epididymitis, and to provide the releases needed for VA to secure any private records of such evaluation/treatment. The RO should obtain for the record complete clinical records (any not already in the record) from all providers identified (to specifically include complete VA clinical records of such treatment since February 2013). If any private provider does not respond to an AOJ request for records, the Veteran and his attorney should be so advised, and reminded that

ultimately it is his responsibility to ensure that private records are received.

2. Thereafter, the RO should arrange for the Veteran to be examined by a neurologist to determine whether he has a headache disorder that was caused or aggravated by his service-connected psychiatric disabilities. The Veteran's record must be reviewed by the examiner in conjunction with the examination. Based on examination of the Veteran and review of the record, the examiner should provide an opinion that responds to the following:

a. Please identify (by diagnosis) any headache disability entity found.

b. Please identify the likely etiology for each diagnosed headache disability entity; specifically, is it at least as likely as not (a 50 % or better probability) that such is either related directly to the Veteran's activities in service or was either (i) caused or (ii) aggravated (the opinion must address the concept of aggravation) by (increased in severity due to) his service connected psychiatric disability (diagnosed as PTSD, major depressive disorder, mood disorder and psychotic disorder).

c. If the examiner finds that a headache disability was not caused but was aggravated by the service-connected psychiatric disability, the examiner should (to the extent possible) identify the degree of the headache disability that is due to such aggravation.

The examiner must explain the rationale for all opinions, citing to supporting clinical data and/or medical literature as deemed appropriate. If the examiner determines that an

> opinion sought cannot be offered without resort to *mere* speculation, the examiner must explain why that is so (e.g., the state of medical knowledge in the matter is insufficient, necessary facts are unavailable, lack of specific expertise).
>
> 3. The RO should issue an appropriate statement of the case (SOC) in the matter of the rating for epididymitis. The Veteran should be advised of the time limit for filing a substantive appeal. If he timely perfects an appeal in the matter, it should be returned to the Board.
>
> 4. The RO should then review the record and readjudicate the claims of service connection for a headache disorder and entitlement to TDIU rating. If any issue remaining on appeal continues to be denied, the RO should issue an appropriate supplemental SOC, and afford the Veteran and his attorney opportunity to respond. The case should then be returned to the Board, if in order, for further appellate consideration.

The appellant has the right to submit additional evidence and argument on the matters the Board has remanded. *Kutscherousky v. West*, 12 Vet. App. 369 (1999). These claims must be afforded expeditious treatment. The law requires that all claims that are remanded by the Board or by the Court for additional development or other appropriate action must be handled in an expeditious manner. *See* 38 U.S.C.A. §§ 5109B, 7112 (West Supp. 2013).

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George R. Senyk
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 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*. Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

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

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

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

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

**How do I file a motion for reconsideration?** You can file a motion asking the 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. *See* 38 C.F.R. 20.904. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address 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 the VA, you can get information on how to do so at the Court's website at: http://www.uscourts.cavc.gov. The Court's website provides a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to the represent appellants. You may also request this information by writing directly to the Court. Information about free representation through the Veterans Consortium Pro Bono Program is also available at the Court's website, or at: http://www.vetsprobono.org, mail@vetsprobono.org, or (888) 838-7727.

**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).