Climbing the VA Claims Process
The First Rung on the Ladder of Change in your VA Claim

Chris Attig
“Changing the Way Veterans Experience the VA Claims Process”

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My first job after school was military service. I reached the rank of Captain in the U.S. Army (Field Artillery) on Active Duty from 1993-1997, and served in the Reserves from 1997-2004.

I graduated Airborne School, attended Ranger school, and prior to leaving active duty, was invited to attend Special Forces Assessment and Selection (SFAS).

The Attig Law Firm handles cases at VA Regional Offices all around the US, before the BVA, and the Court of Appeals for Veterans Claims. My Vision is to Change the Way Veterans Experience the VA Claims Process. My Firm will do that by providing More Information, and More Power, in More Ways, to More Veterans.

I speak around the country on Veteran’s topics:

- Sept 2013: Using FOIA in your VA Cases (NOVA Conference, San Diego)
- April & Sept 2013: The Journey to Service Connection (NOVA: San Diego Washington, D.C.)
- February 2013: Veterans Law Day at SMU Law School (Dallas)
- November 2012: Texas Veterans Legal Issues: Texas Ass’n of Counties (Galveston, TX)
- Spring 2012: Overview of Veterans Benefits (Locke-Lord Law Firm, Dallas)
- Spring 2012: Ethical Issues in a Veterans Law Practice (Dallas Bar Association)
Introduction.
Changing the Way we Think about the VA Claims Process.

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Conclusion and Legalese.
The VA Claims process has a nickname: The VA Hamster Wheel.

Why? Because you can keep running and running and never get anywhere.

I recently gave a speech to a group of attorneys that don’t routinely represent Veterans, but who wanted to help. I shared with them the diagram of the VA Hamster Wheel.

While that is an accurate portrayal of the Hamster Wheel (at least as of January 2014), I don’t like the mental image.

Why not? It doesn’t offer you, the Veteran, any hope that you will get off the Hamster Wheel. You can’t get off a moving Hamster Wheel - at least not without serious injury.

In this eBook, we are going to talk about the process as exactly what it is - a process.

When I served in the Army, we never went on a mission without a map and a plan.

The same goes for the Veteran in a VA Claim.

Just as soldiers carry more than one map into battle or training (it was not uncommon for me to carry street-maps, terrain maps, battlefield overlays, airspace maps, etc), the Veteran filing for disability compensation must have several “maps”.

For example, I lay out the “Map” of the Elements of the legal theories of Service-Connection in my eBook: 5 Paths to Service Connection.

This book gives you a very different type of map: the Map of the VA Claims Process.

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I am not going to teach you how to use the VA’s process against it in this eBook - we’ll save that for the Veterans Law Blog and for other eBooks.

What I am going to do is give you an explanation of the VA Claims Process - from the Regional Office to the Supreme Court, so that you can have a more thorough understanding of the path ahead.

It can take years - decades even - to get a claim through the VA Hamster Wheel.

I started representing a Veteran in one of my cases when my stepdaughter was in 2nd grade. She starts high school next year, and the Veteran’s claim is still working its way through the VA Hamster Wheel.

I don’t think that most Veterans want to be stuck in the VA Hamster Wheel - while there are Veterans who make a “career” out of battling the VA, most simply want to get their claim for service connection granted.

By giving you a better understanding of how the VA Claims and Appeal Process works, and a glimpse into what can and cannot (and what will and will not) be decided at each level of the VA Claims and Appeal Process, I hope to give you an idea that there IS hope.

There IS a way off the Hamster Wheel.

You don’t have to battle the VA forever.

The end goal of the VA Claim is NOT to go to the next level of the VA Hamster Wheel. The end goal is a favorable and satisfactory grant of service-connection and payment of the proper amount of benefits — hopefully in a reasonable period of time.

Start to think of your VA Claim and Appeal as a Ladder.
In that ladder, each individual step on the ladder is NOT a step in the process - that suggests that the goal is to get to the end of the process.

Instead, each step on the ladder is something to learn that will help you climb the ladder to the final goal: appropriate compensation and benefits, in a more satisfactory time period, from the VA.

The information in this eBook will help you climb the first rung on that ladder: an education in the various levels of the VA Claims and Appeals Process will enable you to move to the next rung: an understanding the basic legal theories that govern your claim (I cover this topic in my eBook - 5 Paths to Service Connection).

What metaphor can we use to describe the VA Claims and Appeals PROCESS?

I like to think of it as “blocks” on a sidewalk:

Block 1: RO
Block 2: DRO
Block 3: BVA
Block 4: CAVC
Block 5: Fed Circuit & Supreme Court

Let’s talk about each of those “Blocks” and get a good general understanding of the important components of each “Block”.

Before I share this eBook with you, I have one favor to ask: if you find something in this eBook helpful, tell another Veteran how to get it.

Let’s watch out for each other - nobody else has our back.

Oh - and let me know if this eBook helped you in your case or appeal. I love to hear good news.

Shoot me an email at vetlaw@attiglawfirm.com, and tell me all about it.

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BLOCK 1: The VA Regional Office.

You already know that all claims for benefits start with an original application.

What you may not know is that ALL claims for VA Disability Compensation ENDS with a VA Ratings Decision. Even if you “win” at the Court of Appeals for Veterans Claims, or “win” at the Board of Veterans Appeals, you won’t get paid unless the VA Regional Office issues a favorable decision.

This is important: everything you do in your claim should be designed to make it simple for the VA Regional Office to understand your claim.

There are 58 Regional Offices in the United States and its territories.

Every state has at least one regional office - some states (California & Texas, for example, have more than one).

To find the VA Regional Offices in your state, click on this link to go to the VA Website, and choose your state.

Some Regional Offices are faster than others. As a general rule, the smaller the geographical area that a Regional Office covers, the faster you will get a decision.

Some Regional Offices have specialized functions.

The Pittsburgh Regional Office handles VA claims and appeals for expatriate Veterans: those Veterans that have established a permanent residence overseas.

The St. Paul and Philadelphia Regional Offices handle the initial processing of all Survivor Benefits claims.

As of this writing, the VA was locating the hub for all Fiduciary Services at the Lincoln (Nebraska) Regional Office.
Some Regional Offices are better at Customer Service than others. We routinely get Claims Files from the Seattle and Waco Regional Offices in half the time that it takes the Houston Regional Office to send a letter simply acknowledging receipt of our claim.

To get an edge in your VA Claim, learn about and study your particular VA Regional Office.

You can learn more about your particular Regional Office by searching our Veterans Law Blog, by talking about it with fellow Veterans, and by studying the VA’s “Monday Morning Work Reports” (known as MMWR’s) online. Every Monday, the VA provides the latest statistics on timelines for each of their Regional Offices. Here’s the link:

http://www.vba.va.gov/REPORTS/mmwr/

While I never encourage a Veteran to “kiss the VA’s butt”, or “sugarcoat” problems in a case, I think it is important for Veterans to remember that you catch more flies with honey than you do with vinegar.

Remember, your ultimate goal is to get your claim granted. If it is late in the day on a Friday, and the VA employee deciding your claim is going to issue a decision on 1 of 2 claims sitting on his desk, which do you think they are more likely to tackle:
Veteran #1: He has a complex case, but worked hard to make the claim “direct, concise, and easy”. Throughout the whole process, he worked hard to treat the VA employees with respect and civility, even when they neither earned nor deserved it.

Veteran #2: He has a complex case, but worked hard to make the claim “direct, concise and easy”. However, throughout the whole claim he was demanding, demeaning, rude and insulting to the VA employee.

Not all of us are experts at dealing with people. I carry a copy of this book with me everywhere I go, and I re-read a chapter of it every week, and try to apply the principles in it:

Don’t believe me? Next time you see me, if I have my “red bag” with me, ask to see a copy. If I don’t have it with me, then I’ll buy you a beer or a coffee (whichever is more appropriate for that time of day).

The VA Regional Offices see a number of different types of claims. Here is a short list:

Original Claims
Remanded Claims
Reopened Claims,
Claims for Increased Compensation
Proposals to Decrease/Reduce Compensation
Claims for Total Disability and Individual Unemployability (TDIU) - technically not a separate claim
Claim to Revise an Effective Date based on Clear & Unmistakeable Error (CUE Claims)
Survivor Dependency & Indemnity Compensation Claims (DIC)
Survivor Accrued Benefits Claims
Non-service Connected Pension Claims
Other Benefits Claims
And more.

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Whatever type of claim you have, the primary function of the VA Regional Office is to develop the claim.

What does this mean, to “develop a claim”. It means that the VA will begin collecting evidence for each element of your claim for Service Connection. In the typical Original Claim for Service Connection, once you have shown basic eligibility (qualifying military service) there are invariable 5 elements for which the VA is developing evidence:

1) Evidence of an injury or event in service
2) Evidence of a current medical disability, disease, or illness
3) Evidence that #1 is related #2 - also called “Proof of Nexus”. (I explain the 5 ways to Prove Nexus in my eBook: 5 Paths to Service Connection)
4) Evidence of the degree of impairment you suffer (this is what drives what percent you are rated and how much compensation you receive).
5) Evidence of the date of your claim. Typically - but not always - this is the date you filed your claim with the VA. This evidence drives the VA’s determination of an effective date.

The VA begins the process of assembling all of this evidence, which it then stores in a Claims File, also known as the “C-File”. The importance of knowing what is in - and what is not in - your C-File cannot be overstated.

It contains all of the evidence that the VA relies on in deciding a VA Claims application. If your claim is denied, or delayed, the reason for that problem is in your C-File (or, in some cases, is NOT in your C-File).

That is why I tell Veterans that the single most important thing that they can do to Take Back the Power in their VA claim is to get a copy of their C-File. (I teach Veterans exactly how to do this - using my Firm's unique method - in my eBook: How to get your VA C-File).
The evidence that the VA will seek out for each of those elements includes medical records (both in-service and post-service, VA medical records and private medical records), military service records, etc.

A claims representative - sometimes someone who has been with the VA only a matter of weeks and who has little to no actual experience or knowledge - will review your claim and the supporting evidence and issue a "Rating Decision". Once you get a Ratings Decision, your case will move into the next "Block".
You’ve gotten your VA Ratings Decision in the mail. Generally speaking, for the original service-connection claim, the Decision will contain rulings on the following elements:

1) Determination if you have Qualifying Military Service
2) Determination if your condition is service connected (see elements of service-connection, above)
3) If service-connected, the VA will identify an Impairment Rating
4) If your condition is service-connected, the VA will identify an Effective Date.

The VA often makes mistakes in one or more of those determinations. Not only do they wrongly deny service-connection, but they frequently assign an impairment rating that is too low, or assign the wrong "Effective Date" to your claim.

The effect of these errors can often be that you are not receiving all the past and future money that you may be entitled to you. In some cases - like eligibility for VA health care - you may not be placed in the proper Priority Group because of an error in calculating the Impairment Rating. Veterans in many states can lose out on valuable state property tax reductions based on incorrect determinations of Impairment Ratings and Effective Dates.

The point is, even if the VA grants your claim and starts paying you benefits, you should make sure that the VA properly decided your claim and is paying you the right amount of benefits.

The Ratings Decision should explain the "reasons and bases" for the VA's denial, although I have yet to see one that adequately explains this for a particular Veteran. Remember, this is a bureaucracy, and many of the forms that the VA sends out are generated by computers.

The Law of Computers holds true to this date. If you put garbage in, you get garbage out. So, if you believe your Ratings Decision is "garbage", rather than blame the bureaucracy,
consider taking a look at what kind of garbage was put into your decision. In other words - [get a copy of your C-File](#).

Upon receipt of your VA Ratings Decision, you have one (1) year to file an appeal.

That timeline runs not from the date on the VA Ratings Decision, but from the date stamped on the front of the letter notifying you of that decision: this is called the “Notice of Action” Letter.

I believe that it is best to use the date of the VA Ratings Decision as your deadline to file the appeal of the Ratings Decision - the VA often overlooks this simple rule, and wrongly denies appeals as “untimely” even when they were filed before the date stamped on the Notice of Action Letter. I have never had a case where the VA didn’t later fix their mistake and allow the appeal to proceed, but in every case it has added over 6 months to the timeline in the case.

The document that you use to file an appeal of a VA Ratings Decision is the Notice of Disagreement (NOD).

The Notice of Disagreement - or the NOD - is the first step in filing an appeal.

**IMPORTANT:** As of January 1, 2014, the NOD is not a formal document. HOWEVER, it is important to note that the VA has proposed a new regulation that would require Veterans to use a particular NOD form.

The entire discussion of the NOD in this eBook is based on the current law, as of January 1, 2014. All of this law will necessarily change once the VA updates the rules to require that Veterans use a particular NOD form, so if you are downloading this eBook after January 1, 2014, please double-check that the VA has not finalized its rule requiring the use of a NOD form.

We will update this book with that information, although it can take 1-3 months to update the text of an eBook and release the new edition (If you purchased this eBook from the Attig Law
As of January 1, 2014:

The NOD must contain only 2 things: an "expression of dissatisfaction" with the Ratings Decision and an "intent to appeal". So, the purpose of the NOD is for a Veteran tell the VA that he or she disagrees with the Ratings Decision on the Veteran's claim for disability benefits or other compensation.

Here is the statutory definition of a NOD, from 38 C.F.R. § 20.201:

"A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear."

When you file your NOD, then, I recommend that you have 3 things - at an absolute minimum (remember, just providing the minimum isn’t going to help your case with the VA):

1) Write "Notice of Disagreement" in large, bold, black letters over the top of your letter to the VA.
2) Include a specific expression of dissatisfaction with the VA Ratings Decision.
3) Include a Notice of Intent to Appeal that decision.
I have found it helpful to identify specific part(s) of the Ratings Decision he or she disagrees with and why, as a more thorough and well written NOD can affect the outcome of the DRO Conference.

However, this can be dangerous, too, as the VA can later argue that your appeal is limited to the specifics that you alleged in your NOD.

The authors of the Veterans Benefits Manual recommend that Veterans and Survivors include this “Cover Your Rear” language in your NOD:

“This is a notice of disagreement (NOD) to the VA letter(s) dated [insert date]. I disagree with all of the adjudicative determinations mentioned in the above-referenced VA Letter(s) and any enclosures thereto, except for those, if any, that I specifically state her that I do not want to appeal. Therefore, my NOD specifically covers all the determinations by the Regional Office unless specifically excluded. I also disagree with the RO’s failure to adjudicate issue that I may not have discussed but which were reasonably raise by the evidence in my VA Claims file or in the VA’s possession that should have been inferred by the Regional Office. This appeal also includes adjudicative determinations that were mischaracterized by the Regional Office. If this appeal is not resolved favorably, please send me a Statement of the Case so that I may appeal this decision to the Board of Veterans’ Appeals.”

The Veteran has one (1) year from the date of the Ratings Decision Letter to file the Notice of Disagreement (NOD).

There are some reasons why you might want to file a NOD earlier than that one (1) year deadline, and there are some reasons that you might want to wait.

One reason to wait is to hold out for the possibility of a change in the law (only if it is clear that your case will likely continue to be denied by the BVA).
Another reason to wait is to give the Veteran time to factually develop the case by finding additional evidence, consulting with medical experts, securing medical expert opinions, etc.

Every case is different, and so a cookie-cutter approach cannot be applied to Veterans benefit claims.

In your NOD, you can request a Decision Review Officer (DRO) Conference/Hearing.

The DRO is generally a more senior claims examiner, who has the authority to reverse the VA Rating Decision's conclusion. The DRO also has authority to meet and discuss the claim with the Veterans Benefits attorney or the Veteran.

I believe that the DRO process almost always yields more satisfactory results from the VA.

It is my personal belief that most major issues in a Veterans claims can be best resolved at the DRO conference. You can read about some of my Firm’s successes to see how we used the DRO process for our Clients on the Veterans Law Blog.

To get the most of a DRO Review, though, you are going to want to submit more than the basic NOD.

By educating yourself on the legal elements of your claim, knowing what is and is not in your C-File, and presenting your claim in a Direct Concise and Easy format, you will stand a much better chance of having a favorable conference with the DRO.

If you go into the DRO and expect them to do all of the work, they are (almost always) going to rubber-stamp the decision of the employee below them.

Is this right? I don’t know.

Should we expect more of our federal employees? I don’t know.

And, frankly, I don’t care about such debates. My goal - for my own claim and my clients’ claims - is to resolve the case at the
lowest level possible and get my client out of the Hamster Wheel. I want to get my case - and my clients’ cases - to the top rung of the ladder we discussed in the introduction.

The DRO will issue 1 of 2 documents (and sometimes both documents) after your conference:

1) A VA Ratings Decision (if they are reversing the RO’s decision)
2) A Statement of the Case (SOC) if they are affirming the RO’s decision.

Sometimes, the DRO will issue BOTH of these documents: this happens most frequently when the claim involves multiple claims for multiple medical conditions. The DRO may decide that the VA was wrong on one, but correct in its conclusions on the other.

If you get a VA Ratings Decision granting your claim, make sure to review it again for any errors in legal conclusions regarding: service-connection, impairment ratings, and effective dates.

If you get a Statement of the Case (SOC), you are ready to move to the next “Block” of the process.
**BLOCK 3: The Board of Veterans Appeals (BVA).**

Until your appeal to the BVA is “perfected”, you will never get a VA Hearing. In fact, I would bet that over half of the Veterans awaiting a BVA hearing are awaiting a hearing because they still have not “perfected” their appeal.

How, then, do you “perfect” an appeal? Remember this formula:

\[ \text{NOD} + \text{SOC} + \text{VA9} (+ \text{SSOC} + \text{SVA9, if any}) = \text{Perfected Appeal} \]

Before your appeal can be “perfected”, and sent to the BVA to be “docketed” for a hearing, each of the above documents must be filed:

**Notice of Disagreement (NOD):**

The Veteran must timely file a NOD to a Ratings Decision. This has been covered above.

**Statement of the Case (SOC):**

The VA must issue a Statement of the Case (also known as the SOC).

This document is statutorily required, and is prepared by the VA Regional Office. It’s purpose is to explain to the Veteran the reason(s) that the Veteran's claim for benefits was denied.

The Statement of Case (SOC) must provide notice to the Veteran of the relevant and/or controlling statutes and/or regulations on which the VA Regional Office relied to support its decision to deny benefits.

Statement of the CaseWhen the VA Regional Office denies a Veteran's claim for service-connected disability benefits, the Veteran has the option of appealing that decision to the Board of Veterans' Appeals (BVA).

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The SOC is often a multi-page document, with paragraph after paragraph of seeming incomprehensible legalese. This legalese represents direct quotes of the statute and regulations that the VA Regional Office relied on in denying the Veteran's claim.

Read it carefully - not only can the Veteran use the SOC to determine when the VA Regional Office is relying on "old" law, but also the Veteran can have some insight into the procedural defenses that the VA Regional Office is using to deny the claim.

After receipt of the SOC, the Veteran will take the final step in perfecting the appeal to the BVA by preparing and filing the Substantive Appeal on VA Form 9.

VA Form 9 (aka, a Substantive Appeal).

The VA Form should be included in the SOC that the Veteran receives from the VA Regional Office.

This is the big one for Veterans Appeals - if you're going to spend some time drafting a form, this is the one you want to work on.

It lays out all of the issues you have with the VA Ratings Decision you are appealing. You can do it on multiple copies of VA Form 9, or with one copy of the form and continuation sheets.

State each decision from the VA Ratings Decision you disagree with.

State every reason why you disagree with that part of the decision. Don't worry about being persuasive; here, the goal is to lay all your cards on the table.

I often (but not always) add in the specific remedy that I want for each claim.

The VA Form 9 has many traps for the unwary - you can do serious harm to your appeal by putting something in, or omitting something from, a VA Form 9. The best thing you can do is
contact a VA accredited Veterans Benefits Attorney to assist you at this point.

Nothing against VSOs like the DAV, or VFW. (Well, nothing that I’ll say in writing). Most of the representatives at these organizations do not have formal legal training, and they put something in a VA Form 9, or omit something from a VA Form 9, that really hurts the Veterans case - or delays it even more.

If you don’t know how to choose an attorney, I have an eBook titled “8 Things Every Veteran Should Know Before Hiring an Attorney in their VA Claim”.

Not only does it explain what I think every Veteran should know about attorneys in VA Claims, but it also has a checklist of questions for you to ask any potential attorneys.

**Supplemental Statement of the Case (SSOC).**

If the VA thinks that you raised an issue in your VA Form 9 that it needs to address before the BVA, than it will issue a Supplemental Statement of the Case (SSOC).

It is a long-standing rule that the VA cannot first deny a claim through a SSOC, so if you see a new condition being denied for the first time in a SSOC, then its time for you to give some SERIOUS consideration to finding an accredited VA attorney. This is one of those problems that - if not fixed - can cause your claim to get stuck in the VA Hamster Wheel for years and years.

There is no requirement that a Veteran respond to a SSOC, although the VA leads you to believe otherwise. Sometimes they say that the Veteran has 30 days to respond to the SSOC, and sometimes they give another time frame.

Once the VA has the NOD, the SOC, the VA Form 9, and any SSOC and any Supplemental VA Form 9’s, then they should “perfect” the appeal to the BVA.

They send your C-FIlle to the BVA and ask them to docket the appeal for a hearing.

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The process of docketing the appeal differs from regional office to regional office, and the time it takes can be months or years.

The BVA says that it docketes appeals on a “First Come, First Serve” basis, but I have no evidence that this is actually true (and some evidence that it may be untrue).

The BVA Hearing.

The purpose of the BVA hearing is to give the BVA Hearings Official (Administrative Judge) an opportunity to hear witnesses, testimony and arguments in support of the Veteran’s appeal.

There are 4 types of Hearings:

- Option 1: Travel Board Hearing
- Option 2: Video hearing
- Option 3: In-person hearing at BVA in DC
- Option 4: Decision on the record (written briefs)

I will go into more detail on the types of hearings, and how and why to request each kind, in another eBook: How to Prepare for your BVA Hearing.

BVA hearings usually start with a summary of the issues - listen close, because Judges are humans too - sometimes they miss an issue that may be really important.

If you do decide to put in testimony, an oath will be administered by the BVA Judge to the witness.

The witnesses testimony will be recorded, and later added to a transcript of the hearing. We recommend that every Veteran request a copy of their hearing transcript from the BVA. They don’t charge the Veterans for these copies, and it is a good chance to review the hearing record to make sure that you said what you meant to say.
After the BVA has held a hearing in your appeal, you should request a copy of your BVA Hearing Transcript and ask that it be included in your C-File.

I recommend that you don’t wait - request the transcript IMMEDIATELY after the BVA hearing. The BVA will not charge you for it, and they are required to give you a copy if you ask for it.

Why is it important?

In addition to understanding how the BVA Judge might have misinterpreted what you said, this transcript is important because it may form the foundation of a remand order by the Court of Appeals for Veterans Claims.

For example, in more than one case, I have seen that the Veteran referenced missing - and relevant - records in the BVA Hearing. The BVA’s failure to procure these records could be a failure of the Duty to Assist. But the only way to prove that the BVA knew about the records you mentioned in the hearing is to show the CAVC where in the Hearing Transcript you referenced them.

Another common error is that the BVA fails, in its decision, to address an issue that a Veteran clearly raised before the BVA. The BVA is required to address all arguments which could reasonably lead to a favorable decision for the Veteran. To show that the BVA erred by ignoring facts, or arguments, that you asserted, you must be able to show the CAVC where in the BVA Hearing you raised those arguments or facts.

How to Request the BVA Hearing Transcript? Immediately after the hearing, fax (or better yet, mail via certified mail, return receipt requested) a request for the BVA Hearing Transcript to the following address/fax number:

Board of Veterans’ Appeals
810 Vermont Avenue, North West
Washington, DC  20420
FAX: (202) 343 - 1889
In your request, be sure to include:

* Your name,
* Your claim number,
* Date and time of the hearing,
* Location of the hearing, and,
* If you know it, the BVA Hearing Official’s name.

I also ask that the request for the hearing transcript be included in the Veteran’s C-File, so that there is proof that the request was made in the event the BVA fails to comply with the request.

When you receive the hearing transcript, the first thing to do is send a copy to the VARO that holds your C-File (Certified Mail, Return Receipt Requested). Include a cover letter indicating that you are asking that the BVA Hearing Transcript be included in your C-File.

Frequently, this happens automatically.

However, I have noticed cases where a BVA Hearing was held, but the transcript is "missing". Curiously, this seems to happen most often when the Veteran claims that a vital fact was introduced on the record at the BVA Hearing.

Once you have sent a copy to the VA Regional Office, read the hearing transcript. You might find 2 kinds of errors: transcription errors and substantive errors.

Regarding transcription errors, you can submit what is referred to in the law as an "Errata Sheet". Reference the page and line number of the error, indicate how the transcription appears, and then how it should appear. Typically, this is used for correcting typographical or transcription errors - misspelling of names, incorrect identification of medical conditions, acronyms, etc. An Errata Sheet typically is NOT used to supplement or correct errors in the substance of what was said at the hearing.

If you feel that the transcription wrongly reflects what you said, or that there is a substance error in the transcript, then request...
a copy of the recording tape from the BVA, and listen to it carefully.

If you are correct, and the recording was transcribed improperly, you may want to document the error, send it to the above address by Certified Mail, and start trying to find an accredited Veterans Benefits attorney to help you figure out what your next steps should be.

After the BVA Hearing, the Judge will issue a BVA Decision.

I have yet to see a BVA Decision that didn't have an error in it - some of them are big errors that could affect the outcome, others are errors that are inconsequential to the case. There are five (5) possible outcomes:

1) Remand: The BVA decides that the VA Regional Office needs to develop the case better in some way, and so they "remand" it back to the Regional Office. These types of decisions are common. I recently looked at one BVA Decision from the Little Rock VA Regional Office: the VA Ratings Decision was May 1998 - for the next 14+ years, it was caught in a seemingly endless loop of development at the Regional Office followed by Remand from the BVA back to the Regional Office to further develop the facts. If your case has been remanded more than one (1) time by the BVA before the issuance of a final decision, you might want to consider having an attorney look at your VA Disability Benefits claim.

2) Reverse: The BVA decides that the VA Regional Office got it wrong, and they will issue a decision reversing the VA Regional Office Rating Decision. These types of decisions are very rare.

3) Affirm: The BVA decides that the VA Regional Office got it right, and issue a decision affirming the VA Regional Office Rating Decision. These types of decisions are the most common kind.
4) Refer: The BVA sees an issue that the VA Regional Office hasn’t had a chance to address in a Ratings Decision (most commonly, when a Veteran raises a claim of Clear and Unmistakeable Error - or CUE for the first time at the BVA). The BVA will refer that claim only back to the VA Regional Office for filing and development.

5) Any combination of 1 - 4. The more issues you have in your claim, the more likely you are to get a BVA decision with 3 or 4 different outcomes.

If your claim is denied by the BVA, then you have three (3) choices:

Option 1: Request that the BVA Reconsider their decision. This usually doesn’t work. I have yet to see many cases where reconsideration at the BVA has really done the Veteran any good - although I’m sure that there is the "one-off" case like that out there. You can request reconsideration anytime, but if you don’t request reconsideration before the deadline to appeal to the Court of Appeals for Veterans Claims (CAVC) then you lose the right to appeal to the CAVC, even if the reconsideration decision is still against you.

Option 2: File a claim to reopen. This course of action is a good idea anytime that the BVA denies a claim or affirms the VA Regional Office denial of the claim. If you have New and Material Evidence (NME) that the BVA or the VA Regional Office did not consider, then you should file a claim to reopen as soon as possible.

Option 3: File an Appeal to the Court of Appeals for Veterans Claims (CAVC). You have 120 days from the date of the BVA’s decision (NOT the date you received it and NOT the date it was postmarked) to file a Notice of Appeal in the Court of Appeals for Veterans Claims (CAVC).

Let’s take a look at Option #3, as it is the next “Block” in the VA Claims and Appeals Process.
Block 4: The Court of Appeals for Veterans Claims (CAVC).

The Court of Appeals for Veterans Claims (CAVC) is a Federal Court. Its judges and staff, though frequently “raised” by the military and the VA, are not employees of the VA.

Here are eight (8) facts that I think every Veteran should know about the Court of Appeals for Veterans Claims:

Fact #1: There is a wide range of outcomes.

Many Veterans think that they will win their claim outright at the Court of Appeals for Veterans Claims (CAVC).

While this is a possibility, it is not a common occurrence at the CAVC.

By far the most likely outcome is that the Court of Appeals for Veterans Claims will remand the claim back to the Board of Veterans Appeals (BVA). In fact, if I recall the statistics I recently saw, some 80% of CAVC Appeals are remanded back to the BVA to correct an error.

Other possible outcomes include dismissal of the case for lack of jurisdiction (if the Court doesn’t have statutory or Constitutional authority to hear a case), or outright denial of the claim.

The last outcome is rare, but it does happen.

If it does happen, your only viable options are to appeal to the Federal Circuit Court of Appeals (see Block #5), or attempt to reopen your claim at the VA Regional Office.

Fact #2: There is No right to a jury trial.

There is no point in the VA claims process where you are entitled to a trial by jury.
That's unfortunate, because I suspect a jury would be far more sympathetic to most Veterans claims than the Department of Veterans Affairs.

Instead, your CAVC appeal will either be decided by a single-judge, or a panel of three (3) judges. Single-judge decisions are used in cases that are non-precedential - meaning generally that they do not create new law. Panel decisions are typically used in cases where the decision of the Court of Appeals for Veterans Claims will have an impact beyond the current case - they are precedential, meaning that the "lower courts" (i.e., the BVA and the VARO) are (in theory) bound to follow them.

Fact #3: You are not entitled to any "discovery" of the VA's claims against you.

In traditional litigation, each party has the opportunity to "discover" information about the case that the other party has.

This could include depositions, document production, written questions, and admission/denial of certain facts.

This is, in my mind, the single most unfair thing about the whole VA Claims process. I am of the opinion that if there were traditional discovery under the Federal Rules of Civil Procedure in Veterans claims, that the claims process would move much, much quicker.

Regardless, that option is never available in a VA Claim.

There are three major sets of "evidence" that you can - and should get from the VA:

a) your claims file, or C-File,

b) your VA Medical Records, and

c) the ROA, or Record on Appeal (available at the CAVC only).

Early in your CAVC Appeal, the ROA will be sent to you - typically in paper and on a CD-R - by the attorney representing the VA at the Court of Appeals for Veterans Claims.
Fact #4: The VA will have an attorney.

This is the first stage of the claims process where the VA will openly be - technically and visibly - represented by an attorney.

The law does not permit the VA claims process to be adversarial, so the VA’s attorneys are not as vicious or conflict-prone as, say, USPS or FAA attorneys.

In fact, I have enjoyed working with the most, if not all, of the VA’s attorneys at the CAVC.

However, VA Office of General Counsel attorneys, no matter how friendly, are not your friends.

They do represent the government’s interests, and not yours. And they know they don’t represent your interests: the State Bars of each state require that an attorney have loyalty to his client’s interests.

For that reason, it is always a smart idea to consider having an attorney represent you before the Court of Appeals for Veterans Claims.

Fact #5: You can hire an attorney.

It is important for you to know that the industry standard is that most attorneys do not charge Veterans up-front fees for representation at the Court of Appeals for Veterans Claims.

Attorneys that represent Veterans at the CAVC can, if they prevail in your claim, petition the CAVC to have the VA pay the attorney’s fees, under a law known as the Equal Access to Justice Act (EAJA, pronounced “ee-jah”)

As for costs, different attorneys have different arrangements, and an attorney is always permitted to ask you to repay reasonable costs from the appeal to the CAVC.

Fact #6: Length of time at the CAVC varies widely.
The average time for the adjudication of an appeal to the Court of Appeals for Veterans Claims is somewhere around 254 days from filing to decision (or mandate, as it is called in the appellate courts).

**Fact #7: Filing Fee.**

There is a filing fee for the Court of Appeals for Veterans Claims. It is currently $50, but you can have it waived for financial hardship.

Many law firms will advance the filing fee to their client as part of the attorney-client agreement covering representation before the Court of Appeals for Veterans Claims.

**Fact #8: Settlement and the Rule 33 Briefing Conference.**

Technically, the VA cannot "settle" VA disability benefits claims.

However, sometime before the Appellant’s Brief is due, the Court of Appeals for Veterans Claims will hold a "Briefing Conference". At the Briefing Conference, the parties/attorneys discuss, with a representative of the Court of Appeals for Veterans Claims, the substance of the claim.

There are typically two outcomes to this conference: Joint Motion to Remand and Briefing the Appeal.

I talk more about the JMR - Joint Motion to Remand - on the Veterans Law Blog.

It is sufficient for our purposes her to say that if the Parties believe that the BVA and/or the VA Regional Office made an error, they can send it back to that level to correct the error.

Many times - but certainly not always - this results in a grant of service-connection and/or past-due benefits to the Veteran.
If the VA’s attorney is not convinced of the BVA or VA Regional Office error, the case will be briefed.

However, I have found that even when unsuccessful, any dialogue between attorneys for a claim is useful to develop a relationship for possible future resolution of the claim.

There is not a concrete list of outcomes in a CAVC Appeal. Generally speaking, the CAVC has authority to Reverse the BVA, Remand to the BVA or deny the appeal.

If the CAVC denies your appeal, your only recourse is to seek to reopen the claim at the VA Regional Office or to appeal to the Federal Circuit Court of Appeals.
BLOCK 5: The Federal Circuit Court of Appeals and the Supreme Court of the United States.

I am not going to cover these 2 levels in much detail.

First, if you need to appeal to the Federal Circuit, you should have an attorney. While we all like David and Goliath stories, and pro-se litigants have won at the Fed Circuit, this is a battle you don’t want to fight without an army.

Appeals to the Federal Circuit of Appeals on Veterans issues are rare. Successful appeals are even more rare.

This is because the scope of the appeal to the Federal Circuit is so narrow that many cases don’t even state a proper appeal.

This is not to say that you shouldn’t appeal an adverse CAVC appeal to the Federal Circuit Court of Appeals - it is to say that you really ought to have an experienced and accredited VA Benefits lawyer or experienced Fed Circuit Appellate lawyer to help you out.

The same can be said of the United States Supreme Court.

If you receive an adverse decision at the Federal Circuit Court of Appeals, you can file a request to the Supreme Court to review that decision.

The club of lawyers that argues at the Supreme Court is a small club - while it’s on my professional "bucket list", I am not currently a member of that club.

Point is - get an attorney - don’t go it alone while in “Block 5” of the VA Claims and Appeals Process.
CONCLUSION, LEGALESE, & DISCLAIMER.

I hope that you gained a greater understanding of the VA Claims Process through this eBook.

This eBook, alone, is not going to win your VA claim for you. Nor will it teach you everything you need to know about each “block” of the Appeals Claim.

What it should do, however, is give you a sense of what to expect in your VA Claim, from “soup to nuts”.

In the end, though, your goal is not to turn our VA Claim/Appeal into a second, or third, career.

Your goal is to understand the process, understand the law of your claim, and figure out the fastest way to complete that process and get a favorable outcome in your VA claim/appeal.

Open your eyes to the possibility that you have more Power with the VA than you think.

Then use that Power.

If you liked what you read in this eBook send another Veteran to my website to get his or her copy.

Tell them about my blog. Tell them about Veterans University, or the other offerings on the website.

Let's watch out for each other - nobody else has our backs.

This eBook is not meant to be legal advice and does not serve as a substitute for legal advice. Information is power, and I am providing this information to give you, the Veteran, more power. This information is not widely or easily accessible to Veterans.

The information presented in this eBook is a general description of the VA Claims and Appeal Process; every Veteran’s claim and appeal is different. There may be approaches and strategies
discussed in this eBook that are not accurate or applicable to your case.

You can do serious damage to your case by misapplying the information in this eBook to your appeal. The use of this eBook is for information and education purposes only - so that you can understand the process and the jargon better.

THERE IS NO SUBSTITUTE FOR LEGAL ADVICE FROM AN ACCREDITED VA BENEFITS LAWYER.

There may be information is applicable to your case that is not provided in this eBook.

Downloading and reading this eBook does not make you a client of the Attig Law Firm and it does not make any of us your attorney.

If there is an attorney-client relationship between you and this Firm, we will have a written and signed document explaining that relationship - this eBook, and the receipt for this eBook, are NOT that agreement.

If you do not have a written attorney-client agreement signed by an attorney at the Attig Law Firm and by you, the Veteran, it is unreasonable to think that any attorney at the Attig Law Firm is your attorney or provided you legal advice.

It is very important to note that each and every Veteran’s claim is different. Just because the Attig Law Firm was able to secure substantial past-due benefits for one Veteran or Veteran’s spouse does not mean or imply that we will be able to do so for you. In some cases, the Attig Law Firm may not be able to secure any financial compensation or past-due benefits due to the facts or law of your particular case.

There is NO SUBSTITUTE for good legal advice. If you need legal advice, or specific guidance based on the unique facts and law of your case, contact an accredited VA Attorney immediately.

“Changing the Way Veterans Experience the VA Claims Process.”

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I will tell you this, too, just to be sure you understand: it is really easy to take a superficial reading of this eBook, try to apply the information in your case, and do serious damage.

The study of law is just that - a study. While there are cases and rules and precedent that guide us, lawyers study law for years and still don't come anywhere near developing expertise.

There are exceptions to the concepts discussed in this eBook: every portion does not apply to every type of case.

Don’t use this eBook to argue to the VA (or anyone for that matter) that you know the law.

And certainly don’t take this eBook to your DRO hearing (or to any VA or CAVC employee) and say, “Attig says it, see here.” That's just not what this eBook is intended for.

I've been at this since 2007, and I'm still learning what these decisions mean and how to use them every day.

If you are concerned about how the process or law discussed in this eBook might apply in, or affect, your case, please stop right now and contact an accredited VA Benefits attorney.

There is no substitute for legal advice from an accredited Veterans Benefits attorney.

There is also no guarantee that this eBook will help you win your claim.

If I could make that guarantee, I’d call a bookie in Vegas and pick the next 20 Superbowl winners, and retire a very wealthy man.

Nobody can predict what the VA is going to do in any claim or appeal. Nobody can guarantee an outcome in your VA claim or appeal - and if someone is giving you that guarantee, then you should run far, far away.
The VA is unpredictable, and a fickle bureaucracy. What “works” in one case may not “work” in another case - even though the 2 rely on the same facts.

This eBook seeks only to give you a general insight into the VA Claims and Appeal Process.

It is best to consult with a lawyer familiar with and accredited to handle VA Disability claims and benefits if you have specific questions about the facts and law of your particular case.