



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

April 14, 2011

Director (00/21)
All VA Regional Offices and Centers

In Reply Refer To: 212
Fast Letter 11-14

SUBJ: Handling Orders for Claims Folders by the Court of Appeals for Veterans Claims

This fast letter outlines the process for handling requests for claims folders from the Office of General Counsel (OGC), Professional Staff Group VII (PSG VII), when those folders are needed by the Court of Appeals for Veterans Claims (CAVC or Court).

Overview

Upon receipt of a request for a claims folder from PSG VII via the Appeals Management Center (AMC), regional offices (ROs) have five business days to:

- locate the folder,
- perform necessary folder maintenance,
- build a temporary folder (as necessary), and
- initiate temporary transfer to PSG VII.

Failure to handle the request expeditiously can result in CAVC imposing sanctions upon the Secretary or individual employees. If RO staff cannot locate a claims folder, the staff must perform an exhaustive search in accordance with current procedures. If the exhaustive search is unsuccessful, the RO must prepare a declaration for CAVC describing the steps taken to locate the claims folder.

Background

In 2008, CAVC revised its rules regarding preparation of the Record Before the Agency (RBA). The RBA is a copy of all documents from the appellant's claims folder at the time the Board of Veterans' Appeals (BVA) made its decision. The revised CAVC rules reduce the time that claims folders are out of the control of ROs. The revised rules also eliminate the need for ROs to photocopy documents from claims folders on request from PSG VII. A delay in responding to these requests, which may also be sent through the AMC, adversely affects the timely resolution of appeals pending before CAVC and PSG VII's ability to protect the interests of the Secretary.

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PSG VII Preparation of Appeals Records

PSG VII is charged with litigating CAVC appeals on behalf of the Secretary. Under current CAVC rules, the Secretary must provide the RBA to the Court and the appellant within 60 calendar days from the notice of docketing at the Court. PSG VII must prepare the necessary copies, serve a copy of the record on the appellant, and notify the Court that the service is complete.

Transferring Claims Folders to PSG VII

PSG VII will e-mail a list of requested folders to the AMC mailbox, VAVBAWAS/AMC/OGC. The AMC will e-mail the list to the mailbox of the respective Pension Management/Veterans Service Center Manager. ROs must transfer claims folders to PSG VII upon request. The AMC will follow-up regarding late folders, as needed.

Within five business days of the RO's receipt of the request, it must temporarily transfer the claims folder to

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ROs will follow current procedures in accordance with [VBA Letter 20-06-44](#), using the United Parcel Service (UPS) to ship folders, and

- ensure that tracking numbers are uploaded into COVERS,
- inventory the shipment, and
- provide a manifest to PSG VII.

ROs will ship folders using routine ground and tracking services. However, if PSG VII identifies an exigent circumstance, ROs will use express shipping.

ROs are responsible for all folders located at VBA facilities inside their geographical jurisdiction (including out-based sites, briefing locations, and approved work-at-home or telecommuting sites). ROs are also responsible for coordinating with VA medical facilities for the return of folders located at their facilities. Prior to transfer to PSG VII, the RO will ensure that folders are properly maintained by fastening documents in proper order and creating additional volumes as necessary to prevent overfilling. PSG VII will report folders it receives that are poorly maintained to the AMC mailbox. The AMC will then notify the responsible RO and its respective area office of these reports.

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ROs must not delay sending a folder if a claim for benefits is pending. If the claims folder is required for local adjudication or examination, the RO will photocopy pertinent documents, build a temporary folder (see M21-1MR, Part III, Subpart ii, Chapter 5, Section G, Topic 30, Block a ([M21-1MR, III.ii.5.G.30.a](#))), and temporarily transfer the original claims folder to PSG VII. ROs will add mail or evidence received after the transfer to PSG VII to the temporary folder for local processing.

If an RO cannot locate a claims folder, it will promptly conduct a thorough search to locate it. If that search fails to locate the claims folder, the RO must first notify its respective area office and then send PSG VII a declaration detailing the exhaustive efforts undertaken to locate it. (See Enclosure, *Drafting a Declaration When a Claims Folder Cannot Be Located.*) RO management must conscientiously complete the declaration, which it will submit under oath to CAVC.

PSG VII Action and Return of Claims Folders

After scanning the claims folder, PSG VII will retain custody of the folder for the brief period provided by CAVC's rules for the appellant to dispute the content of the RBA. Once any RBA dispute is resolved, or the allotted time elapses, PSG VII will transfer the claims folder back to the RO. In most cases, PSG VII will not request the claims folder again.

RO staff will follow current procedures (see [M21-1MR, III.ii.4.I.32.c](#)) upon receipt of the claims folder from PSG VII, such as removing the outside label, BVA tabs, and individual file inserts; merging the temporary folder with the original claims folder; etc.

Sanctions

The Secretary is subject to court-imposed sanctions if PSG VII fails to meet CAVC's deadlines for providing documents. Sanctions can include monetary penalties imposed upon VA employees. Therefore, to avoid sanctions, RO personnel must respond expeditiously to requests for claims folders from the AMC on PSG VII's behalf.

Rescission

This fast letter rescinds the Office of Field Operations (OFO) Letter 20F-09-13 dated June 8, 2009, *Procedures for Responding to Case Requests From the Office of the General Counsel*.

We will update M21-1MR as necessary to reflect this guidance.

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Questions

Direct all questions concerning this letter to VAVBAWAS/CO/212A.

/s/

Thomas J. Murphy

Director

Compensation and Pension Service

Enclosure

Drafting a Declaration When a Claims Folder Cannot Be Located

The following guidance provides the content and format of the required declaration for PSG VII when a claims folder for CAVC cannot be located. The declaration outlines the exhaustive efforts that the RO has taken to locate the claims folder. It is imperative that responsible officials provide a detailed declaration in order for the Secretary to avoid sanctions by CAVC. The declaration should address each of the items listed below to the extent that they apply. The declarant should be the Veterans Service Center Manager or Pension Management Center Manager who is responsible for ensuring all procedures are followed to locate the claims folder.

1. Identify your name and position in the introductory paragraph as shown below:
I, (name), am (position title) for the (office name) in (city, state). I am submitting this declaration in order to inform the United States Court of Appeals for Veterans Claims of the efforts made to locate the claims folder for (Veteran).
- Note:** Additional declarations from other supervisory and/or non-supervisory employees may be necessary in order to provide the appropriate information regarding the nature of efforts to locate the claims folder.
2. If not the declarant, who is the person assigned to locate the claims file?
3. Describe when and by what means the folder was requested from your office.
4. Who first attempted to locate the claims folder, and when?
5. Have all procedures on searching for claims folders been followed, as outlined in M21-1MR, Part III, Subpart ii, Chapter 4, Section D, Topics 15 and 16 (M21-1MR, III.ii.4.D.15 and 16)?
6. Who conducted the searches, by what means, and on what dates? Was a specific time period allotted for a response?
7. Are searches still underway? If so, how are they being conducted? How frequently? When was the most recent search?
8. If the claims folder cannot be located, have efforts been made to reconstruct it? If so, what actions are ongoing? Have the appellant and representative been asked to provide any records in their possession?
9. The declaration must include the declarant's name and job title directly underneath the signature and state the following:

I, (name), hereby certify on this date, (insert date), that the statements herein are true and correct to the best of my knowledge and belief.