

UNDERSTANDING THE APPEALS PROCESS



OBJECTIVES

- **Define and identify an appeal**
- **Identify important appeal abbreviation/acronyms and terminology**
- **Identify appeal time limits**
- **Identify a valid NOD**

OBJECTIVES

- **Distinguish between the 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 & 72
- 38 CFR Part 20
- M21-1MR 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

References

- **M21-1MR Part I, 5.D.**
- **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 I.6.**
- **FL 08-18; FL 09-06; TL 02-03**

Acronyms/Abbreviations/Terms

Appeal

A timely notice of disagreement in writing and, after a Statement of the Case (SOC) has been furnished, a timely filed Substantive Appeal

Acronyms/Abbreviations/Terms

Appellant

A claimant who disagrees with VA's decision on his or her claim

Acronyms/Abbreviations/Terms

Decision Review Officer (DRO)

A senior technical expert whose duties include reviewing and deciding appeal cases; holding informal conferences and personal hearings with claimants. DROs conduct de novo reviews of claims on appeal

Acronyms/Abbreviations/Terms

De novo Review

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

Acronyms/Abbreviations/Terms

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.

Acronyms/Abbreviations/Terms

BVA

Board of Veteran Appeals

Acronyms/Abbreviations/Terms

CAVC

U.S. Court of Appeals for Veteran Claims

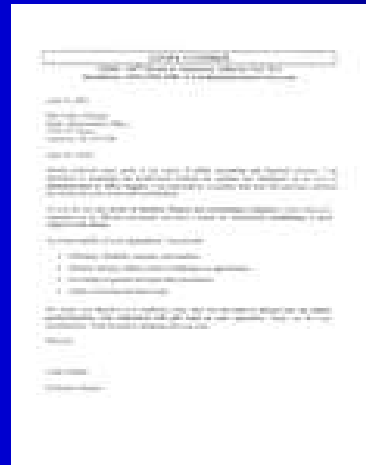
Acronyms/Abbreviations/Terms

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

Acronyms/Abbreviations/Terms NOD

Refer to Exhibit 2



NOD

- **Written statement**
- **Clearly specifying the condition**
- **Reasonably interpreted as a disagreement with the decision**
- **Can not be with a proposed action**

NOD

- Statements of “Reconsideration and/or Notice of Disagreement” should be construed as a Notice of Disagreement if specific to the issue.
- Statements of just “Reconsideration” are not considered an NOD and do not in most cases need to be clarified

NOD

- **Must be received within one year of the date of notification; 60 Days on a contested claim**
- **If not timely filed appeal rights required (VA Form 4107)**
- **Must be both Valid and Timely**

Acronyms/Abbreviations/Terms

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).

Acronyms/Abbreviations/Terms

Supplemental Statement of the Case (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 granted in full (an SSOC must issued even if the appeal is granted in part).

Acronyms/Abbreviations/Terms

Remand

An appeal not yet decided and returned from BVA to the RO to take specified action on the appeal. Substantial compliance with a remand order is mandatory.

Acronyms/Abbreviations/Terms

*Veterans Appeals Control and Locator
System (VACOLS)*

**VACOLS is a VA computer application
used to manage and locate appeals**

Acronyms/Abbreviations/Terms

VA Form 9

Appeal to Board of Veterans' Appeals

Form used to file a substantive appeal to
BVA

Acronyms/Abbreviations/Terms

VA Form 8

‘Certification of Appeal’

**The Form used to certify an appeal to the
Board of Veteran Appeals (BVA)**

Acronyms/Abbreviations/Terms

VA Form 646

*‘Statement of Accredited Representative in
Appealed Cases’*

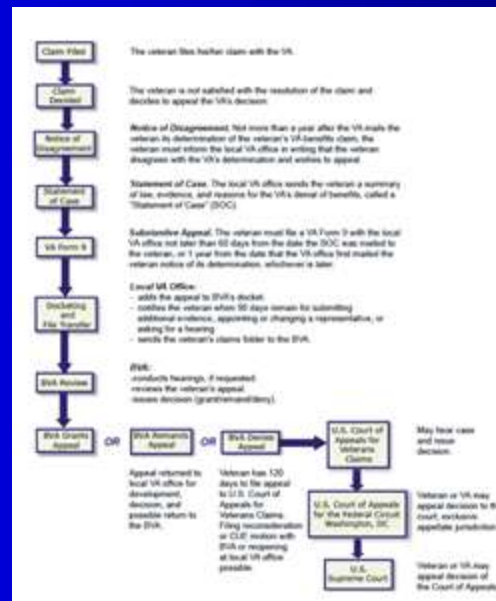
Form provided by the RO to the accredited representative for the purpose of soliciting the representatives (generally service organizations, agents, and attorney) must be provided the opportunity to review an appeal before it is certified to BVA

Appeal Process

- **Provides claimants with a method for disagreeing with a Department of Veteran Affairs decision.**
- **Formal and most steps must be completed in writing**

Appeals Process Flow Chart

Please Refer to Exhibit 1



Veteran Benefits

- **Health Care** (nursing homes, clinics, medical centers)
- **Financial** (disability compensation, pension)
- **Education Benefits** (vocational training, etc)
- **Home Financing**
- **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

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Types of appeal

Two most common types of appeals are:

- **Denial of Service Connection (involves disability compensation)**
- **Disagreement with an assigned evaluation (directly related to the amount of monthly disability compensation entitlement)**

Why the Appeal Process

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.

Why the Appeal Process Example

A claim for service connection for sleep apnea was submitted on January 1, 2007. The claim was denied on January 1, 2008. The Veteran appealed the decision on June 1, 2008. The appeal was ultimately granted by BVA on May 1, 2010. Service connection for sleep apnea was granted with a 50% evaluation.

Why the Appeal Process (Continued)

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.

Jurisdiction of Appeals

- **At the Regional Office level, the responsibility for appeals belongs to the Appeals Team**
- **An issue on appeal should not be rated by the Rating Board**

Appeals Team Objective

The appeal team's primary objective is the expeditious processing of appeals at the Regional Office Level as well as Remands from the Board of Veteran Appeals (BVA) and the Court of Appeals for Veterans Claims (CAVC)

Appeals Time Limits

To submit a Timely NOD, an Appellant has from the time of the decision notification letter:

- ❖ 1 year
- ❖ 60 Days on a contested claim
- ❖ 60 days from the date of their decision notification date of a SOC, SSOC or the remainder of the initial one year period

Appeals Time Limits

An NOD stating that the appellant disagrees with our decision must be postmarked (or received by us) within the specified time limits



Stages in the Appeal Process



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, 5B)

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 or issues are being appealed – or state that all the issues are being appealed.

Stage 2 - Continued

- VACOLS record is established to control and track an appeal

Note: if appellant does 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 allows for a complete review of the claim

Stage 3 (cont)

- 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

Appeal Process Request Letter

Refer to Exhibit 3



DRO Process Explanation Letter

Refer to Exhibit 4



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:**
 - DRO

Stage 5

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

- **If yes on all issues (VSR, RVSR, DRO):**
 - **Issues 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**

Stage 5

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

- **If yes on only some issues (VSR, RVSR, DRO):**
 - **issue a new rating decision.**
 - **issue a SOC 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**

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 DRO at the RO of jurisdiction, or one of the following types of Board of Veterans' Appeals (BVA) hearings:

- Travel board**
- Videoconference, or**
- In person in Washington DC**

Perfecting the Substantive Appeal

- VA Form 9, substantive appeal received within 60 days of the SOC notification letter, or within the remainder if any, of the one year period from the date of the letter notifying appellant of the action that they have appealed.

Perfecting the Substantive Appeal

Example #1

- Rating Decision, dated 03/05/05
- Notification Letter, dated 03/07/2005
- NOD received 08/23/2005
- SOC issued 11/22/2005
- Veteran returns VA Form 9 on 01/20/ 2006, Is it timely?

Perfecting the Substantive Appeal Answer

- **YES!!!!**
 - Form 9 was received within 60 days of SOC and within one year of original notification.

Perfecting the Substantive Appeal

Example #2

- **Rating Decision, dated March 5, 2005**
- **Notification Letter, dated March 7, 2005**
- **NOD, received August 23, 2005**
- **SOC issued November 22, 2005**
- **VA Form 9 received March 9, 2006, Is it timely?**

Perfecting the Substantive Appeal Answer

- **NO!!!**
 - In this case the VA Form 9 should have been received within one year of the notification letter, dated March 7, 2005

Exceptions to time limits for filing a VA Form 9

- **Additional evidence received which requires a Supplemental Statement of the Case (SSOC)**
 - **If additional evidence is received subsequent to the SOC, but within the one year appeal period or the 60 days following the SOC, VA must provide the claimant an additional 60 day period in which to file a substantive appeal from the date of the SSOC.**

Exceptions to time limits for filing a VA Form 9

- An appellant may request an extension of the time limit for filing a substantive appeal. (VA Form 9)
 - Extension must be for good cause
 - Must be in writing
 - Must be requested prior to the expiration of one year appeal period/60 days from SOC.

38 CFR 20.303, M21-1MR, Part I, Chapter 5,
Section E.

Stage 7

VSR, RVSR, or DRO sends a 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**

Supplemental Statement of the Case (SSOC)

- **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**

Stage 8

DRO, RVSR, or VSCM:

- **Certifies the case to BVA**

Certification of Appeal to BVA

Once a SSOC is issued following a substantive appeal. The veteran is allowed 30 days to submit additional evidence prior to certification of the appeal to the BVA. Once 30 days has passed without any additional evidence received the case should be ready for certification to BVA.

(38 CFR 20.302 (c))

Certification of Appeal (cont.)

DRO/RVSR on the appeal team responsible for :

- **Reviewing all appeals, and certifying that the appeal is ready for review by BVA.**
- **Proper review of the case includes verification that all:**
 - **issues on appeal have been decided and discussed, and, appropriate development has been initiated and properly disposed of**

(Refer to Certification Worksheet)

Certification of Appeal (cont.)

- **The DRO/RVSR completes the certification worksheet**
- **If the veteran has an accredited representative the case is submitted to the veteran's representative for the service officer to review the case and complete a Statement of Accredited Representative in Appeal Cases (VA Form 646) to submit to the BVA.**

Certification of Appeal (cont.)

- If the Service Officer completes the 646 and does not bring up additional arguments or evidence the DRO/RVSR certifies the case by completing and signing a VA Form 8
- The case is then transferred to the BVA.

Example

- **A SOC/SSOC has been issued and Veteran has submitted a timely VA Form 9.**
- **Veteran now notes treatment at Womack Army Medical Center**
- **A Negative Reply is of record.**
- **Is the case ready to certify?**

If not, what is required?

Answer

- **NO!!!!** The case is not ready to certify.
- Proper development, to include a Memorandum of Federal Records Unavailability is required.
- Once all development is completed, a SSOC is required, and
- Veteran is provided an additional 30 days from the date of the SSOC to submit additional evidence prior to certification 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 action occur:

- **RVSR** issues a rating decision, if necessary, implementing BVA's decision,
- **VSR** processes the RVSR decision, and
- **VSR** closes out any pending VACOLS records. If all issues are decided, go to **Stage 13**

Stage 11

(continued)

VSR, RVSR, or DRO:

**If BVA remands the case to the RO,
then VSR, RVSR or DRO:**

- Performs additional development,
and**
- Issues a new decision**

Stage 12

- **BVA issues a final decision in a Remanded Case.**
- **Case is returned to the Regional Office 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 he or she is not satisfied with the BVA's decision.

QUESTIONS



Review Exercise

**Refer to the Review Exercise at the
end of the Appeal Process Student
Handout**

