

Date: 11/20/2014

Event: United Spinal Webinar - Veterans Disability Compensation Appeals

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>> Good afternoon and welcome to (audio cutting out) presented by Brett Buchanan. (Audio cutting out) find very helpful. Before we get started I want to remind everybody that information about real time captioning is available in the chat box on your control panel should you need that service. After we have our presentation today we will have some time for questions. You will also see on your control panel a questions box that allows you to ask a question or make a comment. Please just type in your question in that box and at the end of the presentation we will have some time to go over those and our presenter will be providing answers to those questions. Before I turn it over to our presenter I want to give a brief overview of Vets First so that you can understand a little bit more about our program.

Vets First is a program of United Spinal and we represent the culmination of over 65 years of service to veterans and their families. We advocate for the programs, services and disability rights that help all generations of veterans with disabilities independent. This includes access to VA financial and healthcare benefits, housing, transportation and employment services and opportunities. Today we are not only a VA recognized national veterans service organization but also a leader in advocacy for all people with disabilities. And we are proud today to present this webinar with our partner Allsup. I would like to now introduce Brett Buchanan who will be today's presenter.

Allsup is a VA accredited claims (audio cutting out) he provides expertise to veterans from the first appeal at their local regional benefits office to the Board of Veterans Appeals in Washington, D.C. Brett attended Truman State University in Kirksville, Missouri, and participated in the Army ROTC program. (Audio cutting out) and achieved the rank of captain. He was stationed in Germany and deployed in operation Iraqi Freedom (audio cutting out) and earned a bronze star for combat operation.

After the army he earned his law degree from St. Louis University. As a student he worked part-time helping veterans with their claims with the VA and after leaving university (audio cutting out) in VA Compensation benefits. He joined Allsup in 2012 and became a VA accredited claims agent. Brett, I'll now turn the presentation over to you.

>> Brett: Thank you, Heather, for that great introduction. And like Heather mentioned we're going to talk mostly about the VA appeals system. VA Compensation benefits has lots of information so we are not going to be able to cover everything but we thought it was important to talk about what you do when you get a decision that you're not satisfied with and the different remedies you have available.

In this presentation we're going to go through the criteria on how to get the compensation benefits, the disability appeal process, why veterans should seek help when filing an appeal, and who can help veterans appeal their claims. We're going to give you some resources and then of course we're going to take some questions at the end which is always extremely helpful.

I would like to start off with an example. I feel real life examples frame what's going on and then we can apply it to what's going on at the VA side when they process a claim. In this example Matt enlisted in the army and was assigned to an airborne infantry unit. During one of his training airborne jumps Matt landed on a drop zone but a gust of wind caught his parachute. He was dragged 100 yards across rough terrain. Military doctors diagnosed a concussion and neck strain. He later developed headaches after the accident and had constant pain in the neck area. He completed his enlistment and was honorably discharged. As a civilian Matt was diagnosed with a chronic head disorder and degenerative arthritis in the neck. Matt applied for VA Compensation. The VA denied his claim.

So first we're going to go into what does exactly Matt have to bring to the table in order to get his claim approved. The best way to break it down is that the veteran needs to show three criteria in order for the claim to be granted. That is they have to show you have a current disability, they have to show that there was an in-service event or injury, and then you have to show that the two were related, that the military event caused the current disability.

All three criteria must be met in order for the claim to be granted. This the category of a current disability, the best way to look at it, you need to have a current medical diagnosis. If the medical professionals are giving it a name that's medically recognized then that is a current disability. Neither contract be a disease nor suffering an injury while on active duty is enough and pain alone is insufficient. However, if you are suffering from pain in an area and you've been suffering over a long period of time, there's most likely an underlying disability causing that pain and you can file a claim and obtain your current disability while your claim is being processed. But ultimately you have to have a physician or medical professional give a diagnosis.

The evidence used to show that you have a current disability are medical records. Both VA and private records are acceptable when you're filing for VA Compensation claim. And again, you may get the diagnosis after the claim is filed or during the appeal. However, for the claim to be granted un -- and I'll stress this again -- is you have to have a current diagnosis. The doctors have to agree on exactly what the disability is.

The other criteria, the second criteria is you have to show an in-service event or injury. It does not have to be directly related to your military duties but it must take place between your military entrance and your military discharge.

This system was primarily decide for active duty members. So while you're on active duty, even if you're off work on a weekday night or on the weekend, if you incur an injury it's considered related to service and eligible for VA Compensation.

Unfortunately for Reservists and National Guard, their eligibility time period is a little more limited compared to their active duty counterparts. Any time that the Reservists or National Guard is on active duty time, that counts as an eligible time period. And the best way to check that is if that individual is issued a DD214 for that time period. A guard or reservist could be issued multiple DD214s. One for their initial training, one for a deployment, whether overseas or state side. And over the course of their career could have multiple DD214s or active duty time period.

The other time period where reservists and National Guard is eligible for VA Compensation is their active duty for training which is typically the weekend drill or the annual training. Which like the commercial says, it's two weeks in the summer.

If you incur an injury or you have an event that ends up causing a disability during those time periods, then that reservist and National Guard fulfills that criteria for their VA Compensation claim.

Evidence used to show that an event or injury happened, the first tier of evidence is the service medical record and I say first tier because that is the most appropriate evidence out there meaning the VA is looking for service medical records to document the injury. They consider those unbiased and it was a document produced during the time period that the injury happened and fairly accurate.

Military personnel records are also available to use to show that something happened to you in service. If those aren't available the VA does accept alternative evidence and that's in the form of testimony, letters, e-mails or

other media that documents the event or reflects that the injury happened as well as a Line of Duty determination which is a military record.

Line of Duty determination is in this presentation at this point because it is very important for Reservists or National Guard members. When they're injured on their weekend drill or two weeks in the summer, their unit should make a Line of Duty determination in order to assess at the military level if the injury was related to service or not. The VA considers these LOD statements highly probative in showing that a National Guard or reservist injured themselves while on duty.

The third criteria is the most common criteria that veterans get denied on their claims. It's called the causation or nexus element. And basically it's showing medically that what you have today is medically related to what happened to you in service. And this evidence is most often not a medical opinion. It is outside the scope of the expertise of the VA decision maker at the regional office to determine medically if what you have is related to service. That question is a medical question that most often than not can only be answered by a medical

professional.

There are some exceptions to this and they're called legal presumptions and these are conditions that are in the regulations and in the laws that have been deemed related to service. The most common one is the Vietnam veteran that was exposed to Agent Orange. There are a number of conditions that are legally linked to medical orange and a medical opinion is not necessary.

So we go back to our example. Why was Matt's claim denied? On its face in the description we gave earlier, it looks somewhat like a slam dunk. The injury definitely happened in service. He has a current diagnosis of headaches and arthritis, and to us as lay people it appears related to service. Well, there's a number of possible reasons why claims get denied. In Matt's case it may be that the VA does not have all the service records showing the injury. The VA may not have all the medical records between the date of discharge to now showing that it's the same injury.

The VA may have not provided an examination to determine if the present condition is related to what happened to Matt in service and if the determination was made by a VA rater

that the VA rater may not be qualified to make. Or the VA did provide an exam and the VA examiner just felt the evidence was not sufficient enough to make the medical link.

After Matt applied he got what's called an initial decision. This is done by the regional office. He will issue a rating decision which explains the issues, discusses relevant law, lists and discusses the evidence relied on and provides an explanation for the decision.

According to the VA website the average processing time on a national basis for these claims is currently 253 days. Once you receive a rating decision you have one year to appeal. Filing an appeal for your initial rating decision, you need file what's called a notice of disagreement agreement. Until recently there was no VA form for a Notice of Disagreement. The regulations simply said you need to provide a written statement that expressed disagreement or dissatisfaction with the rating decision and request appellate review.

Often people get the vocabulary and they ask for a reconsideration and it's often not enough. The regional

office will also consider a request for reconsideration as a redo with decision maker number one. Also when you appeal you may also submit new evidence. There is a form that has come out recently in the last 18 months called a VA form 21-0958 and this is a Notice of Disagreement. As of now the VA will accept both the 21-0958 or a written statement expressing dissatisfaction and requesting appellate review.

The veteran needs to file the Notice of Disagreement with the regional office that issued the rating decision. And again, within one year of that rating decision being issued.

This is with respect the appeal process gets a little more complex. Before there was always what's called traditional review. Traditional review is where the veteran will file a Notice of Disagreement and will go through the second decision maker at the regional office who would re-adjudicate the issue if new evidence was introduced, would check for clear and unmistakable error but no personal hearing was available and they would release the decision. Also with traditional review if no evidence -- if no new evidence is introduced, the regional

office was unable minus no clear mistakeable error to re-adjudicate the issue and overturn the decision.

In the 1990s they test piloted a program called the decision review officer and in the early 2000s became a standard option. Decision review officers with a senior level employee at the office. If you elect DRO review the case will go through a DRO who has de novo review in other words they're not bound by the previous decision. They can overturn it even without new evidence. They're also trained to conduct a personal hearing so you can have a face-to-face meeting with your next decision maker.

After filing the NOD the regional office will send you a letter asking you if you want traditional or DRO review. After that letter is sent out you have 60 days to elect either one. If you do not elect, the default is traditional review.

One technique is that within your notice of disagreement you can state in the Notice of Disagreement that you want DRO review and that fulfills the 90-day deadline.

So back to our capital. Matt's claim was denied because

the VA was not able to obtain a complete set of his service records. The service records available do not show the injury. VA denied the claim based on lack of in-service event or injury. Matt has copies of his service records showing his in-service injury. He files a Notice of Disagreement along with these service records. The decision review officer requests an examination in order to determine if the current conditions are related to service. The VA examiner does not feel the current conditions are related to Matt's parachute injury. The DRO denies the claim based on the exam results.

Regardless if you elect traditional or DRO review, the second decision that comes from the regional office is called a statement of the case. This is VA's official notice to the claimant of its reasons for denying the claim in whole or in part. Here the appeal window becomes much shorter and you have 60 days to file what's called a VA form nine. There's also an alternative deadline that is a bit more complicated and rarely happens. However, we'll talk about it quickly for this presentation. The other alternative deadline is the remainder of the one-year period from the date of the mailing of the rating decision. That's because when you get a rating decision you have one

year to appeal. If the regional office is not back logged and you file a Notice of Disagreement right away, it could reasonably get you a second decision within one year of the original rating decision. So they felt that it's not fair to impose a 60-day deadline and you still had one year of the original deadline to use up.

Right now the average Notice of Disagreement pending at the regional office is 399 days. What we see from the claimants we represent is something offices are taking 18 to 36 months to process a Notice of Disagreement.

Once you get your statement of the case, you have to file what's called a VA form nine. You can only file a VA form nine. You cannot file a written statement like you could with the Notice of Disagreement. When you file a VA form nine this officially transfers the jurisdiction of the appeal to the board of veterans appeals. You can also submit additional evidence during this time period when you submit the VA form nine and you wait for your case to go to the board. The regional office will then issue what's called a supplemental statement of the case readdressing the issues with the new evidence. This could actually result in the grant of your appeal and your file never goes

to the board. Again, this gives you opportunity to address the VA's version of the issues in dispute.

Well who is the board of veterans appeals? Well, they are the final VA decision maker located in Washington, D.C. They're comprised of approximately 64 Veteran Law Judges and each VLJ has approximately seven staff attorneys. Recently the board has put out job postings and their plans are to expand the VLJs to roughly 80. In 2012 the board produced about 44 decisions -- 44,000 decisions. With the board you can also have a hearing and in 2012 out of the 44,000 decisions they did approximately 12,000 hearings. In 2012 on average from the time you filed your VA form nine to the time the board decision came out the wait time was over a thousand days. Current statistics are showing that the average days pending for VA nines is 625 days.

Like I said before, you can have a personal hearing with the board of veterans appeals. However they are optional. You have to elect a hearing. Because the board is in Washington, D.C., there are multiple different types of hearings you can have. You can have what's called a travel board hearing. This is where the veteran law judge travels to the regional office and conducts the hearing in person

at the regional office. This happens if each regional office approximately has two to three travel boards a year and those judges are at the regional office all week and conduct hearings generally Monday through Friday.

Another alternative is a video conference hearing where the veteran will travel to their local regional office and the veteran law judge will be in Washington, D.C. and you conduct the hearing through a video teleconference system. If you elect this your hearing will most likely be scheduled much quicker as they generally conduct video conference hearings once or twice a month from the regional office.

Finally, you can go to Washington, D.C. yourself and have the hearing at the board of veterans appeals. The biggest restriction on this, however, is that the VA will not reimburse you for travel expenses. So if you live in the Washington, D.C. area this option may be viable. However, if you live in Honolulu, Hawaii or Anchorage, Alaska, or even St. Louis, Missouri, that travel may be overbearing for you and you cannot afford it. Then traveling to your local regional office is your better option.

So we'll return back to our example. Matt files a VA form

nine. He learns that a strong claim will have all available medical records submitted to the VA that pertain to the case. Matt did not file a claim until 20 years after he was discharged and the VA did not have any medical records documenting his condition during that time period. I'm going take a moment on to pause during this example to point out that there is no what's called statute of limitations for compensation claims. You do not have to file within one year of discharge. You could file 40, 50, 60 years after discharge and the VA will adjudicate your claim.

Now, like in Matt's case your claim may become more difficult because so much time has passed between now and your original injury, it may become harder to show that the two are medically the same condition.

Matt obtained all the treatment records he is able to locate for this time period and submits them to the VA. He also elects to have a personal hearing via video conference with the veteran law judge. He testifies about his in-service injury, his systems and treatment after getting out of service and his current condition. The veteran law judge feels Matt is entitled to another examination based on his

testimony and the new medical records he submitted. This time the medical examiner states he feels it is likely not related to his current medical condition. The claim is granted.

Why would you appeal a VA decision. There's many advantages on appealing a VA decision. One of the most important is that appealing maintains what's called your effective date. This is the date that the VA will establish payment. In Matt's case if his appeal took two to three years, that new award he is getting will go back to when he filed the initial claim and he will receive one retro payment for that time period and then the future monthly benefit going forward.

[indiscernible] the date of the claim or the date of the disability whichever is later. For practical purposes that's almost always the date of the claim. Also on appeal it allows you to introduce new evidence throughout the appeal process and gives you opportunity to correct mistakes that were made by the previous decision maker.

Here's an example on the power of maintaining your effective date. Example one, the claim is submitted on

month one. The regional office denies it on month 12. The claim is appealed, new evidence is submitted and it is eventually granted on month 36. That veteran is going to receive an effective date of month one and 36 months of past due benefits.

In example two a claim is submitted on month one, it's denied on month 12, the veteran does not appeal and decides to reopen, essentially go back to decision maker number one and ask them to reopen the previously denied claim. In doing so that veteran submitted the same new evidence as in example one. He does this on month 25. On month 36 he gets a grant from decision maker number one. However, decision maker number one is legally bound to only pay the claim back to the last, most recent application. And the veteran in example two will only get 11 months of past due benefits compared to 36 in example one.

If you plug in real dollar amounts then the difference between these two examples is approximately \$66,000 if the veteran's claim was granted at 100% rate. Please note -- and I mentioned this a little bit before in example two -- but if your claim is not appealed it will become final after the appeal period. A veteran can file a new

claim to reopen a previously denied claim but he or she needs new and material evidence to reopen, meaning the VA will not relook at your claim unless you submit new and material evidence. You will get denied that you did not submit new and material evidence. If you feel that you have a strong case but you were denied based on all the evidence that is available, then it is important that you appeal it because that allows the next decision maker to overturn it based on all the evidence that's already in the file.

If you don't appeal it and you attempt reopen and you're not able to bring anything new to the table, the VA's simply not going to reopen it. Why do people need help appealing a VA decision? This is where the VA Compensation system gets very complex. In Matt's example I used two conditions stemming from a single incident. The current veteran is filing on an average nine to 14 different conditions, some related to the one event, others related to another event on their application. These are separate yes and nos that the VA must go through on their decision. The appeals process has changed over time and it has elements of traditional and new and revised and so it becomes confusing. There's two steps involved. You have an

optional second decision maker in the DRO. There may be advantages of doing a DRO versus a traditional and there may be advantages of doing a traditional for your specific claim over a DRO.

Personal hearings are optional. Sometimes a personal hearing is very helpful for your case. Other times it may not make a difference. Up to this point we've really only been talking about service connection, establishing conditions related to service. What unfortunately we don't have time for and another complex area is that then the VA assigns a rating which is supposed to reflect the current severity of the condition today. As while effective dates on their face appeal pretty simple, it should be the date of the claim, there are some exceptions and other factors that can make the effective date an issue that you're dissatisfied with.

To find of show the back log and the overwhelming amount of claims that the regional offices have, a statistic that is quite showing is that the board of veteran appeals has a very high remand rate of about 45%. A remand is where the board will not deny the claim but they can't grant it and they have to send it back to the regional office to

either correct mistakes or to order new examinations or to continue to search for federal records that the VA did not go through the proper procedures on obtaining.

Currently there's over 526,000 claims at the initial level in VA on a nationwide basis. On the appeals side there's been a 78% increase in number of appeals since 2008. Because of this, appeals can last five to seven years from start to finish. Being able to get your next answer is your last answer is very important because it can take multiple decisions to get the ultimate award and benefit you feel you're entitled to.

Adding to the layer of complexity on top of multiple conditions each being their own yes or no, there's a host of claim specific laws and regulations which make these claims adjudicated differently than your average general claim. I mentioned before Agent Orange exposure. There's a set of presumptions and presumptive conditions related to that. There's another set for Gulf War veterans called gulf war illness or undiagnosed illness. Combat veterans, if your injury occurred in combat their adjudicated differently than a noncombat. The PTSD regulations were heavily revised in 2009 and there's

currently three to four different ways the regional office can do a PTSD claim. And for PTSD that boils down to what type of stressor you suffered whether is it was combat related, a physical or sexual assault or another trauma that does not fall in those two categories. These are medically complex issues that sometimes the doctors themselves can't agree on what is going on with your body. PTSD and other psychiatric conditions, orthopedic conditions are very common for veterans. And also you can get service connected on a secondary basis, meaning if you have a condition that was caused or contributed by a service connected condition then that condition is eligible for service connection. A very common and a Vietnam veteran that comes down to with type two diabetes that's presumed related to Agent Orange. Type two diabetes can cause a host of secondary issues such as peripheral neuropathy and/or kidney conditions. Those conditions would be eligible for service connection on a secondary basis.

Also with exposure not just with Gulf War -- sorry, Agent Orange, but there's also evidence that there's been exposure at Camp Lejeune of cancer causing agents. You get a host of cancers, cardiovascular and respiratory deceases due to your chemical lifestyle of being exposed to these

different chemicals. Also there's been a 200% increase in the last ten years of original claims containing eight or more specific medical issues. In other words, in previous years veterans were only filing for maybe two to five conditions. Currently they're filing for more conditions. That increases the work load at the VA office.

Again, the United States military has been in a combat status in the last -- over ten years in both Iraq and Afghanistan and that has produced a host of problems that the VA is not familiar with in the sense of the Vietnam veteran or the Korean veteran before them or even the first Gulf War veteran in some cases. There has been a rise of dramatic brain injury and other associated conditions. The number of women veterans have increased rapidly. Not only combat but also in noncombat situations and generally the service has bolstered their ranks with women compared to years past.

And these veterans are going upon multiple deployments which just increases the likelihood of something happening to them in service but also increases the likelihood that it is not properly documented like a noncombat injury would be.

Again, as mentioned before, there's a host of chemical exposures that can happen in service such as Agent Orange, Camp Lejeune drinking water and also burn pits that were used in Iraq and Afghanistan.

There's a host of individuals and organizations that can help you with both your initial claim and your appeal. Veteran service organizations provide veterans with free representation and receiving VA benefits including at the appellate level or the appeal level. Private claim agents and attorneys can also assist veterans in receiving VA benefits. These reps are able to charge for their services following the filing of a Notice of Disagreement.

Agents and attorneys must be accredited by the VA office of general counsel in order to represent veterans.

I would like to touch on something I feel is very important for veterans to know this information. What is a reasonable fee a VA case? Historically there was a cap on fees of no more than \$10. That law was passed after the civil war but there was not an inflation index provided so eventually \$10 became the \$10 we know today. In 2006 the

law was changed to allow a reasonable fee to be charged and what happened was the \$10 limit was eliminated. But they made that -- the law change made it that no one could charge any fee for services provided at the initial level, meaning filing an initial claim. Not even \$10. However, an individual could charge a reasonable fee after a Notice of Disagreement has been filed, meaning taking the case to decision maker number two, the VRO or the traditional or to the board of veterans appeals. The VA that deemed a 20% contingency based on the retro award to be reasonable. If the individual does not receive a retro award no fee is due. The future monthly benefit is not pardon of the fee is and these fees are monitored both by VA's office of general counsel and by the regional office and there must be a signed fee agreement on record. An individual can't just charge a fee without a signed fee agreement that is very common in legal representation.

Again, I feel it's very important for veterans to know that if you contact an individual to file an initial claim and they want to charge you a rate, that VA law and regulations prohibit that.

Here's a list of some resources for different topics

related to veterans and veteran compensation. As well as Allsup's contact information for both our veteran disability appeals service and our Social Security appeals service.

I finished a little early because I feel the best information sometimes often -- often, not sometimes, comes from questions. It's very difficult to cover all aspects of VA Compensation in any amount of time so what we try to do is provide a basis of information on different processes and in this respect the appeal process, and then we like to open it up for questions to determine if areas that we didn't cover and issues that you may be dealing with in real life.

>> Thank you, Brett. I really appreciate the very informative presentation about the VA appeals process. We will now turn to our question and answer session. As a reminder to all of our participants to ask a question or make a comment, please type it in the questions box that you see on your control panel. We have already received a few questions so we will go on and begin with some of those.

The first one, Brett, is a question about how do you get

service connected for Agent Orange?

>> Brett: That's a great question, Heather because it's actually a very misunderstood aspect of this props you will hear a lot of veterans say well I'm service connected for Agent Orange at 100% as an advocate of someone that does this for a living that's not technically what's happening. I call it a two-step process. and again the same. You have to show that you have something wrong with you today, something happened to you in service and that you are medically related. Agent Orange claims have some more bells and whistles to make that process much easier.

Step one is you have to show the VA that you were actually exposed to Agent Orange and by doing that there's a regulation that states if the veteran can show they actually stepped foot in Vietnam and time period doesn't matter, it could be one hour or a thousand days then the VA is assuming that you were exposed to Agent Orange and the VA does not worry or take into account about how little or how much exposure to Agent Orange you actually had, you were exposed to Agent Orange. They've expanded those regulations to include certain parts of Thailand and certain parts of Korea, particularly the DMV and via.

Primarily it's stepping foot in Vietnam. That's step one. That gives you the presumption that you were exposed to Agent Orange but that only gets you so far. You have to show that you have a condition that's related to service.

Right now there are 13 conditions that the VA presumes are related to Agent Orange, type two diabetes, ischemia, prostate cancer are the most common ones and this is an ever growing list. The three conditions that were added just a couple years ago were the ischemic heart disease, Parkinson's and a type of leukemia called B-cell leukemia. So if you can bring one of those 13 conditions to the table, meaning you have a current diagnosis of one of those or multiple of those and you can show you stepped foot in Vietnam then service connection is fairly automatic with some exceptions and the VA will grant your claim and you will be service connected for those conditions related to Agent Orange.

If you have a condition that is not on the list of the 13 conditions and you feel it's related to Agent Orange you can still file a claim. However, then it becomes more like a traditional claim and you're going to have to find a medical opinion or acquire a medical opinion that links

what you have today to that exposure of Agent Orange.

>> Great, thank you. Before we continue with the question and answer I want to remind everyone that this webinar has been recorded and we will be archiving both the PowerPoint and the audio presentation on the Vets First website at VetsFirst.org and that presentation should be posted within a couple of weeks.

Our next question asks what if you were misdiagnosed while in service, granted a rating based on the wrong diagnosis then when trying to correct the records the VA put the actual diagnosis as a subset of the wrong diagnosis. Even on appeal it was not corrected. The VA doctor said they will never correct it. Why not? I asked for a personal hearing and the VA got the form because I got it back with a copy of their records I requested. I never had a hearing.

What are my options?

>> Brett: So there's multiple aspects to that question and that's a good one. So -- the first part is this. If you received a rating based on diagnosis A, whatever A may be, time marches on and it turns out your doctors say well you don't really have A, you have B. That could be important for purposes of your claim or it could be kind of a wash as I call it. The reason is because when your service

connected for a condition, the VA then goes to the regulation on what's called a disability schedule and they find your disability in there.

And so if your disability is in there specifically, and I'll use PTSD as an example, then the regulation tells them what set of medical systems to use to give -- symptoms to use to give you your percentage. As time marches on if your diagnosis changes to bipolar or schizophrenia, still a mental disorder but a different name, quite frankly for purposes of your claim it may not matter because schizophrenia and bipolar use the same exact medical measurements as a PTSD rating. However, for other conditions it could make a difference because it could require VA then to use a different set of regulations which would use a different set of medical measurements and you might get a more accurate rating in that respect and it would increase that way.

As far as not getting -- as far as requesting a hearing and not getting one then the remedy on that is unfortunately you just have to maintain your appeal and you bring that up on your appeal that you requested a hearing on such and such date, you weren't provided one and you request one now.

What may have happened is that you filed a Notice of Disagreement, did not explicitly elect a decision review officer to review and then requested a hearing. Since you were under traditional review if that's what happened, the VA regional office could not schedule a hearing and they had to issue what's called a statement of the case. My advice is to file a VA form nine within 60 days and you elect a hearing at that point.

>> Great, thank you. Our next question is can I reasonably assume the board of veterans appeals won't physically receive my appeal until the 90 days has elapsed following the regional office certification? I'm still waiting for a board of veterans appeals letter after my RO appeals certification in September and could you please explain exactly what is the purpose of the 90-day rule following certification of an appeal.

>> Brett: Well that's a great question. So for some of those that are listening that may not know exactly what that -- because it details a very specific part of this process. I'll explain it really quickly. When you file a VA form nine, the way I explain it to my clients is that you are now in line at the regional office and the board will ask the regional office to send up maybe their next

100 or 200 cases. And what the regional office typically will do is send them their oldest, the ones that have the VA 9 pending the longest. So as you wait at the regional office, meaning your case waits at the regional office for what's called certification. Certification means that it's physically being sent to the board and the board will get jurisdiction over your claim. I don't want to call it a limbo status but you're pending for the board to certify your claim.

What happens when the regional office certifies your claim, they send you he notification, your claim is being certified for the board. You have 90 days to submit new evidence to request a hearing to change representatives and to do X, Y and Z. And the board is able -- and the language of the letter is terribly confusing because actually it states that the board can make -- that you have 90 days or until the board makes a decision which doesn't restrict the board from making a decision in less than 90 days meaning if you receive a certification letter from the regional office technically the board can make a decision within less than 90 days. That is very rare because of just the sheer number of appeals and claims and for the board to actually pick up your file that quickly and make a decision

most likely would not happen but it can. Then you are supposed to receive a second letter from the board stating we have your file, if you have any additional evidence remember to submit it to us and not the regional office.

I have been told by the Board of Veteran Appeals that it can take up to 21 days from the date the regional office sends your file to the board to when the board receives it and sends you the second letter notifying that you have -- they have the case. And so my advice is if it's been more than 21 days since you received the certification letter, you can Google the Board of Veteran Appeals home page and there is a customer service line and you need to call the board and say -- and explain exactly the situation. I received a letter from the regional office on such and such date, have you received my file, do you have my appeal because I have not received a letter from you. And they will verbally give you a thumbs up or thumbs down and then that will let you know where you need to submit your evidence.

Regardless, I would wait until they get your file and then submit evidence to the board to avoid any confusion on this transitioning period. Did I answer all the questions,

Heather, on that one?

>> Yes, I believe you did. I have a followup question. Will the Board of Veterans' Appeals accept more written arguments from the veteran before my hearing? I have heard when veterans have a representative the Board of Veterans' Appeals solicits arguments from those representatives shortly before the hearing date but what about those of us who are proceeding pro se without a representation?

>> Brett: Okay. So I just want to make sure I understood the question. The question is they inferred the board will actively solicit a written summary or brief from a representative before the hearing but not pro se. Is that the general question, Heather?

>> Yes.

>> Brett: Okay. So I think that information you received is inaccurate. And I'll explain. I'll explain the process from my perspective. When I have a client and we have a hearing with the board, we get a notification letter that the hearing's been scheduled and generally they give you at least a 30-day notice if not nor that the hearing will be at such and such place at such and such time. I never receive any type of correspondence or phone call or e-mail from the board asking for any type of brief. At the hearing you're able to submit your evidence at that point

and that's when the veteran law judge in my experience is asked do you have any new evidence to submit. Evidence can include a written brief or summary as well as new medical records or medical opinion. So I don't think there's different procedures for a represented veteran versus a non-represented veteran. Some service organization and other private attorneys and agents may have a system already set into place where they -- once they get the hearing scheduled they just automatically shoot off a written summary so that way it's in the file so when the judge conducts the hearing and they review the file, they already have a little bit of a heads up on what your issues with the case has been at that point.

>> Very good. This is a related question. Does a person has to seek legal representation for an appeal or can they file it on their own? And do you think they have more of a chance of getting their claim approved one way or another?

>> Brett: Yeah, and there's no blanket yes or no on that. Well, there is for the first part. No, you do not need any -- you do not need representation to file an appeal. This is what's called a pro se process. The VA Compensation filing the initial claim and filing the appeal is based on the veteran doing it themselves. So you do not need any representative to actually do it. The VA will

accept all filings from the veteran.

The question comes down to how complex is your claim, why are you getting denied, and how important is this claim for you. Should that be your trigger to seek out representation. If VA Compensation is really your only financial outcome to keep you afloat or ability to keep you afloat and you're being denied and you strongly feel that your disabilities that are presenting you from working are related to service then you may have more incentive to seek out representation than the veteran that maybe is making a living, is pursuing a claim for hearing loss which is generally a 10% rating or less. So those factors kind of go into that. I would say yes for someone who's never done it before compared to having a representative that has done your type of claim multiple times then yes the representative I feel is going to increase your chances of a positive outcome because you may just not understand what's missing or what mistakes the VA is making and therefore you can't bring that to the table to the next decision maker where an experienced representative could.

>> Thank you. Our next question is I have what I believe to be a service connected injury slash illness. I previously requested my medical records and I did receive

them. Upon review I found several medical appointments. Examples, colour dispensary visit. What can do I to prove an accident actually occurred?

>> Brett: Okay. Heather, does it mention it the question do they -- let me back up. If it is documented in your service records that the accident happened in some shape or form and you feel it's just not properly being evaluated by the VA decision maker, either they're not acknowledging it or maybe in your service records doesn't really reflect the severity of the actual trauma. Because a lot of medical records prior to 2000 in the service were handwritten and they did not explain everything that happened to the veteran.

So if you feel that the documentation is there in your service records of the injury and it's not just not properly being assessed then an appeal is a better option to go because then you get a second look either the VRO or the veteran law judge and you can have a personal hearing where you can describe what happened to you in more detail and fill in maybe some of the stuff that was not captured by your service record.

If the events or injury was not captured in any respect by

your service records that did happen then you need to introduce alternative evidence such as sworn testimony, letters written home during that time period or anything else you can find. If your service records don't document the injury or the event the claim does. More challenging. It does not become impossible but it does become more challenging because then you're going have a harder time fulfilling that requirement of showing that something happened to you in service.

>> Thank you. Our next question is all of my son's denial letters were based on the fact that there was nothing noted in his service records that he was ill from exposure during his time of military service but the conditions didn't present until ten years later yet there is strong evidence presented of radiation exposure during service. How do you get around that denial of, quote, nothing is noted.

>> Brett: So that is very difficult. And so in general it becomes very difficult and you have to look for alternative evidence. Now, the one word that kind of changed a little bit of this was has she mentioned radiation. And radiation claims are again another category of claims that are adjudicated differently than your general claim or even chemical exposure claims.

So if the veteran hasn't already, they need raise that theory explicitly to the VA meaning I feel I was exposed to radiation and this is where and this is when I feel my exposure happened because that will trigger the VA to do a set of development on either trying to confirm that radiation exposure or not be able to confirm it and to help the veteran in showing that.

Also the duty of the veteran may come into play meaning what was their job in the military and would they have been exposed to radiation or around it. What you can do which becomes difficult though is you can kind of go backwards meaning if you're able to obtain a medical opinion stating the veteran has X, Y and Z, I've eliminated all the other known causes and he has told me or she has told me that they believe they were exposed to radiation on this event. If my medical opinion I feel that these conditions are caused by that radiation exposure because quite frankly I can't see where else it would come from, something to that effect. That will get you far. It won't seal the deal because you still have to some way show that the event happened in service.

>> We have time for just one final question and this will relates to what are some of the veterans organizations,

other individuals that you can contact to have somebody assist you with a claim or an appeal? And I think -- feel free to throw that open it all of the different types of assistance you can get to help you with a claim.

>> Brett: Sure, absolutely. So the veteran service organizations, so that's one umbrella, they're called VSOs. Some of them are federal, meaning that they provide nationwide service. Others are local meaning their sponsored by the state. So your big national ones are disabled American veterans, veterans of foreign war, the VFW, the American legion, paralyzed veterans. Those are the big national ones off the top of my head.

Also a lot of states have their own so I know the Texas veteran commission that's actually sponsored by the state, the TVC, Missouri veterans commission is another one for Missouri residents. So those are your VSOs and they provide help and assistance. And then also like I said private attorneys or private claims agents like myself also provide assistance. And for that information, for all this that can provide representation you can go to the VA office the general counsel website is they have an accreditation search and you can search by VSO, claims agent, you can search by attorney. You can search by what

if you want someone local. You can search by name. So it's actually a fairly robust site and these representatives have been accredited by the office of general counsel so therefore they're able to provide representation services for the VA.

>> Great. Well thanks, Brett, for those great answers to the questions. And I hope that that was helpful to many of the folks who were on the line with us. Just as a time reminder the webinar has been recorded and will be archived and the Vets First website and should be posted at verticals first.org within the next couple weeks. So I want to thank everyone for being on the call today on this webinar. Brett, I want to thank you for your presentation and we appreciate the opportunity to bring these programs to you and we'll have additional programs in the future advertised on our VetsFirst.org website. Thank you everyone. This concludes the webinar.

(End of webinar)

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