Filing a VA Claim in Legacy

- A veteran begins by filing a claim with their local Regional Office (RO)
  - May be submitted to VA's Evidence Intake Center (EIC), located in Wisconsin
- VA Form 21-526, or 21-526EZ
- An "Intent to File" may be submitted up to 1 year prior to the 21-526 to preserve a veteran's desired effective date

Filing a VA Claim in Legacy

- A veteran must specify the condition(s) they seek compensation for
- VA has a Duty to Assist the veteran in obtaining records, such as service records or medical treatment records, to substantiate a veteran's claim
- A Compensation & Pension Examination may be administered by the VA to provide a medical nexus opinion, as required by most theories of service connection

Rating Decision

- Issued by the RO
- May grant or deny benefits
- VA must explain reasons for the decision that is made
  - At this stage, explanation may be very brief and is often vague
- Veteran has one year from date of notification letter to appeal
Notice of Disagreement

- Veteran may appeal the Rating Decision and seek benefits that were not granted
- VA Form 21-0968
- Veteran must specify the issues with which he or she disagrees
  - VA will not accept an appeal that only says, e.g., “everything”, “all issues”, etc.
- Is sent to VA RO (or EIC)

Appeal Review

- At this stage, the veteran may select one of two types of review of their claim
  1. Decision Review Officer (DRO)
     - De novo review by experienced VA adjudicators
     - Hearing or conference with the DRO is possible
     - May take longer to see a new decision
  2. Traditional Review
     - Someone new will review the decision. This person will not review from the front and may not be as experienced as a DRO

Decision Review Officer Decision

- Issued by the RO
- Potential outcome of DRO review of a claim appealed by a Notice of Disagreement
- Functionally the same as a Rating Decision with the same one year window to appeal
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**Statement of the Case**
- Issued by the RO
- Typically is a restatement of a denial, but can also include a grant or a partial grant in an accompanying Rating Decision
- Includes citations to statutes and regulations used in making the decision
- Appeal deadline is 60 days following the date of the notification letter

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**VA Form 9 Substantive Appeal**
- Sent to the RO (or EIC)
- VA Form 9
- Perfects an appeal to the Board of Veterans’ Appeals
- Veteran can request a hearing with a Veterans Law Judge at the Board
- Has an option to appeal all issues in the Statement of the Case, or only specified issues

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**Supplemental Statement of the Case**
- Issued by the RO
- Should VA receive any additional evidence prior to certifying the Veteran’s file to the Board, this is issued
  - Examples include statements sent by the Veteran, or medical opinions obtained by VA
- If more evidence is submitted, multiple SSOCs can potentially be issued, catching a veteran in a “hamster wheel” of continued denials before the file is finally certified to the Board
- No response is required, but the deadline to do so is 30 days following the date of the notification letter
Board Hearings

- Optional, and can be requested in the VA Form 9 Substantive Appeal
- Three types, which pertain to location:
  1. Live videoconference
     - The veteran can go to their local RO and a Veterans Law Judge will conduct the hearing by videoconference
  2. In Washington, D.C.
     - The veteran travels to Washington, D.C. to appear before a Veterans Law Judge
  3. At a local VA office
     - A Veterans Law Judge will visit the local office for the hearing

Board of Veterans' Appeals Decision

- Can do a combination of things:
  1. Grant an issue
  2. Deny an issue
  3. Remand an issue
  4. Refer an issue
  5. Dismiss an issue (such as withdrawn issues)
- Unfavorable Board decisions can be appealed to the United States Court of Appeals for Veterans Claims within 120 days

Board Grant

- Board grants are implemented by the RO
  - Essentially, "the Board says the thing, the RO then does it"
- Rating Decision is issued by the RO
- If the Board grant is not specific to rating and/or effective date, the veteran can file a Notice of Disagreement to appeal for an increased rating and/or earlier effective date
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**Board Denial**

- Can be appealed within **120 days** of the date of the Board decision to the Court of Appeals for Veterans Claims.
- Partial grants, where the Board will grant a benefit "but no higher" (a rating) or "but no earlier" (an effective date) can also be appealed to the CAVC.

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**Board Remand**

- Remands are not final decisions. If the Board cannot decide one way or the other, the case is sent back to the RO for development.
- Development can include obtaining service records, medical records, and/or new medical opinions or clarifications to existing opinions.
- If the benefit cannot be granted, the RO will issue a Rating Decision denying it.
- If the benefit cannot be granted, a Supplemental Statement of the Case is completed, and the issue is sent right back to the Board for a new decision.

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**Board Referral**

- When the Board notices a claim that was raised but has not been adjudicated by a Rating Decision, that claim is referred back to the Agency of Original Jurisdiction (the AOM or the RO) for a decision.
- This can happen following Board hearings, if other issues not on appeal are brought up and discussed.
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The Board is Working Harder

- In FY 2017, the BVA made 52,662 decisions.
- In FY 2018, it made 85,286.
- In FY 2019, the BVA has promised to make 90,000 decisions, but we believe it will be over 100,000 decisions.

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Reasons for Appeals Reform

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Appeals Backlog

- In 2015, VA's Veterans Benefits Administration (VBA) had 425,000 appeals for compensation benefits pending.
- The average wait time was estimated to be 3 years for a Veteran's appeal to be adjudicated.
- Appeals are increasing at a rate of 20% every year.
- At this rate, by 2026, the average wait time in the legacy system could rise to eight and a half years.
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**Average Timeframes**
- A March 2017 U.S. Government Accountability Office report found, on average:
  - Regional Offices take 419 days from receipt of an NOD to issuance of an SOC.
  - 537 days after receiving a VA Form 9 Appeal, the perfected appeal is certified to the Board.
  - 222 days after certification, the appeal is placed on the Board’s docket.
  - Once docketed, it is 270 days before the Board issues a decision on the appeal.


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**New Appeals Law**
- Under the new laws, the appeals process changed.
- Appeals still pending within the old system will be called “Legacy appeals.”
- The VMA went into effect on February 19, 2019.

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**The New VA Appeals System**
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**Appeals Reform**

- Opting in: Veterans with any pending legacy appeals can only opt into the New System after receipt of:
  - An SOC
  - An SSOC

Note that this is different from RAMP, which allowed Veterans to opt in at the NOD, Form 9, BVA certification, or BVA remand stages.

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**Appeals Reform**

- Veterans have 3 options to choose from when filing an appeal with a Rating Decision, called “lanes.”
  - Supplemental Claim Lane
  - Higher Level Review Lane
  - Board Review Lane

- If appealing, the deadline to do so will be within 1 year of the Rating Decision.

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**Appeals Reform**

Supreme Court of the United States

U.S. Court of Appeals for the Federal Circuit

U.S. Court of Appeals for Veterans Claims

Board of Veterans’ Appeals

Supplemental Claim

Notice of Disagreement (NOD)

Department of Veterans Affairs

Claim

Rating Decision

Higher Level Review

Rating Decision
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**Supplemental Claim Lane**

- Case will be reviewed by VBA based on additional evidence that is new and relevant to benefits sought.

- New and relevant evidence
  - New: not previously before the adjudicator.
  - Relevant: the evidence tends to prove or disprove an issue in the case.

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**Supplemental Claim Lane**

- Duty to assist applies. VA will assist the claimant in obtaining evidence.

- Results in a Rating Decision.

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**Higher Level Review**

- Authority to conduct higher level reviews is granted to Decision Review Officers (DROs) for rating issues and to Senior Veterans Service Representatives (SVSRs) or Authorization Quality Review Specialist (AQRS) for non-rating issues.
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**Higher Level Review**

- The duty to assist does not apply here.
- But, when a duty to assist error is noted, a higher level reviewer must return the claim to the supplemental claim lane unless the maximum benefit can be granted.

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**Higher Level Review**

- Can request an informal conference.
- Cannot request a DRO hearing.
- Results in a Rating Decision.

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**Comparing AMA Lanes**

<table>
<thead>
<tr>
<th>Supplemental Claim Lane</th>
<th>Higher-Level Review Lane</th>
</tr>
</thead>
<tbody>
<tr>
<td>VA will readjudicate a claim if &quot;new and relevant&quot; evidence is presented or if there is a change in condition (closed record)</td>
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</tr>
<tr>
<td>VA will assist in gathering new and relevant evidence (duty to assist)</td>
<td>No duty to assist</td>
</tr>
<tr>
<td>Effective date for benefits protected (submitted within 1 year of decision)</td>
<td>No duty to assist</td>
</tr>
<tr>
<td>Replaces &quot;reopening&quot; claims with &quot;new and relevant&quot; evidence</td>
<td>No duty to assist</td>
</tr>
<tr>
<td>More experienced VA employee takes a second look at the same evidence (closed record and no duty to assist)</td>
<td>No duty to assist</td>
</tr>
<tr>
<td>Option for a one-time telephonic informal conference with the higher-level reviewer to discuss the error in the prior decision</td>
<td>No duty to assist</td>
</tr>
<tr>
<td>De novo review with full difference of opinion authority</td>
<td>No duty to assist</td>
</tr>
<tr>
<td>Duty to assist errors returned to supplemental claim lane to correct</td>
<td>No duty to assist</td>
</tr>
</tbody>
</table>
**Supplemental Claim**

When to choose
- If your claim needs new evidence.
- If you don't need new evidence, but think a mistake was made.

What will happen
- The Duty to Assist applies and VA will help you gather the evidence.
- A new decision will be made looking at the new evidence.
- A higher-trained AOJ reviewer will review your claim and make a new decision.
- No new evidence will be added.

**Board Review**

- Filing an NOD will now direct an appeal right to the Board of Veterans' Appeals.
- No hearing, no new evidence to submit.
- The result of a Board review won't be a Rating Decision, but the familiar Board decision of the Legacy system.

**Board Review**

- Three options for Board review:
  1. Direct review
  2. Evidence submission
  3. Hearing

- Hearing before a Veterans Law Judge with option to submit new evidence if desired.
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Board Jurisdiction

Legacy System
- NODs issued by AOJ
- NODs due within 30 days
- Docket date based on issuance

New System
- NODs received and processed by AOJ
- NODs must express general disagreement
- Docket date based on VA9 receipt

NODs received and processed by the Board
- NODs must specify the determination disagreed with and choice of review option
- Docket date based on receipt
- BVA does not maintain jurisdiction of remanded issues

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Board Lane

New System Appeal Lane

Direct Evidence Hearing
- When to choose
  - If you think a mistake was made.
  - If you have new evidence you want a Judge to consider.
  - If you want a hearing before a Judge.
- What will happen
  - The Judge will review the same record and make a decision.
  - No new evidence will be added.
  - You will have 90 days from your NOD to submit any new evidence.
  - The Judge will make a decision considering the evidence you provided.
- How long
  - 365 days (on average)
  - Over 365 days

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Which Board docket to choose?

New System
- If you think a mistake was made.
- If you have new evidence you want a Judge to consider.
- If you want a hearing before a Judge.
- The Judge will review the same record and make a decision.
- No new evidence will be added.
- You will have 90 days from your NOD to submit any new evidence.
- The Judge will make a decision considering the evidence you provided.
- How long
  - 365 days (on average)
  - Over 365 days
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Board Dockets FY 19

<table>
<thead>
<tr>
<th>Board Priorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legacy appeals</td>
</tr>
<tr>
<td>Legacy appeals with hearings*</td>
</tr>
<tr>
<td>AMA Direct Lane</td>
</tr>
<tr>
<td>(30% average processing goal)</td>
</tr>
<tr>
<td>AMA Evidence</td>
</tr>
<tr>
<td>AMA Hearings**</td>
</tr>
</tbody>
</table>

*Hearing requests may result in a multi-year delay in Board adjudication. Approximately 10,000 Veterans are waiting for a hearing with one of the 98 VLJs.
** BVA did not begin to schedule hearings for appeals of RAMP decisions until after February 2019.

All dockets give priority to cases that have been advanced on the docket.

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Can a Veteran switch lanes?

- Yes, but the effective date is only preserved if the withdrawal 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.


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Continuing the Appeal

- A claimant can appeal a Rating Decision that resulted from a previous appeal.
- It depends on what was previously selected that determines future options:
  - Supplemental Claim: ‘Can select it again, as long as new and relevant evidence is submitted’
  - Higher Level Review: Can only be selected if the appeal is part of the procedures mentioned in Supplemental Claim
  - Board Review: Results in a Board decision, but Supplemental Claims cannot be selected after Board decision unless new and relevant evidence is submitted within 1 year

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What is RAMP?

• Pilot program that allowed eligible Veterans with a pending legacy compensation appeal to opt into the new claims process
• Not all appeal election options were available when RAMP first opened
  – Only Higher Level Review, Supplemental Claim
  – The Board lane opened in October 2018
Who could enter into RAMP?

- As of November 1, 2017, RAMP was invitation only.
- As of April 2, 2018, all veterans were eligible to opt into RAMP.

What claims could be entered into RAMP?

- All disability compensation claims on appeal
- Exclusions: pension claims, survivors claims, insurance claims, loan guaranty, new claims, or any appeals certified and activated by the Board
RAMP Decisions

- To feature improved decision notices, containing:
  - Identification of the issues adjudicated
  - A summary of the evidence considered
  - An explanation of the laws and regulations applicable to the claim

RAMP Decisions

- Summary of any findings made by an adjudicator that are favorable to the Veteran
- For denied claim, will identify element(s) required to grant claim that were not met
- Identification of the criteria required to grant the next highest level of compensation

RAMP Decisions

- 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
RAMP Decisions

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1. Shows the negative evidence in the case
2. Shows the applicable statues and regulations
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RAMP In Review
- As of November 2018, approximately 75,000 legacy appeals were transferred into RAMP.
- The average processing time for a decision was approximately 119 days.
- RAMP ran through February 19, 2019, at which time the AMA became effective. All RAMP cases are now treated as AMA cases.

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Legacy v. AMA

- Effective dates will be preserved as long as a timely appeal (one year) is filed and a lane is selected.
- Factual findings that are favorable to the Veteran will be preserved and cannot be overturned without clear and convincing evidence.
- Decisions will be clearer, to include favorable findings of fact and applicable statutes and regulations.

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How do AMA cases differ from Legacy cases?
- Effective dates will be preserved as long as a timely appeal (one year) is filed and a lane is selected.
- Factual findings that are favorable to the Veteran will be preserved and cannot be overturned without clear and convincing evidence.
- Decisions will be clearer, to include favorable findings of fact and applicable statutes and regulations.
Case Development and the Duty to Assist

- Remand for:
  - DTA errors that occurred at any time during the pendency of the appeal
  - Medical examinations and opinions
  - Stegall compliance
- May request VHA or independent medical opinion
- Appeals returned to the Board following development

Remand for:
- DTA errors, but only if they occurred prior to the AOJ adjudication on appeal (pre-decisional)
- May instruct AOJ to obtain an advisory medical opinion to correct the pre-decisional DTA error

Board cannot request VHA or independent medical opinions
- Appeals not automatically returned to the Board following development

Evidentiary Record

- Record does not close until Board decision is issued.
- Claimants may submit evidence at almost any point during the appeal period.
- Record closes when notice of decision on initial claim is issued.
- Supplemental Claim – if new and relevant evidence, open until a decision is issued.
- Higher Level Review – remains closed, but can submit an argument at any time.
- Board – closed, with exceptions:
  - Direct Docket – remains closed;
  - Evidence Docket – open for 90 days following NOD
  - Hearing Docket – open for 90 days following hearing

Evidence v. Argument

- There is a difference between evidence and argument.
- It is acceptable for a Veteran or representative to submit argument in the direct review docket but it is not acceptable for a Veteran or representative to submit evidence in the direct review docket.

Examples
- Evidence: new medical opinion or new treatment record.
- Argument: explanation of a reason why there was a pre-decisional duty to assist error.
Favorable Findings

- DRO and Board conduct purely de novo review of evidence
- General practice: do not disturb favorable findings
- Higher Level Review and Board conduct primarily de novo review of evidence
- Bound by favorable findings made in prior VA decisions
  - Rebuttable only by clear and unmistakable evidence

Effective Dates

- Effective dates based on date of:
  - Claim,
  - Petition to reopen, or
  - Date entitlement arose
- AOJ decision final after 1 year if no NOD filed or if timely VA9 not filed
- Board decision final when issued
- AOJ decision final after 1 year if
  - Supplemental Claim filed more than 1 year after a final decision,
  - Date entitlement arose
- Board decision final when issued, if continuously pursued
  - Generally have 1 year after a decision to elect review in a different lane
- Board decision final when issued

Attorneys Fees:
Determining Entitlement in Legacy and AMA Cases
What kind of fee can you charge?

Under 38 C.F.R. § 14.636(f):

- 20% fee agreement is presumptively reasonable
- Any fee in excess of 33% is presumptively unreasonable

When can you charge a fee?

Legacy:

- There are two separate triggers for fees:
  - For all cases in which a Notice of Disagreement (NOD) was filed before June 20, 2007, the trigger is the first final decision of the BVA or Court representation
  - For all cases in which the Notice of Disagreement was filed after June 20, 2007, the filing of the NOD is the trigger for fees.

When can you charge a fee?

Legacy:

- After the Board of Veterans' Appeals first makes a final decision in the case

- 5904(c)(1) "a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services of agents and attorneys with respect to services provided before the date of which the Board of Veterans' Appeals first makes a final decision in the case."
When can you charge a fee?

AMA:

- Modification of limitations on fees allowable for representation:
  - Section 5904(c) of such title is amended, in paragraphs (1) and (2), by striking “notice of disagreement is filed” both places it appears and inserting “claimant is provided notice of the agency of original jurisdiction’s initial decision under section 5104 of this title.”

When can you charge a fee?

AMA:

- This means you will now be able to charge a fee after the initial decision is made in appeals reform.

Fee Triggering Events

- A notice of disagreement filed on or after June 20, 2007.
- A fee agreement filed within 1 year of a final Board decision.
- After an AOJ has issued notice of an initial decision on the claim(s)
- Applies just to claims in the new system.
- Includes initial decisions on:
  - Claims for increase
  - CUE petition
  - Supplemental Claim following the initial claim.