#### Department of Veterans Affairs M21-1, Part I, Chapter 5

**Veterans Benefits Administration December 11, 2015**

**Washington, DC 20420**

#### Key Changes

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| Changes Included in This Revision | The table below describes the changes included in this revision of Veterans Benefits Manual M21-1, Part I, “Claimant Rights and Responsibilities,” Chapter 5, “Appeals.”  ***Note***: Minor editorial changes have also been made to   * update incorrect or obsolete references * update obsolete terminology, where appropriate, and * bring the document into conformance with M21-1 standards. |

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| Reason(s) for the Change | Citation |
| To clarify the definition of a notice of disagreement (NOD) to indicate that an NOD does not have to be on the prescribed *VA Form 21-0958, Notice of Disagreement*, if the notice for the decision with which the appellant disagrees was sent prior to March 24, 2015. This means that valid NODs may be received after March 24, 2015, in a format other than the *VA Form 21-0958* as long as the decision notice was sent prior to March 24, 2015. | [M21-1, Part I, Chapter 5, Section A, Topic 1, Block d](#Topic1d)  [(I.5.A.1.d)](#Topic1d) |
| To update the stages of the appeal process to reflect updated procedures accommodating changes to the September 2015 version of *VA Form 21-0958* allowing the appellant to choose either the Decision Review Officer (DRO) review process or the traditional appellate review process on the NOD form. These new procedures also apply to any valid NOD received in any format if the appellant elects the DRO or traditional appellate review process on the NOD. | [I.5.A.2.b](#_b.__Overview) |

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| Rescissions | None |

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| Authority | By Direction of the Under Secretary for Benefits |

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| Signature | Thomas J. Murphy, Director  Compensation Service |

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## Section A. General Information on Appeals

#### Overview

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| In This Section | This section contains the following topics: |

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| Topic | Topic Name |
| 1 | Common Appeals Terminology and Definitions |
| 2 | Appeal Process |
| 3 | Withdrawing and/or Reinstating a Notice of Disagreement (NOD) or Appeal |

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#### 1. Common Appeals Terminology and Definitions

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| Introduction | This topic contains information on common appeals terminology and definitions, including   * definition of appellant * definition of claimant * definition of decision review officer (DRO) * definition of notice of disagreement (NOD) * definition of *de novo* review * definition of downstream issue * definition of inextricably intertwined * definition of full grant * definition of partial grant * definition of informal conference * definition of statement of the case (SOC) * definition of supplemental statement of the case (SSOC) * definition of remanded appeal * definition of trailing docket * definition of administrative appeal |

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| Change Date | December 11, 2015 |

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| **a. Definition: Appellant** | An ***appellant*** is a claimant who has initiated an appeal to the Board of Veterans’ Appeals (BVA) by filing a timely notice of disagreement (NOD) with the agency of original jurisdiction (AOJ) that completed the decision pursuant to the provisions of   * [38 CFR 20.201](http://www.ecfr.gov/cgi-bin/text-idx?SID=ce7359a3603e8bb7564078425d8d7d26&mc=true&node=se38.2.20_1201&rgn=div8) and either * [38 CFR 20.302(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ce7359a3603e8bb7564078425d8d7d26&mc=true&node=se38.2.20_1302&rgn=div8), or * [38 CFR 20.501(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ce7359a3603e8bb7564078425d8d7d26&mc=true&node=se38.2.20_1501&rgn=div8), as applicable. |

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| **b. Definition: Claimant** | A ***claimant*** is a person who has filed a claim under 38, U.S.C., for entitlement to Department of Veterans Affairs (VA) benefits.  ***Reference***: For more information on claimaints, see [38 CFR 20.3(g)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ce7359a3603e8bb7564078425d8d7d26&mc=true&node=se38.2.20_13&rgn=div8). |

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| **c. Definition: DRO** | The ***Decision Review Officer (DRO)*** is a senior technical expert who is responsible for holding post-decisional hearings and processing appeals. The DRO may have jurisdiction of any appeal.  ***Reference***: For more information on DROs, DRO duties, and the DRO decision process, see M21-1, Part I, 5.C. |

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| **d. Definition: NOD** | A ***notice of disagreement (NOD)*** about a decision rendered with notification sent prior to March 24, 2015, is a written communication from a claimant or his/her representative expressing   * dissatisfaction or disagreement with a decision, and * a desire to contest the result.   Although no specific wording is required in the NOD received prior to March 24, 2015, it must be written in terms that can be reasonably interpreted as a disagreement with a decision and a desire for appellate review.  ***Effective March 24, 2015***, every case in which the AOJ provides, in connection with its decision, a form for the purpose of initiating an appeal, a notice of disagreement consists of a completed and timely submitted copy of that form. VA will *not* accept as a notice of disagreement an expression of dissatisfaction or disagreement with an adjudicative determination by the AOJ and a desire to contest the result that is submitted in any other format, including on a different VA form.  ***Reference***: For more information on NODs, see M21-1, Part I, 5.B. |

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| **e. Definition: *De Novo* Review** | A ***de novo* review** is a new and complete review of the appealed issue with no deference given to the decision being appealed. This review leads to a new decision, which may be a full grant, partial grant, clear and unmistakable error (CUE), or no change.  ***Reference***: For more information on *de novo* review, see   * M21-1, Part I, 5.C.4, and * [38 CFR 3.2600](http://www.ecfr.gov/cgi-bin/text-idx?SID=e3d812535c457f518beba2e826a7c513&mc=true&node=se38.1.3_12600&rgn=div8). |

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| **f. Definition: Downstream Issue** | A ***downstream issue*** is an issue which arises as a direct result of a favorable decision on an appealed issue and must be addressed by the decision maker.  ***Example***: A Veteran files an appeal for service connection (SC) for depression. When granting SC for depression, the DRO must address the following downstream issues   * disability evaluation * effective date, and * entitlement to any ancillary benefits that arise, based upon the evidence, such as * individual unemployability (IU) * Dependents’ Educational Assistance, and/or * special monthly compensation (SMC).   ***Important***: A decision on a downstream issue may or may not confer new appeal rights.  ***References***: For more information on   * DRO jurisdiction over downstream issues, see M21-1, Part I, 5.C.3.b, and * whether a decision on a downstream issue confers new appeal rights, see M21-1, Part I, 5.C.3.c. |

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| **g. Definition: Inextricably Intertwined** | An issue is ***inextricably intertwined*** with a matter(s) on appeal when a decision on that issue by the regional office (RO) could have a significant impact on the matter(s) under appeal.  ***Notes***:   * A decision has a significant impact on the matter under appeal when it tends to make it more or less likely that the benefit sought will be awarded. * All matters that are inextricably intertwined must be adjudicated before any determination by BVA may be made.   ***Example***: An RO decision granted SC for depression at 10 percent disabling. The Veteran submitted an NOD with the evaluation of depression. During a conference with the DRO, the Veteran also alleges that her fibromyalgia was caused by her depression. The DRO issues a partial grant by increasing the evaluation of depression to 50 percent. The issue of SC for fibromyalgia secondary to the Veteran’s SC depression is inextricably intertwined with the issue of an increased rating for depression and must be adjudicated before BVA can address the issue of fibromyalgia. |

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| **h. Definition: Full Grant** | If the issue under appeal is initial SC, a ***full grant*** occurs when SC for the disability is granted.  If the issue under appeal is the *evaluation* of an already SC disability, a ***full grant*** of an issue on appeal occurs when the maximum benefit allowed by law and regulation for the specific issue(s) under appeal are granted for the entire period under appeal.  ***Exception***: When a Veteran submits an appeal for a specific disability evaluation other than the schedular maximum, an award of the specifically requested evaluation for the entire period under appeal is considered a full grant.  ***Examples***:   * A Veteran files an NOD seeking SC for a left knee condition. A DRO subsequently grants SC for the left knee condition. This is a full grant of the benefit sought and the appeal has been satisfied. * A Veteran files an NOD as to the evaluation of her SC left knee. A DRO grants an increased evaluation, but not the maximum schedular evaluation allowed for the left knee condition. This is *not* a full grant of the benefit sought and the original appeal remains active.   ***Reference***: For more information on fully granting the benefit sought, see [*AB v. Brown*, 6 Vet.App. 35 (1993)](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bma). |

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| **i. Definition: Partial Grant** | A ***partial grant*** of an issue on appeal occurs when the maximum schedular benefit allowed by law and regulation for the issue(s) under appeal is not granted for the entire period under appeal.  ***Important***: If the issue under appeal is initial SC, a partial grant *cannot* occur; the decision rendered must either involve a full grant or denial of the issue under appeal. |

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| **j. Definition: Informal Conference** | An ***informal conference*** is a tool available to the DRO and other RO personnel during the DRO review process to ensure   * all parties understand the issue(s) pending review * the issues are focused and clarified, and * the record is fully developed.   An oath or affirmation is *not* used for an informal conference.  ***Note***: While informal conferences are *not* part of the traditional appellate review process, direct communication with the Veteran and his/her representative is not precluded in these cases and should be initiated in order to facilitate resolution or clarification about matters on appeal.  ***Reference***: For more information on informal conferences, see M21-1, Part I, 5.C.5. |

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| **k. Definition: SOC** | A ***statement of the case*** ***(SOC)*** is an explanation of the decision made on the appellant’s case.  An SOC provides the appellant with a complete understanding of the decision so the appellant can prepare an effective substantive appeal with specific allegations of errors of fact or law.  ***Reference***: For more information on SOCs, see M21-1, Part I, 5.D. |

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| **l. Definition: SSOC** | A ***supplemental statement of the case (SSOC)*** presents the appellant with changes or additions to the SOC.  These changes and additions are usually based on additional evidence received   * after the issuance of the SOC * before or after receipt of a substantive appeal, or * after a remand.   ***Note***: If an appellant has not yet filed a substantive appeal, he/she still needs to respond to an SSOC by filing a substantive appeal, usually on *VA Form 9, Appeal to Board of Veterans’ Appeals*, in order to perfect the appeal.  ***Reference***: For more information on SSOCs, see M21-1, Part I, 5.D.4. |

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| **m. Definition: Remanded Appeal** | A ***remanded appeal*** is an appeal that has been returned by BVA to the RO or Appeals Management Center (AMC) for   * development of additional evidence * due process, or * reconsideration of issues.   ***Important***: Remanded appeals are among the oldest cases and must be worked on a priority basis.  ***Reference***: For more information on remanded appeals, see M21-1, Part I, 5.G.3. |

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| **n. Definition: Trailing Docket** | A ***trailing docket*** is a BVA Travel Board docket in which hearings at the RO are scheduled in immediate succession rather than at specific, individual times.  ***Reference***: For more information on trailing dockets, see M21-1, Part I, 5.H.2. |

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| **o. Definition: Administrative Appeal** | An ***administrative appeal*** is   * an appeal filed as the result of an adjudicated action, and * initiated and filed by the Veterans Service Center Manager (VSCM), Pension Management Center Manager (PMCM), or Director of an RO because he/she disagrees with the decision.   ***Reference***: For more information on administrative appeals, see   * M21-1, Part I, 5.J.2 * M21-1, Part III, Subpart vi, 1.A.1, and * [38 CFR 19.50](http://www.ecfr.gov/cgi-bin/text-idx?SID=9b3114c1a8153835fc8afb72aefa6aa6&mc=true&node=se38.2.19_150&rgn=div8). |

#### 2. Appeal Process

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| Introduction | This topic contains information on the appeal process, including   * formal hearings, and * an overview of the appeal process. |

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| Change Date | December 11, 2015 |

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| a. Formal Hearings | The appellant may elect to have a formal hearing at any time during the appeal process.  ***Reference***: For more information on hearings, see M21-1, Part I, 4. |

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

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| Stage | Who Is Responsible | Action | Reference |
| 1 | Appellant | * files an NOD in response to a VA decision regarding his/her benefit claim, and * *may* elect either the Decision Review Officer (DRO) review process or the traditional appellate review process.   ***Note***: The September 2015 version of *VA Form 21-0958, Notice of Disagreement*, includes new checkboxes for the appellant to elect either the DRO review process or the traditional appellate review process. Appellants may also choose to elect a particular appellate review process with the submission of valid NODs in other formats. | See M21-1, Part I, 5.B. |
| 2 | Appeals development activity | * accepts the NOD if it does not need further clarification, such as clarifying which issues are being appealed when a decision contains multiple issues * establishes a Veterans Appeal Control and Locator System (VACOLS) record, and * ***only if*** the election is *not* received with the NOD, gives the appellant the option to elect the * DRO review process, or * traditional appellate review process without DRO review. | See   * M21-1, Part I, 5.B.3 * M21-1, Part I, 5.B.4 * M21-1, Part I, 5.B.5 * M21-1, Part III, Supbart ii, 3.E.1 * M21-1, Part 1, 5.K, and * [*VACOLS User’s Guide*](http://vbaw.vba.va.gov/bl/21/publicat/docs/vacolsrelease840notes.pdf) |
| 3 | Appellant | elects either the   * DRO review process, or * traditional appellate review process without DRO review.   ***Notes***:   * If an appellant elects the DRO or traditional appellate review process by telephone, the election must be documented in writing on *VA Form 27-0820, Report of General Information*. * If the appellant does not elect the DRO or traditional appellate review process on the NOD or within 60 days of VA notification of the options for the appellate review process paths, the appeal proceeds in accordance with the traditional appellate review process. | See M21-1, Part I, 5.B.3.b |
| 4 | Appeals rating activity | conducts one of the following review processes based on the appellant’s choice   * DRO review process, or * traditional appellate review process without DRO review. | See   * M21-1, Part I, 5.C, and * M21-1, Part I, 5.D. |
| 5 | Appeals rating activity | Determines whether a change to the decision on appeal is warranted based upon a review of the evidence.   * If a change is warranted on all issues, the appeals rating activity issues a new decision with * a complete statement of facts, and * all necessary discussion to show the basis for the change(s) made. * If a change is warranted on only some issues, the appeals rating activity * issues a Statement of the Case (SOC) confirming the decision on appeal and explaining the reasons for the VA decision, and * sends *VA Form 9*, to the appellant. * If no change is warranted on any issue, the appeals rating activity issues an SOC confirming the decision on appeal and explaining the reasons for the VA decision, and * sends *VA Form 9* to the appellant. | See   * M21-1, Part I, 5.C.6, and * M21-1, Part I, 5.D. |
| 6 | Appellant | * returns *VA Form 9* or a substantive appeal in lieu of *VA Form 9* within the applicable time frames, and * may elect one of the following types of BVA hearings * Travel Board * Videoconference, or * In person in Washington, DC, or * may elect a local hearing before RO personnel.   ***Note***: An appellant may also choose not to have a hearing. | See   * M21-1, Part I, 5.E * M21-1, Part I, 4, and * M21-1, Part I, 5.H. |
| 7 | Appeals rating activity | * sends an SSOC to the appellant if * VA receives additional evidence, and * the appellant requests, in writing, that VA performs an initial review of the evidence, and * gives the appellant 30 days to reply before the appeal is sent to BVA.   ***Notes***:   * If none of the above applies, proceed to Step 8. * No reply is necessary from the appellant once VA receives a substantive appeal. * Without a written request from the appellant, VA’s initial review of additional evidence is waived. | See   * M21-1, Part I, 5.D.4, and * [*Public Law (PL) 112-154*](http://www.gpo.gov/fdsys/pkg/PLAW-112publ154/html/PLAW-112publ154.htm). |
| 8 | * Appeals rating activity, or * VSCM/PMCM designee | Certifies the case to BVA. | See M21-1, Part I, 5.F. |
| 9 | Appeals development activity | Transfers the claims folder to BVA. | See   * M21-1, Part I, 5.F.4, and * M21-1, Part I, 5.F.5. |
| 10 | BVA | Either   * issues a decision granting or denying the benefit, or * remands the case to the RO or AMC for additional action. | See M21-1, Part I, 5.G. |
| 11 | Appeals   * development activity * rating activity, or * authorization activity | If BVA   * issues a decision, then the * appeals rating activity issues a rating decision, if necessary, implementing BVA’s decision * appeals authorization activity processes the rating decision, and * appeals authorization activity closes out any pending VACOLS records. If all issues are decided, go to Step #13. * remands the case to the RO or AMC, then the * appeals development activity performs additional development in accordance with the remand, and * appeals rating activity issues a new decision.   ***Note***: If the new decision does not fully grant the benefit on appeal, the appeals rating activity   * prepares an SSOC, and * returns the case to BVA. | See M21-1, Part I, 5.G. |
| 12 | BVA | Issues a final decision in a remanded case and returns the case to the RO for review/processing. | See M21-1, Part I, 5.G. |
| 13 | Appellant | May appeal the final BVA decision to the U.S. Court of Appeals for Veterans Claims (CAVC) within 120 days of the date of the decision if he/she is not satisfied with the BVA decision. | See   * M21-1, Part I, 5.G.2, and * M21-1, Part I, 5.I. |

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

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| Introduction | This topic contains information on   * the withdrawal of an NOD or appeal by the * appellant, or * representative * the time limit for reinstating an NOD or appeal, and * reinstating an NOD or appeal. |

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| Change Date | May 28, 2015 |

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| a. Withdrawal of an NOD or Appeal by the Appellant | An appellant’s request to withdraw an NOD or appeal *must* be submitted in writing.  ***Exception***: A written submission is not required when the appellant withdraws an appeal on the record at a hearing.  ***Note***: Failure of the appellant to report for an examination or furnish evidence requested by VA does ***not*** constitute withdrawal of an appeal. |

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| b. Withdrawal of an NOD or Appeal by the Representative | A duly appointed representative, including an attorney, canwithdraw an NOD or substantive appeal without the written consent of the appellant.  ***References***: For more information on   * duly appointed representatives and power of attorney (POA), see M21-1, Part I, 3.A, and * withdrawal of an appeal by a representative, see [38 CFR 20.204(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=55ab0de88da8abd734a4fbdaddbecd6d&mc=true&node=se38.2.20_1204&rgn=div8). |

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| c. Time Limit for Reinstating an NOD or Appeal | The appellant or his/her authorized representative can reinstate an NOD or appeal after it has been withdrawn.  The request to reinstate must be   * in writing, and * received by VA within the remaining appeal period.   ***References***: For more information on   * receiving a substantive appeal within the appeal period, see [38 CFR 19.32](http://www.ecfr.gov/cgi-bin/text-idx?SID=6f25c0b1f32407716005e54ae44f10a9&mc=true&node=se38.2.19_132&rgn=div8), and * the requirements for reinstating an NOD or appeal, see M21-1, Part I, 5.A.3.d. |

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| d. Reinstating an NOD or Appeal | Use the table below to determine what is required to successfully reinstate an NOD or appeal. |

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| If the appealled issue is a … | And the decision notice was sent … | Then the appellant or authorized representative must submit the request for reinstatement during the remaining appeal period … |
| compensation benefit | before March 24, 2015 | in writing. |
| on or after March 24, 2015 | on *VA Form 21-0958*, *Notice of Disagreement*. |
| pension or Dependency and Indemnity Compensation (DIC) benefit | n/a | in writing. |

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| ***Exception***: If VA does not provide the appellant with *VA Form 21-0958* as an enclosure with the decision notice, the appellant or authorized representative can successfully reinstate an NOD or appeal via written statement.  Refer the folder for activiation of the VACOLS record. In the case of an appeal, this action alerts BVA to an appeal’s reactivation.  If the appellant or authorized representative does *not* reinstate the NOD or substantive appeal, the previously disputed RO decision(s) will be regarded as final.  ***Reference***: For more information on closing an NOD or appeal, see [38 CFR 19.32](http://www.ecfr.gov/cgi-bin/text-idx?SID=6f25c0b1f32407716005e54ae44f10a9&mc=true&node=se38.2.19_132&rgn=div8). |