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Section A. General Information on Appeals

Overview

In this Section This section contains the following topics:

Topic	Topic Name	See Page
1	Appeal Process	5-A-2
2	Withdrawing and/or Reinstating a Notice of Disagreement (NOD) or Appeal	5-A-11

1. Appeal Process

Introduction This topic contains information on the appeal process, including

- formal hearings, and
 - an overview of the appeal process.
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Change Date June 18, 2013

a. Formal Hearings The appellant may elect to have a formal hearing at any time during the appeal process.

Reference: For more information on hearings, see [M21-1MR, Part I, 4.](#)

b. Overview of the Appeal Process The table below describes an overview of the stages in the appeal process.

Stage	Who Is Responsible	Action	Reference
1	Appellant	files a notice of disagreement (NOD) in response to a Department of Veterans Affairs (VA) decision regarding his/her benefit claim.	See M21-1MR, Part I, 5.B.

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1. Appeal Process, Continued

b. Overview of the Appeal Process (continued)

Stage	Who Is Responsible	Action	Reference
2	<ul style="list-style-type: none"> • Claims Assistant, or • Veterans Service Representative (VSR) 	<ul style="list-style-type: none"> • accepts the NOD if it does not need further clarification, such as clarifying which issues are being appealed when a decision contains multiple issues • establishes a Veterans Appeal Control and Locator System (VACOLS) record, and • gives the appellant the option to elect (if the election is <i>not</i> received with the NOD) the <ul style="list-style-type: none"> – Post Decision Review Process, or – appellate review process without DRO review. <p>References: For more information on</p> <ul style="list-style-type: none"> • clarifying NOD issues, see M21-1MR, Part I, 5.B.6.b, and • establishing a VACOLS record, see the VACOLS User's Guide. 	See M21-1MR, Part I, 5.B.5 .

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1. Appeal Process, Continued

b. Overview of the Appeal Process (continued)

Stage	Who Is Responsible	Action	Reference
3	Appellant	<p>elects either the</p> <ul style="list-style-type: none"> • DRO review process, or • traditional appellate review process without DRO review. <p><i>Notes:</i></p> <ul style="list-style-type: none"> • It is acceptable for an appellant to elect the DRO review process by telephone. Any election received by telephone must be documented in writing on <i>VA Form 27-0820, Report of General Information</i>. • If the appellant does not elect the DRO review process on the NOD or within 60 days of VA notification of the right to this process, the appeal proceeds in accordance with the traditional appellate review process. 	See M21-1MR, Part I, 5.B.5.
4	<ul style="list-style-type: none"> • VSR • Rating Veterans Service Representative (RVSR), or • DRO 	<p>conducts one of the following review processes based on the appellant's choice:</p> <ul style="list-style-type: none"> • DRO review process, or • traditional appellate review process without DRO review. 	See M21-1MR, Part I, 5.C.

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1. Appeal Process, Continued

b. Overview of the Appeal Process (continued)

Stage	Who Is Responsible	Action	Reference
5	<ul style="list-style-type: none"> • VSR • RVSR, or • DRO 	<p>Does the review warrant a change to the decision on appeal?</p> <ul style="list-style-type: none"> • If <i>yes</i> on all issues, includes a complete statement of facts in the new decision with any discussion needed to clearly show the basis for the allowance. • If <i>yes</i> on only some issues, <ul style="list-style-type: none"> – issues a Statement of the Case (SOC) confirming the decision on appeal and explaining the reasons for the VA decision, and – sends <i>VA Form 9, Appeal to Board of Veterans' Appeals</i>, to the appellant. • If <i>no</i> <ul style="list-style-type: none"> – issues an SOC confirming the decision on appeal and explaining the reasons for the VA decision, and – sends <i>VA Form 9, Appeal to Board of Veterans' Appeals</i>, to the appellant. 	<p>See</p> <ul style="list-style-type: none"> • M21-1 MR, Part I, 5.C.15 , and • M21-1 MR, Part I, 5.D.

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1. Appeal Process, Continued

b. Overview of the Appeal Process (continued)

Stage	Who Is Responsible	Action	Reference
6	Appellant	<ul style="list-style-type: none"> • returns <i>VA Form 9</i> or a substantive appeal in lieu of <i>VA Form 9</i> within applicable time frames, and • may elect one of the following types of Board of Veterans' Appeals (BVA) hearings: <ul style="list-style-type: none"> – Travel board – Videoconference, or – In person in Washington, DC, or • may elect a local hearing before regional office (RO) personnel. 	See M21-1MR, Part I, 5.E.

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1. Appeal Process, Continued

b. Overview of the Appeal Process (continued)

Stage	Who Is Responsible	Action	Reference
7	<ul style="list-style-type: none"> • VSR • RVSR, or • DRO 	<ul style="list-style-type: none"> • sends a Supplemental Statement of the Case (SSOC) to the appellant if <ul style="list-style-type: none"> – VA receives additional evidence, and – the appellant does not receive a complete grant of benefits on appeal, and • gives the appellant 30 days to reply before the appeal is sent to BVA. <p><i>Notes:</i></p> <ul style="list-style-type: none"> • If none of the above applies, proceed to Step 8. • No reply is necessary from the appellant once VA receives a substantive appeal. 	See M21-1MR, Part I, 5.D.21 .

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1. Appeal Process, Continued

b. Overview of the Appeal Process (continued)

Stage	Who Is Responsible	Action	Reference
8	<ul style="list-style-type: none"> • DRO • RVSR, or • Veterans Service Center Manager (VSCM) designee 	Certifies the case to BVA.	See M21-1MR, Part I, 5.F.
9	Claims Assistant	Transfers the claims folder to BVA.	See M21-1MR, Part III, Subpart i, 1.6.
10	BVA	Either <ul style="list-style-type: none"> • issues a decision granting or denying the benefit, or • remands the case to the RO for additional action. 	See M21-1MR, Part I, 5.G.

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1. Appeal Process, Continued

b. Overview of the Appeal Process (continued)

Stage	Who Is Responsible	Action	Reference
11	<ul style="list-style-type: none"> • VSR • RVSR, or • DRO 	<p>If BVA</p> <ul style="list-style-type: none"> • issues a decision, then the <ul style="list-style-type: none"> – RVSR issues a rating decision, if necessary, implementing BVA's decision – VSR processes the RVSR decision, and – VSR closes out any pending VACOLS records. If all issues are decided, go to Step #13. • remands the case to the RO, then the VSR, RVSR or DRO <ul style="list-style-type: none"> – performs additional development, and – issues a new decision. <p>If the new decision does not fully grant the benefit on appeal, the DRO, VSR, or RVSR</p> <ul style="list-style-type: none"> • prepares an SSOC, and • returns the case to BVA. 	See M21-1MR, Part I, 5.G.
12	BVA	Issues a final decision in a remanded case. Case is returned to the RO for review/processing.	See M21-1MR, Part I, 5.G.

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1. Appeal Process, Continued

b. Overview of the Appeal Process (continued)

Stage	Who Is Responsible	Action	Reference
13	Appellant	May appeal the final BVA decision to the U.S. of Appeals for Veterans Claims (CAVC) within 120 days of the date of the decision if he/she is not satisfied with the decision.	See M21-1MR, Part I, 5.I.

2. Withdrawing and/or Reinstating a Notice of Disagreement (NOD) or Appeal

Introduction An NOD or substantive appeal that has been withdrawn may be reinstated if notice that the appellant wants to reinstate the NOD or appeal is received during the remaining appeal period. This topic contains information on

- the withdrawal of an NOD or appeal by the
 - appellant, or
 - representative
 - the time limit for reinstating an NOD or appeal, and
 - reinstating an NOD or appeal.
-

Change Date December 9, 2004

a. Withdrawal of NOD or Appeal by the Appellant The appellant must submit a written request in order to withdraw an NOD or appeal, except for appeals withdrawn on the record at a hearing.

Note: Failure of the appellant to report for an examination or furnish evidence requested by VA does *not* constitute withdrawal of an appeal.

b. Withdrawal of NOD or Appeal by the Representative A representative, including an attorney, can withdraw an NOD or substantive appeal without the written consent of the appellant.

Reference: For more information on withdrawal of an appeal by a representative, see [38 CFR 20.204\(c\)](#).

c. Time Limit for Reinstating an NOD or Appeal The appellant or authorized representative can reinstate an NOD or appeal after it has been withdrawn *if* VA receives a request for reinstatement in writing within the remaining appeal period.

Reference: For more information on receiving a substantive appeal within the appeal period, see [38 CFR 19.32](#).

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2. Withdrawing and/or Reinstating a Notice of Disagreement (NOD) or Appeal, Continued

d. Reinstating an NOD or Appeal

If the appellant or authorized representative requests reinstatement of the NOD or appeal, refer the folder for activation of the VACOLS record. In the case of an appeal, this action alerts BVA to an appeal's reactivation.

If the appellant or authorized representative does *not* reinstate the NOD or substantive appeal, the previously disputed RO decision(s) will be regarded as final.

Reference: For more information on closing an NOD or appeal, see [38 CFR 19.32](#).
