

TDVS Benefits Bulletin
22-7

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TDVS Updates

TDVS Training Updates

- Mandatory July Quarterly Training: Establishing Entitlement to Service Connection for Hearing Loss and Tinnitus, July 11-17, 2022, viewing will be available for seven days 24/7.
- July Initial Accreditation Training, July 25th – 29th, 2022
- August Lunch & Learn, August 10, 2022, 11:30 to 12:30 CST. VSO Asbestos Claims Training
- Annual Conference, September 26 - 28, Montgomery Bell State Park. Email invitation sent out June 20, 2022, with registration instructions.
- October Initial Accreditation Training, October 17th – 21st, 2022. **Please note this course has moved one week earlier.
- [2022 Service Officer Training Calendar](#)

National Veterans Legal Services Program (NVLSP) Updates

Since the establishment of TDVS's partnership with NVLSP in July of 2019, TDVS has sent over 750 Board of Veterans' Appeals denials to NVLSP for review. NVLSP has offered appellate representation at the Court of Appeals for Veterans Claims (CAVC) to approximately 18% of these claimants. 100% of the appeals that have reached a conclusion at CAVC have been resolved in the Veteran or Appellant's favor.

Offers to discuss NVLSP representing a client before CAVC are sent via letter along with an introductory letter from Commissioner Baker. [Here's what it will look like.](#)

Please remember to use the TDVS power of attorney to ensure that all claimants are offered this opportunity. Additional details about TDVS's partnership with NVLSP can be found in the [TDVS Partnership with the National Veterans Legal Services Program Fact Sheet.](#)

Tennessee Veteran Spotlight

Check out the first video in the three-part Tennessee Veteran Spotlight with Captain Barbara Bell.

[Tennessee Veteran Spotlight - Barbara Bell, CAPT US Navy \(Ret.\) - Part 1](#)



VA and Veteran Benefit Updates

Debt Management Center Updates

In June, VHA launched a streamlined and simplified application and approval process for medical debt relief.

- Objective income threshold criteria will now be used for the processing and consideration of debt relief.
- Supplemental documents to support requests will no longer be recommended for initial submission of applications.
- Patient statements are mailed monthly or can be viewed online --
 - <https://eauth.va.gov/accessva>
 - <https://www.va.gov/manage-va-debt>
- [Simplified Medical Debt Relief Application Process for Veterans FAQs](#)

This application and approval process for medical debt relief is part of VA's larger regulatory effort, highlighted in [Benefits Bulletin 22-2](#) and [explained](#) by the Consumer Financial



Protection Bureau, to provide additional protections to the most financially vulnerable Veterans.

DMC's presentation at TDVS's 2022 [Spring Regional Quarterly Training](#) has additional updates and resources. Also, don't forget that DMC has a dedicated phone line for VSO's -- 612-970-5737 – to assist with urgent debt issues.

Honoring Our PACT Act

Congress is considering legislation, Honoring Our PACT Act of 2022, that would significantly expand access to health care and benefits for Veterans with toxic exposure injuries.

There's significant momentum behind this legislation and the President has indicated he would sign it. NVLSP is working on a curriculum and TDVS anticipates providing training on this legislation at TDVS's Annual Conference in September.

Asset and Infrastructure Review Commission

[Benefits Bulletin 22-4](#) provided background on the Secretary's recommendations to the Asset and Infrastructure Review or AIR Commission, which was a component of the VA MISSION Act of 2018. On July 27th, a bipartisan group of Senators, [effectively stopped](#) the asset and infrastructure review process outlined by the MISSION Act.

Practice Like a Pro

Higher Level Review and Informal Conference

[Benefits Bulletin 21-11](#) highlighted that TDVS Appeals Division's customer services includes providing oral advocacy in support of Veterans and claimants and offered several tips to ensure your clients receive the benefit of Appeals Division advocacy during their informal conference.

VBA's Office of Administrative Review recently provided information on informal conferences in a [Vantage Point Blog Post](#) and [Informal Conference Fact Sheet](#). It emphasized that the purpose of a higher-level review is to correct an error of fact or law in a VA decision.

*PRACTICE TIP...*When filing a higher-level review (VA Form 20-0996) use a VA Form 21-4138 to identify or articulate the error of fact or law in the previous VA decision. You can also use VetraSpec communication notes to identify the error or fact or law and an Appeals Division team member would be happy to assist in crafting an argument. Here are some examples -

SECTION II: REMARKS
(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary.)

This statement is accompanying VA Form 20-0996 (Decision Review Request: Higher Level Review) in order to point out an oversight in VA's dependency award of June 1, 2021.
 Veteran, through his accredited representative, Travis Murphy, TDVS notes that one of the veteran's dependents listed on the VA Form 21-686c filed October 30, 2020 was not added to his June 1, 2021 award.
 Dependent child Benjamin Cache Buckley is listed on page 6 of 6 of the VA Form 21-686c filed October 30, 2020. Please add this dependent to the veteran's award.

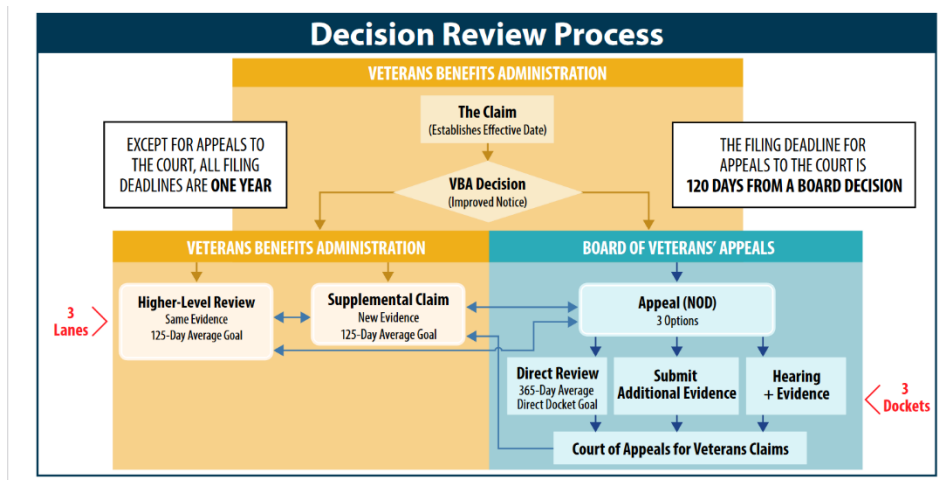
SECTION II: REMARKS
(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary.)

RE: Supplemental Claim Decision Date 3/12/2022
 Veterans supplemental claim came back with a grant and effective date of August 10, 2021. This claim for bilateral hips and back was initially filed October 12, 2020 with an ITF date of June 17, 2020. It appears the VA used the effective date of an ITF received August 10, 2021. Since the claim remained active with multiple supplemental claims submitted, the August 2021 IFT should not of been used, but the original ITF date June 17, 2020 should be the correct effective date. Please review and issue a new decision with the appropriate effective date and retroactive pay as of June 17, 2020.

Please contact the [Appeals Division](#) if you'd like to participate in preparation for or observe an informal conference.

Counseling a veteran on how to disagree with a VA decision is complex. If you catch the mistake immediately, you might use the [Claim Accuracy Request](#) process. A veteran might disagree with one of Appeals Modernization Act's three options – supplemental claim; higher-level review; or appeal to BVA. TDVS's [Appeals Division](#) team is always available to help you weigh the pros and cons – such as the time it might take for a decision and likelihood of success -- of the various methods a veteran might use to disagree with a VA decision.

[VA's Appeals Modernization Fact Sheet](#) is a good visual tool to help clients understand the options for disagreeing with a VA decision. It also provides basic considerations to assist in counseling clients on which lane is right for them.



In addition, BVA's Office of Administrative Review or OAR has provided several tools including [AMA and Decision Review Options Communications Toolkit](#) as part of its Appeals

Modernization Act or AMA education campaign to promote greater understanding of the decision review options available under the AMA.

Advocacy Tips – Back to Basics

In May, TDVS began an Advocacy Tips series to help you practice like a pro by providing basic advocacy tips on: I'm a Service Officer...Now What? That series continued last month by providing advocacy tips on connecting the dots beginning with how to review a VA claim file. The series continues this month with tips for obtaining military records and information to help substantiate a claim.

(1) I'm a Service Officer...Now What?

(2) Connecting the Dots

- (a) How to review a VA claim file;
- (b) Obtaining Military Records and Information to Help Substantiate a Claim.
- (c) Effective Advocacy Before VA.

Part III: Obtaining Military Records and Information to Help Substantiate a Claim

Information is taken in part from the National Veterans Legal Services Program (NVLSP) Veterans Benefits Manual, 2021-22 edition.

Last month's Benefits Bulletin, highlighted the first step in connecting the dots – reviewing a VA claim file and identifying all potential VA benefits to which the claimant may be entitled. **Advocacy Tip** – Although it might be possible to give a claimant general advice about VA benefits without first seeing any records, you can't fully advise a claimant without reviewing his or her relevant records.

That's why TDVS facilitates access to several VA Systems, such as VBMS, SHARE and Caseflow, necessary to review a VA claims file. Here are [step-by-step](#) instructions for using your PIV to access VA Systems. TDVS has also provided training on how to use [SHARE](#) and [Caseflow](#) (December 2021 Lunch and Learn).

Once the file has been reviewed, let's connect to the second dot – obtaining military records and other information to help substantiate a claim.

Military Personnel and Treatment Records – The law requires VA to develop a claim and to obtain all relevant records that are in the custody of a federal agency or department, which includes military personnel and treatment records. Although these are records in federal possession and require VA development, assisting a claimant in obtaining these records

before filing a claim can not only help you provide better counsel but may also speed delivery of benefits. **Advocacy Tip** – [Benefits Bulletin 22-1](#) and an accompanying [TDVS Fact Sheet](#) provided tools and resources available to accredited service officers (i.e. Tennessee War Records, DPRIS, etc.) to support military records requests. Thanks to the Knox County CSO Office, [here](#) is a contact list for state and local governments that might also be able to help obtain a discharge document.

VA Records – As discussed, access to VA systems can facilitate reviewing a VA claims file. Veterans and advocates can also request a copy of the VA claims file using VA Form 20-10206, Freedom of Information Act (FOIA) or Privacy Act Request. This form is not required and a written request, such as a VA Form 21-4138, will also suffice. A VA Form 20-3288 may be used to request VA medical records that are not part of the VA claims file.

Developing for Medical Evidence –

1. Private Medical Evidence - A passionate advocate will aid the claimant in seeking to obtain private treatment records by identifying Release of Information (ROI) procedures associated with a private provider. **Advocacy Tip** – It is often easier and faster for a claimant to obtain private treatment records than submitting the VA Form 21-4142 and 4142a. A good advocate can work with and guide the claimant and private provider to gain needed records.

[Benefit Bulletin 22-4](#) provided several **Advocacy Tips** related to private medical evidence and use of the VA Form 21-4142 and 4142a to allow VA to develop for private medical evidence.

2. Disability Benefit Questionnaires or DBQs – DBQs are a useful tool when obtaining private medical evidence because they are designed to gather the information VA needs to determine service-connection and evaluate the severity of a disability. DBQs are [publicly available](#) and should be reviewed before submission to VA. Remember, if the private medical evidence is negative you should not submit it to VA.

3. Nexus Opinions – Here are several **Advocacy Tips** to avoid VA rejecting private medical opinions:

- The examiner should review and state they reviewed the claims file or at least the Veterans service treatment records in rendering an opinion.
- The examiner should provide a detailed rationale that references the evidence in the claims file as well as commonly agreed upon medical principles. It's also helpful if the examiner references medical treatise or texts as discussed below.
- The examiner should provide details regarding his or her credentials.

- The examiner should use terminology to capture the correct burden of proof for VA claims – “as least as likely as not.”

4. Medical Treatise or Texts – [Benefits Bulletin 22-6](#) discussed the benefits of providing journal articles or other medical literature as evidence in support of a claim.

TDVS’s Training Officer and Appeals Division personnel are available to support in-person individual or small group trainings on these and other topics to ensure you’re practicing like a pro.

Next time we’ll provide several strategics for effective advocacy before VA.

Advocate Spotlight

Back to Basics Results in Retroactive Award (Again)

Entitlement to disability compensation requires three items – 1. Current Disability; 2. In-service Event or Injury; 3. Nexus or Linkage. Identifying the missing evidence and helping the Veteran obtain military records or other information to help substantiate a claim are vital for successful advocacy.

In this case, a peacetime Veteran applied for disability compensation in 2015 using a direct service connection theory that he was entitled to service connection for diabetes mellitus and several disabilities secondary to diabetes. VA denied his claim in June of 2016. The Veteran appealed, using the legacy appeals process, and was afforded a hearing in July of 2020. At the hearing, the Veteran provided lay evidence in the form of testimony about an incident in service when he passed out, was taken to the infirmary, and told that his glucose level was very high. He was discharged with medication, placed on a diet regimen, and told to return. However, before he could return, he was sent back to his reserve unit. The Veteran argued that the high blood sugar in service was a precursor to his post service diagnosis of diabetes.

Based in part on the additional evidence (lay testimony) provided during the hearing, BVA remanded several issues to obtain a medical opinion to address the nature and etiology of his diabetes mellitus. In this appeal, the Veteran and his advocate identified the missing evidence (in-service event or injury and nexus) by using lay evidence to describe symptoms during service, which supported a later diagnosis and nexus opinion by a medical professional.

VA’s Office of Administrative Review recently completed work on the remand. It awarded service connection with an effective date of 2015 and provided retroactive benefits of over



\$250,000. Getting back to basics by identifying and helping the Veteran obtain the missing evidence made all the difference for this Veteran.

Our goal as advocates should be identify the missing evidence and help the Veteran obtain the information necessary to substantiate a claim at the earliest stage in the claims process. Getting back to basics will help us meet that goal.

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

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