Writing Better Appeals - the Notice of Disagreement & Substantive Appeal

ANGELA K. DRAKE, DIRECTOR
CONNOR SMITH, J. D. CANDIDATE 2019
UNIVERSITY OF MISSOURI SCHOOL OF LAW
VETERANS CLINIC
Introduction

- Let’s get a broad overview of the process as it currently exists
- **Note** – it will be changing in February 2019 as a result of the Veterans Appeals Improvement & Modernization Act
- **Forms currently in place:** “NOD” and “Form 9”
- Using the process chart prepared by the Board of Veterans Appeals, we see...
Life Cycle of a VA Appeal

**VBA** *98% of appeals arise from VBA <2% of appeals arise from VBA, NCA, OGC, Other*

**CLAIMS**
- Claim
- VA Decision

**APPEALS PROCESSING**
- NOD
- SOC
- Form 9
- SSOC

**BOARD**
- Veteran
- Board Hearing

**APPEALS DECISION**
- Board Decision
- Hearing are scheduled after the appeal is certified to the Board.
- Certification to Board
- Appeal Docketed at Board using VA Form 9 filing date

**VETERAN**
- Veteran

**COURTS**
- Federal Circuit Court
- U.S. Supreme Court

**Veteran**
- Has ONE YEAR to file NOD
- Veteran has 60 DAYS to file Form 9

**VBA AMO** (Appeals Management Office) or VA Regional Office
- Optional Board Hearing Request

**Veteran Issues Initial VA Rating Decision**
- Veteran Submits Rating Decision (Notice of Disagreement) Informal Appeal
- Veteran Submits SOC (Statement of the Case) Informal Appeal Decision

**VBA Issues SOC (Substantive Appeal) Formal Appeal**
- Veteran Submits VA Form 9 (Substantive Appeal) 1st, 2nd, 3rd, etc. Appeal Decision(s)
- VBA Issues SSOC (Supplemental Statement of the Case) 1st, 2nd, 3rd, etc. Appeal Decision(s)

**Board Issues Final Decision**
- By Law, Board Must Decide Appeals in Docket Order.

**Veteran Submits Claim**
- 1,287K C&P Rating Receipts
- 1,273K Rating Production
- 161,236 NODs Received
- 16,6% of Rating Production
- 64,501 Formal Appeals Filed
- 5.1% of Rating Production

**VBA**
- 86,836 Appeals Received & Docketed by Board
- 13,535 Board Hearings Held

**Veteran Receives Final Decision: Grant or Denial**
- 52,011 Board Decisions
- 16,544 Allowed (31.8%)
- 9,384 Denied (18.0%)
- 23,926 Remanded (46.0%)
- 2,157 Other (4.1%)

**COURTS**
- Federal Circuit Court
- U.S. Supreme Court

**Veteran**
- Board Remands
- Veteran

**Average Timeframes**
- Average 480 days
- AVERAGE 644 DAYS
- Average 288 days
- Average 248 days

**12-22-16 Board of Veterans’ Appeals (Board)**
**FY 2016**

**1,287K C&P Rating Receipts**
**1,273K Rating Production**
**161,236 NODs Received**
**16.6% of Rating Production**
**64,501 Formal Appeals Filed**
**5.1% of Rating Production**

**86,836 Appeals Received & Docketed by Board**
**13,535 Board Hearings Held**

**52,011 Board Decisions**
- 16,544 Allowed (31.8%)
- 9,384 Denied (18.0%)
- 23,926 Remanded (46.0%)
- 2,157 Other (4.1%)

**TBD Filings at the CAVC**
**3,194 Appeals Remanded to Board**
VBA* 98% of appeals arise from VBA
<2% of appeals arise from VBA, NCA, OGC, Other

APPEALS PROCESSING

NOD
Veteran has ONE YEAR to file NOD

SOC
Veteran has 60 DAYS to file Form 9
Form 9

Optional
Board Hearing Request

SSOC
Generally required with new evidence

VBA AMO (Appeals Management Office) or VA Regional Office

AVERAGE 480 DAYS* *ORIGINAL APPEALS ONLY

AVERAGE 644 DAYS*

Veteran Submits NOD (Notice of Disagreement)
Informal Appeal

VBA Issues SOC (Statement of the Case)
Informal Appeal Decision

VBA Submits VA Form 9 (Substantive Appeal)
Formal Appeal

VBA Issues SSOC (Supplemental Statement of the Case)
1st, 2nd, 3rd, etc. Appeal Decision(s)

161,236 NODs Received
16.6% of Rating Production

64,501 Formal Appeals Filed
5.1% of Rating Production
The Process Begins...

with the **Rating Decision**, which will look like this...
January 16, 2018

We made a decision on your VA benefits.

Dear [Name],

This letter will guide you through the information you should know and steps you may take now that VA has made a decision about your benefits.

Your benefit information:

- Service connection for bilateral hearing loss is denied.

Your monthly entitlement amount is shown below:

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<thead>
<tr>
<th>Monthly Entitlement Amount</th>
<th>Payment Start Date</th>
<th>Reason</th>
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<td>$255.00</td>
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<td>$258.83</td>
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<td>Dec 1, 2014</td>
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<td>$264.02</td>
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<td>Cost of Living Adjustment</td>
</tr>
<tr>
<td>$269.30</td>
<td>Dec 1, 2017</td>
<td>Cost of Living Adjustment</td>
</tr>
</tbody>
</table>

Your current benefit payment will continue unchanged.

See Explanation of Payment for more details about your payment.
Evidence Considered

In making our decision, in addition to the evidence listed in the Rating Decision, we considered the following evidence:

- Section (§) 5103 Notice, dated November 29, 2017, no response received from Veteran
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, November 15, 2017
- Service Treatment Records, from May 24, 1954, to June 13, 1957, dated August 20, 1957
- DD Form 214, Certificate of Release or Discharge from Active Duty, from May 24, 1954 through June 13, 1957, received on July 08, 1957
- Copy of MOS listings, received on November 15, 2017
- VAMC Columbia audiogram completed on January 21, 2016, received on November 15, 2017
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received December 21, 2016
Please Take Action: Accept, Appeal, and/or Ask for Help about Other Choices

If you disagree with our decision:

This decision notice explains why we made this decision about your benefits. If you disagree with the decision and would like to appeal it, you must complete and return a Notice of Disagreement, VA Form 21-0958, by January 16, 2019, one year from the date of this notice.

The enclosed VA Form 4107 explains your right to appeal our decision.

Your accredited representative can help you decide your next step.
Look for the...

“Ratings Decision”
with the seal
INTRODUCTION
The records reflect that you are a veteran of the Korean Conflict Era and Peacetime. You served in the Marine Corps from May 24, 1954, to June 13, 1957. You filed a new claim for benefits that was received on November 15, 2017. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION
Service connection for bilateral hearing loss is denied.

EVIDENCE
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, November 15, 2017
- VA Form 21-0966, Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC, received December 21, 2016
- VA Form 21-4138, Statement in Support of Claim, received November 15, 2017
- Columbia Missouri VAMC (Veterans Affairs Medical Center) treatment records, from
INTRODUCTION

The records reflect that you are a veteran of the Korean Conflict Era and Peacetime. You served in the Marine Corps from May 24, 1954, to June 13, 1957. You filed a new claim for benefits that was received on November 15, 2017. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

Service connection for bilateral hearing loss is denied.
REASONS FOR DECISION

Service connection for bilateral hearing loss.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service. Service connection for bilateral hearing loss is denied because we received notification from LHI that you refused examination on December 08, 2017.

Review of your VA medical records, service treatment records, show diagnosis and treatment for hearing loss. However, there is no current exam and/or medical opinion. Based on your claim we requested an examination for current hearing loss and medical opinion. As you refused LHI hearing loss examination, there is no current examination and medical opinion for hearing loss to determine if your condition is related to military service.

Service connection for bilateral hearing loss is denied.
Remember

YOU HAVE ONE YEAR FROM THE DATE OF THE LETTER TO SEND THE “NOD”!

Unless your rating decision decides a simultaneously contested claim: 60 days
Writing Style for NODs & Form 9s

- Remember your audience
- This is not a cert petition → “spoon feed” it
- Adjudicators are extremely pressed for time
- Put exhibits together & wrap it with a bow
  - Think of jigsaw puzzles or connect the dots
Writing Style for NODs & Form 9s

Keep it short, simple, & to the point

- Address the key evidence
- Address the key regulation
- Discuss Adjudication Manual if appropriate
- Tie the evidence to the regulation succinctly
- Minimize use of case law
- No footnotes
- Use headings
Writing Style for NODs & Form 9s

- Attach tabbed & highlighted exhibits
- Bates stamp attachments
- Be critical in checking boxes
  - i.e., effective date & evaluation of disability
Fax Cover Letter for NOD
Centralized Intake Coversheet

To: Department of Veterans Affairs Claims Intake Center
PO BOX 4444, Janesville, WI 53547-4444
Fax: 844-531-7818

- Claimant Last Name: Smith
- Claimant First Name: Jane
- Claimant C-File #: XXXXXXXX
- Claimant Zip Code: 53501
- VSO Contact Email: POA/Representative Angela K. Drake, Esq. drakea@missouri.edu
- Fax Date (MM/DD/YYYY – if applicable): 1/18/2018
- # of Pages to Include Coversheet: 48

Emergent Claim Categories (if applicable)
- "TERM" Terminally ill claimants
- "SERV" Veterans seriously injured in service but not in receipt of benefits
- "FINH" Claimants suffering from extreme financial hardship
- "FPOW" Former prisoners of war and their survivors
- "HOME" Homeless Veterans
- "SUCI" Suicidal claimants
- "ALS" Diagnosis with Amyotrophic Lateral Sclerosis (ALS) or Lou Gehrig's Disease
- "AGE" Greater than 85 years of age
- "HONR" Awarded the Medal of Honor
- Visually Impaired Veteran

List Forms Included:
- 00381 VA 21-0781 Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD)
- 00111 VA 21-2680 Request for Aid and Attendance / Housebound Status
- 00115 VA 21-4138 Statement In Support of Claim
- 00386 VA 21-4140-1 Employment Questionnaire
- 00131 VA 21-526 Veterans Application for Compensation
- 00532 VA 21-526b, Veteran Supplemental Claim
- 00533 VA 21-526EZ, Fully Developed Claim (Compensation)
- 00142 VA 21-674 Request for Approval of School Attendance
- 00148 VA 21-686c Declaration of Status of Dependents
- 00158 VA 21-8940 Veteran's Application for Increased Compensation Based of Unemployability
- 00173 VA 572 Request for Change of Address / Cancellation
- 00420 DD 214 Certified Original - Certificate of Release
- 00025 Birth Certificate
- 00091 Divorce Decree
- 00061 Marriage Certificate / License
- Other: VA 21-0958 Notice of Disagreement

IMPORTANT: Verify on Fax Confirmation Sheet the Claims Evidence is sent to 844-531-7818

Disclaimer: VA Directive 6609, “Mailing of Sensitive Personal Information,” dated May 20, 2011 states that access to Veterans' records is limited to authorized persons only. Information may not be disclosed from this file unless permitted by all applicable legal authorities, enforced by 38 C.F.R. §§ 1.480 – 1.599 and 45 C.F.R. Parts 160 and 164. The Privacy Act contains provisions for criminal penalties for knowingly and willfully disclosing information from the Veterans' file unless properly authorized to do so.
The NOD / Form 21-0958
NOTICE OF DISAGREEMENT

A claimant or his or her duly appointed representative may file a notice expressing their dissatisfaction or disagreement with an adverse determination by the VA regional office. A desire to contest the result will constitute a notice of disagreement. A claimant, while special working is not required, the VA must be in terms which can reasonably construe disagreement with that determination and a desire for appellate review. (Authority: 38 U.S.C. 7105).

To file a valid NOD, there is a time limit of one year from the date the VA mailed the notification of the decision to the claimant. For contested claims including claims of appointment, the time limit is 60 days from the date the VA mailed the notification of the decision to the claimant.

NOTE: You may complete the form online or by hand. Please print using blue or black ink, neatly, and illegibly to help process the form.

### PART I - PERSONAL INFORMATION
1. VETERANS NAME (First, middle initial, last)
2. VETERANS SOCIAL SECURITY NUMBER
3. VA FILE NUMBER
4. Claimant’s Name (First, middle initial, last)
5. Current mailing address (number and street or rural route, P.O. Box, City, State, ZIP Code and County)
6. Preferred telephone number (Include Area Code)
7. Preferred E-mail address

### PART II - TELEPHONE CONTACT
8. Would you like to receive a telephone call or e-mail from a representative at your local regional office regarding your NOD?
   - Yes
   - No
   
   If you answered “Yes,” the VA will make up to two attempts to call you between 9:00 a.m. and 4:30 p.m. local time at the telephone number and time period you entered below. Please select up to one time period you are available to receive a phone call.
   
   - 8:00 a.m. - 10:00 a.m.
   - 10:00 a.m. - 12:00 p.m.
   - 12:00 p.m. - 2:00 p.m.
   - 2:00 p.m. - 4:30 p.m.
   
   Phone number I can be reached at the above checked time:

### PART III - APPEAL PROCESS ELECTION
9. Select one of the appeals processing methods below (See Specific Instructions, Page 2; Part III for additional information)
   - Decision Review Officer (DRO) Review Process
   - Traditional Appeal Review Process

### PART IV - SPECIFIC ISSUES OF DISAGREEMENT
10. Notification Decision Letter Date

11. Please list each specific issue of disagreement and vote the area of disagreement. If you disagree on the evaluation of a disability, specify percentage evaluation sought, if known. Please list only one disability in each block. You may attach additional sheets if necessary.

   | A. Specific Issue of Disagreement | B. Area of Disagreement | C. Percentage (%) Evaluation Sought
<table>
<thead>
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<tbody>
<tr>
<td>Service Connection</td>
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<td>Effective Date of Award</td>
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<tr>
<td>Evaluation of Disability</td>
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<tr>
<td>Other (Please specify below)</td>
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</tr>
<tr>
<td>Other (Please specify below)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

12A. In the space below or on a separate page, please explain why you feel we incorrectly decided your claim. And list any disagreement(s) not covered above:

12B. Did you attach additional pages to this NOD?
   - Yes
   - No
   
   (If so, how many?)

### PART V - CERTIFICATION AND SIGNATURE
I certify that the statements on this form are true and correct to the best of my knowledge and belief.

13A. Signature

13B. Date Signed

VA FORM 21-0868, SEP 2015

Page 3
NOD May Be Different With Older Forms

- Effective 3/24/2015 – You must use Form 21-0958
  - Fill it out completely – ask for “highest available” and attach a brief explaining why the decision is wrong
- Prior to 3/24/15 – could be any writing in which disagreement is expressed and a desire for appellate review is sought (lots of time on 21-4138)
PART I - PERSONAL INFORMATION
1. VETERAN'S NAME (First, middle initial, last)
Jane A Smith

2. VETERAN'S SOCIAL SECURITY NUMBER
XXX - XX - XXXX

3. VA FILE NUMBER
C/CSS -

CLAIMANT'S PERSONAL INFORMATION
4. CLAIMANT'S NAME (First, middle initial, last)
Jane A Smith

5. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)
No. & Street 123 Veterans Way
Apt./Unit Number
City Columbia
State/Province MO Country US ZIP Code/Postal Code 65201

6. PREFERRED TELEPHONE NUMBER (Include Area Code)
573-882-7630 POA/Rep Angela Drake

7. PREFERRED E-MAIL ADDRESS
drakea@missouri.edu
PART II - TELEPHONE CONTACT

8. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR E-MAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?

☐ YES  ☒ NO

(If you answered “Yes,” VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)

☐ 8:00 a.m. - 10:00 a.m.  ☐ 10:00 a.m. - 12:30 p.m.  ☐ 12:30 p.m. - 2:00 p.m.  ☐ 2:00 p.m. - 4:30 p.m.

Phone number I can be reached at the above checked time: ________________________________

PART III - APPEAL PROCESS ELECTION

9. SELECT ONE OF THE APPEALS PROCESSING METHODS BELOW (See Specific Instructions, Page 2, Part III for additional information)

☒ Decision Review Officer (DRO) Review Process

☐ Traditional Appellate Review Process
10. NOTIFICATION/DECISION LETTER DATE

November 28, 2016

11. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.

<table>
<thead>
<tr>
<th>A. Specific Issue of Disagreement</th>
<th>B. Area of Disagreement</th>
<th>C. Percentage (%) Evaluation Sought (If known)</th>
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<td>Evaluation of Disability</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other (Please specify below)</td>
<td></td>
</tr>
</tbody>
</table>

|                                   | Service Connection       |                                               |
|                                   | Effective Date of Award  |                                               |
|                                   | Evaluation of Disability |                                               |
|                                   | Other (Please specify below) |                                               |
12A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

Please see attached: Letter: bates #001
Memorandum bates #002-004
Exhibits A-G: bates #005-043
Form 21-686c: bates #044-045

12B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD?

☑ YES ☐ NO  (If so, how many?) 45

PART V - CERTIFICATION AND SIGNATURE

I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

13A. SIGNATURE  13B. DATE SIGNED

Jane A. Smith  12/01/2017

PENALTY: THE LAW PROVIDES SEVERE PENALTIES WHICH INCLUDE A FINE, IMPRISONMENT, OR BOTH, FOR THE WILLFUL SUBMISSION OF ANY STATEMENT OR EVIDENCE OF A MATERIAL FACT, KNOWING IT TO BE FALSE.
Re: Jane A Smith, ssn xxx-xx-xxx

Attachment to the NOD; 11/28/16 Rating Decision

Dear Sir or Madam:

This is a *timely appeal* to the November 28, 2016 Rating Decision. If this claim is not granted, please prepare the matter for review by the Board by preparing a Statement of the Case, as Veteran Smith wishes to pursue her appeal. Please note we request DRO review.

**PTSD Rating**

With respect to the PTSD rating at 30 percent, we believe Veteran Smith’s symptoms indicate a higher rating of at least 50 percent based upon a review of his C&P PTSD, Initial Evaluation by Janet Doe dated October 21, 2016, and additional evidence that is attached which includes Veteran Smith’s Statement in Support and his husband’s, John Smith’s, Statement in Support.

We provide a chart with the symptomatology relating to the ratings under 38 C.F.R. § 4.130 below. In these charts, we italicize symptoms recognized in the VA Rating Decision. We underscore symptoms in the record at this time, which were not considered earlier.
Under 38 C.F.R. § 4.130, a 30 percent disability evaluation includes symptoms such as:

- Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal)
- Depressed mood
- Anxiety
- Suspiciousness
- Panic attacks (weekly or less often)
- Chronic sleep impairment
- Mild memory loss (such as forgetting names, directions, recent events)
Under 38 C.F.R. § 4.130, a 50 percent disability evaluation includes symptoms such as:

- Occupational and social impairment with reduced reliability and productivity
- *Flattened affect*
- Circumstantial, circumlocutory, or stereotyped speech
- Panic attacks more than once a week
- Difficulty in understanding complex commands
- Impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks)
- Impaired judgment
- Impaired abstract thinking
- *Disturbances of motivation and mood*
- Difficulty in establishing and maintaining effective work and social relationships.
Again, Veteran Smith’s symptoms that were recognized in the VA Rating Decision are italicized. However, we believe the Rating Decision (and the 30 percent rating) failed to account for the following symptoms identified and discussed in the C&P Examination, Exhibit A:

- Limited shared activities because she avoids going out
- Tries to avoid shopping but rushes through them when unable to avoid the errand to minimize exposure to crowds
- No longer goes or enjoys hunting and racing, although these had been a substantial hobby in her youth.
- “I just go to work, come home, sit down, eat, go to bed, then go back to work the next day.”
- Husband reports that Veteran, “just doesn’t want to do anything other than work.”
- Overall, impairment in capacity for social functioning attributed to PTSD is assessed as severe.
- Criterion G: the disturbance causes clinically **significant distress or impairment in social, occupational, or other important areas of functioning.**
Veteran Smith’s symptoms most clearly mirror at least the 50% rating. 38 C.F.R § 4.7 provides “where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating.”
[X] Directly experiencing the traumatic event(s)
[X] Witnessing, in person, the traumatic event(s) as they occurred to others

Criterion B: Presence of (one or more) of the following intrusion symptoms associated with the traumatic event(s), beginning after the traumatic event(s) occurred:

[X] Recurrent, involuntary, and intrusive distressing memories of the traumatic event(s).
[X] Recurrent distressing dreams in which the content and/or affect of the dream are related to the traumatic event(s).
[X] Dissociative reactions (e.g., flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring. (Such reactions may occur on a continuum, with the most extreme expression being a complete loss of awareness of present surroundings).
[X] Intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).
[X] Marked physiological reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).

Criterion C: Persistent avoidance of stimuli associated with the traumatic event(s), beginning after the traumatic event(s) occurred, as evidenced by one or both of the following:

[X] Avoidance of or efforts to avoid distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).
[X] Avoidance of or efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).

Criterion D: Negative alterations in cognitions and mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by two (or more) of the following:

[X] Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world (e.g., "I am bad;" "No one can be trusted;" "The world is completely dangerous;" "My whole nervous system is permanently ruined").
[X] Persistent negative emotional state (e.g., fear, horror, anger, guilt, or shame).
[X] Markedly diminished interest or participation in
<table>
<thead>
<tr>
<th>Stage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOD</td>
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**Average Timeframes:**
- Average 480 days* (original appeals only)
- Average 644 days* (total appeals)

**Stats:**
- **161,236 NODs Received**
  - 16.6% of rating production
- **64,501 Formal Appeals Filed**
  - 3.1% of rating production
Statement of the Case (“SOC”)

- Upon receipt of the NOD, the RO must review the claims file and either grant or deny a claim.
- After reviewing the claims file, and if the denial continues, the RO will issue an SOC.
- SOC must contain:
  - Summary of the evidence,
  - Applicable law and regulations, &
  - Reasons for denying the claims with respect to the issues raised by the NOD.

- 38 C.F.R. § 19.29
September 7, 2017

In Reply Refer To:
Reprv Refer To: ACT/cmc

Dear [Name],

You have filed a Notice of Disagreement with our action. This is the first step in appealing to the Board of Veterans' Appeals (BVA). This letter and enclosures contain very important information concerning your appeal.

Statement of the Case

We have enclosed a Statement of the Case, a summary of the law and evidence concerning your claim. This summary will help you to make the best argument to the BVA on why you think our decision should be changed.

What You Need To Do

To complete your appeal, you must file a formal appeal. We have enclosed VA Form 9, Appeal to the Board of Veterans' Appeals, which you may use to complete your appeal. We will gladly explain the form if you have questions. Your appeal should address:

- the benefit you want
- the facts in the Statement of the Case with which you disagree; and
- the errors that you believe we made in applying the law.

When You Need To Do It

You must file your appeal with this office within 60 days from the date of this letter or within the remainder, if any, of the one-year period from the date of the letter notifying you of the action that you have appealed. If we do not hear from you within this period, we will close your case. If you need more time to file your appeal, you should request more time before the time limit for filing your appeal expires. See item 5 of the instructions in VA Form 9, Appeal to Board of Veterans' Appeals.
Hearings

You may have a hearing before we send your case to the BVA. If you tell us that you want a hearing, we will arrange a time and a place for the hearing. VA will provide the hearing room, the hearing official, and a transcript of the hearing for the record. VA cannot pay any other expenses of the hearing. You may also have a hearing before the BVA, as noted on the enclosed VA Form 9, Appeal to the Board of Veterans’ Appeals. Do not delay filing your appeal if you request a hearing. Your request for a hearing does not extend the time to file your appeal.

Representation

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. § 5904 and 38 C.F.R. § 14.636 and VA’s website at http://www.va.gov/oge/accreditation.asp. You can find the necessary power of attorney forms on this website, or if you ask us, we can send you the forms. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

What We Will Do

After we receive your appeal, we will send your case to the BVA in Washington, DC for a decision. The BVA will base its decision on an independent review of the entire record, including the transcript of the hearing, if you have a hearing.

Sincerely yours,

RO Director

RO Director

Enclosure(s): VA Form 9
Where to Send Your Written Correspondence

CC: Angela K. Drake
University of Missouri-School of Law
104 Hulston Hall
Columbia, MO 65211
**ISSUE:**

1. Evaluation of lumbar spine closed fracture status post fusion L2-L5 currently evaluated as 40 percent disabling.
2. Evaluation of right knee strain, currently evaluated as 0 percent disabling.
3. Service connection for bilateral hearing loss.
EVIDENCE:

- VA Form 21-526, Veteran's Application for Compensation and/or Pension, received August 19, 2010
- VA Form 21-4138, Statement in Support of Claim, received April 15, 2011
- VA Form 21-4138, Statement in Support of Claim, received May 12, 2011
- VA Form 21-526, Veteran's Application for Compensation and/or Pension, received May 12, 2011
- DD Form 214, Certificate of Release or Discharge from Active Duty, from January 22, 2001 through June 16, 2001
- DD Form 214, Certificate of Release or Discharge from Active Duty, from December 27, 2004 through March 23, 2006
ADJUDICATIVE ACTIONS:

08-16-2013  Claim considered based on all the evidence of record.

08-26-2013  Claimant notified of decision.
PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol “§” denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans’ Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits.

38 USC Section 5107 (03/02)  Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY- Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.
VA, in determining all claims for benefits that have been reasonably raised by the filings and evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

DECISION:

1. Evaluation of lumbar spine closed fracture status post fusion L2-L5 currently evaluated as 40 percent disabling, is continued.
2. Evaluation of right knee strain, currently evaluated as 0 percent disabling, is continued.
3. Service connection for bilateral hearing loss is granted with an evaluation of 0 percent effective November 30, 2011.
REASONS AND BASES:

1. Evaluation of lumbar spine closed fracture status post fusion L2-L5 currently evaluated as 40 percent disabling.

The evaluation of lumbar spine closed fracture status post fusion L2-L5 is continued as 40 percent disabling. Although the most recent evidence shows some improvement in your condition, sustained improvement is not shown.

The VA exam of May 2013 showed forward flexion limited to 30 degrees without pain. Ankylosis, muscle spasms and guarding were not found on the exam. You did report flare ups of pain.

The exam of February 2015 showed severely limited flexion of 10 degrees with painful motion, however, ankylosis was not shown. Guarding and/or muscle spasms were noted which resulted in abnormal gait or spinal contour. The examiner reported you have intervertebral disc disease resulting in incapacitating episodes of at least 4 weeks but less than 6 weeks.
Form 9 Appeal

- Important document
  - The one instance under the VA procedural rules where the veteran’s factual and legal arguments are **required** to be submitted
- Veteran must set forth specific arguments relating to the errors of fact or law in the RO’s initial decision denying benefits
- The Form 9 **must be submitted within 60 days** of the date of the SOC, or within 1 year of the Rating Decision, whichever is later
  - Usually the 60 days
- Contested cases – 30 days
  - Must say which issues you are appealing, why you are appealing and what kind of hearing you want
Department of Veterans Affairs

APPEAL TO BOARD OF VETERANS’ APPEALS

IMPORTANT: Read the attached instructions before you fill out this form. VA also encourages you to get assistance from your representative in filling out this form.

1. NAME OF VETERAN (Last Name, First Name, Middle Initial)

2. CLAIM FILE NO. (Include prefix)

3. INSURANCE FILE NO., OR LOAN NO.

4. I AM THE:
   - [ ] VETERAN
   - [ ] VETERAN’S WIDOW
   - [ ] VETERAN’S CHILD
   - [ ] VETERAN’S PARENT
   - [ ] OTHER (Specify)

5. TELEPHONE NUMBERS
   A. HOME (Include Area Code)
   B. WORK (Include Area Code)

6. MY ADDRESS IS:
   A. HOME (Number & Street or Post Office Box, City, State & ZIP Code)
   B. WORK (Number & Street or Post Office Box, City, State & ZIP Code)

7. IF I AM NOT THE VETERAN, MY NAME IS:
   (Last Name, First Name, Middle Initial)

8. THESE ARE THE ISSUES I WANT TO APPEAL TO THE BOARD. (Be sure to read the information about this block in paragraph 6 of the attached instructions.)
   A. [ ] I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM ONLY APPEALING THESE ISSUES (List below):

   (Continue on the back, or attach sheets of paper, if you need more space.)

9. HERE IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY. (Be sure to read the information about this block in paragraph 6 of the attached instructions.)

10. OPTIONAL BOARD HEARING
     IMPORTANT: Read the information about this block in paragraph 6 of the attached instructions. This block is used to request an optional Board of Veterans’ Appeals (Board) hearing. DO NOT USE THIS FORM TO REQUEST A HEARING BEFORE VA REGIONAL OFFICE PERSONNEL.
     Check one (and only one) of the following boxes:
     A. [ ] I DO WANT AN OPTIONAL BOARD HEARING. (Choosing this option often results in the Board issuing its decision most quickly. If you choose, you may write down what you would say at a hearing and submit it directly to the Board.)
     B. [ ] I WANT AN OPTIONAL BOARD HEARING BY LIVE VIDEOCONFERENCE AT A LOCAL VA OFFICE. (Choosing this option will add delay to issuance of a Board decision.)
     C. [ ] IN WASHINGTON, D.C. (Choosing this option will add delay to issuance of a Board decision.)
     D. [ ] AT A LOCAL VA OFFICE* (Choosing this option will add significant delay to issuance of a Board decision.)

   *This option is not available at the Washington, D.C., or Baltimore, MD, Regional Offices.

11. SIGNATURE OF PERSON MAKING THIS APPEAL

12. DATE (MM/DD/YYYY)

13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY
   (Not required if signed by appellant. See paragraph 6 of the instructions.)

14. DATE (MM/DD/YYYY)

VA FORM
JUL 2015
9
1. NAME OF VETERAN (Last Name, First Name, Middle Initial)  
   Doe, John A

2. CLAIM FILE NO. (Include prefix)  
   xx xxx xxx

3. INSURANCE FILE NO., OR LOAN NO.  

4. I AM THE:  
   - [ ] VETERAN  
   - [ ] VETERAN'S WIDOWER/ER  
   - [ ] VETERAN'S CHILD  
   - [ ] VETERAN'S PARENT  
   - [ ] OTHER (Specify)

5. TELEPHONE NUMBERS
   A. HOME (Include Area Code)  
      xxx-xxxx-xxxx
   B. WORK (Include Area Code)  

6. MY ADDRESS IS:  
   (Number & Street or Post Office Box, City, State & ZIP Code)  
   1234 Veteran Way  
   Columbia, MO 65201

7. IF I AM NOT THE VETERAN, MY NAME IS:  
   (Last Name, First Name, Middle Initial)  

8. THESE ARE THE ISSUES I WANT TO APPEAL TO THE BOARD:  
   (Be sure to read the information about this block in paragraph 6 of the attached instructions.)
   A. [X] I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM ONLY APPEALING THESE ISSUES:  
      (List below.)
      Evaluation of Gerd related disabilities and Individual Unemployability

   B. [ ] I WANT TO APPEAL ALL OF THE ISSUES LISTED ON THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE THAT MY LOCAL VA OFFICE SENT TO ME.
9. HERE IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY: (Be sure to read the information about this block in paragraph 6 of the attached instructions.)

See memo attached and Exhibits A-D

(Continue on the back, or attach sheets of paper, if you need more space.)

10. OPTIONAL BOARD HEARING

**IMPORTANT:** Read the information about this block in paragraph 6 of the attached instructions. This block is used to request an optional Board of Veterans' Appeals (Board) hearing. DO NOT USE THIS FORM TO REQUEST A HEARING BEFORE VA REGIONAL OFFICE PERSONNEL.

Check one (and only one) of the following boxes:

A. [X] I DO NOT WANT AN OPTIONAL BOARD HEARING. (Choosing this option often results in the Board issuing its decision most quickly. If you choose, you may write down what you would say at a hearing and submit it directly to the Board.)

I WANT AN OPTIONAL BOARD HEARING:

B. [ ] BY LIVE VIDEOCONFERENCE AT A LOCAL VA OFFICE. (Choosing this option will add delay to issuance of a Board decision.)

C. [ ] IN WASHINGTON, DC. (Choosing this option will add delay to issuance of a Board decision.)

D. [ ] AT A LOCAL VA OFFICE.* (Choosing this option will add significant delay to issuance of a Board decision.)

*This option is not available at the Washington, DC, or Baltimore, MD, Regional Offices.

11. SIGNATURE OF PERSON MAKING THIS APPEAL

John A Doe

12. DATE (MM/DD/YYYY)

2/15/2017

13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY

(Not required if signed by appellant. See paragraph 6 of the instructions.)

14. DATE (MM/DD/YYYY)
Memo to Form 9/GERD

Claimant/Appellant (hereinafter “Veteran Doe”) hereby takes exception to, and preserves for appeal, all errors the VA Regional Office may have made in deciding this appeal. This includes errors in failing to adjudicate issues or claims reasonably raised by the record, even though not specifically mentioned by Veteran Doe. This also includes all legal errors, errors in fact-finding, failure to follow the Adjudication Manual, failure to discharge the duty to assist, and any and all other due process errors. ...

STATEMENT OF FACTS

A. Personal background and service history

Mr. John Doe, a Missouri resident, is a 54-year-old male ...

B. Service connection and scar at issue

On February 11, 2015, Veteran Doe received the following service-connected disabilities: ...

ARGUMENT

I. The evaluation of ventral hernia scar as secondary to the service-connected disability of ventral hernia should be evaluated greater than a 0 percent disabling.

Under the ratings schedule, a scar that is unstable or painful may receive a maximum 10% disability evaluation....

Conclusion

The evaluation of ventral hernia scar as secondary to the service-connected disability of ventral hernia should be evaluated a 0 percent disabling is incorrect....
Memo to Form 9/GERD

Claimant/Appellant (hereinafter “Veteran Doe”) hereby takes exception to, and preserves for appeal, all errors the VA Regional Office may have made in deciding this appeal. This includes errors in failing to adjudicate issues or claims reasonably raised by the record, even though not specifically mentioned by Veteran Doe. This also includes all legal errors, errors in fact-finding, failure to follow the Adjudication Manual, failure to discharge the duty to assist, and any and all other due process errors.
Kinds of Hearings to Request
(until the law changes)

- In person
- Travel board
- Video conference
- No hearing
- Remember that you can also request a hearing with the NOD, before the DRO – formal or informal
- Remember also that you can even ask for a hearing at the RO when the SOC is transmitted
Can I Put More Evidence In?

- Yes → 90-day letter
- Tell the Board you want the full 90 days
Where to Send the NOD & Form 9

- Can be mailed, certified recommended,
- Easiest to fax & receive fax confirmation, or
- Hand deliver & get date stamp
Where to Send Your Written Correspondence

In order to properly determine where to send your written correspondence, please first identify your benefit type (Compensation, Veterans Pension, or Survivor Benefits); then, locate the corresponding address based on your location of residence.

For correspondence relating to all **Compensation** claims:

<table>
<thead>
<tr>
<th>Location of Residence</th>
<th>Address</th>
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<tbody>
<tr>
<td>All United States and Foreign Locations</td>
<td>Department Of Veterans Affairs</td>
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<tr>
<td></td>
<td>Evidence Intake Center</td>
</tr>
<tr>
<td></td>
<td>P.O. Box 4444</td>
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<td>Janesville, WI, 53547-4444</td>
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</tbody>
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*Note: For foreign Veterans Pension and Survivor Benefits please refer to the below addresses.

Or fax your information to:

- Toll Free: 844-531-7818
- Local: 248-524-4260
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<td>Delaware</td>
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Department Of Veterans Affairs Claims Intake Center
Attention: Milwaukee Pension Center
P.O. Box 5192
Janesville, WI 53547-5192
Or fax your information to:
Toll Free: (844) 655-1604

Department Of Veterans Affairs Claims Intake Center
Attention: St. Paul Pension Center
P.O. Box 5365
Janesville, WI 53547-5365
Or fax your information to:
Toll Free: (844) 655-1604
Thank you! Questions?