

# **VA FORM 9 SUBSTANTIVE APPEAL**

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# VA Form 9

## OBJECTIVES

- What is an appeal?
- What is a substantive appeal?
- When is it filed?
- How to write it?
- What language is required?

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## What is an appeal? (38 CFR 20.200)

- An appeal consists of
  - ◆ Timely filed Notice of Disagreement in writing,
  - ◆ Statement of the Case has been furnished and
  - ◆ Timely filed Substantive Appeal.

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**What is a substantive appeal? (38 CFR 20.202)**

- Properly completed VA Form 9, “Appeal to Board of Veterans' Appeals,” or
- correspondence containing the necessary information.

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## **When is it filed? (38 CFR 20.302)**

- After Statement of the Case (SOC) is received
- Within 1 year of mailing date of decision or within 60 days of SOC or 60 days from last SSOC whichever is later.
- Contested claim: 30 days from mailing date of SOC (38 CFR 20.5001(b))
- Extension of time for “good cause”, if requested during appeal period

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## How to write a substantive appeal?

- Use VA Form 9
- indicate all issues to be appealed
- set out specific arguments relating to errors of fact or law made by AOJ
- If possible, relate arguments to specific items in the SOC/SSOCs.
- The NSO, the “expert” on VA Benefits, is the proper person to write the Form 9

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## How to write a substantive appeal?

- BVA will construe such arguments in liberal manner to determine whether issues raised
- BVA may dismiss any appeal which fails to allege specific error of fact or law.
- BVA will not presume facts not specifically contested by Vet are conceded
- Filing document perfects appeal
- Last formal opportunity to request hearing

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## What language is required?

- NSO must identify
  - Specific issues
  - Facts in disagreement
  - Explain why vet is entitled to benefit
- Make a detailed argument and bases for appeal
  - Can also be done at hearing
- CAVC has liberal reading of whether the veteran is appealing a particular claim,

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## What language is required?

- BVA also considers hearing testimony and the record as a whole.
- However, Vet must express some error not just disagreement with outcome. *Ortiz v. Shinseki*
- If BVA is faced with dismissing claims not raised in substantive appeal, Vet is given 60 days to respond whether appeal was adequate

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EXAMPLE

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