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Chapter 3
ADMINISTRATIVE REVIEWS, ADVISORY OPINIONS,
APPEALS AND EQUITABLE RELIEF

3.01 Introduction

This chapter provides the procedures and processes for when a Servicemember or Veteran disagrees with the decision made on his/her claim for Chapter 31 benefits.

3.02 References and Resources

Laws: 38 United States Code (U.S.C.) 3102
 38 U.S.C. 5103
 38 U.S.C. 5109
 38 U.S.C. 7105

Regulations: 38 Code of Federal Regulations (CFR) 21.32
 38 CFR 21.33
 38 CFR 21.58
 38 CFR 21.59
 38 CFR 21.98
 38 CFR 21.412
 38 CFR 21.414
 38 CFR 21.420

VA Forms (VAF): VAF 8, Certification of Appeal
 VAF 9, Appeal to the Board of Veterans' Appeals
 VAF 21-4138, Statement in Support of Claim
 VAF 28-1943, Counseling Transmittal List
 VAF 646, Statement of the Accredited Representative in the
 Appealed Case
 VAF 4107, Your Rights to Appeal our Decision
 FL 1-25, Cover Letter for the Statement of the Case

Websites: www.bva.va.gov/How_Do_I_APPEAL.asp
 www.vba.va.gov/bl/21/publicat/Users/Index.htm
 www.va.gov/bl/21/publicat/Users/Index.htm
 www.gpo.gov/fdsys/pkg/PLAW-106publ475/pdf/PLAW-106publ475.pdf

3.03 Notification and Appellate Rights

A Veteran or Servicemember and his/her designated representative must receive notification of their appeal rights whenever a decision is made that denies, reduces or terminates benefits. All final decisions on claims involving benefits that the Department of Veterans Affairs (VA) administers may be subject to the Board of Veterans' Appeals (BVA) review.

3.04 Advisory Opinion

a. Definition

An advisory opinion is initiated prior to a formal decision being made. It seeks to resolve doubt as to the correct interpretation and application of law, regulations, policies or procedures.

b. The Process

A Vocational Rehabilitation and Employment (VR&E) staff member may initiate an advisory opinion with the concurrence of the VR&E Officer (VREO). However, the request for an advisory opinion must be signed and concurred by the Regional Office (RO) Director. The request must be submitted to the Director of VR&E Service who provides the advisory opinion.

c. Guidelines for Submission of a Request for an Advisory Opinion

1. The request must be prepared in a standard letter and must conform to the following format:

(a) Question(s)

State the question(s) clearly. Do not combine multiple issues into one question. Each issue must be stated in a separate question. Each question must be numbered if there is more than one question.

(b) Background

Provide brief statements of pertinent information regarding the Veteran's or Servicemember's identifying data.

(c) Discussion

State the facts pertinent to the decision that is being considered. Explain the details that may impact the decision and the laws, regulations and manual guidelines supporting the proposed decision.

(d) Recommendation

The VREO must provide his/her recommendation or comments on each question presented. The recommendation(s) must be clearly supported by evidence in the Counseling/Evaluation/Rehabilitation (CER) folder and by pertinent laws, regulations and manual guidelines.

2. The request for the advisory opinion must be sent with the Veteran's CER folder to the Director of VR&E Service.
3. The case manager must ensure that VAF 28-1943 is completed. Send the completed form and a copy with the CER folder to VR&E Service and maintain another copy for the office's recordkeeping. See Appendix O, VA Forms, for information on accessing this form, as well as all forms cited in this chapter.
4. The case manager must ensure that the temporary transfer of the Veteran's CER folder is annotated in the Corporate WINRS (CWINRS) case management system Remarks/Notes to ensure that the case is tracked appropriately.

3.05 Administrative Review

a. Definition

An administrative review is initiated after a formal decision is made. The review provides the resolution to uphold or overturn the formal decision. It focuses on questions regarding policy and procedures, application of the laws, regulatory guidelines or directives.

b. Timeline for an Administrative Review

An administrative review must be submitted within one year from the date of the written notification of decision to the Veteran.

The Veteran must be informed of the decision for an administrative review conducted by the Director of VR&E Service or a VREO within 90 days of receipt of request. (38 CFR 21.98)

c. Veteran Notification of the Administrative Review Outcome

The RO notifies the Veteran in writing with the outcome of the administrative review conducted by VR&E Service or the RO.

d. The Process

1. A request for an administrative review must be initiated prior to a Veteran or Servicemember appealing a decision to BVA. Once he/she files a Notice of Disagreement (NOD), any administrative review in progress will be terminated immediately so that appellate procedures may be followed.
2. A request for an administrative review of an RO decision may be initiated by an RO staff member, the Veteran or Servicemember, the Veteran's or Servicemember's representative or by other internal or external sources.

The review is specifically conducted based on the following types of decisions:

- (a) The Director of VR&E Service reviews decisions related to eligibility and entitlement to Chapter 31 benefits and the development of a rehabilitation plan in cases where the VREO is the case manager.
 - (b) The VREO reviews the decisions related to other adverse actions and the development of a rehabilitation plan.
3. If the administrative review upholds the original decision and the Veteran or Servicemember is not satisfied with the decision, then he/she may proceed with his/her appellate rights by filing an NOD.

e. Guidelines for Submission of Request for Administrative Review

1. Administrative Review Conducted by the VREO

- (a) The case manager must prepare the request in a standard memorandum (memo) using the following format:

(1) Decision

State the decision being disputed clearly. Each issue must be stated separately. Each issue must be numbered if there is more than one issue.

(2) Background

Provide brief statements of pertinent information regarding the Veteran or Servicemember's identifying data.

(3) Discussion

State the facts relevant to the decision of the case manager. Explain the details that led to the decision and the laws, regulations and manual guidelines affecting and supporting the case manager's decision.

- (b) Submit the CER folder with the memo request to the VREO.
- (c) The VREO must provide an explanation on each decision presented. The decision(s) must be clearly supported by evidence in the CER folder, pertinent laws, regulations and manual guidelines. The VREO's decision must be documented in a standard memo and filed in the CER folder.
- (d) The case manager must prepare the letter notifying the Veteran with the decision(s).

2. Administrative Review Conducted by the Director of VR&E Service

- (a) The case manager must prepare the request in a standard memo using the same format outlined above and route it through the VREO to the Director of VR&E Service. The RO Director signs the memo.
- (b) On the Administrative Review document include the VREO's recommendations and comments.
- (c) The case manager must ensure that VAF 28-1943 is complete. Send the completed form and a copy with the CER folder to the VR&E Service and maintain another copy for the office's recordkeeping.
- (d) The case manager must ensure that the temporary transfer of the Veteran's CER folder is annotated in the CWINRS Remarks/Notes to ensure that the case is tracked appropriately.
- (e) The CER folder, together with the required documentation for the administrative review, must be sent via United Parcel Service (UPS) and addressed to the Department of Veterans Affairs, VR&E Service (28), 1800 G Street NW, Suite 501, Washington, DC 20006.
- (f) Upon completion of the review, VR&E Service returns the CER folder to the RO with the memorandum of decision. The RO notifies the Veteran in writing of the outcome of the administrative review.

f. Administrative Review Decision Completed

The Veteran must be informed of the outcome of the administrative review in writing and within 90 days from the receipt of the Veteran's request for an administrative review. In addition, a copy of the decision must be sent to the Veteran's designated representative.

The case manager must take any action to provide further evaluation, obtain evidence or grant benefits as requested.

3.06 Decisions on Advisory Opinion or Administrative Review

The decisions rendered from an advisory opinion or decisions from an administrative review conducted by the Director of VR&E Service are final and binding.

The decisions rendered from an administrative review conducted by a VREO are final and binding.

The BVA may overturn the decisions rendered by the Director of VR&E Services on advisory opinions, administrative reviews or overturn the decisions rendered by a VREO on administrative reviews.

3.07 Board of Veterans' Appeal (BVA)

a. General Information

1. An appeal is a request for review of a VA determination on a claim for benefits rendered by a VA RO or medical center.
2. The BVA, also known as "The Board," is part of VA and located in Washington, D.C. BVA reviews determinations for benefit claims made by local VA offices and makes decisions on appeals on behalf of the Secretary. The Board consists of law judges and attorneys experienced in Veterans law.
3. A plain-language pamphlet, "How Do I Appeal," is available at www.bva.va.gov/How_Do_I_Appeal.asp.

b. Requirements

The VREO must ensure that all appeal actions related to the Statement of the Case (SOC), the Supplemental Statement of the Case (SSOC), decisions, remand responses, etc., as described in this section must be filed in the CER folder and Claims File (C-File).

c. The Appeals Process

A Veteran or Servicemember has one year from the date of the notification of a VA decision to file an appeal. The claimant must file a written NOD with the RO that made the decision. This is a written statement that a claimant disagrees with the VR&E decision.

1. Receipt of the Notice of Disagreement (NOD)

- (a) The NOD must be date-stamped upon receipt and a copy provided to the designated staff in the VA RO who will establish a Veteran's Appeal Control and Location System (VACOLS) record. This record must be established within seven days of receipt of the NOD. The user guide is available at www.va.gov/bl/21/publicat/Users/Index.htm. See 3.09 in this chapter for details on VACOLS.
- (b) The VREO must ensure that the Veterans Claims Assistance Act (VCAA) letter is sent to the Veteran in a timely manner within seven days of receiving the NOD and ensure that the "duty to assist" is met. This letter provides the Veteran 30 days to submit additional evidence related to his/her claim before proceeding to the appeals process. See 3.08 in this chapter for details on VCAA.
- (c) The VREO or his/her designee must review the NOD and the evidence of record to determine if the prior decision is correct and whether any further development or action is needed. The case manager who made the decision may not conduct the review.

2. Development of the Statement of Case (SOC)

- (a) The VREO must ensure that a SOC is prepared if the review does not result in a full grant of the claim for benefit and the claimant or his/her representative is not withdrawing the NOD. See 3.11 in this chapter for details on SOC.
- (b) Generally, the case manager responsible for making the decision upon which the disagreement is made will prepare the SOC.
- (c) The SOC must be completed within 30 days from the time the claim development is completed.

3. VR&E Officer's Review of the SOC

- (a) The case manager must submit a signed copy of the SOC together with the Veteran's CER folder to the VREO for review.
 - (b) The case manager must annotate in CWINRS Remarks/Notes the date the SOC and the CER folder were submitted to the VREO for appropriate tracking.
4. Sending the SOC to the Claimant and His/Her Representative
- (a) Upon completion of the SOC review, the VREO must sign the file copy.
 - (b) The SOC, together with VAF 9 and FL 1-25, Cover Letter for the Statement of the Case, must be sent to the claimant and his/her designated representative.
 - (c) A copy of the SOC must be filed in the claimant's CER folder and the Claims File (C-File).
 - (d) The VREO must ensure that the CWINRS Remarks/Notes is updated to reflect the date the SOC is mailed to the claimant and his/her designated representative.
 - (e) The VREO must also ensure that VACOLS is updated with the date the SOC is mailed to the claimant and his/her designated representative.
5. Claimant Fails to Respond or Responds Late to the SOC
- (a) If the claimant or the designated representative does not respond to the SOC within the 60-day period of receipt of the SOC or one year from the date of claim, whichever is later, no further action is required. See 3.15 in this chapter for more information on Timeline for Receipt of Substantive Appeal.
 - (b) If a response is received after the 60-day period expires, the VREO must ensure that the claimant is provided due process. Further action must be delayed for 60 days to provide the claimant a time to disagree with the decision.

Note: A claimant may appeal a decision regarding untimely filing of his/her appeal.
 - (c) The VREO must ensure that VACOLS is updated to dispatch the appeal, if the claimant withdraws the appeal.

6. Receipt of VA Form (VAF) 9, Appeal to the Board of Veterans' Appeals

The receipt of a properly completed VAF 9 is considered a substantive appeal.

- (a) The VREO must ensure that VACOLS is updated with receipt of the substantive appeal.
- (b) Additionally, the entire record must be reviewed to determine if further development is required.
- (c) If further development is determined not required, the VREO must ensure that one of the following actions is taken:
 - Award the benefit sought
 - Prepare the case for review by the Board of Veterans Appeals (BVA)
 - Determine if the appeal is deficient in specification of errors of fact or law
- (d) If the appeal is deficient, the claimant and the designated representative must be informed in writing about the deficiencies noted. The claimant is allowed 30 days to amend his/her appeal and correct the deficiencies.

If the claimant does not respond to amend his/her appeal, the VREO must ensure that one of the following steps is taken:

- Prepare the case for BVA review
- Prepare an SSOC if the SOC contains an error or is materially deficient
- Gather additional evidence for supplemental development action if indicated

7. Claimant's Representative Statement

- (a) After receipt of a substantive appeal, the VREO must ensure that VA Form 646 is sent to the designated representative prior to certification of VAF 8. A memorandum must be sent with the form notifying the representative that he/she has 10 business days to submit a completed

form. However, VAF 646 may not be sent to the claimant's representative if he/she is a private attorney.

- (b) Upon receipt, the VREO must ensure that VAF 646 is reviewed for any additional evidence in support of the claim to conduct necessary development or to develop an SSOC.
- (c) The VREO must ensure that the appeal is reviewed for any erroneous citations or deficiencies based on court decisions as asserted by the representative.
- (d) If an error or deficiency is found, an SSOC must be developed. However, if the representative offers an argument only, a SSOC will not be developed.

8. Development of an Supplemental Statement of Case (SSOC)

If the claimant properly completes and returns VAF 9 and provides additional evidence in response to the SOC, the VREO or his/her designee must review the appeal and take one of the following actions:

- Prepare an SSOC if the additional evidence does not render a granting of the benefit
- Grant the claim for benefit if the new evidence justifies a positive finding
- Arrange for a hearing or certify the appeal to BVA using VAF 8 if claimant did not provide additional evidence

Note: Refer to 3.12 of this chapter for additional guidance on SSOC.

9. Claimant's Election to a Formal Hearing

A claimant may elect to have a formal hearing anytime after he/she submits a properly completed VAF 9 and makes the request for a hearing on the form. He/she may request that the hearing be arranged in one of the following settings:

- Locally at the RO
- Before the Travel Board section of BVA
- BVA in Washington, D.C.

- Videoconferencing from the RO and BVA in Washington, D.C.

Note: VA does not authorize payment for a claimant's travel expenses for a hearing.

10. Withdrawal of Appeals

(a) Benefit Sought by Claimant is Fully Granted

If a favorable decision is made for a "total grant" of the benefit, the appeal is considered resolved and the claimant and his/her designated representative is notified in writing.

The VREO must ensure that VACOLS is updated accordingly.

(b) Benefit Sought by Claimant is Not Fully Granted

If the decision does not grant all benefits sought, the claimant and his/her designated representative will be notified in writing. The letter must also inform the claimant that he/she may withdraw his/her appeal within 60 days. The claimant must also be informed that if he/she does not respond to the letter, his/her appeal will be certified by the BVA.

In addition, the notification letter must include a self-addressed envelope with a VAF 21-4138.

Note: A claimant's appeal is considered withdrawn if the claimant requests to withdraw his/her appeal in writing.

(c) Claimant Requests to Withdraw Appeal

- (1) If a claimant filed the appeal, he/she may request to withdraw his/her appeal in writing. A designated representative may not withdraw the substantive appeal without a written consent from the claimant.
- (2) If a designated representative filed the appeal, the claimant or the representative may request to withdraw the substantive appeal.
- (3) An NOD may also be withdrawn in a similar manner before a timely substantive appeal is filed.

(d) Reactivation of Appeals After Withdrawal

(1) The claimant or representative may reactivate an NOD or a substantive appeal if VA receives the request within the remaining period of the appeal. BVA must be contacted to reactivate a withdrawn appeal record. Additionally, the claim must also be reactivated in VACOLS.

(2) If an NOD or substantive appeal is not reactivated, the decision will be considered as final. Once a decision is final, new material evidence is required in order to reconsider the issue.

11. Submission of Appeal to BVA

(a) Certification to BVA

The VREO must ensure that VAF 8 is certified and sent to BVA.

The appellant must be informed in writing that the appeal is certified to BVA.

Note: The appellant is allowed 90 days from the date of the notification letter or until the BVA decides the case, whichever comes first, to add evidence, request a hearing or select or change his/her representative. After the 90-day period, the appellant must submit a motion or a written request to petition for acceptance of the request. The motion must include an explanation for the late request and must demonstrate the reason that the BVA should accept it.

(b) Docketing an Appeal

An appeal is added to the BVA docket immediately upon receipt of the substantive appeal (VAF 9) at the RO. This automatically occurs when VACOLS is updated.

Note: The CER folder will remain at the RO until VAF 8 is completed. If a VAF 8 is completed, the CER folder and the C-File must be sent to BVA through the RO Appeals Coordinator.

12. BVA Decisions

VA must comply with the decisions made by BVA.

(a) Required Actions

- (1) If the BVA decision changes or reverses an RO's decision, the VREO must review the decision and ensure that the necessary action is taken.
- (2) If the BVA decision maintains or affirms an RO's decision (denial of claim sought), the VREO must review the decision and ensure that the necessary action is taken.
- (3) If the BVA decision vacates or leaves an RO decision without further action because the claim is not well grounded, the VREO must review and annotate the decision to reflect which decisions are affected including the date of the BVA decision. In this instance, the denial of benefits remains in effect and no further action should be taken.

Note: All BVA decisions are final unless overruled by the Court of Appeals for Veterans Claims (CAVC).

(b) Effective Dates of BVA Decisions

- (1) If the BVA decision grants the decision to deny benefit made previously by the RO and/or denies the claim sought, the effective date of the decision is the date of the vacated or original decision made by the RO.
- (2) If the decision is based on a difference of opinion:
 - The effective date is the receipt of request from Applicant or entitlement date, whichever is later
 - The effective date is the favorable BVA decision when reconsideration is awarded solely on VA initiative
- (3) If the decision grants benefits based on new or additional records received, the effective date is the same as the original claim date.

3.08 Veterans Claims Assistance Act (VCAA) of 2000

On November 9, 2000, Public Law (Pub. L.) 106-475 enacted the VCAA which states that VA has the "duty to assist" claimants or any individual applying for or submitting a claim for any benefit under the laws administered by the Secretary.

Duty to assist includes the responsibility for taking all the necessary steps in assisting the claimant in developing the evidence needed to support his/her claim or appeal. A claimant is notified in writing that he/she is allowed 30 days to respond and/or submit additional evidence before VA proceeds with the determination on his/her claim.

Refer to www.gpo.gov/fdsys/pkg/PLAW-106publ475/pdf/PLAW-106publ475.pdf for additional information.

3.09 Veterans Appeals Control and Location System (VACOLS)

a. Definition

VACOLS is a VA system used for recording, updating and locating cases for a Veteran's appeals. It was initially released to the ROs in May 1996 with several updates since then. Veterans Health Administration (VHA) began using this system in December 2001.

b. Use of VACOLS

The User Guide is available at www.va.gov/bl/21/publicat/Users/Index.htm#bmv.

All data must be entered accurately in each field in VACOLS, as some entries cannot be corrected. The BVA Administrative Manager must be notified if any error occurs.

c. Appeals Coordinator

An RO must have a designated Appeals Coordinator to establish a record or update a record in VACOLS for each stage in the process and to keep a log of NODs or appeals in progress. A Veterans Service Center (VSC) Appeals Coordinator is routinely designated as the RO's Appeal Coordinator.

The VR&E case manager must work closely with the VSC Appeals Team or Coordinator.

d. Updating VACOLS

1. VACOLS must be updated when the following instances occur:

- NOD is received
- SOC is mailed to the Veteran and designated representative

- VAF 9 is received
- SSOC is mailed to the Veteran and designated representative
- VAF 8 is completed/certified to BVA
- Remand case is received from BVA
- Withdrawal of NOD or Appeal
- VBA decision is received and required actions are taken

Note: Administrative Reviews or Advisory Opinions are not entered in VACOLS.

2. When updating VACOLS include the Veteran's name, claim number and date of notification of the decision and a brief description of the Veteran's disagreement.

3.10 Notice of Disagreement (NOD)

a. Definition

An NOD is a written statement from a claimant or designated representative advising the VA that he/she disagrees with a decision involving benefits applied for and denied. The statement must include a desire for appellate review. The claimant does not have to make specific allegations or explain the reason for his/her disagreement with a decision. In addition, the NOD must be based on a decision that has been previously made, not on a proposed action.

Generally, an inquiry or a general complaint following an adverse action is not considered an NOD. However, if a verbal complaint appears to be an NOD, a VR&E staff member receiving the complaint must solicit a written, signed statement of the disagreement with the adverse action.

A verbal statement at a personal hearing may be considered as an NOD if it is transcribed in writing.

b. Receipt of an NOD

All NODs must be received in the RO.

If an NOD is received in an out based office, the NOD must be date-stamped and a copy must be faxed, scanned or emailed to the RO for establishment of a VACOLS record. The original copy must be filed in the Veteran's CER folder.

c. Timeline for an NOD

An NOD must be submitted within one year from the date of the written notification of decision to the Veteran.

If a claimant submits an NOD after the one-year period, the VREO must ensure that the claimant is sent a letter stating the untimely submission of the NOD using the standard letter used by VSC.

It is a Veteran's right to appeal a decision regarding timeliness of a response.

3.11 Statement of Case (SOC)

a. Definition

An SOC is a statement provided to the claimant and his/her designated representative that explains the specific reason(s) and the circumstances that led to the decision for the adverse action or denial of the Veteran's claim for benefits. It is a summary of the evidence and applicable laws and regulations used in making the decision.

Additionally, an SOC assists the Veteran in developing his/her arguments for requesting a change in the decision.

b. Requirements for an SOC

An SOC must be prepared if the request for benefit cannot be granted and if the NOD is not withdrawn.

The case manager who makes the adverse decision must prepare the SOC, sign the original copy and forward the SOC to the VREO for review and signature.

The case manager must complete all development as quickly as possible to avoid any undue delays. The SOC must be prepared within 30 days from the time the claim development is completed.

c. Format

The following format is required in writing an SOC:

1. Issue

Explain the issue with which the Veteran has expressed disagreement.

2. Summary of Evidence and Actions

Summarize the evidence used in making the decision. All relevant actions must be stated in chronological order.

3. Pertinent Laws and Regulations

Cite all pertinent laws and regulations and discuss how such laws and regulations support the decision.

4. Decision

State the decision.

5. Reasons for the Decision

Summarize the reasons for the decision and the laws and regulations that support the decision, explain in detail the evidence used and how it supported the decision, address all of the appellant's contentions and provide clarification to ensure that the basis for the decision is fully explained.

6. Signature and Approval

The case manager who prepared the SOC signs and submits it to the VREO for review and approval. The signed SOC must be filed in the Veteran's CER folder and the unsigned copy will be mailed to the claimant and his/her designated representative.

Note: An SOC cover letter is required and must use specific terms. The case manager may coordinate with the VSC Appeals Coordinator to ensure required terms are used.

7. File

The SOC must be saved in a centralized location, such as a shared folder or drive, which allows other staff members access for necessary edits before submission or future related appeals.

d. Issues Not to be Disclosed in an SOC

- Issues considered by responsible medical authority to be injurious to the appellant's health
- References to a prognosis of "poor" or "terminal" or conditions of misconduct unless the specific misconduct is relevant to the issue
- Discussions of evidence that might provoke feelings of hostility, resentment or rejection on the part of the appellant or his/her family

e. Sending SOC to the Claimant and Designated Representative

1. No Designated Representative

If a claimant does not have a designated representative, the VREO must ensure that specific and potentially harmful references in the SOC are eliminated when furnishing a copy to the claimant. The file copy must be annotated with the full statement to show which portions were deleted from the copy to be sent to the claimant.

2. Representative Designated

Two versions of the SOC may be prepared when disclosure to the claimant's designated representative may not be harmful to the claimant but disclosure to the claimant may be. In this case, the VREO must ensure that both copies of the SOC are sent to the representative with annotation of which statements were deleted from the claimant's copy.

3.12 Development of a Supplemental Statement of Case (SSOC)

An SSOC will be developed when new evidence is submitted after an SOC is issued or the SOC contains an error or is materially deficient.

a. Format

The case manager must develop an SSOC using the same format as a SOC.

b. Information for an SSOC

- Include in full the issue the decision reasons and basis for those issues that have undergone change
- Limit the issues to those addressed on the SOC

- Do not introduce a new issue into the appellate process
- Include information from new evidence only
- Limit the information to the changes or additions required to provide the claimant complete information
- Do not include evidence and related laws and regulations previously cited in the SOC

c. The Process

A new VAF 9 must be submitted with the SSOC and the transmittal letter if a substantive appeal has not been filed.

A response to the SSOC is optional if the VAF 9 has already been received in response to the SOC or a prior-related SSOC.

An extension may be granted for a good cause if the request is received in writing before the time limit is expired.

d. Timeline

The claimant is provided 60 days from the date of the SSOC notification letter to respond if he/she has not completed the appeal process or VA has not received a completed VAF 9. He/she may be provided either 60 days or the remainder of the one year period from the date of decision on appeal, whichever is later, to perfect a substantive appeal.

If the Veteran has completed the appeal process, he/she is provided 30 days from the date of the SSOC notification letter to respond before certifying the appeal to BVA.

3.13 Board of Veterans' Appeals (BVA) Remands

a. Definition

A remand is when BVA returns the case for appeal to the RO after review and finds that additional development, due process or reconsideration is required.

BVA may return remanded appeals to VR&E for further action. A case may be remanded for a number of reasons which include, but are not limited to:

- Missing evidence
- Changes in the law
- Completion of other required actions

b. Required Actions

The VREO must ensure that there is strict control in the maintenance of the remanded cases. Additionally, the VREO must ensure that the following steps are taken:

1. Date-stamp the BVA Remand letter immediately upon receipt.
2. Review the case and all pertinent documents immediately.
3. Update VACOL within seven days of receipt in the RO.
4. Complete all development actions expeditiously and sequentially as ordered.
5. Complete any required SSOC within 30 days of receipt of new evidence if the benefit cannot be granted. Return the case to BVA with the documentation of completed actions as required and update VACOLS of the resubmission of the appeal to VBA.
6. If the VBA decision is to grant the benefit sought, take the appropriate actions to grant the benefit, notify the claimant and designated representative in writing and update VACOLS.

Note: If clarification is needed on a BVA remand, the RO must go through the respective Area Director to the Office of Field Operations (OFO) representative who handles such requests through the Appeals Management Center (AMC).

3.14 Processing Appeals to Court of Appeals for Veterans Claims (CAVC)

a. Definition

Effective November 18, 1988, Congress established judicial review of final decisions of VA by creating the United States Court of Veterans Appeals (COVA). However, COVA became known as the CAVC effective March 1, 1999.

b. The Process

If BVA denies a claimant's appeal, the claimant may appeal the BVA decision to CAVC within 120 days of the date of the decision.

CAVC can affirm, reverse or remand BVA's final decision. Decisions of a three-member panel of CAVC are binding precedent for VA unless reversed by the U.S. Court of Appeals for the Federal Circuit or the U.S. Supreme Court.

c. Informing the Claimant

When BVA denies a claim, the claimant is informed of the decision and the right of appeal to CAVC. VR&E is not required to notify the claimant of the BVA decision.

d. Remands from CAVC

CAVC may return remanded appeals to VR&E for further action. In some cases CAVC may issue orders that require VR&E to make a decision, complete some other action by a certain date or provide status reports at certain intervals. The status reports must show that required procedures are being followed without excessive delay.

All ROs must handle all remanded appeals to VA from either BVA or CAVC expeditiously as required by law. See Veterans Benefits Improvement Act of 1994, Public Law 103-446, for additional information on this issue.

3.15 Timeline for Receipt of Substantive Appeal

The claimant has 60 days to respond by submitting VAF 9 or other correspondence that presents specific arguments relating to errors of fact or law in reaching the decision(s) being appealed.

A substantive appeal must be filed within 60 days from the date of the SOC notification letter or within 30 days from the date of the SSOC notification letter or within the remainder of the one-year period from the date of the notification letter of the determination being appealed, whichever is later.

3.16 Equitable Relief

a. General Information

38 U.S.C. 501(a) and (b) grant the Secretary authority to make rules and regulations needed to administer VA benefits. Occasionally, mistakes are

made in applying rules and regulations, which deprive claimants of benefits or cause them to suffer a loss because they relied on an erroneous VA decision. For this reason, Section 503 also provides a means for the Secretary to remedy an injustice to a claimant, which cannot otherwise be justified within the scope of the law. This remedy is called equitable relief. It is governed by either one of the two provisions described below:

1. Section 503(a) gives the Secretary authority to provide whatever relief is determined equitable if the Federal government or any of its employees denies a claimant VA benefits because of an administrative error.
2. Section 503(b) gives the Secretary authority to provide equitable relief if a claimant suffered loss as a result of relying on an erroneous determination by VA.

b. Requirements for Issuing Equitable Relief

The following factors must be examined prior to initiating a request for equitable relief:

- VA made an erroneous decision concerning benefit eligibility and entitlement
- The Veteran acted to his/her detriment based on that erroneous determination
- At the time the Veteran acted to his/her detriment, he/she did not know the VA determination is in error

c. Development for Equitable Relief

The requirements for issuing equitable relief must be met prior to assessing the extent of loss if the evidence indicates that a claimant has suffered loss.

1. The case manager must include a detailed factual determination of loss as follows:
 - (a) If financial loss is claimed, the claimant must furnish a statement listing obligated expenses incurred because the claimant relied on the erroneous determination.
 - (b) If the loss involves injury, damage or some other disadvantages suffered by the claimant, he/she must furnish documentation showing

the extent of loss, which is due to reliance on an erroneous determination of eligibility or determination.

2. The case manager must assist the claimant in obtaining receipts to ensure that the incurred expenses are reimbursed.
- d. Guidelines for Submission of Request for Equitable Relief
1. Equitable relief requests involving VR&E benefits and services are to be submitted to the Director of VR&E Service for review. The RO Director should sign the requests.
 2. VR&E Service will only consider the request if the request is made by, on behalf of a claimant or if the RO believes the relief should be granted.
 3. The request must be prepared in a standard letter and must conform to the following format:
 - (a) Justify the request in clear and concise terms.
 - (b) Include a brief history of events.
 - (c) Cite the VA error.
 - (d) Describe the loss.
 - (e) Discuss the recommendation(s) for the relief.
 4. When submitting the request to VR&E Service, the case manager must ensure that the request letter is attached to the Veteran's CER folder with the full supporting documentation.
- e. Final Decision

After the Director of VR&E Service reviews and concurs with the granting of the request for equitable relief, the request is forwarded to the Secretary for final decision.

3.17 Clear and Unmistakable Error

a. Definition

A decision may be revised on the grounds of clear and unmistakable error, if the error is established by evidence after a redetermination.

b. Determinations

The following decisions may be subject to revision on the grounds for clear and unmistakable error:

1. A determination for Employment Handicap (EH), Serious Employment Handicap (SEH) or eligibility for a program of employment services prior to the Veteran's induction into a program.
2. A redetermination for EH, SEH or eligibility for a program of employment services after the Veteran's induction into a program.
3. Determinations affecting eligibility for training and rehabilitation services or payment of subsistence allowance.

c. The Process

1. The case manager responsible for making the original decision or the claimant may make the request for revision of decision at any time after the decision is made.
 - (a) If the case manager makes the request, the request must be submitted in a memo format with the evidence that establishes the error.
 - (b) If the Veteran makes the request, the case manager must review the request. The case manager makes the recommendations for maintaining or overturning the decision.
 - (c) The request must be submitted to the VREO for review and final decision.
2. A clear and unmistakable error may be identified through the local quality assurance review, appeals review by the VREO, or by the Systematic Technical Accuracy Reviews (STAR). In any of these instances, the case manager must make the request for revision of decision and submit the request to the VREO for concurrence.

d. Effective Date

The effective date of the revision of a decision on grounds of clear and unmistakable error is the same date as the original decision.

e. Action

When a clear and unmistakable error is established, the case manager must take the appropriate action to rectify the error. All associated actions must be clearly documented and filed in the CER folder and the Veteran must be notified of the decision in writing.

If the Veteran submits the request and the decision is unfavorable, he/she must be notified of the decision in writing and provided due process via VAF 4107, Your Rights to Appeal our Decision.