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The Hearing Premium

Why the Board of Veterans' Appeals Hearing Docket Should Be the Exception, Not the Default

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Abstract. A Board of Veterans' Appeals hearing has always been the veteran's choice. Under the Legacy appeals system, the choice usually made sense: the Veterans Law Judge who conducted the hearing decided the case, the representation environment was thin, and the personal encounter with the decision-maker carried evidentiary weight no written submission could match. Bryant v. Shinseki reinforced the value of that encounter by imposing two affirmative duties on the presiding VLJ: to fully explain the issues on appeal, and to suggest the submission of evidence on a material issue when the record contained none. The Appeals Modernization Act has weakened or eliminated each of those conditions. The VLJ who conducts the hearing no longer decides the case. The accredited bar is more sophisticated than the one Bryant described. The AMA Metrics Reports show the hearing docket producing longer pendency and a higher rate of cases that exit without a merits decision. For accredited attorneys and agents, hearings should be rare. The default should be evidence submission or direct review. This Article develops the doctrinal, structural, and empirical case for that conclusion.

Introduction

Since the Veterans' Judicial Review Act, the Board of Veterans' Appeals hearing has been the veteran's day at the Board. It was personal. It was often the only stage of the claims process where the veteran appeared before the decision-maker. Veterans wanted it. Their representatives requested it. The Board's procedural architecture was built around it. The right to a hearing is statutory and remains so.

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The hearing was always the practitioner's call. Under the Legacy appeals system, the instinct to request one usually held up. The Veterans Law Judge who conducted the hearing decided the case. *Bryant v. Shinseki* reinforced the hearing's value: a presiding VLJ had to fully explain the issues on appeal and suggest the submission of evidence on a material issue when the record contained none. The personal encounter with the decision-maker carried evidentiary weight no written submission could match. The accredited bar was smaller and less specialized; many representatives lacked the infrastructure to build a complete written record.[2]

Each of those conditions has weakened or disappeared. The AMA created three Board dockets where there had been one. The hearing is now a docket selection with consequences for timing, evidence, and procedural posture. The VLJ who conducts the hearing is not the VLJ who decides the case. The transcript functions as a brief the representative did not write. The accredited bar that conducts these hearings is larger and more specialized than the bar that existed when *Bryant v. Shinseki* was decided in 2010.

Two recent decisions confirm the change. *Frantzis* decoupled the hearing VLJ from the deciding VLJ. *Cook* hardened the closed-record discipline. A third, *Hamill*, eliminated the implicit denial doctrine and signals strict Federal Circuit enforcement of AMA notice requirements. Read together, they describe a hearing under more procedural constraint than the system that produced it.

The strategic calculus has shifted. The doctrinal scaffolding has not. For accredited attorneys and agents, hearings should be rare. The default should be evidence submission or direct review. Hearings should be reserved for cases in which testimony cannot be replaced by a written submission. That is not what current practice reflects. It should be.

I. The Statutory Right and Its Original Function

The right to a Board hearing is statutory.[3] Section 7107 grants it on request. The regulations implement that right in detail.[4] The purpose of a Board hearing is "to receive argument and testimony relevant and material to the appellate issue or issues."[5] The hearing is nonadversarial.

[2] 23 Vet. App. 488 (2010).
[3] 38 U.S.C. § 7107.
[4] See generally 38 C.F.R. pt. 20, subpt. H.
[5] 38 C.F.R. § 20.700(b).

There is no cross-examination. The rules of evidence are relaxed. The Veterans Law Judge sets reasonable time limits and may exclude testimony or argument that is unduly repetitious.[6]

The procedure had a particular function. In a system designed for unrepresented claimants, the hearing was the moment the agency could elicit testimony otherwise not in the record, identify gaps the claimant might not have known existed, and produce a transcript capturing the claimant's account.[7] The Court of Appeals for Veterans Claims emphasized in *Arneson v. Shinseki* that the hearing was "the veteran's one opportunity to personally address those who will find facts, make credibility determinations, and ultimately render the final Agency decision on his claim."[8]

Under that scheme, the Veterans Law Judge who conducted the hearing had to participate in deciding the appeal. The statute required it: the member or members designated to conduct the hearing "shall … participate in making the final determination of the claim."[9] The Veterans Court enforced the corollary in *Arneson*: where a panel was assembled after a hearing, the claimant was entitled to the opportunity to be heard by every member who would decide.[10] The Appeals Modernization Act ended the requirement. Congress removed the provision tying the hearing member to the decision.[11]

II. The Doctrinal Genealogy

Bryant sits inside a decade of Veterans Court doctrine on what evidence gathering at the Board is and is not. Two propositions structure that doctrine. Both are stable.

First, VA's claims process operates in two phases — evidence-gathering and adjudication. Notice and assistance obligations belong to the first.[12] *Mayfield* held that 38 U.S.C. § 5103(a) notice is part of evidence gathering, not decisionmaking.[13] *Kent v. Nicholson* held that notice

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[6]Id. § 20.700(c). The statutory title is "Member of the Board." 38 U.S.C. § 7101(a). The regulation provides that a Board Member may also be known as a Veterans Law Judge. 38 C.F.R. § 19.2(b). This Article uses "Veterans Law Judge" or "VLJ" throughout for the same office. The Court has at times used "Board hearing officer" for the VLJ presiding at a hearing; quoted material retains the Court's original language.

[7]For an account of the original design assumptions, see James D. Ridgway, The Splendid Isolation Revisited: Lessons from the History of Veterans' Benefits Before Judicial Review, 3 Veterans L. Rev. 135 (2011).

[8]24 Vet. App. 379, 382 (2011).

[9]38 U.S.C. § 7107(c) (2012) (pre-AMA version); see also 38 C.F.R. § 20.707 (2018) (pre-AMA version) ("The Member or Members who conduct the hearing shall participate in making the final determination of the claim.").

[10]Arneson, 24 Vet. App. at 386. The pre-AMA rule that the hearing member must decide came from the statute and regulation; Arneson interpreted those provisions to require that each deciding member offer the claimant a hearing.

[11]Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, 131 Stat. 1105; see also 38 C.F.R. § 20.707 (2019).

[12]See Mayfield v. Nicholson, 20 Vet. App. 537, 543 (2006), aff'd, 499 F.3d 1317 (Fed. Cir. 2007).

[13]Id.

should be responsive to the particulars of the application submitted — keyed to what the claimant asked for, without weighing the merits.[14] The principle traces to *Robinette v. Brown*: VA's process is nonadversarial; evidence-gathering is cooperative, not evaluative.[15]

Second, preadjudication by an adjudicator during the evidence-gathering phase is impermissible. *Locklear v. Nicholson* rejected the argument for case-specific preadjudicatory notice.[16] *Hupp v. Nicholson* added that case-specific notice — telling the claimant which evidence would help — could be prejudicially misleading because it required the adjudicator to weigh what was already in the record.[17] The line the Court drew was careful. The adjudicator could explain what the elements required in general. The adjudicator could not say which was now closer to being met. That second step was adjudication.

This is the framework *Bryant* extended to Board hearings. The Court held that § 3.103(c)(2) imposed two affirmative duties on the presiding Veterans Law Judge: a duty to fully explain the issues on appeal, and a duty to suggest the submission of evidence on a material issue when the record did not contain it.[18] The case arose from an unrepresented veteran. The Court found error on one claim — squamous cell carcinoma — where the record contained no examination addressing nexus.[19]

The holding fit the *Locklear*/*Hupp* line. The duty to suggest triggered only when the record contained no evidence on a material element — the one situation where a generic suggestion did not require preadjudication. The Court was explicit that the duty did not require the VLJ to weigh conflicting evidence or preadjudicate the merits, only to determine whether the record lacked evidence on a material element and, if so, suggest its submission.[20] The Court located the duties in the regulatory text and the rationale that the hearing serves veterans, not the agency.[21]

Judge Lance dissented in part. He argued that the majority's restriction — duty triggered only by records with no evidence at all — left claimants worse off than under a *Kent*-style framework. A claimant might fail to submit favorable evidence because the VLJ had not flagged that it was

[14]20 Vet. App. 1, 9–11 (2006).
[15]8 Vet. App. 69, 73–75 (1995).
[16]20 Vet. App. 410, 415–16 (2006).
[17]21 Vet. App. 342, 352–53 (2007).
[18]Bryant, 23 Vet. App. at 496–97.
[19]Id. at 498–99.
[20]Id. at 493–94.
[21]Id. at 495–96.

needed to rebut what was in the record.[22] Judge Lance would have held that the duty to fully explain the issues existed in part to help claimants rebut negative evidence.[23] The disagreement foreshadows the question the AMA brings forward. When the claimant has accredited counsel, who rebuts negative evidence — the VLJ at the hearing or the representative in the brief?

The early post-*Bryant* case law assumed the answer was sometimes both. In *Procopio v. Shinseki*, the VLJ announced the record would be held open for sixty days, then turned the hearing over to the representative without questions or comment.[24] The Veterans Court held that approach insufficient, applying the *Bryant* duties to the Board with the same force they carry at the RO.[25] Through the Legacy period, *Bryant* and *Procopio* produced a steady stream of remands.

VA first tried to abrogate *Bryant* by regulation. In August 2011, the agency issued a final rule clarifying that § 3.103(c)(2) did not apply to hearings before the Board.[26] NOVA challenged the rule on APA grounds. VA moved to repeal it.[27] *Bryant* survives. Nothing in that history precludes a later, properly noticed effort.[28]

The AMA reorganized the regulation around *Bryant*. The 2019 rulemaking restructured § 3.103. The current paragraph (c)(2) addresses hearings before "the agency of original jurisdiction."[29] Whether *Bryant* survives intact under the reorganized regulation is a question the Veterans Court has not resolved. The better view is that it does. VLJs discharge the duties in routine practice. The restructure did not address Board hearings expressly. The Court has not disturbed *Bryant* in over a decade. Its reach should be calibrated to representation.

The question this Article raises is different: whether the conditions that justified the duties still describe the cases in which the duties are applied. They do not.

III. The Three Things the AMA Changed

[22]Bryant, 23 Vet. App. at 500–01 (Lance, J., concurring in part and dissenting in part).
[23]Id. at 501.
[24]26 Vet. App. 76, 80 (2012).
[25]Id. at 79.
[26]Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Clarification, 76 Fed. Reg. 52,572 (Aug. 23, 2011).
[27]The National Organization of Veterans' Advocates petitioned the Federal Circuit for review on September 9, 2011, contending the clarification rule was issued without the notice-and-comment procedure the APA requires. VA agreed to repeal the rule to moot the petition. See Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Repeal of Prior Rule Change, 77 Fed. Reg. 23,128 (Apr. 18, 2012).
[28]Corey L. Bosely & Bradley W. Hennings, A Proposed Approach to the BVA's Clarified Hearing Duties to Explain and Suggest Pursuant to Bryant v. Shinseki, 5 Veterans L. Rev. 164, 168–69 (2013).
[29]38 C.F.R. § 3.103(c)(2) (current); VA Claims and Appeals Modernization, 84 Fed. Reg. 138 (Jan. 18, 2019).

The Appeals Modernization Act of 2017 became fully operational on February 19, 2019. It changed three things that bear on the value of hearings.

A. Three Dockets and Strategic Selection

Under Legacy, an appeal that reached the Board was one thing. Under the AMA, it is three. The veteran selects a docket at the Notice of Disagreement: direct review (no new evidence, no hearing), evidence submission (a ninety-day evidence window after the NOD, no hearing), or hearing (a VLJ hearing followed by a ninety-day evidence window).[30] The Board has established timeliness targets of 365 days for direct review, 550 days for evidence submission, and 730 days for the hearing docket.[31] Veterans may switch lanes within one year, with case-by-case exceptions for good cause.[32]

Under Legacy, the practical choice was binary: request a hearing or waive it. The record stayed open throughout the appeal; evidence and argument could be submitted at any time before the Board's decision.[33] The hearing was the only structured procedural choice. The AMA replaces that binary with three structured lanes, each with its own evidence window and timing profile. The choice between lanes is strategic, with different consequences for timing, evidence, and procedural posture.

B. The Hearing VLJ Is No Longer the Deciding VLJ

In the Legacy system, the Veterans Law Judge who conducted a hearing had to participate in deciding the case — a requirement set by statute and regulation.[34] The rule was a procedural cornerstone of Board practice; the Veterans Court read it in *Arneson* to require that every member who decides an appeal first offer the claimant a hearing.[35] The AMA replaced it. The Veterans Court confirmed the change in *Frantzis v. McDonough*, which upheld the AMA framework permitting reassignment.[36] The VLJ who conducts the hearing is no longer the VLJ who issues the

[30] 38 C.F.R. § 20.202(b) (review options); see also id. § 20.800 (docket assignment); id. §§ 20.302–20.303 (evidence windows).

[31] VA, Board of Veterans' Appeals, Fiscal Year 2024 Annual Report 11 (2024).

[32] Rules of Practice; Notice of Disagreement, Docket Selection, 84 Fed. Reg. 138, 138–39 (Jan. 18, 2019).

[33] See 38 C.F.R. § 20.1305(a) (2018) (pre-AMA version) (legacy appellant may submit additional evidence within 90 days following notice of certification "or up to and including the date the appellate decision is promulgated by the Board, whichever comes first").

[34] 38 U.S.C. § 7107(c) (2012) (pre-AMA version); 38 C.F.R. § 20.707 (2018) (pre-AMA version).

[35] Arneson, 24 Vet. App. at 386.

[36] 35 Vet. App. 354 (2022), aff'd, 104 F.4th 262 (Fed. Cir. 2024), cert. denied, No. 24-452 (U.S. Jan. 27, 2025).

decision. The hearing transcript becomes part of the record. The deciding VLJ reads it months later, never having been in the room.

The implications run in two directions. First, *Arneson*'s procedural premise — a personal encounter between the veteran and the adjudicator who decides — no longer holds in most AMA hearings. Second, the hearing transcript carries the evidentiary weight of a brief the practitioner did not write. Pauses, redirects, the veteran trailing off or contradicting an earlier statement — all preserved, all read cold.

A brief controls the narrative. A hearing surrenders that control.

C. Testimony and Argument: The Pre-Hearing Brief

The Board's own regulation distinguishes testimony from argument. The purpose of a Board hearing is to "receive argument and testimony relevant and material to the appellate issue or issues."[37] The same regulation is explicit: a hearing "will not normally be scheduled solely for the purpose of receiving argument by a representative," since "[s]uch argument may be submitted in the form of a written brief."[38]

Most of what representatives do at Board hearings is argument: framing issues, identifying the disputed element, structuring the rating analysis, weighing favorable evidence against negative. That work belongs in a brief. The hearing earns its place only when it adds testimony the written record does not contain.

IV. The Sophisticated Representative

Bryant addressed a representation environment that no longer describes most of the cases the duties reach. In 2010, most veterans before the Board were unrepresented or represented by a VSO service officer. Private attorney representation at the agency level was uncommon.[39] The duties addressed a real gap. An unrepresented veteran or service officer without legal training was less likely to identify a missing nexus opinion, a TDIU claim reasonably raised by the record, or an alternative theory of entitlement. The VLJ supplied a procedural protection the claim itself could not.

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[37] 38 C.F.R. § 20.700(b).

[38] Id. ("Such argument may be submitted in the form of a written brief.").

[39] James D. Ridgway, The Veterans' Judicial Review Act Twenty Years Later: Confronting the New Complexities of the Veterans Benefits System, 66 N.Y.U. Ann. Surv. Am. L. 251, 261–62 (2010) (documenting low rates of attorney representation at the Board).

That environment has changed. Following the 2006 amendments to § 5904, private attorneys and accredited claims agents may represent veterans for a fee after the initial decision.[40] The accredited bar has grown. Specialized firms have developed. Accreditation under § 14.629 and conduct rules under § 14.632 impose specific obligations on representatives that did not exist when *Bryant* was decided.[41] The duty of competent representation requires "the knowledge, skill, thoroughness, and preparation necessary for the representation."[42]

The problem is straightforward. The duties *Bryant* imposed on the VLJ are functionally identical to the duties the accredited representative owes the client. Identify the elements to be proven. Locate supporting evidence. Recognize reasonably raised secondary claims. Ensure the record contains evidence on each material element. These are the core competencies of an accredited representative under § 14.632. When the claimant has accredited counsel, the VLJ's duty duplicates work the representative is already doing.

The Veterans Court has recognized the dynamic in adjacent contexts. *Massie v. Shinseki* held the Board "was entitled to assume that the arguments presented by [the appellant] were limited … under the advice of counsel."[43] *Mason v. Shinseki*, decided the same year, was parallel: "the Court will not invent an argument for a represented party who had ample opportunity and resources to make that same argument."[44] Neither case addressed *Bryant*. Both reflect a doctrine that calibrates agency and reviewing-court obligations downward when the claimant is competently represented.

Judge Lance was right about what the duty was for. He wrote in 2010, in a system where the claimant often had no one else to identify what was missing or rebut what was negative. In 2026, for accredited representation, the representative does that work — earlier, in writing, on the record. The duty Judge Lance defended has not disappeared. It has migrated.

Bryant should stand. The duties are sound for the environment they were designed for. That environment still describes a real share of cases at the Board. Unrepresented veterans appear at hearings. So do veterans represented by service officers whose training varies. For those cases, the *Bryant* duties are a procedural protection the system needs.

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[40]Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. L. No. 109-461, § 101, 120 Stat. 3403, 3407.
[41]38 C.F.R. §§ 14.629, 14.632.
[42]Id. § 14.632(b)(1).
[43]25 Vet. App. 123, 131 (2011), aff'd, 724 F.3d 1325 (Fed. Cir. 2013).
[44]25 Vet. App. 83, 95 (2011).

The argument is narrower. For accredited representation, the rationale no longer holds. The representative, not the VLJ, identifies the missing nexus opinion and ensures its submission. The ninety-day evidence window exists for that purpose.[45] The duty to suggest what is missing has been absorbed by the duty to know.

The hearing-docket function — eliciting overlooked evidence through the VLJ-claimant exchange — is now work the representative does in the brief.

The hearing becomes a procedural appendix to work already done.

Bryant duties were designed for unrepresented veterans. Accredited counsel discharge them in writing, before the hearing, in a brief the VLJ reads. For accredited attorneys and agents, hearings should be rare.

V. What the Data Shows

VA's AMA Metrics Reports show how the three dockets perform. The Board issued 71,262 AMA decisions in FY 2024, more than doubling FY 2023 output.[46] AMA decisions now account for most of the Board's workload. The docket-level data tell the story.

Table 1 summarizes the FY 2025 outcome data.

Table 1. Board Appeal Outcomes by Docket, FY 2025

Docket	Allowed	Allowed w/ Remand	Remand	Denied	Other
Direct Review	26%	8%	31%	24%	11%
Evidence Submission	29%	12%	29%	17%	14%
Hearing	28%	12%	25%	13%	21%
Total	**27%**	**10%**	**29%**	**20%**	**14%**

Source: VA AMA Metrics Reports, FY 2025 data.

Read at face value, the hearing-docket numbers appear favorable. Combined allowance around forty percent. Denial rate of thirteen percent, nearly half the direct-review rate. The lowest remand rate of the three dockets. The natural inference: hearings produce better outcomes.

That inference does not survive the denominator. The "Other" column captures withdrawals, dismissals, and administrative closures. On the hearing docket, "Other" runs at twenty-one percent,

[45] 38 C.F.R. § 20.302.

[46] VA, Board of Veterans' Appeals, FY 2024 Annual Report 7 (2024).

nearly double the eleven percent on direct review. Much of the difference is hearing-related: cancellations, no-shows, rescheduling dismissals, withdrawals during the long wait. The merits-decision denominator is smaller than gross filings suggest. The favorable outcome rates among cases that reach merits reflect, in part, that selection.

There is also a front-end selection effect. Veterans and representatives who choose the hearing docket are not a random sample — they tend to have stronger cases, more developed evidence, and accredited representation. The favorable outcome profile is consistent with that selection. It does not establish that the hearing produces the outcome.

Speed is the other dimension. The Board's timeliness targets are 365 days for direct review, 550 days for evidence submission, and 730 days for the hearing docket.[47] Through Q3 FY 2024, the hearing-docket average was approximately 1,089 days; direct review averaged 866.[48] Those averages mask the AOD effect. Advance-on-the-Docket cases — granted for terminal illness, severe financial hardship, age over seventy-five, and other qualifying categories — pull the hearing-docket average down.[49] For non-AOD cases, hearing-docket decisions routinely take five to six years. A well-prepared direct-review case can resolve in as little as nine months.

The practitioner's docket choice is the difference between under a year and half a decade.

The aggregate picture is straightforward. For the cases that survive the docket, hearings produce outcomes no better than direct review or evidence submission produces for similarly well-prepared cases. The hearing docket takes years longer.

Same outcomes. Years more wait.

VI. What Hearings Add — and What They Risk

The strategic question is not whether hearings ever serve veterans. They do. The question is when, and at what cost.

The strongest argument for hearings is procedural justice. The hearing is the moment the claimant speaks, is heard, and is acknowledged by an adjudicator. The empirical literature — Tyler and Lind on procedural justice, Mashaw on bureaucratic adjudication — establishes that

[47] VA, Board of Veterans' Appeals, FY 2024 Annual Report 11.
[48] VA, Board of Veterans' Appeals, AMA Quarterly Metrics, Q3 FY 2024.
[49] 38 C.F.R. § 20.900.

participants who experience procedural voice accept adverse outcomes more readily and trust the system more.[50] The Board hearing has served this function for decades.

This Article does not deny that value. It calibrates around it. The AOJ hearing under § 3.103(d), earlier in the process, delivers procedural justice at a lower temporal cost.[51] The Board hearing's added value here is incremental, not foundational. When the veteran wants a Board hearing, the practitioner should respect that. The question is not whether to deny hearings to veterans who want them. It is whether to request one on the assumption the veteran does.

With that acknowledged, the case for hearings as default fails on three dimensions: outcome, time, and risk.

A hearing adds real value in three categories. First, credibility-essential cases — where the dispositive issue is whether the veteran's account is credible and the written record cannot resolve it. Second, functional-impact cases, where the rating depends on how the disability affects daily life and the record has not captured it. Third, cases where testimony is the only way to develop a specific evidentiary issue, typically because the veteran is the only available witness.

In each category, the hearing does work the written record cannot. The testimony is not redundant. The personal encounter carries evidentiary weight the transcript will carry forward to the deciding VLJ.

In the broader run of cases, the math reverses. A hearing introduces risks the written record does not. Even well-prepared veterans can volunteer harmful testimony: a concession that aligns with a negative C&P examination, an inconsistency with an earlier statement, a frustrated remark suggesting the disability is less severe than the rating criteria require. The Board's deferential factfinding standard makes adverse credibility findings, once made, hard to disturb on appeal.[52] The hearing transcript becomes record evidence the Board can rely on to deny.

The Board's reasons-or-bases obligation under 38 U.S.C. § 7104(d)(1) compounds the calculus.[53] The Board must address every issue raised. Every issue raised at a hearing — every claim, every theory — becomes an issue the Board must resolve. A hearing that surfaces marginal

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[50]See Tom R. Tyler, Why People Obey the Law (1990); E. Allan Lind & Tom R. Tyler, The Social Psychology of Procedural Justice (1988); Jerry L. Mashaw, Bureaucratic Justice (1983).

[51]38 C.F.R. § 3.103(d).

[52]See 38 U.S.C. § 7261(a)(4) (clearly erroneous standard); Gilbert v. Derwinski, 1 Vet. App. 49, 52–53 (1990); see also Caluza v. Brown, 7 Vet. App. 498, 510–11 (1995) (factors relevant to assessing credibility of testimony).

[53]38 U.S.C. § 7104(d)(1); Allday v. Brown, 7 Vet. App. 517, 527 (1995); Gilbert v. Derwinski, 1 Vet. App. 49, 56–57 (1990).

theories forces the Board to address them. The Board's resolution becomes a finding that survives deferential review. *Hamill v. Collins*, which eliminated the implicit denial doctrine for AMA claims, signals that AMA-era notice and reasons requirements will be read strictly.[54] The reasons-or-bases obligation predates *Hamill*. *Hamill* confirms it will not be diluted.

Brief discipline is strategic discipline. The hearing record is not.

VLJs conduct between six and twelve hearings per day. Hearing-day fatigue is real. The deciding judge, when not the hearing judge, comes to the transcript cold. The personalization argument — that the veteran's presence makes the case real — thins when the deciding judge was not in the room. A focused lay statement on the evidence-submission docket, drafted to the element in dispute, often does more work than an hour of testimony retreading the medical record.

VII. The Direction of Travel

Three recent decisions show where the AMA case law is heading.

Frantzis settled that the VLJ who conducts a hearing need not decide the case. The personal-encounter rationale of *Arneson* — assumed in *Bryant* — no longer holds.

Cook v. McDonough hardened the closed-record discipline at the Board.[55] *Cook* held that the Board may not consider evidence submitted between the AOJ decision and the NOD on the evidence-submission docket. The closed-record principle is procedural, not discretionary.[56] Evidence outside the docket's narrow windows does not enter the record. The corollary for practitioners: the hearing docket's ninety-day evidence window is not flexible. Miss it, and the supplemental claim lane is the only remaining path. The Board will not fix it on appeal.

Hamill v. Collins eliminated the implicit denial doctrine for AMA claims.[57] The holding is narrow: VA initial decisions must give explicit notice that an issue is being adjudicated and how. The posture is broader. The Federal Circuit read the AMA as Congress's deliberate heightening of notice requirements and refused to import a Legacy doctrine that would soften them. *Hamill* did not address *Bryant*, and did not address Board decisions. The direction of travel is clear. The AMA

[54]Hamill v. Collins, No. 24-1543 (Fed. Cir. Feb. 4, 2026) (holding the implicit denial doctrine cannot survive the AMA's heightened notice requirements).
[55]36 Vet. App. 175 (2023).
[56]Id. at 181–83; see also Williams v. McDonough, 37 Vet. App. 305, 311 (2024) (interpreting the docket-switching window under 38 C.F.R. § 20.202(c)(2)).
[57]See Hamill, No. 24-1543, supra.

is a regime built on explicit notice — the kind a represented claimant supplies through counsel, not the kind a VLJ elicits inquisitorially at a hearing.

Read together, these decisions describe a hearing under more procedural constraint and less evidentiary forgiveness. The practitioner controls more of the architecture. The adjudicator controls less. *Frantzis* says the hearing is not where the decision is made. *Cook* says the hearing record will be enforced as drawn. *Hamill* signals that AMA notice and reasons will be read strictly. None of these holdings restricts the veteran's right to a hearing. All of them change when the hearing is worth having.

Frantzis moved the decision. *Cook* sealed the record. *Hamill* sharpened the notice requirement.

VIII. The Practitioner's Default

The question for the accredited representative is not "should we request a hearing?" but "what does a hearing add to this record that a brief and a targeted evidence submission cannot?" When the answer is substantive, the hearing should be requested. When the answer is nothing, or only personalization, the hearing should not.

The standards of competent representation under § 14.632 do not require that result. They make it harder to justify the alternative. An accredited representative who requests a hearing reflexively makes a strategic choice without engaging the strategic question. That isn't enough.

A disclosure. Under 38 U.S.C. § 5904, fees in accredited representation come from past-due benefits accrued during pendency. Longer pendency means larger fees. The institutional incentive points toward the slowest docket. The argument this Article advances cuts against that incentive. CCK's practice — hearings requested selectively, not by default — produces faster resolutions and lower fees per case. The practice serves clients better. Other firms have reached different conclusions.

Since the AMA took effect in 2019, CCK has made evidence submission or direct review the institutional default. Hearings are requested selectively, in the categories above. Grant rates have held. Agency-stage resolution times have improved. Case-by-case docket-selection data are not available; the judgment rests on observed grant rates across the practice. Clients understand the choice when explained: a faster decision on a record the representative controls, rather than a slower one into which the hearing introduces variables the representative cannot anticipate.

This is a firm-specific practice. The point is that the question deserves to be asked deliberately, not answered by reflex. The hearing-as-reflex habit is a holdover from a system in which it usually made sense. That system is gone.

The choice is the representative's. So is the responsibility.

IX. What This Argues For

The argument runs in four directions.

For practitioners, the docket choice deserves more weight. The default should be evidence submission or direct review when the representative is doing the substantive work — identifying missing evidence, articulating the theory, answering negative evidence in writing. Hearings should be reserved for cases in which testimony adds evidentiary value the record cannot carry. CLE programs, NOVA and CAVC Bar materials, and firm training should treat docket selection as a substantive skill, not a procedural afterthought.

For the Board, the operational data on the hearing docket warrant continued attention. A 730-day target, average pendency above one thousand days, and a twenty-one percent "Other" rate suggest a docket with procedural friction worth reducing. Pre-hearing conferences under 38 C.F.R. § 20.707 are underutilized.[58] A more aggressive pre-hearing process — clarifying issues, stipulating facts, narrowing testimony — could compress hearing time and reduce the share of cases that exit without a merits decision. The Board's focus on direct-review efficiency reflects sound institutional judgment. The hearing docket warrants the same attention.

For the doctrine, *Bryant* and its progeny should be applied with sensitivity to representation. Unrepresented claimants and those represented by VSO service officers present *Bryant* in its original form. Accredited counsel present a different case: the duties have been absorbed by the representative's own obligations. The submission itself signals which is which.

For the broader veterans law community, the AMA architecture is a step forward. The three-lane structure gives veterans and representatives a strategic choice the prior system did not. That structure works when the choice is informed. It fails when the hearing lane is selected by default, on the assumption that more procedure is better. For some veterans, the hearing is the right choice. For many, it is not. The accredited representative's job is to know which.

[58] 38 C.F.R. § 20.707; see also Bradley W. Hennings, A Day in the Life of a Veterans Law Judge (CLE materials, on file with the author) (noting underutilization of pre-hearing conferences).

Conclusion

The hearing remains a statutory right, an institutional cornerstone, and a procedural protection this Article does not call into question. Veterans who want a hearing should have one. The duties *Bryant* recognized are sound for the cases they were designed for. They remain in force.

What has changed is the operational environment. The AMA's docket structure makes hearing selection a strategic choice. The decoupling of hearing and deciding VLJs has altered the value of the live encounter. The accredited bar has absorbed the duties the system once placed on the adjudicator. The AMA Metrics Reports show a docket years slower than the alternatives, with a substantial share of cases that never reach merits. The Federal Circuit's direction — strict notice, no Legacy softening — makes the Board's reasons-or-bases obligation more consequential on the hearing record, not less.

The hearing was the veteran's day at the Board. Under the AMA, the brief is. The hearing was always the representative's call. Under Legacy, the call was usually right. The same VLJ heard and decided. *Bryant* gave the hearing a procedural edge the brief could not match. The personal encounter with the decision-maker carried evidentiary weight no written submission could. Each of those reasons has weakened or disappeared. The choice now should be made deliberately, not by reflex. For accredited attorneys and agents, the hearing should be rare. The default should be the brief, the evidence submission, and the record the representative controls.

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