



*The Women's Bar Association  
of the State of New York*

*presents*

*Convention 2019  
Continuing Legal Education Series*

**Veteran Affairs Service  
Connected Compensation Claims**

May 31, 2019  
9:45 am - 10:45 am

Presenter: Danielle E. Bernard, Esq.

The Westin Savannah Harbor Golf Resort and Spa  
Savannah, Georgia

# DEPARTMENT OVERVIEW

## A. Federal Mission and Goals

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- The Department of Veterans Affairs (VA), was established as an independent agency under the President by Executive Order 5398 on July 21, 1930, was elevated to Cabinet level on March 15, 1989.
- The Department's mission is to serve America's veterans and their families with dignity and compassion and to be their principal advocate in ensuring that they receive medical care, benefits, social support, and lasting memorials promoting the health, welfare, and dignity of all veterans in recognition of their service to this Nation.

# DEPARTMENT OVERVIEW

## B. Federal Statistics

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- The VA is the second largest Federal Department, with over 377,000 employees.
- The VA budget has \$186.5 billion in 2018. 78.8 billion is discretionary.
- VA is comprised of a Central Office (VACO), which is located in Washington, DC, and field facilities throughout the Nation administered by its three major line organizations:
  1. Veterans Health Administration (VHA),
  2. **Veterans Benefits Administration (VBA)**, and
  3. National Cemetery Administration (NCA).

# VA STRUCTURE & OFFICERS

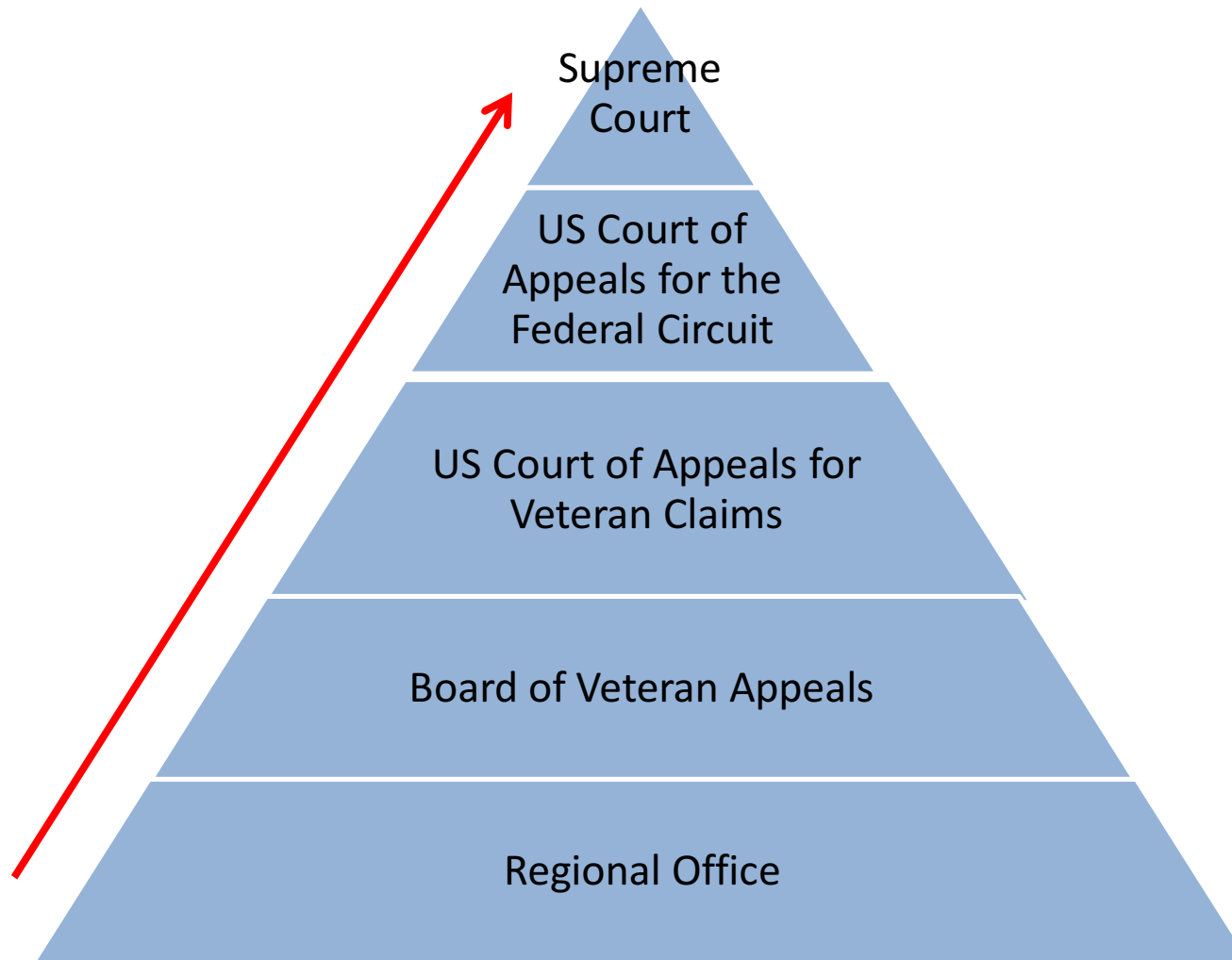
## Office of the General Counsel

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- The Office of General Counsel (OGC) assists in the formulation of policy and provides legal advice and services to the Secretary and all organizational components in the Department.
- The General Counsel of the Department of Veterans Affairs issues written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA.

# BENEFITS CLAIM HIERARCHY

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# Basic Eligibility Requirements & Initial Considerations

# DEFINITION OF A VETERAN

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- “A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.” 38 U.S.C.S. § 101(2); 38 C.F.R. § 3.1(d) (2013).

# ACTIVE SERVICE REQUIREMENTS

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## **A. “Military, Naval, Or Air Service”**

- Conventional military service in one of the five branches of the U.S. Armed Forces
- Also includes service as member of Reserves or National Guard (subject to additional requirements)

## **B. What Does Active Service Include?**

- Active Duty in one of the five branches of the U.S. Armed Forces.
- Training, when injury incurred or was aggravated.
- Reservist called to active duty.
- National Guard member when called to serve on federal active duty under Title 10.



# ELIGIBILITY & CHARACTER OF DISCHARGE

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## **A. Character Of Discharge**

- In order to satisfy the definition of a veteran, that individual must have been discharged or released from military service “under conditions other than dishonorable.” 38 C.F.R. § 3.12(a) (2013)

## **B. Types Of Discharge**

- Honorable discharge (HD);
- Discharge under honorable conditions (UHC), or general discharge (GD);
- Discharge under other than honorable conditions (OTH), or undesirable discharge (UD);
- Bad conduct discharge (BCD);
- Dishonorable discharge (DD) or a dismissal, the later in the case of an officer.

# ELIGIBILITY & CHARACTER OF DISCHARGE

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## **C. Which Discharges Meet The Eligibility Requirements?**

- HD & UHC meet the eligibility requirement.
- DD disqualify a veteran for benefits.
- BCD & OTH may or may not make a claimant ineligible.
- Discharge Upgrades.

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# Types of VA Benefits

# VA HEALTHCARE

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- Eligibility
  - Time Requirement
    - If veteran enlisted after September 7, 1980, you must serve 24 consecutive months.
  - Reservist/National Guard
    - Served the entire period of federal active duty which he was ordered to.
- Exceptions
  - Veterans receiving service connected compensation
  - Veterans with a discharge that is barred by regulations, but can show that their disability is related to service
- Priority Groups

# SERVICE CONNECTED DISABILITY BENEFITS

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- A veteran seeking service connected disability compensation must satisfy three fundamental requirements before the VA will grant compensation benefits.
  - There must be competent evidence of a current disability.
  - There must be medical, or in certain circumstances, lay evidence of in-service occurrence or aggravation of a disease or injury.
  - There must be competent evidence of a link or nexus between the in-service occurrence or aggravation of a disease or injury and the current disability.
- Monthly compensation will be awarded. The amount will be determined by severity.

# NON-SERVICE CONNECTED BENEFITS

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- Wartime service that ultimately results in a discharge under other than dishonorable conditions,
- permanent and total disability, and
- Demonstrated need. The VA determines need by calculating the income and net worth of the claimant.

# SPECIAL MONTHLY PENIONS

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- Aid & Attendance
  - Veteran requires help to perform activities of daily living. These include bathing, feeding, dressing, toileting, adjusting prosthetic devices or protection from environmental hazards.
  - Veteran is bedridden. Disability requires you to stay in bed when he is not receiving treatment.
  - Veterans is a patient in a nursing home due to mental or physical incapacity.
- Housebound
  - Veterans has a single permanent disability evaluated as 100-percent disabling. Because of this, veteran is permanently confined to his immediate location.
  - Veteran has a single permanent disability evaluated as 100-percent disabling and another disability (or disabilities) evaluated as 60-percent or more.

# EDUCATION BENEFITS

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- Post 9/11 GI Bill
  - Honorable Discharge
  - At least 90 days of aggregate active duty service after Sept. 10, 2001
  - Up to 36 Months of Education
- Vocational Rehabilitation
  - Have received a discharge that is other than dishonorable
  - Have a service-connected disability rating of at least 10% from VA
  - Within 12 years of service or service connected disability award
  - Discretionary



# DEPENDENT INDEMNITY COMPENSATION (DIC)

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- Monthly VA benefits paid to eligible survivors of veterans who had
  - Service-connected disability that was the principal or contributory cause of death; or
  - Service-connected disability that was totally disabling for a period of 10 or more years immediately preceding death; the disability was continuously rated totally disabling for a period of 5 years from the date of veteran's discharge; or veteran was a former POW and the disability was continuously rated totally disabling for a period of not less than one year immediately preceding veteran's death. 38 U.S.C.S. § 1318
- Qualified Dependent

# SURVIVOR'S BENEFITS

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- A monthly VA benefit payable to an eligible surviving spouse of a veteran whose death was not service connected.
- The veteran must have qualified for pension benefits.
  - Death pension is based on the survivor's financial need
- Qualified Dependent

# BURIAL BENEFITS

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- Eligibility
  - You paid for a Veteran's burial or funeral, **AND**
  - You have not been reimbursed by another government agency or some other source, such as the deceased Veteran's employer, **AND**
  - The Veteran was discharged under conditions other than dishonorable, **AND**
    - The Veteran died because of a service-related disability, **OR**
    - The Veteran was receiving VA pension or compensation at the time of death, **OR**
    - The Veteran was entitled to receive VA pension or compensation, but decided not to reduce his/her military retirement or disability pay, **OR**
    - The Veteran died while hospitalized by VA, or while receiving care under VA contract at a non-VA facility, **OR**
    - The Veteran died while traveling under proper authorization and at VA expense to or from a specified place for the purpose of examination, treatment, or care, **OR**
    - The Veteran had an original or reopened claim pending at the time of death and has been found entitled to compensation or pension from a date prior to the date of death, **OR**
    - The Veteran died on or after October 9, 1996, while a patient at a VA-approved state nursing home.
- Payments are different for service connected v. non-service connected death

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# Evaluation and Submission of Evidence

# EVIDENCE OF CURRENT DISABILITY


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- The first requirement for a grant of service connected disability compensation is “competent evidence” that the veteran currently has a particular disability. 38 U.S.C. §§ 1110, 1131.
- Such as:
  - Letter or statement from a VA official or private physician;
  - Evidence in the veteran’s service medical and treatment records; and/or
  - Evidence from medical textbooks, treatises or journals.

# OBTAINING VA MEDICAL RECORDS

## 10-5345

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 <b>Department of Veterans Affairs</b>		<b>REQUEST FOR AND AUTHORIZATION TO RELEASE HEALTH INFORMATION</b>	
<p><b>PRIVACY ACT INFORMATION:</b> The execution of this form does not authorize the release of information other than that specifically described below. The information requested on this form is solicited under Title 38 U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164; 5 U.S.C. 552a; and 38 U.S.C. 5701 and 7332 that you specify. Your disclosure of the information requested on this form is voluntary. However, if the information including the last four of your Social Security Number (SSN) and Date of Birth (used to locate records for release) is not furnished completely and accurately, VA will be unable to comply with the request. The Veterans Health Administration may not condition treatment, payment, enrollment or eligibility on signing the authorization. VA may disclose the information that you put on the form as permitted by law. VHA may make a "routine use" disclosure of the information as outlined in the Privacy Act system of records notices identified as 24VA10P2 "Patient Medical Record - VA" and in accordance with the VHA Notice of Privacy Practices. VA may also use this information to identify Veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.</p>			
TO: DEPARTMENT OF VETERANS AFFAIRS <i>(Name and Address of VA Health Care Facility)</i>			
<div></div>			
LAST NAME- FIRST NAME- MIDDLE INITIAL		LAST 4 SSN	DATE OF BIRTH
<div></div>		<div></div>	<div></div>
NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL, OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED			

# IN SERVICE OCCURRENCE

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- Lay evidence may be considered and will be sufficient evidence when the issue relates to an observable event.
- If circumstances raise a medical issue in the case, medical evidence is required.
- Types of lay evidence include:
  - Veterans own statements describing the injury/event;
  - “Buddy statements”;
  - Newspaper articles; and/or
  - Letters to/from family and friends.

# IN SERVICE OCCURRENCE

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## **Combat Veterans**

- This special treatment for combat veterans is mainly contained in two provisions:
  - 38 U.S.C.S. 1154(b)
  - 38 C.F.R. 3.304(d) and (f)
- 38 USCS 1154(b) requires the VA to accept a veteran's lay statement about what happened in service if the event:
  1. Occurred while the veteran was "engaged in combat with the enemy";
  2. Is "consistent with the circumstances, conditions or hardships" of such service; and
  3. There exists no "clear and convincing evidence to the contrary."



# OBTAINING SERVICE RECORDS, SF-180

REQUEST PERTAINING TO MILITARY RECORDS						
Requests from veterans or deceased veteran's next-of-kin may be submitted online by using eVetRecs at <a href="http://www.archives.gov/veterans/military-service-records/">http://www.archives.gov/veterans/military-service-records/</a> . To ensure the best possible service, please thoroughly review the accompanying instructions before filling out this form. PLEASE PRINT LEGIBLY OR TYPE BELOW.						
SECTION I - INFORMATION NEEDED TO LOCATE RECORDS <i>(Furnish as much information as possible.)</i>						
1. NAME USED DURING SERVICE (last, first, full middle)	2. SOCIAL SECURITY #	3. DATE OF BIRTH	4. PLACE OF BIRTH			
5. SERVICE, PAST AND PRESENT <i>(For an effective records search, it is important that ALL service be shown below.)</i>						
	BRANCH OF SERVICE	DATE ENTERED	DATE RELEASED	OFFICER	ENLISTED	SERVICE NUMBER <i>(If unknown, write "unknown")</i>
a. ACTIVE				<input type="checkbox"/>	<input type="checkbox"/>	
b. RESERVE				<input type="checkbox"/>	<input type="checkbox"/>	
c. STATE NATIONAL GUARD				<input type="checkbox"/>	<input type="checkbox"/>	
6. IS THIS PERSON DECEASED? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES - <i>MUST</i> provide Date of Death if veteran is deceased:						
7. DID THIS PERSON <u>RETIRE</u> FROM MILITARY SERVICE? <input type="checkbox"/> NO <input type="checkbox"/> YES						
SECTION II - INFORMATION AND/OR DOCUMENTS REQUESTED						
1. CHECK THE ITEM(S) YOU ARE REQUESTING:						
<input checked="" type="checkbox"/> DD Form 214 or equivalent. Year(s) in which form(s) issued to veteran:						
This form contains information normally needed to verify military service. A copy may be sent to the veteran, the deceased veteran's next-of-kin, or other persons or organizations, if authorized in Section III, below. An UNDELETED DD214 is ordinarily required to determine eligibility for benefits. If you						

# CONNECTION BETWEEN SERVICE & CURRENT DISABILITY

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- **Medical Evidence to Satisfy the Nexus Requirement**
  - A claimant will satisfy the requirement of competent nexus evidence by obtaining a letter or statement from a private physician or VA physician that expressly connects the veteran's disability or death to the occurrence or aggravation of a disease or injury in service or to an event in service
- **Disability must be “as likely as not” connected to service.**

# DUTY TO CONSIDER ALL LEGAL THEORIES

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- The VA is required to consider all legal theories on which the claim could be granted, regardless of whether the claimant argues or focuses on every theory.
- Connection Requirement:
  - Connected to service
  - Related to a service connected condition
  - Presumptively connected
  - Aggravated by service

# EVALUATING PAST MEDICAL EXAMS

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- Adequacy
  - Reliance on incorrect facts
  - Failure to adequately describe the nature of the disability
  - Lack of clear conclusion with supporting data
  - Failure to apply sound and reasoned medical judgment
- Competency
  - Some examinations require a doctor with a specific specialty (Mental health – psychologist or psychiatrist; hearing loss – audiologist)
  - Most examinations do not require a specialty. (Nurse Practitioner, Physicians Assistant, Medical Doctor)

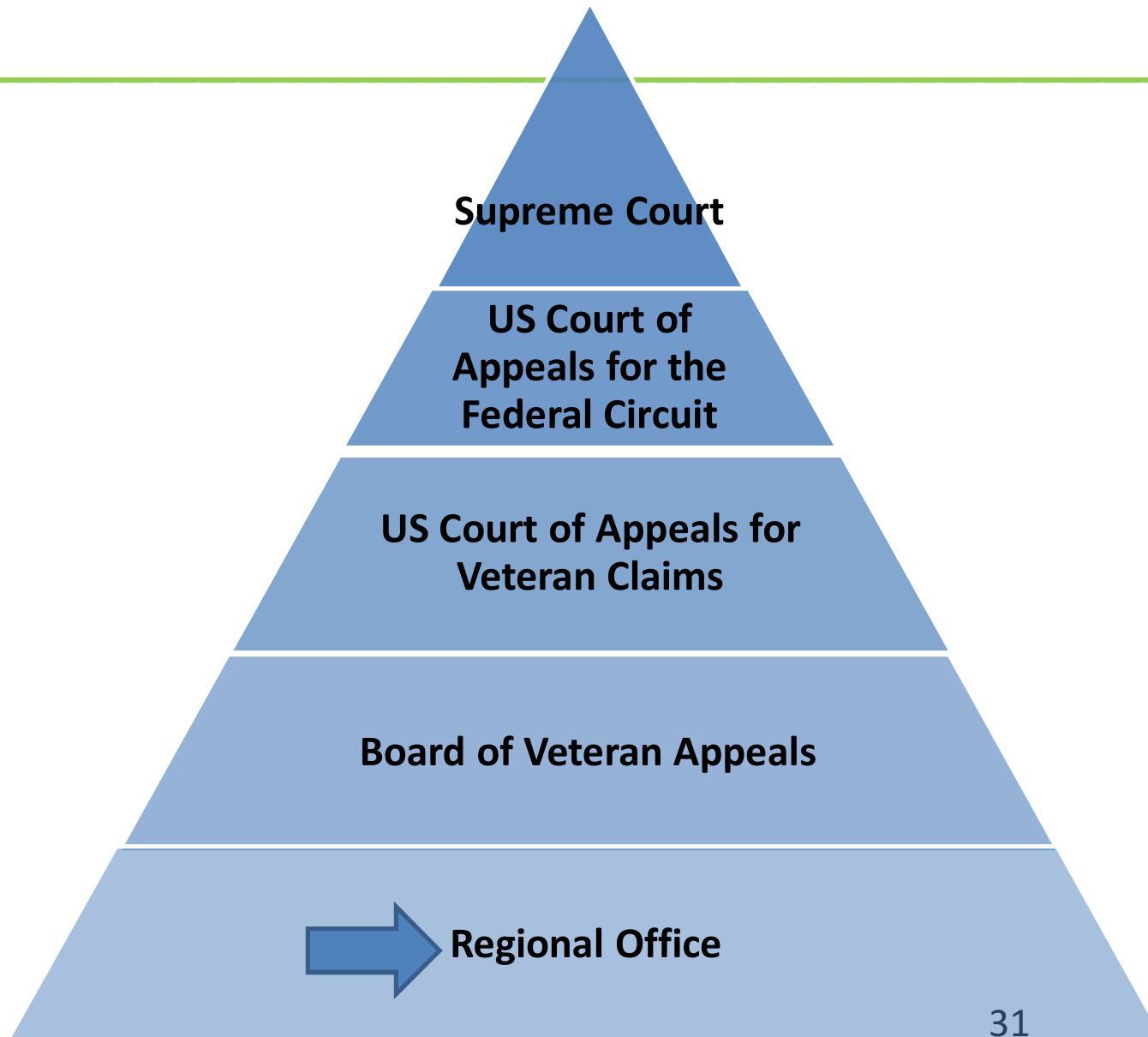
# OBTAINING EXPERT OPINIONS

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- VA treating physicians may not be willing to write an opinion
- May need to go to independent expert for a written opinion
  - No chance for a deposition
  - No requirement for testimony at a hearing
  - Recommend that the doctor does a records review and an in person evaluation, if necessary

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# SUBMITTING A BENEFITS CLAIM



# SUBMITTING A BENEFITS CLAIM AT THE VARO

## A. Overview of the VARO

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- An initial application for benefits is filed with the “Agency of Original Jurisdiction,” or Regional Office (RO).
- There are 56 Regional Offices (RO or VARO) located around the country.



# SUBMITTING A BENEFITS CLAIM

## A. Overview of the VARO

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- The VA is unique **because** in many federal agencies the substantive rules that govern the adjudication of a particular matter are the same for each level of appeal within the agency, but this is not the case at the VA.
  - The VA does not follow a strict system of *res judicata*.
- The VAROs are primarily bound by four sources:
  - The *VA Adjudication Procedures Manual, Manual M21-1*;
  - Applicable statutes and case law;
  - VA regulations; and
  - Precedent Opinions of the VA General Counsel.

# SUBMITTING A BENEFITS CLAIM

## A. Overview of the VARO

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There are three types of claims that can be filed:

1. New or Original Claims
  - 38 C.F.R. § 3.155(a);
2. Reopened Claims Filed After a Final VA Denial
  - 38 C.F.R. § 3.151(a); and
3. Claims for Revision of a Previous Final RO Decision Based on Clear & Unmistakable Error.
  - *Criswell v. Nicholson*, 20 Vet.App. 501 (2006).

# SUBMITTING A BENEFITS CLAIM

## B. Types of Claims Filed at the VARO

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### 1. New or Original Claims

- Each different type of injury, disease or disability that is the subject of a request for benefits involves a new, different claim.
- This type of claim primarily pertains to benefits never requested and increases in a disability ratings.

# SUBMITTING A BENEFITS CLAIM

## B. Types of Claims Filed at the VARO

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### 2. Reopened Claims Filed After a Final VA Denial

- “Final denial” means the previous denial was unsuccessfully appealed to the highest level of appeal possible for that particular matter. Or the veteran missed an appeal deadline.
- A “reopened claim” is a claim for a VA benefit that is filed after the VA issues a final denial of a claim requesting the same benefit. A reopened claim is subject to a threshold requirement that the claimant submits “new and material evidence.” 38 C.F.R. § 3.156(a).
  - *Kent v. Nicholson*, 20 Vet.App. 1, 5 (2006).

# SUBMITTING A BENEFITS CLAIM

## B. Types of Claims Filed at the VARO

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### 3. Claims for Revision of a Previous Final RO Decision based on Clear & Unmistakable Error (CUE)

- These claims are considered an original claim rather than a reopened one because the claim is being revised to conform to the true state of the facts or the law that existed at the time of the original jurisdiction.
  - *Russel v. Principi*, 3 Vet.App. 310, 314-315 (1992).
- The VA regards this type of error very rare and specific where either the correct facts (as they were known at the time) were not before the RO, or the statutory and regulatory provisions existing at the time were incorrectly applied.
  - *Crippen v. Brown*, 9 Vet.App. 412, 418 (1996).

# SUBMITTING A BENEFITS CLAIM

## B. Types of Claims Filed at the VARO

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- The original adjudication process begins at the RO with one of the following types of claims:
  - **Informal Claims**, 38 C.F.R. § 3.155(a).
  - **Formal**, 38 C.F.R. § 3.151(a).
    - VA Form 21-526
  - **Inferred**
    - Claims not directly raised by the claimant but reasonably raised by the claimants record generally require evidence of a veteran's intent to seek benefits.
      - *Criswell v. Nicholson*, 20 Vet.App. 501, 503-504 (2006).

# SUBMITTING A BENEFITS CLAIM

## C. Duties Owed by the VARO

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- After reviewing the file the VARO has a duty to:
  - Notify the claimant of the evidence/information necessary to prove the claim;
  - What information the claimant needs provide to prove its claim; and
  - What information the VA will attempt to obtain on its own.
    - 38 U.S.C.S. 5103(a)
- The VA must provide the notification upon receipt of a complete or substantially complete application, before the RO makes an initial adverse decision on the claim.

# SUBMITTING A BENEFITS CLAIM

## Duties Owed by the VARO

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- **Duty to Consider All Legal Theories, 38 C.F.R. § 3.103(a).**
- The VA is required to consider all legal theories on which the claim could be granted, regardless of whether the claimant argues or focuses on every theory.



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# VA Appeals Improvement & Modernization Act - 2017

# Supplemental Claim

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- If there is an unfavorable decision:
  1. Veteran could continue to submit NEW and RELEVANT evidence;
  2. Veteran could use the Higher – Level Review option; or
  3. Veteran could apply for a review by the Board of Veterans' Appeal by electing for further review within one year of the date of the decision notice

# Higher – Level Review

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- Veteran should use when there is no new evidence but believe initial decision was made in error.
- Claim is reviewed by an senior review officer.
- Only evidence already in the file may be considered. (No NEW and RELEVANT evidence may be entered.)
- VA will NOT assist with developing new evidence.
  - However, if the senior review officer determines that the VA did not fulfill its duty to assist, the senior review officer can return the claim for correction and new rating decision.
- Possible for veteran to request an informal telephonic hearing to explain why previous decision was in error.
- If veteran receives a unfavorable decision at this level the veteran may:
  - Submit a Supplemental Claim with NEW and RELEVANT evidence; or
  - Get in line for a review by the Board of Appeals under the new appeals system (after Feb 2019) by making this decision within one year of receiving the decision notice.

# Board Review effective February 2019

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- The duty to assist does not apply to the Board of Veterans Appeals (Board).
- Must choose one of three (3) review options when requesting a Board review:
  1. Direct Review: No new evidence and no hearing.
  2. Evidence Submission: No hearing but will consider additional evidence within 90 days of the date that the Board receives request.
  3. Hearing: You will be able to testify before a Veterans Law Judge and submit additional evidence within 90 days of the hearing date.

# VA Accredited Representative

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- Qualifications
  - Non Attorney
    - Exam
    - Background Check
    - Continuing Legal Education
  - Attorney
    - Background Check
    - Continuing Legal Education
- Annual CLE Requirements

# DO YOU DISAGREE WITH YOUR VA DECISION?



**NOW YOU HAVE  
A CHOICE**

## Supplemental Claim Lane

**Decision in an average of  
125 days**

- Add any new and relevant evidence before your claim is reviewed.
- VA will assist you in gathering any new and relevant information you want to submit.

**THE CHOICE  
IS YOURS**

## Higher-Level Review Lane

**Decision in an average of  
125 days**

- Get an entirely new review of your claim by a more experienced adjudicator.
- You cannot add any new evidence to your claim. It will be reviewed only with the evidence VA already has on file.
- You can request an informal telephone conference with the higher-level reviewer about your claim.

## Appeal to the Board Lane

→ If you choose the Board, select one of the three following options:

- **Direct Review**  
You do not want to submit additional evidence or have a hearing. The average response from the Board is 365 days.
- **Evidence Submission**  
You choose to submit additional evidence without a hearing. You will have 90 days from your Notice of Disagreement (NOD) to submit any additional evidence.
- **Hearing**  
You have additional evidence and want to testify before a Veterans Law Judge. You will be scheduled for a Board hearing and may submit evidence at the hearing or within the 90-day window following the scheduled hearing.



For more information on the Veterans Appeals Improvement and Modernization Act of 2017 and how to apply for review in one of the three lanes, go to: [www.benefits.va.gov/benefits/appeals.asp](http://www.benefits.va.gov/benefits/appeals.asp).

United States Code Annotated

Title 38. Veterans' Benefits (Refs & Annos)

Part IV. General Administrative Provisions

Chapter 51. Claims, Effective Dates, and Payments

Subchapter I. Claims (Refs & Annos)

38 U.S.C.A. § 5104B

§ 5104B. Higher-level review by the agency of original jurisdiction

Currentness

**(a) In general.--**(1) A claimant may request a review of the decision of the agency of original jurisdiction by a higher-level adjudicator within the agency of original jurisdiction.

(2) The Secretary shall approve each request for review under paragraph (1).

**(b) Time and manner of request.--**(1) A request for higher-level review by the agency of original jurisdiction shall be--

(A) in writing in such form as the Secretary may prescribe; and

(B) made within one year of the notice of the agency of original jurisdiction's decision.

(2) Such request may specifically indicate whether such review is requested by a higher-level adjudicator at the same office within the agency of original jurisdiction or by an adjudicator at a different office of the agency of original jurisdiction. The Secretary shall not deny such request for review by an adjudicator at a different office of the agency of original jurisdiction without good cause.

**(c) Decision.--**Notice of a higher-level review decision under this section shall be provided in writing and shall include a general statement--

(1) reflecting whether evidence was not considered pursuant to subsection (d); and

(2) noting the options available to the claimant to have the evidence described in paragraph (1), if any, considered by the Department.

**(d) Evidentiary record for review.--**The evidentiary record before the higher-level adjudicator shall be limited to the evidence of record in the agency of original jurisdiction decision being reviewed.

(e) **De novo review.**--A review of the decision of the agency of original jurisdiction by a higher-level adjudicator within the agency of original jurisdiction shall be de novo.

**CREDIT(S)**

(Added [Pub.L. 115-55](#), § 2(g)(1), Aug. 23, 2017, 131 Stat. 1107.)

**APPLICABILITY OF ENACTMENT**

<Amendments by [Pub.L. 115-55](#), § 2, applicable to all claims for which notice of a decision under [38 U.S.C.A. § 5104](#) is provided by the Secretary on or after the later of the date that is 540 days after Aug. 23, 2017, and 30 days after the date required certifications and performance outcomes are submitted to the appropriate committees of Congress, see [Pub.L. 115-55](#), § 2(x), set out as a note under [38 U.S.C.A. § 101](#).>

38 U.S.C.A. § 5104B, 38 USCA § 5104B  
Current through P.L. 116-16.



United States Code Annotated

Title 38. Veterans' Benefits (Refs & Annos)

Part IV. General Administrative Provisions

Chapter 51. Claims, Effective Dates, and Payments

Subchapter I. Claims (Refs & Annos)

38 U.S.C.A. § 5104C

§ 5104C. Options following decision by agency of original jurisdiction

Currentness

**(a) Within one year of decision.--**(1) Subject to paragraph (2), in any case in which the Secretary renders a decision on a claim, the claimant may take any of the following actions on or before the date that is one year after the date on which the agency of original jurisdiction issues a decision with respect to that claim:

(A) File a request for higher-level review under [section 5104B](#) of this title.

(B) File a supplemental claim under [section 5108](#) of this title.

(C) File a notice of disagreement under [section 7105](#) of this title.

**(2)(A)** Once a claimant takes an action set forth in paragraph (1), the claimant may not take another action set forth in that paragraph with respect to the same claim or same issue contained within the claim until--

(i) the higher-level review, supplemental claim, or notice of disagreement is adjudicated; or

(ii) the request for higher-level review, supplemental claim, or notice of disagreement is withdrawn.

**(B)** Nothing in this subsection shall prohibit a claimant from taking any of the actions set forth in paragraph (1) in succession with respect to a claim or an issue contained within the claim.

**(C)** Nothing in this subsection shall prohibit a claimant from taking different actions set forth in paragraph (1) with respect to different claims or different issues contained within a claim.

**(D)** The Secretary may, as the Secretary considers appropriate, develop and implement a policy for claimants who--

(i) take an action under paragraph (1);

(ii) wish to withdraw the action before the higher-level review, supplemental claim, or notice of disagreement is adjudicated; and

(iii) in lieu of such action take a different action under paragraph (1).

**(b) More than one year after decision.**--In any case in which the Secretary renders a decision on a claim and more than one year has passed since the date on which the agency of original jurisdiction issues a decision with respect to that claim, the claimant may file a supplemental claim under [section 5108](#) of this title.

#### CREDIT(S)

(Added [Pub.L. 115-55](#), § 2(h)(1), Aug. 23, 2017, 131 Stat. 1108.)

#### APPLICABILITY OF ENACTMENT

<Amendments by [Pub.L. 115-55](#), § 2, applicable to all claims for which notice of a decision under [38 U.S.C.A. § 5104](#) is provided by the Secretary on or after the later of the date that is 540 days after Aug. 23, 2017, and 30 days after the date required certifications and performance outcomes are submitted to the appropriate committees of Congress, see [Pub.L. 115-55](#), § 2(x), set out as a note under [38 U.S.C.A. § 101](#).>

38 U.S.C.A. § 5104C, 38 USCA § 5104C  
Current through P.L. 116-16.

United States Code Annotated

Title 38. Veterans' Benefits (Refs & Annos)

Part V. Boards, Administrations, and Services (Refs & Annos)

Chapter 71. Board of Veterans' Appeals

38 U.S.C.A. § 7113

§ 7113. Evidentiary record before the Board of Veterans' Appeals

Currentness

**(a) Cases with no request for a hearing or additional evidence.**--For cases in which a hearing before the Board of Veterans' Appeals is not requested in the notice of disagreement and no request was made to submit evidence, the evidentiary record before the Board shall be limited to the evidence of record at the time of the decision of the agency of original jurisdiction on appeal.

**(b) Cases with a request for a hearing.**--**(1)** Except as provided in paragraph (2), for cases in which a hearing is requested in the notice of disagreement, the evidentiary record before the Board shall be limited to the evidence of record at the time of the decision of the agency of original jurisdiction on appeal.

**(2)** The evidentiary record before the Board for cases described in paragraph (1) shall include each of the following, which the Board shall consider in the first instance:

**(A)** Evidence submitted by the appellant and his or her representative, if any, at the Board hearing.

**(B)** Evidence submitted by the appellant and his or her representative, if any, within 90 days following the Board hearing.

**(c) Cases with no request for a hearing and with a request for additional evidence.**--**(1)** Except as provided in paragraph (2), for cases in which a hearing is not requested in the notice of disagreement but an opportunity to submit evidence is requested, the evidentiary record before the Board shall be limited to the evidence considered by the agency of original jurisdiction in the decision on appeal.

**(2)** The evidentiary record before the Board for cases described in paragraph (1) shall include each of the following, which the Board shall consider in the first instance:

**(A)** Evidence submitted by the appellant and his or her representative, if any, with the notice of disagreement.

**(B)** Evidence submitted by the appellant and his or her representative, if any, within 90 days following receipt of the notice of disagreement.

**CREDIT(S)**

(Added [Pub.L. 115-55](#), § 2(w)(1), Aug. 23, 2017, 131 Stat. 1114.)

**APPLICABILITY OF ENACTMENT**

<Amendments by [Pub.L. 115-55](#), § 2, applicable to all claims for which notice of a decision under [38 U.S.C.A. § 5104](#) is provided by the Secretary on or after the later of the date that is 540 days after Aug. 23, 2017, and 30 days after the date required certifications and performance outcomes are submitted to the appropriate committees of Congress, see [Pub.L. 115-55](#), § 2(x), set out as a note under [38 U.S.C.A. § 101](#).>

38 U.S.C.A. § 7113, 38 USCA § 7113

Current through P.L. 116-16.

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