

NOTICE OF DISAGREEMENT NOD

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NOTICE OF DISAGREEMENT

OBJECTIVES

What is an NOD?

When must it be filed?

Computation of time limit!

Decision Review Officer

Examples

NOTICE OF DISAGREEMENT

After an adverse VA decision denying a claim in whole or in part, the initial step in the appeal process is to file a Notice of Disagreement (NOD).

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WHAT IS AN NOD? (38CFR 20.201)

- written communication from a claimant/
representative
- Express dissatisfaction/disagreement with an
agency of original jurisdiction (AOJ) decision &
- A desire to contest the result
 - ◆ No specific wording/reasonably construed
 - ◆ If more than one issue, be specific

Response to Notice of Proposed Adverse Action

- An NOD in response to a notice of *proposed* adverse action is not a valid NOD.
- A proposed adverse action is merely a preliminary action that is not appealable. A notice of appellate rights will be furnished when a final decision is made.
- Avoid using the word “disagree” when responding to a proposed adverse action

WHO SHOULD PREPARE

- We strongly recommend that the NSO rather than the veteran prepare the Notice of Disagreement to assure it meets the basic criteria, identifies the issues, explains why and is not frivolous.
- The NSO is the “expert” on VA Benefits and is the proper person to provide a credible argument/claim.

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WHAT IS THE THE TIME LIMIT?

- **NOD must be filed within one year** from the date that that agency mails notice of the determination
 - ◆ Exception: contested claims 60 days
- The date of mailing will be presumed to be the same as the date of that letter
- **38 CFR 20.302**

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COMPUTATION OF TIME LIMIT

- When a written document must be filed within a specified period of time,
 - ◆ a response postmarked prior to expiration of the applicable time limit will be accepted
 - ◆ If the postmark is not of record, it will be presumed to be five days prior to the date of receipt VA
 - ◆ In calculating this 5-day period, Saturdays, Sundays and legal holidays will be excluded.
- **38 CFR 20.305(a)**

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COMPUTATION OF TIME LIMIT

- In computing the time limit for filing a written document,
 - ◆ the first day of the specified period will be excluded and the last day included.
 - ◆ Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.
 - ◆ **38 CFR 20.305 (b)**

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DRO vs. TRADITIONAL

Requesting a DRO Review as part of your Notice of Disagreement saves time as VA is required to notify the claimant of the right to a DRO review before acting on the NOD.

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DRO vs. Traditional

DRO performs a “de novo” review (provides a new and complete review without giving any weight to the fact a rater previously denied the claim).

Traditional review must rely on new evidence to reverse a rating decision.

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DRO vs. Traditional

Not only does the DRO not give any deference to the prior decision, but the DRO may direct any additional development of evidence necessary to address the issues.

The DRO Process

Definition: Decision Review Officer

The Decision Review Officer (DRO) is a senior technical expert who is responsible for holding post-decisional hearings and processing appeals. The DRO may have jurisdiction of any appeal.

DRO Decisional Authority

The DRO may

- amend, reverse, or modify a decision based on de novo review
- amend, reverse, or modify a decision based upon new evidence, or
- exercise single signature CUE authority.
- 38 CFR 3.2600

DRO Decisional Authority

Exception to DRO Authority:

- Unless a CUE exists, the DRO cannot revise the decision in a manner that is less advantageous to the appellant than the decision under review.
- A decision in which CUE is cited requires the signature of the VSCM if the decision would
 - ◆ reduce a service-connected evaluation(s), or
 - ◆ sever service connection for a disability(ies).

Issues Not Under the Jurisdiction of the DRO

- Committee on Waivers and Compromises (COWC) issues
- loan guaranty
- insurance, and
- hearing requests concerning a denial of benefits from a medical determination rendered by a Department of Veterans Affairs (VA) medical activity for
 - ◆ clothing allowance
 - ◆ automobile and adaptive equipment, and
 - ◆ specially adapted housing.

DRO “bargaining”

A DRO is not authorized to “bargain” with a claimant. However, after consulting with your claimant the representative can tell the DRO what will satisfy the appeal.

Scenario 1

- The claimant was granted 0% for hearing loss and 10% for PTSD. The veteran wants to appeal as “other vets get a lot more money from VA for these conditions”
- What does the NSO do?

Scenario 2

Vet files a quick start claim 20 days from separation. Among the conditions he claims is back strain. STRs are silent as it began last week. He then leaves on terminal leave. VAE 3 months later dx lumbar strain but VA denies as not shown in service.

- What now?

Scenario 3

Veteran granted 10% for SC PTSD by rating of 12/22/10. VA exam showed recurrent recollections, distressing dreams, socially isolated, irritable, angry resulting in difficult functioning at home and to a lesser extent at work. GAF Score assigned 55. You & the vet think his symptoms meet a higher level of evaluation.

- **WRITE A NOTICE OF DISAGREEMENT.**

Scenario 4

ACDUTRA soldier claimed PTSD for sexual assault. SC denied by letter of 08/25/10.

- Evidence considered: “National Guard enlistment examination of 12/22/1995 with other medical records to 6/12/1996.”
- Decision: “We have denied service connection for PTSD as the evidence does not show a confirmed diagnosis nor is the credible evidence of the claimed stressor occurring.
- **WRITE A NOTICE OF DISAGREEMENT.**

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