

Appeals may also be known as a Veterans Law Judge.

DATES: *Effective Date:* February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-565-5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits, after an opportunity for a hearing. There are currently 55 Board "members," who decide 35,000 to 40,000 such appeals per year.

On March 6, 2001, we published a notice of proposed rulemaking (NPRM) that would provide that a Member of the Board may also be known as a Veterans Law Judge. 66 FR 13463. The comment period ended May 7, 2001. We received 38 comments, 33 from individuals and 5 from organizations. Of the commenters, 27 supported the proposal, while 11 opposed it.

We have carefully considered all the comments. We also considered a letter from six veterans service organizations sent prior to the beginning of the comment period, but which we referenced in our NPRM. 66 FR at 13463. We have grouped the objections into seven general categories and discuss them below.

For the reasons described, we have decided to adopt the proposed regulation as a final regulation.

1. *The title is detrimental or of no benefit to veterans.*

Several individuals and one organization expressed concern that the change would "intimidate" veterans. Some organizations opined that the change would provide no benefit to veterans. At the same time, several individuals said they did not find the title intimidating. In addition, several individuals said that they found the

current title of "member" confusing and thought that "judge" would be a clarification.

We do not agree that the change will intimidate veterans or provide them no benefit.

The chief reason we proposed this rule was to recognize Board members for what they are: Judges. It is a title that is widely used in the executive branch for thousands of people who hold hearings and decide appeals. For example—

If a person disagrees with a Social Security decision, his appeal is heard by a Social Security Administration (SSA) employee called a judge.

If he disagrees with that decision, the appeal is heard by another SSA employee called a judge.

If a federal employee appeals a personnel decision, her appeal is heard by a Merit Systems Protection Board employee called a judge.

If a person has a complaint about discrimination, her case is heard by an Equal Employment Opportunity Commission employee called a judge.

We also know that most veterans who come before the Board do so once in their life. As we said in our NPRM, "member" doesn't really tell the veteran much about what the member does. 66 FR at 13463. The term "judge" is simply more accurate.

The purpose of the Board is to give veterans an independent review of denied claims. Our experience is that veterans are most concerned that the person deciding their appeals is not part of the regional office, which initially decided their claims. We think that the term "judge" does a better job of letting veterans know what the Board member is and—almost as importantly—what the Board member is not.

VA actually used the term "Veterans Law Judge" for three or four months late in the year 2000 and early in 2001. See 65 FR 55461 (Sep. 14, 2000) (final rule establishing title), *rescinded*, 66 FR

13437 (Mar. 6, 2001). We received no complaints that our Board members had become more aloof or the hearings more formal, nor did we receive any complaints that any veterans were intimidated by the title.

Accordingly, we make no changes based on these comments.

2. *Board Members are not Administrative Law Judges.*

Some commenters objected to the rule because Board Members are not Administrative Law Judges (ALJs).

While this is certainly true, its apparent relevance to this rulemaking is that only ALJs are permitted to carry the title "judge." We noted in our NPRM that there are many types of non-ALJ adjudicators in the executive branch who carry the title "judge." We also note that individuals appointed to the judiciary under Articles I and III of the Constitution—*i.e.*, adjudicators in the various Federal courts—carry the title "judge," and none of them are ALJs.

The point is that the term "judge" describes what the individual does, not whether he or she is subject to particular procedures established by the Office of Personnel Management (OPM). In addition, we have not proposed to refer to Board members as "administrative law judges," but rather as "Veterans Law Judges."

Accordingly, we make no changes based on these comments.

3. *The selection process for Board Members is different from the selection process for ALJs.*

Some commenters objected to the rule because the Board member selection process is different from the ALJ selection process.

The processes are different. Like the ALJ process, however, the Board member process selects experienced attorneys and is based on merit principles. The following table illustrates the similarities and differences in the selection processes:

	Administrative Law Judge	Member, Board of Veterans' Appeals
General qualifications	Attorney with 7 years experience in Administrative Law or Litigation in a government setting. (OPM, non-regulatory requirement).	In practice, 7–10 years experience in the field of veterans' law. (VA, non-regulatory requirement)
Attorney status	Active member of the bar. (OPM, non-regulatory requirement).	Member in good standing of the bar of a State. 38 U.S.C. 7101A(a)(2).
Experience requirement	2 years experience equivalent to a GS–13 or 1 year experience as a GS–14 or GS–15. (OPM, non-regulatory requirement).	Generally, two or more years at the GS–14 or GS–15 level. (VA, non-regulatory requirement)
Skills	Knowledge of administrative procedures, rules of evidence, and trial practices; analytical ability; oral communications ability and judicial temperament; writing ability; organizational skills. (OPM, non-regulatory requirement).	Knowledge of veterans' law and of specialized areas of medicine and law; ability to conduct hearings; ability to manage attorneys; ability to participate in training activities. Additional qualification factors. (VA, non-regulatory requirement)