

Chapter 1: Introduction

This course is an introduction to veterans law and advocacy. The authors hope that at least two groups of people will find it useful. Anyone who helps veterans and their family members get benefits from the U.S. Department of Veterans Affairs (VA) will find helpful information here. The course is also intended to make claimants for VA benefits better, more informed consumers.

This is not an advanced course. It does not attempt to cover every topic or issue in VA law, and the authors have had to omit some very complicated issues. This course will discuss almost every VA benefit, but it will focus on entitlement to compensation and pension benefits because these benefits are often especially difficult to obtain. For example, almost all the cases that come before the U.S. Court of Appeals for Veterans Claims (CAVC) deal with entitlement to compensation and pension. We also do not discuss the many varied state veterans' benefits programs.

We hope many veterans, as well as those providing (or interested in providing) informal advice about VA benefits, will take this course. However, veterans should not expect to represent themselves even after successfully completing this course. That would be a major mistake. But a claimant who takes this course will be better able to assist his or her representative. An informed veteran is far more likely to obtain his or her rightfully earned VA benefits.

There are 12 chapters in this course. This chapter is an introduction and overview. Chapter 2 deals with eligibility requirements. Chapter 3 covers service-connected compensation benefits, including benefits due a veteran injured by VA medical care. Chapter 4 explains how the VA evaluates disabilities and discusses claims for increase and rating reductions. Chapter 5 covers service-connected death benefits. Chapter 6 deals with non-service-connected pension (and death pension) issues. Chapter 7 explains the VA claims process, including the options claimants have after a denial by the Board of Veterans' Appeals (BVA or Board). Chapter 8 gives a general overview of the U.S. Court of Appeals for Veterans Claims (CAVC). Chapter 9 covers VA debt collection, including how an overpayment is created and how to ask for a waiver of debt. Chapter 10 explains how to apply for a discharge upgrade or correct a military record. Chapter 11 covers VA health care. Chapter 12 offers a summary of some lesser known VA benefits.

Although this is a basic course, it contains a great deal of information. You

may find it helpful to read each chapter more than once, and to take the short self-quizzes that appear at the end of most chapters. (Answers are under the page called Self-Quiz Answers) These self-quizzes are designed to let the reader test his or her knowledge of the chapter before going on in the course. Also, you should take the comprehensive test that comes with the course. We have the test graded and inform you of the results. If you pass, you will earn a *Basic Training Course Certificate*. Passing this test will not make you an accredited service representative. Formal accreditation from the VA must come through a veterans' service organization or state department of veterans affairs.

If you want to learn much more about veterans law we suggest you purchase the latest edition of the Veterans Benefits Manual (VBM). This treatise IS user-friendly, well-indexed, and packed with practical information. It includes sample forms and briefs, flowcharts, checklists, citations to legal authorities, and other documents designed to streamline the claims process and save valuable time. For a more detailed description of the VBM go to:

<http://www.nvlsp.org/Publications/Bookstore/Manuals/vetbenefitmanual.htm>

On a practical note, we have also included a number of “intake forms”--forms that veterans can fill in to organize the information that their advocates need. These intake forms should help advocates identify VA benefits for which a veteran may be eligible, although he or she may not even have realized the benefits existed.

The Advocacy Network

People seeking benefits from the federal government usually have to hire attorneys or paralegals. However, claimants seeking VA benefits can rely on a national network of lay advocates--post officers, county and state veterans' service officers, and service officers who work (locally or nationally) for a veterans' service organization. All of the groups listed above can help claimants in obtaining VA benefits. The lay advocates are prohibited by law from charging a claimant a fee.

Some of the infantry in this army of advocates are staff in “posts” established by national service organizations. Many of these posts have a post service officer or chapter service coordinator who provides claimants with basic information and claims forms. In most instances, the national service organizations prohibit their post service officers from dealing with the VA directly. This policy makes sense because post service officers usually do not have the training and

support that is available to the service organizations' more advanced, accredited service officers.

Every advocate's first rule should be: do no harm. Inaccurate or bad advice from an advocate can cost a veteran time or money or both. In some cases, an advocate who gives bad advice may be liable to the claimant.

In general, post service officers should provide information and support, and they should refer the veteran (or claimant) to an accredited service officer. In fact, post service officers should send all applications and communications from claimants they are trying to help to the accredited service officer who is representing the veteran, not to the VA. They should advise veterans to contact the service officer before communicating with or responding to letters or phone calls from the VA.

Most states have state departments of veterans affairs. These organizations may employ service officers, who usually represent veterans before VA regional offices (ROs). The VA allows all state departments of veterans affairs to represent veterans. Other service officers working for state departments of veterans affairs represent claimants on behalf of national service organizations, when accredited by those organizations.

County service officers (sometimes called county directors of veterans affairs) provide a variety of services. In a few states there are no state service officers, just county service officers, who provide services similar to those offered elsewhere by state or national service officers. In other states, county service officers take information and pass it along to state or national organization service officers.

To represent a veteran, a county, state, or national service officer must have a signed power of attorney from that veteran. In most cases, an individual service officer does not represent claimants for VA benefits as an individual. Most claimants for VA benefits sign a power of attorney in favor of the organization that employs or has accredited the individual service officer. Therefore, the power of attorney usually permits any accredited representatives of the named service organization, not just the individual service officer, to represent the veteran.

It is a service officer's job, as a veterans advocate, to present information and, if necessary, supporting arguments. If the service officer is not prepared to argue for the claimant, some other advocate should be involved in the

representation.

Advocates are entitled to--and should--screen information the veteran is considering sending to the VA. The advocate is not obliged to send negative evidence to the VA unless the VA specifically requests that information.

Most national service organizations provide representation before the Board of Veterans' Appeals (BVA). In fact, most national service organizations have advocates located in Washington, D.C., who review appeals submitted to the BVA and provide additional arguments (and sometimes help claimants obtain additional evidence).

Overview: VA Claims System

Americans. —There are at least 25 million veterans and many more millions of family members of veterans potentially eligible for federal veterans' benefits. Million of determinations relating to benefits are made each year within the 58 VA regional offices (ROs). For a listing of all the VA regional offices go to: <http://www.vba.va.gov/vba/benefits/offices.asp>

The VA has a dual role: it is a friend to veterans, but it is also a guardian of the taxpayer's money. This means that the VA is required to investigate applications so that it can reject unsupported claims. Because some claims depend on the VA's accepting the word of the veteran, it is important that claimants be consistent and accurate when they communicate with the VA. That is why all communications by the veteran to the VA should be reviewed by the advocate.

The VA claims system is unique in several important respects. First of all, "final" VA denials are not really final. A claimant can reopen a claim by presenting *new and material evidence*. New evidence is evidence that has not been presented to the VA before and material means that the evidence helps prove a previously unproven fact. When a veteran reopens a claim after a final denial, the VA (the RO and possibly the BVA) must perform a two-step analysis. First, the VA decides if the evidence submitted to support the reopening is new and material. If the submitted evidence is not new and material, the VA must notify the claimant of that decision and describe his or her appeal rights. If the evidence is accepted as new and material, all evidence (old and new together) must be considered afresh.

In some cases, an RO decision can be changed if the veteran can show that

the decision was based on *clear and unmistakable error*. That is, the veteran must show that, based on the facts and the law existing at the time the claim was originally denied, the VA was clearly wrong. Claimants must first identify the error made by the VA and then show that they would have been entitled to benefits if the error had not been made. Another unique feature of the VA claims system is that the system is intended to be non-adversarial--that is, the VA is supposed to be fair and help the claimant, and no one is supposed to be arguing against the claimant.

Veterans and advocates alike must know that the VA claims system does not always work the way it is supposed to. As in any complex system run by human beings, mistakes, misinterpretations, and honest errors are common. Do not become discouraged if a meritorious claim does not succeed at first. The VA must operate under set legal rules, and a claim that has been denied at the regional office level may be granted on appeal.

Benefit of the Doubt

To ensure that the system favors veterans, VA law states that a veteran is entitled to the *benefit of the doubt* in the adjudication of his or her claim. This means that the VA can deny the claim only if the weight of the evidence (more than half) is against the claim. If the evidence for and against the claim is evenly balanced, then the claimant should be given the benefit of the doubt and the claim will be granted.

Advocates do not have to submit enough evidence to win overwhelmingly--just enough so that there is a balance of evidence for and against the veteran's claim. Thus, a good advocate should evaluate the evidence and explain why the majority of the evidence is not against the claim. In that way the advocate can help the VA apply the benefit of the doubt to the specific claim.

Duty to Assist

Another non-adversarial feature of the system is that the VA has a *duty to assist* claimants who submit a reasonably possible claim in developing evidence to support their claims. For example, the VA must try to obtain VA records, other government records (such as Social Security determinations) and private records for the claimant, and may be required to conduct a VA medical examination to assess the claimant's physical or mental condition and obtain an opinion from a medical expert concerning the medical issue in the case.

The VA must keep trying to obtain any relevant federal records until it is discovered that the records do not exist or are unobtainable. If private medical, hospital, employment, or other civilian records contain facts pertinent to the claim, the VA should either request them from the claimant or obtain them directly, if authorized by the claimant. Advocates should suggest possible sources of information to the VA that would help prove the veteran's claim. The VA can't request something if it doesn't know about it. It would be better, however, if the advocate obtained this information directly, because he or she can then review the information to see if it supports the claim--it may support the *denial* of benefits instead of their grant.

Elements of a Claim

Before the VA must assist in developing evidence, the claimant must present a reasonably possible claim. Generally, claimants will receive VA development assistance unless they are legally ineligible for the benefit (for example, the claimant doesn't have qualifying service) or the claim is inherently incredible. When the claim is submitted the advocate should present reasons why benefits should be granted and should cite appropriate statutes, regulations, and the VA's Adjudication Procedures Manual, the M21-1MR. If the VA decides that the claim is not reasonably possible or decides to deny the benefit the reasons and bases for that decision must be provided. The VA especially must explain how it reached any medical conclusions.

Disability compensation claims have three elements:

- The veteran must currently suffer a disability or have suffered from a disability since the claim was filed;
- There must have been some incident (for example, injury, treatment for a disease, symptoms exhibited, and so on) in service that could have caused this condition; and
- there must be some way to link the current condition to that incident.

The veteran almost always needs more than just his or her own testimony to support claims involving medical causation or diagnosis. It is extremely helpful if a medical expert states that the incident in service could have caused the disability. For example, if a veteran suffers from a knee condition some 30 years after discharge, a statement from the veteran's doctor indicating that it is likely (or as likely as not) that the current knee problem was caused by a specific incident in

service would support the grant of benefits.

VA Central Office

The VA Central Office, located in Washington, D.C., directs the activities of the VA regional offices (sometimes called Veterans Service Centers) and the VA medical centers. The Central Office dictates standard rules and procedures the regional offices and medical centers must follow when handling claims.

The Central Office consists of the Veterans Benefits Administration (VBA), headed by the VA Undersecretary for Benefits; and the Veterans Health Administration (VHA), headed by the Undersecretary for Health, who oversees the VA medical care facilities. Other departments in VA Central Office (VACO) include the office that oversees the national cemetery system, the Office of the General Counsel, and the Office of Inspector General.

VA Regional Offices

There are 58 VA regional offices, at least one in every state, Puerto Rico, and the Philippines. A claimant's initial claim for benefits is filed at a VA regional office, and this is where the claim is initially granted or denied. Go to the following web site for more information about the VA regional offices:
<http://www.vba.va.gov/vba/benefits/offices.asp>

The different divisions within the ROs are finance and administrative services, vocational rehabilitation, loan guaranty, district counsel, inspector general, and adjudication. Claims for compensation, pension, and education benefits are received by the regional offices' adjudication divisions (there is one in every RO). Each adjudication division is headed by a Veterans Service Center Manager and is subdivided into two sections--an authorization unit and a rating activity. When a veteran first files a claim at the RO, the VA first examines basic eligibility issues--for example, verifying the veteran's period of military service and type of discharge. If basic eligibility requirements are not met, the claim is denied. The VA will send the veteran a letter explaining the reason for the denial, and will also inform the veteran of his or her right to appeal the determination.

If basic eligibility is established, the VA begins to develop the evidence necessary to prove the claim. For example, they may try to obtain important records missing from the veteran's claims file, and may write to the veteran to ask for more information or evidence.

Any response or inquiry from the VA to a veteran or representative about a particular claim will include the *claim number (C-number or C-file number)*. This number is assigned by the VA when a claim is first filed. It is a unique identifier and should be included in all correspondence.

The veteran, after consulting with his or her representative, should always respond (through the advocate) to the VA's letters requesting more information. If the veteran does not respond within a certain period of time (usually 60 days), the RO may deny the claim based on the veteran's failure to take steps to prosecute the claim. If a veteran needs more time, he or she (or, preferably, his or her representative) should ask the VA for additional time to respond, before the 60-day deadline expires. In any event, the veteran or claimant has one year to submit the requested evidence. Therefore, even if the claim is denied after 60 days, if the claimant submits the requested evidence and benefits are granted, the VA can pay from the original date of claim. The VA is also responsible for providing claimants and their representatives with information about the status of their claims, and for providing proper notice to claimants of their right to appeal denials.

Once basic eligibility requirements are met and most if not all of the evidence necessary to adjudicate the claim has been obtained, the claim is transferred to the rating activity if a medical or legal determination is needed. The rating activity reviews all the evidence in a case, orders additional development (requests more evidence) if needed, applies the relevant law, and then decides whether to grant or deny the claim. Rating activities decide, for example, whether a particular injury or disease is connected to a period of military service, what the level of the veteran's disability is, and whether a disability is permanent and total. If the rating activity determines that the evidence in the case is not sufficiently well developed to make an informed decision, it will send the case back to the authorization unit for further evidentiary development.

Once a decision is made, the RO notifies the claimant (and his or her representative) by letter. VA's notice that a decision has been made will usually contain at least part of the VA's actual rating decision.

If the claim is denied, the RO is required by law to explain in writing what evidence was considered and the reasons for the decision. If a claim involved more than one issue, the RO must explain the reasons for the decision on each issue considered. The RO's letter must also explain how the claimant can appeal the

decision.

Decision Review Officer (DRO) Review

A claimant who files a timely appeal, commonly called a Notice of Disagreement (NOD) may request that the decision be reviewed at the Regional Office by a Decision Review Officer (DRO). The review is conducted *de novo*, meaning that the DRO provides a new and complete review without giving any weight to the fact that other RO personnel previously denied the claim.

The DRO review process is an *optional* review of an RO rating decision a claimant does not have to have a DRO review in order to appeal an RO decision to the Board of Veterans' Appeals (BVA) the next highest level of appeal. If a claimant does not want to take advantage of the *de novo* DRO review process, he or she does not have to request it.

Board of Veterans' Appeals

The next level of claims review is the Board of Veterans' Appeals. The BVA, which is located in Washington, D.C., renders final agency decisions on all appeals for entitlement to veterans' benefits, including claims for service-connected disability compensation, pension, educational benefits, home loan guaranties, and vocational rehabilitation. The Board will not consider purely medical determinations; treatment decisions are made by medical experts.

The Board's activities are directed by a chairman, who is appointed by the President for a six-year term. The BVA usually has over sixty Board Members, including the Vice Chairman and other Board members serving in managerial capacities. Board members use the title "Veterans Law Judge." Board members are subject to periodic performance reviews to determine whether they should be recertified as Board members, receive conditional certification, or be noncertified (in which case their appointment as a Board member is terminated). The BVA is organized into four "decision teams" each of which has responsibility for deciding appeals of VA regional office decisions made in specific geographic regions.

The Board is not supposed to give any special weight to the regional office decision or its reasoning during its review. The BVA reviews the case as if for the first time (this is called *de novo review*). Furthermore, new evidence can be submitted at the Board level.

U.S. Court of Appeals for Veterans Claims

Until the U.S. Court of Appeals for Veterans Claims (CAVC) was created, in 1988, there was no judicial review of veterans' benefits decisions; the BVA had the last word. The Court was created by Congress in the Veterans' Judicial Review Act of 1988 (VJRA). Before the act was passed, attorneys were forbidden to charge more than \$10 to represent veterans with benefit claims at the VA.

Once the claim reaches the CAVC, which is a federal court, the process is no longer considered non-adversarial. In cases appealed to the CAVC, the claimant is opposed by lawyers from the VA's general counsel's office, so it is an especially good idea for veterans to obtain representation before heading to the Court. It not wise to litigate without assistance.

A few national veterans' service organizations provide free representation to some claimants at the CAVC, by the service organization's staff attorneys or by non-attorney practitioners. No service organization guarantees that it will take a case all the way to the Court level.

If a veteran is having trouble locating a representative, he or she can file a notice of appeal and the Court will send, on request, a list of attorneys who have been admitted to practice at the Court. This list is also available on the CAVC website at <http://www.uscourts.cavc.gov/practitioners/>. It is up to the veteran to contact one (or several) of the attorneys listed. Some attorneys charge fees; some may be willing to take the case *pro bono* (free) or work out a contingency agreement (the veteran pays the attorney nothing if he or she loses, but agrees to share a certain percentage of any past VA benefit award with the attorney).

The Court, concerned by the large number of unrepresented claimants who appear before it, helped create a program called the Veterans Consortium Pro Bono Program that matches unrepresented veterans' cases with pro bono attorneys. The Consortium staff screens veterans' cases for merit and trains volunteer attorneys in veterans law and practice before the CAVC. Each attorney is then provided a mentor from one of the Consortium's member organizations (DAV, PVA, The American Legion, and NVLSP), given legal resources, and is assigned a case for representation.

VA Medical Care

The VA health care system is administered by the Veterans Health

Administration (VHA), a branch of the VA that is separate from the Veterans Benefits Administration that runs the VA compensation and pension programs. The VA health care system is the nation's largest system of health care delivery.

Veterans are not automatically entitled to VA hospital care, nursing home care, or out-patient treatment simply because they are veterans. VA medical care is principally directed toward treating medical problems related to veterans' military service and towards helping some low-income veterans. In brief, certain veterans are eligible for free medical care and medications at VA facilities. Other veterans must pay a part of the cost of their care.

Sources of Law

Advocates might find it helpful to understand how statutes, regulations, and VA directives such as the VA's Adjudication Procedures Manual, the M21-1MR (*Manual M21-1MR.*) are related. Of these three sources of law, the statute, written by Congress, is the highest form. The statute that governs veterans' benefits is found in Title 38 of the United States Code (U.S.C.). The VA writes regulations to carry out the laws written by Congress; these are found in Title 38 of the Code of Federal Regulations (C.F.R.). The VA's internal instructions for adjudicating claims are contained in the *Manual M21-1MR*. VA regulations may not conflict with any statute; the manual's provisions may not conflict with either statute or regulations. If they do, the Court has the power to invalidate them.

Help Is Needed

Even though the VA claims system is not supposed to be adversarial, we strongly advise all claimants to obtain representation, and to work through an experienced veterans' advocate instead of dealing directly with the VA. It is really important to get the facts straight before submitting anything to the VA; in many instances, anything the claimant tells the VA can and will be used against him or her. Veterans are wise to take advantage of the free services provided by veterans' service organizations and other advocacy groups.