

A veteran can be his or her own worst enemy when it comes to dealing with their VA disability claim. Frequent examples include repeatedly sending in the same evidentiary documents, and not taking the time to thoroughly read through the Statement of Case (SOC) that the VA sends to the veteran.

Once you send any medical documents or other evidentiary evidence to the VA, all that needs to be done thereafter when you communicate with the VA is to remind them (VA) that you had previously submitted those documents. Even better, if you can remind them of the date that you originally sent them the documents, so much the better.

That is why it is imperative that veterans dealing with the VA keep copies of everything relating to their case in a well-organized home filing system.

This applies even if you are being assisted by a Veterans Service Officer (VSO).

Repeatedly sending the VA copies of documents that you've already submitted is time wasted and can lead to confusion on the part of the VA claims administrator and further delays in the completion of your case.

Also, failure to thoroughly read and scrutinize the SOC that the VA sends you is risky as well. For example, the first few pages of the SOC will usually include a paragraph informing the veteran how long he or she has to submit a Notice of Disagreement (NOD). A NOD letter is a simple letter that you write back to the VA essentially telling them that you disagree with their decision, and why.

With new claims the VA allows one year from the date of the SOC for you to submit a NOD letter. This is not the case with existing claims wherein you are requesting an increase for an existing disability. In those cases you will usually be afforded only *60 days* in which to submit a NOD letter.

It is vital that the veteran read the SOC from beginning to end, and pay particular attention to the deadline that the VA has established for your response. When that deadline passes and you have not submitted a NOD postmarked no later than midnight of the final deadline date, the VA's decision becomes final.

Also advisable is to use the Post Office's green "Certified Mail" tag whenever sending documents or correspondence to the VA. This will require the VA to sign a receipt when your letter is delivered to them, which the Post Office then mails back to you for your records. This receipt constitutes legal *proof* that you submitted your response before the deadline.

Why are these things so important? Because you can lose out on substantial sums of back pay in cases where the VA has approved your claim, but not at the percentage that you feel is commensurate with the effects that your disabilities have on your lifestyle or earning capacity that you have lost as a result of your disabilities.

When a claim becomes final, you will have only two ways to reopen it. The first is by submitting "new and material evidence" that clearly bolsters your case, and the other is when you or your VSO find what you believe to be "clear and unmistakable error" (CUE) in the VA's decision-making process.

New evidence is just that. It has to be new to your case. Submitting a doctor's note that repeats what has already been said before by that doctor or another is not new and material evidence.

So just what constitutes "new and material evidence"? Let's say you were denied for fibromyalgia and you allow your claim to become final on this issue by failing to submit a NOD. Then, two years later the doctor starts to give you medication for fibromyalgia. Since you were not taking this medication previously, this becomes new and material evidence.

As a Persian Gulf War Veteran, fibromyalgia is a "presumptive" condition that is listed under Section 3.317 of the Code of Federal Regulation (CFR); "Compensation for certain disabilities

due to undiagnosed illnesses". But the fibromyalgia must be serious enough to warrant at least a 10% rating.

For a veteran to get to the 10% level for fibromyalgia he or she will need to be receiving medications specifically meant to treat fibromyalgia.

So if you are prescribed new medications for this or other conditions, it's important that you advise the VA so that this can be considered in reevaluating your case.

This is how "new and material evidence" comes in to play.

On the other hand, a claim wherein you have discovered what you believe to be "CUE" is a little harder. In these cases it is advisable for the veteran to seek out a good VSO or someone who understands the laws pertaining to veteran's disability claims. A good VSO will be aware of the relevant court cases that have been decided in favor of veterans with issues similar to yours.

Bottom line, be ever mindful of response deadlines that are included in the Statement of Case (SOC), and consult with the experts if you believe that the VA has made an error or errors in deciding your case.

Finally, always remember that YOU are your strongest advocate. Be always on the alert, *read* everything that the VA sends you, and then act accordingly.

The old adage applies; "*if you snooze, you lose*".