Appeals Processing

Trainee Handout

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Objectives

At the conclusion of this lesson you will be able to:

* Identify a valid and timely Notice of Disagreement (NOD) and Substantive Appeal.
* Control the NOD and Substantive Appeal through the establishment of end products (EP) and VACOLS updates.
* Identify or develop for the appellant's desired appeal process or hearing election.
* Perform necessary development to prepare the appeal for a decision.
* Review and process the decision, deferral, or continued denial.
* Prepare appeal for, and process certification to Board of Veterans Appeals (BVA).
* Identify and discuss the BVA and the Court of Appeals for Veterans Claims (CAVC).
* Review and process a BVA/CAVC decision, remand, or continued denial.

References

* 38 U.S.C. Chapter 71 – Board of Veterans’ Appeals
* 38 U.S.C. Chapter 72 – US Court of Appeals for Veterans’ Claims
* 38 CFR Part 19 – Board of Veterans’ Appeals: Appeals Regulations
* 38 CFR Part 20 – Board of Veterans’ Appeals: Rules of Practice
* M21-1 Part I, Chapter 4 – Regional Office Hearings
* M21-1 Part I, Chapter 5 – Appeals
* M21-1 Part III, Subpart i.1.5 – Appeals Team
* Manlincon v. West (1999) – BVA must Remand for a Statement of the Case where the Veteran filed a timely Notice of Disagreement, but no Statement of the Case has been issued.
* Rice v. Shinseki (2004) – A TDIU claim is part of an increased rating claim when such claim is reasonably raised by the record.
* Evans v. Shinseki (2011) – If the VA Form 9 is potentially ambiguous, it should be interpreted liberally, in favor of the Veteran.

# Terminology

Appeal – This is a properly and timely filed NOD and, after an SOC has been furnished, a properly and timely filed Substantive Appeal.

Appellant – This is a claimant who disagrees with VA’s decision. (All claimants have appeal rights.)

Contested Claim – This is a claim in which two parties have an interest in the outcome. A grant on one claim requires denial of the other claim, and one claimant contests 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.

De novo review – This is a new and complete review of the appealed issue(s) 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 continuation of the previous decision.

Traditional appeal – This is a review of the appealed issue(s) with weight given to the decision being appealed. This only leads to a new decision when evidence that was not considered is used or addressed and/or some error was made on the decision.

**Notice of Disagreement (NOD)** – This is a written communication from a clamant or his or her representative expressing dissatisfaction or disagreement with a decision that specifically names the issue(s) with which the claimant disagrees.

**Decision Review Officer (DRO)** – This is a senior technical expert whose duties include reviewing and deciding appeals cases and holding informal conferences and personal hearings. DROs conduct de novo reviews of claims on appeal.

**Statement of the Case (SOC)** – This is an explanation of the decision made on the appellant’s case and a continuation of the previous decision so 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.

**Supplemental Statement of the Case (SSOC)** – This provides the appellant with information on changes made to the SOC. An SSOC is issued if an 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).

**Board of Veterans’ Appeals (BVA)** – The BVA is a part of the VA located in Washington, D.C. Members of the BVA (judges and attorneys) review benefit claims determinations made by local VA offices and issue decision on appeals.

**Court of Appeals for Veterans’ Claims (CAVC)** – The CAVC is a federal court of record that was established under Article I of the United States Constitution and has exclusive jurisdiction to review decisions of the BVA with the power to affirm, modify, or reverse a BVA decision, or to remand the matter as appropriate.

**Appeals Management Center (AMC)** – This office, located in Washington, D.C., specializes in processing of certain appeals and BVA/CAVC remands.

**Veteran Appeals Control and Locator System (VACOLS)** – This is a VA computer application used to manage and locate appeals.

# VA Forms

VA Form 21-0958: Notice of Disagreement

Used to file appeal

**Note**: this is a required form (in most instances)

VA Form 9: Appeal to Board of Veterans’ Appeals

Attached to SOC and used to file a substantive appeal

**Note**: this is not a required form

VA Form 646: Statement of Accredited Representative in Appealed Cases

**Note**: not required of agent/attorney

VA Form 8: Certification of Appeal

Used to certify an appeal to BVA

VA Form 4597: Your Rights to Appeal Our Decision

Issued with a BVA decision.

**The Appeal Process**

The appeal process provides claimants with a method of disagreeing with VA decisions. The appeal process is formal and certain steps must be completed in writing.

***The withdrawal of an appeal must be completed in writing by the appellant or his/her representative.***

**What Is An Appeal?**

An appeal consists of a Notice of Disagreement that is timely filed in writing, and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

The two most common types of appeals:

* 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), or secondary to a condition that meets this criteria, and
* 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 and linked to VA healthcare.

**Why The Appeal Process?**

As a general rule, all decisions made on claims involving VA-administered benefits issued by a VA Regional Office (RO) are subject to review by the BVA. Claimants not satisfied with the decision(s) made by the local RO on their benefit claims 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**

At the RO 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 CAVC.

**Time Limits**

An appellant has one year from the date of their decision notification letter to submit an NOD.

An appellant has 60 days from the date of the decision notification letter to submit an NOD on a contested claim.

An appellant has 60 days from the date of an SOC or SSOC, or the remainder of the initial one-year period from the date of the decision notification being appealed, to perfect their appeal to BVA by submitting Substantive Appeal.

Note: In computing time limits refer to 38 CFR 20.305.

# Topic 1: Notice of Disagreement (Stages 1-5)

**STAGE 1**

The appellant files a timely NOD in response to a VA decision regarding benefits claimed.

***Important:*** Effective March 24, 2015, VA will only accept issues listed on a timely VA Form 21-0958, *Notice of Disagreement*, if required, as part of the appeal submission for compensation. Any additional evidence or statements suggesting appealed issues will be considered a request for a Notice of Disagreement.

|  |  |
| --- | --- |
| **If the decision notice was sent…** | **then the NOD…** |
| prior to March 24, 2015, | does not need to be submitted on the *VA Form 21-0958*. |
| on or after March 24, 2015, and the decision notice included *VA Form 21-0958*, | must be submitted on *VA Form 21-0958*. |
| on or after March 24, 2015, and and the decision notice did not include *VA Form 21-0958*, | does not need to be submitted on *VA Form 21-0958*. |

***Note***: The current version of *VA Form 21-0958*, *Notice of Disagreement*, is September 2015.  When generating a decision notice for compensation claims in the Automated Decision Letter (ADL) and/or Personal Computer Generated Letters (PCGL), you must ensure that the current version of *VA Form 21-0958* is attached.  After printing the decision notice, remove the January 2015 version of *VA Form 21-0958* and replace it with the current, September 2015, version of the form.  There is no expectation that the copy of the decision notice contained within the claimant’s claim folder contains the current version of the form.  Letter generation systems will be updated shortly.

**STAGE 2**

The NOD is accepted if no further clarification is needed. If multiple issues are on the rating decision, the appellant must specify the issue(s) being appealed or state that all issues on the decisions are being appealed.

A VACOLS record is established to manage 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 de novo review or the traditional appeal process.

**STAGE 3**

The appellant elects either the de novo review or traditional review process.

Both reviews allow for a complete review of the claim.

If the appellant does not elect the de novo 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 review process.

**De Novo Review Process**

Complete review:

The DRO will review all materials in the VA claims folder. This may lead the DRO to request additional evidence from the appellant, a healthcare provider, or another source. The appellant may elect to participate in an informal conference with the DRO to discuss his/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 (CUE), de novo review, or receipt of new and material evidence.

The appellant is notified of the decision and given appeal rights. If the appellant is not satisfied with the DRO’s decision, he/she may then perfect the appeal to BVA.

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

**STAGE 4**

Based on the appellant’s choice, a de novo review or a traditional review is conducted.

**STAGE 5**

After reviewing the claims file, it is determined if a change is warranted in the decision.

* If yes on **all** issues, a full grant of benefits is warranted. 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.
* If yes on **some** issues:
* a grant of benefits is warranted. 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 an SOC for those issues that remain on appeal, confirming the decision, including those issues that remain denied or are granted in part, and explaining the reasons for the decision, and
* send a VA Form 9 to the appellant.
* If no on **all** issues:
* a grant of benefits is not warranted. Issue an SOC confirming the decision on the appeal and explaining the reasons for the decision, and
* send a VA Form 9 to the appellant.

# Topic 2: Substantive Appeal (Stages 6-9)

**STAGE 6**

The appellant returns files a substantive appeal within the applicable time frame and may elect a local hearing before a DRO at the RO of jurisdiction, or one of the following types of BVA hearings:

* Travel Board – a personal hearing conducted at the RO by a Veteran’s Law Judge
* Videoconference – a hearing located at the local RO performed via videoconference with a member of BVA
* In-person in Washington DC

Note: VA cannot reimburse an appellant for any expenses related to these hearings.

**STAGE 7**

An 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.

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 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**

A DRO, RVSR, or VSCM certifies the case to BVA.

**STAGE 9**

A Claims Assistant transfers the claims folder to BVA.

# Topic 3: BVA and CAVC (Stages 10-13)

**STAGE 10**

BVA either:

* issues a decision granting or denying the benefit for all issues on appeal,
* 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**

If BVA issues a decision:

* a rating decision is issued, if necessary, implementing BVA’s decision, and
* the decision is processed, and
* any pending VACOLS records are closed. If all issues are decided, go to Stage 13

If BVA remands the case to the RO:

* perform additional development, and
* issue a new decision.

**STAGE 12**

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

**STAGE 13**

The appellant may appeal the BVA decision to the CAVC within 120 days of the date of decision if the he/she is not satisfied with it.

# Attachment A: Appeals Flowchart

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

