Appeals Modernization

May 2018
The number of pending appeals has grown 350% from 100,000 in FY2001 to 450,000 in FY2017.
The current VA appeal process, set in law, is complex, non-linear, and unlike other standard appeals processes across Federal agencies and judicial systems.

- **Too long** – No defined endpoint or timeframe.
  - On average, Veterans are waiting 3 years for a resolution on their appeals.
  - For those appeals that were decided by the Board of Veterans Appeals in FY2016, on average, Veterans waited at least 7 years from filing their NOD until the Board decision issued that year.

- **Too complex** – Process is hard to understand, contains too many steps, and difficult to explain to Veterans.
  - Splits jurisdiction between VBA and the Board – accountability does not rest with one appellate body. Also creates inherent competition for resources within VBA to process both claims and appeals.
  - Features an open record and ongoing duty to assist – Continuous evidence gathering and readjudication prolongs the ability to reach a final decision.
VA Appeal Process Today

The VA Appeals Process

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

Traditional Review Option Selected

Decision

Award Action

Yes

Stated?

No

Decision Review Officer/De Novo Option selected

Informal Conference with Veteran and/or VSO

Notice of Disagreement

Rating Decision

FORMAL HEARING if requested

Satisfied?

Yes

Award Action

No

Decision

Prepare Case for BVA Review & Certify

New Evidence Received?

Yes

Full Grant of Benefits Sought

Award Action

No

Partial Grant with good potential for appeal resolution

Contact with VSO or Veteran for resolution

Satisfied?

Yes

Award Action

No

Supplemental Statement of the Case (SSOC) (i.e., readjudication). Whenever the Veteran indicates that additional evidence is available, additional development and readjudication is warranted.

Formal Appeal (VA Form 9)

Appeal Closed

Yes

No

STATEMENT OF CASE (SOC)

An SOC is a readjudication of the appeal by VBA.

Appeals in which Veterans are represented by a VSO return to the Appeals Management Office (AMO) for development of evidence identified by the Board’s remand, and remain with this VBA entity until all development is complete, at which time the AMO will complete an SSOC.

If the Veteran is unrepresented, or represented by an attorney, the appeal is returned to the RO to complete the development.

Appeal to Court of Appeals for Veterans Claims

REMAND by Court of Appeals for Veterans Claims

The Court remanded 87.7% of appeals to the Board in FY16. Most remands are for additional development and readjudication.

The Board

CASE REQUIRES DEVELOPMENT

Remand to Appeals Management Office (62% of FY16 Board decisions included a remand for at least one issue. Remands occur as often as development is required, including when evidence has been received since last SSOC.)

Full Grant of Benefits Sought

Award Action

No

Partial Grant of Benefits Sought

Satisfied?

Yes

No

Appeal to Court of Appeals for Veterans Claims

The Board held 13,535 hearings in FY16. Over 75,000 hearing requests are pending.

VBA opinion or Outside Medical Opinion Required. Board completes this development in certain appeals in which the medical record is insufficient, and no further examination is necessary.

KEY

Veteran Decision Point

Duty to Assist

Court Remand

VA Decision

The Appeals Churn

Veterans Benefits Administration
On August 23, 2017, the **Veterans Appeals Improvement and Modernization Act of 2017** was signed into law. The new law takes effect in February 2019.

It creates a new decision review process, which features three lanes:

- **Higher-Level Review** – An entirely new review of the claim by an experienced adjudicator
- **Supplemental Claim** – An opportunity to submit additional evidence
- **Appeal** – Review by the Board of Veterans’ Appeals
### New Process: Three Lanes

<table>
<thead>
<tr>
<th>VBA</th>
<th>VBA</th>
<th>BVA</th>
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<tbody>
<tr>
<td><strong>Supplemental Claim Lane</strong></td>
<td><strong>Higher-Level Review Lane</strong></td>
<td><strong>Appeal Lane</strong></td>
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<tr>
<td>• VA will readjudicate a claim if “new and relevant” evidence is presented or identified with a supplemental claim (open record)</td>
<td>• More experienced VA employee takes a second look at the same evidence <em>(closed record and no duty to assist)</em></td>
<td>• <strong>Evidence only docket:</strong> Additional evidence submitted within 90 days following NOD</td>
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<tr>
<td>• VA will assist in gathering new and relevant evidence <em>(duty to assist)</em>.</td>
<td>• Option for a one-time telephonic <em>informal conference</em> with the higher-level reviewer to discuss the error in the prior decision</td>
<td>• <strong>Direct docket:</strong> Closed record and 365 days timeliness goal</td>
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<tr>
<td>• Effective date for benefits always protected (submitted within 1 year of decision)</td>
<td>• <em>De novo</em> review with full difference of opinion authority</td>
<td>• <strong>Hearing docket:</strong> Board hearing and additional evidence submitted within 90 days following hearing</td>
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<td>• Replaces “reopening” claims with “new and material” evidence</td>
<td>• Duty to assist errors returned to lower-level for correction <em>(quality feedback)</em></td>
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- For **Evidence only docket**, additional evidence must be submitted within 90 days following Notice of Disagreement (NOD).
- For **Direct docket**, any evidence must be submitted within 365 days from the date of the decision.
- For **Hearing docket**, additional evidence must be submitted within 90 days from the date of the Board hearing.
New Decision Review Process

**Agency of Original Jurisdiction (AOJ)**

- **Initial Claim**
  - Establishes effective date

- **AOJ Decision**
  - Improved notice
  - Record closes when notice issued
  - Duty to assist ends when notice issued

- **Supplemental Claim**
  - New Evidence
  - Readjudicated if new & relevant evidence
  - Record closes when notice is issued
  - Duty to assist ends when notice is issued
  - 125-Day Avg. Goal

- **Higher-Level Review**
  - Same Evidence
  - Informal Conference
  - 125-Day Avg. Goal

**Board of Veterans’ Appeals**

- **Appeal (NOD)**
  - 3 Dockets
  - (1) **Direct** – Same evidence
  - 365-Day Avg. Goal
  - (2) **Evidence** – Same evidence + evidence submitted w/NOD or w/in 90 days of NOD
  - (3) **Hearing** – Same evidence + evidence submitted at hearing or w/in 90 days of hearing

- **120 Days**

- **CAVC**

- **Court of Appeals for Veterans Claims**

Except for appeals to the Court, all filing deadlines are **one year**.
New Process: Appeal Lane Dockets

**Evidence Only Docket**
- When this option is selected on the NOD, the appellant may submit evidence within the 90-day window following submission of the NOD. The Board does not have a duty to assist and the record is otherwise closed.

**Direct Docket**
- When this option is selected on the NOD, the appellant receives direct review by the Board of the evidence that was before VBA in the decision on appeal. The Board has a 365-day timeliness goal for this docket. Quality feedback loop for VBA.

**Hearing Docket**
- When this option is selected on the NOD, the appellant will be scheduled for a Board hearing. Additionally, the appellant may submit evidence within the 90-day window following the scheduled hearing. The Board does not have a duty to assist and the record is otherwise closed.

**VBA Decision**
- Evidence Docket
  - Additional evidence submitted within 90 days following NOD

- Direct Docket
  - Closed record and 365 days timeliness goal

- Hearing Docket
  - Board hearing and additional evidence submitted within 90 days following hearing

**NOD**
- Supplemental Claim
- Board Decision
- Appeal to CAVC
New Process: Overview

- **Multiple options for Veterans/representatives**
  - Use one lane at a time for a claimed issue
  - Choosing one lane does not prevent the Veteran/representative from later choosing a different lane
  - No limits to the number of times a Veteran may pursue a claimed issue in any of the lanes

- **Protected effective date for benefits** – For Veterans pursuing the same claimed issue in any of the lanes within one year

- **Duty to assist and open record** – In the Supplemental Claim lane only, not the higher-level review or appeal lanes

- **Higher-Level Review** – *De novo* review with full difference of opinion authority; replaces current DRO review process
New Process: Benefits

New process provides:

- Understandable decision review system
- Multiple review options instead of one
- Improved notice about the reasons for VA’s decision and available decision review options
- Early resolution of disagreements
- Each lane with a clearly defined start/end point
- Higher-Level Review and Appeal lanes provide quality feedback to VBA
- VBA as claims agency, Board as appeals agency
- Efficient use of VA’s and representatives’ resources for long-term savings and improved service for Veterans
The **Rapid Appeals Modernization Program (RAMP)** began on November 1, 2017 and allows eligible Veterans with pending appeals the option to have their decisions reviewed in the new **Higher-Level Review** or **Supplemental Claim** lanes.

**As of April 2, 2018, any Veteran that meets the eligibility criteria below may participate in RAMP (no invitation required)**

- Participation is voluntary and Veterans are encouraged to opt in.
- Veterans must have an active disability compensation appeal in one of the following appeal stages:
  - NOD
  - Form 9
  - Certified to the Board (not activated)
  - Remand
RAMP Opt-in Elections

- Veterans (or their representatives) must use the **RAMP Opt-in Election** document to request participation in RAMP.

- The Appeals Resource Center in Washington, DC is the centralized intake center for all RAMP elections.
### RAMP Lanes

#### RAMP Supplemental Claim Lane

- Any decision to award benefits must be based on **new and relevant evidence** or a **clear and unmistakable error** in the prior decision.
- In RAMP, VA **presumes** that there is new and relevant evidence when a Veteran **first elects to participate**.
- Open evidentiary record with **duty to assist** Veterans in gathering evidence to support the claim.
- Decision authority given to **RVSRs** for rating issues and **VSRs** for non-rating issues.
- Tracking in VBMS under End Product (EP) **683** with claim label **RAMP-Supplemental Claim Review (Rating or Non-Rating)**.

#### RAMP Higher-Level Review Lane

- **De novo review** of the issue(s) previously on appeal (**difference of opinion authority**).
- **Closed record & no duty to assist**.
- Review of all evidence of record on the date that VA receives the Veteran’s RAMP election.
- Decision authority granted to **Decision Review Officers (DROs)** and **Senior VSRs**.
- Optional one-time telephonic **informal conference** with the higher-level reviewer to identify specific errors in the case.
- **Quality feedback loop**: Return of the claim for correction when a duty to assist error or required development is found and the higher-level reviewer cannot grant the maximum benefit.
- Tracking in VBMS under **EP 682** with claim label **RAMP - Higher Level Review (Rating or Non-Rating)**.
For Veterans & Representatives:
- Faster decisions and early resolution of disagreements
- Improved decision notices
- Allows more Veterans to use the new, more efficient process
- Demonstrates VA's commitment to improve services for all Veterans who have appeals, not just those who receive a future decision
- Accelerates resolution of legacy appeals at the earliest points in the process
- Same effective date for benefits regardless of the Veteran's choice of review option
- Requires VA to have clear and convincing evidence to change any findings favorable to the Veteran in a previous VA decision
- Veterans who participate in RAMP fill the Board's new dockets first

For VA & External Stakeholders:
- Eliminates the inherent inefficiencies in the legacy system, thus decreasing the number of work hours spent by VA and Veterans' representatives working legacy appeals
- Shortens the time that VA and Veterans' representatives must operate two appeal systems
- Allows VA and Veterans' representatives to fully assess and adapt to the new law
- Early resolution in VBA reduces legacy appeals to the Board and Federal courts
Higher-Level Reviews (HLR)

- EP 682
  - RAMP – Higher Level Review - Rating
  - RAMP – Higher Level Review - Non-Rating

Supplemental Claims

- EP 683
  - RAMP – Supplemental Claim Review Rating
  - RAMP – Supplemental Claim Review Non-Rating
  - RAMP – HLR – Additional Evidence
  - RAMP – HLR – Duty to Assist Error
# RAMP Update

<table>
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<tr>
<th>RAMP DATA (4/30/18)</th>
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<tbody>
<tr>
<td>RAMP Invitations Mailed</td>
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<tr>
<td>RAMP elections received</td>
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<tr>
<td>Letter Election Rate *</td>
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<tr>
<td>Legacy Appeals Withdrawn</td>
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<tr>
<td>Lane Choices</td>
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<tr>
<td>Retroactive Benefits Awarded</td>
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<tr>
<td>Average Days to Complete</td>
</tr>
<tr>
<td>NOD to opt-in (Avg)</td>
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* Based on RAMP mailings
Veteran Testimonials

After 10 years of appealing, a Gulf War Era Veteran receives a 100-percent evaluation in less than two months.

VA denied this Veteran’s claim for a mental health disorder in June 2008. After many years of appeal decisions, including remands from the Board, the Veteran opted into the Higher-Level Review lane in RAMP in November 2017. VA granted service connection with a 100-percent evaluation in 48 days and paid $276,490 in retroactive benefits.

After waiting seven years, a Veteran receives a full grant of benefits in less than 30 days.

The Veteran submitted an NOD in March 2014 and elected to participate in RAMP in December 2017. VA granted service connection for a mental health disorder, established a 100-percent evaluation effective June 2010, and paid $104,485 in retroactive benefits.

A Veteran receives a total disability evaluation retroactive for seven years in 41 days.

In 2014, VA denied this Vietnam Era Veteran’s claim for an increased evaluation for his service-connected mental health disorder and entitlement to a total evaluation based upon individual unemployability (TDIU). The Veteran elected to participate in RAMP in December 2017. After waiting five years for action on his appeal, he received a grant of benefits in 41 days in RAMP. VA paid the Veteran almost $125,000 in retroactive benefits.
You may visit the Appeals Modernization page on www.VA.gov for more information on VA’s implementation of appeals modernization and RAMP.