

VA Claims Insider



Working Appeals With Clients Policy



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Policy Information Log

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This policy governs the development and oversight of all VA Claims Insider (“VACI”) appeals that clients are currently pursuing or wish to pursue in regard to a denied claim from the Department of Veterans Affairs (VA). This policy establishes rules and guidelines for the different types of appeals and the requirements for them.

Application of this Policy

The purpose of this Policy is to ensure that all employees know and understand the different types of appeals and if VACI can serve the veteran or not. The different types of appeals are:

- Supplemental Claim
- Higher-Level Review (HLR)
- Decision Review Request-Board Appeal-Notice of Disagreement (BVA Appeal)
- US Court of Appeals for Veteran Claims (CAVC Appeal)

Scope of this Policy

- All Policies & Procedures, Handbooks, or other internal guiding documents by VACI that applies to all or some subset of VACI in regard to VA appeals.
- Any VACI employee, contractor, or department that engages with VA appeals.

Administration

The Compliance Department is responsible for the administration of this Policy. All employees are responsible for consulting and complying with the most current version of this Policy. If you have any questions regarding this Policy, please contact the [Experience Owner](#).

Definitions

For the purposes of this policy:

“VA” is the Department of Veterans Affairs.

“VACI” is VA Claims Insider and refers to all VACI employees, independent contractors, and business partners.

“Supplemental Claim” is a new overview of an issue(s) previously decided by the VA based on submission of new and relevant evidence on a completed VA Form 20-0995, Decision Review Request: Supplemental Claim.

“HLR” is a Higher-Level appeal on an issue(s) that was previously decided by the VA which consist of a de novo review of the issue(s) identified by the requesters (clients) on a completed VA Form 20-0996, Decision Review Request: Higher-Level Review.

“BVA” is the Board of Veterans’ Appeals which is the appellate body of the VA and has the ability to overrule a decision made by a VA regional office.

“BVA Appeal” is an appeal on an issue(s) that was previously decided by the VA which consist of a de novo review of the issue(s) identified by the requesters (clients) on a completed VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement).

“CAVC” is the United States Court of Appeals for Veterans Claims which is a federal court in Washington, DC with exclusive jurisdiction over decisions made by the BVA.

“CAVC Appeal” is an appeal on an issue(s) that was previously decided by the BVA as the CAVC has exclusive jurisdiction over decisions appealed by claimants (clients) who believe the BVA erred in its decision.

Determining Appeal Type

SVC/VCs must first review the client's VA decision letter to determine what type of appeal gives the client their desired outcome and discuss it with the client.

Supplemental Claim

For VACI, A Supplemental Claim is used when the VA has already decided on a previous claim and the client is either wanting to reapply for that same condition to get it service connected or show proof that the rating should have been rated higher. There are other reasons that a supplemental claim may be used, however the above reasons are the only approved reasons VACI will help a client with a supplemental claim.

If the claim was denied due to lack of proof that an in-service event caused or worsened by a current diagnosis, aggravated a current diagnosis due to an already service-connected disability, a current diagnosis is missing, or a positive nexus opinion is missing the best option is to satisfy those requirements and then file for a supplemental claim.

In most cases this will be satisfied by referring the client to VACI's Affiliated Partners to obtain an Independent Medical Opinion (IMO).

A Supplemental claim must have new and relevant evidence in order to be accepted by the VA. Examples of new and relevant evidence may be:

- New Diagnosis
- IMO
- Evidence that the VA had but was not used in deciding the claim.

Examples of what is not considered new and relevant evidence:

- Buddy Letter
- Statement in Support of Claim
- Updated Diagnosis

Higher-Level Review (HLR) Appeal

For VACI, a Higher-Level Review (HLR) appeal is used when the VA has either already decided on a previous claim and denied service connection or awarded a rating that the client feels is not appropriate and feels they deserve a higher rating. HLRs do not allow for additional evidence to be added, however a legal/ administrative argument may be added to the HLR.

SVC/VC's must ensure that the client reviews all the sections in Step 8 on the Elite Experience Portal Plus (EEP+) prior to coaching the client on the HLR process.

The “Fillable HLR/BVA for Mental Health Template” and the “Fillable HLR/BVA for NON Mental Health Template” are the only two approved templates that are to be used when doing HLR appeals.

SVCs on an ad hoc basis may create and use a similar template with the approval from Quality Assurance for a clients' HLR. [Reference #1](#) is an example of an approved similar HLR template as instructions sent to the client.

All HLR templates must meet the following requirements:

- Not on a VA form, they must be completed on a word document or a blank sheet of paper.
- Top of each page must have the client's full legal name, VA file number and Social Security Number.
- Each page of the Template must be numbered.
- The total number of pages are listed on the HLR VA Form 20-0996 as an “attachment” in Block 19A (ex “See Attached 4 pages”).
- Identify what the error or VA decision was that is to be appealed.
- Refute the error that was made by the VA with the regulation/procedure/law that was not properly applied.

- Refute the VA decision with references from credible medical evidence (ex IMOs) or other evidence that is credible and has probative value.
- Reference the appropriate regulations listed on the “Laws and Regulations to Quote for HLR/BVA Appeals” document in the EEP+. (SVCs may on an ad hoc basis approve other regulations/laws to reference in the HLR Template).

VACI will always recommend that section 16A and 16B of the VA Form 20-0996 be left blank. The purpose of the HLR Template is to make the clients’ Legal and Administrative Argument for them per the M21-5.4.d VA regulation. [See Reference #2](#).

If the VA decision letter states the denial was due to lack of proof that an in-service event caused or worsened a current diagnosis, aggravated a current diagnosis due to an already service-connected disability, a current diagnosis is missing, or a positive nexus opinion is missing the best option is to satisfy those requirements and then file for a [supplemental claim](#).

VACI should not advise the client to file an HLR for these situations without prior approval from an SVC on an ad hoc basis.

Board of Veterans’ Appeals (BVA) Appeal

For VACI, a Board of Veterans’ Appeals (BVA) appeal is an appeal on an issue(s) that was previously decided by the VA on a completed VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement).

VACI will not coach any client in regard to their BVA appeal.

Clients are allowed to use the resources in the EEP+ to help develop their appeal and ask general questions in the VACI One Coaching and Education classes.

However, VACI will not provide coaching in regard to a BVA appeal nor will VACI invoice a client if the client's BVA appeal is approved.

If the client is only wanting to have a coach to help with a BVA appeal and not any other type of claims or appeals, then the clients' contract for Elite is to be cancelled and the Mastery Program is to be referred to the client.

It is VACI's policy and practice, that once a client has utilized the HLR appeal process and it was denied, the client is encouraged to strengthen their medical evidence by obtaining an IMO (or a second IMO) and file a [supplemental claim](#).

If the client's BVA appeal is granted, and the client wants to utilize the Elite program to win their remanded case then it is treated as a [supplemental claim](#).

Exceptions to this policy and practice can only be approved if Quality Assurance certifies the request as reasonable to coach the client through a BVA appeal. The certified request must then be approved by the President of VACI.

United States Court of Appeals for Veterans Claims (CAVC) appeal.

For VACI, a United States Court of Appeals for Veterans Claims (CAVC) appeal is an appeal on an issue(s) that was previously decided by the BVA as the CAVC has exclusive jurisdiction over decisions appealed by claimants (clients) who believe the BVA erred in its decision.

VACI will not coach any client in regard to their CAVC appeal. Nor will VACI invoice a client if the client's CAVC appeal is won.

If the client's CAVC appeal is won, and the client wants to utilize the Elite program to win their remanded case then it is treated as a [supplemental claim](#).

Reference #1 Example of an approved similar HLR template as instructions sent to the client.

Hello Brian,

I reviewed your rating decision letter. The VA has made errors and I recommend you appeal the decision by filing an HLR by completing [VA Form 20-0996](#). Log in to your [Elite Experience Portal +](#) and review the resources in "Step #8." This will show you how to do the Direct Upload method of filing your HLR. You may also fax your documents to 844-531-7818.

Here's some helpful guidance when completing the form:

- Block #15, select COMPENSATION
- Block #16A and #16B, leave blank
- Block #17A - #17C, leave blank
- Block #18, leave blank unless you and I have already discussed otherwise.
- Block #19A, enter the name of the disability you are appealing and enter "see attached sheet" immediately under it.
- Block 19B, enter the date of the decision letter.

On a blank sheet of paper, enter "HLR Attachment", your full name and file number (SSN)

Your argument: XXX

Copy and Paste the following citations after your argument:

38 U.S.C.A § 5107 (West 2002) states

"VA shall consider all information and lay and medical evidence of record. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, VA resolve reasonable doubt in favor of the claimant."

38 C.F.R. § 3.102

Evidence is in approximate balance, or equipoise, when the evidence in favor and opposing the veteran's claim is found to be almost exactly or nearly equal. When the fact finder determines that the positive and negative evidence relating to a veteran's claim are nearly equal, thus rendering any determination on the merits "too close to call," reasonable doubt is resolved in favor of the claimant. *Ortiz v. Principi*, 274 F.3d 1361, 1365 (Fed. Cir. 2001).

38 C.F.R. § 3.102

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant.

Reference #2 M21-5

5.4.d. Differentiating Between Argument and Evidence

The higher-level reviewer should remember that argument is not evidence. The closed evidentiary record of an HLR precludes the consideration of new evidence, but it permits the consideration of new argument.

Evidence is every type of proof offered to establish a fact. In an HLR, a claimant or representative may not introduce new facts or new evidence, whether medical or lay. When the claimant or representative attempts to submit new evidence in an HLR, the reviewer must remind the claimant or representative that the record is closed. If the claimant or representative still insists on submitting the evidence, the higher-level reviewer may accept it, but the reviewer will also inform the claimant or representative the reviewer cannot consider it. The claimant or representative may submit a supplemental claim based upon the new evidence after receiving the HLR reviewer's new decision. Argument is the attempt to persuade someone to a particular view or belief using reason and facts. 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.

Reference: For more information on evaluating evidence, see [M21-1, Part III, Subpart iv, 5.A.1.](#)

Policy Information Log

Policy Name	Working Appeals with Clients
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