

How To Construct A “Fully Developed” VA Benefits Appeal



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Purpose Of This Presentation

1. To encourage Blue Eagles to develop “Fully Developed Claims”

Then, IF your claim is denied,

2. To encourage Blue Eagles to develop “Fully Developed Appeals”
3. To show Blue Eagles how to submit Fully Developed Appeals that are successful

You Have Received A Claim Denial

- The first decision you have to make is: Do you want to do the work to attempt a reversal of the denial or will you proceed through the appeal process “As Is”
- There are several courses of action (or inaction) that veterans take:
 1. Get upset and do nothing at all
 2. Get upset and call Congressman/woman
 3. Get upset and hire a lawyer
 4. Submit a Notice Of Disagreement (with no further evidence)
 5. Submit an appeal to the Board Of Veterans Appeals (with no further evidence)
 6. Prepare an appeal with more evidence (preferred method)

Definition Of A Claim Denial

- A Claim Denial Is caused by an “Error” that will cause the VA Claim To Be adjudicated without an award for the veteran
- Some common causes of A VA Claim Error:
 1. The veteran left all the work of gathering evidence to the VA
 2. A service connected disability that is not severe enough to receive a rating
 3. The veteran did not understand his/her disability as described in Chapter 38 of the Code Of Federal Regulations (CFR 38)
 4. There were inadequate records provided to support the claim
 5. The veteran missed one or more Compensation & Pension Examinations
 6. Poor performance by the veteran during a Compensation & Pension Examination (unprepared)
 7. The VA regional office did not adjudicate claim correctly

The Appeal Processes

- The VA Has given notice that it will soon adopt the Fully Developed Appeal. What does this mean to veterans whose claims have been denied?
- A Fully Developed Appeal is an appeal that contains the evidence required to overturn a claim denial
- There may be "Gatekeepers" at the VA That could require more evidence than the veteran can acquire in order for the appeal to progress to a Notice Of Disagreement or Board Of Veterans Appeals and beyond

Fully Developed Claims

- Veterans should always strive to submit Fully Developed Claims
- Fully Developed Claims provide a platform for Fully Developed Appeals because the error that caused the denial may take less effort to discover
- If you did not submit a Fully Developed Claim then the chances of an effective appeal are unlikely
- ...However, you should never give up on your claim. If the veteran stops the process, then the VA stops also

Types Of Appeals

- Notice Of Disagreement
 - De Novo Review – you submit new evidence and the Decision Review Officer Performs a “Fresh Look” At The Claim And Denial
 - Traditional Review – A member of the Review Office will review the claim and denial to ensure it was processed correctly
- Board Of Veterans Appeals
- Court Of Appeals For Veterans Claims

What You Should Consider

- If you received a denial on your claim then you must be willing to do the work required in order to turn it around
- You will have to be patient
- Engaging a Congressman may cause a small wave at the VA Regional Office, but they have the law on their side – so there is little hope there...
- Engaging a lawyer may help, but you will have to find one certified to practice in front of the VA (they will get paid by the VA, not you)

What You Should Consider (continued)

- If you engage a lawyer, you will still be required to provide evidence
- If you stop pursuing your appeal, then the VA stops and your appeal will no longer be considered. Perseverance counts!
- Recommendation – do the work yourself, there is a way to develop an appeal systematically that may provide the desired results.

Where To Start A Fully Developed Notice of Denial Or Appeal

1. Read and reread the Letter Of Denial you received from the VA Regional Office until you fully understand its Contents – seek help if you do not understand!
2. Did you obtain a copy of your C & P Examination results? This is the first place to look for a clue on the cause of the denial. Did the examiner write what you described? Did the examiner's words mirror the disability description in Part 4, Chapter 38 of the Code Of Federal Regulations?
3. Do you have the same evidence that the VA Regional Office has that they used to make the denial decision? If you are not sure, you may need to write to the VA Regional Office to obtain a copy. You should state in your letter that you are requesting a copy in accordance with the Freedom Of Information Act (FOIA) or you can download a copy from your eBenefits account.

Where To Start A Fully Developed Notice Of Disagreement Or Appeal (continued)

- If you cannot determine the error that caused the denial, seek help! **Zeke can help, please see the front of this presentation**
- Provide a letter to include in the appeals package
 - The letter describes the error and why you believe the VA should award the percentage you were seeking (include the supporting evidence)
- Have patience, because you are now in for the long run
- If you quit, the VA quits as well.
- **remember, the VA always pays to the claim start date**