



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 3, 8, 14, 19, 20, and 21

RIN 2900-AQ26

VA Claims and Appeals Modernization

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting a final rule regarding its claims adjudication, appeals, and Rules of Practice of the Board of Veterans' Appeals (Board) regulations. This correction addresses minor technical errors in the published final rule.

DATES: Effective February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Veterans Benefits Administration information, Jennifer Williams, Senior Management and Program Analyst, Appeals Management Office, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 530-9124 (this is not a toll-free number). Board of Veterans' Appeals information, parts 19 and 20: Rachel Sauter, Counsel for Legislation, Regulations, and Policy, Board of Veterans' Appeals. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Due to technical errors and dropped amendments in editing, VA is correcting its final rule, VA Claims and Appeals Modernization, that published January 18, 2019, in the Federal Register at 84 FR 138.

Corrections

In FR Rule Doc. No. 2018-28350, beginning on page 138 in the issue of January 18, 2019, make the following corrections.

1. On page 139, second column, third paragraph under “*B. Comments Concerning § 3.103 – Procedural Due Process and Other Rights,*” in last sentence (line 21), remove “to § 3.103(d)(2)”.
2. On page 146, first column, in line 22, correct “§ 3.351(c)” to read “§ 3.151(c)”, and in line 24, correct “admistrative” to read “administrative”.
3. On page 168, second column, correct instruction 8 to read as follows:
“8. In § 3.114, remove the word “reopened” and add in its place the word “supplemental”.”
4. On page 169, first column, in the amendment to § 3.156, add introductory text, per instruction 11b, and correct the third sentence in paragraph (a) to read as follows:

§ 3.156 [Corrected]

New evidence is evidence not previously part of the actual record before agency adjudicators.

(a) * * * New evidence is evidence not previously part of the actual record before agency adjudicators. * * *

* * * * *

§ 3.2400 [Corrected]

5. On page 171, second column, in paragraph (d) of added § 3.2400, add the word “only” between the words “applicable” and “to”.

§ 3.2500 [Corrected]

6. On page 171, third column, in paragraph (b) of added § 3.2500, add a period at the end of the first sentence ending with “option”.
7. On page 172, third column, correct instruction 31 and add text for revised paragraph (c) to read as follows:

31. Amend § 3.2600 by revising the section heading, adding introductory text, revising paragraph (c), and removing paragraph (g).

The revisions and addition read as follows:

§ 3.2600 Legacy review of benefit claims decisions.

* * * * *

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under the version of § 3.103(c) of this chapter predating Public Law 115-55.

* * * * *

8. On page 177, in the second column, in the second table, add the entry “20.304.....19.54” at the end of the table.

9. On page 180, first column, before instruction 95, add instruction 94a and its corresponding regulatory text to read as follows:

94a. Amend newly redesignated § 20.101 by revising the section heading and paragraph (b) to read as follows:

§ 20.101 Rule 101. Composition of the Board; titles.

* * * * *

(b) A Member of the Board (other than the Chairman) may also be known as a Veterans Law Judge. An individual designated as an acting member pursuant to 38 U.S.C. 7101(c)(1) may also be known as an acting Veterans Law Judge.

10. On page 180, second column, before instruction 96, add instruction 95a and its corresponding regulatory text to read as follows:

95a. Amend newly redesignated § 20.103 by revising the section heading to read as follows:

§ 20.103 Rule 103. Principal functions of the Board.

* * * * *

11. On page 180, third column, before instruction 97, add instructions 96a through 96e and their corresponding regulatory text to read as follows:

96a. Revise newly redesignated § 20.105 to read as follows:

§ 20.105 Rule 105. Criteria governing disposition of appeals.

In the consideration of appeals and in its decisions, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans

Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

96b. Amend newly redesignated § 20.106 by revising the section heading to read as follows:

§ 20.106 Rule 106. Assignment of proceedings.

* * * * *

96c. Amend newly redesignated § 20.107 by:

- a. Revising the section heading;
- b. Removing paragraph (b) and the authority citation following paragraph (b);
- c. Redesignating paragraph (c) as paragraph (b); and
- d. In newly redesignated paragraph (b), removing the text “paragraphs (a) and (b)” and adding in its place the text “paragraph (a)”.

The revision reads as follows:

§ 20.107 Rule 107. Disqualification of Members.

* * * * *

96d. Amend newly redesignated § 20.108 by revising the section heading to read as follows:

§ 20.108 Rule 108. Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

* * * * *

96e. Revise newly redesignated § 20.109 to read as follows:

§ 20.109 Rule 109. Delegation of authority to Vice Chairman, Deputy Vice Chairmen, or Members of the Board.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 106(b) and 107(b) (§§ 20.106(b) and 20.107(b)) may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 1004 and 1002(c) (§§ 20.1004 and 20.1002(c)) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§20.2), may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

12. On page 183, in the second column, above the Subpart F heading, correct “§§ 20.404–20.499 [Reserved]” to read “§§ 20.408–20.499 [Reserved]”.

§ 20.6 [Corrected]

13. On page 184, in the first column, in § 20.6, in line 14 of paragraph (a)(1), remove the quotation mark before “§ 14.630”.

14. On page 184, in the second column, correct the heading and instruction 120 to read as follows:

§§ 20.606 – 20.611 [Reserved]

120. Add reserved §§ 20.606 – 20.611.

15. On page 187, in the third column, correct the section heading of the newly redesignated § 20.709 to read as follows:

§ 20.709 Rule 709. Subpoenas.

* * * * *

16. On page 188, in the third column, under the heading “**§ 20.800 [Redesignated as § 20.901]**”, remove “153.” from the end of the instruction.

17. On page 190, before instruction 162, add instructions 161a through 161c and their corresponding regulatory text to read as follows:

161a. . Amend newly redesignated § 20.903:

a. By revising the section heading;

b. In the second sentence of paragraph (b), by removing the words “separately stated”;

c. By removing the authority citation at the end of paragraph (b); and

d. By adding an authority citation at the end of the section.

The revision and addition read as follows:

§20.903 Rule 903. The decision.

* * * * *

(Authority: 38 U.S.C. 7104(d) (2016))

161b. Amend newly redesignated § 20.904:

- a. By revising the section heading;
- b. In paragraph (c), by removing the text “subpart B of this part” and adding in its place the text “part 19, subpart B of this chapter”;
- c. In paragraph (c), by removing the text “§ 20.204” and adding in its place the text “§ 19.55”;
- d. In paragraph (d)(3), by removing the text “§ 20.1304(c) of this chapter” and adding in its place the text “Rule 1305 (§ 20.1305(c) of this part)”;
- e. In paragraph (d)(4), by removing the text “§ 20.901 of this chapter” and adding in its place the text “Rule 906 (§ 20.906 of this part)”;
- f. By revising the authority citation at the end of the section.

The revisions read as follows:

§ 20.904 Remand or referral for further action.

* * * * *

Authority: 38 U.S.C. 7102, 7103(c); 38 U.S.C. 7104(a), 7105 (2016).

161c. Amend newly redesignated § 20.905 by revising the section heading to read as follows:

§ 20.905 Rule 905. Content of Board decision, remand, or order in simultaneously contested claims.

* * * * *

§ 20.1000 [Corrected]

18. On page 191, in the first column, in § 20.1000, in paragraph (a)(3), correct “app7a1” to read “appeal”.

19. On page 191, in the second column, before instruction 170, add instruction 169a and its corresponding regulatory text to read as follows:

169a. Amend newly redesignated § 20.1004 by:

- a. Revising the section heading; and
- b. Removing the word “heard” in paragraph (b) and adding in its place the word “decided” both places it appears.

The revision reads as follows:

§ 20.1004 Rule 1004. Reconsideration panel.

* * * * *

Approved: February 6, 2019

Jeffrey M. Martin,
Assistant Director,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

[FR Doc. 2019-01840 Filed: 2/14/2019 8:45 am; Publication Date: 2/15/2019]