

# VA Certification Training



# Overview

- Representation before VA
- Ethics in representation
- Basic eligibility for VA benefits
- Disability compensation
- 1151
- Pension
- DIC/survivors' benefits
- Claims procedures and right to appeal



# Department of Veterans' Affairs (VA)

- Cabinet level Agency that provides healthcare, benefits, and compensation to veterans and their dependents
- Secretary, Douglas Collins
- Three components:
  - Veterans' Health Administration (VHA)
  - **Veterans' Benefits Administration (VBA)**
  - National Cemetery Administration (NCA)

# VHA

The Veterans Health Administration is America's largest integrated health care system, providing care at 1,380 health care facilities, including 170 medical centers and 1,193 outpatient sites to over 9.1 million veterans enrolled in the VA health care program



# VBA

The Veterans Benefits Administration provides financial and other forms of assistance to veterans and their dependents



# NCA

- Maintains 155 national cemeteries and 34 soldiers' lots and monument sites in 42 states and Puerto Rico.
- Provides funding to establish, expand, improve and maintain 118 Veterans cemeteries in 48 states and territories including tribal trust lands, Guam, and Saipan.
- Provides headstones, markers or medallions to commemorate service of those not buried in a VA national cemetery.
- Maintains the **Nationwide Grave-site Locator**, which can be used to find burial locations of American military Veterans through their searchable website
  - <https://gravelocator.cem.va.gov/ngl/#iframe-content>



# Benefits Administered by VBA

- Veterans' benefits
  - Compensation
  - Pension
  - Education
  - Adaptive Equipment
  - Vocational Rehabilitation
  - VA Home Loans
  - VA Life Insurance
  - Survivors' Benefits



## Total Recipients

Compensation – Number of service-connected compensation and DIC benefit recipients at the end of fiscal year 2023	6,159,448
Pension – Number of non-service-connected disability Veteran and survivor pension recipients at the end of fiscal year 2023	262,932
Fiduciary – Number of beneficiaries who received services from VA’s fiduciary program during fiscal year 2023	104,209
Education – Number of beneficiaries participating in education programs during fiscal year 2023	862,750
Insurance – Number of lives insured at the end of fiscal year 2023	5,554,764
Home Loan Guaranty – Number of loans guaranteed during fiscal year 2023	400,695
Veteran Readiness and Employment – Number of participants during fiscal year 2023	131,179



# Agency Level

## Regional Offices

- 56 VA Regional Offices within the United States, Puerto Rico, and the Philippines
- Handles claims adjudication
- Acting Undersecretary of Benefits, Margarita Devlin

## Board of Veterans' Appeals

- Located in Washington, D.C.
- Directed by Chairman (Vacant; Vice Chairman Kenneth Arnold, Acting)
- Veterans Law Judges



# Board of Veterans Appeals (BVA)

- Administrative tribunal seated in Washington, D.C.
- Makes decisions on behalf of the Secretary and is headed by the Chairman of the BVA (currently vacant; Vice Chairman Kenneth Arnold, Acting)
- Made up of 110 Members of the Board (Veterans Law Judges, or “VLJs”)
- [www.bva.va.gov/](http://www.bva.va.gov/)



# Board of Veterans Appeals (BVA)

- Jurisdiction of the Board – 38 C.F.R. § 20.104
  - All questions of law and fact necessary to a decision by the of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the BVA.
- The Board may reverse or uphold the decision of the RO, but more commonly remands cases (sends them) back to the RO to correct actions that were errors.



# Appellate Review

- Court of Appeals for Veterans' Claims (CAVC)
  - Article 1 Court
  - Washington, D.C., but authorized to sit anywhere in the U.S.
  - Exclusive jurisdiction over decisions by BVA
  - The Secretary of VA (who is named as Appellee) defends cases
  - Authorized 7 permanent active Judges and two additional judges as part of a temporary expansion provision.
    - Term of 15 years with option to agree to be available for recall as Senior Judge



# Representation at Court

- Admission to Court of Appeals for Veteran's Claims
  - Application for Admission
  - Certificate of Good Standing
  - Application available online at [http://www.uscourts.cavc.gov/documents/Form46A\\_02-12\\_.pdf](http://www.uscourts.cavc.gov/documents/Form46A_02-12_.pdf)



# Representation at the Agency

- **Accreditation is required** by both attorneys and non-attorneys
  - Cannot charge for filing of initial claim
  - Must be **accredited**, even if pro bono
  - Non-attorneys must pass an examination in addition to completing application
- Accreditation must be renewed annually and includes CLE requirements
- Application form for Accreditation – VA Form 21a
  - [www.va.gov/vaforms/va/pdf/VA21a.pdf](http://www.va.gov/vaforms/va/pdf/VA21a.pdf)



# Representation at the Agency

- Once accredited, you may represent a Veteran at the agency
- Submit VA form 21-22a
- If you are representing a Veteran for a fee and want the VA to withhold your “reasonable fee” - you will also need to file your fee agreement with the Office of General Counsel (OGC)



# Attorney Representation for Fee

- Withholding fee agreement: VA withholds attorney fee from retroactive award and pays the attorney fee directly to the attorney. Must be filed with the agency of original jurisdiction (the Regional Office) within 30 days of the agreement being signed
  - Withholding fee agreements have to be for 20% of retro award or less to be valid
- Non-withholding fee agreement: the full amount of a retroactive award is released to the veteran and the veteran pays the attorney the fee. Must be filed with the Office of General Counsel (OGC) within 30 days of the agreement being signed



# Attorney Representation for Fee

## Tex. R. Disc. Prof'l Cond. 1.04 - Fees

(a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.



# Accreditation Issues

- Watch out for unaccredited claims consultants, unaccredited AI claims groups
- VA OGC website to confirm someone is accredited
  - [www.va.gov/ogc/apps/accreditation/index.asp](http://www.va.gov/ogc/apps/accreditation/index.asp)
- What should Veteran do if harmed by unaccredited rep/consultant?
  - File complaint with OGC
  - File complaint with FTC
  - Reach out to congressional representative



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# Basic Standards of Conduct

VA-accredited individuals providing VA claims assistance shall:

- Faithfully execute their duties on behalf of a VA claimant;
- Be truthful in their dealings with claimants and VA;
- Provide claimants with competent representation before VA;  
and
- Act with reasonable diligence and promptness in representing claimants.
- 38 C.F.R. §§ 14.632 (a) & (b).



# Basic Standards of Conduct

VA-accredited individuals providing VA claims assistance shall *not*:

- Violate the standards of conduct set forth in 38 C.F.R. § 14.632.
- Circumvent the rules of conduct through the actions of another.
- Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation.
- Solicit, receive, or enter into agreements for gifts related to representation provided before an agency of original jurisdiction has issued a decision on a claim or claims.



# Basic Standards of Conduct

VA-accredited individuals providing VA claims assistance shall *not*:

- Delay, without good cause, the processing of a claim at any stage of the administrative process.
- Mislead, , threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA.
- Engage in, or counsel or advise a claimant to engage in, acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA.
- Disclose, without the claimant's authorization, any information provided by VA for purposes of representation.
- Engage in any other unlawful or unethical conduct.



# Establishing and Maintaining Competency

38 U.S.C. § 5904(b)(3)

The Secretary ... may suspend or exclude from further practice before the Department any agent or attorney recognized under this section if the Secretary finds that such agent or attorney ... is incompetent; ...



# Establishing and Maintaining Competency

## 38 C.F.R. § 14.633(d)(1)

Accreditation **shall** be canceled “when the GC finds that the performance of [a representative] demonstrates a lack of the degree of competency necessary to adequately prepare, present, and prosecute claims for veteran’s benefits.”



# Establishing and Maintaining Competency

## What is “competent representation”?

- 38 C.F.R. §14.632 (b)(1) - Competent representation requires the knowledge, skill, thoroughness, and preparation necessary for the representation. This includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of title 38, United States Code, and title 38, Code of Federal Regulations.
- Tex. R. Disc. Prof'l Cond. 1.01 Competent and Diligent Representation



# Establishing and Maintaining Competency

<https://www.va.gov/ogc/accreditation.asp>

## **Attorneys, Agents, and VSO Representatives**

**| Accreditation and Recognition Search | Recognition of Organizations | Accreditation FAQs |**

### **Fact Sheets:**

- [Applying for Accreditation as an Attorney or Agent](#) 
- [Standards of Conduct](#) 
- [How to Challenge a Fee](#) 
- [How to File a Complaint Regarding Representation](#) 
- [Enforcement Authority](#) 
- [The Pension Program and Representation](#) 
- [How to Select a Representative](#) 

# Acting with Reasonable Diligence

## What is “reasonable diligence”?

- 38 C.F.R. §14.632 (b)(2) - “Representatives must “act with reasonable diligence and promptness in representing claimants. This includes responding promptly to VA requests for information or assisting a claimant in responding promptly to VA requests for information.”
- “A client’s interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when [an advocate] overlooks a statute of limitations, the client’s legal position may be destroyed. Even when the client’s interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the [advocate’s] trustworthiness.”  
ABA Model Rule 1.3 Comment [3]



# Acting with Reasonable Diligence

## What is “reasonable diligence”?

- Comment 6 – “Having accepted employment, a lawyer should act with competence, commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf. A lawyer should feel a moral or professional obligation to pursue a matter on behalf of a client with reasonable diligence and promptness despite opposition, obstruction or personal inconvenience to the lawyer. A lawyer's workload should be controlled so that each matter can be handled with diligence and competence. As provided in paragraph (a), an incompetent lawyer is subject to discipline.” Tex. R. Disc. Prof'l Cond. 1.01  
Competent and Diligent Representation



# Meritorious Claims

- A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous. Tex. R. Disc. Prof'l Cond. 3.01.
- Comment 1 – *“The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. ...”*

# Communication

## Tex. R. Disc. Prof'l Cond. 1.03 – Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



# Managing Veterans' Expectations

What can you do to improve communication with Veterans in an ethically responsible, effective way and reduce frustration due to administrative action/inaction often outside our control?



# Managing Veterans' Expectations

Set communication expectations from the beginning of representation.

- **How** will you primarily communicate? Phone, email, secure portal, mail
- **Who** will be involved in that communication? Staff/other representatives, Veteran's family members/friends. 38 C.F.R. § 14.632(c)(10) (An individual providing representation on a particular claim under §14.630, representative, agent, or attorney shall not: ... Disclose, without the claimant's authorization, any information provided by VA for purposes of representation.)
- When they can expect to hear from you
- When you expect to hear from them



# Managing Veterans' Expectations

## What about challenging/difficult clients?

- Not all challenging clients are difficult.
- A client may be challenging for their knowledge level, high expectations, etc., while a difficult client lacks respect, may be hostile, or even abusive.
- You are not “stuck” with difficult clients. You control the representation; you’re the professional expert. The client controls the goal; you control how you go about achieving it.



# Managing Veterans' Expectations

## What about challenging/difficult clients?

- 38 C.F.R. § 14.631 (c) – governs withdrawal at the agency level. A representative “may withdraw ... if such withdrawal would not adversely impact the claimant’s interests.”
- 38 C.F.R. § 20.6 – withdrawal at the Board.
- Tex. R. Disc. Prof’l Cond. 1.16 - Declining or Terminating Representation



# Interactions with the VA

- Assume that **everything** you put in writing, and everything that is said at a recorded and transcribed hearing, **will be read by a Judge.**
- Judges and other decision-makers in the system “are more likely to be impressed by an advocate who is courteous and respectful to the decision-maker, opposing counsel, the litigants, and the legal process.” Kevin Dubose & Jonathan E. Smaby, *The Power of Professionalism: Civility as a Strategy for Effective Advocacy*, 79 Tex. B.J. 432, 433 (2016).



# Interactions with the VA

- “...good manners, disciplined behavior and civility—by whatever name—are the lubricants that prevent lawsuits from turning into combat.”
- “[L]awyers who know how to think but have not learned how to behave are [a] menace and a liability, not an asset, to the administration of justice.” Chief Justice Burger, *Excerpts From the Chief Justice’s Speech on the Need for Civility*, N.Y. Times, May 19, 1971, at 28.

# Interactions with the VA

38 U.S.C. § 5904(b)(3)

The Secretary...may suspend or exclude from further practice before the Department any agent or attorney recognized under this section if the Secretary finds that such agent or attorney—

- 1) has engaged in any unlawful, unprofessional, or dishonest practice;
- 2) has been guilty of disreputable conduct; ...



# Practice Tips

- Make sure you are competent before worrying about building your caseload or taking on cases.
- Manage your caseload to preserve your own health and sanity.
- Talk with your Veteran/client.
- Manage your Veteran/client's expectations.
- Protect your Veteran/clients' privacy – and make sure your client understands potential risks of disclosure.
- Know when and how to withdraw representation at the RO and Board.

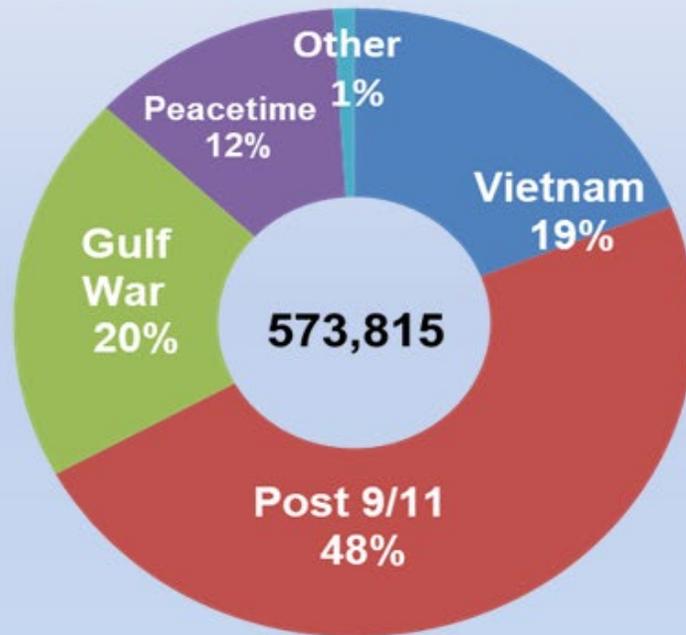


# Disability Compensation



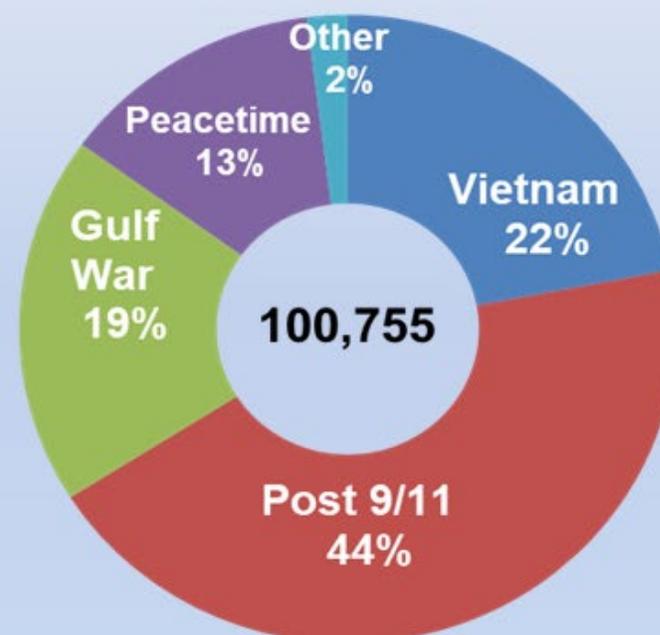
# Characteristics of Claims

## Total Pending Claims



Data as of: 01/24/26

## Total Backlogged Claims



Backlog: Claims pending longer than 125 days

# Service-connected disability compensation

The term “service-connected” means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, air, or space service.

38 U.S.C. § 101 (16).



# What's the benefit?

Compensation is a monthly tax-free benefit payment to Veterans who got sick, were injured while serving in the military, or whose service made an existing condition worse. Disabilities may be physical or mental. There is no requirement that disabilities develop *during* service.

<https://www.va.gov/disability/>



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# Other Benefits

- SC can also provide increased access to healthcare
- Potential death benefits for surviving spouse or children
- Special Home Adaptation (SHA)/Specially Adapted Housing (SAH)
- Dependents Educational Assistance (DEA)
- Special Monthly Compensation (SMC)
- Recognition



# Basic Entitlement

For disability resulting from **personal injury suffered** or **disease** contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, air, or space service . . . the United States will pay to any veteran thus disabled and who was **discharged or released under conditions other than dishonorable** from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but **no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.**

38 U.S.C. § 1110.



# Basic Entitlement

Veteran status - 38 U.S.C. §101(2)

- a person who served in the active military, naval, or air services,
- who was discharged or released under conditions other than dishonorable.



# Active Service Requirements

VA defines “active duty” as any period of active duty for training during which the individual concerned was disabled from a disease or injury incurred or aggravated in line of duty.” 38 C.F.R. § 3.6 (a).

- Examples of “active duty” include full-time duty in the Armed Forces; attendance at preparatory schools of the U.S. Air Force, Military, or Naval Academy; authorized travel to and from such duty or service; etc. 38 C.F.R. § 3.6 (b).
- An example of “active duty for training” includes full time duty in the Armed Forces performed by Reserves for training purposes. 38 C.F.R. § 3.6 (c).
  - Special rules for National Guard and reservists – <https://cck-law.com/blog/va-benefits-for-national-guard-and-reserve-members/#active-guard-reserve-members>



# Character of Discharge

Discharge “under conditions other than dishonorable” for VA purposes.

Types:

- Honorable discharge (HD)
- Discharge under honorable conditions (UHC) or general discharge (GD)
- Discharge under other than honorable conditions (OTH) or undesirable discharge (UD)
- Bad conduct discharge (BCD)
- Dishonorable discharge (DD)

NOTE: Bad discharge from one period does not necessarily preclude benefits for a disability stemming from a period of service with a good discharge.



# Line of Duty

- This phrase means that an injury or disease was incurred in or aggravated during a period of active service, unless the injury or disease is the result of a veteran's own willful misconduct or abuse of alcohol or drugs. 38 C.F.R. § 3.1 (m).
- If the service department finds that the injury or disease occurred in the line of duty, then that finding is binding on the VA, "unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs." 38 C.F.R. § 3.1 (m)

38 C.F.R. § 3.301 (a)



# Line of Duty

Example:



Photo Credit: An Air Force special tactics operator executes a military free fall jump near Alcantarilla Air Base, Spain, July 26, 2022.  
<https://www.defense.gov/Multimedia/Photos/igphoto/2003049927/>

# Line of Duty

But  
also...



Photo Credit: Airmen and soldiers play soccer with residents of Chabelley Village in Djibouti, June 9, 2022.  
<https://www.defense.gov/Multimedia/Photos/igphoto/2003019553/>



# Willful Misconduct

- An act involving conscious wrongdoing or known prohibited action.
- Most common examples are alcohol and drug abuse.
- A finding by a service department that an injury disease or death was not due to willful misconduct will be binding on the VA “unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs.”

38 C.F.R. § 3.1 (n); *see also* 38 C.F.R. § 3.301 (c).



# Direct Service Connection

## Elements:

- Current disability
- Medical or, in certain circumstances, lay evidence of incurrence or aggravation of a disease or injury in service
- Nexus between the in-service injury or disease and the current disability

38 U.S.C. § 1110; 38 C.F.R. § 3.1(k); *Hickson v. West*, 12 Vet.App. 247 (1999).



# Duty to Assist

- Under its Duty to Assist, 38 U.S.C. § 5103A, VA should obtain the veteran's service personnel and medical treatment records but it's important to have VBMS access to verify
- At the stage of an original or supplemental claim the record is not closed and a veteran can offer new and relevant evidence of the event.



# Medical evidence of a current disability

- “[D]isability’ in § 1110 refers to the functional impairment of earning capacity, not the underlying cause of said disability.”
- “[P]ain is an impairment because it diminishes the body’s ability to function, and that pain need not be diagnosed as connected to a current underlying condition to function as an impairment.”

*Saunders v. Wilkie*, 866 F.3d 1356, 1363-64 (Fed. Cir. 2018).



# Are all disabilities fair game?

- No. Developmental or congenital defects cannot be service connected. See 38 C.F.R. § 3.303 (c). “Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency...” *Id.*
- **BUT** congenital or developmental disease capable of getting worse may be service connected. *Quirin v. Shinseki*, 22 Vet.App. 390, 394 (2009).

*O’Bryan v. McDonald*, 771 F.3d 1376, 1379 (Fed. Cir. 2014).



# Medical evidence of a current disability

- A disability is “current” if it manifested at any time during the pendency of the claim, but if it resolved prior to submitting a claim it is not current. *McClain v. Nicholson*, 21 Vet.App. 319 (2007).
- A Veteran does not necessarily have to have evidence of the claimed condition diagnosed during service. See 38 C.F.R. § 3.303(d); see also *Cosman v. Principi*, 3 Vet.App. 503 (1992).



# Medical evidence of a current disability

Evidence of a disability or diagnosis can be shown by:

- Service medical records
- VAMC treatment records or VA examinations
- Private treatment records



# Evidence of incurrence or aggravation of a disease or injury **in service**

- Must not be during a period of service which is dishonorable.
- Must not be due to one's own misconduct such as during commission of a crime or substance use.
- May be on duty or off duty, but "in line of duty."
- Evidence of an injury or disease in service can be shown by
  - Service medical records
  - Service personnel records
  - Private (non-military) treatment records
  - "Verified" stressor (See 38 C.F.R. § 3.304(f))
    - Behavioral issues



# Presumption of Soundness

If no preexisting defects or disabilities noted at enlistment, “the government must show clear and unmistakable evidence of **both** a preexisting condition and a lack of in-service aggravation to overcome the presumption of soundness...” *Wagner v. Principi*, 370 F.3d 1089 (Fed. Cir. 2004).

38 U.S.C. § 1111; 38 C.F.R. § 3.304(b) .



# Aggravation

When a condition is *noted upon entry*, a preexisting injury or disease will be considered to have been aggravated by active military, naval, air, or space service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease. 38 U.S.C. § 1153.

- The burden to establish worsening is on the veteran but, if the veteran shows it got worse in service, the burden then shifts to the government to show the increase in disability severity was due to the natural progression of the disease. 38 C.F.R. § 3.306.



# Special Rule for Combat Veterans

“Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation.”

38 C.F.R. § 3.304(d); 38 U.S.C. § 1154(b).



# Medical Evidence of a Nexus

- Standard of proof is “at least as likely as not.”
- Nexus will usually be established by a VA examination or a private medical opinion.
  - Lay evidence may be able to establish a nexus depending largely on the disability and the Veteran’s combat status. *Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009).
  - “Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation.” 38 C.F.R. § 3.304(d).



# Secondary Service Connection

A “...disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.”

38 C.F.R. § 3.310



# Secondary Service Connection

- Note: Even if a condition cannot be service-connected itself such as primary alcohol or drug use, it may be used to establish service connection as an intermediate step if it results from a service-connected condition.

# Aggravation by Service-Connected Condition

- Any increase in severity of a nonservice-connected disease or injury [i.e., aggravation] that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected. 38 C.F.R. § 3.310(b); *Allen v. Brown*, 7 Vet.App. 439, 448 (1995).
  - VA will not concede that a nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice-connected disease or injury. 38 C.F.R. § 3.310 (b).



# Presumptive Service Connection

- Congress has directed that certain conditions are to be presumed service connected (statute); VA has determined others through the regulatory process (regulation).
- The policy behind presumptive service connection is that the disease that first manifested after active service probably had its beginnings during active service or was caused by active service and, under the circumstances, veterans should not be required to obtain medical evidence of a connection to obtain benefits.
- In other words, the presumption takes the place the nexus requirement.



# Presumptive Service Connection

Statutory presumptions are found at 38 U.S.C. §§

- 1112 – Chronic, tropical, radiation related, and other diseases
- 1116 – Diseases associated with exposure to certain herbicide agents; presumption of exposure for veterans who served in certain locations
- 1116A – Herbicide-exposed blue water veterans
- 1116B – Herbicide-exposed veterans with service in the Korean DMZ
- 1117 – Disabilities occurring in PGW veterans
- 1118 – Illnesses associated with service in the Persian Gulf during PGW
- 1119 – Toxic-exposed veterans, and
- 1120 – Certain diseases associated with exposure to burn pits and other toxins



# Presumptive Service Connection

Regulatory presumption is available for certain diseases including:

- chronic diseases; (3.307; 3.309(a))
- tropical diseases; (3.307; 3.309 (b))
- diseases specific as to former prisoners-of-war;(3.307; 3.309(c))
- diseases specific as to radiation-exposed veterans; (3.309(d))
- diseases associated with exposure to certain herbicide agents such as Agent Orange; (3.307; 3.309 (e))
- diseases associated with contaminated water at Camp Lejeune (3.307; 3.309 (f))
- amyotrophic lateral sclerosis (ALS) (3.318)
- fine particulate matter (3.320)
- diseases associated with exposure to mustard gas and Lewisite(3.316)
- certain diagnosed and undiagnosed illnesses in veterans of the Gulf War (3.317)

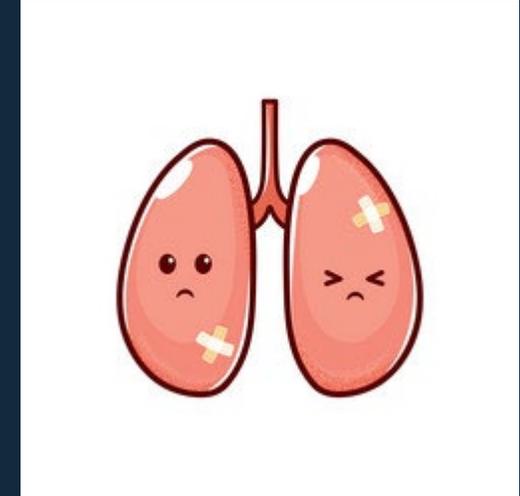
[www.va.gov/files/2025-09/presumptive-service-connection-information.pdf](http://www.va.gov/files/2025-09/presumptive-service-connection-information.pdf)



# Service Connection Based on Paired Organs

Under 38 C.F.R. § 3.383, compensation is payable for combinations of service-connected and nonservice-connected disabilities specified in paragraphs (a)(1) through (a)(5) of this section as if both disabilities were service-connected, provided the non service-connected disability is not the result of the veteran's own willful misconduct.

- Impairment of vision (visual acuity of each eye 20/200 or less, OR peripheral field of vision for each eye is 20 degrees or less)
- Loss of use of one kidney
- Hearing impairment
- Loss of use of one hand or one foot d/t s/c condition with loss of use of second hand/foot due to non s/c condition
- Permanent service-connected disability of one lung rated 50 percent or more



# Presumptive Service Connection Chronic Diseases

- 38 C.F.R. § 3.307 (a)(3).
  - Hansen's disease (leprosy) and tuberculosis must manifest to a degree of 10% or more within 3 years from the date of separation.
  - Multiple sclerosis must manifest to a degree of 10% or more within 7 years from the date of separation.
- 38 C.F.R. § 3.309(a) - Specifically listed disease manifests to a degree of 10% or more within 1 year from the date of separation
  - Examples: arthritis, diabetes mellitus, leukemia, myasthenia gravis, organic disease of the nervous system, etc.



# 38 U.S.C. § 1151 - Benefits for persons disabled by treatment or vocational rehabilitation

A disability or death can be compensated as if it were a service-connected disability or death if

- Disability or death was caused by hospital care, medical or surgical treatment, or examination in “facilities over which the Secretary has direct jurisdiction.” 38 U.S.C. § 1701 (3)(A).
  - carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault
  - event not reasonably foreseeable
- Disability or death was proximately caused by the provision of training and rehabilitation services by the Secretary (including Chapter 31 VR&E), or by participation in a program (known as a “compensated work therapy program”) under 38 U.S.C. §1718.

Note: there is an offset if awarded settlement/compromise in a civil suit.



# Service Connection is Granted – Now What?

## “Downstream” Elements

- Disability rating (38 U.S.C. §§ 1114, 1155; 38 C.F.R., Part 4)
- Effective date (38 U.S.C. § 5110; 38 C.F.R. § 3.400)
- Extraschedular rating (38 C.F.R. § 3.321)
- TDIU (38 C.F.R. § 4.16)



# Rating Evaluation

- Veteran is rated under Part 4 of Title 38 of the C.F.R. ( “VA Schedule of Ratings Disabilities”)
- Disability evaluations are based on “average impairment” in earning capacity. 38 U.S.C. § 1155; 38 C.F.R. § 4.1. Ongoing efforts on part of VA to update.
- 38 C.F.R. § 4.25(b) governs combined ratings – not added together but combined via ratings table.
- Also note sections 4.14 (pyramiding) and 4.20 (analogous ratings).
- Extraschedular ratings are available pursuant to 38 C.F.R. § 3.321 (b)



# Rating Evaluation

Each disability in 38 C.F.R. Part 4 has three parts:

- 1) Diagnostic Code
- 2) Symptomatology or Criteria
- 3) Rating



# Rating Evaluation

## 9411 Posttraumatic Stress Disorder:

- Total occupational and social impairment, due to such symptoms as: grossly inappropriate behavior; persistent danger of hurting self or others; disorientation to time or place..... 100
- Occupational and social impairment with reduced reliability and productivity due to such symptoms as: panic attacks more than once a week; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; difficulty in establishing and maintaining effective work and social relationships. .... 50
- Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress..... 10

\*\* -70% and 30% rating criteria omitted from slide



# VA Rates in 10% Increments

## Compensation rates for Veterans with a 10% to 20% disability rating

Effective December 1, 2025

**Note:** If you have a 10% to 20% disability rating, you won't receive a higher rate even if you have a dependent spouse, child, or parent.

Disability rating	Monthly payment (in U.S. \$)
10%	180.42
20%	356.66

SOURCE: <https://www.va.gov/disability/compensation-rates/veteran-rates/>  
(2026 rates – Site last checked March 16, 2026)



# VA Rates in 10% Increments (Cont.)

**Basic monthly rates for 30% to 60% disability rating**

<b>Dependent status</b>	<b>30% disability rating (in U.S. \$)</b>	<b>40% disability rating (in U.S. \$)</b>	<b>50% disability rating (in U.S. \$)</b>	<b>60% disability rating (in U.S. \$)</b>
<b>Veteran alone</b> (no dependents)	552.47	795.84	1,132.90	1,435.02
<b>With spouse</b> (no parents or children)	617.47	882.84	1,241.90	1,566.02
<b>With spouse and 1 parent</b> (no children)	669.47	952.84	1,329.90	1,671.02

SOURCE: <https://www.va.gov/disability/compensation-rates/veteran-rates/>  
(2026 rates – Site last checked March 16, 2026)



# VA Rates in 10% Increments (Cont.)

**Basic monthly rates for 70% to 100% disability rating**

<b>Dependent status</b>	<b>70% disability rating (in U.S. \$)</b>	<b>80% disability rating (in U.S. \$)</b>	<b>90% disability rating (in U.S. \$)</b>	<b>100% disability rating (in U.S. \$)</b>
<b>Veteran with child only</b> (no spouse or parents)	1,910.45	2,219.15	2,494.30	4,085.43
<b>With 1 child and spouse</b> (no parents)	2,074.45	2,406.15	2,704.30	4,318.99
<b>With 1 child, spouse and 1 parent</b>	2,197.45	2,546.15	2,862.30	4,495.23

**SOURCE:**  
<https://www.va.gov/disability/compensation-rates/veteran-rates/>  
 (2026 rates – Site last checked March 16, 2026)



# VA Rates in 10% Increments (Cont.)

## Added amounts for 70% to 100% disability rating

<b>Dependent status</b>	<b>70% disability rating (in U.S. \$)</b>	<b>80% disability rating (in U.S. \$)</b>	<b>90% disability rating (in U.S. \$)</b>	<b>100% disability rating (in U.S. \$)</b>
<b>Each additional child under age 18</b>	76.00	87.00	98.00	109.11
<b>Each additional child over age 18 in a qualifying school program</b>	246.00	281.00	317.00	352.45
<b>Spouse receiving Aid and Attendance</b>	141.00	161.00	181.00	201.41

**SOURCE:**  
<https://www.va.gov/disability/compensation-rates/veteran-rates/>  
(2026 rates – Site last checked March 16, 2026)



# Combined Ratings

- Combining VA ratings is not simple addition. The mechanism for combining ratings may make it seem like the math isn't "math"ing. VA combines ratings using a formula found in 38 C.F.R. § 4.25.
- E.g.: A vet has 70% for PTSD and 10% for Tinnitus.
  - The combined rating = 70%...not 80%



# Combined Ratings

- VA combines by starting with the greatest rating first and then calculating disability percentages based on the remainder.
- In our 70% & 10% example, VA would first subtract 70% from 100%, and then calculate 10% of the remaining 30% of *ability out of 100%* after you factor in the 70% to determine the percentage to combine.



# Combined Ratings

Broken down further, assume two ratings: **70% and 10%**

- **Step 1:**  $100\% - 70\% = 30\%$
- **Step 2:**  $10\%$  of  $30\% = 3\%$  to add to  $70\%$ 
  - This is what the 2<sup>nd</sup> rating – the  $10\%$  gets the vet in VA Math
  - An additional  $3\%$  to add to the greater  $70\%$  rating.
- **Step 3:**  $70\% + 3\% = 73\%$ 
  - Typical rounding rules apply, so you would then round down to  $70\%$ , because it is less than  $75\%$

**COMBINED = 70%**



# Other Rating Considerations

- Bilateral factor – 38 C.F.R. § 4.26 - when a partial disability results from disease or injury of both arms, or of both legs, or of paired skeletal muscles, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (*i.e.*, not combined) before proceeding with further combinations, or converting to degree of disability.
  - E.g. The Veteran has a left knee and a right ankle disability, each rated at 10%. Under combining rules,  $10\% + 10\% = 19\%$ . The bilateral factor is 10% of 19, which = 1.9. This figure is then added to 19.  $19 + 1.9 = 20.9$ , which rounds to 21. This can make a difference in the overall rating.
    - E.g.  $30\% + 10\% + 10\% = 43$ , which rounds down to a 40% rating.  
But,  $30\% + 21\% = 45$ , which would round to 50.



# Special Monthly Compensation

- VA will also pay an additional tax-free benefit for certain severe disabilities.
- Special monthly compensation, known as **SMC**, is an amount paid over and above a veteran's combined rating.
- 38 C.F.R. § 3.350
- Additional rate of \$201.41 if spouse also requires aid and attendance.



# Special Monthly Compensation

## Basic SMC rates

Dependent status	SMC-L (in U.S. \$)	SMC-L 1/2 (in U.S. \$)	SMC-M (in U.S. \$)	SMC-M 1/2 (in U.S. \$)	SMC-N (in U.S. \$)
<b>Veteran alone</b>  (no dependents)	4,900.83	5,154.00	5,408.55	5,780.00	6,152.64
<b>With spouse</b>  (no parents or children)	5,120.42	5,373.59	5,628.14	5,999.59	6,372.23

SOURCE: [www.va.gov/disability/compensation-rates/special-monthly-compensation-rates/](http://www.va.gov/disability/compensation-rates/special-monthly-compensation-rates/)  
(2026 rates – Site last checked March 16, 2026)



# Special Monthly Compensation

**Basic SMC rates**

<b>Dependent status</b>	<b>SMC-N 1/2 (in U.S. \$)</b>	<b>SMC-O/P (in U.S. \$)</b>	<b>SMC-R.1 (in U.S. \$)</b>	<b>SMC- R.2/T (in U.S. \$)</b>	<b>SMC-S (in U.S. \$)</b>
<b>Veteran alone</b>  (no dependents)	6,514.00	6,877.12	9,826.88	11,271.67	4,408.53
<b>With spouse</b>  (no parents or children)	6,733.59	7,096.71	10,046.47	11,491.26	4,628.12

SOURCE: [www.va.gov/disability/compensation-rates/special-monthly-compensation-rates/](http://www.va.gov/disability/compensation-rates/special-monthly-compensation-rates/)  
(2026 rates – Site last checked March 16, 2026)



# SMC – What is covered?

- Loss or loss of use of reproductive organs, hand or foot, one or both breasts, both buttocks, sight, ability to speak, etc.
- Paraplegia with loss of bowel and bladder control
- Combinations of deafness and blindness
- Combinations of loss of use of upper and lower extremities
- Housebound
- Requiring "aid and attendance"
- Step-ups when other disabilities combine to 50% ( $\frac{1}{2}$  SMC level increase) or 100% (whole SMC level)



# Effective Date

- If a grant of service-connected compensation is made, VA will inform the veteran of the effective date of that grant. In any grant of service-connected compensation VA will award retroactive benefits based upon the effective date required by law and the length of time it took VA to adjudicate the claim. In appeals of denials of benefits, years of retroactive benefits may be awarded.
  - Important: This is why it is important to file an appeal or review option instead of letting the appeal period lapse and filing a new claim.
- The effective date shall be the later of the date entitlement arose and the date of receipt of a pending claim (e.g. a veteran develops PTSD in 2005 but does not file a claim for PTSD until 2010, the date of entitlement would be the 2010 date of claim). 38 U.S.C. § 5110; 38 C.F.R. § 3.400.



# Effective Date

- VA will often grant entitlement to an increased rating from the date of a VA C&P examination (be prepared to point to lay, medical, or expert evidence demonstrating the entitlement did not begin on the date of the veteran's C&P exam).
- A “staged” rating can be appropriate but only where evidence demonstrates the veteran's condition worsened during the pendency of the claim. *Fenderson v. West*, 12 Vet.App. 119 (1999).
- If a claim is received within one year of the veteran's separation from service, the effective date will be the day following the veteran's separation from active service. 38 C.F.R. § 3.400(b)(2)(i).



# Effective Date

- Date of ITF is considered the date of claim
- For presumptive conditions, typically the effective date (for presumptive service connection) will be:
  - Date of change in liberalizing law (if the claim was pending or filed within 1 year from the law change)
  - One year prior to the date of claim (if the claim was previously denied)
  - The date of claim
  - Date entitlement arose



# Effective Date – Clear and Unmistakable Error

- As a general rule a rating decision is final, and the earlier effective date which would have accompanied that claim is lost one year passes and no further action is taken to preserve the effective date. 38 U.S.C. § 7105(b)(1)(A).
- There are exceptions however to this general rule. Notably, in both the Legacy and AMA systems: a request for a revision based upon a clear and unmistakable error (“CUE”) by VA in a prior rating decision allows the veteran to collaterally attack a final agency decision.
- Error is common. CUE is rare.



# Effective Date – Clear and Unmistakable Error

- CUE is NOT a claim – it is a procedural device that allows a claimant to attack a final agency decision when there is a very specific and rare kind of error that, when called to attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error i.e. “undebatable”
- The effect of revision of that error is that the correction to the decision which contains CUE is deemed to have been made on the date of that prior decision, thereby allowing for retroactive benefits.
- 38 U.S.C. § 5109A; 38 C.F.R. § 3.105



# Effective Date – Clear and Unmistakable Error

To successfully establish CUE the claimant must show:

- An error occurred with respect to the evidence of record or the law that existed at the time of the prior adjudication in question, AND
- Had the error not been made, the outcome would have been manifestly different.
- Mere disagreement with how facts were weighed or evaluated is not enough to substantiate an allegation of clear and unmistakable error.
- A determination that a prior VA or Board decision contained a clear and unmistakable error must be based upon the record and the law that existed at the time of the prior adjudication in question.



# Effective Date – 3.156(b) for Legacy Claims

- Where new and material evidence was received prior to the expiration of the appeal period . . . will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period
- This will only apply to claims decided before February 19, 2019, where new and material evidence was submitted less than one year after the rating decision (or less than 60 days after a Statement of the Case or less than 30 days after a Supplemental Statement of the Case) where there was no subsequent adjudication of that issue
- Example: Veteran files a claim for his lower back he injured while parachuting on October 1, 2009. Claim was denied on December 1, 2009 for no disability. Submitted NME in May 2010 documenting diagnosis of the disability. VA never readjudicated the claim. Veteran filed lower back claim on October 1, 2020. The effective date should be October 1, 2009.



# Effective Date – 3.156(c) Service Dept Records

(c)(1) – if at any time after VA issues a decision on a claim, it receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim... such records include but are not limited to:

- i) Service records related to a claimed in-service event, injury, or disease
- ii) Additional service records forwarded by the DoD
- iii) Declassified records that could not have been obtained because they were classified when VA decided the claim



# Effective Date – 3.156(c) Service Dept Records

- (c)(3) – An award made based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.
- (c)(3) establishes the effective date when the new award of service connection has been made based on all or in part on the records identified by (c)(1) as opposed to the effective date being determined by the general rule under 38 U.S.C. § 5110.



# Non Service-Connected Pension



# Non Service-Connected (NSC) Pension

Needs-based program based on wartime service, NSC disability or age, and low net worth. 38 CFR § 3.3(a). The Veteran must meet one of the following criteria:

- Age 65 or older, or
- Have a permanent and total non service-connected disability, that is not the result of his willful misconduct, that will continue throughout the Veteran's lifetime, and prevents the Veteran from sustaining employment, or
- Reside in a nursing home, or
- Receive Social Security Disability benefits.



# Non Service-Connected (NSC) Pension

The Veteran must also meet certain service criteria:

- The Veteran must not have been dishonorably discharged; and
- If on active duty before September 8, 1980, must have served at least 90 days of active duty, with 1 active-duty day during a period of wartime; or
- If on active duty as an enlisted person after September 7, 1980, must have served at least 24 months or the full period for which you were called or ordered to active duty, with at least 1 day during wartime, or
- If an officer and started on active duty after October 16, 1981, and didn't previously serve on active duty for at least 24 months.



# Non Service-Connected (NSC) Pension

The Veteran must also meet income/net worth requirements:

- Currently, the net worth limit (assets and annual income) for eligibility is \$163,669. 38 U.S.C. § 3.275
- If eligible, pension amount will be the difference between countable income and Maximum Annual Pension Rate (MAPR)
- Countable income - is how much the Veteran earns, including salary, investment, and retirement payments, and some income from dependents.
- MAPR – is maximum amount of pension payable to the Veteran based on base amount plus any additional allowances for dependents, Aid and Attendance, or Housebound benefits. 38 U.S.C. § 3.271



# Non Service-Connected (NSC) Pension

- Current pension rates can be found at [www.va.gov/pension/veterans-pension-rates/](http://www.va.gov/pension/veterans-pension-rates/)
- Additional Allowances:
  - Dependent Children
  - Aid and Attendance – If the Veteran has a disability and needs help with regular daily activities (like eating, bathing, or dressing), they may be entitled to an additional monthly amount
  - Housebound – If the Veteran cannot leave their house due to a disability, they may be eligible for an additional amount



# Non Service-Connected (NSC) Pension

## For Veterans with no dependents

If you have no dependents and...	Your MAPR amount is (in U.S. \$)
You don't qualify for Housebound or Aid and Attendance benefits	17,441
You qualify for Housebound benefits	21,313
You qualify for Aid and Attendance benefits	29,093

**Note:** If you have medical expenses, you may deduct only the amount that's above 5% of your MAPR amount (\$872 for a Veteran with no spouse or child).

## For Veterans with at least 1 dependent spouse or child

If you have 1 dependent and...	Your MAPR amount is (in U.S. \$)
You don't qualify for Housebound or Aid and Attendance benefits	22,839
You qualify for Housebound benefits	26,710
You qualify for Aid and Attendance benefits	34,488

**Note:**

- **If you have more than 1 dependent**, add \$2,984 to your MAPR amount for each additional dependent
- **If you have a child who works**, you may exclude their wages up to \$16,100
- **If you have medical expenses**, you may deduct only the amount that's above 5% of your MAPR amount (\$1,141 for a Veteran with 1 dependent)



# Non Service-Connected (NSC) Pension

How to Apply –

- VA Form 21P-527EZ



# DIC/Survivors' Benefits



# DIC/Survivors' Benefits

- Available to eligible survivors of legally-defined Veterans
- Eligibility determined by Veteran's service-connected disability status and/or the financial status of the survivor



# Dependency and Indemnity Compensation (DIC)

Tax-free monthly benefit paid to eligible survivors of Veterans who:

- died while on active duty, active duty training, or inactive duty training; or
- died due to (or, at least in part, due to) a service-connected condition; or
- were entitled to receive VA disability compensation for a totally disabling condition at the time of death.



# DIC – Death from a Service-Connected Disability

Service-connected disability was either the principal or a contributory cause of death - 38 C.F.R. § 3.312(a)

- Principal cause – when the SC disability "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)
- Contributory cause – SC disability must have "contributed substantially or materially" to death, "combined to cause death," or "aided or lent assistance to the production of death." 38 C.F.R. § 3.312(c)(1)
- Noticeably absent from the regulations is a requirement that the SC disability be on the death certificate



# DIC – Veterans Rated Totally Disabled

38 C.F.R. § 3.22 – If a veteran dies of non service-connected causes, VA will pay DIC benefits to the eligible survivor if:

- Death was not the result of the veteran's willful misconduct, and
- At the time of death, the veteran was receiving, or was entitled to receive, compensation for service-connected disability that was:
  - Rated by VA as totally disabling for a continuous period of at least 10 years immediately preceding death;
  - Rated by VA as totally disabling continuously since the veteran's release from active duty and for at least 5 years immediately preceding death; or
  - Rated by VA as totally disabling for a continuous period of not less than one year immediately preceding death, if the veteran was a former prisoner of war.
  - 38 C.F.R. § 3.22(c) - "rated by VA as totally disabling" includes total disability ratings based on unemployability



# DIC – Qualifying Surviving Spouses

38 C.F.R. § 3.50 defines “spouse” and “surviving spouse”

- (a) *Spouse*. “Spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1 (j) (valid under the law of the place the parties resided at the time marriage or when the right to benefits accrued).

- (b) *Surviving spouse*. Except as provided in § 3.52 (marriages “deemed valid), “surviving spouse” means a person of the opposite sex whose marriage to meets the requirements of § 3.1 (j) and who was the spouse of the veteran at the time of the veteran’s death and:

- (1) 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

- (2) Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.



# DIC – Same-Sex Spouses

- VBA Letter 20–15–16 - recognized that same-sex marriages will be accepted in benefit determinations without regard to a Veteran's state of residence. This guidance remains in effect.
- Instruction 01-22, “Instruction of the Secretary and General Policy Statement on the Administration of Benefits for Particular Same-Sex Surviving Spouses”



# DIC – Continuous Cohabitation

38 C.F.R. § 3.53

- The continuous cohabitation requirement from the date of marriage to the date of death of the veteran will be considered as having been met when the evidence shows that any separation was due to the misconduct of, or procured by, the veteran without the fault of the surviving spouse.
- Temporary separations, including those caused for the time being through fault of either party, will not break the continuity of the cohabitation.
- The statement of the surviving spouse as to the reason for the separation will be accepted in the absence of contradictory information.
- Separation by mutual consent for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the surviving spouse to desert the veteran, will not be considered as breaking continuous cohabitation



# DIC – Remarriage

- 38 C.F.R. § 3.50 – To qualify as a surviving spouse, a person must remain unmarried, unless:
- The remarriage ended in death, divorce, or annulment.
- The surviving spouse remarries on or after attaining age 57, and on or after December 16, 2003.
- The surviving spouse remarries on or after attaining age 55, and on or after January 5, 2021.



# DIC – Qualifying Surviving Spouses

Also, the surviving spouse must have:

- Married the veteran before January 1, 1957, or
- Married the Veteran or service member within 15 years of their discharge from the period of military service during which the qualifying illness or injury started or got worse, or
- Been married to the Veteran or service member for at least 1 year, or
- Had a child with the Veteran or service member, not currently be remarried, and have either lived with the Veteran or service member without a break until their death or, if separated, have not been at fault for the separation
- 38 C.F.R. § 3.54



# DIC – Compensation Rates for Surviving Spouses

- Available [www.va.gov/family-and-caregiver-benefits/survivor-compensation/dependency-indemnity-compensation/survivor-rates/](http://www.va.gov/family-and-caregiver-benefits/survivor-compensation/dependency-indemnity-compensation/survivor-rates/).
- For 2026, the fixed monthly DIC rate is \$1 699.36.
- Additional Allowances:
  - Dependent Children - \$ 441 each
  - Transitional Benefit – The surviving spouse has 1 or more children who are under 18, additional \$359.00 for the first 2 years after the Veteran's death
  - 8x8 Rule - If the veteran was rated totally disabled for 8 continuous years immediately before death, and the spouse was married to the veteran for those 8 years, the spouse is entitled to an additional \$ 360.85
  - Aid and Attendance – If the surviving spouse has a disability and needs help with regular daily activities (like eating, bathing, or dressing), they may be entitled to an additional \$ 421
  - Housebound – If the surviving spouse cannot leave their house due to a disability, they may be eligible for an additional \$197.22.
- 38 C.F.R. § 3.10.



# DIC – Additional Benefits for Surviving Spouses

- Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). 38 C.F.R. § 17.271
- Dependents Educational Assistance (DEA). 38 C.F.R. § 3.807
- Burial Benefits. 38 C.F.R. § 3.1703



# DIC – Surviving Children

Surviving children may qualify if:

- Not married, and
- Aren't included in the surviving spouse's compensation, and
- Are under 18 (or 23, if attending school at an approved educational institution)
  - “Helpless Child” exception:
    - 18 or older
    - diagnosed with a mental/physical disability before the age of 18 that leaves them with a permanent incapacity for self-support
- 38 U.S.C. §§ 1313, 1314



# DIC – Surviving Parent

A natural, adoptive, or foster parent may qualify for DIC benefits if:

- Income falls below a certain amount, see <https://www.va.gov/disability/parent-dic-rates/>
- The service member died from an injury or illness while on active duty or in the line of duty while on active duty for training, or
- The service member died from an injury or certain illnesses in the line of duty while on inactive training, or
- The Veteran died from a service-connected illness or injury
- 38 U.S.C. § 1315



# Survivors' Benefits – How to Apply

- VA Form 21P-534EZ – surviving spouses and children.
- VA Form 21P-535



# Accrued Benefits

Accrued benefits are benefits that were due to the Veteran prior to death but that were not paid prior to death. Potential entitlement for a survivor generally arises when:

- A claim for benefits was pending at the time of death.
- A decision on the claim was made prior to the Veteran's death, but the appeal period had not expired at the time of the Veteran's death
- A claim for a recurring benefit had been allowed, but the beneficiary died before the award was made
- 38 U.S.C. § 3.1000



# Accrued Benefits

## Substitution -

- If a claimant dies during a pending claim or appeal, someone eligible to receive accrued benefits can act as substitute to complete the claim.
- VA must receive a substitution claim within one year of the original claimant's death. If the substitute dies, the next substitute has one year from the original substitute's death to file a claim.
- Eligible substitutes are surviving spouses, children, and dependent parents (generally the same eligibility requirements for receiving DIC/survivors' pension)
- VA Form 21P-534EZ/21P-535 - Also covers claims for accrued benefits



# Survivor's Pension

38 U.S.C. § 3.3(b) - Also known as the “death pension,” it is a tax-free benefit for low-income, un-remarried surviving spouse (or unmarried children) of a deceased veteran *with* wartime service. See <https://www.va.gov/pension/eligibility/>

- For service on or before September 7, 1980, the veteran served at least 90 days of active military service, with at least one day during a wartime period; or
- For service after September 7, 1980, the veteran served at least 24 months or the full period for which called or ordered to active duty, with at least one day during a wartime period; and
- Discharged from service under other than dishonorable conditions.



# Survivor's Pension

- Surviving spouse's yearly family income and net worth meet certain limits set by Congress.
- Currently, the net worth limit (assets and annual income) for eligibility is \$159,240. 38 U.S.C. § 3.275
- If eligible, pension amount will be the difference between countable income and Maximum Annual Pension Rate (MAPR)
- Countable income - is how much the survivor earns, including salary, investment, and retirement payments, and any income from dependents.
- MAPR – is maximum amount of pension payable to the survivor based on base amount plus any additional allowances for dependents, Aid and Attendance, or Housebound benefits. 38 U.S.C. § 3.271



# Survivors Pension

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- For service on or before September 7, 1980, the veteran served at least 90 days of active military service, with at least one day during a wartime period; or
- For service after September 7, 1980, the veteran served at least 24 months or the full period for which called or ordered to active duty, with at least one day during a wartime period; and
- Discharged from service under other than dishonorable conditions.



# Survivors Pension

- Surviving spouse's yearly family income and net worth meet certain limits set by Congress.
- Currently, the net worth limit (assets and annual income) for eligibility is \$163,669. 38 U.S.C. § 3.275.
  - There is a 3 year look back period for asset transfers, with a potential penalty period of up to 5 years for transfers for less than fair market value during this time.
- If eligible, pension amount will be the difference between countable income and Maximum Annual Pension Rate (MAPR)
- Countable income - is how much the survivor earns, including salary, investment, and retirement payments, and any income from dependents.
- MAPR – is maximum amount of pension payable to the survivor based on base amount plus any additional allowances for dependents, Aid and Attendance, or Housebound benefits. 38 U.S.C. § 3.271. Current MAPR is \$11,699.



# Survivors Pension

## For qualified surviving spouses with no dependents

If you have no dependents and...	Your MAPR amount is (in U.S. \$):
You don't qualify for Housebound or Aid and Attendance benefits	11,699
You qualify for Housebound benefits	14,298
You qualify for Aid and Attendance benefits	18,697
You qualify for Aid and Attendance benefits and you're the surviving spouse of a Veteran who served in the Spanish-American War (SAW)	19,453



# Survivors Pension

## For qualified surviving spouses with at least 1 dependent

If you have 1 dependent child and...	Your MAPR amount is (in U.S. \$):
You don't qualify for Housebound or Aid and Attendance benefits	15,311
You qualify for Housebound benefits	17,902
You qualify for Aid and Attendance benefits	22,304
You qualify for Aid and Attendance benefits <b>and</b> you're the surviving spouse of a Veteran who served in the Spanish-American War (SAW)	22,979

### Notes:

- The Survivor Benefit Plan (SBP)/Minimum Income Annuity (MIW) limitation is \$11,699
- **If you have more than 1 child**, add \$2,984 to your MAPR amount for each additional child
- **If you have a child who works**, you may exclude their wages up to \$16,100
- **If you have medical expenses**, you may deduct only the amount that's above 5% of your MAPR amount (\$765 for a surviving spouse with 1 dependent)



# Survivors Pension

- How to Apply –
  - VA Form 21P-534EZ



# Claims Process and Right to Appeal



# Initial VA Claims and Decisions

- Every new VA claim begins at the Agency of Original Jurisdiction (the “AOJ”).



# The Two Systems – Legacy and AMA

- Legacy - applies to appeals from rating decisions dated prior to February 19, 2019
  - One path but there were excessive delay
- The Veterans Appeals Improvement and Modernization Act of 2017 (“AMA”) became law on August 23, 2017 (Pub L. 115-55).
  - AMA – Features three lanes and applies to appeals from rating decisions dated after February 19, 2019. This is now the vast majority of claims and appeals in the VA system so we will focus on it today.



# Intent to File Claim

- Intent to File a Claim - 38 C.F.R. § 3.155
  - Preserves effective date for up to 1 year
  - Can be filed in 3 ways:
    - Saved electronic application
    - ITF Claim form submission – VA Form 21-0966
    - Oral intent communicated to designated VA personnel and recorded in writing
- Claim/Application for benefits
  - Requires VA Form 21-526/21-526EZ or Supplemental Claim form 20-0995



# Filing a Claim

## Initial Claim - VA Form 21-526EZ

- Original claim for service connection, not previously denied.
- Claim for IR\*, or
- Use of an Intent to File

## Supplemental Claim – VA Form 20-0995

- Previously denied
- Requires new and relevant evidence to be attached or identified on the claim
- Use of an Intent to File now allowed
- Claim for IR could also be a supplemental claim

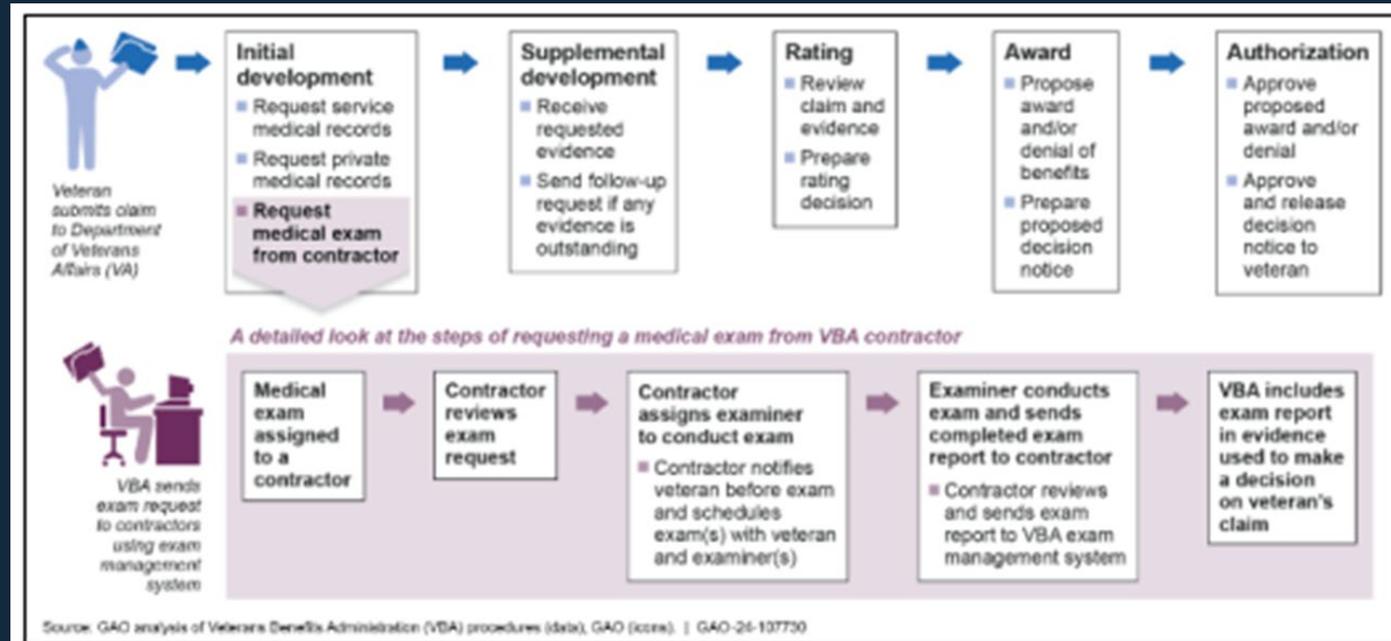


# VA's Duty to Assist

- VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. 38 U.S.C. § 5103A(a); 38 C.F.R. § 3.159(c)
- May include obtaining records & providing a medical examination



# Claims Adjudication Process



# The C&P Exam

- When a veteran files a claim, VA will routinely obtain an opinion from a health care professional it employs to render an opinion about nexus and, if necessary, severity for rating purposes.
- A C&P exam issues this opinion, and VA almost exclusively relies upon the opinions its doctors, P.A.s, and N.P.s issue.



# C&P Exam Challenges

Recent Reports from GAO and VA's Office of the Inspector General have identified several common challenges in the provision of C&P exams:

- Shortages of physicians or specialists in a geographic area. (But VBA-contracted physician examiners have permanent license portability)
- Inflexibility of scheduling veteran appointments with contractors. Timeliness standards for exam completion and disability rating may result in veterans receiving appointments on dates they cannot attend or needing to travel further to available examiners.
- Accessibility, safety, and cleanliness of exam facilities of contractors and subcontractors. VBA has initiated contract modifications to address concerns regarding standards and monitoring.



# Decisions



AMA decision notices are supposed to contain:

- Identification of the issues adjudicated
- A summary of the evidence considered
- An explanation of the laws and regulations applicable to the claim
- Summary of any findings made by an adjudicator that are favorable to the Veteran
- Identification of the element(s) required to grant claim that were not met, in the case of a denial decision
- Identification of the criteria required to grant the next highest level of compensation
- An explanation of how to obtain or access evidence used in making the decision
- A summary of the applicable review options available for the claimant to seek review of the decision

# Appeals Reform

- Veterans have up to 3 options when seeking administrative review or appeal of a Rating Decision. 38 U.S.C. § 5104C
  - Supplemental Claim Lane - 38 U.S.C. § 5108
  - Higher-Level Review Lane – 38 U.S.C. 5104B
  - Board Review Lane (3 board options) - 38 U.S.C. § 7105
- Deadline to file any above request is within 1 year of the Rating Decision.





# Supplemental Claim Lane

- Case will be reviewed by VA based on additional evidence that is *new and relevant* to the benefits sought. See 38 C.F.R. § 3.2501(a)(1) (eff. Feb. 19, 2019).
- New and relevant evidence
  - New: not previously before the adjudicator.
  - Relevant: the evidence tends to prove or disprove an issue in the case.
  - New theory of entitlement



# Supplemental Claim Lane

- **Duty to assist applies.** VA will assist the claimant in obtaining evidence to substantiate the claim, including by assisting the claimant in gathering any evidence that may be new and relevant.
- Continuous vs. non-continuous pursuit
- If new and relevant evidence is presented/secured within the one-year appeal period, the effective date of the claim will be preserved as the date of the underlying (continuously prosecuted) claim.
- Results in a Rating Decision (with the ability to appeal within one year).



# Types of New and Relevant Evidence

- VA treatment records
- Private treatment records
- Service records
- Lay evidence
- VA examinations
- Medical journal or treatise/articles
- Newspaper articles
- Medical/vocational expert opinions
- Employment documentation
- VA correspondence/Rating Decision



# Supplemental Claim Review

- VA's target: complete within 125 days of VA Form 20-0995's receipt.
- Actual experience: VA meets its target only sometimes.

<b>Fiscal Year</b>	<b>% of supplemental-claim requests completed within 125 days</b>
2023	67.8%
2024	47.7%
2025	69.7%

Source: <https://www.benefits.va.gov/REPORTS/AMA/index.asp>



# Supplemental Claim Review

At least partial relief (at least one partial grant), FY 2025: ~48%

<b>FY</b>	<b>Total Claims</b>	<b>Total Grants</b>	<b>Grant Rate</b>
2019	50,102	17,489	34.9%
2020	236,808	94,778	40.0%
2021	236,565	104,493	44.2%
2022	278,309	130,185	46.8%
2023	395,649	212,677	53.8%
2024	539,063	278,011	51.6%
2025	685,669	330,209	48.2%

Source: <https://www.benefits.va.gov/REPORTS/AMA/index.asp>



# Higher-Level Review

- The **duty to assist does not apply** to the higher-level review.
- But, when a duty to assist error is noted in the development of the initial *claim*, a higher-level reviewer must return the claim to the supplemental claim lane unless the maximum benefit sought can be granted.
  - i.e. DTA triggering vs. enforcement – See 38 U.S.C. §5103A(e), (f)



# Higher-Level Review

- *Can* request an informal conference.
- Results in a Rating Decision (with the ability to appeal within one year). *But* a claimant cannot elect a higher-level review appeal in response to a higher-level review decision.



# Higher-Level Review

- VA's target: complete within 125 days of VA Form 20-0996's receipt.
- Actual experience: VA typically meets its target.

Fiscal Year	% of HLR requests completed within 125 days
2023	98.5%
2024	72.3%
2025	97.8%

Source: <https://www.benefits.va.gov/REPORTS/AMA/index.asp>



# Higher-Level Review

- At least partial relief (at least one partial grant), FY2025: ~24%

<b>FY</b>	<b>Total Claims</b>	<b>Total Grants</b>	<b>Grant Rate</b>
2019	16,512	2,388	14.5%
2020	60,005	9,175	15.3%
2021	115,835	20,722	17.9%
2022	117,740	21,964	18.7%
2023	141,501	28,404	20.1%
2024	217,781	48,896	22.5%
2025	283,975	68,853	24.2%

Source: <https://www.benefits.va.gov/REPORTS/AMA/index.asp>



# Comparing AMA RO Lanes

## Supplemental Claim

- VA will readjudicate a claim if “new and relevant” evidence is presented or identified with a supplemental claim (open record)
- VA will assist in gathering new and relevant evidence (duty to assist)
- Effective date for benefits protected (submitted within 1 year of decision)
- Replaces "reopening" claims with supplemental claims “new and relevant” evidence

## Higher-Level Review

- More experienced VA employee takes a second look at the same evidence (closed record and no duty to assist)
- Option for a one-time telephonic informal conference with the higher-level reviewer to discuss the error in the prior decision
- *De novo* review with full difference of opinion authority
- Duty to assist errors returned to supplemental claim lane for correction



# AMA Board Review

- Filing a NOD will now direct an appeal right to the Board of Veterans' Appeals.
  - 1 year deadline to file NOD in response to a rating decision will still apply
- Removes the SOC, VA9, and potential SSOC stages of the legacy system.
- Results in a Board Decision.
- No ongoing jurisdiction after Board remand.
- DTA issues



# Board Review

Three options for Board review:

1. Direct review
2. Evidence submission
3. Hearing

# Board Review

## 1. Direct review

- No hearing, no new evidence to submit
- No triggering of DTA, but obligation to remand for correction of DTA errors. See 38 U.S.C. §5103A(e)-(f); 38 C.F.R. §20.802(a)
- Cannot consider evidence submitted after the decision on appeal (rating decision)



# Board Review

## 2. Evidence Submission

- No hearing, submit new evidence only w/in 90 days of NOD
- Must relate to period on appeal (i.e. prior to Rating decision)
- DTA issues - No triggering of DTA, but obligation to remand for correction of DTA errors. See 38 U.S.C. §5103A(e)-(f); 38 C.F.R. §20.802(a).



# Board Review

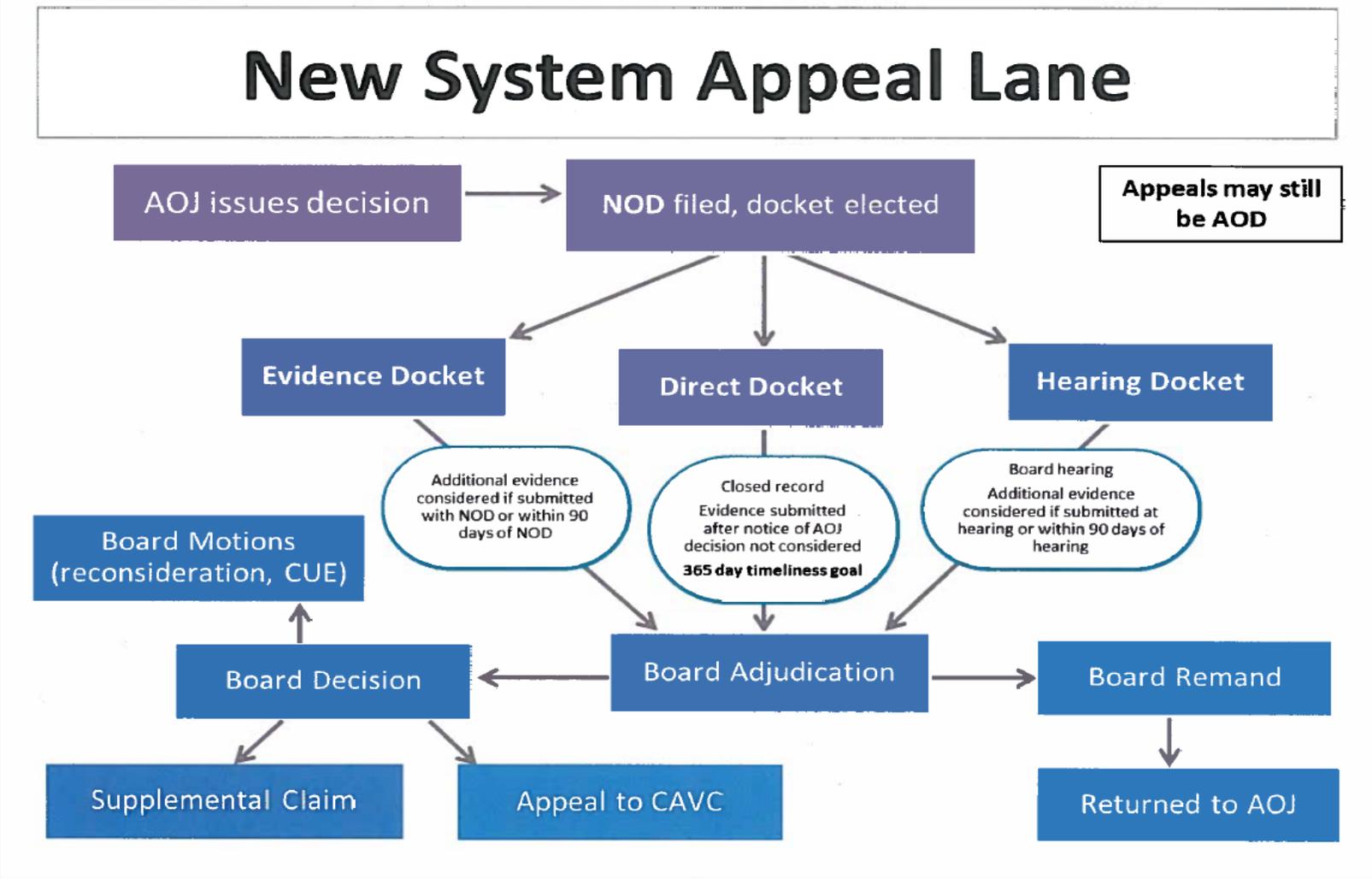
## 3. Hearing

- Hearing before a Veterans Law Judge, with option to submit new evidence if desired, 90 days after hearing
- Must relate to period on appeal (i.e. prior to Rating decision)
- DTA issues - No triggering of DTA, but obligation to remand for correction of DTA errors. See 38 U.S.C. §5103A(e)-(f); 38 C.F.R. §20.802(a).



# Board Options

## New System Appeal Lane



# Board Appeal Outcomes

## Possible outcomes:

- Dismissed
- Granted in full
- Granted in part and remanded to the supplemental-claim lane in part
- Granted in part and denied in part
- Remanded
- Denied



# Can a Veteran switch lanes?

- Yes, but the effective date is only preserved if the withdrawal of the former lane choice, and selection of a different lane, takes place within 1 year following the notice of decision being issued.
- There *may* be exceptions to this where VA allows a lane change outside of 1 year but prior to a final decision. This is on a case-by-case basis and good cause must be shown. See 84 Fed. Reg. Vol. 13 (Jan. 18, 2019).



# Considerations in Deciding which Board Docket to Choose?

	Direct	Evidence	Hearing
When to choose	If you think a <b>mistake</b> was made.	If you have <b>new evidence</b> you want a Judge to consider.	If you want a <b>hearing</b> before a Judge.
What will happen	The Judge will review the same record and make a decision.  <b>No new evidence</b> will be added.	You will have <b>90 days</b> from your NOD to submit any new evidence.  The Judge will make a decision considering the evidence you provided.	You will be placed on a list for a hearing before a Judge by videoconference (or in DC).  After your hearing you will have <b>90 days</b> to submit new evidence.  The Judge will make decision considering the hearing and the evidence you provided.
How long	<b>365 days</b> (on average)	<b>Over 365 days</b>	Based on availability.



# AMA Board Appeals

Which review options are appellants choosing? FY 2025

Docket Type	Allowed, No Remand	Allowed, With Remand	Remand	Denied	Other
Direct Review	26%	8%	31%	24%	11%
Evidence Submission	29%	12%	29%	17%	14%
Hearing	28%	12%	25%	13%	21%
<b>Total</b>	<b>27%</b>	<b>10%</b>	<b>29%</b>	<b>20%</b>	<b>14%</b>

Source: <https://www.benefits.va.gov/REPORTS/AMA/index.asp>



# Options after a Board Denial

- Appeal to CAVC within 120 days
  - CAVC cannot consider new evidence- will only consider the Record Before the Agency (RBA) – 38 U.S.C. § 7261
    - If the CAVC remands to the BVA in AMA, new evidence may not be submitted for Board consideration
- File a Supplemental Claim within 1 year

Note: These can be done concurrently (See *MVA v. McDonough*, 7 F. 4th 1110, 1145 (Fed. Cir. 2021)).



# CAVC Practice

- Only final, adverse BVA decisions can be appealed to CAVC
  - No remands
  - Secretary cannot appeal BVA decisions
- Appeal to CAVC must be filed within 120 days of Board decision
  - Equitable tolling available



# CAVC Practice

- Article I Federal Court sitting in Washington, DC that is independent of the VA
  - Was created by Veterans' Judicial Review Act in 1988—prior to that date no judicial review
  - Nine judges with terms of 15 years
  - Exclusive jurisdiction over VA benefits decisions
  - Does not conduct trial de novo
  - Decisions are reviewed by United States Court of Appeals for the Federal Circuit



# CAVC Practice

- Secretary must serve upon the appellant the Record Before the Agency – a full PDF copy of the record before the Board (usually the full claims file)
  - Must be served within 60 days of docketing notice



# CAVC Practice

- Parties participate in an informal mediation process prior to the filing of Appellant's brief (Rule 33 or Pre-Briefing Conference)
- During the conference, the parties will determine whether the appeal can be resolved with a joint motion for remand or joint motion to terminate with stipulated agreement
  - The majority of the Court's cases are resolved via joint motion either during the mediation process or after briefing has begun

# CAVC Practice

- Cases that cannot be resolved by an agreement by the parties are briefed and decided in chambers
- Most fully-briefed cases are decided by single judge decisions that have no precedential value
- Some fully-briefed cases are sent to a panel of three judges and scheduled for oral argument
  - Decisions in these cases have precedential value
- Court also sometimes sits en banc



# CAVC Practice

Successful appellants can collect attorneys' fees under the Equal Access to Justice Act (EAJA)



# Options after a CAVC denial

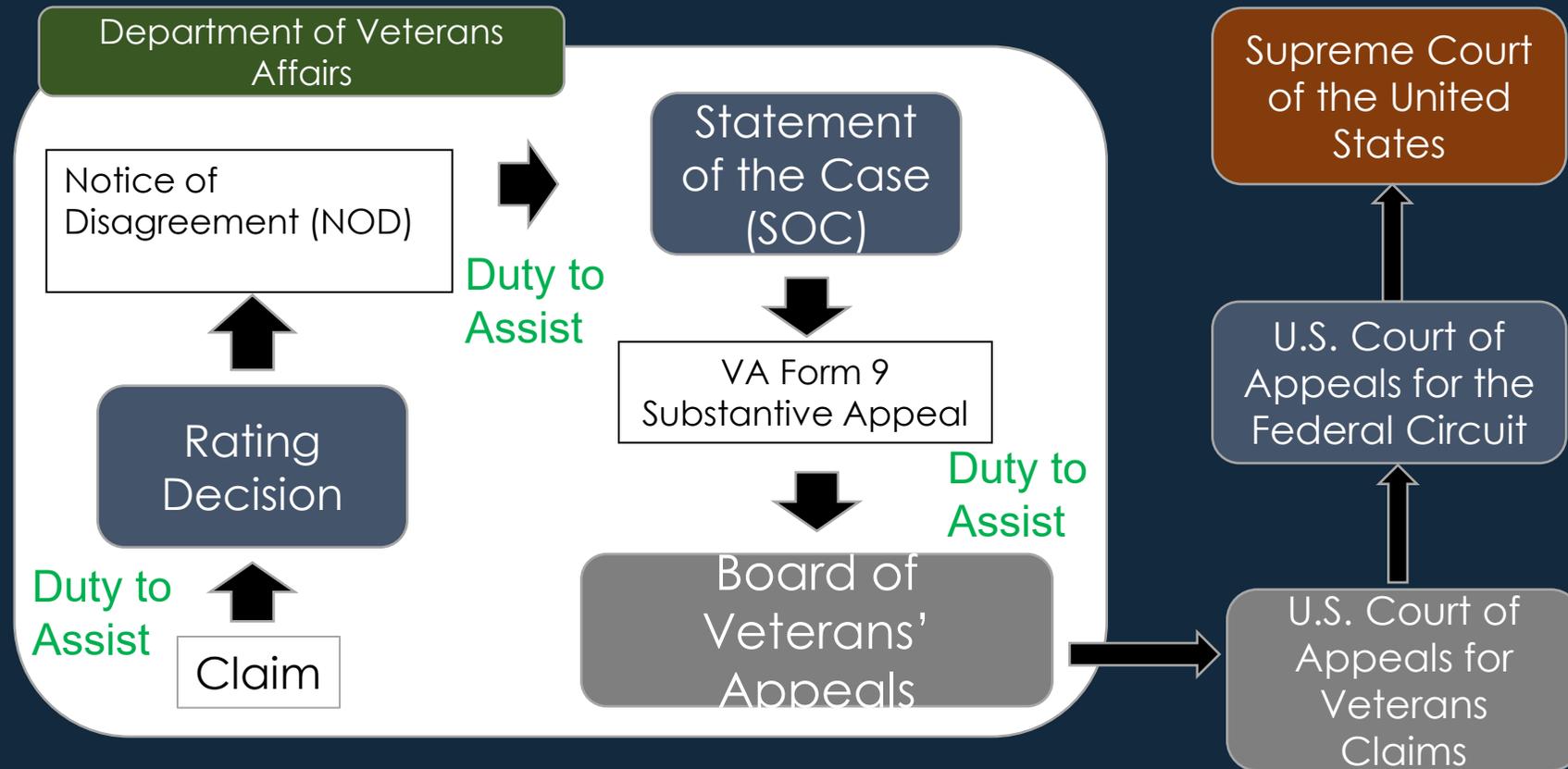
- Appeal to CAFC within 60 days
- File a Supplemental Claim within 1 year
- These can be done concurrently (See *MVA v. McDonough*, 7 F. 4th 1110, 1145 (Fed. Cir. 2021)).



# Legacy Appeals System



# Legacy Appeals System



# LEGACY SYSTEM: Procedural Steps

- Application (Claim filed on required VA Form 21-526)
  - VCAA Notice
    - Submission of records or evidence
- Rating Decision
- NOD – must be filed 1 year from RD
  - Traditional Review or DRO
- Statement of the Case
- Appeal to BVA (VA Form 9) - Must be filed w/in 60 days or remainder of 1 year from RD
  - *[Supplemental Statement of the Case]*
- Board Decision
  - *[Supplemental Statement of the Case]*
- Notice of Appeal (CAVC) - Must be filed w/in 120 days from BVA decision



# Questions?

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