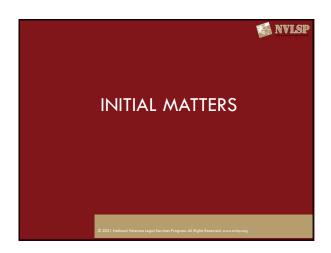


Agenda Initial matters Background, applicability, RO hearings, types of claims, rating decisions Higher-level review Supplemental claim BVA appeal Hypos Other Issues Switching review options, increased rating claims, simultaneously contested claims, etc.



Background

- □ 8/2017: The Veterans Appeals
 Improvement and Modernization Act of
 2017 (AMA) became law
- □ 1/18/2019: VA published final rule
 - VA Claims and Appeals Modernization, 84 Fed. Reg. 138 (Jan. 18, 2019)
- \square 2/19/2019: AMA went into effect

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Key Features of AMA System

- □ Rating decisions more detailed
- ☐ Claimants have more options to challenge rating decision
- □ No SOC, SSOC, VAF 9, VAF 8
- □ Favorable effective date rules
- □ Changes in applicability of duty to assist

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Applicability

- \square Claims for which notice of decision provided by AOJ on or after 2/19/2019
 - "initial" decision on claim for a particular benefit

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- decision on reopened claim
- decision denying CUE claim
 - ■Only HLR or BVA review of CUE denials permitted
- \Box Claims in RAMP (opted in by 2/15/2019)

1		

Applicability - "Legacy" opt-ins - W/in 60 days after SOC or SSOC issued on or after 2/19/2019 - Use VA forms for new review/appeal options - Check "Opt In from SOC/SSOC" - W/in 1 yr of RD issued before 2/19/2019 - Only supplemental claim option - 2021 National Veterans Legal Services Program. All Rights Reserved. www.anhp.org Applicability

Applicability

Other claims remain in "legacy" appeal system

Notice of decision issued prior to 2/19/2019

Claims currently in "legacy" appeals system

VA running two different appeals systems until legacy claims are exhausted

~33,000 legacy appeals currently at ROs

Projected to be ~5,000 by Dec. 2022

~93,000 legacy appeals currently at BVA

Projected to be ~45,000 by Dec. 2022

Type of Claims Under AMA	LAJI
□ VA claims that can be filed as of 2/19/2019:	
□ Initial claim	
■ Benefit not previously requested	
■ Increased Rating	
□ Supplemental claim	
For benefit previously denied (replaces "reopened" claim)	
□ CUE claim	
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Regional Office Hearings	
□ Claimants entitled to RO hearing on any issue	
involved in a claim only before VA issues notice of a decision on:	
□ initial claim	
□ supplemental claim	
 Submit request for RO hearing in writing if claimant wants to present testimony/evidence to VA in person 	
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Changes to Rating Decisions	
□ Decisions more detailed. Notice Letter + RD must	
include:	
 Issues adjudicated Summary of evidence considered 	
□ Summary of applicable laws and regs	
□ Favorable findings	
Claim elements not met	
□ Criteria to grant SC or next higher rating □ How to obtain / access evidence considered	
□ Review options	
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Favorable Findings	
□ If VA (including BVA) makes a finding	
favorable to claimant, it is binding on all	
later adjudications unless there is "clear and unmistakable evidence" to rebut it	-
unmistakable evidence" to rebut it	
"Finding" is a conclusion by a VA adjudicator concerning the issue under review on:	

■A question of fact

■An application of law to facts

NVLSP **Favorable Findings** □ Favorable finding rules only apply to claims subject to AMA, even if VA issued appellate decision on or after 2/19/2019■ SOCs, SSOCs, and BVA decisions on legacy claims do not need to provide notice of favorable findings □ Findings in these decisions that may be favorable are not binding on subsequent adjudicators ■ Mattox v. McDonough, 34 Vet. App. 61 (2021) 3 Options to Challenge RO Decision 1. Higher-level review by RO/AOJ 2. Supplemental claim w/ new and "relevant" evidence 3. BVA appeal by filing NOD 3 Options to Challenge RO Decision □ Claimant may choose different review "lane" for different "issues" □lssue = adjudication of a specific entitlement ■Ex: SC for knee disability and SC for PTSD are

different "issues"

■Ex: Effective date and disability rating for SC knee disability are part of same "issue"

					O. C.	TA A TO
3	Options	to	Challenge	RO	Decis	sion

- □ Advocate should analyze issues separately to determine best option for each
- □ List each issue on the appropriate review/ appeal form and file before deadline
 - ■Different review/appeal requests for different issues decided in same RD can be filed simultaneously or at different times

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3 Options to Challenge RO Decision

Main consideration in choosing type of review:

Which option gives the claimant the best chance of success at the earliest date?

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HIGHER-LEVEL REVIEW

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Option 1: Higher-Level Review

- □ De novo review by "experienced" AOJ adjudicator who did not participate in prior decision
- □ Can grant benefit based on:
 - Error in prior decision
 - □ Difference of opinion



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Option 1: Higher-Level Review

- ☐ Filing deadline: 1 year from notice of AOJ decision
- □ VA Form 20-0996, Decision Review Request: Higher-Level Review
- □ Cannot file for denial of simultaneously contested claim

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Option 1: Higher-Level Review

- □ If VA Form 20-0996 incomplete:
- □ VA must notify claimant and rep of needed info
- □ If complete form rcvd w/in 60 days of notification or before expiration of 1 year filing period, VA will consider it timely

A NVLSP Option 1: Higher-Level Review □ Conducted at Seattle or St. Pete DROC ■ May also occur at RO that handles claims requiring special processing □ Different RO than made prior decision, but can request same RO Option 1: Higher-Level Review □ HLR cannot consider new evidence ■Record limited to evidence of record as of date AOJ issued notice of decision under review Option 1: Higher-Level Review □ Evidence = Info with bearing on the validity of factual questions / elements of claim, such as: ■ Medical treatment records ■ Medical opinions ■ Medical treatises / studies ■ Lay statements about events, injuries, symptoms ■ Military records □ SSA or other gov't records □ Financial info

Option 1: Higher-Level Review □ Evidence "constructively" in record □ In VA control/custody, but not before adjudicator □ Is relevant and reasonably connected to claim ■ Examples: ■ VA treatment record, if adjudicator has sufficient info to indicate that record exists and to locate it ■ Evidence received by VA, but not uploaded to VBMS □ HLR will return case to VSR for consideration of evidence, unless max benefit can be granted Option 1: Higher-Level Review ■ Max benefit = Disability comp: highest schedular eval for □ Ancillary benefits: granting of benefit sought □ Pension/DIC: granting of highest benefit available Option 1: Higher-Level Review □ Advocacy advice: □ Include statement with initial claim: "The veteran receives ongoing medical care through the VA health care system for [claimed disability], including at [list facilities]. Please obtain an up-todate copy of [his/her] VA treatment records from these facilities immediately prior to making a decision on this claim."

M NVLSP Option 1: Higher-Level Review □ Law ≠ Evidence □ Statutes, regulations, caselaw, M21-1 provisions □ Argument ≠ Evidence □ Attempt to persuade someone to a particular view or belief using reason or fact $\hfill\Box$ Explanation of errors of fact or law in RD □ Explanation of why law supports claim, based on the evidence (facts) of record $\underline{\text{at time of RD}}$ Option 1: Higher-Level Review □ HLR can consider written argument □ "A claimant or representative may properly add, and the reviewer may properly consider, new argument to pinpoint or highlight VA's potential misreading of facts, or its potential misapplication of law to the facts that the evidentiary record has already established." □ MANUAL M21-5, 5.4.d (change date Mar. 25, 2021) □ Submit on/with VAF 20-0996, if possible © 2021 National Veterans Legal Services Program, All Rights Reserved, www.nvlsp.org NVLSP Option 1: Higher-Level Review □ Label as "Argument for Consideration by Higher-Level Reviewer" □ Only refer to evidence of record and relevant law □ Include the following intro: This submission does not contain any new evidence in support of the veteran's claim. It solely provides argument about why the regional office (RO) erred in denying the claim, and is based on only the evidence in the claims file at the time the RO issued notice of the

decision being reviewed.

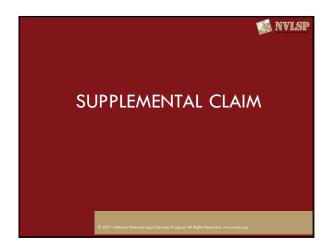
M NVLSP Option 1: Higher-Level Review □ Informal conference □ Can request on VAF 20-0996 ■ VA will contact rep (or claimant) 2x by telephone to try to schedule ■ St. Pete DROC may send email or text msg w/ hyperlink to schedule conference ■ VSO may not be copied, so advise Vet to contact you before responding ■ Will be scheduled w/in 7 bus. days of contact Conducted by telephone (usually) Option 1: Higher-Level Review □ Informal conference is not a "hearing"! ■ Cannot supplement record with testimony / evidence □ Purpose is to ID errors of fact or law in prior decision Option 1: Higher-Level Review □ Advice for informal conference ■ Review claims file in advance and be ready to say precisely what is wrong with the rating decision ■ Prepare notes/outline for all arguments ■ Remember, you can only present argument, not new ■ Be prepared for the call at least 30 minutes prior to scheduled time

Option 1: Higher-Level Review Duty to assist does not apply, but if HLR identifies DTA error committed by AOJ: If max benefit can be granted, HLR ignores If max benefit cannot be granted: HLR returns claim to AOJ for expedited correction and readjudication Evidence received after prior decision can be considered Claim will not return to HLR unless claimant submits new request for HLR review of new decision 2221 Notional Verrors Legal Services Program. All Rights Reserved. www.nripp.arg Option 1: Higher-Level Review

Option 1: Higher-Level Review	-
□ Effective date if claim granted: date of original claim (usually)	
□ If HLR continues denial, to preserve date of original claim as effective date for potential benefits, claimant has 1 year to:	
□ File supplemental claim, or	
□ Appeal to BVA	
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Option 1: Higher-Level Review	SP
□ Pros: □ More experienced adjudicator	
■ Fast decision ■ 50 days on avg (as of 9/30/2021)	
□ Cons □ Can't submit new evidence	
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Option 1: Higher-Level Review When to choose HLR: Evidence: No new evidence needed, or DTA error Rating decision contained error of fact or law Ex: RO missed key piece of evidence Evidence nearly balanced



Option 2: Supplemental Claim	LSP
Supplemental claims can be filed to:	
 Continuously pursue a claim that was denied in the pasyear and preserve the effective date of the claim 38 U.S.C. § 5104C(a) 	t
Attempt to obtain benefits that were previously denied in a VA decision that has became final	
 Applies to past denials of claims for the same or a similar benefit on the same or a similar basis 	•
■ Starts new claim stream	
■ Replaces reopened claims	
■ 38 U.S.C. § 5104C(b)	
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Option 2: Supplemental Claim

- □ Filing deadline: None, but to preserve effective date of claim, must file w/in 1 year of previous denial
- □ VA Form 20-0995, Decision Review Request: Supplemental Claim
- □ Cannot file for CUE denial or simultaneously contested claim

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Option 2: Supplemental Claim

- □ *Important Update #1*
 - □ ITFs now apply to § 5104C(b) supplemental claims (those filed after decision became final, NOT continuous pursuit)
 - 38 C.F.R. § 3.155 preamble, which excluded supplemental claims from the ITF framework, is invalid
 - Military-Veterans Advocacy v. Sec'y of VA, _F.4th_ (Fed. Cir. 2021)
 - You can file ITF for supplemental claim, if most recent prior decision denying the claim was more than one year ago
 - No need to worry that ITF won't protect the effective date
 - \blacksquare Helpful if you aren't sure if VA previously denied the benefit
 - Extra time to obtain/identify new and relevant evidence

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Option 2: Supplemental Claim

- □ *Important Update #2*
 - A claimant may file a supplemental claim while simultaneously pursuing an appeal of a BVA denial of the same claim at CAVC, Fed. Circuit, or Supreme Court
 - 38 C.F.R. § 3.2500(b), which bars filing a supplemental claim when the claim is pending before a federal court, is invalid
 - \blacksquare 38 U.S.C. § 5104C(a) only bars concurrent lanes of $\underline{VA\ review}$
 - Military-Veterans Advocacy v. Sec'y of VA, _F.4th_ (Fed. Cir. 2021)
 - May result in earlier grant of benefits
 - But, grant of supplemental claim may moot court case, allowing VA to avoid judicial review of certain issues

NVLSP Option 2: Supplemental Claim □ Supplemental claim will be considered complete and filed if claimant: □ Submits potentially new evidence, OR □ IDs new evidence for VA to obtain ■Triggers DTA in the gathering of evidence Option 2: Supplemental Claim □ If claim incomplete: □ VA must notify claimant and rep of needed info ☐ If complete form rcvd w/in 60 days, VA will consider it filed as of date of receipt of incomplete claim Option 2: Supplemental Claim □ AOJ will readjudicate issue if there is "new and relevant" evidence ■ Relevant evidence: ■ evidence that tends to prove or disprove a matter in issue ■ Includes evidence that raises new theory of entitlement □ NOT higher threshold than "new and material" □ After finding N&R evidence, VA considers both new

and old evidence during readjudication

A NVLSP Option 2: Supplemental Claim □ Some evidence VA considers "new and relevant": ■ Mere contention of a new theory of entitlement not previously addressed ■ Evidence affirming prior favorable findings ■ Does not need to prove a previously unsubstantiated matter ■ Manual M21-1, X.ii.2.A.2.c (change date Aug. 19, 2021) □ Statement that Vet will attend VA exam that was previously missed Option 2: Supplemental Claim □ When determining if there is "new and relevant" evidence, VA will consider: ■ Evidence submitted by claimant lue VA treatment records reasonably identified by claimant $\hfill\Box$ Evidence rcvd after notice of prior decision while record was closed ■ Evidence constructively part of prior record Other evidence identified by claimant

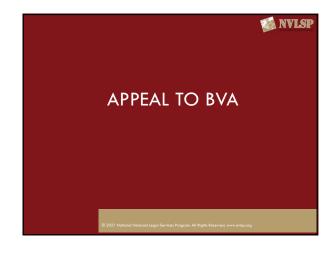
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Option 2: Supplemental Claim VA will consider new and relevant evidence received: with application, and any time prior to issuance of decision on the supplemental claim

A NVLSP Option 2: Supplemental Claim □ If new and relevant evidence not presented or obtained, AOJ will issue decision finding there was insufficient evidence to readjudicate claim □Claimant can appeal / request HLR A NVLSI Option 2: Supplemental Claim □ Duty to assist applies: ■ After receipt of substantially complete claim, DTA in gathering evidence (documents) □ After finding of new and relevant evidence, full DTA (including medical exam/opinion) NVLSI Option 2: Supplemental Claim □ Effective date if granted: □ If filed w/in 1 year of denial: date denied claim was filed (usually) □ If filed more than 1 year after previous denial: date of supplemental claim ■ Remember, ITF can count as date of supplemental

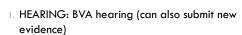
claim for Section 5104C(b) supplemental claim

If supplemental claim denied, to preserve date of claim as effective date for potential benefits, claimant has 1 year to: Request HLR, File another supplemental claim, or Appeal to BVA	Option 2: Supplemental Claim	
Option 2: Supplemental Claim Pros: Can submit new evidence Frat decision 1 Gad days on avg (as of 9/30/2021) Cons: Must submit new and relevant evidence Consum toward levent levent evidence Consum toward levent levent evidence Consum toward leve	☐ If supplemental claim denied, to preserve date	
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	□ Additional evidence needed to grant claim	
■Vet can trigger duty to assist ——————————————————————————————————	■Vet can get on own	
	■Vet can trigger duty to assist	



Option 3: Appeal to BVA

- □ BVA conducts de novo review
- □ 3 options / "lanes" at BVA:



- 2. EVIDENCE: Submit new evidence w/out BVA hearing
- 3. DIRECT: No hearing and no new evidence

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Option 3: Appeal to BVA

- □ VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement)
 - Must list the "specific determination" with which the claimant disagrees (construed liberally)
 - Issue
 - Date of decision
 - Must elect lane for review

Option 3: Appeal to BVA VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (cont.) Can choose different lanes for different issues Submit different NODs, or Attach page to NOD with explanation

Option 3: Appeal to BVA

- □ Filing deadline: 1 year from date of RO or HLR decision
- ☐ Must file with BVA
 - □ Fax: 844-678-8979
 - □ Mail: Board of Veterans' Appeals

PO Box 27063

Washington, DC 20038

□ Upload: VA's Centralized Mail Portal

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Option	.5:	Apped	l to	BVA

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- $\hfill \square$ BVA will handle unclear or deficient NODs
- □ Will notify claimant and request clarification
- □ Claimant must respond w/in 1 year of decision on appeal or 60 days of request
 - $\hfill\Box$ If not, form will NOT be considered an NOD
 - If clarification provided, NOD will be considered filed on date of clarification, which will also be docket date (and start 90 day clock for submitting evidence if "evidence" lane chosen)

 -		-	

Option 3: Appeal to BVA	
$\hfill \square$ No limitation on when written $\emph{argument}$ can be	
submitted to BVA in any lane	
Any time between NOD and BVA decision	
□ Evidenc e submission rules differ in each lane	
□ Decision times differ in each lane	
Decision limes differ in each falle	
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VM NVI SD	1
Option 3A: Direct Lane	
□ BVA will base decision on only evidence of	
record at time of AOJ decision	
■No evidence rcvd by VA after date of prior	
decision will be considered	
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TA AVI SD	1
Option 3A: Direct Lane	
_	
 Choice of direct review lane prevents Vet from submitting new evidence to BVA at later stage, if: 	
BVA issues unfavorable decision	
■ Vet appeals to CAVC	
□ CAVC remands issue to BVA, via decision or JMR	
 On remand, case returns to same BVA lane, with same evidence submission rules 	
□ Claimant does not have the right, as in Legacy cases,	
to submit new evidence to BVA after CAVC remand	
■ Augrews v. McDanauan, 34 vet. ADD, 131 (ZUZ1)	

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Option 3A: Direct Lane	
□ Pros:	
■ Most experienced VA adjudicator	
■ Relatively quick decision – 1 year goal	
■ 241 days to complete from intake on avg (8/2021)	
Quickest route to CAVC	
□ Cons:	
Can't submit evidence	
■ Even if case appealed to CAVC and back at BVA on remand	
Can't have hearing	-
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	<u> </u>
and a series of	1
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Option 3A: Direct Lane	
□ When to choose	-
More likely to get favorable decision than at RO	
■ Complicated facts/law	
□ RO erred	
■ Evidence of record supports award	
□ Want quick BVA decision	
·	-
Not concerned about need to submit new evidence to BVA following possible appeal to CAVC and CAVC	
remand	
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Option 3B: Evidence Lane	
□ Claimants can submit evidence:	
■ With NOD; and/or	
■ W/in 90 days following BVA's receipt of NOD	
BVA will also consider evidence of record at time	
of decision on appeal	
□ BVA will NOT consider evidence rcvd at other	
times	

Option 3B: Evidence Lane Pros: Most experienced VA adjudicator Can submit new evidence Second quickest route to CAVC Cons: Cannot have hearing Only 90 days from NOD to submit new evidence 2nd slowest AMA option & lower priority than legacy along slowest AMA option & lower priority than legacy 264 days to complete from intake on avg (8/2021)

Option 3B: Evidence Lane When to choose: More likely to get favorable decision than at RO Complicated facts/law Additional evidence will increase chance of success Can get evidence w/in 90 days of filing NOD Timely decision not important to claimant Unless appellant qualifies for AOD

Option 3C: Hearing Lane	SP
□ Hearings conducted	
1. At BVA's office in D.C., or	
2. By videoconference	
3. Virtual	
 BVA makes initial determination of type of hearing between first two options, but shall grant request for other type 	
 No Travel Board hearings 	
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NVLSP Option 3C: Hearing Lane ■ More info on hearings: ■ At least 30 days notice of hearing date □ Can reschedule up to 2 weeks prior with good cause □ Generally limited to 30 minutes $\hfill \Box$ VLJ conducting hearing not likely same VLJ that will make decision A NVLSI Option 3C: Hearing Lane □ Claimants can submit evidence: At hearing $lue{}$ W/in 90 days following scheduled hearing (even if claimant does not appear) ■ W/in 90 days of request to withdraw hearing □ BVA will also consider evidence of record at time of decision on appeal □ BVA will NOT consider evidence rcvd at other times © 2021 National Veterans Legal Services Program, All Rights Reserved, www.nvlsp.org **NVLSI** Option 3C: Hearing Lane □ Pros: ■ Most experienced VA adjudicator Long time to develop needed evidence Opportunity to submit testimony □ Cons: □ Longest wait for decision and long wait for hearing ■ 457 days to complete from intake on avg (8/2021) ■ 34K legacy & 54K AMA hearings pending (9/12/2021)

Option 3C: Hearing Lane When to choose: More likely to get favorable decision than at RO Complicated facts/law Opportunity to testify before VLJ important to claimant Compelling / credible testimony could sway decision Can't get needed evidence w/in 90 days of filing NOD Timely decision not important to claimant Unless appellant qualifies for AOD

Option 3: Appeal to BVA

- $\hfill\Box$ Claimants can switch dockets / review type:
 - Must file new NOD w/in the later of:
 - 1 year after decision being appealed, or
 - ■60 days after NOD received by BVA
 - □ Claimant will keep original docket date
 - Request will be denied if appellant already submitted evidence or testimony

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Option 3: Appeal to BVA

- □ Duty to Assist does not apply
- But for DTA errors committed prior to issuance of decision on review:
- $\hfill\Box$ If max benefit can be granted:
 - BVA ignores
- If max benefit cannot be granted:
 - BVA remands for AOJ for expedited correction of DTA errors and readjudication
 - RO must consider all evidence of record, including evidence rcvd outside evidence submission window

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NVLSP Option 3: Appeal to BVA □ BVA may also remand for correction of any other error by AOJ in satisfying a regulatory or statutory duty $\hfill \square$ Only required if reasonable possibility correction would aid in substantiating claim $\hfill \square$ BVA can remand for advisory medical opinion/IMO A NVLSI Option 3: Appeal to BVA □ If remanded claim remains denied in new rating decision, it does not automatically return to BVA □ To continue to pursue claim, claimant must file new NOD, HLR request, or supplemental claim □ If NOD, new BVA docket # assigned NVLSI Option 3: Appeal to BVA □ BVA decision: ■Must provide general statement as to whether any evidence was received at a time not permitted

■ Must inform claimant that such evidence was not considered by BVA and explain options to have

that evidence reviewed

Option 3: Appeal to BVA

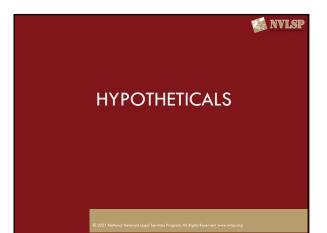
□ Effective date if claim granted: date of original claim (usually)

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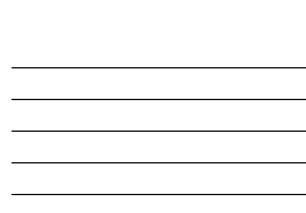
- □ If BVA denies claim, claimant can:
 - □ Appeal to CAVC w/in 120 days of decision; or
 - □ File supplemental claim w/in 1 year of decision; or
 - □ Pursue both avenues simultaneously
- □ These options preserve date of **original** claim as effective date for potential benefits

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Hypo #1

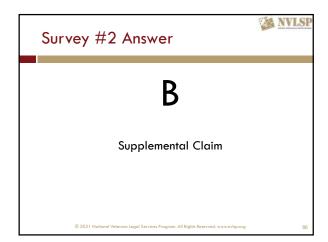
- □ 9/2021: RO denied SC for low back disability
 - Favorable findings of current dx of arthritis and inservice injury
 - \blacksquare Denied due to negative VA nexus opinion
- □ You think VA nexus opinion was based on incorrect facts
- □ Vet cannot get a private medical opinion supporting claim

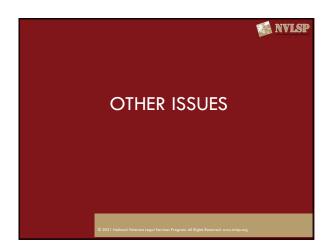


Wind Navie	STN.
Survey #1	38.
□ Which review option is best?	
A. Higher-level review	
B. Supplemental claim	
c. BVA direct review	
D. BVA evidence	
E. BVA hearing	-
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Survey #1 Applies	SP
Survey #1 Answer	
Δ	
	-
Higher-level review	
	-
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NVL	SP
Hypo #2	
-0/2021 PO L + 1555 L + 1 L + 1555	■
□ 9/2021: RO denied SC for low back disability	
 Favorable findings of current dx of arthritis and in- service injury 	
Denied due to negative VA nexus opinion	
□ You think VA nexus opinion was based on	
incorrect facts	
□ Vet has obtained a new favorable nexus	

opinion from a private doctor

Survey #2	NVLSP
 Which review opti A. Higher-level revi B. Supplemental cla C. BVA direct review 	ew aim
D. BVA evidence E. BVA hearing	s Program, All Rights Reserved. www.anlsp.org 85





Using	Inapplicability of DTA	at
BVA t	o Appellant's Advantag	ge



- If RO denies claim based on an <u>adequate</u> negative VA medical opinion and Vet then gets a strong favorable private medical opinion, Vet will want to choose between:
 - Supplemental claim
 - BVA evidence lane
 - BVA hearing lane

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Using Inapplicability of DTA at BVA to Appellant's Advantage



- If Vet files supplemental claim and submits new favorable medical opinion, RO will probably get a new VA medical opinion
 - New VA examiner will probably agree with first VA examiner and provide negative opinion
 - RO will probably deny claim, finding 2 negative opinions carry greater weight than 1 favorable opinion

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Using Inapplicability of DTA at BVA to Appellant's Advantage



- BUT, if Vet appeals to BVA and elects evidence or hearing lane, Vet can submit strong favorable medical opinion, and
 - DTA does not apply and no RO DTA error (negative opinion adequate), so it would be inappropriate to remand for 2nd VA opinion
 - See 38 C.F.R. § 20.802
 - Better chance BVA will find evidence at least in equipoise and grant claim

- NVLSP
- Claimants may switch between different review options (HLR, Supp Claim, BVA)
 - May withdraw request for certain type of review any time prior to notice of decision
 - □If withdrawal occurs w/in 1 year of notice of decision being reviewed, claimant may timely elect another review option to preserve date of claim

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NVLS

Additional Effective Date Rule

- ☐ If CAVC, Federal Circuit, or Supreme Court affirms BVA denial of claim (claimant loses):
 - Claimant can preserve date of **original** claim as effective date for potential benefits by submitting supplemental claim w/in 1 year of court decision

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NVLSP

Increased Rating Claims

- □ Claim for an increased rating is an "initial" claim
- If RO denies increased rating or Vet disagrees with initial rating, challenge in AMA system will only address appropriate rating from one year prior to date of claim until date of decision
- □ If disability gets worse after RO decision, Vet must file new increased rating claim
- Vet can have an increased rating claim and multiple appeals of ratings for the same disability, for different periods of time, pending concurrently

NVLSP Hypo #3 $\hfill\Box$ 6/1/2017: Vet granted SC for PTSD at 30% \square 3/1/2020: Vet files IR claim for PTSD \square 9/1/2020: RO denies IR – lack of evidence \Box 4/1/2021: Vet files NOD – BVA hearing lane \Box 5/1/2023: Vet submits evidence at BVA hearing showing PTSD satisfied criteria for a 50% rating as of 2/1/2020, and satisfied the criteria for a 70% rating as of 11/1/2021A NVLSP Survey #3 □ What rating(s) should BVA assign? A. 30% (no increase) B. 50% from 2/1/2020 c. 50% from 2/1/2020 and 70% from 11/1/2021D. 50% from 3/1/2020 A NVLSI Survey #3: Answer B

□ The issue on appeal is the rating from 1 year prior to the date of claim until the date of the RO decision
 □ Evidence of the severity after 9/1/2020 is irrelevant

 $\hfill\Box$ To maximize benefits, Vet should have filed a new IR claim by 11/1/2022 (w/in one year of increase in

to appeal

severity)

Simultaneously Contested Claims Special rules for simultaneously contested claims: Review option limited to BVA review No HLR or Supplemental Claim option NOD must be filed w/in 60 days Brief/argument/request for different lane due w/in 30 days after substance of NOD provided to party Favorable findings NOT binding

