

**DISABLED AMERICAN VETERANS
Chapter/Department Service Officer**

APPEAL PROCESS OUTLINE

I. What can be appealed?

A. Any formal decision on VA letterhead.

For example:

1. Compensation or Pension
2. Education
3. Medical Benefits
4. Overpayment
5. Reimbursement of unauthorized medical

B. A Doctor's decision **cannot be appealed** (i.e. whether a particular drug can be prescribed, if surgery is necessary or the type of therapy ordered).

II. Written decision to claimant and/or representative.

- A. Decision will include instructions to claimant on his right to appeal and the time frame the claimant has to perfect his appeal.
- B. A service organization letter **is not** a VA decision.
- C. A VA request for evidence is not a VA decision.
- C. Proposal to reduce **is not** a decision.

III. Three main parts of an Appeal.

- A. Notice of Disagreement (NOD)
- B. Statement of the Case (SOC)
- D. Substantive Appeal, timely filed (VA Form 9)

IV. Notice of Disagreement (NOD)

- A. Written expression of dissatisfaction or disagreement with a VA decision.
- B. Must be submitted within 1 year from date of decision (date on VA letter to claimant).
- C. Must be specific as to what is being appealed.
- D. Does not have to be on official VA form.
- E. Proposed reduction cannot be appealed.

V. Decision Review Officers (DRO), Informal Conferences.

- A. DRO's are generally responsible for processing of post-decisional appeals.

1. A DRO may:
 - a. amend, reverse or modify a decision based on *de novo* review,
 - b. exercise single signature clear and unmistakable error (CUE) authority, (NOT TO BE FILED W/OUT NSO)
 - c. amend, reverse or modify a decision based upon new evidence.

- B. In addition to jurisdiction of the traditional appeal process, the DRO has *de novo* review authority if appellant elects that process.
 1. A *de novo* review is a new and complete review with no deference given to the decision being reviewed.
 2. The DRO must write a new decision or SOC if no change, and mail it to the claimant.
 3. Claimant may not have more than one *de novo* review of their claim.

- C. An ***informal conference*** is an optional procedure the Decision Review Officer (DRO) may conduct if he/she believes it would be helpful.

- D. Informal Conference may be held to:
 1. clarify the issues the claimant wishes to appeal,
 2. provide explanations,
 3. identify additional sources of pertinent evidence.

- E. Informal Conferences can be conducted:
 1. by telephone, (with prior approval)
 2. by videoconference, (rare in Seattle)
 3. in person at regional office. (preferred)

VI. Statement of the Case (SOC)

- A. Notice of the issue(s) being appealed.
- B. Statement of claimant's contentions.
- C. Presentations of facts-description of evidence.
- D. Listing of pertinent laws & regulations.
- F. Explanations of reasons for the decision.

VII. Supplemental Statement of the Case (SSOC)

- A. If additional evidence is submitted, an SSOC will be completed & returned to the claimant.
- B. If claimant disagrees with facts as stated, he has 60 days to respond.
- C. If claimant is going to have a personal hearing at RO, they may want to submit additional evidence at that time.
- D. A SSOC does not usually extend the time period for perfecting the appeal.

VIII. Substantive Appeal (VA Form 9)

- A. Appeal should set out specific arguments relating to errors of fact or law.
- B. Claimant should read SOC carefully as it will indicate why claim was denied and what is needed.
- C. Must return *Substantive Appeal* to continue.
- D. Must be filed within 60 days from date of SOC or within the remainder of the one year period from the date of the letter notifying the claimant of the VA decision.

IX. Personal Hearings

- A. The purpose of a personal hearing is to present arguments, testimony & evidence relevant and material to the appellate process.
- B. A hearing request will be granted at any stage of the claims process if requested by claimant.
- C. Types of hearings requested when completing the VA Form 9:
 - 1. Personal hearing at the regional office before a DRO,
 - 2. BVA hearing in Washington D.C. (claimant's expense),
 - 3. BVA Travel Board hearing at the regional office,
 - 4. BVA Video hearing at regional office.

X. Board of Veteran's Appeals (BVA)

- A. Final stage of the VA appeal process.
- B. Will review all evidence of record regarding the issue on appeal, to include personal hearing transcript.
- C. Remand if development not complete.
- D. 646 completed at regional office if DAV is POA.
- E. A Notice of Disagreement cannot be submitted regarding a BVA decision.

XI. U.S. Court of Appeals for Veterans Claims

- A. Not all appeals are accepted.
- B. Must raise some substantive legal or factual basis.
- C. No new evidence, no jury, no witnesses, no personal appearance.
- D. It must be shown that the BVA decision is clearly erroneous & effected the outcome of the decision. Minor procedural errors which do not effect the outcome are not grounds for reversal.
- E. Notice of Appeal (NOA) must be filed within **120 days from date of BVA decision letter.**
- F. \$50.00 filing fee.
- G. For DAV representation, must first contact local DAV office.
- H. Court is not making new laws, instead it is interpreting existing laws.