

VLG

THE VETERANS LAW GROUP

VETERANS APPEALS 101

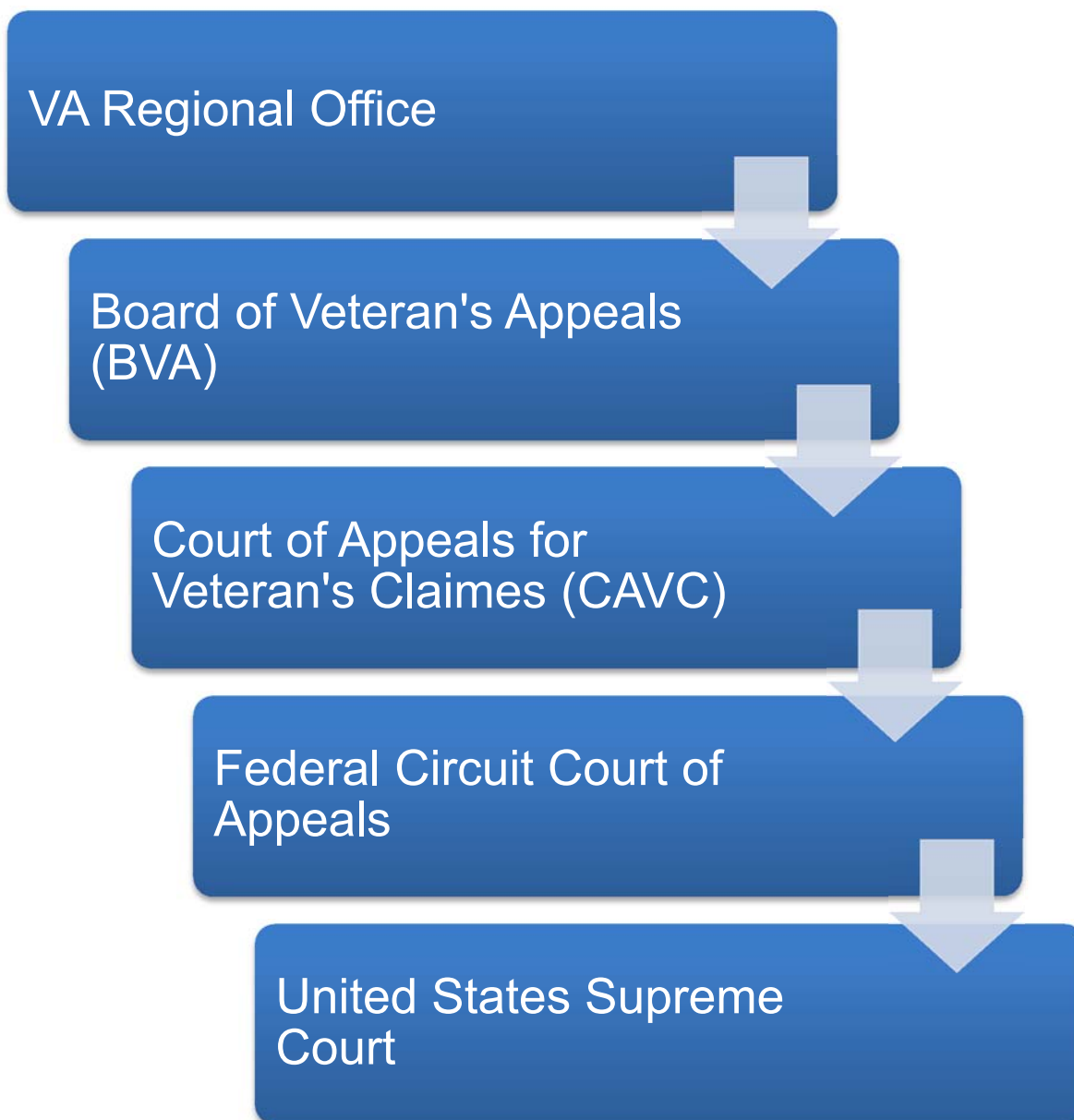
RESOURCE GUIDE

VLG

THE VETERANS LAW GROUP



Appeals Process: Chain of Command



Appeals Process: Overview

VETERANS BENEFITS CLAIMS PROCESS

Standard Claims Process (All claims are unique. The following is meant to be used only as a general guideline.)

1. VISIT A VA OFFICE	2. COLLECT EVIDENCE	3. SUBMIT CLAIM	4. VA REVIEWS CLAIM	5. VA RATING DECISION
<ul style="list-style-type: none"> <input type="checkbox"/> Locate your VA office online at va.gov/directory. <input type="checkbox"/> Find a Veterans Service Officer (VSO) / Veterans Service Representative (VSR) at nacvso.org. <input type="checkbox"/> Work with your VSO/VSR to determine your eligibility. <input type="checkbox"/> Work with your VSO/VSR to determine your claim type. 	<ul style="list-style-type: none"> <input type="checkbox"/> Obtain copies of your service records. <input type="checkbox"/> Obtain copies of your medical records. <input type="checkbox"/> Obtain "buddy statements" as needed. <input type="checkbox"/> Have a doctor complete your Disability Benefits Questionnaire(s) (DBQs). 	<ul style="list-style-type: none"> <input type="checkbox"/> Determine how you want your claim to be processed: Traditional Claim, or Fully Developed Claim (FDC). <input type="checkbox"/> Register for online claims at eBenefits.gov and submit your claim. There is no cost to register or process your claim. <li style="text-align: center;">- OR - <input type="checkbox"/> Have your VSO/VSR help you complete and submit your claim. <p>⏰ You have 1 YEAR from your eBenefits registration to finalize your claim by hitting SUBMIT.</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> The VA will assign your claim to a VA claims examiner, who reviews it for completeness and recommends benefit levels. <input type="checkbox"/> Report for any Compensation & Pension (C&P) examinations the VA determines are needed to decide your claim. <input type="checkbox"/> Continue to keep your existing medical appointments. <p>⏰ It can take up to 3 YEARS for the VA to process evidence and issue a Rating Decision.</p>	<p>VA ISSUES RATING DECISION</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The VA issues a Rating Decision once they determine, if any, your service connection, percent disability, and effective date. <input type="checkbox"/> ACCEPT the Rating Decision and let the VA process the claim for payment as of the effective date and any back pay owed. <li style="text-align: center;">- OR - <input type="checkbox"/> APPEAL if you are not satisfied. See the appeals process below.

Claim Appeals Process

6. APPEAL TO THE REGIONAL VA OFFICE/ BOARD OF VETERANS APPEALS	7. COURT OF APPEALS FOR VETERANS' CLAIMS (CAVC)	8. COURT OF APPEALS FOR THE FEDERAL CIRCUIT	9. APPEAL TO THE U.S. SUPREME COURT
<p>⏰ You have 1 YEAR from the VA Rating Decision to make your appeal and file a Notice of Disagreement.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Continue to keep your existing medical appointments. <input type="checkbox"/> Work with your VSO/VSR to file a Notice of Disagreement (NOD) with the VA Regional Office. <input checked="" type="checkbox"/> You can elect to have your claim reviewed by a VA Decision Review Officer (DRO). <input type="checkbox"/> The VA will send you a second decision (Statement of Case) and appeal paperwork (Form 9) if you choose to appeal this decision. <p>⏰ You have 60 DAYS to return the appeal (Form 9) to the VA office if you choose to appeal.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Work with your VSO/VSR to file Form 9 (Substantive Appeal). <input checked="" type="checkbox"/> The Board of Veterans' Appeals (BVA) will review your case. <p style="text-align: center;">BVA ISSUES DECISION</p> <ul style="list-style-type: none"> <input type="checkbox"/> You can ACCEPT the BVA decision, -OR- ask the BVA to RECONSIDER -OR- APPEAL to CAVC. 	<p>⏰ You have 120 DAYS from the BVA decision to file your appeal.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Continue to keep your existing medical appointments. <input type="checkbox"/> Work with your VSR to fill out the Court's Form 1 (Notice of Appeal) and send it DIRECTLY TO THE COURT. <input type="checkbox"/> Submit the \$50 fee to file, OR ask for a waiver by filing the Court's Form 4 (Declaration of Financial Hardship). <input type="checkbox"/> You may consider hiring a lawyer experienced in veterans benefits appeals. This is NOT required. <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The CAVC will review your case. <p style="text-align: center;">COURT ISSUES DECISION</p> <ul style="list-style-type: none"> <input type="checkbox"/> You can ACCEPT -OR- ask the CAVC to RECONSIDER -OR- APPEAL to the Federal Circuit. <p>⏰ You have 21 DAYS from the CAVC decision to ask the court to reconsider.</p>	<p>⏰ You have a limited time from the CAVC decision to file your appeal to the Federal Circuit Court of Appeals. If you choose to appeal, you should contact a lawyer within 10 days.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Continue to keep your existing medical appointments. <input type="checkbox"/> Find a lawyer. You will need to hire a lawyer experienced in veterans benefits appeals for this level of appeal. <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The Federal Circuit will review your case. <p style="text-align: center;">COURT ISSUES DECISION</p> <ul style="list-style-type: none"> <input type="checkbox"/> You can ACCEPT -OR- APPEAL to the U.S. Supreme Court. 	<p>⏰ You have a limited time from the Federal Circuit decision to file your appeal to the U.S. Supreme Court. If you choose to appeal, you should contact a lawyer within 10 days.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Continue to keep your existing medical appointments. <input type="checkbox"/> Find a lawyer. You will need to hire a lawyer experienced in veterans benefits appeals for this level of appeal. <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The U.S. Supreme Court may or may not review your case, or may issue a denial. <p style="text-align: center;">COURT ISSUES DECISION</p>



veteranslaw.com

VSOs can download a copy of the above from our Resource Center
A printable version of this document can be found [HERE](#).



Appeals Process:

Understanding an Initial Rating Decision

INITIAL RATINGS INCLUDE:

1. Grant or Denial of a claim
2. If Grant, the decision includes: % of disability (individual injuries, and overall rating) and effective date

ALL DETERMINATIONS CAN BE APPEALED

TO APPEAL:

1. File Notice of Disagreement (NOD) Form 21-0958 REQUIRED
2. Due: within 1 year of the date of Notification Letter
3. Ref: 38 CFR Section 20.305(b) – Computation of Time Limits

(a) Acceptance of postmark date. When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this 5-day period, Saturdays, Sundays and legal holidays will be excluded.

(b) Computation of time limit. In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

ELECT AN APPEAL TRACK:

Decision Review Officer (DRO) Review Process

(de novo review)

OR

Traditional Appellate Review Process

(send it to the Board)

VLG

THE VETERANS LAW GROUP

Appeals Process:

Decision Review Officer (De Novo Review)

WHAT IT MEANS:

- Case is assigned to a Decision Review Officer (more experience than ratings examiner)
- DRO takes a "second look" at the evidence and renders a "new" independent decision.
- No weight given to the initial rating decision

WHAT YOU CAN DO:

- Submit additional evidence
- Request a Hearing
- Request a new exam

DECISION REVIEW OFFICER (DRO) DECISION:

RATING DECISION (RD):

- Considered a Grant on Appeal
- May grant service connection, higher percentage or earlier effective date
- **To Appeal:** File NOD (same as before)

AND/OR A

STATEMENT OF THE CASE (SOC):

- Denial, upholding the previous decision
- **To Appeal:** File Form 9 "Appeal to Board of Veterans Appeals" within 60 days from notification letter
- Sends case to the Board of Veterans' Appeals (BVA)

Appeals Process:

Board of Veterans Appeals (BVA/BOARD)

Decisions are made by a VETERANS LAW JUDGE (VLJ)

- Judges – legal background and education
- More discretion than DROs
- VERY friendly and helpful
- Non-Adversarial process

From Form 9 to BVA Decision you can:

- Request a hearing (in D.C or Travel Board – takes 5+ years, OR by videoconference – 2-3 years)
- Submit additional evidence with waiver: law requires all new evidence to be reviewed first by the Regional Office, but you can waive this requirement if you don't want to send it back to the RO. Use this language:

"The veteran waives his/her right to have the case remanded to the Regional Office for review of this newly submitted evidence"

BVA DOES VERY LITTLE DEVELOPMENT:

- They might ask for a medical opinion
- Mostly they remand for additional development, if it is needed

BVA DECISION

- Allows (overturns lower decision)
- Remands (sends back for further development)
- Denies (upholds the lower decision)

BVA decisions are NOT precedent, but can be helpful to persuade DROs and other VLJ's.

APPEALING BVA DECISION:

- File Notice of Appeal with the Court of Appeals for Veterans' Claims
- Within 120 days of the date on the notification letter from the Board

Appeals Process:

Court of Appeals for Veterans Claims (CAVC)

JUDGE REVIEW OF BVA DECISION

- Case is assigned to General Counsel (VA attorney)
- Now, adversarial
- General Counsel attorneys may see the deficiencies in BVA decision and agree to Remand
- If not, Judge considers arguments (briefs) from both sides and renders a decision.
- NO NEW EVIDENCE MAY BE SUBMITTED
- Representatives must be certified to practice before CAVC, separate from accreditation

JUDGE'S DECISION

- Affirming (upholds BVA Decision)
- Reverse (overturn Sends back to BVA)
- Vacate (set aside sent back to BVA)
- Remand (send back to BVA)
- Dismiss – applies when untimely filed appeal

TO APPEAL

- File Notice of Appeal to Federal Circuit

Appeals Process:

Federal Circuit Court of Appeals

SIMILAR TO CAVC PROCESS:

- No new evidence may be submitted
- Opposing counsel is assigned from the Department of Justice
- Decisions at Federal Circuit DO establish precedent
- Oral Argument, get to argue case before the judge panel

TO APPEAL

- File Petition to Supreme Court

Appeals Process:

United States Supreme Court

PETITIONS FOR THE COURT TO REVIEW THE CASE:

- U.S. Supreme Court does NOT have to take up the case
- No new evidence
- Typically arguing for a change in the law, or how it is applied
- Set's precedent all must follow

TO APPEAL:

Decisions CANNOT be appealed. FINAL.

HEARINGS: DRO & BVA

IN GENERAL:

- Gives veteran and representative an opportunity to discuss case with next decision maker
- Testimony “under oath”
- Argue for new exams
- Vet becomes a “real live” person to DRO/VLJ
- Helps to develop rapport with DROs and VA staff

WHAT TO EXPECT

- VERY informal; non-adversarial
- Informal/Formal DRO Hearings
- BVA: Travel Board, Video Conference, D.C.

SETTING EXPECTATIONS

2015 BOARD REPORT TO CONGRESS

The average length of time between the filing of an appeal (*i.e.*, *Substantive Appeal (VA Form 9)*) at the AOJ and the Board's disposition of the appeal was 1,029 days in FY 2015.

"The Board received 52,509 appeals in FY 2015. As VBA has become more efficient at processing claims through its transformation efforts, the Board is receiving an increase in appeals proportionate to VBA's higher output in claims decisions."

Time Interval	Responsible Party	Average Elapsed Processing Time	
Notice of Disagreement Receipt to Statement of the Case	VBA	419 days	} AOJ
Statement of the Case Issuance to Substantive Appeal (VA Form 9) Receipt	Appellant	39 days	
Substantive Appeal Receipt to Certification of Appeal	VBA	537 days	
Certification of Appeal to Board Receipt of Certified Appeal	Board	222 days	} Board
Receipt of Certified Appeal to Issuance of Board Decision*	Board	270 days	
Average Remand Time Factor	VBA	255 days	} AOJ

THINGS TO CONSIDER

SHOULD YOU TAKE THE CASE UP TO THE BVA?

Board of Veterans' Appeals Board Dispositions by VA Program FY 2015										
APPEAL PROGRAM	ALLOWED		REMANDED		DENIED		OTHER		TOTAL	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Burial Benefits	8	8.08%	23	23.23%	68	68.69%	0	0.00%	99	0.18%
Compensation	16,633	31.80%	24,619	47.07%	9,299	17.78%	1,753	3.35%	52,304	93.88%

For compensation claims: Only 17.78% of cases are denied, meaning the BVA upheld the RO's decision. 31.8% of cases are overturned (allowed) and 47.07% of cases are sent back to the RO for further development or correction.

ADDITIONAL RESOURCES:

Case Specific Questions (for VSO):

Mark R. Lippman (mlippman@veteranslaw.com)

Amanda L. Mineer (amineer@veteranslaw.com)

Case Referrals (for veterans):

<http://www.veteranslaw.com/consultation-request>

Toll Free: (888) 811 - 0523

General Resources:

<http://www.veteranslaw.com/>

CLICK HERE FOR:

[VSO/VSR RESOURCE CENTER](#)

VLG

THE VETERANS LAW GROUP