



# Department of Veterans Affairs

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## THE VETERANS APPEALS PROCESS

January 6, 2016



U.S. Department  
of Veterans Affairs

# Purpose of Briefing

1. Overview of VA appeals process.
2. Overview of current constraints within the appeals process.
3. Appendix.

# VA's Appeals Structure

## What can be appealed?

Any decision made by VA on a benefit claim (disability; health care; cemetery) can be appealed for any reason.

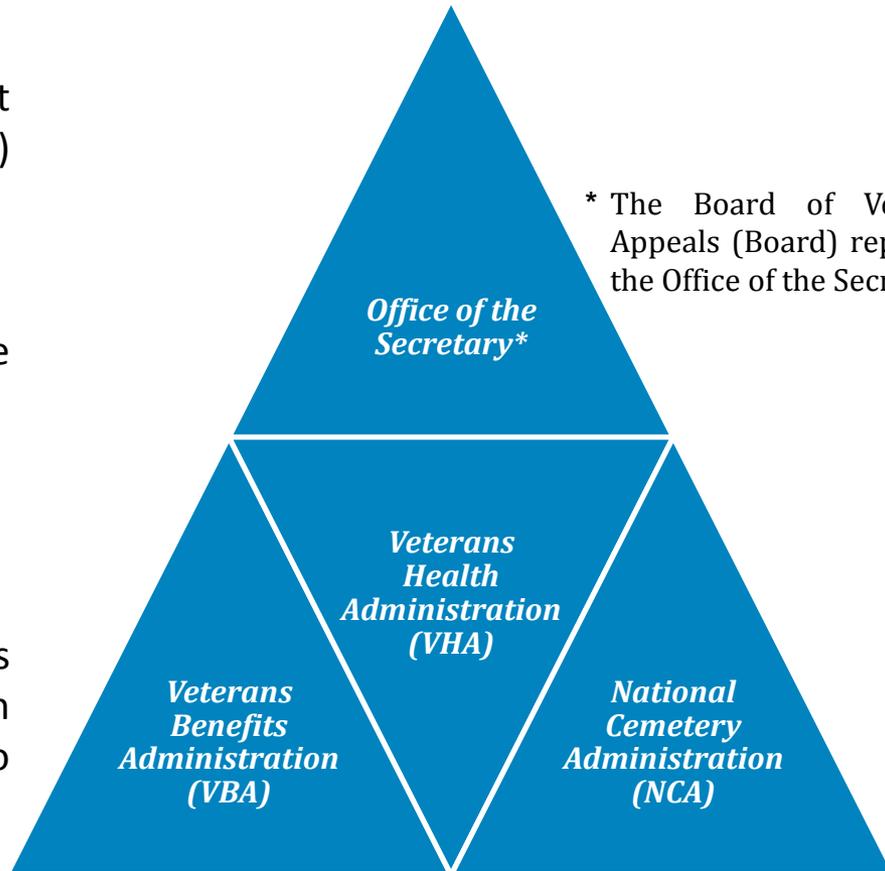
## Where do appeals begin?

Appeals begin at the VA office that made the initial decision.

- 98 percent VBA
- 2 percent VHA, NCA, other

## How does it work?

Since 1933, the appeals process, which is set in law, has grown in complexity, with a continuous open record leading to many repeat decisions in VA.



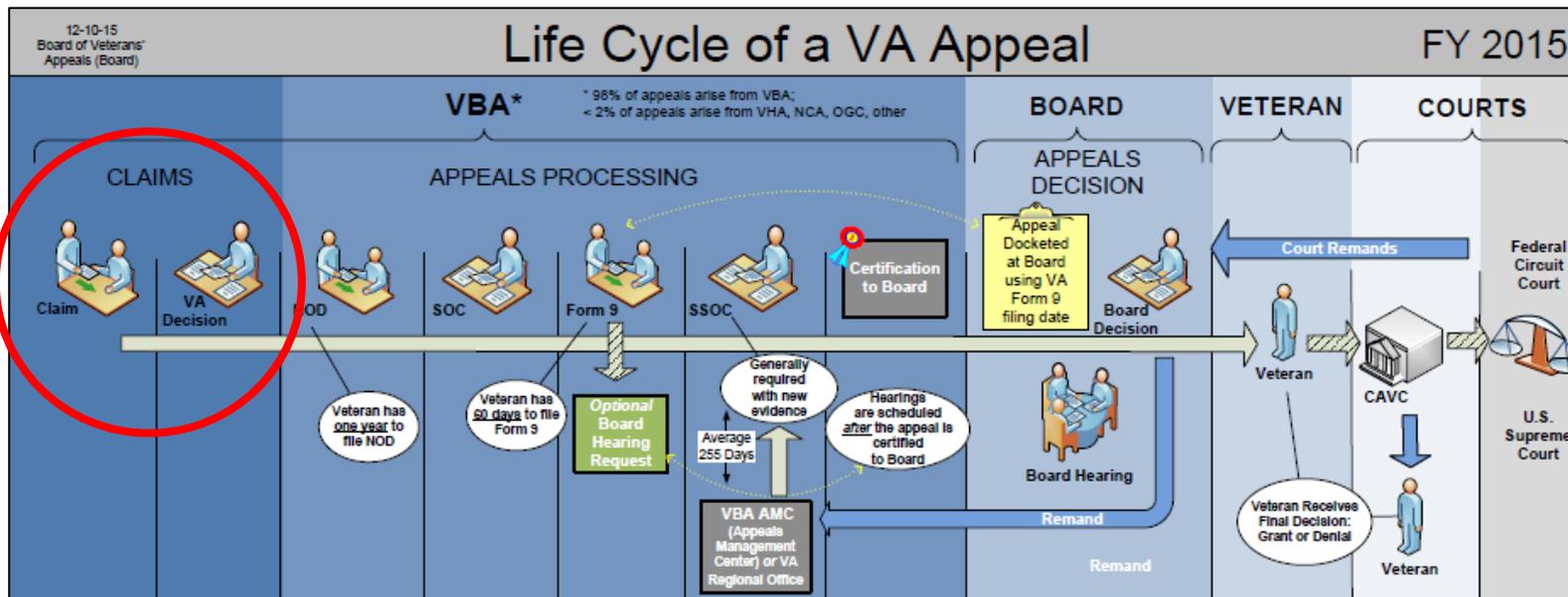
\* The Board of Veterans' Appeals (Board) reports to the Office of the Secretary.

**Fact:** As of FY 2015, 74 percent of Veterans in the current appeal process are already receiving payment of VA compensation benefits

# Appeals at a Glance

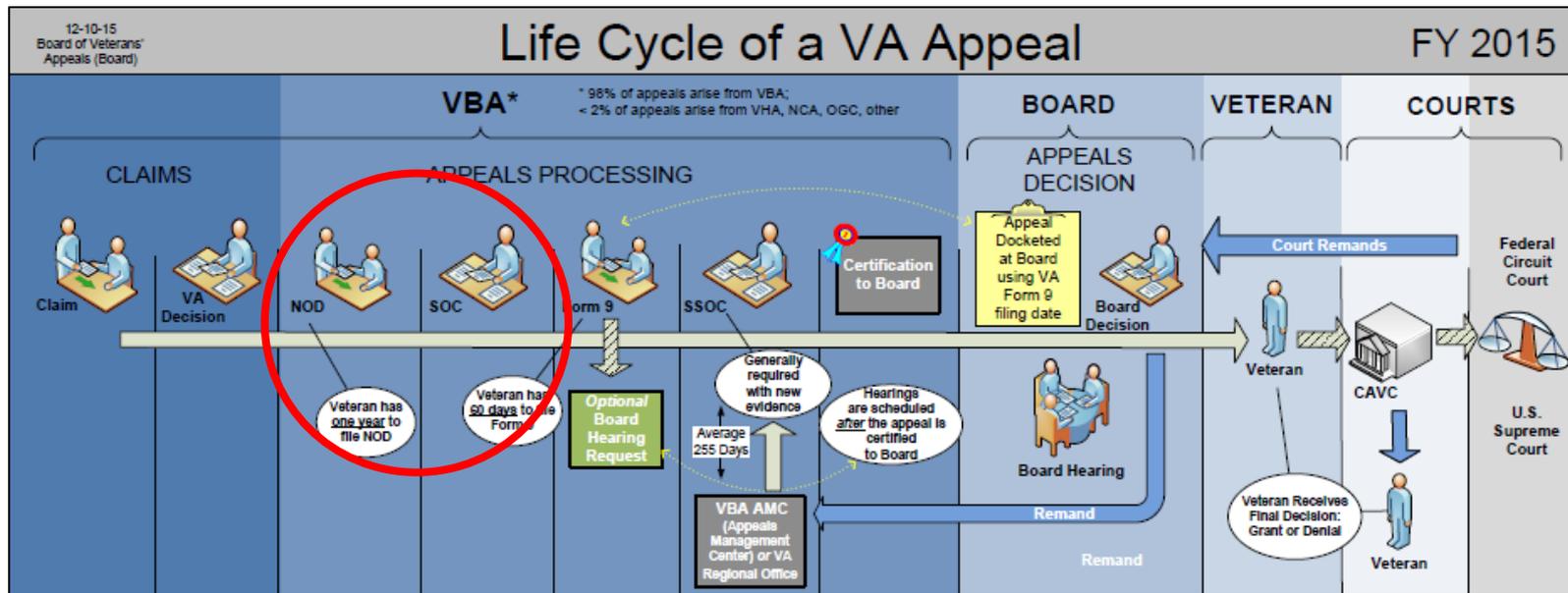
- **Right to Appeal.** Veterans, dependents of Veterans, and Survivors of Veterans have a *right to appeal* any aspect of a VBA claims decision.
- **1 Year to Appeal.** Veterans have *1 full year* to decide whether they wish to file an appeal of a VBA final claims decision. On average, only between 11-12 percent of all VA's claims decisions are appealed – a rate that has held steady over the past 20 years, irrespective of rates of quality or production.
- **Multi-staged VA Appeals Process.** The appeals process is a complex, multi-stage, non-linear process set in law that has evolved over decades, with a *continuous open record* that allows submission of new evidence (medical records, statements, etc.) at any time. Each submission of evidence requires a new cycle of review and decision making.
- **Board Review.** The Board conducts a *de novo (new) review* of the entire case, without deference to the VBA decision and looking at an evidentiary record that has dramatically changed from the time of the initial decision.

# Life Cycle of an Appeal: Where an Appeal Begins



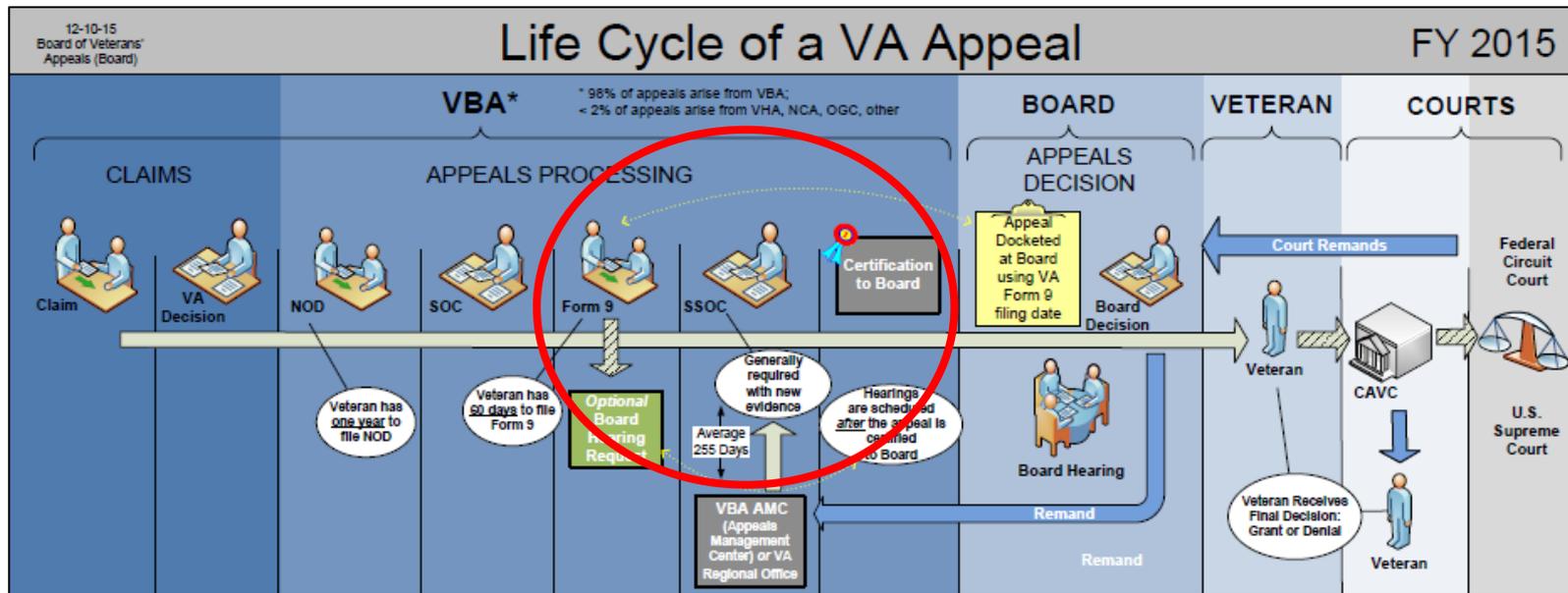
- **Claim Filed:** A claim for disability compensation is filed at VBA.
- **Claims Decision:** VBA completes a final claims decision, called a “**Rating Decision.**”
  - VA has completed more than a million claims in each of the past 7 years, and in FY 2015 *completed a record 1.38 million claims!* Accuracy has increased to over 97 percent on individual medical issues.

# Life Cycle of an Appeal: Notice of Disagreement to Statement of the Case



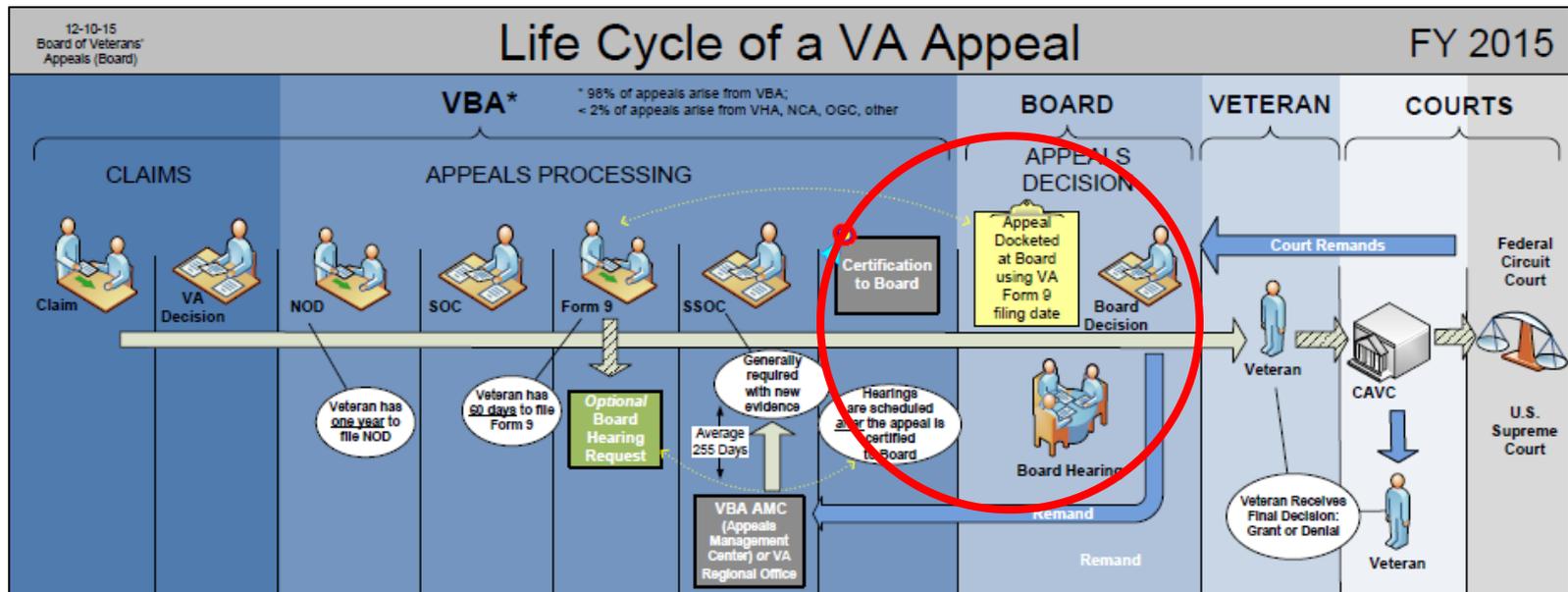
- **Appeal Starts:** An appeal is initiated by the Veteran filing a “**Notice of Disagreement**” (NOD) at VBA.
  - Veterans have an *unqualified right to appeal* any aspect of a claims decision, and they have a full year to decide whether they wish to appeal. On average, only between 11-12 percent of all VA’s claims decisions are appealed – a rate that has held steady over the past 20 years, irrespective of rates of quality or production.
  - As of FY 2015, approximately 74 percent of appeals are from Veterans who are already receiving VA disability compensation payments and are seeking either a higher level of compensation or payment starting from an earlier date.
  - The largest number of appeals are generated by Vietnam era Veterans, not recent OIF/OEF Veterans.
- **New Decision by VBA:** VBA receives an NOD, VBA reviews the record again, incorporating any new evidence provided or gathered, and issues a “**Statement of the Case**” (SOC), which includes a summary of the evidence in the case, a citation to pertinent laws and regulations, and a discussion of the reasons for the decision.

# Life Cycle of an Appeal: Form 9 to Certification



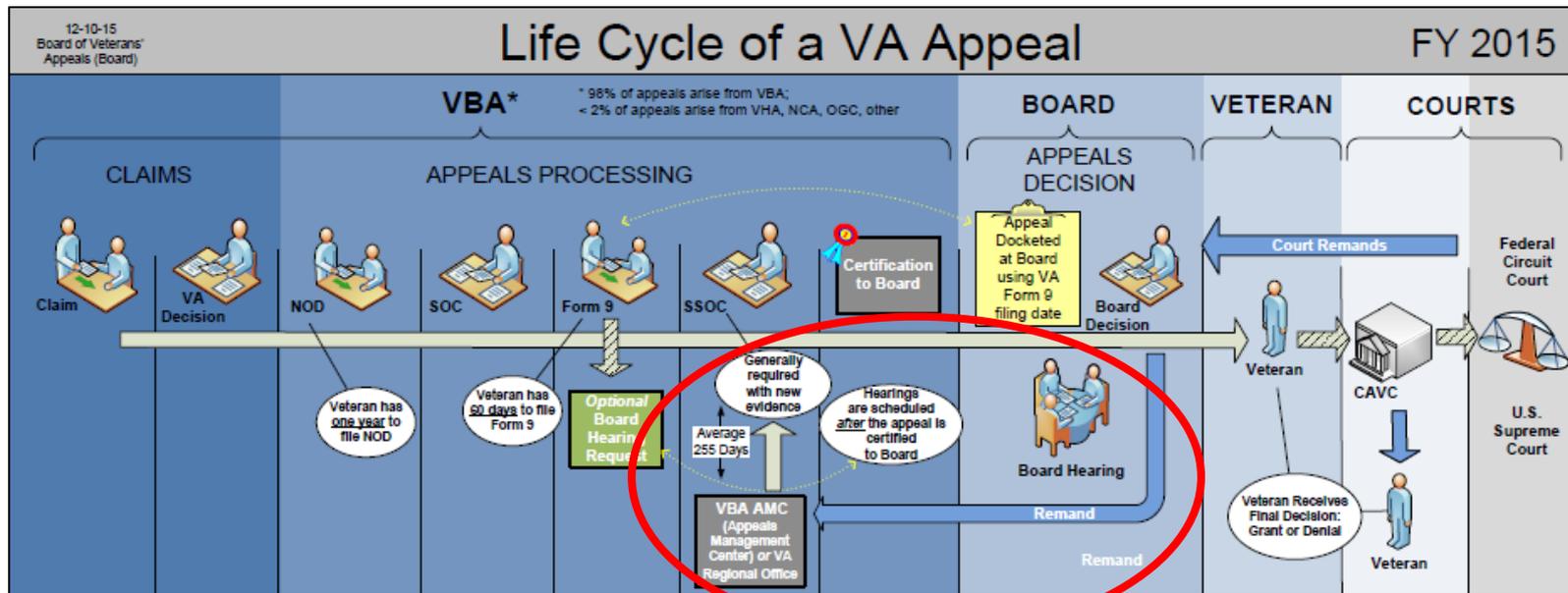
- **Formal Appeal:** If a Veteran is *dissatisfied* with any aspect of the SOC, the Veteran may file a formal appeal at VBA, called a “**Substantive Appeal**” (most use optional VA Form 9).
- **Continuous Open Record Triggers Additional Decision(s) by VBA:** The open record permits new evidence at any time. Generally, the law requires that each time new evidence is obtained in an appeal, VBA must issue a “**Supplemental Statement of the Case**” (SSOC).
- **Transfer of Appeal to the Board:** Less than half of appealed decisions are “**Certified**” and transferred to the Board for a final agency decision.

# Life Cycle of an Appeal: Receipt at Board to Decision



- **Only 4-5 percent of VBA decisions continue on appeal to the Board:** This rate has remained steady over the past 20 years, even as VA has substantially increased the number of claims completed.
- **Optional Board Hearing:** Veterans have the option to request a formal hearing before a Veterans Law Judge to discuss their appeal and present new evidence.
- **De Novo Review:** Unlike a traditional appeals process, the Board takes a fresh look at all the evidence of record without deference to VBA's decision.
- **Final Decision:** Board Veterans Law Judges make a final decision on appeal on behalf of the Secretary.

# Life Cycle of an Appeal: Remand to VBA Appeals Management Center (AMC)



### **Continuous Open Record Triggers Board Remand:**

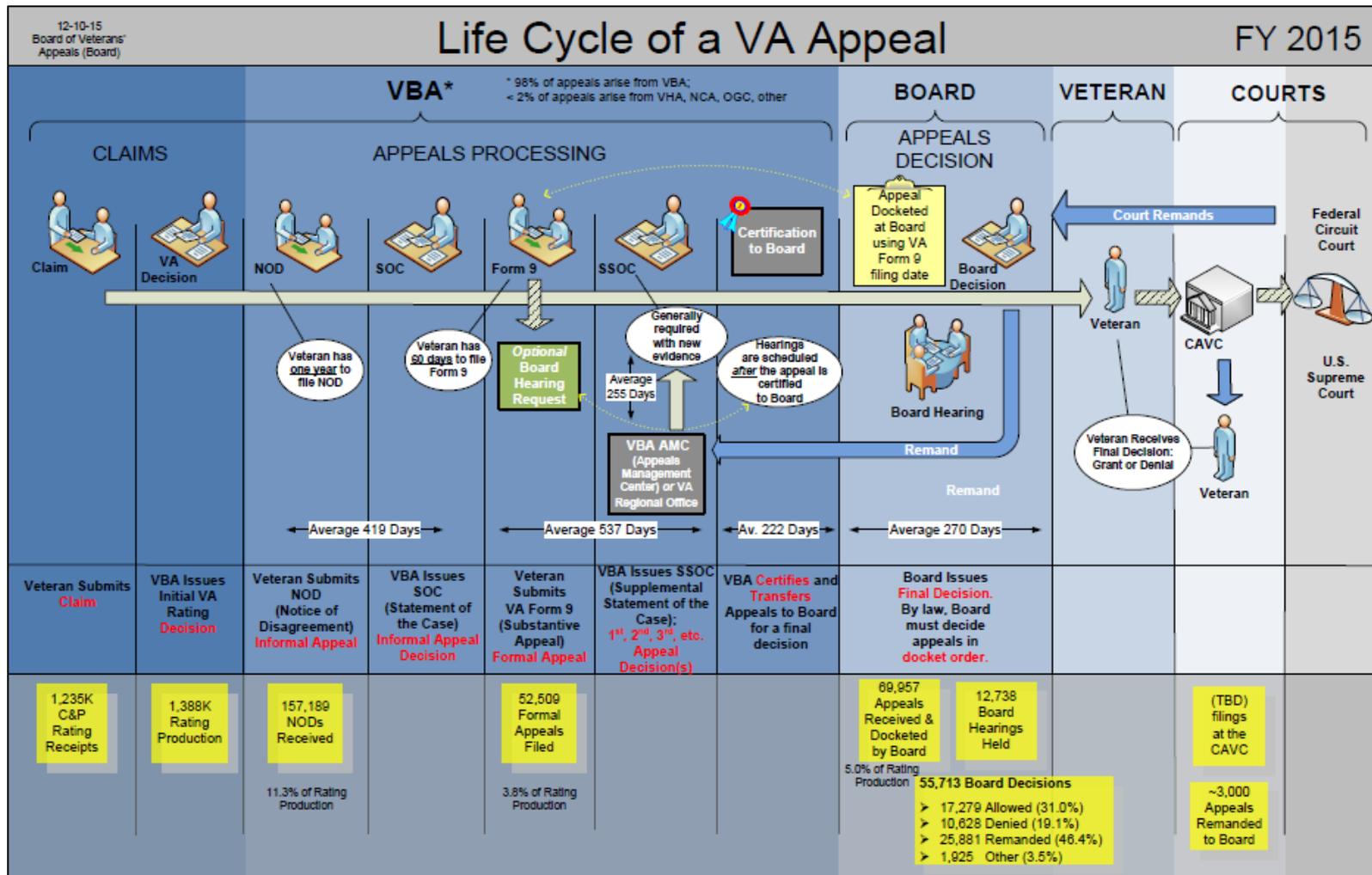
- The Board accepts new evidence by the Veteran at any time, and must also gather new evidence identified or discovered by the Veteran.
- By law, the Board must remand (send back) the appeal to VBA (via the AMC) to review or gather any new evidence that can influence the appeal.
- A **remand starts the cycle all over**. A new decision is made by VBA on that new evidence, and unless the full appeal is granted, it is recertified back to the Board for decision.
- On appeal to the Board, the law generally requires that each piece of evidence be reviewed twice – first by VBA and then by the Board.
- Most common reasons for remand include:
  - Gathering new evidence identified or discovered by the Veteran; or,
  - Scheduling a new medical examination to clarify the current state of disability.

# Appeals Process: Why Does it Take so Long?

- ***Continuous open record welcomes new evidence to be submitted at any time.***
  - There is no requirement to submit all evidence early in the process.
  - New evidence **requires a new decision every time.**
  - This differs from a traditional appeals process where the record is closed at the time of the initial decision.
- ***Medical disabilities are dynamic.***
  - VA is obligated to evaluate the Veteran's **most current disability picture**, which is constantly evolving (e.g. ongoing medical treatment; worsening or improvement in severity), leading to a continuous process of gathering new evidence.
  - Varying treatment records and opinions between different physicians (private and VA) require full consideration by VA.
- ***Complex, non-linear appeals process accumulated over 80 years is set in law and requires multiple layers of review.***
  - Appeals do not proceed in a sequential fashion to a set end. **The length of the process depends substantially on the number of cycles of redevelopment and re-adjudication that are triggered.**

**Note:** As more claims have been completed over the past 7 years, more appeals have emerged at a steady proportionate rate (11-12 percent of VBA claims completed).

# APPENDIX: Life Cycle of a VA Appeal (FY 2015)



# APPENDIX: Evolution of the Appeals Process

**1917**  
Current benefits system created for Veterans of WWI

**1933**  
Board of Veterans' Appeals created to provide appellate review

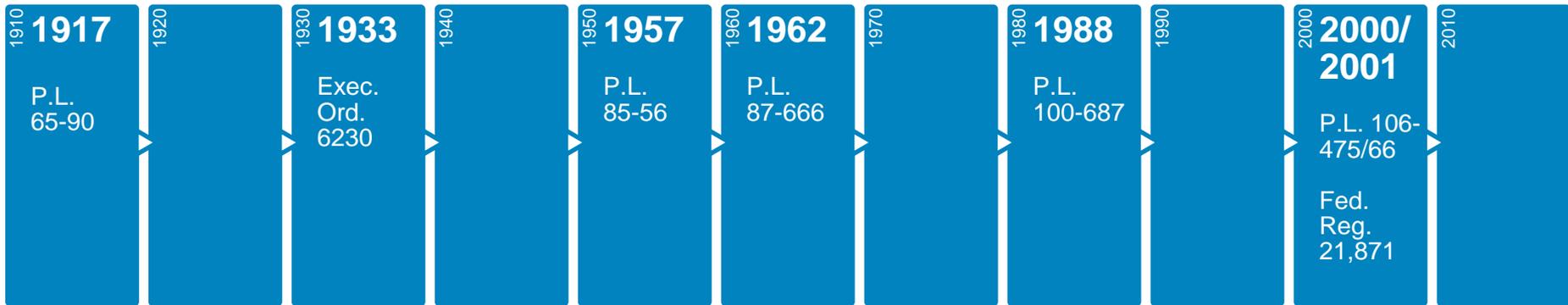
**1957**  
VA Adjudication Regulations enacted as statute

**1962**  
Statement of Case and Substantive Appeal procedures added

**1988**  
VJRA adds CAVC, Fed. Cir., and Supreme Court Review

**2000**  
VCAA expands number of issues requiring remand

**2001**  
DRO review added between NOD and Substantive Appeal



**WWI**



**WWII**



**Korea**



**Vietnam**



**Gulf War**



**Iraq/Afghanistan**

