

NAVIGATING THE AMA REVIEW SYSTEM

Agenda



- Initial matters
 - Types of claims, rating decisions
- Supplemental claims
- Higher-level review
- BVA appeal
- Other issues

INITIAL MATTERS

Type of Claims Under AMA

- VA claims that can be filed as of 2/19/2019:
 - Initial claim
 - Benefit not previously requested
 - Increased Rating
 - An increased rating claim is not a supplemental claim, even if an increased rating was previously denied (*Jackson v. McDonough*, 37 Vet. App. 277 (2024))
 - Supplemental claim
 - For same or similar benefit VA previously denied
 - CUE claim

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

Rating Decisions Under the AMA

- Notice Letter, RD, and other enclosures 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

Favorable Findings

- If VA (including BVA) makes a finding favorable to claimant in a claim subject to the AMA, it is binding on all later adjudications, unless there is “clear and 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

3 Options to Challenge RO Decision

1. Supplemental claim
2. Higher-level review
3. Appeal to BVA

3 Options to Challenge RO Decision

- Claimant may choose different review “lane” for different “issues”
 - Issue = 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”

3 Options to Challenge RO Decision

- 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

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?

Option 1: Supplemental Claim

- Supplemental claims can be filed to:
 - Continuously pursue a claim that was **denied in the past year** and preserve the effective date of the claim
 - 38 U.S.C. § 5104C(a)
 - Attempt to obtain benefits that were previously denied in a **VA decision that has become 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
 - 38 U.S.C. § 5104C(b)

Option 1: 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 (or other VA Form under the right circumstances)
- Cannot file for CUE denial or simultaneously contested claim

Chisholm v. Collins

- CAVC recently addressed whether a supplemental claim must be submitted on VA Form 20-0995 and, if not, whether a TDIU application can serve as a supplemental claim if filed after VA denies a claim for an increased SC disability rating?
 - *Chisholm v. Collins*, 38 Vet. App. 140 (2025)

Chisholm v. Collins

- **Facts**
 - 2/2020: RO denied Vet's 2019 claim for increased ratings of SC disabilities including tinea pedis and right lower extremity radiculopathy
 - Within a year of the denial, Vet requested HLR
 - 4/2021: HLR continued denial of increased ratings
 - Within a year of the HLR decision, Vet filed TDIU claim on VA Form 21-8940 and submitted new evidence. Vet asserted that his radiculopathy and tinea pedis negatively impacted his ability to work.

Chisholm v. Collins

- **Facts (cont'd)**
 - **4/2022:** In response to TDIU application, VA awarded Vet higher ratings for radiculopathy and tinea pedis
 - Later, VA denied direct payment of attorney fees to Vet's attorney because, according to BVA:
 - Vet's 2019 claim stream for higher ratings ended when he did not seek review of the 4/2021 HLR decision
 - TDIU request was a new claim, which made the 4/2022 rating decision an initial decision on that claim and prevents the attorney from charging fees

Chisholm v. Collins

- Vet's attorney appealed to CAVC, which agreed with his argument that Vet's TDIU application was a supplemental claim, thus entitling the attorney to fees related to the increased ratings
- TDIU application was a continued request for increased ratings, including for tinea pedis and radiculopathy, which VA had recently denied
- Thus, Vet had previously filed a claim for the same or similar benefits on the same or similar basis

Chisholm v. Collins

- CAVC's holding:
 - While a supplemental claim must be filed on a form prescribed by the Secretary, it doesn't need to be filed on a supplemental claim form (VA Form 20-0995)
 - VA regs don't restrict supplemental claims to only one form
 - “Because a request for TDIU is not a standalone claim but an attempt to obtain the correct (higher) rating, an application for TDIU may serve as a supplemental claim when filed after VA has already denied higher ratings for the disabilities at issue.”
 - But VA not required to accept all TDIU applications as supplemental claims – depends of facts of case

Option 1: Supplemental Claim

- ITFs apply to supplemental claims
 - 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*, 7 F.4th 1110 (Fed. Cir. 2021)
- You can file ITF for supplemental claim
 - ITF will protect the effective date
 - Helpful if you aren’t sure if VA previously denied the benefit
 - Extra time to obtain/identify new and relevant evidence

Option 1: Supplemental Claim

- VA interprets *Military-Veterans Advocacy* to apply to both § 5104C(a) and § 5104C(b) supplemental claims
 - So, ITF can give client an extra year to continuously pursue a claim, if claimant:
 1. Submits an ITF within one year of the most recent decision denying the claim, and
 2. Within one year of filing the ITF, files a supplemental claim that is covered by the ITF, even if the supplemental claim is filed after the one-year period following notice of the decision
 - MANUAL M21-1, X.ii.2.A.2.c (change date July 3, 2024)

Option 1: Supplemental Claim

- A claimant may file a supplemental claim while simultaneously pursuing an appeal of a BVA denial of the same issue at CAVC, Fed. Cir., 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
 - 38 U.S.C. § 5104C(a) only bars concurrent lanes of VA review
 - *Military-Veterans Advocacy v. Sec'y of VA*, 7 F.4th 1110 (Fed. Cir. 2021)
 - May result in earlier grant of benefits
 - But, grant of supplemental claim will likely moot court case, allowing VA to avoid judicial review of certain issues

Option 1: 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 1: 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

Option 1: 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**
 - Doesn't need to prove previously unsubstantiated matter
 - Manual M21-1, X.ii.2.A.2.d (change date July 3, 2024)
 - Statement that Vet will attend VA exam that was previously missed
 - Change in law (e.g., PACT Act, 2024 COD reg)

Option 1: Supplemental Claim

- When determining if there is “new and relevant” evidence, VA will consider:
 - Evidence submitted by claimant prior to date of decision
 - VA treatment records and other evidence reasonably identified by claimant
 - Evidence received after notice of prior decision while record was closed
 - Evidence constructively part of prior record, but not actually considered by VA

Option 1: 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, or
 - File another supplemental claim w/ new and relevant evidence

Loyd v. Collins

- CAVC recently addressed whether BVA must address the underlying merits of a supplemental claim when the AOJ found that the claimant did not submit new and relevant evidence
 - *Loyd v. Collins*, 38 Vet. App. 234 (2025)

Loyd v. Collins

- **Facts**

- 11/22/2019: VA denied Vet's claim for SC for a left eye disability
- 11/17/2020: Vet filed a supplemental claim for SC for his left eye disability
- 12/2/2020: RO denied Vet's supplemental claim because he failed to submit new and relevant evidence
- 11/2021: Vet filed NOD and elected BVA's evidence submission docket
- BVA declined to readjudicate the claim and continued the denial, finding Vet had not submitted new and relevant evidence

Loyd v. Collins

- Vet argued that BVA should have adjudicated the merits of his claim for SC for his left eye disability
- CAVC disagreed, holding:
 - If the RO denies a supplemental claim because a claimant hasn't submitted N&R evidence, the issue before BVA (or, implicitly, HLR) on an appeal of that decision is limited to whether the evidence a claimant submitted was new and relevant
 - While a supplemental claim preserves an earlier effective date, it does not keep the merits of the initial claim open for BVA review absent the submission of new and relevant evidence

Loyd v. Collins

- CAVC Decision (cont'd):
 - Court noted that it was leaving for another day the question of whether BVA could reach the merits in the first instance if it concluded that the evidence a claimant submitted was new and relevant contrary to the RO's determination or whether it would be required to remand the matter to the RO to consider the merits in the first instance
 - Court indicated that Vet could continuously pursue his claim and preserve the potential effective date for benefits by filing a supplemental claim with N&R evidence within one year of its decision

Option 1: 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)

Option 1: 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

Option 1: 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 1: Supplemental Claim

- **Pros:**
 - Can submit new evidence
 - DTA applies
 - Relatively fast decision
 - 76 days on avg (as of 8/31/2025)
 - Grant rate 45% (through 8/31/2025)
- **Cons:**
 - Must submit new and relevant evidence
 - Lowest level VA adjudicator





Option 1: Supplemental Claim

- When to choose supplemental claim:
 - Additional evidence needed to grant claim
 - Vet can get on own
 - Vet can trigger duty to assist
 - A new theory of entitlement or change in law supports the claim



HIGHER-LEVEL REVIEW

  U.S. Department of Veterans Affairs
DECISION REVIEW REQUEST: HIGHER-LEVEL REVIEW
INSTRUCTIONS: Before completing this form, read the Privacy Act and Respondent Burden on page 5. Use this form to request a Higher-Level Review of a decision you received. A Higher-Level Review is a new review of an issue(s) previously decided by VA based on the evidence of record at the time of the prior decision. For more information call us toll-free at 1-800-827-1000 (TTY: 711) or contact us online through ASK VA: https://ask.va.gov/ . VA forms are available at https://www.va.gov/find-forms/ .

Option 2: 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



Option 2: 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

Option 2: 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 2: Higher-Level Review

- Evidence = something that tends to prove or disprove the existence of an alleged fact, 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 2: Higher-Level Review

- Law ≠ Evidence
 - Statutes, regulations, caselaw, Manual M21-1 provisions
- Argument ≠ Evidence
 - Attempt to persuade someone to a particular view or belief using reason or fact
 - Explanation of errors of fact or law in RD
 - Explanation of why law supports claim, based on the evidence (facts) of record at time of RD

Option 2: Higher-Level Review

- VA decisions in the case \neq Evidence
 - A BVA decision is not evidence
 - *Green v. McDonough*, 37 Vet. App. 127 (2024);
Hime v. McDonald, 28 Vet. App. 1 (2016)
 - Similarly, RO decisions, SOCs, SSOCs are not “evidence”

Option 2: 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 Feb. 3, 2022)
- Submit on/with VAF 20-0996, if possible

Option 2: 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.

Option 2: Higher-Level Review

- Informal conference
 - Must request on/with VAF 20-0996
 - Vet and rep may self-schedule through VERA
 - VA emails/texts claimant and rep a temporary link a few weeks after receiving VAF 20-0996
 - If link expires before conf. is self-scheduled, VA will contact rep (or claimant) 2x by telephone to try to schedule
 - Will generally be scheduled w/in 7 bus. days of contact
 - Conducted by telephone
 - If claimant has requested informal confs for different issues on different VA Forms 20-0996, VA will attempt to schedule a single conference to address all of the issues

Option 2: 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 2: 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 evidence
 - Be prepared for the call at least 30 minutes prior to scheduled time

Option 2: 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 of new decision

Option 2: Higher-Level Review

- **Max benefit =**
 - **Disability comp: highest schedular eval for issue**
 - **Ancillary benefits: granting of benefit sought**
 - **Pension/DIC: granting of highest benefit available**

Option 2: 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

Option 2: Higher-Level Review

- **Pros:**
 - More experienced adjudicator
 - Relatively fast decision
 - 122 days on avg, including time for DTA returns; 79 days on avg. excluding time for returns (as of 8/31/2025)
 - VA's goal is 125 days
- **Cons**
 - Can't submit new evidence
 - 12% grant rate (but 34% return rate for DTA errors) (FY 2025 through 8/31/2025)



Option 2: 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

Claims Accuracy Request (CAR)

- CAR pilot provides for expedited review of significantly flawed rating decisions
 - One time request for VA to review a decided issue based on an **obvious and significant** error of fact or law that changed the outcome of the decision, such as
 - Missed issues
 - Erroneous removal of dependent
 - Clearly incorrect effective dates
 - Limited to AMA C&P claims, with some exclusions (BWN, *Nehmer*, IDES etc.)

Claims Accuracy Request (CAR)


- Must request on VAF 20-0996 (HLR form) and write “CAR” prominently on application
 - Must be filed w/in **30 days** of decision notice letter
 - Must be filed by accredited representative of claimant
 - Must describe in Part V or on separate page the alleged error w/ sufficient specificity to persuade reviewer that outcome would have been different
 - Informal conference not permitted

Claims Accuracy Request (CAR)

- If claim deemed ineligible for CAR program, it will be processed as a regular HLR request
- Can't request CAR review of HLR decision or HLR of a CAR decision
- Eligible CAR claims are decided quicker than other review options and have a high success rate
 - VA found that 65% of CARs were eligible and the rating decision contained error (through 10/17/2024)



APPEAL TO BVA

VA  U.S. Department of Veterans Affairs			DECISION REVIEW REQUEST: BOARD APPEAL (NOTICE OF DISAGREEMENT)		
PART I - PERSONAL INFORMATION					
1. VETERAN'S NAME (First, middle initial, last)		2. VETERAN'S FILE NUMBER		3. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)	
4. IF I AM NOT THE VETERAN, MY NAME IS (First, middle initial, last)				5. MY DATE OF BIRTH (If I am not the Veteran) (MM/DD/YYYY)	
6. MY PREFERRED MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)					
<input type="checkbox"/> I AM EXPERIENCING HOMELESSNESS					
7. MY PREFERRED TELEPHONE NUMBER (Include Area Code) (999-999-9999)		8. MY PREFERRED E-MAIL ADDRESS		9. MY REPRESENTATIVE'S NAME	
PART II - BOARD REVIEW OPTION (Check only one)					
10. 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. (For additional explanation of your options, please see the attached information and instructions.)					
<input type="checkbox"/> 10A. 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. (Choosing this option often results in the Board issuing its decision most quickly.)					
<input type="checkbox"/> 10B. Evidence Submission Reviewed by a Veterans Law Judge: I have additional evidence in support of my appeal that I will submit to the Board with my VA Form 10182 or within the 90 days of the Board's receipt of my VA Form 10182. (Choosing this option will extend the time it takes for the Board to decide your appeal.)					
<input type="checkbox"/> 10C. 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 want the hearing type below. (Choosing this option will extend the time it takes for the Board to decide your appeal.)					
<input type="checkbox"/> Central Office Hearing (I will attend in person in Washington, DC)					
<input type="checkbox"/> Videoconference Hearing (I will go to a Regional Office)					
<input type="checkbox"/> Virtual Telehearing (I will attend using an internet-connected device) (Important: Provide your e-mail address and Representative in Part I)					

Option 3: Appeal to BVA

- BVA conducts de novo review
- 3 options / “lanes” at BVA:
 1. **DIRECT:** No hearing and no new evidence
 2. **EVIDENCE:** Submit new evidence w/out BVA hearing
 3. **HEARING:** BVA hearing (can also submit new evidence)



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
 - Can choose different lanes for different issues
 - Must file different NODs for each different lane

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/QuickSubmit

Option 3: Appeal to BVA

- 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
 - 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

- NOD will be considered unclear or deficient if BVA can't identify the issue or issues the claimant wants to appeal, or which review lane the claimant intends to select
 - Appellant elects more than one evidentiary option, no evidentiary option, or it is otherwise unclear how the appeal should be docketed
 - Ex: Vet elects direct review lane, but attaches additional evidence to VA Form 10182
 - See *Edwards v. McDonough*, 36 Vet. App. 56 (2023)

Option 3: Appeal to BVA

- No limitation on when written ***argument*** can be submitted to BVA in any lane
 - Any time between NOD and BVA decision
- **Evidence** submission rules differ in each lane
- **Decision** times differ in each lane

Option 3A: Direct Lane

- BVA will base its decision on only evidence of record at time of the AOJ decision and written argument submitted by Vet/representative
 - No evidence received by VA after date of prior decision will be considered
 - VA is not required (or likely) to grant extensions of time to submit written argument, so be sure to submit argument with VAF 10182 or soon thereafter
 - *Brack v. McDonough*, 37 Vet. App. 172 (2024)

Option 3A: Direct Lane

- **Pros:**
 - Most experienced VA adjudicator
 - “Quick” decision – 1 year goal
 - Avg days appeals “pending” on docket: 472 (as of 8/31/2025)
 - Quickest route to CAVC
 - Grant rate 24%; Remand rate 33% (FY 2024 by issue)
- **Cons:**
 - Can’t submit evidence
 - Can’t have hearing



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

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 received at other times

Option 3B: Evidence Lane

- **Pros:**

- Most experienced VA adjudicator
- Can submit new evidence
- Second quickest route to CAVC
- Grant rate 26%; Remand rate 33% (FY 2024 by issue)



- **Cons:**

- Can't have hearing
- Only 90 days from NOD to submit new evidence
- 2nd slowest AMA option & lower priority than legacy
- Avg days appeals “pending” on docket: 646 (8/31/2025) (550 day goal)

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

- Hearings conducted
 1. At BVA's office in D.C. (Central Office Hearing)
 2. By videoconference
 3. By virtual telehearing
- Appellants can choose hearing type on NOD

Option 3C: Hearing Lane

- For appeals subject to the AMA, the same Veterans Law Judge (VLJ) who presides at a BVA hearing is NOT required to make the final determination and author the BVA decision
 - VLJ will be relying on transcript of hearing, so make sure hearing is thorough and transcript is accurate
- AMA amended 38 U.S.C. § 7107(c) and removed the language that in the legacy system required the same VLJ for both the hearing and final determination
 - *Frantzis v. McDonough*, 104 F.4th 262 (Fed. Cir. 2024); *Bilharz & Pinto v. Collins*, Vet. App. 22-6158, 23-1931 (Aug. 14, 2025)

Option 3C: Hearing Lane

- Claimants can submit evidence:
 - At hearing
 - W/in 90 days following scheduled hearing (even if claimant does not appear or BVA reschedules hearing on its own)
 - 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 received at other times

Option 3C: Hearing Lane

- **Pros:**
 - Most experienced VA adjudicator
 - Long time to develop needed evidence
 - Opportunity to submit testimony
 - Claims w/ hearing have higher rate of success (historically)
 - Grant rate 27%; Remand rate 32% (FY 2024 by issue)
- **Cons:**
 - Longest wait for decision and long wait for hearing
 - Avg days appeals “pending” on docket: 879 (8/31/2025) (730 day goal for decision)

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

- Claimants can switch dockets / review type (38 C.F.R. § 20.202(c)(2)):
 - **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
 - BVA can't issue decision until deadline for switching lanes expires
 - *Williams v. McDonough*, 37 Vet. App. 305 (2024)

Williams v. McDonough - Advice

- If appellant (1) filed NOD soon after the RO decision and elected the Direct Review lane, and/or (2) requested to have appeal advanced on the docket, and wants to ensure the quickest possible decision, consider having them file a statement expressly:
 - Waiving the right to modify the NOD under 38 C.F.R. § 20.202(c)(2) / the applicability of *Williams*; and
 - Advising BVA that they don't object to receiving a decision before the time to modify the NOD under § 20.202(c)(2) expires

Option 3: Appeal to BVA

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

Option 3: Appeal to BVA

- BVA may also remand for correction of any other error by AOJ in satisfying a regulatory or statutory duty, but only if there is a reasonable possibility correction would aid in substantiating claim
 - *Green v. McDonough*, 37 Vet. App. 127 (2024); 38 C.F.R. § 20.802(a)
- BVA can remand for advisory medical opinion/IMO

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

Option 3: Appeal to BVA

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

OTHER ISSUES

Additional Effective Date Rule

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

Multiple Review Requests for Same RO Decision

- A claimant file more than one administrative review request (supplemental claim, HLR, BVA appeal) for the same RO decision within one year of that decision, as long as the reviews do not run concurrently
- In other words, Vet does not need to seek review of the most recent decision on an issue; Vet can seek review of any decision on the issue within the past year
 - *Terry v. McDonough*, 37 Vet. App. 1 (2023)



Example – Multiple Review

Requests for Same RO Decision

- 3/2025: RD denies Vet's claim for SC for sleep apnea
- 4/2025: Vet files supplemental claim, seeking review of decision denying SC for sleep apnea
- 7/2025: RO denies supplemental claim, finding Vet did not submit new and relevant evidence
- Vet can either:
 1. Seek review of 7/2025 decision on supplemental claim (by 7/2026) (if HLR or BVA, issue would be whether Vet submitted N&R evidence); or
 2. Seek review of 3/2025 decision (by 3/2026) (issue would be merits of claim for SC for sleep apnea)

Switching Review Option

- Claimants may switch between different review options (Supp. Claim, HLR, 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

Questions?

