

CHAPTER 4

STUDY PLAN

38 U.S.C.S § 5103: DUTY TO ASSIST CLAIMANTS

OBJECTIVE

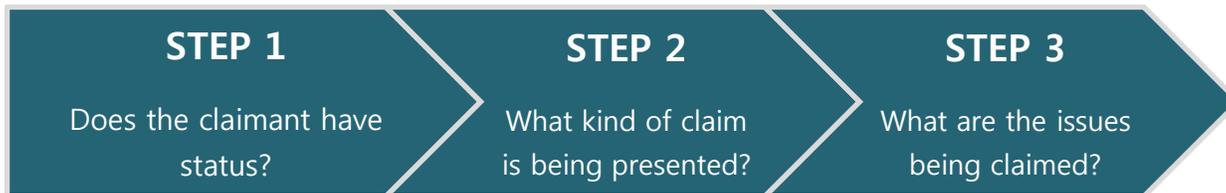
To learn the extent and limitations of VA's duty to assist a claimant with his/her claim, the concept of status as a claimant, and different types of claims.

REFERENCES

- Title 38, U.S. Code, §§ 5103, 5103A, 5107
- 38 Code of Federal Regulations Part 3, § 3.1-3.160
- Adjudication Manual M21-1MR (Manual Rewrite), Part 1, Chapter 1; Part 3, Subpart V, Chapter 3
- Adjudication Manual M21-1MR, Part III, Subpart i, Chapter 3
- Adjudication Manual M21-1MR, Part III, Subpart ii, Chapter 2, Section G
- *Federal Benefits for Veterans, Dependents and Survivors*
- Veterans Benefits Manual, §§ 8.1.1.3, 12.5
- VA Forms
- 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*
 - 21-0966, *Notice of Intent to File a Claim*
 - 21-686c, *Declarations of Marital Status*
 - 20-5655, *Financial Status Report*
- Title 38, U.S. Code, §§ 5103, 5103A, 5107
- 38 Code of Federal Regulations Part 3, § 3.1-3.160
- Adjudication Manual M21-1MR, Part 1, Chapter 1; Part 3, Subpart v, Chapter 3

STATUS OF CLAIMANT

VA claims process is a multi-step operation. Before the merits of a claim can be decided, several initial points must first be determined:

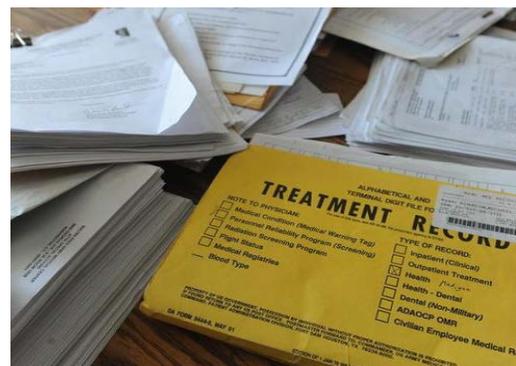


An **applicant** is a person who applies for (a benefit); a **claimant** is a person who claims (a benefit). The difference between them is one of status. Persons with status for VA claims purposes are:

- Veterans
- Spouses (or surviving spouses)
- Children
- Parents

An applicant must attain status as one or another of the above classes before he or she is a claimant. The definitions of a veteran, spouse, child, and parent are set out in 38 C.F.R. § 3.1 and the evidence required for recognition as a spouse, child, or parent is listed in 38 C.F.R. §§3.50-3.60 and §§ 3.204-3.212. These types of claimants are discussed in more detail in **Chapter 9** of this manual. Requirements for status as a veteran are listed in 38 C.F.R. §§ 3.6 and 3.7, and are discussed in more detail in **Chapter 5**.

In addition to the above, a **recognized fiduciary** for a minor, incompetent, or disabled claimant may present appropriate State court documents to show parental or fiduciary status. A VA-recognized fiduciary may submit any claim or statement, of any nature, on a claimant's behalf just as if it were submitted by the claimant. (38 CFR, Part 13.)



An applicant **must** establish status as a claimant. At this point in the process there is *NO* resolution of reasonable doubt in favor of the veteran—the evidence either establishes status or it does not. In addition, *unless and until status is established*, there is *NO* duty to assist the applicant (to establish status).

TYPES OF CLAIMS

Once the question of status is resolved, the next step is to determine the type and nature of the claim. There are **two general classes of claims**: those where the veteran is

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alive, and those where the veteran is **deceased**. Within these two classes, there are claims for service-connected compensation or DIC, and claims for non-service-connected pension. Beyond that, claims are identified according to their type, as set out in 38 C.F.R. § 3.160 and elsewhere. These types of claims are:

- a. **Intent to File a Claim (ITF)**—
Effective March 24, 2015, the “Intent to File a Claim” officially replaces what was known as an informal claim. The Intent to File establishes an effective date for some formal claims (i.e. 21-526ez) filed within one year of VA’s receipt of the ITF.
- b. **Original Claim**—the *very first claim* filed for a class of benefit;
- c. **Pending Claim**—a claim which is awaiting a decision, *or*, a claim on which a decision has been made but that decision is not yet final;
- d. **Finally Adjudicated Claim**—a claim



ADVOCACY TIP

VA only assigns status as a proper claimant to veterans with honorable or general discharges. A favorable **character of discharge determination** is necessary for veterans with other types of discharges, and VA has no duty to assist in that process. Advocates must therefore place extra care and effort into these types of cases. You’ll learn more about this in Chapter 19.

on which a decision has been made, and either the claimant has allowed the specified period to pass without appeal, or, if an appeal was taken, the appellate authority has rendered a final decision;

- e. **Reopened Claim**—a claim where the issue being claimed has been previously denied and such denial has the status of a finally adjudicated claim;
- f. **New Claim**—a non-original disability claim for a condition not previously claimed as service- connected;
- g. **Claim for Increase**—a disability claim for a condition previously established as service- connected, which the veteran requests to have re-evaluated. Also, a disability, death or other claim where the beneficiary is claiming an additional benefit, such as special monthly pension for aid and attendance, or additional allowance because of a dependent;
- h. **Special Claim**—a claim which does not fall under any of the basic categories listed above; **Clear and Unmistakable Error Claim (CUE)**—any claim where the claimant alleges clear and unmistakable error of fact or law on the part of VA
- i. **Contested Claim**—a claim where there are two (or more) claimants for the same benefit, and if one person's claim is allowed the other person's claim must necessarily be denied or benefits reduced.

ISSUE IDENTIFICATION

Although the terms are often used interchangeably, **claims** and **issues** are separate and distinct entities. It may help to remember that claims are comprised of issues—for example, an original claim may be for service connection for multiple conditions; each condition being claimed is a separate issue. The evaluation to be assigned for each service-connected condition established is another issue. The veteran might also be claiming additional compensation for dependents—another issue. In addition, the veteran may have also filed an application for Vocational Rehabilitation—yet another issue; and so on, and so on.

In addition to adjudicating all issues claimed, VA is also required to adjudicate any issues noted in the record which would be to the claimant's advantage, even though not

specifically claimed. Examples of this may be any compensable secondary disabilities not claimed by veteran but identified by a VA examiner, and/or claim entitlement to ancillary benefits that are tied to issues granted by the VA (e.g. Chapter 35, adaptive automobile allowance, etc.).

DUTY TO ASSIST AND INFORM

The requirements of VCAA are set out in 38 U.S.C. § 5103A, and are expanded upon in 38 C.F.R. § 3.159. In general, VA has a duty to assist a claimant in obtaining all relevant records, to provide medical examinations, and where appropriate for compensation claims, to obtain medical opinions.

THREE CATEGORIES OF APPLICATIONS:

- a. A **complete application** is one that is signed by the claimant, contains all required information to identify the claimant, to identify the veteran and verify his/her service data, to identify the claimant's relationship to the veteran (if applicable) and identify the nature and basis for the claim, and is accompanied by sufficient medical and other evidence to make a determination on the merits of the claim, although some further development for substantiation may still be required.
- b. A **substantially complete application** is one that contains at least the claimant's name, his or her relationship to the veteran (if applicable); sufficient service data to identify the veteran and verify the claimed service; the benefit being claimed and any medical condition(s) on which it is based; and is signed by the claimant. If the claim is for non-service-connected pension or for parents' DIC, there must also be a statement of the claimant's family income.
- c. An **incomplete application** is one that is lacking in any of the parts for a substantially complete application. If the application is "incomplete," VA is required to inform the claimant of what evidence or information is needed to make the claim complete. In this case, there is no duty to assist until the claimant submits the required evidence or information. The claimant has one year from the date of VA notice to make the claim complete.



ADVOCACY

TIP

Always state the nature and basis for claiming an issue.

If the application is "complete" or "substantially complete," the duty to assist and inform begins. VA is required to inform the claimant of any additional information and/or medical or lay evidence that may be necessary to substantiate the claim. VA is further required to inform the claimant which information and evidence will be obtained by VA, and which information and evidence will be the claimant's responsibility to provide to VA. Traditionally, VA has provided this information to the claimant as part of a "**development**" **letter** (also known as a VCAA notice letter, or a § 5103 letter). [*Note: In the Fully Developed Claim program, this notice is supplied in the application (21-526EZ, 21-527EZ, 21-534EZ) instructions.*]

If additional information and/or evidence are requested from the claimant, the claimant must respond within thirty (30) days from the date of VA's request or VA may process the claim based on the information and evidence already of record. However, if the claimant then provides the requested information and/or evidence at any time within one year from the date of VA's request, after VA already made a decision, then VA may reconsider the claim, except if the claimant already filed a notice of disagreement.

Finally, of course, VA is required to inform the claimant of the outcome of the claim (i.e., VA's decision to allow or deny the claim), and all associated appeal rights.

EXTENT OF DUTY TO ASSIST

- a. VA will in **all** cases obtain service medical records, unless the claim is **only** for non-service-connected pension.
- b. VA will obtain any other records held by the federal government pertaining to the veteran's military service, **if** the claimant provides sufficient information as to its whereabouts.
- c. VA will obtain the veteran's VA medical records, **if** the claimant provides sufficient information to locate it.
- d. VA will obtain any other relevant records held by any federal department or agency, **if** the claimant sufficiently identifies it.
- e. If the claimant sufficiently identifies and provides a valid release satisfactory to the custodian of such records, VA will request records on the claimant's behalf from any private or state or local government source.

- f. VA must make **every possible effort** to obtain relevant records held by any federal department or agency, **unless** and **until** it is reasonably certain that the records do not exist or that continuing efforts to obtain them would be futile. This will generally require a statement from the custodian that the records no longer exist, or that they have been transferred elsewhere.
- g. VA must make **reasonable efforts** to obtain any other (non-federal) records identified by the claimant as relevant to the claim. This will generally mean one request plus one follow-up request. If, after making reasonable efforts, VA is unable to obtain all of the relevant records, VA must notify the claimant that it has not been able to obtain the specific records sought, and describe any further actions to be taken.
- h. When there is a reasonable possibility that such medical information is necessary to properly decide the claim, VA must provide the claimant with a VA medical examination and/or obtain a medical opinion. However, if the claimant  to reopen a previously finally adjudicated issue, a determination as to whether new and material evidence has been submitted must first be made.

LIMITS ON DUTY TO ASSIST

- a. There is no duty to assist an applicant in attaining status as a proper VA claimant.
- b. There is also no duty to assist on an incomplete claim. However, there **is** a duty to inform the claimant what is needed to make the claim complete, or to provide the claimant with the prescribed form(s) for submitting a formal application.
- c. VA may not obtain any records on the claimant's behalf if a fee is charged for providing such records.
- d. There is no duty to assist if the claimant fails to cooperate by not providing sufficient information to identify and locate relevant records, or fails to supply acceptable authorizations for release of records so that VA can request them.

ADVOCACY TIP

Many veterans get upset when they receive correspondence from VA stating a 30 day "deadline" to submit evidence. In fact, **this is not a true deadline because the veteran may submit evidence within one year from the date of that letter.** However, regulations allow the VA to provide such deadlines to facilitate movement in a claim.

- e. After making reasonable efforts, if for any reason VA is unable to obtain non-federal records identified by the claimant, it is the claimant's ultimate responsibility to obtain the records if he or she wishes to have them considered in the decision.
- f. VA is not required to provide assistance to a claimant if there is no reasonable possibility that such assistance would aid in substantiating the claim (e.g., the claim is inherently incredible, or there is no legal eligibility for the benefit being sought).
- g. Since it is based on the record that existed at the time of the disputed decision, there is no duty to assist on a claim of clear and unmistakable error (CUE). However, if the error was a denial of service connection there **may** be a duty to assist in obtaining evidence to support current and retroactive evaluations.
- h. Duty to assist ends when all of the identified evidence has been obtained, or when sufficient evidence has been obtained to support granting the benefit(s) being sought.



STUDY QUESTIONS

Using the assigned references and reading materials, answer the following questions:

1. VA has an absolute duty to assist any person applying for VA benefits to establish both status and eligibility to such benefits. (T/F) 38 C.F.R. § 3.159(d)
2. Under which of the following circumstances does VA *not* have a duty to assist?
 - a. The applicant is not a veteran, spouse, child, or parent.
 - b. An unsigned application is received from a veteran.
 - c. The veteran fails to sign an authorization for release of records from his private physician when requested by VA.
 - d. All of the above. 38 C.F.R. §§ 3.159(b)(2),(c),(d)
3. If the claimant describes them sufficiently to identify, VA will make as many requests as are necessary to obtain relevant records from a city or state department or agency, unless and until it is determined that the records no longer exist, or that further attempts to obtain them would be futile. (T/F) 38 C.F.R. § 3.159(c)(2)
4. When VA asks a claimant to provide evidence or information needed to decide a claim, the claimant is asked to submit such evidence or information within thirty (30) days. What action(s) will VA take if the claimant does not provide the requested evidence or information until six months later?
 - a. None—the claimant failed to provide the evidence or information requested within the specified time period, so the claim was adjudicated on the basis of the evidence already of record (if any). There is no basis for reopening the issue now except on appeal.
 - b. The claim is considered to be reopened, based on the recent receipt of the evidence or information previously requested. If benefits are allowed, they may only be paid from the date the claim was reopened.
 - c. As long as the evidence or information is received within one year from the date VA requested it, the claim will be reconsidered from date claim. If an unfavorable decision was made based on the evidence or information already of record, the claim will now be re-adjudicated as though the previous decision had not been made. If benefits are allowed, they will be paid from the date appropriate for the entire claim.
 - d. None of the above.

38 C.F.R. § 3.159(b)(1)

5. What is VA's duty to assist on a claim of clear and unmistakable error (CUE)?
- a. The same as for any other claim—VA must help to obtain any and all relevant evidence identified.
 - b. Assistance is limited to obtaining only such evidence as would confirm that the previous decision was erroneous.
 - c. None—a claim for CUE is limited to the evidence of record at the time the decision was rendered. There is no additional development to be done, so there is no duty to assist.

CHAPTER 4.1

STUDY PLAN

VA BENEFITS CLAIMS PROCESS

OBJECTIVE

To understand how the Fully Developed Claims (FDC) Program affects the VA's Duty to Assist under 38 U.S.C. § 5103, learn how to properly submit a fully developed claim, learn the role of a Veterans Service Organization in the claim process & how to appoint a Power of Attorney.

REFERENCES

- CCFR Title 38 Chapter 1, Part 3, Subpart A, §3.15
- Title 38, U.S. Code, Section 5103
- Adjudication Procedures Manual M21-1 (Live Manual), Part III, Subpart I, Chapter 3, Section A and B
- Veterans Benefits Manual (2014), § 12.4.6
- VA Forms and Current Version
 - 21-22, *Appointment of Veterans Service Organization as Claimant's Representative, October 2014*
 - 21-526EZ, *Application for Disability Compensation and Related Compensation Benefits, May 2015*
 - 21-527EZ, *Application for Pension, July 2014*
 - 21-534EZ, *Application for DIC, Death Pension, and/or Accrued Benefits, July 2011*

BACKGROUND

The U.S. Department of Veterans Affairs (VA) designed the FDC Program in an effort to reduce the claims backlog by shifting the burden of gathering certain records to the

veteran, as well as veteran service organizations and attorneys assisting veterans with their claims.

ROLE OF VETERANS SERVICE ORGANIZATIONS (VSO)

Veterans Service Organizations are federally chartered and/or recognized or approved Organizations by the VA Secretary for purposes of providing representation to veterans, their dependents and survivors by evaluating and developing cases for preparation, presentation and prosecution of VA benefits presented before the United States Department of Veterans Affairs (USDVA).

APPOINTMENT OF POWER OF ATTORNEY (POA)

A claimant's authorized representative may be appointed by using a standard VA Form 21-22 (Appointment of Veterans Service Organization As Claimant's Representative), for a private attorney or a claims agent, a VA Form 21-22a (Appointment of Individual as Claimant's Representative), or a statement of representation on the attorney's office letterhead stationery. There are limitations on the actions an authorized representative may take on a claimant's behalf—in general, a representative may not submit any claim or statement on the claimant's behalf if the claimant's signature is required to certify the information therein.

Examples of this would include:

- Any original application for disability or death benefits, education benefits, healthcare benefits,
- Declarations of marital status (VA Form 21-686c), or
- Financial Status Reports, VA Form 20-5655. (38 CFR §§ 14.626–14.634.)
- A representative holding POA may submit supporting documentation on behalf of the veteran, may have access to the veteran's eFolder in VBMS, and may speak to designated VA employees (e.g. VA hotline and Public Contact personnel) about the veteran's claim.

The following bullets are general guidelines of when to accept POA changes to CalVet when an attorney, agent or service organization already holds representation for the veteran/claimant:

1. POA will not be accepted in any case where a veteran/claimant has retained representation by a private attorney. Only when the private attorney ends the representation in writing will CDVA consider accepting POA.
2. POA will be refused when an appeal has already been initiated & pending either at the local appeals level or at the BVA level. **All District Offices have recently been experiencing CVSO's trying to switch POA's from either another service organization or from a private attorney when an appeal is already pending.** Remember when taking a POA either prior to or at the time of filing an NOD & another service organization holds representation an explanation as to why the veteran wishes to change POA from the previous organization is required. Example (difficulty communicating, poor customer service, no contact from service organization for a significant amount of time to more than 1 inquiry by veteran to that organization).
3. Please check BIRLS first to find out if veteran/claimant is being represented by another organization or attorney.
4. If another organization and or attorney shows as the representative, check VACOLS to find out if an appeal is pending.
5. If an appeal is pending VACOLS states "appellant found but not under your representation." Do **not** take POA.
6. Please make the veteran aware of the refusal of acceptance to switch POA when an appeal is pending &/or the need for a reason for the change from another organization if switching prior to an appeal.

In general, CalVet recommends that you ask the veteran why they are switching POA. This practice creates dialogue that can be valuable in determining whether there is risk involved in accepting POA.

HOW TO FILL OUT A VA FORM 21-22

1. Make sure all veteran's/claimants information is filled out in the proper boxes & personal information is correct. Box 1, 2, 4, 8 & 9. Box 6 & 7 (Claimant: other than veteran)
2. List Name of Veteran Service Organization (VSO) for Example: California Department of Veterans Affairs in Box 3A.
3. Accredited CVSO's name & title in Box 3B.
4. Check Box 12-This box **must** be checked in order for the assigned VSO to access the documents in VBMS and/or claims file.
5. Check Box 14-Not necessary if veteran/claimant does not want the VSO to have this ability.
6. Box 15 **must** be signed by the veteran/claimant.
7. Box 16 **must** be signed by an accredited VSO representative or the VA **will not** accept the appointed service organization as the representative.

TYPES OF CLAIMS

INCOMPLETE CLAIMS (INFORMAL CLAIMS)



Starting March 24, 2015, VA instituted the use of VA Form 21-0966, *Intent to File a Claim for Compensation and/or Pension, Survivors Pension, or Other Benefits*, which replaced the current practices for submitting an informal claim. The Intent to File (see highlighted example) process allows additional time to collect all of the information needed to support the claim while protecting the earliest possible effective date for any award of benefits or increased benefits resulting from the claim.

The Veteran or claimant may appoint a recognized representative, such as a Veterans Service Organization, who can notify VA on their behalf at the time of filing an Intent to File.

The Intent to File, Form 21-0966, contain: 1) sufficient personal information to identify the Veteran claimant (if not the Veteran); 2) an election of the general benefit(s) the Veteran is seeking (e.g. compensation, pension, or survivors benefits); and 3) Veteran's or claimant's signature or representative's signature.

Advocates should always assist a veteran in establishing the earliest possible effective date. The difference between doing so or not could mean the difference between the veteran receiving several thousands of dollars to which he or she is entitled and has earned.

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Once filed, the veteran has one year from the date of filing to submit the formal claim (VA Form 21-526EZ, 21-527EZ, 21-534EZ, etc.) and any supporting documentation.

- The Intent to File process also allows VA to award benefits retroactive to the date of the Veteran's medical diagnosis or treatment as long as the Intent to File is filed within one year of the diagnosis/treatment and the required claim form is filed within one year of the Intent to File.
- VA will only recognize one Intent to File per general benefit at any given time.
- The Veteran or claimant's completed claim must be received within one year of the date VA receives your Intent to File for the same general benefit in order for VA to consider your Intent to File when assigning an effective date.
- Once the completed claim is submitted, the Intent to File for that general benefit will no longer be active. If the Veteran or claimant intends to file another claim, but requires time to complete the claim, a new Intent to File must be submitted for the general benefit the claimant is seeking.

For example, VA receives an Intent to File for compensation benefits on April 1, 2016, an application for compensation benefits (21-526EZ) on August 1, 2016, and another application for compensation benefits on January 1, 2017. In this case, VA will consider an effective date of April 1, 2016 for any benefits awarded as a result of the August 1, 2016 application. However, the April 1, 2016 Intent to File will not be used for any benefits awarded as a result of the January 1, 2017 application.

Consider the same circumstances as above, but a second Intent to File for compensation benefits is received by VA on October 1, 2016. In this case, VA will consider an effective date of April 1, 2016, the date VA received the Intent to File, for any benefits awarded as a result of the August 1, 2016 application. VA will also consider an effective date of October 1, 2016 for any benefits awarded as a result of the January 1, 2016 application.

COMPLETE CLAIM

A complete claim is submitted by filing a VA application for benefits using a designated VA application form, e.g. 21-526EZ, or 21-534EZ. If no incomplete claim was previously submitted, the effective date is the date that the complete claim is filed. A claim will only be considered complete if the form is signed, the benefit sought is identified, a description of the medical condition or symptom(s) is identified, and for pension or survivor benefits, a statement of income is provided.

ORIGINAL CLAIM

The very first claim filed for a class of benefit (i.e., disability benefits or death benefits). An initial claim must be filed on the form prescribed by the Secretary (VA Form 21-526EZ for service-connected disability compensation claims, 21-527EZ for pension claims; VA Form 21-534EZ for death claims from a surviving spouse and/or children; VA Form 21-535 for death claims from the Veteran's surviving parents). (38 CFR §§ 3.151(a), 3.152(a).)

PENDING CLAIM

A claim which is awaiting a decision, or, a claim on which a decision has been made but that decision is not yet final, either because the time limit for an appeal has not yet elapsed, or because an appeal was taken but the appellate authority has not yet rendered its final decision.

FINALLY ADJUDICATED CLAIM

A claim on which a decision has been made, and either the claimant has allowed the specified period to pass without appeal, or, if an appeal was taken, the appellate authority has rendered a final decision. It does not matter if the claim was allowed or denied, although the term is most often used in the context of a denied claim.



REOPENED CLAIM

A claim where the issue being claimed has been previously denied and such denial has the status of a finally adjudicated claim. To successfully reopen such a claim, the claimant must submit new and material evidence, and such evidence must raise a reasonable probability of a different outcome. (38 CFR § 3.156(a).

NEW CLAIM

A non-original disability claim for a condition not previously claimed as service-connected.

CLAIM FOR INCREASE

A disability claim for a condition previously established as service-connected, which the veteran requests to have re-evaluated. Also, a disability, death or other claim where the beneficiary is claiming an additional benefit, such as special monthly pension for aid and attendance, or additional allowance because of a dependent.

SPECIAL CLAIM

A claim which does not fall under any of the basic categories listed above. Such as Special Adaptive Housing, Special Home Adaptation grants (detailed eligibility criteria is discussed later in this chapter) & the most common of these is a claim for revision of a final decision because of allegation of clear and unmistakable error of fact or law (CUE). (38 CFR § 3.105(a); §§ 20.1400–1411.) Clear and unmistakable error occurs when 1) either the facts known at the time of the decision being attacked on the basis for CUE were not before the adjudicator, or the law then in effect was incorrectly applied; or 2) an error occurred based on the record and the law that existed at the time; and 3) had the error not been made, the outcome would have been different. (Robertson v. Shinseki, 26 Vet. App. 169, 175-176 (2013).

CONTESTED CLAIM

This is a claim where there are two (or more) claimants for the same benefit, and if one person's claim is allowed the other person's claim must necessarily be denied or benefits reduced.

TYPES OF VA FORMS

VA requires Veterans and Survivors to use standardized forms when filing claims and appeals. The standardized forms enable claimants to clearly identify the symptoms or conditions for which they are seeking benefits while helping to ensure VA receives the information needed to process their claims. VA recognizes that Veterans Service Organizations, as well as state and county agencies are vital partners in the benefits claims process.

Claim Type	Form
Disability Compensation	VA Form 21-5626EZ
Non-Service Connected Disability Pension	VA Form 21-527EZ
Survivors Claims for Dependency and Indemnity Compensation/Death Pension	VA Form 21-534EZ
Intent to File	VA Form 21-0966
Notice of Disagreement	VA Form 21-0958

HOW DOES THE FDC PROGRAM WORK?

- In the standard claims processing program, the 38 U.S.C. § 5103 notice that VA is required to provide to veterans informing them of the evidence necessary to substantiate their claims is provided after the VA receives the claim during the development process. In contrast, FDC Program application forms provide the § 5103 notice up front, and the application form itself.
- The veteran and/or claimant submit all private medical treatment records, identify any relevant treatment records at a federal facility, and submit any additional forms or treatment records required under special circumstances that support their specific claim at the time they submit their FDC application.

FDC CLAIM TYPES

Any Disability Compensation Claim (submitted on Form 21-526EZ) including:

- service-connected disability compensation (original, new, secondary, claim for increase, or reopened),
- individual unemployability (IU) (but must also submit Form 21-8940 & 21-4192 with Form 21-526EZ),

- temporary total disability rating due to hospitalization, or surgical or other treatment(convalescent rating).
 - compensation under 38 U.S.C. § 1151,
 - special monthly compensation (SMC) based on the
 - need for aid and attendance (Form 21-2680),
 - status of being housebound (Form 21-2680),
 - additional benefits for a spouse who needs aid and attendance (Form 21-2680),
 - specially adapted housing or special home adaption (Form 26-4555),
 - automobile allowance or adaptive equipment, and (Form 21-4502), and
 - additional compensation for a veteran with a helpless/seriously disabled child (Form 21-686c).
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*Submitting a Disability Benefits Questionnaire along with an FDC may make it ready for decision sooner

Any Non-Service Connected Disability Pension Claim (submitted on Form 21-527EZ) including:

- improved pension
- special monthly pension (SMP) based on the
 - need for aid and attendance (Form 21-2680), or
 - status of being housebound (Form 21-2680), and
- additional improved pension benefits for a veteran with a helpless/seriously disabled child. (Form 21-688c).

Any Claim for DIC, Death Pension, and/or Accrued Benefits (submitted on Form 21-534EZ) including:

- accrued benefits,
- dependency and indemnity compensation (DIC) for death,
- death pension
- additional death benefits based on the need for aid and attendance, or status of being housebound (Form 21-2680),
- benefits for a deceased veteran's helpless/seriously disabled child (Form 21-686c).

DISABILITY BENEFITS QUESTIONNAIRE (DBQ)

The VA also implemented an initiative to standardize the disability claims process through the submission of a Disability Benefits Questionnaire (DBQ). Submitting a DBQ along with a FDC may make it ready for decision sooner because it provides the information necessary to decide the claim.



ADVOCACY TIP

Be sure to remind veterans that, unless authorized under the Veterans Access, Choice and Accountability Act, the VA will **not** pay for any of the expenses associated with seeing a private doctor to fill out a DBQ.

DBQs are downloadable forms created for veterans' use in the evaluation process that:

- provide veterans with the option of visiting a private healthcare provider instead of a VA facility,
- provide medical information relevant to determining a disability rating evaluation.

There are more than 70 DBQs available for use.

NOTE: DBQs are not available for TBI and for initial PTSD exams (when trying to get service connected for the first time).

FDC EXCLUSIONS

Claimants who do *not* want VA to process their claim under the FDC Program may also use the EZ form to apply for benefits. They notify VA of their choice by checking box 25 next to the statement near the end of each form that reads: *I DO NOT want my claim considered for rapid processing under the FDC Program because I plan to submit further evidence in support of my claim.*

In the following situations, the claim will be excluded from the FDC processing program and will go through standard processing:

- the veteran has a claim pending at the time VA receives the EZ form,
- the veteran has an appeal pending at the time VA receives the EZ form *and* the claims folder is *not* located at the regional office (RO) of jurisdiction,
- the veteran fails to *simultaneously* submit any of the additional forms VA requires to process his/her specific claim,
- any of the following are required to resolve the claim:
 - character-of-discharge determination,
 - development for evidence from
 - the claimant
 - private medical care provider(s), or
 - veteran's Reserve/Guard unit(s).
- the veteran submits an unclear claim requiring clarification,
- the veteran submits VA Form 21-4142 with the FDC (the Form 21-4142 authorizes the VA to gather private medical records, but in FDCs the VA does not do that), (VA Form 21-4142 for VA Vet Center records, however, will not exclude the claim from the FDC Program),
- the veteran submitted an **outdated EZ Form**. Any EZ Form from February 2010 or before will be excluded from the FDC program, or
- even though a claim may initially meet the criteria for processing under the FDC program, VA may later *exclude* the claim from the program and send the claim to the back of the line for standard processing if the claimant:
 - fails to report for a VA examination *and* asks VA to reschedule it (unless VA is *solely* at fault because it, for example, did not provide the examining facility with the claimant's correct mailing address), or
 - submits another claim, additional evidence, or a notice of disagreement after submitting the FDC.



STUDY QUESTIONS

Using the assigned references and reading materials, answer the following questions:

1. The Fully Developed (FDC) is a voluntary program?

(T/F) <http://www.benefits.va.gov/fdc/>

2. In processing a FDC, the VA will gather Social Security records if the veteran identifies them as evidence in the application form. (T/F)

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3. What are the three VA forms collectively known as the EZ forms? What services do they provide?

1)

2)

3)

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4. In addition to the FDC claim, claimants may use the EZ forms to submit standard claims? (T/F)

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5. There are more than ___ Disability Benefits Questionnaires (DBQ) currently available.

- a. 98
- b. 40
- c. 70
- c. 85

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6. If a veteran submits a 21-526EZ and selects FDC processing, and later submits additional evidence, what will the VA do?

Exclude the claim from the FDC program, and send it to the back of the line for standard processing.

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CHAPTER 4.2

STUDY PLAN

FILLING OUT FORMS

OBJECTIVE

To learn the importance of filling out forms correctly *every* time, and tips on how to do that.

REFERENCES

- Title 38, Code of Federal Regulations, §§ 3.155, 3.160, 19.24, 20.201
- 79 Federal Register 57,659 (Sept. 25, 2014), "Standard Claims and Appeals Forms"
- VA Forms library: <http://www.va.gov/vaforms/default.asp>

SUMMARY

Filling out forms correctly may seem easy, and for the most part, it is, but doing so accurately time after time without mistake requires care and attention. *Even small mistakes on forms can delay a veteran's claim for months.* A form that is unsigned will be returned many months later, without an effective date or claim development. If you make that mistake, you then have to explain to the veteran what happened. Failing to submit a required form will cause a Fully Developed Claim to be removed from the FDC program and placed at the back of the line for standard processing, resulting in months of delay. Therefore, we are going to review some simple guidelines for filling out forms, and then test your ability to identify mistakes on actual forms.

There are three steps to getting your forms right:



USE THE RIGHT FORM

The VA used to be flexible about how veterans could submit information. Veterans and VSOs could make a request on VSO letterhead, on a VA Form 21-4138 *Statement in Support of Claim*, or even on a blank piece of paper.

This is changing. The VA is now producing more forms for more purposes. And it is becoming stricter about when they must be used: **on March 24, 2015, the VA stopped accepting certain claim filings if they are not on the correct form.** The new rule states:

- If the VA has made a form for a certain type of claim, then the veteran must use that form. If the veteran uses the correct form but the information is incomplete, the VA will return that form asking for the remaining information.
- If the veteran does not use the correct form at all, the VA can **ignore** the communication. This means that they might not even inform the veteran that he or she have made an improper request.



There are two important things to notice about this. First, the new rules do not state what standardized forms exist. It is up to the VSR to find out if there is a standardized form for what the veteran is trying to do. Second, the veteran has all the risk if she or he gets it wrong.

If the VSR or veteran doesn't use the right form, the VA does not have to respond to the veteran to correct the mistake; the VA can just proceed as if the veteran never made a claim at all. The consequences for veterans could be severe: they might lose an effective date, miss an appeal deadline, or maybe the claim will never be processed in the first place.

It is the VSR's responsibility to prevent these problems from happening. The VSR needs to know what forms have been created, and make sure that the veteran uses the correct one. And remember, each RO can have its own customized Notice of Disagreement form.

The new rule does not change how veterans and VSRs can submit supporting evidence. You can continue to provide statements from veterans or other sources on a 21-4138 *Statement in Support of Claim*, on your agency letterhead, or on any other paper format.

The following table lists the prefixes used for specific types of VA forms:

Type of Claim	VA Form Prefix
Medical Benefits	10-XXXX
Compensation Benefits	21-XXXX
Education Benefits	22-XXXX

FILL IN EVERY BLANK

Before filling out any form, first familiarize yourself with it and the information that is required. Fill in answers to every question neatly and carefully. If a question does not apply to the veteran, write "N/A" in the box.

Problems can arise with **fillable PDF forms**. Many times there is just not enough room to type in the information that is needed and there is no easy way to make the font smaller.

Another apparently common problem with these forms is that they often do not accurately save dollar amounts when entered. For example, Individual Unemployability Form 21-8940 requires veterans to provide income amounts from previous employment on the first page, but one version of the form does not maintain the income amounts—instead, it reverts them back to \$0.00. Each form may have its own quirk that prevents the filler from entering information properly. In these situations, it is best just to print out the form after filling out all the other information, and then hand-write in dollar amounts or provide information that cannot be typed in, including “N/A” where appropriate.

eBenefits is a means to avoid many of these problems. It does not allow incomplete answers to be entered, and if there are mistakes, one can go back and fix them.

HAVE THE VETERAN CHECK THE FORM(S) BEFORE SUBMITTING TO VA

After filling in all information, ask the veteran to review it to be sure that it is correct. On



occasion, veterans get upset about all the information they are required to give to the VA, much of which does not seem relevant to the benefit they are seeking. Let them know that you understand their frustration, that it is not always clear why the VA asks for the information that they do, but that it must be provided if they want to get the benefit they seek.

Remember: every time you fill out a form with a veteran, pay attention, be careful, and review all the information at least once.