

SUBSTITUTION

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SUBSTITUTION

OBJECTIVES

- What is substitution?
- Legal Authority
- Who is eligible?
- What are the benefits?
- What are the requirements?
- Cases at BVA
- Accrued v Substitution
- Advice to NSOs

SUBSTITUTION

WHAT IS SUBSTITUTION?

Substitution is when survivor of veteran eligible to receive accrued benefits substitutes as claimant for purposes of processing the claim to completion.

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LEGAL AUTHORITY

- Public Law 110-389, Sec. 212 (VBIA 2008)
- 38 U.S.C. § 5121A
- VA FL 09-15 (03/03/10)
- VA FL 10-30 (08/10/10)

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WHO IS ELIGIBLE?

If VA claimant dies **on or after October 10, 2008**, while his/her claim for VA benefit is pending, a living person eligible to receive accrued benefits may file request to substitute for deceased claimant.

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WHAT ARE THE BENEFITS?

- Major change on how survivors of claimants who die during a pending claim may pursue benefits.
- New evidence can be submitted
- Substitution allows survivor to continue without having to start claims process over again
- Docket dates are preserved

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WHAT ARE THE REQUIREMENTS?

- File request to Agency of Original Jurisdiction (AOJ) **within one year of veteran's death**
- File request on either VA forms:
 - ◆ VA F\Form 21-534, App. for DIC, Death Pension & Accrued Benefits.
 - ◆ VA Form 21-0847, Request for Substitution
 - ◆ VA Form 21-601 App. For Accrued Benefits. (Not recommended)

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WHAT ARE THE REQUIREMENTS?

- Execute and enclose new power of attorney VA Form 21-22, in name of the **new** claimant
- **Caution:** If no new POA signed, representation by MOPH will not transfer to survivor
- Attach a copy of the claimant's death certificate
- Request MOPH receive notification when decision on substitution request has been made.

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CASES AT BVA

- File request for substitution at AOJ .
- If AOJ grants request File will be re-transferred to BVA who will decide in original docket order.
- If AOJ denies request, the action is appealable to BVA. If appeal is granted BVA who will decide in original docket order.

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ACCRUED v SUBSTITUTION

- Accrued benefits claim was limited to evidence in file at date of death.
- Substitution: No restriction— substituted party will be in same position, procedurally, as deceased claimant.

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ACCRUED v SUBSTITUTION

No bar on submission of new evidence including:

- VA medical nexus opinion (DTA)
- Private medical nexus opinion
- Medical records
- Lay evidence

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ADVICE TO NSOs

- Most recent guidance provides claim for accrued benefits is construed as claim for substitution.
- **Never** waive opportunity to substitute/submit additional evidence
- **Benefits of Substitution = Accrued benefits**

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ADVICE TO NSOs

- For appeals, timely NOD must have been filed before death of claimant
- New/Inferred claims *cannot* be added
- New theories of entitlement *can* be added
- Presumably, cases on remand continue to be reviewed in order of BVA remand date.

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