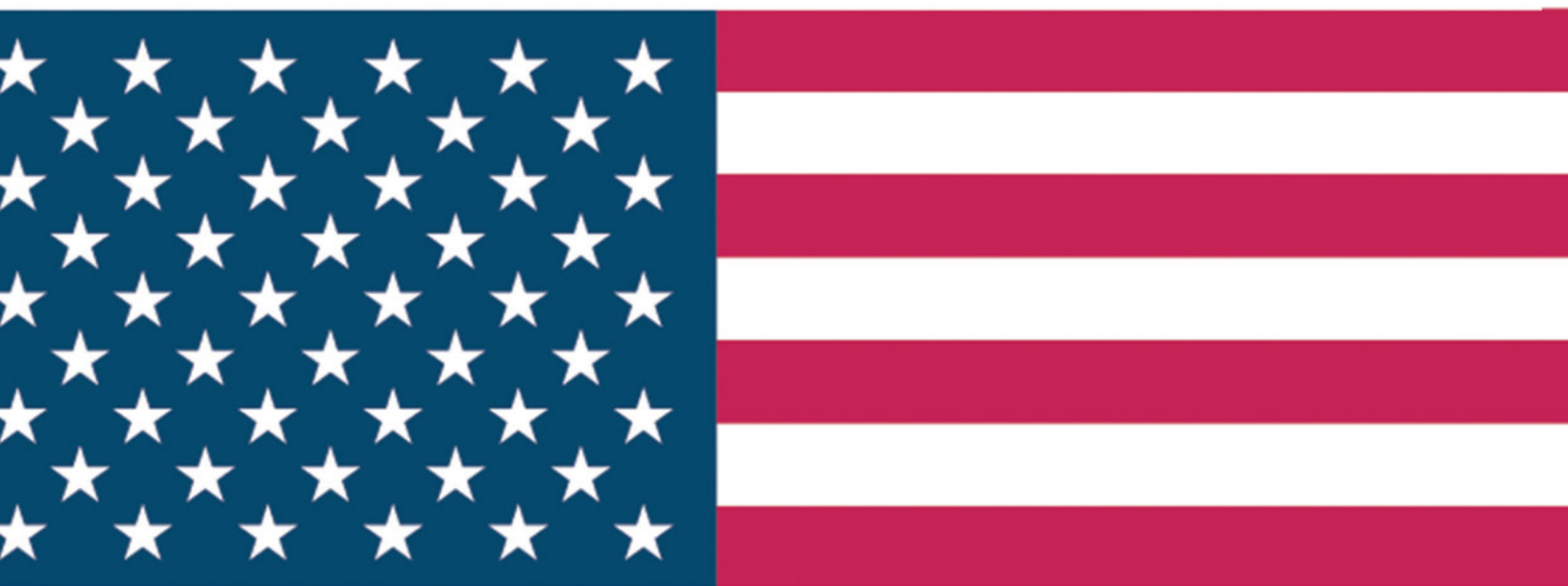


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# HOW TO WIN YOUR VA CLAIM



We've helped thousands of veterans win their battle with the Department of Veterans Affairs. Are you ready to win? We can help you too.



# INTRODUCTION:

This book is intended to provide veterans with a short and easy-to-understand explanation about how to win a VA disability claim. This includes information on how to file a VA disability claim, what information/evidence is needed to win a claim, and the process and rules that apply.

This book also provides information on why an advocate may be needed if a VA disability claim is denied, or if the veteran is not satisfied with the decision, such as a low rating.

## VA CLAIMS AND APPEALS PROCESS

As a veteran of the U.S. Military, you may be entitled to certain veterans' benefits. These benefits could include health care, pensions, education, training, insurance, employment aid, or housing aid. Some benefits assist with transitioning back to everyday life, while other benefits provide compensation for a disability suffered while serving your country. If you believe you are entitled to these benefits, but are not currently receiving them you should file a claim. **Whatever the situation, you should not be afraid to file a claim for benefits you feel you deserve.**



# HOW DOES THE VA CLAIM

## PROCESS WORK?

Generally speaking, the claim process begins when you file an application, VA Form 21-526. This form can be found on our Veterans Forms Page on our website at VeteransHelpGroup.com. You can file your initial claim at your local VA office or medical facility, or you can file online through the VA at [ebenefits.va.gov](https://ebenefits.va.gov). If you feel like you need assistance filing your claim, a representative from the VA or from a service organization can help you. Once the form is complete, the VA will begin processing your claim.

### Claim Stages

After you have filed your VA Form 21-526, the VA will process your claim in three stages. The VA refers to these stages as development, decision, and notification.

During the initial development stage, the VA will request information regarding your claim. The VA will likely request that you provide them with certain military records, like your DD-214, and any medical evidence you have that supports your claim. The VA may request that you undergo a medical examination called a Compensation and Pension (C&P) exam, to help assess and evaluate your claim.

During the decision stage, the VA will evaluate all the relevant information and evidence that has been gathered, and make a decision regarding your claim. Should the rating official find that some relevant information is missing, the claim will be pushed back into the development stage.

The final stage, notification, is where the rating official's decision is reviewed. If the decision is approved, a notification letter detailing the decision is sent to you. This notification letter will detail whether your claim has been approved or denied, and for what reasons.



# VETERANS DISABILITY ELIGIBILITY

To be eligible for VA disability benefits, there are certain general requirements you must prove. First, you must show that you qualify as an eligible veteran under VA regulations. In most circumstances, if you are a veteran, and received a discharge under conditions other than dishonorable, then you meet the VA's definition of an eligible veteran. Once you have proven that you qualify as an eligible veteran, you must then prove that you have a disability that can be service connected. To have a disability classified as service connected, you must show you have a current mental or physical disability that is at least as likely as not related to an in-serve event, illness, or injury. Alternatively, you can also get a disability service connected if it was caused by a service connected disability (referred to as secondary).

# SPECIFIC REQUIREMENTS FOR VA DISABILITY

In addition to the general requirements for VA disability benefits, each specific benefit has particular criteria you must meet to qualify for the benefit. If you are looking to be cared for in a nursing home, the requirements naturally will look very different than the criteria to receive individual unemployability. The following are some benefits you may be entitled. For more specific information, please contact our office.

- **Total Disability Rating Based On Individual Unemployability (TDIU or IU)** - If you have one or more service-connected disabilities that prevent you from being able to work, you may be eligible for an increase to a Total Disability Rating based on Individual Unemployability. With IU, you may be entitled to compensation at 100% even if your combined current disability ratings do not equal a 100% rating, so long as the disability is service-connected and prevents you from securing or maintaining gainful employment.
- **Dependency & Indemnity Compensation (DIC)** - If a veteran with a service-connected disability dies as a result of that service-connected disability, or a condition that should have been service connected, then the surviving spouse, children or parents, may be entitled to DIC benefits from the VA. Additional factors besides cause of death could create eligibility.
- **Aid and Attendance (A&A)** - If you require regular assistance from others to perform personal daily living tasks, then you may be entitled to A&A from the VA. A&A is a benefit that is separate from your disability rating, meaning you may be entitled to additional compensation, even if you are currently rated at 100%.

The best path to take if you are trying to figure out if you are eligible to receive a specific VA disability benefit is to contact Veterans Help Group to discuss your claim with one of our legal professionals. We can help you manage through the copious amounts of legislation and paperwork in order to find out if you do meet all the eligibility requirements. Contact our firm today at 800-953-6224 to get started.

# WHAT DO YOU NEED TO APPLY?

When you decide you are ready to file your initial claim, the first thing you need is the application, called VA Form 21-526 or the Veterans Application for Compensation and/or Pension. This form can be found at your local VA facility, on line, or on the Forms Page on our website VeteransHelpGroup.com.

## What Paperwork Do You Need?

After you submit your application, the VA will likely ask you to submit a number of additional documents. These could include parts of your military records, certain proof of dependency, and any medical evidence you have available.

The VA will use your military records to establish if you are an eligible veteran and a connection exists between your current disability and military service. For example, your **DD-214** can be used to prove a valid discharge and may be used to show overseas deployment. Depending on the condition applied for, you may need to provide deployment orders to prove you were exposed to certain environmental hazards. In other situations, an award citation could prove that an event. **Don't think you need to limit the evidence you provide to the VA to official military records.** In the past, veterans have been able to prove entitlement to benefits by providing the VA with articles written by newspapers, such as the Army Times, featuring an event where the service member was involved. Statements written by another service member who can corroborate your story will serve as proof in your VA claim. Even letters you wrote home to loved ones can verify that certain injuries or events took place.

The VA may also need to see dependency records. A marriage license or birth certificates, could be used to prove entitlement to dependency compensation. Any medical evidence, whether from your private doctor, a VA doctor, or a military doctor, will help you prove your disability and need for aid.




# WHAT IF YOU DO NOT HAVE THE NECESSARY PAPERWORK?

If you do not have access to all the documents the VA requests, it is ok. There is a lot of paperwork you must fill out and provide to the VA. In some cases, these necessary records are difficult to obtain. The responsibility to find all the necessary paperwork does not rest squarely on your shoulders. The VA carries a significant portion of that obligation because they have a duty to assist you in locating information relevant to your claim. The VA may be able to request a copy of your paperwork from the **National Archives and Records Administration (NARA)**, which stores copies of all military personnel files. However, it may be beneficial for you to have the necessary documents ready so the entire process moves faster.

## The Veterans Claims Assistance Act

The **Veterans Claim Assistance Act (VCAA)** was instituted in 2000. The VCAA created a statutory obligation for the VA to assist veterans in developing their claims. This legislation was a reaction against the staggering amount of claims being rejected on the basis that the claim had “no merit”. Most of these denials were unfounded and were merely an attempt to quickly eliminate claims. According to this law, the VA has a duty to assist veterans to fully develop all claims, find necessary evidence, and to inform the veteran at every stage of the application process of information needed to properly develop the claim.



This law was designed to bring more fairness to the system. Under the Act, the VA is required to reasonably search for records relevant to your claim, even if they are records the VA does not maintain themselves. Additionally, in most circumstances the VA must provide a medical examination for the disability you are claiming. This evaluation is meant to determine whether the impairment is related to your service, and if found to be related to service, what rating you should be given.

# THE VA RATING SYSTEM

The VA rating system is based on the average impairment of earning capacity a disability would cause in civil employment. The rating system, called the **VA Schedule for Rating Disabilities**, rates the disability on a scale starting with 0% to 100% using increments of ten. A 0% rating is given to a disability when the veteran has been diagnosed with a condition but that condition is not severe enough to warrant compensation. While this may not seem helpful, a 0% rating acknowledges the disability is related to the veteran's service and allows the veteran to only have to file for an increased rating at a later time should their condition worsen. On the other hand, at 100% a veteran has been given a total disability rating. Currently, a veteran who has a 100% rating will receive around \$3,100 per month with increases for dependents.

# THE VA APPEALS PROCESS

The Veterans Appeals Improvement and Modernization Act of 2017 changed the way the VA processes veterans' disability compensation claims and appeals. This was done in an attempt to simplify and streamline the old appeals process while also allowing veterans, their families, and survivors a choice in how they wanted the VA to handle disagreements with the VA's decisions.

The AMA was signed into law in August of 2017, and was officially implemented on February 19, 2019. This means that all requests for a review of VA decisions, which were issued on or after that date, are being processed in the new system.

**NOTE:** If you received your VA decision prior to February 19, 2019, your VA disability claim may be processed under the old Legacy appeals system. You can learn how the legacy appeals system works here: <https://www.va.gov/decision-reviews/legacy-appeals/>



# KEY TERMS TO KNOW

There are several important terms you should understand to be able to effectively navigate the new appeals system. Under the new system the VA has changed certain evidentiary standards, the way in which the VA is obligated to assist veterans, and deadlines for preserving effective dates.

- **VA's Duty to Assist.** The duty to assist requires the VA to gather information that may help and support your claim, such as service personnel records and VA medical records. The AMA limits the VA's duty to assist veterans insofar as it is only required when a veteran files an initial claim for benefits, or when a veteran files a supplemental claim with new and relevant evidence. The duty to assist does not generally apply to the Board of Veterans' Appeals (Board). This means the Board is no longer obligated to remand decisions for the purpose of developing additional evidence. An exception to this is that the Board may under rare circumstances remand for a new VA examination.
- **New and Relevant Evidence.** The VA has adopted a new standard of evidence to be "new and relevant." The VA defines "new" as evidence that was not previously submitted to the VA. "Relevant" evidence is evidence that tends to prove or disprove a veteran's claim.
- **Effective Dates and Final VA Claims Decisions.** Effective dates are based on the date of the initial claim, the date of the supplemental claim if filed more than one year after a final decision, or the date entitlement arose, whichever is later. If a claim is continuously pursued, the effective date will be preserved. If the claim is not continuously pursued when the claim decision becomes final, the effective date is lost.

Decisions become final when the appeal period for that decision has passed without filing an appeal. Veterans generally have one year to appeal, no matter what type of decision they receive under the AMA. However, veterans only have 120 days to appeal an unfavorable Board decision to the Court of Appeals for Veterans Claims (CAVC).

# HOW DOES THE NEW VA APPEALS

## PROCESS WORK?

If you receive an unfavorable rating decision on an initial VA compensation claim, the VA's new appeals process allows you to choose from three different review options, called lanes, when filing an appeal:

### **Higher Level Review Lane.**

By choosing this lane, you will be requesting that the VA issue another decision based on a higher level of review. This review is conducted by a more experienced Decision Review Officer (DRO) at the Regional Office. This specialist evaluates the veteran's claim de novo (i.e. new look). The previous decision can be overturned based on multiple factors which include a clear and unmistakable error. In this lane you are not allowed to submit new evidence in support of your claim. This means that the DRO will issue their decision based only on the same evidence available at the time of the prior decision, You cannot appeal a higher level review with another higher level review.

### **Supplemental Claim Lane.**

This lane allows you to submit new and relevant evidence. This is also the only lane where the VA has a duty to assist you in gathering evidence to support your claim. You will also keep the same effective date for your claim when submitting new and relevant evidence as long as the supplemental claim is submitted within one year of the prior decision. You are also able to submit a claim with new and relevant evidence if you receive an unfavorable decision from the higher-level review process, after receiving a denial from the Board, or after receiving a denial from the Court of Appeals for Veterans Claims (CAVC).

## **Appeal Lane (i.e. Appeal to the Board of Veterans' Appeals).**

In this lane you can appeal your case directly to the Board following an initial decision from the RO, or an unfavorable decision in either the higher-level review or supplemental claim lane. This change allows you to skip the second-level of review at the RO. There are three dockets at this level which you can choose from: the direct docket, evidence docket, and hearing docket.

## **WHAT ARE THE THREE DOCKETS?**

### **Direct Docket**

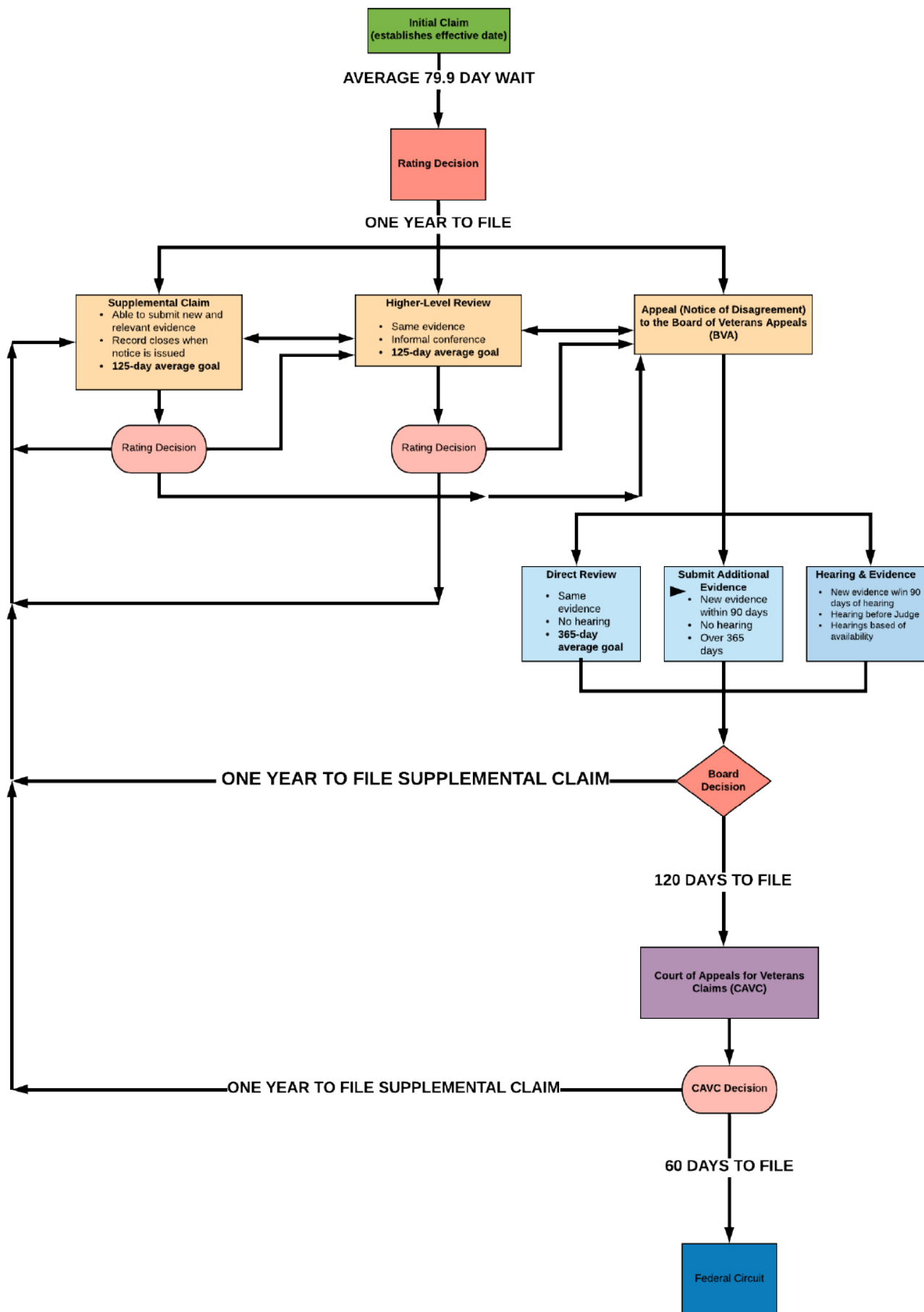
Used when you do not want to submit additional evidence to the Board, and do not want a hearing before a Veterans Law Judge. In this docket, the Board will look at the evidence that was in your file when the appealed decision was issued. The VA has set a 365-day goal for issuing decision for the direct docket lane. This is projected to be the fastest of all the options.

### **Evidence Docket**

If you want to submit additional evidence, but do not want a hearing. In this lane you can submit additional evidence to the Board with their Notice of Disagreement (NOD) and within the 90-days following their NOD.

### **Hearing Docket**

If you want to have a hearing before a Veterans Law Judge. The hearing options available to veterans under the AMA include a videoconference hearing or a hearing at the Board in Washington, D.C.



# SWITCHING LANES IN THE VA

## CLAIMS AND APPEALS PROCESS

It is important to know that you can change your request for a certain review option at several times throughout the VA claims process.

- 1. Switching Lanes at the Regional Office Level.** You can change your request for a certain review option at any time prior to the VA issuing a decision on your claim, so long as the change happens within the one-year period following the date of decision. You can choose another review option and your effective date will be preserved.

**EXAMPLE:** If you file an appeal through the higher-level review lane, but then you discover new and relevant evidence, you can withdraw from the higher review lane and file a supplemental claim to submit new and relevant evidence. So long as this happens within the initial one-year period to appeal.

- 2. Switching Lanes at the Board of Veterans' Appeals Level.** You are also able to switch dockets at the Board level by modifying your Notice of Disagreement. However, if you have already submitted new evidence or testified at a Board hearing, you cannot switch dockets to take advantage of the faster direct docket.

Your request to modify must be made within one year of the rating decision, or 60 days after the Notice of Disagreement is received by the Board, whichever is later.



# WHAT DO YOU NEED TO KNOW

## ABOUT THE VA CLAIMS

## AND APPEALS PROCESS?

### Can I have multiple appeals pending in different lanes at the same time?

**Yes.** You can select different review options for each issue on appeal.

**EXAMPLE:** If you receive a rating decision on two different conditions, you can choose to appeal those claims in whichever lane is most appropriate for your specific case. So you could appeal one condition in the higher-review lane and the other in the supplemental claim lane.

### How long will the VA take to decide my claim?

The VA has listed timely decision making-goals for each review option or lane. Each case is unique however, and your wait time may depend on other variables.

- Supplemental Claims: VA's goal is an average of 125 days.
- Higher-Level Review: VA's goal is an average of 125 days.
- Appeals to the Board of Veterans' Appeals: The VA's goal varies depending on the docket
  - » Direct Docket: The VA's goal is within 365 days.
  - » Evidence Docket The VA claims that this docket may take longer than 365 days.
  - » Hearing Docket This docket is projected to take the longest, and may take longer than 365 days.

## Should I Request a Hearing with the Board?

It depends. The hearing docket gives you the opportunity to present your case to a Veterans Law Judge either in person or via video conference. However, because the Board is prioritizing legacy appeals over the new appeals system, you are likely going to have to wait years before your hearing even takes place. The Board also has a large backlog of requested hearings in the Legacy system and they have to continue to get through those cases before scheduling hearings under AMA. This means that veterans will likely be waiting for AMA hearings for the next three to five years, - causing a significant delay in the decisionmaking process.

## Can I switch into the AMA system from the Legacy System?

**Yes.** If you have a pending Legacy appeal and have received a Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC) within the past 60 days you can choose to move your case from the Legacy system to the AMA process.

To opt-in to the new system, you can complete the appropriate form for the preferred review option you choose to participate in and check the "SOC/SSOC Opt-in" box. You must submit the completed application form(s) within 60 days from the date of an SOC or SSOC, or within one year of the appeal period on an initial rating decision, whichever is later.

## Can I have appeals in the Legacy system and the AMA system at the same time?

**Yes.** Existing appeals in the Legacy system will continue to be adjudicated in that system until a new decision is received. All rating decisions received after February 19, 2019, even if your claim originally began in the Legacy system, will be appealed using the new appeals system.

## Can I return to the Legacy system after opting into the AMA System?

**No.** Once you opt into the AMA process the decision is permanent and you cannot return to the Legacy system.

# WHAT DO YOU NEED TO FILE

## AN APPEAL?

Remember there are now three options to choose from when you want to appeal a decision. There are also new forms to file, whether electronically or by paper.

### **1. Supplemental Claim: VA Form 20-0995**

Use this form to initiate a supplemental claim. Here you will identify the issues you want to appeal, and specify what new and relevant evidence you have identified or would like the VA to help locate.

### **2. Higher Level Review: VA Form 20-0996**

Use this form to request a higher-level review and identify the issues you wish to appeal.

### **3. Board of Veterans Appeals - Notice of Disagreement: VA Form 10182**

Use this form to appeal your decision to the Board and identify the specific issues you disagree with. Here you will also select which of the three dockets you wish to take (either direct review, evidence submission, or hearing).

## TIPS FOR A WINNING VA

### DISABILITY CASE

#### **TIP #1: Recognize and Document Disabilities When They Arise.**

Many veterans do not want to leave service and immediately complain about any medical conditions. As a result, you deal with the problem on your own for many years without going to a doctor. Then after many years, the problem becomes severe and then you see a doctor. At this time, many years have passed and the VA may say they do not trust that you have continuously suffering since you got out of service.



You should document ongoing problems even if you perceive them to be minor. But do not worry, if you did not do this you can still win! You likely must explain the gap in medical treatment and provide alternative forms of evidence such as statements from friends or family.

**TIP #2: Use Statements of Friends and Family to Document the Nature and Symptoms of Your Disability.**

An invaluable piece of evidence you can use are buddy statements, or statements from friends, family, and those you served with. These statements can address and corroborate a stressor that occurred in service (i.e. an IED that is not in your military records), symptoms you have been struggling with, or the impact the disability has on your daily life.

**TIP #3: Get Treatment for Your Conditions.**

Making sure you get treatment for your service-connected conditions can help your claim. From the VA's viewpoint, if you are not treating your conditions, they must not be that severe. Therefore might not need VA disability benefits.

Receiving treatment also helps create a record of your medical conditions. Your treating physician's record can be submitted to the VA when you are applying for benefits.

It is important to know you can receive treatment by doctors outside the VA system. Those records are just as important and can be submitted as well. If you have more than one doctor you can submit all of their records that pertain to your condition.

**TIP #4: Get a Complete Copy of Your Claims File, Including Service Treatment Records and Post-Service Treatment Records.**

In order to be able to properly develop your case, you need to be able to analyze what evidence exists and then be able to assess whether you have sufficient evidence to meet all the required criteria.

There are multiple ways to request your service treatment records: through milConnect, through mail or fax with an SF 180, or in person at the National Personnel Records Center (NPRC). More information is available at: <https://www.va.gov/records/get-militaryservice-records/>

**TIP #5: Obtain Your Own Medical Expert Report Linking Your Disability to Service.**

To substantially increase your chances of success, you should have your own medical expert review your claims file and provide a written opinion as to whether your current

condition is related to service. If you are able to afford it, your own private medical expert is almost always better than relying on the VA.

**EXAMPLE:** Assume you have a current disability of knee pain. Your service treatment records show treatment notes for knee pain. This missing link would be a medical nexus opinion linking your current disability to the documented knee pain from service.

**TIP #6: Understand the Basics of the Claims and Appeals Process.**

The more you understand about how the VA's claims and appeals process works, the more power you will have over your claim. Knowing when to take certain actions or what the process will look like can help ease some of the stress and frustration often experienced by veterans seeking benefits. The Veterans Disability Blog on our website can serve as a valuable educational tool for this information.

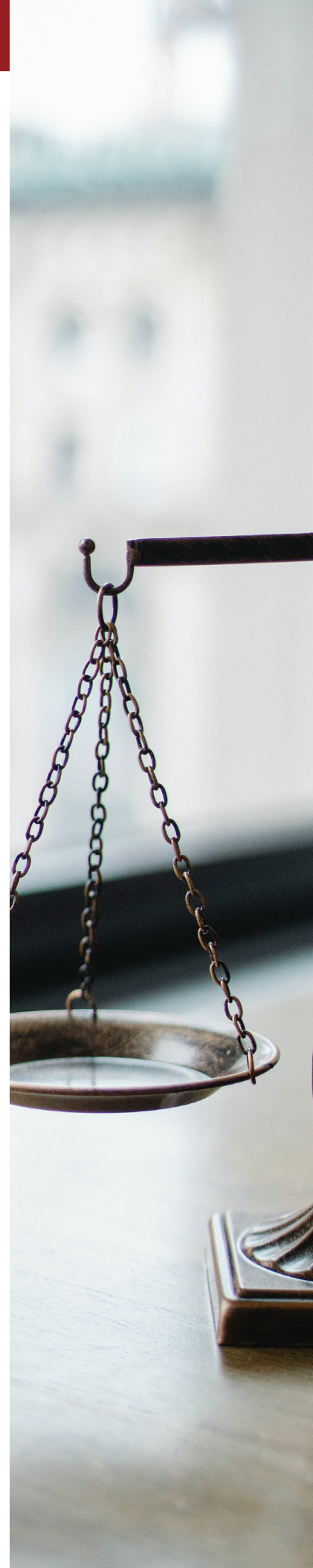
**TIP #7: Keep the VA Updated.**

Make sure that the VA has up-to-date contact information for you, including your address. The VA is only obligated to send correspondence related to your VA claim to the address on file. If your address is incorrect or out-of-date, you can risk your claim being delayed or even potentially closed due to missed deadlines.

Make sure you also update the VA with any changes in dependency status, including recent marriage or divorce, or birth of a child. Failure to update the VA about a divorce or dependency status could result in an overpayment of dependency benefits which you would likely have to pay back. If you have recently gotten married, making sure you update this information could result in more monthly compensation.

Finally, be sure to update the VA with any change in your bank information so there are no delays in your monthly benefits.

As with all updates, the burden is on the veteran to inform the VA.





### **TIP #9: Attend Your C&P Exam and Obtain a Copy of the C&P Report.**

Compensation and Pension examinations are medical exams ordered by the VA to assess the etiology and/or severity of a veteran's disability when they are pursuing a disability compensation claim. The VA weighs the results of this examination very heavily.

If you do not attend your initial exam for service connection, there is a high likelihood your claim will be denied. Further, if you fail to attend your exam for an increased rating claim, the VA may have to rely on outdated medical evidence which may not show the progression of your symptoms.

If you know you are unable to attend your upcoming examination you should reach out to the VA as soon as possible to reschedule.

If the VA sends you for a C&P exam, make sure you obtain a copy of the report. If it is not favorable, you will then be able to submit rebuttal evidence from your own doctor(s).

### **Tip #10: Do not Accept "No" For An Answer.**

A high percentage of all first-time applications for VA disability benefits are denied. If this happens to you, do not give up!

### **Tip #11: Hire an Experienced Advocate.**

Ultimately, if you want to ensure your VA disability claim is done correctly, hire an experienced advocate. Some veterans fight against the VA for years alone and can keep getting denied because they do not know VA law.

# DO YOU NEED A VA

## DISABILITY ADVOCATE?

First, ask yourself the following questions:

- Do you trust the VA to give you what you are entitled to?
- Do you believe the VA is doing everything it can to assist you in obtaining your benefits?
- Do you believe the VA is telling you everything that you are entitled to?
- Do you believe you fully understand VA law and regulations?
- Would you go to court without an advocate?

If you answered “no” to any of these questions, then you may need a advocate. An experienced VA disability advocate knows the VA’s laws and regulations, and understands what you are legally entitled to receive. An advocate can then use that knowledge to level the playing field for veterans.



# WHY YOU NEED

## VETERANS HELP GROUP

- Having an advocate increases your chances of winning. According to the VA's own statistics you are twice as likely to win an appeal with an advocate rather than fighting it alone.(Board of Veterans' Appeals Report of the Chairman Fiscal Year 2012).
- Communication. We know how the VA treats veterans and how hard it is to talk to someone about your medical or claims, and we pride ourselves in our commitment to communicate with clients as much as they need.
- Experience. We have been successfully helping veterans win VA disability benefits since 1995. Read our Recent Victories and Testimonials from satisfied clients on our website at VeteransHelpGroup.com.
- Leaders in VA law. We are leaders in VA law. Many of our advocates serve or have served in various leadership positions in the field of VA law and lecture and train other advocates and agents. For more information check out the Profiles of our advocates and veteran advocates on our website at VeteransHelpGroup.com.
- We know the law! The VA regulations and laws are over 2,000 single spaced pages. Our advocates know these regulations and laws inside and out.
- Resources. We have access to extensive resources that allow us to secure evidence, including vocational expert reports, to support your claim and appeal.
- Evidence. We gather military and medical records and review them to find the evidence to help win cases.
- Medical Treatment. We advise clients on seeking medical treatment and we may refer them to medical experts for evaluations. We work with treating and other expert medical and mental health professionals.
- **NO FEES UNLESS YOU WIN.** We do not charge any fees unless we are successful in your appeal and then we are only paid a fee based on a percentage of the back pay we recover for you.

# CONTACT VETERANS HELP GROUP TODAY!

Veterans Help Group focuses on one thing: getting veterans the benefits they deserve. If you or a loved one served, and is unable to work we are here to help. Call Veterans Help Group at (800) 953-6224 or complete our free veterans benefits case evaluation form at [VeteransHelpGroup.com](http://VeteransHelpGroup.com)

