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Section C. Decision Review Officer (DRO) Review Process

Overview

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10. Overview of the DRO Review Process

Change Date December 9, 2004

a. DRO Review Process The table below describes the stages of the Decision Review Officer (DRO) review process.

Stage	Description
1	The appellant elects the DRO review process.
2	<p>The DRO conducts a <i>de novo</i> review of the prior decision.</p> <p>Reference: For more information on <i>de novo</i> review, see M21-1MR, Part I, 5.C.13.</p>
3	<p>Based on a review of the evidence of record, is there enough evidence to make a new decision?</p> <ul style="list-style-type: none"> • If yes, the DRO makes a new decision. • If no, the DRO <ul style="list-style-type: none"> – pursues additional evidence considered necessary to resolve the claim, and/or – conducts an informal conference to obtain additional evidence from the appellant and his/her representative.
4	<p>Based on evidence gathered, the DRO</p> <ul style="list-style-type: none"> • upholds or overturns the original decision • works with the appellant and his/her representative to <ul style="list-style-type: none"> – focus the issue, and – fully explain the decision in an effort to resolve the appellant's disagreement, and • begins to prepare the appeal for BVA review by sending an SOC, unless there is a full grant of benefits. <p>Reference: For more information on sending an SOC, see M21-1MR, Part I, 5.D.</p>

11. DRO Duties and Responsibilities

Introduction This topic contains information on DRO duties and responsibilities, including

- a definition of *Decision Review Officer*
 - the DRO duties
 - the Veterans Service Center Manager (VSCM) duties
 - the DRO work measurement responsibilities
 - which work measurement codes to take, and
 - the acting DRO.
-

Change Date August 19, 2005

a. Definition: Decision Review Officer The *Decision Review Officer (DRO)* is a senior technical expert who is responsible for holding post-decisional hearings and processing appeals. The DRO may have jurisdiction of any appeal.

b. DRO Duties The table below lists the duties of a DRO.

Notes:

- The DRO is a member of the Appeals Team but is under the direct supervision of the Veterans Service Center Manager (VSCM) or assistant VSCM. The Appeals Team Coach may assign work to the DRO.
- The composition of the local appeals team may vary. At some ROs, the team may consist of only DROs, while at others, it may include
 - DROs
 - RVSRs
 - VSRs, and
 - Claims Assistants.

Duty	Description
1	Hold informal conferences and formal hearings.
2	Evaluate the evidence of record including the need for additional evidence as a result of information obtained during the hearing.
3	Make a decision.
4	Make direct contact with appellants and their representatives.

Continued on next page

11. DRO Duties and Responsibilities, Continued

b. DRO Duties (continued)

Duty	Description
5	Provide feedback to each Rating Veterans Service Representative (RVSR) as to the cases handled and appealed without regard to whether the decision was <ul style="list-style-type: none"> • upheld • reversed, or • modified.
6	Provide feedback to local management about <ul style="list-style-type: none"> • trends • general quality, and • areas in need of training.
7	Work together with station and service center management and staff to develop consistency and accuracy in first-line decision making.
8	Perform Master Rating Specialist duties, including <ul style="list-style-type: none"> • acting as a resource for other employees, and • directing management of the appellate workload.
9	Play a central role in employee development, including <ul style="list-style-type: none"> • mentoring new rating specialists • participating in the training of RVSRs • coordinating training opportunities with BVA and local medical centers, and • providing feedback to Compensation and Pension (C&P) managers at all levels.
10	<ul style="list-style-type: none"> • Certify appeals prior to transfer to BVA, and • coordinate the transfer of appeals to BVA.

Continued on next page

11. DRO Duties and Responsibilities, Continued

c. VSCM Duties

The VSCM (or assistant VSCM)

- supervises the DRO
- may exercise all duties and authorities of the DRO
- assigns duties that are appropriate to the DRO's grade level and position, as time allows, provided such duties do not conflict with the DRO's status as an impartial and independent decision-maker
- appoints acting DROs during the temporary absence or disqualification of the DRO, and
- assigns a rating or authorization panel, whose members did not participate in the decision, to hold a personal hearing in
 - cases where the traditional appellate review process has been elected by the appellant, and
 - unusual or emergency circumstances.

d. DRO Work Measurement Responsibilities

The DRO

- maintains an accurate record of the actual hours spent performing DRO duties at different regional offices (ROs), should the need arise, and
- prepares a report for the VSCM or Appeals Team coach at the RO where the service was performed.

Note: ROs borrow or loan the corresponding amount of time. Charge the DRO's time against the cost center for the rating activity.

Continued on next page

11. DRO Duties and Responsibilities, Continued

- e. Which Work Measurement Codes to Take** Use the table below to determine which work measurement codes to take.
- Note:** Complete EP credit continues to be recorded by the RO having jurisdiction of the claim. Maintain these reports under RCS VB-1, Part 1, Item 13-005.000.

Reference: For more information on which EP credit to take, see [M21-4, Appendix C](#).

If the DRO or VSR ...	Then he/she takes EP code ...
prepares an SOC only	172.
holds an informal conference which results in the withdrawal of the appeal	173. Note: Annotate the informal conference report when taking the EP.
<ul style="list-style-type: none"> • conducts a <i>de novo</i> review and issues a decision • prepares a clear and unmistakable error (CUE) decision, and/or • holds a traditional hearing 	174.

- f. Acting DRO** When the DRO is temporarily absent or disqualified because he/she participated in the decision under review, the VSCM of the RO where the hearing is scheduled appoints an acting DRO.

The acting DRO

- shall have considerable understanding of the issue that is the subject of the hearing
- shall not be less than a GS-12, except in extraordinary circumstances, and
- cannot have participated in the decision being reviewed.

12. DRO Jurisdiction and Authority

Introduction This topic contains information on DRO jurisdiction and authority, including

- the DRO's jurisdiction over
 - appellant issues, and
 - subordinate issues
 - issues not under the jurisdiction of the DRO
 - the jurisdiction of the visiting DRO
 - the DRO's decisional authority
 - the DRO's lack of authority in subsequent hearing requests
 - how the DRO is bound by a BVA decision, and
 - how DRO bargaining is prohibited.
-

Change Date June 19, 2006

**a. DRO
Jurisdiction
Over Appellant
Issues**

Once the DRO assumes jurisdiction of a case, he/she works in partnership with the appellant and representative to resolve all issues covered by the NOD in accordance with the laws and facts in that particular case. The appeal remains with the DRO until it is forwarded to BVA.

The DRO has jurisdiction over a rating issue that the appellant raises during the hearing provided the issue was part of the rating decision being appealed that is the subject of the formal hearing or informal conference.

Notes: The DRO has

- *de novo* review jurisdiction only over appeals for benefits governed by
 - [38 CFR Part 3](#), and
 - [38 CFR Part 4](#)
 - limited jurisdiction over a rating issue raised during an informal conference or formal hearing, provided the issue was part of the rating decision that is the subject of the hearing, and
 - no jurisdiction over an appeal on a rating decision made by the DRO him/herself.
-

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12. DRO Jurisdiction and Authority, Continued

**b. DRO
Jurisdiction
Over
Subordinate
Issues**

When an issue is favorably decided, the DRO assumes jurisdiction over any subordinate issues, including

- evaluation and effective date, and
- any inferred or ancillary issues that are encompassed by that favorable decision.

Reference: For more information on inferred or ancillary issues, see

- [M21-1MR, Part III, Subpart iv, 6.B.3](#), and
 - [M21-1MR, Part IX, Subpart i](#).
-

**c. Issues Not
Under the
Jurisdiction of
the DRO**

The DRO does *not* have jurisdiction over

- Committee on Waivers and Compromises (COWC) issues
 - loan guaranty
 - insurance, and
 - hearing requests concerning a denial of benefits from a medical determination rendered by a Department of Veterans Affairs (VA) medical activity for
 - clothing allowance
 - automobile and adaptive equipment, and
 - specially adapted housing.
-

**d. Jurisdiction
of the Visiting
DRO**

If the DRO at the host office participated in the decision being reviewed, a visiting DRO may be requested to hold hearings or conduct *de novo* review. The visiting DRO will render a decision in such claims, but not maintain jurisdiction of the appeal.

However, the VSCM at each RO has the authority to grant the issue on appeal based on a *de novo* review or CUE without referral to the visiting DRO. The VSCM is not permitted to delegate this authority to anyone else.

Note: Submit a written request to C&P Service when a specific delegation of this authority is necessary.

Continued on next page

12. DRO Jurisdiction and Authority, Continued

e. DRO Decisional Authority

The DRO may

- amend, reverse, or modify a decision based on *de novo* review
- amend, reverse, or modify a decision based upon new evidence, or
- exercise single signature CUE authority.

Exceptions:

- Unless a CUE exists, the DRO cannot revise the decision in a manner that is less advantageous to the appellant than the decision under review.
- A decision in which CUE is cited requires the signature of the VSCM if the decision would
 - reduce a service-connected evaluation(s), or
 - sever service connection for a disability(ies).

Note: The VSCM's signature is required on the rating even if the reduction or severance based on a CUE would not cause a reduction or termination of total benefits paid.

Reference: For more information on DRO decisional authority, see [38 CFR 3.2600](#).

f. No DRO Authority in Subsequent Hearing Request

The DRO has *no* authority to participate in a formal hearing if he/she participated in the decision under appeal.

Example: If the DRO makes a new decision based on *de novo* review and the appellant subsequently requests a formal hearing, the DRO does not have authority to conduct the formal hearing.

Reference: For more information on the DRO not having authority in subsequent hearing requests, see [38 CFR 3.103\(c\)\(1\)](#).

g. DRO Bound by BVA Decision

In the absence of new and material evidence, the DRO is bound to follow a decision of BVA in an individual claim and *cannot* recommend a change based on *de novo* review authority.

Continued on next page

12. DRO Jurisdiction and Authority, Continued

h. DRO Bargaining Prohibited

A DRO cannot make a bargain with an appellant or his/her representative by requesting or requiring him/her to withdraw a claim or take any action in exchange for the granting of any benefit.

Example: A DRO tells an appellant's representative that she will grant a 50-percent evaluation for PTSD if the appellant withdraws the claim for secondary service connection for hypertension.

A DRO is *not* prohibited, however, from discussing the lack of merit in any particular case or from encouraging the claimant or his/her representative to withdraw a meritless appeal.

13. *De Novo* Review

Introduction

This topic contains information on a *de novo* review, including

- definition of a *de novo* review
 - who may receive a *de novo* review
 - who conducts a *de novo* review
 - what may be reviewed
 - *de novo* review of contested claims, and
 - responding to a CUE.
-

Change Date

March 28, 2011

a. Definition: *De Novo* Review

A *de novo* review is a new and complete review of the appealed issue with no deference given to the decision being appealed. This review leads to a new decision, which may be a full grant, partial grant, CUE, or no change.

Reference: For more information on *de novo* review, see [38 CFR 3.2600](#).

b. Who May Receive a *De* *Novo* Review

An appellant has a right to *de novo* review of his/her claim if he/she

- files a timely notice of disagreement (NOD) with the decision of an agency of original jurisdiction on a benefit claim, and
- requests the DRO review process/*de novo* review no later than 60 days after the date of the notice sent informing the appellant of his/her right to *de novo* review.

Notes:

- The 60-day time limit *cannot* be extended.
 - An appellant *cannot* have more than one *de novo* review of his/her claim.
-

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13. De Novo Review, Continued

c. Who Conducts a De Novo Review

At VA discretion, the *de novo* review is conducted by the

- VSCM, or
- DRO.

The DRO has *de novo* review authority over post-decisional claims.

Note: Only an individual who did *not* participate in the original decision being appealed may conduct this review.

References: For more information on

- who conducts a *de novo* review, see [38 CFR 3.2600](#)
- DRO jurisdiction, see [M21-1MR, Part I, 5.C.12](#)
- acting DROs, see [M21-1MR, Part I, 5.C.11.f](#), and
- visiting DROs, see [M21-1MR, Part I, 5.C.12.d](#)

d. What May Be Reviewed

Review only those decisions that have not become final by

- appellate decision, or
- failure to timely appeal.

The review will encompass only the decision with which the appellant has expressed disagreement in the NOD.

Continued on next page

13. De Novo Review, Continued

e. *De Novo* Review of Contested Claims

The DRO or VSCM designee conducts one hearing or *de novo* review for each of the different appellants in contested claims.

In some cases, the appellant requests a hearing or *de novo* review but does not live in the same jurisdiction as the office having custody of the claims folder.

The table below describes the process for reviewing contested claims when the appellant does not live in the same jurisdiction as the office having custody of the claims folder.

Stage	Who Is Responsible	Description
1	DRO/VSCM at RO closest to the appellant's residence	<ul style="list-style-type: none"> • Holds a hearing • prepares a transcript, and • sends a transcript to the DRO/VSCM at the RO with jurisdiction over the claims folder.
2	DRO/VSCM with jurisdiction over the claims folder	<ul style="list-style-type: none"> • Reviews the transcript, and • makes a decision.

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13. De Novo Review, Continued

f. Responding to a CUE Use the table below to respond to a CUE.

If ...	Then ...
a DRO <ul style="list-style-type: none"> • finds a CUE on a prior decision • prepares a decision that proposes to <ul style="list-style-type: none"> – reduce a service-connected evaluation, or – sever service connection for a disability, and • the VSCM agrees 	<ul style="list-style-type: none"> • the DRO and VSCM (or Assistant VSCM) sign the decision, and • the person who prepared the original decision gets a copy of the decision.
a DRO <ul style="list-style-type: none"> • finds a CUE on a prior decision • prepares a decision that would <ul style="list-style-type: none"> – reduce a service-connected evaluation, or – sever service connection for a disability, and • the VSCM does <i>not</i> agree 	<ul style="list-style-type: none"> • the VSCM states his/her disagreement on the decision • the DRO prepares another decision affirming the issue in question, and • both documents are filed in the claims folder.
a DRO <ul style="list-style-type: none"> • finds a CUE on a prior decision, and • prepares a decision that would <i>not</i> <ul style="list-style-type: none"> – reduce a service-connected evaluation, or – sever service connection for a disability 	<ul style="list-style-type: none"> • the DRO signs the decision, and • the person who prepared the original decision gets a copy of the decision.
<ul style="list-style-type: none"> • an RVSR <ul style="list-style-type: none"> – believes there is a CUE, and – prepares a decision, and • the VSCM agrees 	<ul style="list-style-type: none"> • the RVSR and VSCM sign the decision, and • the person who prepared the original decision gets a copy of the <i>revised</i> decision.

Continued on next page

13. De Novo Review, Continued

f. Responding to a CUE (continued)

If ...	Then ...
<ul style="list-style-type: none"> • an RVSR <ul style="list-style-type: none"> – believes there is a CUE, and – prepares a decision, and • the VSCM disagrees 	<ul style="list-style-type: none"> • the VSCM states his/her disagreement on the decision • the RVSR prepares another decision affirming the issue in questions, and • both documents are filed in the claims folder.

Important:

- If the CUE involves a rating issue, the DRO or RVSR must annotate the rating decision with a certificate of error.
- The final decision reducing the evaluation or severing service connection does not require the signature and approval of the VSCM or Assistant VSCM *unless* new evidence has been received since the proposed decision was approved.

Reference: For more information on CUE, see [M21-1MR, Part III, Subpart iv. 2.B.7.](#)

14. Informal Conferences

Introduction This topic contains information on an informal conference, including

- definition of an informal conference
 - the purpose of an informal conference
 - when to schedule and conduct an informal conference
 - requesting, canceling, or rescheduling an informal conference
 - where and how to conduct an informal conference
 - who may attend an informal conference
 - presenting evidence during an informal conference
 - the Informal Conference Report, and
 - handling new issues raised during an informal conference.
-

Change Date March 28, 2011

a. Definition: Informal Conference An *informal conference* is a tool available to the DRO and other Veterans Service Center (VSC) personnel during the DRO review process to ensure that

- all parties understand the issue(s) pending review
- the issues are focused and clarified, and
- the record is fully developed.

An oath or affirmation is *not* used for an informal conference.

Note: While informal conferences are *not* part the traditional appellate review process, direct communication with the Veteran and his/her representative is not precluded in these cases and should be initiated in order to facilitate resolution or clarification about matters on appeal.

Continued on next page

14. Informal Conferences, Continued

b. Purpose of an Informal Conference

The purpose of an informal conference is to

- clarify the issues the appellant wishes to appeal
 - provide explanations, and
 - identify additional sources of pertinent information.
-

c. When to Schedule and Conduct an Informal Conference

Informal conferences are scheduled and conducted at the discretion of the DRO.

d. Requesting, Canceling or Rescheduling an Informal Conference

A claimant may request, cancel or reschedule an informal conference in writing, by e-mail, by fax, by telephone, or in person. If this is done by telephone or in person, the DRO or employee receiving the request should promptly complete a *VA Form 21-0820, Report of General Information*, to document the request.

e. Where and How to Conduct an Informal Conference

Conduct an informal conference

- in person at the RO
 - of jurisdiction, or
 - nearest to the appellant's residence
- by telephone, or
- by videoconference.

Informal conferences may be conducted in work areas as long as all participants agree on the location.

Continued on next page

14. Informal Conferences, Continued

f. Who May Attend an Informal Conference

The appellant and his/her representative may attend an informal conference at their discretion.

Note: If the appellant's representative is an attorney, emphasize

- the informality of the conference
 - that rules of evidence do *not* apply, and
 - that leading questions are permissible.
-

g. Presenting Evidence During an Informal Conference

During an informal conference, the appellant or his/her representative may

- introduce evidence into the record, and
 - make arguments and contentions with respect to the facts and applicable law.
-

h. Informal Conference Report

Use the *Informal Conference Report* to

- document the informal conference, and
- describe
 - all the issues in detail (**Example:** The Veteran seeks a rating increase from 50 percent to 70 percent for post-traumatic stress disorder.)
 - specific additional evidence required
 - a summary of the discussion during the informal conference, and
 - the course of action agreed upon by the parties.

Note: The *Informal Conference Report* should be placed in the claims folder.

Reference: For a sample of the *Informal Conference Report*, see [M21-1MR, Part I, 5.C.16](#).

i. Handling New Issues Raised During an Informal Conference

If a new issue is raised during the informal conference and a decision on that issue has not been made, refer it to the appropriate activity for development and a decision.

15. Making the Decision

Introduction	<p>This topic contains information on making the decision, including</p> <ul style="list-style-type: none"> • the decision format requirements • the VSCM's responsibility for the quality of the DRO's decision • the decision to <ul style="list-style-type: none"> – award full benefits – award partial benefits, and – uphold the previous decision • implementing the decision, and • the appellant withdrawing the NOD.
Change Date	March 28, 2011
a. Decision Format Requirements	<p>Consider the <i>Informal Conference Report</i> when making a new decision. DRO decisions, which are either a new rating decision, SOC, or supplemental statement of the case (SSOC), must identify all the issues and include a</p> <ul style="list-style-type: none"> • summary of the evidence • citation of pertinent laws • discussion of how those laws affect the decision, and • summary of the reasons for the decision. <p>Reference: For a sample of the <i>Informal Conference Report</i>, see M21-1MR, Part I, 5.C.16.</p>

Continued on next page

15. Making the Decision, Continued

b. VSCM's Responsibility for the Quality of the DRO's Decision

The VSCM is responsible for the quality of decisions in the VSC. This responsibility extends to ensuring that DROs properly apply all laws, regulations, and instructions to decisions rendered.

In some cases, where the VSCM disagrees with the substantive decision of a DRO, the VSCM may

- request reconsideration but *not* direct a change in the decision, or
- seek an advisory opinion, administrative review, or administrative appeal.

Exception: The VSCM has the authority to direct a change in the decision of a DRO when CUE is cited and the decision would

- reduce a service-connected evaluation(s), or
- sever service connection for a disability(ies).

References: For more information on

- advisory opinions, see [M21-1MR, Part III, Subpart vi, 1.A.2](#)
 - administrative reviews, see [M21-1, Part III, Subpart vi, 1.A.3](#)
 - administrative appeals, see [M21-1MR, Part I, 5.J.50](#), and
 - responding to a CUE, see [M21-1MR, Part I, 5.C.13.f](#).
-

c. Decision to Award Full Benefits

If all benefits sought are awarded for the entire period covered by the appeal

- consider the appeal resolved
- advise the appellant, and
- update Veterans Appeals Control and Locator System (VACOLS).

Because the DRO has jurisdiction over all aspects of the issue, the Reasons for Decision section of the new rating decision must be comprehensive and include a discussion of evaluations and effective dates as necessary.

The decision must include a statement that this is an award of all benefits sought on appeal and that the appeal is therefore considered satisfied in full.

Note: When service connection is the issue under appeal, a grant of service connection, regardless of the evaluation, satisfies the appeal in full.

Reference: For more information on appeals, see [38 CFR 3.2600](#), *Review of Benefit Claims Decisions*.

Continued on next page

15. Making the Decision, Continued

d. Decision to Award Partial Benefits

The DRO may make a decision that awards the benefit in part but which *may* still require an SOC/SSOC.

In this case, the DRO

- sends the appellant the
 - new rating decision
 - an SOC/SSOC, and
 - the Appeal Response form, and
- makes every attempt to contact the appellant and the representative directly to explain his/her decision and the options available.

Note: If the appellant withdraws the appeal, for example during an informal conference, the DRO does not have to send the appellant an SOC. In cases where the conference is conducted by telephone, written confirmation of the withdrawal must be made.

Example 1: A Veteran files an NOD with a decision denying increased rating for a knee condition. After a review of the record, the DRO decides to award a partial rating increase. The DRO prepares a

- decision that will implement the rating increase, and
- SOC.

Note: The SOC is required unless the appellant has withdrawn the appeal.

Example 2: A Veteran files NODs with two decisions. The DRO decides to grant one of the claims, but deny the other. The DRO prepares a

- decision that will implement the award, and
- SOC for the claim that was denied.

References:

- For a sample of the *Appeal Response* form, see [M21-1MR, Part I, 5.C.17](#), and
- For more information on sending an SOC, see [M21-1MR, Part I, 5.D](#).

Continued on next page

15. Making the Decision, Continued

e. Decision to Uphold Previous Decision

If the DRO confirms the previous decision, he/she sends

- an SOC confirming the decision on appeal and explaining the reasons and bases for the VA decision, and
- *VA Form 9, Appeal to Board of Veterans' Appeals*, to the appellant.

Reference: For more information on sending an SOC, see [M21-1MR, Part I, 5.D.20.](#)

f. Implementing the Decision

The DRO routes the decision to the appropriate activity.

A DRO's decision is final and binding on all ROs and is not subject to revision on the same factual basis, except by BVA or as provided under [38 CFR 3.105\(a\)](#).

g. Appellant Withdrawing NOD

When an appellant calls the DRO to indicate satisfaction with the decision and a desire to withdraw his/her NOD, the DRO

- explains VA's need to obtain written confirmation of the withdrawal, and
- informs the appellant that an SOC/SSOC will be sent if written confirmation is not received in ten business days.

If the DRO does not receive written confirmation within a reasonable period of time, such as ten business days, he/she issues an SOC, if he/she has not already done so.

Note: An appellant and/or his/her representative may withdraw an appeal at any time, subject to the restrictions of [38 CFR 20.204](#).

Reference: For more information on withdrawing an NOD, see [M21-1MR, Part I, 5.A.2.](#)

16. Exhibit 1: Informal Conference Report

Change Date August 4, 2009

a. Informal Conference Report An example of an *Informal Conference Report* is below.

INFORMAL CONFERENCE REPORT	
DATE:	
VA OFFICE:	
CLAIM NUMBER:	
CLAIMANT'S NAME:	
TELEPHONE NUMBER:	
PERSON CONTACTED:	
<hr/>	
ISSUE(S):	
ADDITIONAL EVIDENCE REQUESTED:	
SUMMARY OF DISCUSSION:	
AGREED UPON ACTION(S):	
SIGNATURE(S):	
<hr/>	
DRO	DATE
<hr/>	
REPRESENTATIVE	DATE

a. Appeal Response Form A sample of the *Appeal Response* form is below.

APPEAL RESPONSE	
<p align="center">Appeal Response In the Case of [name] Claim Number: [date of cover letter]</p>	
<p>I have reviewed the recent VA decision and chose the following:</p>	
<p><input type="checkbox"/> The VA decision satisfies my appeal on <i>all issues</i>. I withdraw my appeal.</p>	
<p><input type="checkbox"/> The VA decision satisfies my appeal <i>only on the following issues</i>:</p>	
<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>Please remember to sign this document before returning it to the VA Regional Office in the enclosed self-addressed return envelope.</p>	
<p>_____ Signature</p>	<p>_____ Date</p>