

Veterans Benefits Administration



*Compensation
Service*

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Orientation to Appeals



Objectives

- Identify and define an appeal.
- Define common appeals terminology and acronyms.
- Recognize common VA forms required during the appellate process.
- Understand appeal time limits.
- Identify a valid notice of disagreement (NOD).



Objectives

- Distinguish between the Decision Review Officer (DRO) review and the traditional review process.
- Identify the stages in the appeal process.
- Understand how an appellant's death affects a pending appeal.
- Recognize deficiencies pertaining to communication with accredited representatives.
- Become familiar with the end product (EP) credit taken for appeal actions.



References

- 38 U.S.C. Chapter 71, Board of Veteran's Appeals
- 38 U.S.C. Chapter 72, U.S. Court of Appeals for Veterans' Claims
- 38 CFR 19, Board of Veterans' Appeals: Appeals Regulations
- 38 CFR 20, Board of Veterans' Appeals: Rules of Practice
- M21-1 Part I, Chapter 5, Appeals
- M21-1 Part I, Chapter 5, D.2.a, Guide to SOC/SSOC, Laws & Regulation Citations
- M21-1 Part III, Subpart I, 1.5, Appeals Team
- M21-1 Part I, Chapter 3, General Information on Power of Attorney (POA)

Note: All M21-1 references are found in the Live Manual Website



What is an Appeal?

- Claimants not satisfied with 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 consists of a timely filed NOD in writing and, after a Statement of the Case (SOC) has been furnished, a timely filed substantive appeal.
- An appeal preserves the date of claim.



Types of Disagreement

- The two most common types of disagreement are
 - denial of service connection, and
 - disagreement with an assigned evaluation.



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.
- If the Board of Veterans' Appeals (BVA) determines a remand is in order, they will send the remanded appeal either directly to the Appeals Management Center (AMC) or the regional office for processing.



Appeals Team Objective

- The appeals team's primary objective is the expeditious processing of appeals and remands that do not fall under the jurisdiction of the AMC.
- Responsibilities of the appeals team includes
 - establishing, monitoring, and updating appeals-tracking records
 - developing and deciding issues on appeal and on remanded appeals
 - certifying claims to BVA if the appeal cannot be resolved at the regional office level
 - promulgating, authorizing, preparing, and mailing decisions to appellants, and
 - communicating with BVA.



Composition of the Appeals Team

- Self-contained unit that is composed of essentially the same type of employees as a cross-functional team.
- Typically is staffed with a coach and one or more
 - VSRs that have been cross-trained in both claim development and award promulgation
 - SVSRs and/or certified, GS-11 VSRs, and
 - Decision Review Officers (DROs).



Common Appeals Terminology/Definitions

Appellant

- A claimant who has initiated an appeal to BVA by filing a timely NOD with the Agency of Jurisdiction (AOJ).



Common Appeals Terminology/Definitions

Decision Review Officer (DRO)

- A senior technical expert whose duties include reviewing and deciding appeal cases. In the course of their duties, DROs may:
 - hold informal conferences or conduct formal hearings
 - complete *de novo* or traditional review of claims



Common Appeals Terminology/Definitions

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, clear and unmistakable error (CUE), or no change.
- An appellant has a right to *de novo* review of his/her claim if he/she files a timely NOD with the decision on a benefit claim, and either
 - requests a *de novo* review at the time of submission of the NOD, or
 - requests a *de novo* review within 60 days of the date VA sends the notice of the right to *de novo* review.



Common Appeals Terminology/Definitions

Full Grant

- If the issue under appeal is initial service connection (SC), a full grant occurs when SC for the disability is granted.
- If the issue under appeal is the evaluation of an already SC disability, a full grant occurs when the maximum benefit allowed by law and regulation is granted for the entire period under appeal.



Common Appeals Terminology/Definitions

Partial Grant

- A partial grant of an issue on appeal occurs when the maximum schedular benefit allowed by law and regulation for the issue(s) under appeal is not granted for the entire period under appeal.
- If the issue under appeal is initial SC, a partial grant cannot occur, the decision rendered must either involve a full grant or denial of the appealed issue.



Common Appeals Terminology/Definitions

Clear and Unmistakable Error (CUE)

- Errors that are undebatable, so that it can be said that reasonable minds could only conclude the original decision was fatally flawed at the time it was made.
- A reversal of a prior decision on the grounds of a CUE has the same effect as if the corrected decision had been made on the date of the reversed decision.



Common Appeals Terminology/Definitions

Downstream Issue(s)

- Issue(s) which arises as a direct result of a favorable decision on an appealed issue and must be addressed by the decision maker.
- A decision on a downstream issue may or may not confer new appeal rights.



Common Appeals Terminology/Definitions

Inextricably Intertwined Issues

- An issue is inextricably intertwined with a matter(s) on appeal when a decision on that issue by the RO could have significant impact on the matter(s) under appeal.
- All matters that are inextricably intertwined must be adjudicated before any determination by BVA may be made.



Common Appeals Terminology/Definitions

Notice of Disagreement (NOD)

- Prior to March 24, 2015, an NOD is written communication from a claimant or his/her representative expressing
 - dissatisfaction or disagreement with a decision, and
 - a desire to contest the result.
- For 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.



Common Appeals Terminology/Definitions

NOD - continued

- Must be received within one year of the date of notification; 60 days on a contested claim.
- If not timely filed, appeal rights are required (VA Form 4107).
- Must be both valid and timely (postmarked or received by VA within the specified time limits).



Common Appeals Terminology/Definitions

Contested Claims

- Claims where two parties have an interest in the outcome. A grant of one claim requires the denial of the other claim and one claimant contests the award to the other claimant.
- Typically involves apportionment, attorney fees, claims based on relationship, or two people claiming entitlement to the same benefit.



Common Appeals Terminology/Definitions

Formal Hearings

- A recorded proceeding wherein a party presents sworn or affirmed testimony, other evidence, and/or argument relevant to an issue pending adjudication before a decision maker.
- The appellant may elect to have a formal hearing at any time during the appeal process.
- The DRO has no authority to participate in a formal hearing if he/she participated in the decision now under appeal.



Common Appeals Terminology/Definitions

Informal Conference

- The purpose of an informal conference is to
 - clarify the issue(s) the appellant wishes to appeal
 - provide explanations regarding the rating decision
 - identify additional sources of pertinent evidence.
- A DRO cannot make or bargain with an appellant by requesting or requiring him/her to withdraw a claim or take any action in exchange for the granting of any benefit.



Common Appeals Terminology/Definitions

Informal Conference - continued

- A claimant may request, cancel, or reschedule an informal conference in writing, by e-mail, by fax, by telephone, or in person.
- The informal conference is scheduled and conducted at the discretion of the DRO.



Common Appeals Terminology/Definitions

Statement of the Case (SOC)

- Explanation of the decision made on the appellant's case.
- Provides the appellant with a complete understanding of the decision so the appellant can prepare an effective substantive appeal with specific allegations of errors of fact or law.



Common Appeals Terminology/Definitions

Supplemental Statement of the Case (SSOC)

- Presents the appellant with changes or additions to the SOC.
- The changes and additions are usually based on additional evidence received
 - after the issuance of the SOC
 - before or after receipt of a substantive appeal, or
 - after a remand.



Common Appeals Terminology/Definitions

Substantive Appeal

- Must be filed in response to the SOC in order to “perfect” or complete the appeal.
- May be one of the following documents containing the necessary information as provided in 38 CFR 20.202
 - VA Form 9, Appeal to the Board of Veterans’ Appeals
 - a statement at a formal hearing or informal conference reduced to writing, or
 - written correspondence containing the necessary information.



Common Appeals Terminology/Definitions

Substantive Appeal - continued

- The time limit for contested claims is 30 days. For all other claims, the substantive appeal must be received before the later of the following dates:
 - The last day of the one-year period from the date VA mailed the decision notice of the issue being appealed, or
 - 60 days from the date VA mailed the SOC or SSOC.



Common Appeals Terminology/Definitions

Remanded Appeal

- An appeal that has been returned by BVA to the RO or the AMC for
 - development of additional evidence
 - due process, or
 - reconsideration of issues.

- Remanded appeals are among the oldest cases and must be worked on a priority basis.



Common Appeals Terminology/Definitions

Veterans Appeals Control and Locator System (VACOLS)

- VA's computer application used to manage and locate appeals.
- Effective tracking of appeals requires accurate and timely updates of VACOLS each time the end user takes action on a pending appeal.



Common Appeals Terminology/Definitions

Board of Veterans Appeals (BVA)

- BVA is part of the VA and is located in Washington D.C.
- Members of the Board review benefit claims determinations made by local VA offices, and issue decisions on appeals. These law judges are the only ones who can issue Board decisions.



Common Appeals Terminology/Definitions

U.S. Court of Appeals for Veterans Claims (CAVC)

- CAVC is part of the U.S. judiciary and not part of the VA.
- The court has exclusive jurisdiction over decisions made by BVA.
- The court reviews Board decisions appealed by claimants who believe the Board erred in its decision.



Common Appeals Forms

VA Form 9

Appeal to Board of Veterans' Appeals

- The form used to file a substantive appeal to BVA.
- Should be reviewed for new issues, not formally on appeal, that may be considered a request for application or a request for notice of disagreement.



Common Appeals Forms

VA Form 8 Certification of Appeal

- The form used to certify an appeal to BVA.
- Only the issues on appeal should be cited.
- If the appeal is enlarged to include additional issues, certify all inextricably intertwined issues on appeal to BVA.



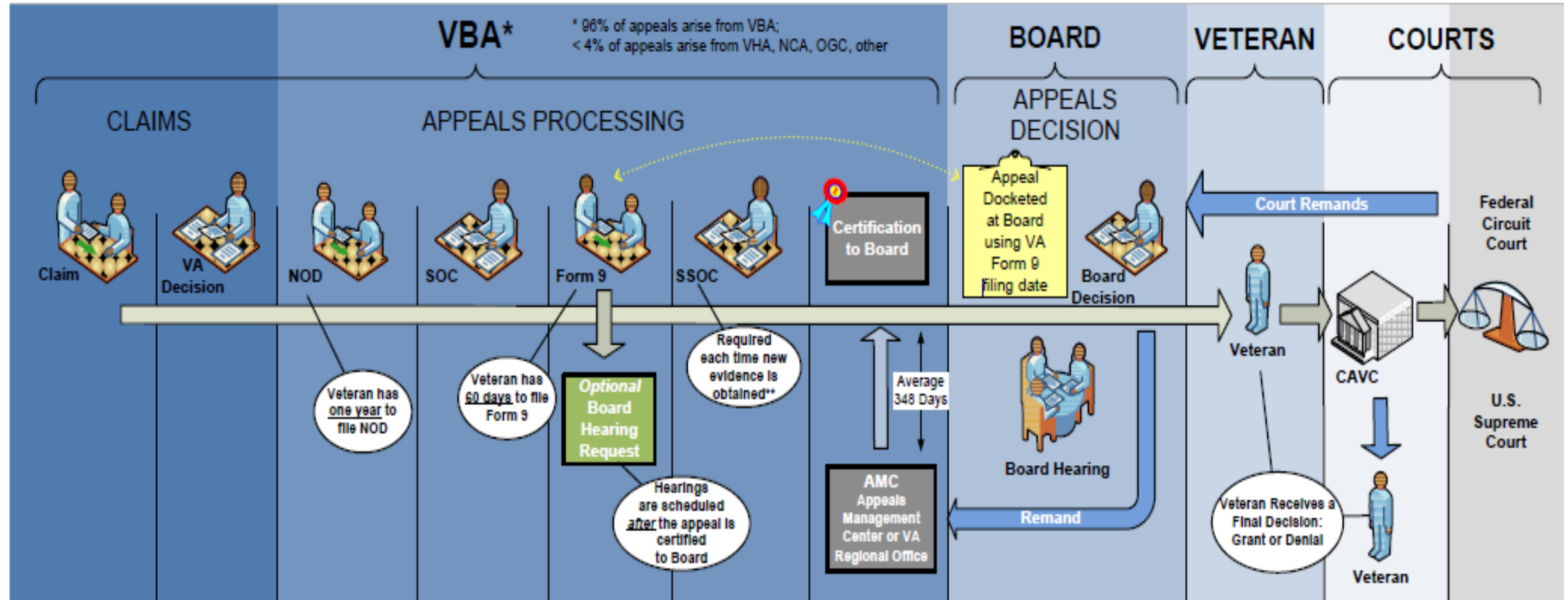
Common Appeals Forms

VA Form 646

Statement of Accredited Representative in Appealed Cases

- Provided to the appellant's accredited representative once all development for the pending appeal is complete, and prior to certification to BVA.
- Gives an appellant's accredited representative an opportunity to review the appeal and submit a statement regarding the appeal.

Stages in the Appeal Process





Stage 1

- Appellant files a timely NOD in response to a VA decision regarding claimed benefits, and may elect either the DRO review process or the traditional review process.
- If the NOD is not complete or not submitted on the appropriate form, the claimant is notified and must provide the 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 from the AOJ, whichever is later.



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.
- VACOLS record is established to control and track the appeal.
- If the appellant does not elect an appeals review option with their NOD, a letter is sent giving them the option to elect either the DRO *de novo* review process or the traditional appeal process.



Stage 3

- Appellant elects either the DRO *de novo* review process, or traditional appellate review process.
- If elected by telephone, the election must be documented on VA Form 27-0820, Report of General Information.
- If the appellant does not elect the DRO *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 appellate review.



Stage 4

- Based on the appellant's choice, one of the following review process is conducted:
 - traditional appellate review (which may be conducted by a VSR, RVSR, or DRO)
 - *de novo* review (which may only be conducted by a DRO or VSCM/PMCM)



Stage 5

- After reviewing the claims file, the appeals rating activity determines if a change is warranted in the decision.
- If a change is warranted on all issues, the appeals rating activity
 - issues a new rating decision and includes a complete statement of facts in the new decision with any discussion needed to clearly show the basis for changes made.



Stage 5 - continued

- If a change is warranted on only some issues, the appeals rating activity
 - issues a new rating decision
 - issues an SOC confirming the decision on appeal and explaining the reasons for the VA decision, and
 - sends a VA Form 9 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 (perfecting the appeal).
- May elect a local hearing, before a DRO at the RO of jurisdiction, or one of the following types of BVA hearings
 - travel board
 - videoconference, or
 - in person in Washington D.C.



Stage 7

- Appeals rating activity sends an SSOC to the appellant if
 - VA received additional evidence, and
 - the appellant requests, in writing, that VA performs an initial review of the evidence, and
 - gives the appellant 30 days to reply before the appeal is sent to BVA.
- No reply is necessary from the appellant once a substantive appeal is received.
- Without a written request from the appellant, VA's initial review of additional evidence is waived.



Stage 8

- The DRO, VSCM or PMCM, or his/her designee certifies the case to BVA by
 - reviewing the claims file
 - verifying that
 - all issues on appeal have been decided
 - all non-appeal issues that are inextricably intertwined with appeal issues have been properly addressed
 - all necessary development is complete
 - the accredited representative was given the opportunity to execute and return VA form 646
 - completing the Appeal Certification to BVA worksheet, and
 - completing and signing VA Form 8, Certification of Appeal.



Stage 9

- Once certification of the appeal is complete, the appeals development activity
 - transfers the paper claim folder to BVA (if applicable), and/or
 - utilizes the appeals Caseflow tool.

- The Caseflow tool is a simple, web-based tool primarily intended to ensure that paperless appeals which are transferred from an RO to the Board have all the required documents (NOD, SOC, SSOC, Form 9) in their respective VBMS e-folder and have consistent correct certification.



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 or the AMC for additional action.



Stage 11

- If BVA issues a decision, then the following actions occur
 - RVSR or DRO issues a rating decision, if necessary, implementing BVA's decision
 - VSR processes the RVSR decision, and
 - VSR closes out any pending VACOLS records.



Stage 11 - continued

- If BVA remands the case to the RO or AMC, then VSR, RVSR, or DRO
 - performs additional development, and
 - issues a new decision.

- If the new decision does not fully grant the benefit on appeal, the appeals rating activity
 - prepares an SSOC, and
 - returns the case to BVA.



Stage 12

- BVA issues a final decision in a remanded case.
- 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 he/she is not satisfied with BVA's decision.



Appeals After Death

- Appeals pending before BVA at the time of the appellant's death do not survive the appellant's death; unless a person who is eligible for accrued benefits requests to proceed with the decedent's claim or appeal.
- If the Veteran's death occurs within the one-year period in which any NOD may be filed, the RO's decision subject to that potential appeal becomes final.



Correspondence with Representatives

- Ex-parte communications
 - phone calls to represented Veterans
 - sending documents to Veterans' counsel
- Electronic access for accredited representatives
- Processing special correspondence received from accredited representatives



Appeal End Products (EPs)

- EP 170: Appeal Control
- EP 070: Appeals Processing
- EP 172: SOC/Grant of Benefits
- EP 173: Hearings conducted by an employee other than a DRO / Informal DRO Hearings
- EP 174: Hearings Conducted by DRO/Decisions

Questions & Review Exercise

