

TDVS Benefits Bulletin
21-11

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TDVS Updates

Fall Training Schedule

Annual Examination, Friday, November 19, 2021 @ 1 – 3 p.m. CST **or** Monday, November 22, 2021 @ 1 – 3 p.m. CST. You should have received a calendar invitation with a WebEx link for both sessions. Please contact your Regional Director with any questions.

Monthly Lunch and Learn

TDVS's next monthly lunch and learn is scheduled for December 8, 2021 at 11:30 a.m. CST and will cover Caseflow, which is a web-based tool that enables the tracking and processing of appealed claims at the Board of Veterans' Appeals. It's currently used for Appeals Modernization Act (AMA) appeals and will eventually replace the current system of record for appeals, the Veterans Appeals Control and Location System (VACOLS), which was created in 1979 on now-outdated infrastructure.

This lunch and learn will cover Caseflow basics – What is it? How does it work? How will it benefit your advocacy? Most importantly you'll have access to Caseflow following this learning opportunity.

NEW – TDVS will make time and have team members available to answer questions and discuss topics from the benefits bulletin at each future lunch and learn opportunity.

VA Mail Delays

TDVS has received several reports from VRCs and County Partners about veterans not receiving VA mail. We also know BVA has experienced delays in providing veterans and their representatives notice of hearings, decisions, and other mailed correspondence. Please continue to provide TDVS with specific examples so we can engage the VA Regional Office and BVA on these delays.

As VA and BVA work to resolve this issue, please remember that you cannot print and provide a copy of documents from VBMS. VBMS is a VA (federal) system of record and release is governed by Federal law.

You can assist clients by contacting the VA VSO line – 855-225-0709 – which is now answered by the National Call Centers and requesting they fax you a copy of the document, so you can provide it to the veteran or claimant.

VA and Veteran Benefit Updates

Regulatory Updates

- Proposed Rule – Apportionments

On October 14, 2021, VA published a [proposed rule](#) that seeks to amend regulations to limit the circumstances in which benefits will be apportioned and to stop apportioning certain benefits.

- Final Rule – Certification of Evidence for Proof of Service

On October 18, 2021, VA published a [final rule](#) that amends its adjudication regulations concerning the nature of evidence that VA will accept as proof of military service and character of discharge. Specifically, this change allows VA to accept uncertified copies of service documents as evidence of military service if VA is satisfied that the documents are free from alteration.

This rule is effective November 17, 2021 and is one piece of VA's efforts to address claim adjudication delays that resulted from reliance on the National Personnel Records Center (NPRC) during the pandemic.

Quality Review Insights

Informal Conferences

The TDVS Appeals Division's customer service includes providing oral advocacy in support of veterans and claimants. Here is an update to ensure your clients receive the benefit of Appeals Division advocacy during their informal conference:

One of the options for disagreeing with a VA decision dated February 19, 2019 or later is by filing a VA Form 20-0996 to request a higher-level review. Claimants can request an informal

hearing as part of this option. If the claimant elects an informal hearing, please provide the following Appeals Division contact information to ensure appellate representation.

NEW PRACTICE TIP... Complete Block 16B of the VA form 20-0996 by selecting “Call my representative between 8:00 a.m. – 12:00 p.m. ET” and “Call my representative between 12:00 p.m. – 4:30 p.m. ET”.

Block 17 should contain the following contact information -

- 17A. Lisa Ware
- 17B. 615-695-6385
- 17C. tdva.vbanas@va.gov

SECTION IV - OPTIONAL INFORMAL CONFERENCE	
16. YOU OR YOUR AUTHORIZED REPRESENTATIVE MAY REQUEST AN INFORMAL CONFERENCE WITH THE HIGHER-LEVEL REVIEWER FOR THE SOLE PURPOSE OF POINTING OUT ERRORS OF FACT OR LAW IN THE PRIOR DECISION. (VA will only conduct one informal conference by telephonic communication associated with this request for Higher-Level Review.)	
<input type="checkbox"/> 16A. I WOULD LIKE AN INFORMAL CONFERENCE. I understand electing an informal conference is optional and may delay a decision.	
16B. IF YOU SELECTED THE BOX ABOVE, VA will make two attempts to contact you OR your representative to schedule the informal conference. Contact attempts will be between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time. INDICATE ONE PREFERENCE:	
<input type="checkbox"/> Call me between 8:00 a.m. - 12:00 p.m. ET	<input type="checkbox"/> Call me between 12:00 p.m. - 4:30 p.m. ET
<input type="checkbox"/> Call my representative between 8:00 a.m. - 12:00 p.m. ET	<input type="checkbox"/> Call my representative between 12:00 p.m. - 4:30 p.m. ET
17. IF YOU WOULD LIKE VA TO CONTACT YOUR REPRESENTATIVE, YOU MUST PROVIDE YOUR REPRESENTATIVE'S CONTACT INFORMATION BELOW.	
17A. REPRESENTATIVE'S NAME (First, Last) <input type="text" value="Lisa"/> <input type="text" value="Ware"/>	
17B. REPRESENTATIVE'S TELEPHONE NUMBER (Include Area Code) <input type="text" value="615-695-6385"/>	
17C. REPRESENTATIVE'S E-MAIL ADDRESS <input type="text" value="tdva.vbanas@va.gov"/>	

Please contact TDVS’s [Appeals Division](#) is you have any questions or concerns.

Lack of Veteran or Claimant Signature

TDVS’s quality review program frequently identifies forms that lack a veteran, claimant, or VSO signature. COVID restrictions in many communities have caused us to modify how we obtain client signatures. As a reminder, with limited exceptions, VA has not relaxed or modified the signature requirements for compensation and pension claims and appeals.

The only exceptions are for certain Vocational Rehabilitation forms such as VBA-28-1900 and VBA-28-8832 and the VA Form 10182 (Decision Review Request: Board Appeal). On these forms, the typed name of the veteran or claimant will suffice for a signature.

All other forms continue to follow existing guidance that requires a wet, electronic, or digital signature and is outlined in more detail below.

What forms can a representative sign?

Representatives have the authority to prepare and submit certain types of claims and other claim-related documents on behalf of the represented individual without that individual's signature. These include but are not limited to –

- Intent to file (ITF) a claim
- Supplemental Claim
- Request for higher-level review
- Legacy Substantive Appeal

A POA may prepare, but may not sign, documents that require the claimant's signature, such as (this list is not all forms...but rather several examples) –

- Original Applications for Veterans Benefits
- VA Form 21-8940, Veteran's Application for Increased Compensation Based on Unemployability
- VA Form 21-4142, Authorization to Disclose Information to the Department of Veterans Affairs (VA)
- VA Form 21-0538, Mandatory Status of Dependents

Please review [VA's M-21 Adjudication Procedures Manual](#) – I.3.A.4.b. – for additional information.

Establishing Representation and Disabled American Veterans

The Appeals Division continues to encounter instances where claims or related materials have been packaged using VetraSpec when the Disabled American Veterans (DAV) is the Power of Attorney of record. DAV is not an organization supported by TDVS. They have their own office and framework for claim submission in the State of Tennessee. If a county service officer is accredited with DAV and desires to utilize that POA, they should provide that assistance outside of VetraSpec and work through the DAV team at the VA Regional Office.

Reviewing VA systems prior to assisting a veteran will ensure that you hold the appropriate accreditation necessary to represent a veteran or other claimant before VA. The VSO hotline -- 855-225-0709 -- is another resource that may be used to determine whether a POA is of record when providing claims assistance.

Practice Like a Pro

VBMS – POA Electronic Notification Queue – Filter Enhancements



As highlighted in [Benefits Bulletin 21-9](#), in mid-August VBMS was updated to provide accredited representatives electronic notification within VBMS when new documents are added to the eFolder of a veteran whom they represent. The initial release included limited filter capability. A VBMS Update on October 17, 2021 enhanced the POA notification queue filters by allowing users the ability to save customized filters, set a default filter and filter by POA within the notification queue.

These [Release Notes](#) include additional information and step-by-step instructions for utilizing this new feature.

Legal Aid in Tennessee

Often, Veterans and their families will contact TDVS or county partners for assistance with legal issues that are not related to obtaining VA or State benefits. For example, a veteran may contact you requesting assistance with a divorce, property dispute, eviction or employment issue.

If a veteran requests assistance with any of these issues, or other legal issues not related to veterans benefits, you should be aware of legal assistance available in your community. Here are some resources to get you started.

Statewide – [HELP4TN](#)

West Tennessee – [West Tennessee Legal Services](#)

Middle Tennessee – [Legal Aid Society of Middle Tennessee & the Cumberland](#)

East Tennessee – [Legal Aid of East Tennessee](#)

Appeals Modernization Act or AMA

The TDVS Appeals Division’s customer service includes providing oral advocacy in support of veterans and claimants. Much of that advocacy occurs before the Board of Veterans’ Appeals or BVA. As discussed during the [AMA presentation](#) at the Annual Conference, veterans have three review options, outlined on VA Form 10182, when appealing to the BVA.

Option 1: Request a Direct Review

Option 2: Submit More Evidence

Option 3: Request a Hearing

<p>PART II - BOARD REVIEW OPTION <i>(Check only one)</i></p> <p>11. A Veterans Law Judge will consider your appeal in the order in which it is received, depending on which of the following review options you select. <i>(For additional explanation of your options, please see the attached information and instructions.)</i></p> <p><input type="checkbox"/> 11A. Direct Review by a Veterans Law Judge: I do not want a Board hearing, and will not submit any additional evidence in support of my appeal. <i>(Choosing this option often results in the Board issuing its decision most quickly.)</i></p> <p><input type="checkbox"/> 11B. Evidence Submission Reviewed by a Veterans Law Judge: I have additional evidence in support of my appeal that I will provide within the next 90 days, but I do not want a Board hearing. <i>(Choosing this option may add delay to issuance of a Board decision.)</i></p> <p><input type="checkbox"/> 11C. Hearing with a Veterans Law Judge: I want a Board hearing and the opportunity to submit additional evidence in support of my appeal that I will provide within 90 days after my hearing. <i>(Choosing this option may add delay to issuance of a Board decision.)</i></p> <p>PART III - SPECIFIC ISSUE(S) TO BE APPEALED TO A VETERANS LAW JUDGE AT THE BOARD</p>

The evidence submission rules are different for each option. If a veteran elects the hearing option, new and relevant evidence can be added either at the hearing or within 90 days after the hearing. BVA will not consider any evidence that was submitted after the rating decision but prior to the hearing.

PRACTICE TIP... Upload new and relevant evidence to VetraSpec and add communication notes but do not package prior to the hearing. This will allow TDVS's Appeals Advocates to review the evidence, incorporate into their hearing argument, and file with BVA within 90 days after the hearing.

Advocate Spotlight

Sumner County Advocacy Changes the Life of a Surviving Spouse

A veteran does not have to be service connected at death for a survivor to be eligible for DIC. The Sumner County Veteran's Service Office knew this rule and more. Their advocacy resulted in a life changing award of DIC to a surviving spouse of a Vietnam Veteran and a retroactive award of over \$370,000.

In this case, the Vietnam veteran died from arteriosclerotic cardiovascular disease in January of 1991. Prior to his death, the veteran was not service connected for any condition. In February of 1991, the spouse filed a claim for burial benefits and survivor benefits. VA denied both claims.

On August 31, 2010, VA established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the exposure to herbicides used in Vietnam. As a result of the *Nehmer* lawsuit, VA was supposed to identify and review cases of Vietnam veterans and survivors who were previously denied disability or death compensation for these diseases. That review did not happen in this case.

With the assistance of the Sumner County Veterans Service Office, the spouse again filed a claim for survivor benefits in April of 2021. They specifically sought out and included evidence of the Veteran's service in the Republic of Vietnam. They also understood there had been a previous denial of benefits, which triggered the special effective date rules of the *Nehmer* lawsuit. With assistance from TDVS's Appeals Division, Sumner County flagged for VA the application of *Nehmer* to this claim.

In October, the surviving spouse was awarded DIC with an effective date of January 1991, Dependent's Educational Assistance and the aid and attendance allowance. Remarkable

advocacy by the Sumner County Veterans Service office that highlights several important advocacy tips –

- Remember, a veteran does not have to be service connected at death for a survivor to be eligible for DIC.
- Many survivors of Vietnam Veterans may now be eligible for DIC because of the expansion of diseases associated with exposure to Agent Orange.
 - This includes thousands of survivors of Blue Water Navy Veterans who became eligible for benefits following the passage of the Blue Water Navy Vietnam Veterans Act of 2019.
- Not all previously denied claims subject to the *Nehmer* lawsuit have been identified and reviewed. If a veteran or survivor was previously denied service-connected disability or death benefits for a disease associated with exposure to Agent Orange, file a new claim.
 - TDVS's Appeals Division and NVLSP can assist with ensuring the proper application of *Nehmer's* special effective date rules.

If you have an example of teamwork between Veteran service offices/organizations across the state making a difference in the lives of Tennessee veterans, please share with your Regional Director for possible inclusion in an upcoming "Advocate Spotlight."

TDVS Benefits Bulletins Can Be Found on the [VSO Tools](#) Portion of TDVS's Website