

115TH CONGRESS
1ST SESSION

H. R. 2311

To direct the Secretary of Veterans Affairs to carry out a pilot program to provide veterans the option of using an alternative appeals process to more quickly determine claims for disability compensation.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2017

Mr. O'ROURKE (for himself, Ms. BROWNLEY of California, Mr. CICILLINE, Mr. HURD, Mr. KILMER, Mr. LANGEVIN, Mr. MASSIE, Ms. PINGREE, Ms. TITUS, Mr. YOUNG of Iowa, Mr. COSTELLO of Pennsylvania, and Mr. LOEBSACK) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To direct the Secretary of Veterans Affairs to carry out a pilot program to provide veterans the option of using an alternative appeals process to more quickly determine claims for disability compensation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Express Appeals Act”.

5 **SEC. 2. PILOT PROGRAM ON FULLY DEVELOPED APPEALS.**

6 (a) IN GENERAL.—The Secretary of Veterans Affairs
7 shall carry out a pilot program to provide the option of

1 an alternative appeals process that shall more quickly de-
2 termine such appeals in accordance with this section.

3 (b) ELECTION.—

4 (1) FILING.—In accordance with paragraph
5 (2), a claimant may elect to file a fully developed ap-
6 peal under the pilot program under subsection (a) by
7 filing with the Secretary the following:

8 (A) The notice of disagreement under
9 chapter 71 of title 38, United States Code,
10 along with the written election of the claimant
11 to have the appeal determined under the pilot
12 program.

13 (B) All evidence that the claimant believes
14 is needed for the appeal as of the date of the
15 filing.

16 (C) A statement of the argument in sup-
17 port of the claim, if any.

18 (2) TIMING.—A claimant shall make an election
19 under paragraph (1)—

20 (A) if the claimant has filed a traditional
21 appeal with respect to the claim for disability
22 compensation before the date on which the pilot
23 program under subsection (a) commences, at
24 any time during the traditional appeal process,
25 notwithstanding paragraph (1)(A); or

1 (B) if the claimant has not so filed a tradi-
2 tional appeal with respect to the claim for dis-
3 ability compensation before such date, as part
4 of the notice of disagreement filed by the claim-
5 ant in accordance with paragraph (1)(A).

6 (3) CHANGE OF PROCESSING.—If a claimant
7 described in paragraph (2)(A) seeks to elect to make
8 an election under paragraph (1) to change a tradi-
9 tional appeal to a fully developed appeal, the Sec-
10 retary shall—

11 (A) inform the claimant of whether, in
12 light of such traditional appeal being processed,
13 the claimant will achieve any time savings
14 through such a fully developed appeal; and

15 (B) if the claimant elects to file such fully
16 developed appeal, process the fully developed
17 appeal in accordance with this section to the ex-
18 tent practicable.

19 (4) REVERSION.—At any time, a claimant who
20 makes an election under paragraph (1) may elect to
21 revert to the traditional appeals process without any
22 penalty to the claimant other than the loss of the
23 docket number associated with the fully developed
24 appeal.

1 (5) USE OF FULLY DEVELOPED APPEAL.—A
2 claimant may only make an election under para-
3 graph (1) with respect to a claim for disability com-
4 pensation filed by the claimant that is not, with re-
5 spect to a claim previously decided by fully developed
6 appeal, a petition to reopen the claim or a separate
7 claim for an increased rating for the claim.

8 (6) OUTREACH.—In providing claimants with
9 notices of the determination of a claim during the
10 period in which the pilot program under subsection
11 (a) is carried out, the Secretary shall provide to the
12 claimant information regarding—

13 (A) the pilot program;

14 (B) how to make an election under para-
15 graph (1);

16 (C) what documents the claimant must
17 provide during the course of the appeals proc-
18 ess; and

19 (D) the ability of the claimant to seek ad-
20 vice and education regarding such process from
21 veterans service organizations and attorneys
22 recognized under chapter 59 of title 38, United
23 States Code.

24 (c) TREATMENT BY DEPARTMENT AND BOARD.—

1 (1) PROCESS.—Upon the election of a claimant
2 to file a fully developed appeal pursuant to sub-
3 section (b)(1), the Secretary shall—

4 (A) not provide the claimant with a state-
5 ment of the case nor require the claimant to file
6 a substantive appeal; and

7 (B) transfer jurisdiction over the fully de-
8 veloped appeal directly to the Board of Vet-
9 erans' Appeals.

10 (2) DOCKET.—

11 (A) The Board of Veterans' Appeals
12 shall—

13 (i) maintain fully developed appeals
14 on a separate docket than traditional ap-
15 peals;

16 (ii) hear fully developed appeals in the
17 order that the fully developed appeals are
18 received on the fully developed appeal
19 docket;

20 (iii) except as provided by subpara-
21 graph (B), decide not more than one fully
22 developed appeal for each four traditional
23 appeals decided; and

24 (iv) to the extent practicable, decide
25 each fully developed appeal by the date

1 that is one year following the date on
2 which the claimant files the notice of dis-
3 agreement.

4 (B) Beginning one year after the date on
5 which the pilot program under subsection (a)
6 commences, the Board may adjust the number
7 of traditional appeals decided for each fully de-
8 veloped appeal under subparagraph (A)(iii) if
9 the Board determines that such adjustment is
10 fair for both traditional appeals and fully devel-
11 oped appeals.

12 (3) LIMITATION ON USE OF NEW EVIDENCE.—

13 A claimant may not submit to the Board of Vet-
14 erans' Appeals any new evidence relating to a fully
15 developed appeal after filing such appeal unless the
16 claimant reverts to the traditional appeals process
17 pursuant to subsection (b)(4).

18 (4) PROHIBITION ON REMAND TO REGIONAL
19 OFFICE.—If the Board of Veterans' Appeals deter-
20 mines that a fully developed appeal requires Federal
21 records, independent medical opinions, or new med-
22 ical exams, the Board shall—

23 (A) in accordance with paragraph (5), take
24 such actions as may be necessary to develop
25 such records, opinions, or exams;

(B) retain jurisdiction of the fully developed appeal without requiring a determination by the Veterans Benefits Administration based on such records, opinions, or exams;

(C) ensure the claimant receives a copy of such records, opinions, or exams; and

(D) provide the claimant a period of 45 days after the receipt of such records, opinions, or exams to provide the Board any additional evidence.

(5) DEVELOPMENT UNIT.—

(A) The Board of Veterans' Appeals shall establish an office to develop Federal records, independent medical opinions, and new medical exams pursuant to paragraph (4)(A) that the Board determines necessary to decide a fully developed appeal.

(B) The Secretary shall—

(i) ensure that the Veterans Benefits Administration cooperates with the Board of Veterans' Appeals in carrying out subparagraph (A); and

(ii) transfer employees of the Appeals Management Center of the Veterans Benefits Administration to the office of the

1 Board established under subparagraph (A)
2 in a number that the Secretary determines
3 sufficient to carry out such subparagraph.

4 (6) HEARINGS.—Notwithstanding section 7107
5 of title 38, United States Code, the Board of Vet-
6 erans' Appeals may not provide hearings with re-
7 spect to fully developed appeals. A claimant may re-
8 quest to hold a hearing pursuant to such section
9 7107 if the claimant reverts to the traditional ap-
10 peals process pursuant to subsection (b)(4).

11 (d) DURATION; APPLICATION.—The Secretary shall
12 carry out the pilot program under subsection (a) for a five-
13 year period beginning one year after the date of the enact-
14 ment of this Act. This section shall apply only to fully
15 developed appeals that are filed during such period.

16 (e) REPORTS.—During each year in which the pilot
17 program under subsection (a) is carried out, the Secretary
18 shall submit to the Committees on Veterans' Affairs of
19 the House of Representatives and the Senate a report on
20 the pilot program. The first such report shall be submitted
21 by not later than 180 days after the date on which the
22 pilot program commences. Each report shall include—

23 (1) a recommendation for any changes to im-
24 prove the pilot program; and

1 (2) an assessment of the feasibility and advis-
2 ability of expanding the pilot program.

3 (f) DEFINITIONS.—In this section:

4 (1) The term “claimant” has the meaning given
5 that term in section 5100 of title 38, United States
6 Code.

7 (2) The term “compensation” has the meaning
8 given that term in section 101 of title 38, United
9 States Code.

10 (3) The term “fully developed appeal” means
11 an appeal of a claim for disability compensation that
12 is—

13 (A) filed by a claimant in accordance with
14 subsection (b)(1); and

15 (B) considered in accordance with this sec-
16 tion.

17 (4) The term “traditional appeal” means an ap-
18 peal of a claim for disability compensation that is
19 not a fully developed appeal.

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