Appendix DD:

Opt-In Process

Cases in which the Servicemember or Veteran (SM/V) filed a Notice of Disagreement (NOD) to the regional office (RO) of jurisdiction on a decision made prior to the effective date of the Veterans Appeals Improvement and Modernization Act of 2017 on February 19, 2019, but have not yet been certified and/or activated to the Board of Veterans Appeals (BVA) for an official appeal, must be granted the opportunity to opt-in to the new appeals system. This option is available to SM/V who receive a Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC) issued on or after February 19, 2019.

It is important to note that these are the only cases in which a SOC or SSOC will be required after the implementation of the new appeals system. SOC or SSOC are not issued for decisions made on or after February 19, 2019.

**Step 1 – Develop Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC)**

VR&E staff must complete a SOC or SSOC, as necessary. A SOC is a statement provided to the SM/V and his/her designated representative that explains the specific reason(s) and the circumstances that led to the decision for the adverse action or denial of the SM/V’s claim for benefits. It is a summary of the evidence and applicable laws and regulations used in making the decision. Generally, the case manager responsible for making the decision will prepare the SOC or SSOC. The SOC must be completed within 30 days from the time the claim development is completed, meaning when all the data or information necessary to make a required adjudication or determination is received by the Department of Veterans Affairs (VA). The format of a SOC is as follows:

1. Explain the issue with which the SM/V has expressed disagreement.
2. Summarize the evidence used in making the decision. All relevant actions must be stated in chronological order.
3. Cite all pertinent laws and regulations and discuss how such laws and regulations support the decision.
4. State the decision.
5. Summarize the reasons for the decision and the laws and regulations that support the decision; explain in detail the evidence used and how it supported the decision; address all of the SM/V’s contentions; and provide clarification to ensure that the basis for the decision is fully explained.
6. Include Appendix DE, “SOC/SSOC Opt-In Fact Sheet”; and VA Form 20-0998, “Your Rights to Seek Further Review of Our Decision”.
7. If the SM/V elects to participate in the new appeals system via the completion of the VA Form 20-0995 or 20-0996, stop action and move to Step 2 on the last page of this appendix. If the SM/V elects for his/her appeal to remain with the Board of Veterans Appeals, no further action is required by VR&E staff.

A SSOC is developed when new evidence is submitted after an SOC is issued or the SOC contains an error or is materially deficient. The format of the SSOC is the same as the SOC; however, the information included differs slightly:

1. Limit the issues to those addressed on the SOC.
2. Do not introduce a new issue into the appellate process.
3. Include information from new evidence only.
4. Limit the information to the changes or additions required to provide the SM/V complete information.
5. Do not include evidence and related laws and regulations previously cited in the SOC.
6. Include Appendix DE, “SOC/SSOC Opt-In Fact Sheet”; and VA Form 20-0998, “Your Rights to Seek Further Review of Our Decision”.
7. If the SM/V elects to participate in the new appeals system via the completion of the VA Form 20-0995 or 20-0996, stop action and move to Step 2 on the last page of this appendix. If the SM/V elects for his/her appeal to remain with the Board of Veterans Appeals, no further action is required by VR&E staff.

The following issues are not disclosed in a SOC or SSOC:

1. Issues considered by responsible medical authority to be injurious to the SM/V’s health.
2. References to a prognosis of “poor’ or “terminal” or conditions of misconduct unless the specific misconduct is relevant to the issue.
3. Discussions of evidence that might provoke feelings of hostility, resentment, or rejection on the part of the SM/V or his/her family.

The case manager must submit a signed copy of the SOC, together with the SM/V’s VR&E record, if applicable, to the Vocational Rehabilitation and Employment Officer (VREO) for review. The case manager must annotate in CWINRS Remarks/Notes the date the SOC and the SM/V’s VR&E record was submitted to the VREO for appropriate tracking. Upon completion of the SOC review, the VREO must sign the file copy. An unsigned copy of the SOC, together with VA Form 10182 and a SOC cover letter, must be sent to the SM/V and his/her designated representative. The signed SOC must be filed in the SM/V’s VR&E record and/or copied to the electronic folder. The VREO must ensure that the CWINRS Remarks/Notes is updated to reflect the date the SOC was mailed to the SM/V and his/her designated representative.

If the SM/V or the designated representative does not respond to the SOC within the 60-day period of receipt of the SOC or one year from the date of claim, whichever is later, no further action is required on the appeal. The VREO must ensure that the SM/V is sent written notice of termination of all further processing of the appeal.

If a response is received after the 60-day period expires, the VREO must ensure that the SM/V is provided due process with a letter explaining that the appeal was not timely filed. VAF 20-0998 must be sent with this letter. A SM/V may appeal a decision regarding untimely filing of his/her appeal.

If the SM/V files a VA Form (VAF) 10182, Decision Review Request: Board Appeal (Notice of Disagreement), then it is considered a substantive appeal. The VREO must ensure that Caseflow is updated with receipt of the substantive appeal. Additionally, the entire record must be reviewed to determine if further development is required. If further development is determined to not be required, the VREO must ensure that one of the following actions is taken:

* Award the benefit sought.
* Prepare the case for review by the BVA.
* Determine if the appeal is deficient in specification of errors of fact or law, meaning that VA misinterpreted a law, regulation, policy, or fact when making the decision.

If the appeal is deficient, the SM/V and the designated representative must be informed in writing about the deficiencies noted. The SM/V is allowed 30 days to amend his/her appeal and correct the deficiencies. If the SM/V does not respond to amend his/her appeal, the VREO must ensure that one of the following steps is taken:

* Prepare the case for BVA review.
* Prepare an SSOC if the SOC contains an error or is materially deficient.
* Gather additional evidence for supplemental development action, if indicated.

The SM/V is provided 30 days from the date of the SSOC notification letter to respond if he/she has not completed the appeal process by submitting a completed VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement). He/she may be provided either 30 days from the date the SSOC is mailed, or the remainder of the one-year period from the date of decision on appeal, whichever is later, to complete a substantive appeal.

If the SM/V has completed the appeal process, he/she is provided 30 days from the date of the SSOC notification letter to respond before VR&E certifies the appeal to BVA.

**Step 2 – Opt-In to New Appeals Process**

If the SM/V elects to transition to the new appeals system, follow the guidance in M28R.III.C.3.05.a and b; remove the case from VACOLS; and update CaseFlow.