

UNITED STATES COURT OF VETERANS APPEALS

MISC. NO. 7-94

IN RE:

RULES 4(A) AND 25(B)

Before NEBEKER, Chief Judge, and KRAMER, FARLEY,
MANKIN, HOLDAWAY, IVERS, and STEINBERG, Judges.

O R D E R

Pursuant to 38 U.S.C. § 7264(a) and consistent with 28 U.S.C. § 2071(b) and (e), the Court has determined that there is an immediate need for rules addressing the filing of a Notice of Appeal on its postmark date, as is provided for by Public Law No. 103-446, § 511 (1994), which applies to any Notice of Appeal mailed to this Court on or after November 2, 1994. It is by the Court, with Judge Steinberg dissenting,

ORDERED that Rule of Practice and Procedure 4(a) is amended, effective immediately, to read as follows:

(a) Time for Appeal. To obtain review by the Court of a Board decision, a person adversely affected by that decision must file a Notice of Appeal within 120 days after the date on which the Board mailed notice of the decision to the last known address of the appellant and the appellant's authorized representative, if any. A Notice of Appeal shall be deemed to be received:

(1) on the date of its legible postmark, affixed by the United States Postal Service (not including a postage-metered date imprint other than one affixed by the United States Postal Service) on the cover in which the Notice is posted, if the mailing is properly addressed to the Court and is mailed, or

(2) on the date of its receipt by the Clerk, if it does not bear a legible postmark affixed by the United States Postal Service, or it is delivered or sent by means other than United States mail, including facsimile.

It is further

ORDERED that Rule of Practice and Procedure 25(b)(2) is amended, effective immediately, by adding, at the end, the sentence: But see Rule 4(a) concerning Notice of Appeal. It is further

ORDERED that Form 1 (Notice of Appeal) is amended, effective immediately, to read as shown on the attachment to this order.

Public comment on these amendments is invited. Such comment must be submitted to the Clerk of this Court at 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950, by December 31, 1994.

DATED: NOV 7 1994

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Frank Q. Nebeker".

FRANK Q. NEBEKER
Chief Judge

CERTIFICATE OF SERVICE

On _____, a copy of this Notice of Appeal was (check one)

(Date)

mailed postage prepaid to

served personally on

General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date

Signature (Appellant, Appellant's attorney, or representative)

INSTRUCTIONS

Send your completed Notice of Appeal (original only) by United States mail to:

**Clerk, US Court of Veterans Appeals
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950**

It will be in time if it is properly addressed to the Court and bears a legible postmark, affixed by the United States Postal Service, with a date which is within 120 days after the mailing date of the BVA decision that you wish to appeal. A postage-metered date imprint other than one affixed by the United States Postal Service does not qualify as such a postmark.

Send the filing fee (\$50.00, by check or money order, payable to "US Court of Veterans Appeals") with this Notice of Appeal. DO NOT MAIL CASH. If you are requesting waiver of the filing fee, attach a completed Form 4 to the Notice of Appeal.

You may file your Notice of Appeal by delivery means other than United States mail, including facsimile transmission to (202) 501-5848. If you elect another form of delivery or if you mail the Notice of Appeal and it does not bear a legible postmark affixed by the United States Postal Service, then the Notice of appeal must be actually received by the Court within the 120-day time limit. If you file by facsimile, the Clerk must receive the \$50.00 filing fee or a completed Form 4 within 14 days after you sent the facsimile Notice of Appeal.