

# **Module 17**

## **Appeals**



**North Dakota Department of Veterans Affairs**

# Objective

- To learn how to assist a claimant to appeal the denial of a VA benefit, and to become familiar with the procedures for such actions, including appeals to the U.S. Court of Appeals for Veterans Claims.

# References

- Title 38, U.S. Code, Chapters 71 and 72.
- 38 Code of Federal Regulations, Parts 19 and 20.
- Adjudication Manual 21-1MR, Part 1, Chapter 5, Section A thru K.
- VA Pamphlet Understanding the Appeals Process.
- VA Pamphlet Federal Benefits for Veterans and Dependents.

# Appeals

- Any unfavorable adjudicative decision by the Department of Veterans Affairs (VA) may be appealed to the Board of Veterans Appeals, and if the denial continues, to the U.S. Court of Appeals for Veterans Claims.
- An appeal is defined as a timely filed written Notice of Disagreement from a VA decision and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

# Notice of Disagreement (NOD)

- The only requirements for a Notice of Disagreement are that it must be in writing, that it must be addressed to the activity or operating element of VA which made the adverse decision, and that it must be worded so that it can be reasonably construed as disagreement with the decision and a desire for appellate review. If multiple issues were decided and the claimant disagrees with some but not all of the decisions, the Notice of Disagreement should specify which decisions are being contested.

# NOD Review by VA

- After this review, if the benefit being sought is still not granted, VA will then furnish a Statement of the Case to the claimant and his or her representative, if any.
- The Statement of the Case will contain a recitation of the evidence considered in the decision, a recitation of the laws and regulations applicable to the decision, a statement of the decision, and a discussion of the reasons and bases why the rules applied to this evidence did not permit the benefit being sought to be granted.

# Time Limits

- A claimant has one year from the date of the letter notifying him or her of the denial of a benefit to submit a Notice of Disagreement; otherwise, that decision becomes final.
- The claimant then has 60 days from an issued Statement of the Case or the remainder of the one-year appeal period, whichever is later, to submit a Substantive Appeal (VA Form 9, ***Appeal to the Board of Veterans' Appeals***, or equivalent written statement) on the issue(s) covered; otherwise, the decision becomes final.

# Supplemental Statement of the Case (SSOC)

- A Supplemental Statement of the Case will be furnished if additional evidence is considered after the original Statement of the Case has been sent; if an amended decision has been made granting part but not all of the benefit(s) being sought; if there was any material defect in the original Statement of the Case.
- If the appeal period had not expired when the additional evidence was considered or when the additional issue was disagreed with, the claimant and representative (if any) will be furnished another VA Form 9 and allowed another 60 days (or to the end of the appeal period, whichever is later) for response.

# Substantive Appeal

- The Substantive Appeal (VA Form 9) must make specific contentions relating to errors of fact or law made by VA in reaching the decision(s) being appealed. To the extent feasible, it should relate to specific points in the Statement(s) of the Case. Once the Substantive Appeal has been returned, the appeal has been “perfected,” and the claimant is not required to take any further actions except for cooperating with any additional development determined to be necessary.
- If there is a representative, the representative will be invited to make a final argument.

# Board of Veterans' Appeals (BVA)

- The Agency of Original Jurisdiction will then certify that the appeal is ready for review by the Board of Veterans' Appeals (BVA), and forward the complete record to the Board.
- The claimant and representative will be notified when the appeal is received at BVA, and will be allowed a period of up to 90 days to submit additional evidence or request a personal hearing (if not already done), or to request a change in representation.

# Board of Veterans' Appeals (BVA)

- After the appeal has been forwarded to BVA and the 90-day period has elapsed, any additional evidence submitted may not be reviewed by BVA until it has been first reviewed by the Agency of Original Jurisdiction, unless a waiver of such review is filed by the claimant or representative. Such a waiver must be in writing and must accompany the evidence being submitted. If no waiver is given, BVA will remand the appeal back to the Agency of Original Jurisdiction for review of the additional evidence and preparation of a Supplemental Statement of the Case, if the claim remains denied.

# BVA Actions

- If the Board determines that the appeal is not ready for review, they will remand it to the Agency of Original Jurisdiction for additional development, observance of due process requirements, etc., as instructed.
- If the Board determines that the case requires special expertise or involves obscure legal issues, the Board may request an independent (outside VA) expert medical opinion or a legal opinion from VA General Counsel.
- Whether the Board's final decision grants the appeal or upholds the denial, the claimant and representative (if any) will be advised in writing of the Board's decision.

# Court of Appeals for Veterans Claims

- Following an unfavorable BVA final decision, an appellant may file an appeal to the U.S. Court of Appeals for Veterans Claims (CAVC) within 120 days of the date of the BVA decision. ***This appeal must be sent directly to the court, NOT to BVA or to any VA office.***
- The time limit for filing may not be extended or waived. There is a filing fee, which can be waived.

# Decision Review Officers

- As of June 1, 2001 a claimant can elect to have a Decision Review Officer (DRO) take a fresh look at the issue(s) on appeal by making a request for DRO review on the same statement as the Notice of Disagreement (NOD). The VA will also advise the claimant of the DRO option if the NOD did not specifically request this procedure. A claimant then has 60 days to accept the DRO review in writing, before the appeal is reviewed under the traditional process (the 60 day time limit can not be extended).

# Decision Review Officers

- The VARO will appoint a DRO to look at all the evidence on record, give no deference to the previous decision, and decide if further development or a personal hearing would be in order. The DRO may consult with the accredited representative to discuss the issue(s) on appeal, any further development or evidence needed, conduct personal hearings, or to determine if the appeal can be satisfied by a decision that does not grant all issues
- Should the DRO uphold the prior decision or if the claimant is still dissatisfied with the new decision, the appeal is returned to the traditional BVA process.

The background of the slide features a large, light blue circular seal. The outer ring of the seal contains the text "NORTH DAKOTA VETERANS AFFAIRS" at the top and "PUTTING VETERANS FIRST" at the bottom. In the center of the seal is a portrait of a man with a beard and mustache, wearing a suit and tie. To the right of the portrait are five stars arranged vertically. Below the portrait, the text "EST. 1945" is visible.

# Appeals

## Q & A