VA
Appeals Modernization

September 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
Problem: VA Appeal Process Today

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 reenter 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

Award Action

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

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

Partial Grant with good potential for appeal resolution

Contact with VSO or Veteran for resolution

Award Action

Yes

No

Notice of Disagreement

Decision Review Officer/De Novo Option selected

FORMAL HEARING if requested

Decision Satisfied?

Yes

No

VBA Opinion or Outside Medical Opinion Required. Board completes this development in certain appeals in which the medical record is insufficient, and no further examination is necessary.

The Board

Board Hearing, if requested

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

CASE REQUIRES DEVELOPMENT
Remand to Appeals Management Office (AOM) 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 AOM will complete an SSOC.

Partial Grant of Benefits Sought

Yes

No

Appeal to Court of Appeals for Veterans Claims

Case Remand

If the Veteran is unrepresented, or represented by an attorney, the appeal is returned to the RO to complete the development.

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.
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.
New Decision Review Process

Veterans Benefits Administration

The Claim
(Establishes Effective Date)

VBA Decision
(Improved Notice)

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

Supplemental Claim
New Evidence
125-Day Avg. Goal

Board of Veterans’ Appeals

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

120 Days

Court of Appeals for Veterans Claims

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

The law creates a new decision review process, which features three lanes:

- **Higher-Level Review** – An entirely new review of the claim by an experienced adjudicator
- **Supplemental Claim** – An opportunity to submit additional evidence
- **Appeal** – Review by the Board of Veterans’ Appeals
## New Process: Three Lanes

<table>
<thead>
<tr>
<th>VBA</th>
<th>VBA</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 “<strong>new and relevant</strong>” 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 (<strong>closed record and no duty to assist</strong>)</td>
<td>• Evidence only docket: Additional evidence submitted within 90 days following NOD</td>
</tr>
<tr>
<td>• VA will assist in gathering new and relevant evidence (duty to assist).</td>
<td>• Option for a one-time telephonic <strong>informal conference</strong> with the higher-level reviewer to discuss the error in the prior decision</td>
<td>• <strong>Direct docket</strong>: Closed record and 365-day average processing time goal</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>• <strong>Hearing docket</strong>: Board hearing and additional evidence submitted within 90 days following hearing</td>
</tr>
</tbody>
</table>
### Which VBA lane to choose?

Under Appeals Modernization beginning February 2019

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

<table>
<thead>
<tr>
<th>What will happen</th>
<th>VA will help you gather the evidence.</th>
<th>A higher-trained VBA employee will review your claim and make a new decision.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A new decision will be made looking at the new evidence.</td>
<td><strong>No new evidence</strong> will be added.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How long</th>
<th>125 days (on average)</th>
<th>125 days (on average)</th>
</tr>
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</table>
**Which Board docket to choose?**

Choose the Board if you have a **legal argument** to make before a Veterans Law Judge.

<table>
<thead>
<tr>
<th>When to choose</th>
<th>Direct</th>
<th>Evidence</th>
<th>Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>If you think a <strong>mistake</strong> 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>
</table>

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<tr>
<th>What will happen</th>
<th>Direct</th>
<th>Evidence</th>
<th>Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No new evidence</strong> will be added.</td>
<td>You will have <strong>90 days</strong> from your NOD to submit any new evidence. The Judge will make a decision considering the evidence you provided.</td>
<td>You will be placed on a list for a hearing before a Judge by videoconference (or in DC). After your hearing you will have <strong>90 days</strong> to submit new evidence. The Judge will make decision considering the hearing and the evidence you provided.</td>
<td></td>
</tr>
</tbody>
</table>

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<tr>
<th>How long</th>
<th>Direct</th>
<th>Evidence</th>
<th>Hearing</th>
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<tr>
<td><strong>365 days</strong> (on average)</td>
<td><strong>Over 365 days</strong></td>
<td>Based on availability. Currently the Board has 91 Judges. There are 78,000 Veterans waiting for hearings. In FY 17 Judges held an average of 177 hearings per year.</td>
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</tbody>
</table>
Dual Systems

• The AMA remakes the VA appeals process, and will be the **only** framework going forward.

• VA will operate **both** systems in the transition.
  – VA will receive **new** legacy appeals through February 2020
    • Veterans receiving a Rating Decision prior to implementation in February 2019 have **one year** to file a **legacy** NOD
  – Other sources:
    • Pending inventory
    • Remands from the Board, Court of Appeals for Veterans Claims, and Federal Circuit
The **Rapid Appeals Modernization Program (RAMP)**
began on November 1, 2017 and allows eligible Veterans with pending appeals the option to have their decisions reviewed in the new **Higher-Level Review** or **Supplemental Claim** lanes

**As of April 2, 2018 any Veteran that meets the eligibility criteria below may participate in RAMP (no invitation required)**

- Participation is voluntary and Veterans are encouraged to opt in
- Veterans must have an active disability compensation appeal in one of the following appeal stages:
  - NOD
  - Form 9
  - Certified to the Board (not activated)
  - Remand
• Under RAMP Veterans 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 pending legacy appeals can only opt in at the following stages:
  - SOC
  - SSOC
RAMP Quick Stats - National

- Legacy Appeals Converted: 59,487
- RAMP Lane Choices
  - HLR – 62%
  - Supp – 38%
- NOD to Opt-in Days (Avg.): 760 Days
- Average Days to Complete: 104 Days
- Retroactive Benefits Awarded: $70,099,873
- Claim Grant Rate
  - Total – 28%
  - HLR – 28%
  - Supp – 28%

* All data shown as of September 20, 2018
Board Dockets FY 19

Priority to Advanced on the Docket on all dockets.

<table>
<thead>
<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 (365 average processing goal)</td>
</tr>
<tr>
<td>AMA Evidence</td>
</tr>
<tr>
<td>AMA Hearings* **</td>
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</tbody>
</table>

*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 92 VLJs.

** Hearings for appeals of RAMP decisions will not be scheduled until after February 2019
STATEMENT IN SUPPORT OF CLAIM

FIRST NAME MIDDLE NAME LAST NAME OF VETERAN (SIGN IF 2110)

SOCIAL SECURITY NO. VARIABLE NO. COSS:

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, 2019, at which time you will have to seek new application requirements outlined in the new appeals system. Filing instructions will be available at https://www.benefits.va.gov/benefits/appeals.

Instruction: 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 for review of 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):

I elect to have all issues reviewed under the following option (Check ONLY ONE of the boxes below):

☐ 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.)

FEDERAL REGULATIONS 38 C.F.R. 19.9 (b): I understand that the Board must make a decision on this appeal within 125 days of receipt of all information and evidence on the appeal.

 Amenities: The agency provides services that include free or reduced-cost, or both, for the disabled submission of any evidence or evidence of a material fact, knowing it to be false.

DATE SIGNATURE

ADDRESS

TELEPHONE NUMBERS (Include Area Code)

DAYTIME EVENING
Board 2.0

Action

Service

Modernization
The Board has served more Veterans this year than any fiscal year in the Board’s history.

Through September 16, the Board of Veterans’ Appeals has signed 81,489 decisions, which is 65% more decisions as compared to 49,448 decisions signed thru the same period last year. The Board’s annual goal is 81,033 decisions.

The Board surpassed last year’s decision total of 52,661 dispatched decisions in May.
• The Chairman recommended new Veterans Law Judges for SecVA approval and Presidential appointment.

• To date, the Board is hired 186 new staff with approximately 30 more arriving by the end of FY18.
  • This brings the Board to over 1,000 FTE for the first time in the Board’s history.
The Board will begin adjudicating RAMP appeals in October

- Once Veterans receive a decision under the RAMP supplemental claim or higher-level review lanes, they will 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 September 20, 2018, the Board has received 247 appeals (NODs) of RAMP decisions.
- In October 2018, the Board will begin adjudicating the first of these appeals in a phased implementation to test processes and technology.
  - The Board’s phased approach to RAMP will allow 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

• Vets.gov Appeals Status Tool

153,976
Appeals ahead of you
You are here

212,815 total appeals on the docket
There are currently 78,000 Veterans waiting for a Board hearing. That means approximately 845 Veterans are waiting for a hearing per Veterans Law Judge.

Each figure represents approximately 5 waiting Veterans.

Each VLJ holds roughly 200 hearings per year.
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

- **Specialty Case Team**
  - Implemented in May 2018
  - More efficient adjudication of specialized areas

- **One Touch Hearing**
  - Implemented in April 2018
  - Enables Veterans Law Judges to efficiently adjudicate hearing cases with clear dispositions within working docket date range