

## Notice of Disagreement

When the claimant receives an adverse RO decision denying a claim in whole or part, the initial step in the appeal process is to file a Notice of Disagreement (NOD). For any appeal, filing an NOD is mandatory and cannot be overlooked.

### The NOD must:

1. Be in writing
  2. Express dissatisfaction or disagreement with the determination
  3. Desire to contest the result
  4. Be in terms which can be reasonable construed as expressing disagreement with the determination and a desire for appellate review
  5. Be filed at the VA office from which the claimant received notice of the determination being appealed (or the VA office that assumed jurisdiction over the records if records transferred to another VARO)
  6. Be filed within **1 year** from the date of the mailing of the VA notice to the claimant of the adverse decision
- There must be a NOD for each issue of a claim.
  - It is common to file the NOD on **VA Form 21-4138, *Statement in Support of Claim***, as no special form exists on which to file a NOD.

### NOD Language:

Broad, nonrestrictive language should be used in every NOD and Substantive Appeal to protect against being too specific so as to forfeit the claimants right to force the VA to consider all of the issues it should consider, including inferred issues.

#### *Example:*

- This is a notice of disagreement (NOD) to the VA letter(s) dated \_\_\_\_\_. I disagree with all the adjudicative determinations mentioned in the above referenced VA letter(s) and any enclosures except for those, if any, that I specifically state here that I do not want to appeal. Therefore, my notice of disagreement specifically covers all the determinations made by the regional office unless specifically excluded. I also disagree with the RO's failure to adjudicate issues and claims it was required to adjudicate. I am specifically referring to issues that I may not have discussed but which were reasonably raised by the evidence in my VA claims file or in the VA's possession that should have been inferred by the regional office. This appeal also includes adjudicative determinations that were mischaracterized by the regional office. I also request in person de novo review by a Decision Review Officer. If this appeal is not resolved favorably, please send me a Statement of the Case so that I may appeal this decision to the Board of Veterans' Appeals.

### **Why should you request Decision Review Officer Review in the NOD?**

- DRO review may be requested in NOD or within 60 days of notice from the RO that DRO review is available.
- DRO review is by a senior-level RO employee and it is new and complete review without giving any weight to the fact that other RO personnel previously denied the claim.
- DRO may conduct additional development of evidence considered necessary to resolve the issues addressed in the NOD.
- DRO has the authority to change a regional office decision on the basis of difference of opinion. Many initial decisions by rating boards to deny benefits are overturned by DRO review.
- DRO cannot overturn a favorable part of the decision that the previous decision-maker made
- DRO review does not eliminate your right to file a traditional substantive appeal to the Board of Veterans Appeal. If the DRO review decision is unfavorable the VA will proceed with the traditional appellate process by issuing the Statement of the Case. Once the claimant receives the SOC he or she must the perfect the appeal to the BVA by filing a VA Form 9 or Substantive Appeal within the required filing period.