



THE SECRETARY OF VETERANS AFFAIRS

WASHINGTON  
March 5, 2003

The Honorable Lane Evans  
Ranking Democratic Member  
Committee on Veterans' Affairs  
U. S. House of Representatives  
Washington, DC 20515

Dear Congressman Evans:

I am writing in response to your letters of October 22, 2002, and February 13, 2003. I apologize for not providing the information requested in your letter of October 22, and believe that this reply is sufficient to satisfy both requests.

In your letters, you raise concerns regarding the criteria being used by the Board of Veterans' Appeals (Board or BVA) to decide whether a case should be advanced on the Board's docket due to "serious illness." More specifically, you state that you are concerned that the Board is interpreting the "serious illness" requirement of 38 U.S.C. § 7107(a)(2)(B) and 38 C.F.R. § 20.900(c) as requiring evidence that "death is so imminent that the appellant may not survive the time projected to complete the appellate process." I have referred this matter to the Board and the Chairman's staff has prepared the attached fact sheet with specific details to address your concerns.

I appreciate you bringing this matter to my attention. I trust that this will address your concerns regarding the criteria being considered by the Board in ruling on motions to advance cases on its docket, as well as the particular handling of motions.

Sincerely yours,

A handwritten signature in black ink that reads "Anthony J. Principi". The signature is written in a cursive style.

Anthony J. Principi

Enclosure

**Department of Veterans Affairs**  
**Fact Sheet related to Board of Veterans Appeals Issues**  
**Raised in a letter from the Honorable Lane Evans**

**BVA Criteria to Advance a Case on the Docket**

VA staff shares your concern that in some instances incorrect criteria may have been considered in deciding what constitutes a "serious illness" for purposes of deciding motions to advance cases on the Board's docket. While "serious illness" is not specifically defined by either the statute or the regulation, or in the pertinent legislative and regulatory history, the requirement that a veteran be in imminent danger of death before a motion to advance on the docket will be granted appears to be too narrow and restrictive of an interpretation of those words. Instead, a "serious illness" more appropriately is considered to be one that involves a sickness that is grave in nature, is fraught with danger or harm, and entails the possibility of important or dangerous consequences due to its extremely serious nature.

The Board is taking immediate action to ensure that only the correct criteria, as set forth above, are considered. Training and guidance is being provided to all Deputy Vice Chairmen and Board Members regarding the appropriate criteria to be considered when ruling on a motion for advancement on the Board's docket.