



## U.S. Department of Veterans Affairs Veterans Benefits Administration

# Frequently Asked Questions on Appeals Modernization and Decision Review Options

### Why did the Department of Veterans Affairs (VA) reform the way appeals are handled?

The goal of reforming the appeals system was to streamline a previously complex system into one that is simple, timely, and fair to Veterans. Working with its stakeholders, VA created the framework of what became the Veterans Appeals Improvement and Modernization Act of 2017 (AMA), which was implemented on February 19, 2019. AMA implementation reformed the old appeals system, now referred to as the “legacy” appeals process, by providing three review choices instead of one. These choices are called decision review options or lanes.

### What are the benefits of the modernized decision review system?

AMA was one of the most significant statutory changes to affect VA and Veterans in decades.

- AMA created a modernized system that is simple, timely, and fair to Veterans.
- It offers greater choice on how disagreements with VA benefits decisions can be resolved by providing the choice of three decision review options:
  - Higher-level review
  - Supplemental claim
  - Appeal to the Board of Veterans’ Appeals
- AMA provides faster resolution of disagreements on average.

### What are the three decision review options?

Under AMA, you have three options:

- **Higher-level review (HLR):** This option is a review of the claim by a higher-level reviewer based on the same evidence previously considered. An HLR is a closed record review, so no new evidence will be considered in the new decision. You can learn more about HLRs at [www.va.gov/decision-reviews/higher-level-review/](https://www.va.gov/decision-reviews/higher-level-review/).
- **Supplemental claim:** This option allows for the submission or identification of new and relevant evidence to support your claim. VA will make reasonable efforts to gather any new evidence you identify. You can learn more about supplemental claims at [www.va.gov/decision-reviews/supplemental-claim/](https://www.va.gov/decision-reviews/supplemental-claim/).
- **Appeal to the Board of Veterans’ Appeals:** This option allows you to appeal directly to the Board of Veterans’ Appeals (Board). Your appeal will be decided by a Veterans Law Judge. You can learn more about Board appeals at [www.va.gov/decision-reviews/board-appeal/](https://www.va.gov/decision-reviews/board-appeal/).



## **Which decision review option is the best option for me?**

You may choose from one of the three decision review options based on the option you feel best meets the needs of your situation. If you disagree with more than one issue addressed in the decision, you may select different decision review options for each issue. [VA Form 20-0998](#), *Your Right to Seek Review of Our Decision*, walks you through factors to consider, including a general overview of each option, the timeliness goals for completion, and the form to file.

What you should think about when choosing the best option for you:

- Do you have new evidence to submit? If you have new evidence, it cannot be considered with an HLR. You should look at the other two options: a supplemental claim or a Board appeal.
- Did you identify an error in the prior decision or believe an error occurred but do not have new evidence you want considered? If so, you may select an HLR which allows you to point out errors in fact or law in the prior decision.
- Do you want your case reviewed by a Veterans Law Judge? If this is your preference, you should select a Board appeal.

If timeliness is important, you should also consider the timeliness goals as you make your selection. See the frequently asked question, “*How long will I wait for a decision and how does that compare to the average wait time in the legacy appeals system?*” for VA’s average timeliness goals.

## **How do I request a decision review?**

Based on the decision review option you select, you should file the following:

- If you want to file an HLR, you may [file online](#) or you may [download VA Form 20-0996](#). You can learn more about HLRs at [www.va.gov/decision-reviews/higher-level-review/](http://www.va.gov/decision-reviews/higher-level-review/).
- If you want to file a supplemental claim, you should [download VA Form 20-0995](#). You can learn more about supplemental claims at [www.va.gov/decision-reviews/supplemental-claim/](http://www.va.gov/decision-reviews/supplemental-claim/).
- If you want to file a Board appeal, you should [download VA Form 10182](#). You can learn more about Board appeals at [www.va.gov/decision-reviews/board-appeal/](http://www.va.gov/decision-reviews/board-appeal/).

## **What happens if a higher-level reviewer identifies an error during a higher-level review?**

The higher-level reviewer looks at the evidence of record to determine if the previous decision was correct or if an error was made. We will notify you of the outcome of the HLR in one or more documents, depending on what we found. The documents will tell you any decisions we made and inform you of any additional actions we are taking.

Sometimes, the higher-level reviewer determines an error was made in gathering evidence to support the claim. This is called a duty to assist error, as explained later in this document. If a duty to assist error is identified, we will identify the error and what actions we need to take to correct the error. Once the duty to assist error is corrected, a new decision will be issued.

### **What should I expect if I request an informal conference?**

If you request an HLR, you have the option to request an informal conference with a higher-level reviewer. If you elect to have an informal conference, the higher-level reviewer will call the phone number you or your representative provided on the HLR form (VA Form 20-0996) to schedule a time to discuss your claim for a higher-level review. The higher-level reviewer will try to reach you or your representative twice. If no one answers, they will leave a voicemail to inform you about the reason for the call.

During the informal conference, you and/or your representative should point out errors in fact or law and discuss why you think the decision should be changed. The higher-level reviewer may provide clarification on the issue(s) including an explanation about the rating decision, the evidence considered, and how the evidence was used in deciding the claim.

This is not a formal hearing and there will not be transcripts of this call. You can learn more about informal conferences by downloading the *Informal Conference Fact Sheet* available at <https://benefits.va.gov/BENEFITS/factsheets.asp>.

### **What's required for a supplemental claim?**

In order to file a supplemental claim, you have to identify or provide evidence that's both new and relevant. You can either submit the evidence yourself or identify evidence, like medical records, that you would like VA to get for you. VA will accept the claim if new and relevant evidence is identified or provided.

### **What's new and relevant evidence?**

VA cannot accept a supplemental claim without the identification of new and relevant evidence. New evidence is information that VA didn't review before. Relevant evidence is information that could prove a part of your claim. If new and relevant evidence is not identified or submitted, then a decision will be rendered finding that there was insufficient evidence to readjudicate the claim.

## **Can I submit evidence with my request for a decision review, such as medical evidence from my private doctor or other new evidence?**

Yes, you can submit evidence, however, not all decision review options allow the consideration of new evidence. If you plan to submit evidence, you should consider the supplemental claim decision review or the Board appeal and elect either the Evidence Submission docket or the Hearing docket. VA will not be able to consider new evidence if you request an HLR or appeal to the Board and elect the Direct Review docket.

## **What's the "Duty to Assist"?**

VA's duty to assist requires VA to assist you in getting identified evidence, such as medical records, that are needed to support your claim. It can also include requesting an examination or obtaining a medical opinion to decide your claim.

## **What's a "Duty to Assist" error?**

A duty to assist error occurs when VA did not make reasonable attempts to gather evidence we should have. Sometimes this error occurs because we did not obtain medical records you identified, or it could be because we needed to order an examination or obtain a medical opinion. When we determine a duty to assist error occurred, we want to correct that error.

## **What happens if VA identifies a "Duty to Assist" error?**

If a higher-level reviewer discovers a duty to assist error, they will issue a decision identifying the error found. The HLR decision will then be closed and continued for corrective action as a "duty to assist error". Corrective action for a duty to assist error requires VA to consider new and relevant evidence, therefore the claim is continued until corrective actions are complete and a new decision is issued. If an error is identified during the process, the adjudicator will identify the needed evidence before rendering a decision. We will send a document explaining the actions we are taking.

If the issue was that we did not obtain medical records, we will take action to try to get the identified evidence or records. Some examples might include private medical records, federal records, or other types of records. If the issue was that we needed an examination or medical opinion, we will schedule an examination or request a medical opinion. We will send a document to let you know what actions we are taking.

Once the evidence is received and the duty to assist error is satisfied, you will be issued a new decision.

## **After reviewing the decision review options, I have decided to pursue a Board appeal, how do I know which docket is the best option for me?**

The Board has three options for an appeal. These options, or “dockets” are a Direct Review, an Evidence Submission, and a Hearing with a Veterans Law Judge.

- Electing the **Direct Review** docket will send your appeal to a Veterans Law Judge for a decision. This is an option if you do not want to submit additional evidence in support of your appeal and do not want a hearing with a Veterans Law Judge.
- Choosing the **Evidence Submission** will allow you to submit additional evidence in support of your appeal without a hearing with a Veterans Law Judge.
- Selecting the **Hearing** docket provides you the opportunity for a hearing with a Veterans Law Judge and the ability to submit additional evidence.

## **What should I expect if I request a hearing with a Veterans Law Judge?**

You have the option to request a hearing with a Veterans Law Judge if you request a Board appeal and select the Hearing docket on the VA Form 10182. The Board offers three hearing types:

- A video conference hearing will take place at a VA location near you. You and your representative (if you have one) need to appear in person at the VA location where the hearing is scheduled. The Veterans Law Judge will attend by video.
- A virtual tele-hearing, which requires each party to have access to a device with a camera, microphone, and Wi-Fi connection. You, your representative (if you have one) and the Veterans Law Judge will each join the virtual hearing room from separate locations. If you have a representative, you may discuss meeting them and joining from the same location.
- A central office hearing scheduled at the Board in Washington, DC. All three parties – you, your representative (if you have one) and the Veterans Law Judge – will be present at the Board. Travel and accommodations are not provided by the government.

At your hearing, you and the Veterans Law Judge will have a conversation. The Veterans Law Judge will listen to your testimony and may ask you a few questions. Your representative, if you have one, may help you at the hearing. The hearing will be transcribed and added to your file. You can submit evidence at the hearing and/or within 90 days after the hearing, but it is not required.

## **What are the deadlines for submitting a decision review?**

For most VA benefits, you have 1 year from the date on your decision notice to request a decision review to ensure the earliest possible effective date, if your claim is granted. However, please look at your decision notice, as certain types of VA benefits may have specific limitations.

## **What if I miss the deadline listed in my decision notice?**

If the deadline has passed, you can file a supplemental claim with new and relevant evidence. Because the deadline has passed, the effective date for benefits will generally be tied to the date VA receives the new request, not the date VA received your previous claim.

## **How long will I wait for a decision and how does that compare to the average wait time in the legacy appeals system?**

Prior to AMA, Veterans waited, on average, between three to seven years for resolution of a legacy appeal. The AMA process is more efficient and leads to a quicker average resolution.

The timeliness goals under the AMA are:

- Average timeliness goal of 125 days for HLRs
- Average timeliness goal of 125 days for supplemental claims
- Average timeliness goal of 365 days for Board appeal – Direct Review docket
- Average timeliness goal of 550 days for Board appeal – Evidence Submission docket
- Average timeliness goal of 730 days for Board appeal – Hearing docket

## **What if I want to change my decision review option after submitting a form?**

If you submitted a decision review form and want to change your review option, you can send a new decision review request form. You must include a signed statement that indicates you want to withdraw your existing review and switch to a different option. Please note that original filing requirements apply to the review lane you are requesting to switch to. For example, if you are requesting to switch into the HLR lane, the form must be received within 1 year of the decision under review. Claimants can change their request for a certain review option at any time prior to VA issuing a decision on their claim but it must be within 1 year of the decision notification. If the claimant's lane withdrawal occurs within the 1-year period following the date VA issued the decision being reviewed, the claimant can choose another review option and their effective date will be preserved.

If you requested a Board appeal and want to switch to a different decision review option, you will need to withdraw your appeal with the Board and submit a new decision review form. Original filing requirements apply to the Board appeal and docket lanes. You can switch appeal options within 1 year from the date of the VA decision. If you are in the legacy appeals system and interested in opting into AMA, please see the frequently asked question, *"How do I opt in if I want my legacy appeal to be considered in the modernized system."* You cannot select a different docket request if evidence has been submitted or a hearing has occurred.

## **What if I want to change my Board docket after submitting a form?**

If you requested a Board appeal and want to change your docket option, you will not need to withdraw the existing appeal. You only need to submit a new VA Form 10182, electing a different docket within 60 days of when the first VA Form 10182 was submitted or 1 year of the decision being appealed, whichever is later.

Please note that there are some limitations on changing docket options, such as when evidence has already been submitted or when a hearing has occurred.

## **If I still have an appeal pending in the legacy system, how will my appeal be addressed?**

VA is committed to addressing the inventory of legacy appeals. There are two touchpoints during a pending legacy appeal where a claimant may have the opportunity to opt into the modernized decision review process. However, there is no requirement to opt in. Claimants who do not wish to opt into the modernized review process, will see their appeal addressed under the legacy system.

## **How do I opt in if I want my legacy appeal to be considered in the modernized system?**

You may be able to opt into the modernized review system after receiving a VA statement of the case (SOC) or supplemental statement of the case (SSOC) dated on or after February 19, 2019. After you receive an SOC or SSOC, you have two options:

- You can continue in the legacy appeals process:
  - After receipt of a SOC: Return [VA Form 9](#) to the VA regional office within 60 days from the date on the SOC or within 1 year of the decision, whichever is later.
  - After receipt of a SSOC: No additional action is needed as your claim will continue in the legacy appeals process.
- You can [opt-in](#) to the modernized review system by submitting a Notice of Disagreement (VA Form 10182) or a decision review request form (VA Form 20-0995, *Supplemental Claim* or VA Form 20-0996, *Higher-Level Review*). You have 60 days from the date on the SOC or SSOC to opt into the modernized review system or within 1 year of the decision, whichever is later.

## **What are my options if I request a decision review and I still disagree with the decision?**

As long as you continuously pursue the claim by submitting the correct form within 1 year from your notification, you have the following options:

- If you requested a supplemental claim and do not agree with the supplemental claim decision:
  - You may submit another supplemental claim with new and relevant evidence.
  - You may request an HLR.
  - You may request a Board appeal.
- If you requested an HLR and do not agree with the HLR decision:
  - You may submit a supplemental claim with new and relevant evidence.
  - You may request a Board appeal.
- If you requested a Board appeal and do not agree with the Board decision:
  - You may submit a supplemental claim with new and relevant evidence.
  - You may appeal to the U.S. Court of Appeals for Veterans Claims.