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Appeals Modernization: An Overview of Critical Changes

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I. Introduction

19. In August of 2017 President Trump signed into law the Veterans Appeals Improvement and Modernization Act of 2017.³ In order to give the VA time to implement these changes, Congress deferred the effective date until February 19, 2019. This legislation represents the continuing commitment of Congress to maintaining the uniquely veteran friendly system for adjudicating claims for VA benefits, and appealing denials of those benefits. The veterans' benefits system designed by Congress has always been pro-claimant.⁴ The statutes governing veterans' benefits are "strongly and uniquely pro-claimant."⁵ Congress designed the veterans' benefits adjudication process to be "a non-adversarial, ex parte, paternalistic system."⁶ The veterans' benefits regime is thus the

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2 [Sara Huerter](#) has been an associate attorney with Carpenter Chartered since 2004.

3 See [Pub. L. No. 115-55](#), [131 Stat. 1105](#).

4 See, e.g., *Henderson v. Shinseki*, [131 S. Ct. 1197, 1205](#)(2011) (quoting *United States v. Oregon*, [366 U.S. 643, 647](#) (1961)).

5 *Hodge v. West*, [155 F.3d 1356, 1362](#) (Fed. Cir. 1998).

6 *Collaro v. West*, [136 F.3d 1304, 1309-10](#) (Fed. Cir. 1998); see also *Hayre v. West*, [188 F.3d 1327, 1334](#) (Fed. Cir. 1999); overruled in part on other grounds by *Cook v. Principi*, [318 F.3d 1334](#) (Fed. Cir. 2002).

“antithesis of an adversarial, formalistic dispute resolving apparatus.”⁷ The rules and procedures of the veterans’s benefits system differ sharply from the procedures of normal civil litigation, as the Supreme Court explained in *Henderson v. Shinseki*:

The contrast between ordinary civil litigation . . . and the system Congress created for the adjudication of veterans’ benefits could hardly be more dramatic. In ordinary civil litigation, plaintiffs must generally commence their suits within the time specified in a statute of limitations and the litigation is adversarial. Plaintiffs must gather the evidence that supports their claims and generally bear the burden of production and persuasion. Both parties may appeal an adverse trial-court decision and a final judgment may be reopened only in narrow circumstances. By contrast, a veteran seeking benefits need not file an initial claim within any fixed period . . . [T]he VA proceedings are informal and nonadversarial. The VA is charged with the responsibility of assisting veterans in developing evidence that supports their claims, and in evaluating that evidence. . . . If a veteran is unsuccessful before a regional office, the veteran may obtain *de novo* review before the Board, and if the veteran loses before the Board, the veteran can obtain further review in the Veterans Court. A Board decision in the veteran’s favor, on the other hand, is final. And even if a veteran is denied benefits after exhausting all avenues of administrative and judicial review, a veteran may reopen a claim by presenting new and material evidence.

20. The clear goal of Congress, as the Supreme Court noted, has been to “place a thumb on the scale in the veteran’s favor in the course of administrative and judicial review of VA decisions.”⁸

21. Congress’s special solicitude for veterans is readily understandable, and for reasons in addition to gratitude for service to the country. Veterans are considerably older than non-veterans.⁹ Furthermore, nearly 15 percent of veterans are sufficiently disabled to have been awarded VA benefits.¹⁰ The Veterans Appeals Improvement and Modernization Act of 2017 occurred because of VA’s antiquated process of adjudicating and appealing VA claims. This article will discuss issues that may be ripe for litigation, while reviewing the critical changes between the old and new appeals process including the

7 *Forshey v. Principi*, 284 F.3d 1335, 1360 (Fed. Cir. 2002) (en banc), superseded on other grounds by statute, Veterans Benefits Act of 2002, Pub. L. No. 107-330, Section 402, 116 Stat. 2820, 2832.

8 *Henderson v. Shinseki*, 131 S. Ct. 1197, 1199 (2011).

9 See National Center for Veterans Analysis and Statistics, *Profile of Veterans: Profile of Veterans: 2012 Data from the American Community Survey*, U.S. DEP’T OF VETERANS AFFAIRS (2015) (noting a median age for male veterans of 64 years).

10 See *National Survey of Veterans active Duty Service Members, Demobilized National Guard and Reserve Members, Family Members and Surviving Spouses*, WESTSTAT (2010).

requirements for appeal; the strengthened notice requirements; and the options available following a denial which, when used effectively, can be used for discovery and protection of the effective date.

22. The adjudication process being replaced operates as follows. A veteran/claimant,¹¹ begins the process of seeking benefits by filing a claim with a VA regional office. The regional office responds with a Rating Decision. If the veteran receives an unfavorable Rating Decision (e.g., a denial of a claim for disability benefits), he or she begins the appeal process by filing a Notice of Disagreement. After the Notice of Disagreement is filed, the veteran may either proceed directly with his or her appeal to the Board of Veterans' Appeals ("Board"), as outlined here, or first request *de novo* review by a VA Decision Review Officer at the regional office.¹²

23. Once a Notice of Disagreement is filed, VA then issues the next document required in the appeal process — the Statement of the Case (SOC). On average, VA takes 500 days to prepare the SOC. After a veteran files a Notice of Disagreement, the agency re-examines the claim and determines whether additional review or development is warranted. If the disagreement is not resolved by granting the benefit sought or through withdrawal of the Notice of Disagreement, the VA must then prepare an SOC.¹³ As outlined by statute, the SOC includes: (A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed. (B) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision. (C) The decision on each issue and a summary of the reasons for such decision.¹⁴

24. After receiving the SOC, a veteran may then file a notice of appeal with the Board, also known as a "Form 9." While it is currently taking on average 500 days for VA to prepare an SOC, the veteran must file a VA-9 within 60 days of receipt of the SOC or lose the right to appeal.¹⁵ Once the veteran files a Form 9, VA completes a Certification of Appeal which is the process of transferring the records to the Board.¹⁶ Under the current system appealing is a two step process which is unique to veterans law. Prior to judicial review which was not permitted until November of 1988, the current adjudication and appeal process made much more sense. With the advent of judicial review the current process became obsolete.

11 In this article, the term "veteran" should also include "claimant" since the a non-veteran can seek VA benefits as a survivor.

12 38 U.S.C. § 7105(a).

13 See 38 U.S.C. § 7105(d)(1).

14 38 U.S.C. § 7105(d)(1); see 38 C.F.R. § 19.29.

15 See 38 C.F.R. § 19.30(b).

16 See 38 C.F.R. § 19.35.

25. The certification process has been noted to take VA about two and a half hours to complete, on average. Nonetheless, veterans wait an average of 773 days for VA to issue the Certification of Appeal, plus an additional 321 days for VA to transfer the certified appeal to the Board for docketing.¹⁷ In contrast to preparation of the SOC, for which there is arguably an explanation for some delay, the significant delay in the certification and transfer of appeals to the Board does not seem justified as the transfer process consists of simply transferring appellate records. After these significant periods of delay, the Board will issue its decision and if adverse, an appeal can be taken to United States Court of Appeals for Veterans Claims. Overall, the average time from the filing of a Notice of Disagreement to issuance of a Board decision is over five years.

26. Under the current process, VA regional offices adjudicate claims and process appeals to the Board. Under the new process, regional offices will only adjudicate claims and appeals will be made directly to the Board. Notices of Disagreement which initiate the appeal will be filed directly with the Board.¹⁸ The new appeal process eliminates the redundancy of the issuance of an SOC and the completion of the appeal with the filing of a VA-9. The veteran only needs to initiate the appeal once. Ideally, the new process will eliminate 1,594 days (more than 4 years) from an appeal based on the elimination of the SOC, VA-9, and certification process. The more efficient adjudication and processing of appeals is a significant benefit of the new process, and especially meaningful to an aging population of veterans.

27. Another significant benefit under Appeals Modernization is the enhanced duty of VA in providing notice to veterans. Congress has amended the notice requirements in 38 U.S.C. § 5104 to provide significant detail to the veterans regarding decisions made on claims. The current version of § 5104 is generic requiring (1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary. In practice these notices vary widely and in reality conveyed little information to veterans and their representatives. The amended version incorporates many of the current requirements for the content of an SOC but adds critically important new mandates.

28. The amended text of 38 U.S.C. § 5104 now requires:

(a) In the case of a decision by the Secretary under section 511 of this title affecting the provision of benefits to a claimant, the Secretary shall, on a timely basis, provide to the claimant (and to the claimant's representative) notice of such decision. The notice shall include an explanation of the procedure for obtaining review of the decision.

(b) Each notice provided under subsection (a) shall also include all of the following:

¹⁷ *Martin v. O'Rourke*, 891 F.3d 1338, 1341 (Fed. Cir. 2018); see also 38 C.F.R. § 19.36.

¹⁸ VA Claims and Appeals Modernization, 84 Fed. Reg. 138, 143 (Jan. 18, 2019).

- (1) Identification of the issues adjudicated.
- (2) A summary of the evidence considered by the Secretary.
- (3) A summary of the applicable laws and regulations.
- (4) Identification of findings favorable to the claimant.
- (5) In the case of a denial, identification of elements not satisfied leading to the denial.
- (6) An explanation of how to obtain or access evidence used in making the decision.
- (7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.

29. Requirements (2) and (3) come from the current requirements for the content of an SOC. The other five requirements are new and provide veterans and their representatives with valuable information as well as context to develop the evidence necessary to substantiate a claim or claims.¹⁹ These new requirements allow representatives to narrow and refine the issue or issues to be appealed.

30. Requirement (1) mandates that VA must identify the issues adjudicated. While this would seem obvious, it is not. Because the scheme created by Congress is intended to be veteran friendly and non-adversarial, an unintended consequence is the lack of clear and precise definitions for terms such as claim, issue, and benefit. VA has previously used “claim” and “issue” interchangeably but the amendment to § 5104 necessitates a distinction. Congress in this legislation amended 38 U.S.C. § 101 to add a new subsection (36) which defines the term “supplemental claim” to mean “a claim for benefits under laws administered by the Secretary filed by a claimant who had previously filed a claim for the same or similar benefits on the same or similar basis.”²⁰ It is unclear when Congress required VA to include in its notice to “identify the issues adjudicated” whether Congress intended the terms issue, benefit, and claim to be interchangeable or whether “issue” has an independent meaning.

31. Carpenter Chartered proposed to amend the provisions of 38 C.F.R. § 3.1(p) as follows:

The term “claim” should be defined as a written or electronic application submitted on the form prescribed by the Secretary for monetary benefits under the laws administered by the Department of Veterans Affairs which are divided into four categories: compensation, pension, dependency and indemnity compensation to include accrued benefits, and burial benefits.

¹⁹ 38 U.S.C. § 5104.

²⁰ 38 U.S.C. § 101(36).

32. By defining the term “claim” in this way, it would make clear that a claim is an application for monetary benefits which is adjudicated by VA. This definition is consistent with Congress’s definition of the term “supplemental claim.” It is necessary to more clearly define the term “claim” as representing the starting point of the administrative claims process for seeking monetary benefits from VA. A claim should represent the monetary benefit sought by the claimant in one of the four categories of monetary benefits, e.g., compensation benefits; pension benefits; dependency and indemnity compensation benefits to include accrued benefits; and burial benefits.²¹ Within a “claim” for compensation benefits, there are potentially multiple bases for entitlement to benefits. An “issue” is not the same as a “claim” made by a claimant for the payment of monetary benefits. The absence of a definition of the term “issue” will necessarily be the subject of litigation in order to secure a judicial determination regarding its meaning. It is critical that there be a definition for the term “issue” since it has been used by Congress in its amendment to 38 U.S.C. § 5104(b). It must be made clear that an issue arises in an appeal of a VA adjudication based on what the VA did or did not adjudicate in its decision. In other words, an “issue” is the basis upon which the VA relies to deny a benefit or benefits sought.

33. The importance of the need for a definition of the term “issue” is shown by the following example: in a claim for service connected compensation, the VA only adjudicated the veteran’s entitlement on a direct basis and failed to adjudicate on a presumptive basis. The VA, under the amended provisions of § 5104(b)(1), would be required to identify “the issue adjudicated” as either on a direct basis, a presumptive basis, or both. Knowing the issue or issues upon which the VA identifies the issue adjudicated is critical to both avoid unnecessary repetitive adjudication of issues previously decided and to confirm precisely what the VA did and did not do in its decision.

34. Under the new system a veteran can question the issues adjudicated either in a request for higher level review or in a supplemental claim by submitting new and relevant evidence relating to an issue not identified by the VA as having been adjudicated. In so doing, veterans and their representatives can force VA to either expand or to narrow the issues by means of a request for higher level review or in a supplemental claim before initiating an appeal to the Board with a notice of disagreement. It is important to understand that under the new appeals process the agency of original jurisdiction is no longer involved in appeals. This means that veterans, and their representatives, by way of requests for a higher level review, and the submission of supplemental claims, can continue to develop the record and shape the issue or issues before initiating an appeal.

35. Under subsection (4), in addition to identifying the issues adjudicated, the VA will be required to include in the notice to the veteran to identify findings made in deci-

²¹ See VA Claims and Appeals Modernization, [84 Fed. Reg. 138](#) (Jan. 18, 2019).

sions which are favorable to the claimant.²² This is without a doubt the most significant change made by Congress in this new legislation. This provision is a crucial change in the process to get claimants and veterans every benefit available under law.²³ Not only does VA have to identify findings favorable to the claimant but all future adjudicators are bound by those favorable findings.²⁴ This requirement is a game changer for veterans and their representatives because it allows them to be focused on the unfavorable findings without having to be concerned that the next VA decision will reverse a prior decisions favorable findings. This requirement must be used to compel the VA to make specific, and explicit, findings favorable to the claimant.

36. If the findings are vague, nonspecific, or meaningless, veterans, and their representatives, must challenge such ambiguity by using requests for higher level review. VA adjudicators have never been previously required to make specific and explicit findings favorable to the claimant. Thus, it can and should be anticipated that requests for higher level review will be necessary before an appeal is initiated. It is going to take time and experience for VA adjudicators to understand the need to comply with their statutory obligations regarding making favorable findings to the claimant. This will not happen if notices are not challenged.

37. Subsection (5) of § 5104(b) mandates that notice of the decision, in the case of a denial of a benefit, must identify the elements not satisfied leading to the denial.²⁵ Veterans will have a clearer picture of what elements remain in dispute and are preventing VA from making an award. This allows veterans to focus on what elements of the claim still need to be satisfied. Veterans, and their representatives, will be able to determine the evidence that needs to be developed to satisfy the missing elements and will have another opportunity to refine the legal bases to support an award. Using requests for higher level reviews, veterans, and their representatives, must press the VA to explain precisely what is missing in the record which, if provided to VA, will result in an award.

38. Requirement (6) of § 5104(b) in conjunction with the previous subsections mandates that the VA provide an explanation of how to obtain, or access, evidence used in making the decision.²⁶ In other words, the VA must tell the veteran, and his or her representative, how to obtain, or access, the evidence used by the VA in making its decision to deny a benefit or benefits. This provision represents a new and important right which requires the VA to provide claimants, and their representatives, with information on how to obtain, or access, the evidence used in making the decision. When a VA notice fails to provide information on how to obtain the evidence, the veteran must request

22 38 U.S.C. § 5104(b)(4).

23 See *AB v. Brown*, 6 Vet. App. 35 (1993); see also 38 C.F.R. § 3.103(a).

24 See 38 U.S.C. § 5104(a).

25 38 U.S.C. § 5104(b)(5).

26 38 U.S.C. § 5104(b)(6).

that the higher level reviewers clarify, or identify, the exact method to obtain, or access, the evidence used by VA in making a decision to deny a benefit or benefits.

39. Under the present process, the VA intentionally, or not, was always playing hide the ball by concealing from the veteran, and their representative, just what specific evidence would result in an award of the benefit or benefits sought. Until the requirements of § 5104 were amended, there was no formal, or informal, discovery available to claimants and their representatives. This provision requires that claimants, and their representatives, be informed how to obtain or access the evidence used in making the decision. When VA decisions do not inform, representatives must, through requests for higher level review, insist that the VA inform the claimants, and their representatives, how to obtain or access the evidence used in making the decision.

40. The final requirement (7) mandates that the VA must identify the criteria that must be satisfied in order for the VA to grant service connection or for the VA to award the next higher level of compensation.²⁷ It is more likely than not that VA notices, in the first several years following implementation of this new legislation, will continue to be generic. Veterans, and their representatives, from the beginning, must insist that VA notices are specific and individualized. Generic statements of the criteria for either service connection or the next higher rating will not be compliant. Prior to this statutory mandate, veterans, and their representatives, have never been in a position to press for more specific information from VA decisionmakers. Now, however, veterans, and their representatives, must not fail to demand that higher level reviewers provide specific information about what additional evidence, if submitted, would result in an award of service connection or an award of the next higher level of compensation. A generalized statement of the criteria is neither compliant nor helpful. In other words, just telling the claimant that he or she does meet the criteria is no longer compliant with the statute. It is critical that advocates challenge noncompliant notices following a denial from the VA.

41. After the VA issues a denial, the veteran has one year to select how to proceed by choosing one of three available “lanes.” The options are: to request a higher level of review; file a supplemental claim with new and relevant evidence; or file a notice of disagreement and appeal directly to the Board.²⁸ Exercising the first two options allows veterans to remain at the regional office level. Option three moves the case from the development stage to the appeal stage. Under the former system, a claim remained open allowing for the submission of new evidence, and the VA was required to readjudicate the claim each time new evidence was received. Under the new system, claim development is done by way of supplemental claims. Appeals, once initiated, are handled exclusively by the Board.

²⁷ 38 U.S.C. § 5104(b)(7).

²⁸ VA Claims and Appeals Modernization, 84 Fed. Reg. 138, 189 (Jan. 18, 2019).

42. Requests for higher level review are comparable to the current decision review officer process, except that the review is without the submission of additional evidence. These reviews are de novo reviews based on the existing record.²⁹ If you want another decision by another VA adjudicator before appealing then your option is a request for a higher level review. As has been discussed above, veterans, and their representatives, can use requests for higher level reviews to enforce the notice requirements of § 5104(b). The notice should be reviewed for compliance with §5104(b) and an argument should be made that the VA failed to satisfy a requirement, or combination of requirements, of the statute. The veteran, and representative, should demand that the higher level reviewer address any deficiencies in the notice in a new decision in order for the claimant to obtain, and submit, new and relevant evidence. It will be critical for practitioners to challenge the notice whenever there is a deficiency in order to compel the VA to comply with the statute. Consider looking at a request for a higher level review as an opportunity to use § 5104(b) to obtain more specific information about what is missing which prevents an award — a form of informal discovery. Additionally, look at requests for a higher level of review as opportunities to present purely legal questions, if the record has been fully developed.

43. Supplemental claims are a new tool for veterans and their representatives. Supplemental claims require the submission of new and relevant evidence. Based on the enhanced information provided to veterans in the one year following a decision, new and relevant evidence can be submitted requiring the VA to make a new decision based on that evidence. What is unique about supplemental claims is the protection of the effective date of an award. Under the current system previously denied claims can be reopened with new and material evidence, but the effective date is the date of the submission of the new and material evidence. Under the new system, as long as new and relevant evidence is submitted within one year of a VA decision, or a decision based on a higher level of review, the effective date is protected.³⁰

44. Supplemental claims can also be filed within one year of a Board decision denying a claim, as well as within one year of a decision from the United States Court of Appeals for Veterans Claims (Veterans Court) affirming a denial by the Board.³¹ Thus, a supplemental claim becomes a conduit for the protection of an effective date of an ultimate award even if the veteran receives a denial of his or her appeal to the Board or the Veterans Court. As a result, the concept of finality of decisions on claims for benefits has become significantly diluted. The skilled use of requests for reviews by higher level authorities and of supplemental claims can keep a claim alive indefinitely until an award is finally made to the veteran and the date that claim was filed, no matter how long ago, can be the effective date of the award of benefits.

29 VA Claims and Appeals Modernization, [84 Fed. Reg. 138, 173](#) (Jan. 18, 2019).

30 VA Claims and Appeals Modernization, [84 Fed. Reg. 138, 172](#) (Jan. 18, 2019).

31 VA Claims and Appeals Modernization, [84 Fed. Reg. 138, 191](#) (Jan. 18, 2019).

45. A supplemental claim can be strategically used to avoid initiating an appeal to the Board, or can be used to revitalize a claim denied by both the Board and the Veterans Court if a veteran can identify, or develop, new and relevant evidence and submit within a year of the decisions. In so doing, the claim stream is kept alive until an award is made, or no further new and relevant evidence can be located or developed. Obviously, such submissions can eliminate the need for an appeal, and get the benefits awarded sooner, than if an appeal is taken to the Board or the Veterans Court.

46. In theory, the VA is required to fully, and sympathetically, develop a claim to its optimum before rendering a decision. In reality, that is rarely the case; particularly in more complicated claims. A supplemental claim can be used to fill in the gaps in the VA's development of the record, and, hopefully, lead to quicker resolutions. A supplemental claim can also be used to extend VA's decision-making until all needed development has been completed and all legal hurdles have been overcome — all while the effective date is protected. It is the preservation of the effective date which is central to the new adjudication and appeals process.

47. The use of a notice of disagreement will be more in the control of the veteran, and his or her representative, rather than at the dictate of a decision from VA, because the veteran has other options before filing the notice of disagreement. The benchmark, going forward, will be when the veteran, and his or her representative, feel confident that the record has been fully developed sufficient to warrant a grant, and that a *de novo* review by the Board or the Veterans Court is, more likely than not, going to result in an award of benefits. The key determinative regarding the filing of a notice of disagreement is when there is a level of confidence that all evidentiary development has been completed, and only a decision from Board of the Veterans Court will decide the matter. Adjudicating and appealing claims, especially more complex claims, is more art than science. An appeal should be initiated with the notice of disagreement only after the record has been fully developed and a sound legal argument can be made to support an award of the benefits sought.

48. Requests to higher level reviews and filing of supplemental claims should be viewed as discovery tools to confirm what evidence is missing or incomplete and providing an opportunity to develop the evidentiary record sufficient to support an award at law. Then the filing of a notice of disagreement becomes the right choice. Keep in mind that at each of these stages the claim can be awarded.

49. Under the new appeals process, veterans, and their representatives, will have new options following denials of appeals by the Board, and the Veterans Court, because the new system affords the option of filing a supplemental claim after either.³² The filing of a supplemental claim with new and relevant evidence within one year allows

³² VA Claims and Appeals Modernization, [84 Fed. Reg. 138, 191](#) (Jan. 18, 2019).

veterans, after a denial of an appeal by the Board and the Veterans Court, the choice of proceeding with an appeal, or getting a new decision from the VA based on the supplemental claim. However, the new appeals process does not allow for the filing of supplemental claims after an appeal to the United States Court of Appeals for the Federal Circuit. As a result, the decision to appeal a denial by the Veterans Court to the Federal Circuit precludes protection of the effective date, unless the veteran prevails on appeal to the Federal Circuit. This makes the risks of taking an appeal to the Federal Circuit much higher. The VA's proposed regulations precludes the filing of both an appeal and a supplemental claim. This proposed provision was challenged in the notice and comment period, and this rule-making challenge will be taken to the Federal Circuit. So, there is still a possibility that filing an appeal and concurrently filing a supplemental claim will be permitted.

50. The VA estimates that there will be a half a million pending appeals when this new process goes into effect. The new law applies only to decisions and appeals pending on February 19, 2019. It will not apply to any of the appeals pending, but not decided, on that date. Those appeals are being called "legacy appeals," and will continue to be handled under the appeal process in place when the appeal was initiated. This will no doubt cause some considerable confusion. Legacy appellants will be allowed to opt in to the new appeal process after an SOC or a supplemental SOC has been issued, but at no other times. The VA's regulations do not allow for the filing of a supplemental claim following a denial of a legacy appeal by the Board or the Veterans Court. This interpretation was challenged in the notice and comment period and a rule-making challenge of this question will be filed with the Federal Circuit. It is recommended that any veteran who has a legacy appeal denied, by either the Board or the Veterans Court, after February 19, 2019, and can develop, or obtain, new and relevant evidence, should file a supplemental claim. If that claim is granted, then there will need to be an appeal of the effective date assigned.

II. Conclusion

51. This article is not intended to cover all of the provisions which will be available under the new adjudication and appeals process. The goal is to make veterans, and their representatives, aware of the new options which will soon be available. With the passage of time, and with actual experiencing of this new process, more options will become apparent. Finally, while generalizations are helpful, particularly as we embark on this new system, it must be kept in mind that every claim is unique and veterans, and their representatives, need to be guided in their decision-making by the circumstances of each individual claim.

52. We are confident that, with collective creativity of those who represent veterans and their families in these appeals, we will master this new system of appeals, and maximize the advantage of these changes to the men and women who have served this nation and to their families. Hopefully, these observations will be of benefit in adapting to and mastering this new appeal process.