### Section F. Requests for Reconsideration

#### 1. Requests for Reconsideration

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| Introduction | This topic contains information on claims for reconsideration, including   * definition of a request for reconsideration * initial steps for handling a request for reconsideration * effective dates for requests for reconsideration of increased evaluation * determining whether to include appeal rights in the decision notice, and * letter to a claimant who provides no evidence, or evidence VA has already considered, in support of a request for reconsideration. |

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| Change Date | July 15, 2015 |

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| a. Definition: Request for Reconsideration | *For the purpose of this topic*, a request for reconsideration is a request from a claimant for the Department of Veterans Affairs (VA) to reconsider one of its decisions that has not yet become final (the one-year appeal period, which begins on the date the claimant was notified of the decision at issue, has not yet expired). A prescribed form is ***not*** required for a request for reconsideration.  A request for reconsideration differs from a claim to reopen in that the decision at issue in a claim to reopen *has* become final.  ***Reference***: For more information about claims to reopen a finally denied claim, see M21-1, Part III, Subpart ii, 2.D. |

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| b. Initial Steps for Handling a Request for Reconsideration | The table below describes the initial steps for handling a request for reconsideration |

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| If the claimant submits ... | Then ... |
| evidence VA has never before considered | refer the claim to either the rating activity or authorization activity (whichever made the decision at issue) for reconsideration. |
| no evidence but makes reference to available evidence that VA has never before considered | assist the claimant in obtaining the evidence.  ***Note***: Follow the applicable instructions in this table once VA receives the evidence.  ***Reference***: For information about assisting claimants in obtaining evidence to support their claim, see M21-1, Part III, Subpart iii, 1.C.1, 2, and 3. |
| a statement indicating a willingness to report for examination(s) after failing to report to a previously scheduled exam(s) | reorder the missed examination(s). |
| * no evidence, or * evidence VA has already considered | send the claimant the letter shown in M21-1, Part III, Subpart ii, 2.F.1.e. |

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| ***Important***:   * If, when the claimant initially filed the claim for which he/she is requesting reconsideration, VA provided the claimant with [Section 5103](http://www.law.cornell.edu/uscode/text/38/5103) notice for the contentions associated with that claim, there is no requirement to reissue the notice upon receipt of the request for reconsideration. * Upon receipt of a request for reconsideration, establish an end product (EP) 020 with the *Reconsideration* claim label. This will ensure that the intent to file (ITF) batch process will not update the status of an *active* ITF to *claim received* upon establishment of the EP. * If additional conditions are claimed at the same time as the reconsidered issues, do ***not*** establish an EP 020 with the *Reconsideration* claim label, but instead establish the appropriate EP claim label based on whether the claimed conditions constitute new, increase, or reopened claims.   ***Example 1***: Veteran receives a decision notice on April 4, 2015, stating that his/her claim for service connection (SC) for a right knee condition is denied. On May 10, 2015, the Veteran submits an ITF for compensation. VA receives a letter from the Veteran on June 16, 2015, requesting a reconsideration of the denial of the right knee condition, and simultaneously submits medical records that have not been previously considered (new evidence).  In this example, an EP 020 with the *Reconsideration* claim label would be established, in order to ensure that the current status of the *active* ITF received on May 10, 2015, ***is not*** changed to *claim received* when the batch process runs the night that the EP 020 is established.  ***Example 2***: Veteran receives a decision notice on April 4, 2015, stating that his/her claim for SC for a right knee condition is denied. On May 10, 2015, the Veteran submits an ITF for compensation. VA receives a complete *VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits*, on June 16, 2015, requesting a reconsideration of the right knee condition, along with new medical evidence pertaining to the right knee, and also claims SC for a back condition on the *VA Form 21-526EZ*.  In this example, an EP 020 with the *New/Reopened* claim label would be established, in order to ensure that the status of the *active* ITF received on May 10, 2015, ***is*** changed to *claim received* when the batch process runs the night that the EP 020 is established. |

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| c. Effective Dates for Requests for Reconsideration of Increased Evaluation | When new and material evidence is submitted within the appeal period or prior to an appellate decision with regard to a claim for increased evaluation, the effective date for any increased evaluation is the later of the following dates   * the date on which the facts establish the increase in disability occurred, or * the date of the original claim for increase.   ***Exception***: If the facts establish that a Veteran’s disability increased within one year prior to VA’s receipt of the original claim for increased rating, the effective date of the increase is the date on which the increase in disability occurred.  ***References***: For more information on   * effective dates for increased rating claims, see * [38 CFR 3.400(o)](http://www.ecfr.gov/cgi-bin/text-idx?SID=878d83d53d3667a97157c2240f852387&node=pt38.1.3&rgn=div5#se38.1.3_1400), and * [VAOPGCPREC 12-98](http://www.va.gov/ogc/docs/1998/prc12-98.doc), and * new and material evidence, see * [38 CFR 3.156](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e49633264c8ed2d02cb7d08562113f1&node=se38.1.3_1156&rgn=div8), and * M2-1 Part III, Subpart iv, 2.B.2. |

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| d. Determining Whether to Include Appeal Rights in the Decision Notice | Include appeal rights in a decision notice issued in response to a request for reconsideration ***only if*** VA received or obtained ***new*** evidence in connection with the request for reconsideration. Include the appeal rights and a *VA Form 21-0958, Notice of Disagreement,* regardless of whether or not the decision at issue changed.  ***Important***: If the inclusion of appeals rights in the decision notice is appropriate, the claimant has one year from the date of that notice to file an NOD with the corresponding decision. |

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| e. Letter to a Claimant Who Provides No Evidence, or Evidence VA has Already Considered, in Support of a Request for Reconsideration | If a claimant who, in support of a request for reconsideration of a previously denied claim, provides   * ***no*** evidence, or * evidence VA has already considered,   send the claimant a letter containing the language below. |

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| We have received your request to reconsider your claim for **[Insert condition(s)]**. We previously made a decision on this claim and notified you of this decision in our decision notice dated **[Enter date of decision notice]**. This decision notice included a VA Form 4107, *Your Rights to Appeal Our Decision*, which explained your appeal rights.  **What Do You Do Now?**  We will not take further action on your request unless you do one of the following:   1. **Submit or identify new evidence related to the previously denied/decided issue(s**). We have enclosed a VA Form 21-4142, *Authorization to Disclose Information*, and VA Form 21-4142a, *General Release for Medical Provider Information*, for your use to identify any medical records that we do not have in our possession. 2. **File an appeal (notice of disagreement) of our prior decision**. To do so, you must submit to us a notice of disagreement expressing your dissatisfaction or disagreement with our prior decision, specifying which issue(s) or what part(s) of the decision you disagree with. You must submit a VA Form 21-0958, Notice of Disagreement, if the VA Form 21-0958 was provided to you as part of the decision notice for the decision that you would like to appeal. If you do not agree with our decision, please reference the *What You Should Do If You Disagree With Our Decision* section of the decision notice referenced above, which will provide you with information on what is needed to submit a notice of disagreement. 3. **Identify a clear and unmistakable error in the prior VA decision**. Clear and unmistakable errors are undebatable, so that reasonable minds could only conclude that the previous decision was flawed at the time it was made.   **Where and When Do You Send the Information or Evidence?**  Please mail or fax all correspondence to the appropriate address listed on the attached *Where to Send Your Written Correspondence* chart. Please put your full name and VA file number on the evidence.   |  |  | | --- | --- | | **If you are…** | **Then you have…** | | submitting or identifying new evidence | one year from the date of our decision notice **[Insert date of decision notice]** to submit new evidence. | | filing an appeal | one year from the date of our decision notice dated **[Insert date of decision notice]**. | | claiming a clear and unmistakable error | no time limit since there is no deadline for filing a clear and unmistakable error. | |

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| ***Note:*** If a rating EP was erroneously established to control the request, change the EP to EP 400 with the *Correspondence* claim label and clear the EP 400 after sending the letter. Do ***not*** maintain EP control for a response. Further action on the claim is only required if the claimant responds to the letter.  ***Important:*** If the rating EP was established with a claim label **other than** *Reconsideration*, review to determine if a pending ITF was marked *Claim Received*. In cases where an ITF status was changed based on the erroneous establishment of a rating EP, the claim processor must submit a trouble ticket to the National Service Desk to set the ITF back to the correct status.  ***Reference:*** For more information about changing an incorrect ITF status, see M21-1 Part III, Subpart ii, 2.C.1.l. |