BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON, DC 20038

Date: February 18, 2021

[redacted]

[redacted]

Dear Appellant:

The Board of Veterans' Appeals made a decision on your appeal.

If your decision contains a	*What happens next*
Grant	The Department of Veterans Affairs (VA) will contact you regarding next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached for additional options.
Remand	Additional development is needed. VA will contact you regarding next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at http://www.vets.gov.

Sincerely yours,

N. Tann

N. Tann
Executive Director
Office of Appellate Support

Enclosures (1)

[redacted]

BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

Docket No. [redacted]

Represented by
Disabled American Veterans

DATE: February 18, 2021

ORDER

A higher 40 percent initial rating, though no greater, is granted for degenerative arthritis of the spine and spinal stenosis from November 13, 2006 to January 1, 2018, subject to the statutes and regulations governing retroactive payments.

Entitlement to a rating in excess of 40 percent for the degenerative arthritis of the spine and spinal stenosis since January 2, 2018 is denied.

FINDINGS OF FACT

1. For the initial period at issue from November 13, 2006 to January 1, 2018, the medical evidence of record shows that the Veteran's lumbar spine disability was manifested by forward flexion limited to 60 degrees with painful motion, but it is as likely as not he had even less forward flexion – to 30 degrees or less, during flare ups and during prolonged or repetitive use of his low back.

2. However, he has never had unfavorable ankylosis of his thoracolumbar spine or entire spine, either prior to or since January 2, 2018.

CONCLUSIONS OF LAW

1. For the initial period at issue from November 13, 2006 to January 1, 2018, when resolving all reasonable doubt in the Veteran's favor, the criteria are met for a higher 40 percent initial rating for the degenerative arthritis of his spine and spinal stenosis. 38 U.S.C. §§ 1155, 5107; 38 C.F.R. §§ 4.1, 4.3, 4.7, 4.40, 4.45, 4.59, 4.71a, Diagnostic Code (DC) 5238-5242.

2. But, both prior to and since January 2, 2018, the criteria conversely are not met for entitlement to a rating greater than 40 percent for this low back disability. *Id.*

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from October 1979 to October 2005.

This appeal to the Board of Veterans' Appeals (Board) is from a November 2007 rating decision of a Department of Veterans Affairs (VA) Regional Office (RO).

This case was previously before the Board in May 2019, at which time the Board, in pertinent part, denied the claim for an initial rating higher than 20 percent for the degenerative arthritis of the Veteran's spine from November 2006 onwards.

The Veteran appealed the Board's May 2019 decision to the higher U. S. Court of Appeals for Veterans Claims (Veterans Court/CAVC). In February 2020, the contesting parties filed a Joint Motion for Partial Remand (JMPR), which the Court granted in an Order that same month, partially vacating the portion of the Board's decision denying this claim and remanding it back to the Board for further development and re-adjudication in compliance with directives specified.

In August 2020, the Board in turn remanded the claim back to the Agency of Original Jurisdiction (AOJ), in part, to obtain a new examination reassessing the severity of the Veteran's lumbar spine disability in accordance with *Correia v. McDonald*, 28 Vet. App. 158, 168 (2016). There since has been the required compliance with the August 2020 remand directives. *See Stegall v. West*, 11 Vet. App. 268, 271 (1998) (holding that a remand by the Board confers upon the

Veteran, as a matter of law, the right to compliance with the remand instructions); *but see also D'Aries v. Peake*, 22 Vet. App. 97, 105 (2008) (holding that only "substantial" rather than strict or exact compliance with the Board's remand directives is required under *Stegall*); *accord Dyment v. West*, 13 Vet. App. 141, 146-47 (1999).

While this matter was on remand, the Veteran was granted a higher 40 percent rating for his service-connected low back disability at issue retroactively effective from January 2, 2018. *See* October 2020 Rating Decision. He since has continued to appeal for an even higher rating. *See AB v. Brown*, 6 Vet. App. 35, 38-39 (1993) (receipt of a higher rating, but less than maximum possible rating, does not abrogate a pending appeal unless the Veteran expressly indicates he is satisfied or content with the greater rating and for all periods at issue). So, this appeal now concerns whether he was entitled to an initial rating higher than 20 percent for this disability prior to January 2, 2018, and whether he has been entitled to a rating higher than 40 percent since.

Increased Ratings

Disability ratings are determined by comparing the Veteran's symptoms with criteria listed in VA's Schedule for Rating Disabilities (Rating Schedule), which is based, as far as practically can be determined, on average impairment in earning capacity. Separate codes identify the various disabilities. 38 C.F.R. Part 4. When rating a service-connected disability, the entire history must be borne in mind. *Schafrath v. Derwinski*, 1 Vet. App. 589 (1991). Where there is a question as to which of two ratings shall be applied, the higher rating will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned. 38 C.F.R. § 4.7. All reasonable doubt material to the determination is resolved in the Veteran's favor. 38 C.F.R. § 4.3. The Board will consider entitlement to "staged" ratings to compensate for times when the disability may have been more severe than at others. *Fenderson v. West*, 12 Vet. App. 119 (1999); *Hart v. Mansfield*, 21 Vet. App. 505 (2007).

When evaluating musculoskeletal disabilities based on limitation of motion, 38 C.F.R. § 4.40 requires consideration of functional loss caused by pain or other factors listed in that section that could occur during flare-ups or after repeated use and, therefore, not be reflected on range-of-motion testing. 38 C.F.R. § 4.45 requires consideration also be given to less movement than normal, more movement than normal, weakened movement, excess fatigability, incoordination, and pain on movement. *See DeLuca v. Brown*, 8 Vet. App. 202 (1995); see also *Mitchell v. Shinseki*, 25 Vet. App. 32, 44 (2011). Nonetheless, even when the background factors listed in § 4.40 or 4.45 are relevant when evaluating a disability, the rating is assigned based on the extent to which motion is limited, pursuant to 38 C.F.R. § 4.71a; a separate or higher rating under § 4.40 or 4.45 itself is not appropriate. *See Thompson v. McDonald*, 815 F.3d 781, 785 (Fed. Cir. 2016) ("[I]t is clear that the guidance of § 4.40 is intended to be used in understanding the nature of the veteran's disability, after which a rating is determined based on the § 4.71a criteria.").

Under 38 C.F.R. § 4.59, painful motion is a factor to be considered with any form of arthritis; however, 38 C.F.R. § 4.59 is not limited to disabilities involving arthritis. *See Burton v. Shinseki*, 25 Vet. App. 1 (2011).

In *Correia v. McDonald*, 28 Vet. App. 158 (2016), the Court held that the final sentence of 38 C.F.R. § 4.59 requires that the examiner record the results of range of motion testing "for pain on both active and passive motion [and] in weight-bearing and non-weight-bearing and, if possible, with range of motion measurements of the opposite undamaged joint." The spine has no opposite joint.

In *Sharp v. Shulkin*, 29 Vet. App. 26 (2017), the Court held that VA examiners must obtain information about the severity, frequency, duration, precipitating and alleviating factors, and extent of functional impairment of flares from the veterans themselves, when a flare-up is not observable at the time of examination.

1. A higher 40 percent initial rating, though no greater, is granted for the degenerative arthritis of the spine and spinal stenosis from November 13, 2006 to January 1, 2018.

2. Entitlement to a rating greater than 40 percent for the degenerative arthritis of the spine and spinal stenosis since January 2, 2018 is denied.

The degenerative arthritis and spinal stenosis of the Veteran's spine is rated under 38 C.F.R. § 4.71a, DC 5238-5242. Hyphenated DCs are used when a rating under one DC requires use of an additional DC to identify the specific basis for the evaluation assigned. 38 C.F.R. § 4.27. Here, the hyphenated DC represents spinal stenosis (DC 5238) and degenerative arthritis of the spine (DC 5242), both of which are part of a General Rating Formula for Diseases and Injuries of the Spine.

According to this General Formula for Diseases and Injuries of the Spine, the following ratings apply: a 20 percent rating is warranted when there is forward flexion of the thoracolumbar (thoracic and lumbar) spine greater than 30 degrees but not greater than 60 degrees; or combined range of motion of the thoracolumbar spine not greater than 120 degrees; or muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour, such as scoliosis, reversed lordosis, or abnormal kyphosis. A 40 percent rating is warranted for forward flexion of the thoracolumbar spine limited to 30 degrees or less or favorable ankylosis of the entire thoracolumbar spine. A 50 percent rating is warranted for unfavorable ankylosis of the entire thoracolumbar spine. A 100 percent rating is warranted for unfavorable ankylosis of the entire spine (meaning when additionally considering the adjacent cervical segment).

Any associated objective neurologic abnormalities are to be evaluated separately, under an appropriate DC. 38 C.F.R. § 4.71a, DCs 5235-42, Note (1).

For VA compensation purposes, normal forward flexion of the thoracolumbar spine is from zero to 90 degrees, normal extension is from zero to 30 degrees, normal left and right lateral flexion is from zero to 30 degrees, and normal left and right lateral rotation is from zero to 30 degrees. 38 C.F.R. § 4.71a, DCs 5235-42, Note (2). So normal combined range of motion is 270 degrees. All measured ranges of motion are to be rounded to the nearest five degrees. 38 C.F.R. § 4.71a, DCs 5235-42, Note (4).

For VA compensation purposes, unfavorable ankylosis is a condition in which the entire thoracolumbar spine is fixed in flexion or extension, and the ankylosis results in one or more of the following: difficulty walking because of a limited line of vision; restricted opening of the mouth and chewing; breathing limited to diaphragmatic respiration; gastrointestinal symptoms due to pressure of the costal margin on the abdomen; dyspnea or dysphagia; atlantoaxial or cervical subluxation or dislocation; or neurologic symptoms due to nerve root stretching. Fixation of a spinal segment in neutral position (zero degrees) always represents favorable ankylosis. 38 C.F.R. § 4.71a, DCs 5235-42, Note (5).

Under the Formula for Rating Intervertebral Disc Syndrome (IVDS) Based on Incapacitating Episodes, the following ratings apply: a 20 percent rating is warranted for incapacitating episodes having a total duration of at least two weeks but less than four weeks per year. A 40 percent rating is warranted for incapacitating episodes having a total duration of at least four weeks but less than six weeks per year. A 60 percent rating is warranted for incapacitating episodes having a total duration of at least six weeks but less than twelve weeks per year. 38 C.F.R. § 4.71a, DC 5243.

An "incapacitating episode" is defined as "a period of acute signs and symptoms due to [IVDS] that requires bed rest prescribed by a physician and treatment by a physician." 38 C.F.R. § 4.71a, Code 5243, Note (1).

At the outset, the evidence of record indicates the Veteran is not entitled to an increased rating for incapacitating episodes (i.e., doctor-prescribed bedrest) during the period on appeal since there is no evidence of incapacitating episodes having a total duration of at least two weeks. Absent some clinical (objective) documentation of bedrest prescribed by a physician or other healthcare provider for at least two weeks, *see* DC 5243, the Board cannot assign a higher rating during the period on appeal using the criteria described in the IVDS ratings.

During a September 2007 VA examination, the Veteran complained of persistent daily low back pain. He stated that this low back pain was aggravated by carrying groceries and that it precluded him from jogging or engaging in physical activities. On physical examination, his thoracolumbar spine forward flexion was to 60 degrees and his backward extension to 30 degrees. His left and right lateral flexion (side bending) also were to 30 degrees, but on the third repeated trial he experienced stiffness in his lower back. The examiner did not provide range of left and right rotation (twisting). Pain was observed with flexion at 60 degrees, and the examiner indicated the Veteran was slow on his third repetitive motion to get to the 60 degrees mark, which suggests a decreased endurance. However, the potential loss of range of motion based on decreased endurance was not quantified, and this partly was the reason for partly vacating the Board's prior decision denying this claim.

During a more recent January 2018 VA thoracolumbar spine examination, the Veteran complained that his low back pain worsens every day. He reported difficulty walking, sitting, standing, and bending due to his low back pain. On physical examination, he had guarding or muscle spasm of his spine, but his gait was normal and there was no need for assistive devices. His forward flexion was to 50 degrees, backward extension limited to 0 degrees, right lateral flexion and rotation each to 20 degrees and left lateral flexion and rotation each also to 20 degrees – but including pain on repetitive use and flare-ups.

During an even more recent October 2020 VA back examination, the Veteran reported dull pain in his lower back with numbness and tingling in his left leg. He also reported that his lower back pain worsens with movement and exertion. The VA examiner observed the Veteran was unable to bend down to tie his shoelaces. On examination, flexion, on repetitive motion and flare-ups, was to just 20 degrees and backward extension still restricted to 0 degrees, with objective evidence of painful motion. Left lateral flexion was to 5 degrees; right lateral flexion and right and left lateral rotation were each to 10 degrees, with evidence of pain. He did not have IVDS and he did not have ankylosis.

Based on this collective body of evidence dating back several years, so including back to the initial examination in September 2007, the Board finds that a higher initial rating of 40 percent, though no greater, is warranted for the low back disability even prior to January 2, 2018 – indeed, even dating back to November 13, 2006. Although the report of the contemporaneous September 2007 VA examination reveals that the Veteran's range of motion on forward flexion was to 60 degrees, albeit with pain even to that point, the VA examiner further indicated that the Veteran struggled to reach that 60 degrees mark after repetitive testing and affirmed this indicated a decreased endurance. This suggest that the Veteran's limitation on range of motion due to pain is actually less than the recorded 60 degrees in this extreme circumstance – meaning with prolonged or repetitive use of his low back since in that circumstance there is premature fatigability. Resultantly, the Board will resolve all reasonable in his favor and find that he met the requirements for a 40 percent rating even then (not just as of January 2, 2018). Therefore, this higher 40 percent rating is being granted from November 13, 2006 to January 1, 2018, so even during the period preceding when he eventually received this higher rating.

That said, at no time either prior to or since January 2, 2018, has the Veteran's low back disability met the requirements for a rating higher than 40 percent. A higher 50 percent rating is not appropriate in this case as the evidence does not at any point reflect findings suggestive of unfavorable ankylosis of his entire thoracolumbar spine. In other words, the evidence does not reflect that his spine is fixed in flexion or extension, and the ankylosis results in difficulty walking because of a limited line of vision; restricted opening of the mouth and chewing; breathing limited to diaphragmatic respiration; gastrointestinal symptoms due to pressure of the costal margin on the abdomen; dyspnea or dysphagia; atlantoaxial or cervical subluxation or dislocation; or neurologic symptoms due to nerve root stretching. *See* 38 C.F.R. § 4.71a, DCs 5235-5242, Note (5). Aside from that definition provided in Note (5), ankylosis has been defined in caselaw as stiffening or fixation of the joint as the result of a disease process, with fibrous or bony union across the joint. *See Dinsay v. Brown*, 9 Vet. App. 79, 81 (1996) citing Dorland's Illustrated Medical Dictionary at 86 (27th ed. 1988) (Ankylosis is "immobility and consolidation of a joint due to disease, injury, or surgical procedure."); *see also Coyalong v. West*, 12 Vet. App. 524, 528 (1999); *Lewis v. Derwinski*, 3 Vet. App. 259 (1992) [citing Saunders Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health at 68 (4th ed. 1987)]. By definition, there is no spinal motion. Here, though, there is not this required indication – even accepting that the Veteran's range of motion of his low back is far from normal.

The Board also has considered whether separate, compensable, ratings are warranted based on neurological manifestations. Note (1) of the General Rating Formula for Diseases and Injuries of the Spine provides for separate ratings based on associated objective neurological abnormalities. However, the Veteran already is receiving compensation (i.e., has *separate* ratings) for radiculopathy of the sciatic nerve of his left and right lower extremities under 38 C.F.R. § 4.124a, DC 8520.

Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board J. Hamm, Associate Counsel

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.

Department of Veterans Affairs

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (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. Your local VA office will implement the Board'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. Please note that if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your appeal at the Court because of jurisdictional conflicts. If you file a Notice of Appeal with the Court ***before*** you file a motion with the Board, the Board will not be able to consider your motion without the Court's permission or until your appeal at the Court is resolved.

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 Board 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 Board to reconsider any part of this decision by writing a letter to the Board clearly explaining why you believe that the Board 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 your letter be as specific as possible. A general statement of dissatisfaction with the Board decision or some other aspect of the VA claims adjudication process will not suffice. If the Board 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:

Litigation Support Branch
Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038

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 Board to vacate any part of this decision by writing a letter to the Board 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 on the previous page for the Litigation Support Branch, 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 on the previous page for the Litigation Support Branch, 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 Board, 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 (855) 446-9678.

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: If you hire an attorney or agent to represent you, a copy of any fee agreement must be sent to VA. The fee agreement must clearly specify if VA is to pay the attorney or agent directly out of past-due benefits. See 38 C.F.R. 14.636(g)(2). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the direct-pay fee agreement must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. See 38 C.F.R. 14.636(g)(3).

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).