

FAQ – 2019-03-05 – Appeals Modernization Act - Questions and Answers

Question 1: Will employees have access to Caseflow?

Response 1: Yes, employees at regional offices (ROs) can be granted Caseflow access in the same way as other system applications are granted through use of the Common Security Employee Manager (CSEM) application. However, the level of access will vary by position and need.

Question 2: Will End Products (EP) 040s be used for non-rating supplemental claims?

Response 2: Yes.

Question 3: Will there be multiple EPs such as 020 for new claim and 040 for supplemental claims?

Response 3: Yes, if the Veteran submits a VA Form 21-526EZ for a new claim, VBA will control the action through the use of an EP 020. If a Veteran submits a VA Form 20-0995 for a supplemental claim, VBA will control the action through the use of an EP 040. These separate EPs could run concurrently, but submission must be made on the appropriate prescribed forms.

Question 4: If the reconsideration or reopened claim was filed before the go live date for AMA, i.e., before February 19, 2019, then does it remain as an EP 020?

Response 4: Yes

Question 5: If an incomplete supplemental claim is received on day 364 after the decision notification on an issue, we send the Veteran the incomplete supplemental claim letter and allow them 60 days. If they provide a complete supplemental claim within the 60-day window, but outside of the one year from the date of their notification, would that protect their entitlement to the effective date of the original claim, or only back to the date of the incomplete supplemental claim?

Response 5: For effective date purposes, entitlement could be traced back to the date of the prior claim's filing.

Question 6: How are we handling claims where the element lacking is a diagnosis? For example, prostate cancer was claimed on January 10, 2018. VA confirms service in the Republic of Vietnam, but the claim is denied for lack of diagnosis on February 15, 2018. The Veteran submits a supplemental claim on March 15, 2018. On September 15, 2018, the Veteran undergoes a biopsy and this is the first date VA has a confirmed diagnosis of prostate cancer. Is the effective date September 15, 2018 based on facts found or is the effective date January 10, 2018?

Response 6: While the earliest effective date of a supplemental claim filed within a year of the decision is the date of the prior claim, the provisions of 38 C.F.R. 3.400 still apply and determine the effective date.

Question 7a: If the claimant files a claim for a secondary condition that was previously filed as direct service connection, then would this be a supplemental claim.

Response 7a: Yes

Question 7b: If VA previously denied a right knee condition on direct service connection, and now the Veteran claims a right knee condition secondary to a service- connected left hip condition. What is the process?

Response 7b: This would be considered a supplemental claim and would require submission of the claim on VA Form 20-0995, *Decision Review Request: Supplemental Claim*. In addition, the mere contention of "secondary service connection" is sufficient to meet the "new and relevant evidence" standard to render the claim complete.

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Question 7c: If the veteran claims a left knee condition secondary to a service- connected left hip condition but had not claimed the left knee previously, then how would VA treat this claim?

Response 7c: This would be considered an initial claim since the left knee condition was never previously decided on any basis, i.e., direct, secondary, or otherwise, and would require submission of the claim on VA Form 21-526EZ.

Question 8: On February 20, 2019 (after the implementation of AMA), can a Veteran file a supplemental claim in which the appeal period is still pending (e.g., previous decision was made in December 2018)?

Response 8: If the decision was made prior to February 19, 2019, the legacy appeals process applies. However, for veterans in the legacy appeals process, they have the opportunity to opt-in to the modernized appeals process following the receipt of a Statement of the Case (SOC) or Supplemental Statement of the Case.

Question 9: Will a Veteran's subsequent action in response to a denial for a failure to report to an examination still be considered a claim for reconsideration?

Response 9: No, claims for reconsideration will no longer exist effective February 19, 2019. If the Veteran's claim was denied due to a failure to report to an examination, the Veteran will need to submit a supplemental claim on VA Form 20-0995, Decision Review Request: Supplemental Claim.

Question 10: What happens when a claimant asks for a hearing on a supplemental claim?

Response 10: As noted in 38 C.F.R. 3.103(d) "upon request, a claimant is entitled to a hearing on any issue involved with a claim within the purview of part 3 of this chapter before VA issues a notice of a decision on an initial or supplemental claim."

Question 11: For higher-level review (HLR) returns to the Supplemental Claim Lane, who will be handling that? Under the new process, will that be the DROCs? If the HLR returns under RAMP, will that do to the RAMP stations?

Response 11: Under the new process, Decision Review Operation Centers (DROCs) will process higher-level returns and any necessary re-adjudication of these cases under EP 040. If a higher-level reviewer returns a claim under RAMP, these will be worked by a designated RAMP station.

Question 12: Can supplemental claims be subject to attorney fees?

Response 12: Yes, both supplemental claims and higher-level reviews can potentially result in an attorney fee being paid.

Question 13: If a station receives a supplemental claim should the application be sent to a DROC for establishment in Caseflow?

Response 13: Yes, stations should follow the M21-1 guidance for routing supplemental claims, for compensation issues, through the Centralized Mail portal to the DROCs.

Question 14: Can a Veteran withdraw a supplemental claim, then later request a HLR on the same issue?

Response 14: Claimants or representatives may change the type of decision reviews, whether HLRs or supplemental claims, if VA has not yet completed the review and the claimant is still within the time period for filing the new review option. To do so, claimants or representatives

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must submit both request to withdrawal the current review, and a timely complete application for the other type of review.

Question 15: Is there a cutoff date for acceptance of VAF 21-0958, or Form 9?

Response 15: For reviews of decisions issued on or after February 19, 2019, the claimant, or his/her authorized representative, must seek review in writing by submitting either VA Form 20-0996, Decision Review Request: Higher-Level Review, or VA Form 20-0995, Decision Review Request: Supplemental Claim. VBA will not accept review requests in any format other than the prescribed forms. For decisions issued prior to February 19, 2019, the legacy appeals process still applies.

Question 16: Will the AMA forms be immediately available in eBenefits, or will there be a delay?

Response 16: AMA application forms are not currently available in eBenefits. Claimants may download the forms from the VA.gov forms page, or may access them from VA.gov/decision-reviews.