

Veterans Affairs Administrative Law

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US Department of Veterans Affairs

- Veterans Benefits Administration
- Veterans Health Administration
- National Cemetery Administration



The Claims Process

Technology, Law and Reformation

The Claims Process

- **Three Types of Claims**
 - **Original Claim**
 - **Reopened Claim**
 - **Claim for Revision due to Clear and Unmistakable Error**

Original Claims

- **Different Flavors**
 - “New Benefit” – e.g., new disability claim
 - Claim for increased compensation for existing benefit – e.g., higher rating for disability compensation
 - Claim to reopen a final decision – e.g., denied compensation for hearing loss, claimant acquires new evidence and wants to VA to re-examine the claim
 - “New and Material Evidence” in the current system
 - “Relevant Evidence” in the reformed system

Clear and Unmistakable Error

- Court of Veterans Appeals describes as “a revision” so the final decision conforms to the “true” state of facts or law at the time of original adjudication
 - High burden
 - Facts at time were not before the adjudicator, but were part of the record, or the evidence does not support the factual determinations
 - Error occurred based on the record and law that existed at the time
 - But for the error, the outcome would have been “manifestly different”

Notice of Intent to File



AccessVA - Windows Internet Explorer

https://access.va.gov/accessva/app/ld=sep

U.S. Department of Veterans Affairs

Enter your search text Search

site map [a-z]

VA Health Benefits Burials & Memorials About VA Resources Media Room Locations Contact Us

AccessVA Securing your Access to VA IAM

AccessVA Home About Sign-In Partners Contact Us

SEP

You can sign in to the Stakeholder Enterprise Portal (SEP) with the following Sign-In Partners. Don't have an account? Register for an account or Learn More.

VA Personal Identity Verification (PIV) card is a smart card issued to VA Federal employees and contractors. [Log In with VA PIV Card](#)
[Register](#) | [Learn More](#)

Norton by Symantec accounts are issued to any user requiring identity verification to access VA websites and applications. [Log In with Norton by Symantec](#)
[Register](#) | [Learn More](#)

[Select another VA website](#)

CONNECT: Veterans Crisis Line: 1-800-273-8255 (Press 1)

VA HOME: Notices Privacy FOIA

QUICK LIST: Veterans Online Application Prescriptions Enroll/Update Medical Benefits

RESOURCES: Careers Returning Service Members Vocational Rehabilitation &

ADMINISTRATION: Veterans Health Administration Veterans Benefits Administration National Cemetery Administration

11:43 AM 9/16/2015

VA Form 21-0966

- Placeholder for effective dates
 - Electronic file: incomplete application constitutes a NOIF
 - Must receive complete 526 within one year
 - Medical evidence irrelevant
 - Replaces old informal claim system

OMB Control No. 2900-0026
Respondent Burden: 15 minutes
Expiration Date: 07/01/15

Department of Veterans Affairs
**INTENT TO FILE A CLAIM FOR COMPENSATION AND/OR PENSION,
OR SURVIVORS PENSION AND/OR DIC**
(This Form is Used to Notify VA of Your Intent to File for the General Benefit(s) Checked Below)
Note: Please read the Privacy Act and Respondent Burden below before completing the form.

SECTION I: GENERAL BENEFIT ELECTION
IMPORTANT: VA may not be able to use this form to establish an effective date for benefits if you do not select one or more of the general benefits listed below.
I intend to file for the general benefit(s) checked below: (Choose all that apply.)
 COMPENSATION PENSION
 SURVIVORS PENSION AND/OR DEPENDENCY AND INDEMNITY COMPENSATION (DIC)
NOTE: Only check this box if you are a surviving dependent of the veteran.

SECTION II: CLAIMANT'S IDENTIFICATION
1. CLAIMANT'S NAME (First, middle initial, last)
2. CLAIMANT'S SOCIAL SECURITY NUMBER
3. VETERAN'S NAME (First, middle initial, last) (if different from claimant)
4. VETERAN'S SOCIAL SECURITY NUMBER
5. VETERAN'S DATE OF BIRTH 6. VETERAN'S SEX 7. HAS THE VETERAN EVER FILED A CLAIM WITH VA? 8. VA FILE NUMBER
Month Day Year MALE FEMALE YES NO (If "Yes," provide your file number in form 5)
9. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)
Number and Street or Rural Route, P.O. Box City State ZIP Code and Country
10. PREFERRED TELEPHONE NUMBER (Include Area Code) 11. PREFERRED E-MAIL ADDRESS (If applicable)

SECTION III: DECLARATION OF INTENT
By filing this form, I hereby indicate my intent to apply for one or more general benefits under the laws administered by VA. I acknowledge that: (1) this is not a claim for benefits; (2) I must file a complete application for each general benefit with VA before VA will process my claim; and (3) a complete application for the same general benefit(s) as indicated on this form must be received within one year of the date VA receives this form for my application to be considered filed as of the date of this form.

12A. SIGNATURE OF CLAIMANT/AUTHORIZED REPRESENTATIVE 12B. DATE SIGNED (MM/DD/YYYY)
13. NAME OF ATTORNEY, AGENT, OR VETERANS SERVICE ORGANIZATION (Please Print)
NOTE: This form may only be completed by a Veterans Service Organization, attorney, or agent if a valid power of attorney has been completed.

PRIVACY ACT NOTICE: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.556 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of benefits, verifications of identity and status, and personnel administration) as identified in the VA system of records, SVA210228, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required only to preserve a date of claim for an application that is received within one year of receipt of this form. VA uses your Social Security number to identify if you have a claim file and to ensure that your records are properly associated with your claim file. VA will not deny an individual benefit for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine the appropriate application and provide it to the claimant.
RESPONDENT BURDEN: We need this information to determine and to provide the claimant with the appropriate application for VA benefits (38 U.S.C. 5102). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.omb.gov/public/foia/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

VA FORM
NOV 2014 21-0966

Fully Developed Claim

- VA Form 21-526EZ
 - Ready to rate
 - Limited development
 - No Veterans Claims Assistance Act Notice
 - 117 days after submission based on testimony by Allison Hickey
 - Electronically filed is faster
 - National Guard/Reserve record exception
 - VA 686 Dependency

14A. WHAT IS THE NAME AND ADDRESS OF YOUR RESERVE/NATIONAL GUARD UNIT?		14B. WHAT IS THE TELEPHONE NUMBER OF YOUR CURRENT UNIT? (Include Area Code)	
15A. HAVE YOU EVER BEEN A PRISONER OF WAR? <input type="checkbox"/> YES (If "Yes," complete Item 15B) <input type="checkbox"/> NO (If "No," skip to Item 16A)		15B. DATES OF CONFINEMENT From: _____ To: _____	
SECTION III: SERVICE PAY			
16A. DID/DO YOU RECEIVE ANY TYPE OF SEPARATION/SEVERANCE/RETIRED PAY? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete Items 16B and 16C)		16B. LIST AMOUNT (If known) \$ _____	16C. LIST TYPE (If known)
<p>IMPORTANT: Submission of this application constitutes an election of VA compensation in lieu of military retired pay if it is determined you are entitled to both benefits. If you are entitled to receive military retired pay, your retired pay may be reduced by the amount of any VA compensation that you are awarded. VA will notify the Military Retired Pay Center of all benefit changes. Receipt of military retired pay or Voluntary Separation Incentive (VSI) and VA compensation at the same time may result in an overpayment, which may be subject to collection. However, if you do not want to receive VA compensation in lieu of military retired pay, you should check the box in Item 17. Please note that if you check the box in Item 17, you <i>will not</i> receive VA compensation, if granted.</p>			
17. <input type="checkbox"/> I want military retired pay instead of VA compensation.			
SECTION IV: DIRECT DEPOSIT INFORMATION			
<p>The Department of Treasury requires all Federal benefit payments be made by electronic funds transfer (EFT), also called direct deposit. Please attach a voided personal check or deposit slip or provide the information requested below in Items 18, 19 and 20 to enroll in direct deposit. If you do not have a bank account, you must receive your payment through Direct Express Debit MasterCard. To request a Direct Express Debit MasterCard you must apply at www.usdirectexpress.com or by telephone at 1-800-333-1795. If you elect not to enroll, you must contact representatives handling waiver requests for the Department of Treasury at 1-888-224-2950. They will encourage your participation in EFT and address any questions or concerns you may have.</p>			
18. ACCOUNT NUMBER (Check the appropriate box and provide the account number, or simply write "Established" if you have a direct deposit with VA)			
<input type="checkbox"/> CHECKING Account No.: _____		<input type="checkbox"/> SAVINGS Account No.: _____	
<input type="checkbox"/> I CERTIFY THAT I DO NOT HAVE AN ACCOUNT WITH A FINANCIAL INSTITUTION OR CERTIFIED PAYMENT AGENT			
19. NAME OF FINANCIAL INSTITUTION (Please provide the name of the bank where you want your direct deposit)		20. ROUTING OR TRANSIT NUMBER (The first nine numbers located at the bottom left of your check)	
SECTION V: CLAIM CERTIFICATION AND SIGNATURE			
<p>I certify and authorize the release of information. I certify that the statements in this document are true and complete to the best of my knowledge. I authorize any person or entity, including but not limited to any organization, service provider, employer, or government agency, to give the Department of Veterans Affairs any information about me, and I waive any privilege which makes the information confidential.</p> <p>I certify I have received the notice attached to this application titled, <i>Notice to Veteran/Service Member of Evidence Necessary to Substantiate a Claim for Veterans Disability Compensation and Related Compensation Benefits</i>.</p> <p>I certify I have enclosed all the information or evidence that will support my claim, to include an identification of relevant records available at a Federal facility such as a VA medical center; OR, I have no information or evidence to give VA to support my claim; OR, I have checked the box in Item 21, indicating that I do not want my claim considered for rapid processing in the Fully Developed Claim (FDC) Program because I plan to submit further evidence in support of my claim.</p> <p>21. The FDC Program is designed to rapidly process compensation or pension claims received with the evidence necessary to decide the claim. VA will automatically consider a claim submitted on this form for rapid processing under the FDC Program. Check the box below ONLY if you DO NOT want your claim considered for rapid processing under the FDC Program because you plan on submitting further evidence in support of your claim.</p> <p><input type="checkbox"/> I DO NOT want my claim considered for rapid processing under the FDC Program because I plan to submit further evidence in support of my claim.</p>			
22A. VETERAN/SERVICE MEMBER SIGNATURE (REQUIRED)		22B. DATE SIGNED	
SECTION VI: WITNESSES TO SIGNATURE			
23A. SIGNATURE OF WITNESS (If veteran signed above using an "X")		23B. PRINTED NAME AND ADDRESS OF WITNESS	
24A. SIGNATURE OF WITNESS (If veteran signed above using an "X")		24B. PRINTED NAME AND ADDRESS OF WITNESS	
<p>PRIVACY ACT NOTICE: The form will be used to determine allowance to compensation benefits (38 U.S.C. 5101). The responses you submit are considered confidential (38 U.S.C. 5701). VA may disclose the information that you provide, including Social Security numbers, outside VA if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies. VA may make a "routine use" disclosure for: civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration. Your obligation to respond is required in order to obtain or retain benefits. Information that you furnish may be utilized in computer matching programs with other Federal or State agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs. Social Security information: You are required to provide the Social Security number requested under 38 U.S.C. 5101(c)(1). VA may disclose Social Security numbers as authorized under the Privacy Act, and, specifically may disclose them for purposes stated above.</p> <p>RESPONDENT BURDEN: We need this information to determine your eligibility for compensation. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 25 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/dh/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.</p>			

Current Appeals System Delays

Time Interval	Responsible Party	Average Elapsed Processing Time
Notice of Disagreement to Statement of the Case	VBA	419 Days
Statement of the Case Issuance to Substantive Appeal Receipt	Appellant	39 Days
Substantive Appeal Receipt to Certification of the Appeal	VBA	537 Days
Certification of Appeal to Board Receipt of Certified Appeal	Board	222 Days
Receipt of Certified Appeal to Issuance of Board Decision	Board	270 Days
Subtotal	Combined	1,487 Days (4.07 Years)
Average Remand Time Factor	VBA	255 Days

Identifying the Problem

- The record in the administrative appeal process never closes.
- If an appeal for a disability compensation claim lingers for 3 to 5 years, then inevitably the treatment for the disability will create new medical evidence.
- The record is growing while the appeal is pending.
- This is Problem #1
- The Veterans Claims Assistance Act
- Creates a nearly unachievable mandate for the VA
- Duty to Inform and Duty to Assist
- Filing a claim triggers these duties
- This is Problem #2
- The Veterans Appeals Improvement and Modernization Act tries to solve these.

Veterans Claims Assistance Act – Problem #2

- 38 U.S.C. § 5102, 5103, 5103A, 5104
 - FY 2016 compensation and pension exam workload exceeded 1,287,000
 - 8.9 million enrolled veterans in VHA FY 2014
 - 86.4 million outpatient visits FY 2013
 - 694,000 inpatient admissions FY 2013
 - <http://www.va.gov/vetdata/Expenditures.asp>
 - FY 2014 expenditures exceeded \$161 billion, with a “B”
 - <http://www.militarytimes.com/story/military/capitol-hill/2015/07/22/va-budget-shortfall-shutdowns/30526261/>



Duties to Assist

- **Obligation to notify the claimant of information necessary to complete the application, 38 U.S.C. § 5102**
- **Obligation to consider all legal theories for granting the claim, 38 U.S.C. § 5104**
 - **Fully and sympathetically develop the claim to its optimum before deciding the claim on the merits**
 - **VA must adjudicate claims reasonably raised by the evidence vis a vis a standard claims form**
 - **“Consistent with these policies VA employs the practice of identifying and adjudicating reasonably raised claims as an administrative tool to provide for consideration of issues and benefits that have not been expressly claimed but that logically are placed at issue upon a sympathetic reading of the claims presented to VA”**
- **Duty to notify claimant of evidence necessary to substantiate the claims, 38 U.S.C. § 5103(a)**

Duties to Assist

- Duty to obtain evidence, 38 U.S.C. § 5103A
 - Duty to obtain records, VA sends VA Form 21-4142, for claimant signature
 - Duty to obtain service medical records
 - Duty to obtain a medical examination or medical opinion under certain conditions
- SF 180
- Burden of proof remains with the veteran, and the standard is low: when there is an approximate balance of positive and negative evidence on any issue material to determination of the matter, Secretary shall give benefit of doubt to the claimant. 38 U.S.C. § 5107.

The screenshot shows the National Archives website's 'Veterans Service Records' page. The browser address bar displays 'http://www.archives.gov/veterans/'. The page features a navigation menu with options: 'Research Our Records', 'Veterans Service Records', 'Teachers' Resources', 'Our Locations', and 'Shop Online'. A search bar is located in the top right corner with the text 'Search Archives.gov' and a 'GO' button. The main content area is titled 'Veterans Service Records' and includes a breadcrumb trail 'Home > Veterans Service Records'. There are four main content boxes: 'Request Military Service Records' (with a mouse icon and a list of links including 'Request Personnel and/or Medical Records Online', 'More ways to get service records', 'Learn about military service records (e.g. DD Form 214)', 'Recently separated veteran?', and 'Request DD 214/ Separation Document Online'); 'Research Using Military Records' (with a magnifying glass icon and a list of links including 'What's available online?', 'Locate older (pre-WW I) military service records', 'Using military records for genealogical research', and 'Other military and veterans records'); 'Replace Lost Medals and Awards' (with a medal icon and the text 'Learn how to replace lost or damaged medals and awards.');

News and Notices

Need Help?

- Online Requests/eVetRecs Problems
- Need Immediate Assistance
- Military Personnel Records, FAQ (Includes DD 214/ Separation Documents, Personnel Records, and/or Medical Records)
- More FAQs
- NPRC Veterans Service Officer (VSO) Information Page
- Funeral Home Director Information Page

The Windows taskbar at the bottom shows the system clock as 2:52 PM on 9/16/2015.

Reformed System: The Duty to Assist Will Not Apply to the Appeals System

- **38 U.S.C. 5103A is amended by added subsection (e), stating “(1) The Secretary’s duty to assist under this section shall apply only to a claim, or supplemental claim, for a benefit under a law administered by the Secretary until the time that a claimant is provided notice of the agency of original jurisdiction’s decision with respect to such claim, or supplemental claim, under section 5104 of this title.”**

Duty to Notify in the Current System During Appeals

- **Bryan v. Shinseki, 23 Vet. App. 488 (2010), the CAVC held that pursuant to 38 C.F.R. 4.103(c)(2), a hearing officer (on appeal) chairing a hearing must satisfy two duties consisting of: (1) fully explaining the issue or issues; and (2) suggesting the submission of evidence that may have been overlooked and that may be potentially advantageous to the claimant's position."**
- **New code relieves the hearing officer of this sort of burden.**

The Open Record in the Current Appeals System – Problem #1

- Iterative process that repeats itself.
- Record does not close in the circular/iterative process.
- Multiple administrative review before reaching the administrative law judge.
- VCAA promotes the repeating process by requiring VA development of medical evidence.

Rating Decisions

- Claims Processing Improvement Model
- Segmented Lanes Model
 - Express Lane (FDC claims)
 - Core Lane
 - Special Operations Lane
 - Non Rating team
 - Appeals team
- Development
 - 900,000 compensation and pension exams, DBQ



Rating Decisions

- Notice of decision including
 - Evidence considered
 - Reasoning for denial or award
 - Appellate rights, VA Form 4597
 - Appeals form under standardization of forms rule, 0958
- 1,237,000 rating decisions FY 2016

VA Department of Veterans Affairs **YOUR RIGHTS TO APPEAL OUR DECISION**

The attached decision by the Board of Veterans' Appeals (BVA or Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. We will return your file to your local VA office to implement the BVA's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. None of these things is mutually exclusive - you can do all five things at the same time if you wish. However, if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your case because of jurisdictional conflicts. If you file a Notice of Appeal with the Court *before* you file a motion with the BVA, the BVA will not be able to consider your motion without the Court's permission.

How long do I have to start my appeal to the Court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the Court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you*, you will then have another 120 days from the date the BVA decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, *it is your responsibility to make sure that your appeal to the Court is filed on time*. Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:
Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: <http://www.uscourts.cave.gov>, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court**, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the BVA to reconsider any part of this decision by writing a letter to the BVA clearly explaining why you believe that the BVA committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that such letter be as specific as possible. A general statement of dissatisfaction with the BVA decision or some other aspect of the VA claims adjudication process will not suffice. If the BVA has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

Director, Management, Planning and Analysis (014)
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

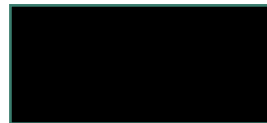


DEPARTMENT OF VETERANS AFFAIRS

St. Petersburg Regional Office
P.O. BOX 1437
St. Petersburg FL 33731

JAN 31 2013

In Reply Refer To:



We made a decision on your claim for service connected compensation received on July 27, 2011.

Although we have not changed the way we consider and decide claims, we have changed the way we inform you of our decision. This single streamlined notice includes the essential information previously contained in a separate rating decision.

This letter constitutes our decision based on all issues we understood to be specifically made, implied, or inferred in that claim.

This letter tells you about your entitlement amount and payment start date and what we decided. It includes the evidence used and reasons for our decision. We have also included information about additional benefits, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Award Amount and Payment Start Date

Your monthly entitlement amount is shown below:

Monthly Entitlement Amount	Payment Start Date	Reason For Change
\$1,228.00	Jul 1, 2011	Original Award
1,272.00	Dec 1, 2011	Cost of Living Adjustment
1,293.00	Dec 1, 2012	Cost of Living Adjustment

We are paying you as a single veteran with no dependents.



You Can Expect Payment

Your payment begins the first day of the month following your effective date. You will receive a payment covering the initial amount due under this award, minus any withholdings, in approximately 15 days. Payment will then be made at the beginning of each month for the prior month. For example, benefits due for May are paid on or about June 1.

What We Decided

Please see the enclosures for more information regarding the evidence considered and the evaluation assigned.

We determined that the following conditions were related to your military service, so service connection has been granted:

Medical Description	Percent (%) Assigned	Effective Date
✓ Fibromyalgia	40%	Jun 21, 2011
✓ Adjustment disorder with depressed and anxious mood	30%	Jun 21, 2011
✓ Left shoulder strain	10%	Jun 21, 2011
✓ Lumbar strain	10%	Jun 21, 2011
✓ Cervical spine, degenerative disc disease	10%	Jun 21, 2011
✓ Right ankle degenerative joint disease	10%	Jun 21, 2011

An examination will be scheduled at a future date to evaluate the severity of your service connected Fibromyalgia, Adjustment disorder with depressed and anxious mood, Left shoulder strain, Lumbar strain, Cervical spine, degenerative disc disease and Right ankle degenerative joint disease.

Your claim for individual unemployability was denied because the evidence does not show you are unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

Your examiners noted you are capable of light physical employment: Teaching/Sales. Thus, your service connected conditions do not present functional impairments that would prohibit physical or sedentary employment; Your service connected conditions could mildly impact physical and sedentary employment. However, you are considered capable of gainful employment.

The Appeals Process

The Long Road

Beginning the Appeals Process – Current System

Notice of Disagreement

- Triggers the Appeals Process
 - VA Form 21-0958, Notice of Disagreement
 - AOJ Request for Clarification
 - 365 days to file
 - DRO or Traditional
 - Informal hearings or formal hearings

Litigation on Standardized Appeals

CMB Approved No. 2966-0791
Repealment Number: 30 months
Expiration Date: 10/02/2017

Department of Veterans Affairs	NOTICE OF DISAGREEMENT								
<small>A CLAIMANT OR HIS OR HER DULY APPOINTED REPRESENTATIVE MAY FILE NOTICE EXPRESSING THEIR DISSATISFACTION OR DISAGREEMENT WITH AN ADJUDICATIVE DETERMINATION BY THE AGENCY OF ORIGINAL JURISDICTION. A DESIRE TO CONTEST THE RESULT WILL CONSTITUTE A NOTICE OF DISAGREEMENT (NOD). WHILE SPECIAL WORDING IS NOT REQUIRED, THE NOD MUST BE IN TERMS WHICH CAN BE REASONABLY CONSTRUED AS DISAGREEMENT WITH THAT DETERMINATION AND A DESIRE FOR APPELLATE REVIEW. (AUTHORITY: 38 U.S.C. 7109)</small>									
TO FILE A VALID NOD, THERE IS A TIME LIMIT OF ONE YEAR FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT. FOR CONTESTED CLAIMS INCLUDING CLAIMS OF APPOINTMENT, THIS TIME LIMIT IS 60 DAYS FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT.									
(DO NOT WRITE IN THIS SPACE) (VA DATE STAMP)									
PART I - PERSONAL INFORMATION									
1. VETERAN'S NAME (First, middle initial, last)									
2. VA FILE NUMBER (CICSS -)									
3. VETERAN'S SOCIAL SECURITY NUMBER (-)									
CLAIMANT'S PERSONAL INFORMATION									
4. CLAIMANT'S NAME (First, middle initial, last)									
5. MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)									
6. PREFERRED TELEPHONE NUMBER (include Area Code)									
7. PREFERRED E-MAIL ADDRESS									
PART II - TELEPHONE CONTACT									
8. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR E-MAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD? <small>If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.</small>									
<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> 8:00 a.m. - 10:00 a.m. <input type="checkbox"/> 10:00 a.m. - 12:30 p.m. <input type="checkbox"/> 12:30 p.m. - 2:00 p.m. <input type="checkbox"/> 2:00 p.m. - 4:30 p.m. Phone number I can be reached at the above checked time: _____									
PART III - SPECIFIC ISSUES OF DISAGREEMENT									
9. NOTIFICATION/DECISION LETTER DATE									
10. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.									
A. Specific Issue of Disagreement	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">B. Area of Disagreement</th> <th style="text-align: center; padding: 5px;">C. Percentage (%) Evaluation Sought (if known)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"> <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify) </td> <td style="padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;"> <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify) </td> <td style="padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;"> <input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify) </td> <td style="padding: 5px;"></td> </tr> </tbody> </table>	B. Area of Disagreement	C. Percentage (%) Evaluation Sought (if known)	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)		<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)		<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	
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<small>VA FORM 21-0958 JAN 2015</small>									

(Continued on next page)

Statement of the Case

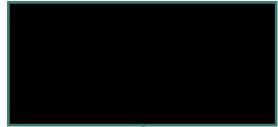
- Last administrative remedy before filing a “substantive appeal”
- Supplemental Statement of the Case
- VA-9 Form
- 60 day deadline to file after SOC
- 30 day deadline to file after SSOC
- Raise all potential arguments
- VA-8 Certification of issues



DEPARTMENT OF VETERANS AFFAIRS
Cleveland Regional Office
1240 East Ninth Street
PO Box 99710
Cleveland OH 44199-2001

ATTY

JUN 04 2014



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

Statement of the Case

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

What You Need To Do

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

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

When You Need To Do It

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

Hearings

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

Representation

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

What We Will Do

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

Sincerely yours,

Charles L. Moore

Charles L. Moore
Service Center Manager

Enclosure(s): VA Form 9
Appeal Satisfaction Notice

CC: AGENT OR PVT ATTY-EXCLUSIVE CONTACT NOT REQUESTED

Board of Veterans Appeals

- Headquartered in Washington, D.C.
- Veterans Law Judges, VLJ, 64 with assistance of 614 staff
- 52,011 decisions in FY 2016
- 13,535 hearings FY 2016
- Received 86,836 appeals received and docketed FY 2016, 46% remanded
- Cases pending end of FY increasing steadily. The deficit is growing

BVA Jurisdiction

- Entitlement to benefits resulting from service connected disabilities
- Dependency and indemnity compensation
- Benefits for survivors of certain veterans
- Entitlement to non-service connected pension
- Education benefits
- Voc rehab entitlement
- Reimbursement for unauthorized medical expenses
- Home loans
- Waiver of recovery of overpayment
- VA determination of discharge characterization
- Marital status and apportionment determinations

BVA Practice

- Right to a hearing in person or via teleconference
- 90 day letter is the opportunity to introduce new evidence into the record
- Informal hearings – no rules of evidence, recorded digitally and transcribed
- Hearing procedure
- Standard of proof
- Waiver of evidence consideration
- Remand or final decision, partial grants, total grants, sweeping denials

Reformed System

- NOD is the substantive appeal. The VA Form 0958 will appeal the claims to the BVA
- The claimant may do one of two things: (1) file the NOD, or (2) request a “higher level review” at the AOJ.
- The deadline to file the NOD or to request a higher level review is 365 days.
- The claimant will be given the option to indicate on the NOD that the Board will receive more evidence.
- The claimant will be given the option to request a hearing

BVA Dual Docket & Closing the Record

- **38 U.S.C. 7107** mandates that the Board will maintain two dockets.
- **Docket #1:** appeals wherein the appellant has invoked the right to a hearing in the NOD (actual language in the code), will add additional evidence.
- **38 U.S.C. 7113 (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.

Court of Appeals for Veterans Claims

- Overview of the Court
 - Admission to the Court's Bar
 - Judges
 - Chief Judge Lawrence B. Hagel
 - Judge Bruce E. Kasold
 - Judge Alan G. Lance, Sr.
 - Judge Robert N. Davis
 - Judge Mary J. Schoelen
 - Judge Coral W. Pietsch
 - Judge Margaret Bartley
 - Judge William S. Greenberg
 - **President Trump Appointees Confirmed:
Amanda L. Meredith, Joseph P. Toth,
Michael P. Allen**



Errors Reviewed at the Court

- Limited review pursuant to 38 U.S.C. § 7252(a)
- Written record is closed
- 120 deadline to file NOA
- Deadline is “procedural” as opposed to jurisdictional
- E-filing mandated effective October 14, 2008
- Redaction Rule 6
- \$50.00 filing fee unless indigent

Schedule

- After NOA is filed, the Notice of Docketing directs VA to file the BVA decision within 30 days and Record Before the Agency within 60 Days
- 14 or 19 day review of RBA
- After RBA review deadline, Court issues notice to file appellant's brief 60 or 30 days after briefing conference, whichever is later
- Rule 33 conference is scheduled between Group VII attorney, you, and court staff
- Appellant counsel submits a summary of issues 14 days prior to the Rule 33 conference
- Appellant does not file the summary, but file a certificate of filing

Equal Access to Justice Act (EAJA)

- Appellant certifies that her net worth is less than \$2 million
- Government's position was not substantially justified
- Appellant is the prevailing party
- Attorney provides an itemized statement
- Hourly Rate = \$125.00 x CPI-U at mid-point/CPI-U March 1996
- E.g., CPI-U August 1996 is 155.7 and CPI-U August 2015 is 238.3
- $\$125.00 \times \frac{238.3}{155.7} = \$125 \times 1.53 = \$191.31$

Representing Clients in the VA System

The Strong Paternal History

Representing Clients in the VA System

- Accreditation by the VA Office of General Counsel required
 - File VA Form 21a, www.va.gov/ogc/accreditation.asp
 - OGC claims a 60 to 90 day processing time
 - Attorney may appeal an adverse decision via APA (*Bates v. Principi*, 17 Vet. App. 443 (2004))
 - Three character references, member of state bar in good standing
- Continuing legal education, RPC, 38 C.F.R. § 14.632
- Attorney fees strictly regulated, withheld by VA for review. Under the current system, the case must have an administrative review pending – i.e., “open” NOD on file. Reformed system: a rating decision issued and appeal period open.

Resources

- **Veterans Benefits Manual – Written by National Veterans Legal Services Program (NVLSP) & Published by Lexis Nexis**
- **The National Veterans Legal Services Program (NVLSP).** This organization assists veterans and VA lawyers. You can purchase legal treatises, VA regulations, and CLE materials at their website: www.nvlsp.org.
- **American Bar Association (ABA) Resources for VA Claimants/Advocates.** The ABA provides the following resources:
 - **The American Bar Association Initiative on Veterans Affairs** provides publications, articles, and links for veteran claimants or their representatives: www.abanet.org/vetaffairs.
 - **The American Bar Association's Standing Committee on Legal Assistance for Military Personnel (LAMP)** provides resources for attorneys who represent military members: http://www.americanbar.org/groups/legal_assistance_military_personnel.html.

Questions?

