



## **I. When to Appeal vs. When to Amend: General Guidance.**

You should appeal **if you are challenging the VCF's determination on your claim.**

You should amend **if you are seeking a new determination based on new information.**

*If you file a compensation appeal, your claim **will not be paid** until after a decision is made on your appeal. If you file an eligibility appeal, compensation review will not commence until after a decision is made on your appeal. The only circumstance in which a claim will be paid while under appeal is if the claimant has been approved for expedited status after meeting the applicable criteria. In all cases, filing an amendment will not affect payment on the original determination.*

When considering whether to appeal or to amend, consider whether you are waiving or compromising a particular claim or argument by accepting payment on the original determination and choosing to pursue an amendment rather than an appeal. For example, if you believe that the earnings basis that the VCF used to calculate lost earnings was too low and you do not appeal, you will have waived the right to raise that argument during a future appeal if you subsequently amend your claim and the VCF issues a revised determination. In that case, you are challenging the determination already made and you should appeal. Conversely, if you believe that the percentage of disability attributable to your eligible conditions used by the VCF was too low and you have information not previously submitted that you believe supports a higher disability percentage, you will not compromise your claim to a higher disability percentage if you accept payment on the determination already made while submitting proof relating to a request for a higher percentage as an amendment. In that case, you are accepting the determination already made because it was based on the information contained in your claim at that time, and also seeking a new determination based on new information, and you should amend.

If you have a legitimate basis to appeal – meaning you are challenging the basis of the determination already issued on your claim – the appeal must be filed within **30 days** of the decision letter using the appeal form that was included in the determination letter. Failing to file an appeal within the required 30-day period will waive your right to appeal that determination and the VCF will begin processing any applicable payment on the claim.

You should not appeal the decision on your claim as a way to seek a faster review of an amendment that is unrelated to the decision already made. Appeals filed solely for purposes of seeking consideration of an amendment on an unrelated issue are invalid, and you will be notified that your appeal is cancelled, that your right to appeal that determination is deemed waived, and, if an award determination has already been made, that your claim is moving to payment.

## **II. Appealing an Eligibility Determination.**

In general, for eligibility determinations, an appeal is appropriate if you meet all three of the following criteria:

- (a) Your claim was found to be ineligible, and
- (b) There is no further documentation you can provide to support eligibility, and
- (c) You believe that the only way to do so is through testimony at a hearing.

For example, appropriate cases in which to appeal an eligibility denial include:

- Your claim was denied because of lack of sufficient proof of presence within the New York City Exposure Zone or at one of the other crash sites, or because of lack of proof of exposure for



the required time periods set forth by the by the World Trade Center (“WTC”) Health Program as necessary to support the verification of an eligible physical condition; and

- You have already submitted all of the documentation you have to establish these eligibility requirements; and
- You believe that the only way to demonstrate your presence or period of exposure is through testimony at a hearing.

Similarly, an appeal is appropriate if:

- Your claim was denied because the medical records submitted demonstrate that you first had symptoms of your non-cancer condition after the maximum time interval set forth by the WTC Health Program as necessary to support the verification of an eligible physical condition; and
- There is no further documentation you can submit to establish that your symptoms began at an earlier time, and
- You believe that the only way to demonstrate the timing when your symptoms first began is through testimony at a hearing.

An appeal would not be appropriate, however, if you have additional documentation that you have not previously submitted to the VCF and that you think would establish that you are eligible for compensation. In this situation, the proper course is to amend. So, for example, an amendment is appropriate in the following cases:

- Your claim was denied because of lack of sufficient proof of presence or because of lack of proof of sufficient time periods of exposure, and you have located acceptable proof that was not filed before the original determination was made (for example, log books, additional affidavits, or other employer documentation to verify your presence).
- Your claim was denied because the documentation you previously submitted indicated that the first time you had symptoms of your 9/11-related condition was outside the time periods set forth by the WTC Health Program (that is, before the latency period for cancer conditions and after the maximum time interval for non-cancer conditions), and you have located additional medical records or obtained physician statements which demonstrate that your symptoms developed within the required WTC Health Program time periods.
- Your claim was denied for untimely registration, and you have documentation that demonstrates the earliest date that a governmental entity determined that your physical injury or condition was related to your 9/11 exposure, which was not submitted prior to the VCF rendering the eligibility decision on your claim.
- Your claim was denied for failure to comply with the lawsuit settlement/dismissal policy and you have proof of the timely lawsuit settlement, release, or dismissal date, which was not submitted prior to the VCF rendering the eligibility determination on your claim.
- Your claim was denied for lack of an eligible condition and you have since been certified for treatment by the WTC Health Program for an eligible condition, or you have additional certified injuries and/or conditions that were not considered in the original determination and that you believe are eligible for compensation.

### **III. Appealing a Compensation Determination.**

In general, for compensation determinations, an appeal is appropriate if you meet the following criteria:



- (a) You believe there was an error in the VCF's calculation of the award and you therefore disagree with the amount of the award determination; and
- (b) You can provide additional documentation that directly supports your argument that the award was calculated incorrectly; and/or
- (c) You believe that testimony would be useful in establishing a basis for the VCF to recalculate your award.

For example, you would appeal the award determination if you believe that the VCF used an incorrect income amount to calculate lost earnings, or did not include in the calculation specific information regarding employer-provided benefits that was included in your claim submission. In cases such as this, additional explanatory or detailed information may be useful to support your appeal and should be uploaded to your claim well in advance of the hearing. As a rule of thumb, the VCF begins preparation for hearings approximately four weeks prior to the scheduled hearing date, so uploading any additional information prior to that time would help us to operate most efficiently. Similarly, if you believe that the VCF incorrectly accounted for the severity of your condition when issuing a non-economic loss award, an appeal is appropriate.

If your circumstances have changed since the VCF issued a determination on the claim, or if you wish to seek compensation for a new injury or a new loss, you should file an amendment. So, for example, an amendment is appropriate in the following situations:

- Your original claim was filed for non-economic loss only and you now want to claim economic loss because you have been found to be disabled or because you now meet the criteria for a WTC Health Program disability evaluation. See Appendix B of the VCF [Policies and Procedures](#).
- Your original claim was filed for economic loss and the VCF did not award economic loss (or awarded only a portion of your economic loss claim) because insufficient evidence was submitted to allow the VCF to calculate the loss or the full extent of the loss claimed. For example, the VCF assumed that you were 50% disabled due to your eligible conditions based on the general presumptions it applies when evaluating disability determinations. You claim that you are 100% disabled due to your eligible conditions and have a letter from your treating physician explaining that you are totally disabled due to these conditions, but the letter has not yet been uploaded to your claim.
- Your original claim was filed for certain components of economic loss but did not include a claim for other components of the loss (e.g., medical expenses).
- You now have new losses as a result of a newly eligible condition.

#### IV. VCF Procedures

If your appeal is timely filed within the 30-day appeal period, the VCF will schedule a hearing and then, approximately four weeks prior to the hearing date, will review the appeal request form and any documentation submitted in support of the appeal and will determine if the appeal appears to be valid. An appeal is considered valid if it is an attempt to challenge the determination already issued and if there is a reasonable basis for the challenge noted either on the appeal request form or in documents uploaded to the claim in support of the appeal. An appeal is considered not valid if it appears to be an attempt to seek a new determination on new information.

- If the VCF determines your appeal to be valid, your hearing will be held as scheduled.



- If the VCF determines your appeal is not valid, we will notify you that your hearing is cancelled, that the submission will be treated as an amendment, and that by filing an invalid appeal, your right to appeal the determination that has already been issued has been waived. The VCF will begin processing any applicable payment on your claim and will also open a revision review to process your submission as an amendment.
- It will often be the case that the VCF will determine that, even though your appeal is valid, it is not efficient or productive to proceed with a hearing. For example, if you filed an amendment that is pending review, and review of that amendment will necessarily involve a re-evaluation of issues involved in the original determination that you are challenging on appeal, the VCF may notify you that we are canceling the hearing and issuing payment on the original determination, and that we will reconsider those issues in conjunction with the pending amendment. We will not treat these cases as “deferred,” “stayed,” or “postponed” hearings. Rather, we will issue a new determination on the amendment(s) and those issues will be subject to appeal (if desired) of the amended determination.

If the VCF determines that it is appropriate to treat your submission as both a valid appeal and an amendment, or if your valid appeal is scheduled for a hearing and you subsequently file an amendment before the hearing is held, the VCF will decide the most appropriate course of action based on what we believe is the most efficient way to review and resolve your claim. Depending on the nature of the claim, we may advise you to take one of the following actions:

- Continue your appeal and file your amendment, and each will be considered in the appropriate course.
- Continue your appeal and file your amendment, and the amendment will be considered as part of the appeal. In this situation, you will not have the right to appeal the determination on the amendment; the post-hearing decision, which will include consideration of the amendment, is final.
- Defer your appeal and file your amendment. In this situation, **payment will not be processed** on your original determination. The VCF will make an effort to prioritize your amendment, and the determination issued on the amendment will include an appeal right for both the new determination and the original determination. In this scenario, which is expected to be rare, where your appeal is deferred pending consideration of an amendment, we will cancel your scheduled hearing and provide written confirmation that the appeal is being deferred.

Following are some examples of situations where there might be both a valid appeal and an amendment:

- You applied for and received an award for non-economic loss and filed an appeal to challenge it because you believe it is too low and does not appropriately account for the severity of your condition. Subsequent to filing your appeal, but before your hearing is held, the WTC Health Program certifies you for an additional condition which you believe warrants an increase in your non-economic loss award. In this case, we are likely to advise you to continue your appeal on the non-economic loss award and we will consider the amendment as part of the appeal.
- You applied for and received an economic loss award and filed an appeal to challenge it because you believe that the VCF used an incorrect earnings basis to calculate lost earnings. In support of this appeal, you submit new documents from your employer that provide additional details regarding your earnings basis. Subsequent to filing your appeal, but before your hearing is held, you realize that your original claim did not include a request for pension loss and you file



an amendment seeking such an award. In a case such as this, where lost earnings may need to be recalculated, it may be most efficient for the VCF to ask you to defer your appeal, pending resolution of the pension loss amendment. In such a case, because there is still a potentially valid appeal, payment will not be processed on the original determination. The VCF will issue a determination on the amendment that will both trigger a new appeal from that determination and revive the previous earnings basis appeal.

- You applied for and received an award comprising both economic and non-economic loss and filed an appeal challenging the percentage of disability included in the economic loss calculation and the amount of the non-economic loss award. You also filed an amendment requesting consideration for the WTC Health Program Disability Evaluation process. In this case, we will cancel the hearing and consider the disability percentage as part of the amendment. Because the amendment seeks reconsideration of a factor that could potentially affect non-economic loss (a higher disability percentage may correlate to a higher non-economic loss award) and economic loss (if we adopt a higher disability percentage), and because there may be new information that supports such a change, proceeding with a hearing before that information is available and reviewed is not an efficient or effective way to proceed. Both the economic loss and non-economic loss calculations will be subject to challenge on appeal of the amendment determination. Payment will be issued on your original award while we consider the amendment.

The VCF's decision about the best way to proceed will be guided in each case by an assessment of the most efficient way to review and resolve your claim. If you have a question about the appropriate course to take for your claim, please contact the VCF Helpline.