

APPEALS PROCESS RVSR STUDENT HANDOUT

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APPEALS PROCESS - RVSR STUDENT HANDOUT

PREREQUISITE TRAINING Prior to this training, you must have completed the RVSR Challenge curriculum, or be assigned to the appeals team as an RVSR or Decision Review Officer (DRO).

PURPOSE OF LESSON The purpose of this lesson is to provide an overview of the appeals process.

This lesson will present the following material:

- an overview of the appeal process
- definition of an appeal
- identification of important appeal abbreviations/acronym and terminology
- appeal time limits
- accepting the NOD
- Decision Review Officer (DRO) review
- traditional review
- stages in the appeal process
- review exercise

Time Required 4 Hours

Instructional Method Lecture, participatory discussion and practical exercises

Materials/ Training Aids Classroom or private area where a discussion may be held. Chairs and writing surfaces are required.

Large writing surface such as—easel pad, chalkboard, dry erase board, overhead projector, etc., with appropriate markers, or computer with projection equipment and PowerPoint software.

- Overview of the appeal process PowerPoint presentation
- Appeals Flow Chart Handout
- VA Form 9
- VA Form 8
- VA Form 646
- VA Form 21-0958

**TOPIC
OBJECTIVES**

At the conclusion of this lesson you will:

- define and identify an appeal
- identify important appeal abbreviations/acronym and terminology

- identify appeal time limits
- identify a valid NOD
- distinguish between the Decision Review Officer (DRO) review and the traditional review
- identify the stages in the appeal process
- demonstrate through practical exercise an understanding of the appeal process

References

- U.S.C Chapters 71 and 72
- 38 CFR 19.23
- 38 CFR 19.24
- 38 CFR Part 20
- M21-1 MR Part I, 4.
- M21-1MR Part I, 5.A.
- M21-1MR, Part I, 5.B.
- M21-1MR, Part I, 5.B.5
- M21-1MR, Part I, 5.C
- M21-1MR, Part I, 5.C.15
- M21-1MR, Part I, 5.D.
- M21-1MR, Part I, 5.E
- M21-1MR, Part I, 5.F.
- M21-1MR, Part I, 5.G
- M21-1MR, Part I, 5.H
- M21-1MR, Part I, 5.I.
- M21-1MR, Part III, Subpart I, 1.6.
- FL-08-18
- FL 09-06
- FL 10-02
- FL 13-23
- TL 02-03



Appeal Acronyms Abbreviations/Terminology

- Appeal – A timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal. (38 CFR 20.200)
- Appellant – A claimant who disagrees with VA’s decision on their claim (remember all claimants have appeal rights)
- Decision Review Officer (DRO) – A DRO is a senior technical expert whose duties include reviewing and deciding appeals cases, holding informal conferences, and personal hearings with claimants. DROs conduct *de novo review* of claims on appeal.
- De novo review – a de novo review is a new and complete review of the appealed issue with no deference given to the decision being appealed. It leads to a new decision, which may be a full grant, partial grant, CUE, or no change.
- Contested Claims – Claims where two parties have an interest in the outcome. A grant on one claim requires denial of the other claim and one claimant contest the award to the other claimant. These cases typically involve apportionment, attorney fees, claims based on relationship, or two people claiming entitlement to the same benefit.
- Board of Veteran Appeals (BVA) - The Board of Veterans' Appeals (also known as "BVA" or "the Board") is a part of the VA, located in Washington, D.C. Members of the Board review benefit claims determinations made by local VA offices and issue decision on appeals.
- U.S. Court of Appeals for Veteran Claims (CAVC) - The United States Court of Appeals for Veterans Claims is a federal court of record that was established under Article I of the United States Constitution. The court has exclusive national jurisdiction to provide independent, federal, judicial oversight and review of final decisions of the Board of Veterans' Appeals (Board). While the Board of Veterans' Appeals is a part of the *United States Department of Veterans Affairs*, the Veterans’ Court is not a part of the VA; it is an independent federal court
- Notice of Disagreement (NOD) – A written communication from a claimant or his or her representative expressing dissatisfaction/disagreement with a decision that specifically names the issues or issues with which the claimant disagrees. Please note that all compensation claims decided on or after March 24, 2015, VA Form 21-0958 must be used to file an NOD when the form is provided with the decision letter.

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VAF21-0958 is noted to be the standard form for a NOS. If the original compensation decision was prior to March 24, 2015, then use of VAF 21-0958 is not required because it was not provided in the decision notification letter (this form will be required in decision notification letters starting March 24, 2015).

- Statement of the Case (SOC) – An explanation of the decision made on the appellant’s case and a continuation of the previous decision so that the appellant can prepare an effective substantive appeal (VA Form 9). The SOC provides a summary of the evidence in the case relating to the issue or issues on appeal; a summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the decision (38 CFR 19.29).
- Supplemental Statement of the Case (SSOC) – The SSOC provides the appellant with information on changes made to the SOC. An SSOC is issued to claimants, if a SOC has been issued and new evidence material to the appeal is received, but the appeal is not granted in full (an SSOC must be issued even if the appeal is granted in part).
- Remand – An appeal not yet decided and returned from BVA to the Regional Office. A remand order from BVA compels the RO (or AMC or PMC or other VA entity) to take specified action on the appeal. Substantial compliance with a remand order is mandatory.
- Veteran Appeals Control and Locator System (VACOLS)-VA computer application used to manage and locate appeals.
- VA Form 9 – *Appeal to Board of Veterans’ Appeals* – The form used to file a substantive appeal to BVA.
- VA Form 8 *Certification of Appeal* – The form used to certify an appeal to the Board of Veteran Appeals.
- VA Form 646 *Statement of Accredited Representative in Appealed Case*- The form provided by the RO to the accredited representative for the purpose of soliciting the representative’s input on the appeal. Accredited representatives (generally service organizations, agents, and attorneys) must be provided the opportunity to review an appeal before it is certified to BVA.
- VA Form 21-0958, *Notice of Disagreement* – The form is used to file a Notice of Disagreement for compensation related decisions. This form will be required for any compensation decisions dated on or after March 24, 2015 if the form is included with the decision letter.

The Appeals Process

- The appeal process provides claimants with a method for disagreeing with a Department of Veteran Affairs decision.
- The appeal process is formal and most steps must be completed in writing.

VA extends to Veterans various types of benefits



Congress, through the United States Department of Veterans Affairs (VA) provides a broad variety of benefits and services to Veterans and certain members of their families.

❖ **Health care and related service, such as:**

- Nursing homes
- Clinics
- Medical centers



Various types of financial benefits, including:

- Disability compensation
- Pensions



❖ **Education benefits, including**

- -Vocational training,
- -Independent living skills training
- -Related career assistance

❖ **Home financing**

- Home Loan Program

❖ **Life insurance**

❖ **Burial benefits**

❖ **Benefits for certain family survivors**



What is an appeal?

- ❖ An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal. For compensation decisions dated on or after March 24, 2015, VA Form 21-0958 must be used to file a NOD if the form was provided with the decision letter.
- ❖ The two most common types of appeals are:
 - 1) Denial of service-connected benefits for a disability that the claimant believes was incurred in, or aggravated during a period of active military service or an applicable presumptive period (this issue usually involves disability compensation).
 - 2) Disagreement with an assigned evaluation. Generally, a claimant believes that his/her disability is more severe than the VA has rated it - which is directly related to the amount of monthly disability compensation entitlement.



Why the appeal process?

- ❖ As a general rule, all decisions made on claims involving benefits administered by VA issued by a VA Regional Office (RO) are subject to review by the Board of Veteran Appeals (BVA).
- ❖ Claimants not satisfied with the decision(s) made by the local VA Regional Office on their claims for benefits may elect to have the decision(s) reviewed on appeal.
- ❖ An appeal preserves the date of claim.

Example: A claim for service connection for sleep apnea was submitted on January 1, 2007. The claim was denied on January 1, 2008. However, the Veteran appealed the decision on June 1, 2008. After going through several stages of the appeal process, the appeal was ultimately granted by BVA on May 1, 2010. Service connection for sleep apnea was granted with a 50% evaluation.

Why is this important? Provided the veteran had sleep apnea when the claim was initially filed, the Veteran is entitled to retroactive compensation benefits from the original date of claim of January 1, 2007.

NOTE: Remember all claimants have appeal rights.

Jurisdiction of Appeals

- ❖ At the regional office level, the responsibility for appeals belongs to the Appeals Team (or as directed by the RO)

Appeals Team Objective

The appeals team's primary objective is the expeditious processing of appeals at the RO level as well as remands from both BVA and the Court of Appeals for Veterans Claims (CAVC).



Appeal Time Limits

- ❖ An appellant has **one year** from the date of their decision notification letter to submit a Notice of disagreement (NOD). *For compensation decisions dated on or after March 24, 2015, VA Form 21-0958 must be used to file a NOD if the form was provided with the decision letter.
- ❖ An appellant has **60 days** from the date of their decision notification letter to submit an NOD on a contested claim.

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- ❖ An appellant has 60 days from the date of their decision notification date of a Statement of the Case, Supplemental Statement of the Case, or the remainder of the initial one year period beginning on the date on the first page of the appealed decision notification letter, to perfect their appeal to BVA by submitting VA Form 9 *Appeal to Board of Veterans' Appeals* or its equivalent.



Note: In computing time limits refer to 38 CFR 20.305

NOTE: *The date of the decision notification letter is usually stamped on the first page of the document*

An NOD (Filed by the appellant that they disagree with our decision, must be postmarked (or received by us) within the specified time limits)



Stages in the Appeal Process

Now that you are familiar with important terms in regards to the appeal process – review and gain an understanding of the stages in the appeal process.

****For all compensation decisions dated on or after March 24, 2015, all NODs must be filed on VA Form 21-0958 if the form was provided with the decision letter****

If the original compensation decision was prior to March 24, 2015, then use of VAF 21-0958 is not required because it was not provided in the decision notification letter; however, this form will be required if it was provided with the decision notification letters dated on or after March 24, 2015.

Receipt of an Incomplete VA Form 21-0958 - §19.24(b)(1)

If a VA Form 21-0958 is received timely but not complete, VA will inform the claimant (or representative) that he/she must timely file a complete standard form. The claimant is not required to correct/cure an incomplete form by filing a completed version of the standard form unless VA informs the claimant or his/her representative that the form is incomplete and requests clarification.

When a claimant is notified that an incomplete form was received, the claimant has to provide a completed form within:

- 60 days from the date of the request or
- The remainder of the 1 year from the mailing of the notice of decision of the agency of original jurisdiction, whichever is later.

If a completed form is received within the appropriate time, then the NOD will be considered timely and complete. Otherwise, the decision made by the AOJ will become final.

Stage 1

- ❖ Appellant files a timely notice of disagreement (NOD) in response to a Department of Veteran Affairs (VA) decision regarding benefits claimed. (M21-1, MR Part I, 5 B)

Stage 2

- ❖ **NOD** is accepted if no further clarification is needed. If multiple issues are on the rating decision the appellant must specify which issue(s) is/are being appealed or state that all issues on the decisions are being appealed.
- ❖ **VACOLS** records is established to control and track appeal.

Note: *If appellant did not elect an appeals review option with their NOD, a letter is sent giving them the option to elect either the DRO review process or the traditional appeal process.*

Stage 3

- ❖ Appellant elects either the DRO review process or traditional appellate review process without DRO review.
 - Both reviews allow for a **complete review** of the claim.
 - If appellant does not elect the DRO review process on the NOD, or within 60 days of VA notification of the right to this process, the appeal proceeds in accordance with the **traditional appellate review process**.

DRO Review Process

Complete review:

The DRO will review the materials in the VA claims folder, including evidence and arguments, and statements from the appellant's representative. This may lead the DRO to request additional evidence from the appellant, a healthcare provider, or some other source. The appellant may elect to participate in an informal conference with the DRO to discuss his or her case.

New decision:

The DRO will then make a new decision. The DRO has the authority to grant benefits based on clear and unmistakable error, **de novo** review, or the receipt of new and material evidence.

The appellant is notified of the decision and given appeal rights. If appellant is not satisfied with the DROs' decision, he or she may then appeal, using the traditional appeal process.

Note: The appellant is entitled to a formal hearing to present evidence or testimony at any time during this process.

Traditional Appeal Process

Complete review:

A VA claims processor (usually a VSR/RVSR/DRO) reviews the claims folder for completeness or to determine if additional development or clarification is necessary. Appellants may be asked to clarify ambiguities (vagueness) concerning their disagreement. If additional development is necessary, then the development will be performed prior to rating.

Stage 4

Based on the appellant's choice one of the following review processes is conducted:

Traditional appellate review process without a DRO review by:

- ❖ VSR-
- ❖ RVSR

DRO review process by:

Stage 5

- ❖ DRO

After reviewing the claims file determine if a change is warranted in the decision.

- ❖ **If yes on all issues (VSR, RVSR, or DRO):**
 - a full grant of benefits is warranted on all issues. Issue a new rating decision. Include a complete statement of facts in the new decision with any discussion needed to clearly show the basis for the allowance

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- ❖ **If yes on only some issues (VSR, RVSR, or DRO):**
 - a full grant of benefits is warranted on some issues. Issue a new rating decision. Include a complete statement of facts in the new decision with any discussion needed to clearly show the basis for the allowance,
 - issue a statement of the case (SOC) for those issues that remain on appeal, confirming the decision, including those issues that remain denied or granted in part, and explaining the reasons for the decision
 - send VA Form 9, *Appeal to Board of Veterans' Appeals*, to the appellant

- ❖ **If no (VSR, RVSR, or DRO):**
 - A full grant of benefits is not warranted. Issue an SOC confirming the decision(s) on appeal and explaining the reasons for the VA decision **and**,
 - send VA Form 9, *Appeal to Board of Veterans' Appeals* to the appellant

Stage 6

- ❖ The appellant returns VA Form 9 or a substantive appeal in lieu of VA Form 9 within the applicable time frame, and may elect local hearing, before a Decision Review Officer (DRO) at the RO of jurisdiction, or one of the following types of Board of Veterans' Appeals (BVA) hearings:
 - travel board – a personal hearing conducted at the RO by a Veteran Law Judge
 - video conference- a hearing located at the local RO performed via videoconference with a member of BVA, or
 - in person in Washington DC

Note: VA cannot reimburse an appellant for any expenses of such hearings.

Stage 7

- ❖ **VSR, RVSR, or DRO sends a supplemental statement of the case (SSOC) to the appellant if:**
 - VA receives additional evidence material to one or more issues on appeal, **and**
 - the appeal cannot be granted in full.

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The appellant is afforded 30 days to respond to the SSOC (38 CFR 20.302 (c)).

Note 1: If none of the above applies, proceed to **Stage 8.**

Note 2: No reply is necessary from the appellant once VA receives a substantive appeal.

Note 3: If an SSOC is sent before the substantive appeal or VA Form 9 is received, the appellant has the later of either:

- 60 days from the mailing of the SSOC, **or**
- the remainder of the one-year period from the date of the original notification letter

Stage 8

DRO, RVSR, or VSCM:

- certifies the case to BVA.

Stage 9

Claims Assistant:

- transfers the claims folder to BVA

Stage 10

BVA either:

- issues a decision granting or denying the benefit, for all issues on appeal, **or**
- issues a decision granting or denying some of the issues on appeal and remands other issues, **or**
- remands all of the issues on appeal to the RO for additional action

Stage 11

VSR, RVSR, or DRO:

- ❖ If BVA issues a decision, then the following actions occur:
 - RVSR issues a rating decision, if necessary, implementing BVA's decision, **and**
 - VSR processes the RVSR decision, **and**

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- VSR closes out any pending VACOLS records. If all issues are decided, go to **Stage 13**
- ❖ If BVA remands the case to the RO, then the VSR, RVSR or DRO:
 - performs additional development, and
 - issues a new decision.

Stage 12

- ❖ BVA issues a final decision in a remanded case. The case is returned to the RO for review/processing.

Stage 13

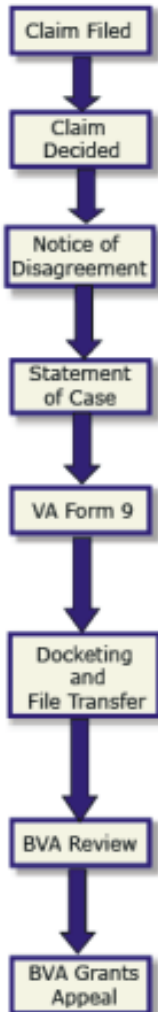
- ❖ The appellant may appeal the final BVA decision to the U.S. Court of Appeals for Veterans Claims (CAVC) within 120 days of the date of decision if the he or she is not satisfied with the BVA's decision.

EXHIBIT 1

APPEALS FLOW CHART

Starting with the original application for benefits and concluding with an appeal to the U.S. Supreme Court. A flow chart outlining all of the steps in the appeal process is provided

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The veteran files his/her claim with the VA.

The veteran is not satisfied with the resolution of the claim and decides to appeal the VA's decision.

Notice of Disagreement. Not more than a year after the VA mails the veteran its determination of the veteran's VA benefits claim, the veteran must inform the local VA office in writing that the veteran disagrees with the VA's determination and wishes to appeal.

Statement of Case. The local VA office sends the veteran a summary of law, evidence, and reasons for the VA's denial of benefits, called a "Statement of Case" (SOC).

Substantive Appeal. The veteran must file a VA Form 9 with the local VA office not later than 60 days from the date the SOC was mailed to the veteran, or 1 year from the date that the VA office first mailed the veteran notice of its determination, whichever is later.

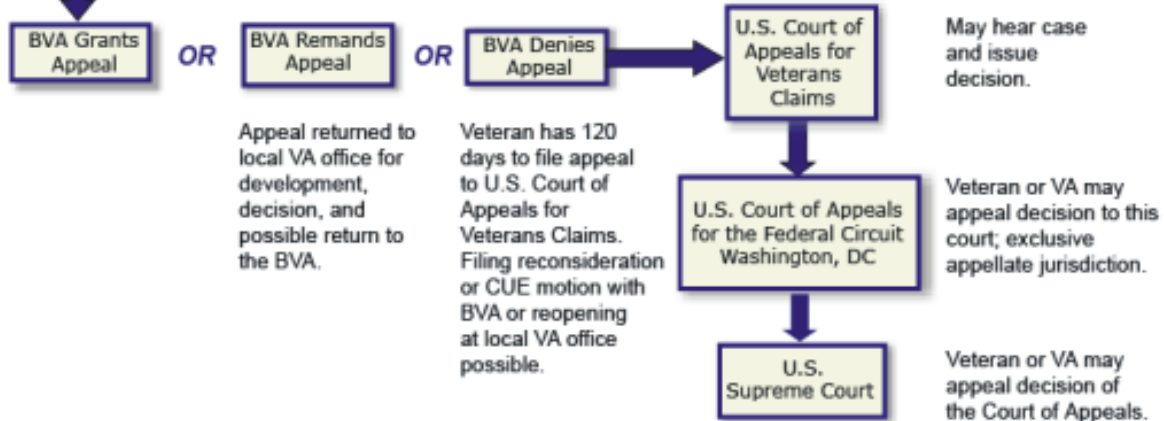
Local VA Office:

- adds the appeal to BVA's docket.
- notifies the veteran when 90 days remain for submitting additional evidence, appointing or changing a representative, or asking for a hearing.
- sends the veteran's claims folder to the BVA.

BVA:

- conducts hearings, if requested.
- reviews the veteran's appeal.
- issues decision (grant/remand/deny).

For all compensation decisions dated on or after March 24, 2015, VA Form 21-0958 must be used to file an NOD if the form was provided with the decision letter



Appeal returned to local VA office for development, decision, and possible return to the BVA.

Veteran has 120 days to file appeal to U.S. Court of Appeals for Veterans Claims. Filing reconsideration or CUE motion with BVA or reopening at local VA office possible.

May hear case and issue decision.

Veteran or VA may appeal decision to this court; exclusive appellate jurisdiction.

Veteran or VA may appeal decision of the Court of Appeals.

EXHIBIT 2

EXAMPLE OF AN NOD

I received my rating decision, dated July 29, 2009 and a notice of the decision letter on August 2, 2009. I disagree with the following issues:

1. Service connection denied for right ankle strain. I disagree with this decision, because I fractured my ankle in service, and it is documented in my service treatment records.
2. Service connection for migraine headaches. I was diagnosed and treated in service for migraine headaches. I still suffer from migraine headaches.
3. 10 percent evaluation of right knee degenerative arthritis with limitation of motion. My knee hurts all the time and I should at least be evaluated at 20 percent.

Mr. Joe Veteran

111-22-3333

August 10, 2010

NOTE: Remember that although no specific wording is required in the NOD, it must be stated in terms that can be reasonably interpreted as a disagreement with a decision and a desire for appellate review.

****Please note the decision was dated prior to March 24, 2015****

EXHIBIT 3

APPEAL PROCESS REQUEST LETTER

DEPARTMENT OF VETERANS AFFAIRS

Regional Office

[date]

[appellant's name]

[appellant's address] In Reply Refer To:

We received your written notice of disagreement with the Department of Veterans Affairs (VA) decision of [date]. This letter describes what happens next.

Will VA try to resolve my disagreement?

This local VA office will try to resolve your disagreement through the Post-Decision Review Process. As part of this process, you must decide how you would like us to handle your appeal. You may choose to have a Decision Review Officer (DRO) assigned to your case or to follow the traditional appeal process.

How does the Decision Review Officer Process work?

Complete review: The DRO will review the materials in your VA claims folder, including evidence and arguments, and statements from your representative. This may lead the DRO to request additional evidence from you, your doctor or some other source. You may be asked to participate in an informal conference with DRO to discuss your case.

New decision: The DRO will then make a new decision. The DRO has the authority to grant benefits based on clear and unmistakable error, *de novo* review, or the receipt of new and material evidence. You will be notified of the decision and your appeal rights. If you are not satisfied with the DRO's decision, you may then appeal, using the traditional appeal process.

How does the Traditional Appeal Process work?

Complete review: A VA staff member will check your file for completeness. Then a review will be made of your evidence and arguments, statements from your representative and any other information available in your claims folder. This may lead to a request for additional evidence from you, your doctor or other sources. You may be asked to clarify questions about your disagreement.

Statement of the Case: If we cannot grant your appeal based on the review and an examination of any additional evidence, we will then prepare a Statement of the Case (SOC) and send you a copy. The SOC will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision. If you still do not agree with that decision and wish to continue your appeal, you need to submit a substantive appeal so that your case can be sent to the Board of Veterans' Appeals. Instructions on how to file a substantive appeal will be provided in our letter notifying you of the decision.

May I be represented?

[Use this paragraph if appellant has a representative.]

You designated **[name]** from **[organization]** to represent you in presenting your claim to VA. The DRO will work with this representative while trying to resolve your disagreement. If you have not already done so, you should contact your representative directly to discuss your case.

[Use this paragraph if appellant does not have a representative.]

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. §5904 and 38 C.F.R. §14.636 and VA's website at <http://www.va.gov/ogc/accreditation.asp>. You can find the necessary power of attorney forms on this website, or if you ask us, we can send you the forms. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

How do I select the Decision Review Officer process or traditional appeal process?

You must notify us within 60 days from the date of this letter whether you want to have your case reviewed by the Decision Review Officer process or by the traditional appeal process. If we do not hear from you within 60 days, your case will be reviewed under the traditional appeal process.

We hope we will be able to resolve your disagreement to your satisfaction. If you have questions about the information in this letter please call us at 1-800-827-1000.

EXHIBIT 4

DECISION REVIEW OFFICER (DRO) PROCESS EXPLANATION LETTER

DEPARTMENT OF VETERANS AFFAIRS
Regional Office

[date]

[appellant's name]

[appellant's address] In Reply Refer To:

[salutation]

We received your election of the Decision Review Officer (DRO) process to handle your appeal. Our records show that you filed a notice of disagreement with the Department of Veterans Affairs (VA) decision of **[date]**. This letter describes what happens next.

Will VA try to resolve my disagreement?

How does the Post-Decision Review Process Work?

Complete review: The DRO will check your file for completeness. Then a review will be made of your evidence and arguments, statements from your representative and any other information available in your claims folder. This may lead to a request for additional evidence. You may be asked to participate in an informal conference by the DRO to clarify questions about your disagreement.

New decision: The DRO will then make a new decision. You will be notified of the decision and your appeal rights

Note: You are still entitled to a formal hearing to present evidence or testimony at any time during this process.

Page 2 DRO Process Explanation Letter

May I be represented?

[Use this paragraph if appellant has a representative.]

You designated **[name]** from **[organization]** to represent you in presenting your claim to VA. The DRO will work with this representative while trying to resolve your disagreement. If you have not already done so, you should contact your representative directly to discuss your case.

[Use this paragraph if appellant does not have a representative.]

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. §5904 and 38 C.F.R. §14.636 and VA's website at

<http://www.va.gov/ogc/accreditation.asp>. You can find the necessary power of attorney forms on this website, or if you ask us, we can send you the forms. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

We hope we will be able to resolve your disagreement to your satisfaction. If you have questions about the information in this letter please call us at 1-800-827-1000.

REVIEW EXERCISE

Scenario # 1

On January 1, 2015 the Veteran, Motivated GI, submitted a claim for service connection for the following conditions: type II diabetes mellitus, migraine headaches, bilateral hearing loss, tinnitus, right knee arthritis, and left knee arthritis. The Veteran's claim was reviewed and a decision was made on March 31, 2015. That decision granted service connection for type II diabetes mellitus at 20%; bilateral hearing loss at 0 percent; tinnitus at 10%; migraine headaches at 10 %, right knee arthritis at 10 percent and right knee instability at 10%. Service connection was denied for left knee arthritis

The Veteran was provided a decision notification letter on April 1, 2015. The Veteran was pleased with his decision, since he now had 30% or more disability which gave him Veteran's preference for certain federal jobs.

The Veterans spouse, however, was not pleased with the decision. She promptly wrote a letter expressing her disagreement with the decision, which we received on **June 1, 2015**. She stated that her husband's left knee should also be service connected – since he hurt both knees at the same time. On **December 1, 2015** the Veteran submitted a VA Form 21-0958 stating that his bilateral hearing loss was more severe than the 0 % evaluation he was awarded, and that he deserved a higher evaluation for his hearing loss. He also expressed disagreement with not being service connected for a traumatic brain injury (TBI). He stated that he was pleased with the decision regarding his right knee, since he received separate evaluations for the same knee. The Veteran requested *de novo* review.

- ❖ The VSR on the appeals team promptly sent the Veteran a letter acknowledging his NOD – the Veteran's notice letter listed the issues on appeal as: (choose the correct appeal issue(s))
 - SC for left knee arthritis
 - SC for TBI;
 - Evaluation for bilateral hearing loss
 - Evaluation for right knee instability.

The VSR established the NOD in VACOLS for the issue(s) as received on June 1, 2015.

From the scenario above:

1. Determine the proper appellant.
2. Determine the issue(s) on appeal.
3. Determine the valid NOD date.

**REVIEW EXERCISE
(Continued)**

4. List the issues that have been correctly placed on appeal.
5. List the issues that have been incorrectly placed on appeal.
6. Using the same scenario, what corrective action should be conducted?
 - a. None the VSR did everything correct.
 - b. Another NOD should be established for December 1, 2015 since there were two Notice of Disagreements received.
 - c. Update VACOLS to reflect NOD, dated December 1, 2015 - for evaluation of bilateral hearing loss. Send the Veteran a corrected letter apologizing for the errors of the previous letter. Tell the Veteran that we accepted his NOD for the issue of bilateral hearing loss only as valid. Inform the Veteran that the issue of TBI is not a valid NOD because a decision was not made regarding TBI. Send the Veteran's spouse a letter and inform her that we did not accept her letter as a NOD as she is not the proper claimant.
 - d. Grant the left knee disability since the spouse informed you that the Veteran hurt both knees at the same time and put the other issues on appeal.

Scenario #2

The Veteran submitted a claim on June 6, 2006 for service connection of right knee, which was denied on December 31, 2007. The Veteran was notified of the decision on January 15, 2008. The Veteran was displeased with our decision, as he believed his right knee should be service connected. Accordingly, the Veteran sent us a letter postmarked February 20, 2009 stating that he disagreed with our decision to deny service connection for his right knee.

7. Based on scenario # 2, does the Veteran have a valid NOD?
 - a. Yes – the Veteran expressed disagreement with the denial dated, December 31, 2007
 - b. No – the Veteran's NOD although specific is not timely (within one year of the decision notification date).

Scenario #3

The Veteran claimed service connection for right knee, left knee, hearing loss and tinnitus. In our Rating Decision, dated January 15, 2010, SC was granted for hearing loss with 0 percent evaluation, tinnitus with 10 percent evaluation and left knee with a 10 percent evaluation. SC was denied for the right knee. On January 21, 2010 we notified the Veteran of our decision. The Veteran submitted a letter, dated February 3, 2010, which only stated disagreement with the rating decision, of January 15, 2010.

REVIEW EXERCISE (Continued)

8. Based on scenario #3 is this a valid NOD? Why or why not?
- No, in this case we have to write and ask the Veteran to clarify out of the four issues, the specific issues in which he/or she disagreed with on the January 15, 2010 rating decision.

For questions 9-10 using scenario #3 – the Veteran submitted a letter, dated March 10, 2010 rather than February 3, 2010 which noted disagreement with our decision to deny service connection for the right knee.

9. Is this a valid NOD?
10. What is the correct NOD date?
11. What should be done once the NOD is accepted as valid?
- Review and rate the case, granting service connection
 - Send the Veteran an SOC because the first decision was correct
 - Send the Veteran and appeal election letter which allows for either selection of the DRO review process or the traditional appeal process
12. What is the time limit for submitting an NOD with a contested claim?
13. If we have already issued an SOC and new evidence is received, what is the next step?

True or False

14. All claimants have appeal rights.
15. The appeal process can only begin after a final decision has been made and we have notified the claimant of that decision.
16. An NOD must be received in writing (or VA Form 21-0958), but do not have to state which decision the appellant is disagreeing with if multiple issues were listed on the decision.
17. Due to the overwhelming appeals backlog- Veterans do not have a choice between a *de novo* review or the traditional appeal process, but must accept whichever is the most expeditious.
18. Traditional review means that the issues under disagreement and only the evidence relating to them will be reviewed and can be conducted by either an RVSR or DRO.
19. The appeal process provides claimants with a method for disagreeing with a VA decision
20. If the appellant receives an SOC and continues to disagree with the decision they must file a VA Form 9, or its equivalent to continue the appeal.