



June 4, 2024

The Board of Veterans' Appeals: A Brief Introduction

The [Board of Veterans' Appeals](#) (BVA or Board) hears appeals of claimants dissatisfied with the initial decision on a claim for benefits or reimbursement filed with the Department of Veterans Affairs (VA). The BVA provides the highest level of appellate review within VA. This In Focus describes the BVA's creation, jurisdiction, adjudicators, and appellate procedures.

Although the BVA is still closing out the remaining appeals under VA's so-called "legacy" appeal system, this document will focus on the BVA's appeal process under the [Veterans Appeals Improvement and Modernization Act of 2017](#) (AMA), which went into full effect in February 2019.

Organization and Composition

The BVA is a distinct entity located within VA. [By statute](#), the BVA is led by the BVA Chairman, appointed by the President with the Senate's advice and consent, who serves a six-year term; a Vice-Chairman, appointed by the VA Secretary with the approval of the President; and "such number of members as may be found necessary" to meet the BVA's mission. Members of the Board—[also known as](#) Veterans Law Judges (VLJs)—are the adjudicators who make decisions on appeals to the BVA. The statutes governing BVA's composition, jurisdiction, and procedures are codified at [38 U.S.C. §§ 7101–7113](#), and VA's implementing regulations are codified in [part 20 of Title 38](#) of the *Code of Federal Regulations*.

Jurisdiction

The BVA is [tasked](#) to "conduct hearings and consider and dispose of appeals properly before the Board in a timely manner." It has jurisdiction to review "all questions of law and fact necessary to a decision by the Secretary of [VA] under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors." [38 C.F.R. § 104](#). Thus, the BVA decides appeals on a wide range of issues, from VA educational benefits to eligibility for outpatient treatment. Title 38, Section 20.104 of the *Code of Federal Regulations* provides a non-exhaustive list of potential issues that may come before the BVA. A final BVA decision is considered the final decision of the VA Secretary on the issue.

Veterans Law Judges

VLJs are the adjudicators that decide appeals before the BVA. They are appointed by the VA Secretary on the BVA Chairman's recommendation and approved by the President. A VLJ is required by statute to be a lawyer in good standing with the bar of any state and have a salary equivalent to that of an Administrative Law Judge.

The number of VLJs on the Board has increased in recent years in an effort to address the backlog of pending appeals

at the BVA, from 92 at the end of FY2018 to 125 at the end of FY2022. The BVA can also call upon "acting members"—typically BVA attorneys—to hear cases for a limited time each year.

There is no term limit for VLJs, and they may continue to serve as long as they meet performance standards. Federal law requires a performance review panel to evaluate VLJ job performance at least once every three years. If a VLJ meets the performance standards, they are "recertified" as a VLJ. If a VLJ fails to meet the performance standards, they may receive a "conditional recertification," subject to an additional performance review within one year, or they may be "noncertified" and removed from the Board. Outside of the performance evaluation program, a VLJ may only be removed for good cause.

Appealing a VA Decision

In 2017, Congress enacted the AMA in an effort to "expedite VA's appeals process while protecting veterans' due process rights." [H. REP. NO. 115-135](#), at 2 (2017). Any appeal filed after February 19, 2019, is subject to AMA procedures. For appeals filed before that date, the claimant can continue with the pre-AMA legacy appeal process or move to the new AMA process. A discussion of the legacy appeals system is outside the scope of this In Focus.

If a claimant disagrees with an initial decision of a VA *agency of original jurisdiction* (AOJ) (e.g., a regional office, medical center, or other VA entity) on a claim for benefits or reimbursement, the claimant may appeal it. The AMA provides three avenues for further review: (1) requesting higher-level review from a more experienced adjudicator within the AOJ; (2) filing a supplemental claim with new evidence at the AOJ; or (3) appealing to the BVA.

The AMA provides that a claimant may seek an unlimited number of reviews and, as long as each subsequent appeal is filed within one year of the most recent decision, keep the original claim's effective date. Therefore, requesting higher-level review or filing a supplemental claim does not preclude a claimant from seeking BVA review of the resulting VA decision.

To elect BVA review, a claimant must file a notice of disagreement (NOD) using VA Form 10182 with the BVA within one year of the AOJ's decision. The Board may provide an extension of the one-year deadline if the claimant submits a written request showing good cause.

BVA Proceedings

When electing BVA review, a claimant must select one of three review options available at the Board: (1) the *direct review* docket, (2) the *new evidence* docket, or (3) the

hearing docket. These options are discussed further below. If desired, a claimant may select different dockets for each separate issue in a decision subject to appeal.

Once the Board receives a completed NOD, it assigns the appeal a docket number. The BVA is statutorily obligated to hear appeals from each docket in the order in which they are received. However, an appeal may be advanced on the docket if there is sufficient cause, such as when the claimant is suffering severe financial hardship, has a severe illness, or has reached an advanced aged (75 years or older).

Claimants may elect to be represented before the BVA by an attorney, a claims agent, or a representative of a recognized veterans' service organization (VSO). The representative must be accredited by VA to represent a claimant. The proceedings are non-adversarial—that is, there is no party that argues *against* the claimant.

VA's "duty to assist" claimants in developing their claim no longer applies during an appeal to the BVA, but the BVA can remand the case if the AOJ failed to properly assist the claimant with the development of the initial claim.

In all of these dockets, the BVA generally will review the record de novo, meaning the assigned VLJ will look at the claim anew and not accord any weight to the AOJ's conclusions. There is one exception to the BVA's de novo review: the BVA is bound by all AOJ findings that are *favorable* to the claimant unless a finding is the result of a clear and unmistakable error.

Direct Review Docket

Under direct review, the VLJ reviews the decision based solely on the record evidence that existed when the AOJ made the initial determination. There is no opportunity to submit additional evidence or have a hearing with the VLJ. The BVA has a stated goal of completing reviews of claims on this docket within one year; as of September 2023, the BVA concludes these appeals, on average, in 314 days.

New Evidence Docket

If the claimant elects the new evidence docket, the claimant may submit additional supporting evidence with the NOD or within 90 days after submitting the NOD. There is no opportunity for a hearing with the VLJ on this docket. The VLJ will review the newly submitted evidence along with the evidence on which the original AOJ decision was based. The BVA has a stated goal of completing review of claims on this docket within 550 days; as of September 2023, the BVA concludes these appeals, on average, in 695 days.

Hearing Docket

The hearing docket permits a claimant to schedule a hearing with a VLJ. Claimants can elect to attend the hearing (1) in person at the BVA's office in Washington, DC; (2) virtually from a VA facility; or (3) virtually from a personal internet-connected device. Hearings are informal, and the claimant or the claimant's representative can provide testimony and argument. The claimant can submit additional evidence at the hearing and within 90 days following the hearing.

The VLJ will review the record evidence that was before the AOJ, the testimony and arguments from the hearing, and any added evidence submitted. The BVA has a stated

goal of completing review of claims on this docket within 730 days; as of September 2023, the BVA concludes these appeals, on average, in 927 days.

BVA Decisions

When review is complete, the BVA will grant, deny, or remand the claim to the AOJ for further development. The BVA's decision must include a written explanation of the Board's findings and conclusions on all issues of fact and law presented in the claim. If the claimant disagrees with the BVA's decision, the claimant may continue their claim within VA by filing a supplemental claim with new evidence or seek judicial review of the BVA decision.

Judicial Review of BVA Decisions

The [Court of Appeals for Veterans Claims](#) (CAVC) is a federal Article I court that has exclusive jurisdiction to review final BVA decisions. The CAVC reviews BVA legal conclusions de novo and reviews BVA factual findings for clear error. Only claimants may appeal a decision of the BVA to the CAVC—VA cannot appeal.

CAVC decisions can be appealed to the U.S. Court of Appeals for the Federal Circuit. Any party, including the VA, may appeal a CAVC decision, but the scope of review is limited to legal questions. The Federal Circuit may not review factual findings or law as applied to facts unless the issue involves a constitutional question. Federal Circuit decisions, in turn, are subject to review by the Supreme Court.

Cases Remanded to the BVA

If the CAVC remands a case to the BVA, the BVA must treat the case expeditiously. The case is placed on the BVA docket from which it originated. Therefore, if a claimant elected for direct review at the BVA, the remanded case will be put on the direct review docket, and the claimant will not be permitted to submit additional evidence for the BVA's consideration on remand.

Issues for Congress

BVA's caseload and pending appeals backlog is a perennial issue for Congress. In FY2022, the BVA rendered 95,294 decisions and received 107,274 new cases. At the close of FY2022, there were 209,535 BVA appeals pending. When considering new legislation that would impose additional procedural requirements on the BVA, Congress may wish to weigh the impact those additional requirements may have on the BVA's ability to efficiently conclude appeals presented to it.

In recent Congresses, legislators have introduced bills that would, among other things, [create internship and recruitment programs](#) to improve the BVA's ability to employ qualified attorneys, require VA's Inspector General to [report on the appeals backlog](#), require the BVA to include [additional information in its decision notices](#), and authorize the BVA to [aggregate appeals](#) involving substantially similar questions of law or fact.

Daniel T. Shedd, Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.