

# 10 Steps to Every VA Claim.



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# 10 Steps to Every VA Claim

## Why should you Care What I Have to say?



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My first job after school was military service. I reached the rank of Captain in the U.S. Army (Field Artillery) on Active Duty from 1993-1997, and served in the Reserves from 1997-2004.

I graduated Airborne School, attended Ranger school, and prior to leaving active duty, was invited to attend Special Forces Assessment and Selection (SFAS).

I have handled cases at VA Regional Offices all around the US, before the BVA, and the Court of Appeals for Veterans Claims. My Vision is to Change the Way Veterans Experience the VA Claims Process. I will do that by providing More Information, and More Power, in More Ways, to More Veterans. For years, I have spoken around the country on Veterans' Law topics:

- Best Practices for Attorneys representing Veterans
  - Put Your VA Sleep Apnea Claim to Rest
  - Take Back the Power in YOUR VA claim
    - Using FOIA in your VA Cases
    - The Journey to Service Connection
    - Veterans Law Day (SMU Law School)
  - Texas Veterans Legal Issues (Texas Ass'n of County Judges)
- Overview of Veterans Benefits (various law firms and Bar Assn's)
  - Ethical Issues in a Veterans Law Practice
- How to Build a Veterans Law Practice (NOVA Webinar series)

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# 10 Steps to Every VA Claim

## Step #1: Learn how to REALLY File a VA Claim.

I've been representing Veterans before the VA since 2007 - in those 7 years, I've helped hundreds, if not thousands, of Veterans to better navigate the VA Claims Process.

Now, my work has mostly been in the appeals process: it's very rare that it is a good idea to hire an attorney to help you file a VA Claim (although there is no longer a law that prevents this).

But one thing I've learned is that MANY Veterans can get out of the VA Hamster Wheel faster - and with better results - if they learn how to really file a VA Claim.

Let's face it - many of you have tough claims, with tough issues.

And many of you have claims that go back years and years.

There are certain types of cases that will just be denied, no matter how good a job you do filing the claim.

So, if the VA is going to deny your claim, the next best thing you can do is to do a good enough job filing it that when it is appealed - by you, or a VSO, or an attorney advocate - you have set up your case for a stronger - and hopefully easier and quicker - appeal.

Filing a VA Claim the right way starts with understanding the VA Claims Process.

If you lose your claim, you can - and probably should - appeal to the BVA.

If you lose your appeal to the BVA - you can and probably should - appeal to the Court of Appeals for Veterans Claims.

What can be done at each stage of the appeals and claims process shrinks as you go up the ladder.

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So, to have a good fallback position in your CAVC appeal, you need to have a well-prepared and well-thought out BVA appeal.

To get a good fallback position in your BVA appeal, you need to have a well-prepared and well thought out VA Claim.

I can't - in this short book - teach you How to File a VA Claim. But I have set up an entire Training Package that will allow you to learn - in intricate detail - how to REALLY file your claim.

You can start learning [How to File a VA Claim by clicking this link.](#)

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## Step #2: Develop Your VA Claims Evidence.

Most Veterans think that they can submit their military personnel file, some military medical records, and their post-service medical records to the VA and they will take care of the rest.

This is - simply put - the biggest reason most Veterans are caught in a VA Claims Hamster Wheel.

There is a lot that goes into “developing” the evidence for your VA Claim - a lot more than you can possibly learn in this short guidebook.

However, there are a couple principles you can learn NOW. Developing evidence for a VA Disability Claim comes down to 3 things:

#1: Finding the evidence

#2: Deciding whether to put into your C-File

#3: Knowing HOW to get evidence into the "record" in your claim.

This isn't just about putting MORE evidence into the file - it is about putting BETTER evidence into the file.

Here is something that not many Veterans know - there are 2 general types of evidence: Lay evidence, and medical evidence.

Lay evidence is, at its core, observations and facts that are documented by people without specialized professional knowledge, for example:

Your buddy's statement that you both were assigned to guard duty 50 yards from a burn pit in Iraq is lay evidence of an in-service event.

Your spouse's statement that you don't sleep more than 30 minutes at a time throughout the night and keep a loaded pistol under your

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pillow is lay evidence of symptomatology of your mental health conditions (or possibly sleep apnea)

Your statement that a doctor in Vietnam diagnosed you with malaria in 1971 is lay evidence of a contemporary diagnosis.

Medical evidence is the evidence provided by medical professionals: medical treatment notes, diagnoses, medical evaluations and opinions, etc.

C&P Exams are medical expert evidence

Private/Independent Medical Exams are medical expert evidence

Service Medical Records, and post-service medical records are medical evidence.

I tell Veterans all the time that Lay Evidence is the "Magic Bullet" in a VA Disability Claim.

Medical evidence is just the rifle which delivers that bullet to its target.

Without a rifle, the bullet sits in a magazine, powerless. Without a bullet, the rifle sits in a cabinet and can never be called into action.

So it is with medical and lay evidence. Without lay evidence, medical evidence is devoid of context. Without medical evidence, lay evidence has no real power.

I have reviewed hundreds, if not thousands, of Veterans C-Files. In doing so over the years, I have seen 2 categories of errors that Veterans (and a lot of their VSOs) commit.

## Category 1: The Veteran or VSO relies too heavily on medical evidence.

I see this a lot in Sleep Apnea claims - typically, you will see the Veteran or his VSO provide an abundance of medical evidence of diagnosis, sleep studies, treatment plans, prescriptions for use of

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CPAP, etc. This category of Veteran or VSO often does not include lay evidence that shows how the condition is impacting his daily life activities.

Category 2: This Veteran or VSO relies too heavily on lay evidence.

Typically, the Veteran or VSO either omits medical evidence or puts the burden on the VA to generate the medical evidence.

The VA will fill the void and produce or create the medical evidence (through selective inclusion of health records and poor quality C&P Exams), resulting in an outcome that the Veteran is not happy with.

There is a 3rd Way.

Medical Evidence and Lay Evidence work together.

They are like peanut butter and chocolate. Summer and Margaritas. Bonnie and Clyde. Together, they are far more powerful than they are separately.

Consider this:

38 CFR 4.10 (2013) tells us that medical examiners are responsible for providing a “full description of the effects of disability upon the person's ordinary activity”

Where do medical examiners get this information? Veterans. In the form of lay evidence.

38 CFR 4.2 (2013) tells us that the examiner has to reconcile the various reports into a consistent picture “ ..so that the current rating may accurately reflect the elements of disability present.”

If the examiner has only the Veteran's statements on a VA Form 21-4138, what is there for the doctor to reconcile?

Nothing - other than the examiners own background and experience.

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This is why so many Veterans are frustrated by C&P examiners that don't seem to believe them, or who don't understand the full scope of the problems they face.

The C&P Examiner has never been given the FULL picture of the Veteran's disability and does not understand the limitations on the Veteran's Daily Life Activities.

What if there was a wealth of lay evidence in a VA Disability Claim showing the WHOLE picture of the Veteran's disability?

Most Veterans don't paint the "whole picture". The result is that they are dissatisfied with the VA Disability Claims Process.

By contrast, when my law firm paints this picture, we find that VA Disability claims and appeals get granted more efficiently and more thoroughly.

So, what if all of the lay evidence in a VA Disability Claim - from a wide variety of people, not just the Veteran?

What if there was a wealth of evidence talking about the Veteran experiences in and after military service, such as:

What the Veteran's spouse sees and observes?

What the Veteran's co-workers see him/her doing or not doing at work?

What friends observed about how he/she has changed since returning from military service?

What extended family observe, if only a couple times a year?

What if the medical examiner had access to all that information?

What if the Veteran's Treating Physician understood more about how the Veteran's condition affects daily living activities?

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Here's what happens: Treatment changes and improves. Opinions from C&P Examiners improve. It becomes harder and harder for examiners to paint a picture that is unfavorable to the Veteran.

BVA Decisions increase in quality, because they have MORE evidence on which to "hang their hat".

You can win your VA Claim with just lay - or just medical - evidence.

But if you have the opportunity to use both, you might just find that you have a different experience in the VA Claims Process.

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## Step #3: Diagnose the Reason You Were Denied.

There is no guarantee that you will prevail in your VA claim - even Veterans that filed “top-notch” VA Claims, and do all the right things in using lay and medical evidence to properly develop their claims - will be denied.

The key here is to know WHY you were denied....so that you can appeal that denial and not get caught up in the VA Appeals Backlog.

The first step is to realize that you have MORE POWER in your VA Disability Claim than you think.

Once you accept this, the very next thing you should do is get a copy of your VA C-File.

The VA CFile has everything that the VA, the docs, the BVA and the Veterans Court are using to deny your claim.

For that reason, your VA C File is the most important document in your VA Claim.

Here is a quote from a Veteran in a Facebook Group that I'm a member of:

*“The best advise that I can ever get a Veteran, or his family.....is contact the Veterans Affairs office by certified mail, and request a full copy of your "C-file", and yes you can get them. If they don't sent them then you can file in Federal Court....”*

I have been saying this for years.

Here are 5 reasons that the VA C-File is - in my opinion - the single most important document in your VA claim or appeal.

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## 1. The C-File is the only place that you might find your C&P results.

Remember that Compensation and Pension Exam you took at the VA Medical Center? The results - and the form requesting it - are in your C-File.

In fact, if the VA is denying your claim because of a lack of "nexus" between your condition and military service, there is a really good chance that there is an adverse C&P Exam in your C-File.

I have only seen the C&P Exam reports in actual medical treatment records (where they might do some good in treating a Veteran) about 1 out of 1,000 requests. What does that mean? The C-File is probably the only place you'll find your C&P Exam Results.

## 2. The VA decision is based entirely on what is in - or not in - this file.

Every level of the claim process looks at the VA C-File. Every level of the claim process reviews it. The DRO will carry it into your DRO Hearing or Conference.

The BVA judge will study it before your hearing, and while writing a decision in your claim.

Medical examiners have to certify that they reviewed it or their decision lacks legal credibility.

That's how important it is - everyone is looking at it. You should be, too.

## 3. Without the C-File, the VBA doesn't know anything about you.

Seriously - if the VBA (the benefits side is the VBA - the health side is the VHA) side of the house can't find your VA C-File, then they draw 1 of 2 conclusions:

Conclusion 1: You are not a Veteran

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Conclusion 2: You never filed a claim.

I've also seen the VA deny claims because they cannot find the C-File, or parts of it.

They conclude that the absence of evidence is evidence against the claim: one of the most common errors that the VA and the BVA makes.

4. Everything the VBA thinks they know about you is in it. This is very closely related to #3, above.

If the BVA or VBA is issuing a decision that is adverse to you, it is because of what is in - or not in - the VA C-File.

It's that simple.

5. Code sheets.

Ever heard of a Code Sheet? I bet you haven't.

Every time the VA issues a Ratings Decision, they should attach a Code Sheet. This Code Sheet tells me - the Veterans advocate - the claims that have and have not been service-connected, the Effective Dates, the Impairment Ratings, the method of service connection, the Diagnostic Codes used, and so much more.

The VA used to attach Code Sheets to the last page of the Ratings Decision, but in their efforts to streamline the claims process, they've decided that the Veteran doesn't "need to know" this information.

As they say in France: "au contraire mon frère" (To the contrary, my friend)

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Its one of the first documents I look for in a VA C-File because it tells me SO much about the case.

Bottom line: Get a copy of your C-File - and use it to diagnose WHY the VA denied your claim for benefits.

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## Step #4: When you figure out why you were denied, file a Timely Appeal.

This seems to be a 'no-brainer', but it's not. Many Veterans are steered into a dangerous situation by listening to bad guidance from other Veterans - and even Veterans Service Organizations (VSOs).

Veterans are often told not to appeal - instead, they are told to file a Request for Reconsideration to the VA Regional Office.

Here's the problem - there is no such thing as a Request for VA Reconsideration.

It doesn't exist.

Not in any regulation.

Not in any policy manual.

Not in any law or statute.

Near as I can tell, the "Request for VA Reconsideration" is something that the VA and VSOs have concocted to ensure that Veterans miss appeal deadlines.

VSOs often advise Veterans to file a "Request for VA Reconsideration" from an unfavorable Ratings Decision.

This is BAD advice. Follow it at your own peril

Here's an example how VSOs screw Veterans with non-existent requests for "VA Reconsideration".

A Veteran, who was the victim of of Military Sexual Trauma (MST) had a claim for benefits denied in an unfavorable Ratings Decision.

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AMVETS - a Veterans Service Organization that represents a great number of Veterans - advised the veteran to request VA reconsideration "under the CRF 3.102 Reasonable Doubt."

(I don't have any clue what that means - its gibberish, "jail-house lawyer" gobbledy-gook. The kind of thing someone says when they want to SOUND informed, without actually BEING informed.)

The veteran said that the AMVETS representative advised an appeal would "...take too long..." and VA reconsideration was "...the preferable response to the negative rating decision."

So the Veteran went along with what the AMVETS representative advised. Ultimately, no appeal was filed, and the rating decision became final.

Not unsurprisingly, the VA did not "reconsider" their decision. They aren't under any legal obligation to do so, so why would they?

The veteran is now at a significant procedural disadvantage and will have to reopen the claim. Adding new and material evidence, in a Military Sexual Trauma claim, will be very difficult.

Oh - and the Veteran lost several years of past-due benefits because the effective date for a reopened claim is the date of the reopened claim - not the underlying original claim.

All that work for nothing - years of work.

Tens of thousands of past-due benefits, flushed down the toilet.

Because some AMVETS VSO Representative did what made him look good to the VA, without thinking of what was important for the Veteran.

You may really like your VSO Representative - and that's totally cool with me.

I apply the Ronald Reagan philosophy with VSO reps - after 2 major national VSOs told my grandmother (wrongly) that she was not entitled to any VA

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Survivor benefits after her husband died as a result of injuries sustained at the Battle of the Bulge in World War II.

What's the Ronald Reagan Philosophy: Trust, but Verify.

Don't get me wrong - there are some GREAT VSOs out there.

And there are a couple that my firm maintains tight relationships with. But until your VSO can be proven to be one of the great ones, watch them like a hawk.

If you get a VA Ratings Decision that you disagree with, file an appeal (See next section for how an appeal is filed).

What is the PROPER Way to Appeal a VA Ratings Decision?

Within one (1) year of the date of the Notice of Action Letter delivering a VA Ratings Decision, file a Notice of Disagreement.

A Notice of Disagreement consists of 2 things:

- 1) An indication that you disagree with the decision (indicating which parts you disagree with)
- 2) Expression of an Intent to Appeal.

The VA wants all the Notices of Disagreement filed on this new form: VA Form 21-0958. Get on the Veterans Law Blog and read about this form - there are some landlines in it that will screw up your appeal if you don't know about them.

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## Step #5: Request a DRO Conference.

So you got your VA Ratings Decision and filed your appeal - by filing a Notice of Disagreement on VA Form 21-0958.

But did you also request a DRO Conference?

The DRO Conference - held by a VA Decision Review Officer - is usually done AFTER the Veteran has filed their appeal (Notice of Disagreement).

I am a big fan of the DRO process - with one exception, we have had a really favorable experience working with DROs to resolve claims and appeals.

A DRO Review is a "de novo" (Latin for "from the beginning") review of your case by a Senior VA Rater - called a Decision Review Officer.

Technically, there are DRO Conferences (informal phone calls with the DRO) and DRO Hearings (formal recorded hearings at the VA Regional Office).

There are 3 ways to Win in a DRO Conference or Hearing.

#1: You can Get a Grant of the Benefits you seek.

This is the obvious favorable outcome. The VA DRO Review concludes that the initial rater erred and that you are entitled to a full grant of all the VA Benefits you seek.

Just beware - Veterans and the VA have very different ideas about what is a "full grant". Veterans think a "full grant" is everything that they asked for. The VA thinks a "Full Grant" is whatever they decided, regardless what the Veteran claimed.

I'll let you guess who is right.

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The VA use of the "Full Grant of Benefits" language in just about every DRO Ratings Decision that includes a grant of some benefits is misleading, at best.

## #2: You can get a QUICKER issuance of the Statement of the Case (SOC)

The second favorable outcome is a continued denial of the benefits sought - through the issuance of the Statement of Case (SOC).

Why is this favorable, you ask? After all, you were denied.

Here's why.

The only time you know for absolute certain that your C File is on a Rater's desk is when you receive a decision letter from them.

So, if you get a Statement of Case (SOC) from the VA, you know that they have your C-File on their desk.

If you can turn around and submit the VA Form 9 directly to the DRO, you stand a pretty good chance of shaving 1-2 years off the time you have to wait for a BVA Hearing.

The average wait time for BVA hearings after submission of the VA Form 9 is 2 years and 3 months... you can DRAMATICALLY cut that time down by having the DRO commit to issuing a Statement of Case within 30 days of the DRO hearing, and immediately filing your Substantive Appeal on VA Form 9.

In fact, this will shave YEARS off your appeal.

## #3: Use the DRO Conference or Hearing to get a Compensation and Pension Exam (C&P) scheduled.

The third favorable outcome of a VA DRO Review is to get the DRO to agree to schedule a Compensation and Pension exam.

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Why is this a favorable outcome?

Because you want the VA to go "on the record" first with a Medical Opinion letter....if it's adverse, you can get a private medical opinion to counter the VA C&P exam opinion.

Then they are "trapped" - if they get a second opinion to counter your expert, they are committing an error known as "Development to Deny".

So, once you have filed your appeal (i.e., properly and timely filed a Notice of Disagreement on VA Form 21-0958), request a DRO Conference or Hearing - there are 3 ways to win at a DRO hearing, and you can dramatically reduce your appeals wait time by scheduling a DRO Conference/Hearing.

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## Step #6: File your BVA Appeal and Hearing Request

So there's this awful and archaic process that Veterans have to go through to appeal a denial of their VA Claim to the BVA.

One might even call it the "Road to Nowhere".

I look at it a little differently.

To Change the Way that Veterans Experience the VA Claims Process, Veterans must change our approach to the appeals process.

What do I mean?

On the Veterans Law Blog, and in my private emails and Guidebooks, I teach Veterans the 8 Steps to Improving your VA Claim.

Step #6 of that process is "Choosing your Battlefield".

One of the battlefields you can fight on - and there are good reasons to do this - is at a BVA Hearing. But to get to the BVA, you have to move your army - your VA Appeal - across a desert.

Here is the desert you will have to cross:

- 1) File a Notice of Disagreement.
- 2) Wait up to 2 years or more.
- 3) VA Issues a Statement of Case.
- 4) Veteran has 60 days to file a VA Form 9 (Appeal)
- 5) Wait 2 more years - or more.
- 6) VA certifies appeal to the BVA.

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7) Wait 2 more years.

8) BVA schedules hearing.

9) Wait 2-6 months for hearing.

This process makes no sense - it's archaic and outdated and serves no real purpose.

In an Open Letter to newly appointed VA Secretary Robert McDonald, I asked him to consider scrapping this convoluted process and adopting a "One Appeal" process like you see in other administrative review processes.

But you have to follow it, for now at least.

Alright, so you've filed your Notice of Disagreement - how do you get a VA Statement of Case?

When the VA Regional Office denies a Veteran's claim for service-connected disability benefits, the Veteran has the option of appealing that decision to the Board of Veterans' Appeals (BVA).

There is a process that must be followed in order to "perfect the appeal" to the Board of Veterans' Appeals (BVA).

As the VA appeals backlog - the backlog that the VA created by "fixing" the claims backlog - continues to grow, it is becoming crucial that Veterans understand the process by which they appeal their claim to the BVA.

The first step in perfecting an appeal to the BVA is for the Veteran to submit a Notice of Disagreement (NOD) with the VA Regional Office's Ratings Decision.

When the VA Regional Office receives the NOD, it then prepares and delivers a "Statement of Case" (SOC) to the Veteran.

The Statement of Case (SOC) is statutorily required.

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Its purpose is to explain to the Veteran the reason(s) that the Veteran's claim for benefits was denied.

The SOC must provide notice to the Veteran of the relevant and/or controlling statutes and/or regulations on which the VA Regional Office relied to support its decision to deny benefits.

So the first 15-35 pages of a Statement of Case are filled with boilerplate legalese - the VA makes no effort to have this make sense to the Veteran, and it certainly never explains WHY it is including various "cut and paste" copies of statutes and regulations.

The last few pages of a Statement of Case are basically a "rewrite" of the VA's explanation of its denial of your claim in the Ratings Decision.

But read it carefully - a good bit of the time, in my experience, the VA tries to sneak some new basis for denial in the Statement of Case.

When does a Veteran get a Statement of Case?

Most commonly, the Veteran will get a Statement of Case after filing a Notice of Disagreement (NOD). It can typically take as long as 2 years for the VA Regional Office to issue a Statement of Case.

Why so long? Nobody really knows.

The VA is fond of telling folks that it is "developing" the record in the points raised in the NOD - but my experience is that this is not true.

In fact, in over 75% of the C-Files that I have reviewed over the years, there is little or no evidence that any action is taken by the VA between their receipt of the Veterans NOD and the issuance of the SOC.

Another time that a Veteran might get a SOC is after a DRO Review of their appeal.

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The DRO typically issues a Ratings Decision to grant claims and a SOC to continue the denial of benefits to the Veteran.

As discussed in an earlier step, you can shave 2 years or more off your appeal wait time simply by getting the DRO to agree to issue a SOC in 30 days if they are going to continue to deny the claim.

How should Veteran's Use the Statement of Case?

The Statement of Case is often a multi-page document, with paragraph after paragraph of seeming incomprehensible legalese. This legalese represents direct quotes of the statute and regulations that the VA Regional Office relied on in denying the Veteran's claim.

Read it carefully - not only can the Veteran use the SOC to determine when the VA Regional Office is relying on "old" law, but also the Veteran can have some insight into the procedural defenses that the VA Regional Office is using to deny the claim.

After receipt of the SOC, the Veteran will take the final step in perfecting the appeal to the BVA by preparing and filing the Substantive Appeal on VA Form 9.

VA Form 9 should be included in the SOC that the Veteran receives from the VA Regional Office.

Even though the VA can take 2 years - or more - to issue a SOC, the Veteran has only 60 days to prepare a VA 9 - the Veteran's Substantive Appeal.

The VA will then sit on the file for an average of 2 years and 3 months, and then certify the appeal to the Board of Veterans Appeals.

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## Step #7: Prepare for your BVA Hearing.

I told you in Step #6 that once you properly file all documents needed to get a BVA hearing (Veteran files NOD, VA sends SOC to Veteran, Veteran files VA Form 9), it can still take up to 2 years to get a hearing.

In fact, as of the writing of this material in 2014, the BVA was telling advocates that it was just starting to hold hearings from appeals certified to the BVA in 2012.

I will tell you that the reality is much worse....many of the Veterans that have become my clients have been waiting for a BVA hearing since 2009. We recently started working with a Veteran who has been waiting for a BVA hearing since 2004.

But just because you have to wait on the VA doesn't mean you should be sitting on your ass.

I'm actually writing a book to show Veterans how I prepare for a BVA hearing... [sign up here for an email alert when it is published](#)...but until then, there are 4 things you can do NOW to prepare for a BVA hearing

*#1: Before the BVA Hearing, get a copy of your C-File.*

The BVA judge will have your C-File in front of him/her at your BVA hearing. They will comb through it looking for the reasons to grant or deny your claim.

Why on earth wouldn't you get a copy of your C-File now - and use my C-File Summary Worksheet to organize it - and show the BVA Judge the RIGHT way to look at the evidence in your case?

If I were a BVA Judge, and had a 1,000+ page C-File in front of me, and the Veteran walked me through the important evidence in his/her C-File in an organized and professional manner, I would be more inclined to believe that Veteran than the one that walked in

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with stacks of random paper, complaining about all the woes and ills of the VA.

(Don't get me wrong - the VBA is "sick" - but your BVA hearing is not the time or place to talk about that.)

## #2: Prepare your "4 Pillars".

There are 4 Pillars in any VA Claim; at your BVA hearing, make sure you can point to clear and specific evidence in support of each of the 4 Pillars for each condition for which you seek service-connection.

Where can you learn what the 4 Pillars are? Go to the Veterans Law Blog - where I have written many posts explaining what I call the 4 Pillars. Here's a [link to the main post on the "4 Pillars" at the Veterans Law Blog.](#)

Before every BVA hearing, I make a chart.

Each disease/condition gets its own column.

Each row is one of the 4 Pillars. In the corresponding block, I write the evidence I have for each element.

*TIP - Comparing the evidence you put on this chart to the info you put on the C-File Summary Worksheet can sometimes tell you exactly what the "gap" is between your perspective of the case, and the VA's perspective of the case.*

Using worksheets like this helps me keep focused on what I have to prove, what I need to prove, and what has already been resolved.

If you are nervous about your hearing, being prepared is the key to overcoming that.

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Don't overlook Pillar 3 (Impairment rating) and Pillar 4 (Effective dates) - but, if you haven't been granted service connection yet, you can relax about these 2 Pillars.

The BVA rarely grants initial percentages or makes the first effective date assignment, so you will likely have time to appeal those elements later.

When Pillar 3 and 4 are not the actual appealed issue in the case, I briefly touch on them in the BVA Hearing (I usually talk about them when I request a specific remedy: "Veteran should be granted an X% impairment rating, effective XYZ date").

## #3: Research BVA Decisions.

On the Veterans law blog, I post a link to the BVA Searchable Decision Database. Search for cases like yours.

The search function on this page is not the best in the world (Seems like the BVA could get Google to build them a better search platform for decisions).

Keep at it - I promise you that (except for that "1 in a million" situation) the legal issues most Veterans bring to the BVA are not new issues.

Point is, if you can't find a decision, keep searching - they are out there.

What's the value in reading decisions from the BVA?

If a Veteran or a surviving spouse can get a feel for what the BVA looks for in similar disability compensation appeals, or why they frequently reject claims with particular issues, the Veteran can better prepare their case for a BVA hearing.

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My personal opinion is that a Veteran has to read 10-15 decisions on a particular issue to start to get a feel for what will and won't persuade the BVA in their appeal.

*TIP - The BVA uses document generators to write most opinions - in fact, I just read a CAVC Decision rebuking a BVA Judge who used outdated "boilerplate" in his decision. If you can "argue" your case using the "boilerplate" the BVA used to grant a benefit to another Veteran, you will probably get much better results at the BVA. Where do you find the boilerplate? Use the database I mentioned above.*

Or, find several Veterans to split a monthly subscription to Lexis - at current (2014) prices, 10 Veterans can pay \$25 a month and get access to all BVA, CAVC, and Fed Circuit decisions, as well as the VA M21-1MR and other FAST letters and OGC Precedential opinions.

## #4: Practice your presentation to the BVA Judge.

A few weeks before the BVA hearing, set aside 20 minutes a day to practice what you want to tell the BVA's Hearing Officer.

Stand in front of a mirror, and deliver your presentation while looking yourself in the eye.

This exercise - once a day for 2 weeks before a hearing - will change the way you present your case at hearing, for the better. I do it before every presentation, every hearing, every oral argument.

Be as clear - and specific as possible. Remember - these BVA Hearing Officers write hundreds/thousands of decisions a year, and so it's hard to find all the needles in all the haystacks.

The unwritten rule of a judge - in any forum - is that the easier the analysis, the easier the decision.

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In other words, make your analysis really clear, and really easy; by doing so, you invariably make the VA Regional Office's analysis seem more complex and unsupportable.

The more clear and clean a Veteran's presentation to the BVA, the better the chances of a good outcome in the BVA Decision.

The success rate for Veterans represented by an attorney at the BVA and CAVC is significantly higher than those that are pro-se (handling the case themselves). If you absolutely must do the hearing on your own, the above 3 steps should help get you more confident about presenting your claim to a BVA Hearing Officer.

But if you want to really improve your chances of success - get a VA Accredited Attorney to help in your appeal. Don't just talk to one. Talk to 3 or more. I've written a guide to help you find the attorney that is best for your claim.

Oh -- and after your BVA Hearing, don't forget to get a copy of your hearing transcript. Most Vets don't do this, and miss a valuable opportunity to identify the Judge's error at the hearing. [Click here to go to the Veterans Law Blog and I'll show you exactly how to get YOUR copy.](#)

# 10 Steps to Every VA Claim

## Step #8: Present your Best Case at the BVA.

BVA Hearings are supposed to be non-adversarial. And for the most part, they are.

Recently, however, I have heard stories and seen BVA Hearing Transcripts that suggest that some of the Judges may be cracking under the pressure.

Here's One BVA Judge that Should Probably Not Be a Judge.

Background facts on the case - Vietnam Veteran with COPD and Sleep Apnea is arguing that one of the factors that led to these conditions was his exposure to certain chemicals in service (not Agent Orange or herbicides).

He had some pretty convincing medical literature to show the BVA Judge, and here's what the Judge said:

*“I don't care [what the medical literature says]” and “I don't want to hear about theories. I don't want to hear about what other people have said.”*

Elsewhere in the hearing, the Veteran expressed concern that the VA failed the Duty to Assist. Here's what the BVA Judge had to say about that:

*“I don't want to hear about [allegations of the failure of the Duty to Assist]”*

At the end of the hearing, the Judge said this to the Veteran:

*“Well, thank you for that poorly organized presentation.”*

What a rude thing to say!

This particular Veteran spent YEARS preparing for his hearing at the Board.

He prepared binders, tabbed with evidence and statements from his C-File and from his private medical examiners. He practiced and rehearsed his presentation.

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And he got over the nerves all of us get before going before a Judge.

I'll tell you something else, too.

This particular Veteran's case was as well prepared as most attorneys, and one of the Top 5 most organized presentations I've seen in 7 years of looking at thousands of C-Files.

My question to that particular Judge - who I am not naming at this point in time - is this: Why the hell are you in this line of work?

If you are so unhappy with your life, why don't you make the world better for the rest of us and find something you do like doing.

But, he probably wouldn't answer.

In all seriousness, most BVA Judges are pretty nice people.

We all have our little quirks, to be sure, and you may think your Judge is rude when really he's just being direct.

And we are ALL entitled to a bad day now and again.

Attorney or not, Judge or not, everyone should get a little slack.

But every once in a while, you get a "Gem" like the BVA Judge described above. One that doesn't need to be in this line of work. One that is incredibly dissatisfied with his life - or even his career. And they take it out on the rest of us.

When you run into "that guy"...here's a few tips to help.

Follow these steps...think of it like a series of things to do to de-escalate the tension and, if that doesn't work, preserve the adversarial tone of the BVA Hearing Officer for the record.

Don't do all 5 at once.

# 10 Steps to Every VA Claim

Think of them as "Def-Con" levels.

Start with #1. If it doesn't get better, go to #2. Then #3. You either de-escalate the conflict, or preserve the adversarial nature for the record.

## 1) Be a Boy Scout and "Be Prepared".

Do these 2 things at the beginning of your hearing:

#1 - Bring a witness with you - most bullies look for easy victims. Easy victims are usually people that are alone.

#2 - Get the Hearing Officer's Name. His (or her) full name. Confirm the spelling and don't feel bad about asking to confirm it. You are entitled to know the name and correct spelling of the man or woman that is about to make a decision based on your most intimate personal, medical and professional experiences as a soldier/sailor/airman.

And I'll tell you this...don't be afraid to record the hearing on your mobile device.

The Board is recording the hearing to create a transcript, so there is no law you're breaking here. At least none that I'm aware of ... if you know of one, please tell me so I'm not giving other Vets "bad" tips.

## #2: Never let the Bully see you sweat.

Most bullies will back down when they see that they can't get a rise out of you.

So don't let some 2 bit schlep get you off your game.

If you prepared for your hearing, you have a prepared "script": list of witnesses who will testify, list of evidence to get in the record, list of arguments to make.

# 10 Steps to Every VA Claim

Remember that Drill Sergeant that would get in your face and call you every name in the book while you were trying to qualify with your rifle?

How did you deal with that nimrod? Simple: You Stay focused on the task at hand, and push on.

Same thing at the BVA: stay on target, and don't let the BVA judge "get your goat".

## #3: Document the "tone" for the record

Okay, so the witness you brought to the hearing didn't faze Mr. Bully. Ignoring him didn't work. It's time to up the stakes a little.

Remember how I said that the Board was recording the hearing? They are doing it to get a written transcript. But written transcripts don't reflect tones of voice.

So after the 3rd time that the Bully comes at me, I usually say something like this - in the most even tone:

*"I'm going to take a moment and document in the record that the tone of the Hearing Official is markedly adversarial. He is raising his voice, scowling at me and my witnesses, and being rude in cutting me off before I'm done talking [Add any other BEHAVIORS you have seen...just hit the high notes here...you don't need a blow by blow account]."*

*"My tone has remained very even throughout this hearing [be sure that it has], and that is reflected in the audio recording of this hearing which I hereby ask to be preserved in audio format and provided to me with the written transcript so that I may demonstrate the adversarial nature of this hearing to the Court of Appeals for Veterans Claims and, if necessary to the State Bar where the Board Hearing Officer maintains his licensure as*

# 10 Steps to Every VA Claim

*an attorney [most if not all BVA Hearing Officers are licensed attorneys].*

*“Having said that, I will continue with my presentation.”*

Then move RIGHT into your next presentation.

Don't pause - go.

You're not looking for a debate - you are looking to document the problem and move on.

(Notice also how I talk about the bully in the 3rd person? This is an old tactic for defusing the temper of a reasonable person - most reasonable people, when talked about this way in the third person will back off. But be forewarned - narcissists and bullies find this as a “personal snuff” and their tempers will likely blow.)

Most smart people will recognize that they are in a bit of a pinch at this point - any decision they write is going to be subject to extra scrutiny.

Nobody - not even a BVA Hearing Officer - wants to be the one that the Court slams for being Adversarial to Veterans.

## #4: Protest the adversarial nature of the hearing.

If it gets worse after you've taken the first 3 steps, well, you're in for a roller coaster ride. I hope you have a witness in the room with you, because you're going to need one at this point.

Why do I say that?

If you have given a BVA Hearing Officer 3 opportunities to back down - one by having a witness present, one by ignoring his commentary, and one by documenting his commentary in the record - and he still comes after you, then it's a pretty good sign

# 10 Steps to Every VA Claim

that you have a Hostile Hearing Officer that doesn't care about your case.

You have a choice at this point:

Option 1: Continue with Steps 1 through 3 - documenting the adversarial comments calmly and evenly as you did in Step #3, and build the record for an appeal and an ethics complaint to the Department of Justice Office of Professional Responsibility.

Option 2: Stop your presentation. Read a statement like this into the record - don't direct the statement to the Hearing Officer. He is not your audience. The Court of Appeals for Veterans Claims is your audience. Force yourself to talk in a lower and calmer tone than you normally do, state:

*"Board hearings are supposed to be non-adversarial in nature.*

*I am not the enemy. I am a United States Veteran. I have a right to make this claim. I have a right to file this appeal. I have a right to present my facts and argument.*

*And I have a right to be treated with respect.*

*The demeanor of the hearing officer has been very adversarial, has limited my ability to articulate my legal and factual support for my appeal, and I am concerned that the Hearing Official has pre-decided my claim or has a personal animosity towards me for some reason.*

*More than all of that, though, the Board has a Duty to Assist me in identifying the evidence to support my claim; instead, the Board seems to be deliberately thwarting my claim by turning this hearing into an adversarial event."*

Continue your presentation.

# 10 Steps to Every VA Claim

Do the best you can.

Continue to document the problems in the record wherever you can.

Have your witness take notes, and ask them to prepare a detailed statement - using a Sworn Declaration form - immediately after the hearing so that the memories and recollection of what was said and how it was said is not lost to the passage of time.

You don't need to give anyone that statement now - you can submit it before the Board issues its decision, if you really think that you're going to need to go to the Court, or you can hold on to it until afterwards, too.

## #5: Some extra tips for dealing with the BVA Bully.

- Bullies want the conflict to escalate - don't ever give them the pleasure. Don't ever let them see that they "got your goat"...because then they own you.

- ALWAYS take the moral high ground. Document the problem, stay calm, and stick to your Game Plan. Don't take the bullies bait.

- You can't win a pissing contest with a BVA Hearing Officer. Believe me, I have tried. Stick to your Game Plan, document the problems, and save the fight for the Court. Choose your battlefield.

- At a Board Hearing before a bully, pride is a weakness. A huge liability. These bullies are counting on you to lose your temper, say something foul, or possibly give them a "Middle Finger Salute". Save it for a blog, later. :-)

Don't give an ass-clown the pleasure of seeing they got to you.

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Bottom line: put on the best presentation you can at the BVA Hearing....don't ignore the Judge (that would be very, very bad)... but remember to have a game plan and **STICK TO IT** in your presentation of law and evidence to the BVA Judge.

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## Step #9: Prepare for What Happens after the BVA Hearing

There are 5 possible outcomes at a BVA hearing:

- 1) The BVA grants you benefits
- 2) The BVA denies your benefits
- 3) The BVA sends your case back to the Regional Office to get more evidence (aka, the “remand”)
- 4) The BVA says that it doesn’t have “jurisdiction” over your claim and refers it back to the BVA
- 5) Any combination of the above.

A BVA Denial of your claim is one of those points in time to consider hiring an attorney to assist you in your CAVC Appeal.

When the BVA denies your claim, you generally have 3 Options.

### Option #1.

Let the claim "die", and take no action.

The Attig Law Firm rarely recommends this course of action, as recent statistics suggest that the BVA makes an error of fact or law that affects the outcome of the claim in 60-80% of the decisions it issues.

### Option #2.

Request reconsideration from the BVA.

# 10 Steps to Every VA Claim

Again, the Attig Law Firm rarely recommends this course of action, as I have not known the BVA to ever change its mind on reconsideration.

There is a deadline to seek reconsideration from the BVA, and it does not toll your deadline to file in the Court of Appeals for Veterans Claims (CAVC), so there is often little value in seeking reconsideration.

Caveat: Every case is different, and I am only providing general information. I do not intend to provide legal advice to you regarding a Request for Reconsideration by sharing my opinion with you about the process.

It is always best to contact an Accredited VA Benefits Attorney to determine whether it is appropriate to seek reconsideration of an Adverse BVA decision under the specific facts and law of your particular case.

## Option #3:

File an appeal to the Court of Appeals for Veterans Claims (CAVC).

The CAVC has the authority to determine if the BVA made an error of law, or an error of application of fact to law, and if so, can do one or more of the following:

Reverse the BVA denial and grant the benefit sought. This is a very rare outcome from the CAVC.

Identify the BVA's error, and remand the case back to the BVA for correction of the error.

Affirm the BVA denial and dismiss the appeal.

At the CAVC, you will have an opportunity to try to resolve your dispute by engaging in what is called a "Rule 33 Conference" with a

# 10 Steps to Every VA Claim

Staff Attorney at the CAVC and an attorney from the VA Office of General Counsel.

If you cannot agree on resolution at the Rule 33 conference, the Veteran or surviving spouse will have a chance to file a brief with the court, and depending on the facts and law involved, you may have an opportunity to Orally Argue your appeal before a panel of CAVC Judges.

When a Veteran or Veteran's surviving spouse receives a BVA Denial in his/her claim, they have to be prepared to act quickly: the Veteran or Surviving Spouse has only 120 days from the date of the BVA Decision to file an appeal in the Court of Appeals for Veterans Claims.

The CAVC Appeal process is not for the weak of heart. It is a formal Federal Court, with formal rules of procedure, and many rules and deadlines that can trip you up along the way.

I think that there are some really good reasons for having an attorney help you at the Court of Appeals for Veterans Claims.

To help you choose the best attorney for you, please download a FREE copy of my eBook: 8 Things that Veterans Should Know Before Hiring an Attorney in their VA Appeal.

***TIP: Scroll to the last page of this eBook, and you will find over a DOZEN books and Videos that I offer at the Veterans Law Blog Bookstore - on ALL of the topics discussed throughout this book.***

***NOBODY - and I mean NOBODY - gives you the kind of in-depth "how to" information that the Veterans Law Blog has provided for 7 years.***

# 10 Steps to Every VA Claim

## Step #10: Continuously improve your VA Claim or Appeal.

As you've probably seen, the VA Claims and Appeals process is a little bit more than most Veterans think.

But I truly believe that many Veterans - most Veterans - can improve their own VA claims and get better results....without having to pay an attorney, and without having to trust a VSO who may not know the difference between a C-File and C-Clamp.

The key to improving your VA Claim or Appeal? Study. Read. Learn. Discuss.

Here are a few resources where you can continue to stay sharp on changes in the law, changes in the process, other Veterans experiences in their VA Claims, etc.

### Blogs

[The One - and Only - Veterans Law Blog](#)

[Veterans Law Blog Bookstore](#)

[The Famous AskNod Blog: VA Claims Blog by a Veteran, for Veterans.](#)

[Vocational Rehab Blog: DisabledVeterans.org](#)

### Message Boards

[The HadIt Forums](#)

### Facebook Groups:

[VA Is Lying](#)

[Chapter 31 Disabled Vets \(Voc Rehab\)](#)

[MST/PTSD Awareness and Education](#)

[Veterans Advising Veterans](#)

[Agent Orange and Burn Pit Survivors](#)

[NKP Royal Thai Air Base Veterans \(Agent Orange Survivors\)](#)

[OIF Veteran Community](#)

# 10 Steps to Every VA Claim

## IMPORTANT INFORMATION

I've been where you are.

I've battled the VA in my own claim. I've been frustrated by their obtuse rules and regulations, annoyed by their excessive delays and baffled by the things they've written in their decisions.

I learned something along the way. I learned that Information is Power.

Ever year, thousands of Veterans come to the Attig Law Firm looking for help battling the VA. Each Veteran processes information in a different way.

This eBook is meant to show you that there is a clear path in your battle with the VA - by using the 10 Steps in this eBook (and learning EVERYTHING you can about each of them), battling the VA need not be a losing proposition.

Let me take a moment and tell you who this guide is not for.

If you want or expect legal advice, this is not the book for you.

If you are seeking or expecting legal advice, then fill out a consultation request form on the [Attig Law Firm website](#).

This eBook is not legal advice.

In fact, some or all of the tactics employed by the Veteran in this case may not be appropriate, and may not be effective, in your VA Claim or Appeal.

If you need specific guidance on the unique facts and law of your claim, STOP reading here and contact an accredited VA Benefits attorney.

There are good ones out there.

# 10 Steps to Every VA Claim

To help you, visit the Veterans Law Blog and download another free eBook - [“8 Things you Need to Know When Choosing a Lawyer for your VA Disability Benefits Claim.”](#)

There is NO SUBSTITUTE for good legal advice. If you need legal advice, or specific guidance based on the unique facts and law of your case, contact an accredited VA Attorney immediately.

I will tell you this, too, just to be sure you understand: it is really easy to take a superficial reading of the information in this eBook, and try to apply the lessons in your case without really understanding what you are doing.

By doing this, you can do serious damage to your claim.

Don't use this eBook to argue to the VA (or anyone for that matter) that you know the law.

And certainly don't take this eBook to your DRO or BVA hearing and say, “Attig says it, see here.” That's just **not** what this eBook is intended for.

Instead use the eBook to begin to find a deeper understanding of the VA process and to begin your study of the language that is used by the VA, BVA and Courts to describe that process and the legal elements and claims that comprise that process.

I've been at this since 2007, and I'm still learning what these decisions mean and how to use them every day.

If you are concerned about how the law discussed in this eBook will affect your case, or how to apply the law referenced in this eBook to the specific facts of your case - please stop right now and contact an accredited VA Benefits attorney.

There is no substitute for legal advice from an accredited Veterans Benefits attorney.

There is also no guarantee that this eBook will help you win your claim.

# 10 Steps to Every VA Claim

If I could make that guarantee, I'd call a bookie in Vegas and pick the next 20 Superbowl winners, and retire a very wealthy man.

Nobody can predict what the VA is going to do in any claim or appeal.

Nobody can guarantee an outcome in your VA claim or appeal - and if someone is giving you that guarantee, then you should run far, far away.

The VA is unpredictable, and a fickle bureaucracy. What "works" in one case may not "work" in another case - even though the 2 rely on the same facts.

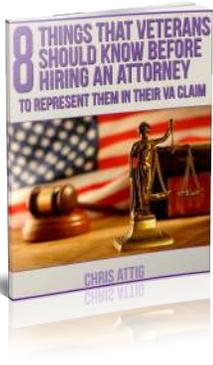
This eBook does try to give you insight into how the VA Claims Process - specifically, how you can find a path to victory in your VA Claims battle.

If you find something in this eBook helpful, tell another Veteran how to get it.

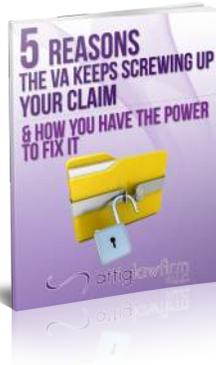
Let's watch out for each other - nobody else has our back.

# 10 Steps to Every VA Claim

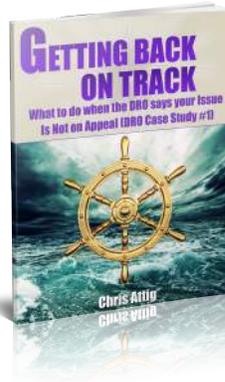
## 12 Guidebooks & Videos from the Veterans Law Blog



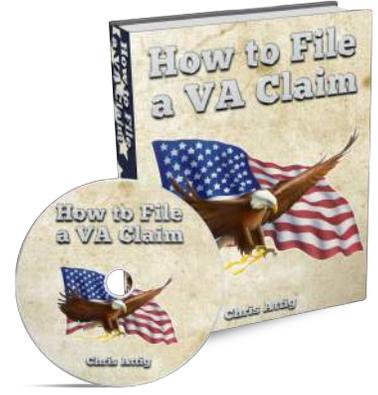
[How to Hire an Attorney](#)



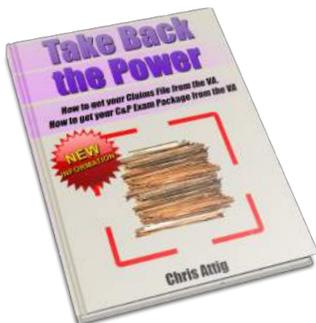
[Why the VA Keeps Screwing Up Your Claim](#)



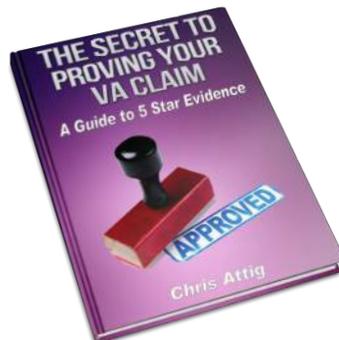
[DRO Case Study #1](#)



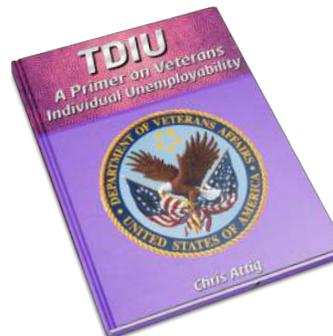
[How to File a VA Claim](#)



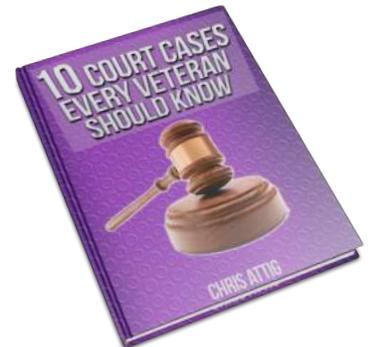
[How to Get Your C-File](#)



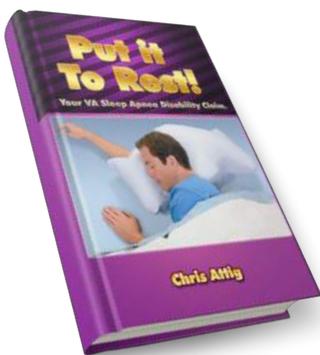
[The Secret to PROVING a VA Claim.](#)



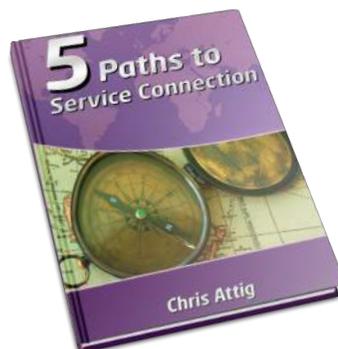
[A Primer on VA TDIU Claims](#)



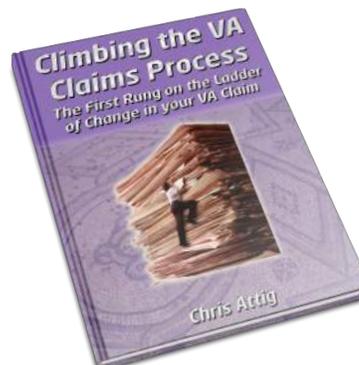
[10 Court Cases Every Vet Should Know](#)



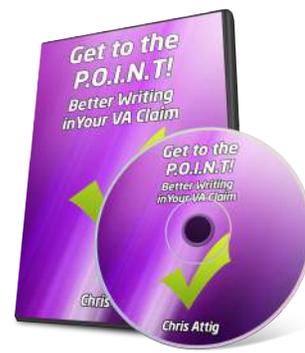
[Put Your VA Sleep Apnea Claim to Rest](#)



[5 Paths to Service Connection](#)



[Learn the VA Claims Process](#)



[Write More Persuasively \(Video\)](#)