

Slide 1



***Legacy Appeals:
DRO Review Process***

Appeals Management Office
February 2020

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Instructor Notes:

This course teaches learners about Decision Review Officers (DROs) and their authority to review, complete, and make decisions regarding appellate issues.

Lesson Objectives

- Define the duties of the DRO
- Identify issues under the jurisdiction of the DRO
- Understand the DRO's decisional authority and limits of authority
- Understand *de novo* review and what the review consists of
- Describe the purpose and requirements of informal conferences
- Detail the different DRO decisions made on appealed issues



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Instructor Notes:

At the end of this training, learners will be able to:

- Define the duties of the DRO
- Identify issues under the jurisdiction of the DRO
- Understand the DRO's decisional authority and limits of authority
- Understand *de novo* review and what the review consists of
- Describe the purpose and requirements of informal conferences
- Detail the different DRO decisions made on appealed issues

Appeals Modernization Act (AMA)

- PL 115-55, *Veterans Appeals Improvement and Modernization Act of 2017* went into effect on February 19, 2019
- Claimants who received a decision notice
 - **PRIOR** to the effective date may file a **legacy appeal** with the AOJ
 - **ON or AFTER** the effective date may file an appeal directly with the Board of Veterans' Appeals (Board) under the **new appeal system**

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Learning Objective: N/A

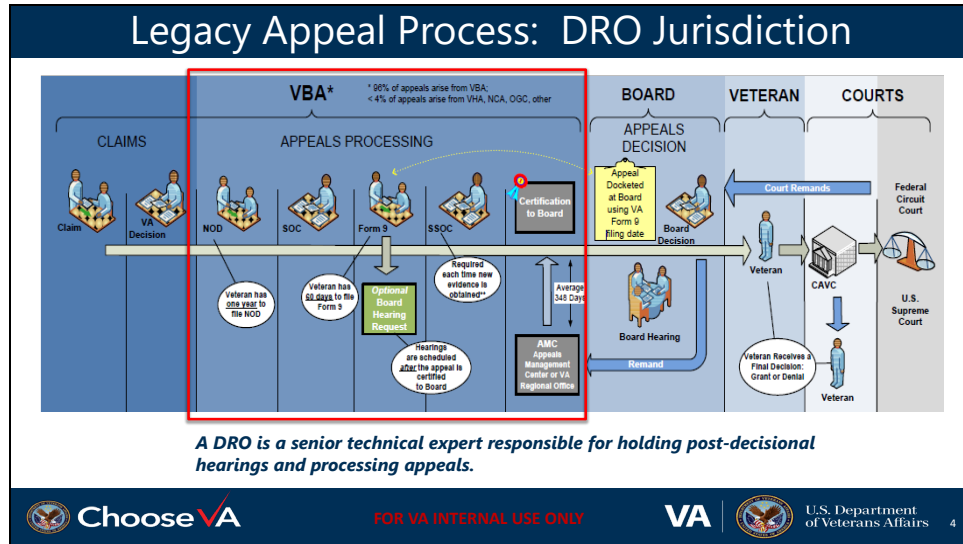
Instructor Notes:

VA amended its claims adjudication, appeals, and Board of Veterans' Appeals (BVA, or Board) regulations with the final rule, Public Law (PL) 115-55, *Veterans Appeals Improvement and Modernization Act of 2017*, also called "AMA." The President signed the law on August 23, 2017, and it became effective on February 19, 2019.

AMA contains numerous provisions including:

- changes to decision notices
- new decision review processes, including higher-level reviews and supplemental claims, and
- new options available at the Board of Veterans' Appeals.

Under this rule, VA amended the procedures for appeals of VA decisions on claims for benefits, creating a new, modernized review system. Disagreements with VA decisions on or after the effective date (February 19, 2019), or in situations in which a claimant elected to opt-in to the new review system, are processed in the modernized review system.



Learning Objective: Define the duties of the DRO

Instructor Notes:

This graphic shows the entirety of the legacy appeals system. The red box identifies the appeals processing stages that a Decision Review Officer (DRO) has jurisdiction and authority to be involved in.

A DRO is a senior technical expert who is responsible for holding post-decisional hearings and processing appeals. The DRO may have jurisdiction of any legacy appeal.

Note - The graphic on this slide shows how the Appeals Management Center (AMC) or the VA Regional Office is responsible for conducting legacy appeals work and certifying appeals to the Board. Please note that effective January 4, 2017, VBA Letter 20-17-02, *Realignment of Appeals Policy and Operational Control to the Appeals Management Office*, realigned appeals and decision review activities to the newly established Appeals Management Office (AMO). Furthermore, effective October 1, 2018, AMO established three Decision Review Operations Centers (DROCs) under VBA Letter 20-18-05, *Decision Review Operations Centers*. Per this new guidance, the AMC was renamed to the Washington DC Decision Review Operations Center (DC DROC).

DRO Duties, Jurisdiction and Authority



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DRO Duties

- Contacts appellants and representatives
- Holds informal conferences and formal hearings
- Evaluates evidence of record
- Decides disagreements based on entire evidentiary record
- Issues SOC/SSOCs
- Certifies and transfers appeals to BVA
- Participates in employee development

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Learning Objective: Define the duties of the DRO

Instructor Notes:

- Makes direct contact with appellants and their representatives to include holding informal conferences and formal hearings
- Evaluates the evidence of record, including the need for additional evidence as a result of information obtained during the conference or hearing
- Decides disagreements based on the entire evidentiary record
- Issues SOC/SSOCs, certifies, and coordinates the transfer of appeals to BVA
- Plays a central role in employee development, including
 - mentoring new employees, such as appeals RVSRs
 - participating in the training of RVSRs
 - providing feedback to the Appeals Management Office (AMO), Compensation Service, or Pension and Fiduciary (P&F) Service managers at all levels

DRO Jurisdiction

- *De novo* review
- Limited jurisdiction of rating issues raised during informal conferences or formal hearings
- Downstream issues raised from favorable appeal decisions
 - Disability evaluation
 - Effective date
 - Any inferred or ancillary issues

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Learning Objective: Identify issues under the jurisdiction of the DRO

Instructor Notes:




The DRO has:

- *de novo* review jurisdiction over only legacy appeals governed by 38 CFR Part 3 and 38 CFR Part 4
- limited jurisdiction over a rating issue raised during an informal conference or formal hearing, provided the issue was part of the rating decision that is subject of the hearing
- When a DRO issues a favorable decision on an appealed issue, the DRO assumes jurisdiction over and decides any downstream issues, including:
 - disability evaluation
 - effective date, and
 - any inferred or ancillary issues that are encompassed by that favorable decision.

Example of downstream issue: The appeal decision maker is reviewing medical evidence in support of the appeal on the Veteran's SC neurological disability and discovers that it now causes loss of use. The appeal decision must include a decision on any ancillary benefits to which the Veteran is entitled, such as SMC and auto grant.

Issues Not Under DRO Jurisdiction

- Appeals on rating decisions made by the DRO him/herself
- Appeals filed after February 19, 2019 under modernized review system
- Committee on Waivers and Compromises (COWC) issues
- Loan guaranty
- Insurance
- Hearing requests concerning the denial of benefits from a medical determination rendered by a VA medical authority

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Learning Objective: Identify issues under the jurisdiction of the DRO




Instructor Notes:

The DRO does not have jurisdiction over:

- an appeal on a rating decision made by the DRO him/herself
- Disagreements filed on or after February 19, 2019, to which the modernized review system applies
- Committee on Waivers and Compromises (COWC) issues
- loan guaranty
- insurance, and
- hearing requests concerning the denial of benefits from a medical determination rendered by a VA medical activity for:
 - Clothing allowance
 - Automobile and adaptive equipment, and
 - Specially adapted housing.

DRO Decisional Authority

- Amend, reverse, or uphold decision based on
 - *de novo* review
 - new evidence
- Single signature of clear and unmistakable errors (CUEs) that are not adverse actions
- DROs cannot
 - participate in a hearing if he or she participated in the decision under appeal
 - recommend a change based on *de novo* review of a BVA decision
 - bargain to withdraw a claim or take action in exchange for the grant of a benefit

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Learning Objective: Understand the DRO's decisional authority and limits of authority

Instructor Notes:

The DRO may:

- amend, reverse, or modify a decision based on *de novo* review, new evidence, or CUE, and
- exercise single signature CUE authority on decisions that do not involve reduction of evaluation or severance of service connection.

The DRO may not:

- participate in a formal hearing if he/she participated in the decision now under appeal
- recommend based on *de novo* review of a BVA decision
- Bargain with an appellant or their representative in exchange for withdrawal of an appeal

De Novo Review



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Right to *De Novo* Review

- Right to *de novo* review if NOD filed timely, and either requests review
 - at time of NOD submission, or
 - within 60 days of the date VA sends notice of right to *de novo* review
- 60-day time limit cannot be extended
- Can only have one *de novo* review of an issue

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Learning Objective: Understand de novo review and what the review consists of

Instructor Notes:

An appellant has a right to *de novo* review of his/her claim if he/she files a timely NOD with the decision on a benefit claim, and **either**




- requests *de novo* review at the time of submission of NOD, or
- requests *de novo* review within 60 days of the date VA sends the notice of the right to *de novo* review.

Notes:

- The 60-day time limit *cannot* be extended.
- An appellant *cannot* have more than one *de novo* review of the issue on appeal.

Conducting the Review

- Individual who did not participate in original decision
- Conducted by DRO or higher (cannot be delegated lower):
 - DROCM
 - VSCM
 - PMCM
- Visiting DRO

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Learning Objective: Understand de novo review and what the review consists of

Instructor Notes:

Only an individual who did *not* participate in the original decision being appealed may conduct the *de novo* review.

At VA discretion, the *de novo* review is conducted by the DRO or by one of the following individuals with higher authority




- DROCM
- VSCM, or
- PMCM.

The DROCM, VSCM, or PMCM at each RO/DROC has the authority to grant the issue on appeal based on a *de novo* review or CUE. They are *not* permitted to delegate this authority to anyone else, other than to a Visiting DRO.

If the DRO at the host RO participated in the decision being reviewed, a visiting DRO may be requested to hold hearings or conduct *de novo* review. The visiting DRO will render a decision in such claims, but not maintain jurisdiction of the appeal.

De Novo Review

- New and complete review
- No deference to decision being appealed
- Result may be new decision or no change
- Review only of decision that appellant has expressed disagreement with
- Reverse or revise other decisions, even if disadvantageous (requires CUE)

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Learning Objective: Understand de novo review and what the review consists of

Instructor Notes:

The *de novo* review is a new and complete review of the appealed issue with no deference given to the decision being appealed. The review may lead to a new decision which may be a full grant, partial grant, CUE, or no change.

The review will encompass only the decision with which the appellant has expressed disagreement with the NOD.

During *de novo* review, the reviewer may also reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of CUE.

Informal Conference



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Informal Conference

- Scheduled and conducted at DRO discretion
- All parties understand issues pending review
- Clarify issues as needed
- Provide explanations regarding decision
 - rating
 - which evidence was considered
 - how evidence was considered
- Identify additional information

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Learning Objective: Describe the purpose and requirements of informal conferences

Instructor Notes:




Informal conferences are scheduled and conducted at the discretion of the DRO.

The purpose of the informal conference is to:

- ensure all parties understand the issues pending review
- clarify the issues the appellant wishes to appeal
- provide explanations regarding
 - The rating decision(s)
 - Which evidence was considered, and
 - How the evidence was considered
- identify additional sources of pertinent information to include introduction of new evidence if available.

Conducting the Conference

- Conference location
 - in person
 - by telephone
 - videoconference
- Attendance
 - appellant
 - his/her representative
- Reminders for attorneys

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Learning Objective: Describe the purpose and requirements of informal conferences

Instructor Notes:

Conduct an informal conference

- in person at a VA facility
 - of jurisdiction, or
 - nearest to the appellant's residence
- by telephone, or
- by videoconference.

Informal conferences may be conducted in work areas as long as all participants agree on the location.




The appellant and his/her representative may attend an informal conference at their discretion.

Note: If the appellant's representative is an attorney, emphasize

- the informality of the conference
- that rules of evidence do *not* apply, and
- that leading questions are permissible.

Informal Conference Report

- Document informal conference in report
- Describe in the report
 - all issues in detail
 - specific additional evidence required
 - summary of discussion during the conference
 - course of action agreed upon
- Retain in claims folder
- Consider when making a new decision

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Learning Objective: Describe the purpose and requirements of informal conferences

Instructor Notes:

Use the informal conference report to:

- document the informal conference
- describe all the issues in detail
- document specific additional evidence required, and
- document the course of action agreed upon by the parties.

The informal conference report should be retained in the claims folder or electronic file. Consider the information recorded in the *Informal Conference Report* when making a new decision.

Report Example




INFORMAL CONFERENCE REPORT

DATE:
VA OFFICE:
CLAIM NUMBER:
CLAIMANT'S NAME:
TELEPHONE NUMBER:
PERSON CONTACTED:

ISSUES:
ADDITIONAL EVIDENCE REQUESTED:
SUMMARY OF DISCUSSION:
AGREED UPON ACTION(S):
SIGNATURE(S):

DRO DATE

REPRESENTATIVE DATE

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Learning Objective: Describe the purpose and requirements of informal conferences

Instructor Notes:

Review example displayed on screen.

Making a Decision



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Awarding Full Benefits

- If all benefits sought on appeal are awarded for entire period
 - consider appeal resolved
 - advise appellant and representative
 - update VACOLS

- “Full grant” depends on type of issue
 - initial service-connection: full grant when disability granted
 - increased evaluation: full grant when maximum allowed granted

- Include statement in decision notice that the decision
 - is an award of all benefits sought on appeal, and
 - the appeal is considered satisfied in full

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Learning Objective: Detail the different DRO decisions made on appealed issues

Instructor Notes:

If all benefits sought are awarded for the entire period covered by the appeal

- consider the appeal resolved for that issue
- advise the appellant and representative, if applicable, that the appeal is considered resolved, and
- update the Veterans Appeals Control and Locator System (VACOLS) record according to the table below.




“Full grant” is determined depending on the type of issue under appeal.

- If the issue is initial service-connection (SC), then a full grant occurs when SC for the disability is granted.
- If the issue is the evaluation of an already SC disability, a full grant occurs when the maximum benefit allowed by law and regulation for that specific issue is granted for the entire period under appeal.
- The exception to this is when a Veteran submits an appeal for a specific disability evaluation other than the schedular maximum, an award of the specifically requested evaluation for the entire period under appeal is considered a full grant.

The decision notice for a full grant *must* be comprehensive and include a statement that the decision is an award of all benefits sought on appeal for that tissue, and the appeal is considered satisfied in full for that issue.

Awarding Partial Benefits

- When maximum schedular benefit allowed is not granted for entire period
- When awarding partial benefits, send the appellant
 - the new rating decision
 - statement of the case (SOC) or supplemental statement of the case (SSOC), or, development as needed
 - appeals satisfaction notice
 - notice of appeal rights

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Learning Objective: Detail the different DRO decisions made on appealed issues

Instructor Notes:




A partial grant of an issue on appeal occurs when the maximum schedular benefit allowed by law and regulation for the issue(s) under appeal is not granted for the entire period under appeal. *Remember, if the issue under appeal is initial SC, a partial grant *cannot* occur; the decision rendered must either involve a full grant or denial of the issue under appeal.

When awarding partial benefits, the DRO must send the appellant:

- The new rating decision
- A decision that partially awards the benefit sought requires a statement of the case (SOC) or supplemental statement of the case (SSOC) unless the appellant states they are satisfied with the partial award.
- For any issues that cannot be fully granted or denied, the DRO should initiate required development action
- Notice of appeals rights

Upholding Prior Decision

- Confirm previous decision on NOD, send
 - an SOC
 - VA Form 9
 - explanation of any applicable time limit to respond
- Confirm previous decision on SOC, send
 - an SSOC
 - VA Form 9
 - explanation of any applicable time limit to respond

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Learning Objective: Detail the different DRO decisions made on appealed issues

Instructor Notes:


If the DRO confirms the previous decision, he/she sends an SOC

- confirming the decision on appeal, and
- explaining the reasons and bases for the VA decision, and
- provides VA Form 9, Appeal to Board of Veterans' Appeals, to the appellant.




If confirming the previous decision on appeal after an SOC has been sent, send the appellant:

- an SSOC
 - confirming the decision on appeal, and
 - discussing any changes and additions to the information provided in the prior SOC or SSOCs
- a VA Form 9, if still required, and
- an explanation of any applicable time limit to respond.

Questions?



- DRO Duties, Jurisdiction and Authority
- *De Novo* Review
- Informal Conference
- Making a Decision

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As we stated in the beginning of our training today, the lesson objectives were to:

- Define the duties of the DRO
- Identify issues under the jurisdiction of the DRO
- Understand the DRO's decisional authority and limits of authority
- Understand *de novo* review and what the review consists of
- Describe the purpose and requirements of informal conferences
- Detail the different DRO decisions made on appealed issues




We accomplished each of these objectives by discussing them within the lesson topics:

- DRO Duties, Jurisdiction and Authority
- *De Novo* Review
- Informal Conference
- Making a Decision

What additional questions do you have?

TMS Credit

- An assessment and satisfaction survey have been assigned to you in TMS
- Be sure to complete the survey and assessment to receive credit for this training

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Instructor Notes:

An assessment and satisfaction survey have been assigned to you in TMS. Completing both will allow you to receive credit for this training.