

# IACVAC 2019 Annual Training and Conference



## Navigating the AMA

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# VA's Legacy Appeals Process

## VA CLAIM/APPEAL TIMELINE

VETERAN

VA (RO / BOARD)

**INTENT TO FILE** (Form 21-0966)



**FORMAL APPLICATION**

(Form 21-526, 21-526EZ, etc.)

Must submit within one year of Intent to File



**VCAA NOTICE LETTER**

Acknowledges receipt of claim,  
requests evidence



**DEVELOPMENT**

Obtains records, medical exam, hearing, etc.



**RATING DECISION**

Grants, denies, may defer some issues



# VA's Legacy Appeals Process

## VA CLAIM/APPEAL TIMELINE (p2)

### NOTICE OF DISAGREEMENT

(Form 21-0958) Must submit within one year of date |  
decision was sent. As of 9/2015, NOD form includes section for type  
of appeal (de novo review by DRO  
Or Traditional Appeal – sent to the Board)

Can also request a hearing, submit  
additional evidence

↓  
DRO CAN ISSUE A FAVORABLE DECISION OR  
STATEMENT OF THE CASE  
(or BOTH!)

↓  
SUBSTANTIVE APPEAL (VA Form 9)  
Must submit within 60 days of SOC

↓  
SUPPLEMENTAL SOC  
(If additional evidence is received after the SOC  
and AOJ consideration not waived)

↓  
APPEAL CERTIFIED TO BOARD  
(RO Sends Notice to Appellant)



# New VA Decision Review Process

## Veterans Benefits Administration

### The Claim

(Establishes Effective Date)

Duty to assist

### VBA Decision

(Improved Notice)

Choice and  
Control

### Higher-Level Review

Same Evidence  
125-Day Avg. Goal

### Supplemental Claim

New Evidence  
125-Day Avg. Goal

Duty to assist

## Board of Veterans' Appeals

### Appeal (NOD)

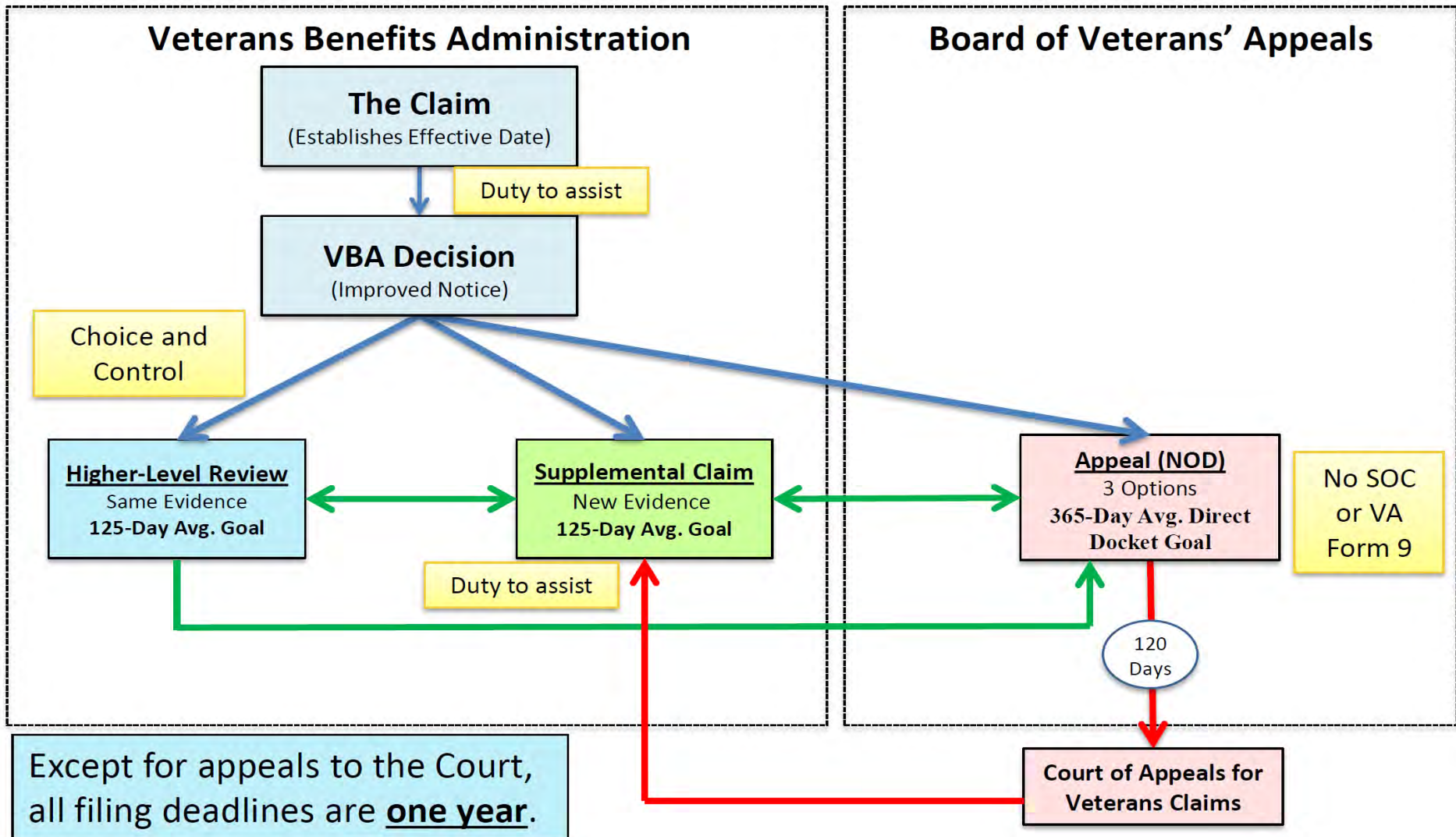
3 Options  
365-Day Avg. Direct  
Docket Goal

No SOC  
or VA  
Form 9

120  
Days

Court of Appeals for  
Veterans Claims

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



# ***What To Look For in New Decision Notices***

**Each Notice provided by VA under 38 U.S.C. § 5104(a) must include all of the following:**

- Identification of the issues adjudicated.
- A summary of the evidence considered.
- A summary of the applicable laws and regulations.
- Identification of findings favorable to the claimant.
- Identification of elements not satisfied leading to the denial.
- An explanation of how to obtain or access evidence used in making the decision.
- Identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.

# *Laying Out a Good NOD*

Laying out a good NOD (or supplemental claim, HLR, BVA Appeal)

- What exactly was claimed?
- Did VA's decision address each issue in the R&B section?
- Identify errors made in the decision

# *Laying Out a Good NOD*

## **What evidence is listed as reviewed?**

- Is everything there that you submitted with claim?
- Did VA obtain/add any more evidence between claim and decision (e.g. VA medical opinion, memo to file, JSRRC request)?
- You should access any added information on VBMS, print/save to file, and review for errors!

# *Laying Out a Good NOD*

Is ALL of the evidence actually addressed in the decision?

- What reasons does VA provide for how the evidence was evaluated? (e.g., why was one piece of evidence given more weight than another?)
- Did VA fulfill its duty to assist?
- What are the next steps?



# Which Form, When?

Notice letter with rating decision is dated **before** February 19, 2019

*If you disagree....*



- **Within one year of the notice letter:**
  - File VA Form 20-0995, Decision Review Request: Supplemental Claim; OR
  - VA Form 21-0958, Notice of Disagreement
- **After one year**



\*To request an increased rating **within or after** one year of the notice letter (due to worsening of the disability – *not* a disagreement with the initial rating), file VA Form 21-526EZ, Application for Disability Compensation.

Notice letter with rating decision is dated **on or after** February 19, 2019

*If you disagree....*



- **Within one year of the notice letter:**
  - VA Form 20-0995, Decision Review Request: Supplemental Claim;
  - VA Form 20-0996, Decision Review Request: Higher-Level Review; OR
  - VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement)
- **After one year of the notice letter:**
  - To reopen a previously denied claim file VA Form 20-0995, Decision Review Request: Supplemental Claim.
  - To request an increased rating, file VA Form 21-526EZ, Application for Disability Compensation\*
  - To file a new claim for a claim that has not previously been filed (or is not substantially similar to a previously-filed claim), file VA Form 21-526EZ.

# *Which Lane?*

## **Option 1: File Legacy NOD (ONLY if RD is dated BEFORE February 19, 2019)**

- Can file with or without new and relevant evidence
- Can add additional evidence
- Can have DRO review
- Can have RO hearing
- DTA applies

# *Which Lane?*

## **Option 2: File Supplemental Claim (for RD dated BEFORE OR AFTER February 19, 2019)**

- Must have new and relevant evidence to file (or identify evidence VA to gather)
- Can add additional evidence and argument
- Can have RO hearing
- DTA applies
- If appeal period for “legacy” RD still open, date of initial claim is preserved

# *Which Lane?*

## Option 3: File Higher Level Review (ONLY if RD is dated after February 19, 2019)

- Will not consider any evidence received after the prior decision notification date, i.e., record is closed
- Cannot have RO hearing but can have informal telephone conference (NOT the same as a hearing!)
- “The sole purpose of the optional telephone contact is to give you or your POA the opportunity to identify any errors of fact or law in the prior decision.”

# *Which Lane?*

## **Option 3: File Higher Level Review (continued)**

- May request HLR at either the same office that decided issue(s) or different office
- Can submit additional argument orally at informal conference
- But, NO official transcript like in a hearing – only “HLR Informal Conference Worksheet” which “summarizes the discussion...”

# *Which Lane?*

## Option 3: File Higher Level Review (continued)

- “VA may make up to two attempts to call you at the telephone number provided to VA to schedule your informal conference”
- What happens if you and the Veteran miss these phone calls????

# *Which Lane?*

## Option 3: File Higher Level Review (continued)

- “VA may make up to two attempts to call you at the telephone number provided to VA to schedule your informal conference”
- What happens if you and the Veteran miss these phone calls????
- “If VA is unable to reach you or your representative, the higher-level reviewer will move forward with completing your request for higher-level review and will issue a decision.”



# BVA Lanes

	Direct	Evidence	Hearing
When to choose	If you think a <b>mistake</b> was made.	If you have <b>new evidence</b> you want a Judge to consider.	If you want a <b>hearing</b> before a Judge.
What will happen	The Judge will review the same record and make a decision.  <b>No new evidence</b> will be added.	You will have <b>90 days</b> from your NOD to submit any new evidence.  The Judge will make a decision considering the evidence you provided.	You will be placed on a list for a hearing before a Judge by videoconference (or in DC).  After your hearing you will have <b>90 days</b> to submit new evidence.  The Judge will make decision considering the hearing and the evidence you provided.
How long	<b>365 days</b> (on average)	<b>Over 365 days</b>	Based on availability. Currently the Board has 98 Judges. There are approximately 67,000 Veterans waiting for hearings.



# ***Which Lane?***

**Option 4a: File BVA Direct Docket (ONLY if RD is dated after February 19, 2019 OR SOC/SSOC has been issued)**

- Cannot submit any additional evidence
- Can submit additional argument in writing
- Can switch to evidence or hearing lane (within 60 days of submission or 1 yr of decision)
- Can opt out of BVA lanes completely and return to RO via Supplemental Claim lane; must notify BVA

# *Which Lane?*

**Option 4b: File BVA Evidence Docket (ONLY if RD is dated after February 19, 2019 OR SOC/SSOC\* has been issued)**

- Can add add'l evidence but must do so within 90 days of filing (hard deadline)
- Can switch to direct docket or hearing lane so long as no evidence submitted previously (within 60 days)
- Must notify BVA of lane change

\* Time limit to file from SOC/SSOC is 60 days/30 days

# *Board Appeal FAQs*

How do I...?		When?
Change review options at the Board	Fill out a new Board Appeal form. Make sure you check the box for the new review option, and list all of the issues.	To change the lane elected at the Board, you have <b>1 year</b> from the date on the decision, <u>or</u> 60 days from the date that you submitted your Board Appeal, whichever is later.
Request different Board review options for different issues	You can submit one Board Appeal form and attach additional pages to explain how you want your issues reviewed, <u>or</u> you can submit multiple Board Appeal forms – one for each review option.	You have <b>1 year</b> from the date on your decision to file an appeal at the Board.
Change review options from Board Appeal to Supplemental Claim or Higher-Level Review	Tell the Board – in writing – that you wish to withdraw your Board Appeal. File a Supplemental Claim or Higher-Level Review with the local VA office that issued the last decision.	You have <b>1 year</b> from the date on your decision to request to appeal. You need to withdraw your Board Appeal before you can request a different type of review.

# *Hypothetical # 1*

- Jan 2017, VA denied Veteran's service-connection claim for bladder cancer due to CLCW; he tossed decision in drawer and did not appeal.
- He wants to refile for bladder cancer because his neighbor keeps raving about VA's new claims process
- What lane do you choose and which VA form do you use?
- What do you submit as new and relevant evidence?

## *Hypothetical # 2*

- March 2017, VA granted Veteran's service-connection claim for bladder cancer due to CLCW, assigned 0% because cancer in remission.
- Jan 2019, Veteran wants to file for an increased rating because bladder cancer is active again
- What lane do you choose and which VA form do you use?
- What do you submit as new and relevant evidence?

## *Hypothetical # 3*

- October 2018, Veteran opted into RAMP's higher-level review because his service-connection claim for PTSD was denied despite proof of combat and excellent MNO.
- Dec 2018, HLR decision confirms denial.
- What lane do you choose and which VA form to use? By when must you file?
- What do you submit as new and relevant evidence?

## *Hypothetical # 4*

- Boots-on-ground Vietnam Veteran, diagnosed with DMII at VAMC in 2017.
- March 2019 Decision denied claim because “no proof of diagnosed condition.”
- What lane do you choose and which VA form do you use? By when must you file?
- What do you submit as new and relevant evidence?

## *Hypothetical # 5*

- March 20, 2018: VA denies service-connection for IHD, DMII, prostate cancer for BWN Veteran.
- March 4, 2019: Veteran's POA files 21-0958 NOD.
- April 10, 2019: VA letter "we received correspondence that you would like us to review a claim we previously denied. VA regulations require you to file this request on the proper form. We will take no further action until you submit the proper form."
- What do you do?



# *Hypothetical # 6*

- June 20, 2016: Veteran files 21-526EZ for CAD due to herbicide exposure at Thailand AFB.
- Sept 4, 2017: VA denies claim.
- Sept 1, 2018: Veteran files VA Form 21-0958 NOD and requests DRO review.
- Crickets (still waiting for a VA decision).....
- Sept. 15, 2019: Veteran comes to VSO, raves about friends getting speedy grants thru AMA and wants the VSO to file either 20-0995 or 10182 to BVA.
- Which one do you file?

# Questions?

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