VA

Appeals Modernization

October 2018

Cheryl L. Mason, Chairman – Board of Veterans’ Appeals
* The Board reports directly to the Office of the Secretary.
Overview

Mission
The Board’s mission is to conduct hearings and decide appeals properly before the Board in a timely manner. See 38 United States Code (U.S.C.) § 7101(a).

Background
All questions in a matter under which 38 U.S.C. § 511(a) is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals are made by the Board.
The Appellate Landscape

- US Supreme Court
- US Court of Appeals for the Federal Circuit
- US Court of Appeals for Veterans Claims
- Board of Veterans’ Appeals
- Local VA Offices

Outside of VA

Within VA
The current VA appeal process, set in law, is complex, non-linear, and unlike other standard appeals processes.

- **Too long** – No defined timeframe.
  - Veterans waiting an average of 7 years for a Board decision

- **Too complex** – Process is hard to understand, contains too many steps, and difficult to explain.
Problem: VA Appeal Process Today

Where is the Veteran? Everywhere and Nowhere

The VA Appeals Process

This chart represents the path any one single appealed issue can follow towards resolution. An appeal may have several issues, each within a different stage of the process, and a Veteran may have multiple contemporaneous appeals. Any Veteran can enter and revisit the process, even when no further compensation is possible. While this chart represents the typical path for most compensation-related issues, other types of VA appeals have different processes.

Traditional Review Option Selected

- Decision
- Notice of Disagreement
- VBA Rating Decision
- INFORMAL CONFERENCE with Veteran and/or VSO
- Decision Review Officer/De Novo Option selected
- FORMAL HEARING if requested
- Satisfied?
- Award Action
- Yes
- No

STATEMENT OF CASE (SOC)
An SOC is a readjudication of the appeal by VBA.

Appeal Closed

- Supplemental Statement of the Case (SSOC) (i.e., readjudication). Whenever the Veteran indicates that additional evidence is available, additional development and readjudication is warranted.

- Award Action
- PARTIAL GRANT with good potential for appeal resolution
- Contact with VSO or Veteran for resolution

- Partial Grant of Benefits Sought
- Award Action

- Full Grant of Benefits Sought
- Award Action

AGENCY OF ORIGINAL JURISDICTION (VBA)
Appeals in which Veterans are represented by a VSO return to the Appeals Management Office (AMO) for development of evidence identified by the Board's remand, and remain with this VBA entity until all development is complete, at which time the AMO will complete an SSOC. If the Veteran is unrepresented, or represented by an attorney, the appeal is returned to the RO to complete the development.

Board Hearing, if requested
The Board held 13,535 hearings in FY16. Over 75,000 hearing requests are pending.

- Full Grant of Benefits Sought
- Satisfied?
- Award Action
- Yes
- No

- Partial Grant of Benefits Sought
- Satisfied?
- Award Action
- Yes
- No

CASE REQUIRES DEVELOPMENT
Remand to Appeals Management Office (62% of FY16 Board decisions included a remand for at least one issue. Remands occur as often as development is required, including when evidence has been received since last SSOC.)

- Appeal to Court of Appeals for Veterans Claims
- The Court remanded 87.7% of appeals to the Board in FY16. Most remands are for additional development and readjudication.

REMAND by Court of Appeals for Veterans Claims
New Decision Review Process

Veterans Benefits Administration

The Claim
(Establishes Effective Date)

VBA Decision
(Improved Notice)

Choice and Control

Higher-Level Review
Same Evidence
125-Day Avg. Goal

Supplemental Claim
New Evidence
125-Day Avg. Goal

Duty to assist

Board of Veterans’ Appeals

Appeal (NOD)
3 Options
365-Day Avg. Direct Docket Goal

No SOC or VA Form 9

120 Days

Court of Appeals for Veterans Claims

Duty to assist

Except for appeals to the Court, all filing deadlines are one year.

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New Process: Three Lanes

On August 23, 2017, the Veterans Appeals Improvement and Modernization Act of 2017 was signed into law. The new law takes effect in February 2019.

<table>
<thead>
<tr>
<th>AOJ* Lane</th>
<th>AOJ Lane</th>
<th>Board</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supplemental Claim Lane</strong></td>
<td><strong>Higher-Level Review Lane</strong></td>
<td><strong>Appeal Lane</strong></td>
</tr>
<tr>
<td>• VA will readjudicate a claim if “new and relevant” evidence is presented or identified with a supplemental claim (open record)</td>
<td>• More experienced VA employee takes a second look at the same evidence (closed record and no duty to assist)</td>
<td>• Direct docket: Closed record and 365-day average processing time goal</td>
</tr>
<tr>
<td>• VA will assist in gathering new and relevant evidence (duty to assist).</td>
<td>• Option for a one-time telephonic informal conference with the higher-level reviewer to discuss the error in the prior decision</td>
<td>• Evidence only docket: Additional evidence submitted within 90 days following NOD</td>
</tr>
<tr>
<td>• Effective date for benefits always protected (submitted within 1 year of decision)</td>
<td>• De novo review with full difference of opinion authority</td>
<td>• Hearing docket: Board hearing and additional evidence submitted within 90 days following hearing</td>
</tr>
<tr>
<td></td>
<td>• Duty to assist errors returned to lower-level for correction (quality feedback)</td>
<td></td>
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</tbody>
</table>

*AOJ= Agency of Original Jurisdiction (VBA, VHA, or NCA)
### Which AOJ lane to choose?

**Under Appeals Modernization beginning February 2019**

<table>
<thead>
<tr>
<th>When to choose</th>
<th><strong>Supplemental Claim</strong></th>
<th><strong>Higher Level Review</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>If your claim needs <strong>new evidence</strong>.</td>
<td>If you don’t need new evidence, but think a <strong>mistake</strong> was made.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What will happen</th>
<th><strong>Supplemental Claim</strong></th>
<th><strong>Higher Level Review</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Duty to Assist applies and <strong>VA will help</strong> you gather the evidence.</td>
<td>A <strong>higher-trained</strong> AOJ reviewer will review your claim and make a new decision.</td>
<td></td>
</tr>
<tr>
<td>A new decision will be made looking at the new evidence.</td>
<td><strong>No new evidence</strong> will be added.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How long</th>
<th><strong>Supplemental Claim</strong></th>
<th><strong>Higher Level Review</strong></th>
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<tbody>
<tr>
<td><strong>125 days</strong> (on average)</td>
<td><strong>125 days</strong> (on average)</td>
<td></td>
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*AOJ= Agency of Original Jurisdiction (VBA, VHA, or NCA)*)
## Which Board docket to choose?

<table>
<thead>
<tr>
<th>When to choose</th>
<th>Direct</th>
<th>Evidence</th>
<th>Hearing</th>
</tr>
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<tbody>
<tr>
<td>If you think a mistake was made.</td>
<td>If you have <strong>new evidence</strong> you want a Judge to consider.</td>
<td>If you want a <strong>hearing</strong> before a Judge.</td>
<td></td>
</tr>
</tbody>
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<th>What will happen</th>
<th>Direct</th>
<th>Evidence</th>
<th>Hearing</th>
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</thead>
<tbody>
<tr>
<td>The Judge will review the same record and make a decision.</td>
<td>You will have <strong>90 days</strong> from your NOD to submit any new evidence.</td>
<td>You will be placed on a list for a hearing before a Judge by videoconference (or in DC).</td>
<td></td>
</tr>
<tr>
<td><strong>No new evidence</strong> will be added.</td>
<td>The Judge will make a decision considering the evidence you provided.</td>
<td>After your hearing you will have <strong>90 days</strong> to submit new evidence.</td>
<td></td>
</tr>
<tr>
<td>The Judge will make decision considering the hearing and the evidence you provided.</td>
<td></td>
<td></td>
<td></td>
</tr>
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<table>
<thead>
<tr>
<th>How long</th>
<th>Direct</th>
<th>Evidence</th>
<th>Hearing</th>
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<tbody>
<tr>
<td><strong>365 days</strong> (on average)</td>
<td><strong>Over 365 days</strong></td>
<td>Based on availability. Currently the Board has 95 Judges. There are 78,000 Veterans waiting for hearings.</td>
<td></td>
</tr>
</tbody>
</table>
The Rapid Appeals Modernization Program (RAMP) began on November 1, 2017.
- Allows eligible Veterans with pending appeals the option to have their decisions reviewed in the new Higher-Level Review or Supplemental Claim lanes.

- Participation is voluntary.

- Under RAMP Veterans with disability compensation appeals can opt in at any of the following stages:
  - NOD
  - Form 9
  - Certified to the Board (not activated)
  - Remand

- After full implementation in February 2019, Veterans with any pending legacy appeals can only opt in at the following stages:
  - SOC
  - SSOC
RAMP Quick Stats - National

- **Legacy Appeals Converted**: 663,436
- **RAMP Lane Choices**
  - HLR – 61%
  - Supp – 39%
- **NOD to Opt-in Days (Avg.)**: 751 Days
- **Average Days to Complete**: 109 Days
- **Retroactive Benefits Awarded**: $ 85,797,878
- **Claim Grant Rate**
  - Total – 28%
  - HLR – 27%
  - Supp – 29%

* All data shown as of October 8, 2018
Priority to Advanced on the Docket on all dockets.

<table>
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<tr>
<th>Board Priorities</th>
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<tbody>
<tr>
<td>Legacy appeals</td>
</tr>
<tr>
<td>Legacy appeals with hearings*</td>
</tr>
<tr>
<td>AMA Direct Lane</td>
</tr>
<tr>
<td>(365 average processing goal)</td>
</tr>
<tr>
<td>AMA Evidence</td>
</tr>
<tr>
<td>AMA Hearings* **</td>
</tr>
</tbody>
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*Hearing requests may result in a multi-year delay in Board adjudication. Approximately 78,000 Veterans are waiting for a hearing with one of the 95 VLJs.

** Hearings for appeals of RAMP decisions will not be scheduled until after February 2019.

Honoring a promise made by VA in March 2016.
STATEMENT IN SUPPORT OF CLAIM

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

RAMP SELECTION

Use this form to seek additional review under RAMP until the new system becomes effective on or after February 14, 2018, at which time you will have to follow the new application requirements outlined in the new appeals system. Filing instructions will be available at https://www.benefits.va.gov/appeals.

Please list the issues you are seeking review of below and on the next page select the type of review you would like from the choices provided. Note that you may select ONLY ONE type of review for all issues identified on this form. See the “RAMP Review Rights” document for information on each review option and mailing instructions.

I would like to seek further review of the following issues (use additional page if necessary):

Instructions:

☐ I am filing a Supplemental Claim. I understand that I must submit or identify new and relevant evidence that was not previously considered by the local VA office.

☐ I am requesting a Higher-Level Review based on the evidence of record at the time of the prior decision.

☐ I am requesting a Higher-Level Review based on the evidence of record at the time of the prior decision and I am requesting a one-time informal conference with the Higher-Level Reviewer. If you have an accredited representative (VSO, attorney, or agent) please include his or her contact information below. (This option may cause some delay in the processing of your higher-level review.)

Representative/Org
Phone Number

I am appealing to the Board of Veterans’ Appeals (Board). I understand the Board will not process my appeal under the new system until no earlier than October 2018. I would like the following review option:

☐ Direct Review (Based on the evidence of record at the time of the prior decision; NO evidence submission or hearing request)

☐ Evidence Submission (Evidence submission within 90 days; NO hearing request)

☐ Hearing (Hearing with evidence submission allowed) (This option may cause some delay in receiving a decision by the Board)
The Board has served more Veterans this year than any fiscal year in the Board’s history.

The Board issued 62% more decisions in FY18 than FY17.
• The Chairman recommended new Veterans Law Judges for SecVA approval and Presidential appointment.

• The Board hired up to a total of 1,055 FTE in FY 18.
  • This is the first time in the Board’s history to have over 1,000 FTE.
The Board began adjudicating RAMP appeals on October 1st

- Once Veterans receive a decision under the RAMP supplemental claim or higher-level review lanes, they have the option of appealing to the Board.

- The Board holds RAMP appeals in a queue in the order in which they were received.
  - As of October 9, 2018, the Board has received 407 appeals (NODs) of RAMP decisions.

- Staring October 1st, the Board began adjudicating the first of these appeals in a phased implementation to test processes and technology.
  - The Board’s phased approach to RAMP allows the Board to identify and address potential issues and risks relating to implementation of the new framework, while continuing to deliver decisions to legacy appellants at historic levels.
Service: Improved Customer Service

• Interactive Decision Template
  – Improved readability for Veterans

• AOD cases
  – Most recently for victims of Hurricane Florence

• Vets.gov Appeals Status Tool
  – Moving to VA.gov on Veterans Days
  – 22,000 Veterans have used to date
There are currently 78,000 Veterans waiting for a Board hearing. That means approximately 812 Veterans are waiting for a hearing per Veterans Law Judge.

Each VLJ holds roughly 200 hearings per year.

Each figure represents approximately 5 waiting Veterans.
Service: Stakeholder Outreach

• **Training**
  – Board
    • New attorney bootcamp
    • Ongoing quality training
    • AMA refresher training
  – Within VA
    • VBA
    • VHA
  – VSO partners

• **Outreach**
  – VSOs and private bar
    • Ex. American Legion national conference
  – Private bar
    • Ex. Federal Circuit Bench and Bar
  – Congressional
    • Ex. Event with Congressman Larry Buschon
Modernization: Internal Efficiencies

• **Caseflow Reader**
  – Improved interface for electronic claims folder
  – Launched in November 2017 by Digital Service

• **Caseflow Queue**
  – Will electronically manage all Board dockets in February 2019
  – Testing is currently ongoing
Useful Links

• Board’s webpage:
  https://www.bva.va.gov/

• VBA’s AMA information:
  https://www.benefits.va.gov/benefits/appeals.asp

• Vets.gov appeals status tracker:
  https://www.vets.gov/?next=%2Ftrack-claims

• Reports to Congress on the status of implementation of AMA:
  https://benefits.va.gov/benefits/appeals-reports.asp