

Military-Veterans Advocacy's One Pager in support of
VA Appeals Reform Act of 2017

Background: The bill is designed to solve VA's current appellate backlog and resolve current and future problems. Current estimates are that the appellate backlog is approximately 450,000 and the average appeal is delayed for several years.

Why this Legislation is Needed:

The VA appellate system is archaic and does not conform with the procedures used by other federal adjudication systems such as the Merit Systems Protection Board, Social Security or the Equal Employment Opportunity Commission. Special rules limit the ability of the veteran to pursue a substantive appeal or to obtain judicial review in the Court of Appeals for the Veterans Claims. Jurisdictional statutes limit the ability of the Court and its supervisory court to review factual errors. Additionally, the intermediate level review authority, the Board of Veterans Appeals, is hampered by unqualified decision makers, disjointed scheduling and excessive remands. The backlog at the Board is unconscionable. MVA estimates, based on the current backlog, that over 14,000 veterans will die awaiting adjudication. (See reverse).

What the Legislation Will Do:

- Requires the board members to be qualified as Administrative Law Judges.
- Require a scheduling conference and scheduling order.
- Provide for the review and sanction of board members who have more than 30% of their decisions remanded for reasons within the control of the board member.
- Provides for a discovery process to streamline the preparation of the appeal.
- Require the Chairman of the Board to implement electronic filing and an electronic case management system as well as appropriate training.
- Require the Secretary to implement an electronic filing and case management system at the Agency of Original Jurisdiction.
- Allows the veteran to hire an attorney at the Agency of Original Jurisdiction.
- Allows for retroactive effect of a decision in the event of Clear and Unmistakable Error Overruling *George v. McDonough*.
- Revise § 7261(a)(4) of Title 38 to change the standard of review for factual findings from "clearly erroneous" to "abuse of discretion."
- Revise § 7261(d) of Title 38 to allow a de novo trial on the record, similar to the provisions in federal district courts and the Court of Federal Claims.
- Revise § 502 of Title 38 to vest jurisdiction in the Court of Appeals for Veterans Claims instead of the Court of Appeals for the Federal Circuit.
- Strike § 7292 and add the Court of Appeals for Veterans Claims to the general Jurisdictional statute of the Court of Appeals for the Federal Circuit.
- Modifies 38 U.S.C. § 7332[b][2] to allow the VA to release the record to the Court of Appeals for Veterans Claims & the veteran's representative when notice of appeal is filed.