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# Understanding VA (legacy & new AMA) Appeals

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# TODAY'S COVERAGE

## INFORMATION:

1. New Appeals Process - AMA
2. Legacy Appeals – still active
3. RAMP Program
4. Appeals Decision Points

## Q&A:

Submit questions to [Amanda@VeteransLaw.com](mailto:Amanda@VeteransLaw.com)

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# “CHAIN OF COMMAND”

1. VA REGIONAL OFFICE (“VBA”)



2. BOARD OF VETERANS APPEALS (“BVA”)



3. COURT OF APPEALS FOR VETERANS CLAIMS (“CAVC”)



4. FEDERAL CIRCUIT COURT OF APPEALS



5. UNITED STATES SUPREME COURT

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# Veteran Appeals Improvement and Modernization Act of 2017

- Revamped the entire VA Appeals Process
- Pre-Launched in 2017-2018 under RAMP (Rapid Appeals Modernization Program)
- Did not close down old appeals program (“Legacy Appeals”)

# Legacy Appeals v. New Appeals System

- Both Appeals Systems are still Active
- Legacy refers to all appeals filed prior to New Appeals System launching February 19, 2019
- Legacy Appeals will STAY in the old system unless/until the veteran chooses to opt-in to New Appeals
- All appeals for decisions on/after Feb 19, 2019 are in the new appeals system

Appeals Modernization Act –  
New Appeals process –  
Effective Feb 19, 2019

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# Real Life Scenario

- Veteran filed a claim for PTSD and Low Back on December 6, 2018
- On February 28, 2019 Veteran received a rating decision that granted the veterans PTSD at a 30% rating and low back at 20% rating effective December 6, 2018.

- Veteran has an overall rating of 40% (VA math)

<https://www.benefits.va.gov/compensation/rates-index.asp#combinedRatingsTable1>

- Veteran wants to appeal his 30% PTSD rating

# Appeals Modernization Act – New Appeals – Effective Feb 19, 2019

Upon Receiving an initial rating decision, the veteran has 3 options to obtain a higher rating:

1. Higher Level Review Lane
2. Supplemental Claim Lane
3. File a Appeal to the Board

**MUST APPEAL WITHIN ONE YEAR OF DECISION**

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# Higher Level Review Lane

- More experienced adjudicator provides a second look at same evidence
- It is a de novo review
- Option for a One-Time informal teleconference with “Higher Level Reviewer”
  - If selected VA will only try to reach Veteran or rep 2x (MUST include rep info or they will call Vet)
- Can request the same RO conduct HRL, otherwise will go to another RO

# Higher Level Review Lane

- NO new evidence can be submitted
- New decision will be rendered, which can be appealed to another lane
- If HLR finds a duty to assist error, can move the case to Supplement Claim Lane
- To file a request a HRL, complete VA form 20-0996

# Supplemental Claim Lane

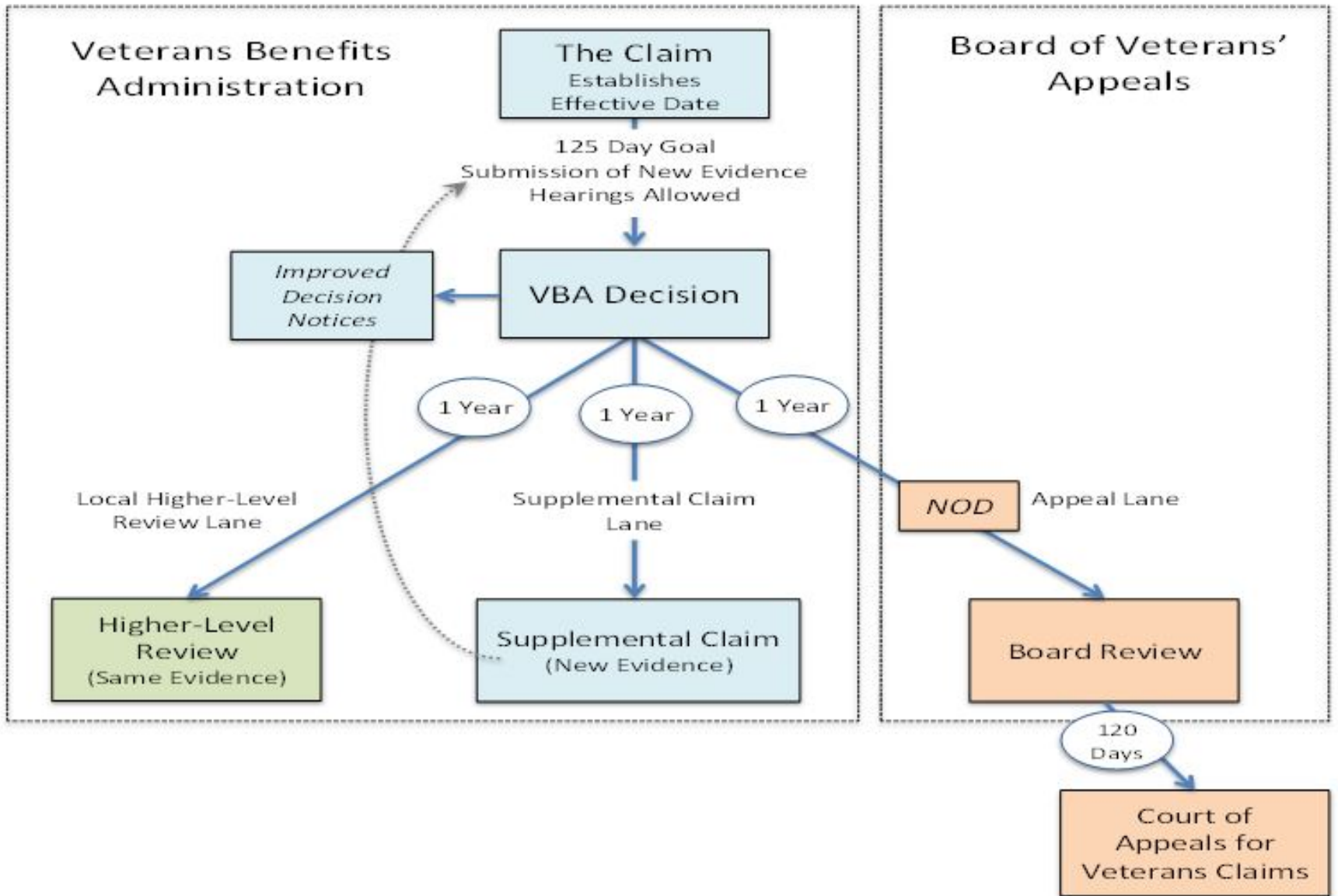
- Ability to submit new evidence
- VA will readjudicate if there is “new and relevant” evidence  
(replaces “new and material” standard)
- Adjudicator is the same level as initial decision maker (i.e. “Rater”)

# Supplemental Claim Lane

- Duty to Assist applies – VA assists in gather new and relevant evidence
- New decision is issued, which can be appealed to another lane
- To file a request a Supplemental Claim, complete VA form 20-0995

# Real Life Scenario

- Veteran received a rating decision dated Feb 28, 2019
  - 30% PTSD effective December 6, 2018
- Veteran wants to appeal his 30% PTSD rating
- Higher Level Review?
  - Review the C&P exam, see if it supports higher rating
- Supplemental Claim?
  - Submit evidence from private doctor, IME, C&P exam inadequate?
- Appeal to the Board?



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# Appeal to Board Lane (“Appeal”)

- **Complete an Notice of Disagreement** (VA form 10128) & choose a docket
- **Three Dockets at the Board**
  - **Direct Docket:** No new evidence, no hearing. Goal for VA is to have decisions within 365 days of appeal.
  - **Evidence Docket:** Additional evidence can be submitted within 90 days of NOD
  - **Hearing Docket:** new evidence submitted within 90 days of NOD and a hearing will be scheduled before VLJ

# New Appeals Flow Chart

## Evidence Only Docket

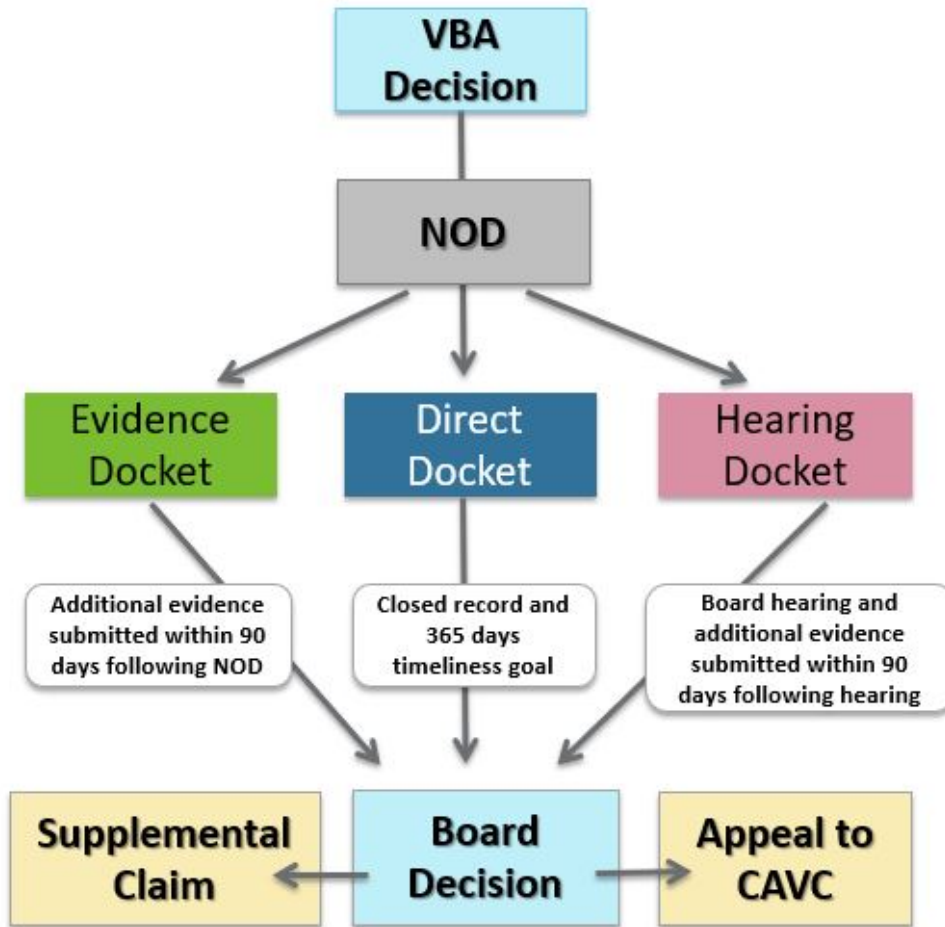
When this option is selected on the NOD, the appellant may submit evidence within the 90 day window following submission of the NOD.

## Hearing Docket

When this option is selected on the NOD, the appellant will be scheduled for a Board hearing. Additionally, the appellant may submit evidence within the 90 day window following the scheduled hearing.

## Direct Docket

When this option is selected on the NOD, the appellant receives direct review by the Board of the evidence that was before the AOJ in the decision on appeal. VA has established a 365-day timeliness goal for the Direct Docket.





# One of the Biggest Changes

- Veteran can submit new and relevant evidence within one year of ANY decision and VA will readjudicate.
- This goes for a Rating Decision, Board Decision or CAVC Decision
- Veteran keeps original effective date

# Also a Big Change

- Under new appeals, the adjudicator will include in RD the applicable law and favorable findings
- Favorable findings of fact cannot be overturned by a subsequent adjudicator unless clear error.
- Example, adjudicator finds the stressor credible

## Of Note: Directly from the VA

- Veterans can only pursue one lane at a time on each issue
- If veteran chooses one lane and changes his/her mind, can switch lanes
- Under RAMP, Veterans had to move ALL issues into one lane, no longer.

# Of Note: Directly from the VA

- No limit to # of times a Veteran may pursue a claimed issue in any given lane
- Effective date is protected as long as Veteran pursues the issue in any lane or submits new evidence within 1 year of decision
- Duty to Assist applies only to initial claims and the supplemental claim lane.

# VA's "Pitch" for Benefits of New Appeals

## **New framework provides:**

- Understandable process.
- Multiple options for Veterans instead of one.
- Improved notice as to which option might be best.
- Early resolution of disagreements.
- Each lane with a clearly defined start/end point.
- Higher-Level Review and Appeal lanes provide quality feedback to VBA.
- Workload transparency for better workload/resource projections.
- VBA as claims agency, Board as appeals agency.
- Efficient use of resources for long-term savings.

# Rapid Appeals Modernization Program ("RAMP")

- System to test out and implement the new appeals process
- Started in November 2017, dissolved upon launch of new appeals system
- If a case comes to you that was decided under RAMP, it is part of NEW Appeals system, even if before February 19, 2019

# Legacy Appeals

Cases Decided Prior to February  
19, 2019 unless was decided  
under RAMP

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# Legacy Appeals

Three Approaches to Contesting a VA Decision:

1. Reconsideration – Not an appeal
2. Decision Review Officer (DRO) Review Process
3. Traditional Appellant Review Process



# RECONSIDERATION

## NOT an appeal:

- Typically need new evidence OR
- There was an administrative or inaccurate application of law
- Submit 4138 with \*\*\*Motion for Reconsideration\*\*\* and attach new evidence or argument

## New Decision will be Issued by Rater:

- New Evidence must be “New and Material”
- WARNING: Monitor your 1 year deadline for filing Appeal

# DECISION OFFICER REVIEW

## De Novo Review:

- Taking a “second look” at the evidence and rendering a “new” independent decision.
- No weight given to the initial decision

## During the de novo review process you can:

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

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# Real Life Scenario

- Veteran received a rating decision dated July, 18 2018
  - 30% PTSD effective February 28, 2018
- Veteran wants to appeal his 30% PTSD rating
- File Notice of Disagreement w/ DRO Review?
  - Challenge C&P exam, get IME, submit private records?
- File Notice of Disagreement w/ Traditional Review?

# DRO DECISION

## RATING DECISION (RD)

- Considered a Grant on Appeal
- May grant service connection, higher percentage or earlier effective date
- **To Appeal:** File Notice of Disagreement

## 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)

# BOARD OF VETERANS' APPEALS (BVA/BOARD)

## 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
- Submit additional evidence with waiver (legacy)
- Under new system, new evidence or hearing requests are handled under different dockets

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# BOARD OF VETERANS' APPEALS (BVA/BOARD)

## VERY LITTLE DEVELOPMENT

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

## Submit evidence w/ Waiver (legacy appeals)

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

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# BOARD OF VETERANS' APPEALS (BVA/BOARD)

## BVA DECISION

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

BVA decisions are NOT precedent, but can be helpful to persuade other adjudicators

# BOARD OF VETERANS' APPEALS (BVA/BOARD)

## APPEALING A 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

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# New Appeals v. Legacy Appeals

- Anything from a Board Decision up the Appeal chain will remain same whether in New or Legacy Appeals system
- Exception: Under New Appeals you can submit New and Relevant evidence within one year of decision and hold your effective date

# COURT OF APPEALS FOR VETERANS' CLAIMS (CAVC)

## JUDGE REVIEWS THE 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 IS SUBMITTED
- Representatives must be certified to practice before CAVC, separate from accreditation

# COURT OF APPEALS FOR VETERANS' CLAIMS (CAVC)

## JUDGE'S DECISION:

- Affirming (uphold)
- Reverse (overturn)
- Vacate (set aside)
- Remand (send back)
- Dismiss

## TO APPEAL:

- File Notice of Appeal to Federal Circuit

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# FEDERAL CIRCUIT COURT OF APPEALS

## Similar to CAVC Process

- No new evidence
- 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 Notice of Appeal to Supreme Court

# UNITED STATES SUPREME COURT

## Petition 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

## NO APPEAL:

- Talk to your congressman 😊

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# APPEALS DECISION POINTS:

## RECEIVE A RATING DECISION:

1. Grant or Denial
2. If grant for service connection, % (individual and overall)
3. Effective Date

ALL OF WHICH ARE APPEALABLE

## WHAT'S NEXT?

Is this case in the old legacy appeals system or new appeals?

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# APPEALS DECISION POINTS:

DECISION WAS MADE PRIOR TO Feb 19, 2019 & was NOT RAMP:

1. First, is this an administrative error or can it be resolved by a Reconsideration?
2. Within one year from Notification Letter, File Appeal
  - If decision for service connection – MUST appeal on Notice of Disagreement Form 21-0958
  - All other issues can appeal on 4138 or just a letter
3. Determine DRO Process or Traditional Process
4. Option to request a hearing with DRO
5. Option to get into new appeals? Only after SOC/SSOC

# APPEALS DECISION POINTS:

DECISION WAS MADE AFTER Feb 2019 OR UNDER RAMP:

1. Determine which lane to opt into:
  - HLR, SC, NOD?
2. Is New Evidence Needed?
3. Would a Hearing be helpful?

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# HEARINGS: DRO/HLR AND BVA

## Generally:

- Gives veteran and representative an opportunity to discuss case with next decision maker
- Testimony “under oath” (legacy appeals)
- Argue for new exams
- Vet becomes a “real live” person to DRO/MLJ
- 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.

# Questions??

## FURTHER QUESTIONS:

Case Specific Questions:

Amanda L. Mineer ([Amanda@VeteransLaw.com](mailto:Amanda@VeteransLaw.com))

Case Referrals (for veterans):

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

Toll Free: (888) 811 - 0523

Check out our VSO Resource Center: <http://www.veteranslaw.com/>

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