



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

May 2, 2014

Director (00/21)
All VA Regional Offices and Centers

In Reply Refer to: 211
Fast Letter: 14-02

SUBJ: Automatic Waiver of Agency of Original Jurisdiction Review of New Evidence

Purpose

This fast letter implements section 501 of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law (PL) 112-154, which will enhance efficiency in the appeals process. Section 501 amends 38 U.S.C. § 7105 by adding new paragraph (e), under which evidence submitted by the appellant or appellant's representative at the time of or after receipt of the Substantive Appeal is subject to initial review by the Board. While the scope of the legislative language of section 501 is currently under review, this fast letter implements preliminary guidance. This fast letter also clarifies procedures for transferring jurisdiction of an appeal to the Board.

Background

Section 7105 affords claimants the opportunity to appeal final Agency of Original Jurisdiction (AOJ) decisions to the Board of Veterans' Appeals (Board); however, prior to the amendment that added paragraph (e), the statute precluded the Board from considering evidence submitted in connection with an appeal unless the appellant waived the right to AOJ consideration of the evidence in the first instance. Congress determined that the former law resulted in processes and procedures that significantly delayed appeals and unnecessarily expended VA resources, as AOJs were required to repeatedly issue Supplemental Statements of the Case (SSOCs) to address new evidence and allow appellants an additional 30 days to respond.

Section 7105(e) provides that, the Board will initially review any evidence that the appellant or his/her representative submits with or after the filing of a Substantive Appeal received on or after February 2, 2013. A Substantive Appeal consists of a properly completed VA Form 9, *Appeal to Board of Veterans' Appeals*, or correspondence containing the necessary information to complete an appeal. The statute still allows an appellant or his/her representative to obtain initial AOJ review if a written request is submitted with the evidence.

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Procedures

Evidence Received At the Time of or After Submission of Substantive Appeal

Section 7105(e) applies to evidence submitted by the appellant or the appellant’s representative with or after the filing of a Substantive Appeal. Evidence received prior to the Substantive Appeal will still require AOJ review and preparation of an SSOC or rating decision.

Effective immediately, use the procedures below when an appellant submits evidence with or after a Substantive Appeal received on or after February 2, 2013.

In all cases, ROs should continue following current procedures when issuing an SSOC, requesting a VA Form 646, *Statement of Accredited Representative in Appealed Case*, and completing all other steps necessary to certify an appeal. When requesting a VA Form 646 from the appellant’s representative, ROs are reminded to closely monitor and enforce timeliness standards in accordance with [M21-1MR I.5.F.25.e](#), which provides a recommended range of 5-8 days for completion.

If...	Then...
Evidence submitted by the appellant or his/her representative does <u>not</u> require further development AND there is no request for AOJ review,	<ul style="list-style-type: none"> • File the evidence received in the claims folder. • Do <u>not</u> complete an SSOC based on the evidence submitted by the appellant or his/her representative with or after receipt of the substantive appeal. • Upon receipt of the VA Form 9, immediately request a VA Form 646, certify the appeal and transfer jurisdiction to the Board.
Evidence submitted by the appellant or his/her representative does <u>not</u> require further development AND there is no request for AOJ review; however, AOJ personnel have undertaken development for additional evidence prior to release of this fast letter,	<ul style="list-style-type: none"> • Complete all development actions using current procedures. • Issue a new decision and notify the claimant using current procedures (rating decision and/or SSOC). <p><i>Note:</i> The 30-day response time to an SSOC does not preclude VBA from requesting a VA Form 646, certifying the appeal and immediately transferring jurisdiction to the Board.</p>

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<p>Evidence submitted by the appellant or his/her representative indicates on its face that further development is necessary AND there is no request for AOJ review,</p> <p><i>Note:</i> Examples of such evidence include receipt of a VA Form 21-4142 identifying private medical evidence not of record or identifying relevant treatment records from a VA medical facility.</p>	<ul style="list-style-type: none"> • Complete all development actions using current procedures. • Issue a new decision and notify the appellant using current procedures (rating decision and/or SSOC). <p><i>Note:</i> The 30-day response time to an SSOC does not preclude VBA from requesting a VA Form 646, certifying the appeal and immediately transferring jurisdiction to the Board.</p>
<p>Appellant or his/her representative submits a written request for AOJ review of the evidence in one or more issues on appeal,</p>	<ul style="list-style-type: none"> • Review the evidence and perform any necessary development. • Issue a new decision and notify the claimant using current procedures (rating and/or SSOC). • After completing an SSOC, wait 30 days for the claimant to respond to the SSOC before initiating the certification process.

Note: Evidence relevant to the appeal that is submitted *before* jurisdiction of the appeal has been transferred to the Board should be reviewed based on the above guidelines. Evidence relevant to the appeal that is submitted *after* jurisdiction of the appeal has been transferred to the Board should be sent directly to the Board. No adjudicative or development action will be taken on such evidence. See: [M21-1 MR I.5.F.27.b](#) and [38 CFR 19.37\(b\)](#)

Transfer of Jurisdiction to the Board

Appeals that are Ready for Immediate Paper Transfer

Offices should continue following current procedures as outlined in [M21-1 MR I.5.F](#) for certified appeals that are ready for Board review, meaning paper claims folders should be shipped to the Board immediately if *all* of the following conditions are met:

- All pending appeals are ready for certification to the Board
- No rating claim(s) is pending
- Travel Board hearing has not been requested (If a Travel Board hearing has been requested, prepare the file for shipment to the scanning vendor in accordance with the procedures noted below.)

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Complete all necessary steps to certify an appeal, including obtaining a VA Form 646, completing the VA Form 8, and updating VACOLS with the date the appeal is certified to the Board. COVERS should be used to reflect physical shipment of the folder to the Board. VACOLS should be updated to reflect transfer of jurisdiction of the appeal to the Board. This is accomplished by inputting the date of transfer in the “*Adv File Sent BVA*” field.

Scanning of Folders and Electronic Transfer

Certain appeals folders will be scanned prior to transfer to the Board to allow for concurrent processing by the RO and the Board. Instructions from the Office of Field Operation will be released shortly regarding the phased implementation plan for scanning appeal folders. If *one* of the following applies, certify the appeal and prepare the folder for shipment to the scanning vendor:

- Concurrent appeal(s) pending that is not ready for certification
- Travel Board hearing request pending
- Concurrent rating claim(s) pending in the appeal file

OFO will notify ROs when files are to be shipped to the scanning vendors. For appeals that meet the above requirements, use VACOLS to transfer jurisdiction of the appeal to the Board. Do not use COVERS to transfer an appeal to the Board. COVERS should be updated to show shipment to the scanning vendor only. When a case is shipped for scanning:

- Input the date of transfer to the scanning vendor in the “*Adv File Sent BVA*” field or “*Remand Returned*” field on the “*Docket*” tab in VACOLS.
- Select the “*VBMS Appeal*” checkbox in the Special Interest box on the Dispatch tab

For full procedures regarding appeals in VBMS, please refer to the latest [VBMS Tip Sheet, Processing Appeals in VBMS](#).

Note: The VBMS Claim Exclusion List will be updated according to this guidance.

Evidence Received After Board Remand

The AOJ will comply with the Board’s remand instructions and complete any necessary adjudicative or development actions required as a result of review of this evidence, including preparing an SSOC.

Current Status

To fully implement section 7105(e), VBA must revise regulations and manual provisions. This fast letter provides interim guidance and is applicable to all Substantive Appeals received on or after February 2, 2013.

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Questions

Submit questions regarding this fast letter to the Veterans Service Center Manager mailbox and emailed to VAVBAWAS/CO/21Q&A.

/S/
Thomas J. Murphy
Director
Compensation Service

/S/
David R. McLenachen
Director
Pension and Fiduciary Service