Veterans' Benefits Training/CLE
2023

The Honorable Michael Allen

United States Court of Appeals for Veterans Claims, Washington D.C.

Professor Stacey-Rae Simcox

Director, Veterans Advocacy Clinic

Director, Veterans Law Institute

Stetson University College of Law

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Agenda

- Organization of the VA
- Advocacy at the VA
- Basic Eligibility
- How to Prove Entitlement
- How to File a Claim
- The Life of a Claim
- Right to Appeal

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Organization of the VA

- Executive Branch/Cabinet level agency
- Three main components
  - Veterans Health Administration (VAMC)
  - Veterans Benefits Administration
  - Memorial Affairs/National Cemeteries

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Organization of the VA

- Agency of original jurisdiction for claims = VA Regional Office (RO or VARO)
  - 58 VARO's
- At the VA a "No" is almost never an absolute "No."
- Different members of the agency can make different decisions and overturn a previous decision
- Claimant does not carry his burden alone

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VA Benefits

- Medical care (VHA)
- Home loan guarantees
- Educational assistance
- Survivor benefits
- Pension for indigent wartime veterans
- Disability compensation
  - Monthly nontaxable check
  - For current disabilities connected to the veteran's military service

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Things to remember

18 million

Living Veterans in USA

5.4 million

Number of veterans with a recognized service-connected disability

6

Things to Remember

322,908 / $15,244

Number of **veterans** who began receiving disability compensation in 2022/ estimated annual average individual payment

38,027 / $18,571

Number of **survivors** who began receiving service-connected death benefits in 2022/ estimated annual average individual payment

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Stats

	Aug 2022 Total Claims Pending		**Sept 2023 Total Claims Pending**	
Original Claims (Veterans)	145,619	28.8% pending over 125 days.	226,916	29.7% pending over 125 days.
Original Claims (Spouses)	14,765	29.7% pending over 125 days.	203,482	37.2% pending over 125 days.
Supplemental Claims	408,266	19.8% pending over 125 days.	203,482	37.2% pending over 125 days.
Higher Level Reviews	18,086	Avg days pending: 25.2	51,216	Avg days pending: 54.9
HLR Returns	13,754	Avg days pending: 122.9	50,371	Avg days pending: 151.2
Board AMA Returns	5,058	Avg days pending: 129.1	8,652	Avg days pending: 145.5

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Things to remember

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ADVOCACY AT THE VA

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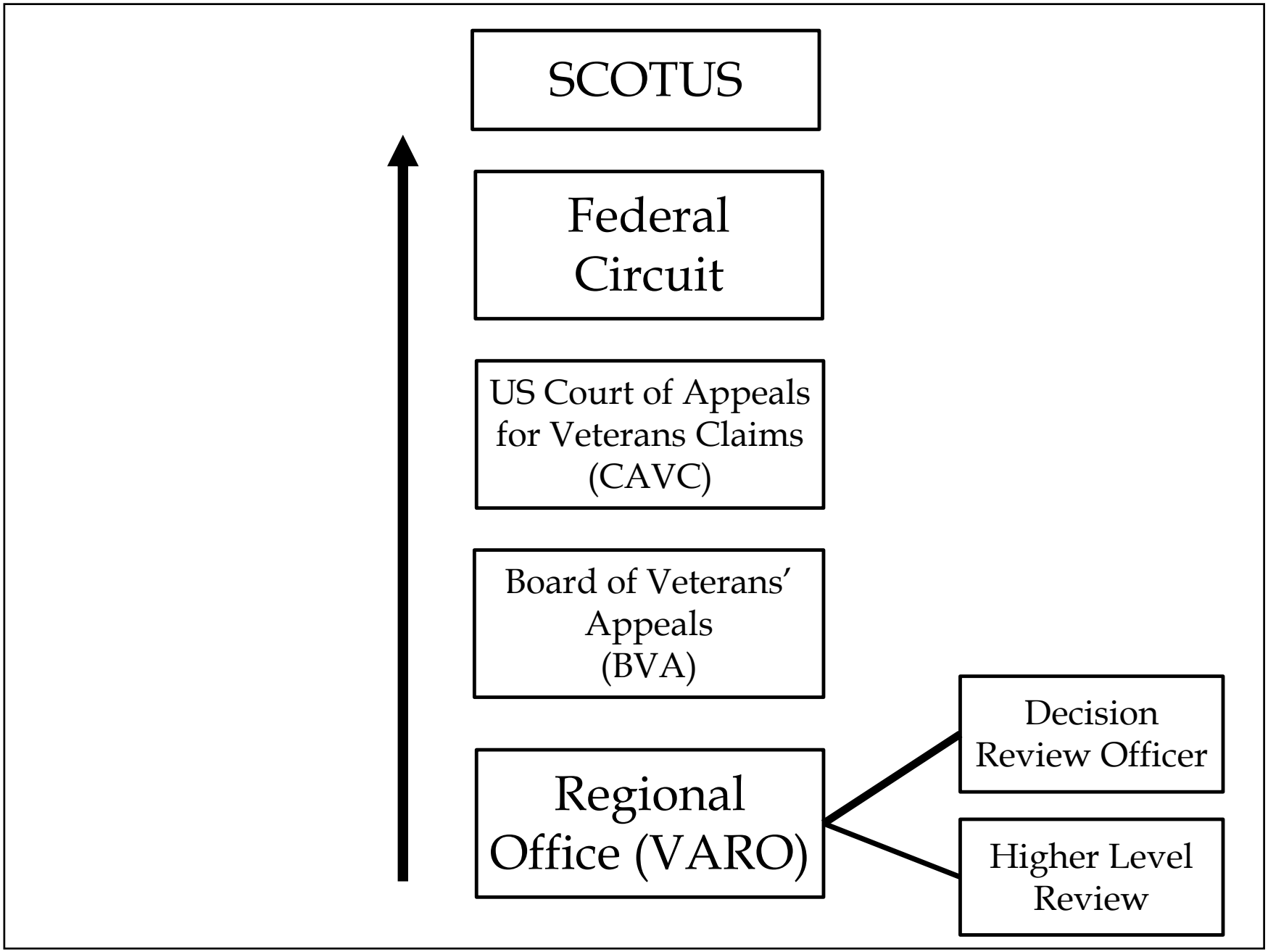
SCOTUS
Federal Circuit
US Court of Appeals for Veterans Claims (CAVC)
Board of Veterans' Appeals (BVA)
Regional Office (VARO)
Decision Review Officer
Higher Level Review

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HOW TO FILE A CLAIM

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How to File a Claim

- Initial Claim Form (VA Form 21-526)
- FDC and Subsequent Claim Form (VA Form 21-526EZ)
- Intent to File (VA Form 21-0966)

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UNDERSTANDING RECORDS

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Representation before the VA: Obtaining Records

- Relevant records include:
  - Official Military Personnel File (OMPF)
  - Medical records (inpatient/outpatient)
  - VA Claims File

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Representation before the VA: Obtaining Records

- OMPF and active-duty inpatient and outpatient records may be obtained by filing an SF-180, Request Pertaining to Military Records.
  - Type of record
  - Branch of service
  - Date of discharge

- All Branches have different places they are holding records depending on year of discharge

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Representation before the VA: Obtaining Records

- VA Claims File ("C-File")
  - Obtained by a FOIA request with the appropriate Regional Office
  - Should have
    - copies of all correspondence between the VA and Claimant,
    - all records obtained by the VA,
    - and all medical evaluations of the Veteran conducted on behalf of the VA

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REPRESENTATION BEFORE THE VA: WHO IS AN ELIGIBLE "VETERAN?"

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Who is a Veteran?
Four Requirements

- Requirement of Veteran Status
- Active Military, Naval, Air, or Space Service Requirement
- Discharge Requirement
- Length of Service Requirement

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Basic Eligibility for Benefits: Veteran Status

- Who is a veteran?
  - Served in the active military, naval, or air service, **and**
  - Who was discharged or released therefrom under conditions other than dishonorable

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Basic Eligibility for Benefits: Active Service

- Active duty:
  - Active troops
  - Reservists/National Guard:
    - Any period of active duty for training during which the individual was disabled or died from disease or injury incurred or aggravated in line or duty (Title 10 status)

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Basic Eligibility for Benefits: Discharges

- To be eligible for benefits, a Veteran must have a discharge under:

  "other than dishonorable conditions"

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What is a Discharge?

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What is a Discharge?

- The end of Active Service
  - Includes:
    - Active Duty
    - Active Training
  - Note: National Guard service only counts when it is *federal* service!
    - Service while on duty for your state will not apply

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How Does a Servicemember Prove He Was Discharged?

- DD-214
  - "Certificate of Release or Discharge from Active Duty”
  - Began to issue in 1950
  - 1940’s-1950 = "WD AGO" (War Department Adjutant General) Forms and the NAVPERS (Naval Personnel) discharge documents
  - Short Form vs Long Form

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The DD-214

- What's on it?
  - Biographical information
  - Verifies complete span of time served on active duty
  - Lists MOS (Military Occupational Specialty)
  - Overseas service
  - Awards
  - Rank
  - Character of Discharge
  - Reason for Discharge

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14. MILITARY EDUCATION *(Course title, number of weeks and month and year completed)*

PRIMARY LEADERSHIP DEVELOPMENT COURSE, 4 WEEKS, 1996//COMBAT LIFESAVER COURSE, 1 WEEK, 1993 //NOTHING FOLLOWS

15.a MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERAN'S EDUCATIONAL ASSISTANCE PROGRAM	Yes	No	15.b HIGH SCHOOL GRADUATE OR EQUIVALENT	Yes	No	16. DAYS ACCRUED LEAVE PAID
		X		X		60.0

17. MEMBER WAS PROVIDED A COMPLETE DENTAL EXAM AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION		Yes	X	No

18. REMARKS

DATA HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOD OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS//IMMEDIATE REENLISTMENTS THIS PERIOD--[redacted] /MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE//CONT FROM BLOCK 13: //OVERSEAS SERVICE RIBBON//NATO MEDAL//EXPERT INFANTRYMAN BADGE//AIR ASSAULT BADGE//DRIVER AND MECHANIC BADGE WITH DRIVER-W BAR//NOTHING FOLLOWS

19.a MAILING ADDRESS AFTER SEPARATION *(Include Zip Code)*

[redacted]

20. MEMBER REQUESTS COPY 6 BE SENT TO [redacted] **OR OF VET. AFFAIRS** | X | Yes | | No |

[redacted]

21.a NEAREST RELATIVE *(Name and address - Include Zip Code)*

[redacted]

22. OFFICIAL AUTHORIZED TO SIGN *(Typed name, grade, title and signature)*

BEVERLY A. WILES, GS07, DAC, LEAD CLERK, TRAN

SPECIAL ADDITIONAL INFORMATION *(For use by authorized agencies only)*

23. TYPE OF SEPARATION	24. CHARACTER OF SERVICE *(Include upgrades)*	
DISCHARGE	UNDER HONORABLE CONDITIONS (GENERAL)	
25. SEPARATION AUTHORITY	**26. SEPARATION CODE**	**27. REENTRY CODE**
AR 635-200, PARA 14-12C(2)	JKK	3
28. NARRATIVE REASON FOR SEPARATION		
MISCONDUCT		
29. DATES OF TIME LOST DURING THIS PERIOD		**30. MEMBER REQUESTS COPY 4**
NONE		Initials

DD Form 214-AUTOMATED, NOV 88 *Previous editions are obsolete.* SERVICE - 2

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How Many Discharges Can One Servicemember Have?

- Officers
  - An officer receives a commission from the POTUS to serve.
  - Commissions are indefinite
  - Commissions come with an obligation of service
  - Currently, officers are not automatically discharged at the end of the obligation
  - DD-214 received after separation/discharge/retirement

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How Many Discharges Can One Servicemember Have?

- Enlisted
  - Sign a contract for a specific period of obligation
  - ETS ("End of Term of Service")= new contract ("Re-enlistment")
  - For each ETS = new DD-214 (or its equivalent)

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How Many Discharges Can One Servicemember Have?

- Reservists
  - Get a DD-214 for each period of active duty (Title 10 status)

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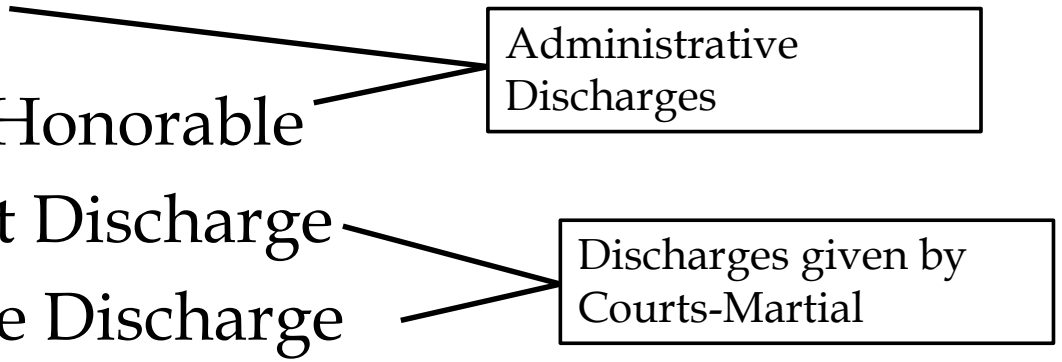
Character of Discharge

- Honorable
- General
- Other Than Honorable
- Bad Conduct Discharge
- Dishonorable Discharge



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Character of Discharge

- Honorable
  - Normal
  - Entitled to full benefits
- General
  - Administrative separation
- Other Than Honorable
  - Administrative separation
  - More procedural due process

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Character of Discharge

- Bad Conduct Discharge (BCD)
  - Punitive discharge
  - Administered by General or Special Courts-Martial
- Dishonorable Discharge (DD)
  - (Dismissal for officers)
  - Punitive discharge
  - Administered by General Courts-Martial

VA: "other than dishonorable discharge"

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VA Benefits Eligibility: Discharges

- Eligible for benefits
  - Honorable discharge
  - General discharge
- Not eligible for benefits
  - Other than honorable (case-by-case)
  - Bad conduct discharge
  - Dishonorable discharge

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Basic Eligibility for Benefits: Statutory Bars to Benefits

- Regardless of discharge characterization
  - Separation as a conscientious objector who refused orders
  - Release by reason of sentence of general court martial
  - Officer resigning for good of service
  - Deserter
  - Alien sought discharge in time of hostility
  - AWOL for 180 days (unless there are compelling circumstances to warrant the prolonged absence

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Basic Eligibility for Benefits: Upgraded Discharge

- Upgrade by Board for Correction of Military Records (BCMR) to Honorable or General:
  - Allows the benefits normally proscribed under "issued under dishonorable conditions' clause
  - Sets aside statutory bars to benefits
- Upgrade by Discharge Review Board (DRB) to Honorable or General
  - Allows the benefits normally proscribed under "issued under dishonorable conditions" clause
  - BUT **not** statutory bars to benefits

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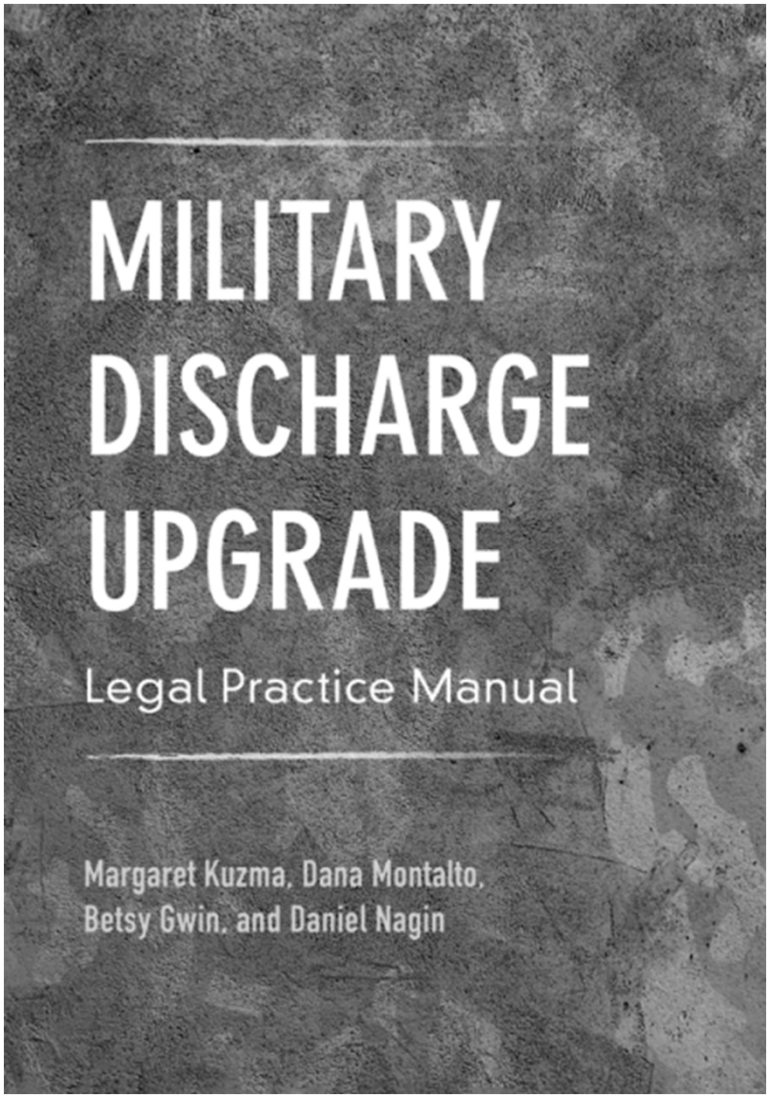

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2021
ABA

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Basic Eligibility for Benefits: Length of Service

- Prior to 1980, no minimum length of service requirement
- Since 1980
  - NO length of service requirement for service – connected disability compensation or death benefits
  - Some length of service requirement of pensions and health care

VA BENEFITS:
Pensions
&
Compensations

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Pension vs. Compensation:
The Basics

- Non-service-connected disability
- Needs-based
- Need to show:
  - Low income
  - Wartime Service
  - Total and permanent disability

- Service-connected disability
- Not needs-based
- Need to show:
  - Eligibility
  - Current Disability
  - Nexus

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ESTABLISHING ENTITLEMENT TO DISABILITY COMPENSATION

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Disability Compensation

- To be awarded disability compensation, like other benefits, a claimant has to show he is eligible for the benefit and entitled to the benefit.

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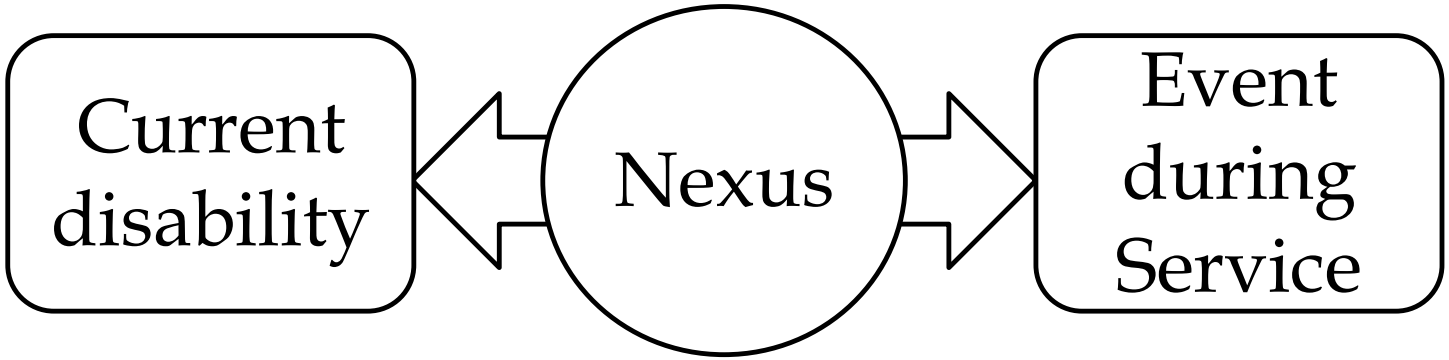
Establishing entitlement to disability compensation



(Statute; regulation; case law)

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Disability Compensation: 1. Medical Diagnosis

- Made by a medical professional or some other person with specialized training that qualifies them to give medical diagnosis
- Lay evidence will not normally satisfy

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Disability Compensation: 1. Medical Diagnosis

- Must have current disability or current disabling residuals
- May be awarded disability compensation if resolves prior to adjudication

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Disability Compensation: 2. In-service Event

- Does not have to be directly related to military duties if happened between entry and discharge
- STANDARD: Evidence in the record demonstrates that it is *as likely as not* that there was an in-service aggravation of disease/injury
- How do you prove this?

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Disability Compensation: 3. Nexus

- Direct causative link between current disability and in-service event
- Aggravation of pre-existing condition
- Presumptive service connection
- Secondary service connection
- Consequence of injury by VA health care

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Disability Compensation: 3. Nexus (cont'd)

- Medical evidence of nexus almost always required (Biggest denial basis)
- Competent medical evidence: Evidence provided by a person qualified through education, training, or experience to offer medical diagnoses, statements, or opinions.
- Does not have to be a medical doctor.

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Disability Compensation: 3. Nexus (cont'd)

- Satisfying the Nexus requirement:
  - Letter or statement from physician expressly connecting disability to occurrence, aggravation, or event
  - Standard of proof:

"As Likely As Not"

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Disability Compensation: 3. Nexus (cont'd)

- Standard of proof:

  "Benefit of the doubt" v. "Reasonable doubt."

  When reasonable doubt arises regarding service origin, such doubt will be resolved in favor of the claimant.

  Reasonable doubt = one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim.

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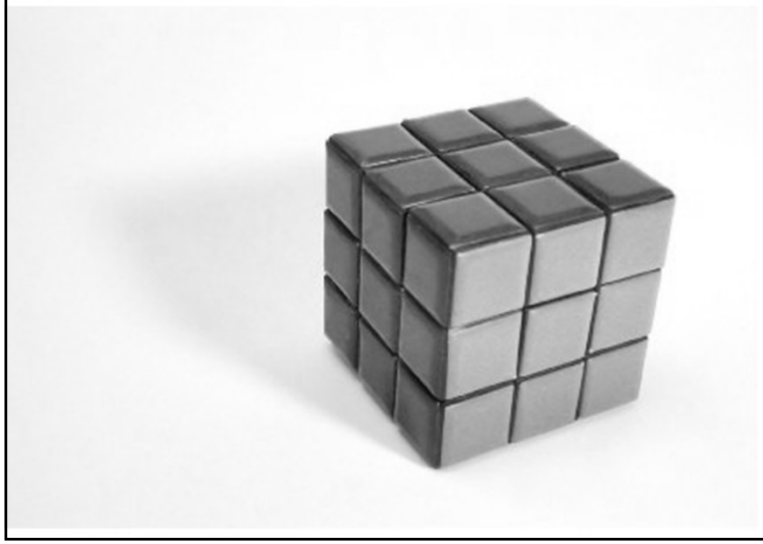
SOMETIMES, THE REQUIREMENTS FOR COMPENSATION ARE HARD TO PROVE, SO VA CREATED SOME "SHORT-CUTS" CALLED PRESUMPTIONS.



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Presumptions

- Agent Orange
- Gulf War Syndrome
- Burn Pits
- Camp Lejeune water/Litigation
- Other diseases and situations
- PACT ACT: ‘‘Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022’’ or the ‘‘Honoring our PACT Act of 2022’’ PL 117-168

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Presumptions: Agent Orange

SRS0

- Presumption applies if you:
  - Served in Vietnam
    - Between Jan. 9, 1962 and May 7, 1975
    - Set foot on land or within 12 nautical miles
  - Have one of a list of specified diseases
  - For some diseases, got the disease within 1 year of serving
  - Do NOT need to prove exposure to Agent Orange

PACT ACT 8/2022 additions: Thailand, Laos, Cambodia, Guam or American Samoa (each has a different time frame)

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Navy Veterans and AO Exposure

- ***Procopio v. Wilkie*** (Fed. Cir. Jan 29, 2019)
  - 12 nautical miles
  - Stay on cases

- Blue Water Navy Vietnam Veterans Act of 2019 (June 25, 2019 became law amending 38 USC 1116A)
  - Vets who filed claims between 9/85 and 1/20 (or survivors)
  - 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia interesting at a number of geographic points latitude and longitude.

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More Blue Water Act

- Veterans during naval, air, or military service served in or near the DMZ from 9/1/67-8/31/71 (codified regulation)
- Children of Thailand veterans with spina bifida
  - Vet served in Thailand between 1/1962 and 5/1975
  - VA and DoD determine vet would have been exposed to an herbicide agent during service there.

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SRS0

Presumptions: Agent Orange

- List of diseases includes:
  - Many types of cancer
    - Lung, prostate, myeloma, leukemia
    - Hodgkins Disease
    - Non-Hodgkins Lymphoma
    - Bladder Cancer (2021 addition)
  - Type 2 Diabetes
  - PACT ACT: Hypertension & Monoclomal Gammopathy (1/1/2023)
  - Many others
    - See http://www.va.gov/agentorange

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SRS0

Presumptions: Gulf War Syndrome

- Presumption applies if you:
  - Qualify as a Persian Gulf Veteran
    - Any time after Aug. 2, 1990
      - Served in Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, UAE, Oman, Saudi Arabia, Somalia (including airspace)
    - Any time after Sept. 11, 2001 (PACT ACT 2022 change)
      - Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan

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Presumptions: Gulf War Syndrome

- Presumption applies if you:
  - Have certain symptoms or conditions
    - Includes any *undiagnosed* or *"medically unexplained"* illness (MUCMI)
    - Examples: Chronic Fatigue Syndrome, Fibromyalgia, Irritable Bowel Syndrome

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Burn Pits

- The following types of cancer:
  - (A) Head cancer of any type.
  - (B) Neck cancer of any type.
  - (C) Respiratory cancer of any type.
  - (D) Gastrointestinal cancer of any type.
  - (E) Reproductive cancer of any type.
  - (F) Lymphoma cancer of any type.
  - (G) Lymphomatic cancer of any type.
  - (H) Kidney cancer.
  - (I) Brain cancer.
  - (J) Melanoma.
  - (K) Pancreatic cancer.

SRS0

Burn Pits (continued)

- Chronic bronchitis.
- Chronic obstructive pulmonary disease.
- Constrictive bronchiolitis or obliterative bronchiolitis.
- Emphysema.
- Granulomatous disease.
- Interstitial lung disease.
- Pleuritis.
- Pulmonary fibrosis.
- Sarcoidosis.
- Chronic sinusitis.
- Chronic rhinitis.
- Glioblastoma.

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Presumptions: Camp Lejeune

- Served at Camp Lejeune or MCAS New River for at least 30 cumulative days from August 1953 through December 1987; AND
- Have at least one of these conditions:
  - Adult leukemia
  - Aplastic anemia and other myelodysplastic syndromes
  - Bladder cancer
  - Kidney cancer
  - Liver cancer
  - Multiple myeloma
  - Non-Hodgkin's lymphoma
  - Parkinson's disease

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Litigation

SRS0

United States District Court for the Eastern District of North Carolina

- party shall produce evidence showing that the relationship between exposure to the water at Camp Lejeune and the harm is— (A) sufficient to conclude that a causal relationship exists; or (B) sufficient to conclude that a causal relationship is at least as likely as not.
- No punitive damages
- Effect on VA benefits…

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Presumptions: For All Veterans

- Tropical Diseases
  - Within 1 year of service
- Tuberculosis
  - Within 3 years after service
- Multiple Sclerosis
  - Within 7 years after service

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Presumptions: For Certain Veterans

- Prisoners of War
- Veterans injured in combat
  - Note: If records show you were in combat, do NOT have to prove you were injured
- Veterans exposed to radiation

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Disability Compensation: Ratings

- Disability refers to the "average impairment in earning capacity" resulting from the rated condition.
- VA created a schedule of ratings providing for degrees of impairment evaluated from 0 to 100 percent in increments of 10 percent.

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Disability Compensation: Ratings

- Zero-percent ratings
- Combined ratings. *See* "Combined Ratings Table," 38 U.S.C.S. § 1155

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ENTITLEMENT TO PENSION BENEFITS

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Pension: Low Income

- Countable income does not exceed Maximum Annual Pension Rate
  - What is veteran's net worth?
  - What are the incomes of the veteran, veteran's spouse, and the veteran's dependent children?
- Amount of pension increases with each dependent
- Need is reassessed annually
- Can be for a veteran or the spouse of a deceased veteran.

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Surviving Spouse

Person of any sex who was spouse of veteran at time of veteran's death and lived with veteran continuously from date of marriage to date of veteran's death.

Surviving Spouse MAY also have to prove one or more of the following:

1. Married at least one year prior to the veteran's death.
2. Continuous cohabitation with the veteran during the marriage; and
3. No remarriage after the Veteran's death.

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Non-Service Connected Pension Requirements

(1) wartime service that ultimately results in a discharge under other than dishonorable conditions,

(2) permanent and total disability, and

(3) demonstrated need. The VA determines need by calculating the income and net worth of the claimant.

Periods of War:

1. World War II: December 7, 1941 – December 31, 1946
2. Korean Conflict: June 27 1950 – January 31, 1955
3. Vietnam Era: August 5, 1964 – May 7, 1975.
4. Persian Gulf War: August 2, 1990 – date to be prescribed by Presidential proclamation.

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Requirement: Wartime Service

- Discharged under conditions other than dishonorable
- Minimum period of service (if enlisted after Sept. 8, 1980 24 mos or the full period for which you called up.)
- PLUS one of the following:
  - Total of 90 days during one or more periods of war
  - 90 or more consecutive days with one day during a period of war
  - At least one day of wartime service resulting in discharge for service-connected disability

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Requirement: Permanent and Total Disability

- Permanent = Unlikely veteran's disability will get better over time
- Total = 100% rating
  - Ineligible if veteran has *substantial gainful employment*
- Veterans 65+ are *presumed* to be permanently and totally disabled
- Vets in nursing homes (SNFs) qualify/Not ALF
- Disability does NOT have to be service-connected!

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The Requirement of Need

-Needs based program.

In order to establish entitlement to improved pension, the VA considers the claimant's **net worth** as well as his or her **income**.

-Need does not refer to physical disability.

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Income Requirement

If countable income exceeds the maximum annual pension rate (MAPR), a claim for improved pension will be denied.*

-MAPR for Veteran 2023: $16,037 [no dependents]

-MAPR for Spouse 2023: $10,757 [no dependents]

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Exclusions and Deductions from Income for Improved Pension Purposes

Sources of income excluded and deductions from income for VA improved pension purposes include*:

1.)Welfare
2.)Fire insurance proceeds
3.)Profit from sale of property
4.)Funds in joint accounts acquired by death
5.)Medical Expenses
6.)Interest accrued on retirement annuity accounts
7.)Expenses of last illness and burials
8.)Educational Expenses

* 38 U.S.C.S. § 501(a); 38 C.F.R. § 3.272

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The Formula Used to Calculate Improved Pension

Simple Income Example:

-MAPR is $16,037 a year

-Veteran income is $10,000

-VA pension will be $6,037 ($ 16,037 - $10,000 = $ 6,037) paid in monthly installments

$503.08/month

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The Formula Used to Calculate Improved Pension -Deducting Medical Expenses

- **A portion of your unreimbursed medical expenses** (what you paid out of pocket after medical insurance pays) may **reduce** your countable income. If your medical expenses for a year are $8,000 and your medical insurance pays $6,000 of that, your **unreimbursed medical expense is $2,000.**

- That **portion** of your unreimbursed medical expenses ($2,000 in the example above) which is **more than 5%** of the maximum rate of pension, or **$801.85** in this example ($16,037 x .05 = $801.85), may be deducted from your total combined income which then increases the amount VA will pay to you.

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The Formula Used to Calculate Improved Pension Deducting Medical Expenses

Since the $2,000 out of pocket expenses is greater than $801.85, you may reduce your income by $1,198.15 ($2,000 - $801.85). So, your income for VA pension purposes is now **$8,801.85** ($10,000 - $ 1,198.15).

Your VA pension would then be $16,037 (maximum rate for a veteran) minus $ 8,801.85 (total income after deducting unreimbursed medical expenses), or **$7,235.15** for that year.

$602.93/month

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Net Worth

- Was an arbitrary standard designed to take into account life expectancy, depletion rate of assets, etc…
- Now (EFF DATE: 10/18/18) is pegged to the Medicaid CSRA (community spouse resource allowance)
- 2023: $150,538
- The length of the penalty period is determined by dividing the fair value of the income or assets given away by a "penalty divisor." For 2023 the penalty divisor is $2,642.

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Spending down assets

- May be expended on any item that claimant pays fair market value for that isn't an ASSET.
- Transfers change!!!
  - 36 month look-back period. 5 year max penalty period.
  - Any transfer for less than market value that cannot be liquidated for claimant benefit (irrev. Trust) for an amount that would have made claimant ineligible for pension benefits.
  - Exception: trust for child incapable of self-sufficiency.

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Special Monthly Pension (SMP)

Special Monthly Pension (SMP) is awarded for disability levels exceeding permanent and total disability. There are two types of SMP:

1.) Housebound benefits (HB).

also permanently housebound (essentially confined to his or her home).

$19,598 (2023 Veteran alone)/$16,462 (2023 Spouse alone)

2.) Aid & Attendance (A&A).

needs the regular aid and attendance of another person for ADL.

$26,752 (2023 Veteran alone)/$20,509 (2023 Spouse alone)

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Aid & Attendance

- Require the aid of another person in order to perform personal functions required in everyday living such as:
  - Bathing, showering, toileting
  - Feeding (not merely meal preparation)
  - Transferring from bed/chair, overall mobility
  - Incontinence
  - Adjustment of prosthetic
  - Bedridden due to disability
- Patient in a nursing home due to mental or physical incapacity;
- Limited eyesight (blind or very nearly blind)

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How to File

New Pension Claim

Useful Forms

- VA Form 21-256: Veteran's App. For Compensation or Pension
- VA Form 21-4138: Statement in Support of Claim
- VA Form 21-527EZ: Fully Developed Claim
- VA Form 21-2680: Examination for Housebound Status or Permanent Need for Aid & Attendance
- VA Form 21-0779 (Special Monthly Pension): Request for Nursing Home Info

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Where to File

- **Philadelphia VA Regional Office**
  - PO Box 8079
    Philadelphia, PA 19101
  - **Service Area:** Connecticut, Delaware, Florida, Georgia, Maine , Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia
- **Milwaukee VA Pension Center**
  - PO Box 342000
    Milwaukee WI 53234-9907
  - **Service Area:** Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, Wisconsin
- **St. Paul VA Regional Office**
  - Pension Management Center (335/21P)
    PO BOX 11000
    St. Paul, MN 55111-0000
  - **Service Area:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming

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Factors to Expedite Your Client's Claim

- Homelessness or a history of homelessness
- Extreme Financial Hardship
  - Home Foreclosure
  - Vehicle Repossession
  - Bankruptcy
  - Inability to Meet Basic Needs
- Advanced Age
  - 75+ Years Old at the Board. (at St Pete VARO they have said you have to be 84 and older)
- Significant illness/terminal

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DEPENDENCY AND INDEMNITY COMPENSATION (DIC)

86

Survivor Benefit

- Surviving Spouse (would include stipend for dependent children)
- Dependent Child

- Amount is $1562.74 base. Extra $387.15 for dependent child.

- **INCREASES FOR ALL AMOUNTS EXPECTED TO RAISE BY 3% IN 2024. (They rose 8.7% in 2023)**

87

Eligibility

- The Servicemember died while on active duty, active duty for training, or inactive duty training, **OR**
- The Veteran died from an injury or disease deemed to be related to military service, **OR**
- The Veteran died from a non service-related injury or disease, but was receiving, **OR** was entitled to receive, VA Compensation for service-connected disability that was rated as totally disabling
  - For at least 10 years immediately before death, **OR**
  - Since the Veteran's release from active duty and for at least five years immediately preceding death, **OR**
  - For at least one year before death if the Veteran was a former prisoner of war who died after September 30, 1999

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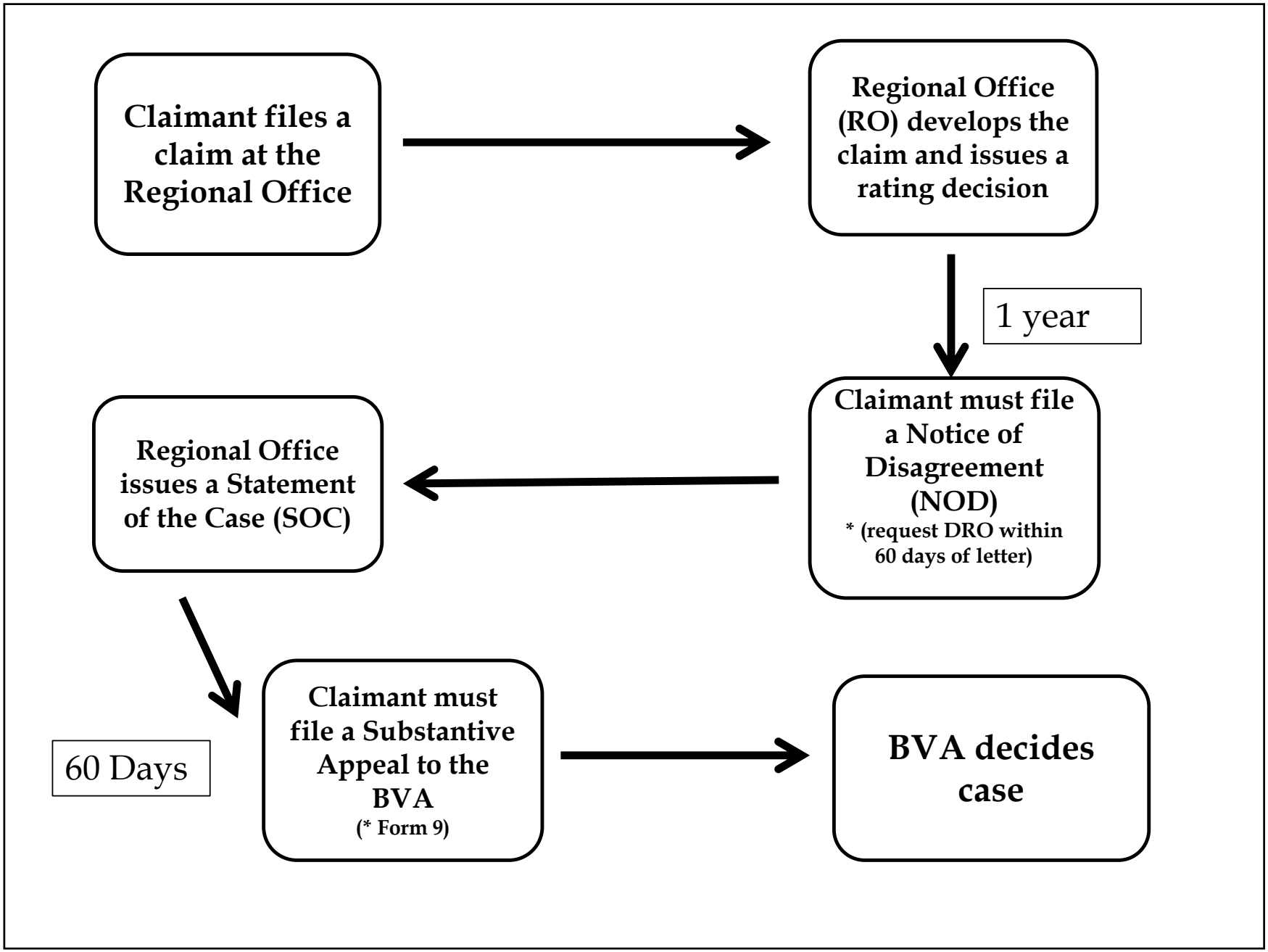
THE LIFE OF A CLAIM IN THE LEGACY SYSTEM

89

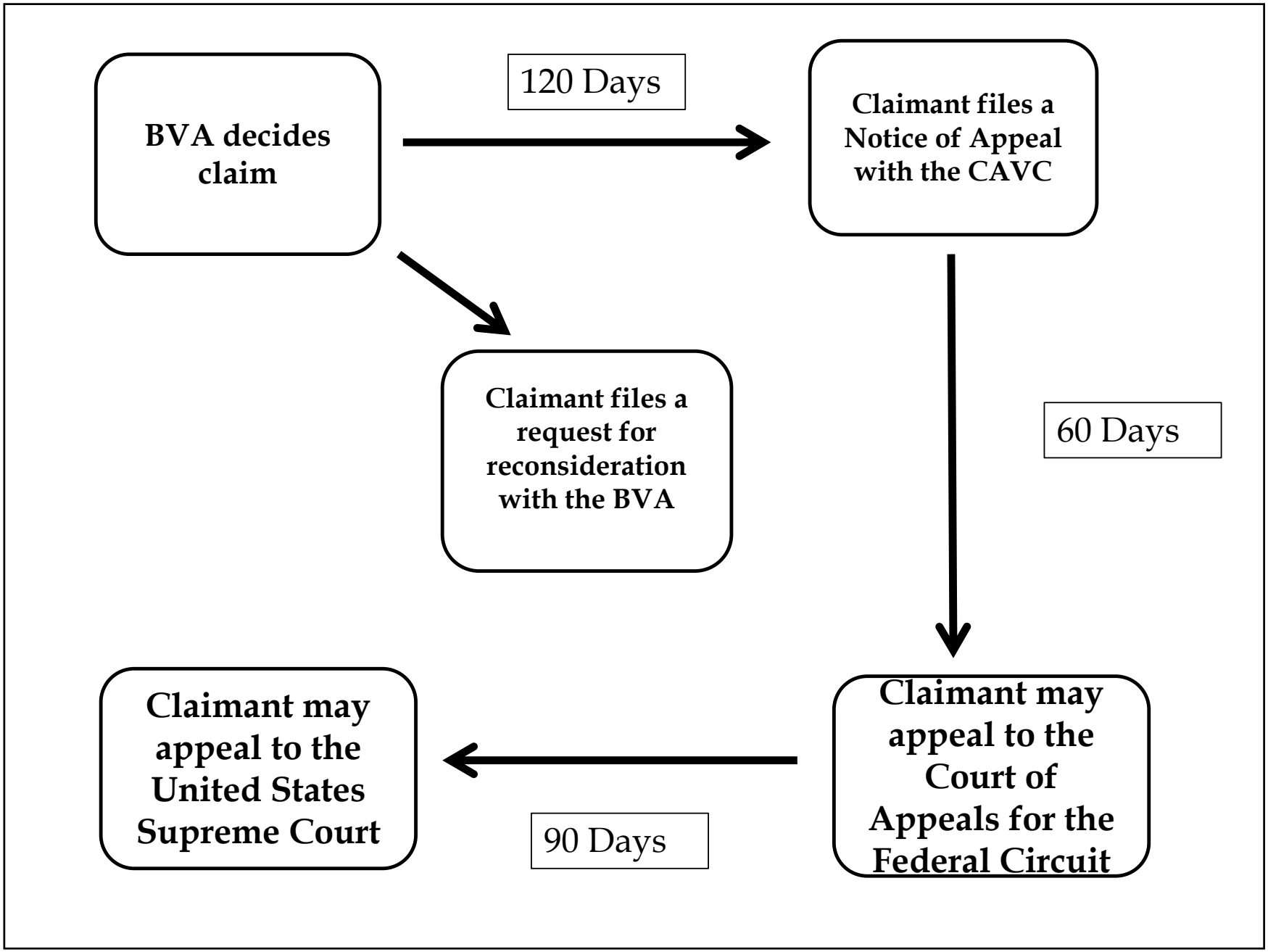
Claims Procedures: Deadlines

- **Missing a deadline makes a decision final, <u>There is a possibility of taking a fresh look at the claim in both the LEGACY and AIMA claims.</u>**
- Initial RO decision / file NOD – 1 year
- Receipt of letter offering DRO / Request DRO review –
- SOC / File Substantive Appeal on Form 9 – later of 60 days or remainder of 1 year from mailing of the notice of decision

90


Claimant files a claim at the Regional Office
Regional Office (RO) develops the claim and issues a rating decision
1 year
Claimant must file a Notice of Disagreement (NOD)
* (request DRO within 60 days of letter)
Regional Office issues a Statement of the Case (SOC)
60 Days
Claimant must file a Substantive Appeal to the BVA
(* Form 9)
BVA decides case

91

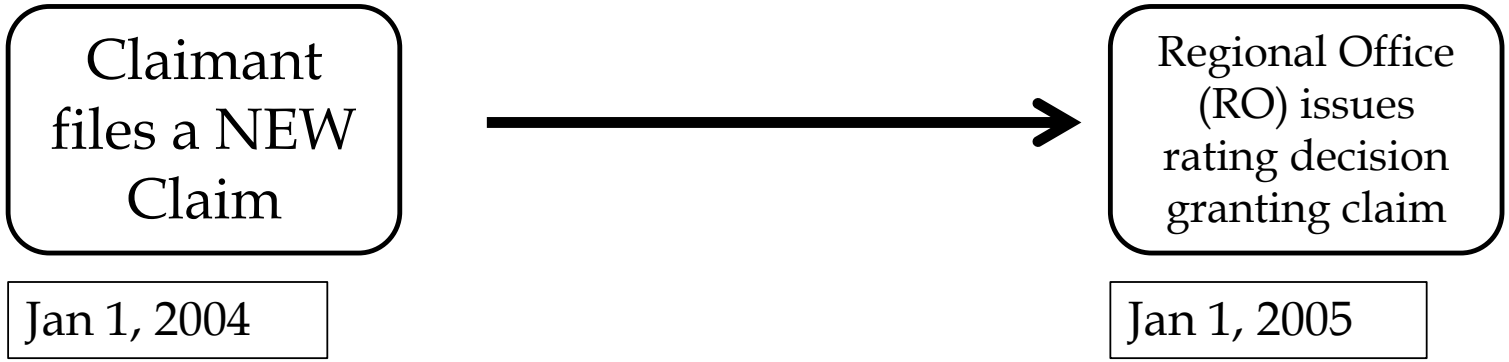

BVA decides claim
120 Days
Claimant files a Notice of Appeal with the CAVC
Claimant files a request for reconsideration with the BVA
60 Days
Claimant may appeal to the Court of Appeals for the Federal Circuit
90 Days
Claimant may appeal to the United States Supreme Court

92

Claims Procedures: Types of Claims

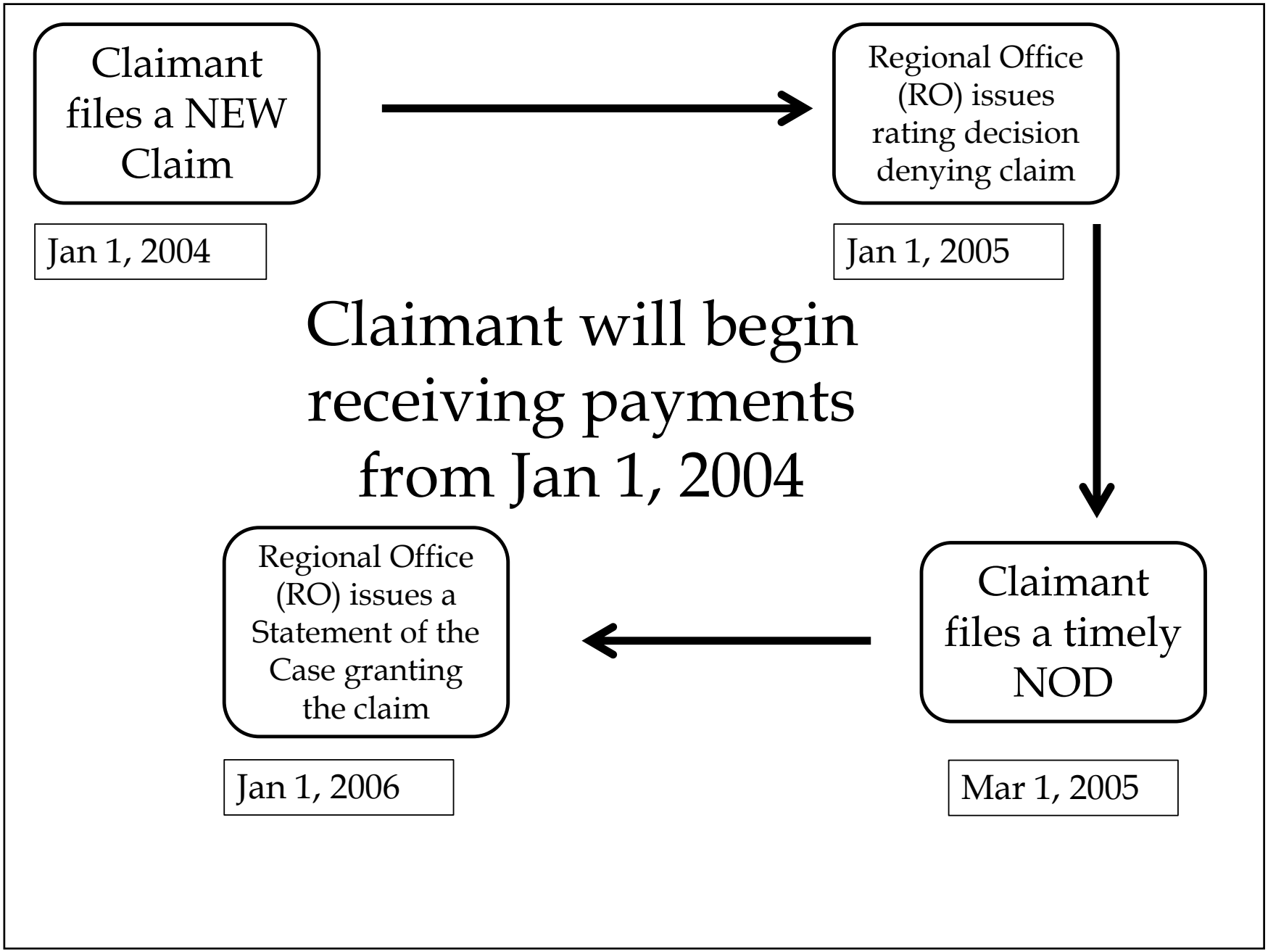
- Three types of claims:
  - New or original claims
  - Reopened claims
    - Requires new and material evidence
  - Clear and unmistakable error (CUE)
    - Facts not before the adjudicator or law incorrectly applied
    - Error occurred based on the record and the law that existed at the time
    - Outcome would have been manifestly different

93

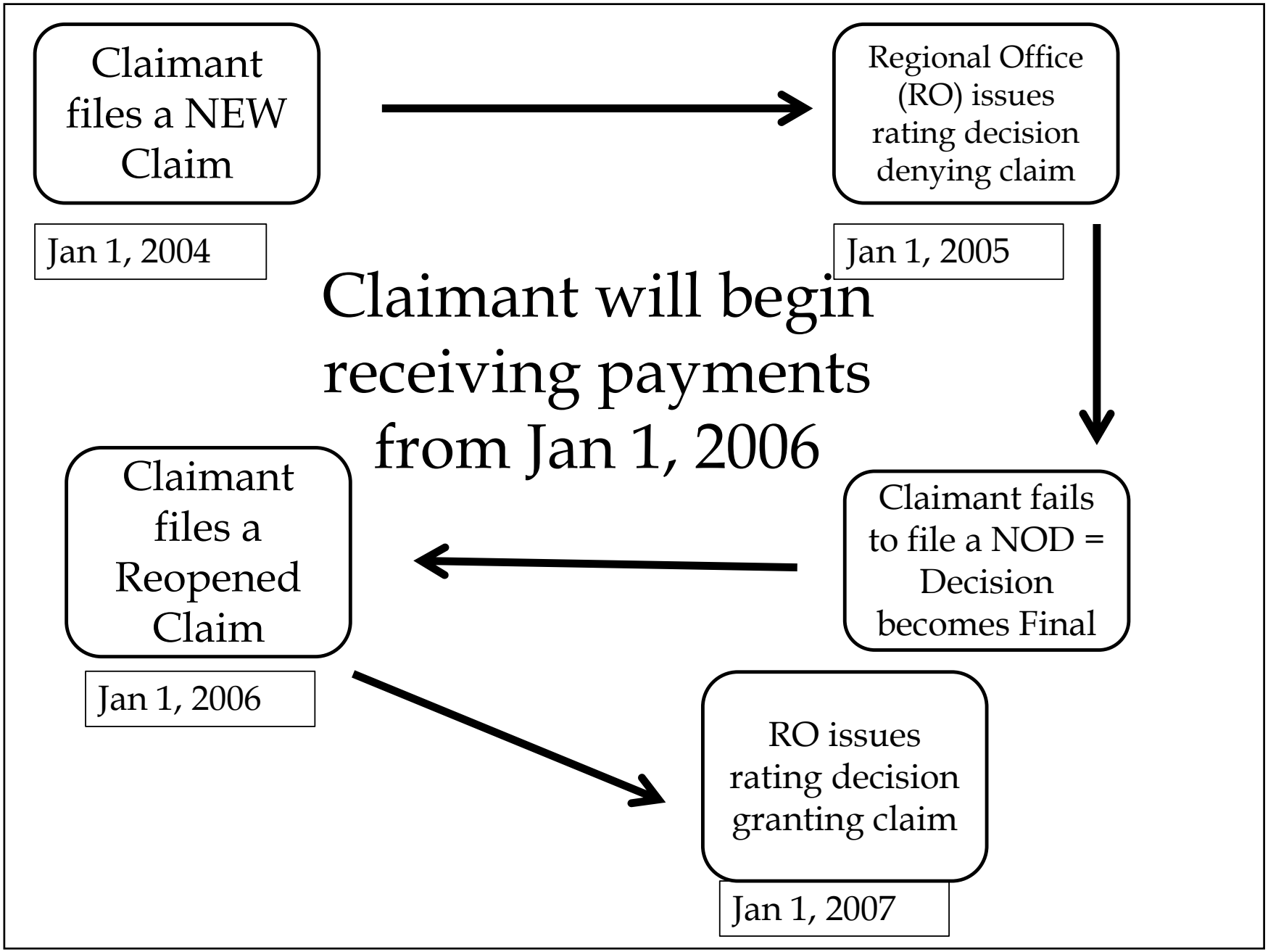


Claimant will begin receiving payments from Jan 1, 2004

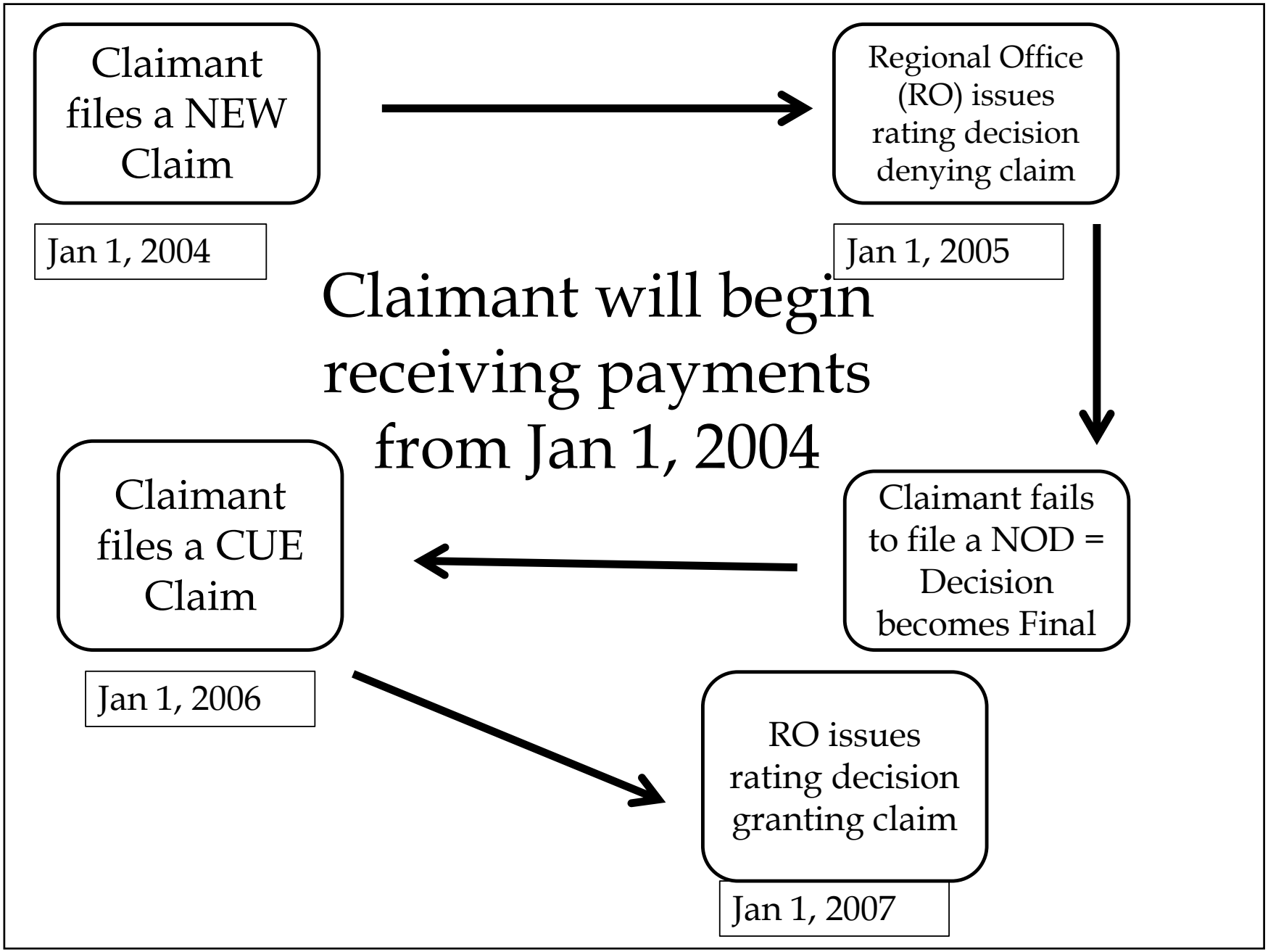
94


Claimant files a NEW Claim
Jan 1, 2004
Regional Office (RO) issues rating decision denying claim
Jan 1, 2005
Claimant will begin receiving payments from Jan 1, 2004
Claimant files a timely NOD
Mar 1, 2005
Regional Office (RO) issues a Statement of the Case granting the claim
Jan 1, 2006

95


Claimant files a NEW Claim
Jan 1, 2004
Regional Office (RO) issues rating decision denying claim
Jan 1, 2005
Claimant will begin receiving payments from Jan 1, 2006
Claimant fails to file a NOD = Decision becomes Final
Claimant files a Reopened Claim
Jan 1, 2006
RO issues rating decision granting claim
Jan 1, 2007

96


Claimant files a NEW Claim
Jan 1, 2004
Regional Office (RO) issues rating decision denying claim
Jan 1, 2005
Claimant will begin receiving payments from Jan 1, 2004
Claimant fails to file a NOD = Decision becomes Final
Claimant files a CUE Claim
Jan 1, 2006
RO issues rating decision granting claim
Jan 1, 2007

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The Right to Appeal

- Claimant always has the right to appeal if the deadlines are preserved.
- Appeal from the RO to the BVA (60 days/Form 9)
- Appeal from the BVA to the CAVC (Notice of Appeal (120 days)
- Appeal from the CAVC to the Federal Circuit (60 days)
- Appeal from the Federal Circuit to SCOTUS (90 days)

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THE LIFE OF A CLAIM IN THE VETERAN APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017

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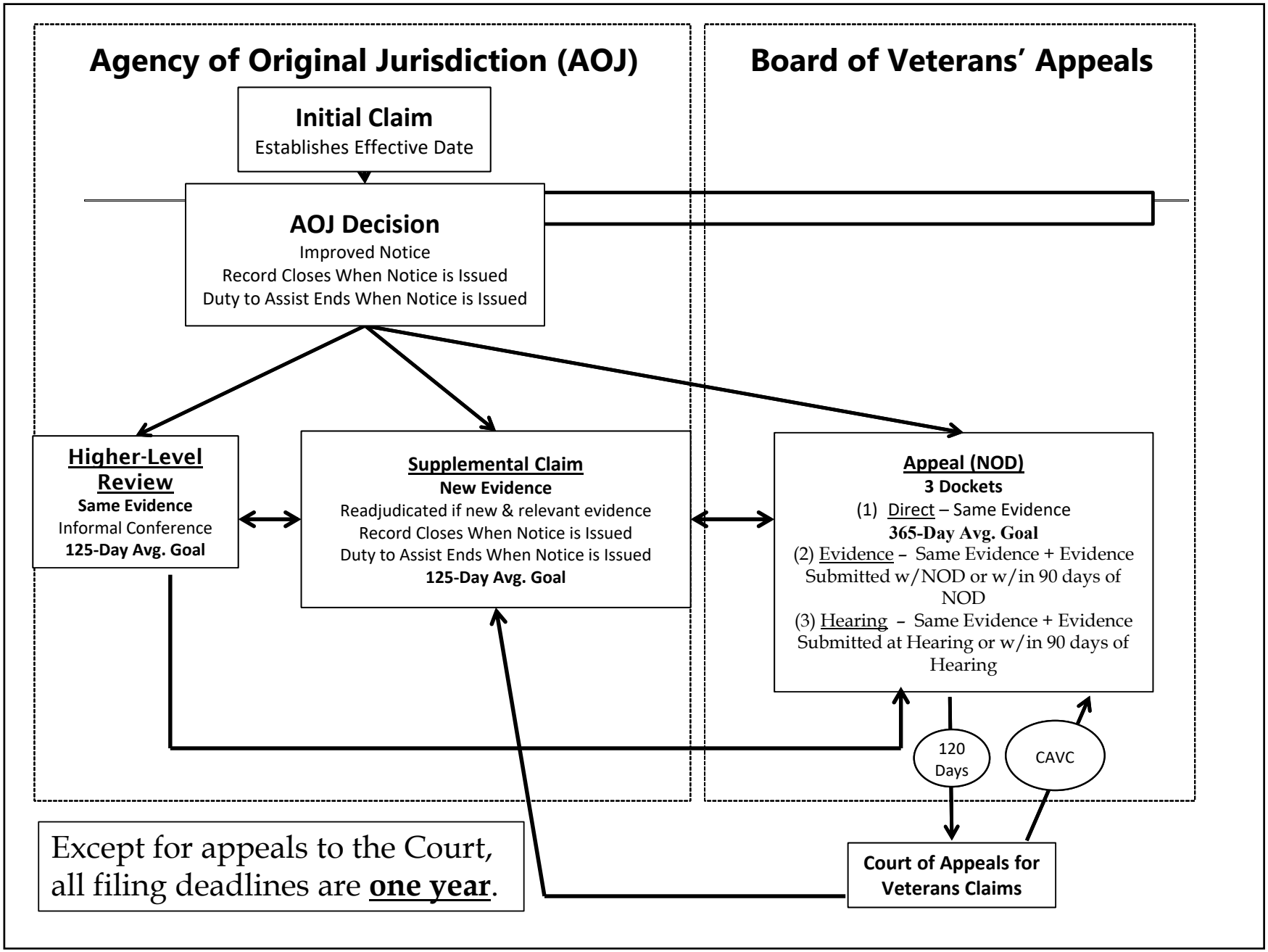
Agency of Original Jurisdiction (AOJ)
Board of Veterans' Appeals
Initial Claim
Establishes Effective Date
AOJ Decision
Improved Notice
Record Closes When Notice is Issued
Duty to Assist Ends When Notice is Issued
Higher-Level Review
Same Evidence
Informal Conference
125-Day Avg. Goal
Supplemental Claim
New Evidence
Readjudicated if new & relevant evidence
Record Closes When Notice is Issued
Duty to Assist Ends When Notice is Issued
125-Day Avg. Goal
Appeal (NOD)
3 Dockets
(1) Direct – Same Evidence
365-Day Avg. Goal
(2) Evidence – Same Evidence + Evidence Submitted w/NOD or w/in 90 days of NOD
(3) Hearing – Same Evidence + Evidence Submitted at Hearing or w/in 90 days of Hearing
120 Days
CAVC
Court of Appeals for Veterans Claims
Except for appeals to the Court, all filing deadlines are one year.

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Three Review Options

VBA		BVA
Supplemental Claim	**Higher-Level Review**	**Board Appeal**
• Replaces "reconsiderations" and "reopening" claims with "new and material" evidence • VA will readjudicate a claim if "new and relevant" evidence is presented or identified with a supplemental claim **(open record)**. • VA will assist in gathering new and relevant evidence **(duty to assist)**. • Effective date for benefits is always protected when submitted within 1 year of prior decision. • Tracked and controlled under **EP 040 series** • Decisionmakers are **Veterans Service Representatives (VSRs)** and **Rating VSRs (RVSRs)**	• More experienced VA employee takes a second look at the same evidence **(closed record and no duty to assist)**. • Option for a one-time telephonic **informal conference** with the higher-level reviewer to discuss the error in the prior decision • *De novo* review with full difference of opinion authority • Duty to assist errors returned to lower-level for correction **(quality feedback)** • Tracked and controlled under **EP 030 series** • Decisionmakers are **Decision Review Officers (DROs)** and **Senior VSRs**	• **Evidence-only docket** • **Direct docket** • **Hearing docket**

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Important Changes

- **Supplemental Review: new and relevant evidence.**
  - **Filing this within one year keeps the same effective date for the claim.**
- **Higher Level Review: Like the DRO but no new evidence.**
- **Three paths to the BVA**
- **No more Statement of the Case**
- **Favorable findings at any level are generally binding on the other levels.**

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Things to Know

- Any Rating Decision made BEFORE 2/19/2019 is considered a legacy claim and is appealed with a traditional Notice of Disagreement VA Form 21-0958.
- Any Rating Decision made AFTER 2/19/2019 is appealed in the AIMA system.
- Legacy claims can opt into the new system if they do so within 60 days of receipt of the SOC/SSOC by filing a supplemental claim, a higher level review, or a NOD (VA Form 10182)

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New AMA Application Forms

VBA will include ***VA Form 20-0998, Your Rights to Seek Further Review of Our Decision*** with all decision notices. This form provides claimants with information on the available decision review options.

Claimants will use the following new enterprise wide VA forms to file under one of the new options:

- **VA Form 20-0995, Decision Review Request: Supplemental Claim**
- **VA Form 20-0996, Decision Review Request: Higher-Level Review**
- **VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement)**

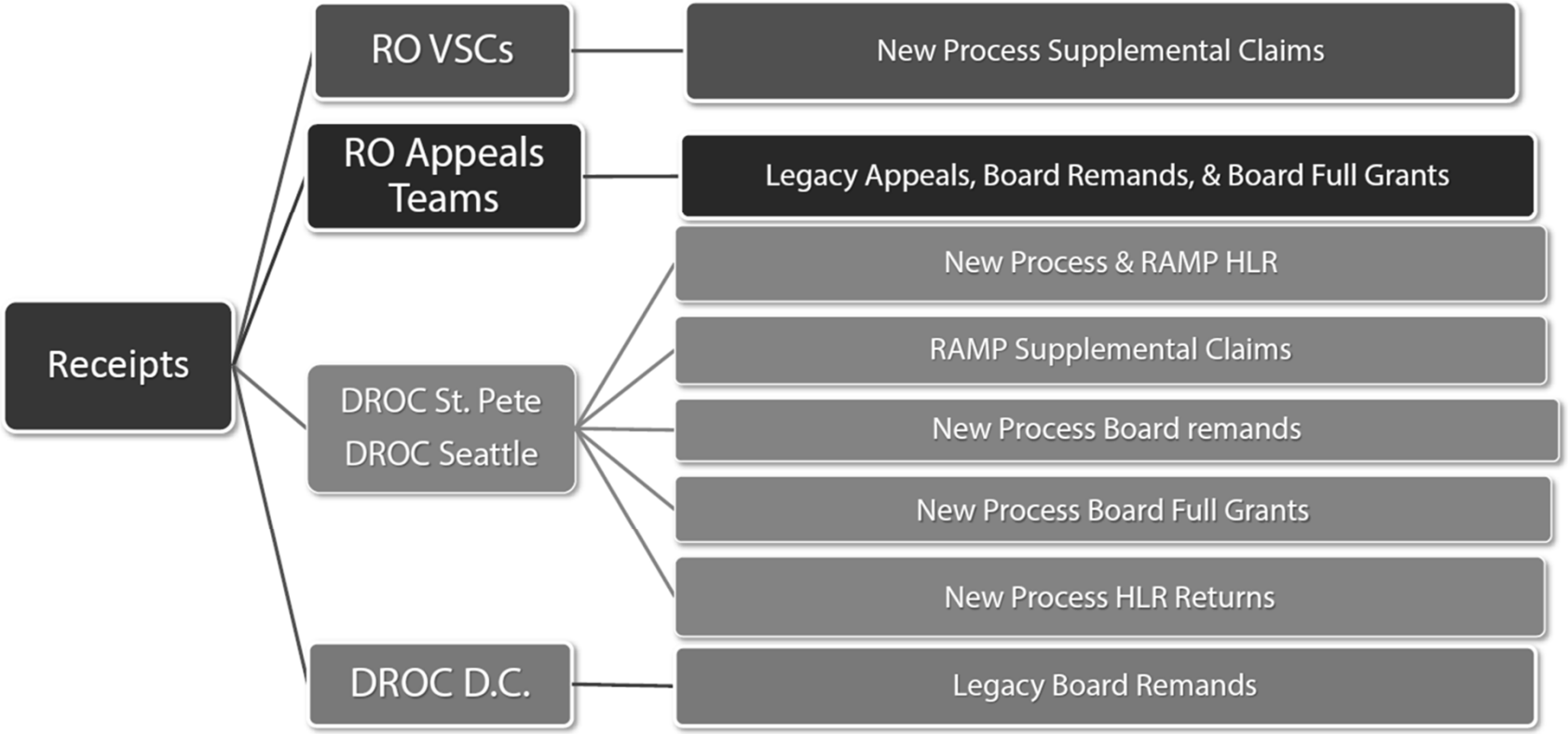
Claimants will access the new forms on the VA.gov forms page.

Use of *VA Form 4107* and *VA Form 21-0958, Notice of Disagreement* will be discontinued for decisions issued after the Appeals Modernization Act becomes effective.

Hearing Scheduling after February 2019

	Responsible prior to February 19, 2019	Responsible after February 19, 2019
Legacy video hearing scheduling	**RO**	**Board**
Legacy travel board hearing scheduling	**RO**	**Board**
AMA video hearing scheduling	N/A	**Board**
Mailing scheduling letters	**RO**	**Board**
Set up and break down of hearing rooms	**RO**	**RO**
Greeting and escorting appellants and representatives to hearing room	**RO**	**RO**
Operating on-site hearing equipment	**RO**	**RO**

VBA Workload Distribution



ChooseVA
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VA | U.S. Department of Veterans Affairs

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Things to Know

- National Work Queue
- Implementation of the AIMA so far…
- Backlogs at VA and the Board

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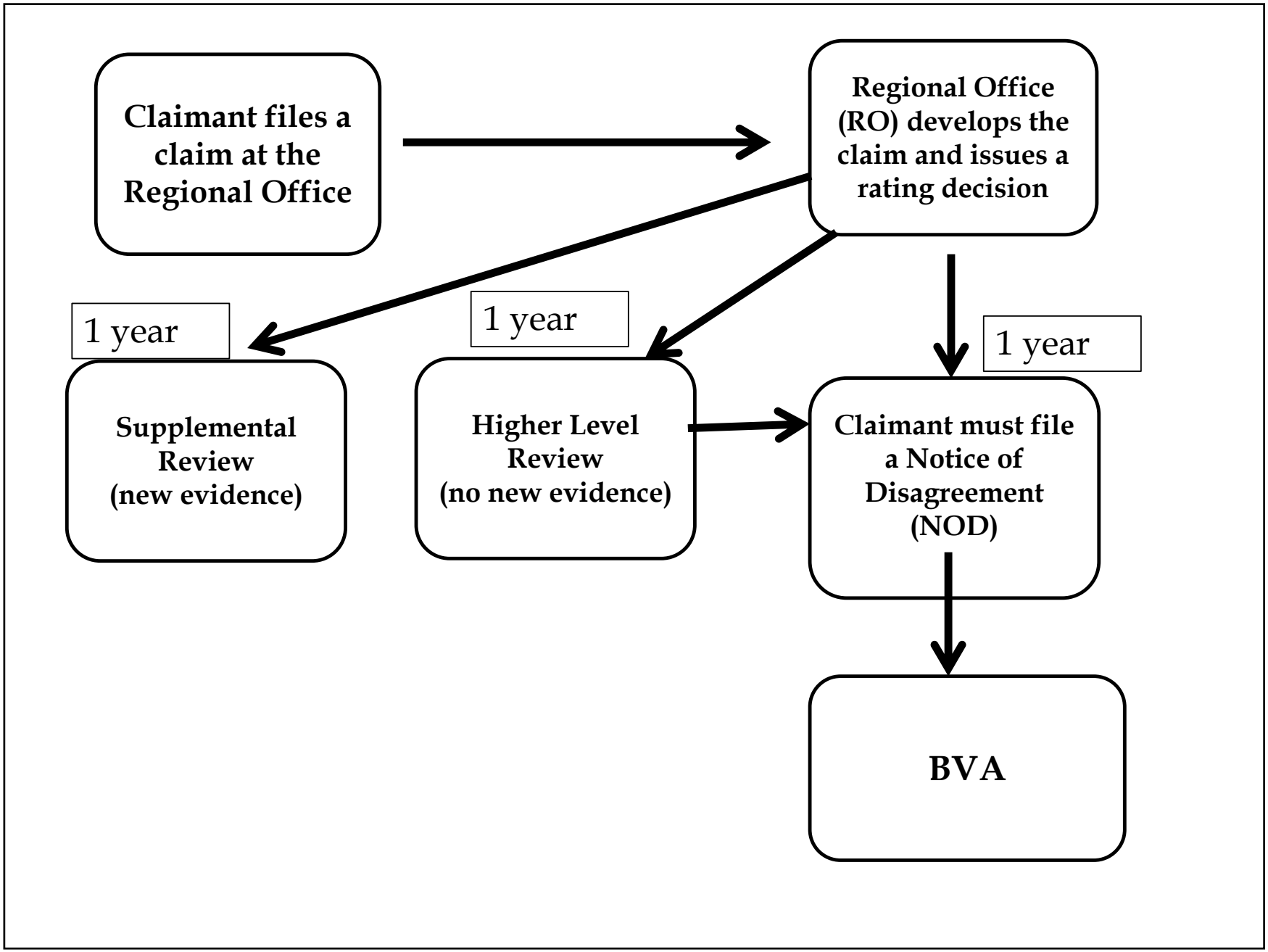
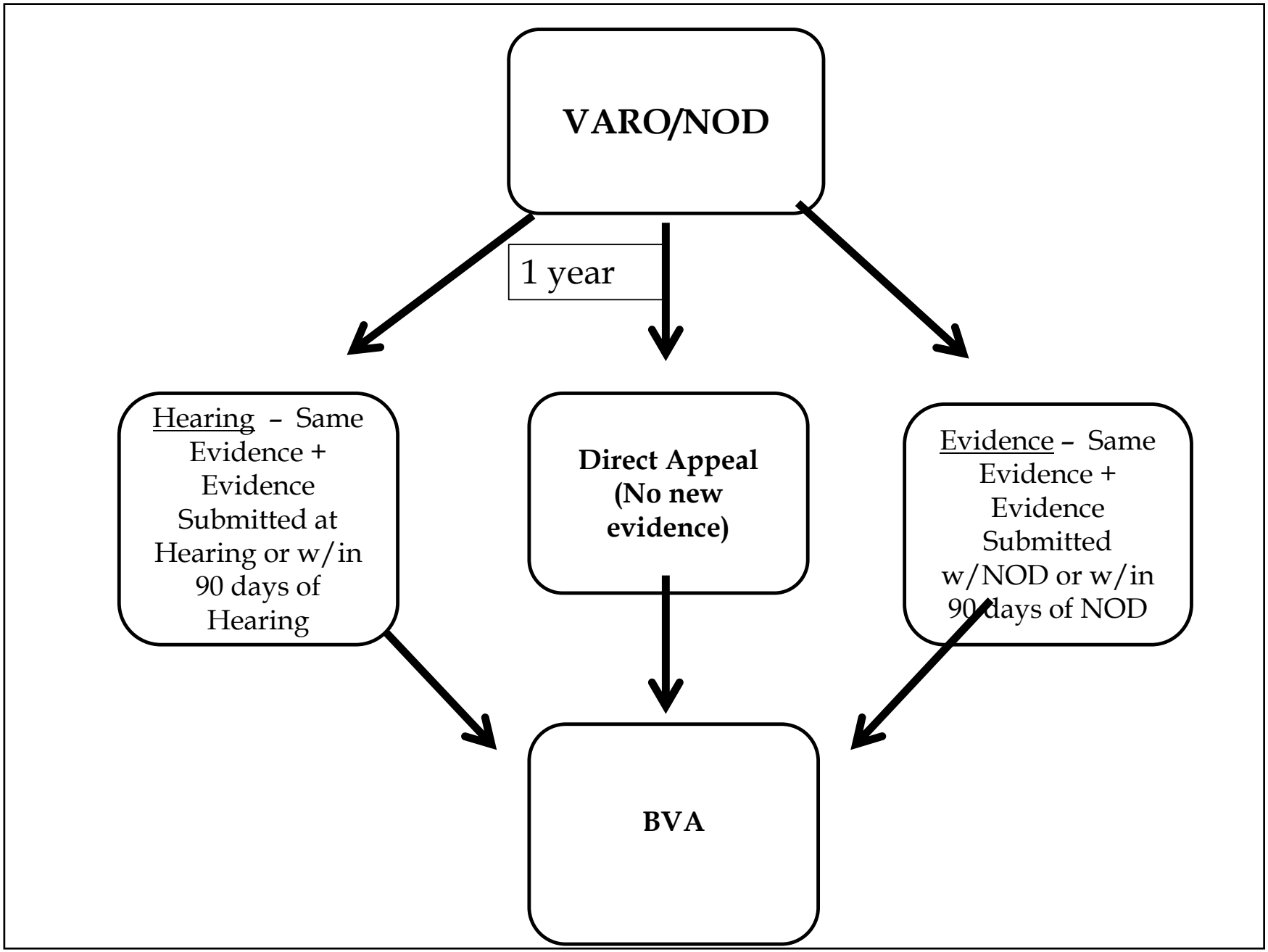
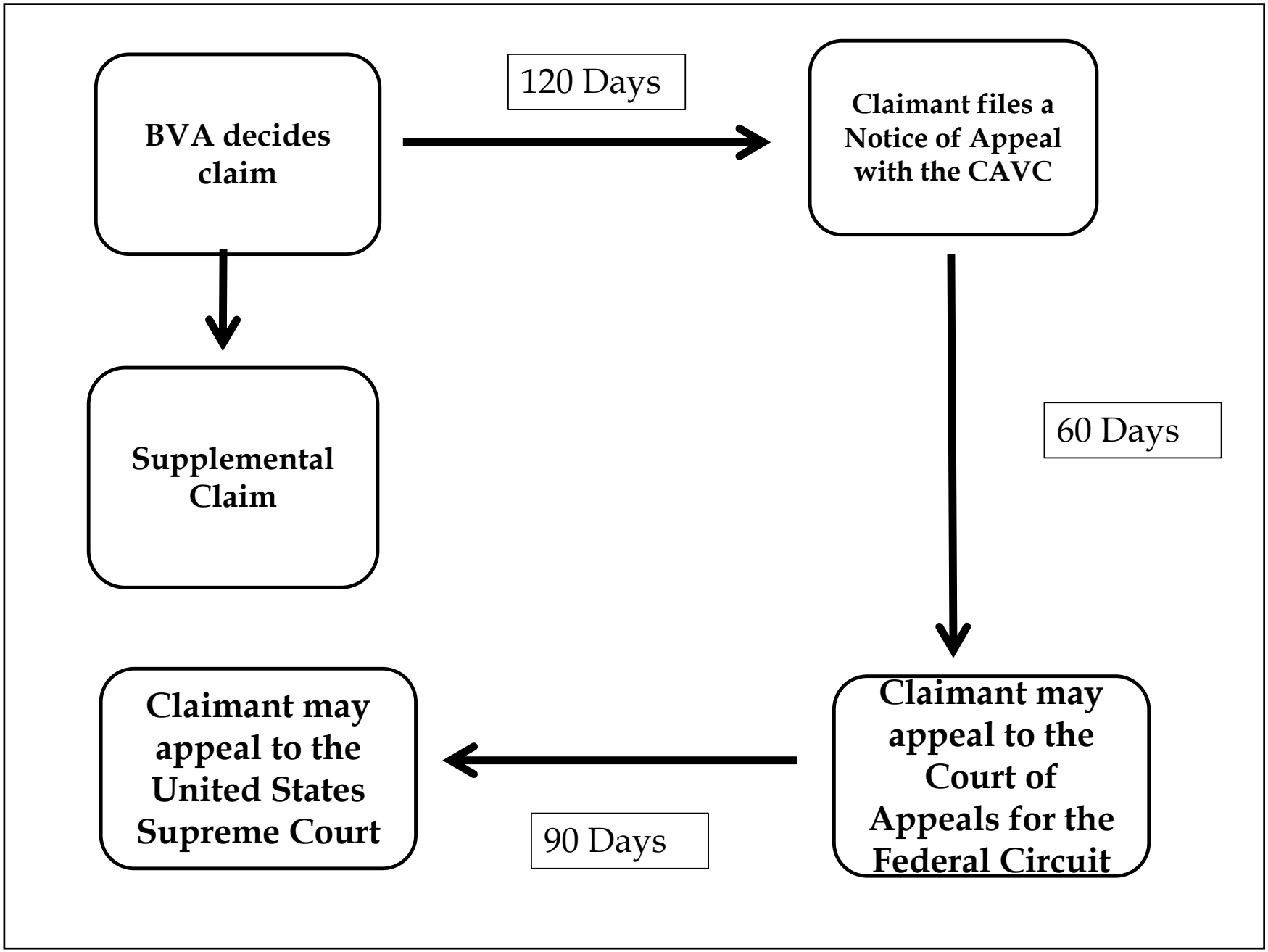

Claimant files a claim at the Regional Office
Regional Office (RO) develops the claim and issues a rating decision
1 year
Supplemental Review (new evidence)
1 year
Higher Level Review (no new evidence)
1 year
Claimant must file a Notice of Disagreement (NOD)
BVA


VARO/NOD
1 year
Hearing – Same Evidence + Evidence Submitted at Hearing or w/in 90 days of Hearing
Direct Appeal (No new evidence)
Evidence – Same Evidence + Evidence Submitted w/NOD or w/in 90 days of NOD
BVA


BVA decides claim
120 Days
Claimant files a Notice of Appeal with the CAVC
Supplemental Claim
60 Days
Claimant may appeal to the United States Supreme Court
90 Days
Claimant may appeal to the Court of Appeals for the Federal Circuit

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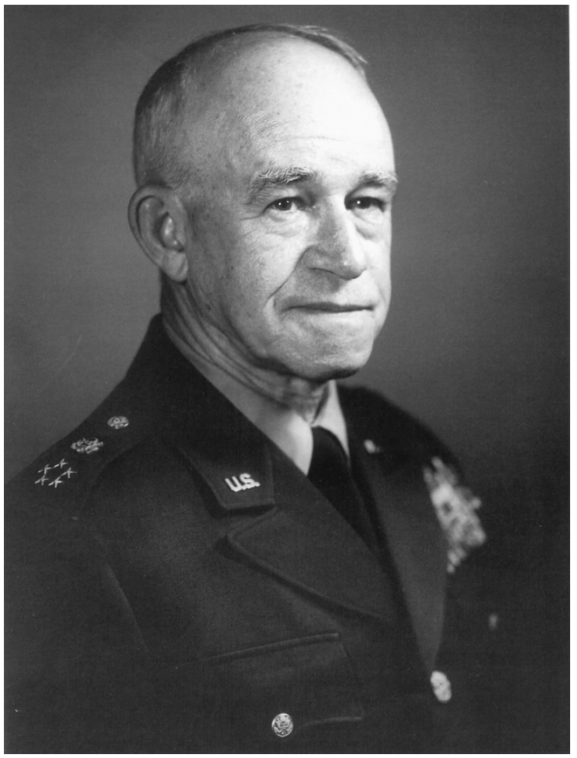
"We are dealing with veterans, not procedures -- with their problems, not ours."

General of the Army
Omar Bradley, speaking
as Administrator of the
U.S. Veterans Administration
in 1947



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