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▶▶ July 2014 ◀◀

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Section E. Filing a Substantive Appeal

Overview

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22. Substantive Appeal

Introduction This topic contains a information on substantive appeals, including

- the purpose of a substantive appeal
- what constitutes a substantive appeal
- handling an incomplete substantive appeal involving multiple issues
- the substantive appeal time limit
- computing the substantive appeal time limit, and
- handling a time limit extension request.

Change Date March 28, 2011

a. Purpose of a Substantive Appeal An appellant and/or his/her representative must file a substantive appeal in response to a statement of the case (SOC) in order to perfect or complete the appeal.

Once an appellant and/or his/her representative files a substantive appeal, the appeal is certified and sent to the Board of Veterans' Appeals (BVA) if no other development is necessary.

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22. Substantive Appeal, Continued

b. What Constitutes a Substantive Appeal

A substantive appeal is one of the following documents containing the necessary information as provided in [38 CFR 20.202](#):

- *VA Form 9, Appeal to Board of Veterans' Appeals*
- written correspondence containing the elements listed below, or
- a statement at a formal hearing or informal conference reduced to writing.

Necessary Information: The information below *must* be included in a substantive appeal.

- If the SOC and any subsequent supplemental statements of the case (SSOCs) addressed several issues, the substantive appeal must either
 - indicate that the appeal is being perfected as to all of those issues, or
 - must specifically identify the issues appealed.
- The substantive appeal should set out specific arguments relating to errors of fact or law made by the agency of original jurisdiction in reaching the decision(s) being appealed. To the extent feasible, the argument should relate to specific items in the SOC and any subsequent SSOCs.

Note: BVA will

- construe such arguments in a liberal manner for the purpose of determining whether they raise issues on appeal
- *not* presume that an appellant agrees with any statement of fact contained in an SOC or SSOC which is not specifically contested, and
- determine the adequacy of a substantive appeal.

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22. Substantive Appeal, Continued

c. Handling an Incomplete Substantive Appeal Involving Multiple Issues

The table below shows how to handle *VA Form 9* and/or a substantive appeal when the

- SOC/SSOC contained multiple issues, and
- claimant does not indicate which issues are being appealed.

Step	Action
1	<p>To clarify which issues are being appealed, a Veterans Service Representative (VSR)</p> <ul style="list-style-type: none"> • contacts the claimant by telephone to obtain clarification, and/or • sends the claimant a letter requesting that he/she clarify the issues under appeal within 30 days from the date of the letter. <p><i>Note:</i> Extend the time limit to file an appeal through the end of the 30-day response period if the time limit</p> <ul style="list-style-type: none"> • has already expired, or • will expire during that 30-day period.
2	<p>Did VA receive clarification by telephone or within 30 days from the date of the letter?</p> <ul style="list-style-type: none"> • If <i>yes</i>, process the substantive appeal as usual. • If <i>no</i>, go to Step 3.
3	<p>The VSR sends the claimant a notification letter that</p> <ul style="list-style-type: none"> • explains VA is dismissing the appeal under 38 CFR 20.202 for failure to file a properly completed substantive appeal, and • includes a <i>VA Form 4107, Your Rights to Appeal Our Decision</i>. <p><i>Note:</i> If the time limit to file a substantive appeal has not expired, the letter should</p> <ul style="list-style-type: none"> • state the time limit for filing the appeal, and • explain that if VA receives clarification of the issues under appeal within this time limit, VA will continue the appeal.

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22. Substantive Appeal, Continued

d. Substantive Appeal Time Limit

The table below describes the time limits for an appellant to file a substantive appeal.

A substantive appeal of a ...	Must be filed ...
contested claim	<p>30 days from the date the Department of Veterans Affairs (VA) mailed the SOC or SSOC.</p> <p>Reference: For more information on contested claims, see M21-1MR, Part III, Subpart vi, 6.A.</p>
all other claims	<p>before the later of the following dates:</p> <ul style="list-style-type: none"> • 60 days from the date the VA mailed the SOC or SSOC, or • the last day of the one-year period from the date VA mailed the notification of the decision being appealed. <p>Note: After issuing an SSOC, VA must provide a claimant a 60-day period in which to file a substantive appeal, even if the one-year appeal period will expire before the 60-day period ends. Therefore, when a claimant submits additional evidence within the one-year appeal period, and that evidence requires preparation of an SSOC, the time limit to file a substantive appeal shall end no sooner than 60 days after the SSOC is mailed.</p>

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22. Substantive Appeal, Continued

e. Computing the Substantive Appeal Time Limit

When computing the substantive appeal time limit

- exclude the first day of the specified period
- include the last day of the specified period, and
- if the time limit expires on a Saturday, Sunday, or legal holiday, include the next workday in the computation.

If the postmark date is

- prior to the expiration of the substantive appeal period
 - consider the substantive appeal timely, and
 - retain the postmarked envelope, or
 - *not of record*, presume the postmark date to be five days prior to the date VA received the substantive appeal, excluding Saturday, Sundays, and legal holidays.
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f. Handling a Time Limit Extension Request

An appellant may request an extension of the time limit for filing a substantive appeal. In this situation, the time limit may be extended if an appellant shows good cause.

[38 CFR 20.303](#) provides that a request to extend the 60-day time limit file a substantive appeal, or to respond to an SOC/SSOC when such a request is required, must be made in writing before the time limit has elapsed.

[38 CFR 3.109\(b\)](#) provides that a request to extend the one-year time limit to file a substantive appeal may be submitted after the time limit has elapsed, but only if the appellant has completed, or is in the process of completing, the action for which the extension is requested.

An appellant may appeal a denial of a request for a time limit extension to BVA.

Notes:

- [38 CFR 20.303](#) and [38 CFR 3.109\(b\)](#) do not define “good cause.”
- When determining whether or not to extend the time limit for filing a substantive appeal in the case of a contested claim, take the interests of the other parties involved into consideration.

Reference: For more information on requesting an extension of the time limit to file a substantive appeal, see [Morgan v. Principi](#), 16 Vet. App. 20 (2002).

23. Processing a Substantive Appeal

Introduction This topic contains information on processing a substantive appeal, including

- handling a timely filed substantive appeal
 - handling a substantive appeal not timely filed
 - an appellant's right to a hearing, and
 - the request for
 - RO hearings, and
 - medical examinations.
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Change Date March 28, 2011

a. Handling a Timely Filed Substantive Appeal Follow the steps in the table below when a substantive appeal is timely filed.

Step	Action
1	<p>Update Veterans Appeals Control and Locator System (VACOLS).</p> <p>Result: VACOLS assigns a BVA docket number to the substantive appeal.</p> <p>Notes:</p> <ul style="list-style-type: none"> • Do not update VACOLS upon receipt of a duplicate substantive appeal unless a separate or new issue is raised. • As provided in 38 CFR 20.202, BVA addresses any inadequacies in the substantive appeal.

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23. Processing a Substantive Appeal, Continued

a. Handling a Timely Filed Substantive Appeal (continued)

Step	Action
2	<p data-bbox="548 436 1003 470">Can the benefit sought be awarded?</p> <ul style="list-style-type: none"> <li data-bbox="548 512 1393 659">• If yes <ul style="list-style-type: none"> <li data-bbox="571 554 1393 617">– award the benefit, if new evidence is of record or DRO review is elected, and <li data-bbox="571 630 990 659">– close out the VACOLS record. <li data-bbox="548 667 1117 814">• If no <ul style="list-style-type: none"> <li data-bbox="571 709 1117 739">– confirm that all development is complete <li data-bbox="571 751 880 781">– certify the appeal, and <li data-bbox="571 793 906 823">– send the appeal to BVA. <p data-bbox="548 856 1354 926">Reference: For more information about certifying appeals, see M21-1MR, Part I, 5.F.26.</p>

b. Handling a Substantive Appeal Not Timely Filed

When a substantive appeal is not timely filed

- close out the VACOLS record, if erroneously established
- inform the appellant and his/her representative in writing that the
 - time limit has expired, and
 - decision is final
- enclose *VA Form 4107, Your Rights to Appeal Our Decision*, and
- take no further action on the appeal.

Reference: For more information on handling a substantive appeal that is not timely filed, see

- [38 CFR 19.33](#), and
 - [38 CFR 19.34](#).
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23. Processing a Substantive Appeal, Continued

c. Appellant's Right to a Hearing

An appellant may request that a hearing be held

- locally, before a Decision Review Officer (DRO) at the RO of jurisdiction
- before the traveling section of BVA
- at BVA in Washington, DC, or
- via a videoconference between the RO and BVA in Washington, DC.

Note: VA cannot reimburse an appellant for any expenses of such hearings.

References: For more information on

- informal conferences, see [M21-1MR, Part I, 5.C.14.](#)
 - formal hearings, see [M21-1MR, Part I, 4.](#)
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d. Requests for RO Hearings

If it appears *VA Form 9* has been altered in an attempt to request a RO hearing, write or call the appellant to clarify whether the RO hearing is requested

- in addition to the BVA hearing, or
- in place of the BVA hearing.

Note: Document the results of any telephone conversation on a *VA Form 21-0820, Report of General Information.*

e. Requests for Medical Examinations

Do *not*

- request medical examinations solely because an appeal is pending, or
 - defer action on an appeal pending the completion of any scheduled medical examination unless the examination is
 - related to the issue under appeal, or
 - necessary to properly decide the claim.
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24. Handling New Issues Raised on a Substantive Appeal

Introduction This topic contains information about handling new issues raised on a substantive appeal, including

- handling new issues
 - handling related new NODs, and
 - handling unrelated new NODs.
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Change Date August 19, 2005

a. Handling New Issues An appellant may raise a new issue on a substantive appeal that

- the appellant indicates is related or appears related to the issue on appeal, or
- is not related to the appeal.

In either situation, if all of the necessary evidence is

- of record
 - make a decision, and
 - send the appellant the decision and *VA Form 4107*, or
 - not of record
 - develop for evidence
 - make a decision once all evidence is gathered, and
 - send the appellant the decision and *VA Form 4107*.
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b. Handling Related New NODs If the new issue is related to the appeal and the appellant files a notice of disagreement (NOD)

- delay sending the file to BVA until work on the new issue is complete
- send the appellant an SOC on the new issue, and
- do *not* send the case to the BVA until
 - the new issue is perfected or completed, or
 - the appellant fails to respond to the SOC/SSOC on the new issue within 60 days.

Note: If the appellant does *not* perfect the appeal relating to the new issue, send the case to the BVA once the appellate time limits have elapsed.

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24. Handling New Issues Raised on a Substantive Appeal,

Continued

**c. Handling
Unrelated New
NODs**

If the new issue is *not* related to the appeal, forward the case to BVA regardless of whether or not the appellant files a substantive appeal regarding the new issue.

If the appellant does file a substantive appeal regarding the new issue, flash the temporary folder to show that there is a new issue on appeal.

Note: The temporary folder should contain all the evidence and documentation that is

- related to the new issue, and/or
 - needed to process the claim.
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