

The background features a low-angle shot of a large, ornate building with a prominent dome and a spire, likely a state capitol building. The building is partially obscured by a semi-transparent white banner. In the foreground, there are out-of-focus autumn leaves in shades of yellow and orange against a clear blue sky.

Fourth Annual Free Veterans Day CLE Webinar November 7, 2024



Veterans Clinic
School of Law
University of Missouri

Preliminary Matters

CLE Program ID:

755634

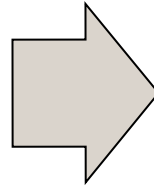
3.6 General CLE Credits

Questions: Please type your questions into the Q&A function. We will try to get to all of them by the end of the presentations.





Why We
Do It...



How We
Do It...



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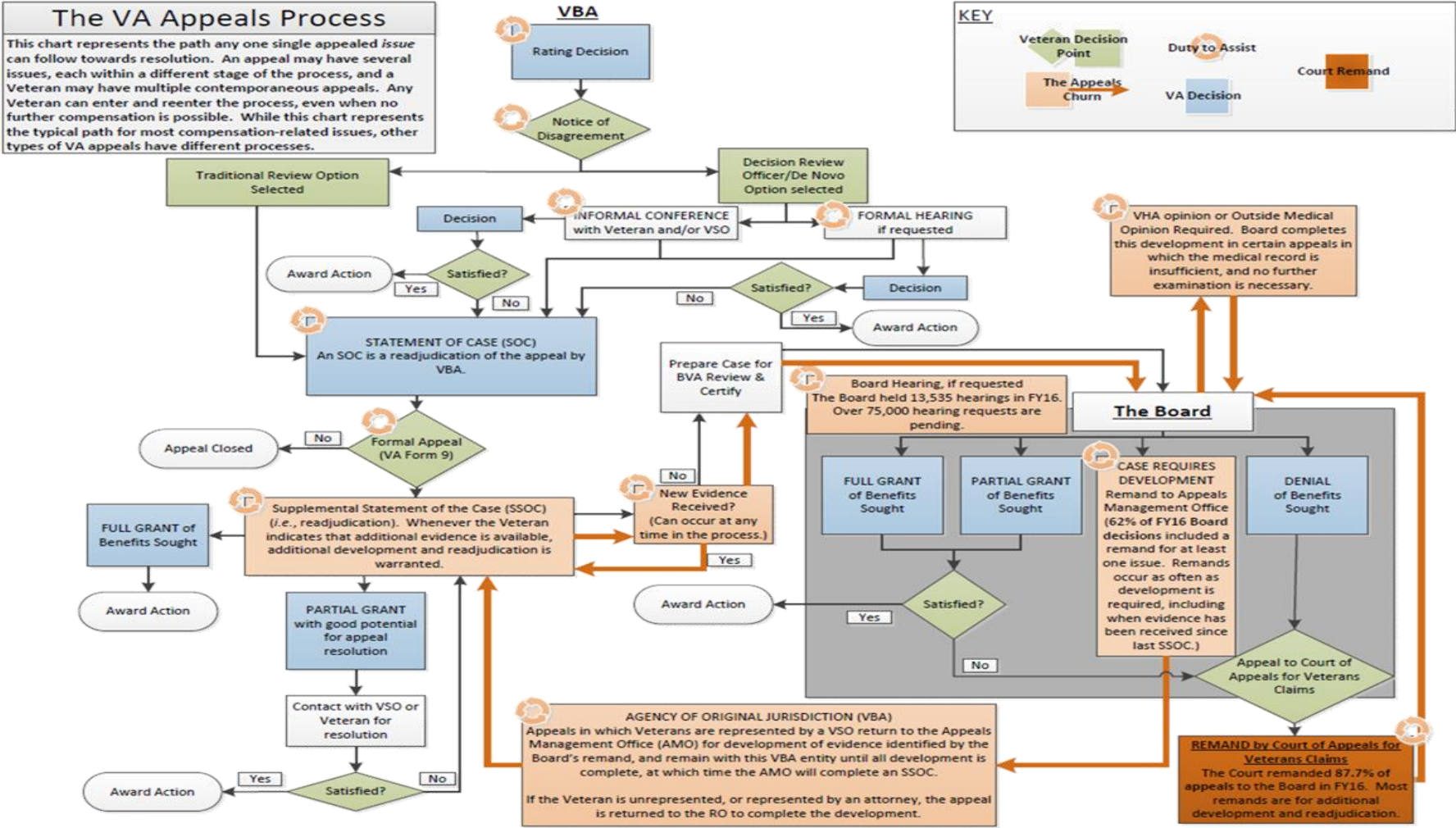


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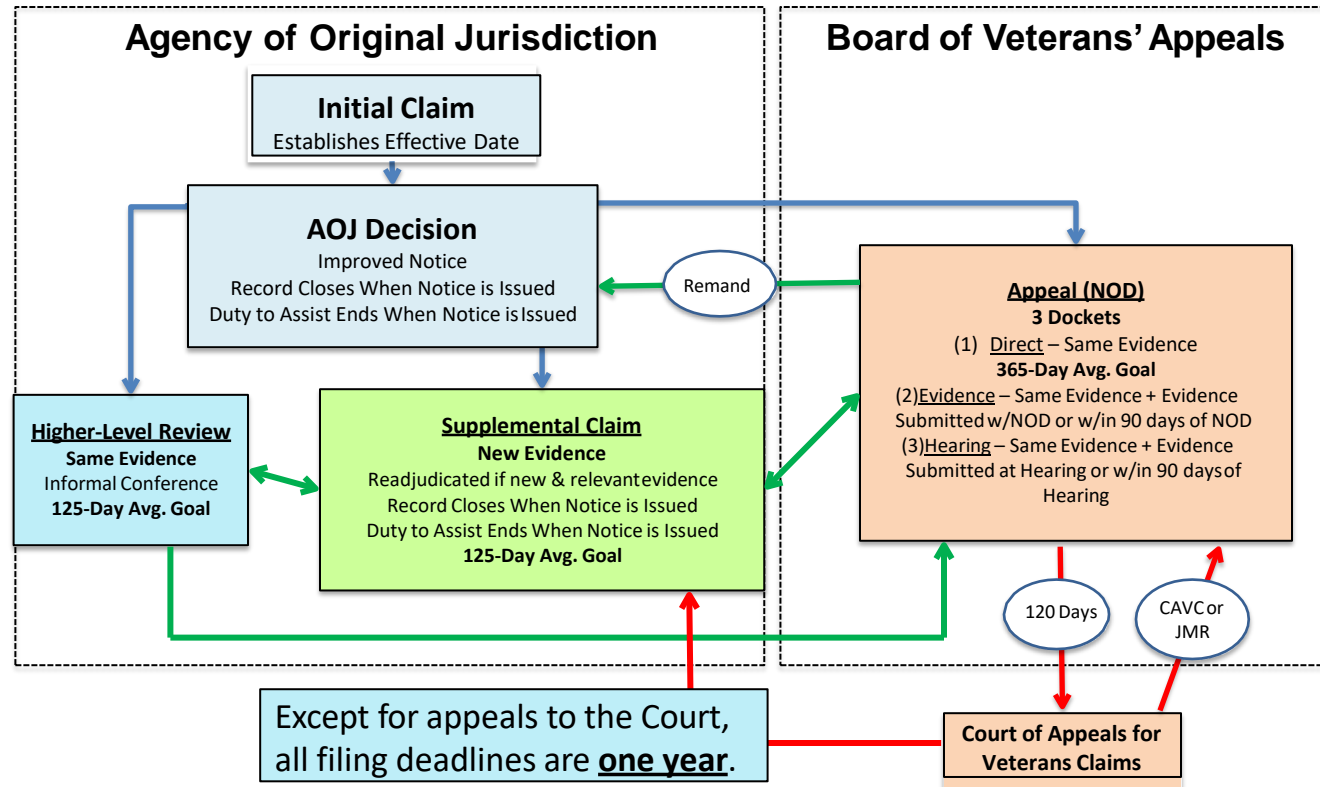
Why We Do It...



Problem: VA Legacy Appeal Process



Appeals Modernization Act



VA



U.S. Department of Veterans Affairs



University of Missouri

How We Do It...

- Direct Assistance
- Symposia and Amicus
- Community Outreach
- *Tigers for Troops*
- *Show Me Home*



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VETERANS CLINIC CLIENT STATUS BOARD

A=Current active files P=Project
M=Money secured for Veterans C=Closed

Status	CLIENT/Project	State	type of case
M	A.A-P.	MO	military sexual trauma /Navy 1980
A	T.B	MO	Peacetime/Knee injury
A	G.B.	MO	Iraq Gulf War Di
A	N.B.	CT	Afghanistan -nur injuries
A	D.B.	MO	Vietnam Era/TB training
A	C.B.	OH	Agent Orange/W
A	J.C.	MO	filed NOD and re work
C	H.C.	MO	Korea

Direct Assistance



A					prepared; our work complete in terms of health care secured for back injury and other injuries in service				
C	C.F.	IL	referred by ABA	reviewed his claim	completed work and recommendation	helped him file a			
M	N.F.	MO	Military Sexual Trauma 1990s ; working on Effective		100%	\$32,000 retro: 10			
C	C.G.	FL	rating decrease p VA	C	E.P.	Rep. of Philip	WWII Filipino	Fed Cir	lost ap
M	O.G.	MO	Vietnam Vet/AC	A	M.P.	MO	Marine/Camp Lejeune	bipolar neuro defect resultant to toxic chemicals in water	will ap
C	D.G.	CA	educational benef father currently	M	J.P.	VA	peacetime	done	done
					D.P.	IL	Afghanistan/numerous disabilities	arguing effective date	secure
					J.R.	MO	Afghanistan/nu disabilities		
					L.R.	MO	peacetime/11 h		
					R.R.	MO	peacetime/Arm		
					D.S.	MO	Marine/Camp I		
					J.S.	NY	Iraq/knee injury for Special For		
					L.S.	AZ	Vietnam Widov		
					D.T.	MO	Peacetime/hear		
					T.Te.	KS	Camp Lejeune		

Direct representation of over 250 clients

C	T.W.	MO	peacetin
A	T.Wh.	IL	peacetin

P	Ethical Vignettes		students
P	New client intake		continual
P	November Coalition/D.C.		complet
P	Rural Outreach		students
P	Symposium CLE section		students
P	Symposium/Public		students
P	amicus briefs		

Symposia



PUSHING THE ENVELOPE
Firsts in Advocacy for America's Heroes

Modern Warfare: Challenges Arising from the Gulf War and the War on Terror

with keynote presentation by Christopher W. Dunn, '14,
Owner of GeoVelo and Gulf War Veteran

Friday, Nov. 10, 2017

 School of Law
University of Missouri



Veterans Clinic Symposium and CLE

Traumatic Brain Injury 2.0

The Science, Treatment and Legal Considerations
Behind One of Our Nation's Most Pressing Issues

November 11, 2016

Symposium 7:30 a.m. to 12:45 p.m.
CLE 12:45 p.m. to 5:00 p.m.

This event is free and open to the public. Registration via our website is requested but not required. For more information, please visit law.missouri.edu/veterans-symposium.




UNIVERSITY OF MISSOURI
School of Law
Announcing the inaugural symposium
of the University of Missouri School of Law
Veterans Clinic

PTSD AND MST ISSUES
IN VETERANS'
DISABILITY CASES:
New Developments

NOVEMBER 11, 2014
8 a.m. to 11:45 a.m.
HULSTON HALL
on the University of Missouri Campus

FEATURING
Keynote Speaker
LT. GEN. (RET) RICHARD HARDING
Former leader of the Judge Advocate General Corps
of the United States Air Force



University of Missouri

Community Outreach

Tigers

Partnership with MU Extension in conducting rural outreach to veterans to remedy unmet legal needs

For

Tigers for Troops has reached 104 counties and conducted more than 308 free legal consultations to veterans

Troops

With Tigers for Troops, we are often connecting them to other resources such as referral attorneys, VA health care education, and Service Officers



Community Outreach

- **Show Me Home**

- In 2024, the Mizzou Veterans Clinic received a \$300,000 grant from the VA to build upon the Show Me Home Program, an initiative to empower and aid veterans in their journey out of homelessness.
- This grant doubles the VA's initial 2023 backing of \$150,000, showcasing its support and trust for the program. The increase funding empowers the Clinic to extend its assistance to more veterans, making an even greater impact.



Why It's Easy For You to Help:

- Very narrow area of the law
- Free mentorship from Veterans Clinic staff and attorneys and help from clinic students
- Veteran friendly and non-adversarial
- No trials or paper records, and no opposing counsel
- The rules of evidence do not apply and the standard of proof is "as likely as not," a more liberal standard of proof than other areas of the law
- Few hard deadlines; new evidence can be submitted during the process



What we've done for our veterans

Secured more
than \$16.5
million in
tax-free retro
payments

Trained over
400 attorneys
and 200
students in
veterans law

Assisted
over 1,600
veterans

These
benefits
helped
countless
family
members

But we need
your help!



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OVERVIEW OF VA DISABILITY COMPENSATION



Veterans Clinic

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University of Missouri

CLE Program ID:

755634

3.6 General CLE Credits

Reminder: Please type your questions into the Q&A function. We will try to get to all of them by the end of the presentations.



What is the U.S. Dept. of Veteran's Affairs (“VA”) and Why Does it Exist?

- 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.
- *“To fulfill President Lincoln’s promise to care for those who have served in our nation’s military and for their families, caregivers, and survivors.”*
- The Department of Veterans Affairs (VA) has a duty to assist veterans in a non-adversarial and paternalistic process.



Benefits Claims Hierarchy

-
- Supreme Court
 - US Court of Appeals for the Federal Circuit
 - US Court of Appeals for Veteran Claims
 - Board of Veteran Appeals
 - Regional Office



Basic eligibility for VA Benefits – Veterans Defined

- **Definition of a Veteran:** A veteran is “a person who served in the **active** military, naval, or air services, 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) (2016).
- “ **[A]ctive military, naval, or air service...**”
 - Must have had “active duty” service, meaning that they served full-time duty in the
 - Air Force
 - Army
 - Coast Guard
 - Marine Corps
 - Navy
 - Space Force

Basic Eligibility – Veterans Defined

Character of Discharge

- Eligibility for VA benefits requires that an individual's discharge must have been “under conditions other than dishonorable.” 38 U.S.C. § 101(2); 38 C.F.R. § 3.12(a).
- Types of Discharges:
 - **Honorable discharge (“HD”)**;
 - **General discharge under honorable conditions (“GD”)**;
 - Discharge under other than honorable conditions (“OTH”);
 - Bad conduct discharge (“BCD”);
 - Dishonorable discharge (“DD”) or a Dismissal, the latter in the case of an officer

The Accreditation Process

- **38 C.F.R. § 14.629** – adopted June 23, 2008
 - Permits attorneys to get paid for services at certain agency claim stages of a claim before the agency
 - Adopted standards for agents and attorneys to be accredited to practice before the VA
 - You **MUST** be an accredited attorney to represent a veteran before the agency. § 14.629(b)(1)



Accreditation – How to Apply

- VA Office of General Counsel
- VA Form 21a – *Application for Accreditation*
- Application can be mailed, faxed, or emailed per the VA website
 - “...accreditation applications may be mailed to the address indicated on the form, faxed to the Office of the General Counsel (002D) at (202) 495-5457, or attached (as a pdf file) to an e-mail sent to the Accreditation Mailbox (ogcaccrreditationmailbox@va.gov).”



Accreditation - § 14.629(b)(1)

- In addition to the application and character check – **Certification** of:
 - 3 hours of state-approved, qualifying CLE (**this course**)
 - Within 12 months after Accreditation
 - + 3 hours of qualifying CLE on veterans benefits law and procedure not later than 3 years from the date of initial accreditation **and** every 2 years thereafter

Two Major Disability Programs for Veterans

A. Service-Connected Disability Compensation (Compensation)

1. Not based on need or income;
2. Must connect disability to military service.

B. Non-Service Connected Disability Pension (Pension)

1. Needs based program;
2. Wartime service;
3. Total and permanent disability;
4. Disability need not be connected to military service.



Service-Connection

- **For the VA to find a disability or death to be service connected, it must determine that the disability or death was incurred or aggravated during active service in line of duty.**

[38 U.S.C. § 101\(2016\).](#)

- Combat not required
- Deployment not required
- Only requirement is that something happened between dates on the DD214 (and not a result of willful or wanton misconduct)

Basic *Prima facie* case

- A veteran seeking service-connected disability compensation must satisfy **three** fundamental requirements:
 1. Competent evidence of a current disability.
 2. Medical, or in certain circumstances, lay evidence of in-service occurrence or aggravation of a disease or injury.
 3. Competent evidence of a nexus between the in-service occurrence or aggravation of a disease or injury and the current disability.



OVERVIEW OF VETERANS BENEFIT LAW

Standard of Proof

- **Criminal Law**
 - Beyond a reasonable doubt
- **Civil Law**
 - Preponderance of the evidence
- **Veterans Law**
 - *As likely as not*
 - Benefit of the doubt
 - *When there is an **approximate balance of positive and negative evidence** regarding any issue material to the determination of a matter, the [VA] shall give the benefit of the doubt to the claimant.”*
 - 38 USC § 5107(b)
 - Equipoise
 - Resolve reasonable doubt in favor of the claimant if all procurable evidence, after being weighed, is found in approximate balance.



Evidence of Current Disability

- 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 (2011).
- Such as:
 - Letter or statement from a VA official or private physician;
 - Evidence in the veteran’s current medical records;
 - Statement from the veteran or family member/caretaker

Evidence of Current Disability

- For a grant of disability compensation, the VA requires evidence that the veteran had a "presently existing disability" on the date that the veteran filed the claim for compensation benefits or at another point thereafter.
- Evidence that a veteran had a service-related disability at some point in the past does not satisfy this requirement.

Evidence of Current Disability

- Under the VA's *Duty to Assist* a claimant in obtaining evidence necessary to substantiate the claim, the veteran may be able to force the VA to provide a free VA medical examination to diagnose the claimed condition.

Evidence of an In-Service Occurrence or Aggravation

- The second requirement for service -connected disability compensation is “medical, or in certain circumstances, lay evidence of in-service occurrence or aggravation of a disease or injury.”
- Again, the disease, injury, or event does not have to be directly related to military duties as long as it happened between the day the veteran entered service and the day the veteran was discharged.
- 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.

Nexus between In-Service and Current Disability

- **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
 - Medical treatises may also be considered
- **Disability must be “as likely as not” connected to service.**

Nexus Between In-Service and Current Disability

- Five Legal Theories to establish a Nexus:
 1. Direct Service Connection
 2. Aggravation
 3. Presumptive Service Connection
 4. Secondary Service Connection
 5. VA Malpractice (Section 1151 Claim)

Nexus Between In-Service and Current Disability

- Direct Service Connection – the disease, injury, or event during active military service directly caused current disability.
- Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d)(2008).

Nexus Between In-Service and Current Disability

- Aggravation – compensation may be granted when an injury or disease that existed prior to service is aggravated due to service.
- A key issue is whether the condition was noted when the veteran was examined, accepted and enrolled for service. If it was not, then veteran is presumed to be sound upon enrollment (Presumption of Soundness – 38 U.S.C. § 111; 38 C.F.R. § 3.304(b)).
- Veteran only has to show that the underlying disability worsened during period of service. It must be more than a flare-up of symptoms.

Nexus Between In-Service and Current Disability

- Presumptive Service Connection is available for diseases:
 - certain chronic diseases,
 - tropical diseases,
 - specific as to former prisoners of war,
 - specific as to radiation-exposed veterans,
 - associated with exposure to certain herbicides such as Agent Orange, or contaminated water,
 - associated with exposure to burn pits and other toxic exposures,
 - associated with exposure to mustard gas, and
 - diagnosed and undiagnosed illnesses in Gulf War veterans

Nexus Between In-Service and Current Disability

- Secondary Service Connection – must show that condition is proximately the result of, or linked to, a service-connected condition
- If a service-connected condition causes or aggravates a second condition, the second condition may be service connected and veteran may be compensated for the highest degree of disability for the second condition.

Nexus Between In-Service and Current Disability

- An 1151 Claim: Injury Caused by VA Medical Treatment or Vocational Rehabilitation – may be treated “as if” it is connected to service.
- 38 U.S.C. 1151 requires fault, negligence, lack of proper skill, carelessness, error in judgment or accident by VA.
 - Or disability results from an unforeseeable event
- If negligence is a factor, the veteran can file a claim under the Federal Tort Claims Act (both avenues may be pursued simultaneously).

The Claims Process

- Claim received by VA
- VA reviews all pertinent records
- Should the VA find evidence of an in-service occurrence and symptomatology, or a diagnosis associated with that occurrence, the VA schedules a C&P exam
- The C&P exam requests medical opinion as to the probability that the disability is associated with service and the functioning level of the disability
- VA makes a decision based on this evidence

What Is In the VA Decision?

- Payment amount and effective date (if favorable)
- Conclusions as to every claim
- Evidence considered
- Reasons for decision
- Favorable findings
- If denied, then the evidence needed to substantiate a claim
- How to appeal the decision



DEPARTMENT OF VETERANS AFFAIRS
 Muskogee
 125 S. Main Street
 Muskogee, OK 74403

[Redacted]

Home Veterans Privacy of Your Record Tools

Represented By:
 DISABLED AMERICAN VETERANS

Rating Decision
 06/10/2015

INTRODUCTION

The records reflect that you are a veteran of the Gulf War Era. You served in the Army from August 21, 2008 to December 10, 2011. You filed an original disability claim that was received on July 23, 2014. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

Evaluation of post traumatic stress disorder (PTSD) with traumatic brain injury (TBI), which is currently 50 percent disabling, is continued.

EVIDENCE

- Service treatment and personnel records for the period August 2008 to December 2011.
- VA Form 21-5106E, Fully Developed Claim for Compensation, received July 23, 2014.
- We received notification from QTC Medical Services showing you failed to report for your VA examination. Evidence expected from this examination, which might have been material to the outcome of your claim, could not be considered. Evidence does not show that you have

provided "good cause" for not attending your scheduled examination. Therefore, we will not reschedule the examination until you notify us that you are available to attend.

- VA examinations dated March 16, 2015 and April 15, 2015 and VA medical opinion dated June 8, 2015

REASONS FOR DECISION

Evaluation of post traumatic stress disorder (PTSD) with traumatic brain injury (TBI) currently evaluated as 50 percent disabling.

The evaluation of post traumatic stress disorder (PTSD) has been combined with your traumatic brain injury (TBI) and is continued as 50 percent disabling.

The VA examiner stated that your TBI is at least as likely as not related to your combat service but noted on your mental exam that your level of occupational and social impairment could not be delineated because both your TBI and PTSD contribute equally. Because the examiner could not delineate the level of occupational and social impairment for each disability we have combined the evaluation of your TBI with the evaluation of your PTSD and granted the higher benefit.

Your 50 percent evaluation is assigned based on your PTSD examination, which revealed the following:

- Difficulty in adapting to stressful circumstances
- Flattened affect
- Difficulty in establishing and maintaining effective work and social relationships
- Chronic sleep impairment
- Anxiety
- Suspiciousness
- 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)

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 50 percent disability evaluation.

A higher evaluation of 70 percent is not warranted for post traumatic stress disorder unless the evidence shows occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as:

- suicidal ideation
- obsessional rituals which interfere with routine activities

Establishing Disability Percentage Rating

- VA assigns the appropriate disability rating based on impairment of earning capacity.
- Each disability relates to numerical diagnostic code. The degree of disability increases as the severity of symptoms becomes greater, leading to a higher percentage rating.

Establishing Disability Percentage Rating

- The rating team examines the veteran's medical records to ascertain the diagnosis, finds the appropriate diagnostic code for the disability and selects the degree that corresponds to the symptoms.
- Degree of disability is based on a system of percentages in multiples of 10.

SINGLE FINGER AMPUTATIONS

Major/Minor

5152 Thumb, amputation of:	
With metacarpal resection.....	40 / 30
At metacarpophalangeal joint or through proximal phalanx.....	30 / 20
At distal joint or through distal phalanx.....	20 / 20
5153 Index finger, amputation of	
With metacarpal resection (more than one-half the bone lost).....	30 / 20
Without metacarpal resection, at proximal interphalangeal joint or proximal thereto.....	20 / 20
Through middle phalanx or at distal joint.....	10 / 10
5154 Long finger, amputation of:	
With metacarpal resection (more than one-half the bone lost).....	20 / 20
Without metacarpal resection, at proximal interphalangeal joint or proximal thereto.....	10 / 10

38 CFR 4.71a (2010).

VA Math

Direct Calculations of Multiple Disabilities

- Veteran has following ratings: 70%, 30%, 20%
- This does not mean the Veteran has a 120% disability rating.
- Instead: VA uses a combined rating formula
- **1st Rating** + ((100% - 1st Rating) x 2nd Rating) = **Combined Rating**
 - $70\% + (30\% \times 30\%) = 79\%$
 - $79\% + (21\% \times 20\%) = 83.2\%$ (which would be rounded down to 80%)



Levels of Payment

The following are examples of the payments corresponding to levels of disability, updated with 2023 rates:

- 10% Rating = \$165.92/month
 - 50% Rating = \$1,041.82/month (no dependents)
 - 100% Rating = \$3,621.95/month (no dependents)
-
- Disability compensation is not taxable and (generally) is not subject to garnishment. 38 U.S.C. § 5301(a)(1) (2003).

Q&A with Carter Templeton

Overview of Benefits



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APPEALS MODERNIZATION ACT OVERVIEW



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Overall AMA Scheme

EFFECTIVE DATE: FEBRUARY 19, 2019

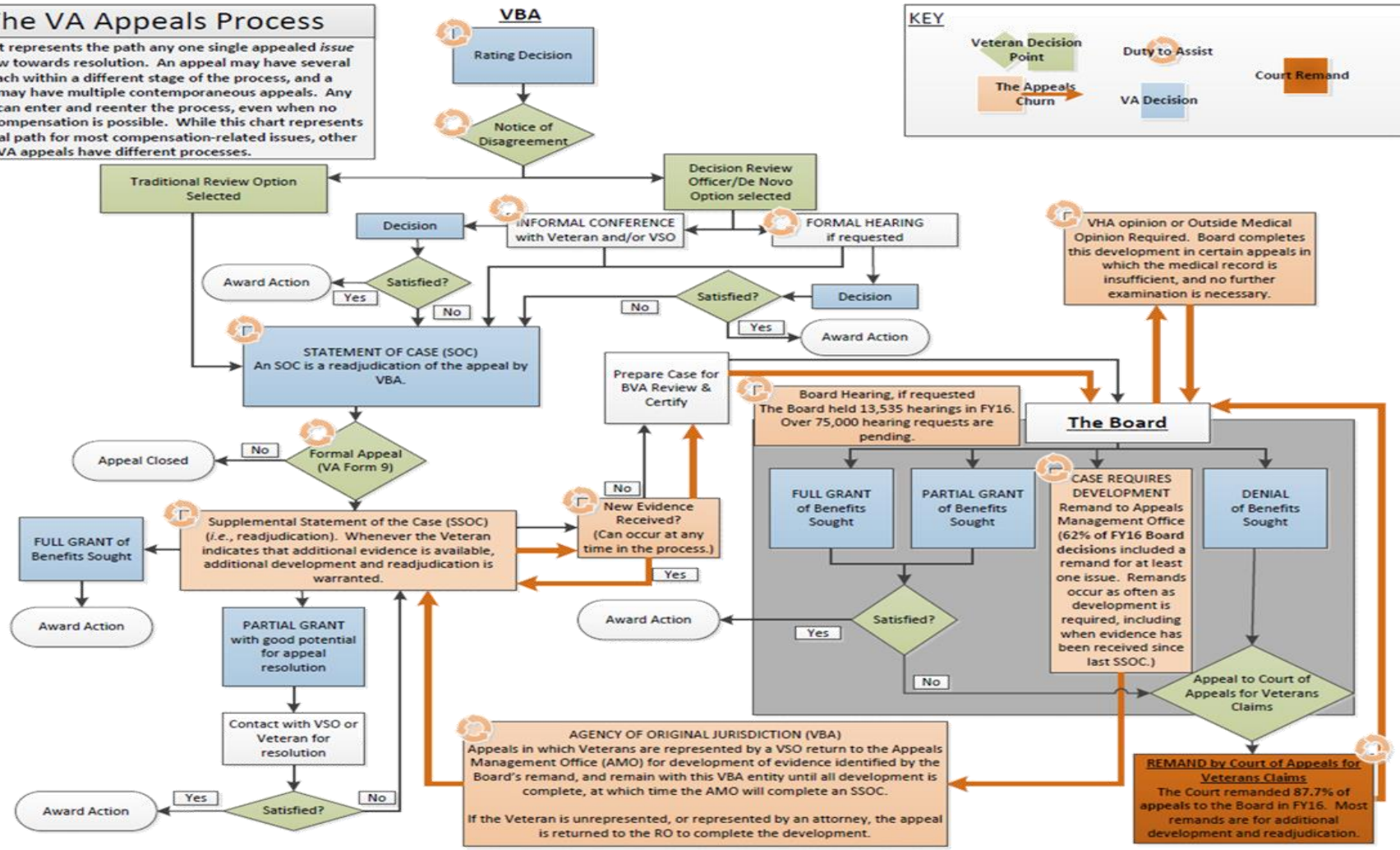
- Any rating decision dated February 19, 2019 or after is ***automatically in the AMA system***
 - See 38 CFR § 3.2400(b)
- Any rating decision issued **prior to** February 19, 2019 is in the ***Legacy appeals system***
 - NOTE: A veteran whose claim is in the Legacy appeals system may "opt-in" to the AMA system. Once a veteran opts in to AMA, regulations applicable to Legacy claims and appeals no longer apply. See 38 CFR § 3.2400 (c) and (d)

Why the Appeals Modernization Act?

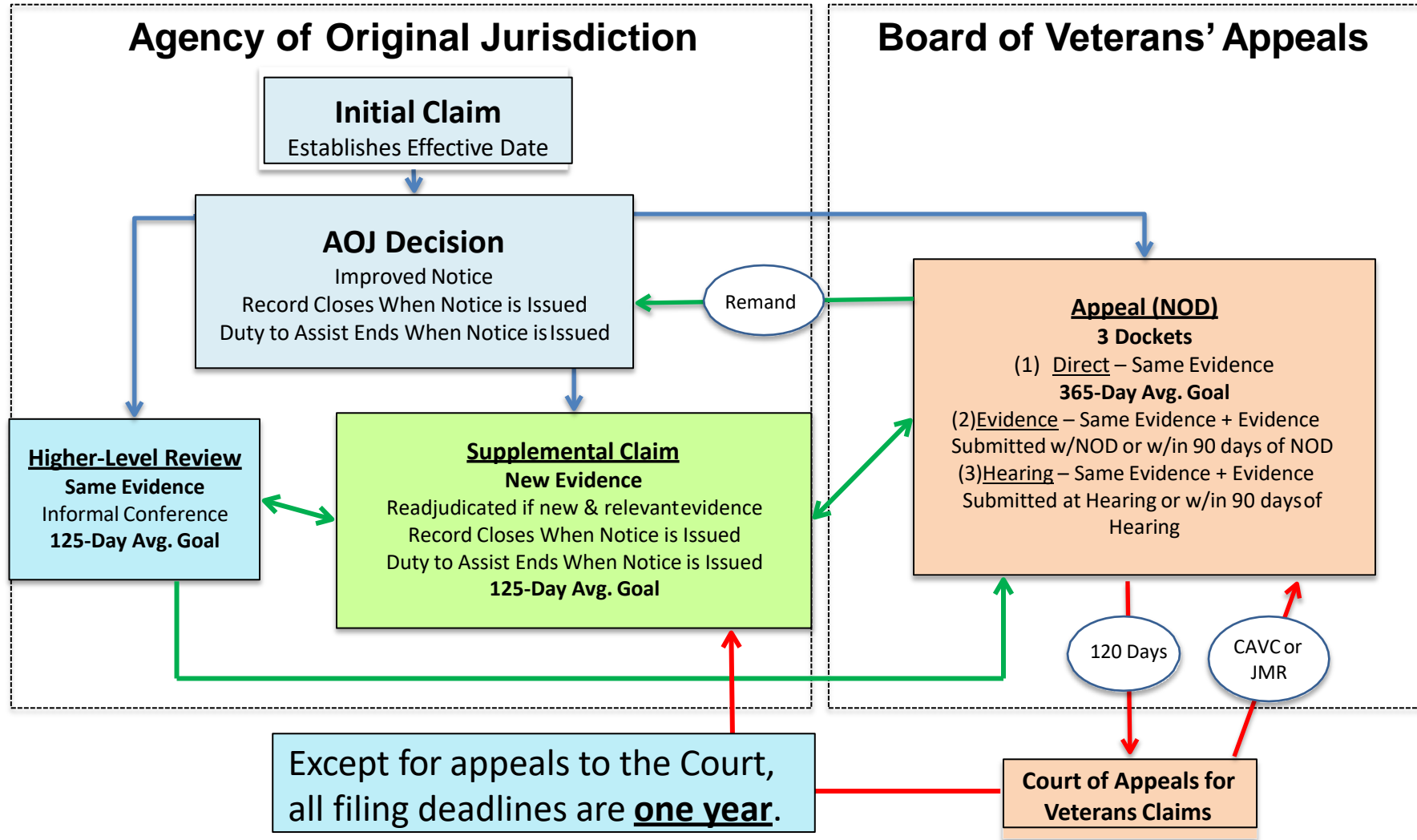
- Congress enacted the AMA in response to longstanding issues within the veterans' benefits appeals process, primarily to address the significant backlog and inefficiencies that plagued the system.
- The law, in short:
 - Modernized the claims and appeals process
 - Includes three decision review options for disagreements with benefits decisions
 - Requires improved notification of VA decisions
 - Provides earlier claim resolution

The VA Appeals Process

This chart represents the path any one single appealed issue can follow towards resolution. An appeal may have several issues, each within a different stage of the process, and a Veteran may have multiple contemporaneous appeals. Any Veteran can enter and reenter the process, even when no further compensation is possible. While this chart represents the typical path for most compensation-related issues, other types of VA appeals have different processes.



Appeals Modernization Act



Choose VA

VA



U.S. Department of Veterans Affairs

of Missouri

Definition of Claim

A *claim* is "written or electronic communication requesting a determination of entitlement or evidencing a belief in entitlement" to a specific benefit **on the proper form**. 38 CFR § 3.1(p).

VA defines two major categories of claims:

- initial
- supplemental

Initial v. Supplemental Claim

- An *initial* claim is “any complete claim, other than a supplemental claim, for a benefit on a form prescribed by the Secretary . . .” 38 CFR § 3.1(p)(1).
 - *Initial* claims include:
 - Claim requesting s/c for a disability or grant of a new benefit. *Id.* at (i).
 - Claim for increased rating/rate of benefit paid based on a change/worsening in condition or circumstance since last decision. *Id.* at (ii).



Initial v. Supplemental Claim

- A supplemental claim is “any complete claim for a VA benefit on an application form prescribed by the Secretary where an initial or supplemental claim for the same or similar benefit on the same or similar basis was previously decided. 38 U.S.C. § 101(36); 38 CFR § 3.1(p)(2). *See also* 38 CFR § 3.2501.
 - More on this in a few slides...

AMA and the VA's Duty to Assist

- The Duty to Assist ("DTA") requires VA to gather information and evidence that may help support the veteran's claim – like service personnel records, service medical records, and VA medical records. VA must make "reasonable efforts" to obtain such information.
- Under the AMA, VA's duty to assist is limited insofar as it is only required when a veteran files an initial claim for benefits, and when a veteran files a supplemental claim with new and relevant evidence.
- The DTA no longer applies to the Board of Veterans Appeals.



AMA's Impact on Decision Notice Requirements

- AMA significantly changed decision notice requirements:
 - Clearer decision notices (specific notice provisions on next slide)
 - Standardized forms for decision notices
 - Why? Easier for veterans to recognize important information quickly
 - Explanation of review options
 - Timeliness
 - These changes aim to reduce delays and ensure veterans have quick access to information regarding their claims

Decision Notice Requirements (cont.)

- The statute requires **specific notice provisions**. 38 USC § 5104(b); see also 38 CFR § 3.103(f)(1)-(8).
- Decision notices **must** contain the following 8 items:
 - Identification of issues adjudicated;
 - Summary of evidence considered;
 - Summary of applicable laws and regulations;
 - Identification of ***favorable findings***;
 - For denied claims, identification of elements not satisfied leading to the denial;
 - If applicable, identification of criteria to grant service connection or next higher rating;
 - Explanation of how to obtain/access evidence used in making decision;
 - Summary of further review options.



Favorable Findings

- Any finding favorable to the claimant made by either VA/BVA is binding on all subsequent VA/BVA adjudicators “unless rebutted by evidence that identifies a clear and unmistakable error in the favorable finding.” 38 CFR § 3.104(c).
 - Even if a claim is not fully granted, favorable findings can help strengthen the veteran's position in future claims or appeals.
- A finding is defined as “a conclusion either on a question of fact or on an application of law to facts made by an adjudicator concerning the issue(s) under review.” *Id.*




Options for Review of Decision

- 38 U.S.C. 5104C -- Options following decision by agency of original jurisdiction (within 1 year). See also C.F.R. 3.2500.
 - File request for higher-level review (HLR), 38 U.S.C. § 5104B; 38 C.F.R. § 3.2601;
 - File supplemental claim (SC) with new and relevant evidence, 38 U.S.C. § 5108; 38 C.F.R. § 3.2501;
 - File appeal to BVA – notice of disagreement (NOD) directly to BVA, 38 U.S.C. § 7105; 38 C.F.R. §§ 20.202 and 20.203.



YOUR RIGHT TO SEEK REVIEW OF OUR DECISION

This document outlines your right to seek review of our decision on any issue with which you disagree. You may generally select one of three different review options for each issue decided by VA. However, you may not request review of the same issue using more than one option at the same time. Below is information on the three different review options.

	Supplemental Claim	Higher-Level Review	Board Appeal
What Is This?	A reviewer will determine whether new and relevant evidence changes the prior decision.	An experienced claims adjudicator will review your decision using the same evidence VA considered in the prior decision.	A Veterans Law Judge at the Board of Veterans' Appeals (Board) will review your decision.
By Selecting This Option	<p>You are adding or identifying new and relevant evidence to support your claim that we did not previously consider.</p> <p>VA will assist you in gathering new and relevant evidence that you identify to support your claim.</p> <p>You are entitled to a hearing at any time in the supplemental claim process.</p>	<p>You have no additional evidence to submit to support your claim, but you believe there was an error in the prior decision.</p> <p>You can request an optional, one-time, informal conference with a Higher-Level Reviewer to identify specific errors in the case, although requesting this conference may delay the review.</p>	<p>You must choose a docket:</p> <p>Direct Review - You do not want to submit evidence or have a hearing.</p> <p>Evidence Submission - You choose to submit additional evidence without a hearing.</p> <p>Hearing - You choose to have a hearing with a Veterans Law Judge.</p>
Goal To Complete	125 days on average	125 days on average	365 days on average for Direct Review (longer for the other options)
Form To File*	VA Form 20-0995 <i>Decision Review Request: Supplemental Claim</i>	VA Form 20-0996 <i>Decision Review Request: Higher-Level Review</i>	VA Form 10182 <i>Decision Review Request: Board Appeal (Notice of Disagreement)</i>
Scan QR Code to Access Form			
Further Options After This Decision Review	You may request another Supplemental Claim, a Higher-Level Review, or a Board Appeal.	You may request a Supplemental Claim or a Board Appeal.	You may request a Supplemental Claim or appeal to the U.S. Court of Appeals for Veterans Claims.



What is Higher Level Review (HLR)?

- Definition: Higher-level review (HLR) is a de novo review based on evidence before VBA at time of original decision. 38 C.F.R. § 3.2601(f). No new evidence will be considered. 38 C.F.R. § 3.2601(i). Decision must indicate if any evidence was not considered and how it can be considered on further review. 38 C.F.R. § 3.2601(k).
- Optional informal conference. A claimant or their representative may request an informal conference with a HLR. 38 C.F.R. § 3.2601(f).
- Who: Experienced adjudicator who did not participate in prior decision. Selection of adjudicator at VA's discretion; generally will be from another RO (unless a specialty case handled at specific RO). You can request same office review and VA will grant that request in absence of good cause to deny. 38 C.F.R. § 3.2601(e).



What is Higher Level Review (HLR)?

- 38 U.S.C. 5104B - Higher-level review by the agency of original jurisdiction.
- Applicability: Applies to all claims under the modernized review system except simultaneously contested claim. 38 C.F.R. 3.2601(a).
- Format: Complete request must be submitted on a form prescribed by the Secretary. 38 C.F.R. 3.2601(b).
- When: Request for higher-level review must be received by VA within one year of the date the VA issues notice of decision. 38 C.F.R. 3.2601(d).



What are Supplemental Claims?

- 38 U.S.C. § 5108 - Supplemental claims.
 - General. If new and relevant evidence is presented or secured with respect to a supplemental claim, the Secretary shall readjudicate the claim taking into consideration all of the evidence of record.
- Definition: “[A]ny complete claim for a VA benefit on an application form prescribed by the Secretary where an initial claim for the same or similar benefit on the same or similar basis as previously decided.” 38 U.S.C. § 101(36); 38 C.F.R. § 3.1(p)(2); 38 C.F.R. § 3.2501.



What are Supplemental Claims? (cont.)

- New and relevant evidence: To successfully file a supplemental claim, there must be new and relevant evidence.
- New = not previously part of record before agency.
- Relevant = tends to prove or disprove a matter at issue in a claim.
- New and relevant includes evidence that “raises a theory of entitlement that was not previously addressed.” 38 C.F.R. § 3.2501(a)(1).



Review by BVA/Filing Appeal - NOD

- Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary. See 38 U.S.C. 7105(a); 38 C.F.R. 20.202(a) and (d).
- Notice of disagreement must identify the specific decision and issue or issues with which the claimant disagrees. See 38 C.F.R. 20.202(a).
- Notice of disagreement must indicate type of review requested by the Board. See 38 C.F.R. 20.202(b).

BVA Review Options

- **Direct Review:** No new evidence; no hearing. Decision will be based on evidence in file. BVA states the goal for decisions in this lane is an average of 365 days. 38 C.F.R. 20.301.
- **Hearing:** BVA will consider evidence of record at time of agency decision, evidence submitted at hearing, and evidence submitted within 90 days of hearing. 38 C.F.R. 20.302.
- **Evidence only:** BVA will consider evidence of record at time of agency decision and evidence submitted with NOD or within 90 days of filing NOD.



Separating Issues

- You can take different issues into different review options in the new system. See 38 U.S.C. 5104C(2)(C).
- Example: If decision adjudicates two conditions, e.g., s/c for knee and ankle, those are separate issues that can be taken into separate review lanes.
- However, different review options may not be selected for specific components of the knee disability claim, e.g., ancillary benefits, whether knee condition occurred in service, or whether current knee condition resulted from a service-connected injury/condition. 38 C.F.R. 3.151(c)(2).



Changing Review Options Before VBA

- You can withdraw a request for consideration of a HLR or SC claim and change review option as long as it is within the year of the initial decision under review. 38 C.F.R. 3.2500(e)(1).
- Claimant may change review option to a supplemental claim after expiration of one year IF VA grants extension for good cause under 38 C.F.R. 3.109(b) and the supplemental claim application is received within the extension period. 38 C.F.R. 3.2500(e)(2).



Forms

- VA regulations require proper form usage.
 - VA Form 20-0995, Decision Review Request: Supplemental Claim
 - VA Form 20-0996, Decision Review Request: Higher-Level Review
 - VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement)

Q&A with Martha Kleinhesselink Appeals Modernization Act



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Non-Service-Connected Disability Pension and Survivor's Pension



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Non-Service-Connected Disability Pension and Survivor's Pension

- Non-Service-Connected Disability Pension (also referred to as Live Pension) is for Veterans.
- Survivor's Pension is for surviving dependents (surviving spouses and dependent children (to include adult children incapable of self-support)) that qualify based on Pension eligibility requirements

Non-Service-Connected Disability Pension

- Non-service-connected disability pension is a **needs-based program for veterans with** war-time service who are permanently and totally disabled or over the age of 65. Non-Service-Connected Pension is also known as VA pension or for dependents of a War-time Veteran, Survivor's pension.

Description:

- NSC Pension benefits are for veterans, surviving spouses, and dependent children based upon the individual's eligibility. Pension benefits include Base Pension with (or without) the addition of Housebound or Aid and Attendance. These benefits were created to help pay for medical care for qualifying claimants and are "needs based" with a financial criteria that must be met. They are not directly (or indirectly) related to any service-connected injury or condition nor are they related to a veteran's service-connected death. This program also explains how a surviving spouse who is currently receiving service-connected DIC benefits may apply for additional Housebound or A&A.



Active-Duty minimum requirements

- Honorable or General Discharged (other than Dishonorable)
- You started on active duty before September 8, 1980, and you served at least 90 days on active duty with at least 1 day during wartime, **or**
- You started on active duty as an enlisted person after September 7, 1980, and served at least 24 months or the full period for which you were called or ordered to active duty (with some exceptions) with at least 1 day during wartime, **or**
- You were an officer and started on active duty after October 16, 1981, and you hadn't previously served on active duty for at least 24 months



Disability Based

- You're at least 65 years old, **or**
- You have a permanent and total disability, **or**
- You're a patient in a nursing home for long-term care because of a disability, **or**
- You're getting Social Security Disability Insurance or Supplemental Security Income

War-time Service

- World War II.
 - December 7, 1941, through December 31, 1946.
- Korean conflict.
 - June 27, 1950, through January 31, 1955.
- Vietnam era.
 - The period beginning on November 1, 1955, and ending on May 7, 1975 in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975 in all other cases.
- Persian Gulf War.
 - August 2, 1990, through current date.

Net Worth guidelines (con't)

- The term *assets* means the fair market value of all property that an individual owns, including all real and personal property, unless excluded under paragraph (b) of this section, less the amount of mortgages or other encumbrances specific to the mortgaged or encumbered property. VA will consider the terms of the recorded deed or other evidence of title to be proof of ownership of a particular asset. See also § 3.276(a)(4), which defines “fair market value.”
- There is a 3 year look back on all assets, similar to Medicaid’s 5-year lookback



Net Worth guidelines

- Family net worth from all sources **less than \$155,603** (home (less than two acres), furnishings, and single auto EXCLUDED) (2024)
- Includes the previous calendar year's income **minus** unreimbursed medical expenses included in net worth total
- Increased every year by COLA, established by SSA

Net Worth guidelines (con't)

- Should excess acreage not be able to be sold separately, a statement verifying this is necessary to exclude from net worth.
- As of October 18, 2018, any potential applicant for a Pension program who has transferred any assets for less than value could be subject to a penalty. The look back for gifting is 3 years but not beyond October 18, 2018.
- VA Pension is a needs-based benefit and is not intended to preserve the estates of individuals who have the means to support themselves. Accordingly, a claimant may not create Pension entitlement by transferring covered assets. VA will review the terms and conditions of asset transfers made during the look-back period to determine whether the transfer constituted transfer of a covered asset. However, VA will disregard asset transfers made before October 18, 2018.



Calculating the Penalty Period

- It is a period of non-entitlement due to the transfer of a covered asset(s) during the look-back period, but cannot exceed 3 years
- It begins on the first day of the month following the date of the last transfer, and it is calculated by dividing the total covered asset amount by the monthly penalty rate and rounding down. The resulting whole number is the number of months VA will not pay Pension.
- If a penalty period covers any portion of a liberalized legislation period, the claimant is not entitled to benefits for the entire liberalized legislation period. (See liberalization law at the end of this chapter)
- Penalty periods end the last day of the last month of the penalty period so in accordance with 38 CFR 3.31, the payment date becomes the first day of the following month.



2023 Income Thresholds

If you have no dependents and...	Your MAPR amount is (in U.S. \$)
You are capable of self support	16,551.00 (1379.25 per month)
You qualify for Housebound benefits	20,226.00 (1685.15 per month)
You qualify for Aid and Attendance benefits	27,609.00 (2300.75 per month)

Maximum Annual Pension Rate (MAPR) amounts include

- The amount the Federal Government believes is the minimum everyone should pay for their medical expenses
- For a single Veteran, it is \$827 for a single Veteran
- For a surviving spouse, it is \$555 per year
- For a Veteran with one dependent the MAPR is approximately \$1,083.
- Medical expenses ABOVE these amounts will be counted to offset income



Income Thresholds (con't)

If the Veteran has 1 dependent and...	Your MAPR amount is (in U.S. \$)
You are capable of self support	21,674.00 (1806.16 per month)
You qualify for Housebound benefits	25,348.00 (2112.33 per month)
You qualify for Aid and Attendance benefits	32,729.00 (2727.41 per month)



Housebound rating

- The VA considers a “housebound” **veteran as significantly confined to their residence, but still able to leave with assistance.**
- A residence could include:
 - A personal residence.
 - A nursing home.
 - An assisted living facility



Aid & Attendance

- You may be eligible for this benefit if you get a VA Pension, and you meet at least one of the requirements listed below.

At least one of these must be true:

- You need another person to help you perform daily activities, like bathing, feeding, and dressing, **or**
- You have to stay in bed—or spend a large portion of the day in bed—because of illness, **or**
- You are a patient in a nursing home or assisted living facility due to the loss of mental or physical abilities related to a disability, **or**
- Your eyesight is limited (even with glasses or contact lenses you have only 5/200 or less in both eyes; or concentric contraction of the visual field to 5 degrees or less)



How do I get this additional benefit?

- Fill out **VA Form 21-2680** (Examination for Housebound Status or Permanent Need for Regular Aid and Attendance) and submit to the DVA. You must have your medical provider fill out the examination information section.

Medical Expenses can offset income

- VA may be able to pay you a higher benefit rate if you identify expenses VA can deduct from your income. Your benefit rate is based on your income. Your out-of-pocket payments for medical and dental expenses may be deductible. Report any medical or dental expenses that you paid for yourself or for a relative who is a member of your household (spouse, grandchild, parent, etc.) for which you were not reimbursed and do not expect to be reimbursed.

Medical Expenses can offset income (con't)

- For the original Pension claim, the VA will only count medical expenses that have 100% predictability:
 - Medical, Dental, Vision, or special insurance premiums
 - Cost of care for assistance with activities of daily living
 - Assisted living facility cost
 - Nursing Home cost

Medical Expenses can offset income (con't)

- Below are examples of expenses you should include, if applicable:
 - Hospital expenses
 - Doctor's office fees
 - Dental fees
 - Prescription/non-prescription drug costs
 - Vision care costs
 - Medical insurance premiums
 - Nursing home costs
 - Hearing aid costs
 - Home health service expenses
 - Monthly Medicare deduction
 - Expenses related to transportation to a hospital, doctor, or other medical facility

Medical Expense Report

- The Pension program is an annual program administered with a monthly benefit.
- The initial period is submitted after 12+months, but recorded by partial calendar year, for example:

Initial claim received by VA on May 17, 2021.

Initial year reported as 05/17/2021 through 12/31/2021 and a second report completed for 01/01/2022 through 05/31/2022.

Medical Expense Report

- Second Year Medical Expense Reports completed for 06/01/2022-12/31/2022
- Each year after that, a Medical Expense Report is to be completed for each calendar year.
- **VA Form 21-8416**
- Complete all aspects of the expense (Expense, amount paid, date paid, name of provider, and for whom paid).

Applying for NSCD Pension

- Complete **VA Form 21-527EZ** with all application evidence to support claim:
 - Social Security number or VA file number (required)
 - Military history (required)
 - Your financial information and the financial information of your dependents (required)
 - Work history
 - Bank account direct deposit information
 - Medical information

Applying for NSCD Pension (con't)

- If requesting additional benefits for Housebound or Aid & Attendance, include VA Form 21-2680 to demonstrate the medical need for the additional benefit.

Survivor's Pension

- Created for dependents (spouse, children, adult children permanently disabled prior to the age of 18) of Veterans.
- Operated using the same Military Service and net worth criteria as the NSCD Pension
- Income thresholds are:

You don't qualify for Housebound or Aid and Attendance benefits	11,102.00 (925.16 per month)
You qualify for Housebound benefits	13,568.00 (1160.66 per month)
You qualify for Aid and Attendance benefits	17,743.00 (1478.58 per month)

Survivor's Pension (con't)

- Complete VA Form 21P-534EZ with all applicable evidence and supporting documentation
- Include Veteran's Death Certificate

Examples

- Homeless, war-time Veteran, no income, no net worth (deemed unable to work due to depression, anxiety, and physical disabilities), VA would award \$1,379.25 per month.
- If that same Veteran is granted \$1000 in Social Security disability, VA would reduce award amount to \$379.25 (to bring Veteran back up to the threshold).

Examples (con't)

- A single Housebound Veteran living on \$1400 Social Security who pays \$600 per month for assistance leaving his residence for medical appointments would be awarded \$885.15 per month to bring Veteran back up to the threshold.
- Surviving spouse needing to reside in a skilled nursing facility meeting A&A requirements paying more than her income for the facility would be awarded \$1,478.58 per month.



Examples

- A war-time Veteran with \$50,000.00 net worth, with income of \$1500 from Social Security and \$1200 employment retirement moves into a state-run Veterans Home costing Veteran \$2420 per month:
 - \$2700 total income
 - \$2420 cost of facility
 - \$174 cost of Medicare premium
 - \$250 cost of Medicare Supplement premium
 - (\$2844 total medical expenses)
 - Income for VA Purposes reduced below zero
 - VA would award \$2300.75 to bring Veteran back up to threshold



Dependency and Indemnity Compensation (DIC)



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Dependency & Indemnity Compensation (DIC)

- Generally, DIC is a monthly, tax-free payment made by the VA Secretary to a servicemember/veteran's *surviving spouse, child or parent* because of a servicemember/veteran's "**service-connected**" death. 38 U.S.C. § 101(14).
- A "service-connected death" requires that it "resulted from a disability incurred or aggravated, in the line of duty in the active military, naval, air or space service." 38 U.S.C § 101(16).
- "Active military, naval, air or space service" is active duty, active duty for training, and inactive duty for training. 38 U.S.C. § 101(24)(A)-(C)



Eligibility - Surviving Spouse

- A "surviving spouse" is a "person of the opposite sex who was the spouse of a veteran at the time of the veteran's death, **and** who lived with the veteran continuously from the date of marriage to the date of the veteran's death (**except** where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) **and** who has not remarried **or** (in cases not involving remarriage) has not since the death of the veteran, and after Sept. 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person." 38 U.S.C. §§ 101(3), (31).
 - Must have cohabitated with veteran without break until death, **or**
 - If separated, spouse wasn't at fault for the separation**AND**
 - Who has not remarried, **or**
 - If not remarried, lived with another person and held himself or herself out openly to the public to be the spouse of another person
 - Note: Same-sex surviving spouses can receive DIC.

Eligibility - Surviving Spouse

- Must have a valid marriage
- VA follows law of the state where marriage occurred or when VA claim benefits arose
- Deemed Marriages
 - Invalid due to legal impediment unknown to claimant
 - Didn't know state didn't recognize common law marriages
 - Didn't know spouse was still married to another
 - Not legally allowed to be married
 - Occurred one year or more before veteran's death
 - Claimant entered into marriage without knowledge of impediment
 - No competing claim from "legal" spouse

Eligibility - Surviving Spouse

- Remarriage of spouse before age 57 terminates DIC benefits
- If remarriage before age 57 is terminated by divorce, death or annulment, then benefits may be reinstated
- Remarriage after age 57 benefits are counted (Age 55 after January 5, 2021)

Income Chart- Pension, Survivor's Pension, and DIC (2024)

DIC -	Basic Rate for Spouses	100% for 10 years/married last 8 years for spouses	For each eligible child	Housebound for spouses	Aid & Attendance for spouses
Monthly Rate	<u>1612.75</u>	<u>+342.46</u>	<u>+342</u> (for first two years after death), then <u>+399.54</u> (for each eligible child thereafter)	<u>+187.17</u>	<u>+399.54</u>

Eligibility - Child or Parent

- A "child" means "a person who is unmarried and--(i) who is under the age of 18 years; (ii) who, before attaining the age of 18 years, became permanently incapable of self-support; or (iii) who, after attaining the age of 18 years and until completion of education or training (but not after attaining the age of 23), is pursuing a course of instruction at an approved educational institution." 38 U.S.C. § 101(4)(A)
 - Not married; **and**
 - Not included in surviving spouse's compensation; **and**
 - Is under age 18
 - Unless attending school, then 23.
- A "parent" means a "father, mother, a father through adoption, a mother through adoption, or an individual who for a period of not less than one year stood in the relationship of a parent to a veteran at any time before the veteran's entry into active [service] or if two persons stood in the relationship of a father or mother for one year or more, the person who last stood in the relationship of father or mother before the veteran's last entry into active [service]." 38 U.S.C. § 101(5)
 - Parent, adoptive, or foster parent of veteran, and
 - One year of parent relationship before entry into service; or
 - Last in time; and
 - Income below a certain amount.



DIC- Death as a Result of Service-Connected Disability

- A "service-connected death" requires that the veteran's death "resulted from a disability incurred or aggravated, in the line of duty in the active military, naval, air or space service" (active duty, active duty for training, and inactive duty for training). 38 U.S.C §§ 101(16), 101(24)(A)-(C).
 - It does **not** require that the veteran received service connection for that condition at the time of his or her death.
- Put another way, DIC is owed to a servicemember/veteran's surviving spouse, child, or parent when the servicemember/veteran:
 - Passes away during active duty, active duty for training, or inactive duty training;
 - Passes away as a result of, or aggravated by, his or her service-connected injury or disease, including;
 - That the cause of the veteran's death was service connected (direct, secondary, or presumptive); or
 - Has a service-connected disability that singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related thereto. 38 C.F.R. § 3.312(b) (2024); or
 - Has a service-connected disability that contributed substantially or materially; that it combined to cause death; that it aided or lent assistance to the production of death. 38 C.F.R. § 3.312(c).



DIC- Death, and Total Disability for 10 Years

- Was awarded **100%** service-connected compensation (to include Total Disability based on Individual Unemployability (TDIU)) for greater than **10** years.
- If married to the same spouse for at least the last **8** years then a higher rate of DIC is awarded under 38 USC §1318.

Application for DIC

- A eligible survivor can claim DIC by filing a VA Form 21P-534.
 - If the form is filed within one year of death and DIC is granted, then the survivor's benefits will be backdated to the first month after death.
 - If filed more than a year after death and later granted, then the survivor's benefits will be backdated to the date the form (or supplemental claim) was filed.

Q&A with Eugene and Katie Pension and DIC



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