



# BOARD OF VETERANS' APPEALS

## The Purplebook

Version 1.0.2

September 2018

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## INTRODUCTION

### I. INTRODUCTION

This document was created as part of a Board-wide priority project to document and consolidate all internal guidance documents. The Purplebook is a tool to provide internal guidance to Board staff and is intended only for use by Board personnel. Board personnel are advised that if there is a conflict between The Purplebook and controlling statute, regulation, and/or caselaw, Board personnel must follow the controlling law. The Purplebook will be updated accordingly. If Board personnel believes that he or she has identified a conflict between The Purplebook and controlling law, the Board personnel is instructed to follow the procedures to report a conflict found in section XV.i.3.

The Purplebook began as a project conducted by a workgroup of Office of Veterans Law Judges and Appellate Group staff in 2013 to merge and update Board Directive 8430 and Board Handbook 8430.2, which had been in effect since 1999 and 1997, respectively. The project was expanded in scope in 2016 to encompass all Board policies and procedures, not just those listed in the Directive and Handbook.

The organizational structure was created by staff from the Office of the Chief Counsel, and it is designed to be easy to update and maintain, so that Board policies and procedures can be modified as needed to improve efficiency and effectiveness.

## II. DEFINITIONS AND COMMON ACRONYMS

As used in this publication, the following terms have these meanings:

**Acting Veterans Law Judge (AVLJ)** – Counsel or Senior Counsel designated by the Chairman to serve as an acting Veterans Law Judge (VLJ) for a period not to exceed 90 days. 38 U.S.C. § 7101(c)(1)(A).

**AOD** – Advanced on Docket. Appeals advanced on the Board’s docket under 38 C.F.R. § 20.900(c).

**AOJ** – Agency of Original Jurisdiction. The VA division or Administration (VBA, Veterans Health Administration (VHA), or National Cemetery Administration (NCA)) that made the initial determination on a claim. 38 C.F.R. § 20.3(a).

**AMO** – Appeals Management Office.

**Associate Counsel** – Board attorneys serving at grades GS-9 through GS-13.

**Bluebook** – Harvard Law Review Association, *The Bluebook: A Uniform System of Citation*.

**Board** – Board of Veterans’ Appeals.

**Caption** – The part of Board decisions containing the names of the parties and the applicable VA file number(s) that appears at, or near, the top of each page of the decision.

**CACB** - Case Administration and Control Branch.

**Caseflow** – A suite of web-based applications used by the Board for various functions, including monitoring the physical location of case files and the status of cases.

**CAVC or Court** – United States Court of Appeals for Veterans Claims.

**Chief Veterans Law Judge** – VLJ who supervises VLJs, Senior Counsel, Counsel, and Associate Counsel.

**CHR** – Combined Health Record – a brown folder with a lime green tab usually associated with appeals originating with a VHA VA Medical Center (VAMC). Often labeled “VHA Medical Appeal.”

**CREB** - Case Review and Evaluation Branch.

## DEFINITIONS AND COMMON ACRONYMS

**Counsel** – Board attorneys serving at grade GS-14. In this document this term refers to Board attorneys with the titles “Counsel” and “Associate Counsel” collectively, unless otherwise specified.

**CUE** – Clear and unmistakable error.

**DAS** – Decision Assignment Sheet.

**Deputy Vice Chairman (DVC)** – VLJs who are appointed by the Secretary upon the recommendation of the Chairman and are responsible for the leadership, supervision, and direction of the Board’s OAO. This includes the Office of the Chief Counsel.

**FOIA** – Freedom of Information Act.

**IHP** – Informal Hearing Presentation.

**IRS** – Internal Revenue Service.

**IVM** – Income Verification Match. Folders and co-pay folders from the Health Eligibility Center contain tax information provided by the IRS and/or Social Security Administration (SSA) that is obtained pursuant to a contractual agreement that allows VA to compare or “match” Federal tax documents with the information provided by claimants.

**Legacy Content Manager** – An eFolder Web Application being integrated into VBMS. Formerly known as Virtual VA.

**LRP** – The Board’s Office of Legislation, Regulations, and Policy.

**NCA** – National Cemetery Administration.

**NOA** – Notice of appeal.

**NOD** – Notice of disagreement.

**OGC** – VA’s Office of General Counsel.

**OAO** – Office of Appellate Operations. Formerly known as the Office of Veterans Law Judges.

**Personally Identifiable Information (PII)** – Any information that can be used to distinguish or trace an individual’s identity (*e.g.*, name, social security number, biometric records, etc.) either standing alone or when combined with other information that is linked or linkable to a specific individual, (*e.g.*, date and place of birth, mother’s maiden name, etc.). Information does not

## DEFINITIONS AND COMMON ACRONYMS

have to be retrieved by any specific individual or unique identifier (*i.e.*, covered by the Privacy Act) to be PII.

**Office of the Chief Counsel** – Responsible for the Board’s Knowledge Management, FOIA, and Quality Assurance offices.

**QR** – The Board’s Office of Quality Review.

**RO** – VA Regional Office.

**Senior Counsel** – Board OAO attorneys serving at grade GS-15.

**SOC** – Statement of the Case.

**SSA** – Social Security Administration.

**SSOC** – Supplemental Statement of the Case.

**Template** – A computer software word-processing device used to automate the formatting of decisions or other documents.

**VACOLS** – Veterans Appeals Control and Locator System. A computerized database used by the Board for various functions, including monitoring the physical location of case files and the status of cases. VACOLS is part of System of Records 44VA01. See November 2015 VACOLS training documents for details on VACOLS codes.

**VAMC** – VA Medical Center.

**Veterans Benefits Management System (VBMS)** – Electronic claims file system.

**VBA** – Veterans Benefits Administration.

**VHA** – Veterans Health Administration.

**Veterans Law Judge (VLJ)** – Attorney experienced in veterans law appointed by the Secretary, with approval by the President, based upon recommendation of the Chairman, who conducts hearings and disposes of appeals in a timely manner. Referred to in statutes and regulations as a Board Member.

**VSO** – Veterans Service Organization (*e.g.*, Disabled American Veterans, Texas Veterans Commission).

### III. GENERAL PROCEDURES

#### i. ELECTRONIC ROUTING

##### 1. Counsel

A. Counsel use Caseflow Queue to check out cases to their VLJ.

B. Check Out

(1) Refer to CHECK OUT TO VLJ, VIII.xiii.

C. Counsel use VACOLS to check out cases that require administrative action.

D. Admin Check Out

(1) E-mail the OVLJ Admin Action Team which is appropriate for your Chief group with the claims file number and a brief explanation of the administrative action that must be completed. **The e-mail must be encrypted.**

i. OVLJ Admin Action Team 1:  
[bvaovljadminactionteam1@va.gov](mailto:bvaovljadminactionteam1@va.gov)

ii. OVLJ Admin Action Team 2:  
[bvaovljadminactionteam2@va.gov](mailto:bvaovljadminactionteam2@va.gov)

(2) Check out the case to the OVLJ Admin Action Team which is appropriate for your Chief group by selecting it in Admin Check Out. The available options are:

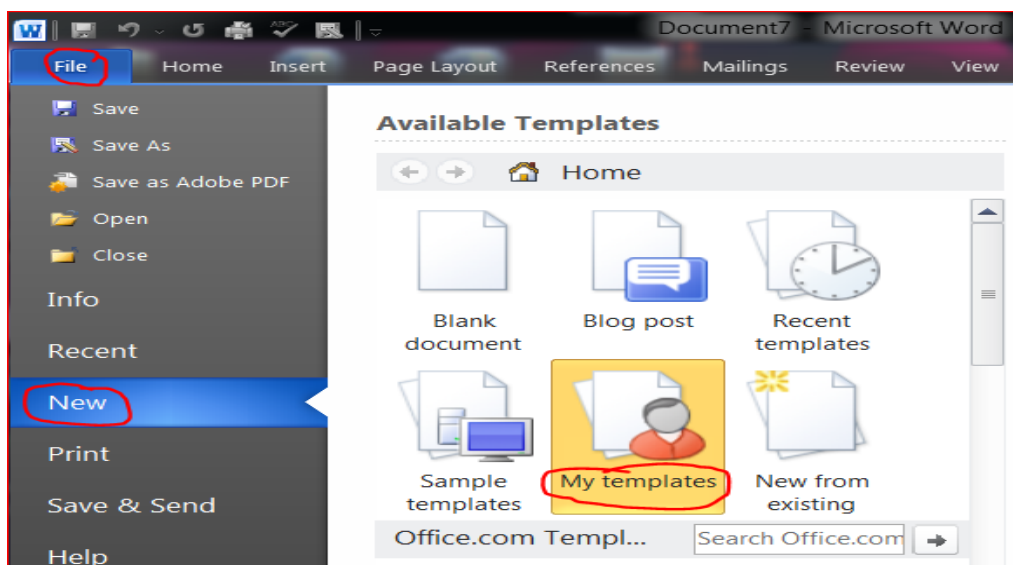
i. 11 OVLJ Admin Action Team 1

ii. 12 OVLJ Admin Action Team 2

## GENERAL PROCEDURES

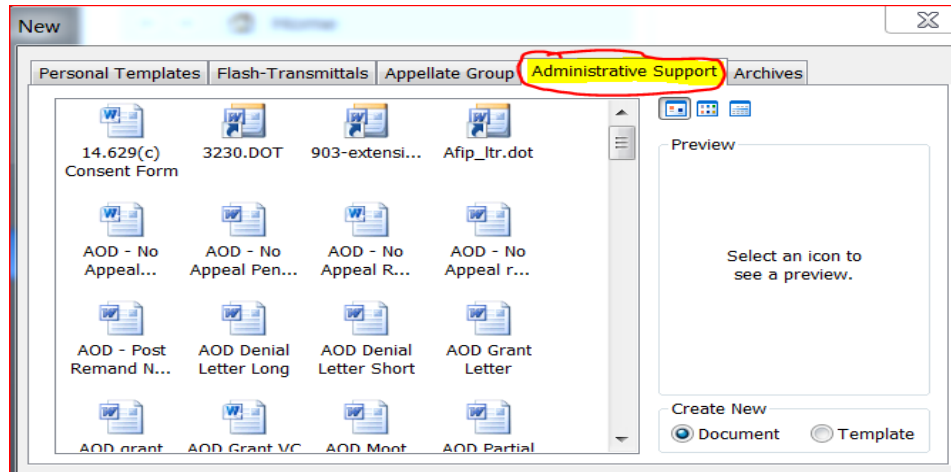
### 2. Administrative Staff

- A. The Administrative staff is comprised of two separate sections: Co-Located Administrative Staff (Co-Located) and Outside Medical Opinion (OMO) Section.
- B. Co-Located is comprised of three teams with approximately four people per team that have the responsibility of performing those administrative actions necessary to assist in rendering a final decision on an appeal. Additionally, the Co-Located staff performs the following functions: case delivery to the Veterans Law Judges, process timecards, merge/split appeals, provide customer service to the VLJ and counsels, process mail, process correspondence, request additional records to be added to the VBMS database and any special letter outside the scope of the templated format.
- C. Correspondence is found in Microsoft Word.
  - (1) Click **File** and then click **New** on the right side of the screen, the window below will appear. Click on **My Templates** as displayed below;



- (2) Click the **Administrative Support** tab. All Administrative correspondence templates are located under this tab.

## GENERAL PROCEDURES



### D. Sample Correspondence Letters

(1) **CUE Appellant Notice Letter** - This template is used to acknowledge receipt of the motion for CUE made by an appellant or representative, and advises of the docket number assigned to the claim. Hold in abeyance “24” for 30-days ONLY if there is representation. If there is no representative, charge case to “81” Case Storage.

(2) **CUE Representative Notice Letter** - This template is prepared to the accredited representative of record along with preparation of the CUE notice to the appellant letter. This acknowledges receipt of the motion for CUE to the representative, advises of the docket number assigned to the claim, and provides notice to the representative of the opportunity to review the claims folder. Hold in abeyance “24” for 30-days.

(3) **Extension Letter** - This template is used when a VLJ has ruled favorably on a motion submitted by any moving party for an extension of time to submit additional arguments or evidence made by an appellant or representative. Hold in abeyance “24” for 30/60/90 days.

- a. **Hearings – Hearing Clarification Letter** - This template is used to clarify the appellant’s hearing desires. Hold in abeyance “24” for 30-days.



## GENERAL PROCEDURES

- b. **Hearings - VLJ No Longer at Board Letter** - This template is used to inform the appellant of his or her right to a new hearing in situations where the appellant had a hearing on an issue before a VLJ that no longer serves at the Board. Hold in abeyance “24” for 30-days.
- c. **Representation - Clarification Letter** - All appellants have the right to representation. This template is used when clarification of representation is in order. Clarification typically results when the appellant cites a desire for representation or if there is a discrepancy in who is representing the appellant. Hold in abeyance “24” for 30-days.
- d. **Vacate** - A Board decision may be vacated at any time upon request of the appellant or representative, or on the Board’s own motion, if the appellant was denied due process or was allowed benefits based upon false or fraudulent evidence.
- e. **Waiver of New Evidence Letter** - This template is used when, during appellate review, an attorney determines additional evidence has been submitted with no waiver of initial agency of original jurisdiction consideration. Hold in abeyance “24” for 45-days.

### E. Handling of Mail

- (1) All mail received at the Board is evidence of record and is Federal government property.
- (2) It is ***imperative to read*** and ***accurately dispose*** of mail to prevent delays in appellate processing.
- (3) Certain types of mail require processing by designated staff members before it can be closed and associated to the claims folder or placed in a file bank (if the case is in Board custody). This mail includes:

## GENERAL PROCEDURES

- a. A Board hearing request, postponement or cancellation of an already scheduled Board hearing
- b. Evidence and Argument
- c. A request for withdrawal of an appeal
- d. A request for an extension of a requested response
- e. A power of attorney change
- f. Notice of death of an appellant
- g. Returned or undeliverable mail
- h. Congressional Inquiry
- i. Privacy Act Request

(4) In the above instances, the case must be pulled with the mail and assigned/charged to the designated staff members in the Branch Office associated with the action.

(5) The Co-Located staff must ensure that they are proactive by always maintaining a zero to low count.

(6) Overdue and outstanding mail reports are generated on a weekly basis to properly reconcile reports and advise your supervisor of any problems encountered.

### F. Outside Medical Opinion Section

(1) The Outside Medical Opinion (OMO) Section is responsible for obtaining approximately 900 medical opinions each year. Its primary function is to operate as the Board's liaison between Board staff attorneys and the medical community at large. Specifically, the OMO staff is responsible for contacting medical institutions (VA Medical Centers and Medical Universities/Schools) to obtain critical medical opinions that play a vital role for pending veterans' appeals cases. More than 80 percent of the work involves external communication. Such communication requires emailing requests for medical opinion directly to

## GENERAL PROCEDURES

the Chief of Staff/Medical Directors at VA Medical Centers as well as soliciting the Deans at various Medical schools requesting selection of qualified/board certified physician/professor to review veteran case files and provide a sound medical opinion.

### (2) Requesting an Outside Medical Opinion

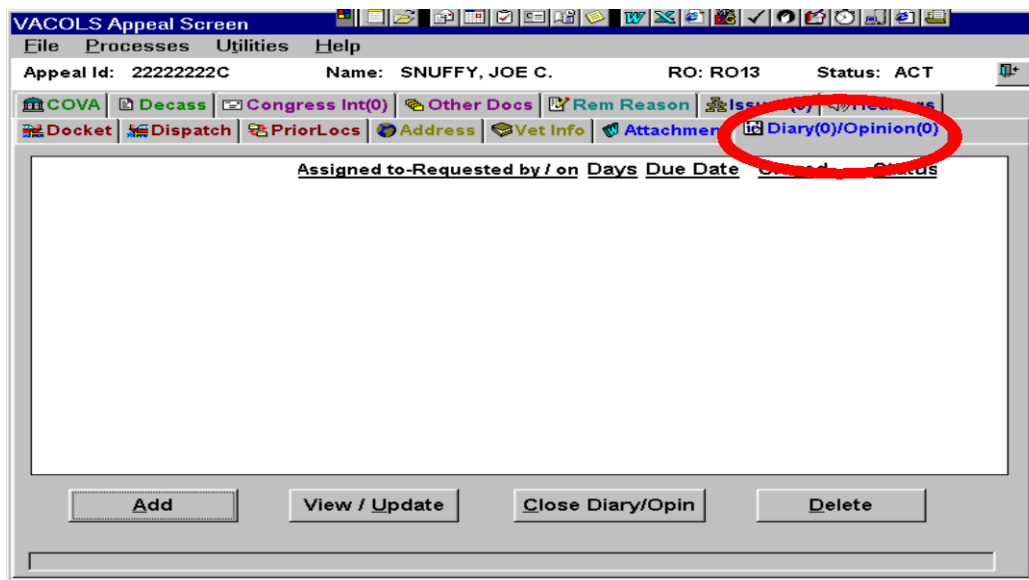
(i) When the VLJ has charged a case to the Legal Assistant co-located in the Decision Team regarding a need for an OMO, the employee is to first route and charge the case to the Deputy Vice Chairman's office point of contact for these types of cases for review by an in-house medical advisor.

(ii) When the DVC point of contact has indicated completion of that office's action, the case is to be charged back to the requesting VLJ.

(iii) Any necessary changes are made to the OMO request by the Board Member or Counsel.

(iv) The administrative staff employee is then responsible for entering specific information in the DIARY tab of VACOLS.

(v) Access the DIARY tab to add a diary as displayed below:



## GENERAL PROCEDURES

(vi) When the ADD button is enabled, the following diary screen is displayed:

Diary / Opinion Detail

Assigned to/  
Requested by:  Search Code:

Requested Activity:

Response Notes:

Assigned/  
Requested: 01/13/00 Days: 0 (Default if left blank)

Due: 00/00/00 Status: P - Pending

Closed: 00/00/00 Assigned by: JKLEIN

Update Print Exit

(vii) Enter the requesting VLI's VACOLS moniker in the ASSIGNED TO/REQUESTED BY field. Use the SEARCH button if needed.

(viii) From the CODE selections, use the drop-down box to click on the appropriate OMO type requested (1-IME, 2-VHA or 3-AFIP.)

**DO NOT ENTER THE NUMERICAL/ALPHA CODES AS THESE CODES ARE FOR ACTIONS PURSUASNT TO THE INITIAL REQUEST.**

(ix) Click the UPDATE button to store the information to VACOLS.

(x) Charge the case to (20-Opinion Request) and route the case accordingly via a routing/transmittal slip bearing your name and telephone extension).

Diary / Opinion Detail

Assigned to/ Requested by: JPERELES Search Code: 1 - IME Request

Requested Activity:

Response Notes:

Assigned/ Requested: 01/18/02 Days: 90 (Default if left blank)

Due: 00/00/00 Status: P - Pending

Closed: 00/00/00 Assigned by: JKLEIN

Update Print Exit

(x) Charge the case to (20-Opinion Request) and route the case accordingly via a routing/transmittal slip bearing your name and telephone extension).

(xi) Place the case on the Decision Team's outgoing table for delivery.

(xii) Do not attach the un-templated OMO request to VACOLS.

### 3. VLJs

- A. Refer to ASSIGNMENT OF CASES TO COUNSEL, VII.ii.
- B. Refer to CASE SIGNING AND VLJ PROCEDURES, X.
- C. Use VACOLS for Admin Check Out and refer to the instructions above for Counsel, 1.C.

## IV. DOCKETING APPEALS (INTAKE)

### i. GENERAL PROCESS

The Board renders the final agency decision on an appeal to the Secretary. The AOJs render initial administrative and rating decisions and preliminary appellate decisions in the form of SOC and SSOCs. When an AOJ concludes that due process has been satisfied and the appeal has not been resolved, the AOJ certifies that appeal to the Board. Although certification does not confer or deprive the Board of jurisdiction, certification signals the Board that the appeal is ripe for final agency review. This section describes the process by which a certified appeal is placed on the Board's docket.

### ii. VACOLS

#### 1. Importance

As required by the Privacy Act of 1974, 5 U.S.C. § 552a(e), VA maintains the system of records currently entitled "Veterans Appellate Records System—VA" (44VA01) through use of an electronic database known as the Veterans Appeals Control and Locator System (VACOLS). *See* 40 FR 38,095 (Aug. 26, 1975); *see also* 53 FR 46,741-03 (Nov. 18, 1988); 56 FR 15,663-03 (Apr. 17, 1991), 63 FR 37,941-02 (Jul. 14, 1998), 66 FR 47,725-02 (Sep. 13, 2001); 70 FR 6,079-02, (Feb. 4, 2005); 78 FR 66803-02 (Nov. 6, 2013). VACOLS can include electronically attached copies of Board decisions and remands; personal information on appellants and contesting parties including names, addresses, identifying numbers, phone numbers, service dates and issues on appeal; names, addresses and phone numbers of representatives, powers of attorney and attorney fee agreements; information on and dates of procedural steps taken in claims; records and electronic copies of correspondence concerning appeals; diary entries, notations of mail received, information requests; transcripts of hearings; tracking information as to file location and employee productivity information. Records in this system, in VACOLS, and those collected prior to VACOLS' use as a repository, are retained indefinitely as Category B Vital Records unless otherwise specifically noted in the System of Record.

Access to VACOLS is strictly limited to reflect the need individual employees have for the different records in the system. Maintenance of the integrity of data within the system is the responsibility of the individual employees in the course of their work.

## **2. Correcting Erroneous Docket Numbers and Names**

Upon review of a claims file, Board personnel may discover that VACOLS entries for docket numbers or claimants' names are incorrect. To correct such errors, send an encrypted e-mail to your OAO Admin Action Team, noting the claims file number and the error to be corrected.

### **iii. APPEALS CERTIFIED BY AN AOJ**

Most appeals docketed at the Board arrive through certification by an AOJ. Original appeals (perfected appeals that have not been considered by the Board) and post-remands (previously remanded by the Board) are certified using the Caseflow certification tool. This tool updates the VACOLS database and ensures that certain jurisdictional documents are contained within the electronic record. An original appeal will appear in the VACOLS database in status "ADV (CERT)" with location 77. An appeal returning from prior remand by the Board will appear in the VACOLS database in status "REM" in location 96. Prior remands in status "REM" but locations other than 96 are not ready for docketing at the Board.

Appeals are "activated" and undergo administrative "case review" in docket order, oldest to newest. The Board's docket numbers are assigned by the date on which the substantive appeal is received by VA. This equalizes the docket by age across the many AOJs. Docket numbers are assigned to original appeals during the "activation" process automatically by the VACOLS database application.

Docket order is not maintained in two situations: where an appeal has been advanced on docket and where a case has been remanded by CAVC. The criteria for advancing a case on the Board's docket are discussed in Hearing Docket and AOD, V.i.1. Based on these principles, appeal docketing is prioritized first by appeals remanded by CAVC, then those advanced on the Board's docket, then those with the oldest docket number.

Activation and case review of certified appeals is performed by the Case Review and Evaluation Branch (CREB) of the Case Management Division.

## **1. Intake Standard Operating Procedures**

A. For RAMP appeals, see XVII.ii.4.

## DOCKETING APPEALS (INTAKE)

### iv. CAVC REMAND PROCESSING

Litigation Support is exclusively responsible for activating cases that have been returned from the Court.

#### 1. **Activation**

When a memorandum decision or order granting a joint motion for remand is issued by the Court, the Board adds a “CAV 77” record in VACOLS that is populated from the underlying Board decision; the status of the record is ADV. The “CAVC” tab is populated with relevant details from the Court case and the “Issues” tab is populated with the issues adjudicated at the Court.

Once Judgment has issued, Litigation Support conducts a “case review” to verify the proper power of attorney (POA) and address of the Veteran, then “activates” the appeal and merges it with any other active appeals or certified appeals without hearing requests per guidance issued herein on merging. *See IV.v.5.* VACOLS should now reflect an “ACT” appeal in Court Remand status and the appeal will be monitored for an appeal to the United States Court of Appeals for the Federal Circuit (Federal Circuit) or Mandate from the Court. Information regarding the date and issuance of Mandate and/or an appeal to the Federal Circuit is also contained in the CAVC tab. The Court’s Mandate is tracked with an “M” diary, and a Federal Circuit appeal is tracked with a “K” diary.

#### 2. **Post-Mandate Letters**

The Board may not issue any letters or proceed to adjudicate an appeal until the Court’s Mandate has issued.

##### A. POA Clarification

(1) If a discrepancy with the POA is identified during the aforementioned “case review” process or has otherwise been discovered while processing the Court remand, Litigation Support will issue a clarification letter to the Veteran and establish a corresponding VACOLS diary. Upon receipt of a response from the Veteran or expiration of the diary, VACOLS and SHARE are updated with the proper POA information. A 90-day letter may not be issued when representation is unclear.



## DOCKETING APPEALS (INTAKE)

### B. 90-Day Letters

(1) Once Mandate has issued from the Court and POA is clear, Litigation Support issues a 90-day letter to the Veteran and his/her representative, which is uploaded in VACOLS and VBMS. An “F” diary is added in VACOLS to ensure the case is held in Litigation Support for the full 90 days, barring an explicit waiver thereof from the Veteran or his/her representative. *See Clark v. O’Rourke*. When an appellant is represented by an attorney or agent, such a waiver must come from the representative.

(2) After the expiration of the “F” diary, the case will be routed by Litigation Support to either the in-house VSO or for assignment to a VLJ as appropriate.

#### (3) Exceptions to Issuance of 90-Day Letters

##### a. Straight Reversal by the Court

(i) If the Court’s order directs the Board to grant benefits, leaving no discretion to the Board, a 90-day letter need not be issued; the appeal will be routed for a decision once Mandate has issued.

##### b. Death of the Veteran without Substitution

(ii) If the Veteran dies during the pendency of an appeal to the Court and no party is substituted-in, no 90-day letter shall be issued; the appeal will be routed for issuance of a death dismissal once Mandate has issued.

### C. Hearing Clarification Letters

(1) If the VLJ who conducted a hearing is no longer at the Board and the Veteran has not yet been offered an opportunity to appear for another hearing, Litigation Support will issue a “Retired Judge” letter to the Veteran and establish proper diary controls in VACOLS. The hearing diary and the “F” diary may run concurrently.

## DOCKETING APPEALS (INTAKE)

(2) Similarly, if the Chairman held a hearing in a post-CAVC case, Litigation Support will issue a clarification letter advising the Veteran of his/her opportunity to appear before the other members of the panel. The hearing diary and the “F” diary may run concurrently.

### 3. Common Pitfalls and Caveats in Processing Post-CAVC Appeals

#### A. 90-Day Hold

First-generation post-CAVC cases must be held for the full 90-days from the issuance of a 90-day letter, absent explicit waiver of the period by the Veteran or his/her representative.

To determine whether the period has run in any first- generation Court remand, review the “Diary/Opinion” tab and verify that the “F” diary has been closed. If it has not been closed, the diary will be “Pending” and the case should not move forward. Instead, contact BVA Litigation Support to determine if the case should be returned to Litigation Support for the remainder of the 90-day period. If the “F” diary is closed, then the case may proceed unless you happen to notice a problem with the calculation of the 90-day hold period.

#### B. Substitution at the Court

If a Veteran dies during the pendency of his/her appeal to the Court and the Court allows for a substitution from a person deemed appropriate by VA, such substitution is binding on the Board. The post-CAVC decision should be captioned for the substituted party and all notice should be sent to him/her and his/her POA.

#### C. Merging

If VACOLS reflects a Court Remand CAV 77 record or an ACT Court Remand record, please contact BVA Litigation Support to determine if the appeals can be merged per guidance issued herein on merging. Please be advised that even if you have already begun to work a non-post-CAVC appeal stream, and a post-CAVC stream is identified, the active appeal records will be merged if merging is mandated herein. See v.5. Checking VACOLS prior to beginning your case

## DOCKETING APPEALS (INTAKE)

review is the best way to determine if a post-CAVC stream exists for potential adjudication.

### D. Extension Requests

If a representative or Veteran requests an extension of time in which to submit additional evidence or argument, Litigation Support will process the request. If a second request is received thereafter or if an extension request is received after the expiration of the “F” diary, those extension requests will be handled by the co-located teams and/or VLJS with the assistance of Litigation Support.

### E. New POA

If a new POA is appointed after the issuance of the 90-day letter but before expiration of the corresponding “F” diary, Litigation Support will issue a new 90-day letter and begin a new “F” diary from the date of issuance of the new 90-day letter.

IF A POA CHANGE OCCURS AFTER THE EXPIRATION OF AN “F” DIARY AND PRIOR TO ADJUDICATION OF THE APPEAL, PLEASE CONTACT BVA LITIGATION SUPPORT TO DETERMINE WHETHER A NEW 90-DAY LETTER NEEDS TO BE ISSUED

## v. SINGLE/SEPARATE DECISION POLICY

### 1. Overview

All issues over which the Board has jurisdiction in an individual case will be addressed in a single document that disposes of issues ripe for disposition and remands any issues requiring development or other appropriate action by the AOJ. Multiple docket numbers and requests for new or additional hearings do not warrant separate decisions.

### 2. Outside Medical Opinion (OMO) Pending

No decision may be issued while a request for an OMO is pending, even if the decision constitutes a complete grant of all issues addressed therein.

### 3. Relationship to 38 C.F.R. § 19.9

Nothing in this statement of policy should be construed as requiring a remand where a remand is not required by 38 C.F.R. § 19.9.

### 4. Exceptions to General Policy

Separate Board decisions should only be prepared in the following instances (formerly codified in Board Handbook 8430, Paragraph 14). Any other exception must be approved by the Office of the Chief Counsel.

#### A. Two or More AOJS

Matters arising out of two or more AOJs will be addressed in separate decisions. There are only three AOJs for the purpose of single/separate decisions: VBA, VHA, and NCA. This is because AOJ is defined by the regulations as “the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.” 38 C.F.R. § 20.3(a).

The focus is on which AOJ made the initial determination, not on which facility docketed the appeal or certified the record to the Board. For example, appeals of issues decided by a VAMC (*e.g.*, unauthorized medical expense reimbursement) should be addressed in a separate decision from any VBA issues (*e.g.*, service connection or increased rating) even though an RO may have processed the appeal for the VAMC. This is because the VAMC is part of VHA, while the RO is part of VBA. This exception neither requires nor permits separate decisions based on divisions of decision making responsibility *within* an AOJ.

#### B. Insurance Cases

Because there are forum choices for appealing Board decisions in insurance cases that are not available in other types of cases, insurance issues must always be addressed in Board decisions separate from decisions on other issues. *See* 38 U.S.C. § 1984.

#### C. Representative’s Fee and Expense Cases

Representative’s fee and/or expense issues must always be addressed in Board decisions separate from decisions on other issues because of their potentially

## DOCKETING APPEALS (INTAKE)

adversarial nature. These cases include appeals of rulings by the OGC on motions for review of fee agreements under 38 C.F.R. § 14.636(i).

### D. Board CUE

The Board exercises original jurisdiction where reversal or revision of a previous Board decision due to CUE is requested. 38 U.S.C. § 7111(e). The motion of whether a prior Board decision involves CUE will be addressed in a decision separate from decisions on other issues.

### E. When a Full Text Decision Might Be Injurious to Health

A separate abbreviated decision document, in addition to a full-text decision, will be necessary where release of a full-text decision might be injurious to the recipient's health. *See* 38 U.S.C. § 5701(b)(1); 38 C.F.R. § 20.1301(a).

### F. Supplemental Decisions

### G. Simultaneously Contested Claims

"Appellate issues that do not involve all of the contesting parties will be addressed in one or more separate written decisions, remands, or orders that will be furnished only to the appellants concerned and their representatives, if any." 38 C.F.R. § 19.8. All parties must receive identical decisions as to contested issues. *See* SIMULTANEOUSLY CONTESTED CLAIMS, IV.vii.

### H. Reconsideration

Address issues before the Board on reconsideration in a decision separate from any decision addressing issues not before the Board on reconsideration.

### I. Hearings by Different VLJs, VII.i.8.

### J. Issues Dependent on Completely Different Law and Facts

### K. Because they differ from other issues so greatly, separate decisions shall generally be issued on the following issues in order to produce more understandable decision documents:

#### a. Loan guaranty.

## DOCKETING APPEALS (INTAKE)

- b. Overpayment.
- c. Education/vocational rehabilitation and training.

Exception: basic entitlement to Dependents' Educational Assistance (an ancillary status issue frequently appended to total disability rating based on individual unemployability due to service-connected disabilities (TDIU) decisions by AOJs) may be combined in a single decision.

- d. Corpus and income.

Exception: When this is a component of an overpayment case, the issues may be combined in a single decision.

- e. Status of legal relationships under 38 C.F.R. §§ 3.50-60.
- f. Renouncement of benefits
- g. Recoupment of severance or separation pay.
- h. Offset of benefits due to an award under the Federal Tort Claims Act.

### L. Combinations

Unless one of the other exceptions applies, all issues of the same type should be combined in one decision. For example, all loan guarantee issues will be addressed in the same decision unless a second exception also applies that requires them to be separated.

### M. Different Representatives

If different representatives are appointed for different issues, issue a separate decision for the issues addressed by each representative.

## DOCKETING APPEALS (INTAKE)

### 5. Merging Multiple Docket Numbers into a Single Docket Number

Merging is the act of combining two separate VACOLS appeal streams in their entirety (full merge), or in part (partial merge).

#### A. VACOLS appeal stream

When an appellant files an NOD to a rating action, an appeal stream (for all issues listed in that NOD) is started in VACOLS. See screenshot immediately below.

Appeal Id	Name	Status	Dec Date	Disp RO	Cur Loc	A E P	Action
2222222C	SNUFFY JOE	L ADV (Cert)			RO13 99		1 - Original

#### B. Issues in a VACOLS appeal stream

In order to identify which issues are in a particular appeal stream, you should double click on the appeal stream. After you double click, the VACOLS Docket Tab will open and you will see the other Tabs listed across the top of the VACOLS Appeal Stream window – click on the Issues Tab, as indicated by the red arrow in the screenshot immediately below.

Recvd BVA: 00/00/00 RO: 313 - Baltimore 2434410D2

The Issues Tab will appear similar to the example below. If an appeal has more than six issues, you will need to scroll within the tab to see all of them.

## DOCKETING APPEALS (INTAKE)

Program	Issue	Levels 1-3	Disposition / Date
1 Compensation	Service connection	All Others 9411 Post-traumatic stress disc	
2 Compensation Note: initial rating	Increased rating	Schedular & Extraschedular 8100 Migraine	

### C. Two Types Of Merging

- (1) Full: Moving all issues from one appeal stream into a separate appeal stream such that one appeal stream becomes inactive.
- (2) Partial: Moving one or more issues, but not all issues, from one appeal stream into a separate appeal stream; both appeal streams remain active.

### D. Adding Issues Without Merging

There are three common scenarios in which issues can be added to an appeal without a merge.

- (1) If you are populating the issues in a first generation CAVC remand (i.e., an appeal in which the Board made a decision that was appealed to CAVC and the matter has just returned to the Board from CAVC), you are not merging and you can add the issue by yourself and proceed.
- (2) If you have identified an issue that is properly before the Board, but is not currently listed in any other open (ADV, ACT, or REM status) appeal stream in VACOLS, you are not merging and you can add the issue by yourself and proceed.
- (3) If you have identified an issue in an ADV record which requires remand due to *Manlincon v. West*, 12 Vet. App. 238, 240-41 (1999), you may simply add this issue to the appeal stream you are working and proceed, without taking any action to the ADV appeal stream.



## DOCKETING APPEALS (INTAKE)

Upon remand, the AOJ will work the Manlincon action in the appropriate ADV appeal stream.

### E. Merging Inappropriate

If you are considering requesting a merge of issues from an appeal stream that has not yet been certified to the Board, see Issues that are perfected but not certified, VIII.ix.3. While the certification of issues on a VA Form 8 does not confer/deprive the Board of jurisdiction, it is a signal that the VBA has completed its action regarding the certified issues. However, if it is necessary to take jurisdiction of non-certified issues, judicial discretion may be exercised to do so (e.g., a full grant of the benefits sought). If you see that an issue has, or multiple issues have, been perfected, but not yet certified to the Board, then include a brief explanatory statement in the Introduction acknowledging the issue(s) and stating whether or not you are exercising judicial discretion to take jurisdiction.

Generally, please ensure that you are not requesting a merge of appeals/issues that:

- Originate from different AOJs;

- Involve hearings held by different judges;

- Include a motion for CUE with respect to a prior Board decision;

- Include a motion for reconsideration of a prior Board decision;

- Involve different representatives for different issues;

- Are based on completely different law and facts; or

- Involve any other circumstance addressed in Exceptions to General Policy, IV.v.4.

### F. Requesting A Partial Merge

Look in VACOLS and identify the appeal stream that contains the issue (or issues) that you want to merge into the appeal stream that is currently before you. Remember that if you want to merge all of the issues from a separate appeal stream into the appeal stream

## DOCKETING APPEALS (INTAKE)

that you are working on, you should refer to the instructions pertaining to full merges. If you are requesting a merge involving a first generation CAVC remand (an appeal in which the Board made a decision that was appealed to CAVC and the matter has just returned to the Board from CAVC), you must contact the Litigation Support Branch (BVALitSupport@mail.va.gov) before proceeding.

Send an e-mail to BVAMergeRequest@va.gov stating: I require a PARTIAL merge of <identify issue(s)> from <identify the VACOLS appeal stream in which the issues currently appear> into <identify the appeal stream currently before you>.

### G. Requesting A Full Merge

Look in VACOLS and identify the appeal streams that you want to merge. Ensure that they are both in ACT (active) status.

If either appeal stream is in ADV status, but VACOLS reflects that a VA Form 9 has been filed, or in REM status, and remand directives appear to have been completed, you must e-mail BVACSBInquiry@va.gov to request activation; only active appeals can be merged. After activation, ensure that both appeal streams are charged to you.

If either appeal stream is in ADV status and no VA Form 9 has been filed, you must add the following sentence to your request: “The <identify the secondary VACOLS appeal stream> has not yet been activated – since no VA Form 9 has been filed, please activate this record prior to merging.”

After ensuring that both of the appeal streams are in ACT status (unless you are dealing with one ADV appeal in which no VA Form 9 has been filed), you need to choose which record will be primary (this record’s docket number will be preserved; it should be the record with the older docket number) and which record will be secondary (any appeal stream without a VA Form 9 has to be secondary). If either appeal stream is a CAVC remand, of any generation, that appeal stream (the CAVC remand record) MUST be primary to preserve special VACOLS controls. If you are requesting a

## DOCKETING APPEALS (INTAKE)

merge involving a first generation CAVC remand (an appeal in which the Board made a decision that was appealed to CAVC and the matter has just returned to the Board from CAVC), you must contact the Litigation Support Branch (BVALitSupport@mail.va.gov) before proceeding.

Send an e-mail to [BVAMergeRequest@va.gov](mailto:BVAMergeRequest@va.gov) stating: I require a FULL merge of <identify the secondary VACOLS appeal stream (docket number will not be preserved)> into <identify the primary VACOLS appeal stream (docket number will be preserved)>.

### H. After Receiving An E-mail That Merge Is Complete

Review VACOLS for correctness, noting the guidelines above. If you notice any error, immediately send a second e-mail to [BVAMergeRequest@va.gov](mailto:BVAMergeRequest@va.gov) and request remedial action.

## vi. RESTORATION OF PAPER FILES

If a physical claims file is damaged or otherwise in need of structural restoration, send an e-mail to [BVAClaimFileRestoration@va.gov](mailto:BVAClaimFileRestoration@va.gov) stating that you have a file that needs restoration and listing your office number.

Attach a Claim File Restoration Form to the top of the file, indicating the repair/restoration work that you are requesting. Charge the file to Case Restoration, VACOLS location 17.

## vii. SIMULTANEOUSLY CONTESTED CLAIMS

### 1. Recognizing a Simultaneously Contested Claim

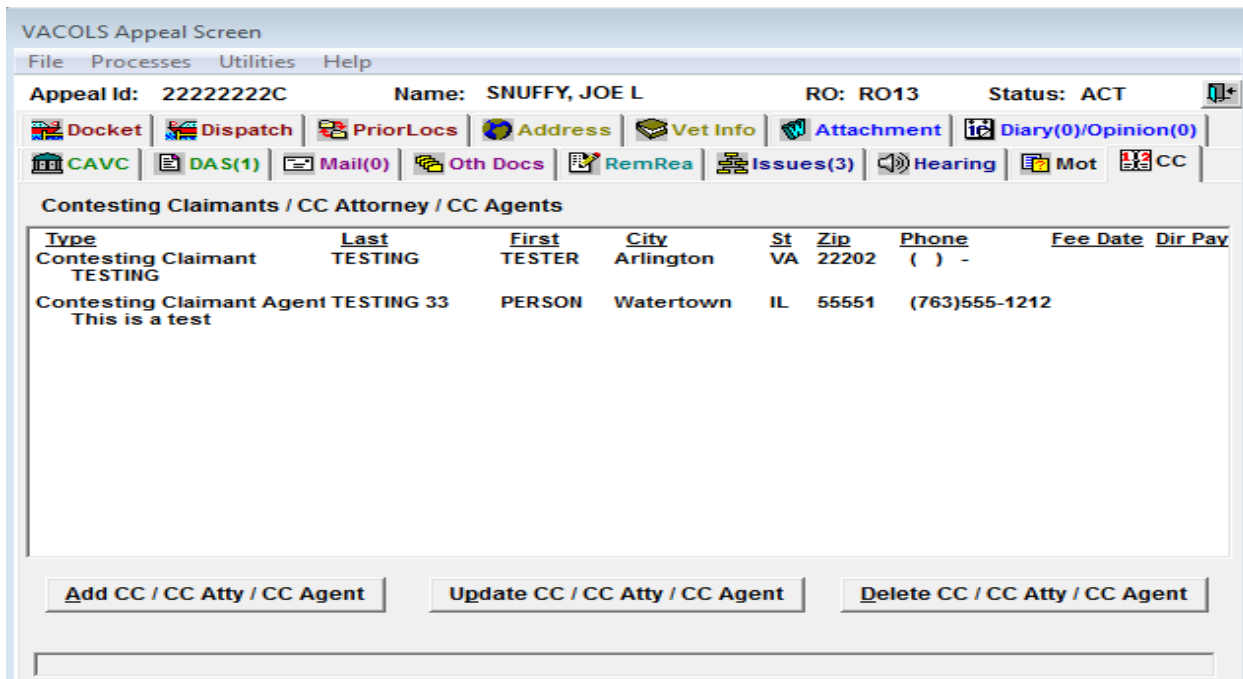
When entering the claims file number in VACOLS in a simultaneously contested claim, a pop-up will occur indicating that the case involves a contested claim.

## DOCKETING APPEALS (INTAKE)



### 2. Accuracy of Information

Click on the active appeal, and then click on the “CC” tab in VACOLS for the contesting claimant’s information, as shown below.



## DOCKETING APPEALS (INTAKE)

Click on each name to ensure the accuracy of the (1) name, (2) address, and (3) representative, if any. The name below is a sample of a contesting claimant.

The screenshot shows a web form titled "Contesting Claimant / CC Attorney / CC Agent". At the top, there are two input fields: "Appeal Id:" with the value "22222222C" and "Veteran Name:" with the value "SNUFFY, JOE". Below these, the "Entry Type:" is set to "Contesting Claimant" in a dropdown menu. To the right, a "Fee Agreement" box contains fields for "Agreement Date:", "Direct Pay:", "Received:", "FA Acknowledged:", "Last Doc:", and "Dispatched:". The main form area has a "Pick" button and several input fields: "Last" (value: TESTING), "First" (value: TESTER), "MI" (empty), and "Suffix" (empty). Below these is a "Rep:" dropdown menu set to "B - AmVets". The "Address:" field contains "1234 Main Street". The "City/St/Zip:" fields contain "Arlington", "VA", and "22202". The "Phone:" field contains "( ) -". The "Notes:" field contains "TESTING". At the bottom right, it says "Last Modified by RO13 3/25/2015".

In this sample case, the other contesting claimant is an agent, and agents and attorneys do not have a line entry for a representative. Ensure the accuracy of the (1) name and (2) address.

The screenshot shows the same web form, but with "Contesting Claimant Agent" selected in the "Entry Type:" dropdown. The "Fee Agreement" box is the same. The "Last" field now contains "TESTING 33", the "First" field contains "PERSON", and the "MI" field contains "A". The "Address:" field contains "123 Main St". The "City/St/Zip:" fields contain "Watertown", "IL", and "55551". The "Phone:" field contains "(763)555-1212". The "Notes:" field contains "This is a test". At the bottom right, it says "Last Modified by RO13 3/31/2015".

## PRE-DECISIONAL DEVELOPMENT

If there are any inaccuracies, make any necessary changes to the information in the “CC” tab.

### 3. **Appeal Receipt Notification Letter**

A Board appeal receipt notification letter (where the Board informs the appellant that the case has been received at the Board) must be sent to each contesting claimant and representative, if any. Each letter should be uploaded to VBMS for proof of issuance of the letter.

## V. **PRE-DECISIONAL DEVELOPMENT**

### i. **HEARINGS**

#### 1. **Hearing Docket and AOD**

- A. The Board schedules hearings based on docket order. Docket order is not maintained in two situations: where an appeal has been advanced on the docket (AOD) and where a case has been remanded by the Court. Based on these principles, appeal docketing is prioritized first by appeals remanded by CAVC, then those advanced on the Board docket, then those with the oldest docket number.
- B. If the Board receives an AOD motion for a case that is in ADV (Cert) status with a pending hearing request and the request is granted, the AOD team will send a request to BVA CSB Inquiry to activate the appeal and then route it to 58 for scheduling of the requested hearing.
- C. If the Board receives an AOD motion for a case that is in ADV (Cert) status with a pending hearing request and the request is denied, then the AOD team will address any request for an expedited hearing in the AOD denial letter.

#### 2. **Hearings of Record**

- A. Selection of VLJ with Formal Hearing Requests
  - (1) Central Office and Video Hearing Requests

## PRE-DECISIONAL DEVELOPMENT

Subject to case assignment policies, supervising DVCs, or their designees, are responsible for assigning VLJs to conduct Washington, D.C., Central Office hearings and Video Conference hearings, based upon hearing schedules provided by the OAO Hearing Management Branch.

### (2) Travel Board Hearings Conducted at an AOJ

The Vice Chairman, acting on behalf of the Chairman, shall assign VLJ(s) to conduct hearings at VA field facilities as required. Subject to 38 U.S.C. § 7103(b)(2) in reconsideration cases, the VLJ(s) so assigned will conduct the hearing and will be responsible for (or when a panel is assigned will participate in) making the determination in the proceeding, even though the case may have been remanded by other VLJs prior to the hearing at the AOJ. 38 U.S.C. § 7107(c).

### 3. Informal Hearing Presentations

### 4. Specialty Hearings

#### A. Incarcerated Appellants

For incarcerated appellants, the duty to assist requires that VA tailor assistance to the peculiar circumstances of confinement. *Wood v. Derwinski*, 1 Vet. App. 190, 193 (1991). However, VA does not have any authority to require a prison to cooperate with the appellant's request for a hearing.

The duty to assist includes requests for a Board hearing. The appellant should be sent a letter informing him or her about options for holding a hearing. Contact the Specialty Hearings Coordinator of the OAO Hearing Management Branch for assistance scheduling hearings for incarcerated appellants.

#### B. Simultaneously Contested Claims

If a hearing is scheduled for any party to a simultaneously contested claim, the other contesting claimant(s) and their representatives, if any, must be

## PRE-DECISIONAL DEVELOPMENT

notified and afforded an opportunity to be present. 38 C.F.R. § 20.713. See SIMULTANEOUSLY CONTESTED CLAIMS, IV.vii.

### C. Incompetent Appellants

These appellants have been found “incompetent” to handle funds by VA and have been assigned a fiduciary by VA.

### D. Due Process

Due Process considerations include requests for a Board hearing and VA examinations. For incompetent appellants, due process also requires that VA tailor assistance to the peculiar circumstances, if feasible. However, VA does not have authority to require a nursing home or other health care facility to cooperate with the appellant’s request for a hearing or VA’s request to perform a medical examination of the appellant.

### E. Rights of Incompetent Appellants

The appellant may file a claim, submit statements, and appeal his or her decision without permission of his or her fiduciary.

### F. Limitations on Rights of Fiduciaries of Incompetent Appellants

Fiduciaries of incompetent dependents have most of the same rights as appellants in bringing claims before VA, including filing claims, notices of disagreement, substantive appeals, and post-decisional motions. However, if an incompetent appellant has been prosecuting his or her own claim, the ability of a fiduciary to withdraw that claim may be limited. See *DeLisio v. Shinseki*, 25 Vet. App. 45, 57 (2011) (finding that the withdrawal of an appeal must be “explicit, unambiguous, and done with a full understanding of the consequences of such action on the part of the claimant”).

### G. Caption

Decisions dealing with incompetent appellants do not utilize the standard caption format.



## 5. One-Touch Hearing Cases

### A. Overview and Eligibility

- B. When a VLJ holds a hearing in a case that is within the Board's docket range and the outcome of the appeal is immediately clear, the VLJ can activate the case under the 'One Touch' program. This case will be transferred directly to the VLJ without waiting for the transcript. The case can then be assigned to an attorney, drafted, signed, and dispatched expeditiously. The transcript will later be obtained and uploaded to the electronic claims file.

### C. Activation for 'One Touch'

After determining a case is eligible for the 'One Touch' program, the VLJ should type "ONE TOUCH" in the notes section of the appellant's appeal, and send an email to BVACSBINQUIRY and the BVAHearingTeamHotline. This email should identify: (1) the appellant's name, (2) the file number, and (3) the appeal stream that is to be activated pursuant to the 'One Touch' initiative.

Once the case is activated it will be assigned to the VLJ who held the hearing for assignment to the drafting attorney pursuant to the ordinary process outlined in VII.ii Assignment of Cases to Counsel. The VLJ should inform the attorney of the desired disposition.

### D. Check-out

The VLJ should check the box indicating this case was processed according to the 'One-Touch' program.

## 6. CaseFlow hearing procedures

- A. General: VLJs are expected to use the CaseFlow Hearing Prep tool when preparing for and conducting hearings. It allows judges to view their upcoming hearings, view relevant appellant information, take notes before, during, and after a hearing as well as review documents in a Veteran's claim folder.

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- B. Procedures: <https://appeals.cf.ds.va.gov/hearings/dockets>. A list of upcoming and past hearing days (“Your Hearing Days”) are displayed after log in.
- C. Preparing for Hearings: Selection of a hearing day by date will open the docket for that day; select the file number to open a worksheet for preparation and use during and after the hearing. Use the Prep checkbox to track which cases have been reviewed.
- D. Conducting Hearings: On the Docket page, indicate the appropriate actions taken or to be taken, whether a transcript has been requested, and note relevant information, to include whether One Touch Hearing procedures are to be activated.
- E. Past Hearings: Edits to worksheets or additional notes may be entered by selecting the Past tab. Past hearings are currently accessible in Hearing Prep for one year, after which they are accessible only through Caseflow Queue/Case Details.

### ii. MOTIONS

#### 1. Definitions

- A. A pre-decisional motion is a request made by an appellant and/or his or her representative that the Board issue an interlocutory ruling on a preliminary matter, prior to final adjudication.
- B. An interlocutory ruling is an interim or a temporary ruling not constituting a final resolution of the whole controversy. A VLJ may occasionally find it necessary to issue an interlocutory ruling on a preliminary matter

#### 2. Interlocutory Ruling

- A. Examples Include

##### (1) Rulings on Motions

- a. A ruling on a motion for subpoena under the provisions of 38 C.F.R. § 20.711(a).

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- b. A ruling on a motion to quash or modify a subpoena under 38 C.F.R. § 20.711(h).
- c. A ruling on a motion for a personal hearing in connection with a Board CUE challenger under 38 C.F.R. § 20.1405(c).
- d. A ruling on a motion by a representative to permit the withdrawal of representation after certification under 38 C.F.R. § 20.608(b)(2).

### (2) Rulings on other requests

- a. A ruling on a request to have changes made to a hearing transcript.
- b. A ruling on a request by an appellant for a change in representation.
- c. A ruling on a request for a second personal hearing.
- d. A ruling on a request for a personal hearing following the expiration of 90 days after notification of certification and transfer of records.
- e. A ruling on a request for submission of additional evidence following the expiration of 90 days after notification of certification and transfer of records.

### 3. Templates

- A. Interlocutory orders involving subpoenas  
“Interlocutory Order.dot”
- B. Request for a personal hearing in connection with a Board CUE challenge  
“CUE Interlocutory Order.dot”

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- C. Request of representative to withdraw after certification
- D. Request for extension of time  
“Extension.dot”
- E. Untimely submission of additional evidence  
“Waiver Timeliness.dot”

### 4. AOD

Appeals must be considered in docket order, but may be advanced if sufficient cause is shown, including if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, the advanced age of the appellant (75 or over), or if other sufficient cause is shown. 38 C.F.R. § 20.900(c).

- A. Processing of AOD Motions
- B. *Sua Sponte* AOD Rulings

Upon notification that an appellant is 75 years or older, the Board will issue a sua sponte order granting AOD status to the appeal.

- C. Pre-Activation (ADV (cert) status) AOD Motion Rulings

If the AOD request is granted, a request will be sent to BVA CSB Inquiry with instructions to activate and case review the AOD appeal. AOD controls will be added in VACOLS.

If the AOD request is denied, a denial letter will be dispatched.

- D. Post-Activation (ACT status) AOD Motion Rulings

If the AOD request is granted, VACOLS will be annotated to note the new status, and the Board should process the appeal as expediently as possible.

If the AOD request is denied, a denial letter will be dispatched.

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### E. Procedural Concerns

### F. After Issuance

Once an appeal has been granted AOD status, the appeal will always remain in AOD status for any subsequent appeals at the Board, including post-substitution by another party.

### G. Discovery of AOD Motion in File

If an AOD motion that has not been ruled on is discovered during file review, please contact the [AOD](#) office.

### H. Death of the Moving Party

If the party seeking AOD status dies prior to issuance of a ruling letter, the motion should still be processed in case of a subsequent substitution.

## 5. Other Motions

### A. Advancement on Hearing Docket 38 C.F.R. § 20.704(f)

Signatory: Chairman/Vice Chairman (on Board's own motion); VLJ (if hearing case or assigned to VLJ); DVC (if not yet assigned to VLJ)

Routing: Lit Support (VACOLS mail code 23)

### B. Hearing after failure to appear 38 C.F.R. § 20.704(d)

Signatory: VLJ who was scheduled for the hearing

Routing: Lit Support (VACOLS mail code 23)

### C. Motion by representative to appear alone at a Hearing 38 C.F.R. § 20.704(d)

Signatory: VLJ assigned to hearing

Routing: Lit Support (VACOLS mail code 23)

### D. Correction of Hearing Transcript 38 C.F.R. §20.716

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Routing: Lit Support (VACOLS mail code 23)

E. Subpoena 38 C.F.R. § 20.711

Signatory: VLI to whom the case is assigned

Routing: Lit Support (VACOLS mail code 23)

F. Recusal 38 C.F.R. § 19.12

Signatory: Chairman/VC

Routing: Lit Support (VACOLS mail code 23)

G. Vargas-Gonzales

*Vargas-Gonzales v. Principi*, 15 Vet. App. 222 (2001) (holding that in appeals before the Board with “downstream” issues of effective date and increased initial rating arising from a Board decision, the original docket date is retained).

Signatory: DVC

Routing: Motions and Litigation (VACOLS mail code 23)

iii. TRANSLATION OF DOCUMENTS NOT IN ENGLISH

Requests for translations must be completed at the Board before taking any other action in the case, such as remanding the appeal.

**1. Exceptions**

A. SAN JUAN RO

For cases originating from the San Juan RO, a remand instruction may be included for the translation of documents. This should be done only if the case is being remanded to the San Juan RO for other reasons (and the remand development is not contingent upon the documents requiring translation).

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### B. No Prejudice

Translation procedures can be bypassed completely if doing so is not prejudicial to the appellant (*e.g.*, a full grant). In these situations, consider including (1) a discussion of the appellant's due process rights with respect to VA's duty to translate the foreign language documents and (2) a finding that there is no prejudice to the appellant in not fulfilling the request because the claims are being granted in full.

## 2. Procedure

Once the documents are identified (see below), use electronic routing procedures to route the case to the Translation Section. See ELECTRONIC ROUTING, III.I.

### A. PAPER CLAIMS

Identify each document that needs to be translated with a tab labeled "translation."

### B. electronic appeals

In VBMS, bookmark the page(s) or go to the subject line in the bookmark dropdown box and write "needs translation."

## iv. PRIVACY ACT/FOIA

### 1. Privacy Act Requests

If a Privacy Act request is received, adjudication should cease until there has been a response to the request.

When a Privacy Act request is filed "by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, the request will be reviewed and processed *prior to appellate action* on that individual's appeal." 38 C.F.R. § 20.1200 (emphasis added).

A Privacy Act request must be received in writing and signed by the requestor before it can be honored. 38 C.F.R. § 1.526. If the Appellant or the representative requests a copy of the claims file during a Board hearing, the VLJ should ask the Appellant to write and sign his or her request while at the hearing and to have the written request associated with the claims file. A request located in the transcript of a hearing cannot

## PRE-DECISIONAL DEVELOPMENT

be honored and the requestor will have to be contacted for a written and signed request before the request can be honored.

If there is a Privacy Act request associated with the claims file that has not been honored, the attorney should electronically route the case to their OVLJ Admin Action Team. The email should note if the case is a death dismissal to allow for expedited processing.

### 2. FOIA

The FOIA office is under the Office of the Chief Counsel. They handle FOIA requests, which are distinct from Privacy Act requests.

## v. OBTAINING WAIVERS FOR EVIDENCE SUBMITTED AFTER AOJ REVIEW

### 1. General Policy

Depending on when it was received, new evidence added to a claims file after AOJ review may require a waiver from the appellant/representative.

A. Evidence received prior to transfer of records to the Board

B. Default Rule

If the AOJ receives evidence after an appeal is initiated (including after certification has been completed), but before the appeal is transferred to the Board, the evidence must be referred to the appropriate rating or authorization activity for review and disposition. 38 C.F.R. § 19.37(a).

If an SOC/SSOC was prepared before the receipt of additional evidence, a new SSOC must be furnished to the appellant and representative. 38 C.F.R. § 19.31.

### (2) Exceptions

- a. The additional evidence duplicates evidence previously of record that was discussed in a prior SOC/SSOC.
- b. The additional evidence is not relevant to the issue, or issues, on appeal.



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c. The decision will be a full grant.

### C. Evidence received after transfer of records to the Board

As directed by 38 C.F.R. § 19.37(b), additional evidence received by the AOJ after the records have been transferred to the Board for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue(s). In this situation, the Board should seek a waiver pursuant to 38 C.F.R. § 20.1304(c).

Any pertinent evidence submitted by the appellant or representative that is: 1) accepted by the Board under the provisions of this section; 2) submitted by the appellant or representative in response to notification that the Board is requesting a legal or medical opinion under 38 C.F.R. § 20.903; or 3) referred to the Board by the AOJ under 38 C.F.R. § 19.37(b) must be referred to the AOJ for review. Evidence is not pertinent if it does not relate to or have a bearing on the appellate issue or issues. 38 C.F.R. § 20.1304(c).

This procedural right may be waived by the appellant or representative. A waiver must be in writing or, if a hearing is conducted, the waiver must be formally and clearly entered on the record orally at the time of the hearing. The Board may also determine that the benefit(s) to which the evidence relates is fully allowed on appeal without such referral.

### D. Determining when the case was transferred to the Board

The RO sends the appellant a notice letter informing him or her that it is transferring the case to the Board. A copy of this letter can be found in the claims file. If a Board hearing was held, the letter can often be found immediately before or after the hearing transcript.

The date is also identified in the “Dispatch” tab in VACOLS, in the “RO Mailing Status” box. It is *not* the “Cert BVA” date on the Docket tab.

## 2. Exception

When the new evidence is **submitted by the appellant** AND the substantive appeal was **received on or after February 2, 2013**, an exception to the waiver rule applies.

If an appellant or representative *submits* evidence with a substantive appeal or any time thereafter, the Board should review the evidence **without first seeking a waiver** unless the claimant or representative requests in writing at the time the evidence is submitted that the AOJ initially review the evidence. 38 U.S.C. § 7105(e). The Board should not seek a waiver of AOJ review of evidence *submitted by the appellant* unless a statement submitted with the evidence raises a question as to whether he or she is requesting initial AOJ review of the evidence submitted.

**This automatic waiver does *not* extend to evidence that was not submitted by the appellant** (*e.g.*, evidence that was suggested by an appellant's submission but was gathered separately pursuant to the duty to assist). Notable examples include VA medical records and VA examination reports that are associated with the claims file by VA. The reason for this is that when the evidence is submitted by anyone other than the appellant/representative, we cannot be sure that he or she had the opportunity to review, respond, or knowingly waive AOJ review.

### 3. How to Send a Waiver Letter

Use electronic routing procedures to route the case to OAO Management Support Branch personnel. *See* Electronic Routing, III.i. They will prepare and send the waiver solicitation letter. The template name is "Waiver New Evidence.dot."

### 4. When a Waiver is Not Necessary

#### A. For proceedings before OGC

Waivers are not necessary in proceedings before the OGC conducted under 38 C.F.R. Part 14 to cancel accreditation or to review fee agreements and expenses for reasonableness. 38 C.F.R. § 19.37(c).

#### B. When the Board is remanding the case

Generally, if the pertinent issue is being remanded, Board practice is *not* to seek a waiver, even if one would otherwise be required. Because the AOJ will be able to review the new evidence on remand, there is no prejudice to the appellant.

v. OUTSIDE MEDICAL OPINIONS

1. **When to Obtain an OMO**

A VLJ may seek an expert outside medical opinion to obtain answers to complex medical questions raised by a particular case. OMO requests may include the need to interpret something already in the record.

2. **Types of OMO Requests**

A. VHA opinions

The Board may obtain a medical opinion from an appropriate VHA health care professional on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal. 38 C.F.R. § 20.901(a). These types of opinion requests, commonly referred to as “VHA requests,” are sent to VAMCs. The clinician does not physically examine the appellant, so the evidence must be complete for the VHA clinician to review.

In preparing the request, the VLJ asks for a specific type of specialist to prepare the opinion. The VAMC, rather than the VLJ, selects the individual clinician to prepare the opinion. The clinician is usually not a VA examiner.

B. Independent Medical Expert (IME) opinions

When an additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of VA. Opinions will be secured, as requested by the Chairman, from recognized medical schools, universities, clinics, or medical institutions with which VA has made arrangements for such opinions. An appropriate official of the institution will select the individual expert(s) to give an opinion. 38 C.F.R. § 20.901(d).

IME requests are commonly reserved for medical questions in one of two situations. First, where the medical question at issue will require an opinion from a specialist in a highly unique medical specialty that is not available within VHA. Second, where the case is found to need the appearance of a completely disinterested opinion, such as a claim under section 1151.

C. Joint Pathology Center (JPC) opinions

The Board may refer pathologic material to JPC and request an opinion based on that material. 38 C.F.R. § 20.901(b).

The JPC was formerly known as the Armed Forces Institute of Pathology (AFIP). However, the C.F.R. and Word templates continue to refer to AFIP. The OMO office is aware of this discrepancy and will modify your request letter accordingly and forward the request to the correct successor agency.

**3. Clarification of OMO Responses**

A “clarification” can be obtained if the answer to the initial VHA, IME, or JPC request is found to be inadequate. This is a supplemental opinion rather than an initial request.

**4. How to prepare an OMO Request**

A. Determining What Kind Of Initial Request To Make

Identify the specialty of the provider before forwarding a request to the OMO office. When possible, ask for the most generalized appropriate provider. Not all VA treatment facilities have every kind of specialist, but if a particular specialist is needed, the OMO office will find one. If you are not sure what type of specialist to request, give the VAMC flexibility by using “and/or” or requesting “a qualified physician.”

To the extent possible, a single request letter should be prepared for each type of medical specialty needed, rather than for each claim. However, where necessary, multiple letters may be prepared if different specialists are needed to address different medical conditions in the same appeal.

Example: The appellant is claiming service connection for (1) a knee condition, (2) an elbow condition, (3) a lumbar spine condition, (4) a kidney condition, and (5) a psychiatric condition. The Board has determined OMO requests are the proper development for all five issues. Four letters should be drafted: (1) a request for an orthopedist to address the knee and elbow; (2) a request for an orthopedic spine surgeon or a neurosurgeon to address the lumbar spine; (3) a request for a general internist or nephrologist to address the kidney; and (4) a request for a psychiatrist or psychologist to address the psychiatric condition.

## 5. How to Draft an OMO Request

### A. Templates

Templates are available in MS Word corresponding to the different types of medical opinions.

VHA: VHA\_Ltr-Win7.dot

IME: IME\_LTR-Win7.dot

JPC/AFIP: Afip\_ltr-Win7.dot

You need not supply the name of the addressee or salutation information. OAO Management Support Branch will add that later. *See Board Handbook 8440.*

### B. Saving and Reviewing

OMO request letters should be saved using the button. Thereafter, re-save the draft using the button (keyboard shortcut Ctrl+S).

Saved letters are stored in the following locations, based on the type of letter:

VHA: S:\vha\_rqst

IME: S:\ime\_rqst

JPC/AFIP: S:\afip\_rqst

### C. Attorney: Check out the appeal to the VLJ. *See III.i.1.*

In the Work Product drop-down box, select “VHA” “IME” OR “AFIP” as appropriate.

### D. VLJ: Reviewing the OMO Request

After reviewing an initial draft letter, the VLJ should:

Sign the letter.

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Upload the signed letter into your VLJ-specific Signed Decisions folder on the M: drive (M:\Decision Team\Signed Decisions) so OMO can retrieve it.

Charge the case in VACOLS to location 20, including the Document ID.

### E. Procedure When OMO Request Returns

When the case returns from the chosen medical specialist with the requested opinion, the OMO office will send an e-mail notifying the VLJ and asking the VLJ to review the adequacy of the specialist's opinion. The e-mail will provide three options for the VLJ. Indicate the selection in a reply e-mail to the OMO office.


If clarification is required, prepare a clarification letter by following the same steps above for preparing the initial letter. Either attach the clarification letter to the reply e-mail, or send the reply e-mail indicating that a clarification letter is forthcoming and attach the letter to DAS when it is ready.


If/when a 60-day letter is sent to the appellant, the OMO Office will place the appeal in abeyance for the proper amount of time or until a waiver is received. The OMO Office will then charge the case back to the VLJ and send an e-mail notification.

When the case is charged back to the VLJ after final processing with the OMO Office, the VLJ to whom the case is assigned should review the file to ensure that both notices required by 38 C.F.R. § 20.903 were sent before continuing with appellate processing.

A waiver of initial AOJ consideration is not needed to consider the opinion, and the good-cause requirement of 38 C.F.R. § 20.1304(b) does not need to be met in order to accept rebuttal evidence submitted by an appellant.

### F. How to draft a clarification

If clarification is needed from the same specialist, prepare a clarification letter to be sent through the Board's OMO Office. Use template "OMO-Insufficient Opinion-Win7.dot" and the  Save (Assign name) button.

Thereafter, re-save the draft using the  Save button. The saved clarification request is stored in S:\OMO\_rqst.

## 6. **Thurber Letters**

### A. When To Send

If the Board develops or obtains any evidence not previously of record, the appellant must be notified and given an opportunity to respond. *Thurber v. Brown*, 5 Vet. App. 119, 123 (1993). This applies most often when the Board obtains an OMO.

### B. Legal or Medical Opinion

If the Board requests an opinion pursuant to 38 C.F.R. §20.901, the Board will notify the appellant and his or her representative, if any. When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant's representative, if any. A period of 60 days from the date the Board furnishes a copy of the opinion will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes a copy will be presumed to be the same as the date of the letter or memorandum that accompanies the copy of the opinion for purposes of determining whether a response was timely filed. 38 C.F.R. § 20.903(a).

### C. Medical Treatise

If, pursuant to § 19.9(d)(5), the Board supplements the record with a recognized medical treatise, the Board will notify the appellant and his or her representative, if any, that the Board will consider the recognized medical treatise in the adjudication of the appeal. The notice from the Board will contain a copy of the relevant portions of the recognized medical treatise. The appellant will be given 60 days after the date of the notice described in this section to file a response, which may include the submission of relevant evidence or argument. The date the Board gives the notice will be presumed to be the same as the date of the notice letter for purposes of determining whether a response was timely filed. 38 C.F.R. § 20.903(b)(1).

D. Exception

The notice described above is not required if the Board uses a recognized medical treatise or medical dictionary for the limited purpose of defining a medical term and that definition is not material to the Board's disposition of the appeal. 38 C.F.R. § 20.903(b)(2).

E. How to send

If the Board has requested an OMO opinion, the OMO office will normally send the needed *Thurber* letter. However, if such a letter has not been sent, electronically route the case to OAO Management Support Branch personnel asking that they prepare a *Thurber* letter to be sent to the appellant and his or her representative, if any. See ELECTRONIC ROUTING, III.I. In the e-mail, identify the additional evidence and provide a brief description of why it is being cited and how it will be relied upon by the Board. In a paper file, tab the evidence in the claims file. In an electronic appeals file, add a Note in VBMS to identify the document. Charge the case to your respective OAO Management Support Branch personnel.

vi. GC OPINIONS

1. Overview

This subpart describes procedures for requesting precedential opinions from OGC to provide clarification on specific points of law. The Board is bound in its decisions by these precedential opinions. 38 U.S.C. § 7104(c); 38 C.F.R. § 20.101(a).

In the absence of LRP Counsel, the Office of the Chief Counsel will assume all authorities in this section delegated to LRP Counsel.

2. Request Submission

A. Authority

Requests for precedential opinions can be submitted directly to LRP by the Chief of any division, branch, or office. In the absence of a permanent Chief, precedential opinion requests can be submitted by the current ranking authority (e.g., Acting Chief, Team Lead) within the division, branch, or office.



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- (1) In the OAO, this includes all Chiefs under the VLJ Hearing and Support Management Division structure, as well as all Chief VLJs and VLJs. Counsel must route a request through a VLJ or Chief VLJ.

### B. Memorandum

Send a memorandum to LRP. The memorandum should include sufficient detail to enable LRP to review the matter and take further action. The person preparing the memorandum should include the VLJ's name and telephone number as a contact point, so that LRP will know whom to contact for further information. The memorandum should specifically list:

- (1) The questions on which OGC would be asked to provide binding guidance;
- (2) A list of all relevant statutes, regulations, case law, and other policies which have been reviewed in conjunction with these questions;
- (3) An explanation of why these questions are of sufficient importance to warrant a precedential opinion from OGC. This explanation should focus on:
  - a. Demonstrating that the relevant statutes, regulations, case law, and other policies consulted are unclear, AND
  - b. That this lack of clarity will impact a large number of cases, be significantly costly to VA, or otherwise cause a substantial harm or burden to appellants or to VA.

## 3. Post-Request Procedures

### A. LRP development

LRP Counsel will review all precedential opinion requests and consult with any relevant parties to determine whether the precedential opinion request warrants a submission to OGC.

If LRP Counsel determines that a submission to OGC is not warranted, LRP will inform the requesting authority that the opinion

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request will not be submitted to OGC, along with a brief explanation of the reason for that decision.

- (1) If LRP Counsel determines that a submission to OGC is warranted, counsel for LRP will draft a formal precedential opinion request memorandum for signature by the Chairman or the Vice Chairman, as deemed appropriate.

### B. Submission

After signature by the Chairman or the Vice Chairman, as deemed appropriate, an electronic copy of the precedential opinion request will be sent to the OGC Benefits Law Group. Submission in any other format, including mailing a signed paper copy, will be completed if appropriate to satisfy OGC procedures.

## vii. Requesting equitable relief

### 1. Overview

The Board is bound strictly by statutory requirements and does not have the authority to grant claims on an equitable basis, or otherwise grant equitable relief. However, equitable relief may be granted by the Secretary. See 38 U.S.C. § 503; 38 C.F.R. § 2.7; *Darrow v. Derwinski*, 2 Vet. App. 303 (1992). The Secretary may provide equitable relief in two circumstances: 1) The Secretary may provide equitable relief if the Secretary determines that benefits administered by VA have not been provided by reason of administrative error on the part of the Federal Government or any of its employees and 2) The Secretary may provide equitable relief to any person who suffers a loss as a consequence of reliance upon an erroneous determination by VA concerning entitlement to benefits.

38 C.F.R. § 2.7 provides that the Chairman of the Board may recommend correction of administrative error and equitable relief to the Secretary. CAVC has found that the Board need not address the issue of recommendation under Section 2.7 in its decisions. *Eicher v. Shulkin*, 29 Vet. App. 57, 64 (2017). However, in footnote 5 of *Eicher*, the Court expressed confusion “as to why the Board member failed both to

convey the Board Chairman's ability to recommend the case for equitable relief and to encourage such a recommendation, given the facts of this case.”

Equitable relief from the Secretary is rare and is limited to extraordinary circumstance involving administrative error on the part of the VA or the federal government. It is not available to grant a monetary payment where Congress has not authorized such payment or the recipient does not qualify for such a payment under applicable statutes. *See McCay v. Brown*, 106 F.3d 1577, 1581 (1997).

Accordingly, please be cautious when using language which suggests that although the Board does not have the authority to grant claims on an equitable basis, such discretionary power is available to the Secretary of VA under 38 U.S.C. § 503; 38 C.F.R. § 2.7. While this equitable relief language is intended to be sympathetic to the Appellant’s claim, it can lead to additional complications on further review at the Board and before CAVC.

This subpart describes the procedures for processing a request for equitable relief from the Appellant, and the procedure for a VLJ to refer a request for equitable relief to the Chairman’s office for consideration.

## **2. Request from the Appellant**

If the claims file includes a specific request from the Appellant requesting equitable relief, the Board must respond to this request. Send an email to [BVALitSupport@mail.va.gov](mailto:BVALitSupport@mail.va.gov) and specifically identify the request from the Appellant (i.e. the claims number, the document name, and date of the request). The Office of Litigation Support will forward this request for equitable relief to the Chairman’s office for consideration. If the Chairman approves the request for equitable relief, the request will be forwarded to the Secretary’s office. If the Chairman does not approve the request for equitable relief, the request will be returned to Litigation Support. Litigation Support will send a letter to the Veteran stating that the request for equitable relief was considered and advising the Veteran of the outcome.

Because this is a request for equitable relief outside of the normal laws and regulations concerning Veterans benefits, the appeal may continue to be adjudicated as normal while the request for equitable relief is pending.

### **3. Request from the VLJ**

An attorney or VLJ may also find that consideration of equitable relief is warranted in an appeal without a specific request from the Veteran. If an attorney feels equitable relief is warranted, they should discuss this with his or her VLJ. If the VLJ agrees, or otherwise determines consideration of equitable relief is warranted, the VLJ should draft a memorandum requesting consideration of equitable relief. This memorandum should succinctly lay out the relevant facts, and the VLJ should identify why he or she believes there has been administrative error or an erroneous determination by VA in this case.

The VLJ should send the memorandum to Litigation Support via an email to [BVALitSupport@mail.va.gov](mailto:BVALitSupport@mail.va.gov). The Office of Litigation Support will forward this request for equitable relief to the Chairman's office for consideration. If the Chairman approves the request for equitable relief, the request will be forwarded to the Secretary's office. If the Chairman does not approve the request for equitable relief, the request will be returned to Litigation Support. Because there was no request from the Appellant, the Appellant will not be sent a letter regarding this request for equitable relief if not approved.

Because this is a request for equitable relief outside of the normal laws and regulations concerning Veterans benefits, the appeal may continue to be adjudicated as normal while the request for equitable relief is pending.

## **viii. SUSPECTED FRAUD/IG REFERRAL PROCESS**

### **1. Overview**

This subpart describes procedures for VA Central Office fraud investigations initiated by the Board. Internal OAO procedures for designating particular counsel to prepare investigation requests or requiring advance consultation between counsel and VLJs are within the discretion of the Office of the Chief Counsel, or his or her designee.

One service available through Central Office investigation procedures is document analysis to establish the authenticity, or lack thereof, of a questioned document. Use the procedures outlined in this section.

## **2. Authority**

The Chairman and Vice Chairman have authority delegated by the Secretary of VA to order VA Central Office investigations of matters before the Board. 38 C.F.R. § 19.13(b).

## **3. Resources**

Investigative responsibilities within VA are shared by the Inspector General's (IG) Office of Investigations and the Office of the Deputy Assistant Secretary for Security and Law Enforcement. The Board is most often concerned with the type of investigations carried out by the IG's Office of Investigations, *e.g.*, investigations involving fraudulent claims. The Deputy Assistant Secretary for Security and Law Enforcement primarily deals with criminal violations and incidents that occur at VA facilities.

## **4. Mandatory Referral of Fraud Allegations**

It is VA's policy that allegations of fraud initiated by Board employees involving VA programs and operations will immediately be referred by the Board to the IG. The Board must have the concurrence of that office before taking any further action while an investigation is in progress.

## **5. Investigation Request Processing by Counsel**

### **A. Identification of Relevant Documents**

Flag relevant documents in the claims file.

### **B. Memorandum**

Prepare a memorandum from the VLJ to the Office of the Chief Counsel. The memorandum should include sufficient detail to enable the Chief Counsel to review the matter and take further action. The person preparing the memorandum should include the VLJ's name and telephone number as a contact point, so that the Chief Counsel will know whom to contact for further information.

As there currently is no specialized template for preparing investigation requests, use the generic "VAMEMO.dot" word-processing template.

## PRE-DECISIONAL DEVELOPMENT

Forward the memorandum and administratively charge the appeal to the VLJ to whom the case is assigned.

### 6. **VLJ**

After arranging for any necessary corrections, the reviewing VLJ should forward the investigation request memorandum and administratively charge the appeal to the supervising DVC.

### 7. **DVC**

Review the investigation request memorandum and transfer the file to the Office of the Chief Counsel with comments, if any.

### 8. **Office of the Chief Counsel**

The Chief Counsel may approve or disapprove the investigation request at his or her discretion for further review by the Chairman or Vice Chairman.

If approved, the Chief Counsel will prepare a formal memorandum from the Chairman, or Vice Chairman, to the IG setting forth recommendations for action. The person preparing the memorandum should include his or her name and telephone number as a Board contact point, so that the investigator will know whom to contact if further information is needed. The Chief Counsel will forward the memorandum to the Chairman, or Vice Chairman, with recommendations for action.

To alert the IG that the Board will not be able to treat the investigation report as confidential, the memorandum should note that decisional law of CAVC requires that the Board provide the claimant with a copy of the report and a reasonable opportunity to respond. 38 C.F.R. § 20.903; *Thurber v. Brown*, 5 Vet. App. 119, 126 (1993). It is important that the list of enclosures on the memorandum, which is the official inventory of the records sent to the IG, include each file and other item sent.

If the request is disapproved, the Chief Counsel should prepare a memorandum informing the VLJ that the request has been disapproved. The DVC will charge the appeal and send the memorandum to the VLJ to whom the case is assigned. The VLJ should then continue with adjudication of the appeal.

**9. Chairman or Vice Chairman**

**A. Processing Approved Requests**

The Chairman or Vice Chairman may indicate approval of the requested investigation by signing the memorandum. If the request is approved, the Chairman or Vice Chairman will forward the signed memorandum and charge the appeal to the Office of the Chief Counsel.

**B. Processing Disapproved Requests**

Disapproved investigation requests will be returned to the Office of the Chief Counsel for action.

**10. Office of the Chief Counsel Processing Signed Investigation Requests**

The Office of the Chief Counsel will perform the following actions upon receipt of a signed investigation request memorandum from the Chairman, or Vice Chairman:

- A.** Attach the approved investigation request memorandum to the VACOLS record for the case.
- B.** Date the approved investigation request and forward the signed memorandum and the applicable file(s) to the IG, retaining a copy of the signed memorandum.
- C.** Prepare a Diary Slip in VACOLS using Code 21 ("Outside BVA"). Specify "90 days" in the suspense date column.
- D.** Make follow-up inquiries, as required.

**11. Office of the Chief Counsel When IG Reports are Received**

The Office of the Chief Counsel will perform the following actions upon receipt:

- A.** UPLOAD the original IG report TO the claims file.
- B.** Update the VACOLS charge.

## 12. VLJ Upon Receipt of a Completed IG Report

The VLJ should follow the instructions in the letter from the IG that came with the associated report. Contact the Board's Privacy Office with questions about the application of the Privacy Act to the appellant's specific report. If authorized by the IG, and the VLJ decides to rely on the report in the decision, follow the *Thurber* notice procedures.

### ix. MISFILED DOCUMENTS

Upon review of a claims file, Board personnel may discover records, correspondence, or other information pertaining to one claimant that is misfiled in another claimant's file, or other documents that are otherwise misfiled. Different corrective procedures apply depending on whether misfiled documents influenced a prior decision and whether the file before the Board is a paper file or electronic appeals file.

#### 1. Analysis

Treatment differs depending on whether a misfiled document had a bearing on any issue(s) before the Board.

##### A. Misfiled Document(s) Influenced a Prior Decision

If it appears that mistaken reliance on a misfiled document may have materially affected the AOJ determination on an issue on appeal:

- a. Consider whether additional development is necessary prior to rendering a final decision on appeal. Development may include, but is not limited to, obtaining the correct VA records or examination reports and/or ordering a new adjudication that does not rely on the misfiled document(s), etc.
- b. The final decision should contain a discussion with regard to the AOJ reliance on the misfiled document(s), the removal of the misfiled document(s) from the record, and the development, if any, that resulted from the AOJ consideration of the misfiled document(s).



## PRE-DECISIONAL DEVELOPMENT

### B. Misfiled Document(s) Did Not Influence a Prior Decision

If the misfiled document(s) appears to have had no bearing on any decision rendered in connection with an issue on appeal, continue with normal disposition of the case before the Board, but also complete the steps below to ensure proper filing of the misfiled documents.

## 2. Electronic Appeals Claims Files

Open a [Paperless Service Ticket](#) through the Board's Strategy, Innovation, and Programs SharePoint site. In the Issue Identifiers field, select "Misfiled Document." In the Issue Description field, include the information described below to allow the misfiled document to be identified. Please do not add bookmarks or edit subject lines to identify misfiled documents.

### A. 10 or more misfiled documents in a single VBMS eFolder, include:

File number for the VBMS eFolder in which you are working.

State that there are 10 or more misfiled documents in the VBMS eFolder (no need for identification of specific documents).

### B. Fewer than 10 misfiled documents in a single VBMS eFolder, include for *each* misfiled document:

File Number for the VBMS eFolder in which you are working.

Document Type (Document Label) for each misfiled document.

Receipt Date for each misfiled document.

State whether the document(s) is/are in VBMS or Legacy Content Manager.

## 3. Paper Claims Files

The person discovering the misfiled document(s) should:

### A. Carefully remove the misfiled document(s) from the claims folder

### B. E-MAIL THE OAO MANAGEMENT SUPPORT BRANCH

## PRE-DECISIONAL DEVELOPMENT

Address the e-mail to OAO Management Support Branch personnel with a brief explanation of the discovery of the misfiled documents. Please note the following information in the e-mail:

- (1) Brief description as to where the misfiled documents were discovered (i.e., another claimant's claims folder).
- (2) Identifying information for the misfiled documents:
  - a. Appellant's or claimant's name.
  - b. Claims file number, if known.
  - c. Originating AOJ, if known.
  - d. Description of the content of the documents (e.g., service medical records).

C. Deliver misfiled documents to OAO Management Support Branch

D. OAO Management Support Branch Actions

Upon receiving the e-mail and the misfiled documents, consult VACOLS to determine the current location of the claims folder of the appellant to whom the documents pertain.

E. If VACOLS shows that the claims folder is located at the Board

(1) Case has not yet been assigned

If the claims folder is located at the Board, but has not yet been assigned to Counsel/VLJ/AVLJ, carefully file the misfiled documents at the top of the correct claims folder.

(2) Case is currently assigned

If the claims folder is currently assigned to a Counsel/VLJ/AVLJ, carefully file the misfiled documents at the top of the correct claims folder and bring the documents to the attention of the

## PRE-DECISIONAL DEVELOPMENT

Counsel/VLJ/AVLJ handling the case by providing them with the e-mail that explains the discovery of the misfiled documents.

- a. Case has a signed decision and is awaiting dispatch

If a decision has already been signed in the case, but not yet dispatched, return the claims folder and the newly discovered misfiled documents to the VLJ/AVLJ who signed the decision so he/she can determine whether any additional action is needed before the decision is dispatched.

- b. If VACOLS shows that the claims folder is located at the AOJ

Complete VA Form Letter 1-13, and check the box that advises the AOJ that misfiled document(s) are being returned. VA Form Letter 1-13 may be downloaded from the VA Forms website located at <http://vawww.va.gov/vaforms/>.

Route the misfiled document(s) and VA Form Letter 1-13 to the appropriate AOJ.

- c. If the claimant is not listed in VACOLS, perform a search of other appropriate databases to ascertain whether a claims folder exists for the claimant

(i) Retired Claims Folder. If the claims folder has been “retired,” the misfiled document(s) should be directed to the AOJ that last had jurisdiction over the claims folder. The misfiled document(s) should not be sent directly to the records center that is storing the retired claims folder, but rather to the AOJ that last had jurisdiction over the claims folder. On VA Form Letter 1-13, note the name of the facility where the “retired” claims folder was sent.

(ii) No Claims Folder. If it appears that a claims folder does not exist, check the documents carefully to see if an address of the potential claimant is shown. If a city can be identified, route the misfiled documents to the local AOJ office that

## PRE-DECISIONAL DEVELOPMENT

would have jurisdiction over that geographic location. Note on the VA Form Letter 1-13 that the documents were misfiled in another claimant's claims folder, and it could not be determined whether the person to whom the documents belonged had filed a claim with VA. If no identifying information can be ascertained other than the fact that the documents were clearly misfiled, return the documents to the AOJ that last had jurisdiction over the claims folder, using VA Form Letter 1-13, and explain that the documents were misfiled in a claims folder.

### x. DETERMINING THE BOARD'S JURISDICTION

#### 1. General

All questions of law and fact necessary to a decision by the Secretary of VA under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in these appeals are made by the Board. In its decisions, the Board is bound by applicable statutes, the regulations of VA and precedent opinions of the OGC.

The Board has jurisdiction over appeals arising from VBA, VHA, NCA, and OGC. *See* 38 U.S.C. § 7104; 38 C.F.R. § 20.101. The Board's jurisdiction over VHA does not extend to medical determinations (treatment decisions with which an attending physician may be faced), such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, whether a particular drug should be prescribed, or whether a specific type of physiotherapy should be ordered. The Board's jurisdiction over matters arising from OGC includes matters of accreditation and reasonableness of fee agreements.

The Board has original jurisdiction over motions to correct, vacate, reconsider, and revise Board decisions.

#### 2. Adequacy and Timeliness of NOD and VA Form 9

The Board may address questions pertaining to its jurisdictional authority to review a particular case, including, but not limited to, determining whether NODs and substantive appeals are adequate and timely, at any stage in a proceeding before it, regardless of whether the AOJ addressed such question(s).

## PRE-DECISIONAL DEVELOPMENT

### A. Notice Requirement

When the Board, on its own initiative, raises a question as to a potential jurisdictional defect, all parties to the proceeding and their representative(s), if any, will be given notice of the potential jurisdictional defect(s) and granted a period of 60 days following the date on which the notice is mailed to present written argument and additional evidence relevant to jurisdiction and to request a hearing to present oral argument on the jurisdictional question(s). The date of mailing of the notice will be presumed to be the same as the date stamped on the letter of notification. The Board may dismiss any case over which it determines it does not have jurisdiction. 38 C.F.R. § 20.101(d).

### 3. Clarifying the Issues on Appeal

If the record raises a question as to what issues remain on appeal before the Board, the Board should send the appellant a letter informing him or her of the perceived ambiguity as it pertains to the potential jurisdictional defect and ask the appellant to clarify which issue(s) he or she is intending to appeal.

Counsel is responsible for drafting the letter for VLJ review. Two templates may be used for this purpose: [NOD.dot](#) and [Substantive Appeal ltr.dot](#). These letters address insufficient NODs and VA Form 9s, respectively.

OAO Management Support Branch staff will conduct an administrative review of letters before sending them.

The letter should give the appellant and his/her representative, if any, a period of 60 days to respond with written argument and additional evidence relevant to jurisdiction and to request a hearing to present oral argument on the jurisdictional question(s).

Examples of issues that may be clarified include whether the appellant is:

- A. satisfied with a Board/RO grant
- B. limiting the scope of the appeal
- C. limiting to a specific disability rating percentage, effective date, and/or rating period of award
- D. intending to withdraw certain issue(s) remaining on appeal

#### 4. **Withdrawal of Appeals**

Withdrawal of an appeal is only effective where the withdrawal is explicit, unambiguous, and done with a full understanding of the consequences of the action on the part of the claimant. *DeLisio v. Shinseki*, 25 Vet. App. 45, 57 (2011).

Withdrawal of appeals must be done in writing, unless the appellant or representative confirms the withdrawal of an appeal on record during a hearing. 38 C.F.R. § 20.204.

#### 5. **Substitution Determinations**

The determination of whether an individual is an eligible substitute for a deceased appellant is an appealable issue. The AOJ must make the initial substitution eligibility determination and must notify the appellant of that decision. 38 C.F.R. § 3.1010(e). If the appellant has passed away and there is a pending request for substitution that has not yet been granted, the Board is to dismiss the appeal without prejudice. The drafting attorney should then email the Appeals Management Office (AMO) Operations Mailbox at [AMO-Appeals.Ops@va.gov](mailto:AMO-Appeals.Ops@va.gov) and request that the Regional Office make a substitution determination. This email should include the appellant's name, file number, and request to expediate the processing of the substitution determination.

If the attorney receives a response from the AMO indicating that the substitution has been granted, the attorney is to forward this email to their co-located administrative staff. The co-located staff member will then enter the substitute into VACOLS and reactive the appeal as appropriate. The appeal will then assume its original place on the Board's docket. See 38 C.F.R. § 20.1302.

#### xi. **BRYANT LETTERS**

As directed by 38 C.F.R. § 3.103(c)(2), it is the responsibility of the VA employee conducting hearings to explain the issues fully and suggest the submission of evidence that may be missing or that the claimant may have overlooked that would be of advantage to the claimant's position. There are a few approaches that can be taken if a *Bryant* error is identified:

##### 1. **Letter**

Send a letter to the appellant curing the defect and offering an opportunity to submit additional evidence.

## 2. New Hearing

Offer the appellant a new hearing.

## 3. Analysis

If appropriate for the facts of the case, find that the error was not prejudicial because any evidence that might have been solicited pursuant to the notice could not affect the outcome of the decision.

If the appellant has not raised a *Bryant* challenge, consider applying *Dickens v. McDonald*, 814 F.3d 1359 (Fed. Cir. 2016). In that case, the Federal Circuit ruled that a *Bryant* hearing deficiency was subject to the doctrine of issue exhaustion as laid out in *Scott v. McDonald*, 789 F.3d 1375 (Fed. Cir. 2015).

# VI. CACB PROCEDURE MANUAL

## i. GOVERNING PROCEDURES

The Board's Case Administration and Control Branch (CACB) within the OAO is responsible for managing incoming cases that are awaiting appellate review, including distributing cases to Chief VLJ Units within the OAO. This includes the management of daily case requests from the OAO and the VSOs. Additional requests are filled on an "as needed" basis to other entities within the Board.

The Office of the Chief Counsel has the authority to establish the procedures of the CACB, on behalf of, and in concert with, the Office of the Chief Counsel and the Office of the Chairman. The CACB Chief is responsible for updating this procedure manual. All changes are to be coordinated with the Office of the Chief Counsel and the Chief Counsel for Operations. CACB personnel are responsible for the implementation of this procedure and for ensuring that all appropriate Board personnel are trained.

This guide is to enable the CACB to assist the Board in meeting the requirement to decide appeals in docket order, to the extent practicable. *See Ramsey v. Nicholson*, 20 Vet. App. 16, 34 (2006) (holding that 38 U.S.C. § 7107 is not an exclusive set of rules by which the Board must consider and decide cases, but rather was intended "to set broad guidelines for the general order of processing of appeals at the Board to ensure fairness, efficiency, and timeliness in consideration and decision of appeals"). The law governing docket order is found at 38 U.S.C. § 7107 and the VA regulation implementing that law is found at 38 C.F.R. § 20.900.

There is no provision in law or regulation specifically outlining the procedures for placing a case on the Board's docket. Prior to February 1994, the Board docketed cases based on the date the case physically was received at the Board. In February 1994, the Board revised docketing procedures permitting the assignment of docket numbers as soon as a substantive appeal (VA Form 9 or its equivalent) was filed with the AOJ (generally VBA), rather than when a case was received at the Board. *See Chairman's Annual Report to Congress, Fiscal Year 1994, at 7.* This was done to equalize disparate rates of appellate processing at various VBA ROs.

Effective October 1, 2008, docketing procedures were again amended to provide Veterans with more clarity regarding the Board's actual control of a case. With this amendment, which reflects current practice, the docket date of each case on appeal continues to derive from the date that the substantive appeal was received at VA. However, the docket number is not assigned until the case is received at the Board, screened, and formally docketed.

More specifically, the AOJ enters the date of receipt of the substantive appeal into VACOLS. The Board does not have control over a case until the AOJ certifies the appeal and the case is received and docketed at the Board. As part of the docketing procedures, VACOLS automatically assigns a docket date to the appeal based on the date that the substantive appeal was received, rather than the date that the Board receives the case. This process preserves the appellant's place in line on the Board's docket utilizing an earlier date in the multi-step appeals process. In summary, when an appealed case is received at the Board, the appeal is activated (or reactivated if a returned remand) and formally docketed using a priority order commensurate with the date that the substantive appeal was received at an RO. *See Chairman's Annual Report to Congress, Fiscal Year 2010, at 16.*

The Board's docket is comprised of all activated appeals in its inventory. Active appeals are held pending in CACB until their place on the docket is reached. At that time, appeals are charged to a VLJ for assignment to counsel for adjudication. The Board's docket is fluid; it changes constantly because new appeals are docketed and other appeals are dispatched on a daily basis. As discussed above, priority order in appeals adjudication is not based on the date the appeal arrives at the Board. Rather, the priority order for deciding appeals derives from the date the substantive appeal was received by VA. Therefore, the priority order for deciding appeals in the Board's active inventory is in constant flux since appeals arrive at the Board in an order that is variable from the date that the substantive appeal was received by VA. Moreover, appeals returned to the Board following prior Board remand retain their initial docket dates and,



as such, these cases typically move closer to the “front of the line” based on their docket dates. Moreover, appeals returned to the Board following prior Board remand retain their initial docket date. The law requires that all claims that are remanded by the Board or CAVC for additional development or other appropriate action must be handled in an expeditious manner. 38 U.S.C. §§ 5109B, 7112.

Distribution of appeals to OAO for assignment is performed through a case assignment program, which assigns cases to OAO based upon their docket date. There are generally two main programs that are used – one for appeals in which judges held hearings (and the cases must be assigned to the judge who held the hearing) and one for general cases that can go to any judge.

“Docket order” is controlled from the distribution of appeals from CACB, based on the weekly “point-in-time” report. Once cases are distributed from CACB by oldest docket date, docket date no longer controls the movement of that case. Rather, time then becomes the control. It is critical that the distributed cases continue to move through the remaining processing stages for adjudication at the Board in a timely fashion. In summary, docket date is used to pull cases out of CACB and assign them for adjudication, but once cases are distributed to the OAO, docket date is not the controlling factor – time controls. This is to ensure steady movement of cases through the Board to dispatch.

## ii. RECEIVING CASES

The Board’s CACB is the central repository of all cases awaiting appellate disposition, with exceptions for cases that have exigent circumstances. *See* 38 C.F.R. § 20.900. CACB receives cases from the following sources:

### 1. **Board-based VSOs**

When the Veteran is represented by a BVA-based VSO and no hearing was held, a hearing was held and the VSO is Paralyzed Veterans of America (PVA), or the appeal is a post-remand appeal (to include a Court-remanded appeal), the case is received by CACB via the VSO’s charge to VACOLS charge code 55 (Shelf 902). Shelf 902 indicates that an IHP, or written arguments in support of the issue(s) on appeal before BVA, has been completed, and the appeal is otherwise ready for distribution in docket order. For a complete listing of Board-based VSOs, *see* Complete Listing of Board-Based VSOs (updated February 20, 2018), VI.vi.

## **2. OAO Hearing Management Branch**

When a Board hearing has taken place (Central Office, Travel Board, or Video), and the hearing transcript has been associated with VBMS and attached in VACOLS, the case is charged to CACB (Location 81) for holding, pending distribution in docket order.

When an appellant is scheduled for a hearing and the hearing is cancelled by the appellant or the appellant is a No-Show, the case is charged to the VSO to prepare an IHP. If the cancelled hearing was a Central Office hearing, the Hearing Management Branch charges the appeal to location 55. If the cancelled hearing was a Video or Travel Board, the Case Activation and Review Branch charges the appeal to location 55. The case then follows the procedure set forth in VI.ii.1 above.

## **3. Litigation Support**

When cases are remanded to the Board by CAVC, they are administratively processed by the Litigation Support Branch. After Litigation Support completes its processing of the case, the case is forwarded to Location 55, if there is a co-located VSO, or otherwise, CACB.

## **4. From the AOJ (via CREB)**

Here, AOJ means a VA RO (including via Manifest), AMO, VAMC, and NCA.

In situations where there is no Board-based VSO, no hearing, or no representation, subsequent to initial case review and data entry, a case is forwarded to CACB from the CREB to await assignment to a VLJ.

### **iii. SCREENING PAPER CASES PRIOR TO FILING**

To maximize efficiency and minimize case processing time, CACB personnel perform a due diligence screening of all cases prior to routing them to CACB. CACB personnel ensure the following steps are taken prior to filing in CACB:

#### **1. Any physical claims folder is intact:**

- A. The spine(s) of the claims folder(s)/other record(s) are intact.
- B. All loose evidence documentation is fastened to the record.
- C. The claims folder(s) is/are cross banded (*i.e.*, rubber bands placed vertically and horizontally around the claims folder(s)).

- D. If the folders are not intact, CACB personnel should route them to the CREB for repair.

**2. The information on the brief face is correct:**

- A. The date field in the “Rec’d BVA” box is complete. (Note: If the date field reflected in the “Rec’d BVA” box is blank, the case has not yet been activated / covered and must be returned to the CREB for initial case review and data entry for activation).
- B. The appeal has a docket number.

**3. All evidence is associated with the case file:**

- A. IHPs

If no Board hearing took place and if the appellant is represented by a Board-based VSO, that VSO must have been giving an opportunity to submit an argument in support of the appeal. For a post-remand case where a hearing has been held and the appellant is represented by a Board-based VSO, the CACB routes the case to the VSO for an opportunity to complete an IHP on the case. Once the IHP is completed, CACB is responsible for uploading the IHP to VBMS. (Note: for cases in which Paralyzed Veterans of America (PVA) is the representative, there should be an opportunity for an IHP for both non-hearing *and* hearing cases.)

**Note:** If the Veteran submits a new 21-22 or 21-22a, and the Board accepts this change in representation consistent with 38 C.F.R. § 20.1304, the Board must ensure the new representative has an opportunity to present a written argument. This applies even if the prior representative submitted an IHP or participated in a Board hearing.

- B. VACOLS “Other Docs” tab
  - a. Electronic Appeals: The tab should indicate that the file is an electronic appeal and the total number of eDocuments should be displayed on the Board Cover Sheet.
  - b. Paper file: the number of volumes will be listed and should match with what the evidence file reflects.

## iv. FILING CASES IN CACB

Each VLJ and AVLJ is assigned his or her own shelf or shelving units in CACB. There are also General Population shelves established for unassigned cases. Each “pre-assigned” case (see “Pre-assigned” Cases in CACB, VI.iv.2) should be filed on the shelf of the respective VLJ or AVLJ. All other “to-be-assigned” cases (see “To-be-assigned” Cases (i.e., “General Population” cases), VI.iv.3) should be filed on the General Population shelves identified in CACB.

1. **Special Cases**

## A. AOD cases

No cases should be charged to AOD (LOC 59 in VACOLS). Instead, AOD motion mail should be charged to AOD (LOC 59) and will be processed by the AOD team. If the AOD motion is granted, a diary will be added in VACOLS. Thereafter, the case will be identified by CACB when that team runs periodic reports and routed for appropriate action.

If an AOD motion is identified during file review, please email the AOD team for guidance as to disposition. If the request will be granted, it can typically be done in the introduction to a decision and the AOD team can add the appropriate VACOLS diary and close out the mail tab.

## B. CAVC remand cases

Cases remanded by CAVC to the Board require expeditious processing. These cases arrive in CACB after Litigation Support (01C2) completes processing of the case. CACB runs a report to identify these types of cases in CACB that have been there for more than 30 days. After 30 days, if the case has been requested by the VLJ, it is sent to the VLJ that the case is assigned to (regardless of whether or not a hearing was held on the case). CAVC remand cases that were subsequently remanded to the AOJ should similarly be treated expeditiously upon return to the Board post-remand. If the prior VLJ who issued the Board decision is retired, the CAVC remand case is then routed to the appropriate DVC.

## C. Travel Board or Video Conference hearing request

If at any point while a case is in CACB a Travel Board or Video Conference hearing request is received and no Board hearing was held, it is critical that hearing clarification be sought from the Appellant or the Appellant’s representative.

Such clarification must be documented in the record, and if a hearing is still desired the case must be placed in a special location for pending hearings and should not be placed in CACB to await assignment to a VLJ until the hearing is held, or the hearing request is formally withdrawn. CACB personnel routes these cases to the Hearing and Support Management Division whose personnel take the action to seek clarification.

## 2. “Pre-assigned” Cases in CACB

Pre-assigned cases in CACB are of two types. The first type are cases in which a VLJ or AVLJ has held a hearing (Travel Board, Video Conference, or Central Office Hearing), addressing the issues on appeal. They may be original appeals, post-remands, or CAVC remands. The second type of pre-assigned cases is prior Board remands where no hearing was held.

### A. Hearing Cases

Where the appellant has been afforded a Board hearing, the VLJ/AVLJ that presides over a Board hearing (Central Office, Travel Board or Video) is obligated to participate in making the final determination of the claim (i.e., sign the decision). See 38 U.S.C. § 7107(c); 38 C.F.R. § 20.707; see also ASSIGNMENT OF CASES TO VLJS, VII.i.

Where the VLJ/AVLJ who presided over the hearing testimony is still employed by the Board, the case is considered pre-assigned to the VLJ/AVLJ who presided over the hearing and that judge will decide the case in compliance with 38 C.F.R. § 20.707.

- (1) If the VLJ/AVLJ who presided over the hearing testimony is no longer employed by the Board, a new hearing is offered. For such cases identified in LOC 81 CACB personnel will send the appellant a letter providing the opportunity to appear before a new VLJ/AVLJ at another hearing. If no new hearing is requested, CACB personnel will file the case with General Population cases, and will be sent to the OAO according to its order on the docket.
- (2) If two or more VLJs/AVLJs presided over hearings covering the same issue(s), or some of the same issues in the appeal, the case should be

assigned to the VLJ/AVLJ who held the most recent hearing in the appeal or who most recently acted on the case. For any issue(s) on appeal for which at least two VLJs took hearing testimony, a third VLJ will need to be assigned to the panel to consider the issue(s), after giving the appellant the opportunity for a hearing before a third VLJ. 38 C.F.R. § 20.707; *Arneson v. Shinseki*, 24 Vet. App. 379, 386 (2011). This will be handled by the VLJ/AVLJ who most recently acted in the case.

### 3. **“To-be-assigned” Cases (*i.e.*, “General Population” cases)**

“To-be-assigned” cases are generally those original appeals with no Board hearing testimony involved that have cycled through administrative processing (*i.e.*, initial case review/data entry, Board hearing requests, and clarification of any power of attorney issues), and both informal and formal hearing arguments have been honored. Post-remand non-hearing cases are not considered as “to-be-assigned cases” with the exception of non-hearing post-remand cases of Chief VLJs and Senior Counsel; those cases can be reassigned to a different VLJ or AVLJ.

These “to-be-assigned” cases will be filed in docket number order

#### A. **Motions for Revision of a Board Decision Based on Clear and Unmistakable Error (CUE).**

Although these cases are not technically considered “pre-assigned,” a motion for review of a prior Board decision for CUE may *not* be assigned to any VLJ/AVLJ who participated in the decision that is the subject of the motion. *See* 38 C.F.R. § 20.1405(a)(1). These cases will be filed in docket number order and placed on the General Population shelves.

### 4. **“Pre-assigned” Cases not in CACB**

Pre-assigned cases not filed in CACB involve actions that take place after a previous Board decision was dispatched. Typically, the Board will not have custody of the physical claims file, if in existence, and thus the case will not be filed in CACB. Rather, these matters will be immediately distributed using the following rules of assignment:

A. Reconsideration Action Cases

Where the DVC has granted reconsideration and empaneled a reconsideration panel, pursuant to 38 U.S.C. § 7103(b) and 38 C.F.R. § 19.11, the case is considered pre-assigned and will be assigned to and decided by those impaneled VLJs/AVLJs.

B. Supplemental Action Cases

Where the VLJ/AVLJ that previously entered a decision finds it necessary to enter a subsequent decision to address relevant and pertinent evidence that was not cited in the initial decision, the second decision supplements the initial decision, but does not alter its outcome.

Where the VLJ/AVLJ who signed the first decision is still employed by the Board, the case is considered pre-assigned and will be re-assigned to and decided by the VLJ/AVLJ who entered the prior decision.

Where the VLJ/AVLJ who signed the first decision is no longer employed by the Board, the case will be filed on the appropriate DVC's shelf according to the Group assignment.

C. Vacatur Action Cases

Where the Board on its own motion, a motion by the representative, or a motion by the appellant, vacates a prior decision due to a violation of the appellant's right to due process of law, the VLJ/AVLJ who signed the prior decision is encouraged to sign the subsequent decision, but is not obligated by law to do so. See 38 C.F.R. § 20.904.

- (1) Where the VLJ/AVLJ who signed the prior decision is still employed by the Board, the case is considered pre-assigned and will be re-assigned to and decided by the VLJ/AVLJ who entered the prior decision.
- (2) Where the VLJ/AVLJ who signed the prior decision is no longer employed by the Board, the case will be filed in the retired VLJ/AVLJ section of CACB in docket date order.

v. CASE REQUESTS, ASSIGNMENT, AND DISTRIBUTION

1. **Case Requests**

Generally, only a Chief VLJ or DVC can request cases. Senior Counsel, however, may be delegated the authority to request cases. If a VLJ needs more cases, he or she must request cases from his or her Chief VLJ or DVC, who in turn will request cases from the CACB. Case requests will be filled by sending cases in docket order, unless certain exceptions are met (*see* Exceptions to Docket Order, VI.v.2).

A. **Case Request Procedures**

The OAO groups and other staff offices will request case deliveries via an e-mail to “[BVA Case Request](#).”

Upon receipt of the e-mail requesting cases, an acknowledgement will be sent to the sender. The request will then be filled by CACB personnel and VACOLS charges are made to the groups requesting the cases (*e.g.*, to the specific VLJs requesting cases).

CACB personnel coordinate with the group’s co-located staff for distribution.

2. **Exceptions to Docket Order**

The Board is required to consider and decide appeals in docket number order except in certain circumstances. *See* 38 U.S.C. § 7107; 38 C.F.R. § 20.900. Thus, *after receiving requests for cases*, CACB personnel will *generally* distribute cases to VLJs and AVLJs in docket number order. The following four types of exceptional cases should be handled out of docket order:

- A. CAVC Remands, including those that were subsequently remanded to the AOJ and have returned to the Board (“post-remand” cases). *See* 38 U.S.C. § 7112; 38 C.F.R. § 20.900(d).

These appeals must be handled expeditiously and should be immediately sent to the DVCs for distribution.

- B. Appeals in which the Board is advised of the death of an appellant. *See* 38 C.F.R. § 20.1302; *Smith v. Brown*, 10 Vet. App. 330, 333-34 (1997) (holding that the Board does not retain jurisdiction over an appeal after the appellant’s death).



The Board no longer retains jurisdiction over these appeals and they should be pulled and sent to the OAO for dismissal.

- C. Appeals subject to a Board-wide stay. This is a rare situation usually prompted by a need to wait for further guidance from CAVC on a narrow area of law.

These appeals should be withheld from docket-order distribution in accordance with the particular instructions provided by the Chairman or his/her designee for that stay, to include placing the appeals in abeyance.

- D. Appeals that are AOD, or are otherwise to be considered out of docket order, pursuant to 38 C.F.R. § 20.900. *See* 38 U.S.C. § 7107.
- E. Cases returned to the Board post-remand that have already been identified as AOD should be sent to the AOD Section for processing.

- (1) On a monthly basis, a report should be run to identify all cases located in CACB that can be advanced on the docket based on the Veteran's age (75 years or older). These cases should be pulled and routed to the AOD Section for AOD controls/processes.

### **3. The Oldest by Docket Report**

Every Friday at 2:00 p.m., the CACB staff will run the VACOLS report, "Oldest by Docket Pre-Assigned and Unassigned (New)" (Oldest by Docket Report) to ascertain the oldest cases that are in CACB (VACOLS location 81). The number of cases in the oldest case pool may be adjusted up or down over time, with the approval of the Vice Chairman. This "point in time" snapshot of the cases with the oldest docket dates will be used to distribute cases for assignment over the coming week.

This report will be saved on a shared drive for access by Board personnel. The list of cases generated will be the Weekly Case List / Pool of Cases for Assignment for the following week. The month and year of the newest case (by docket number) identified in the Oldest by Docket Report will be the end of the "docket date range."

The Oldest by Docket Report identifies pre-assigned hearing cases by VLJ, by listing all cases in the Oldest by Docket Report in which a hearing has been held under the name of the VLJ who held the applicable hearing. Post-remand non-hearing cases

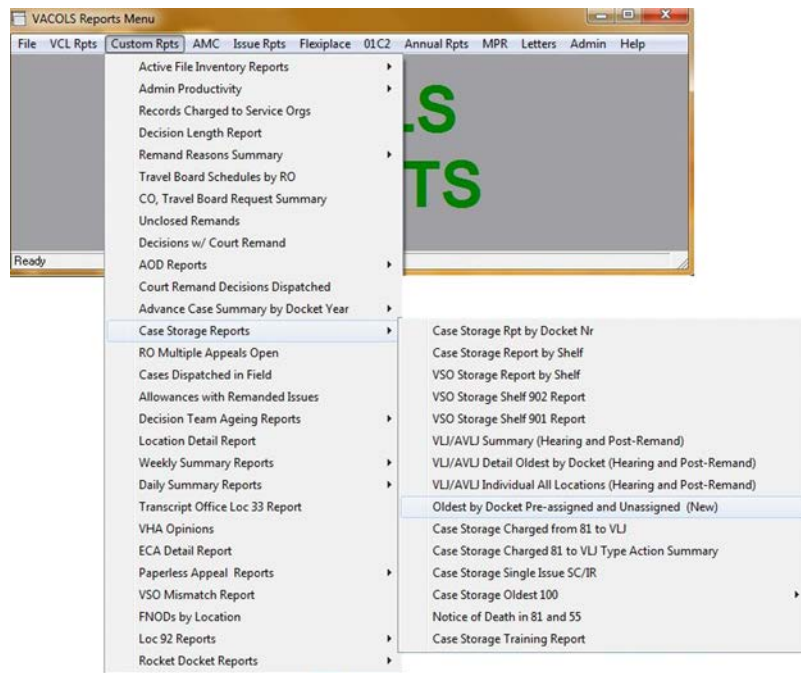
## CACB PROCEDURE MANUAL

are also identified on this report. Additionally, through the use of a radio button within VACOLS, the Oldest by Docket Report identifies General Population cases on a separate list. This report also identifies appeals in which hearings have been held by retired VLJs/AVLJs; such appeals must be added to the General Population pool, unless the appellant has elected to attend a new hearing.

### A. INSTRUCTIONS:

- (1) Run the above “Oldest by Docket Pre-assigned and Unassigned (New)” as shown below.

The report is generated through VACOLS Reports Menu, Custom Rpts, Case Storage Reports, Oldest by Docket Pre-assigned and Unassigned (New).



- (2) Select “Save Report” and save the report to c: drive/user in “HTML.”
- (3) Open the report using Microsoft Excel and correct any formatting errors that may have occurred during the transition to Excel.

- (4) Save an archive version of the report, as an Excel spreadsheet, at S:\Oldest Docket for Assignment\Archive\ using the following format: DATE Oldest Docket for Assignment (i.e., 1.16.15 Oldest Docket for Assignment.xlsx).
- (5) Save a live version of the report, to be used as a case assignment tracker, as an Excel spreadsheet, at S:\Oldest Docket for Assignment\ using the following format: DATE Oldest Docket for Assignment (i.e., 1.16.15 Oldest Docket for Assignment.xlsx).
- (6) Send a link to the archive version of the report via e-mail to the Office of the Chairman, the Office of the Chief Counsel, and all appropriate OAO staff. Include the date and name of the report in the subject line (i.e., 1.16.15 Weekly Report for Oldest Docket Assignment (Archive)).
- (7) Send a link to the live version of the report via e-mail to the Office of the Chairman, the Office of the Chief Counsel, the DVCs, the “BVA Chief Members” distribution list, the “BVA Senior Counsel” distribution list, and all appropriate OAO/Operations staff. Include the date and name of the report in the subject line (i.e., 8.04.17 Weekly Report for Oldest Docket Assignment).

#### **4. Assignment of Cases**

Using the number of cases requested by each VLJ, as identified in the case requests submitted by Chiefs and/or DVCs (*see Case Requests, VI.v.1*), CACB will identify the appropriate number of assignable cases for each VLJ who has requested cases, based on docket order. *See 38 U.S.C. § 7107; 38 C.F.R. § 20.900.*

Prior to assignment of cases, CACB personnel must ensure that all mail has been associated with the file and the “mail tab” in VACOLS has been closed. An exception will be Status Inquiry mail, where actions will be taken to ensure that all administrative steps are completed prior to a decision being rendered by the OAO.

## 5. Case Delivery

With respect to cases for VLJs, each case will be charged and delivered directly to the appropriate VLJ.

With respect to cases for AVLJs, each case will be charged and delivered to the respective AVLJ's Chief. Chiefs are responsible for monitoring and ordering AVLJ cases.

No cases from beyond the docket date range should be assigned, distributed, or decided, except in the circumstances of AOD cases and prior CAVC Remands, which must be distributed first in order to afford those cases expeditious treatment as required by law, and cases in which the Board no longer maintains jurisdiction due to the death of the appellant. In the event that a case with a docket date beyond the docket date range is inadvertently sent to the OAO, the case should be returned to CACB.

### A. Exceptions to General Case Distribution

Release of Cases Previously Subject to a Board-wide Stay - Upon the direction of the Vice Chairman, or his/her designee, cases may be distributed from CACB outside of the normal procedures outlined in this manual after a Board-wide stay has been lifted.

VLJ Case Screening at Hearings – Upon the direction of the Vice Chairman, or his/her designee, cases may be assigned from CACB outside of the normal procedures outlined in this manual to facilitate the screening of appeals for purposes of the development of a record found to be inadequate for decisional purposes, pursuant to 38 U.S.C. § 7107(f). Under this statutory authority, the Board may screen appeals to identify those cases that require additional evidentiary development before a final decision can be issued. Board judges review the identified cases and, where appropriate, order immediate evidentiary development to ensure that the record is adequate for a decision and to save wait time for Veterans. Where upon further review, any adjudicative decision other than evidentiary development is necessary in a case selected pursuant to this statutory authority, the case must be returned to CACB to await its turn in docket order.

## 6. Case Movement of Appeals to Board-based VSOs

CACB is accountable for the movement of appeals to and from the four largest VSOs at the Board – Disabled American Veterans (DAV), the American Legion (AML), Veterans of Foreign Wars (VFW), and Vietnam Veterans of America (VVA), and the numerous smaller Board-based VSOs listed in Complete Listing of Board-Based VSOs (updated February 20, 2018), VI.vi.

The following process applies to the routing of cases that are identified post Intake and Case Review to the appropriate VSO for review/creation of an IHP. Change in the size and location of CACB have significantly altered how cases are moved to Board-based VSOs once appeals have been activated and reviewed by CREB. CREB personnel previously delivered cases charged to location 55 or location 81 to Room 2W404 (CACB) and then filed these cases within CACB or moved them to the large VSOs, as appropriate. Effective January 2017, CACB delivers appeals charged to Board-based VSOs to the designated working area of each organization.

### A. Process

CREB activates an appeal, completes case review, and places the brief face in a designated “mailbox” located in 2W403 (clearly marked and properly labeled). DAV, AML, VVA, and VFW each have their own mailbox; all the smaller VSOs share one mailbox that is dedicated to them. Any case that is intended for VSO review will be charged to location 55 in VACOLS. There is also a separate mailbox for location 81 charges.

Each business day at 9:30 a.m., a CACB staff member picks up the appeals from these mailboxes, obtains a daily count of appeals moving to each Board-based VSO, and obtains appeals to place in the Board’s current CACB area for cases charged to location 81. This involves a quality assurance check for each case that has been charged to location 55. CACB personnel then batch charge these cases to location 55 (901). The same process is performed for cases charged to location 81.

After performing a quality assurance check and batch charges to the specific VSO shelf location, a CACB staff member hand-delivers the cases to the designated working areas (i.e., shelves) for the VSOs

receiving these cases. [Note: CACB files DAV's cases in their designated case storage area.]

## **7. Case Movement of Appeals within the Board**

### **A. Movement of Cases Between Staff Offices**

Staff offices wishing to move cases between internal groups, branches, or individuals within the Board are responsible for arranging and communicating the details of the transfer among themselves, which includes ensuring that the case is checked into the proper destination location and delivering it to that location. The VACOLS location and the physical location of the brief face must be in sync.

### **B. Procedures for Staff Offices Sending Cases to CACB**

Staff offices wishing to send cases to CACB will need to charge the cases to the appropriate location (81 for CACB and 55 for VSOs) and hand-carry the case to Room 2W415. CACB personnel will file the cases in the appropriate location.

## **vi. Complete Listing of Board-Based VSOs (updated February 20, 2018)**

Do not send PII to non-VA email addresses or in unencrypted emails.

\* denotes part-time occupant

### **American Legion (AL), Room 2E.102B**

Cristle Maddox, Appeals Representative

(202) 632-5297

E-mail: [BVA 3230 AML](#)

### **American Red Cross (ARC), Room 2W.240K**

Ron Williams, Appeals Representative

(202) 632-5692

E-mail: [BVA 3230 ARC](#)

### **American Veterans (AMVETS), Room 2W.240G**

Christopher Johnson, Appeals Representative

(202) 382-2825

Duayne Driscoll, Appeals Representative

(202) 632-5767 / (240) 678-9089

E-mail: [BVA 3230 AmVets](#)

**\*Armed Forces Services Corporation (AFSC), Room 2W.240J**

*(Formerly Army, Air Force Mutual Aid Association)*

Jennifer Harlow, Appeals Representative

Jennifer Moran, Appeals Representative

(202) 632-5883

(703) 379-9311 Ext. 1821

E-mail: [BVA 3230 Armed Forces Servs Corp](#)

**\*Blinded Veterans Association (BVA), Room 2W.240M**

Judith (Bouton) Eckroth, Appeals Representative

Judith.bouton@va.gov

(202) 632-5374

E-mail: [BVA 3230 Blinded Vets Assn](#)

Send correspondence to:

Field Service Program Director

The Blinded Veterans Association

125 N. West Street, 3<sup>rd</sup> Floor

Alexandria, VA 22314

**\*Catholic War Veterans (CWV), Room 2W.240D**

Jose Garcia, Appeals Representative

(512) 447-4697

E-mail: [BVA 3230 Catholic War Vets](#)

**Disabled American Veterans (DAV), Room 2E.250J**

Roy Spicer, Supervisor, National Appeals Office

(202) 632-4631

E-mail: [BVA 3230 DAV](#)

**\*Fleet Reserve Association (FRA), Room 2W.240C**

Chris Slawinski, Appeals Representative

(703) 683-1400, Ext. 115

E-mail: [vafra@fra.org](#)

**\*Marine Corps League (MCL), Room 2W.240I**

Garry A. Brown, Appeals Representative

(202) 632-5884

E-mail: [williamson@MCLeague.org](mailto:williamson@MCLeague.org)

**\*Maryland Department of Veterans Affairs (MDVA)**

Gerard “Gerry” Taylor, Appeals Representative

(410) 230-4444

E-mail: [BVA 3230 MD DVA](mailto:BVA 3230 MD DVA)

**\*Military Order of the Purple Heart (MOPH), Room 2W.240P**

Howard Hood, Appeals Representative

(202) 632-5140

E-mail: [BVA 3230 MOPH](mailto:BVA 3230 MOPH)

Other contacts:

Senior Counsel for Veterans’ Appeals (BVA & AMC), Room 2W.240Q

Celeste Kirkorian, Esq., Appeals Representative

(202) 530-9243

**\*National Veterans Legal Services Program, Inc. (NVLSP), Room 2W.240H**

Jeanne Schlaegel, Appeals Representative

(202) 632-5906

E-mail: [BVA 3230 NVLSP](mailto:BVA 3230 NVLSP)

Send correspondence to:

1600 K Street NW, Suite 500

Washington, DC 20006-2833

**\*Navy Mutual Aid Association (NMAA), Room 2W.240J**

Jennifer Harlow, Appeals Representative

(202) 632-5883

(703) 614-1207 (Arlington, VA office)

E-mail: [BVA 3230 Navy Mut Aid Assn](mailto:BVA 3230 Navy Mut Aid Assn)

**Paralyzed Veterans of America (PVA), Room 2W.210C**

Jamie Rudert, Associate General Counsel of Appeals

(202) 632-5442

E-mail: [BVA 3230 PVA](mailto:BVA 3230 PVA)

**Veterans of Foreign Wars (VFW), Room 2E.450K**

Sylvester C. Jones, Appeals Representative

(202) 632-4605



## CASE ASSIGNMENT

E-mail: [BVA 3230 VFW](#)

**Vietnam Veterans of America (VVA), Room 2W.220F**

Kelsey Yoon, Director Veterans Benefits Program

(202) 632-5073

Alec U.Ghezzi, Senior Managing Attorney

(202) 632-5783

E-mail: [BVA 3230 VVA](#)

**\*Wounded Warrior Project (WWP), Room 2W.240S – VSO-Flexi Desk**

Timothy J. Grossman, Senior Benefits Liaison, Appeals

(202) 558-4327)

E-mail: [BVA 3230 WWP](#)

Send Correspondence to:

Timothy J. Grossman

1120 G Street NW, Suite 700

Washington, DC 20005

## VII. CASE ASSIGNMENT

### i. ASSIGNMENT OF CASES TO VLJS

#### 1. Authority to Assign

Cases may be assigned to VLJs by the Chairman; by the Vice Chairman or the Chief Counsel acting on behalf of the Chairman; or by DVCs, Chief VLJs, or Senior Counsel acting on behalf of the Chairman.

VLJ(s) who conducted a hearing will be responsible for, or when a panel is assigned will participate in, making the determination in the proceeding even though the case may have been remanded by other VLJs prior to the hearing. 38 U.S.C. § 7107(c). This general rule is subject to 38 U.S.C. § 7103(b)(2) in reconsideration cases.

Once a case has been assigned to an AVLJ to adjudicate, that AVLJ may issue any subsequent determination on any aspect of the same appeal, even if it is done on a day when AVLJ status is not in effect. 38 U.S.C. § 7101(c)(1)(B). In addition, if a hearing is subsequently requested by an appellant whose case was previously assigned to an AVLJ, that AVLJ may be assigned to conduct the hearing, even if it is done on a day when AVLJ status is not in effect. 38 C.F.R. § 20.707.

## **2. Initial Assignment**

New matters before the Board shall be assigned to one VLJ rather than a panel, unless the Chairman, or his or her designee, directs otherwise. 38 U.S.C. § 7102(a).

## **3. CUE Motions for Board Decisions**

A motion for revision of a prior Board decision for CUE under 38 U.S.C. § 7111 may not be assigned to any VLJ who participated in the decision that is the subject of the motion. 20 C.F.R. § 20.1405(a)(1).

## **4. CAVC-Remanded Cases**

### **A. Scope**

This assignment policy applies both to initial Board consideration following a CAVC remand and to CAVC-remanded cases that have been remanded by the Board and then returned to the Board for further consideration.

### **B. General Policy**

At the Board's discretion, all cases requiring Board decisions and remands in response to a remand by a court of competent jurisdiction shall be assigned to the VLJ(s) that signed the decision appealed to CAVC, if warranted, unless the Chairman, Vice-Chairman, DVC, Chief VLJ, or their designee, directs otherwise.

### **C. Pre-Authorized Exceptions to General Policy**

#### **(1) VLJ Who Signed Remanded Decision Unable to Serve (Retirement, etc.)**

##### **a. No Hearing Conducted**

##### **(i) No VLJ Still Able to Serve**

If no VLJ who signed the decision remanded by CAVC is able to serve, the case will be assigned to a new individual VLJ or a new reconsideration panel, as applicable.

## CASE ASSIGNMENT

### (ii) One or More, But Not All, Panel VLJs Able to Serve

If one panel VLJ remains and is able to serve, the case will be assigned to that VLJ, unless the case is a reconsideration case requiring panel disposition. If two or more panel VLJs (one or more in reconsideration cases), but less than the full panel, are able to serve, additional VLJs will be assigned, with the remaining VLJ(s), to constitute a panel of the same size as the panel that signed the decision remanded by CAVC.

#### b. Hearing Conducted. See VII.i.6.B(1)

### D. Hearing Scheduled

Where a VLJ is assigned to conduct a hearing in the case, the case will be assigned to that VLJ.

### E. Compliance with CAVC Order

A CAVC-remanded case will be assigned to a VLJ other than the VLJ who signed the remanded Board decision if that assignment is required to comply with the order of CAVC.

### F. Reassignment Will Facilitate Timely Review

When a hearing has not been conducted, the Chairman (or, acting on behalf of the Chairman, Vice Chairman, DVC, Chief VLJ, or Senior Counsel) may assign the case to a VLJ other than the VLJ who signed the decision appealed to CAVC if that assignment will facilitate timely review because of extenuating circumstances (*e.g.*, the absence of VLJs or the existing workload of VLJs). This exception is subject to the requirements of 38 U.S.C. § 7107(c).

## 5. Cases Returned to the Board Following Remand to AOJ

### A. General Policy

At Board discretion, cases returned to the Board for further consideration following remand to an AOJ will be assigned to the remanding VLJ, unless the Chairman, Vice-Chairman, DVC, Chief VLJ, or their designee directs otherwise.

## CASE ASSIGNMENT

- B. Pre-Authorized Exceptions to General Policy
- C. VLJ(s) Who Remanded Case Unable to Serve

### (1) No Hearing Conducted

#### a. No Remanding VLJ Able to Serve

If no remanding VLJ is able to serve, the case will be assigned to a new individual VLJ or a new reconsideration panel, as applicable.

#### b. One or More, But Not All, Remanding Panel VLJs Able to Serve

If one remanding panel VLJ is able to serve, the case will be assigned to that VLJ, unless the case is a reconsideration case requiring panel disposition. If two or more remanding panel VLJs (one or more in reconsideration cases), but less than the full panel, are able to serve, additional VLJs will be assigned, with the remaining VLJ(s), to constitute a panel of the same size as the remanding panel.

### (2) Hearing Conducted. See No VLJs Able to Serve, 6.B(1).

### (3) Hearing Scheduled

Where a VLJ is assigned to conduct a hearing in the case, the case will be assigned to that VLJ.

### (4) Reassignment Will Facilitate Timely Review

Except where otherwise required by 38 U.S.C. § 7107(c), when a hearing has been conducted, the Chairman (or, an individual acting on behalf of the Chairman, the Vice Chairman, DVC, Chief VLJ, or senior counsel) may assign the case to a VLJ other than the VLJ who signed the remand if that assignment will facilitate timely review because of extenuating circumstances, including the absence of, or existing workload of, the remanding VLJ(s) (*e.g.*, cases signed by AVLJs may be reassigned so long as a hearing has not been conducted).

**6. VLJ(s) Who Conducted Hearing Unable to Participate in Final Determination**

**A. Scope**

38 U.S.C. § 7107(c) specifies that a VLJ designated by the Chairman to conduct a hearing “shall, except in the case of a reconsideration of a decision under section 7103 of this title, participate in making the final determination of the claim.” This section sets out Board policy on how to proceed when a VLJ who held a hearing in an appeal is unable to participate in the final decision.

**B. Non-reconsideration Cases**

**(1) No VLJs Able to Serve**

If no VLJs who participated in a Board hearing on the current appeal are able to participate in the final determination, the appellant will be offered an opportunity to proceed on the record with a newly assigned VLJ or to have a new hearing. When the appellant has made the election, the case will be assigned to a new VLJ for a decision or for conducting a new hearing, as appropriate. If the appellant fails to make an election within 30 days, the case will be assigned to a new VLJ for a decision without scheduling a new hearing.

**(2) One or More, But Not All, VLJs of Hearing Panel Able to Serve**

If one VLJ who participated in a Board panel hearing on the current appeal is able to serve, the case will be assigned to that VLJ. If two or more of the VLJs, but less than the full panel, who participated in a non-reconsideration Board panel hearing on the current appeal are still able to serve, an additional VLJ, or VLJs, will be assigned to reconstitute the panel.

**C. Reconsideration Cases**

See VLJ restrictions, XIII.ii.4.D.

## **7. Specialty Case Team Pilot Program**

### **A. General Purpose**

The Specialty Case Team (SCT) pilot program was approved by the Chairman in April 2018 for a duration of one year to be extended at the Chairman's discretion. The purpose of the SCT pilot program is to increase productivity as well as the quality and consistency of decisions involving the Board's rarest and most legal complex topic areas. Cases eligible for the program will be designated to specific specialty areas, authorized by the Chairman.

### **B. Case Distribution**

Cases involving SCT issues, including all hearing and non-hearing cases within the specialty area, are distributed directly to the VLJ who has the SCT attorney assigned to the specific specialty on his or her mini-team. Cases involving SCT issues are not delivered during general case orders.

## **8. Panel of VLJs**

### **A. Hearings by Different VLJs on the Same Issue(s)**

The authority for this section derives from 38 U.S.C. § 7107(c); 38 C.F.R. § 20.707; and *Arneson v. Shinseki*, 24 Vet. App. 379 (2011).

#### **(1) Identification of Appeals Requiring a Panel Decision**

To identify whether a panel decision is necessary, Counsel must determine whether the hearings covered any of the same issues. For any issue on appeal for which at least two VLJs took hearing testimony, a third VLJ will need to be assigned to the panel to consider that issue, after giving the appellant the opportunity for a hearing before a third VLJ.

If all issues on appeal were covered by each VLJ, then a single panel decision will be issued. The determination as to whether or not a VLJ took testimony on an issue is itself a finding of fact to be made by a VLJ.

Any issues on appeal on which only one VLJ took hearing testimony will be handled by that VLJ in a separate decision signed by that single VLJ, apart from the separate panel decision that will be issued addressing the common issues that were covered in the multiple hearings. Examples:

## CASE ASSIGNMENT

a. Judge A conducts a hearing that addresses three issues: (1) entitlement to service connection for headaches, (2) entitlement to service connection for hypertension, and (3) entitlement to service connection for flat feet. Judge B conducts a hearing that addresses two of the same issues: (1) entitlement to service connection for headaches and (2) entitlement to service connection for hypertension. Under this example, two decisions will be issued by the Board. Judge A will issue a decision that addresses only the issue of entitlement to service connection for flat feet. Both Judges A and B, along with a third (to be assigned) Judge C, will issue a panel decision on the issues of entitlement to service connection for headaches and hypertension, after providing the appellant with an opportunity for a hearing before Judge C on those issues. Counsel and VLJs, working with OAO Management Support Branch personnel, must arrange for two separate VACOLS records and administrative controls to ensure proper tracking and dispatch of the two separate decisions.

b. Judge A conducts a hearing that addresses two issues: (1) entitlement to service connection for a right knee condition and (2) entitlement to an increased rating for a back condition. Judge B conducts a hearing that addresses three issues: (1) entitlement to service connection for hearing loss, (2) entitlement to service connection for tinnitus, and (3) entitlement to an increased rating for a back condition. Under this example, three decisions will be issued by the Board. Judge A will issue a decision that addresses only the issue of entitlement to service connection for a right knee condition. Judge B will issue a decision that addresses only the issues of (1) entitlement to service connection for hearing loss and (2) entitlement to service connection for tinnitus. Finally, both Judges A and B, along with a third (to be assigned) Judge C, will issue a panel decision on the issue of entitlement to an increased rating for a back condition, after providing the appellant with an opportunity for a hearing before Judge C on that issue. Counsel and VLJs, working with OAO Management Support Branch personnel, must arrange for three separate VACOLS records and administrative controls to ensure proper tracking and dispatch of the three separate decisions.

## CASE ASSIGNMENT

c. Judge A conducts a hearing that addresses two issues: (1) entitlement to service connection for PTSD and (2) entitlement to service connection for diabetes. Judge B conducts a hearing that addresses the exact same issues. Under this example, one panel decision will be issued by the Board, after providing the appellant with an opportunity for a hearing before a third judge on those same issues. No changes need to be made to the VACOLS record.

d. Judge A conducts a hearing on two issues, and Judge B conducts a separate hearing on entirely different issues – in other words, there were no common issues between the two hearings. Both appeals are in active status at the Board. Under this example, two separate decisions will be issued by the Board. Since there were no common issues between the two hearings, the procedures for panel decisions are not implicated, and no notice about the opportunity for a third hearing is necessary. Counsel and VLJs, working with OAO Management Support Branch personnel, must arrange for two separate VACOLS records and administrative controls to ensure proper tracking and dispatch of the two separate decisions.

### (2) Panel Members

If the appellant requests a third hearing, then the panel will consist of all three VLJs who took testimony on the same issues. Panels may not consist of less than three members. 38 U.S.C. § 7102(a); 38 C.F.R. § 19.2(b).

If the appellant declines a third hearing, fails to report for the third hearing, or cancels the hearing request, the third VLJ on the panel will be assigned by the supervising Chief VLJ of the VLJ who held the most recent hearing.

### (3) Cases Involving More than One Decision

Once Counsel identifies an appeal as requiring more than one decision, that Counsel is to work with OAO Management Support Branch personnel to ensure that the appeal is properly docketed in VACOLS. In that regard, multiple record entries will be created in VACOLS for each Board decision that will be issued along with the issue(s) being decided in each of those separate decisions. In those cases where issues on appeal



## CASE ASSIGNMENT

are being split into multiple VACOLS records, the issues that pertain to each specific Board decision that will be issued (and that will be reflected in a separate VACOLS record) must be clearly and explicitly identified by Counsel to assist the OAO Management Support Branch personnel in making the record changes.

### (4) Preparation of Letters Offering Third Hearing in Panel Cases

If two different VLJs held two different hearings covering one or more common issues on appeal, Counsel should use the “Arneson Letter” template in the shared template folder in Word (“All Issues Common” or “Only Some Issues Common”) to draft a letter to the appellant offering the opportunity for a hearing with a third VLJ who will be assigned to the panel. The letters are designed to offer the appellant the choice of: (1) being scheduled for a hearing before the third VLJ assigned to the panel on the issue or issues that require a panel decision or (2) waiving his or her right to a third hearing and immediately proceeding with appellate review of the issue or issues that require a panel decision.

Completed letters should be saved in the “Arneson Notification Letters” subfolder located at S:\Arneson Notification Letters using the following naming convention: the word “Arneson” plus the last four digits of the appeal identification number (C number or SS number). For example, if the C number is 12 345 678, the name of the letter will be “Arneson5678.” Once complete, route the case electronically to OAO Management Support Branch personnel to dispatch the letters and hold the case in abeyance for 37 days (30 days plus time allowed for mail association). See ELECTRONIC ROUTING, III.I.

### (5) Response to Hearing Letter

#### a. No Response to Hearing Letter

If no response to the letter offering a third hearing is received within 37 days of the date of the letter (30 days plus time allowed for mail association), the claims file will be returned to the originating Counsel for decision drafting without scheduling another hearing.

## CASE ASSIGNMENT

### b. Request for Travel Board or Video Conference Hearing

If the appellant elects to have a third hearing either by Travel Board or Video Conference, the issues requiring a panel decision must be electronically routed to the OAO Management Support Branch personnel. See ELECTRONIC ROUTING, III.I.

### c. Request for Central Office Hearing

If the appellant elects to have a Central Office hearing before a third VLJ, adjudication of the entire appeal will be delayed until after the hearing has been conducted. Forward the case to the OAO Hearing Management Branch for appropriate action.

## B. Panel Dissolved

A panel of three VLJs may be dissolved when no more than one VLJ who held a hearing on the issue(s) remains employed by the Board. This contemplates that at least two of the panel VLJs are no longer employed by the Board. If at least two VLJs of a panel are available to participate in the deciding of the issue(s), then the panel may not be dissolved (and the Board will need to provide the appellant with an opportunity for a third hearing before another VLJ).

## C. RECONSIDERATION

Panel assignment is required when a motion for reconsideration is granted. 38 U.S.C. § 7103(b); 38 C.F.R. § 19.11. See RECONSIDERATION, XIII.ii.

## 9. For Corrective Action

### A. Authorized Methods

For substantive information about Correcting Released Decisions, Remands, and Interlocutory Orders, see POST-DECISIONAL MOTIONS, XIII.

### B. “Harmless Error” Correction

Cases requiring an order correcting harmless error may be assigned to any VLJ who signed the decision, remand, or order to be corrected. If no such

## CASE ASSIGNMENT

VLJ is able to serve, another VLJ will be assigned to complete the corrective order.

All corrective orders are processed through the Motions Unit of the Litigation Support Branch. Any cases requiring a corrective order should be referred to the Board's Litigation Support Branch. The Litigation Support Branch will ensure there are no jurisdictional bars to the order. If no jurisdictional bars exist, Litigation Support staff will draft the order.

### C. Reconsideration.

See RECONSIDERATION, XIII.ii.

### D. 38 U.S.C. § 7111 CUE Motions

All *sua sponte* Board CUE motions are initiated by Motions Unit of the Litigation Support Branch. See CUE REVIEW, XIII.iii.

### E. Vacatur and Supplemental Decisions

A Board decision may be vacated by the same VLJ who signed the prior decision. Follow the procedures in VACATUR, XIII.vi.

## 10. Cases Involving Review of Representatives' Expenses and/or Fees

### A. Overview

OGC has primary responsibility for the administrative coordination of cases involving reviews of representatives' fee agreements under 38 C.F.R. § 14.636(i) and motions for the review of expenses charged by representatives initiated by either the representative on its own motion or by an appellant under 38 C.F.R. § 14.637(d).

### B. Agreements entered into before June 23, 2008

Prior to June 23, 2008, fee agreements were governed by 38 C.F.R. §§ 20.609-610. Effective June 23, 2008, these sections were removed and reorganized under 38 C.F.R. §§ 14.636-637.

## CASE ASSIGNMENT

### (1) No Other Fee or Expense Matter Pending

If no other fee or expense matter involving the same parties is pending before the Board, the case will be assigned to the VLJ who initiated the motion. If more than one VLJ initiates the motion, the case will be assigned to a panel of three, or more in multiples of three if required, that includes the initiating VLJs.

### (2) Review Initiated by the Board While Other Fee or Expense Matter Pending

Where another fee or expense review matter involving the same parties is already pending before the Board, a Board-initiated motion will be consolidated with the pending matter and assigned to the same VLJ(s) to whom the pending matter is assigned.

## C. Agreements entered on or after June 23, 2008

(1) The Board may not initiate on its own motion a review of a fee agreement.

(2) Standard case assignment procedures apply.

## 11. Cases Involving Classified Information and/or IVM

In the extraordinary circumstance that a case requires a VLJ access to classified information; it will be assigned *only* to VLJs who have been properly authorized to have access to that information. This policy takes precedence over any other assignment policy in this directive. If no VLJ so cleared is available for assignment, assignment will be deferred until that clearance is obtained.

IVM folders and co-pay folders from the Health Eligibility Center (HEC) contain tax information provided by the IRS and/or SSA, which is obtained pursuant to a contractual agreement that allows VA to compare or “match” Federal tax documents with the information provided by claimants. This comparison will show any adjustments that need to be made to income-based benefits, such as pension, TDIU, and certain health care services such as co-pay obligations. The tax information received through the IRS and/or SSA is *protected tax information* and so must be contained in an IVM folder or a Co-Pay folder. These bright orange (IVM) and bright yellow (HEC) folders are kept in a locked safe (or elsewhere online, in light of the Board’s continuing transition to an electronic claims file environment). In

## CASE ASSIGNMENT

order to handle IVM cases, both Counsel and VLJs must become certified by completing IVM training. All VLJs and Counsel must renew their certification on a yearly basis. It is the responsibility of the Counsel and VLJ to keep their IVM certifications up to date. The Privacy Officer is responsible for training VLJs and Counsel to handle IVM cases.

If a non-certified attorney comes across an IVM folder, the Privacy Officer should be contacted immediately.

If an IVM-certified attorney is assigned an IVM case and there is reason to believe there is a paper file, contact the Privacy Officer to obtain the file.

### 12. Disqualification of VLJs or Counsel

#### A. VLJs - 38 C.F.R. § 19.12

(1) *General.* A VLJ will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in which he or she participated or had supervisory responsibility in the AOJ prior to his or her appointment as a VLJ, or where there are other circumstances that might give the impression of bias either for or against the appellant.

(2) *Appeal on same issue subsequent to decision on administrative appeal.* Any VLJ who made the decision on an administrative appeal will disqualify himself or herself from acting on a subsequent appeal by the claimant on the same issue.

(3) *Disqualification by the Chairman.* The Chairman, on his or her own motion, may disqualify a VLJ from acting in an appeal on the grounds set forth in this section and in those cases where a VLJ is unable or unwilling to act.

#### B. Counsel

A case will be reassigned where the facts show that Counsel is biased for or against a party to the case, or that there are circumstances that would create a public impression of bias.

### **13. Recusal**

#### **A. No Travel Board Hearing Scheduled**

Any VLJ who disqualifies himself or herself from participating in the disposition of a case under 38 C.F.R. § 19.12 is responsible for promptly notifying his or her supervising DVC, who will take appropriate action to reassign the case. If a Central Office or Video Conference hearing has been scheduled, the VLJ will also promptly notify the OAO Hearing Management Branch. Contact your supervisor for guidance.

#### **B. Travel Board Hearing Scheduled**

Any VLJ who disqualifies himself or herself from participating in the disposition of a case under 38 C.F.R. § 19.12 in which he or she has been scheduled to conduct a hearing at a VA field office is responsible for promptly notifying the DVC, who will take appropriate action to reassign the case.

### **ii. ASSIGNMENT OF CASES TO COUNSEL**

VLJs, along with Chief VLJs, Senior Counsels, and other supervising authority as needed, are responsible for the assignment of cases to Counsel. Assignment procedures will take into consideration AOD status, whether the case has been appealed to CAVC, workflow needs, the complexity of the case, Counsel's existing work load, and the grade and experience level of Counsel.

#### **1. File Protection and Control**

##### **A. Protection of Records**

All Board personnel are responsible for the protection of VA records in their possession or control. Concealing, removing, mutilating, obliterating, falsifying, or destroying government records are criminal offenses. 18 U.S.C. § 2071. Items of evidence that may pose a biological or other hazard may be removed from a paper claims file with the approval of the Chairman, the Vice Chairman, Chief Counsel, or DVC and an appropriate photograph or description of the item and reason for its removal may be substituted in its place.

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### B. Tracking

The location of all official VA files in the Board's custody *must* be tracked at all times. All Board personnel having custody of official records are responsible for ensuring that VACOLS is properly updated when files move from one work unit of the Board to another, or from the Board to a location outside of the Board. Supervising DVCs, or their designees, are responsible for developing procedures to ensure tracking of files within the OAO. The Chief Counsel, or his or her designee, is responsible for developing such procedures within the Office of the Chief Counsel.

### C. Classified information

All Board employees are responsible for safeguarding classified information in their care and ensuring that no person has access to that information that does not have the proper security clearance and a need to access the information in order to perform his or her duties. Any Board employee who becomes aware of the unauthorized disclosure of classified information will immediately notify the Privacy Officer.

## 2. Recusal

Senior Counsel or Counsel who believe that they may be biased for or against a party in a case assigned to them, or who believe that there may be an appearance of bias, are responsible for promptly reporting the facts upon which the belief is based to the VLJ to whom the case is assigned. The VLJ to whom the case is assigned is responsible for determining whether Senior Counsel, or Counsel, should be excused from preparation of a decision in the case because of actual or apparent bias and, if so, for promptly arranging for reassignment of the case.

## VIII. CASE DRAFTING

### i. SAFEGUARDING PERSONALLY IDENTIFIABLE INFORMATION (PII)

#### 1. Privacy Protection Requirements

Final decisions and remands of the Board must be made available to the public. 5 U.S.C. § 552(a)(2). At the same time, copies of Board documents that are made available to the public must be prepared in such a way that a member of the public cannot link personal information contained in that document to a specific individual (*e.g.*, the appellant). *See generally* 5 U.S.C. § 552(a). Thus, PII should not appear in

the body of a Board decision or in a remand, particularly in the order portion of the documents. Board decisions have captions at or near the top of each page that include the name(s) of the appellant and other parties and the applicable VA file number(s). However, this information is removed from decisions and remands that are made available to the general public through an automated process. Placing this kind of information outside the caption substantially increases the risk of an information law violation.

## **2. Mosaic Effect**

Some information specific to the appellant may not identify him or her by itself, but when aggregated with other information, the identity of the appellant may emerge. Consider whether a friend or a family member would easily recognize the appellant from the information you are including, or if you have given enough information for a reader to find the name of the appellant. In particular, if the appellant references very specific information about him or herself that is easily searchable online in a way that would individually identify the appellant, then that information needs to be redacted from the decision.

## **3. Alternative Forms of Reference**

Permissible methods of reference in portions of Board decisions other than the caption include the use of initials only or references to “the Veteran,” the “appellant,” “the Veteran’s spouse,” “the appellant’s son,” etc., with no associated name. Even the use of only first names of family members and witnesses should be avoided, because this might be sufficient to permit someone to identify that person. It is permissible to use the names of public institutions or service providers, if the information is not about the institution or provider, *e.g.*, the names of physicians or hospitals providing medical reports about their patients, except when the relationship between the third party and the subject is well known in such a way that disclosure of the name of the third party would reveal the identity of a protected individual.

## **4. Procedure When Personal Identifiers Must Be Included**

If a decision or remand cannot be adequately prepared without disclosing PII in the body of the document, the VLJ to whom the case is assigned must coordinate the release of the decision or remand with the Board’s Privacy Officer to ensure the protection of privacy interests when it is released to the public.



## CASE DRAFTING

The redaction is done after a decision is issued and before it is released online. Alerting the Privacy Officer that a decision may need to be redacted will not delay the issuance of the decision. E-mail the Privacy Officer with the name and file number of the appellant so that the decision can be properly redacted prior to being made public. The Privacy Officer will determine how to redact the decision.

### ii. TEMPLATES – The Interactive decision template & specialized templates

#### 1. Formatting

Basic formatting for decisions is automated through the use of templates. Modifications to decision formatting are automatically instituted Board-wide through centralized changes to these templates. Do not change the default formatting in the absence of specific contrary instructions. The Interactive Decision Template (IDT) may be found in Microsoft Word by navigating to [P:\Board\ Template to find the IDT \(Interactive Decision Template.dotm\)](P:\Board\ Template to find the IDT (Interactive Decision Template.dotm)).

#### 2. Specialized

All templates that formerly existed in Microsoft Word, prior to the implementation of the IDT, are located on the V drive: [Templates7](#). When using one of the specialized templates, DO NOT EDIT THE ORIGINAL DOCUMENT. Rather, copy the file to your desktop and open it, then cut and paste the text into the IDT.

### iii. CAPTIONS

#### 1. Caption Preparation

The IDT produces captions for the most common kinds of cases, but some captions require manual revision. These situations are annotated below.

#### 2. Claim and Other File Numbers

The primary VA file number used in captions is the “C,” “XC,” “SS,” or “XSS” claim number:

SS 123 45 6789 (no dashes used)

C 1 234 567 or C 12 345 678 (For claim numbers that are less than 8 digits, a 0 should not be added to the front.)

## CASE DRAFTING

If the veteran is deceased *and is not the appellant*, an “X” should be placed in front of the C or SS (*i.e.*, XC or XSS). For cases that are being dismissed due to the death of the veteran, an “X” should not be used, as the veteran is still the appellant for the purposes of the dismissal.

Some appeals use a VA file with another number. Loan guaranty file folders use an “LH” prefix, followed by a number. Insurance file folders can include multiple prefixes, most commonly “RH.” These numbers, including any prefix and/or suffix, should appear on the right-hand side beneath the primary file number in the following format (“LH” and “TN” are used below as examples of prefix and suffix placement).

IN THE APPEAL OF

SS 123 45 6789

JOHN Q. VETERAN

LH 123 456 TN

### 3. Docket Numbers

Docket numbers should take the following form: 12-34 567 or 12-34 567A. Check the “Docket” tab in VACOLS for the correct docket number.

The letter after the docket number may indicate a correction.

### 4. Identification of Parties

The following are sample captions for different types of cases.

#### A. Veteran appellant, no Fiduciary

This is the simplest caption. No revision is normally required when the IDT is used.

IN THE APPEAL OF

SS 123 45 6789

MARY T. VETERAN

#### B. Appeal by a Fiduciary on Behalf of a Veteran

Incompetent veterans are listed as the appellant, unless a properly appointed fiduciary prosecutes the appeal. 38 C.F.R. § 20.301. List legally appointed guardians or other fiduciaries as the appellant if they have acted on behalf of a veteran in an appeal, identifying their capacity. Identify the veteran as well.

## CASE DRAFTING

IN THE APPEAL OF

SS 123 45 6789

I. M. FIDUCIARY, GUARDIAN

IN THE CASE OF

JOHN Q. VETERAN

### C. Appeals by Survivors, Substituted Claimants, or Dependents

If the appeal is by a survivor or dependent (*e.g.*, a surviving spouse seeking entitlement to service connection for the cause of a veteran's death), list the survivor or dependent as the appellant. List multiple appellants in succession, one under the other. Identify the veteran as well. In the following example, there was an appeal by two dependents, the deceased veteran Martha Smith's son John and her daughter Sara.

IN THE APPEAL OF

XC 12 345 678

JOHN SMITH

SARA SMITH

IN THE CASE OF

MARTHA SMITH

### D. Appeal by a Fiduciary on Behalf of Someone Other Than the Veteran

A fiduciary may appeal on behalf of an appellant other than the veteran through whom benefits are claimed. This occurs when the appellant is under a legal disability (*e.g.*, a minor or an incompetent dependent). In the following example, there was an appeal by the guardian of the veteran Martha Smith's minor daughter Sara. Martha is the veteran through whom benefits are claimed, but the appellant is Sara, a minor.

IN THE APPEAL OF

XC 12 345 678

I. M. FIDUCIARY

On behalf of SARA SMITH

IN THE CASE OF

MARTHA SMITH

## CASE DRAFTING

### E. Administrative Appeals

Certain VA officials are authorized to file an administrative appeal to resolve disagreement within an AOJ about the proper disposition of a claim. See 38 C.F.R. Part 19, Subpart C and 38 C.F.R. Part 20, Subpart E. Claimants are notified of administrative appeals and given an opportunity to join in the appeal. If they do, the appeal becomes a “merged appeal.” Normal captions are used for merged appeals. The caption is not affected by the fact that the appeal began as an administrative appeal. If the claimant does *not* elect to join in the administrative appeal, the appellant is the VA official entering the administrative appeal. In the following example, an adjudication officer entered the appeal and the veteran elected not to join.

IN THE APPEAL OF C 12 345 678  
ADJUDICATION OFFICER  
VA Regional Office  
Washington, D.C.  
IN THE CASE OF  
SAMUEL J. VETERAN

### F. Simultaneously Contested Claims

In simultaneously contested claims, the parties who were not awarded benefits are the appellants. The name of the successful party at the AOJ does not appear in the caption. In the following example, two of the veteran’s former spouses are contesting a decision that a third spouse should be recognized as the surviving spouse for VA purposes. The contesting parties, “Gail One” and “Jane Two,” are named as appellants and the third spouse, who prevailed below, is not identified as an appellant:

IN THE APPEAL OF XC 12 345 678  
GAIL ONE and  
JANE TWO  
IN THE CASE OF  
SAMUEL J. VETERAN

## CASE DRAFTING

### G. Reconsideration Decisions

The fact that a case is before the Board on reconsideration does not affect preparation of the caption. However, until the IDT has been expanded to include the reconsideration as an option, you must include the notation “Reconsideration” in the caption.

### H. Representatives’ Fee Agreement and Expense Charges Cases

#### (1) Fee Cases

The [template for fee agreement cases](#) should be copied and pasted into the IDT. Captions should be modified accordingly. In this example, the fee agreement was between the veteran and an attorney:

IN THE MATTER OF THE FEE AGREEMENT OF C 12 345 678  
CLARENCE SPARROW  
IN THE CLAIM OF  
JOHN A. VETERAN

The next example illustrates how the caption would be formatted in a case involving a fee agreement between a representative and a surviving spouse, child, etc. Joan M. is the surviving spouse of deceased John A. Veteran.

IN THE MATTER OF THE FEE AGREEMENT OF XC 12 345 678  
CLARENCE SPARROW  
IN THE CLAIM OF  
JOAN M. VETERAN  
IN THE CASE OF  
JOHN A. VETERAN

#### (2) Expense Cases

The same formatting applies, except that the caption will need to be manually modified throughout to change “IN THE MATTER OF THE FEE AGREEMENT OF” to “IN THE MATTER OF THE EXPENSE CHARGES

## CASE DRAFTING

OF,” or to “IN THE MATTER OF THE FEE AGREEMENT AND EXPENSE CHARGES OF.”

### I. Appeal by Health Care Provider in Medical Expense Reimbursement Case

The Board does occasionally receive an appeal from a health care provider in a case where unauthorized medical expense reimbursement has been denied.

IN THE APPEAL OF C 12 345 678  
QUICK MANAGED CARE, INC.  
IN THE CASE OF  
JOSEPH A. VETERAN

### J. Multiple Names for the Same Individual

There is an Also-Known-As (AKA) checkbox on the first information screen within the IDT as well as an option to add AKA lines on the IDT right-click menu. This option should be utilized when there are multiple names for the same individual. This feature is most commonly used for appellants who have changed their names due to marriage or divorce.

### K. 38 U.S.C. § 7111 CUE Review Cases

The [various templates for 38 U.S.C. § 7111 CUE review cases](#) produce appropriately modified captions:

IN THE MATTER OF THE MOTION OF SS 123 45 6789  
EVE VETERAN  
IN THE CASE OF  
ADAM VETERAN

## iv. GENERAL FORMAT DECISIONS

### 1. Usage

The “general” format that includes all of the elements specified by 38 U.S.C. § 7104(d) is used for most Board decisions. See 38 C.F.R. § 19.7(b) for exceptions.

## 2. Headings

Most of the required headings that follow the introductory material are automatically inserted by the Interactive Decision Template (IDT). Two lines should be allowed between each section. Minor modifications may be required (*e.g.*, plural Findings/Conclusions).

## 3. Finding(s) of Fact (FoF)

Present FoF briefly in a sequentially numbered list, using Arabic numerals, with one blank line between each numbered finding. Findings should always include relevant “ultimate” findings. “Evidentiary” findings may also be appropriate in some cases; however, FoF should never be used to merely describe pieces of evidence.

## 4. Conclusion(s) of Law (CoL)

Present CoLs in a sequentially numbered list, using Arabic numerals, with one blank line between each numbered conclusion. Cite the statutory or regulatory provisions that are applicable immediately after the text of each CoL. Case law should not be included in CoLs, as this is the interpretation of the statutory or regulatory provisions by the U.S. Court of Appeals for Veterans Claims (CAVC).

## v. SIGNATURE ELEMENTS

### 1. Signature Lines

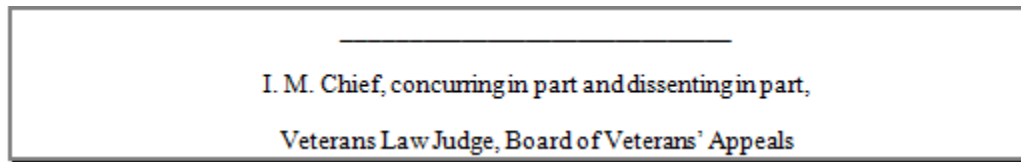
The IDT automatically generates signature lines for both single and multiple judge decisions. If you are assigned a panel case, wherein three Veterans Law Judges (VLJs) must sign, there is a checkbox on the first information page in the IDT as well as a right-click down menu option to insert additional signature lines.

### 2. VLJ Titles

The IDT automatically inserts the title “Veterans Law Judge, Board of Veterans’ Appeals” beneath the space for inserting the VLJ’s name. To add “Acting” before “Veterans Law Judge” when applicable in the IDT, press “Alt-V” and select the “Toggle Acting Status” option from the bottom of the VLJ pop-up menu. Do not add “Chief” or signifiers other than “Acting” before “Veterans Law Judge.”

### 3. Decisions with Concurring or Dissenting Opinions

An appropriate notation should be added to the normal signature block:



Center one of the following headings below the signature line(s), but above the concluding notice of further appellate rights: “DISSENT,” “CONCURRING OPINION,” or “OPINION CONCURRING IN PART AND DISSENTING IN PART.” Follow the heading with appropriate narrative material.

#### vi. NOTICES

##### 1. Notice of Appellate Rights

When signing an appellate decision in the IDT, the signing VLJ will be asked if appellate rights should be attached to the decision. These rights should be attached to all outcome-determinative decisions. They should not be included with Remands alone.

##### 2. Insurance Cases

*Delete the notice of appellate rights paragraph in insurance cases.* There are options for appealing decisions by the Board in insurance cases that are not available in other types of cases. See, e.g. 38 U.S.C. § 1984 and *Young v. Derwinski*, 1 Vet. App. 70 (1990). Letters containing appropriate information concerning appellate rights are mailed with dispatched Board decisions in insurance cases.

##### 3. Representatives’ Expense Cases

While most formatting produced by the [attorney-fee case template](#) is also appropriate for use in pre-June 23, 2008, 38 C.F.R. § 20.610(d) motion cases, necessary modifications include deleting the first sentence of the included “Notice of Appellate Rights” discussing CAVC’s 38 U.S.C. §§ 5904(c)(2), § 7263(d) jurisdiction.



vii. FORMATTING

1. Representation

The IDT will automatically populate the name of the representative associated with the claim in VACOLS. Any changes made to the representative in the IDT must be done manually. PLEASE NOTE: Any changes made to prepopulated fields in the IDT must also be made separately in VACOLS. Though the IDT pulls case information from VACOLS, it does not write back to VACOLS. Contact co-located administrative staff or senior counsel for assistance if needed.

The examples below show how a VSO, attorney, agent, or individual may be listed in the Representation section of the decision. These are only examples and should be adapted to the facts of each case.

- A. The Veteran is not the Appellant, but Participated and was Represented

Appellant represented by: The American Legion

Veteran represented by: Dana Scully, Agent

- B. Simultaneously Contested Claims

A. W. represented by: Vietnam Veterans of America

M. G. represented by: Abraham Lincoln, Attorney

- C. Representatives' Fee Agreement and Expense Charges Cases

Because the interests of the VA claimant and the representative whose fees or expense charges are at issue may be adverse in these cases, that representative *is not* listed as the claimant's representative. However, either the claimant or the representative may be separately represented in the fee or expense proceeding. Use the following format to show representation for one or both parties, as applicable:

U. R., Attorney, represented by: William J. Bryan, Attorney

VA Claimant represented by: Clarence Darrow, Attorney

## CASE DRAFTING

### D. Representation by a Member of Congress

If a member of Congress is the representative properly appointed in accordance with the provisions of 38 C.F.R. §§ 14.629-631 (or 38 C.F.R. §§ 20.603-605 if prior to June 23, 2008), use one of the following formats:

Appellant represented by: The Honorable Mary A. Doe, United States Senate

Appellant represented by: The Honorable John P. Jones, United States House of Representatives

### E. Reconsideration Decisions

List the appellant's current representative, if any, without regard to representation at the time that the reconsidered decision was issued.

### F. Administrative and Merged Appeals

List the claimant's representative on the title page of merged appeals, but not on the title page of administrative appeals that have not been merged.

### G. Representation by Veterans Benefits Counselors

Veterans Benefits Counselors (VBC) may present an appeal at a Board hearing at the appellant's request. 38 C.F.R. § 20.701. Do not list a VBC as the representative under the representation heading. If a VBC has assisted an appellant at a Board hearing, note that fact immediately under the "Reasons and Bases for Findings and Conclusions" subheading.

## 2. Attorney for the Board

The appropriate title, "Senior Counsel," "Counsel," or "Associate Counsel," should follow the attorney's name. In this context: "Associate Counsel" refers to Board attorneys serving at grades GS-9 through GS-13; "Counsel" refers to Board attorneys serving at grade GS-14; and "Senior Counsel" refers to Board attorneys serving at grade GS-15.

## CASE DRAFTING

### ATTORNEY FOR THE BOARD

#### A. Lincoln, Associate Counsel

The drafting attorney's name may be listed in full, abbreviated in full, or any combination of the two. If the drafting attorney prefers not to have his or her name associated with the case for any reason, the section may be deleted in its entirety.

## viii. STYLE GUIDE

### 1. References to the Department of Veterans Affairs

The following language may be used in making the first reference to the Department: "the Department of Veterans Affairs." Subsequent references may then be to "VA." Because "VA" stands for "Veterans Affairs," it is not grammatically correct to refer to "the VA." Prior to November 1988, "VA" stood for the "Veterans Administration." Although "the VA" was grammatically correct before then, do not use the definite article regardless of the time period being discussed in the decision.

### 2. References to the Board of Veterans' Appeals

The following, or similar, language may be used in making the first reference to the Board: "Board of Veterans' Appeals." Subsequent references may be to "the Board" or "BVA." Note that an apostrophe follows the word "Veterans" in the full title.

### 3. Typeface Conventions

Use the typeface conventions for everyday legal citation outlined in the "Bluepages" section of the *Bluebook*, rather than the law review typeface conventions addressed in the second part (white pages). Where either italics or underscoring may be used, use italics. Type size and font selections are set by the IDT and should not be altered.

### 4. Citations

#### A. USE OF THE *BLUEBOOK*

Except as otherwise noted in this guide, citations should follow the most recent edition of the *Bluebook* distributed to Board employees.

B. THE UNITED STATES CODE

(1) Codified Statutes

Use the appropriate code citation for codified Federal statutory material unless citation of a public law serves a specific need.

(2) U.S.C.

Citation should be made to the U.S.C. directly with the standard *Bluebook* citation format: “38 U.S.C. § 7801 (2012).”

To the extent that any Board templates have not been updated to reflect this, manually change the citations.

(3) Old Title 38 Code Sections

a. Background

Title 38 of the U.S.C. has been amended on many occasions and was extensively reorganized and renumbered several times, including in 1958, pursuant to Pub. L. 85-857, and in 1991, pursuant to Pub. L. 102-40 and Pub. L. 102-83. It is occasionally necessary to cite a statute as it existed at some prior time. The statutory histories listed in the U.S.C. are generally incorrect for any statute from 1958 or earlier. In particular, any history that lists Pub. L. 85-857 as the origin of a statute is almost certainly incorrect.

b. Sources of Renumbering Information

Convenient recodification tables showing code section numbers immediately before and after the 1991 revision are included in the front of the March 1997 reprint of title 38 provided by the House and Senate Committees on Veterans’ Affairs, as well as in the front of the supplement (“pocket part”) to the first volume of the 1991 U.S.C.A. edition of title 38. The recodification table in the front of the first bound volume (not the “pocket part”) of the 1991 U.S.C.A. edition of title 38 shows the pre-1958 section numbers and their equivalent current numbers, omitting the intervening 1958 recodification. Additional information can be

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found in the U.S.C. in footnotes to the various code sections and in the “Historical and Statutory Notes” following each code section. The Board’s Research Center has copies of the official U.S.C. dating back to 1946 and copies of many applicable Public Laws, but no longer has copies of pre-1991 editions of U.S.C.A. for title 38.

### (4) Citation Forms

#### a. Prior Code Section

The official U.S.C. is updated through supplements and then periodically republished when accumulated changes warrant. The method of citing these supplements is addressed in *Bluebook* rule 12.3.1(e).

#### b. Past and Current Section Numbers

It is rarely necessary to cite both the current and old numbers for a code section in Board decisions. In limited situations where tracing the history of a code section is relevant, follow the format in the U.S.C. code section footnotes in the *Bluebook*.

## C. VA REGULATIONS

### (1) Use of C.F.R. Citation

The appropriate [Code of Federal Regulations \(C.F.R.\)](#) citation is normally used to cite current departmental regulations, *e.g.*, “38 C.F.R. § 20.1000 (2018).” Where the regulation has not yet been codified, cite the Federal Register location for the proposed or final rule, parenthetically adding the location where the section will appear in the C.F.R. when codified, following the format suggested by the *Bluebook*.

### (2) Optional Form for “Rating Schedule”

Because the aggregation of many rating schedule diagnostic codes under the same C.F.R. section number may make locating specific diagnostic codes difficult, the following citation format may be used: “38 C.F.R. pt. 4, Diagnostic Codes 5275 and 7800 (2016).”

(3) Rating Schedule Effective Date Information

Title 38 C.F.R. Part 4, Appendix A contains some information concerning the effective dates of changes in specific rating schedule paragraphs and diagnostic codes. Information about more recent changes can be found beneath the specific paragraph or code group. When an effective date that only appears in appendix A is material to the decision, the appendix must be cited along with the appropriate paragraph or diagnostic code. For example, “38 C.F.R. § 4.55 and pt. 4, app. A (2018)” or “38 C.F.R. pt. 4, Diagnostic Code 7305 and app. A (2018).”

D. CAVC OPINIONS

(1) Slip opinions (unpublished)

The Lexis citation below is optional but recommended:

*[Appellant’s Last Name] v. [Secretary’s Last Name]*, No. 14-2669, 2015 U.S. App. Vet. Claims LEXIS 1401 (Oct. 19, 2015).

(2) Published

- a. Cite *West’s Veterans Appeals Reporter* using the standard *Bluebook* format: *Rosler v. Derwinski*, 1 Vet. App. 241, 242 (1991).
- b. Pinpoint citations (pin cites) should always be used if possible.

(3) Same appellant as the Board decision

There are instances when a case has been before CAVC and is returned to the Board for further action. To cite to CAVC case by name in those circumstances effectively names the appellant in the current case. Instead, when appropriate, identify the fact that the case has been before CAVC in other ways that do not include PII. For example: “The United States Court of Appeals for Veterans Claims remanded this case to the Board in 1997, and directed the Board to . . .” The exception to this is where a CAVC case is cited for a point of law. Then the name of the case should be included in the citation, even if the point of law was established in an earlier case involving the same appellant. It need not be obvious from the citation that the same appellant is involved.

E. Board DECISIONS

(1) “Locator Number”

The Board has archived copies of its decisions since mid-1977. There is a unique “locator number” for each archived Board decision. This number is used to locate and retrieve a copy of the decision, when required, and to cite the decision. Because of privacy law considerations, *the name of the appellant may not be used as a part of Board decision citations*. Privacy interests are preserved when only the locator number is used because only authorized personnel have access to the data through which a locator number may be linked to a particular veteran’s records. Use the following:

No. [Board Docket #], Bd. Vet. App. [Locator Number], XXXX WL XXXXXX ([DATE]).

The citation listed in the above format is optional but recommended, particularly for pin cites.

(2) Slip opinion pin cites

These may be included, but they are not particularly useful, as the Board’s public searchable database of decisions does not include page numbers.

No. 05-21510, Bd. Vet. App. 1626204, 2016 WL 4246746, at \*23 (June 29, 2016)

(3) Microfilm Archiving—Mid-1977 to September 30, 1989

Board decisions archived from mid-1977 to September 30, 1989 are preserved on microfilm reels. They are assigned locator numbers such as “84-13-01151.” (The first two digits indicate the year. The next two digits indicate the microfilm reel number for that year. The remaining digits indicate the frame number on that reel for the first page of the decision.) The appropriate citation form is “Board Dec. 84-13-01151.” The locator number was stamped on the front of each Board decision at the time of microfilming. If the applicable file containing the decision is not available, the locator number for a particular decision in a particular case is available through tables which may be provided to authorized personnel.

(4) Computer Archiving—October 1, 1989, through December 31, 1991

Decisions archived from October 1, 1989, through December 31, 1991, were preserved in computer files on magnetic media. A computer-generated locator number, such as “90-12345,” was assigned for each decision file. The form for citing these decisions is “Board 90-12345.” Persons authorized to have access to VACOLS may obtain this number through the VACOLS record for the case.

F. OGC OPINIONS

VA’s Office of General Counsel issues “advisory,” “conclusive,” and “precedent” opinions. 38 C.F.R. § 14.507. Until 1995, the form of citation included the initials “O. G. C.” followed by the abbreviated name for the type of decision, the sequential number of the opinion within a particular year, a hyphen, and the last two digits of the year the opinion was issued. For example, the twelfth precedent opinion issued in 1989 would be cited as “O. G. C. Prec. 12-89.” VA adopted a new formal method for citing opinions of its General Counsel, effective January 1, 1995. 60 Fed. Reg. 19,808 (1995). This form, still in use, consists of an acronym incorporating the abbreviation “VA” with abbreviations for “Opinion” and “General Counsel” and for the type of opinion, followed by the same number and year sequence previously used. *E.g.*, “VAOPGCADV 15-98,” “VAOPGCCONCL 5-98,” or “VAOPGCPREC 1-95.” Follow the new citation format even when the opinion cited was issued prior to 1995.

5. **Capitalization**

A. NOD, SOC, substantive appeal

When a term commonly used in Board decisions is found in the U.S.C., follow capitalization conventions used in the code. For example, terms such as “notice of disagreement,” “statement of the case,” “substantive appeal,” etc., are not capitalized in the Code and should not be capitalized in Board decisions. Do not alter capitalization in quoted material to comply with code capitalization conventions, however.



B. Veteran

Capitalize the word “Veteran” when referring to a specific veteran, (“the Veteran”) but not when referring to any veteran (“a veteran”).

6. **Dates**

Give dates by month and year only unless precise dates are required (*e.g.*, in cases involving close questions of the timely filing of jurisdictional documents).

7. **Incorporation by Reference**

Do not incorporate other documents into a Board decision by reference. Quote material relied upon to the extent necessary for clarity. Authorities such as statutes, regulations, and CAVC opinions may be cited to support general propositions of law without full quotation of the text. *See Hatlestad v. Derwinski*, 3 Vet. App. 213, 217 (1992) (concerning quotation of medical treatises relied upon by the Board). CAVC held in *Mathews v. McDonald*, 28 Vet. App. 309 (2016) that the Board cannot incorporate reasons and bases from prior Board remands into a later decision by citing to the prior Board remand.

8. **Citing to a Non-Precedential Case**

The Board may refer to a non-precedential Federal or State court opinion or order and may look to a non-precedential disposition for guidance or reasoning, but will not give non-precedential dispositions the effect of binding precedent. *Bethea v. Derwinski*, 2 Vet. App. 252, 254 (1992); *see* Fed. Cir. R. 32.1. The Board’s reference to a non-precedential opinion or order should be comprised of: 1) a statement of the guidance or reasoning for which the opinion or order is cited, 2) a statement recognizing the lack of binding, precedential effect, and 3) an explanation as to why the opinion or order is relevant and persuasive to the Board’s decision.

ix. DISPOSITION

**1. General Policy**

The Board will enter a final decision on all issues that are ripe for appellate disposition, even though other issues in the same appeal must be remanded for further development.

**2. Issues in Remand Status When Additional Issues are Remanded by CAVC**

CAVC will vacate and remand issues previously decided by the Board without impacting remands of other issues ordered by the Board in the same decision. In this situation, remanding those actions again, before the AOJ has completed the actions ordered by the original remand, may slow down the case or cause additional complications. Accordingly, although the Board retains jurisdiction over the remanded issues, they should not be addressed again until development has been completed on them and they have been re-certified to the Board. In this situation, do not list the remanded issues on the title page, but include a notation in the Introduction explaining that the issues are currently in remand status and will be addressed by the Board again once the ordered actions have been completed.

**3. Issues that are Perfected but not Certified**

If an issue has been perfected for appeal by the claimant, but has not yet been certified to the Board by the AOJ, then the decision should include a brief jurisdictional statement in the Introduction acknowledging the issue and stating whether the Board is exercising its jurisdictional discretion.

**A. Explanation**

Although the certification of issues on a VA Form 8 neither confers nor deprives the Board of jurisdiction, it is a signal that the Veterans Benefits Administration (VBA) has completed its action regarding the certified issues. With the shift to electronic appeals in Veterans Benefits Management System (VBMS) and now in Caseflow, the Board now has a real-time view of the claims folder, to include actions taken by the AOJ on issues not certified to the Board.

For example, the Board could be working on, and ready to issue a decision on, perfected and certified issues and then notice separate issues where a rating decision, NOD, SOC, and substantive appeal are all located in the eFolder, but there is no VA Form 8 signaling certification. Because a VA Form 8 for

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certification has not yet been issued by VBA, it is within the Board's discretion to address perfected, but not yet certified, issues.

Generally, it is advisable to follow the VBA process of certification of issues because of the difference in how the Board and VBA track issues related to an appellant's case. Judicial discretion may be exercised if it is necessary to take jurisdiction of non-certified issues (*e.g.*, for a full grant of the benefits sought). If you see issues that have been perfected, but not yet certified, the best course of action is to acknowledge these issues by including a jurisdictional statement immediately underneath the "Reasons and Bases for Findings and Conclusions" subheading, stating whether or not the Board is taking jurisdiction in the current decision so that the appellant, representative, VBA, OGC, or CAVC can see how the Board is handling these issues.

### B. Suggested Language

The Board acknowledges that the issues of [Identify Issue One] and [Identify Issue Two] have been perfected, but not yet certified to the Board. The Board's review of the claims file reveals that the AOJ is still taking action on these issues. As such, the Board will not accept jurisdiction over them at this time, but they will be the subject of a subsequent Board decision, if otherwise in order.

## x. REMANDS

### 1. Improper For Clarification of Certain Procedural Matters

Do not remand for clarification of representation or whether the appellant desires a hearing. 38 C.F.R. § 19.9(d). If there is confusion as to representation or hearing status, electronically route the file to OAO Management Support Branch personnel.

### 2. Improper for Scheduling Hearings

Do not remand to schedule an appellant for a hearing. If it is necessary to provide an appellant with a hearing before the Board, electronically route the file to OAO Management Support Branch personnel. See ELECTRONIC ROUTING, III.I.

### 3. Inextricably Intertwined Issues

Final disposition of issues that are inextricably intertwined with those being remanded must also be remanded until the requested development has been completed and the intertwined issue is also ready for appellate review. This is true

even if the intertwined issue otherwise appears to be fully developed, unless it can be granted in full or otherwise addressed without prejudice to the appellant.

#### 4. Incarcerated Appellants

The duty to assist includes requests for VA Examinations. VHA internal guidance mandates VHA must provide necessary examinations to all appellants, including those currently incarcerated. *See Bolton v. Brown*, 8 Vet. App. 185 (1995). For incarcerated appellants, the duty to assist requires that VA tailor assistance to the peculiar circumstances of confinement. *Wood v. Derwinski*, 1 Vet. App. 190, 193 (1991). However, VA does not have any authority to require a prison to cooperate with a request to perform a medical examination of the appellant.

#### 5. Substance

- A. When using IDT to draft decisions, standard Board language is available via the Snippets menu – Please utilize wherever possible
- B. Body

Remands are interlocutory orders to the AOJ and do not constitute a final factual or legal resolution of any question in controversy. 38 C.F.R. § 20.1100(b). However, “[u]nder the doctrine of ‘law of the case,’ questions settled on a former appeal of the same case are no longer open for review.” *Browder v. Brown*, 5 Vet. App. 268, 270 (1993). Accordingly, specific findings made in previous Board decisions and remands can be binding on future adjudications of the case. That said, keep in mind that the Board cannot incorporate reasons and bases from prior Board remands into a later decision merely by citing to the prior Board remand.

An exhaustive explanation as to why the case requires a remand is not required. The remand body should be kept to an absolute minimum, providing a succinct explanation to understand why the case has been returned to the AOJ. Broad legal citations are not needed. If the case has been returned to the AOJ on multiple occasions, a more detailed explanation as to why the case requires additional development may be beneficial.

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### C. Action Paragraphs

The instructions to the AOJ (the remand action paragraphs) should be kept clear and concise when at all possible. The action paragraphs are not generally being read by lawyers and should include simple language and clear and concise requests. Clear direction is essential to avoid inaccuracies that will cause delays in the adjudication of the case.

### D. Medical Professional

Medical professionals are generally competent to address medical questions; therefore, requests for a specific type of medical professional should be avoided, and reserved for only those instances in which a question is so medically complex that only a medical professional of a particular specialty or experience could answer it.

### E. Findings of Fact

The Board, as the final finder of fact for the VA Secretary, should make interlocutory findings of fact when appropriate, but only when necessary for answering a question. For example, when the Board has found that an injury occurred during service and that finding has led to the need to obtain a medical opinion, the Board can instruct an examiner to accept as fact that the injury occurred during service.

### F. Records in Appellant's Possession

In order to expedite the appeal, whenever possible, the appellant and/or representative should be encouraged to assist VA in obtaining pertinent records.

## xi. DECISION

When using the IDT to draft decisions, refer to the IDT materials on the Knowledge Management sharepoint site.

In the majority of cases, a Board decision signifies the final answer of the Secretary of VA regarding an appellant's petition for compensation from the United States Government for injuries sustained by a veteran in service to this country.

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The Board decisions should be clear, concise, and veteran-centric, with a fundamental focus on assisting the appellant in understanding the reasoning behind the decision.

To be clear, decisions should use short sentences and focused paragraphs with initial topic sentences. The use of subheadings and definitions of unfamiliar medical terms are recommended. Unfamiliar acronyms should be avoided.

To be concise, decisions should omit boilerplate that has no relevance to the case or contentions raised, avoid redundant citations, and focus only on the key contentions of the case. The decision should use minimal background facts (*i.e.*, facts only as needed) and should generally avoid a detailed history of the case (unless it is demanded by the complexity of the case). Facts are to be used in a decision to provide a reader with a grasp of the decision and to support the analysis of the claim on appeal.

A veteran-centric decision acknowledges and addresses an appellant's contentions, even if only to explain why the law does not operate as the appellant expects. A veteran-centric decision identifies the key factual findings and legal conclusions reached in a manner that is simple to understand and respectful. It does not explicitly or implicitly attribute any intent or deceptive motive to statements that may be simply inartful or the product of inaccurate recollection of long-ago events or caused by impairment. The focal point is always on providing the veteran and his or her family a decision that they can comprehend and, thus, the best possible customer service. In providing timely appellate decisions, Board employees act in accordance with VA's ICARE (Integrity, Commitment, Advocacy, Respect, Excellence) values.

Decisions in cases that have been remanded to the Board may require additional development and/or explanation to address the concerns of the court(s). The Board should both address the appellant's contentions and show compliance with the directives of the court(s). Regardless, the primary focus of a Board decision should always be providing the appellant with a clear understanding of the decision and the reasons for it.

### 1. TDIU Claims

A request for TDIU, whether expressly raised by an appellant or reasonably raised by the record, is not generally a separate claim for benefits but rather an alternative to a schedular rating for a disability. *Rice v. Shinseki*, 22 Vet. App. 447, 453–54 (2009). The Board has jurisdiction over TDIU claims that are raised in conjunction with rating claims on appeal. If AOJ action is required, the issue shall be remanded to the AOJ, not referred. However, referral of a TDIU claim to the AOJ may be appropriate if the

TDIU claim is found to be exclusively part of an increased rating claim that is not before the Board.

## **2. Bifurcation of Schedular/Extraschedular**

Extraschedular ratings may be separated from rating claims or appealed rating issues and developed and/or adjudicated independently. However, if remanding an extraschedular rating independent of an associated rating claim/appeal, consider whether any development ordered for the extraschedular rating is inextricably intertwined with the increased rating claim/appeal.

## **3. Grants**

Decisions that involve a grant of benefits, or in which the issue(s) before the Board, even if granted, would provide no benefit (monetary or otherwise) to an appellant, should be brief to both avoid unnecessary delay in the benefit being delivered and to ensure the efficient processing of all cases before VA. A decision that is a complete grant of the benefit sought should contain only as much language as is required to enable a reviewer to understand, as succinctly as possible, why the grant is warranted and to allow the AOJ to appropriately effectuate the grant. If an increased evaluation has been granted, the grant itself should be brief, with the major focus of the decision serving to explain why a higher level of compensation is not warranted.

### **xii. UNUSUAL SITUATIONS**

#### **1. Panel Cases**

##### **A. Decision Drafting**

Counsel should draft a decision on the issue(s) common to the panel. Counsel should also draft any separate decisions on issues for which a hearing was held before only one of the VLJs assigned to the panel. As to the single VJL decision(s), decision preparation should be completed by the specific Counsel assigned to the case by each deciding VJL. In other words, it is possible that when multiple decisions are required to be issued, more than one Counsel will be responsible for preparing the decision drafts. Each decision should add a notation after the issue list that the remaining issue(s) will be addressed in either a separate single VJL or panel decision, as appropriate. Generally, the VJL who held the most recent hearing in a multi-hearing case will be the lead VJL on the panel, and will

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initiate drafting the panel decision. All decisions will be dispatched simultaneously.

### B. Request for Travel Board/Video Conference Hearing before Third VLJ

If the appellant elects to appear at a Travel Board or Video Conference hearing for any issue(s) requiring a panel decision, the case must be electronically routed to OAO Management Support Branch personnel so that the appellant can be provided with a hearing. See ELECTRONIC ROUTING, III.I.

### C. Request for Central Office Hearing before Third VLJ

After the appellant presents testimony at a Central Office hearing before a third VLJ on the issues common to the panel, a panel decision should be drafted only with respect to the issue(s) on which all three VLJs took hearing testimony. If the appellant fails to report for a scheduled hearing, the panel should proceed with issuing the decision, with an explanation of the efforts that were made to schedule the requested hearing. The last VLJ to hold a hearing shall be responsible for the preparation of the initial draft decision.

## 2. Simultaneously Contested Claims

### A. Definition

A “simultaneously contested claim” refers to when the allowance of one claim results in the disallowance of another claim involving the same benefit, or the allowance of one claim results in the payment of a lesser benefit to another claimant. 38 C.F.R. § 20.3(p).

### B. Examples

- (1) Appellant (spouse or former spouse) seeks an apportionment of the veteran’s disability benefits on behalf of him/herself or of a dependent child
- (2) Attorney’s fees (when the claimant contests the amount of past due benefits paid to the attorney)
- (3) Veteran dies and more than one person claims to be the surviving spouse



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- (4) Multiple individuals seek to substitute for the claimant
- (5) Insurance claims (these are uncommon)

### C. PROCEDURES FOR RECEIPT OF CASE WHEN IT ARRIVES AT THE BOARD

See SIMULTANEOUSLY CONTESTED CLAIMS, IV.vii.

### D. PROCEDURES FOR VLJs AND COUNSEL

- (1) Recognizing a simultaneously contested claim.

The “Contested Claim” pop-up shows only in VACOLS and not “Attorney Check In” or “Counsel Time.” See Recognizing a Simultaneously Contested Claim, IV.vii.1 .

The “Contested Claim” pop-up occurs only if an individual’s information is entered in the “CC” tab in VACOLS. It is possible that the AOJ did not properly enter the contesting claimant information in VACOLS. Sometimes the contesting claimant’s information is entered under Appellant in the Address tab (see screenshot below). That is not where a contesting claimant’s information should be entered.

The screenshot displays the VACOLS Appeal Screen for a case with Appeal Id: 22222222C, Name: SNUFFY, JOE L, RO: RO13, and Status: ACT. The Address tab is selected, showing the following information:

Last Name:	SNUFFY	First:	JOE	MI:	L	Suffix:	
Address: 306 Wayne Manor							
City:	White Plains	St:	NY	Zip:	76543	Country:	USA
Phone (H):	(123) 456-7892	(W):	(987) 000-0000	FNOD:	00/00/0000		
SSN:	123456789	Gender:	<input checked="" type="radio"/> M <input type="radio"/> F	DoB:	01/31/1938		
Last		First		MI	Suffix	Relationship	
Appellant:						VETERAN	

Buttons at the bottom include Update Address, Print Label (LPT), and Print Label (BC). On the right, the 'Added by' field shows JKLEIN on 11/24/1997, and the 'Last Modified' field shows MLPEAK on 6/2/2015.

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If the case involves a contesting claimant and there is no “Contested Claim” pop-up in VACOLS (indicating there is no information in the “CC” tab), e-mail OAO Management Support Branch personnel requesting that the contesting claimant’s information to the “CC” tab in VACOLS. Provide the specific information: name, address, representative, if any, and phone number (the phone number is not required). In this situation, it is likely that one of the parties did not receive the Board’s appeal receipt notification letter. If that is the case, in the same e-mail providing the information of the contesting claimant to be added to the “CC” tab, request that OAO Management Support Branch personnel also send an appeal receipt notification letter to the person who did not receive a letter.

### (2) Verify accuracy of contesting claimant information

If any of the information in the “CC” tab is inaccurate, e-mail OAO Management Support Branch personnel and identify the specific information in VACOLS that must be changed.

### (3) Appeal receipt notification letter

Before working the case, ensure that each contesting claimant received the Board’s appeal receipt notification letter (informing the claimant that the case had been received at the Board). These letters should be uploaded to VBMS. If any of the contesting claimants and/or representatives did not receive a letter, e-mail OAO Management Support Branch personnel requesting that they send the letter(s) to the specific claimant and/or representative who was not sent a letter.

### (4) Procedural compliance

Simultaneously contested claims have special procedures and different time limits than a regular appeal. All notices in simultaneously contested claims must be provided to the last address of record of the parties concerned. 38 U.S.C. § 7105A; 38 C.F.R. §§ 19.100-19.102, 20.500-20.504, 20.713. If any party did not receive notice at the last address of record, a remand will be warranted to correct the specific procedural error.

- a. All interested parties must be notified of the AOJ determination, the right and time limit for initiating an appeal, hearing rights, and

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representation rights. 38 U.S.C. § 7105A(a). All notices in simultaneously contested claims must be provided to the last address of record of the parties concerned. 38 U.S.C. § 7105A(b); 38 C.F.R. § 20.504.

b. NOD must be filed within 60 days from the date of mailing the notification of the determination; otherwise, the decision becomes final. 38 C.F.R. § 20.501(a).

c. All interested parties must be furnished a copy of the SOC if an NOD is received. 38 C.F.R. § 19.101.

d. Substantive appeal must be filed within 30 days from the mailing date of the SOC. 38 C.F.R. § 20.501(b). The content of the substantive appeal must be furnished to the other contesting parties to the extent that it contains information that could directly affect the payment or potential payment of the applicable benefit. 38 C.F.R. § 19.102.

If any party did not receive the substantive appeal, assuming it has information that could affect the payment of benefits to the other parties, take measures to ensure that the contesting claimant has received a copy of the substantive appeal, either through OAO Management Support Branch personnel (the Board could send a copy) or a remand to correct the procedural error.

e. If an SSOC is issued, there is a 30-day period for parties to respond.

Hearings: *See Simultaneously Contested Claims*

If any party did not receive notice of the hearing, a remand may be warranted to correct the due process error.

### xiii. CHECK OUT TO VLJ

#### 1. Electronic Routing to VLJ

- A. Select what you would like your judge to review: a draft decision or outside medical opinion request. This can be done from the Your Queue page or the Case details page.

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**Step one:** Select what you would like your judge to review: a draft decision or outside medical opinion request. This can be done from the **Your Queue** page or the **Case details** page.

### Your Queue

Case Details	Type(s)	Docket Number	Issues	Due Date	Reader Documents	Action
Andrea C Rasti (654353253)	CAVC	13 11-265	3	02/22/18	View 5 in Reader	<div>Select an action...</div> <div>Decision Ready for Review</div> <div>Medical Request Ready for Review</div>
Vera A Marshall (1234)	AOD, Original	13 11-265	1	02/13/18	View 6 in Reader	<div>Select an action...</div> <div>Decision Ready for Review</div> <div>Medical Request Ready for Review</div>
Ruth Gansburg (687878778)	Clear and Unmistakeable Error	13 11-265	12	02/22/18	View 5 in Reader	<div>Select an action...</div> <div>Decision Ready for Review</div> <div>Medical Request Ready for Review</div>
Polly A Carter (384920173) <small>This is a paper case</small>	Original	13 11-265	1	02/13/18	View 6 in Reader	<div>Select an action...</div> <div>Decision Ready for Review</div> <div>Medical Request Ready for Review</div>
Ricky A Tikitembo (654325324) <small>Veteran is not the appellant.</small>	Original	13 11-265	3	02/22/18	View 5 in Reader	<div>Select an action...</div> <div>Decision Ready for Review</div> <div>Medical Request Ready for Review</div>
Ann Amazingveteran (123846543)	Remand					
Daniel A Nino (659875324)	Reconsideration					
Joe Snuffy (55435543)	Post Remand					

### Andrea C Rasti (654353253)

Assigned to you by Ricky Tikitembo on 04/23/13. Due 02/22/18.

Open 5 documents in Caseflow Reader

Select an action...

Decision Ready for Review

Medical Request Ready for Review

### Appeal Summary

Type(s): CAVC

Power of Attorney: One Time Representative

Regional Office: Manchester (73)

Click **Decision Ready for Review** or **Medical Request Ready for Review** from the **Action** dropdown menu to start the workflow.

## CASE DRAFTING

- B. Specify the type of outside medical opinion you are requesting and the judge who will sign the case.



**Step two:** Specify the type of outside medical opinion you are requesting and the judge you are assigning to.

**Submit OMO for Review**

Complete the details below to submit this OMO request for judge review.

OMO type:

☐ OMO - VHA

☐ OMO - IME

☐ This work product is overtime

Document ID:

Submit to judge:

Select a judge

Notes:

Cancel

Back Continue

Enter document ID into the *Document ID* field.

Click **Select a judge** to assign a judge to review the decision. Default is judge who originally assigned you the case.

Enter any required notes into the *Notes* field.

Click **Continue** to complete assignment of judge for review.

## CASE DRAFTING

- C. To send a finished draft to your Judge, select dispositions for each issue. When selecting issue dispositions, you have the option to add, edit, or delete issues so they are accurate for the Veteran's record.

**Step two:** Select dispositions for each issue. When selecting issue dispositions, you have the option to add, edit, or delete issues so they are accurate for the Veteran's record.

**Select Dispositions**  
Review each issue and assign the appropriate dispositions.

Issues	Actions	Dispositions
1. <b>Program:</b> Compensation <b>Issue:</b> Service connection All Others 5252 - Thigh, limitation of flexion of <b>Note:</b> low back condition	<a href="#">Edit Issue</a>	3 - Remanded
2. <b>Program:</b> Compensation <b>Issue:</b> Service connection All Others 5252 - Thigh, limitation of flexion of <b>Note:</b> low back condition	<a href="#">Edit Issue</a>	3 - Remanded
3. <b>Program:</b> Compensation <b>Issue:</b> Service connection All Others 5252 - Thigh, limitation of flexion of <b>Note:</b> low back condition	<a href="#">Edit Issue</a>	3 - Remanded

[Add Issue](#)

[Back](#) [Continue](#)

**Callouts:**

- Click **Edit Issue** to edit an issue.
- Select an Issue disposition from the **Disposition** dropdown menu. The following dispositions are listed:
  - **Allowed**
  - **Remanded**
  - **Denied**
  - **Vacated**
  - **Dismissed, Other**
  - **Dismissed, Death**
  - and, **Withdrawn**.
- Click **Add Issue** to add an issue.
- Click **Continue** to continue to the next page.

## CASE DRAFTING

- D. If the issue is remanded, the Select Remand Reasons page will display. Select remand reason(s) and click Continue to the next page.

**Optional step:** If an issue is remanded, the **Select Remand Reasons** page will display. Select remand reason(s) and click **Continue** to continue to the next page.

### Select Remand Reasons

Please select the appropriate remand reason(s) for all the remand dispositions.

---

**Issue 1 of 3**

Program: Compensation  
Issue: Service connection  
Code: 5252 - Thigh, limitation of flexion of  
Certified:  
Note: low back condition

<b>Medical examination and opinion</b>	<b>Duty to notify</b>
<input type="checkbox"/> Current findings	<input type="checkbox"/> No notice sent
<input type="checkbox"/> Incomplete/inadequate findings	<input type="checkbox"/> Incorrect notice sent
<input type="checkbox"/> Nexus opinion	<input type="checkbox"/> Legally inadequate notice
<input type="checkbox"/> Clarify diagnosis	
<input type="checkbox"/> No VA exam conducted	<b>Due process</b>
	<input type="checkbox"/> BVA travel board and video hearing
<b>Duty to assist records request</b>	<input type="checkbox"/> AOJ hearing
<input type="checkbox"/> Service treatment records	<input type="checkbox"/> Adjudicate intertwined issue(s)
<input type="checkbox"/> Service personnel records	<input type="checkbox"/> Issuance of SOC/Manlincon
<input type="checkbox"/> JSRRC	<input type="checkbox"/> Issuance of SSOC
<input type="checkbox"/> VA medical records	<input type="checkbox"/> Consider merits of reopened claim
<input type="checkbox"/> Social security records	<input type="checkbox"/> Apply contested claims procedures
<input type="checkbox"/> Private medical records	<input type="checkbox"/> Noncompliance/Stegall
<input type="checkbox"/> Other federal records	<input type="checkbox"/> Other due process deficiency
<input type="checkbox"/> Other private records	
<input type="checkbox"/> Certification from appellant	

[Cancel](#)[Back](#)[Continue](#)

Click **Continue** to continue to the next page.

## CASE DRAFTING

### E. Submit draft decision for review.

**Submit Draft Decision for Review**  
Complete the details below to submit this Draft Decision request for judge review.

☐ This work product is overtime

Document ID:

Submit to judge: [Select a judge](#)

Notes:

[Cancel](#) [Back](#) [Continue](#)

Enter document ID into the *Document ID* field.

Click **Select a judge** to assign a judge to review the decision. Default is judge who originally assigned you the case.

Enter any required notes into the *Notes* field.

Click **Continue** to complete assignment of judge for review.

### F. To add or edit issues

**Edit Issue**

[Delete Issue](#)

Program:  Required

Issue:  Required

**Subsidiary Questions or Other Tracking Identifier(s)**

Level 1:

Diagnostic code:

Notes:

[Cancel](#) [Back](#) [Continue](#)

Click **Delete Issue** to delete an issue.

Select the required *Program* and *Issue* from the dropdown menus.

Click **Continue** to continue to the next page.



## ADJUDICATORY BEST PRACTICES

The screenshot shows a web form titled "Add Issue" with a "Delete Issue" link. It contains two required dropdown menus: "Program:" and "Issue:". Below these is a section for "Subsidiary Questions or Other Tracking Identifier(s)" with a "Level 1:" dropdown and a "Notes:" text area. At the bottom are "Cancel", "Back", and "Continue" buttons. Two callout boxes provide instructions: one points to the dropdown menus saying "Select the required *Program* and *Issue* from the dropdown menus.", and another points to the "Continue" button saying "Click **Continue** to continue to the next page."

**Add Issue**  
Delete Issue

Program: *Required*  
Select program ▼

Issue: *Required*  
Select issue ▼

**Subsidiary Questions or Other Tracking Identifier(s)**

Level 1:  
Select level 1 ▼

Notes:  
[Text area]

Cancel Back Continue

Select the required *Program* and *Issue* from the dropdown menus.

Click **Continue** to continue to the next page.

### 2. Post-Submission Changes

Do not make changes to a decision after it has been submitted to a VLJ/AVLJ for review without first consulting with the VLJ/AVLJ.

## IX. ADJUDICATORY BEST PRACTICES

### i. INTRODUCTION

This section is intended to operate as a repository of recommended approaches to handling some aspects of claims adjudication at the Board. **The contents of this section are suggested guidance only and are not binding on any adjudicator or in any case.**

ii. ALL DECISIONS

1. Identification of New Claims

A. Evidence identification

When drafting a decision that identifies a new claim or appeal that has not been properly handled, specifically identify the date and title of the document(s) from which the claim arose, mirroring the identifiers used in VBMS and Caseflow Reader. AMO staff can resolve these issues more efficiently when the documents from which the claim or appeal arose are clearly identified by the Board. Board notes cannot be viewed by AMO staff in VBMS or Caseflow Reader, so identifying the document(s) in that manner does not assist the AMO in determining the date of claim.

iii. REMANDS

1. Remand Efficiency

A. Only order remands that are necessary to adjudicate a claim

Remands do not provide a final decision on an appeal to the appellant and they contribute to the Board's appeals inventory, as the vast majority of remands are eventually returned to the Board for additional adjudication. When considering whether to remand an issue, ask yourself whether additional evidence is *necessary* to decide the appeal or whether the issue should be resolved through an internal process per 38 C.F.R. § 19.9. It is possible to avoid some remands by conducting a prejudicial error analysis to circumvent some defects.

B. Keep remand actions simple

The more complex a remand action is, the harder it will be to understand and complete. Keep remand actions as brief as possible and focus on identifying the evidentiary or procedural development that is necessary to decide the claim.

(1) Avoid listing specific procedural steps that must be taken to accomplish development, particularly for obtaining service personnel records. Records are stored in specific locations based on the date, duty status, and branch of the appellant's service. The AMO will determine which locations are appropriate to

## ADJUDICATORY BEST PRACTICES

search for service personnel records, even if the Board does not list those locations out. Listing out locations that must be searched will require the AMO to check those locations even if they know there are no records there.

(2) Avoid giving a specific order in which development must be completed. Some steps may take days or weeks to complete. If remand actions are required to progress in ordered steps, subsequent development will have to be put on hold until the initial steps are complete. Without the order, the other development steps could be accomplished while the longer-term steps are in progress, resulting in a faster turnaround time for the remand.

### C. Evidence Identification

If a specific piece of evidence must be addressed or otherwise utilized on remand, identify the date and title of the document as listed in VBMS and Caseflow Reader. Board notes cannot be viewed by AMO staff, so identifying the document(s) in that manner does not assist the AMO in locating the document.

## 2. VA Opinions and Examinations

### A. Use VHA and IME Opinion Requests When Possible

When remanding for a medical opinion in which an examination of the appellant is not necessary, consider using the VHA or IME option instead.

### B. Avoiding *Stegall* Problems

Many *Stegall* remands are because the Board ordered that specific actions be taken to complete a VA opinion or examination and those actions were then not properly completed. To ensure that medical remand actions are completed as accurately as possible, adhere to the following guidelines whenever feasible.

## ADJUDICATORY BEST PRACTICES

(1) Do not request a specific person, medical specialist, or medical test.

It is quite difficult to arrange examinations with specific people due to scheduling and other availability issues. Accordingly, avoid asking for a specific person to provide the medical opinion or examination. If asking for a specific person is unavoidable, include language allowing for a different examiner to provide the opinion or examination if it is not possible for it to be done by the preferred individual.

Similarly, it can be difficult to obtain opinions or examinations from specific medical specialists because not all VA facilities have all types of specialists on staff. If a specific medical specialist is listed in the remand action with no option for any other type of examiner, an appellant may be asked to report to a VA facility that is a very long distance away. This inconveniences the appellant and significantly decreases the chances that the examination or opinion will be completed. Accordingly, avoid asking for a specific medical specialist to provide the medical opinion or examination.

For the same reasons, avoid ordering specific medical testing unless necessary. Medical professionals are the best qualified people to determine whether a specific kind of test is required to produce the desired information and ordering a medically unnecessary test can significantly complicate an examination request.

(2) Do not order the examiner to discuss/consider specific evidence.

If the Board orders an examiner to discuss a specific piece of evidence, it will be difficult to argue that there was substantial compliance if the examiner fails to do so in the report. If it is felt that it is necessary for an examiner to talk about a specific aspect of the case, whenever possible summarize the point in the remand action instead of directing the examiner to the specific document.

## ADJUDICATORY BEST PRACTICES

Similarly, avoid asking an examiner to list the sources he or she consulted in providing a medical opinion.

### (3) Ensure that opinions address aggravation when relevant

For service connection claims, if the Board needs an opinion addressing whether a disability was aggravated by service or by a service-connected disability, ensure that such an opinion was provided by the examiner. VA examiners sometimes miss these questions and it is difficult to argue that an opinion is substantially compliant where an aggravation opinion was requested but not provided. Furthermore, avoid asking for an aggravation opinion unless the aggravation theory of entitlement has been raised by the record or explicitly argued by the appellant and/or representative.

### (4) TDIU Pitfalls

a. Avoid requesting social industrial surveys and vocational rehabilitation opinions due to the unavailability of appropriate examiners (*e.g.*, social workers) at all VA medical facilities.

b. Do NOT ask an examiner to opine on whether the disability(ies) render the appellant unable to obtain or maintain gainful employment, as this a determination to be made by the VA-decision maker. *Geib v. Shinseki*, 733 F.3d 1350 (Fed. Cir. 2013). Instead, any requests for an opinion on employability should ask the examiner to describe the impact of the service-connected disability(ies) on employment.

### C. Foreign Examinations

It can be difficult to schedule examinations for appellants who live outside the United States. In cases where medical information is needed for these appellants, if possible, ask for a medical opinion only.

### D. Increased Rating Claims

Do not list out the specific medical findings that must be conducted according to the specified diagnostic code. Current VA examinations are conducted in the Disability Benefits Questionnaire (DBQ) format, which is specifically designed to capture the findings that are needed for relevant diagnostic codes. Accordingly, including them in a remand action is redundant.

### E. Environmental Toxicologist Opinions

In some cases, appellants will allege exposure to Agent Orange or other herbicide agents due to activities which involved touching equipment that itself may have come into contact with those substances. The question of whether the equipment might have been contaminated is not a medical question; it is a question for an environmental toxicologist who can speak to the properties of chemicals and how they break down under different conditions. There are other possible situations where an opinion from an environmental toxicologist may be necessary. The key to identifying these cases is that the opinion needed is about the chemical itself. When requesting an opinion from an environmental toxicologist, keep in mind the following guidelines:

- (1) An opinion from an environmental toxicologist should only be requested after considering the competency and credibility of the Veteran. Do not request such an opinion based on factual assertions that are found to be not credible or beyond the competence of the Veteran.
- (2) Do not to seek an opinion as to unknown or unidentified substances, as that provides the expert with nothing to analyze or discuss.
- (3) The question of whether a particular substance can cause a particular condition is something that an ordinary medical opinion can address through a literature search.
- (4) Note: This does not apply to cases involving Air Force Veterans who served on C-123 aircraft used in Operation Ranch Hand spraying operations after those planes returned from Vietnam. VA

## ADJUDICATORY BEST PRACTICES

has specific regulations covering those cases. *See* 38 C.F.R. § 3.307(a)(6)(v).

(5) Special handling is required prior to dispatch for decisions which include remands to request an opinion from an environmental toxicologist. *See* Environmental Toxicologist Opinions, X.v.1.

### iv. GRANTS

#### 1. Identify the Evidence Used to Grant the Claim

In order to effectuate a grant and assign an effective date, the AMO/VBA needs to be able to identify the pieces of evidence that the Board used to grant the claim. This is particularly important for staged rating claims in which a specific medical report may mark the effective date for a rating increase. Accordingly, when granting a claim be sure to identify the specific documents that contributed to that determination.

### v. DENIALS

#### 1. Duty to Notify

While improper or inadequate notice was a major problem for the Board for several years immediately following the enactment of the Veterans Claims Assistance Act of 2000, VA almost entirely rectified the duty to notify problem by changing the content of standard notice letters that are sent to all claimants. As a result, it is usually unnecessary to spend any significant amount of time while reviewing the electronic claims file focusing on whether the duty to notify has been met. In addition, discussion of compliance with the duty to notify in a decision may be entirely unnecessary. *Scott v McDonald*, 789 F.3d 1375, 1381 (Fed. 2015).

#### A. Specific areas where the duty to notify remains a concern and may need to be addressed in a denial.

(1) The appellant has alleged that there has been a duty to notify error.

(2) The case is very old and has not received one of the modern-style VA notification letters. It is difficult to determine precisely

## ADJUDICATORY BEST PRACTICES

when those notice letters became sufficiently compliant to alleviate most concerns, but letters sent from 2010 onwards are likely satisfactory.

(3) Mailing address errors. Pay particular attention in cases where mail has been returned as undeliverable or where an appellant alleges non-receipt.

(4) Notice under 38 C.F.R. § 3.304(f)(5) for PTSD based on in-service personal assault. If 38 C.F.R. § 3.304(f)(5) is applicable to the claim, ensure that the notice letter included the relevant information.

### 2. Lay Evidence

#### A. Use the Competency—Credibility—Weight (C-C-W) Framework

(1) Competency: Address the competency of all lay evidence first. Even if competency is accepted, it should still be stated. This can be one sentence.

(2) Credibility: Address the credibility of all competent lay evidence, but do not address credibility if the evidence was found to not be competent. If credibility is also being accepted, that should still be stated. This can be done in a single sentence, and even combined with the competency finding.

(3) Weight: Only address the probative weight of lay evidence that has been found to be both competent and credible. *All* competent and credible lay evidence must be explicitly weighed in the decision unless there is a specific finding that the evidence is not relevant to the appeal.

### 3. With Simultaneous Remands

When denying one or more issues while simultaneously remanding at least one other issue, include a discussion in the Reasons and Bases section explaining why the



development being ordered with respect to the remanded issue does not impact the issues being denied. Be particularly alert in the following scenarios:

A. Remanding to obtain additional VA records

In *Sullivan v. McDonald*, 815 F.3d 786, 793 (Fed. Cir. 2016), the Federal Circuit concluded “that § 3.159(c)(3) extends the VA’s [sic] duty to assist to obtaining sufficiently identified VA medical records or records of examination or treatment at non-VA facilities authorized by VA, *regardless of their relevance*.” (Emphasis added). Accordingly, if you are remanding to obtain additional VA records, include a prejudicial error analysis to explain why those records do not have to be obtained under the duty to assist for any claim being denied.

B. Deciding an increased rating issue while remanding a TDIU issue for a VA examination or opinion

In *Brambley v. Principi*, 17 Vet. App. 20, 24 (2003), CAVC held that it “was premature for the Board to decline extraschedular consideration where the record was significantly incomplete in a number of relevant areas probative of the issue of employability.” In that case, the Board declined to refer the matter for extraschedular consideration, but remanded the issue of entitlement to TDIU because “additional employment and medical information was necessary to adjudicate fairly the TDIU claim.” *Id.* CAVC explained that, “[a]lthough it is well settled that extraschedular consideration and TDIU claims are not necessarily inextricably intertwined, here both adjudications require a complete picture of the appellant’s service-connected disabilities and their effect on his employability.” *Id.* (Internal citations and quotations omitted). Thus, it was premature for the Board to decline extraschedular consideration where the record was significantly incomplete in a number of relevant areas probative of the issue of the appellant’s employment. *Id.*

**4. Herbicide Agent Claims**

A. Claims involving hypertension, bladder cancer, and hypothyroidism

In cases where presumptive (or actual) exposure to herbicide agents has been conceded, do not deny service connection for hypertension, bladder cancer, or hypothyroidism without first obtaining a VA medical opinion on the nexus element.

## CASE SIGNING AND VLJ PROCEDURES

VA has not conceded a relationship between hypertension and herbicide agents, and prior to 2006 the National Academy of Sciences (NAS) placed hypertension in the “inadequate or insufficient evidence” category. However, in its 2006 Update, NAS elevated hypertension to the “limited or suggestive evidence” category. The 2012 Update provides the history of NAS changing the categorization of hypertension beginning in its 2006 Update and subsequent updates. See 79 Fed. Reg. 20,308 (Apr. 11, 2014). The NAS updates are published in the Federal Register by VA, and thus VA is on notice as to the information contained therein. The 2012 Update notes that NAS has defined this category of limited or suggestive evidence to mean that the “evidence suggests an association between exposure to herbicides and the outcome, but a firm conclusion is limited because chance, bias, and confounding could not be ruled out with confidence.” *Id.* at 20,309.

The suggestive evidence of an association can arguably be sufficient to establish an “indication” that the current disability “may be related” to herbicide agent exposure during service, as contemplated by 38 U.S.C. § 5103a(d)(2)(b). CAVC stated that there is a “low threshold” when assessing the need for a medical examination. *McLendon v. Nicholson*, 20 Vet. App. 79, 83 (2006). On a practical basis, for the above reasons, OGC’s CAVC Litigation Group will not defend service connection for hypertension cases when a VA nexus opinion has not been obtained, and these issues are automatically remanded by Joint Motion.

Bladder cancer and hypothyroidism were similarly recategorized from the “inadequate or insufficient evidence” category to the “limited or suggestive evidence” category in the 2014 Update. While the 2014 Update had not been published in the Federal Register as of the time this guidance was written, it will eventually be published. When that happens, OGC’s CAVC Litigation Group is likely to treat bladder cancer and hypothyroidism the same as hypertension in these cases. Accordingly, similar handling by the Board is recommended for those issues.

## **X. CASE SIGNING AND VLJ PROCEDURES**

### **i. CASE REASSIGNMENT**

VLJs should strive to review and sign decisions as expeditiously as possible. Excess non-hearing cases are subject to reassignment to another VLJ or AVLJ as determined by the Chief VLJ.

### ii. CASES REQUIRING REVISION

Cases requiring revision should be returned to the drafting counsel (unless reassigned to a different counsel) as expeditiously as possible.

### iii. DAS

#### 1. **Evaluation and Feedback**

The DAS will be used to evaluate the work product and to provide effective feedback to the drafting counsel.

#### 2. **Ensuring Accuracy**

VLJs are responsible for ensuring that the DAS is completed as required. VLJs must ensure that the drafting attorney is selected as Counsel in the DAS, that the proper work product is selected (including Overtime designations), and that the number of issues listed in DAS match the number of issues addressed in the decision. If any issues are being remanded for additional development, the VLJ or AVLJ should ensure that the proper reasons for remand are identified in VACOLS.

#### 3. **Multiple Entries**

In some cases where multiple appeal streams are merged, multiple DAS entries may have been created. VLJs should ensure that excess DAS entries are deleted prior to the case being charged to Dispatch.

### iv. PANEL DECISIONS

Panel decisions must be circulated to the other panel members and signed before going to Dispatch.

When signing a decision as part of a panel in the Improved Decision Template, the first VLJ or AVLJ should digitally sign, but not lock the decision. The case should then be transferred to the second VLJ who will review, and if appropriate, sign, but not lock the decision. Once the last panel member has signed the decision, the case should be returned to the first VLJ who will lock the decision and complete the DAS. Because locking the decision or completing the DAS will automatically send the decision to Dispatch, it is important that these actions not be completed until all members have reviewed the decision.

v. Case-specific Handling

1. **Environmental Toxicologist Opinions**

When an opinion is needed from an environmental toxicologist, contact the Chief of the Litigation Support Branch *prior* to dispatching the case. This is necessary because VBA has one specific expert who can address these types of questions, and the Board must notify VBA in advance so that the case can be properly routed to this expert.

vi. DISPATCH

1. **Charging**

When a case is signed and the DAS completed, it should be charged to the appropriate dispatch location (31 (for OAO Team 1), 32 (for OAO Team 2), 20 (for the Outside Medical Opinion office), or 4E for cases using the Improved Decision Template.

## **XI. QUALITY REVIEW – CASE REVIEW MANUAL**

i. Introduction

1. This Case Review Manual describes the Office of Quality Review (QR) process for review of signed, but not dispatched, Board decisions including an explanation of errors and preauthorized corrections that may be identified. Part I defines “errors,” Part II, “preauthorized corrections,” Part III quality notations and data gathering, Part IV case review best practices, and Part V administrative process.

ii. PART I: ERRORS

1. **Guiding principles**

A. Deference to judicial discretion

(1) The purpose of QR case review is to identify objective errors that fall outside the bounds of judicial discretion. Judicial discretion applies to numerous aspects of the decision process, including, but not limited to, the outcome, depth and approach of the analysis, and handling of

numerous procedural and jurisdictional questions. Accordingly, QR case review errs on the side of caution whenever judicial discretion is a potential explanation for an area of concern in a decision.

(2) Legitimate differences of opinion as to the outcome in an appeal, the interpretation of the law, the application of the law to the facts, or assessment of the weight and credibility of the evidence are matters related to the exercise of adjudicative judgment and generally do not fall within the definition of “error.”

(3) In order to maintain the statistical validity of the case review system, QR will strive to ensure that errors are called uniformly and consistently, regardless of the case being reviewed and the individual reviewer.

**B. Determining if an error is undebatable**

(1) It is expected that QR will have disagreements as to whether an area of concern meets the requirements to be deemed an error. Discussion or disagreement within QR does not inherently mean that an area of concern is now debatable, and thus not an error. The key is whether, after discussion and debate, disagreement remains.

(2) If, following a discussion, disagreements have been resolved and all QR participants agree that the area of concern meets the requirements to be deemed an error, the error will be deemed to be undebatable and will be called. If, following a discussion, disagreement remains from any QR participants then the area of concern is debatable and no error will be called.

**2. Clear and Unmistakable Error (CUE)**

**A. Standard of Review**

(1) Use 38 C.F.R. § 20.1403. Undebatable error of fact or law and, but for error, the result would have been manifestly different. The Board gets the facts or law completely wrong and, but for the error, e.g., a denial should be a grant.

- (2) CUE is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. Generally, either the correct facts, as they were known at the time, were not before the Board, or the statutory and regulatory provisions extant at the time were incorrectly applied. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable.

B. Error Situations

- (1) The veteran has disability X and qualifies for presumptive service connection under a relevant statute or regulation. The Board denies service connection for X, stating that there is no presumption of service connection for X.

C. Non-Error Situations

- (1) Failure to fulfill the duty to notify.
- (2) Failure to fulfill the duty to assist.
- (3) Disagreement as to how facts were weighed or evaluated.
- (4) Failure to reopen a new and material evidence claim. This includes both an incorrect determination that a prior decision was final (or not final) and an incorrect finding that new and material evidence was not been received sufficient to reopen. Correcting these findings would not result in a manifestly different outcome for QR error purposes because it would not clearly result in an overall grant of the claim.
- (5) Failure to treat surviving appellant as a substitute, instead of an accrued benefits claim, unless this results in CUE. That is, if the claim is denied when looking only at the evidence of record at the time of the Veteran's death (accrued claim), but evidence added after the Veteran's death would undebatably compel a different result (substitute claim), then it rises to the level of a CUE error because correction would result in a manifestly different outcome.

### 3. Customer Service Error

#### A. Standard of Review

- (1) Undebatable.
- (2) Error does not have to result in a manifestly different outcome or otherwise be prejudicial. These errors can significantly impact an appellant's experience with the Board even in situations where the error is not outcome determinative.

#### B. Error Types

##### (1) Failure to address explicitly raised theory or contentions

a. Only an error if the decision completely misses theory or contention for Decision Review Database coding, specify where the theory or contention was found:

- (i) jurisdictional document (claim, NOD, F9)
- (ii) representative argument (IHP, Appellate Brief, third party correspondence, hearing)
- (iii) appellant correspondence
- (iv) medical evidence (clear statements by veteran recorded in VA examinations or in VA or private medical records)
- (v) other type of document

b. Not an error if theory or contention is addressed at all in the decision.

- (i) A statement addressing the theory or contention in a Finding of Fact and/or Conclusion of Law alone, with no explanation of any kind as to the underlying reason for that Finding or Conclusion, will not be sufficient to avoid an error.

- (ii) In general, the theory or contention should be addressed in the Reasons and Bases section, though exceptions can be made if an explanation is provided in another substantive section of the decision, such as the Introduction or Remand.
- (iii) “Addressing” the contention or theory is more than just listing its existence; there must be at least a short response to the overall contention or theory.

c. Definition of a theory or contention

- (i) For the purpose of QR case review errors, theories and contentions are all statements made by an appellant or his/her representative of a specific and substantive nature about why a claim should be granted. This includes broad theories of entitlement such as alleging secondary service connection, aggravation or exposure to mustard gas. It also includes very specific contentions focused on specific evidence, such as a claim that a specific document received on a specific date justifies an earlier effective date.
- (ii) QR will construe theory or contention as narrowly as possible; this can be difficult and require discussion. Try to distinguish between whether something is additional evidence or is actually a theory or contention to be addressed.
- (iii) The focus of the theory/contentions error standard is to ensure that appellants feel that their concerns have been heard by VA, even if those concerns do not impact the final outcome of the case. A guiding principle for case reviewers when reviewing a Board decision is to ask whether an appellant will feel like their concerns have been addressed even if the appeal is denied.



d. Examples of missed contention

- (i) Veteran reports symptoms that suggest a disability that the regulation directs be rated with the disability on appeal – IR spine, Veteran alleges in NOD, F9, and/or written statement that he has pain, numbness, etc. in his legs. There is no adjudication of radiculopathy at the lower level and the Board fails to address these symptoms. In contrast, it is NOT a missed contention if VA addressed the question of radiculopathy in a rating decision and the Veteran did not appeal. The underlying theory of the missed contention error is to ensure the Veteran is heard on his or her contention. Therefore, if VA addresses it at all, it is not missed.
- (ii) The Veteran submits and requests consideration of a private medical opinion that finds his claimed disability was aggravated by an already service-connected disability. The Board does not address secondary service connection.

e. Non-Error Situations (general – see below for *Scott* related examples)

- (i) Failure to address a CUE allegation on a non-final rating decision which does not include any reasoning for the CUE allegation. This situation is essentially the same as an NOD or general expression of disagreement with the RD. By adjudicating the appeal, the Board is inherently addressing this disagreement.
- (ii) Appellant requests more time to submit evidence before the Board decides the case and the Board adjudicates without noting the existence of that request. This may fall under a due process error depending on the circumstances, but will not be a theory/contentions error because the request is

not about the merits of the case and is only about process and timing.

- (iii) An allegation that an extraschedular determination by the Director, Compensation Service was inadequate, where the Board addresses the factual arguments as to extraschedular ratings but not the allegation of inadequacy. The Board reviews the Director's determinations de novo and they do not constitute evidence that must be weighed, according to *Wages v. McDonald*, 27 Vet. App. 233 (2015) and *Kuppamala v. McDonald*, 27 Vet. App. 447 (2015). The Board would not remand for an "adequate" Director's determination in the same way that it would not remand for an 'adequate' rating decision. Accordingly, failure to address that specific aspect of the allegation is not an error for QR purposes.
- (iv) The Board raises and develops a theory in a prior remand but does not mention that theory at all in the current denial, but the Veteran has never specifically mentioned or made arguments for that theory. Example: Board remands for medical opinion addressing direct SC, but the Veteran/representative has only made assertions as to secondary service connection. The Board decision only addresses SSC, not direct SC. The current QR error standard focuses on theories/contentions explicitly raised by the appellant/representative.

f. Scott v. McDonald examples:

- (i) See 12/8/17 QR Update on *Scott* Mini-Alert to 7/31/17 initial *Scott* Alert.
- (ii) Not an error: The IHP argues that the VA opinion indicates that there is no disability noted and no nexus opinion provided, which is incorrect. The

denial cites to *Scott* and goes on to indicate that the VA opinion is sufficient. The contention has been addressed - the overall contention is that the opinion was inadequate, and the Board says it was adequate; there is no need to respond to the specific type of inadequacy that is alleged. If they had just cited to *Scott*, it would have been failure to address contention error, but because they had that extra language, it's not an error.

(2) Unnecessary remand instruction

a. Error regardless of whether the issue would have been remanded anyway even without the erroneous instruction.

b. Error Situations

(i) Evidence already in file

(A) Remanding to obtain a document that is already in the claims file, such as VA treatment records, examination reports, STRs, or SPRs from specific dates.

(B) Remanding to get a VA examination because no VA examination was ever provided but there was a VA examination provided for that disability and the report is in the file.

(ii) Use internal procedures: Remanding when action should be accomplished with a clarification letter or other internal process per 38 C.F.R. § 19.9(d). See VIII.x.1

(A) Clarification of whether appellant wants a hearing or type of hearing – route to OAO Management Support Branch personnel for clarification letter. (*But*

*see Non-Error Situations below for exception.)*

- (B) Scheduling any Board hearing– route to OAO Hearing Management Branch personnel to schedule hearing. *(See Non-Error Situations for exception.)*
- (C) Clarification of representation – route to OAO Management Support Branch personnel for clarification letter.
- (D) Clarification of current address – The Board’s administrative support staff, including the Field Representative and Privacy Office staff, has resources available to locate parties and confirm mailing addresses.
- (E) Remanding for AOJ review of evidence where evidence was received *after* the case was transferred to the Board and the appellant did not specifically request AOJ review. Section V.iv.C directs that, if necessary, the Board should seek a waiver in this situation. (See also Due Process Violation section below re AOJ review of evidence for more explanation.)

*(I) Determining when the case was transferred to the Board (See V.iv.D): The RO sends the appellant a notice letter informing him or her that it is transferring the case to the Board. A copy of this letter can be found in the claims file. If a Board hearing*

was held, the letter can often be found immediately before or after the hearing transcript. The date is also identified in the “Dispatch” tab in VACOLS, in the “RO Mailing Status” box. It is not the “Cert BVA” date on the Docket tab.

(iii) Any “other” undebatably unnecessary remand instruction.

(A) Example: Ordering development on an issue which should be denied or granted as a matter of law.

c. Non-Error Situations

- (i) A Board remand action clarifying a request for a hearing, or scheduling a hearing, when the Board is simultaneously remanding the same issues for other reasons.
- (ii) Remanding for an SSOC due to new evidence when the evidence was submitted *prior* to transfer of the case to the Board and AOJ review would otherwise be required. See V.iv.A and Due Process Violation section below.

d. Privacy Violation

e. Representation problems will be addressed in the Due Process section (below).

f. Error Situations

- (i) Listing personally identifiable information (PII) in body of decision without following proper Privacy Office procedures. See VIII.i.

(A) Name of veteran or family member.

(B) File number.

(I) Mosaic Effect – Very unlikely to be an undebatable error, but it should still be considered in file review.

(II) If PII is included, it is still permissible if done in coordination with the Board's Privacy Officer.

#### 4. Due Process Violation Errors

##### A. Standard of Review

- (1) Undebatable as with CUE, but without the manifestly different outcome element.
- (2) Error must be prejudicial. Thus, due process errors will usually only arise in denials or partial grants because such a mistake for a remand could eventually be corrected.

##### B. Error types

- (1) Failure to rule on AOD motion: Only AOD motions filed in writing at the Board must be ruled on. See 38 C.F.R. § 20.900(c)(2).

###### a. Error Situations

- (i) At least one issue is being remanded for a non-*Manlincon* reason and the basis for the AOD motion is not advanced age.

###### b. Non-Error Situations

- (ii) All issues are being decided, regardless of disposition.

(iii) All issues being remanded are being remanded due to *Manlincon*.

(iv) Issues are being remanded for non-*Manlincon* reasons, but basis for AOD motion is advanced age. In this situation, this is a Preauthorized Correction.

(2) Denial of Right to Representation: Appellant denied right to representation through action or inaction by VA personnel. See 38 C.F.R. § 20.904(a)(1); see also VI.iii.3.

a. Error Situations

(i) Not providing opportunity to present argument on an appeal, such as through 90-day notice letter or routing to a co-located Veterans Service Organization for an informal hearing presentation or similar document. This includes notice to an appellant's representative when the case is transferred to the Board from the Court. See *Carter v. McDonald*, 794 F.3d 1342 (Fed. Cir. 2015) (an appellant's representative must be provided with a copy of the 90-day notice letter after remand from the CAVC).

(A) EXCEPTION: There is no error if nothing is being denied (i.e., full grant or remand). Inherently no prejudice on a full grant and an opportunity to present argument will still occur prior to a final decision for remanded issues.

(B) Common Example: attorney submits a VA Form 21-22a to change representation without limitation on the Power of Attorney, yet the Board's docketing notice letter is sent to the prior representative. Sending a copy of the notice letter, or some other curative action, should take place for the

representative to have an opportunity to present argument or evidence. If the Board denies any portion of an issue on appeal, this is an error.

- (C) Related Example: if a new representative is appointed within 90 days after the BVA docketing letter was mailed but there is no opportunity for arguments, there would be no error if all issues are granted in full or remanded.
- (D) Paralyzed Veterans of America (PVA): An opportunity to present argument is required if PVA is the representative, regardless of whether a hearing is held. This situation is due to a VA settlement with PVA.
- (E) Other National VSOs with offices at the Board: An opportunity to present argument is required if no hearing was held. No opportunity to present argument is required for the decision immediately following a hearing.
- (F) Post-remand cases: For co-located VSO representatives, the Board should route a case for an IHP when the appeal is post-remand (Board or Court remand), regardless of whether there was a hearing prior to the remand. See VI.iii.3.A.
- (G) State VSOs, attorneys, and other non-co-located representatives: Must have been given an opportunity to submit argument. However, if the change in representation occurred after



certification/transfer to the Board or after a Board remand, only the opportunity to submit an appellate argument is needed.

(H) Determining if there has been opportunity to submit argument where there is no argument document in the file:

(1) Opportunity to submit argument is usually accomplished with standard notice letters attached to VA adjudicatory documents, including the Board docketing letter. Generally, as long as those documents were sent to the representative's correct address, there will not be a problem.

(2) Most issues will arise when the representative has changed after the last AOJ adjudication or certification, but see below as to court remands. Per the Office of Litigation Support (11/17/17), the Board corrects these errors as follows:

(I) For anything other than a 1st generation court remand case, the case should be routed to co-located admin support staff to send the appropriate letter. Where a Board docketing letter was not appropriately cc'd to the current representative, resend the docketing letter. Where the notice was sent to the representative at the time but the representative subsequently changes, send

“PT-VSO” letter.

- (II) For 1st generation court remand cases, if a representative was not appropriately notified, the case must be returned to Lit Support for re-mailing of the 90-day letter. This applies regardless of whether it is the original notice or there was a representative change after notice.

(ii) Listing the wrong appointed representative for the appellant on decision.

(A) Not an error if the representative listed on the decision works for the same law firm and is listed in the Conditions of Appointment box of the 21-22a. This should be handled via a preauthorized correction.

(B) Not an error if the appellant revokes prior representation to become unrepresented. This will be a preauthorized correction to remove the representative from the decision, and the QR reviewer should also correct the representative designation in VACOLS (see Administrative Processes below for procedure). This is a different situation than when the Veteran revokes a representative to appoint a new representative, which would likely involve an error.

(C) Not an error where the Veteran revokes a representative to appoint a new representative, but that new representative was provided the opportunity to present arguments and/or the decision is a full grant of the issues on appeal. Although this is not an error, the representative should be corrected through preauthorized correction. WHY: This is not a privacy violation because the Veteran was previously represented by the appointed representative. Additionally, if the current representative was provided an opportunity to provide arguments, there was no denial of right to representative. If it is a full grant, then there is no prejudice even if there was no opportunity for representative arguments. For example, the decision lists The American Legion as the representative, but VACOLS lists DAV; the Veteran submitted a 21-22 in 2011 for the American Legion, but submitted another 21-22 in 2013 for DAV, and DAV appeared to represent the Veteran at the Board hearing in 2017. Moreover, the decision grants the issue on appeal in full.

(D) For representative clarification, see unnecessary remand error.

(iii) In contrast, not listing the attorney for the Board is not an error or necessary correction.

(iv) Any “other” undebatable denial to right to representation is an error.

(A) **90-day notice letters:** An appellant is entitled to the full 90-day period to submit new evidence or argument after a case has returned to the Board from the Court. *See Clark v. O'Rourke*, No. 16-2826, 2018 U.S. App. Vet. Claims LEXIS 898 (Vet. App. July 10, 2018). A waiver of any portion of the 90-day period by the appellant must be voluntary, knowing, and intentional. *Id.*

Not waiting the full 90 days before issuing a decision is an error.

If there is a request for extension beyond 90 days, a ruling on the motion is required; if there is no ruling, this is an error.

b. Non-Error Situations

- (i) Representative was not provided with an opportunity to present argument because notice was not mailed to the representative; however, the representative then submitted a Privacy Act request and was given a full copy of the claims file. This copy included the notice letter, thus constituting actual notice despite the mailing error; therefore, this cures the bad notice situation. Certain notices have due process periods for submission of evidence and argument that begin to run once the notice is provided. It may be error to proceed to adjudicate without ensuring the submission period has elapsed as measured from the date of actual notice.
- (ii) Board appeal notice/docketing letter was not sent or not sent to the proper representative, but a hearing was held with the representative. This is

because the representative knows about the appeal and presented arguments already.

- (iii) Board issues decision less than 15 days after missed hearing; i.e., fail to wait 15 days to receive motion for new hearing after failure to report to hearing.

(3) AOJ Adjudication Needed: SOC or required SSOC was not provided. See 38 C.F.R. § 20.904(a)(2).

a. Error Situations

- (i) Adjudicating evidence not reviewed by AOJ without a required waiver. See 38 C.F.R. § 20.1304(c); 38 U.S.C. § 7105(e)(1).

(A) Where the substantive appeal was on or after February 2, 2013:

- (I) A waiver is NOT required for new evidence submitted by the appellant/representative, and the Board may proceed with adjudication unless the appellant/representative explicitly requests AOJ consideration, or if a statement submitted with the evidence raises a question as to whether he or she is requesting initial AOJ review of the evidence submitted.
- (II) A waiver IS required for evidence obtained or

developed by VA based upon a submission from the veteran, such as evidence that was suggested by a submission but gathered separately pursuant to the duty to assist (*e.g.*, VA treatment records, VA examination, STRs, etc.).

(III) The reasoning is that if the new evidence is submitted directly from the veteran/representative then we can assume he/she has reviewed the records and is making a knowing waiver of their contents. If evidence is submitted by another source, we cannot assume that the veteran/representative has reviewed the records.

(B) Where the substantive appeal was prior to February 2, 2013, a waiver of AOJ review is required unless the evidence is duplicative of evidence already discussed in a prior SOC/SSOC or it is not relevant/pertinent to the issues on appeal (meaning it does not relate to or have a bearing on the issues).

(C) If a waiver would be required under the rules above:

- (I) If all issues on appeal are being granted in full or are being remanded for other reasons, no waiver is required because there is no prejudice.
- (II) If any of the issues on appeal are being denied (in whole or in part), determine when the new evidence was received.
- (III) If received *prior* to transfer of the case to the Board, a waiver request is not appropriate and a new SSOC must be furnished to appellant and representative per 38 C.F.R. §§ 19.31 & 19.37(a).
- (IV) If received after transfer to the Board, the Board should seek a waiver pursuant to 38 C.F.R. §§ 19.37(b) & 20.1304(c). A waiver can be requested on the record at a hearing or through a clarification letter – transfer the case to OAO Management Support Branch personnel.
- (V) Determining when the case was transferred to the Board: The RO sends the

appellant a notice letter informing him or her that it is transferring the case to the Board. A copy of this letter can be found in the claims file. If a Board hearing was held, the letter can often be found immediately before or after the hearing transcript. The date is also identified in the “Dispatch” tab in VACOLS, in the “RO Mailing Status” box. It is not the “Cert BVA” date on the Docket tab. *If there is no date in the “RO Mailing Status” box, then go by the “Rec’d BVA” date on the Docket tab.*

(D) Determining if evidence is relevant and requires a waiver:

If there is post-AOJ adjudication evidence and a waiver could potentially be required, the decision should explain why a waiver is not needed. However, to be an error for failure to obtain a waiver or explain why it is not needed, the evidence must be undebatably pertinent to the appeal.



The reviewer should not spend much time trying to determine if the evidence is undebatably relevant. If there are only a few pages or a relevancy determination can be made by a quick key search, that's fine. If more extensive review is needed, it will likely be an error requiring the judge to either solicit a waiver or remand, or explain why the evidence is not pertinent such that a waiver is not needed.

Examples:

- a. Undebatably relevant: A nexus is needed, and the new evidence has a nexus that the QR reviewer can quickly identify as not already being in the claims file or addressed in the decision.

Undebatably relevant:  
The Board decision references new VA records uploaded by the AOJ (CAPRI records) in the decision analysis.

NOT undebatably relevant: CAPRI records are added by the AOJ (possibly as related to development on a different issue). QR reviewer can quickly identify that the judge/atty could have (but didn't) made a finding that the records don't have a bearing on the appeal.

(ii) Reopening an issue and denying on the merits IF there was no previous AOJ adjudication on the merits. Check RD/SOC/SSOCs to see if merits considered even if not characterized like that.

(iii) Any “other” error that would undebatably require AOJ adjudication.

b. Non-Error Situations

(i) Failure to issue a *Manlincon v. West*, 12 Vet. App. 238 (1999), remand. (See QR FAQ for QR's stance on legal basis for not *Manlincon*-ing.) Similarly, if there is an appeal stream in NOD status in VACOLS, there is no need to reference that appeal stream in the decision or explain why no *Manlincon* remand is done. Also note, if the Board is issuing a *Manlincon* remand, the issue being remanded should be added to the current appeal stream *without taking any action to the ADV (NOD) appeal stream. Meaning, there should be two appeal streams listing the *Manlincon*'ed issue.* If there are not, QR may correct this via Litigation Support.

(4) Failure to afford a personal hearing. See 38 C.F.R. § 20.904(a)(3).

a. If the veteran did not appear for a hearing, check to see if the hearing notice was mailed to latest address of record.

(i) Look out for cases with incarcerated or incompetent appellants or simultaneously contested claims. See V.i.4. Due process requires the Board to tailor assistance to incarcerated or incompetent appellants. If one party to a simultaneously contested claim is scheduled for a hearing, the other claimant must be notified and afforded an opportunity to be present.

b. If an appellant dies before a Board hearing has been held and an eligible beneficiary has been substituted, the substituted appellant has stepped into the shoes of the original appellant. The hearing request remains pending and, barring some indication that the appellant does not want the hearing, it needs to be conducted. 38 C.F.R. § 3.1010(f)(3). Similarly, if the appellant had a pre-death hearing, the substitute is not entitled to another hearing because he or she stepped into the original appellant's shoes; however, on motion the presiding VLJ may grant an additional hearing.

(5) Taking jurisdiction over an issue over which the Board does not have jurisdiction.

a. Error Situations

(i) Granting an issue over which the Board does not have jurisdiction.

(A) Example: The Board already issued a decision granting or denying issues, or the AOJ issues a full grant upon remand. The case returns to the Board and the Board issues another decision addressing the already decided issue.

(ii) Listing an issue and remanding for development where not perfected/appealed; however, the issue may be properly taken under the Board's jurisdiction under *Percy v. Shinseki*, 23 Vet. App. 37 (2009), if not otherwise perfected.

(A) Example of error: The Board notes that the only perfected issue on appeal is TDIU, as the Veteran limited his F9 after SOC that addressed TDIU and other issues. However, the Board also takes jurisdiction of IR PTSD as inextricably intertwined with the TDIU issue, lists it as an issue on the first page and remands it for development and adjudication, although in the remand action paragraph the Board notes this issue will not be returned to the Board unless the Veteran files a NOD/SOC/F9. This is improperly taking jurisdiction over a non-appealed issue.

(B) Example of non-error: A prior remand was to provide an SOC for SC bladder disability, which was done, but there was no timely Form 9 or document that could be construed as a Form 9. At a Board hearing, the VLJ indicates this issue is on appeal. The current decision takes up the issue and remands it. Although this issue should not have been addressed in the hearing because it was not perfected, under *Percy*, addressing it in the hearing brings it under the Board's jurisdiction, so there is no error to address/remand it now.

b. Non-Error Situations

- (i) Granting an extraschedular rating under 38 C.F.R. § 3.321(b)(1) or extraschedular TDIU under 38 C.F.R. § 4.16(b) prior to referral to the Director, Compensation Service. The fact that this would not rise to an error under the current QR standard should not be taken as QR endorsement of such a

practice. This is a procedural violation, not a jurisdictional violation, as the Board has jurisdiction over both schedular and extraschedular aspects of an IR claim. A veteran does not have to appeal the Director's decision in order to vest jurisdiction with the Board, because the Board already has jurisdiction. Although it is legally incorrect for the Board to assign an extraschedular evaluation in the first instance, this is not a clear jurisdictional violation, and if the effect is non-prejudicial then that is sufficient to take it outside of current QR error standards.

6. Failure to address an issue over which the Board does have jurisdiction.

a. Error Situations

- (i) Failure to apply *Percy v. Shinseki*, 23 Vet. App. 37 (2009). Note that it will be quite rare for such an error to be undebatable.

(A) Error example: The Veteran filed an NOD for the issue of IR back, then during DRO review, the RO grants separate ratings for associated radiculopathy of the lower extremities. The Veteran does not file another NOD, but the RO includes those issues in the SOC for the initial NOD, listing ratings for the back and radiculopathy as being on appeal. The Veteran then submits a Form 9 for all issues in the SOC and the issues of both the back and radiculopathy are certified to the Board. If the Board does not reference or address the issues of radiculopathy in any way, this would be an error. Despite no NOD for radiculopathy, because the radiculopathy was granted as associated with the IR back issue on appeal, and he

filed a Form 9 to the SOC that included both issues, the Veteran has an expectation that radiculopathy will be adjudicated and it would be under the Board's jurisdiction per *Percy*.

(B) Non-error example: Same fact pattern as above prior to Board decision, but the Board *at least addresses the procedural history in the decision*. If the Board explains in the decision that it is not taking jurisdiction because the Veteran did not submit an NOD to initiate an appeal for radiculopathy, it is not an error.

(ii) Failure to do formal dismissal for issue that is withdrawn *after* certification and *transfer* to the Board – usually these dates are the same, but at times you may need to distinguish between certification and transfer/BVA receipt date. *See* QR FAQ for Board Process.

(A) Dismissal needed: If the issue was both certified and transferred to the Board and then it is withdrawn, but the Board does not dismiss it, it is an error.

(B) Dismissal not needed: (1) the issue is withdrawn prior to certification; or (2) the issue has been perfected by a substantive appeal but not yet certified by the RO. In these situations, it is fine to be silent or to intro the issues out.

(C) Explanation as to difference from QR FAQ regarding Board Process: VBA can effectuate withdrawals received while the files are with the RO. 38 C.F.R. § 20.204(b)(3). The key in 38 C.F.R.

§ 20.204(b)(3) is the use of the word “transfer.” We interpret that as a determination as to who currently has custody of the appeal. While the Board has jurisdiction over an issue once a substantive appeal is filed, we do not yet have custody of the appeal. Therefore, any appeal that has not yet been certified to the Board is not yet in the Board’s custody, regardless of whether the appeal has been perfected. Thus, if the issue is withdrawn at that point, the withdrawal is effective immediately and a separate order by the Board is not required to effectuate it. In addition, whether an appeal was withdrawn is itself an appealable issue. So, to the extent that there is some controversy over an effectuated withdrawal, the Board can resolve that dispute anyway.

(D) Determining when the case was transferred to the Board (V.iv.D): The RO sends a notice letter informing the appellant that it is transferring the case to the Board, which should be in the claims file. If a Board hearing was held, the letter is often found immediately before or after the hearing transcript. The date is also in the “Dispatch” tab in VACOLS, in the “RO Mailing Status” box; it is not the “Cert BVA” date on the Docket tab. *If there is no date in the “RO Mailing Status” box, then go by the “Rec’d BVA” date on the Docket tab.*

(E) Update based on recent change to Form 8: As of September 2017, the Form 8 for

certification no longer lists the issues that were certified; it is just a general certification form. Generally go by what VACOLS says as to whether the issues have been certified to the Board (i.e., in ACT not ADV status). If it is questionable/judgment call as to whether an issue is certified, this is not an error.

- (F) Example: VACOLS or Form 8 reflects that a case with multiple issues was certified in Oct. 2014, but the case stayed at the RO for 3 years for a video hearing, VACOLS shows a BVA receipt date (upper left corner on docket page) of Sept. 2017, and the Veteran had a hearing in Nov. 2017. Although it was previously certified, the case was not in the Board's custody/ transferred until Sept. 2017, so that is likely the controlling date.
- (G) Example with slight twist: The case was certified in Oct. 2014 but stayed at the RO waiting for hearing, Veteran submitted written withdrawal of 8 issues in July 2017, then at the hearing in -Aug. 2017 he withdraws issue #9, but the "received at BVA" date in VACOLS says Sept. 2017 - what is the transfer/ Board custody date? In this situation, the hearing date controls. No formal dismissal is needed for the July 2017 withdrawals (fine to just intro them out or not mention them, but make sure VACOLS shows as withdrawn). A formal dismissal is needed for the Aug. 2017



withdrawal during the hearing (listed issue with FoF/Col/Order).

(iii) TDIU and Rice-related errors (See Non-Error situations below for more explanation of Rice-related determinations and current Board policies):

(A) As summarized in VIII.xi.1: “A request for TDIU, whether expressly raised by an appellant or reasonably raised by the record, is not generally a separate claim for benefits but rather an alternative to a schedular rating for a disability. *Rice v. Shinseki*, 22 Vet. App. 447, 453–54 (2009). The Board has jurisdiction over TDIU claims that are raised in conjunction with rating claims on appeal. If AOJ action is required, the issue shall be remanded to the AOJ, not referred. However, referral of a TDIU claim to the AOJ may be appropriate if the TDIU claim is found to be exclusively part of an increased rating claim that is not before the Board.”

(B) Error: Failing to take jurisdiction over TDIU issue where the claim is based completely on IR issue(s) otherwise before the Board is an error. This will be an error where the Board is silent about the TDIU issue, as well as where the Board explains incorrectly that TDIU is not on appeal before it.

(C) TDIU is clearly under the Board’s jurisdiction in this situation pursuant to *Rice*, as the TDIU issue is considered part and parcel of the appeal of the underlying disability rating(s), and such issue(s) are already on appeal.

- (D) This includes where the RO denied TDIU and there is no NOD for that issue, as the TDIU is under the Board's jurisdiction as part of the IR issue; *Rice* makes clear that TDIU does not need to be separately perfected.
- (E) Whether the Board must adjudicate the TDIU issue or may remand it for initial AOJ notice and adjudication depends on the procedural history.
- (F) For example, an error was called where an underlying rating for IR PTSD was on appeal, the attorney submitted the formal VA 21-9840 for TDIU claimed as due to PTSD, and the attorney waived initial AOJ processing of TDIU along with consideration of new evidence submitted for the claim.
- (G) From QR Board Process FAQ in 2017: Q: Can the Board adjudicate the issue of entitlement to TDIU when it has been raised by the record as part of an IR claim pursuant to *Rice*, but not adjudicated by the RO? A: Yes, the Board may adjudicate TDIU but it is not mandatory to do so. If *Rice* directs that the issue is under the Board's jurisdiction, the Board may decide or remand the issue without resulting in an error.

b. Non-Error Situations

- (i) **Issues that are perfected but not certified:** Failure to include an explanation in the introduction as to why the Board is not taking jurisdiction over issues that have otherwise been perfected (i.e., with a

clear NOD, SOC, and timely Form 9) will not be an error. The Board policy is only suggestive, not mandatory. However, to help avoid confusion, QR will add the Suggested Language to the decision introduction as a Preauthorized Correction. (See procedures below.)

(A) **Policy:** Per VIII.ix.3, if an issue has been perfected for appeal, but has not yet been certified to the Board, then the decision should include a brief jurisdictional statement in the Introduction acknowledging the issue and stating whether the Board is exercising its jurisdictional discretion.

(B) **Explanation:** Although the certification of issues on a VA Form 8 neither confers nor deprives the Board of jurisdiction, it is a signal that the VBA has completed its action regarding the certified issues. With the shift to electronic appeals in VBMS, the Board now has a real-time view of the claims folder, to include actions taken by the AOJ on issues not certified to the Board. For example, the Board could be working on, and ready to issue a decision on, perfected and certified issues and then notice separate issues where a rating decision, NOD, SOC, and substantive appeal are all located in the eFolder, but there is no VA Form 8 signaling certification. Because a VA Form 8 for certification has not yet been issued by VBA, it is within the Board's discretion to address perfected, but not yet certified, issues. Generally, it is advisable to follow the VBA process of certification of issues

because of the difference in how the Board and VBA track issues related to an appellant's case. Judicial discretion may be exercised if it is necessary to take jurisdiction of non-certified issues (e.g., for a full grant of the benefits sought). If you see issues that have been perfected, but not yet certified, the best course of action is to acknowledge these issues by including a jurisdictional statement in the Introduction section stating whether or not the Board is taking jurisdiction in the current decision so that the appellant, representative, VBA, OGC, or CAVC can see how the Board is handling these issues.

- (C) **VACOLS Tips:** Where issues have been perfected to the Board but not yet certified, VACOLS should show that appeal stream as in ADV (I-9) status for an original appeal or REM status for a post-remand appeal. If the issues have been certified, they should be in ADV (cert) or ACT status; the difference is that cases in ACT status have also been transferred or received by the Board, whereas cases in ADV (cert) status have not yet been received. As of September 2017, the Form 8 for certification no longer lists the issues that were certified. Generally go by what VACOLS says as to whether the issues have been certified. If it is debatable or a judgment call as to whether an issue has been perfected or certified such that an introduction explanation should be included, no correction is needed.

(ii) Issues that have been perfected and certified but are pending a Board hearing: For similar reasons as above, failure to include an explanation in the introduction as to why the Board is not taking jurisdiction over issues that have been perfected and certified, but VACOLS reflects a pending hearing request, will not be considered an error. Per current Board policy, the issue(s) awaiting a hearing should remain in a separate appeal stream to save their place in the hearing docket line. QR added the Suggested Language to the introduction as a preauthorized correction. (See correction procedures below.)

(iii) No error for not taking jurisdiction over increased rating issues for separate evaluations related to a disability on appeal that the AOJ granted in a rating decision and for which no NOD has been received. Example: IR lumbosacral spine is on appeal. VBA issues a rating decision granting separate 10% ratings for left and right leg radiculopathy, and the appellant does not file an NOD as to those ratings. There is no binding authority that specifically states that these separate ratings are absolutely part of the IR lumbosacral spine issue such that a separate NOD is not required after they are granted. Accordingly, this is an area of judicial discretion and thus falls outside the undebatable error standard.

(iv) TDIU and *Rice* Related Non-Errors (see above for Error info):

(A) Not taking jurisdiction over TDIU issue when the Board has a perfected IR issue before it where the TDIU is claimed as based on a disability other than the one that is otherwise before the Board. This will not be an error in situations where the TDIU claim is based completely on a disability not on appeal, as well as when

it is based only in part on an issue not on appeal. The Board may take jurisdiction over TDIU when claimed as based in part on an issue on appeal, but if it declines then it is not necessary for the Board to mention TDIU at all (no explanation needed).

- (B) One common question is whether the Board has jurisdiction over TDIU when the RO separately denied TDIU and there is no NOD.
- (C) Another is when the RO granted TDIU for only a portion of the appeal period, whether the Board has jurisdiction over TDIU for the rest of the appeal period if there is no NOD for the effective date of TDIU.
- (D) In both situations, currently it is a matter of judicial discretion of whether the Board has jurisdiction. *Rice* makes clear that TDIU does not need to be separately perfected because it is part and parcel of the appeal of the rating for the underlying disability. Thus, if the underlying IR issues are on appeal, then the TDIU remains on appeal for the entire appeal period as part and parcel of those rating appeals, pursuant to *Rice v. Shinseki*, 22 Vet. App. 447 (2009). A grant of TDIU for only part of the appeal period does not constitute a full grant of that issue; thus, the remainder of the appeal period would still be before the Board as with IR claims.
- (E) However, the procedural ramifications of *Rice* are less clear where TDIU is

claimed as due to more than one service-connected disability, only some of which are already on appeal. There is no specific binding precedent or regulation requiring the Board to take jurisdiction. However, there are many JMRs and Memorandum Decisions vacating and remanding similar fact patterns.

c. Failure to respond to Privacy Act request. (See V.iv)

d. Error Situations

- (i) The Records Management Center (RMC) is in the process of responding to a records request. An example of this would be a letter sent to the veteran notifying him or her that the request has been received and is being worked, but no there is actual response indicating that the records were provided. The case must be sent to the Privacy Office for appropriate action in this situation.
- (ii) If the veteran requested an opportunity to review and respond to the records after response to the Privacy Act request, the Board must rule on that motion.

e. Non-Error Situations

- (i) The Board decision is non-prejudicial (only granting and/or remanding all issues).
- (ii) A Privacy Act request is specific to the person requesting it and doesn't transfer, whether due to death or otherwise. 5 U.S.C. § 552a(b).
  - (A) Not an error if the request was received from the veteran's representative, but then the veteran subsequently changes

representation. A Privacy Act request expires when the representative's POA is revoked, unless the request was made by the veteran directly.

- (B) Not an error if the case is a death dismissal and there has not been a substitution, as the request becomes moot at the veteran's death because rights under the Privacy Act expire with the individual. If there has been a substitution and the substitute requests the documents, then that request should be fulfilled; under these circumstances, the records become those of the substitute, subject to the Privacy Act.

iii. PART II: PREAUTHORIZED CORRECTIONS

**1. Definition**

- A. Mistakes which do not qualify as errors, but which are embarrassing to the Board or otherwise warrant efforts to correct them prior to dispatch.
- B. QR is authorized to fix these mistakes directly without VLJ input.
- C. Preauthorized corrections are not considered errors and will not be factored into QR's Board decision accuracy rate reporting.

**2. Standard of review**

- A. Mistake must be undebatable.

**3. Types**

- A. Mistakes in an appellant's biographical information or identification in the decision, such as misspelled names, incorrect gender pronouns, or incorrect date of death.



(1) These errors are very likely to anger the appellant and give a poor impression of the Board's customer service.

(2) Does not include missing AKA names, unless the appellant specifically requests that name to be used, such as where she gets married during the appeal period.

B. Wrong date or branch of service

(1) These errors are very likely to anger the appellant and give a poor impression of the Board's customer service.

C. Mistakes in Non-Substantive Appeal Data

(1) Erroneous docket numbers and claims file numbers create a high risk of causing improper handling.

(2) Correction is required when the numbers are wrong, including if missing a letter.

(3) Do not fix if the only error is that the spacing is wrong.

(4) Standard docket number spacing format: 12-34 567 or 12-34 567A.

(5) Standard file number spacing format: SS 123 45 6789 (no dashes used); C 1 234 567 or C 12 345 678. (For claim numbers that are less than 8 digits, a 0 should not be added to the front.)

a. The case is missing a required "X".

(i) For cases that being dismissed due to the death of the veteran, an "X" should not be used as the veteran is still the appellant for the purposes of the dismissal.

(ii) If the veteran is deceased *and is not the appellant*, an "X" should be placed in front of the C or SS (i.e., XC or XSS).

b. Inclusion of the unnecessary leading “0” in a C-file number that should be less than 8 digits.

D. Decisional Elements: Significant mistake in Finding of Fact, Conclusion of Law, Order, or Remand directive

(1) Guiding Principles

- a. QR will correct mistakes which have a high risk of causing in improper handling, the need for a corrective order, or significant confusion for the appellant. Such a correction would not result in a substantive change in the Board decision or remand or impinge on the signing VLJ’s determination regarding the appropriate outcome of the case.
- b. QR will not correct mistakes in the Reasons and Bases section unless it otherwise falls under another Preauthorized Correction category, such as incorrect gender pronouns. This is because mistakes in this the Reasons and Bases are significantly less likely to result in improper handling because implementation of Board decisions is largely done off of the FoF, CoL, Order, and remand action paragraphs.
- c. QR also will not generally correct spelling or grammar mistakes, as they are too time-consuming and should not affect the handling of the case. However, it may be appropriate to make such corrections in cases where there are significant and frequent mistakes of the type that are easily identified by running spell check. This is because the amount of errors of this type may very well cause the appellant confusion or anger and give a poor impression of the Board’s customer service.
- d. QR will not make spelling corrections if there is not another preauthorized correction to be made that would meet the rules set forth herein.

- e. If there is another preauthorized correction to be made, the reviewer should use their discretion to determine if it is worth making the spelling/grammar changes and notifying the judge of the changes, along with the other preauthorized correction.

- (A) Notifications of this type must be specific enough for the judge to know what changes were made and where they were made, but not overly critical.
- (B) Consult the QR Chief if needed to assist with the determination or wording of the notification. Some general tips for phrasing of notification:
- (C) Put the reason for the change up front so focus is more on the Veteran's perspective than the typos.
- (D) If you can say it was a typo or "mistyped" vs an error/mistake, do so.
- (E) Identify the number of words corrected so the judge knows the extent of changes, and list some examples of changes and the page number, with a notation see the original if desired to figure out the rest of the changes.
- (F) Be clear that QR only changed clear spelling problems, i.e., say QR ran "Spell Check," because grammar can be subject to interpretation.

## (2) Examples

- a. Listing the issue in the FoF/CoL but omitting the final disposition in the Order.

- i. This does NOT include a missing FoF or CoL. It is not a preauthorized correction or an error if the FoF is missing, as long as the CoL and Order are there; this is because the finding of fact will be explained in the narrative portion.
  - b. This does NOT include a missing FoF or CoL. It is not a preauthorized correction or an error if the FoF is missing, as long as the CoL and Order are there; this is because the finding of fact will be explained in the narrative portion.
  - c. Leaving out “not” in FoF/CoL for denial or leaving in “not” for grant, thus making the FoF/CoL inconsistent with the decision.
  - d. Listing the disposition in the Order as granted when it was denied.
  - e. Listing an issue as being granted or denied when it is being remanded in full.
  - f. Listing the wrong disability for the relevant FoF/CoL/Order/remand action.
    - (i) Example: Issue being remanded is right knee, but the remand action paragraph orders an examination for the left ankle (likely due to a copy and paste error).
- E. Missing AOD flag for veterans aged 75 and older in a case where at least one issue is being remanded for a non-*Manlincon* reason.
- (1) These errors have a high risk of causing improper handling.
  - (2) See the Due Process Violation/Failure to Rule on AOD Motion error (above) for the same scenarios but where the AOD motion is based on any non-age-related reason.
- F. Representative related corrections
- (1) These errors have a high risk of causing improper handling.

(2) Correcting the appointed representative in VACOLS where the decision already lists the correct representative. Follow procedures in Administrative Processing section (below).

(3) Correcting the appointed representative to reflect appellant has clearly revoked prior representation to become unrepresented. See Error section as to wrong representative above for explanation of why this is a preauthorized correction, and follow procedures below in Administrative Processing section to update VACOLS as no representative.

(4) Correcting the appointed representative to reflect a newly appointed representative where that representative was given the opportunity to present arguments and/or where the decision is a full grant of all issues. See Error section as to wrong representative above for explanation of why this is a preauthorized correction.

(5) Correcting the appointed representative to reflect the VSO organization instead of the individual representative within the organization listed as an agent. For example, decision lists: “Joe Snuffy, Agent” but 21-22 lists this individual as a “VSO” representative for “Pennsylvania Department of Military and Veterans Affairs,” which is one of the drop-down options for a VSO representative in the decision template. Similarly, VACOLS lists “State VSO” and VBMS indicates Pennsylvania Department of Military and Veterans Affairs is the representative. There is no privacy violation because it is actually the same representative, so this is a preauthorized correction.

G. Other allowable procedural corrections

(1) These errors have a high risk of causing improper handling.

(2) Misfiled documents: Follow procedures (see below) to remove the misfiled document. Briefly consider whether a misfiled

document was mistakenly relied upon in a prior adjudication. In that case, remand may be appropriate.

(3) Merging appeal streams in VACOLS where the issues were already addressed in the same decision. See QR Chief for help with merging if needed.

(4) Correcting the Regional Office in VACOLS where the decision and VBMS already list the correct Regional Office. Follow procedures in Administrative Processing section (below).

#### iv. PART III: QUALITY NOTATIONS & DATA GATHERING

##### 1. **Quality notations**

###### A. Overview

(1) QR case reviewers will log concerns they have with cases that do not otherwise qualify as an error or a preauthorized correction.

(2) Examples:

- i. Questionable applications of law or omission of discussion of seemingly important facts, but that do not rise to the level of an error.
- ii. Extremely specific or detailed remand action that will likely cause confusion or potential *Stegall* issues, but that does not rise to the level of an error.
- iii. In a remand action paragraph for a VA medical opinion, requesting that an incorrect probative standard be used.

###### B. Purpose

(1) Quality notations will be tracked for internal data collection purposes only and reviewed periodically.

(2) Issues commonly listed in quality notations can be proposed as a new error or preauthorized correction category.

(3) Potentially useful internal training tool to ensure consistency in case review.

C. Process

(1) Quality notations will be entered into a separate Excel spreadsheet until such time as VACOLS/Caseflow is capable of incorporating them.

**2. DATA GATHERING – ON HOLD AS OF 2/15/18**

A. Overview

(1) QR case reviewers will enter data to answer specific questions asked about the case they are reviewing.

(2) The questions asked must be answerable by the case reviewers with minimal additional effort, so as not to impose a burden and slow down the case review process.

(3) Examples of potential additional data gathering categories:

(4) A new decision template is distributed for use. Data will be gathered as to how many decisions use that template.

(5) An upcoming Board training is expected to recommend a change in Board approach on a substantive legal matter. Data will be gathered as to the Board's approach to that substantive legal matter for one month before the training and two months after the training. The data will be used to determine whether the training was successful in changing the Board's approach in that area.

**B. Purpose**

(1) As QR case review will be reviewing a statistically significant sample of live Board decisions, the same review process can gather statistically significant data on various aspects of Board decisions. This data can be used to gain a greater understanding of Board decisional behavior in any context that is useful for any part of the Board.

**C. Process**

(1) The Chief will determine the questions that are asked and the time period for which the data will be gathered.

(2) Current data categories:

a. Board Decision Page Count – only count to judge signature (not appeal rights pages)

b. Representative Argument – drop down menu for general type and nature

c. Any extraschedular analysis – yes/no; only for cases involving IR issues

(3) Data will be entered into a separate Excel spreadsheet until such time as VACOLS/Caseflow is capable of incorporating this work.

**v. PART V: ADMINISTRATIVE PROCESSES**

**1. Case Review Process**

**A. Case Assignment**

(1) Check inventory for the oldest case

(2) Open VACOLS Reports. Choose the “Custom Rpts” dropdown menu and select “Location Detail Report.” Run the report for location 48 (Quality Review).



(3) Look at the “Date Charge” and/or “Days” columns to find the cases which have been charged to QR for the longest period of time, as well as the “AOD” column to check AOD status. “Y” in the AOD column means the case is AOD.

(4) Cases will be worked in the following priority, starting with the oldest charge date within each subgroup; the AOD cases take priority within each subgroup (pending for 7 days or more, or pending for 7 days or less):

a. AOD cases charged to QR for 7 days or more.

b. Non-AOD cases charged to QR for 7 days or more.

c. AOD cases charged to QR for 6 days or less.

d. Non-AOD cases charged to QR for 6 days or less.

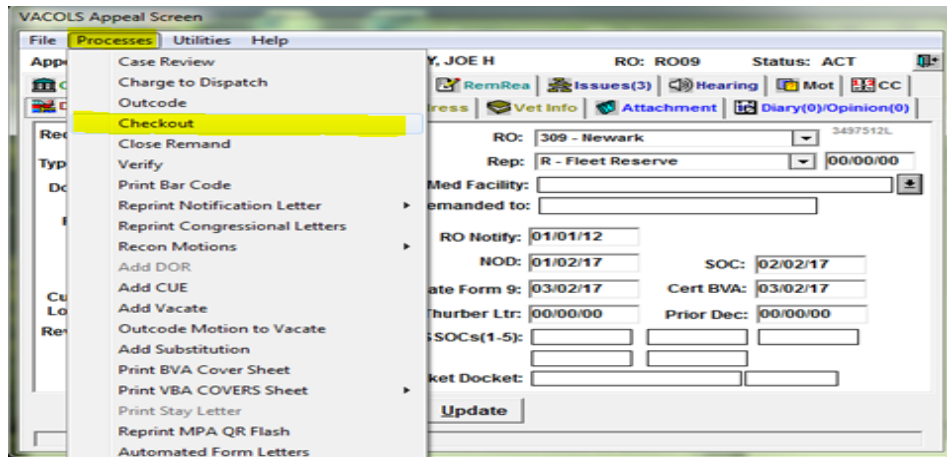
e. Example: If the oldest date charge case has been in 48 for 9 days, and there is an AOD case pending for 8 days, first do the AOD case and then do the 9 days case. This means there may be some cases pending longer than those AOD cases. Once all cases 7 days or older have been done, move to the group of cases that are less than 7 days pending, AOD or otherwise. If there are AOD cases pending for less than 7 days, first do those AOD cases and then do the non-AOD cases.

(5) The Chief can select a case for immediate review at any time even if it is not currently in order.

a. checking out a case to work

(i) Check the selected case out to yourself using VACOLS, *not* DAS: Open the appeal in VACOLS, click the “Processes” tab, and select “Checkout.” Enter your VACOLS ID or click the Find button and browse to your name. Then click the “Checkout” button.

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### B. Finding the decision to review

(1) Note: Decisions can be reviewed by printing or digitally, as per the preference of the reviewer. Keep in mind PII security restrictions on printing if teleworking.

(2) The file number of the decision to review will be in the DAS or Attachment tab of VACOLS. If it is an IDT decision, it may not be attached to VACOLS yet. In the attachment tab, it will have a document description of "Decision" and the "Doc Name" field will correspond to the standard Generic Decision Template file naming structure (ending with the attorney number). For decisions created using the Interactive Decision Template (IDT) (most cases after late May 2018), the file name will start with the attorney number, but with an extra one or two "0" digits at the beginning of the number to create a 5 digit number.

(3) If it is a non-IDT decision, the version you need to review is the signed PDF, not the VACOLS upload if it is not the pdf. If it is an IDT decision, there should not be a pdf version because it will be the Word version that is electronically signed.

(4) Different locations for Word decision versions depending on template used:

- a. Decisions created with the prior generic decision template will be saved under the P drive, attorney number folder.
- b. Decisions created with the newer IDT template will be saved in the P drive under the “Board” folder, then the attorney number folder with an extra one or two “0” digits at the beginning of the number to create a 5 digit number. This should have the electronic signed version too.

(5) For non-IDT decisions: Use the file number from VACOLS to find the signed PDF version in M:\Decision Team\Signed Decisions under the folder of the signing VLJ Open the VACOLS attached Word document and compare it to this version. Other than the VACOLS version being unsigned, the two versions should be identical.

- a. If you cannot find the pdf signed version, it is usually best to send the VLJ an encrypted email explaining the situation and asking them to let you know the location/name. They may need to resign the decision electronically.
- b. If the VACOLS decision is not the same as the signed pdf version, the signed version takes precedence because it is the official version. Although the decisions will match in the vast majority of cases, sometimes they will not. In this situation, you will need to locate and upload the correct version to VACOLS.
- c. This may occur because there are two Word documents with similar names in the drafting attorney’s P:\ drive folder. For example, one of the documents will end in the attorney number but one of them will end in “.docx” because that is how it saved when the VLJ made corrections due to computer settings.

- d. If you cannot determine where the correct Word version is, send the VLJ an encrypted email explaining the situation and asking for the file location/name.

(6) How to correct the version in VACOLS:

- a. In the VACOLS attachment tab, select the incorrect decision and click “delete.”
- b. Click “add,” then click “browse” to find the correct version of the file (it will be the Word file, usually in the attorney’s P drive folder), and verify it is the correct document. For Attachment Type, select “DC – Decision” and click OK.
- c. You may also need to change the document ID number on the DAS page to reflect the name of the corrected document – you should be able to edit this.

(7) Multi-decision cases

- a. If multiple decisions are being issued simultaneously, review all of the decisions and code each one separately.
- b. Double/multiple entries in VACOLS or multiple DAS entries for one case:
  - (i) If a case has multiple decisions, each decision should be associated with a separate entry in VACOLS, so double/multiple entries would be proper.
  - (ii) If there are two entries for the same case in the Location Detail report, but there are not two decisions or a merged entry to review, the double entry may be a scan gun error that should have resolved with the elimination of brief faces.

(iii) If two lines appear on your Cases Checked In summary but otherwise there is only one entry for the case in VACOLS or other programs, this may be due to a bug where there is a DAS for a prior VHA opinion and also for the current decision that was pulled for QR review. In this case, there will be a scrolling bar on the right side of the VACOLS full DAS screen to show both DAS entries. Both lines should disappear from your Case Checked In summary once the case is released to dispatch or otherwise moved to the next location.

C. Completing review

(1) If the case has no error, mark the case as reviewed in the Decision Review Database (DRD) and check it out to dispatch.

(2) See the DRD self-help sheet [for](#) how to complete DRD.

(3) To check out the case to dispatch, open the appeal in VACOLS. Choose the “Processes” dropdown menu and select “Charge to Dispatch.”

(4) If you have a paper file, you can send Dispatch an email and someone will pick the paper file up. There is also an outgoing shelf for paper cases on the 5<sup>th</sup> floor, but they are not regularly checking it.

(5) If the case has an error, refer to the Error Dissemination Process procedures below.

(6) Complete all relevant entries in the QR Tracker Spreadsheet.

(7) Each staffer will create an individual tracking spreadsheet stored in the QR network folders.

a. New spreadsheet templates will be produced when Data Gathering entries change.

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- (i) Whenever possible, such changes should be done at the start of a new month.
- (ii) Old spreadsheets will be compiled and stored here:  
T:\Quality Assurance\Case  
Review\Spreadsheets\Compiled

(8) Reviewers are encouraged to provide feedback on good case writing.

a. If you review a decision that you think is of particularly outstanding quality, take the time to send an email to the VLJ who signed it. While QR does not have any official method of providing positive reinforcement, even unofficial praise of this type can make a big difference to individual people.

(9) If you send an email of this type, CC the Chief.

(10) As these communications are unofficial, there is no set format. However, it is recommended to send the email only to the VLJ, with notations indicating who the drafting counsel was and encouraging the email to be forwarded on. Example:

Judge [name] – I just finished QR review of a decision you signed, and I wanted to provide some positive feedback.

[VETERAN LAST NAME ONLY]

[C-FILE NUMBER LAST 2 DIGITS ONLY]

Drafting Counsel: [NAME]

The issues on appeal were service connection for TBI with memory loss and service connection for headaches, both claimed as residuals of a head injury during service, which you had remanded twice previously for additional development after holding a hearing. The decision demonstrates good customer service and empathy for the Veteran, as it focuses on his

contentions and adjudicates the issues without providing unnecessary detail or legalese with respect to VA's duties to notify or assist, and it gives a thorough but clear explanation of how the evidence was weighed for each issue.

In particular, the decision grants service connection for headaches by giving the benefit of the doubt to the Veteran based, in part, on his lay reports, and explaining why the preponderance evidence is in favor of the claim despite a recent negative VA etiological opinion. Additionally, in denying service connection for TBI with memory loss, the decision gives a thorough explanation as to how the lay and medical evidence was assessed for competency and weighed to determine that there is no current disability or residual related to the Veteran's head injury during combat service, and that the claimed symptom of memory loss or mild cognitive concerns is shown to be related to the Veteran's now service-connected PTSD.

Thanks to you and your drafting counsel for your efforts in efficiently and effectively serving this Veteran. Please feel free to forward my comments on to drafting counsel or anyone else you deem appropriate.

## **2. Error Dissemination Process**

### **A. Error Questions**

(1) For efficiency, questions about whether a case contains an error will generally be held until the Case Review Error Meetings.

(2) In general, case reviewers should not begin drafting error memos if they have any doubts or questions about whether an error is present. Ask first, to ensure that time is not wasted by drafting a memo that does not get used.

### **B. Drafting an Error Memo**

(1) The template for drafting a QR memo can be found in the T:\ drive, Quality Assurance folder, Case Review folder (T:\Quality Assurance\Case Review\QR Error Memo Template.dotm). To

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open and use the fillable template, double click on the file name “QR Error Memo Template.” If the QR Chief needs to make changes to the template itself, the document should be opened by right-clicking on it and selecting “open.”

(2) Use the Add-In “SaveQR” to save the memo draft to the T:\ drive QRmemos folder.

(3) Finding sample error memo language

a. Error memos that have been issued under the current system (October 2017 forward) are currently only stored on the T:\ drive in the “QRmemos” folder. You can search these fairly quickly by using the “Search QRmemos” box in the upper right of the Word can be found by searching in the Word folder



b. Additionally, sample language to conform to the new error criteria and format is here: [T:\Quality Assurance\Case Review\Sample Error Memo Language.docx](#).

c. Many more examples of old error memos (aka Exception Memos) can be found under the “QR Memos” tab in Research Tools. These are from the old QR case review system, which existed prior to October 2017 for many years until November 2016. Note that these memos involved different error (Exception or Non-Exception)



categories and standards, and memos prior to June 23, 2016, did not include recommended actions in the same format. The legal basis for the prior memos should still be sound, except for where new binding legal authority has been issued.

(4) Add the case to the Error Memo Work Tracker in the Case Review tab of OneNote.

a. Update the Error Memo Work Tracker as necessary to ensure that it accurately captures the current state of all errors. In general the person who completes a phase should be the one that updates the tracker for that phase. For example, the Chief will distribute the errors to VLJs and, as such, should be the person to update the “Distributed to VLJ?” field.

b. If the only error called in a case is failure to schedule a requested hearing, the case will be considered resolved, and thus no longer in need of QR tracking, once the case has been transferred by the judge to the OAO admin staff to go to the hearing team. This is because this case will likely never return to QR – either a hearing will be held (likely be a different judge) or the case will have already been found adequate as is with the exception of the missed hearing request. Any other problem that may arise due to hearing processing would not be subject to error consideration for the current decision selected.

C. Internal Circulation of Error Memo

(1) Notify Chief and all other decision reviewers by email that the error memo is ready for review and include a link to the error memo in the T:\QRmemos folder. (Do not attach the document to the email, as it is easier to consolidate changes with a link.)

(2) The Chief (or delegate) and all case review staff who are working must review the decision and agree it is an error. This is part of

the “undebatable” error check process as described above in the Errors/Guiding Principles section.

- (3) The Chief (or delegate) and all case review staff should use tracked changes and comments to make edits to the memo in the T:\QRmemos folder. Each reviewer should make their changes or add a comment on the document that reviewed and no changes.
- (4) Once review is complete, if there is agreement that QR error standards are met, incorporate any appropriate edits or changes received from the Chief (or delegate) and all other reviewers. Then notify the Chief that the memo is ready for distribution.

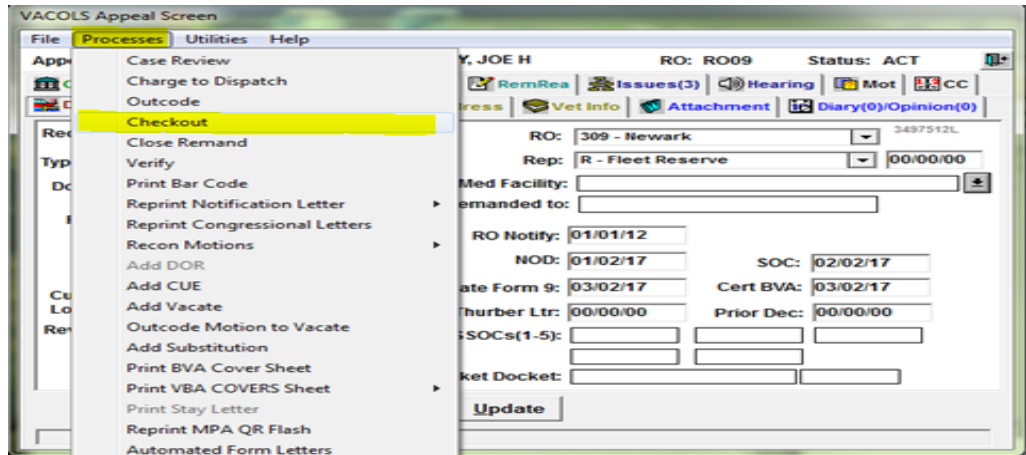
D. Coding Error in DRD

- (1) See the DRD self-help sheet.

E. Sending an Error Memo

- (1) An email with error memo attached will be sent by the Chief to the VLJ.
- (2) Do not CC the DVC or Chief VLJ.
- (3) Use the standardized email format, located in the T Drive, in the case review modernization folder: QR Case Review Email Templates.
- (4) Check out case in VACOLS to VLJ.
- (5) Open the appeal in VACOLS. Choose the “Processes” dropdown menu and select “Checkout.” Enter the VLJ’s VACOLS ID, or click the Find button and browse to the VLJ’s name. Then click the “Checkout” button.

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### F. Mandatory Error Correction by VLJs

(1) After the VLJ has made changes, the VLJ must check case back in to the Chief and email the Chief and identify the new document name/location, if different from the original location, or include the new document as an attachment or hyperlink.

(2) Checking progress of error correction and re-signature:

(3) As a rule of thumb, wait one week to follow up with a VLJ when re-signature is needed for a preauthorized correction; longer may be appropriate at times.

(4) For error corrections, use discretion to determine the length of time to wait, but generally allow at least 2 weeks.

(5) Once corrections are received, the Chief will check the case back to reviewer.

(6) The reviewer will examine the changes to determine if the error has been fixed.

a. If the error called was technically resolved, but another error under the current standards is created by the modified decision, then this will either be considered non-

compliance or grounds for calling another error. Discuss with Chief.

b. If there are concerns about whether the error was fixed, discuss with the Chief.

- (i) If the Chief agrees the error was not fixed, the reviewer will draft an explanation for why the changes did not resolve the error.
- (ii) The Chief will then check the case back out to VLJ and provide an email with an explanation as to why the changes did not resolve the error.

c. If the error has been fixed, the reviewer will upload the new version to VACOLS and check out to dispatch.

- (i) Ensure that the new version name in VACOLS matches the file name of the signed PDF version at M:\Decision Team\Signed Decisions.
- (ii) Check to see if the old signed PDF version still exists. If so, delete it from the corresponding Signed Decisions folder to prevent possible dissemination of the wrong copy.
- (iii) To upload a new version, open the appeal in VACOLS. Choose the “Attachment” tab. If the old decision is still there, delete it. (item description “Decision” with Doc Name matching the standard decision file number structure) Click Add, browse to the new version of the file, and click Open. If the document displayed is correct, click Yes. For Attachment Type, select “DC – Decision” and click OK.
- (iv) You may also need to change the document ID number on the DAS page to reflect the name of the corrected document – you should be able to edit this.

- (v) To check out the case to dispatch, open the appeal in VACOLS. Choose the “Processes” dropdown menu and select “Charge to Dispatch.”

G. Error Reconsideration

(1) In the event that a VLJ does not agree that an error identified by QR falls into one of the specific categories listed, the VLJ may submit a written request for reconsideration to the Office of the Chief Counsel and the Chief of QR with all of the following information:

(2) File identification (appellant’s name and file number).

(3) Date of the QR error memorandum.

(4) Specific findings/statements made in the QR error memorandum with which the VLJ disagrees.

(5) Rationale for disagreeing with the QR error memorandum, to include appropriate citations to relevant facts, statutes, regulations, and case law.

(6) Time Limit

- a. A request for reconsideration must be submitted within 15 working days from the date on the error memorandum. There may be limited exceptions for good cause, such as extended leave.

(7) Reconsideration Process

- a. QR will review the error memorandum and the request for reconsideration to determine whether the identified concern is properly categorized as an error. QR will then make a recommendation to the Office of the Chief Counsel as to whether the error should be upheld or withdrawn.

b. The Office of the Chief Counsel will provide a final ruling and the VLJ will be informed of that ruling. The Chief Counsel's ruling on a request for reconsideration is final and no further requests or commentary will be allowed with respect to that case.

- (i) If the determination is to remove the error, the error will be removed in VACOLS and the VLJ will be informed that the challenge was successful and the error was removed.
- (ii) If the determination is to uphold the error, the QR reviewer will draft a response memorandum. This memorandum will be circulated to the Chief and all reviewers for edits/comments.
- (iii) The Chief will send the memorandum to the Office of the Chief Counsel for formal approval and routing to the VLJ.

### **3. Preauthorized Correction Process**

#### **A. General Process**

(1) For one month after starting a case review detail, or until the Chief says otherwise, all preauthorized corrections and notifications to judges must be approved by the Chief before they are made. The reviewer will still send out the email though.

(2) A notification to the judge is only required if a change is being made in the language of the decision itself, which should be sent whether or not re-signature is required. No notification is necessary for errors involving only administrative action routing.

#### **B. Making corrections requiring change to decision and notification to judge**

(1) With an error: Where an Error Memo is being distributed for a decision but there are also preauthorized corrections to be made,

note the preauthorized correction in the body of the email sent to the judge for error distribution, but also note the existence of the preauthorized correction in the Error Memo itself so it doesn't get missed.

(2) Without an error: To edit a Word decision follow these steps.

a. Save the original document under a new name by adding "ORIGINAL" to the title as indicated below, and save the document with the QR revisions under the original document name. This is to keep a record of the document without changes in case the judge disagrees with them, and to allow the judge to electronically sign the revised decision in pdf form without having to change the name.

- (i) Open the original version in the P drive attorney folder and "save as" a new document in the same folder using the original document ID format, but adding "ORIGINAL\_" to the beginning. There will likely be a ".doc" or ".docx" extension added to the end of this file name – add the attorney number as an extension before this if needed. For example, if the file number was 12345678.905, the resaved original file would be named ORIGINAL\_12345678.905.docx. Close that renamed document. You should now have the working document "12345678.905" and the preserved original "ORIGINAL\_12345678.905.doc."
- (ii) After closing the new renamed document, open the working document, make the preauthorized changes, and click "save." (Do not "save as" or "save" a new document because we want the file name to stay exactly the same so the judge can sign with ease.) Thus, if the original version file number was 12345678.905, the QR revised

document would now be the one named 12345678.905.

b. Upload the corrected version to VACOLS.

- (i) Notify the judge of the corrections using the Email Template document and await re-signature if needed. Make sure the re-signed pdf version matches the QR corrected Word version.
- (ii) In the VACOLS attachment tab, select the original decision and click “delete.”
- (iii) To upload the correct version, click “add,” then click “browse” to find the correct version of the file (the Word file in the attorney’s P drive folder), and verify it is the correct document. For Attachment Type, select “DC – Decision” and click OK.

(3) Without an error: To edit a signed PDF decision for a decision follow these steps.

a. Go here M:\Decision Team\Signed Decisions, open the folder for the signing VLJ/AVLJ and locate the file name that matches the Word document file name.

b. Open the document with Adobe Acrobat Pro. (You may need to right click on the document and choose “Open with” and select Adobe Acrobat Pro. Do not use Adobe Acrobat Reader, as you will not be able to edit even if it is not locked by the judge.)

c. Click the Edit dropdown menu and select “Edit Text & Images.”

- (i) Most pdf decisions will be locked to prevent editing after the VLJ signature; if that is the case, you will receive a pop-up error message when you attempt to edit. Email the VLJ using the email template for preauthorized correction needing a re-signature, which will identify the file only at the P drive



location. Do not check the case out to the VLJ; it will remain checked out to you and you will dispatch after ensuring corrections were made/re-signed by VLJ (see below).

- (ii) If the decision is not locked for editing, make the necessary edits and click save. If the decision allows you to make edits BUT requires re-signature by the judge after editing, email the VLJ using the email template for preauthorized corrections that need re-signature, identifying both the M drive and P drive versions. Do not check the case out the VLJ; it will remain checked out to you and you will dispatch after ensuring corrections were made/re-signed by VLJ.
- (iii) If you do not get a pop-up message for either edits or re-signature, email the VLJ using the email template for preauthorized corrections that do not need re-signature, identifying both the M drive and P drive versions. Do not check the case out the VLJ; this notice is for information only.

d. After the VLJ edits and/or re-signs the decision:

- (i) Ensure that the corrected P drive version is uploaded to VACOLS (see above).
- (ii) Ensure that the new file name at M:\Decision Team\Signed Decisions matches the file name of the version uploaded in the Attachments tab of VACOLS.
- (iii) Check to see if the old signed PDF version still exists in the Signed Decisions folder. If so, delete it to prevent possible dissemination of the wrong copy.

- (iv) To check out the case to dispatch, open the appeal in VACOLS. Choose the “Processes” dropdown menu and select “Charge to Dispatch.”

C. Making corrections not requiring change to decision or notification to judge

(1) Misfiled Documents: QR reviewers can relocate misfiled documents or add additional documents (such as IHP from VSO) without going through the Paperless Appeals Office.

a. In the VBMS file, select the document and choose the appropriate choice from the Action dropdown menu, i.e., “move” (to the correct c-file if identifiable).

b. If you do not know the correct c-file for the document, the option would be “unassociate.” However, in this case, you should notify the Paperless Appeals Office of the misfiled document and that it needs to be relocated appropriately.

c. To add a document, choose “upload” as the action and select the appropriate file.

(i) To find an IHP that has been submitted but hasn’t been uploaded to VBMS, or where one has been uploaded to the wrong file, look here: V:\VBMS Paperless IHPs. They’re arranged by upload date (in folders by month) and then by the Veteran’s last name and last 4 digits of c-file number.

(ii) If you are adding documents to VBMS, such as an IHP where it was originally misfiled in another file, you will need to review it to make sure it does not need to be reviewed by the VLJ as analogous to new mail or if an error would arise.

(2) Adding hearing transcript

a. If the transcript is in VACOLS but not in VBMS/Legacy Content Manager, you can open the document using the link in VACOLS and upload from that file location to VBMS from there using instructions as noted above for uploading documents.

b. If the transcript is not in VACOLS but is in VBMS/LCM, it may be because the case is a post-remand case and the hearing is attached to an earlier appeal stream. In those cases, there will likely be a notation in the hearing tab of when the hearing was held, along with an IHP uploaded to the attachment tab. It is likely unnecessary to upload a transcript for this situation; however, if the relevant hearing transcript is nowhere in VACOLS, follow the instructions below for how to find it and upload it.

c. Find the transcript here V:\v3attach\ct. Locate the transcript by using the search bar in Windows Explorer. Note the file name and date last modified; you will use this to find the document for VACOLS uploading. In VACOLS, use the “add” button in attachments tab, locate the document, and use the description of “hearing transcript” and document type “CT-Hearing Transcript.” (The search function will not work when you are uploading a document to VACOLS; use the date last modified to find the document in the appropriate folder as above.)

(3) Correcting the appointed representative in VACOLS where the decision already lists the correct representative (including a different representative or no representative).

a. Under the “Docket” tab, choose the correct option under the dropdown menu for the representative and click “Update” then “yes” when asked if you want to save changes. If the appellant is representing him/herself and happens to be an attorney, the

## QUALITY REVIEW – Case review manual

correct option is “none” because there is no separate representative.

b. If you change the representative designation to “None” and there was previously an attorney representative, leave the attorney representative information as listed in the “address” tab for historic purposes. Changing the representative to “none” should prevent items from being sent to the representative.

(4) Correcting the Regional Office in VACOLS where the decision and VBMS already list the correct Regional Office. The RO in VACOLS should correspond with the RO who transferred the file to the Board. To correct this, just choose the correct option under the “Docket” tab and click “Update” then “yes” when asked if you want to save changes.

(5) AOD due to advanced age.

a. Add the flag in VACOLS: Open the case in VACOLS and go to the “Diary/Opinion” tab and click “Add.” For “Assigned to/Request by:” enter “59”. For the “Code:” dropdown menu select “B – Advance on Docket (VLJ).” Click Update.

VACOLS Appeal Screen

File Processes Utilities Help

Appeal Id: 22222222C Name: SNUFFY, JOE H RO: RO09 Status: ACT

CAVC DAS(0) Mail(0) Oth Docs RemRea Issues(1) Hearing Mot CC

Docket Dispatch PriorLocs Address Vet Info Attachment Diary(1)/Opinion(0)

DIARIES	Assigned to-Request by / on	Days	Due Date	Closed	Status
B - Advance on Docket (VLJ)	59 9/5/2017	30	10/5/2017		P - Pending

Add View / Update Close Diary/Opin Delete

b. Send to dispatch: To check out the case to dispatch, open the appeal in VACOLS. Choose the “Processes” dropdown menu and select “Charge to Dispatch.”

D. Coding/tracking preauthorized corrections

(1) Not yet available in VACOLS.

(2) Preauthorized Corrections should be logged into the Case Review Spreadsheet using the wording of Types i-vii above to allow for ease of tracking and data compilation.

E. Dispatching Corrected Decision

(1) If the decision does not need to be re-signed by the VLJ

a. Send to dispatch: To check out the case to dispatch, open the appeal in VACOLS. Choose the “Processes” dropdown menu and select “Charge to Dispatch.”

b. Notify VLJ by email that change was made. See QR Case Review Email Templates.

(2) If the decision needs to be re-signed by the VLJ

(3) Do not check the case back to the VLJ in VACOLS.

(4) Email the VLJ with a link to the corrected version, explaining the change that was made and requesting re-signature. See QR Case Review Email Templates.

a. Once the VLJ has re-signed, upload the new version to VACOLS and send to dispatch.

b. Use your discretion on how long to wait for re-signature. If the VLJ is away for an extended period, the VLJ’s Chief can be consulted to determine whether the decision should wait for re-signature or be dispatched as-is.

#### 4. New Mail Process

##### A. General Process:

(1) These procedures apply only for new mail received (or additional documents added to the file) after the DAS date as indicated in VACOLS in the DAS tab; this may be different than the decision upload date. If documents are added to the file between the attorney submission date and DAS date, they are not “new mail” for QR review purposes.

(2) Use an “undebatable” relevancy determination standard. If the documents are undebatably non-relevant, they do not need to be returned to the VLJ.

B. If there is a pending mail flash in VACOLS, verify that the mail has been associated with the claims file, and close out the new mail diary.

C. If the appeal needs to be returned to the VLJ to consider the new mail, first process the decision as per standard case review procedures.

(1) If there is no error:

a. Follow standard decision review coding procedures.

b. Check out the case to the VLJ.

c. Send the VLJ an email explaining where to find the new mail. The VLJ can choose to modify the decision at his/her discretion. Regardless, the decision is not to be returned to QR for another review. See QR Case Review Email Templates.

(2) If there is an error, include the new mail notation in the email that accompanies the Error Memorandum, but also put a notation in the body of the Error Memo so it does not get missed.

## **XII. DISPATCH**

The Decision Management Branch of the Case Management Division is responsible for dispatching Decisions, Remands, Certified Lists, and Orders issued by the Board in an accurate and timely manner, pursuant to established administrative procedures and statutory requirements. 38 U.S.C. § 7104(e).

### **i. VERIFICATION PROCESS**

During the verification process the dispatcher will ensure that the appellant and appeal information corresponds with VACOLS, VBMS, and any paper claims file.

#### **1. Review of Claims File**

##### **A. Verify the Spelling of the appellant's Name and VA File Number**

Ensure that the appellant's name and VA file number are correctly spelled. Compare the information against VACOLS. If the name and VA file number do not match, return the case to appropriate OAO Management Support Branch personnel for clarification by the signing VLJ or AVLJ.

##### **B. Paper claims file**

###### **(1) Check for damage**

Inspect the exterior of the claims file. If the claims file is damaged, repair it with tape to ensure the safe return of all material in the volume(s) to the AOJ. If the file is in total disrepair, band the case file(s) back together, check the case out to Case Restoration (location 17), and walk it to Board Claim File Restoration.

###### **(2) Ensure all volumes of the Claims File are Accounted for**

Check the records inventory on the Appeals Cover Sheet against the VACOLS database "OTHER DOCS" tab to ensure that all volumes of the case file that were temporarily transferred to the Board for appellate consideration are present (including Combined Health Record [CHR], Education, and Vocational Rehabilitation folders). If there are missing volumes return the case to appropriate OAO Management Support Branch personnel for correction and clarification by the signing VLJ or AVLJ.

## DISPATCH

### C. Verify appellant's Address

Check the claims file for the appellant's *last known* address. You can utilize the most recent correspondence from the appellant or the Notification of Transfer Letter from the AOJ. If you have questions ascertaining the correct address, please consult your Team Leader.

### D. Appointment of Representation

If a private attorney or agent is acting as representative before the Board, check the "ADDRESS" tab to ensure that the attorney's address is correct. If the representation is unclear, locate the appellant's most recent VA 21-22(a) in the claims file. You may also review correspondence from either the appellant or the representative. If you are still unable to verify the representative, return the case to the appropriate OAO Management Support Branch personnel for clarification by the signing VLJ or AVLJ.

It is very important that VACOLS has the correct address for the appellant's private attorney or agent so they can also receive a copy of the Board decision.

### E. AOJ

Ensure that the AOJ is identified on the appeal to be dispatched. Compare the information listed on the document against VACOLS. If the AOJ does not match, return the case to appropriate OAO Management Support Branch personnel for clarification by the signing VLJ or AVLJ.

### F. Verify Issues

Ensure the issues listed on the decision correspond with the issues listed under the "ISSUES" tab in VACOLS. If you notice a discrepancy, return the case to the appropriate OAO Management Support Branch personnel.

### G. VLJ or AVLJ Signature

Ensure that the VLJ/AVLJ has electronically signed the last page of the decision. If there is no signature return the case to appropriate OAO Management Support Branch personnel for signature by the VLJ/AVLJ.



H. VA Form 4597 “Notice of Appellate Rights”

Verify that a VA Form 4597, 4597a, or 4597b “Notice of Appellate Rights” is included in any *final* decision. This includes any decisions that are remanded in part and decided in part. *If all issues are remanded a VA Form 4597 should not be included.* If a VA Form 4597 is included in a Remand (where all issues were remanded), delete the form from the decision.

ii. OUTCODE PROCEDURE

The process established in VACOLS once the decision outcome has been rendered by the VLJ/AVLJ and the appeal is charged to the Decision Management Branch.

1. **Outcoding Process**

A. Type VA Claim Number into VACOLS

Access the VACOLS record by entering the VA Claim Number. Ensure that the VACOLS record pertains to the same appellant and docket number as the decision in hand being dispatched and charged to Pending Dispatch (Pilot Decision) (4E) or Central Dispatch (30).

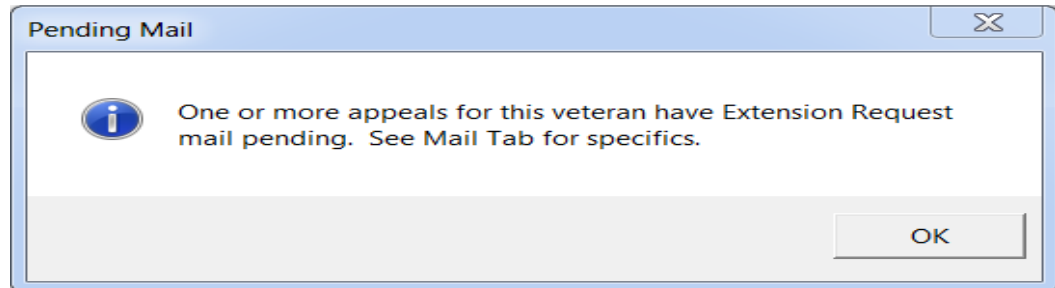
B. Claims File Charged to Central Dispatch (30)

Ensure the appellant’s record has been charged to Central Dispatch Branch (30). If the case is charged to another branch return the case to the Decision Management Branch.

C. Mail Alert

Upon attempting to outcode the record, if there is any outstanding mail for the case, a message prompt (shown below) will appear. The prompt reflects outstanding mail that must be addressed before further action can be taken. In most cases, the new mail and claims file must be returned to the signing VLJ/AVLJ for consideration as to whether any changes need to be made to the decision/remand. The only exception is new mail that is clearly duplicative of evidence already in the claims, or basic status inquiries. All mail actions must be closed prior to OUTCODE.

## DISPATCH



### D. Correct Errors

Review the “Docket” tab to ensure that the action, docket number, representation code, and RO/VAMC correspond with the information on the document title page. If not, make the appropriate correction in VACOLS forward the case to the OAO Management Support Branch personnel for clarification by the signing VLJ/AVLJ.

### E. Verify Issues

Review the “ISSUES” tab a second time to ensure the issues listed on the decision correspond with the issues listed under the Issues tab in VACOLS. If you notice a discrepancy, return the case to the appropriate OAO Management Support Branch personnel for clarification by the signing VLJ/AVLJ.

### F. Select OUTCODE as displayed below

A screenshot of the 'VACOLS Appeal Screen' software interface. The title bar says 'VACOLS Appeal Screen'. The menu bar includes 'File', 'Processes', 'Utilities', and 'Help'. A dropdown menu is open under 'Processes', showing options like 'Case Review', 'Charge to Dispatch', 'Outcode', 'Checkout', 'Close Remand', 'Verify', 'Print Bar Code', 'Reprint Notification Letter', 'Reprint Congressional Letters', 'Recon Motions', 'Add DOR', 'Add CUE', 'Add Vacate', 'Outcode Hearing to Vacate', 'Print BVA Cover Sheet', 'Print VBA COVERS Sheet', 'Print Stay Letter', and 'Automated Form Letters'. The 'Outcode' option is highlighted. The main window displays case information for 'SNUFFY, JOE' with RO: R001 and Status: ACT. It includes tabs for 'Oth Docs', 'RemRea', 'Issues(1)', 'Hearing', and 'Motion'. Below these are fields for 'Address', 'Vet Info', 'Attachment', and 'Diary(0)/Opinion(0)'. The form contains various input fields: 'RO: 301 - Boston', 'Rep: A - American Legion', 'Med Facility:', 'Remanded to: 397 - VBA AMC', 'RO Notify: 00/00/00', 'NOD: 05/22/08', 'SOC: 06/22/08', 'Date Form 9: 07/22/08', 'Cert BVA: 10/08/08', 'Thurber Ltr: 00/00/00', 'Prior Dec: 00/00/00', and 'SSOCs(1-5):'. There is an 'Update' button at the bottom.

## DISPATCH

G. After selecting OUTCODE, the following screen should appear

The screenshot shows a software window titled "Outcode Appeal". It contains a form with the following fields:

- Name:** Last: SNUFFY, First: JOE, MI: (empty), Suffix: JR
- Address:** 502 Driveway, #2243
- City/St/Zip:** Atlanta, GA, 12345, Country: USA
- Phone (H):** (800) 827-1000, **(W):** (800) 827-1234, **FNOD:** 00/00/0000
- SSN:** 22222222, **Gender:** ☒ M ☐ F, **DoB:** 09/20/1955
- Added by:** JKLEIN, 11/24/1997
- Last Modified by:** JKLEIN, 12/2/2009
- Appellant:** Last: SNUFFY, First: MARY, MI: M, Suffix: (empty), Relationship: CHILD (dropdown menu)

At the bottom of the form are four buttons: "Update Appeal", "Update Address", "Update Other Docs", and "Cancel".

The address listed in this screen is the same address listed on the "ADDRESS" tab, so ensure that the address citation in VACOLS is the ***most recent address of record*** as reflected in the claims file or VBMS.

H. Select UPDATE APPEAL to cycle to the next screen displayed below

The screenshot shows a dialog box titled "More Addresses?". It contains a question mark icon and the text: "Do you want to add Attorney or Contesting Appellant addresses?". At the bottom are two buttons: "Yes" and "No".

## DISPATCH

- I. The Attorney/Contesting Appellants prompt will now appear

Atty/CA/Fee	Last	First	City	St	Zip	Phone	Fee Date
-------------	------	-------	------	----	-----	-------	----------

Buttons: Add Atty/CA, Update Atty/CA, Delete Atty/CA, Exit

- (1) If there is NO Contesting Appellant (CA) or an attorney involved in the appeal, click Exit.
- (2) If there is a CA or an attorney involved in the appeal, click "Add Atty/CA." Update any information as necessary and then print a label. Then click "Exit."

- J. Other Docs or Records Received screen will appear

Records Received

<input checked="" type="checkbox"/> 1 Claims Folder	<input type="checkbox"/> Education Folder
<input type="checkbox"/> Loan Guaranty Folder	<input type="checkbox"/> Insurance Folder
<input type="checkbox"/> Income Verification Match Folder (IVM)	<input type="checkbox"/> Dental Folder
<input type="checkbox"/> Medical Folder	<input type="checkbox"/> X-rays
<input type="checkbox"/> Slides	<input type="checkbox"/> Tissue Blocks
<input type="checkbox"/> Other <input type="text"/>	<input type="checkbox"/> Service Dept Records Envelope
	<input type="checkbox"/> Co-Pay Folder

Buttons: Update Appeal, Update Address, Update Other Docs, Cancel

Status: No address changes made.

- (1) Verify that all records that were in the Board's custody during appellate consideration are released to the VA facility for

## DISPATCH

disposition action. If all records in the “Other Docs” tab are accounted for, click on the Update Other Docs button.

- (2) If all records are not available at dispatch, return the case to the appropriate OAO Management Support Branch personnel for clarification by the signing VLJ/AVLJ.

### K. Outcode Screen

Type the date of dispatch for the document. When dispatching prior to 3:30 p.m., type in today’s date. When dispatching after 3:30 p.m., type the next duty day. This date must be the same date that is stamped on the decision title page and cover letter. When setting your date stamp to the next duty day (for work dispatched after the established “cut-off” time), keep in mind holidays and weekends.

The screenshot shows a software window titled "Outcode". At the top, there is a "Decision Date:" field with the date "12/02/01" entered. Below this is a table with the following columns: Program, Issue, Level 1, Level 2, and Disposition. The table contains three rows of data. Below the table, there is a checkbox labeled "Print COVERS cover sheet" which is checked. At the bottom of the window, there are two buttons: "Update" and "Cancel".

Program	Issue	Level 1	Level 2	Disposition
2 Compensation	Increased rating	Schedular	9411 Post-traumatic stres	4 - Denied
3 Compensation	Effective date	Rating increase or d		R - Recon by Letter
4 Medical	Medical expense rei			5 - Vacated

- (1) The box labeled “Print COVERS cover sheet” should be selected to allow users to auto-print the COVERS transmittal for final decisions released to the AOJ.
- (2) Click the Update button.

L. Cover Letter

When dispatching an appeal with the IDT, the cover letter will be provided. Thus, within this step, you should click **exit** to bypass this process.

*Under limited circumstances* the dispatcher can use this process, to provide another cover letter.

The next screen to appear is the decision cover letter signed by the Chief Counsel. The appellant's address is pulled from the ADDRESS tab on VACOLS.

- (1) First Review. Review the letter to assure that the correct address appears for the appellant AND for the private attorney (in the cc:), if any, and correct any errors in VACOLS.
- (2) An address will only appear in the "cc:" if the representative is a private attorney. Otherwise, the "cc:" will simply show the VSO (e.g., "DAV.")
- (3) State organization, private attorney, or agent. If the appellant has elected a private attorney, state organization, or agent you will need to type the name of the state organization (e.g., "cc: Georgia Department of Veterans Affairs".) If the appellant has elected a private attorney or agent please ensure the name and address of the representative is typed in the "cc" line of the letter.
- (4) Print the letter. Upon printing, the dispatch cover letter is automatically attached to VACOLS.
- (5) Second Review. Review the hard copy once more for any printing errors.
- (6) If re-printing the letter is necessary, be sure to edit the attached letter in VACOLS and then re-attach the edited version to VACOLS in place of the former version.

## DISPATCH

a. Verify the “Remand Destination” by comparing the destination highlighted in VACOLS with the cover page of the Board remand where it reads: “On appeal from the Department of Veterans Affairs (regional office or medical center).” Most Board remands are sent to the AMO. Appeals represented by a private attorney are sent directly to the RO.

b. If there is a discrepancy regarding the remand destination, forward the case to the Dispatch Team Lead.

### M. VBA COVERS Routing Transmittal

The next screen to appear is the VBA COVERS Routing Transmittal. This will automatically print. The destination of the file will be pulled from VACOLS.

- (1) *Verify and print* the VBA COVERS Routing Transmittal showing the correct release station based on the disposition of the appeal.
  - (2) *Staple* the routing transmittal slip to the front, top center of the case.
- a. *Pen* in BOLD BLACK INK in the upper right corner of the COVERS transmittal and circle the VACOLS code destination for the record:

The image shows a 'Print Cover Sheet' form. At the top, it has a blue header with a printer icon and the text 'Print Cover Sheet'. Below this, the form contains the following information:

- Case Number: #22222222C
- Date: 07/19/2006
- Section: COVERS
- Section: MULTIPLE TEMPORARY TRANSFER OF VETERAN'S RECORDS
- Section: TEMPORARY
- Send To (RO/Station Name): OFFICE OF THE ATTORNEY GENERAL
- Station Number:
- Route to: [Dropdown menu]
- From/Return To (RO Name): DVA, CQ
- RO Number: JCL
- Date of Transfer: 07/19/06
- Type of Transfer: TEMPORARY
- Expected Return Date: 11/15/06

## DISPATCH

N. Click the UPDATE button to transfer the information to VACOLS

This action will automatically charge the record to the appropriate location based on the disposition of the decision/remand:

- (1) Completed File (99) for final decisions and other final Board actions (*i.e.*, corrective orders, supplemental decisions, orders to vacate, interlocutory orders, CUE motions, etc.) that are being returned to the AOJ.
- (2) Remand in Transit AMO (97) for non-medical remand Orders when the AOJ is a VBA office.
- (3) Court Remand File (70) for remand Orders appealed to CAVC.
- (4) 54 Remand File (54) for medical remand Orders when the AOJ is a VAMC.
- (5) Remand File (50) for final decisions and other final Board actions involving a private attorney at the AOJ.

### 2. Sealing the Record for Final Decisions – Paper Files Only

If dispatching a decision where all issues are finalized or if any issues are final, you must protect the integrity of the evidence by properly sealing the record using the pink Judicial Review (JR) seals (A.K.A., “Decision Flash”).

#### A. Pink Judicial Review Seals

All volumes must be sealed to include both inside flaps.

- (1) The JR seals are visual indicators for VA stations to place the case in their “Court Locked Files” for 150 days from the date of the Board decision to protect the evidence for possible appeal to CAVC. This date must be written on the middle seal.
- (2) Seal each separate volume (*i.e.* medical/treatment files) using page 1 of the pink judicial review seal that indicates the suspense date for special handling.



## DISPATCH

### B. Cross-band the appellate record

Use a rubber band or other fastening device to bind all volumes together and place the claims file on your outgoing table. Ensure the brief face remains on the case as Board personnel are required to safeguard the accountability of all outgoing cases released from the Board to private mail contractors.

### C. Return the claims file to the AOJ and the CHR to the VHA VAMC

The appellate record must be returned to the AOJ that certified the appeal to the Board.

- (1) In situations where a legal or compensation appeal is remanded, the case is released to the AMO.
- (2) In situations where a medical appeal is remanded, the CHR (brown folder with a lime green tab) is released to the VHA VAMC and the claims file is released to the regional office.
- (3) When splitting the claims file and CHR folder to different destinations, ensure the destinations of each record are alternately cited in the "Remarks" section of the COVERS transmittal.
- (4) When releasing records from the Board, dispatchers must remember all boxed cases leaving the Board cannot have any personal identifiers (name, C or SS #) on the face of a box due to Privacy Act concerns.

### D. Hand-deliver claims file to the Outgoing Mail Room

After Outcode and Dispatch, claims files are delivered to Room 2W450 to be scanned by a system providing evidence of release date and destination.

## iii. DISPATCHING

During the Dispatch process the support specialist is required to disseminate the certified appeal to all interested parties in the appellant's claim in an accurate and

## DISPATCH

timely manner. Through the IDT, the date will be provided during the dispatching process of the decision in this application and automatically be assigned on the decision.

If manually dispatching a Board decision, the below procedures will be utilized.

### 1. Date Stamping the Decision

Manually date stamp the original and all copies of the decision/remand with the appropriate date in the space indicated on the decision title page. Next, manually date stamp the cover letters and mailing envelopes.

All documents, including the decision or remand, cover letters, and mailing envelopes must be date-stamped with the same date.

When dispatching prior to 12:00 pm, set the date stamp to today's date. When dispatching after 12:00 pm, set the date stamp to the next duty day.

When setting your date stamp to the next duty day (for work dispatched after the established "cut-off" time), keep in mind holidays and weekends. Under no circumstances will decisions be stamped with dates falling on weekends or Government holidays.

### 2. The Mailing Process

A. Dispatch the document to the following:

- (1) Place the original signed document in the appellate record/claims file.
- (2) The appellant should receive one copy.
- (3) The representative should generally receive one copy. However, if the representative is a Washington, D.C.-based VSO, two copies should be sent: one to the national office and the other to the local representative's office.
- (4) Under 38 U.S.C. § 5902(c), a claimant may limit his or her appointment of a representative to appointment of a particular recognized VSO representative. Such a limitation must be in the power of attorney and must indicate a specific desire that "only"

## DISPATCH

that person represent the claimant. In those cases, send the representative's copy of the decision and cover letter to his or her last known address.

- (5) If there are any other representatives, they should also receive a copy of the document. (NOTE: Not all VSOs are officially recognized by VA. See your team leader or <http://www1.va.gov/vso/> if you are unsure of the validity of a VSO).
- (6) If there is congressional interest, the Congressperson should receive one copy of the document. See Congressional Interest Cases, XII.iv.2.

### 3. Envelopes

Documents prepared for dispatch are to be placed in 9 inch x 12 inch envelopes. Place the appellant's copy of the document and the Chief Counsel cover letter so that the address is visible through the transparent window in the envelope and manually date stamp the document date *on the lower left corner of each envelope*.

#### iv. UNUSUAL OUTCODE AND DISPATCH PROCEDURES

##### 1. Re-mailing Decisions/Remands

Occasionally, an appellant's copy of the decision/remand will be sent to the wrong address due to error or change in address. Or, the appellant may just request another copy of their decision/remand.

For any Board decision that is returned as undeliverable, follow established policy for returned mail, which includes checking various resources for updated contact information, and preparing a VA Form 119, Report of Contact, to document efforts. If a new address is found, the Board decision and cover letter must be mailed to that new address along with a transmittal letter that contains language indicating that this is a second mailing attempt.

Decision Management Branch staff must prepare a cover letter explaining the reason for re-mailing and re-mail the appellant a copy of the decision/remand. Ensure that the letter is signed by your Branch Chief and is dated the date of re-

## DISPATCH

mailing. (Note: The date of the re-mailing cover letter will not match the date of the decision/remand.)

### 2. Congressional Interest Cases

#### A. Congressional Interest of Record

If Congressional interest has been expressed in an appeal, it should be of record on the following screen with the name/address of the Congressperson annotated:

Source	CorrType	Ctrl	Corr Date	Recv'd BVA	Due	Closed	Last Action Assignee	Action / Date	Secondary Due Date
Congressional Mail	N	9/1/2009	9/2/2009	9/23/2009	12/1/2009	JBROCK	Order/Correspondence D	12/16/2009	
Status Inquiry		Sen. Hillary Clinton		New York		NY			

Buttons: Add, Print Letter/Label, View/Update, Close

If there is Congressional interest in a case and IF the appellant has signed a privacy release, a copy of the Board decision or remand should be mailed to the interested Congressperson. Typically congressional offices include those releases for constituent inquiries.

The only exception to the written permission requirement is if a Congressperson on a Veterans Affairs committee needs the decision for the business of the committee. 5 U.S.C. § 552(b)(9).

#### B. Congressional Interest Not of Record in VACOLS

If Congressional interest has been expressed in the appeal, but is not electronically captured in the "Mail" tab, dispatchers must create an electronic record of the congressional interest. When dispatching Congressional correspondence, note whether a decision or remand was sent to the

## DISPATCH

Congressperson and also note when the document was sent in the “Notes” field of the MAIL tab.

### C. Congressional Copy Cover Letter

For any appeal with Congressional interest, the interested Congressperson should receive a courtesy copy of the completed decision or remand. A cover letter for this courtesy copy will be automatically generated through VACOLS during the OUTCODE process immediately after the generic cover letter is generated.

There are slight but very important distinctions in the name and address fields of the Congressional Copy Cover Letters. For instance, if the Congressperson is a Senator and the mail is being sent to the Washington, D.C. office, the second line in the address field must show “United States Senate.” However, if the Congressperson is a Senator and the mail is being sent to the local district office, the second line in the address field must show “United States Senator.” There are similar distinctions for members of the House of Representatives. These letters are being sent to esteemed members of Congress under the Chairman’s signature so it is very important that these fields contain the appropriate title. Please review the cover letter for accuracy before dispatching.

Add Mail																											
Appeal ID: 22222222C		Name: SNUFFY, JOE																									
Source: G - Congressional Mail		Correspondence Type: 13 Status Inquiry																									
Controlled Correspondence: <input type="radio"/> Yes <input checked="" type="radio"/> No		Date of Corr: 09/01/09																									
Currently Assigned to: JBROCK		BVA Recv Date: 09/02/09																									
Action: [Pick]		Due: 09/23/09																									
Action Completed: 00/00/00		Closed: 00/00/00																									
Pages: PA/FOIA		Secondary Action Due: 00/00/00																									
<table border="1"><thead><tr><th>Action</th><th>Assignee</th><th>Comp date</th></tr></thead><tbody><tr><td>02 Forwarded for Employee/Team Action</td><td>JBROCK</td><td>9/2/2009</td></tr></tbody></table>				Action	Assignee	Comp date	02 Forwarded for Employee/Team Action	JBROCK	9/2/2009																		
Action	Assignee	Comp date																									
02 Forwarded for Employee/Team Action	JBROCK	9/2/2009																									
Notes: Response requested		Autotext																									
Congressional Interest																											
<table border="1"><thead><tr><th>First</th><th>MI</th><th>Last</th><th>Suffix</th></tr></thead><tbody><tr><td>Sen. Hillary</td><td>R</td><td>Clinton</td><td></td></tr><tr><td colspan="2">CONGRESS Dist Office</td><td colspan="2">United States Senate</td></tr><tr><td colspan="4">780 Third Ave., Ste. 2601</td></tr><tr><td colspan="4"></td></tr><tr><td>New York</td><td>NY</td><td>10017</td><td>Phone: (212) 688-6262 Fax: (212) 688-7444</td></tr></tbody></table>				First	MI	Last	Suffix	Sen. Hillary	R	Clinton		CONGRESS Dist Office		United States Senate		780 Third Ave., Ste. 2601								New York	NY	10017	Phone: (212) 688-6262 Fax: (212) 688-7444
First	MI	Last	Suffix																								
Sen. Hillary	R	Clinton																									
CONGRESS Dist Office		United States Senate																									
780 Third Ave., Ste. 2601																											
New York	NY	10017	Phone: (212) 688-6262 Fax: (212) 688-7444																								
Added by: JBROCK 12/02/09		Last Update: JBROCK 12/02/09																									
<div>Update Print Screen Print Label Cover Sheet Cancel</div>																											

### 3. Cases Remanded by CAVC

If the CAVC remand appeal (type action “7”) has been finalized, follow the standard outcode and dispatch instructions. If the CAVC remand appeal has been remanded by the Board, ensure that the orange pre-printed Flash is placed inside the claims file and the VA Form 7216a routing transmittal is placed on top of the claims file before dispatching to the AOJ.

VA Form 7216a is available at: <http://vaww.va.gov/vaforms/va/pdf/VA7216A.pdf>.

### 4. Supplemental Claim Folders

Place the original signed document in the appellate record/claims file. Also, include a copy of the decision/remand in any applicable specialty folders, including:

- A. VAMC or CHR – Brown Folder with a Lime Green Tab entitled “VHA Medical Appeal”
- B. Co-Pay Appeals from HEC – Manila Folder with bright yellow transmittal cover slip
- C. Educational Benefits (Chapter 35) - Blue Folder
- D. National Cemetery Association
- E. Insurance Issues – Blue Folder
- F. Loan Guaranty Issues – Manila Folder
- G. IVM Issues – Orange folder

### 5. VHA Medical Appeals

- A. Definition

Appeals adjudicated by a VAMC involve issues such as reimbursement of unauthorized medical expenses, entitlement to a fee basis card, entitlement to dental benefits, and entitlement to a clothing allowance. Medical appeals are controlled and entered into VACOLS by the Chief Business Office, VHA Appeals Liaison in Central Office, not the VAMC. They electronically appear with clear recognizable identifiers.

## DISPATCH

### B. OUTCODE Process

Supplement the standard outcode and dispatch instructions with the following:

- (1) Ensure the medical appeal has the following VACOLS identifiers on the DOCKET tab:

The screenshot shows the VACOLS Appeal Screen for Appeal Id: 22222222C, Name: SNUFFY, JOE, RO: RO99, Status: ACT. The DOCKET tab is selected. The form contains the following fields:

Recvd BVA:	11/24/09	RO:	799 - VHA CO	2170871	
Type Action:	1 - Original	Rep:	T - Attorney	03/10/09	
Docket Nr:	0819791A	Med Facility:			
Hearing Request:	5 - None	Remanded to:	397 - VBA AMC		
Travel Board Preferences:					
Video:	<input type="checkbox"/>	Outbased:	<input type="checkbox"/>		
Ready:	<input type="checkbox"/>	Req Date:			
Current Location:	LHELINSK	Date Form 9:	07/22/08	Cert BVA:	01/01/09
Reviewed by:	LHELINSK	Thurber Ltr:	00/00/00	Prior Dec:	08/12/09
Stays:		SSOCs(1-5):			

Buttons: Update

- (2) Double check the paper records against the "Other Docs" tab in VACOLS (usually a VHA appeal contains both a claims file and a CHR folder):

The screenshot shows the VACOLS Appeal Screen for Appeal Id: 22222222C, Name: SNUFFY, JOE, RO: RO99, Status: ACT. The Other Docs tab is selected. The form contains the following fields:

<b>Records Received</b>	
<input checked="" type="checkbox"/> Claims Folder	<input type="checkbox"/> Education Folder
<input type="checkbox"/> Loan Guaranty Folder	<input type="checkbox"/> Insurance Folder
<input type="checkbox"/> Income Verification Match Folder (IVM)	<input type="checkbox"/> Dental Folder
<input type="checkbox"/> Medical Folder	<input type="checkbox"/> X-rays
<input type="checkbox"/> Slides	<input type="checkbox"/> Tissue Blocks
<input checked="" type="checkbox"/> Other Combined Health Record (CHR)	<input type="checkbox"/> Service Dept Records Envelope
	<input type="checkbox"/> Co-Pay Folder

Buttons: Update

## DISPATCH

(3) Dispatch. The Board decision/remand title page will cite the name of the VAMC as the AOJ (*i.e.*, “On appeal from the Department of Veterans Affairs Washington, D.C. Medical Center”).

(4) Docket Tab. Ensure the “Docket” tab, “RO” field reads “799-VHA CO” and the “Medical Facility” field reflects the VAMC (a.k.a. the AOJ).

### C. DISPATCH Process

All medical appeals will have a brown CHR folder with a lime green tab including the notation “VHA Medical Appeal” and may also have a paper claims file.

(1) If a paper claims file exists, a VHA Appeals Liaison will attempt to obtain the file from the regional office so that the Board can review both the CHR and the paper claims file when deciding the appeal. The Liaison’s attempts to obtain the paper claims file should be of record in the CHR folder (attempts successful/unsuccessful regarding a transfer of a claims file to the Board).

(2) A copy of the Board’s decision/remand should be included in the claims file (if available) *and* the CHR folder.

(3) If a claims file has been transferred to the Board with the CHR, each record must be dispatched to separate locations.

a. The CHR folder must be dispatched to the VAMC, and

b. The claims file must be dispatched to the regional office.

Separate COVERS transmittals should be printed for each destination.



## 6. VHA Co-Pay Appeals

### A. Definition

Co-pay appeals are medical appeals originating from the HEC in Atlanta, Georgia, a subset of VHA. These appeals arise where the appellant is contesting the Department's decision to impose a co-payment for treatment received in a VAMC. The determination of whether a co-payment is required when receiving medical treatment in a VAMC is based on income. If the appellant's income is below the established threshold, a co-payment will not be assessed. If the appellant's income is above the threshold, the appellant will be assessed a co-payment, payable to the VAMC. When a co-payment matter is contested by the appellant, it is appealable to the Board.

### B. Protected Tax Information

Co-payment matters require the use of IVM information received from the IRS and/or SSA. All co-payment issues are adjudicated from the HEC, as this VHA station is the only office in VHA authorized to handle IVM material. When a CHR file is received at the Board from the HEC appealing matters of co-payment, assume that it contains IVM material. Due to the sensitivity of the IVM material in CHR files, they must be handled in the same secure manner as IVM folders. Thus, all staff dispatching appeals involving co-pay appeals must be certified and trained by the Board Privacy Act Officer to handle these folders. See 11. Cases Involving Classified Information and/or IVM, 0 for an explanation regarding the sensitivity of this information.

### C. Outcode Process – Paper Files

Co-pay appeals in paper files must be *hand-carried* to all locations. A co-pay appeal cannot sit on a shelf or desk unattended. They must be walked to a Team Leader or Unit manager's desk. Refer to the standard outcode instructions.

### D. Dispatch Process

As appropriate, follow the standard outcode and dispatch instructions, *but also ensure that these additional steps are taken:*

## DISPATCH

- (1) Co-pay appeals will always have a yellow VA Form 7216a transmittal.
- (2) Return the co-pay appeal folder to the HEC in Atlanta, Georgia (station number 741), as the HEC acts as the AOJ in all co-pay appeals. Send the folder *via UPS* due to the sensitive tax material contained in the file.
- (3) The *claims file will not accompany the co-pay folder*. Dispatch the claims file to the appropriate regional office.

### 7. Educational Appeals

#### A. Definition

Educational appeals involving entitlement to educational benefits originate from four different locations:

- (1) Buffalo Educational Center (station 951)
- (2) Atlanta Educational Center (station 992)
- (3) Muskogee Educational Center (station 992)
- (4) St. Louis Educational Center (station 994)

#### B. Educational File

When an educational issue is on appeal to the Board there will *always* be an *educational folder* in Board custody. The Board may or may not have custody of other records (such as a paper claims file) when an educational decision is rendered. Board custody of additional records is dependent on whether review of the records is necessary for a fair and equitable decision.

#### C. Outcode Process

Follow the standard outcode instructions, keeping in mind the following:

- (1) Correct AOJ. Ensure that the educational appeal is captured on the “Docket” tab with the correct Educational Center as the AOJ --

## DISPATCH

“RO” field. Also, ensure the proper AOJ is cited on the decision title page corresponding to the “RO” field.

- (2) Multi-Decision Case. An educational appeal *may* be subject to a multi-decision case where the other appeal (decision) requires separate outcoding.

### D. Dispatch Process

As appropriate, follow the standard dispatch instructions. If the educational appeal is subject to multi-decisions *or* if the educational appeal is associated with the claims file for the single educational appeal, *the claims file must be dispatched to the RO that retains jurisdiction and the educational folder dispatched to the proper Educational Center.*

## 8. National Cemetery Administration Appeals

### A. Definition

NCA honors veterans and their families with final resting places in national shrines and with lasting tributes that commemorate their service and sacrifice to our Nation. VA furnishes upon request, at no charge to the applicant, a United States flag, to drape the casket or accompany the urn, and a Government headstone or marker for the unmarked grave of any deceased eligible veteran. These services are furnished to honor the memory of a deceased veteran who served honorably in the U. S. Armed Forces.

### B. NCA folder

When an NCA issue is on appeal to the Board there may be a paper folder in Board custody. The Board may or may not have custody of other records (such as a paper claims file) when an NCA decision is rendered. Board custody of additional records is dependent on whether review of the records is necessary for a fair and equitable decision.

### C. Outcode Process

Follow the standard outcode instructions and ensure that the NCA appeal is captured on the “Docket” tab with “798 – NCA” selected in the RO dropdown

selection. Also, ensure the proper AOJ is cited on the decision title page corresponding to the “RO” field.

## 9. Insurance Appeals

### A. Definition

Insurance appeals involving entitlement to insurance benefits originate from one of two VA RO and Insurance Centers (VARO&ICs):

(1) VARO&IC in Philadelphia, PA

(2) VARO&IC in St. Paul, MN

Insurance appeals will always have a blue insurance folder associated with the claims file. The Board will issue decisions involving insurance issues where there is a simultaneously contested claim for the benefit and where the appellant is filing an appeal as a result of eligibility concerns or policy lapses. Simultaneously contested claims typically occur (but are not limited to) situations where the veteran is deceased and a beneficiary is simultaneously contesting the proceeds with another claimant. Generally, if the veteran is alive, these appeals are the result of eligibility concerns or policy lapses. Under these circumstances, there is only one party to the appeal, the appellant.

### B. Outcode Process

Follow the standard outcode instructions, keeping in mind:

- (1) Correct AOJ. Determine that the AOJ is properly reflected as a VARO&IC in the “RO” field of the docket tab as indicated on the decision title page.
- (2) Number of copies. Check the number of copies required to correctly dispatch the decision. If the appeal involves a contested claim, ensure that you do not dispatch a copy of one contesting party’s decision to the other contesting party.
- (3) VA Form 4597 “Notice of Appellate Rights.” Insurance cases should not have a normal notice of appellate rights attached, as there are options for appealing decisions by the Board in

## DISPATCH

insurance cases that are not available in other types of cases (*see* 38 U.S.C. § 1984; *see also* *Young v. Derwinski*, 1 Vet. App. 70 (1990)). Letters containing appropriate information concerning appellate rights are mailed with dispatched Board decisions in insurance cases.

- (4) Mailing. Once you have completed dispatching and providing a copy of the decision to all responsible parties, return the file to the Decision Management Branch for mailing.

### C. Dispatch Process

Follow the standard dispatch instructions, keeping in mind the following:

- (1) Insurance Letters. OAO Decision Management Branch personnel should prepare, attach to VACOLS, and dispatch an appropriate insurance appeal cover letter with a copy of the decision. Ensure that the letter is signed by your Branch Chief and is dated the same date as the decision. The letter should be hand-carried to the Team Leader or supervisor for same-day outcode and dispatch of the decision and case.

REMINDER: In contested appeals, each contesting party receives a decision addressing their entitlement. It is considered a violation of the Privacy Act to release the contesting party's address to the appellant. NEVER dispatch a copy of one contesting party's decision to the other contesting party.

All decisions with insurance issues must be dispatched by certified mail with special insurance cover letters attached to the paper copy of all copies of the decision. A copy of the insurance cover letters mailed must be attached in VACOLS and placed in any paper claims file.

- (2) Claims File and Insurance Folder. If there is both a paper claims file and an insurance folder, ensure that both are returned to their respective AOJs.

## 10. IVM Folders

### A. Definition

IVM folders contain federal tax information and data directly traceable to information furnished by the IRS and/or SSA. These folders are separate from claims files but require association with a claims file before a decision can be issued. Decisions involving IVM folders typically involve income and/or pension issues. IVM folders can be visually identified as an orange folder. All staff dispatching appeals involving IVM folders must be certified and trained by Board Privacy Act Officer to handle IVM folders.

Any non-certified person who comes across an IVM folder should immediately notify the Privacy Officer so it can be handled correctly.

If an IVM folder was received by the Board, it will appear on the “Other Docs” tab:

**VACOLS Appeal Screen**  
 File Processes Utilities Help

Appeal Id: 22222222C Name: SNUFFY, JOE RO: R099 Status: ACT

☒ Docket 
 ☒ Dispatch 
 ☒ PriorLocs 
 ☒ Address 
 ☒ Vet Info 
 ☒ Attachment 
 ☒ Diary(2)/Opinion(0)

☒ CAVC 
 ☒ BAS(1) 
 ☒ Mail(2) 
 ☒ Oth Docs 
 ☒ RemRea 
 ☒ Issues(12) 
 ☒ Hearing 
 ☒ Motion

**Records Received**

<input checked="" type="checkbox"/> Claims Folder	<input type="checkbox"/> Education Folder
<input type="checkbox"/> Loan Guaranty Folder	<input type="checkbox"/> Insurance Folder
<input checked="" type="checkbox"/> Income Verification Match Folder (IVM)	<input type="checkbox"/> Dental Folder
<input type="checkbox"/> Medical Folder	<input type="checkbox"/> X-rays
<input type="checkbox"/> Slides	<input type="checkbox"/> Tissue Blocks
<input type="checkbox"/> Other <input type="text"/>	<input type="checkbox"/> Service Dept Records Envelope
	<input type="checkbox"/> Co-Pay Folder

This entry on the “Other Docs” tab will trigger the following prompt when a case is charged to anyone at the Board:



If this prompt appears and there is reason to believe there is a paper file, request the file from the Privacy Officer.

**B. Dispatch Process**

The IVM-certified staff should follow the standard outcode and dispatch instructions and ensure that these additional steps are taken:

- (1) Associate with Claims File. When dispatching the appellate record, ensure the IVM folder has been associated with the claims file.
- (2) Co-pay files (bright yellow) should be encased in double envelopes before sending.
- (3) To protect the privacy of the appellant's financial information, the IVM folder and claims file must be *sent via UPS* to the appropriate AOJ.

**11. Multi-Decision Cases**

**A. Definition**

There are occasions where the Board will enter multiple decisions and dispatch them separately. These include:

- (1) Claims that are adjudicated from two or more AOJs, requiring multiple decisions (*e.g.*, an educational or insurance claim)

## DISPATCH

originating from an Educational or Insurance Center *and* an entitlement to a legal issue adjudicated from a regional office).

(2) Claims where there are contesting appellants.

See SINGLE/SEPARATE DECISION POLICY, IV.v for a list of all separate decision situations.

### B. OUTCODE Process

Follow the same instructions regarding the OUTCODE process *for both VACOLS records*, using the standard outcode and dispatch instructions.

### C. DISPATCH Process

Follow the standard outcode and dispatch instructions, but ensure that *all decisions* are dispatched to *all parties and their respective representatives*. There may be different dispositions for each decision, thus different file destinations for each decision, dependent on disposition.

*Care must be taken to ensure that the correct Board decisions are attached to the appropriate VACOLS records if more than one decision is being dispatched.*

## 12. Simultaneously Contested Appeals

### A. POP-UP

Upon receiving the VACOLS pop-up notification (see Recognizing a Simultaneously Contested Claim, IV.vii.1 ) that the appeal involves a contested claim, OAO Management Support Branch personnel should check the Contesting Claimants (CC) tab in VACOLS to ensure the accuracy of the name, address, and representative, if any, of each contesting claimant. See Accuracy of Information, IV.vii.2 .

### B. Outcode Process

Follow the standard outcode procedures for both appellee and appellant records.



## DISPATCH

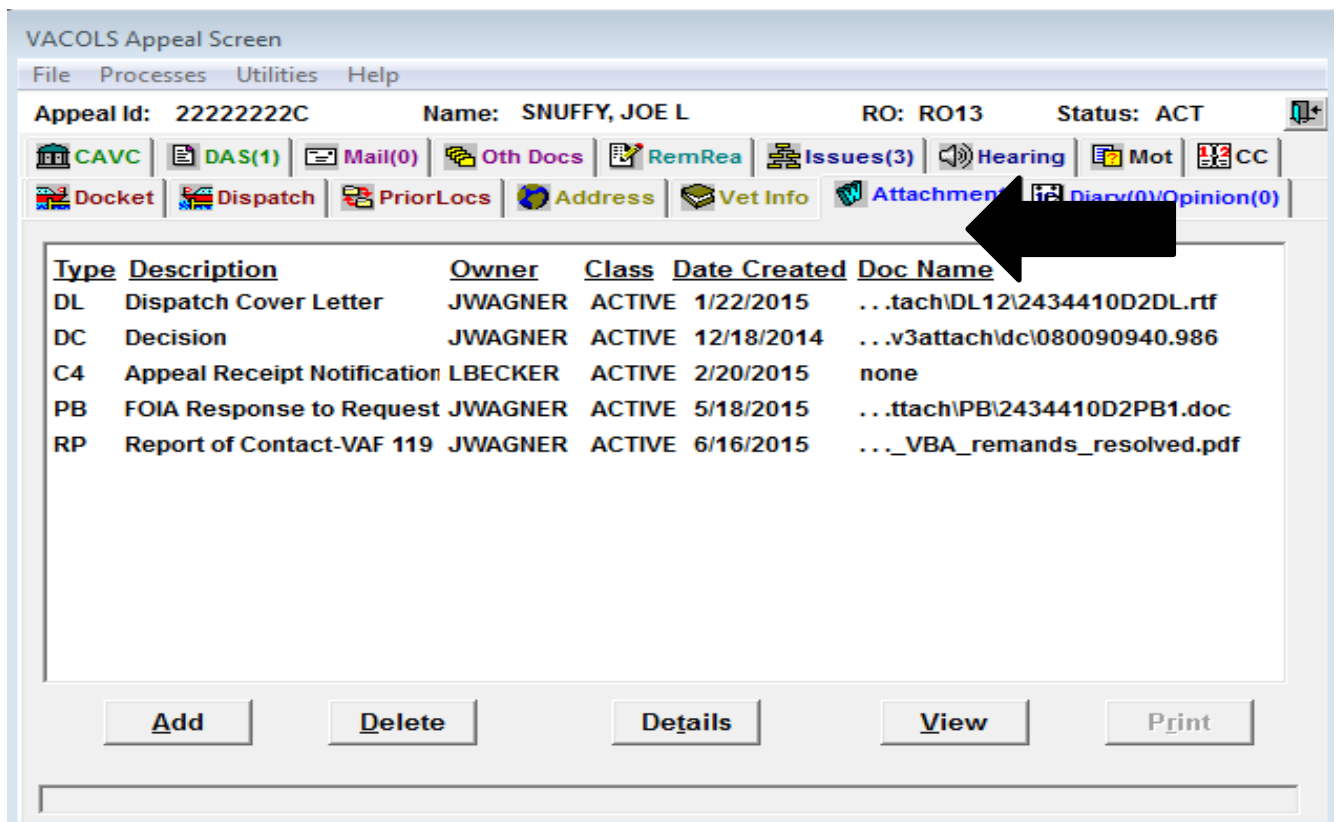
### C. Dispatch Process

Addresses in the CC tab do not automatically populate in a dispatch cover letter. Accordingly, cover letters for contesting claimants *must be completed manually*.

It is appropriate to list the name of the other party in the “cc” field, but the address of one party may not be revealed to another party. If any party has a representative, that representative must receive a copy of the cover letter and decision.

In contested appeals, each contesting party receives a decision addressing their entitlement. It is a violation of the Privacy Act to reveal one party’s address to another party. It is appropriate to list the name of other parties in the “cc” field, but NEVER dispatch a copy of one contesting party’s decision to the other contesting party.

Each cover letter should be uploaded to VBMS and to VACOLS in the “Attachment” tab. See screenshot below for location of “Attachment” tab.



## POST-DECISIONAL MOTIONS

After preparing the manual cover letter(s), uploading the letter(s) to VACOLS and VBMS, and making the necessary number of copies, follow the regular mailing procedures.

Insurance Appeals have special mailing procedures. See Insurance Appeals, XII.iv.9.

### **XIII. POST-DECISIONAL MOTIONS**

#### **i. JURISDICTION**

When an NOA has been filed with CAVC, special procedures must be followed in correcting or revising released Board decisions, remands, and interlocutory orders.

Questions about performing an NOA check should be referred to the Board's Litigation Support Branch.

#### **ii. RECONSIDERATION**

##### **1. Legal Authority**

Final Board decisions may be reconsidered in accordance with 38 U.S.C. § 7103 and 38 C.F.R. Part 20, Subpart K.

##### **2. Initial Processing**

###### **A. Properly addressed motions**

Generally, motions for reconsideration will be identified as incoming correspondence and will be handled by general attorneys in the Board's Litigation Support Branch. Litigation Support will respond to the motion and draft a grant or denial for DVC signature; only motions for reconsideration that are granted will be routed to the OAO for additional action.

###### **B. Unaddressed motions**

Board attorneys and VLJs should be aware that each file may contain unaddressed motions for reconsideration. Expressions of disagreement with any portion of a Board decision must be evaluated by staff within the Board's Litigation Support Branch. Even if a motion does not meet pleading requirements, responses will be sent to claimants. If attorneys or VLJs note

## POST-DECISIONAL MOTIONS

unaddressed motions in the claims file, they should contact the Chief of the Litigation Support Branch to ensure the motion is handled appropriately.

### 3. **Separate Decision**

Address issues before the Board on reconsideration in a decision separate from any decision addressing non-reconsideration issues. If a motion for reconsideration has been granted, a separate VACOLS line must be created for the issues to be reconsidered; this action should be handled before the matter is moved to OAO for decision, but Counsel and VLJs should confirm that issues are listed correctly.

### 4. **Constituting a Panel for Reconsideration**

#### A. Panel REQUIRED

Panel assignment is required when a motion for reconsideration is granted. 38 U.S.C. § 7103(b); 38 C.F.R. § 19.11. If a motion for reconsideration is granted, a hearing may be granted upon request. 38 C.F.R. § 20.1003.

#### B. Number of VLJs

If the decision being reconsidered was entered by a panel of VLJs, the number of VLJs on the reconsideration panel will equal the number on the original panel plus three, unless the Chairman, or his or her designee, directs otherwise. 38 C.F.R. § 19.11(b).

#### C. Controlling VLJ

The official assigning the panel will designate a panel VLJ to have administrative control of the case file for the coordination of voting and decision preparation and similar administrative tasks. Panel formation responsibilities will be assigned evenly to the Chief groups.

#### D. VLJ restrictions

- (1) The reconsideration panel may not include any VLJ/AVLJ who participated in the decision being reconsidered.
- (2) If a VLJ of a reconsideration panel who participated in a reconsideration hearing is unable to participate in the final decision, deliberations will proceed with a new VLJ(s), as required

## POST-DECISIONAL MOTIONS

to reconstitute the panel. This is permissible because the 38 U.S.C. § 7107(c) requirement that VLJs designated to conduct hearings participate in making the final determination in the claim does not apply to reconsideration under 38 U.S.C. § 7103.

### iii. CUE REVIEW

Final Board decisions may be reviewed for CUE under 38 U.S.C. § 7111 and 38 C.F.R. Part 20, Subpart O. However, before adjudicating a claim of CUE in a Board decision, Counsel and VLJs should make certain that there are no jurisdictional impediments to issuing a denial of a motion to vacate by performing an NOA check. Questions about performing an NOA check should be referred to the Board's Litigation Support Branch. If the appellant has filed an NOA with CAVC *and* a CUE motion in regard to the same Board decision, the Board must stay consideration of the motion pursuant to 38 C.F.R. § 20.1410. Stayed cases will be held in abeyance by the Litigation Support Branch.

If an appellant files a Motion for Reconsideration and a Motion for CUE in the same document, the Board will process the Motion as a Motion for Reconsideration and inform the appellant that the filings are being processed as such. If the appellant files the Motion for Reconsideration and Motion for CUE in two separate documents, the Board will process the Motion for Reconsideration and then the Motion for CUE. See *Gomez v. McDonald*, 28 Vet. App. 39 (2015).

### iv. CORRECTION OF "HARMLESS ERROR"

Harmless errors or omissions, as defined by 38 C.F.R. § 20.1102, may be addressed by issuing a corrective order. Any cases requiring a corrective order should be referred to the Board's Litigation Support Branch. The Board does not have jurisdiction to issue a corrective order regarding a decision presently on appeal to CAVC and correcting a single decision may have effects on other decisions issued to the same appellant. The Litigation Support Branch will ensure there are no jurisdictional bars to the order. If there are jurisdictional bars, Litigation Support staff must inform OGC of the error/omission needing correction. If no jurisdictional bars exist, Litigation Support staff will draft the order.

### v. SUPPLEMENTAL DECISION

The Board has statutory authority to correct obvious errors in the record on its own motion. 38 U.S.C. § 7103(c). A supplemental decision, remand, or order may be used for correcting an obvious error consisting of the inadvertent failure to address an issue

## POST-DECISIONAL MOTIONS

within the Board's jurisdiction in a prior decision, remand, or order. If one or more issues already addressed are "inextricably intertwined" with the omitted issue(s), consider whether the prior decision, remand, or order should be vacated under 38 C.F.R. § 20.904 as to the intertwined issue(s). If the intertwined issue(s) are vacated, address them in the supplemental decision, remand, or order with the omitted issue(s) (or in a new decision, remand, or order if the entire original decision, remand, or order is vacated). See Vacatur and Supplemental Decisions, VII.i.6.E.

### vi. VACATUR

#### 1. Background

A Board decision may be vacated at any time upon request of the appellant or his or her representative, or on the Board's own motion, if the appellant was denied due process or was allowed benefits based upon false or fraudulent evidence. 38 U.S.C. §7104(a); 38 C.F.R. § 20.904. Denial of due process is conceded when the appellant was denied his or her right to representation through the action or inaction of VA personnel, or where there was a prejudicial failure to afford the appellant a personal hearing. Depending on the facts of the case, denial of due process may also include a failure to consider relevant evidence that was constructively in the Board's possession, or a failure to consider a request for an extension of time to submit additional evidence. Other common bases for vacating and dismissing an appeal include where the Board learns, after issuing a decision on the merits, that the appellant had died prior to the issuance of that decision, or where the appellant dies while the appeal of the Board's decision is pending before CAVC and CAVC vacates the Board's decision and remands the matter for the Board to dismiss the appeal due to the appellant's death.

#### 2. Types

##### A. Without an Immediate Accompanying Adjudication

If an appellant has been denied due process as described in 38 C.F.R. § 20.904, an Order to Vacate issued as a stand-alone document may be appropriate when the Board will not be re-adjudicating the case until a later date due to the need to afford the claimant an opportunity to submit additional evidence or argument, to clarify representation, to attend a scheduled hearing, or to address some other due process matter.

## CUSTOMER SUPPORT

When issuing a stand-alone vacatur document, ensure that a new VACOLS record is added as a placeholder for the eventual readjudication. An appropriate diary (to expire after any additional necessary action) should be placed in the new VACOLS record to ensure the matter is readjudicated in a timely manner. This action is frequently missed and results in appeal delay and, occasionally, CAVC writs.

Litigation Support Branch personnel can assist with this process, but Counsel/VLJ should confirm this VACOLS action has been completed.

### B. With an Accompanying Adjudication

If an appellant has not been denied due process as described in 38 C.F.R. § 20.904, or died prior to the Board's decision, an Order to Vacate issued within the same document as an accompanying Board adjudication may be appropriate.

## 3. DAS Work Products

### A. Fully vacated Board decision

Select as appropriate: (1) Vacatur, (2) Vacate and Decision, (3) Vacate and Remand, (4) Vacate and Decision and Remand, or (5) Vacate and Dismissal.

### B. Partially vacated Board decision

Each issue that is *not* being vacated must be entered into VACOLS, either at the "Attorney Check In" stage or at the DAS stage.

## XIV. CUSTOMER SUPPORT

### i. CONTACT WITH PARTIES, REPRESENTATIVES, AND CONGRESSIONAL OFFICES

#### 1. Documenting Contact

- A. All substantive evidence and argument must be properly memorialized in the claims file.
- B. Congressional, appellant, and representative inquiries that are received by mail or fax will be responded to by a formal, written response from Litigation Support and Customer Service.

## CUSTOMER SUPPORT

(1) Congressional, White House, and Secretary correspondence is signed by the Chairman.

(2) Status correspondence is signed by the Vice Chairman.

### 2. E-mail or Phone Contact

Counsel and VLJs should not respond directly to telephone or e-mail inquiries.

Direct appellants or their representatives to the VA Status Line, (800) 923-8387 or forward the e-mail inquiry to the Board's Office of Litigation Support and Customer Service ([bvalitsupport@mail.va.gov](mailto:bvalitsupport@mail.va.gov)) for response.

If the inquiry involves a CAVC-remanded case, direct the appellant or representative to the Litigation Support Branch Status Line at (202) 632-4628.

Counsel or VLJ should not promise any particular action or engage in repeated interactions with an appellant. It is appropriate to suggest to the appellant that he or she submit evidence to be associated with the record or a written inquiry for a response. The Board mailing address is: P.O. Box 27063, Washington, DC 20038, and the Board main fax number is: (202) 495-6803.

Congressional Inquiries by phone and email are routed to Litigation Support and Customer Service Congressional email and phone line.

### 3. Salesforce

A. Online system through which inquiries from the Secretary's office (VIEWS), The White House (VIEWS), and The White House Hotline (WHH) are fielded.

(1) Enter the mail item in VACOLS (VACOLS code 22) and respond by phone if from the WHH; and by formal, written correspondence if fielded through the VIEWS system.

#### ii. CO-LOCATED VSO

Counsel and VLJs are not to interface directly with any co-located VSOs. Route contact through:

**1. OAO Management Support Branch personnel**

- A. missing forms
- B. informal hearing presentations

**2. Senior Counsel**

- A. representative accreditation
- B. representative clarification

**iii. HANDLING IMPROPER CONTACTS**

If the appellant shows up to the Board in person, or if the contact is disruptive, threatening, abusive, or overly persistent, the Board employee should report the contact to a member of the Emergency Management Team by e-mail at [watchofficer-bva@va.gov](mailto:watchofficer-bva@va.gov) or contact the watch officers directly.

**iv. REQUEST FOR VBMS ACCESS**

If a Board employee receives a request for VBMS access from a non-Board employee, the Board employee should instruct the person to contact the Office of General Counsel.

**XV. THE PURPLEBOOK POLICIES AND PROCEDURES**

**i. CONFLICTS WITH OTHER AUTHORITIES**

**1. Board Authorities**

In the event of a conflict between this document and any other Board authority, this document is controlling except where a specific exemption has been made by the Chief Counsel, Vice Chairman, or Chairman.

**2. VA Authorities**

In the event of a conflict between this document and any non-Board VA authority, the non-Board VA authority is controlling.



### 3. Reporting a Conflict

Any Board employee who believes that they have discovered a conflict should notify LRP so that the apparent conflict can be clarified or resolved.

## ii. UPDATING AND ALTERING

### 1. General

All policies and procedures found in this document represent the Board's current practice. Accordingly, changing what is written in this document amounts to a change in the underlying policy or procedure described.

In the absence of LRP Counsel, the Chief Counsel will assume all authorities in this section delegated to LRP Counsel.

### 2. Change Request Authority

#### A. Chief of any division, branch, or office

(1) Requests for changes to this document can be submitted directly to LRP by the Chief of any division, branch, or office. In the absence of a permanent Chief, change requests can be submitted by the current ranking authority (e.g., Acting Chief, Team Lead) within the division, branch, or office.

(2) In the OAO, this includes all Chiefs under the VLJ Hearing and Support Management Division structure, as well as all Chief VLJs. VLJs and OAO Senior Counsel are not included.

#### B. Other individuals

(1) Any individuals not listed above may not submit a request for change directly to LRP and must instead route their ideas for changes through their Chief.

(2) It is recommended that ideas for changes that directly bear on the operations of a specific division, branch, or office be routed through the appropriate Chief. It is recommended that ideas for

## The PURPLEBOOK POLICIES AND PROCEDURES

changes that would have a broad impact on the Board or affect the operations of multiple divisions, branches, or offices be discussed internally so as to receive concurrence from as many impacted Chiefs as possible prior to submission to LRP.

### 3. Submitting a Request for Change

A. Requests for change will include the following information:

- (1) Name and division/branch/office of the submitting party.
- (2) Name(s) of any co-submitters for changes affecting more than one division/branch.
- (3) Brief (1-2 sentences) description or title of the request.
- (4) If the request includes a revision to a current The Purplebook section:

- a. Identify the section(s) affected.
- b. Provide a “red-lined” or tracked changes copy of the current section, with edits showing the requested change.

For example:

Central Office Hearing Requested

Subject to case assignment policies and in matters before the Board on reconsideration, ~~supervising Deputy Vice Chairmen~~ Abe Lincoln, or ~~their~~ his designees, ~~are~~ is responsible for assigning VLJs to conduct Washington, D.C., Central Office hearings and Video Conference hearings, based upon hearing

- (5) If the request includes the addition of a new The Purplebook section:

## The PURPLEBOOK POLICIES AND PROCEDURES

- a. Identify a suggested location for the new section(s).
  - b. Provide the actual text of the addition(s) you are requesting.
- (6) Provide a narrative description of the background or history that necessitated this request. Consider identifying the problem this change or addition seeks to address, the rationale for the requested change or addition, other potential options considered, and any other information that may be helpful in evaluating the request.
- (7) List all relevant individuals at the Board and in other parts of VA who have been consulted about this request prior to its submission, any comments or concerns they have raised, and their contact information (if outside the Board).
- (8) If there is a specific deadline for implementation of this request, indicate the deadline and the source of that deadline.

#### 4. **Post-Submission Procedures**

##### A. LRP Development

(1) LRP will review all submitted requests for change and may follow-up with the submitting party for additional information, or to discuss ways to modify the request if necessary. LRP may refer the request back to the requesting authority if additional development is necessary.

(2) LRP will document all requests for change that are in Pending status and publicize them for internal Board viewing to provide for Board-wide awareness of changes that are under consideration. Publication of specific requests for change can be omitted with authorization from LRP Counsel.

## The PURPLEBOOK POLICIES AND PROCEDURES

### B. Circulation and Approval Process

(1) LRP Counsel must approve the request for change before further steps can be taken. After approval by LRP Counsel, the request for change will be sent to the affected office's respective SES-graded leadership, or the person acting in that capacity, for approval.

(2) Any individual listed above may also require that the request for change be approved by any other individual at the Board, to include the Chief of any specific division/branch/office, the Chairman, or the Vice Chairman, as deemed appropriate.

### C. Post-Circulation Process

(1) If any individual whose approval was required in the Circulation and Approval process declines to approve the request for change, the request will be denied. LRP will inform the requesting authority that the request has been denied, along with a brief explanation as to the reason for the denial. LRP will document all denied requests for change and publicize them for internal Board viewing to provide for Board-wide awareness of changes that have already been considered and rejected. Publication of specific denied requests for change can be omitted with authorization from LRP Counsel.

(2) If all individuals whose approval was required in the Circulation and Approval process approve the request for change, LRP will move the request for change into Approved status.

(3) At the end of each quarter, LRP will compile all requests in Approved status into a single memorandum to be submitted for final approval by the appropriate authority. Once the memorandum is signed, the changes or additions will become effective and will be published in The Purplebook. Prior versions

## TEMPLATE CHANGES

of any changed section of The Purplebook will also be made accessible for reference and research purposes.

(4) LRP Counsel may authorize the submission of any Approved status request for change in its own memorandum at any time.

### D. Version Numbering

To easily track incremental changes, The Purplebook uses version numbers modeled after [software versioning](#). The third digit will increase by one every time changes are made that include minor edits or additions. The second digit will increase by one every time changes are made that include major edits or additions. Whenever the second digit increases, the third digit will reset to zero. The first digit will increase by one every time changes are made that are so significant and far-reaching that the new version is considered a complete break from the previous version. Whenever the first digit increases, the second and third digits will reset to zero.

## XVI. TEMPLATE CHANGES

### i. General

Templates taken from a networked drive, or other shared source, should be largely unaltered except as necessary to be effective. Typically the portions of a template-based document which require the employee to make changes or additions are indicated within the text of the template itself, or the necessary information is entered in the course of creating the document (for example, an appellant's name or address).

Individual employees should avoid saving personal copies of template-generated documents locally on their computers. Templates are frequently updated, and locally saved copies may not reflect the most up-to-date version of the template.

For information on locating specific template files, see the corresponding section of The Purplebook Part I.

Outside Medical Opinions: See [How to Draft an OMO Request](#) at V.iv.

Panel of VLJs: See [\(4\) Preparation of Letters Offering Third Hearing in Panel Cases](#).

Case Drafting: See [Templates – The Interactive Decision Template & Specialized Templates](#) at VIII.ii.

## TEMPLATE CHANGES

In the absence of LRP Counsel, the Chief Counsel will assume all authorities in this section delegated to LRP Counsel.

### ii. Change Request Authority

#### 1. Chief of any Division, Branch, or Office

Requests for new templates, changes to existing templates, and requests to remove existing templates can be submitted directly to LRP by the Chief of any division, branch, or office. In the absence of a permanent Chief, change requests can be submitted by the current ranking authority (*e.g.*, Acting Chief, Team Lead) within the division, branch, or office.

In the OAO, this includes all Chiefs under the VLJ Hearing and Support Management Division structure, as well as all Chief VLJs. VLJs and OAO Senior Counsel are not included.

#### 2. Other Individuals

Any individuals not listed above may not submit a request for change directly to LRP and must instead route their ideas for changes through their Chief.

It is recommended that ideas for changes that directly bear on the operations of a specific division, branch, or office be routed through the appropriate Chief. It is recommended that ideas for changes that would have a broad impact on the Board or affect the operations of multiple divisions, branches, or offices be discussed internally so as to receive concurrence from as many impacted Chiefs as possible prior to submission to LRP.

### iii. Submitting a Request

#### 1. E-mail LRP staff.

#### 2. Requests for Change will Include the Following Information:

- A. Name and division/branch/office of the submitting party.
- B. Name(s) of any co-submitters for changes affecting more than one division/branch.

## TEMPLATE CHANGES

- C. Name of the template file, and specific network location of the template file if known.
- D. Brief (1-2 sentences) description of the current use of the template document, changes requested, and why they are being requested.
- E. Identify any sections of The Purplebook which reference, or are otherwise related to, the template document.
- F. Provide a “red-lined” or tracked changes copy of the entire template document with edits showing the requested change(s). DO NOT INCLUDE ANY PII.
- G. List all relevant individuals at the Board and in other parts of VA who have been consulted about this request prior to its submission, any comments or concerns they have raised, and their contact information (if outside the Board).
- H. If there is a specific deadline for implementation of this request, indicate the deadline and the source of that deadline.

### **3. Requests for Removal of a Template will Include the Following Information:**

- A. Name and division/branch/office of the submitting party.
- B. Name(s) of any co-submitters for changes affecting more than one division/branch.
- C. Name of the template file, and specific network location of the template file if known.
- D. Brief (1-2 sentences) description of the current use of the template document and a description of why it is no longer necessary.
- E. Identify any sections of The Purplebook that reference, or are otherwise related to, the template document.
- F. List all relevant individuals at the Board and in other parts of VA who have been consulted about this request prior to its submission, any comments or concerns they have raised, and their contact information (if outside the Board).

## TEMPLATE CHANGES

- G. If there is a specific deadline for implementation of this request, indicate the deadline and the source of that deadline.
4. **Requests for the Creation of a New Template Document will Include the Following Information:**
- A. Name and division/branch/office of the submitting party.
  - B. Name(s) of any co-submitters for changes affecting more than one division/branch.
  - C. Suggested name for the new template document, and the division(s)/branch(es)/office(s) which will be using the new template.
  - D. Brief (1-2 sentences) description of the new template document being requested, including what it will be used for, and whether it is similar to any existing template documents.
    - (1) Identify any sections of The Purplebook which reference, or are otherwise related to, the template document.
  - E. Provide an electronic copy of the entire new template document being requested. Use the Track Changes function to include "comments" if needed. Also indicate what, if any, information the end-user would input.
  - F. List all relevant individuals at the Board and in other parts of VA who have been consulted about this request prior to its submission, any comments or concerns they have raised, and their contact information (if outside the Board).
  - G. If there is a specific deadline for implementation of this request, indicate the deadline and the source of that deadline.

### iv. Post-Submission Procedures

#### 1. LRP Development

LRP will review all submitted requests and may follow up with the submitting party for additional information, or to discuss ways to modify the request if necessary. LRP



## TEMPLATE CHANGES

may refer the request back to the requesting authority if additional development is necessary.

### **2. Approval and Implementation of a Request**

- A. The LRP Counsel must approve all requests before further steps can be taken. After approval, LRP counsel will prepare and send an e-mail to appropriate staff for implementation.

(1) If the requested action is for the creation of a new template document or a change to an existing template document, the appropriate staff will make the requested changes and provide the document to LRP for confirmation that the request was properly executed.

(2) If the requested action was for the removal of a template document, the appropriate staff will move the template document into an "archive" status where it will remain available if needed, but is not accessible for regular use.

For any template document that has been removed from use, a notation should be applied directly to the document indicating the date it was removed.

- B. Following implementation of the request, LRP will notify the requester of its completion. The requester should take appropriate steps to notify affected staff of any new template, changed template, or removed template.

### **3. Denial of a Request**

- A. If the LRP Counsel declines to approve the requested template action, LRP will inform the requesting authority that the request has been denied, along with a brief explanation as to the reason for the denial.

## **XVII. APPEALS MODERNIZATION**

### **i. APPEALS MODERNIZATION ACT**

1. On August 23, 2017, the President signed into law the Veterans Appeals Improvement and Modernization Act, Pub. L. No. 115-55 (to be codified as amended in scattered sections of 38 U.S.C.), 131 Stat. 1105 (2017), also known as the Appeals Modernization Act (AMA). This new law will go into effect on February 14, 2019.
2. The new appeals process will feature three decision-review lanes:
  - A. Higher-Level Review Lane: A senior-level claims processor at a VA Agency AOJ will conduct a new look at a previous decision based on the evidence of record. Reviewers can overturn previous decisions based on a difference of opinion, or return a decision for correction.
  - B. Supplemental Claim Lane: Veterans can submit new, relevant evidence to support their claim and a claims processor at a VA regional office will assist in developing evidence.
  - C. Appeal Lane: Veterans will have the option to appeal a decision directly to the Board.
3. Proposed regulations to implement the Appeals Modernization Act were published in the Federal Register on August 10, 2019. The Purplebook will be updated to reflect Appeals Modernization Act policy and procedure upon publication of the final rule.
4. For training materials and resources about [Appeals Modernization](#), please visit the Appeals Modernization section of KM's sharepoint site.

### **ii. RAMP**

#### **1. Introduction**

In an effort to test VA's processes and procedures before the implementation of AMA, VBA initiated the Rapid Appeals Modernization Program (RAMP) in November 2017. This test program allows eligible Veterans to opt into the new framework prior to February 2019 by selecting either the supplemental claim lane or the higher-level review lane. VBA then issues the eligible









## Appeals Modernization

Veteran a RAMP rating decision. Veterans who receive a RAMP rating decision have one year to seek additional review of the rating decision, to include appealing to the Board.

The Board has held cases where Veterans have selected to appeal their claims to the Board in a queue until October 1, 2018. Beginning October 1, 2018, these RAMP appeals will be worked by Board staff.

### 2. Distinguishing Between Legacy and AMA Cases

Board staff will be able to distinguish a legacy case from an Appeals Modernization case in Caseflow Queue. Legacy cases will have a 7 digit docket number with the format XX-XX XXX. Caseflow Queue will also label these cases with an "L" for legacy. AMA cases will have at least a 7 digit docket number with the format XXXXXX-X. Caseflow Queue will label these cases with an "E" for the evidence submission lane, "D" for direct lane, or "H" for the hearing lane.

Your cases					
Case Details	Type(s)	Docket Type & Number	Issues	Days waiting   Due on	Veteran Documents
<a href="#">Grace Madison</a> (963360019)	Original	 180911-3	2	5 days -	<a href="#">View docs</a> 3 docs
<a href="#">Rodrigo W O'kon</a> (884668527)	Post Remand	 4575797	4	32 days - 09/29/18	<a href="#">View docs</a> 5 docs
<a href="#">Matilde W Spinka</a> (209179363)	Post Remand	 6127824	1	19 days - 10/06/18	<a href="#">View docs</a>  NEW 19 docs
<a href="#">Beulah J Mills</a> (767574947)	Post Remand	 6182238	6	19 days - 09/29/18	<a href="#">View docs</a>  NEW 1001 docs
<a href="#">Julia Y Senger</a> (216979849)	Post Remand	 9209665	7	32 days - 09/23/18	<a href="#">View docs</a>  NEW 5 docs

### 3. Legacy Cases with a Signed RAMP Opt-in Election Form

- A. Veterans are not eligible for RAMP if their legacy claim has been activated at the Board.
- B. VACOLS identifies whether a claim has been activated – underneath the “Status” for the appeal stream will be “ACT” for “active.”

## Appeals Modernization

Appeal Id	Name	Status	Dec. Date	Disc RD	Cer Loc	A E P Action
22222222C	SHUFFY	JOE	H ACT		RO40 4E	Y 1 - Original
22222222C	SHUFFY	JOE	H ADV (NOD)		RO28 77	Y 1 - Original
22222222C	SHUFFY	JOE	H ADV (7-8)		RO97 99	Y 7 - Court Rema
22222222C	SHUFFY	JOE	H CAV		RO09 77	7 - Court Rema
22222222C	SHUFFY	JOE	H REM	2/21/2018 3	RO09 50	Y 1 - Original

C. Veterans are ONLY eligible to opt into RAMP if their appeals are in the following stages:

- (1) An NOD has been filed – ADV (NOD);
- (2) A VA Form 9 has been filed – ADV (VA9);
- (3) A claim has been certified by VBA to the Board but the issue(s) have not yet been activated – ADV (CERT); or
- (4) When a claim has been remanded to the AMO by the Board.

D. If you do not know whether you should activate or adjudicate a case because there is a signed RAMP opt-in form in the claims file, complete the following steps:

- (1) Review the [RAMP materials](#) located on the KM sharepoint and follow the appropriate steps outlined in the training materials.

If you continue to have questions, please seek advice from your senior counsel or senior program specialist, or email [VACOBVARAMPQuestions@va.gov](mailto:VACOBVARAMPQuestions@va.gov).

4. Intaking a RAMP Case

- A. RAMP cases are activated at the Board using Caseflow Intake, not VACOLS.
- B. If you do not have access to Caseflow Intake, email the c-file number of the case requiring intake to [BVACSBInquiry@va.gov](mailto:BVACSBInquiry@va.gov).
- C. To intake a RAMP case in Caseflow Intake, complete the following steps:
  - (1) On the Caseflow Intake "Select Form" page, choose "RAMP Selection (VA Form 21-4138)" and click the "Continue to search" button.
  - (2) On the "Search" page, enter the c-file number and click the magnifying glass to proceed to the "Review" page.
  - (3) On the "Review" page, enter the receipt date of the RAMP Selection Form, select "Appeal to Board", specify the type of appeal requested (Direct Review, Evidence Submission, or Hearing), then click the "Continue to next step" button.
  - (4) Complete the external steps described on the "Finish" page (upload RAMP Selection Form to VBMS with document type "Correspondence" and a subject line of "RAMP Lane Selection"). Review and select the contentions requested for review and indicate whether the Veteran's form contained any ineligible contentions. Then, click on the "Finish Intake" button.
  - (5) The text "Appeal record saved in Caseflow" should appear on the next page. If you have additional RAMP NODs to process, click on the "Begin next intake" button to begin intaking the next case.
- D. If you have questions about these instructions, please review [RAMPmaterials](#) located on the KM sharepoint site. If you continue to have questions, contact your senior program specialist.

5. Adjudicating a RAMP Case

- A. If you are assigned a RAMP appeal to adjudicate, review the [RAMP materials](#) located on the KM sharepoint site prior to reviewing the claims file.
- B. These materials contain important information regarding how to adjudicate a RAMP appeal and how to draft a RAMP Board decision.
  - (1) These training materials include information on circumstances when a remand is appropriate and circumstances when a remand is not appropriate, how to address evidence that was submitted when new evidence was not allowed, and how to determine the period on appeal.
  - (2) These training materials also provide mandatory language to include in the Board decision and highlights circumstances when an attorney will need to contact the OAO point of contact for RAMP adjudication.
- C. If, after reviewing the training material, you have questions regarding how to adjudicate the RAMP appeal or how to draft the RAMP Board decision, please seek advice from your senior counsel.



**CASEFLOW**

Hearing Prep

User Training Guide



DIGITAL SERVICE at VA

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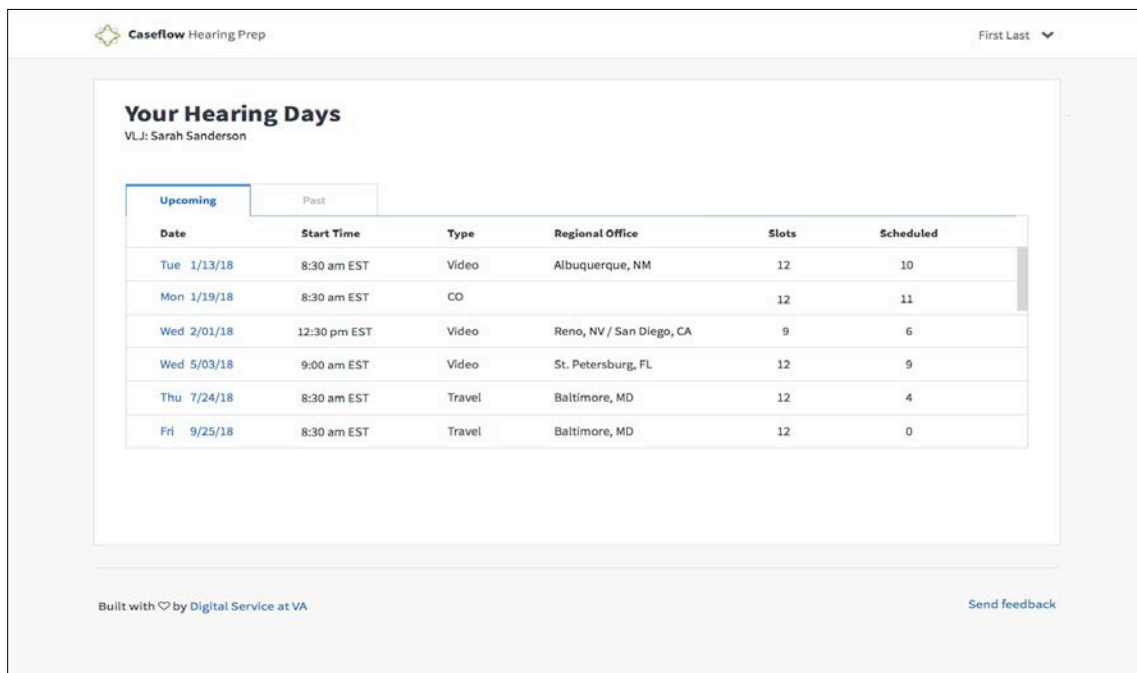
## Introduction

Caseflow Hearing Prep (Hearing Prep) was built by the Digital Service at VA (DSVA) to help judges to more accurately and expeditiously prepare for their hearings online. It allows judges to view their upcoming hearings, view relevant appellant information, take notes before and during a hearing as well as review documents in a Veteran's claim folder.

## Accessing and Using Hearing Prep

### Logging into Hearing Prep

1. Connect to the VA network.
2. Using your Google Chrome browser, navigate to <https://appeals.cf.ds.va.gov/hearings/dockets>.
3. Sign in using your VA credentials.
4. The first page of Hearing Prep is **Your Hearing Days**, which shows a list of all your upcoming hearings and past hearings (held within the past year).



Your Hearing Days					
VLJ: Sarah Sanderson					
Upcoming		Past			
Date	Start Time	Type	Regional Office	Slots	Scheduled
Tue 1/13/18	8:30 am EST	Video	Albuquerque, NM	12	10
Mon 1/19/18	8:30 am EST	CO		12	11
Wed 2/01/18	12:30 pm EST	Video	Reno, NV / San Diego, CA	9	6
Wed 5/03/18	9:00 am EST	Video	St. Petersburg, FL	12	9
Thu 7/24/18	8:30 am EST	Travel	Baltimore, MD	12	4
Fri 9/25/18	8:30 am EST	Travel	Baltimore, MD	12	0

Figure 1 - Your Hearing Days

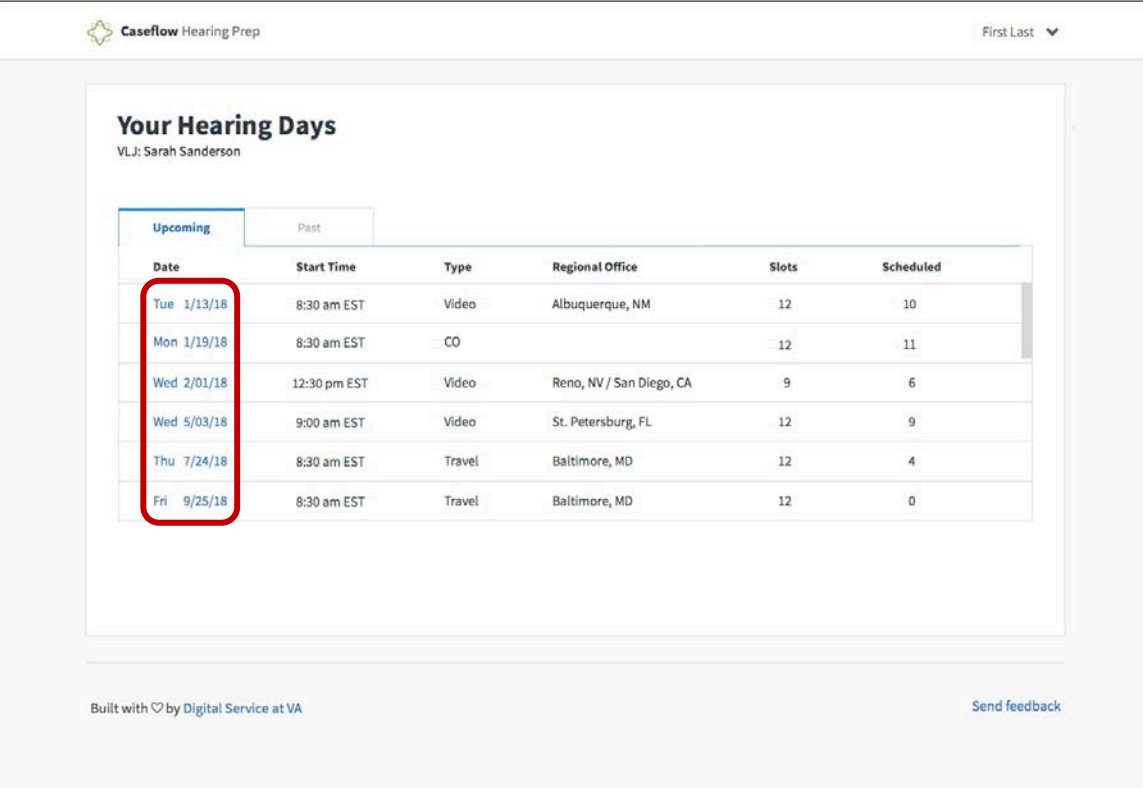
## Reviewing a Your Hearing Days

The **Your Hearing Days** page allows you to see a list of all upcoming and past hearings.

### Accessing Upcoming Hearings

- Under the *Upcoming* tab on the **Your Hearing Days** page, click the date of the hearing to view that date's docket.

*Note: Hearing date dockets may be viewed up to 30 days in advance. If there are no hearings scheduled, the date will not be clickable.*



Caseflow Hearing Prep First Last ▼

### Your Hearing Days

VLJ: Sarah Sanderson

Upcoming
Past

Date	Start Time	Type	Regional Office	Slots	Scheduled
Tue 1/13/18	8:30 am EST	Video	Albuquerque, NM	12	10
Mon 1/19/18	8:30 am EST	CO		12	11
Wed 2/01/18	12:30 pm EST	Video	Reno, NV / San Diego, CA	9	6
Wed 5/03/18	9:00 am EST	Video	St. Petersburg, FL	12	9
Thu 7/24/18	8:30 am EST	Travel	Baltimore, MD	12	4
Fri 9/25/18	8:30 am EST	Travel	Baltimore, MD	12	0

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Figure 2 – Your Hearing Days: Upcoming Hearings

## Appendix A: Caseflow Hearing Prep User Training Guide

- You will then be taken to the Daily Docket for that hearing date.
- The **Daily Docket** lists the hearings scheduled for the day by start time.

Caseflow Hearing Prep > Daily Docket Hearing Prep (DSUSER) ▼

Last saved at 1:12 pm

---

### Daily Docket

VLJ: Lauren Roth

Fri 4/13/2018

Hearing Type: CO

Prep	Time/RO(s)	Appellant/Veteran ID	Representative	Actions
1. <input checked="" type="checkbox"/>	9:30 am ET / 9:30 am ET Pittsburgh, PA	<b>Andrew A. Madison</b> <a href="#">20fb09a9</a> 1 Issue	Military Order of the Purple Heart Susan Madison	<div>Disposition: <span>Select... ▼</span></div> <div>Hold Open: <span>Select... ▼</span></div> <div>AOD: <span>Select... ▼</span></div> <div><input type="checkbox"/> Transcript Requested</div>
Notes <div style="border: 1px solid #ccc; height: 20px; width: 100%;"></div>				
2. <input type="checkbox"/>	9:30 am ET / 9:30 am ET Pittsburgh, PA	<b>Andrew A. King</b> <a href="#">29ca3064</a> 1 Issue	Military Order of the Purple Heart Andrew Merica	<div>Disposition: <span>Select... ▼</span></div> <div>Hold Open: <span>Select... ▼</span></div> <div>AOD: <span>Select... ▼</span></div> <div><input type="checkbox"/> Transcript Requested</div>
Notes <div style="border: 1px solid #ccc; height: 20px; width: 100%;"></div>				
3. <input type="checkbox"/>	12:30 pm ET / 12:30 pm ET Pittsburgh, PA	<b>Susan A. Van Buren</b> <a href="#">2c4231263</a> 1 Issue	Military Order of the Purple Heart James Madison	<div>Disposition: <span>Select... ▼</span></div> <div>Hold Open: <span>Select... ▼</span></div> <div>AOD: <span>Select... ▼</span></div> <div><input type="checkbox"/> Transcript Requested</div>
Notes <div style="border: 1px solid #ccc; height: 20px; width: 100%;"></div>				
4. <input type="checkbox"/>	10:30 am ET / 10:30 pm ET Pittsburgh, PA	<b>Susan A. Madison</b> <a href="#">6a51ac488</a> 4 Issues	Military Order of the Purple Heart Barack Jefferson	<div>Disposition: <span>Select... ▼</span></div> <div>Hold Open: <span>Select... ▼</span></div> <div>AOD: <span>Select... ▼</span></div> <div><input type="checkbox"/> Transcript Requested</div>
Notes <div style="border: 1px solid #ccc; height: 20px; width: 100%;"></div>				
5. <input type="checkbox"/>	11:30 am ET / 11:30 am ET Pittsburgh, PA	<b>Grace A. Jackson</b> <a href="#">077650dc9</a> 1 Issue	Military Order of the Purple Heart Andrew Merica	<div>Disposition: <span>Select... ▼</span></div> <div>Hold Open: <span>Select... ▼</span></div> <div>AOD: <span>Select... ▼</span></div> <div><input type="checkbox"/> Transcript Requested</div>
Notes <div style="border: 1px solid #ccc; height: 20px; width: 100%;"></div>				

[< Back to Your Hearing Days](#)

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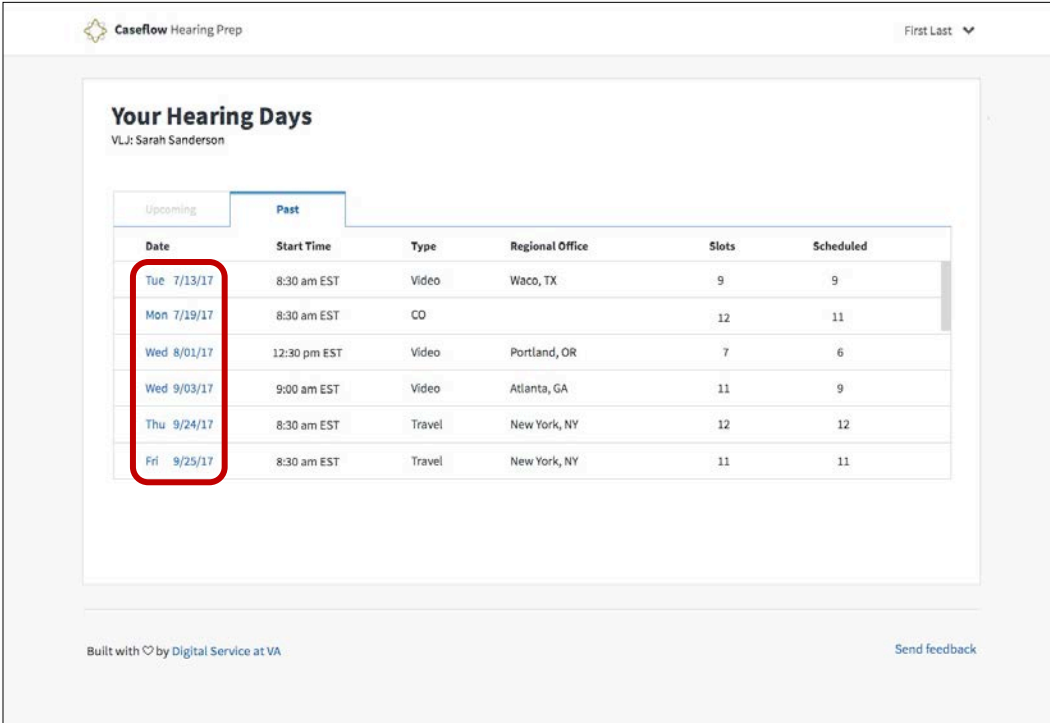
Figure 3 - Daily Docket

*Note: Click the “Back to Your Hearing Days” link at the bottom left-hand corner of the page, or the Caseflow Hearing Prep logo at the top left-hand corner of the page, to return to the Your Hearing Days page.*

### Accessing Past Hearings

- Under the *Past* tab on the **Your Hearing Days** page, click the date of the hearing you would like to view.

*Note: The Daily Docket and Hearing Worksheets will be accessible within Hearing Prep for one year, thereafter they can be accessed only from the Case Details page in Caseflow Queue.*



Caseflow Hearing Prep

First Last ▾

### Your Hearing Days

VLJ: Sarah Sanderson

Upcoming Past

Date	Start Time	Type	Regional Office	Slots	Scheduled
Tue 7/13/17	8:30 am EST	Video	Waco, TX	9	9
Mon 7/19/17	8:30 am EST	CO		12	11
Wed 8/01/17	12:30 pm EST	Video	Portland, OR	7	6
Wed 9/03/17	9:00 am EST	Video	Atlanta, GA	11	9
Thu 9/24/17	8:30 am EST	Travel	New York, NY	12	12
Fri 9/25/17	8:30 am EST	Travel	New York, NY	11	11

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Figure 4 – Your Hearing Days: Past Hearings

## Appendix A: Caseflow Hearing Prep User Training Guide

- You will then be taken to the Daily Docket for the selected date.
- The **Daily Docket** lists the hearings that were scheduled for that date.

The screenshot shows the 'Daily Docket' page in the Caseflow Hearing Prep system. At the top, the breadcrumb 'Caseflow Hearing Prep > Daily Docket' is visible on the left, and 'Hearing Prep (DSUSER)' with a dropdown arrow is on the right. Below the breadcrumb, it says 'Last saved at 5:34 pm'. The main heading 'Daily Docket' is on the left, with 'VLJ: Lauren Roth' underneath. On the right, the date 'Wed 5/17/2017' and 'Hearing Type: Video' are displayed. The main content area is a table with columns: 'Prep', 'Time/RO(s)', 'Appellant/Veteran ID', 'Representative', and 'Actions'. There is one row for a hearing at 7:30 am ET / 4:30 am PT in Los Angeles, CA. The appellant is James A. Jefferson, George A. Jackson (Veteran), with ID 66b565fed and 7 issues. The representative is the Military Order of the Purple Heart, Anne Merica. The 'Actions' column contains three dropdown menus for 'Disposition', 'Hold Open', and 'AOD', each with 'Select...' as the current value. Below these is a checkbox for 'Transcript Requested'. A 'Notes' section on the left of the 'Actions' column contains the text 'The veteran is running 2 hours late.' At the bottom left, there is a link '< Back to Your Hearing Days'. At the bottom right, it says 'Built with ❤ by the Digital Service at VA' and 'Track Caseflow Status | Send feedback'.

Prep	Time/RO(s)	Appellant/Veteran ID	Representative	Actions
1. <input type="checkbox"/>	7:30 am ET / 4:30 am PT Los Angeles, CA	<b>James A. Jefferson</b> George A. Jackson (Veteran) <a href="#">66b565fed</a> 7 Issues	Military Order of the Purple Heart Anne Merica	<div>Disposition: <input type="text" value="Select..."/></div> <div>Hold Open: <input type="text" value="Select..."/></div> <div>AOD: <input type="text" value="Select..."/></div> <div><input type="checkbox"/> Transcript Requested</div>

Figure 5 - Daily Docket

*Note: Click the “Back to Your Hearing Days” link at the bottom left-hand corner of the page, or the Caseflow Hearing Prep logo at the top left-hand corner of the page, to return to the Your Hearing Days page. (move this next to the image)*

## Using the Daily Docket

- The **Daily Docket** lists the hearings scheduled for the day, along with Time/Regional Office, Appellant's name, Veteran's ID, number of issues, Representing Organization, and Representative's name. Also included is a box to check when a hearing has been prepped, an area for Notes to communicate with the hearing coordinator, and a section for Actions related to the appeal.
- Information added to Notes and to Actions will be saved to VACOLS.

## Prep Checkbox

- Click the **Prep** checkbox to keep track of the hearings you have prepped.

The screenshot shows the 'Daily Docket' interface in Caseflow. At the top, it says 'Caseflow Hearing Prep > Daily Docket' and 'Hearing Prep (DSUSER)'. Below this, it says 'Last saved at 9:28 am' and 'Fri 4/13/2018 Hearing Type: CO'. The main section is titled 'Daily Docket' and 'VLJ: Lauren Roth'. It contains a table with the following columns: Prep, Time/RO(s), Appellant/Veteran ID, Representative, and Actions. There are two rows of data. The first row is for Andrew A. Madison, and the second row is for Andrew A. King. A red square highlights the Prep checkbox for the second row. The Actions column for each row contains three dropdown menus: Disposition, Hold Open, and AOD. Below these are checkboxes for 'Transcript Requested'.

Prep	Time/RO(s)	Appellant/Veteran ID	Representative	Actions
<input checked="" type="checkbox"/>	9:30 am ET / 9:30 am ET Pittsburgh, PA	Andrew A. Madison 20fbf09a9 1 Issue	Military Order of the Purple Heart Susan Madison	Disposition: Select... Hold Open: Select... AOD: Select... <input type="checkbox"/> Transcript Requested
<input type="checkbox"/>	9:30 am ET / 9:30 am ET Pittsburgh, PA	Andrew A. King Martin A. Madison (Veteran) 2f9ca3064 1 Issue	Military Order of the Purple Heart Andrew Merica	Disposition: Select... Hold Open: Select... AOD: Select... <input type="checkbox"/> Transcript Requested

Figure 6 - Daily Docket indicating a prepped case

## Actions

### Disposition

**Disposition** is used to indicate the disposition of the hearing. The options are “Held”, “No Show”, “Cancelled”, or “Postponed”.

### Hold Open

**Hold Open** is used to indicate whether the hearing should be held open. The **Hold Open** options are “0”, “30”, “60”, and “90” days and also includes the relevant dates.

### **AOD**

Advance on Docket (**AOD**) is used to indicate whether a case has AOD status. The options are “Granted”, “Filed”, and “None”.

### ***Transcript Requested***

The **Transcript Requested** box is used to indicate whether the Veteran has requested a transcript of the hearing.

### **Notes**

The **Notes** field displays information related to the hearing and hearing logistics. This information can be added by the judge or the hearing coordinator. This information is saved and updated to VACOLS.

- Click within the **Notes** field to begin typing hearing notes.

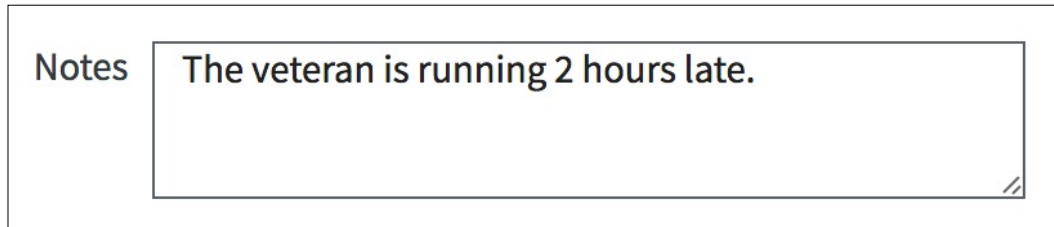
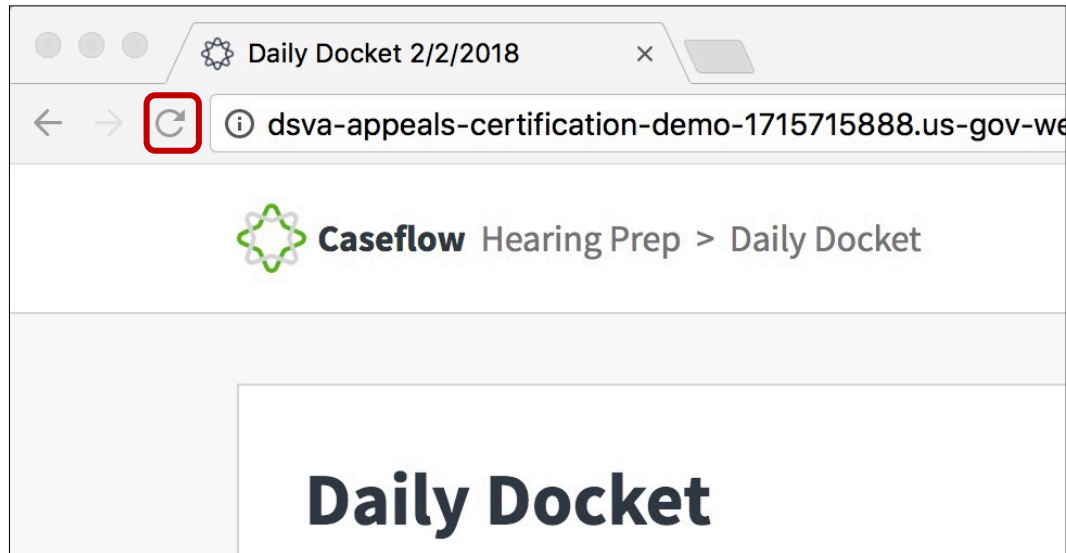
The image shows a screenshot of a software interface. On the left, the word "Notes" is displayed in a bold, black font. To its right is a large, rectangular text input field with a thin black border. Inside this field, the text "The veteran is running 2 hours late." is entered in a standard black font. In the bottom right corner of the text input field, there is a small, faint icon consisting of two parallel diagonal lines.

Figure 7- Daily Docket “Notes” Field

*Note: Refreshing the Daily Docket page in the Google Chrome browser will allow you to see the most recent updates to the Notes field. The Daily Docket must be refreshed manually.*

- Click the refresh icon to refresh the Daily Docket page.



**Figure 8 - Google Chrome browser refresh icon**



## Accessing the Hearing Worksheet

- Click the Veteran's ID number located under the Appellant or Veteran's name to access the Hearing Worksheet.

Caseflow Hearing Prep > Daily Docket

Hearing Prep (DSUSER)

Last saved at 1:00 pm

**Daily Docket**

VLJ: Lauren Roth

Fri 4/13/2018  
Hearing Type: CO

Prep	Time/RO(s)	Appellant/Veteran ID	Representative	Actions
1. <input checked="" type="checkbox"/>	12:30 pm ET / 12:30 pm ET Pittsburgh, PA	<b>James A. Anthony</b> Martin A. Washington (Veteran) 20fb09a9 1 Issue	Military Order of the Purple Heart Thomas Jefferson	Disposition: Select... Hold Open: Select... ADD: Select... <input type="checkbox"/> Transcript Requested
2. <input type="checkbox"/>	11:30 am ET / 11:30 am ET Pittsburgh, PA	<b>Anne A. Madison</b> Andrew A. Washington (Veteran) <b>299ca3064</b> 2 Issues	Military Order of the Purple Heart John Anthony	Disposition: Select... Hold Open: Select... ADD: Select... <input type="checkbox"/> Transcript Requested
3. <input type="checkbox"/>	10:30 am ET / 10:30 am ET Pittsburgh, PA	<b>Barack A. Jackson</b> John A. Jefferson (Veteran) 2c4231263 1 Issue	Military Order of the Purple Heart James Washington	Disposition: Select... Hold Open: Select... ADD: Select... <input type="checkbox"/> Transcript Requested
4. <input type="checkbox"/>	11:30 am ET / 11:30 am ET Pittsburgh, PA	<b>Andrew A. Anthony</b> 6a51ac488 4 Issues	Military Order of the Purple Heart Susan Merica	Disposition: Select... Hold Open: Select... ADD: Select... <input type="checkbox"/> Transcript Requested
5. <input type="checkbox"/>	10:30 am ET / 10:30 am ET Pittsburgh, PA	<b>Andrew A. Washington</b> Andrew A. Van Buren (Veteran) 077650dc9 1 Issue	Military Order of the Purple Heart Andrew Merica	Disposition: Select... Hold Open: Select... ADD: Select... <input type="checkbox"/> Transcript Requested

< Back to Your Hearing Days

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Figure 9 – Veteran ID as displayed on the Daily Docket

*Note: The Representative name is listed under the name of the Representative Organization.*

## Appendix A: Caseflow Hearing Prep User Training Guide

- You will be taken to the **Hearing Worksheet** for that Veteran from the Daily Docket. You will see relevant information about the Veteran, Appellant and relevant information for each appeal stream.

Select Veteran  
J. Maggio (5 Issues)
☐ Hearing Prepped
Review claims folder

### Jared P. Maggio's Hearing Worksheet

VLJ Judge with hearings and cases	HEARING TYPE CO	REGIONAL OFFICE Roanoke, VA	DATE Fri 9/7/2018
--------------------------------------	--------------------	--------------------------------	----------------------

#### Appellant/Veteran Information

VETERAN NAME Jared P. Maggio	VETERAN ID 626343664	AGE 63	GENDER Female
APPELLANT NAME Cruckshank Estel	CITY/STATE Lindmouth, MI	REPRESENTATIVE ORG. Disabled American Veterans	

Representative Name Elta Keeling	Witness (W)/Observer (O) and Additional Details
-------------------------------------	---

#### Periods and circumstances of service

Army 02/13/2002 - 12/21/2003, Honorable  
Navy 07/02/2005 - 06/28/2008, Under Honorable Conditions

#### Procedural History

19 Documents in Claims Folder

Appeal Stream 1 - Docket #8927941

Prior BVA Decision	08/12/2018	SSOC	06/25/1997, 01/05/2018
NOD	05/25/1996	Certification	02/03/2018
SOC	06/27/1996	Docs since Certification	19
Form 9	08/03/1996		

Current Issues (3)
Prior Issues (5)

Appeal Stream 1 Issues	Notes	Disposition	Preliminary Impressions
1. Comp IR 04 - Scheduler; 5202 - Humerus, other impairment of	illum voluptatem consectetur molestiae maiores commodi est est optio.	Remanded 08/12/2018	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO
2. Comp IR 04 - Scheduler; 5284 - Foot injuries, other	illum voluptatem consectetur molestiae maiores commodi est est optio.	Remanded 08/12/2018	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO
3. Comp IR 04 - Scheduler; 6513 - Sinusitis, maxillary, chronic	illum voluptatem consectetur molestiae maiores commodi est est optio.	Remanded 08/12/2018	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO

+ Add Issue

#### Hearing Summary

B
I
U
T
List
Link

Contentions

Evidence

Comments and special instructions to attorneys

Save as PDF

Figure 10 - Hearing Worksheet

## Selecting a Veteran

At the top of the Hearing Worksheet, you may move to the Hearing Worksheet of another Veteran on the same docket by selecting the “Select Veteran” dropdown. You may use the Hearing Prepped checkbox to mark prepped worksheets. You will see the checkmark in the dropdown menu.

- Click the dropdown arrow next to the Veteran's name.
- Select the desired Veteran from the dropdown menu.

**Select Veteran**

A. Richardson (5 issues) ✓

J. Shuffy (5 issues) ✓

C. Bellingham (2 issues) ✓

D. Perez (1 issue) ✓

P. Bellarona (2 issues) ✓

L. Jones (2 issues) ✓

S. Lee (4 issues) ✓

J. Schwartz (8 issues) ✓

W. Hunt (3 issues) ✓

**Hearing Worksheet**

REGIONAL OFFICE: Sioux City, IA

DATE: 03/09/2017

AGE: 84

GENDER: Male

Representing Org.: Veterans of Foreign Wars

Witness (W/Observer (O))

Additional Notes

Periods and circumstances of service: Army 02/01/1980 - 09/03/86; Honorable Discharge Purple Heart

**Procedural History** 233 Documents in claims folder

Appeal Stream 1 - Docket #1234567 **DC**

Prior BVA Decision	01/01/1990	SSOC	01/07/1990
NOD	01/03/1990	Certification	02/12/2016
SOC	01/04/1990	Docs Since Certification	22
Form 9	01/05/1990		

Appeal Stream 1 - Docket #1234567 **DC**

Prior BVA Decision	01/01/1990	SSOC	01/01/1992
NOD	01/09/1990	Certification	02/12/2016
SOC	01/09/1991	Docs Since Certification	12
Form 9	01/11/1990		

**Current Issues (5)** Prior Issues (3)

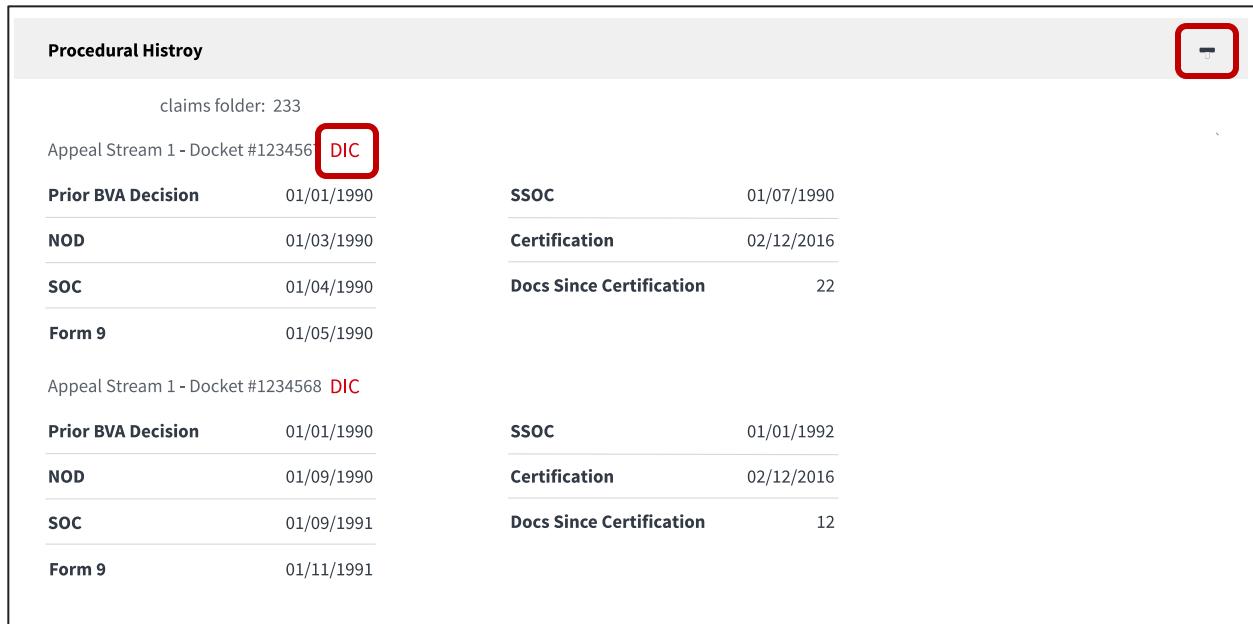
Appeal Stream 1	Notes	Disposition	Preliminary Impressions
1. Comp: SC All Others, 5010 - Arthritis, due to trauma	Right elbow; Rated at 30% on 03/16/2016	Remanded 12/09/17	<input type="checkbox"/> He-Open <input type="checkbox"/> Remand <input type="checkbox"/> Allow <input type="checkbox"/> Dismiss <input type="checkbox"/> Deny <input type="checkbox"/> OMO
2. Education: Extension of Delimiting Date 01/38 U.S.C. ch. 30		Remanded 12/09/17	<input type="checkbox"/> He-Open <input type="checkbox"/> Remand <input type="checkbox"/> Allow <input type="checkbox"/> Dismiss <input type="checkbox"/> Deny <input type="checkbox"/> OMO

Figure 11 – Hearing Worksheet dropdown menu ‘Select Veteran’ used to move to another Veteran’s Hearing Worksheet

## Reviewing Procedural History

Under Procedural History you can see how many documents are contained in the Veteran's claims folder and view the dates of key events for each appeal stream. Contested claims and Death & Indemnity Compensation claims will be indicated with a red CC or DIC.

- Click the “-“ to collapse the Procedural History section.



**Procedural History**

claims folder: 233

Appeal Stream 1 - Docket #123456 **DIC**

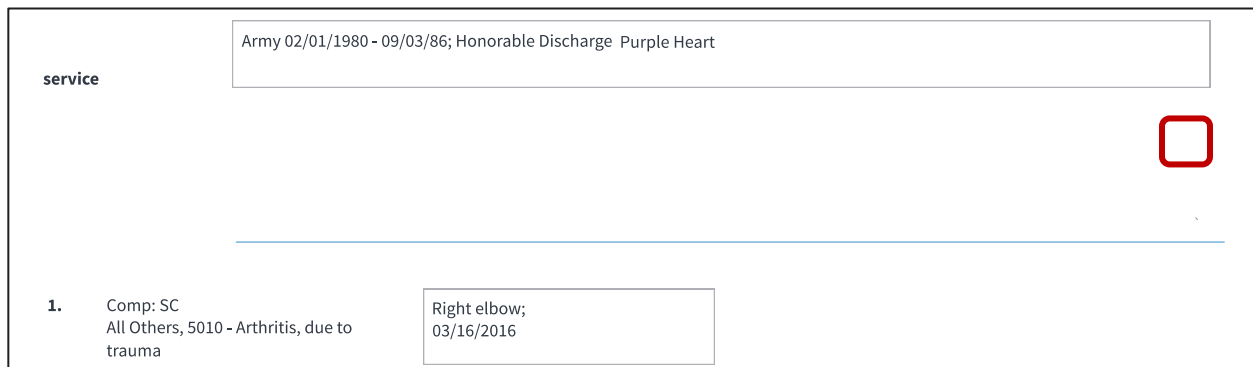
<b>Prior BVA Decision</b>	01/01/1990	<b>SSOC</b>	01/07/1990
<b>NOD</b>	01/03/1990	<b>Certification</b>	02/12/2016
<b>SOC</b>	01/04/1990	<b>Docs Since Certification</b>	22
<b>Form 9</b>	01/05/1990		

Appeal Stream 1 - Docket #1234568 **DIC**

<b>Prior BVA Decision</b>	01/01/1990	<b>SSOC</b>	01/01/1992
<b>NOD</b>	01/09/1990	<b>Certification</b>	02/12/2016
<b>SOC</b>	01/09/1991	<b>Docs Since Certification</b>	12
<b>Form 9</b>	01/11/1991		

Figure 12- Expanded Procedural History section of Hearing Worksheet

- Click the “+” to expand the Procedural History section.



**service**

Army 02/01/1980 - 09/03/86; Honorable Discharge Purple Heart

1. Comp: SC  
All Others, 5010 - Arthritis, due to trauma

Right elbow;  
03/16/2016

Figure 13 – Collapsed Procedural History Section

## Adding and Deleting Issues on the Hearing Worksheet

The Appeal Stream section of the Hearing Worksheet shows the Current and Prior Issues on appeal for each appeal stream and its disposition and date, if there is one.

The screenshot shows the 'Current Issues (1)' tab selected. Under 'Appeal Stream 1 Issues', there is one issue listed: '1. Comp: SC 03 - All Others; 5252 - Thigh, limitation of flexion of'. The 'Notes' field contains 'low back condition'. The 'Disposition' field is empty. The 'Preliminary Impressions' section has checkboxes for 'Re-Open', 'Allow', 'Deny', 'Remand', 'Dismiss', and 'OMO', all of which are unchecked. A trash icon is visible to the right of the checkboxes. A '+ Add Issue' button is located at the bottom left.

Figure 14 – Appeal Stream as shown on the Hearing Worksheet

*Note: Prior Issues are the issues with decisions in the field (before the hearing). If there are none, the Prior Issues tab will not be viewable.*

### Adding an Issue

- Click **+Add Issue** to add an issue to an appeal stream. A new row of boxes will appear.
- Type the relevant information for the issue into the new row of boxes.

This screenshot shows the 'Current Issues (2)' tab selected. There are now two issues listed. The first issue is the same as in Figure 14. The second issue, labeled '2.', has empty fields for 'Notes', 'Disposition', and 'Preliminary Impressions'. The '+ Add Issue' button at the bottom left is highlighted with a red rectangle.

Figure 15 - Adding an Issue to an Appeal Stream on the Hearing Worksheet

## Deleting an Issue

- Click the trashcan icon located to the right of the issue you wish to delete.

The screenshot shows the 'Hearing Worksheet' interface. At the top, there are two tabs: 'Current Issues (2)' and 'Prior Issues (0)'. Below the tabs, there is a table with four columns: 'Appeal Stream 1 Issues', 'Notes', 'Disposition', and 'Preliminary Impressions'. The first row (1.) contains the following data: 'Comp: SC 03 - All Others; 5252 - Thigh, limitation of flexion of', 'low back condition', and 'Re-Open', 'Allow', 'Deny', 'Remand', 'Dismiss', 'OMO'. The second row (2.) is empty. To the right of the 'Deny' checkbox in the first row, there is a trashcan icon highlighted with a red square. At the bottom left, there is a '+ Add Issue' button.

Figure 16 - Deleting an Issue from an Appeal Stream on the Hearing Worksheet

- Click **Confirm delete** in the **Delete Issue Row** dialog box to remove the issue from the Hearing Worksheet.

*Note: The issue will be removed from the Hearing Worksheet but will remain in VACOLS.*

The screenshot shows the 'Delete Issue Row' dialog box. The dialog box has a title bar with a close button (X). The main text reads: 'Are you sure you want to remove this Issue from Appeal Stream 1 on the worksheet?'. Below this, it says: 'This issue will be removed from the worksheet, but will remain in VACOLS.' At the bottom, there are two buttons: 'Cancel' and 'Confirm delete'. The 'Confirm delete' button is highlighted with a red square.

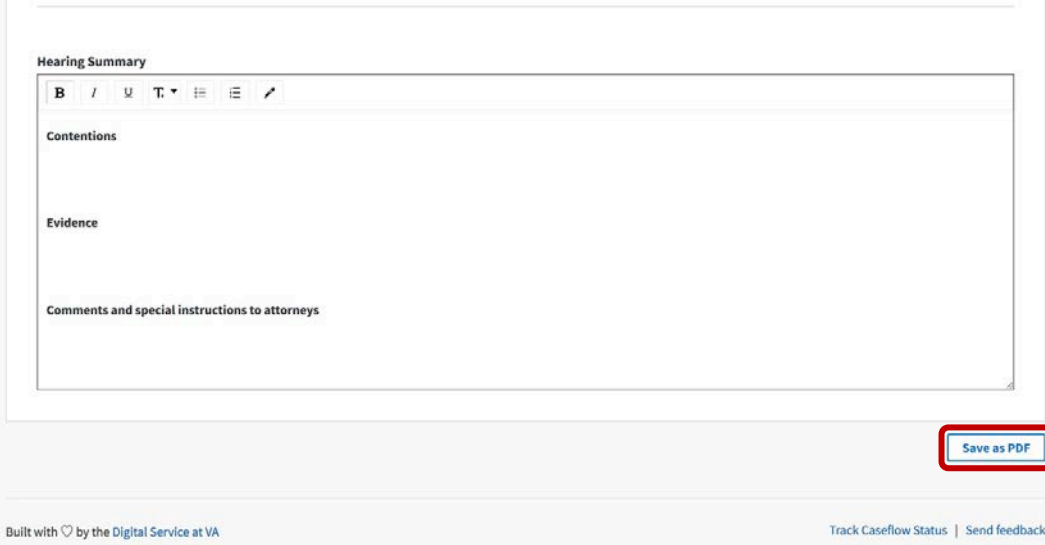
Figure 17 – Confirming the deletion of an issue in the “Delete Issue Row” dialog box

## Printing the Hearing Worksheet

The Hearing Worksheet may be saved as a PDF or printed, if required.

### *Saving the Hearing Worksheet as a PDF*

- Click **Save as PDF** located at the bottom right-hand corner of the Hearing Worksheet. A dialog box will display to allow you to select your option.



The screenshot shows a web form titled "Hearing Summary". It features a rich text editor with a toolbar containing icons for bold (B), italic (I), underline (U), text color (T), bulleted list, numbered list, and link. Below the editor are three sections: "Contentions", "Evidence", and "Comments and special instructions to attorneys". At the bottom right of the form, a button labeled "Save as PDF" is highlighted with a red rectangular box. The footer of the page includes the text "Built with ❤ by the Digital Service at VA" on the left and "Track Caseflow Status | Send feedback" on the right.

Figure 18 - Saving a Hearing Worksheet as a PDF

## Appendix A: Caseflow Hearing Prep User Training Guide

- Click **Save** to save your Hearing Worksheet as a PDF.

*Note: **Save as PDF** is the default print option.*

**Print**  
Total: 2 pages

**Save** Cancel

Destination: Save as PDF  
Change...

Pages: All  
e.g. 1-5, 8, 11-13

Margins: Default

Options: Background graphics

**Jared P. Magglo's Hearing Worksheet**

FILED: JUDGE WITH HEARINGS AND CASES: CO: REGIONAL OFFICE: Roanoke, VA: DATE: Feb 9/7/2018

**Appellant/Veteran Information**

VETERAN NAME: James P. Magglo	VETERAN ID: 620343864	AGE: 63	GENDER: Female
APPELLANT NAME: Chickahomoc Estate	CITY/STATE: Lindmouth, MI	REPRESENTATIVE ORG: Disabled American Veterans	

**Representative Name:** Elita Keeling  
**Witness (W)/Observer (O) and Additional Details:**

**Periods and circumstances of service:**  
Army 02/15/2002 - 12/21/2003, Honorable  
Navy 07/02/2006 - 06/28/2008, Under Honorable Conditions

**Procedural History**

19 Documents in Claims Folder

Appeal Stream 1: Document 4987945

Prior RIA Decision	06/13/2018	SSOC	06/05/1997, 01/05/2018
NOD	05/25/1996	Certification	01/05/2018
SDC	06/27/1996	Docs since Certification	19
Form 9	06/03/1996		

**Current Issues (3)** Prior Issues (5)

Issue	Notes	Disposition	Preliminary Impressions
1. Comp: 04 - Schedule 5202 - Humeral, other impairment of	Hum vertebrae connecticut modelae muscle connecticut end not open	Remanded 06/13/2018	No Open Allow Deny OHD
2. Comp: 04 - Schedule 5204 - Post injuries, other	Hum vertebrae connecticut modelae muscle connecticut end not open	Remanded 06/13/2018	No Open Allow Deny OHD
3. Comp: 04 - Schedule 6013 - Skulls, mandible, etc	Hum vertebrae connecticut modelae muscle connecticut end not open	Remanded 06/13/2018	No Open Allow Deny OHD

**Hearing Summary**  
Contentions

Evidence

J. Magglo, Page 1 of 2

Figure 19 - Hearing Worksheet Print dialog box



- Select the location where you would like to save your Hearing Worksheet.

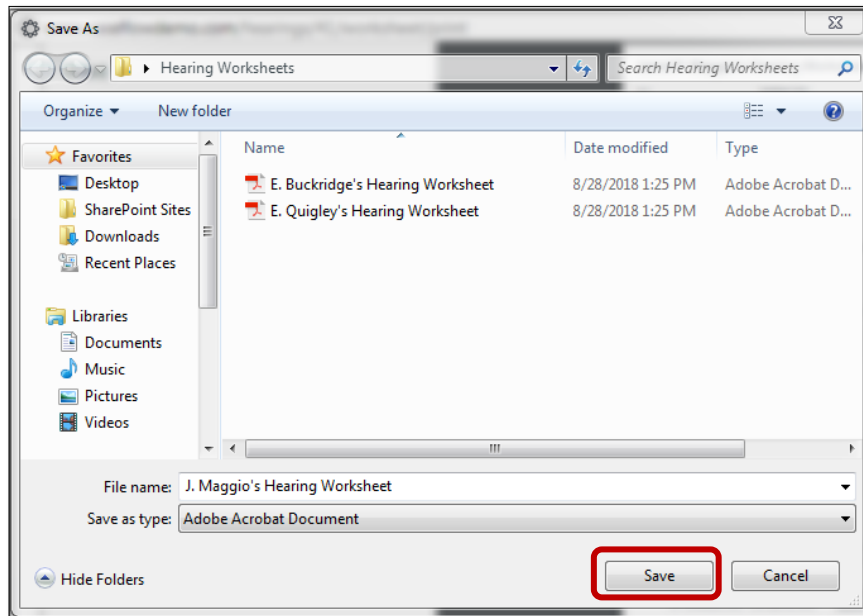


Figure 20 - Save As dialog box

### ***Printing the Hearing Worksheet***

- Click **Save as PDF** located at the bottom right-hand corner of the Hearing Worksheet.
- Click **Change...** when the Print dialog box appears, to change the selected print option.

## Appendix A: Caseflow Hearing Prep User Training Guide

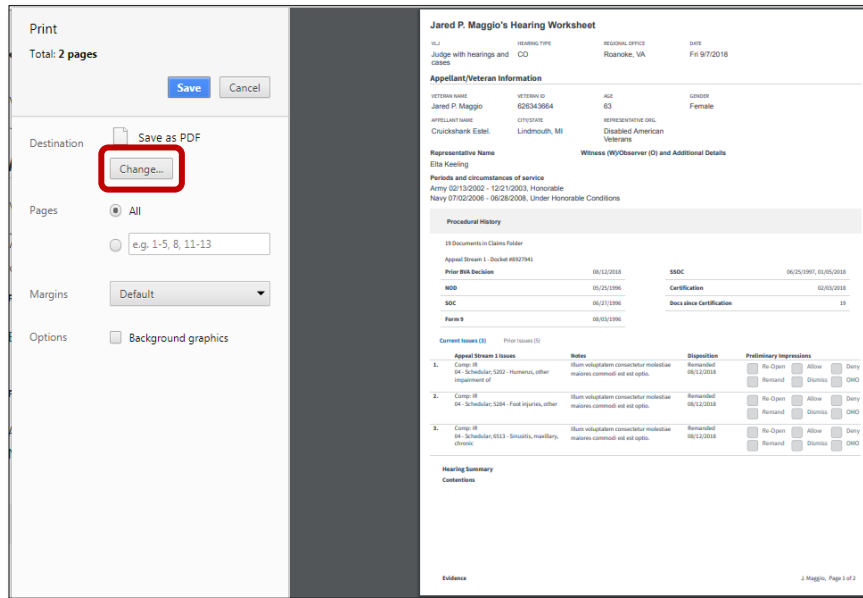


Figure 21- Hearing Worksheet Print dialog box

- Select the desired printer.

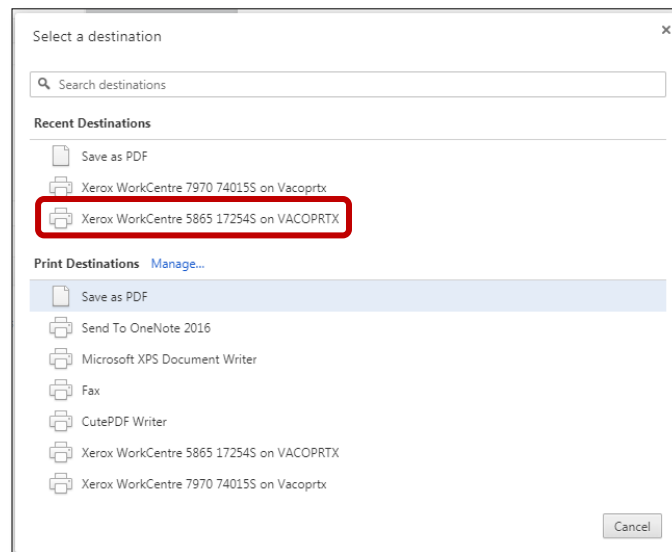


Figure 22 - Select a destination printer dialog box

## Appendix A: Caseflow Hearing Prep User Training Guide

- Click **Print** to print your Hearing Worksheet.

**Print**

Total: 1 sheet of paper (2 pages)

**Print** Cancel

Destination: Xerox WorkCentre 586...  
BLDG 425 RM 05W319  
Change...

Pages: ☒ All  
☐ e.g. 1-5, 8, 11-13

Copies:

Options: ☒ Two-sided

+ More settings

Print using system dialog... (Ctrl+Shift+P)

---

**Jared P. Maggio's Hearing Worksheet**

HEARING TYPE: Judge with hearings and issues  
REGIONAL OFFICE: CO Roanoke, VA  
DATE: Fri 9/7/2018

**Appellant/Veteran Information**

VETERAN NAME Jared P. Maggio	VETERAN ID 620343664	AGE 63	GENDER Female
APPELLANT NAME Clutchshank Esq.	CITY/STATE Lynchburg, VA	REPRESENTATIVE DOL Disabled American Veterans	

**Representative Name**  
Ella Keeling

**Witness (W)/Observer (O) and Additional Details**

Periods and circumstances of service  
Army 02/13/2002 - 12/21/2003, Honorable  
Navy 07/02/2006 - 06/28/2008, Under Honorable Conditions

**Procedural History**

19 Documents in Online Folder

Appeal Stream 1: Decided 09/07/2018

Prior WA Decision	08/12/2018	SDOC	06/25/2017, 01/05/2018
MOD	01/25/2018	Certification	01/05/2018
SOC	06/27/2018	Docs since Certification	19
Form 9	08/03/2018		

Current Issues (3) Prior Issues (0)

Appeal Stream 1 Issues	Notes	Significant	Procedural Progress
1. Comp-B 04 - Scheduler 1002 - Honors, other impaired of	Item redigitation connector modestiae matrons commed est est optio.	Remanded 06/12/2018	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO
2. Comp-B 04 - Scheduler 1004 - Post injuries, other	Item redigitation connector modestiae matrons commed est est optio.	Remanded 06/12/2018	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO
3. Comp-B 04 - Scheduler 0513 - Smalls, military, chronic	Item redigitation connector modestiae matrons commed est est optio.	Remanded 06/12/2018	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO

**Hearing Summary**

Contentions

Evidence

J. Maggio, Page 1 of 2

Figure 23 - Hearing Worksheet Print dialog box

## Reviewing a Veteran's claims folder

- Click the **Review claims folder** button located at the upper right-hand corner of the **Hearing Worksheet** page to begin reviewing the Veteran's claims folder in Caseflow Reader.

Select Veteran  
A Richardson (5 issues) ✓

☒ Hearing Prepped

Review claims folder

### Alexander Richardson's Hearing Worksheet

VJ	HEARING TYPE	REGIONAL OFFICE	DATE
Sarah Sanderson	Video	Sioux Qty, IA	03/09/2017

#### Veteran/Appellant information

VETERAN NAME	VETERAN ID	AGE	GENDER
Alexander Richardson	123456789	84	Male
APPELLANT NAME	CITY/ STATE		
Jane Doe	Cincinnati, OH		
Representative Name	Representing Org.		
	Veterans of Foreign Wars		
Additional Notes	Witness (W)/Observer (O)		
Periods and circumstances of service	Army 02/01/1980 - 09/03/86; Honorable Discharge Purple Heart		

#### Procedural History

233 Documents in claims folder

Appeal Stream 1 - Docket #1234567 DIC			
Prior BVA Decision	01/01/1990	SSOC	01/07/1990
NOD	01/03/1990	Certification	02/12/2016
SOC	01/04/1990	Docs Since Certification	22
Form 9	01/05/1990		
Appeal Stream 1 - Docket #1234568			
Prior BVA Decision	01/01/1990	SSOC	01/01/1992
NOD	01/09/1990	Certification	02/12/2016
SOC	01/09/1991	Docs Since Certification	12
Form 9	01/11/1991		

Current Issues (5)

Prior Issues (3)

Appeal Stream 1	Notes	Disposition	Preliminary Impressions
1. Comp: SC All Others, 5010 - Arthritis, due to trauma	Right elbow; Rated at 30% on 03/16/2016	Remanded 12/09/17	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO
2. Education: Extension of Delimiting Date 0138 U.S.C. ch. 30		Remanded 12/09/17	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO
Appeal Stream 2	Notes	Disposition	Preliminary Impressions
3. Pension: Increased rate for Dependents 03 Recognized Service		Remanded 12/09/17	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO
4. Comp: IR All Others, 7959- Other hemic or lymphatic system disability	castleman's	Remanded 12/09/17	<input type="checkbox"/> Re-Open <input type="checkbox"/> Allow <input type="checkbox"/> Deny <input type="checkbox"/> Remand <input type="checkbox"/> Dismiss <input type="checkbox"/> OMO

+ Add Issue

Figure 24 - Reviewing a claims folder from the Hearing Worksheet in Hearing Prep

## Case Summary

You are now on the **Claims Folder** page in Caseflow Reader. The Claims Folder displays all the documents in a Veteran's file. By default, the document relevant to Hearing Prep will be filtered on the yellow, Case Summary category. The list includes:

- BVA Decision
- Notice of Disagreement
- Statement of Case
- VA 9 Appeal to Board of Appeals
- Rating Decision Narrative
- Rating Decision Codesheet
- Supplement Statement of Case
- VA8 Certification of Appeal
- DD Form 214 – Certificate of Release or Discharge from Active Duty
- VA 21-526EZ - Fully Developed Claim (Compensation)
- VA 21-527EZ - Fully Developed Claim (Pension)
- VA 21-22 Appointment of Veterans Service Organization as Claimant's Representative
- VA 21-22a Appointment of Individual as Claimant's Representative
- Hearing Transcript
- and any document added in the last 30 days.

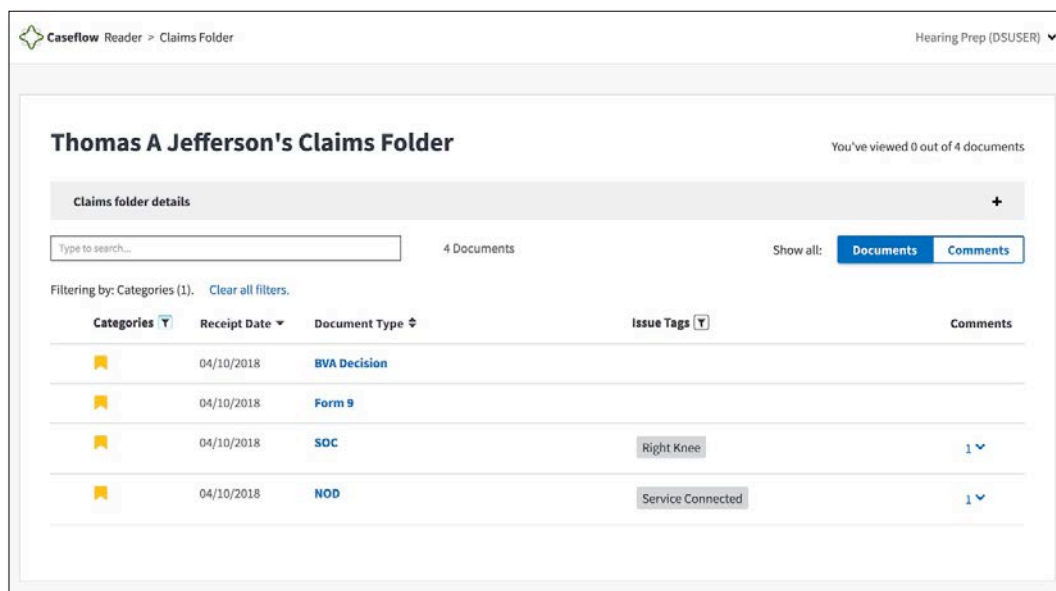


Figure 25 – Cases Summary category in Caseflow Reader

To see all of the documents in the claims folder, click “Clear all filters”.

*Note: Clearing all filters will not remove the Case Summary flag from documents in that category.*

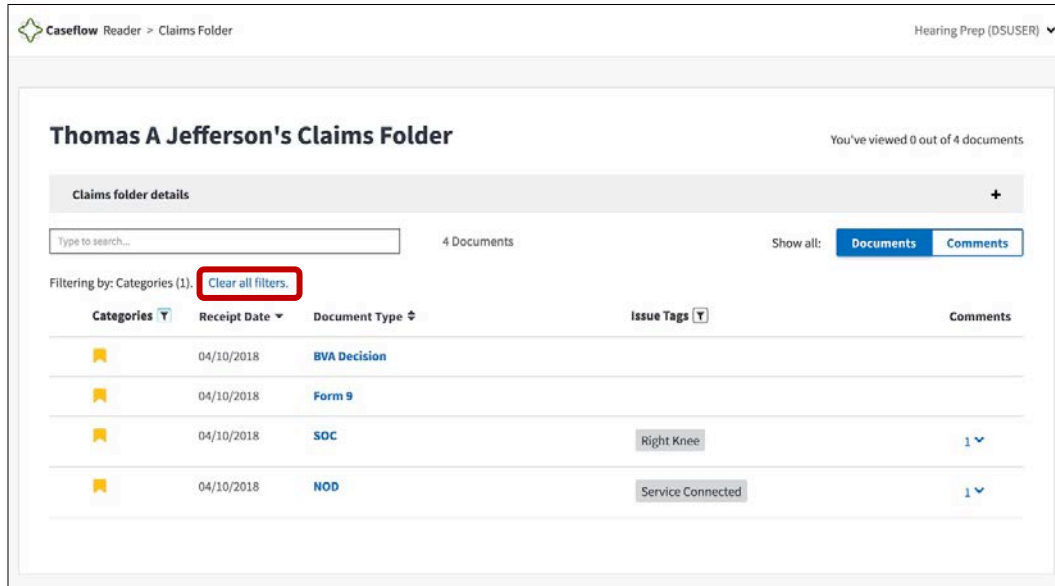


Figure 26 - Clearing all filters to view the Veteran's entire Claims Folder in Caseflow Reader

- To return to the Case Summary filtered Document list, select *Case Summary* from the **Category** list.

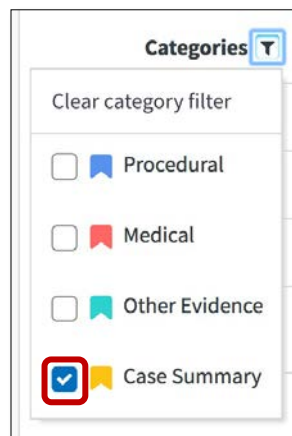


Figure 27 - Filtering Veteran's Claims Folder by Categories

## Feedback and Support

The Caseflow Team is always open to learn about your experience with Hearing Prep. This includes things you like, things you dislike, and feature you would like to see added. You may also ask questions when you need help.

### To Provide Feedback

- Click on username dropdown arrow.
- Select “Send Feedback”.
- Complete Feedback form with your comment or feedback and contact email.
- Click **Send Feedback** button.

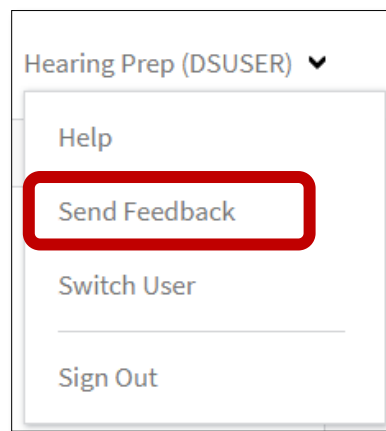


Figure 28 - Selecting "Send Feedback" from the dropdown menu next to username

*Note: A “Send Feedback” link may also be found at the bottom of each page.*

If you experience technical issues or need more support, please contact the Caseflow Product Support Team at [caseflow@va.gov](mailto:caseflow@va.gov) or 1-844-876-5548 (Monday through Friday, 8am-8pm EST).

## Caseflow Status Page

The Caseflow Status Page provides the operational status for all Caseflow applications, from Reader to Queue, at a glance. To view the Caseflow Status Page, type, or copy and paste, the URL (<https://caseflow.statuspage.io/>) into your web browser and click [Enter] on your keyboard. You can stay abreast of the operational status of Caseflow applications by clicking the **Subscribe to Updates** button on the Caseflow Status Page.

**Caseflow - Status page**

[SUBSCRIBE TO UPDATES](#)

**All Systems Operational** Refreshed about 1 minute ago

**About This Site**

Welcome to Caseflow's StatusPage.

If you're currently experiencing an issue with Caseflow and wish to reach out for service, you send us an email at [caseflow@va.gov](mailto:caseflow@va.gov) or 1-844-876-5548

Caseflow - Reader	Operational
Caseflow - Certification	Operational
Caseflow - Intake	Operational
Caseflow - Hearing Prep	Operational
Caseflow - Efolder Express	Operational
Caseflow - Dispatch	Operational
Caseflow - Queue	Operational

Figure 29 - Caseflow Status Page



You may also access the Caseflow Status Page by clicking the “Track Caseflow Status” link located on the bottom right-hand corner of the page of any Caseflow application.



Figure 30 - "Track Caseflow Status" link



**CASEFLOW**

Reader

User Training Guide



**DIGITAL SERVICE at VA**

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## Appendix B: Caseflow Reader User Training Guide

Revision Date	Summary of Changes	Version	Author
April 2018	Initial Release	1	
May 2018	Added Queue screenshots to reflect current state of Reader	2	
July 2018	Added note to explain who could view comments in Reader	3	

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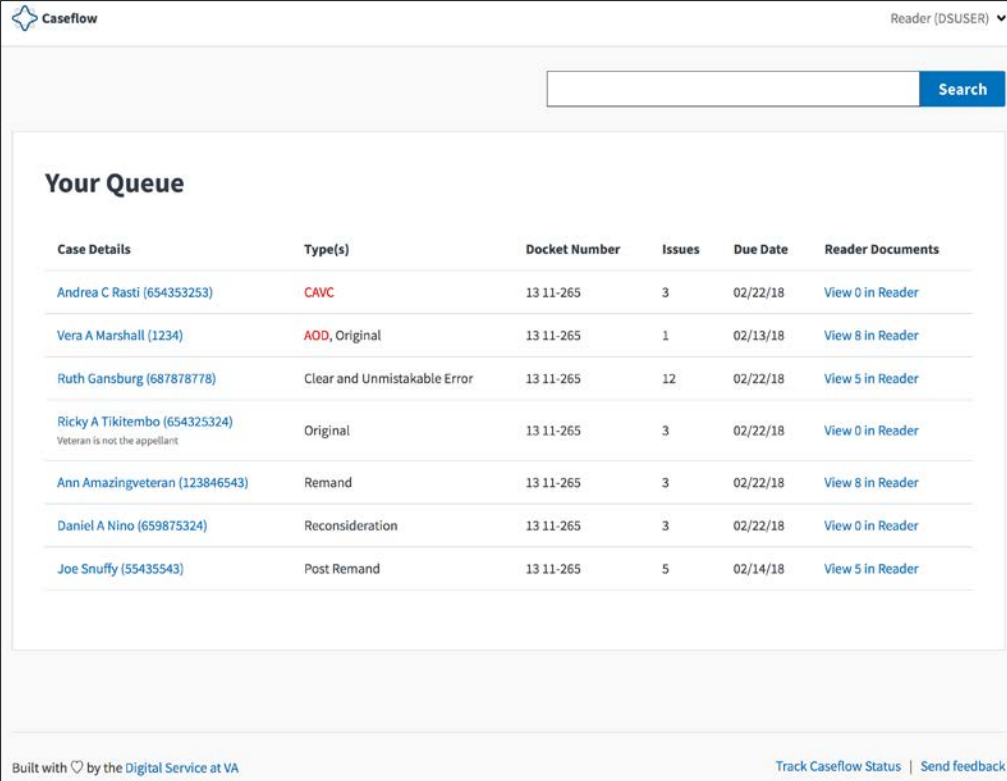
## Introduction

Caseflow Reader (Reader) is a web-based tool for reviewing and annotating appellants' claims folders. It allows you to navigate through all of the documents associated with a Veteran's appeal and to add categories, issue tags, and comments for fast and easy evidence review. Reader was built by the Digital Service at VA (DSVA) and will create cost savings and process improvements for many areas of the VA.

## Accessing and Using Reader

### Signing into Reader

5. Connect to the VA network.
6. Using your Google Chrome browser, navigate to <http://appeals.cf.ds.va.gov/reader/appeal>.
7. Sign in using your VA credentials.
8. The **Your Queue** page will show all of the cases currently checked in to you.



Case Details	Type(s)	Docket Number	Issues	Due Date	Reader Documents
Andrea C Rasti (654353253)	CAVC	13 11-265	3	02/22/18	<a href="#">View 0 in Reader</a>
Vera A Marshall (1234)	AOD, Original	13 11-265	1	02/13/18	<a href="#">View 8 in Reader</a>
Ruth Gansburg (687878778)	Clear and Unmistakable Error	13 11-265	12	02/22/18	<a href="#">View 5 in Reader</a>
Ricky A Tikitembo (654325324) Veteran is not the appellant	Original	13 11-265	3	02/22/18	<a href="#">View 0 in Reader</a>
Ann Amazingveteran (123846543)	Remand	13 11-265	3	02/22/18	<a href="#">View 8 in Reader</a>
Daniel A Nino (659875324)	Reconsideration	13 11-265	3	02/22/18	<a href="#">View 0 in Reader</a>
Joe Snuffy (55435543)	Post Remand	13 11-265	5	02/14/18	<a href="#">View 5 in Reader</a>

Figure 31- Your Queue page

## Access Error in Chrome

If this is your first-time logging into Reader, you may receive a “**Your connection is not private**” warning. This is because the URL is triggering a “**Certificate Authority Invalid**” error. To bypass the error, complete the following steps:

- Click the **Advanced** link, located on the bottom left-hand side of the page. A **Proceed to (URL (unsafe))** option will be displayed.
- Click the **Proceed to (website (unsafe))** option and you will be taken to the Reader Welcome page.

## Appendix B: Caseflow Reader User Training Guide

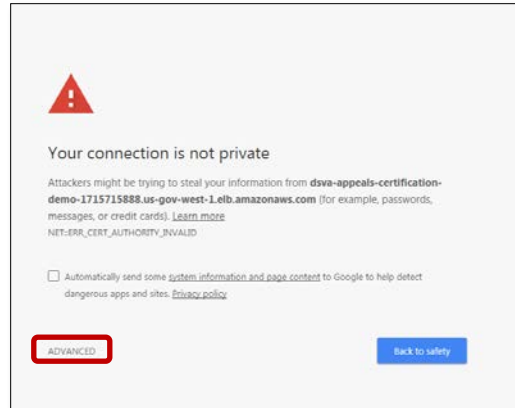


Figure 32 - Chrome "Certification Authority Invalid" error

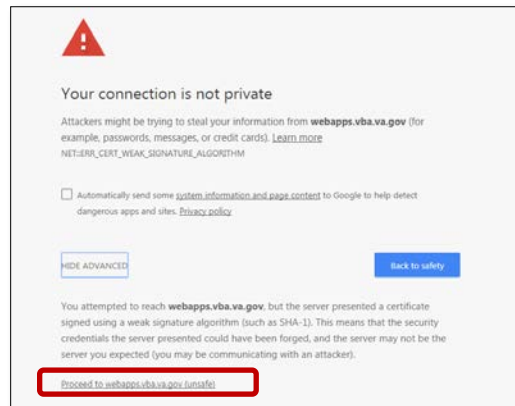


Figure 33 - Chrome "Certificate Authority Invalid" error Advanced screen

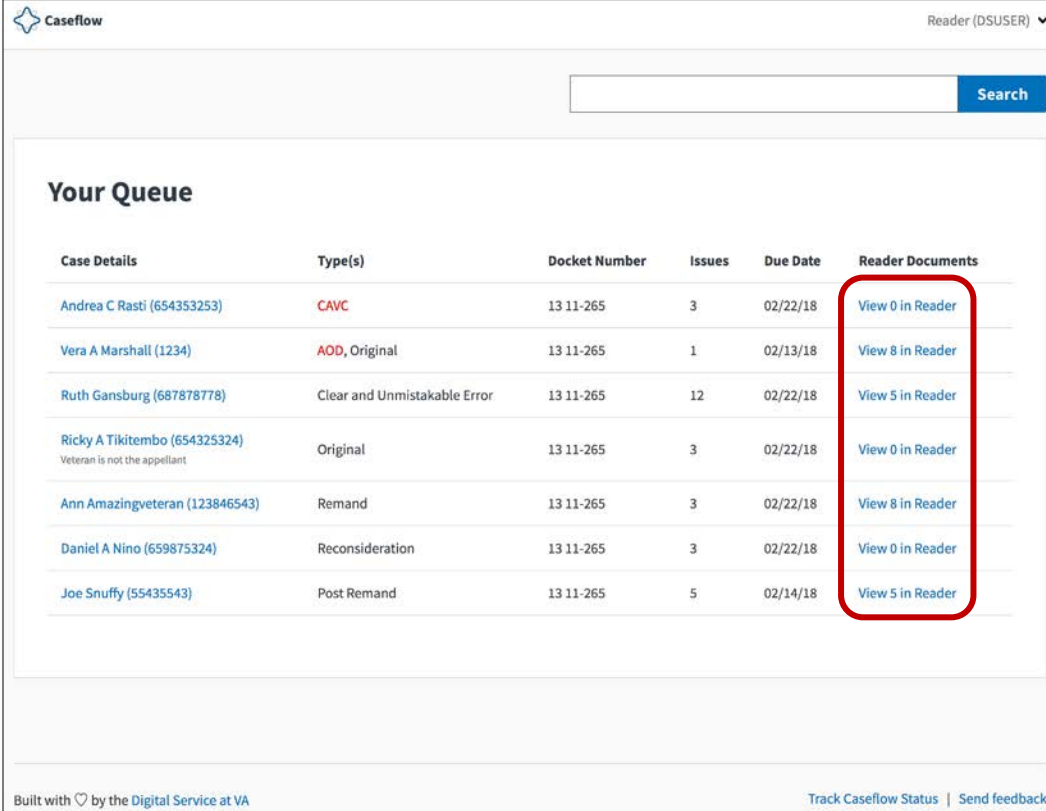
**NOTE: Proceeding to the Reader website does not affect your system's vulnerability.**

## Viewing a Claims Folder

- Under the **Reader Documents** column, click the "View X in Reader" link to review a case in Reader.

**NOTE: "X" represents the number of documents.**

## Appendix B: Caseflow Reader User Training Guide



Caseflow Reader (DSUSER)

Search

### Your Queue

Case Details	Type(s)	Docket Number	Issues	Due Date	Reader Documents
Andrea C Rasti (654353253)	CAVC	13 11-265	3	02/22/18	<a href="#">View 0 in Reader</a>
Vera A Marshall (1234)	AOD, Original	13 11-265	1	02/13/18	<a href="#">View 8 in Reader</a>
Ruth Gansburg (687878778)	Clear and Unmistakable Error	13 11-265	12	02/22/18	<a href="#">View 5 in Reader</a>
Ricky A Tikitembo (654325324) <small>Veteran is not the appellant</small>	Original	13 11-265	3	02/22/18	<a href="#">View 0 in Reader</a>
Ann Amazingveteran (123846543)	Remand	13 11-265	3	02/22/18	<a href="#">View 8 in Reader</a>
Daniel A Nino (659875324)	Reconsideration	13 11-265	3	02/22/18	<a href="#">View 0 in Reader</a>
Joe Snuffy (55435543)	Post Remand	13 11-265	5	02/14/18	<a href="#">View 5 in Reader</a>

Built with by the Digital Service at VA

[Track Caseflow Status](#) | [Send feedback](#)

Figure 34 – Your Queue page with Reader Documents column highlighted

**NOTE:** The “Open documents in Caseflow Reader” link may also be accessed from the Appeal Details page.



Caseflow Queue System Admin (DSUSER)

< Back to your queue

### Draft Decision - Vera A Marshall (111112)

Assigned to you by Joe A Snuffy on 05/17/13. Due 02/13/18.

[Open documents in Caseflow Reader](#)

[Appeal](#) Appellant (Vera A Marshall)

### Appeal Summary

Figure 35 - Appeal Details page with “Open documents in Caseflow Reader” highlighted



## Navigating the Claims Folder Page

Once you've chosen an appeal, you will be taken to the Claims Folder page. The documents in the claims folder will be sorted newest to oldest by default.

- Click on the column headers to sort by Receipt Date or Document Type.

**NOTE: Initially, the documents will appear in bold font. Once viewed, the documents will appear in regular font.**

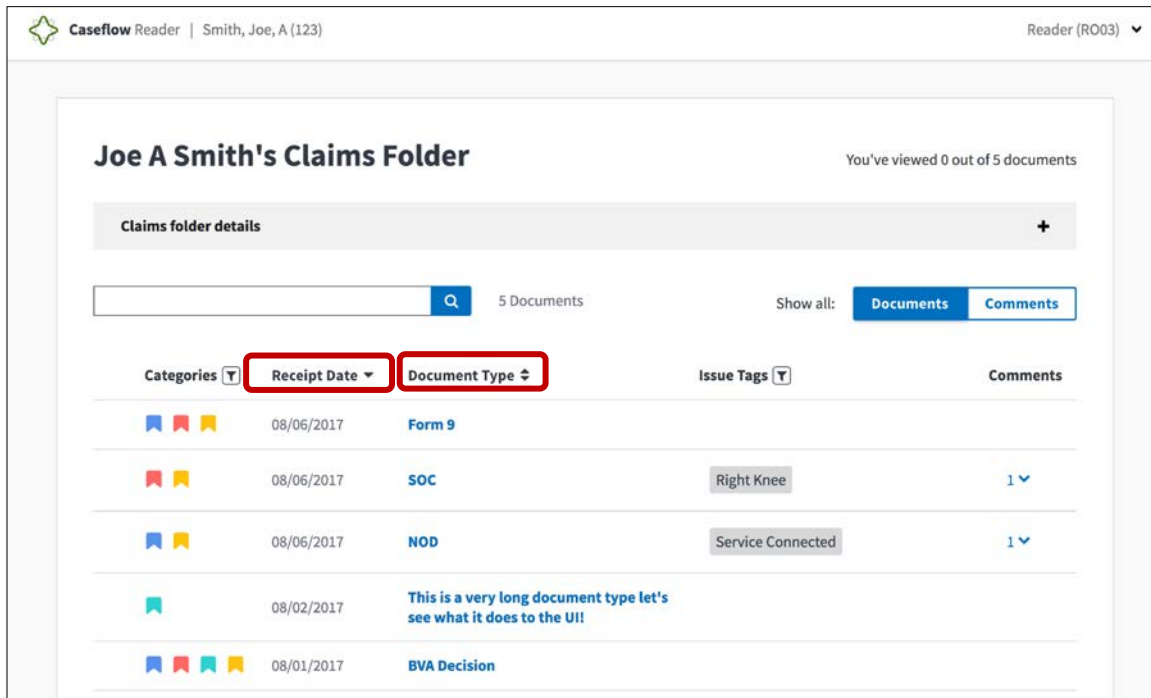
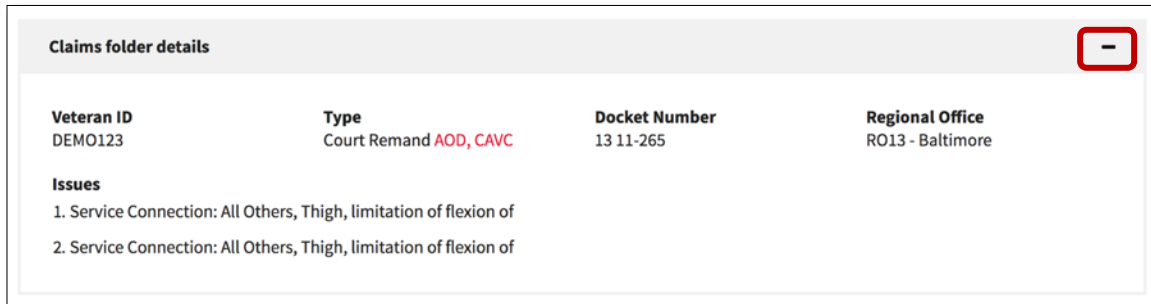


Figure 36 - Veteran's Claims Folder

## Displaying Claims Folder Details

The **Claims folder details** include the Veteran ID, Type, Docket Number, Regional Office, and Issues as listed in VACOLS.

- Click the “+” or “-” to expand or collapse the **Claims folder details**.



Claims folder details			
<b>Veteran ID</b> DEMO123	<b>Type</b> Court Remand AOD, CAVC	<b>Docket Number</b> 13 11-265	<b>Regional Office</b> RO13 - Baltimore
<b>Issues</b>			
1. Service Connection: All Others, Thigh, limitation of flexion of			
2. Service Connection: All Others, Thigh, limitation of flexion of			

Figure 37 - Claims folder details

## Searching

- Click inside the search bar to search for documents by issues tags, comment text, document description, and document metadata from VBMS (such as Receipt Date or Document Type).

**NOTE:** Currently, you cannot search for document text from the main search bar, but you can still use “Ctrl + f” on an open document to search its contents (if the document was scanned using character recognition).

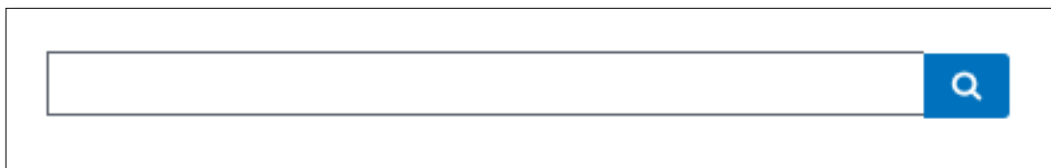


Figure 38 - Search bar

## Viewing Comments

- Click the **Comments** button to view all documents with comments. Their comments will be expanded for easy viewing.
- Click **Jump to section** to go to the section of the document containing the comment.

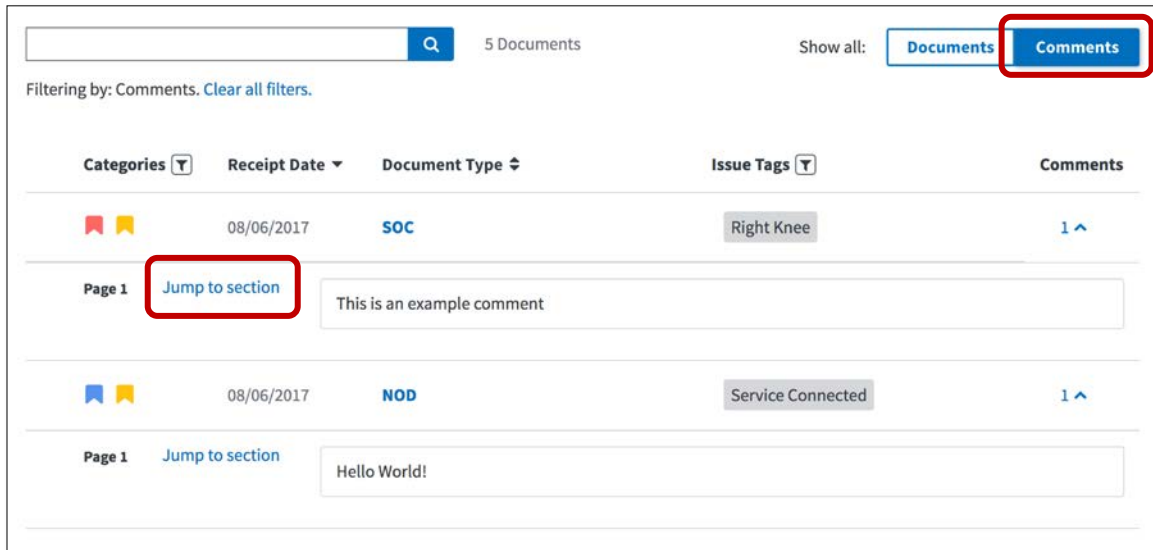


Figure 39 - Veteran's Claim Folder sorted by Comments

**NOTE:** Click the dropdown arrow next to the number under the Comments column to expand comments individually.

## Filtering by Categories

- Click the funnel icon and the desired categories to filter documents by one or more categories.

**NOTE:** The Case Summary category is predefined for hearing related documents and cannot be changed. The list includes:

the BVA Decision  
 Notice of Disagreement  
 Statement of Case,  
 VA 9 Appeal to Board of Appeals  
 the Rating Decision Narrative  
 the Rating Decision Codesheet  
 Supplement Statement of Case  
 VA8 Certification of Appeal

***DD Form 214 – Certificate of Release or Discharge from Active Duty  
VA 21-526EZ - Fully Developed Claim (Compensation)  
VA 21-527EZ - Fully Developed Claim (Pension)  
VA 21-22 Appointment of Veterans Service Organization as Claimant's Representative  
VA 21-22a Appointment of Individual as Claimant's Representative  
Hearing Transcript  
and any document added in the last 30 days.***

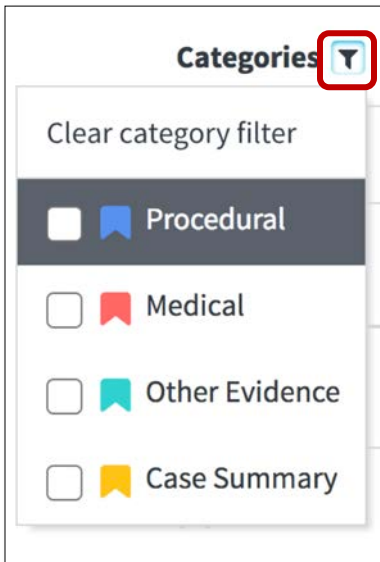


Figure 40 - Categories menu

### ***Filtering by Issues Tags***

- Click the funnel icon and the desired issue tag(s) to filter documents by one or more issue tags.

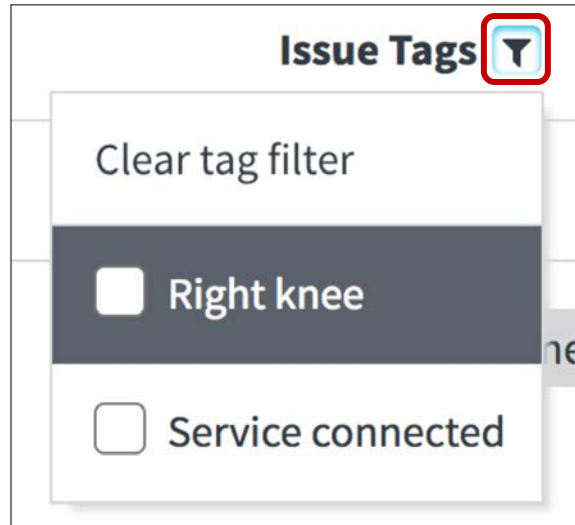


Figure 41 - Issue tag menu

### ***Sorting by Receipt Date or Document Type***

- Click the arrow next the column heading to sort documents in ascending or descending order by Receipt Date or Document Type.



Figure 42 - Column heading sort option

## Reviewing Documents

- Click the document title of the document you wish to review (e.g. NOD) to begin reviewing the document. You will be taken to the Document Viewer.

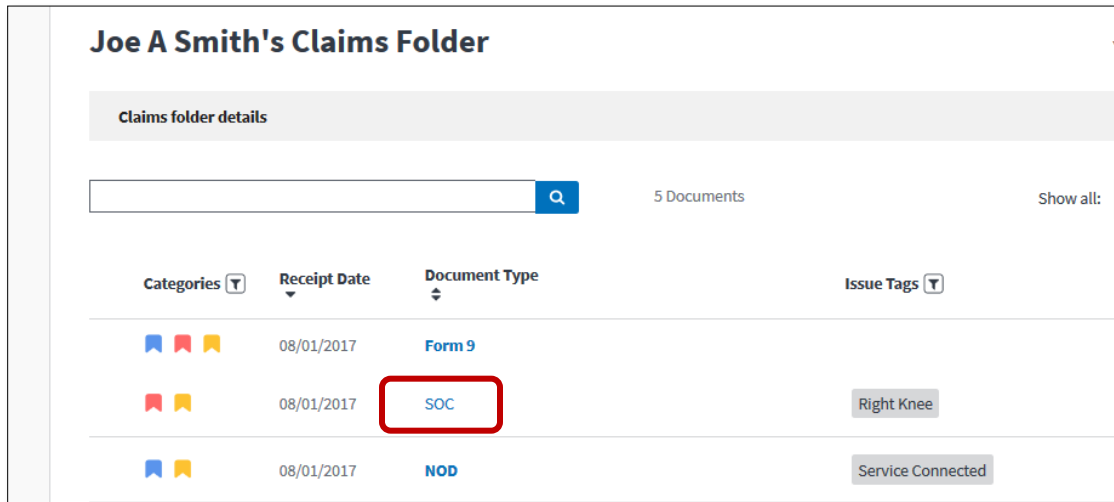


Figure 43 - Selecting a document to review in the Claims Folder

- The Document Viewer allows you to review the document, edit the document description, add categories, add issue tags, add comments, and move between documents in the claims folder.

**NOTE:** The sections in the side menu may be collapsed or expanded by clicking the “-” or the “+” next to the heading.

## Appendix B: Caseflow Reader User Training Guide

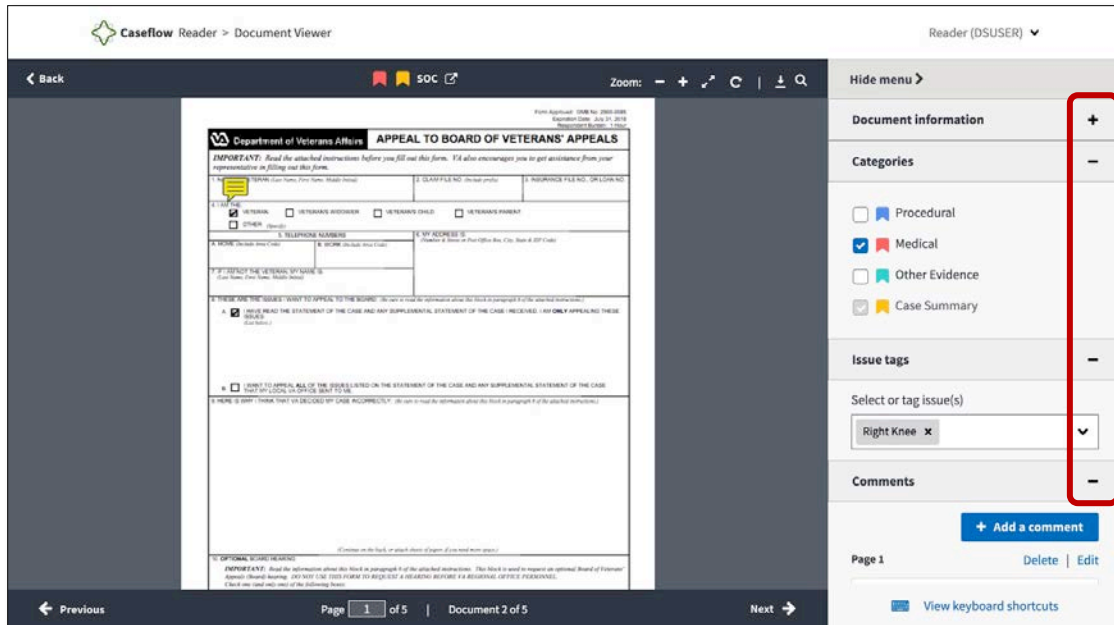


Figure 44 - Document Viewer menu

### Navigating a Document

Navigate through the document by clicking with the mouse or using the available keyboard shortcuts (for example: use the left and right arrows to move between documents, and the up and down arrows to scroll within a document).

- Click **View keyboard shortcuts** located in the bottom right-hand corner of the Document Viewer Menu to access the list of keyboard shortcuts.

## Appendix B: Caseflow Reader User Training Guide

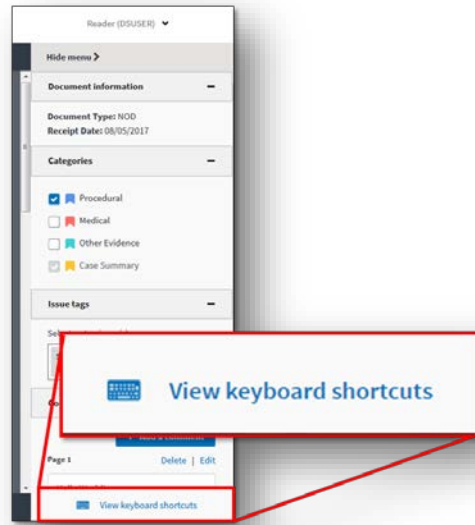


Figure 45 - "View keyboard shortcuts" link

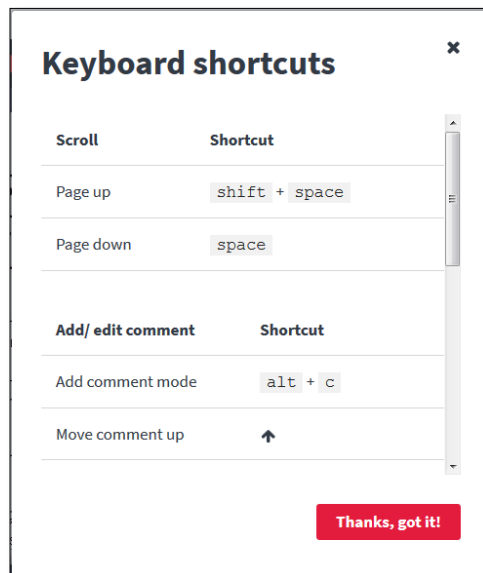


Figure 46 - Keyboard shortcuts



## Scrolling Through the Document

- Click on the scroll bar to the right of the document and drag it up or down to scroll through the document. You may also scroll through the document by using the up or down arrow keys on the keyboard.

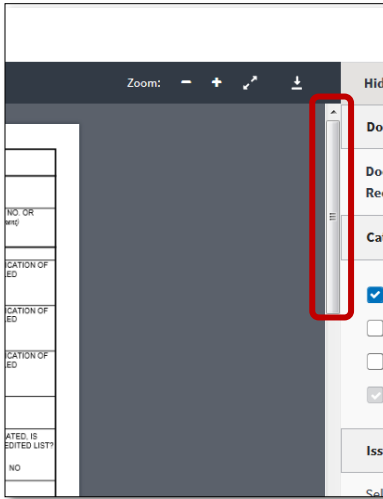


Figure 47 - Document Viewer scroll bar

## Viewing the Next Document in the Claims Folder

- Click the **Next** or **Previous** buttons at the bottom of the Document Viewer to view the next document in the claims folder.

**NOTE:** You may also click the right or left arrow on the keyboard to view the next or previous document in the claims folder. Or, click the “Back” button at the top left-hand corner of the Document Viewer and select the desired document from the Document List page.



Figure 48 - Document navigation bar

## Viewing the Document in a New Tab

- Click on the document title at the top of the Document Viewer to view the document in a new (separate) tab.



Figure 49 - Opening document in a separate tab

## Editing the Document Description

The Document Description allows you to add a description to any document in the claims folder. The Document Description can be edited in Document Information section of the Document Viewer.

- Click the “+” next to the **Document Information** on the Document Viewer menu to open the Document Information.

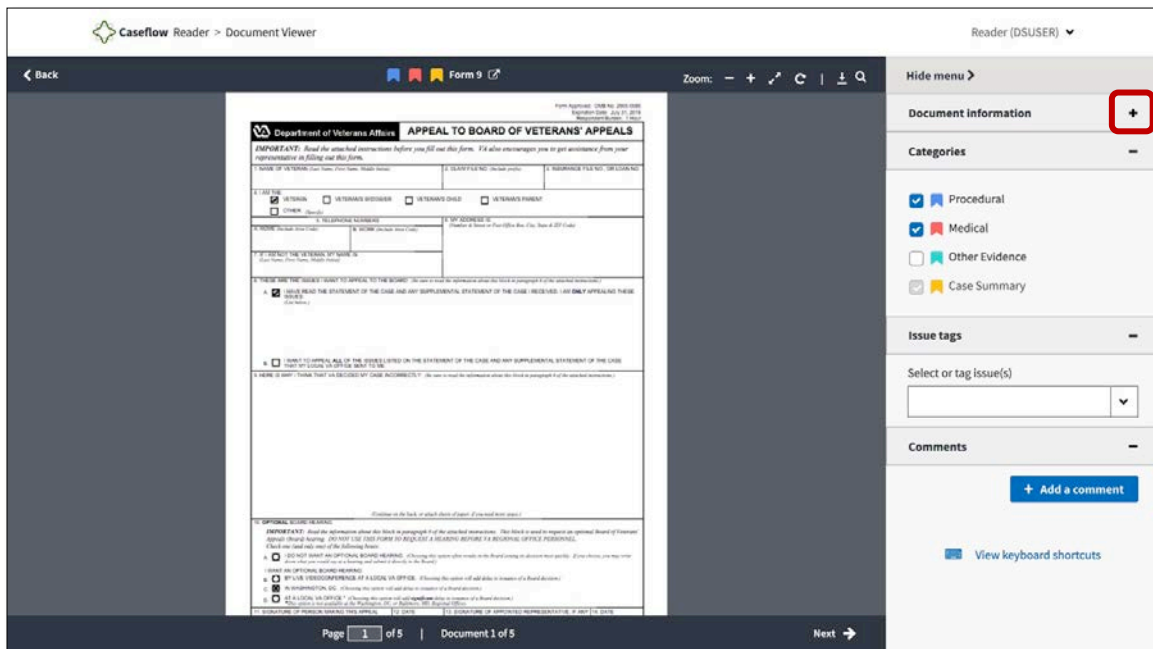


Figure 50 - Document Viewer

## Appendix B: Caseflow Reader User Training Guide

- Once the Document Information displays, click **Edit** next to Document Description.

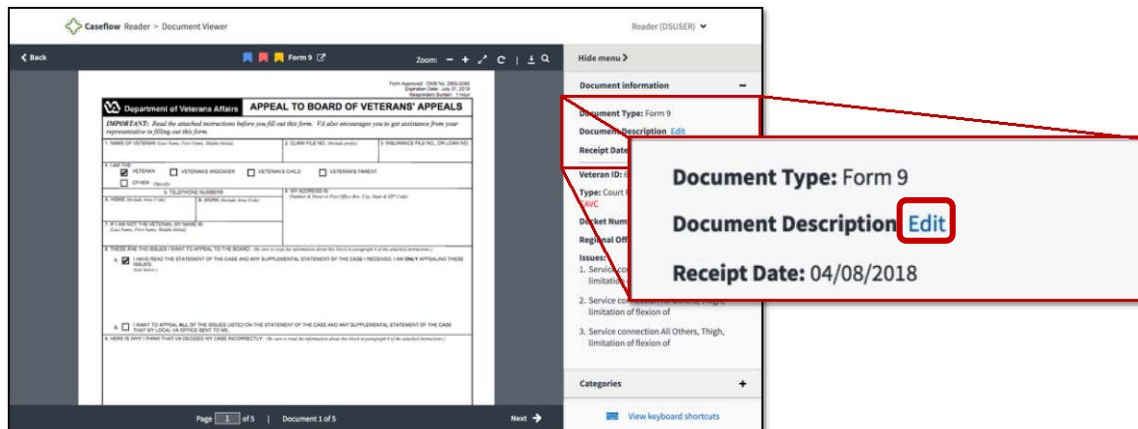


Figure 51 - Document Information box

- Type the desired description into the dialog box and click Save.

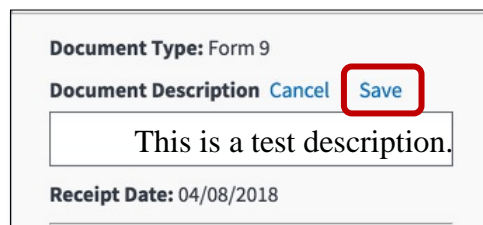


Figure 52 – Adding a Document Description

**NOTE: There is no character limit for the Document Description.**

The new document description will appear below **Document Description** in the Document Information section of the Document Viewer Menu.

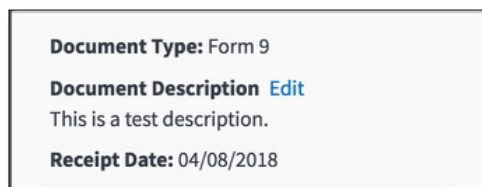


Figure 53 - Document Information with adding Document Description

## Appendix B: Caseflow Reader User Training Guide

The new document description can be viewed in the document list of the Claims Folder page, below the Document Type.

**Joe Snuffy's Claims Folder** You've viewed 1 out of 5 documents

Claims folder details +

Type to search... 5 Documents Show all: Documents Comments

Categories <span>Y</span>	Receipt Date <span>▼</span>	Document Type <span>↕</span>	Issue Tags <span>Y</span>	Comments
<span>▶</span> <span>📌</span> <span>📌</span> <span>📌</span>	04/08/2018	<b>Form 9</b> This is a test description.		
<span>📌</span> <span>📌</span>	04/08/2018	<b>SOC</b>	Right Knee	1 <span>▼</span>
<span>📌</span> <span>📌</span>	04/08/2018	<b>NOD</b>	Service Connected	1 <span>▼</span>
<span>📌</span> <span>📌</span>	04/04/2018	<b>This is a very long document type let's see what it does to the UI!</b>		
<span>📌</span> <span>📌</span> <span>📌</span> <span>📌</span>	04/03/2018	<b>BVA Decision</b>		

Last VBMS retrieval: 04/11/18 11:59am EDT  
Last VVA retrieval: 04/11/18 11:59am EDT

Figure 54 - Veteran's Claims Folder highlighting Document Description

## Adding a Category to a Document

Categories are used to identify documents as Procedural, Medical, Other Evidence, or Case Summary.

- Click the desired category within the **Categories** section of the Document Viewer Menu to add a **Procedural**, **Medical**, or **Other Evidence** category to a document.

**NOTE:** The Case Summary category is predefined for a specific set of documents and cannot be changed. The list includes:

*the BVA Decision*

*Notice of Disagreement*

*Statement of Case,*

*VA 9 Appeal to Board of Appeals*

*the Rating Decision Narrative*

*the Rating Decision Codesheet*

*Supplement Statement of Case*

*VA8 Certification of Appeal*

*DD Form 214 – Certificate of Release or Discharge from Active Duty*

*VA 21-526EZ - Fully Developed Claim (Compensation)*

*VA 21-527EZ - Fully Developed Claim (Pension)*

*VA 21-22 Appointment of Veterans Service Organization as Claimant's Representative*

*VA 21-22a Appointment of Individual as Claimant's Representative*

*Hearing Transcript*

*and any document added in the last 30 days.*

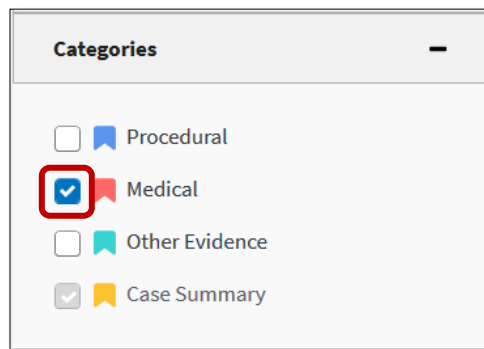


Figure 55 - Categories menu

## Adding Issue Tags to a Document

Issue Tags are used to identify issues associated with a document.

- Click in the box in the **Issue tags** section of the Document Viewer Menu to add an issue tag to a document.
- Type in a new issue tag and press Enter, or select an existing issue tag from the dropdown menu.

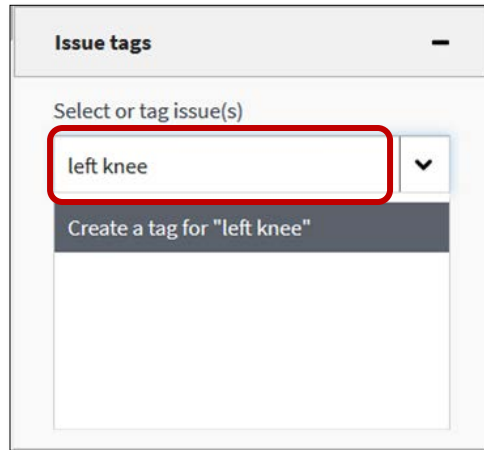


Figure 56 - Adding an Issue tag

## Adding, Deleting, and Editing Comments within a Document

Comments are used to add detailed notes to a document during review. The Comment may be placed next to the information you wish to reference in the document.

### *Adding a Comment*

- Click the **Add a comment** button and click the desired comment location within the document (indicated by the comment icon) to add a comment to a document.

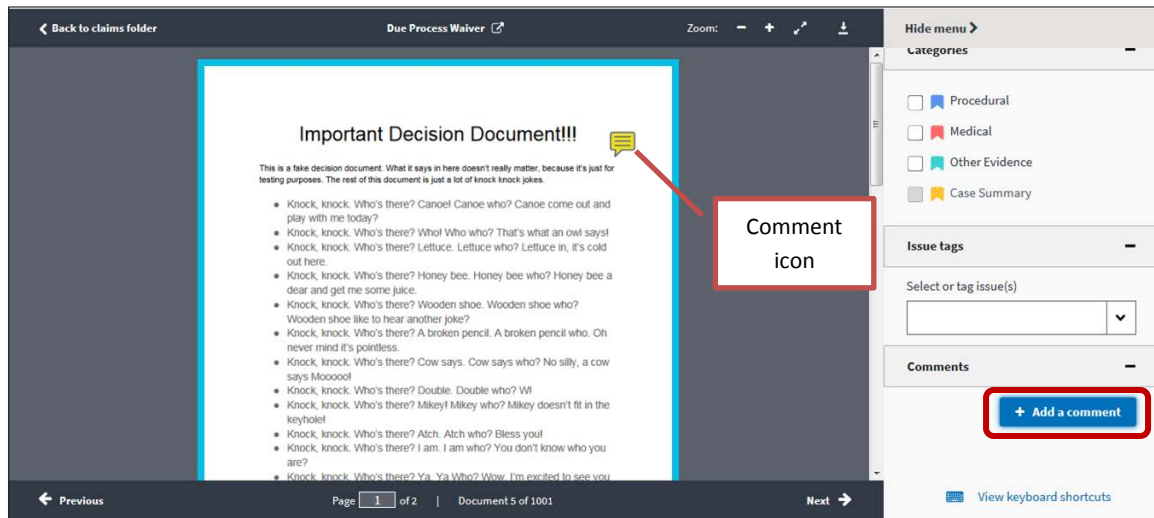


Figure 57 – Adding a Comment from the Document Viewer

- Type the date and the desired comment into the dialog box within the **Comments** section of the Document Viewer Menu. Click the **Save** button to save the comment.

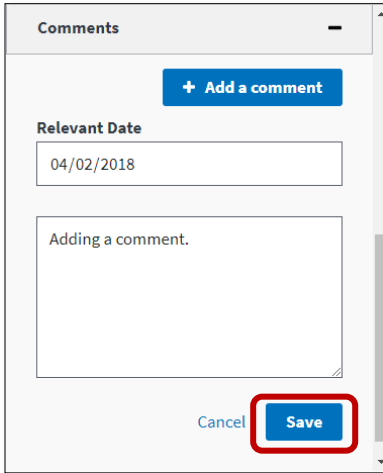
A screenshot of a 'Comments' modal window. At the top, there's a title bar with the word 'Comments' and a minus sign. Below the title bar is a blue button with a plus icon and the text '+ Add a comment'. Underneath is a 'Relevant Date' label followed by a text input field containing '04/02/2018'. Below the date field is a large text area with the placeholder text 'Adding a comment.'. At the bottom of the modal, there are two buttons: 'Cancel' and 'Save'. The 'Save' button is highlighted with a red rectangular box.

Figure 58 - Adding a Comment

### ***Deleting a Comment***

- Locate the comment you wish to delete in the **Comments** section of the Document Viewer Menu and click the **Delete** button above the comment to delete the comment.

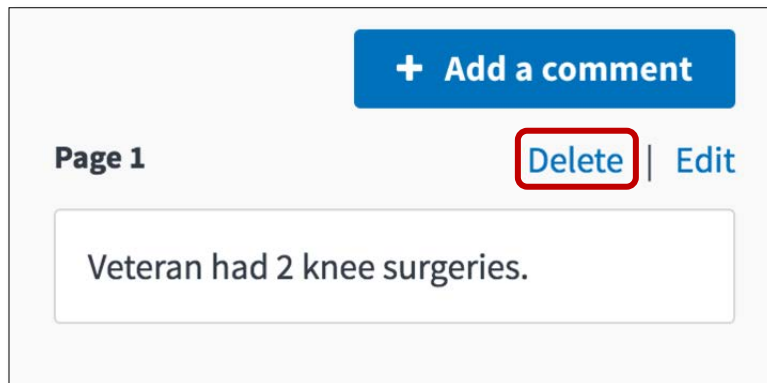
A screenshot of a comment in the Document Viewer Menu. At the top, there's a blue button with a plus icon and the text '+ Add a comment'. Below it, on the left, is the text 'Page 1'. On the right, there are two buttons: 'Delete' and 'Edit'. The 'Delete' button is highlighted with a red rectangular box. Below the buttons is a text input field containing the text 'Veteran had 2 knee surgeries.'

Figure 59 - Deleting a Comment

- Click the **Confirm delete** button to confirm the deletion of the comment.



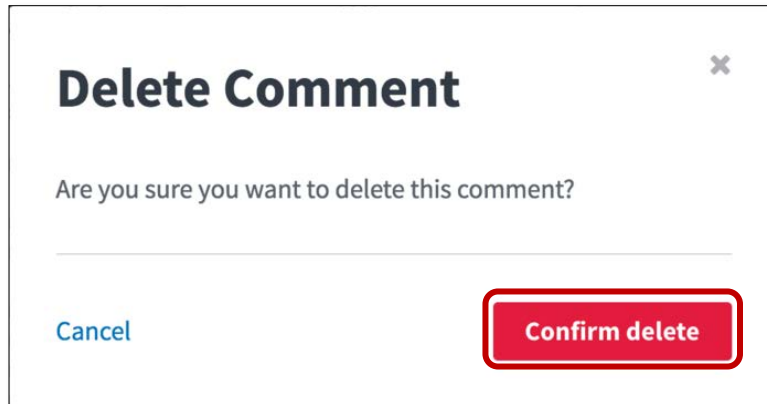


Figure 60 - Delete Comment confirmation

## ***Editing a Comment***

- Locate the comment you wish to edit in the **Comments** section of the Document Viewer Menu and click the **Edit** button above the comment to edit the comment.

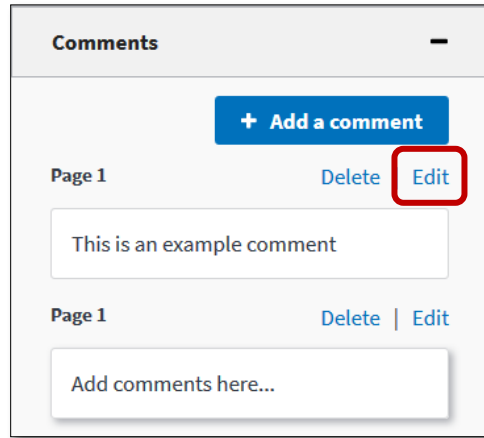


Figure 61 - Editing a Comment

- Make the desired changes to the comment and click the **Save** button.

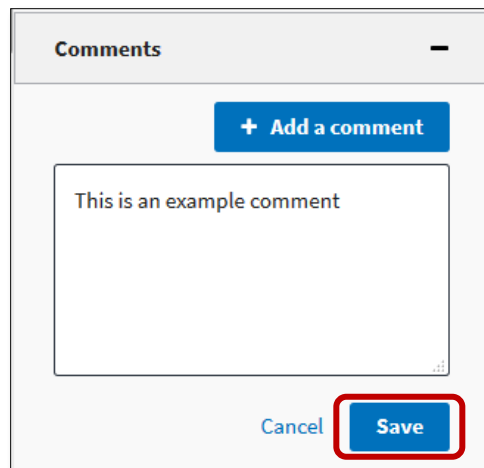


Figure 62 - Saving a Comment

***NOTE: Any member of Board Staff who has access to Reader may view, add, delete, or edit comments attached to a document in Reader.***

## Document Toolbar

- Click the desired icon on the Document Toolbar, in the upper right-hand corner of the Document Viewer, to zoom in, zoom out, fit-to-page, rotate, or download a document.

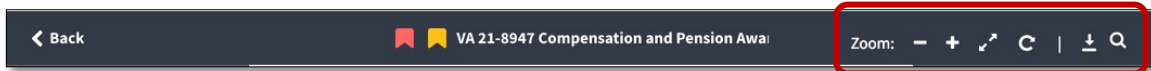


Figure 63 - Document Tool Bar

## Hiding and Opening the Side Menu

- Click **Hide menu** in the upper right-hand corner of the Document Viewer to hide the side menu. Or, click **Open menu** to open the side menu.



Figure 64 - Hide menu button

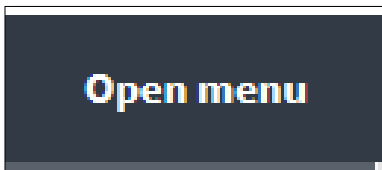


Figure 65 - Open menu button

## Returning to the Claims Folder

- Click **Back** in the upper left-hand corner of the Document Viewer to return to the **Document List** page.



Figure 66 - Back button

## Feedback and Support

The Caseflow Team is always open to hearing about your experiences with Reader. This includes things you like, things you dislike, and feature you would like to see added. You may also ask for assistance with technical issues.

### To Provide Feedback

- Click on username dropdown arrow.
- Select “Send Feedback”.
- Complete Feedback form with your comment or feedback and contact email.
- Click **Send Feedback** button.

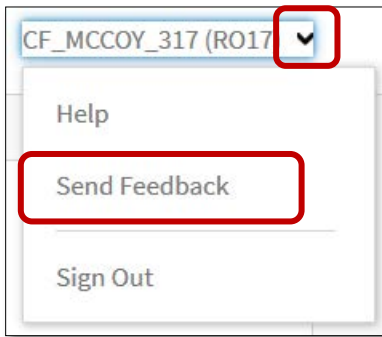


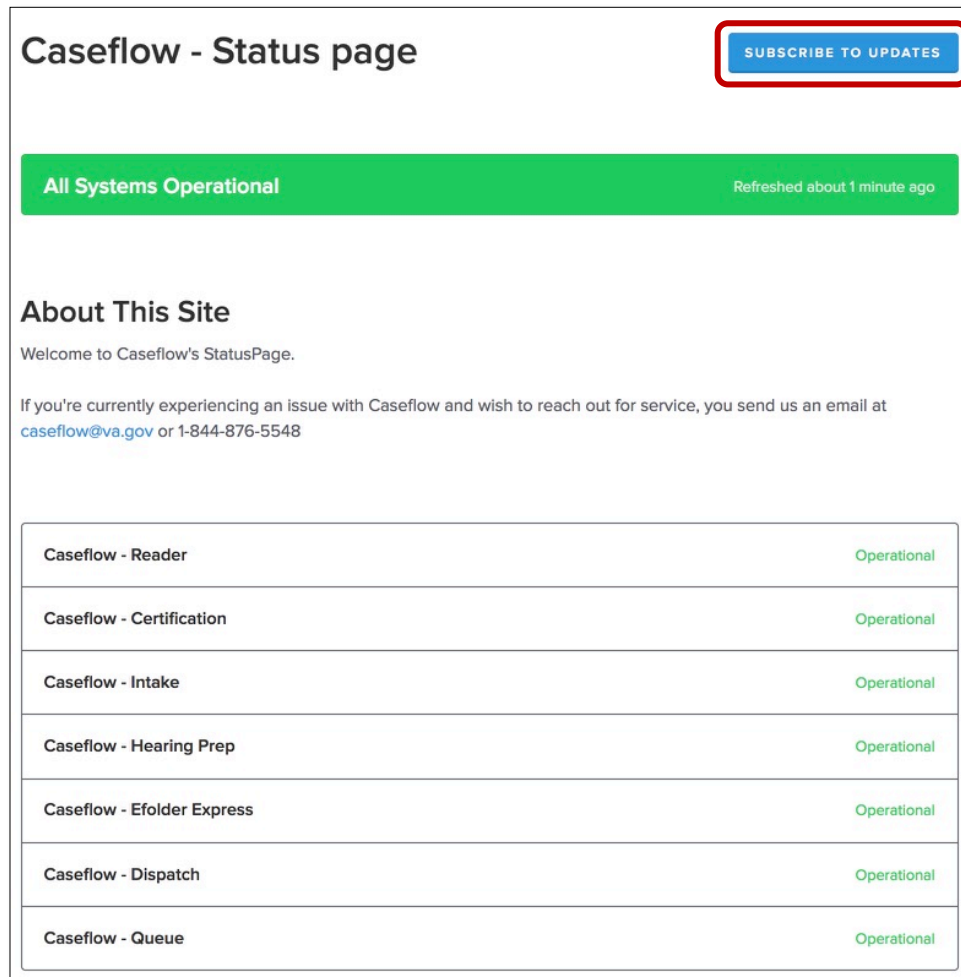
Figure 67 - "Send Feedback" link on dropdown menu next to username

*Note: A “Send Feedback” link may also be found at the bottom of each page.*

If you experience technical issues or need more support, please contact the Caseflow Product Support Team at [caseflow@va.gov](mailto:caseflow@va.gov) or 1-844-876-5548 (Monday through Friday, 8am-8pm EST).

## Caseflow Status Page

The Caseflow Status Page provides the operational status for all Caseflow applications at a glance. To view the Caseflow Status Page, type, or copy and paste, the URL (<https://caseflow.statuspage.io/>) into your web browser and click [Enter] on your keyboard. You can stay abreast of the operational status of Caseflow applications by clicking the **Subscribe to Updates** button on the Caseflow Status Page.



The screenshot shows the Caseflow Status Page. At the top, the title "Caseflow - Status page" is on the left, and a blue button labeled "SUBSCRIBE TO UPDATES" is on the right, highlighted with a red rectangle. Below the title is a green banner with the text "All Systems Operational" and "Refreshed about 1 minute ago". Underneath the banner is a section titled "About This Site" with a welcome message and contact information. At the bottom is a table listing various Caseflow services and their status, all of which are "Operational".

Service	Status
Caseflow - Reader	Operational
Caseflow - Certification	Operational
Caseflow - Intake	Operational
Caseflow - Hearing Prep	Operational
Caseflow - Efolder Express	Operational
Caseflow - Dispatch	Operational
Caseflow - Queue	Operational

Figure 68 - Caseflow Status Page

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You may also access the Caseflow Status Page by clicking the “Track Caseflow Status” link located on the bottom right-hand corner of the page of any Caseflow application.



Figure 69 - "Track Caseflow Status" link

# Caseflow Reader - Frequently Asked Questions

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- [2. How was Reader developed?](#)
- [3. How do I access Reader?](#)
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## 1. What is Caseflow Reader?

Caseflow Reader ("Reader") is a web-based tool for reviewing and annotating appellant claims folders. It was developed by the U.S. Digital Service at VA, and was custom built for the Board. The application allows you to navigate through all of the documents associated with a Veteran's appeal, and to add categories, issue tags, and comments for fast and easy evidence review. Learn more: Training Guide. [Back to top](#)

## 2. How was Reader developed?

The Digital Service at VA (DSVA) team worked closely with attorneys and judges at BVA and other stakeholders across the VA, to develop and test a Reader prototype. Using feedback from VA employees and human-centered design principles, DSVA has tweaked and improved the tool steadily, and will continue improving the tool as they collect more feedback from its users.

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## 3. How do I access Reader?

To gain access to Reader, you must submit a request to your Information Security Officer (ISO) and/or Information Resources Management (IRM) team to adjust your Common Security Employee Manager (CSEM) permissions. To initiate the request, draft an email requesting your current permissions be updated as follows:

Application Name	Role	Function
Caseflow	User	"Reader"

Once the email is drafted, attach a copy of your latest "VA Privacy and Information Security Awareness and Rules of Behavior" training certificate and forward the email to your supervisor for approval. If approved, your supervisor should forward the request to your station's IRM team and/or ISO for entry into CSEM. You will receive an email notice once access is granted.

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## 4. How do I start a case in Reader?

To start a case using Reader, open Google Chrome and paste the following URL into the browser: <http://appeals.cf.ds.va.gov/reader/appeal>. Hit Enter and you will be taken to the Your Queue page. Once on the Your Queue page, you may select a case from the "Reader Documents" column by click on the "View X in Reader" link. "X" is the number of documents.

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## **5. Where do the documents in Reader come from?**

Reader retrieves documents from the VBMS eFolder.

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## **6. Can I view Virtual VA documents in Reader?**

Yes, you can access Virtual VA documents in Reader.

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## **7. How do I search for a document in Reader?**

You can use the search bar on the claims folder page to locate specific documents by entering annotation keywords such as issue tag labels, categories, or comment text. You can also search for information about specific documents, such as the Document Type or Receipt Date; however, you cannot search within a document's text from the search bar.

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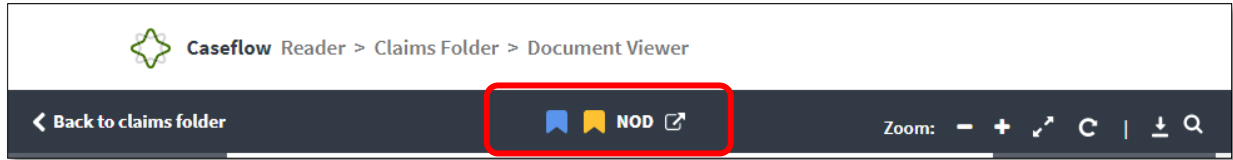
## **8. How do I know which documents I have read on the Claims Folder page?**

On the claims folder page, the Document Type will initially appear in bold. Once you have read the document, the text will appear in regular font. If a different attorney or judge opens the same case, the documents will reset to bold ("unread"). The categories, issue tags, comments, and annotations within the document will remain "as-is" if a different user views the document.

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## **9. How do I open a document in a separate tab?**

You can open a document in a new tab by selecting the Document Type link located at the top of the document in the PDF viewer (e.g., "Form 9" in screenshot below).



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## 10. How do I add a comment to a document in Reader?

Go to the page in the document where you would like to add a comment. In the Menu on the right-hand side, you will see a section called Comments where you can add, delete, edit, or read comments. Click on the "Add a comment" button and place the comment icon wherever you would like to add the comment by clicking on the document page. Type your comment in the dialog box that appears in the Comments section and click "Save." Once added, comments can be dragged to different locations on the page. From the Documents List page, you can see how many comments have been added to a single document.

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## 11. How do I delete comments in Reader?

While reviewing a document, all of the comments are displayed in the Comments section in the Menu on the right-hand side. Each comment has its own "Delete" link above the comment box. Once you click the delete link, a confirmation box will appear. If you click the "Confirm delete" button, your comment box and icon will be deleted.

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## 12. Can I delete someone else's comments in Reader?

Yes. If you are reviewing a document and wish to delete one of the attached comments, click the "Delete" link above the comment box in the Comments section of the Menu. Click the "Confirm delete" button on the deletion confirmation box to confirm the deletion and the comment will be deleted.

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### **13. Who can view my comments in Reader?**

Only Board Staff has access to Reader. If an individual is a member of the Board Staff, has access to Reader, and is reviewing one of your cases, they will be able to view your comment.

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### **14. How do Issue Tag(s) work?**

You can add issue tags to documents to help you label and filter documents by issue(s) as you review evidence. The first time you create an issue tag, it will appear in the issue tags dropdown menu so you can easily add it to other documents. To add an issue tag to a document, click in the box under the Issue Tags section in the menu on the right-hand side and select an issue from the dropdown list or type an issue and hit Enter. You can delete an individual issue tag within a document by clicking the “X” next to the issue. Issue tags do not persist across cases.

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### **15. Can I sort documents by Issue Tag(s)?**

You can sort documents by issue tag(s) by clicking on the filter icon next to the "Issue Tags" header on the claims folder page to filter documents by their associated issue(s). Selecting one or more issues tag(s) will filter the documents to only display documents with the selected issues. You can return to the complete claims folder view by unchecking the selected issue tag(s).

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### **16. How do I complete a case in Reader?**

After you complete a decision on an appeal, you should follow your regular process for sharing your decision document with your VLJ. If your VLJ has access to Reader, s/he will see your annotations when s/he opens the case in Reader.

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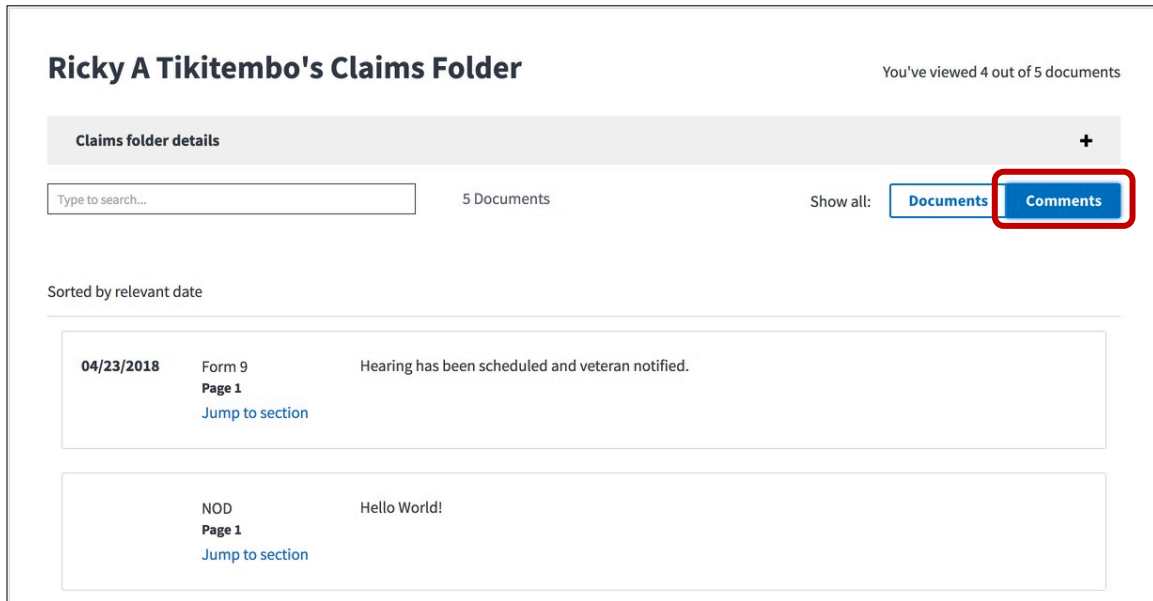
### **17. What happens if I cannot complete a review in one sitting?**

Reader will automatically save any comments, categories, or issue tags you have added during the review process. The next time you access Reader you can pick up where you left off.

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## 18. Can the Comments in Reader be sorted by date?

Yes. On the **Claims Folder** page, click the *Comments* button to display the Comments in date order. The Comments without dates will appear at the bottom of the list.



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## 19. Why do I get the, "Drat. You are not authorized to use this Caseflow application." message when I try to log into Reader?

You will receive this message if you have not been granted access to Reader. To gain access to Reader, you must submit a request to your Information Security Officer (ISO) and/or Information Resources Management (IRM) team to adjust your Common Security Employee Manager (CSEM) permissions. To initiate the request, draft an email requesting your current permissions be updated as follows:

Application Name	Role	Function
Caseflow	User	"Reader"

Once the email is drafted, attach a copy of your latest “VA Privacy and Information Security Awareness and Rules of Behavior” training certificate and forward the email to your supervisor for approval. If approved, your supervisor should forward the request to your station’s IRM team and/or ISO for entry into CSEM. You will receive an email notice once access is granted.

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## **20. Why do I get the, “Drat. You are not authorized to use this part of Caseflow yet.” message when I try to log into Reader?**

You will receive this message if you have been granted access to Caseflow but you do not have authorization to use the Reader function. To gain access to Reader, you must submit a request to your Information Security Officer (ISO) and/or Information Resources Management (IRM) team to adjust your Common Security Employee Manager (CSEM) permissions. To initiate the request, draft an email requesting your current permissions be updated as follows:

Application Name	Role	Function
Caseflow	User	“Reader”

Once the email is drafted, attach a copy of your latest “VA Privacy and Information Security Awareness and Rules of Behavior” training certificate and forward the email to your supervisor for approval. If approved, your supervisor should forward the request to your station’s IRM team and/or ISO for entry into CSEM. You will receive an email notice once access is granted.

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## **21. Why do I get the, “Drat. You are not authorized to use eFolder Express.” message when I try to log into Reader?**

You will receive this message if you are trying to access Reader using the incorrect Uniform Resource Locator (URL). The correct URL for accessing Reader is <http://appeals.cf.ds.va.gov/reader/appeal> and you must copy and paste it into Google Chrome to access Reader. If you attempt to access Reader using a web browser other than Google Chrome, Reader may not function properly.

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## **22. How do I bookmark Reader?**

To bookmark Reader, you will need to copy and paste the Reader URL into your Google Chrome browser and click Enter. Sign in through the Common Security Services (CSS) log-in using your VA credentials. When the Reader Welcome page appears, click the star located on the right side of the address bar. Once the Bookmark dialog box appears, type in a name for the bookmark (for example: Caseflow Reader) and select a Folder. The "Bookmark bar" is the default folder. If you use "Bookmark bar" as your Folder, your bookmark will be displayed below the browser address bar. If the Bookmark bar is hidden, click **Ctrl+Shift+B** to display it. [Back to top](#)

## **23. What does the Case Summary category in Reader represent?**

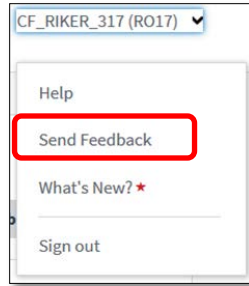
The Case Summary category is used to identify the key documents used by a judge when preparing for a hearing. The list includes the BVA Decision, Notice of Disagreement, Statement of Case, VA 9 Appeal to Board of Appeals, the Rating Decision Narrative, the Rating Decision Codesheet, Supplement Statement of Case, VA8 Certification of Appeal, DD Form 214 – Certificate of Release or Discharge from Active Duty, VA 21-526EZ - Fully Developed Claim (Compensation), VA 21-527EZ - Fully Developed Claim (Pension), VA 21-22 Appointment of Veterans Service Organization as Claimant's Representative, VA 21-22a Appointment of Individual as Claimant's Representative, Hearing Transcript, and any document added in the last 30 days. [Back to top](#)

## **24. What should I do if I encounter problems?**

If you encounter any problems while using Reader, contact the Caseflow Product Support Team by calling 1-844-876-5548 or sending an email to [caseflow@va.gov](mailto:caseflow@va.gov). [Back to top](#)

## **25. How can I share my suggestions for improving Reader?**

You can use the "Send feedback" link located in the dropdown menu next to your username to share your ideas for improving Reader.



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## 26. What if I still need help?

If you require further assistance after reviewing the FAQs, Quick Reference Guide, or Training Guide, please contact the Caseflow Product Support Team by phone (1-844-876-5548) or email ([caseflow@va.gov](mailto:caseflow@va.gov)). We look forward to assisting you.

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