



Department of
Veterans Affairs

Board of Veterans' Appeals

Understanding the Appeal Process

PUTTING VETERANS FIRST

DEPARTMENT OF VETERANS AFFAIRS
Board of Veterans' Appeals
Washington DC 20420

January 2000

Dear BVA Customer:

We can't give you directions for how to win your appeal in a general publication like this one. The facts in your case are unlike the facts in any other case. We can tell you about the appeal *process* — what steps you need to take and when you need to take them — and we have tried to do that here. Our goal is to help you understand how the appeal process works and provide answers to the most commonly asked questions about appeals in a logical, easy to understand way.

As with most things in life, veterans' law changes. This revision of this pamphlet adds information about new topics, such as "motions" for review of final Board of Veterans' Appeals decisions for "clear and unmistakable error." We've also included some references to internet sites where you can get more information about veterans' benefits and veterans' law.

I hope you find this guide helpful. We are dedicated to doing our best to serve veterans and their families. I welcome your comments about "Understanding the Appeal Process."

Sincerely,



Eligah Dane Clark
Chairman

Who Should Read This Pamphlet?

Anyone who is not satisfied with the results of a claim for veterans' benefits (determined by a VA regional office, medical facility, or other local VA office) should read this brochure. It is intended to explain the steps involved in filing an appeal and to serve as a reference for the terms and abbreviations used in the appeal process.

How Do I Find The Answers To My Questions?

There are several ways to use this pamphlet. You can simply read it from start to finish — it discusses the steps in the appeal process in the order they normally occur. The Table of Contents on the next page is arranged in the same order. The Index at the back of the pamphlet lists topics in alphabetical order using key topic words. Some common abbreviations are listed on page 35. A glossary that explains many of the terms used in the pamphlet also begins on page 35.

Representation

This pamphlet discusses the appeal process in detail, but it isn't a complete checklist for filing an appeal. Think of it as "one more tool in the toolbox" for understanding the benefit claims system. While it is possible to "go it alone," most people have found the assistance and experience of appeals representatives to be very helpful. Many Veterans' Service Organizations, as well as state and county veterans' departments, will represent you free of charge. We strongly urge you to consider contacting one of these organizations to help you with your appeal. See page 12 for more information.

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User Tips

Becoming familiar with certain terms and phrases will help you understand the appeal process better. As you read through this guide, refer to the glossary (starting on page 35) anytime you see an unfamiliar term or abbreviation.

Words or phrases that are explained in the glossary or listed in the index are printed in *italic* type the first time they are used or discussed in detail in this pamphlet. For example, the first time “VA Form 9” is used, it is printed as *VA Form 9*.

The basic law about veterans’ benefits is found in the United States Code (U.S.C.) and the Code of Federal Regulations (C.F.R.). You will see information boxes (like this one, but smaller) throughout this pamphlet containing U.S.C. and C.F.R. section (§) numbers that apply to that part of the text. If you would like to read those code sections, you can find them in the legal section of your local library or on the internet. (Some internet resources are listed on pages 30 and 31.) If you have a representative, the representative should also be able to help.

The “Notes” section, starting on page 44, is a good place to jot down any questions you have for VA or for your representative, if you have one.

What is the Board of Veterans' Appeals?

38 U.S.C. § 7101(a)
38 U.S.C. § 7104

The *Board of Veterans' Appeals* (also known as "the BVA" or "the *Board*") is a part of the Department of Veterans Affairs (VA), located in Washington, D.C. "*Members of the Board*" review benefit claims *determinations* made by local VA offices and issue *decisions* on appeals. These *Board members*, attorneys experienced in veterans' law and in reviewing benefit claims, are the only ones who can issue Board decisions. Staff attorneys, referred to as *Counsel* or *Associate Counsel*, are also trained in veterans' law. They review the facts of each appeal and assist Board members.

What is an appeal to the Board of Veterans' Appeals?

An *appeal* is a request for a review of a VA determination on a *claim* for benefits issued by a *local VA office*.

Who can appeal?

Anyone who has filed a claim for benefits with VA and has received a determination from a local VA office is eligible to appeal to the Board of Veterans' Appeals.

When can I file an appeal?

You may *file* an appeal **up to one year from the date the local VA office mails you its initial determination** on your claim. After that, the determination is

considered final and cannot be appealed unless it involved *clear and unmistakable error* by VA.

What can I appeal to the Board?

38 U.S.C. § 511(a)
38 U.S.C. § 7104(a)
38 C.F.R. § 20.101

You may appeal any determination issued by a VA *regional office* (RO) on a claim for benefits. Some determinations by VA medical facilities, such as eligibility for medical treatment, may also be appealed to the Board.

You may appeal a complete or partial **denial** of your claim or you may appeal the **level** of benefit granted. For example, if you filed a claim for disability and the local office awarded you a 10% disability, but you feel you deserve more than 10%, you may appeal that determination to the Board.

What can't I appeal to the Board?

38 C.F.R. § 20.101(b)

Decisions concerning the need for medical care or the type of medical treatment needed, such as a physician's decision to prescribe (or not to prescribe) a particular drug or order a specific type of treatment, are not within the Board's jurisdiction. (Occasionally, the Board receives an appeal of this nature, but since it doesn't have the legal authority to decide this type of case, the Board must dismiss it.)

How do I file an appeal?

No special form is required to begin the appeal

process. All that's needed is a written statement that (1) you disagree with your local VA office's claim determination and (2) you want to appeal it. This statement is known as the *Notice of Disagreement*, or *NOD*.

If you received notice of determinations on more than one claim *issue*, your NOD needs to be specific about which issue or issues you wish to appeal. For example, if you were notified about local VA office determinations on a knee disability and a heart condition, but you only want to appeal the heart condition determination, say that. Being specific helps VA concentrate on what is most important to you and moves your case along more quickly.

While the NOD is all that's needed to begin the appeal process, you will eventually need to complete and file a *VA Form 9* to finish your appeal. That's discussed on the next page.

Where do I file my appeal?

Normally, you file your appeal with the same local VA office that issued the decision you are appealing, because that is where your *claims file* (also called a *claims folder*) is kept. However, if you have moved and your claims file is now maintained at a local VA office other than the one where you previously filed your claim, you should file your appeal at the new location.

What happens with the NOD?

When the local VA office receives and reviews your NOD, it is possible that it will change its original

determination and allow your claim. If it doesn't, it will prepare and mail to you a *Statement of the Case* (SOC) and a blank VA Form 9. (The VA Form 9 is discussed in the next section.) This SOC summarizes the evidence and applicable laws and regulations used in deciding your case and gives you the local VA office's reasons for making the determination you appealed.

What follows the Statement of the Case?

Within 60 days of the date when the local VA office mails you the SOC, you need to submit a *Substantive Appeal*. However, if the one-year period from the date the local VA office mailed you its original determination is later than this 60-day period, you have until that later date to file the Substantive Appeal. (See the caution in the information box on the next page.)

To file a Substantive Appeal, simply fill out and submit the VA Form 9 that the local VA office sent you. The form comes with detailed instructions that we have tried to write in easy-to-understand language. *Please read these instructions carefully before completing the form.*

An important part of the VA Form 9 is the section used to request a *BVA hearing*. Hearings are covered in more detail on pages 17 through 19 of this pamphlet.

On the VA Form 9, you should make sure that you clearly state the benefit you want and that you point out any mistakes you think VA made when it issued its determination. You should also identify anything in the SOC that you disagree with.

If you submit new information or evidence with your VA Form 9, the local VA office will prepare a *Supplemental Statement of the Case* (SSOC). A SSOC is similar to the SOC, but addresses the new information or evidence you submitted. If you are not satisfied with the SSOC, you have 60 days from date the SSOC was mailed to you to submit, in writing, what you disagree with.

What if I don't want BVA to examine a particular issue listed in the SOC or SSOC?

If, for some reason, you don't want BVA to examine an issue listed in the Statement of the Case or the Supplemental Statement of the Case, simply state (on the VA Form 9) that you are withdrawing that specific issue (or issues) from the appeal. Withdrawing issues you don't really want to appeal will help VA move your case along more quickly.

Caution! Don't delay submitting the VA Form 9 to the local VA office. **If you don't file the VA Form 9 on time, you could lose your right to appeal.** Use the following formulas to figure out when the VA Form 9 is due.

RO determination mailing date + 1 year

or

SOC + 60 days

Whichever date is later is the date when the VA Form 9 must be received at the local VA office.

Can I get an extension of the date for filing?

38 U.S.C. § 7105(d)(3)
38 C.F.R. § 20.303

You can ask for an extension of the 60-day period for filing a Substantive Appeal, or the 60-day period to respond to a Supplemental Statement of the Case, by writing to the local VA office handling your appeal. You should explain why you need the extra time to file (called “showing good cause”).

Are the time periods for filing my NOD, VA Form 9, and SSOC response always the same?

38 U.S.C. § 7105A
38 C.F.R. part 20, subpart F

The time limits we have given you are good in most cases, but there is one kind of case, called a *simultaneously contested claim*, where the filing times are a lot shorter. A simultaneously contested claim is a claim where more than one person is trying to get a VA benefit or status that only one of them can have. An example would be a case where two different people claim that they are entitled to all of the same life insurance policy proceeds.

If you are appealing a determination in a simultaneously contested claim, your NOD must be filed within 60 days from the date the local VA office mailed you its determination, not one year from that date. The VA Form 9 has to be filed within 30 days of the date when the local VA office mailed you the Statement of the Case, not 60 days. The alternative period for filing

the VA Form 9 (one year from the date the RO mailed you its original determination) *does not apply to simultaneously contested claims*. Also, if there is a SSOC that you want to respond to in a simultaneously contested claim, you only have 30 days to file your response, not 60 days.

These kinds of appeals are fairly rare, but we wanted you to know about them because filing deadlines are so important. If you are not sure whether these shorter filing deadlines apply to your appeal, ask your local VA office or your representative.

Do I need a lawyer or other representative to help me with my appeal?

38 U.S.C. § 5904
38 C.F.R. part 20, subpart G

You can represent yourself, but about 90 percent of all people who appeal to the Board do obtain representation. Most *appellants* (about 85 percent) choose to be represented by a *Veterans' Service Organization* (VSO) or their state's veterans department.

Many VSOs have trained personnel who specialize in providing help with claims and appeals. VSOs do not charge for this service and do not require you to be a member of their organizations. Many state and county governments also have trained personnel in their veterans departments who can help. Your local VA office can provide a list of approved veterans' appeal *representatives* in your area.

You can hire a lawyer to represent you. Most lawyers will charge you for their services, although there are

strict guidelines about what a lawyer may charge. In most cases, no fees can be charged for work performed before BVA issues its final decision.

In addition to the representatives and attorneys just discussed, a few “agents” are recognized by VA to represent appellants.

Fill out a VA Form 21-22 to authorize a VSO to represent you, or a VA Form 22a to authorize an attorney or recognized agent to represent you. Your local VA office can provide these forms.

What kind of information do I need to include in my appeal?

It is important that you send VA any evidence that supports your argument that its determination on your claim was wrong. If you have additional evidence, such as records from recent medical treatments or evaluations that you feel make your case stronger, you can submit the evidence to the office holding your claims folder. (See “Where is my claims folder kept?” on page 20.) An appeal representative can also submit additional written information in support of your claim.

If your file is still at the local VA office and you send your new evidence there, it will send you a SSOC if it still does not allow your claim after reviewing the new evidence. The new evidence you submitted will be included in your claims folder and considered when the Board reviews your appeal.

If your file is at the Board and you plan to send your new evidence there, be sure to read “What is the 90-day

Rule” on page 20 for some important information about time deadlines. Also, if you want the Board to consider your new evidence without sending your case back to the local VA office, include a written statement saying that you waive local VA office consideration of your new evidence and that you want the Board to review the evidence even though the local VA office hasn’t seen it. Otherwise, there could be a considerable delay while the Board sends your new evidence back to the local VA office to consider.

Also see “What SHOULD I do?” and “What should I AVOID?” on pages 33 and 34.

Do I have to do anything else to complete my appeal?

In most cases, you are not required to submit any more paperwork to finish your appeal once you’ve filed a completed VA Form 9. There is one important exception that you should know about. If you have received a SSOC that covers a **new issue**, you will need to complete and file a supplemental VA Form 9 covering the new issue if you want to appeal it.

For example, let’s say that you appealed a local VA office determination on your knee disability, it sent you a SOC on that issue, and you filed your VA Form 9 on that issue. Later, before the Board decided the appeal on your knee disability, you also appealed a decision about a heart disability and your local VA office sent you a SSOC on that. If you wanted the Board to consider your appeal on the heart issue, you’d have to send your local VA office a VA Form 9 on that issue too.

What happens to my VA Form 9?

Your VA Form 9 becomes part of your claims folder and is the basis for adding your appeal to BVA's *docket*. The Board will review it when it considers your appeal.

What is the Board's docket and why is my docket number important to me?

38 U.S.C. § 7107(a)
38 C.F.R. § 20.900

The law requires the Board to decide cases on a “first come, first served” basis. To do that, the Board needs to know when each case was received in relationship to every other case. That's where the Board's “docket” comes in.

Think of the Board's docket as a list of all the cases the Board has to decide. Your case is added to this list when VA receives your substantive appeal (VA Form 9).

The Board keeps track of where your case is in the pipeline by assigning it a “docket number” when it's added to the list. The first 2 digits show the year the case was added to the list and the rest of the numbers show in what order the case was added to the list that year. For example, if your appeal was the very first appeal added to the list in 1999, it would have docket number 99-00001.

The older the year and the lower the number for that year, the sooner your case will come up for review. The later the year and the higher the number, the longer it will take. (This is another reason it's important to file your VA Form 9 promptly.)

How long does the appeal process take?

It is difficult to say just how long it will take from the time you file your appeal until you receive the Board's decision. As of the Fall of 1999, it took an average of about two years from the time a NOD was filed until a final decision was issued. Complex cases can take longer, particularly if the Board must remand the case. (Remands are discussed on pages 24 and 25.)

Is there any way to have the Board decide my case more quickly?

38 U.S.C. § 7107(a)(2)
38 C.F.R. § 20.900(c)

If you believe your appeal should be decided sooner than the appeals of others who filed before you did, you can write directly to the Board explaining why. (This is called filing a *motion to advance on the docket*.)

Over the years, BVA has granted fewer than 3 out of every 20 requests for advancement on the docket. That's because most appeals involve some type of hardship and the Board wishes to treat everyone fairly. You need to show convincing proof of exceptional circumstances before your case can be advanced. Some examples of exceptional circumstances are terminal illness, danger of bankruptcy or foreclosure, or an error by VA that caused a significant delay in the docketing of your appeal.

Be sure to send us proof of your exceptional circumstances with your motion. For example, if you are about to lose your home due to foreclosure, send us a copy of the notice you received telling you that. If you

have a terminal illness, include a statement about that from your doctor.

To file a motion to advance on the docket, send your request to:

Board of Veterans' Appeals (014)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

What is a personal hearing?

38 U.S.C. § 7105(a)
38 U.S.C. § 7107(d)(e)
38 C.F.R. part 20, subpart H

Basically, a personal *hearing* is a meeting between you (and your representative, if you have one) and an official from VA who will decide your case. During this meeting, you present *testimony* and other evidence supporting your case.

There are two types of personal hearings: *local office hearings* (also called *Regional Office hearings*, *RO hearings*, or *hearing officer hearings*) and BVA hearings.

As its name implies, a “local office hearing” is a meeting held at a local VA office between you and a “hearing officer” from the local office’s staff. To arrange a local office hearing, you should contact your local VA office or your appeal representative as early in the appeal process as possible.

In addition to a local office hearing, you also have the right to present your case in person to a member of the

Board. Appellants in most areas of the country can choose whether to hold this “BVA hearing” at the local RO, commonly called a *Travel Board hearing*, or at the BVA office in Washington, D.C. (but not both).

Some ROs are also equipped to hold BVA hearings by videoconference. With this kind of hearing, you would be located at the RO and the Board member conducting the hearing would be in Washington, D.C. You would communicate with each other by closed circuit television. Sometimes, VA can offer videoconference hearings more quickly than Travel Board hearings. If you are interested in this kind of hearing, check with your RO to see if a videoconference hearing is a possibility in your area.

When deciding where to hold a BVA hearing, please keep in mind that VA cannot pay for any of your expenses — such as lodging or travel — in connection with a hearing.

The usual way to request a BVA hearing is to check a box on the VA Form 9 telling us what kind of hearing you want. However, if you didn’t ask for a BVA hearing on the VA Form 9, you can still request one by writing directly to the Board. (This is subject to the “90-Day Rule,” which is explained on page 20.) If you want a BVA hearing, be sure you clearly state whether you want it held at the RO **or** at the Board’s office in Washington, D.C. (You cannot have a BVA hearing in both places.)

Please **do not** use the VA Form 9 to request a local office hearing. Write directly to that office instead.

When will my personal hearing be held?

38 U.S.C. § 7107
38 C.F.R. § 20.702
38 C.F.R. § 20.704

When a hearing will be held depends on what type of hearing you requested and where you requested that it be held. Local VA office hearings are generally held as soon as they can be scheduled on the hearing officer's calendar.

The scheduling of Travel Board hearings — BVA hearings held at regional offices — is more complicated, because Board members must travel from Washington, D.C., to the RO to conduct the hearings. (Travel Board hearings may not be available at ROs located near Washington, D.C.) Factors that affect when Travel Board hearings can be scheduled include the docket number (a guide to how old cases awaiting hearings are), the total number of requests for hearings in your area, how soon the Board will be able to review the cases associated with the hearings, and the resources, such as travel funds, available to the Board.

Because videoconferenced hearings do not involve travel by Board members, they are less complicated to arrange and can usually be scheduled more quickly than Travel Board hearings.

Hearings held at the Board's offices in Washington, D.C., will be scheduled for a time close to when BVA will consider the case — usually about three months before the case is reviewed.

Where is my claims folder kept?

If you do not request a BVA hearing, your claims folder will stay at the local VA office until it is transferred to BVA shortly before the Board begins its review.

If you request a Travel Board hearing, your claims folder will stay at the local VA office until the hearing is completed and will then be transferred to the Board.

If you request a videoconferenced BVA hearing or a hearing held at the Board's office in Washington, D.C., your claims folder will stay at the local VA office until shortly before the hearing is held. It will be transferred to BVA in time for your hearing and the Board's review.

What is the 90-Day Rule?

38 C.F.R. § 20.1304

Your local VA office will send you a letter when it transfers your claims folder to Washington, D.C. That letter will let you know that you have **90 days** (from the date of that letter) **or until the Board decides your case, whichever comes first**, during which you can add more evidence to your file, request a hearing, or select (or change) your representative.

For the Board to accept any of these items after this 90-day period is up, you must submit a written request (called a "*motion*") with the item asking the Board to accept the item even though it is late. The request must include an explanation of why the item is late and show why the Board should accept it (called "showing good

cause"). A motion to accept items after the 90-day period will be reviewed by a Board member who will issue a ruling either allowing or denying the motion.

Remember that it is important to act as early as possible if you want to send new evidence, appoint or change a representative, or request a hearing for two reasons. (1) By acting before the 90 days are up, you avoid having to file a motion and the risk that your motion will be denied. (2) You might not have the full 90 days because the Board could decide your case before the 90 days are up.

How do I find out the status of my appeal?

Until your file is transferred to the Board, your local VA office is the best place to get information about your appeal. (See “Where is my claims folder kept?” on page 20.) VA will notify you in writing when your file is transferred to the Board in Washington, D.C. You will also be notified in writing when the Board receives your file.

After your file is transferred to the Board, you can call (202) 565-5436 to check on its status. Please bear in mind that Board employees cannot discuss the legal merits of a case or predict the outcome of an appeal. Also, because every case is different, it is impossible to give you a precise estimate of when your appeal will be decided.

**To learn the current status of your appeal
after it is transferred to Washington, D.C.,
call:**

(202) 565-5436

Be sure to have your claim number handy.

**If the Board has “remanded” your case to your
local VA office (see page 24), call that office.**

What happens to my appeal when it gets to the Board?

The Board will notify you in writing when it receives your appeal from the local VA office. The Board examines the claims folder for completeness and provides your representative (if you have one) with an opportunity to submit additional written arguments on your behalf. Your case is then assigned to a Board member for review. (If you requested a "BVA hearing," the Board member assigned to your case will conduct the hearing before reaching a decision.)

When the docket number for your appeal is reached, your file will be examined by a Board member and a staff attorney (Counsel or Associate Counsel) who will check it for completeness, review all the evidence and your arguments, as well as the transcript of your hearing (if you had one), the statement of your representative (if you have one), and any other information included in the claims folder. The staff attorney, at the direction of the Board member, may also conduct additional research and

prepare recommendations for the Board member's review.

Before a decision is reached, the Board member will thoroughly examine all of the material in the claims folder along with the recommendations prepared by the staff attorney. The Board member will then issue a decision.

How will I be notified of the Board's decision?

The Board will give you its decision in writing. BVA tries to make its decisions as understandable as possible. However, because they are legal documents, decisions may contain complex information, such as references to laws and court cases. Many BVA decisions also contain detailed medical discussions.

Your decision will be mailed to the home address that the Board has on file for you, so it is extremely important that you keep VA informed of your correct address.

If your appeal is denied, the Board will send you a "Notice of Appellate Rights" that describes additional actions you can take. We'll also tell you more about that later in this pamphlet.

Important: If you move, or get a new home or work phone number, you should notify the office where your claims folder is located. (See "Where is my claims folder kept?" on page 20.)

What is a remand?

Sometimes the Board will review an appeal and find that the case isn't ready for a final decision. It will then return the case to the local VA office with instructions to do whatever needs to be done. This action of sending a case back for more work (sometimes described as "additional development") is called a *remand*.

After performing the additional work, the local VA office will review your case and issue a new determination. If it is unable to allow your claim, it will return the case to the Board for a final decision. The case keeps its original place on BVA's docket, so it is reviewed soon after it is returned to the Board.

Depending on what was done after your case was remanded, the local VA office may provide you with a SSOC. If so, you have 60 days from the date the SSOC was mailed to you to comment on it.

Why are some cases remanded?

Some cases are remanded for reasons neither you nor the Board can control, such as new rulings by the *United States Court of Appeals for Veterans Claims* or other changes in the law that require the Board to return them for local VA office review or some other action. However, some remands might be avoided if you do — or don't do — certain things. If the Board doesn't have to remand your case, you will get your decision more quickly.

The "What SHOULD I do?" and "What should I AVOID?" sections on pages 33 and 34 are based on

many years of experience of Board members and other BVA employees. These lists do not include every possible situation, but they do include the most frequent “do’s and don’ts” and should prove helpful as you prepare your case.

What if I disagree with the Board’s decision?

If you are not satisfied with the Board’s decision, you can appeal to the United States Court of Appeals for Veterans Claims (the Court). The Court is an independent court that is not part of the Department of Veterans Affairs.

Normally, to appeal a BVA decision, you must file the Notice of Appeal with the Court within 120 days from the date when the Board’s decision is mailed. (The date of mailing is stamped on the front of the Board’s decision.)

To appeal a Board decision to the Court, you must **file an original Notice of Appeal directly with the Court** at:

United States Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004

If you filed a *motion to reconsider* (discussed in the next section of this pamphlet) with the Board within this 120-day time frame and that motion was denied, you have a new 120-day period to file the Notice of Appeal with the Court. This new 120-day period begins on the date the Board mails you a letter notifying you that it has denied your motion to reconsider. A “Notice of

Appellate Rights,” that discusses this in detail, will be mailed to you if the Board denies your motion to reconsider your appeal.

If you appeal to the Court, you should also **file a copy** of the Notice of Appeal **with the VA General Counsel** at the following address:

Office of the General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Caution! While you should file a copy of your Notice of Appeal to the Court with the VA General Counsel, the original Notice of Appeal you file with the Court is the only document that protects your right to appeal a BVA decision. *The copy sent to VA’s General Counsel does not protect that right or serve as your official appeal filing.*

To obtain more specific information about the Notice of Appeal, the methods for filing with the Court, Court filing fees, and other matters covered by the Court’s rules, you should contact the Court directly at the Indiana Avenue address given on page 25. You may also contact the Court by telephone at 1-800-869-8654. See “Internet Resources for Information,” beginning on page 30, for the Court’s World Wide Web site address.

What else can I do if I disagree with a Board decision?

38 U.S.C. § 7103
38 C.F.R. § 20.1000
38 C.F.R. § 20.1001

1. *Motion for Reconsideration.* If you can demonstrate that the Board made an obvious error of fact or law in its decision, you can file a written "motion to reconsider" your appeal. If you are represented, you may wish to consult with your representative for advice about whether you should file a motion (and for assistance in preparing one). **If you do file a motion to reconsider, it should be sent directly to the Board, not to your local VA office.**

A motion to reconsider should not be submitted simply because you disagree with BVA's decision. You need to show that the Board made a mistake and that the Board's decision would have been different if the mistake had not been made.

38 U.S.C. § 5108
38 U.S.C. § 7104(b)
38 C.F.R. § 3.156
38 C.F.R. § 20.1105

2. *Reopening.* If you have "new and material evidence," you can request that your case be re-opened. To be considered "new and material," the evidence you submit must include information related to your case that was not included in the claims folder when the Board decided your case.

To re-open your case, you need to submit your new evidence **directly to the local VA office** and not to the Board.

38 U.S.C. § 7111
38 C.F.R. part 20, subpart O

3. *CUE Motion.*

The law was amended in 1997 to provide one more way to challenge a Board decision. A Board decision can be reversed or revised if you are able to show that the decision contained “clear and unmistakable error” (CUE). Your written request for the Board to review its decision for CUE is called a “motion.” **CUE motions should be filed directly with the Board, and not with your local VA office.**

Because CUE is a very complicated area of law, we urge you to seek help from your representative if you decide to file a CUE motion. A motion for CUE review of a prior Board decision must meet some very specific requirements, described in the Board’s *Rules of Practice*. If the motion is denied you can’t ask for another CUE review of the way the Board decided the issues you raised in your first CUE motion, so it is very important that the motion be prepared properly the first time out.

Not many CUE motions are successful, because CUE is a very rare kind of error, the kind that compels a conclusion that the Board would have decided your case differently but for the error. A difference of opinion is not enough. When you file your CUE motion, you must tell the Board clearly and specifically, in writing, exactly what the “clear and unmistakable” error, or errors, were.

You can file a motion to review a Board decision for CUE at any time, but if you file your CUE motion after filing a timely Notice of Appeal with the Court, the Board will not be able to rule on your CUE motion.

What happens to an appeal if the appellant dies before a decision is issued?

38 U.S.C. § 7104(a)
38 C.F.R. § 20.1302

According to the law, the death of an appellant generally ends the appeal. So, if an appellant dies, the Board normally dismisses the appeal without issuing a decision. The rights of a deceased appellant's survivors are not affected by this action. Survivors may still file a claim at the RO for any benefits to which they may be entitled.

Need general information about veterans' benefits?

Speak to a VA Veterans Benefits Counselor by calling 1-800-827-1000.



Internet Resources for Information

Here are just a few of the many helpful resources for information on veterans' benefits and veterans' law on the "World Wide Web."

The Department of Veterans Affairs

<http://www.va.gov/>

The site has a wealth of veterans' information including links to an "on-line" version of this pamphlet and archives of Board of Veterans' Appeals decisions. There is extensive information about veterans programs and benefits. A number of VA forms are available.

The Veterans Benefits Administration

<http://www.vba.va.gov/>

This site contains extensive information about veterans' benefits, links to VA forms, copies of many benefits regulations, and more.

United States Court of Appeals for Veterans Claims

<http://www.vetapp.uscourts.gov/>

This site includes information about how to appeal a Board of Veterans' Appeals decision to the Court, Court filing fees, forms needed for filing an appeal with the Court, copies of the Court's opinions, and more.

***National Archives and Records Administration
Code of Federal Regulations***

<http://www.access.gpo.gov/nara/cfr/>

Published Federal regulations, including the sections of 38 C.F.R. cited in this pamphlet, may be found here.

***The Office of the Law Revision Counsel
U.S. House of Representatives***

<http://uscode.house.gov/usc.htm>

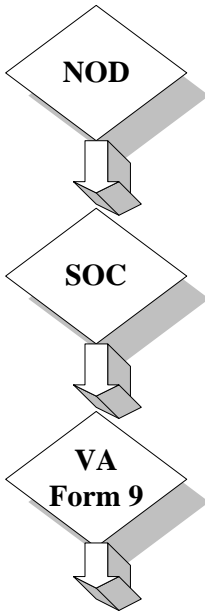
This site permits you to search for, read, and print sections of the United States Code, including the 38 U. S. C. sections cited in this pamphlet.

***Department of Veterans Affairs
Electronic FOIA Reading Room***

<http://vaww.va.gov/foia/>

VA's Electronic FOIA (Freedom of Information Act) Reading Room has links to numerous VA publications, including directives, manuals, and handbooks. The site features VA's "One-Stop Customer Service Inquiry Page," described as "the place to find answers to question about any number of VA issues."

The Appeal Process



Notice of Disagreement

Not more than a year after it mails you notice of its determination of your VA benefits claim, you tell your local VA office in writing that you disagree with its determination and want to appeal.

Statement of the Case

Your local VA office sends you a summary of law, evidence and reasons for VA's denial of benefits called a "Statement of the Case" (SOC).

Substantive Appeal

You file a VA Form 9 with the local VA office not later than 60 days from the date the SOC was mailed to you, or 1 year from the date that office first mailed you notice of its determination, whichever is later.

Docketing and File Transfer

Local VA Office:

- adds your appeal to BVA's docket
- notifies you when 90 days remain for submitting additional evidence, appointing or changing a representative, or asking for a hearing
- sends your claims folder to BVA

BVA Review

BVA:

- conducts hearing, if requested
- reviews your appeal
- issues decision (grant/remand/deny)

BVA Grants Appeal

or

BVA Remands Appeal

Appeal returned to local VA office for development, decision, and possible return to BVA

or

BVA Denies Appeal

You have 120 days to file appeal to Court of Appeals for Veterans Claims

Filing reconsideration or CUE motion with BVA or reopening at local VA office possible

Caution! These filing time limits apply in most cases, but don't apply to "simultaneously contested claims." See page 11.

What SHOULD I do?

If you intend to appeal:

- **Do** consider having an appeal representative assist you.
- **Do** file your NOD and VA Form 9 as soon as you're sure you want to appeal. (Because so many appeals are filed, delaying could add months to your wait for the Board's decision.)
- **Do** be as specific as possible when identifying the issue or issues you want the Board to consider.
- **Do** be specific when identifying sources of evidence you want VA to obtain. For example, provide the full names and addresses of physicians who treated you, when they treated you, and for what they treated you.
- **Do** keep VA informed of any change to your current address, phone number, or number of dependents.
- **Do** be aware that copies of your doctor's treatment records are generally more helpful than just a statement from the doctor.
- **Do** be clear (on your VA Form 9) about whether or not you want a BVA hearing and where you want it held. (See pages 17 through 19.)
- **Do** provide all the evidence you can that supports your claim, including additional evidence or information requested by VA.
- **Do** include your *claim number* on any correspondence you send to VA and have it ready if you call. This helps VA find your records.

What should I AVOID?

- ***Don't*** try to "go it alone." Consider getting a representative. A skilled representative can save you a lot of time, help you prepare the best possible appeal, and help you avoid mistakes.
- ***Don't*** send in material that doesn't have anything to do with your claim or send duplicates of things you have already sent to VA. This will only slow down the process.
- ***Don't*** use the VA Form 9 to raise new claims for the first time. The VA Form 9 is only used to appeal decisions on previously submitted claims.
- ***Don't*** use the VA Form 9 to request a local office hearing. Write to that office instead.
- ***Don't*** raise additional issues for the Board to consider late in the appeal process, especially after your claims folder has been sent to the Board in Washington, D.C. This could well cause your case to be sent back to your local VA office for additional work and result in a longer wait for a BVA decision.
- ***Don't*** submit evidence directly to the Board unless you include a written or typed statement saying that you waive consideration of the new evidence by the local VA office and clearly indicating that you want the Board to review the evidence even though the local VA office has not seen it. If you submit evidence directly to the Board without such a waiver, the case may be remanded for review and could result in delays.
- ***Don't*** submit a last minute request for a hearing or a last minute change to the type or location of a hearing unless it is unavoidable. This almost always results in a delay in getting a final decision.

Abbreviations

The following abbreviations are used in this pamphlet. Complete definitions of the terms are given in the Glossary.

BVA	Board of Veterans' Appeals
CUE	Clear and Unmistakable Error
RO	Regional Office
NOD	Notice of Disagreement
SOC	Statement of the Case
SSOC	Supplemental Statement of the Case
VA	The Department of Veterans Affairs
VSO	Veterans' Service Organization

Glossary

This glossary contains many of the terms commonly used in the appeal process. 38 U.S.C. § 101 also defines many claim and appeal terms.

Advance on the Docket — A change in the order in which an appeal is reviewed and decided — from the date when it would normally occur to an earlier date.

Agency of Original Jurisdiction — See “Local VA Office.”

Appellant — An individual who has appealed a local VA office claim determination.

Associate Counsel — See Counsel.

Glossary

Board — The Board of Veterans' Appeals.

Board of Veterans' Appeals — The part of VA that reviews benefit claims appeals and that issues decisions on those appeals.

Board Member — See Member of the Board.

BVA Hearing — A personal hearing, held at the BVA office in Washington, D.C., or at a VA regional office, that is conducted by a member of the Board. These hearings can be held by videoconference from some regional offices. Also see Travel Board Hearing.

Claim — A request for veterans' benefits.

Claim Number — A number assigned by VA that identifies a person who has filed a claim; often called a "C-number." VA now uses the veteran's Social Security number for this purpose, but older files still bear the "C-number."

Claims File — Same as claims folder.

Claims Folder — The file containing all documents concerning a veteran's claim. (Other VA records folders, like education or loan guaranty folders, may also be involved, but "claims folders" are the most common and that term has been used in this pamphlet for convenience.)

Counsel — Counsel, and Associate Counsel, are attorneys skilled in veterans' law who assist Members of the Board in preparing decisions. They are like a law

Glossary

clerk who helps a judge.

Court of Appeals for Veterans Claims — See United States Court of Appeals for Veterans Claims.

Decision — The product of BVA's review of an appeal. A decision might, for example, grant or deny the benefit or benefits claimed, or remand the case back to the local VA office for additional action.

Determination — A decision on a claim made by a local VA office.

Docket — A listing of appeals that have been filed with BVA. Appeals are listed in numerical order, called docket number order, based on when a VA Form 9 is received by VA.

Docket Number — The number assigned to an appeal when a VA Form 9 is received by VA. By law, cases are reviewed by the Board in docket number order.

File — To submit written material, usually by mailing it or delivering it in person.

Hearing — A meeting, similar to an interview, between an appellant and an official from VA who will decide an appellant's case, during which testimony and other evidence supporting the case are presented. There are two types of personal hearings: local office hearings (also called regional office hearings or hearing officer hearings) and BVA hearings.

Glossary

Hearing Officer Hearing — See Regional Office Hearing.

Issue — Something specific you want the Board to grant you when it reviews your appeal. For example, if you filed an appeal asking the Board to grant you service connection for a heart disorder, grant you service connection for a knee disability, and grant you a higher disability rating for an already service-connected shoulder disability, the appeal would be said to contain three issues.

Local Office Hearing — See Regional Office Hearing.

Local VA Office — a term used in this pamphlet for any local office of the Department of Veterans Affairs where claims for VA benefits are received and determined. Usually, this is a VA Regional Office or an administrative office at a VA medical center. (The legal term for such an office is “agency of original jurisdiction.”)

Member of the Board — An attorney, appointed by the Secretary of Veterans Affairs and approved by the President of the United States, who decides veterans’ benefit appeals.

Motion — A legal term used to describe a request that the Board take some specific action in processing your appeal (such as advance your case on the docket), or that it give you permission to do something concerning your appeal (such as send in evidence late in the appeal process). The Board’s “Rules of Practice” tell you when

Glossary

a motion is required, what a particular motion should include and where you should file it. Most motions must be in writing.

Motion to Advance on the Docket — A request that BVA review and decide an appeal sooner than it normally would for a specified reason.

Motion to Reconsider — A request for BVA to review (reconsider) its decision on an appeal.

Notice of Disagreement — A written statement saying that you disagree with a local VA office's determination on your claim and that you want to appeal that determination.

Regional Office — One of 58 VA regional offices throughout the U.S. and its territories where most claims for VA benefits are filed and determined.

Regional Office Hearing — A personal hearing conducted by a RO "Hearing Officer." A regional office hearing may be conducted in addition to a BVA hearing.

Remand — The action the Board takes in returning an appeal to the local VA office where the claim originated. This action is taken when something else needs to be done before the Board can make a decision in an appeal.

Representative — Someone familiar with VA's benefit claim process who assists claimants in the preparation and presentation of an appeal. Most representatives are Veterans' Service Organization employees who

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specialize in veterans' benefit claims. Most states, commonwealths, and territories also have experienced representatives to assist veterans. Other individuals, such as lawyers, may also serve as appeal representatives.

RO Hearing — See Regional Office Hearing.

Rules of Practice — Federal regulations, found at 38 C.F.R. part 20, that set out procedures for appeals to the Board of Veterans' Appeals. The 38 C.F.R. part 20 sections cited in this pamphlet are "Rules of Practice."

Simultaneously Contested Claim — A simultaneously contested claim is a claim where more than one person is trying to get a VA benefit or status that only one of them can have. Examples might be two people each claiming they are entitled to all of the proceeds of the same life insurance policy, or two people each asking to be recognized as a particular veteran's lawful surviving spouse.

Statement of the Case — This is a document prepared by the local VA office processing your appeal. It gives you a summary of the evidence considered in your case, a listing of the laws and regulations used to decide your claim, and an explanation of why the local VA office decided your claim as it did. Reviewing the SOC will help you prepare your substantive appeal.

Substantive Appeal — Normally, a completed VA Form 9.

Supplemental Statement of the Case — An update to an SOC prepared when VA receives new evidence, or a new

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issue is added to an appeal, after the SOC was prepared.

Testimony — Testimony is the legal term used to describe what you and others who know about the facts of your case (witnesses) say at a hearing. Basically, to “testify” at a BVA hearing just means to tell what you know about your case. VA hearings are much more informal than court hearings, so you don’t need to worry about technical rules of evidence or being cross-examined when you testify.

Travel Board Hearing — A personal hearing conducted at a RO by a member of the Board.

United States Court of Appeals for Veterans Claims — An independent Federal court that reviews appeals of BVA decisions. (The court used to be called the United States Court of Veterans Appeals.)

VA Form 9 — You receive this VA form, titled “Appeal to the Board of Veterans’ Appeals,” with the SOC. It is the form that you fill out and file with the local VA office to complete your appeal.

Veterans’ Service Organization — An organization that represents the interests of veterans. Most Veterans’ Service Organizations have specific membership criteria, although membership is not usually required to obtain assistance with benefit claims or appeals. There are many such organizations. The American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America are examples of these organizations. Your RO can provide information about VSOs serving your area.

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How Can We Make This Pamphlet Better?

This pamphlet was produced by the Board of Veterans' Appeals at the request of veterans. If it doesn't help — or if it could be better — please let us know how we can improve it.

Send your comments to:

Board of Veterans' Appeals (012)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

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Department of Veterans Affairs
Board of Veterans' Appeals
Washington, DC 20420

Understanding the Appeal Process
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