Appeals: SOC and SSOC

Trainee Handout

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Objectives

* Identify when to issue an SOC
* Identify what must be included in the SOC (elements required)
* Demonstrate understanding of when to limit SOC content
* Identify differences between SOC and SSOC
* Identify when to Issue an SSOC
* Understand items required in an SSOC

References

* [38 U.S.C. 1312(a)](http://www.law.cornell.edu/uscode/38/1312.html), Benefits in certain cases of in-service or service-connected deaths
* [38 CFR 3.156(a)](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_156.htm), New and Material Evidence
* [38 CFR 19.29](https://www.law.cornell.edu/cfr/text/38/19.29), Statement of the Case
* [M21-1 Part I.5.D.1](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/), Jurisdiction and Cause for Issuing an SOC
* [M21-1 Part I.5.D.2](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/), Preparing an SOC
* [M21-1 Part I.5.D.3](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/), Issuing an SOC
* [M21-1 Part I.5.D.4](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/), Preparing and Issuing an SSOC

Topic 1: Cause for Issuing a Statement of the Case (SOC)

**Statement of the Case (SOC) definition**: 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.

**The SOC provides:**

* a summary of the evidence in the case relating to the issue(s) 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).

When to issue SOC –

* Issue a statement of the case (SOC) when there is an active, valid notice of disagreement (NOD) that cannot be fully granted.

Note: This policy applies to both the traditional appellate review process and Decision Review Officer (DRO) review process.

* Increase claims: prepare SOC if decision awards less than
  + schedular maximum evaluation, or
  + evaluation requested by the Veteran on appeal.
* An SOC is not required if the appellant states he/she is
  + satisfied with the grant, or
  + withdrawing the issue.

**Question**: who at your station has the VSCM (or PMCM) designated to issue an SOC?

Helpful hints - Failure to take these steps can cost a lot of time in unnecessary work:

* Ensure you have a valid NOD
* Ensure that it is an NOD and not a claim for reconsideration
* If clarification is needed, call! Do not assume.

Topic 2: Preparing an SOC

**Preparing the SOC: What Should I See?**

1. Make sure there is a valid NOD
2. Cover letter for SOC
3. SOC

**Elements required in an SOC:**

* Issue
* Evidence
* Adjudicative Actions
* Pertinent laws and regulations
* Decision
* Reasons for Decision
* Signature & review

**What Should I See in the Issue Section?**

* Issue(s) appellant expressly disagrees with such as:

\*Service-connection for PTSD

\*PTSD evaluated at only 10%

\*Effective date of service-connection for PTSD

* Issues that remain denied or only partially granted

*What Should I Not See: full or partial grants which must be addressed in a separate rating decision.*

**What Should I See in the Evidence Section?**

This is normally taken from rating decision to include any additional evidence from the Veteran.

An SOC *cannot* disclose matters contrary to [38 U.S.C. 5701](http://www.law.cornell.edu/uscode/38/5701.html), Confidential Nature of Claims or to the public interest per [38 U.S.C. 7105(d)(2)](http://www.law.cornell.edu/uscode/38/7105.html), Filing of notice of disagreement and appeal.

***Reference***: For more information on matters not to be disclosed in an SOC, see M21-1, Part I, 5.D.2.e.

**These are examples of things to include or review for the Adjudicative Actions Section:**

* Was the 5103 notice sufficient?
  + Included in 526EZ
  + Was it a special issue that needed separate 5103
* Rating Decision
* Notice of Disagreement (NOD) received
* De Novo Review elected

***Note****: ensure actions taken have been correct and watch those dates!*

**What should I see in the Pertinent Laws and Regulations Section?**

* Only what’s needed!
  + Don’t include irrelevant laws
  + Make sure you cover issues

For example: if issue is service connection, don’t include diagnostic code evaluation laws.

* **Helpful Hints**: See the SOC/SSOC Job Aid for a starter cheat sheet.
* Keep in mind that this is a generic cheat sheet which could not include everything for every type of case out there.
* You may add to this list.

**What should I see in the Decision Section? Statement of decision.**

Examples:

* Service connection for gastroesophageal reflux disease is denied.
* Service connection for schizophrenia (also claimed as bipolar disorder) remains denied.

**What should I see in the Reasons for Decision Section?**

Rather than relying on simplified notification letter text,

* Write out the complete decision
* Tie decision to evidence received
* Show how decision, based on evidence, complies with laws
* Use good writing principles and proper grammar and punctuation
* Keep it relevant!

*This is your chance to explain why we did what we did.*

Helpful Hint - Liberally Construing Evidence I.5.D.2.b

The following language is required and must always be included in the SOC: *VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the (Veteran/claimant) as well as all evidence of record.*

*Reminder: evidence by itself cannot constitute a claim.*

References: For more information on

* what is considered a claim, see [38 CFR 3.155](http://www.ecfr.gov/cgi-bin/text-idx?SID=d79b13542c16cfbbe9975b4625cad634&mc=true&node=se38.1.3_1155&rgn=div8)
* liberally construing evidence, see Harris v. Shinseki, 704 F.3d 946 (Fed.Cir. 2013).
* the definition of inextricably intertwined, see M21-1, Part I, 5.A.1.g, and
* reasonably raised claims, see M21-1, Part III, Subpart iv, 6.B.1.

**Helpful Hints –**

* Do not include matters in an SOC of a sensitive nature that would be injurious to the physical or mental health of the appellant
* Do not include discussions that may provoke feelings of hostility, resentment, or rejection on the part of the appellant or his/her family.
* Does the appellant have limited representation?
  + If yes, a 2nd version of the SOC may be needed
  + Use the table provided in I.5.D.2.f when disclosing appeal information to the appellant’s representative.

***Reminder – ensure you enclose a Form 9 with the SOC!***

**What should I see in the Signature and Review Section?**

* I certify I have reviewed and electronically signed
* 2nd signature if required

**Reminder:** update VACOLS.

Topic 3: Issuing a Supplemental SOC

An SSOC presents the appellant with changes or additions to the SOC when:

* + Additional evidence is received, ***unless*** duplicate, not relevant, or results in a total grant of issue on appeal.
  + A change in the regulations has occurred.
  + A remand has been issued.
  + A personal hearing.
  + A material error was made in the SOC
* SOC – full explanation of decision and legal references; 1 time on that issue
* SSOC – addendum to the SOC; addresses new information (much shorter); as many times as needed

**When to Issue an SSOC:**

After an SOC has been issued, and when required, ROs should issue an SSOC to document a continued denial of an appealed issue. ***Remember, text on liberally construing evidence must be included in SSOC***!

***Note****: usually the SSOC is needed due to new evidence or when we’re able to grant an increase but unable to grant the maximum (100%) evaluation.*

Issue an SSOC If…

* Claimant submits new evidence and requests RO review
* Material error (CUE) is discovered in SOC
* Appellant appeared for an RO hearing
* Development on appeal or remanded appeal results in additional evidence
* Additional evidence is received within time limit, but no substantive appeal has been filed

**Do *Not* Issue an SSOC If…**

* Substantive appeal timely filed and new evidence is received but appellant does ***not*** request RO review (after 2/2/13)
* Evidence is duplicate or irrelevant
* Appellant claims a new issue

Helpful Hints - Additions to SSOC if Substantive Appeal is Not Filed

If the appellant has not filed a substantive appeal at the time the SSOC is released

* + provide another VA Form 9 with appropriate transmittal letter,
  + include information about the time limit for submitting a substantive appeal,
  + clear the appropriate EP, and
  + update VACOLS.

***Notes***:

* If an SSOC is sent before the receipt of the substantive appeal, the claimant has until **later** of either 60 days from mailing the SSOC, or remainder of one year period from date of the original notification to perfect the appeal with a *VA Form 9* or substantive appeal.
* If an SSOC is sent after the receipt of the substantive appeal, then the claimant has 30 days from the mailing of the SSOC to respond before VA certifies the appeal to BVA.

**Don’t include in the SSOC:**

* repeat evidence cited in the SOC,
* include the “Pertinent Laws and Regulations” section unless an additional statute or regulation is relied upon, or
* use the phrase as previously stated in any of the sections.

Helpful Hints - SSOC with full or partial grant

When there’s a full or partial grant, prepare…

* a separate rating decision addressing the issues granted, and
* an SSOC for any issues that remain denied. Do *not include any issues that are fully granted in the SSOC*.

***Notes:***

* The SSOC will address only the issues still continued on appeal because they remain denied or only partially granted.
* Any issue outside the ongoing appellate process will be addressed separately in a rating decision and does *not* go into the SSOC.

Practical Exercise

**Directions**: Answer the questions below.

1. True or False – if the active, valid notice of disagreement can be fully granted, we still issue a Statement of the Case (SOC).

1. SOC Elements include what?
2. SOCs must always include language on what?
3. Limit SOC to content relevant to the issue(s) with which the appellant \_\_\_\_\_\_\_\_\_\_\_\_\_.
4. True or false – if the decision is considered a full or partial grant of an issue, you will address that in the SOC.
5. True or false – you will always disclose all information to the Veteran’s representative that you disclose to the Veteran sending them a duplicate copy of the Veteran’s SOC.
6. When would you issue an SSOC?
7. Is an SOC or an SSOC the document with a full explanation of the decision and legal references which goes into much more depth and detail?
8. True or false – when the claimant submits new evidence and requests review by the RO, an SSOC should be issued.
9. True or false – when a material error (CUE) is discovered in the SOC, an SSOC should be issued.
10. True or false – when the claimant submits new evidence that is duplicate of evidence of record and is not relevant to the issue(s) on appeal, an SSOC should be issued.
11. True or false – the SSOC should be prepared in the same format as the SOC and use the appropriate transmittal letter.
12. True or false – the language on liberally construing evidence is only needed in the SOC.
13. True or false – in the SSOC, you should repeat the evidence cited in the SOC, include the “Pertinent Laws and Regulations” section even if no additional statue or regulation is used, and try to say “as previously stated” as much as possible.