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
Department Organization

* 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.
Problem: Complex Current Appeal Process

The current VA appeal process, set in law, is complex, non-linear, and unlike other standard appeals processes across Federal agencies and judicial systems.

- **Too long** – No defined endpoint or timeframe.
  - On average, Veterans are waiting 3 years for a resolution on their appeals.
  - For those appeals that were decided by the Board of Veterans Appeals in FY2016, on average, Veterans waited at least 7 years from filing their NOD until the Board decision issued that year.

- **Too complex** – Process is hard to understand, contains too many steps, and difficult to explain to Veterans.
  - Splits jurisdiction between VBA and the Board – accountability does not rest with one appellate body. Also creates inherent competition for resources within VBA to process both claims and appeals.
  - Features an open record and ongoing duty to assist – Continuous evidence gathering and readjudication prolongs the ability to reach a final decision.
The number of pending appeals has grown 350% from 100,000 in FY2001 to 450,000 in FY2017.
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.

VBA

Rating Decision

Notice of Disagreement

Decision

INFORMAL CONFERENCE with Veteran and/or VSO

FORMAL HEARING if requested

Decision Review Officer/De Novo Option selected

PREPARE CASE for BVA Review & Certify

STATEMENT OF CASE (SOC)

An SOC is a readjudication of the appeal by VBA.

AWARD Action

Satisfied?

Yes

No

Award Action

Satisfied?

Yes

No

New Evidence Received?

Yes

Can occur at any time in the process.

PARTIAL GRANT with good potential for appeal resolution

Contact with VSO or Veteran for resolution

Award Action

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

Award Action

AWARD Action

Appeal Closed

No

FORMAL APPEAL (VSA Form 9)

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 (62% of FY16 Board decisions included a remand for at least one issue. Remands occur as often as development is required, including when evidence has been received since last SSOC)

Full Grant of Benefits Sought

Partial Grant of Benefits Sought

CASE REQUIRES DEVELOPMENT

Remand to Appeals Management Office (62% of FY16 Board decisions included a remand for at least one issue. Remands occur as often as development is required, including when evidence has been received since last SSOC)

Appeal to Court of Appeals for Veterans Claims

REMAND by Court of Appeals for Veterans Claims

The Court remanded 37.7% of appeals to the Board in FY16. Most remands are for additional development and readjudication.

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, at which time the AMO will complete an SSOC.

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

KEY

Veteran Decision Point

Duty to Assist

Count Remand

Choose VA

VA

U.S. Department of Veterans Affairs
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 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.
# 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>
</tbody>
</table>
| • VA will readjudicate a claim if “**new and relevant**” evidence is presented or identified with a supplemental claim (**open record**)  
• VA will assist in gathering new and relevant evidence (**duty to assist**)  
• Effective date for benefits always protected (submitted within 1 year of decision)  | • More experienced VA employee takes a second look at the same evidence (**closed record and no duty to assist**)  
• Option for a one-time telephonic **informal conference** with the higher-level reviewer to discuss the error in the prior decision  
• *De novo* review with full difference of opinion authority  
• Duty to assist errors returned to lower-level for correction (**quality feedback**)  | • **Direct docket:** Closed record and 365-day average processing time goal  
• **Evidence only docket:** Additional evidence submitted within 90 days following NOD  
• **Hearing docket:** Board hearing and additional evidence submitted within 90 days following hearing  |
## 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>VA will help you gather the evidence.</td>
<td>If your claim needs <strong>new evidence</strong>.</td>
<td>If you don’t need new evidence, but think a <strong>mistake</strong> was made.</td>
</tr>
<tr>
<td>A new decision will be made looking at the new evidence.</td>
<td>A <strong>higher-trained</strong> VBA employee will review your claim and make a new decision.</td>
<td><strong>No new evidence</strong> will be added.</td>
</tr>
<tr>
<td>How long</td>
<td><strong>125 days</strong> (on average)</td>
<td><strong>125 days</strong> (on average)</td>
</tr>
</tbody>
</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>

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

<table>
<thead>
<tr>
<th>How long</th>
<th>Direct</th>
<th>Evidence</th>
<th>Hearing</th>
</tr>
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<tbody>
<tr>
<td><strong>365 days</strong> (on average)</td>
<td></td>
<td><strong>Over 365 days</strong></td>
<td>Based on availability. Currently the Board has 95 Judges. There are 78,000 Veterans waiting for hearings.</td>
</tr>
</tbody>
</table>

Choose VA

U.S. Department of Veterans Affairs
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
New Process: Overview

• **Multiple options for Veterans/representatives**
  - Use one lane at a time for a claimed issue
  - Choosing one lane does not prevent the Veteran/representative from choosing a different lane after a decision
  - No limits to the number of times a Veteran may pursue a claimed issue in any of the lanes

• **Protected effective date for benefits** – For Veterans pursuing the same claimed issue in any of the lanes within one year

• **Duty to assist and open record** – In the Supplemental Claim Lane only, not the Higher-Level Review or Appeal Lanes

• **Higher-Level Review** – *De novo* review with full difference of opinion authority; replaces current DRO review process
New Process: Benefits

New process provides:

• Understandable decision review system
• Multiple review options instead of one
• Improved notice about the reasons for VA’s decision and available decision review options
• Early resolution of disagreements
• Each lane with a clearly defined start/end point
• Higher-Level Review and Appeal lanes provide quality feedback to VBA
• VBA as claims agency, Board as appeals agency
• Efficient use of VA’s and representatives’ resources for long-term savings and improved service for Veterans
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
65,342

RAMP Lane Choices
HLR – 61%
Supp – 39%

NOD to Opt-in Days (Avg.)
746 Days

Average Days to Complete
111 Days

Retroactive Benefits Awarded
$ 91,414,215

Claim Grant Rate
Total – 27%
HLR – 27%
Supp – 29%

* All data shown as of October 15, 2018
The Board began adjudicating RAMP appeals on October 1st

- Once Veterans receive a decision under the RAMP supplemental claim or higher-level review lanes, they 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 October 16, 2018, the Board has received 487 appeals (NODs) of RAMP decisions.
- Starting October 1st, the Board began adjudicating the first of these appeals in a phased implementation to test processes and technology.
  - The Board’s phased approach to RAMP allows 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.
RAMP Selection Form

STATEMENT IN SUPPORT OF CLAIM

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, 2018, at which time you will have to follow the new application requirements outlined in the RAMP appeals system. Filing instructions will be available at https://www.benefits.va.gov/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 of review for 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)

Signature: ________________________
Date: ________________________

Address: ________________________
Telephone Numbers (Include Area Code)
Daytime: ________________________
Evening: ________________________

Penalty: The law provides severer penalties which include fine or imprisonment, or both, for the willful submission of any untrue or evidence of a material fact, knowing it to be false.

VA FORM 21-4138
SUPERSEDES VA FORM 21-4138, AUG 2011, WHICH WILL NOT BE USED.

CONTINUE ON REVERSE

VA FORM 21-4138, JAN 2015

Choose VA

U.S. Department of Veterans Affairs

20
Priority to Advanced on the Docket on all dockets.

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<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>
</tr>
</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 95 VLJs.

** Hearings for appeals of RAMP decisions will not be scheduled until after February 2019.
• Board’s webpage:
  https://www.bva.va.gov/
• VBA’s AMA information:
  https://www.benefits.va.gov/benefits/appeals.asp
• Vets.gov appeals status tracker:
  https://www.vets.gov/?next=%2Ftrack-claims
• Reports to Congress on the status of implementation of AMA:
  https://benefits.va.gov/benefits/appeals-reports.asp