Appeals: Hearings

Trainee Handout

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Objectives

* Describe important elements of a local hearing
* Understand travel board hearing docket
* Review scheduling and notification for BVA Travel Board Hearings
* Recite needed preparation for travel board and video hearings
* Recognize good techniques of communication
* Demonstrate successful hearing communication techniques

References

All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).

* [38 USC 7107](https://www.law.cornell.edu/uscode/text/38/7107) – Appeals: dockets; hearings
* [38 CFR 4.23](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part4/4_23.htm) – Attitude of rating officers
* [38 CFR 19.75](http://www.ecfr.gov/cgi-bin/text-idx?SID=33ee0178e701e22c41aaed38abe9104a&mc=true&node=se38.2.19_175&rgn=div8) – Field Hearing Docket
* [38 CFR 19.76](http://www.ecfr.gov/cgi-bin/text-idx?SID=8398399e758bd89df7a8b09c92da40a9&node=se38.2.19_176&rgn=div8) - Notice of time and place of hearing before the Board of Veterans' Appeals at Department of Veterans Affairs field facilities
* [M21-1, Part I, Chapter 5, Section H](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/) – Board of Veterans’ Appeals (BVA) Travel Board and Video Hearings

Topic 1: Hearings

**RO Hearings** - Claimants have the option to request a hearing with a DRO.

**Preparing for RO Hearing *-*** These are important steps that can make the hearing a productive use of time and increase customer satisfaction:

* Review the file ahead of time!
* List key points to discuss at the hearing
* Know where the panic button is in the hearing room
* Work with the POA
* No bargaining

**POA role in local formal hearing *-*** The POA is responsible for these items, but it’s always a good idea to touch base with the POA ahead of time to make sure the correct forms are available and find out if there’s a likely point of contention.

* Meets the Veteran prior to the hearing
* Knows what forms (such as privacy release forms if spouse will be in attendance)
* Leads the discussion

**Administrative items & during the hearing -**Remember these items and take a checklist or notes if needed to ensure that all are

* Affirmation – standard format “swearing in”
* Inform participants that hearing is being taped
* Obtain any witness signatures needed (i.e. spouse)
* Here’s where your list of key points is useful
* Ask pointed questions (ex. if 50% is requested, do you have any supporting documentation?)
* Still no bargaining!

**Travel Board Hearing Docket**

**I.5.E.1.a Requirement for Receipt of a Substantive Appeal Before Scheduling Travel Board or Video Hearings**… If the appellant requests a Travel Board or video hearing before a substantive appeal is received,

* + return the request to the appellant
	+ explain to the appellant the requirement for a substantive appeal, and
	+ do *not* update Veterans Appeals Control and Locator System (VACOLS).

**I.5.H.1.b. Receiving and Responding to a Timely Hearing Request**

When a timely Travel Board or video hearing request is received,

* update the VACOLS Travel Board list by clicking on the TRAVEL BOARD button and performing the following actions:
	+ enter the date of receipt of the travel board request
	+ indicate whether the case is ready for a hearing
	+ indicate whether a video hearing was requested, and
	+ update the representative information, if necessary, and
* respond to the appellant by
	+ acknowledging his/her request by sending the letter containing the text shown in M21-1, Part I, 5.H.4
	+ advising him/her if the hearing cannot be included on the current Travel Board hearing docket by sending the letter shown in M21-1, Part I, 5.H.5, and
	+ advising him/her of the availability of a video hearing if the request was for a Travel Board hearing.

**Notes**:

* If not properly date stamped on receipt, use next best evidence such as post-mark date.
* BVA forwards any hearing requests it receives to the station of origination (SOO). The date of receipt is the date the request was received in a VA facility.
* To remind appellants of the video hearing option, which is usually quicker than a travel board hearing, Compensation Service sends a letter on a quarterly basis to appellants awaiting a travel board hearing.

**I.5.H.1.c****. Maintaining the VACOLS Travel Board List:**

ROs must maintain a list of all requests for Travel Board and video hearings in VACOLS, according to the instructions in the table in I.5.H.1.c.

***Pull up this manual reference and review the table.***

**Notes**:

* ROs must ensure the VACOLS Travel Board list is updated and reviewed monthly for accuracy.
* BVA is responsible for determining the dates it will hold video and Travel Board hearings.
* ROs are responsible for scheduling the specific times for individual video and Travel Board hearings.

**Reference**: For more information on

* the responsibility of ROs to maintain the Travel Board list, see [38 U.S.C. 7107](https://www.law.cornell.edu/uscode/text/38/7107), or
* updating VACOLS, see the [*VACOLS User’s Guide*](http://vbaw.vba.va.gov/bl/21/publicat/Users/Index.htm#bmv).

**I.5.H.2 - Scheduling and Notification of BVA Travel Board Hearings –**

* ROs receive 90-day advance notice of Travel Board visits and number of cases the Travel Board will hear.
* Establish trailing docket to ensure maximum number of appellants is seen. Schedule:
	+ five hearings on the arrival day (usually Monday)
	+ five hearings on the departure day (usually Friday), and
	+ 11 hearings on the other days.

**References**:

* For more information on Travel Board hearing schedules, see [M21-1, Part I, 5.H.2.d](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#2d).
* For the definition of a trailing docket, see [M21-1, Part I, 5.A.1.n](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014081/M21-1, Part I, Chapter 5, Section A - General Information on Appeals).

**I.5.H.1.d****. Actions to Take When an Appellant Withdraws His/Her Request for a Travel Board or Video Hearing**

When an appellant or his/her representative withdraws a request for a Travel Board or video hearing, update VACOLS by accessing the UPDATE APPEAL screen and selecting None in the BVA HEARING REQUEST block.

**Note**: A withdrawal request may include:

* a written request from the appellant or his/her representative, or
* a properly completed [*VA Form 27-0820*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-27-0820-ARE.pdf), Report of General Information, showing that the appellant or his/her representative verbally withdrew the hearing request.

**I.5.H.2.h****.** If an appellant cancels or postpones their hearing, **fill the vacancy**!

* Use docket number order to contact appellants
* Use any means to fill vacancy including calling appellants

Do not certify an appeal in order to fill the vacancy unless:

* + The appellant has requested a Travel Board or video hearing, **and**
	+ The status of the hearing request is ready

***Important***: If an appellant agrees to an earlier hearing, obtain a waiver of the 30-day notice requirement discussed in [M21-1, Part I, 5.H.2.f](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#2f)

**I.5.H.2.i****.** When an appellant **fails to appear** for a scheduled Travel Board hearing,

* attach a Failure to Appear for Board Hearing flash to the outside of the paper claims folder (or upload a copy of the flash into the appellant’s eFolder if the claims folder is entirely paperless), and
* forward the appeal to BVA.

**Important**: Do not reschedule the hearing unless BVA grants a motion for a new hearing because the appellant showed good cause for failing to appear.

**Reference**: For a sample of a Failure to Report for Board Hearing claims folder flash, see [M21-1, Part I, 5.H.2.j](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#2j).

**I.5.H.2.c. Determining Which Travel Board Hearing Requests to Schedule**

To prepare a hearing schedule

* Hearings tab, VACOLS RO Access Screen
	+ Run Travel Board Requests and
	+ Certified BVA Awaiting Travel Board Reports

**Important**: ROs schedule any hearing requests VHA receives

Check out the example schedule under I.5.H.2.c.

**I**.**5.H.2.e****. Scheduling Travel Board Hearings of Complex Cases**

In some situations, an RO might have reason to believe the hearing in a particular case will be extraordinarily long, be complex, or involve many witnesses.

In these situations, the RO compensates by scheduling the hearing early in the day, and fewer hearings for that block of time.

**I.5.H.2.f****. Notifying Appellants of a Scheduled Travel Board Hearing**

When an RO completes a hearing schedule, it must send notification to all appellants with a scheduled hearing. The notification must include:

* + the date, time, and location of the hearing
	+ instructions to arrive one hour prior to the starting time of the first scheduled hearing for his/her session, and
	+ notice that hearings will occur in the order in which appellants sign in at the RO.

***Important***: The notification letter *must* be sent to appellants at least 30 days before the date of the Travel Board visit.

***References***:

* For more information on notifying appellants of a scheduled Travel Board hearing, see [38 CFR 19.76](http://www.ecfr.gov/cgi-bin/text-idx?SID=8398399e758bd89df7a8b09c92da40a9&node=se38.2.19_176&rgn=div8).
* For a sample of the language used to notify appellants of a scheduled Travel Board hearing, see [M21-1, Part I, 5.H.6](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#6).

**Per I.5.H.2.g**, mail a reminder to all scheduled appellants 2 weeks prior to hearing.

For sample language, see M21-1, Part I.5.H.7.

**I.5.H.3.a****.** If documents relevant to any of the cases the Travel Board will hear during the first two days of its visit to an RO do not exist in an eFolder, the RO must send copies of the documents via priority mail or the United Parcel Service (UPS) to:

Director, Office of Management, Planning, and Analysis (014)
Board of Veterans’ Appeals
810 Vermont Ave, NW
Washington, DC 20420

**Notes**:

* The relevant documents referenced in this block include but are not limited to the following:
	+ Statement of the Case (SOC)
	+ Supplemental Statement of the Case (SSOC), and
	+ [*VA Form 8*](http://www.va.gov/vaforms/va/pdf/VA8.pdf), Certification of Appeal.
* Send the documents referenced in this block to BVA with sufficient expediency to ensure they arrive at least one week before the Travel Board departs Washington, DC, for the scheduled hearings.

**Before a video hearing begins, RO personnel are responsible for**

* completing all necessary development prior to certification of the appeal to BVA
* completing *VA Form 8*
* shipping the claims folder(s) (unless the claims folder is entirely paperless) via UPS 45 days in advance of the scheduled hearing date to

Board of Veterans’ Appeals
Hearing Branch
425 I St., NW
Washington, DC 20420

* making the claims folder available to the appellant and his/her representative, if applicable, at least three weeks prior to the date of the hearing
* printing and distributing the daily hearing docket
* greeting the appellant and his/her representative, if applicable, on the day of the hearing, and
* ensuring that the appellant and his/her representative are in the videoconference room at the proper time.

***Notes***:

* An appellant’s accredited representative may access the appellant’s eFolder through VBMS.

An appellant may view the contents of his/her eFolder by scheduling an appointment with the RO where the hearing will be held.

**I.5.H.3.c. RO Responsibilities With Regard to Travel Board Hearings**

The responsibilities of an RO with regard to Travel Board hearings are the same as those described in M21-1, Part I, 5.H.3.b, *with one exception*: ROs must wait until ***after*** the Travel Board holds its hearing before it

* sends the appellant’s claims folder to BVA, or (if the claims folder is entirely paperless)
* transfers jurisdiction over the eFolder to BVA.

Before Travel Board hearings begin, ROs have the added responsibility of equipping the hearing room with a computer that is configured to access each appellant’s eFolder.

***Note***: Under certain circumstances, the Travel Board might instruct an RO to

* take specific development action(s), and
* wait to send the claims folder (or transfer jurisdiction over the eFolder) until development is complete.

**I.5.H.3.e****. Videoconference Equipment and Backup Phones**

A backup phone system consisting of a normal speakerphone must be available in the videoconference room so that a video hearing may continue (with audio only) even if there is a disconnection in the video link between BVA and the RO.

The videoconference equipment must be left on at all times. The system will shut itself down after five minutes of non-use when disconnected from a videoconference call.

**Good Communication** - More than just talking at people, good communication involves:

* Active listening
* Withholding judgment
* Using appropriate body language and non-verbal cues

**Remember** - Whatever we may think going into a hearing, our actions reflect on us and the United States Government. We are professionals and every appellant deserves a chance to tell their story. We will make the decision based on facts; during the hearing we will:

* Be respectful
* Hear out the appellant (and their representative if applicable)
* Be professionally hospitable
* Make an effort to understand what they are trying to say and identify any additional information that may be alluded to
* Ensure that everything runs as smoothly as possible

**Remember 38 CFR 4.23 Attitude of rating officers**

Practical Exercise

**Directions: answer the following questions.**

* 1. True or false – it is ***not*** necessary to receive a substantive appeal before scheduling a travel board or video hearing.
	2. If a hearing is requested before a substantive appeal is received, what actions should be taken?
	3. If a timely request for a hearing is received, update VACOLS Travel Board List with what information?

4. ROs must ensure VACOLS Travel Board list is updated and reviewed for accuracy how often?

5. How far in advance do ROs receive information on Travel Board visit dates and number of cases to be heard?

6. How many hearings should be scheduled on arrival and departure days for the Travel Board? How many should be scheduled on other days?

7. What reasons would cause a hearing to be scheduled earlier in the day with fewer hearings in that block of time?

8. Appellants should arrive how far in advance of the start of the block of hearings in which they are scheduled?

9. If appellant cancels or postpones a hearing, what order should you contact appellants in attempt to fill the vacancy?

10. If an appellant agrees to a hearing less than 30 days before it is schedculed, what is required?

11. What are appeals employees not allowed to do?

12. All contact with a Veteran must be captured how?

13. Whose responsibility is it to ensure that all communication and correspondence sent to the Veteran is also sent to the correct representative?

**The instructor will call on students to demonstrate the following behaviors. As a class discuss what made a positive, effective use of communication or what could be done better.**

* A good way to greet an appellant when they arrive on station and show professional hospitality
* Example of non-verbal cues that you are impatient
* Example of active listening
* Example of respectful clarification of a confusing statement.
* Example of re-focusing on the purpose of the hearing.