

Namibia

Veterans Act, 2008

Regulations relating to Appeals to Veterans Appeal Board and the High Court, 2011

Government Notice 45 of 2011

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Regulations relating to Appeals to Veterans Appeal Board and the High Court, 2011

Contents

1. Definitions	1
2. Clerk of Appeal Board	2
3. Messenger	2
4. Service of process	2
5. Signing and filing of documents	2
6. Legal representation	2
7. Institution of appeal proceedings	3
8. Notice of appeal	3
9. Response to notice of appeal	3
10. Failure to respond	3
11. Intervention by third parties	4
12. Amendment of appeal documents	4
13. Extension of time and condonation	4
14. Interpreter	5
15. Securing attendance of witnesses before Board or Appeal Board	5
16. Setting down of appeal	6
17. Notice of hearing of appeal	6
18. Incapacity of member of Appeal Board	6
19. Oath office by members of Appeal Board	6
20. Hearing and procedures thereof	6
21. Judgment	7
22. Application of rules of court	7
23. Appeals to the High Court	7
24. Costs	8
Untitled	8



Republic of Namibia
Annotated Statutes

Veterans Act, 2008

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1. Definitions

In these regulations any word or expression to which a meaning has been given in the Act bears that meaning and, unless the context otherwise indicates-

“**Appeal Board**” means the Veteran Appeal Board established under section 41(1) of the Act;

“**clerk**” means the clerk of the Appeal Board appointed under regulation 2;

“**deliver**” means serving of copies of the notice of appeal, process or other document required to be served in terms of these regulations, on all parties and filing the original copy with the clerk of the Appeal Board;

“**legal practitioner**” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act [No. 15 of 1995](#)) and includes a candidate legal practitioner as defined in that section;

“**messenger**” means a person appointed as such under regulation 3 or where appropriate, the messenger of the magistrates court authorised to serve process in terms of the rules of the court;

“**party**” and any reference to an appellant or a respondent or other litigant, includes his or her legal representative, as the context may require;

“**process**” means the process of the Appeal Board;

“**rules of court**” means the rules of the magistrates court promulgated in RSA GN R1108 of 21 June 1968;

“**presiding officer**”, means the magistrate presiding at the appeal hearing; and

“**the Act**” means the Veterans Act, 2008 (Act [No. 2 of 2008](#)).

2. Clerk of Appeal Board

The Permanent Secretary-

- (a) must designate a staff member of the Ministry as clerk of the Appeal Board;
- (b) may designate such other staff members of the Ministry as may be necessary,

to perform the administrative functions or other work incidental to the performance of the functions of the Appeal Board or such other functions as may be assigned by the Permanent Secretary or the Appeal Board.

3. Messenger

The Permanent Secretary must designate one or more staff members of the Ministry as messenger of the Appeal Board entrusted with serving any process required to be served under these regulations.

4. Service of process

- (1) Any process required to be served in terms of the Act or these regulations must be served by the messenger or where such service cannot be effectively served by the messenger, it may be served by the messenger of the magistrates' court who is authorised to serve process of that court in the area where the process of the Appeal Board is to be served.
- (2) Any process served under subregulation (1) must be served in the same manner that process of the magistrates' courts is served in terms of the rules of that court.
- (3) A party requiring service of process in terms of the Act or these regulations must deliver to the clerk the original of such process together with as many copies thereof as there are persons to be served.
- (4) The clerk must instruct the messenger to serve the papers on the Board or any other person named in the papers.
- (5) After serving the process, the messenger must in writing notify-
 - (a) the clerk and the party who sued the process that service has been duly effected, stating the date and manner of service or the result of service and return the process to the clerk; or
 - (b) the party who sued out the process that he or she was unable to effect service and of the reasons for such inability, and return the said process to such party, but the messenger must keep a record of any process so returned.

5. Signing and filing of documents

- (1) Any notice, process or other document which is filed with the clerk must be signed by the person who is responsible for the filing thereof.
- (2) Any notice, process or other document required to be filed with the clerk, may be filed during the hours 08:00 - 13:00 and 14:00 - 16:00 on any day, except Saturdays, Sundays or public holidays.
- (3) Wherever a notice, process or other document is filed with the clerk at least four copies thereof must also be filed.

6. Legal representation

- (1) Any legal practitioner may act in any appeal proceedings before the Appeal Board.
- (2) Any party to an appeal may act personally or through a legal practitioner in the proceedings before the Appeal Board.

7. Institution of appeal proceedings

Proceedings for the institution of an appeal against a decision or order of the Board to the Appeal Board must be instituted by way of a notice of appeal set out in Form AB 1 which notice must be duly signed by the appellant and filed with the clerk.

8. Notice of appeal

- (1) Whenever an appeal is noted in terms of the Act or these regulations to the Appeal Board, the notice of appeal must state-
 - (a) the full name and address of the appellant and of the respondent;
 - (b) the decision or determination appealed against;
 - (c) the full address where the appellant will accept service of any notice, process or any other document required in terms of these regulations; and
 - (d) the grounds upon which the appeal is based.
- (2) A notice of appeal must be accompanied by -
 - (a) the original of the decision, determination or order of the Board being appealed against;
 - (b) copies of any documents, including application forms presented to the Board; and
 - (c) any other documents which the Appeal Board deems necessary.

9. Response to notice of appeal

- (1) If the respondent wishes to oppose the appeal he or she or it must cause a written reply to be delivered to the appellant within 20 days of the date of service of the notice of appeal on the respondent.
- (2) The respondent must in such reply-
 - (a) deal with the grounds of appeal set out in the notice of appeal; and
 - (b) set out the reasons for the decision or determination appealed against.
- (3) An appellant is entitled to amend the grounds of appeal within 10 days of receipt of a respondent's reply to a notice of appeal and a respondent is entitled to reply to such amendments within 10 days of the receipt of the amended notice of appeal.

10. Failure to respond

- (1) If any party fails to deliver his or her answer within the period prescribed in these regulations, the other party may deliver a notice which states that, in the event of failure to deliver the answer within 7 days of such notice, application will be made for the summary determination of the appeal by the Appeal Board without reference to the other party.
- (2) A party that fails to deliver an answer within the prescribed period is, after expiry of the period referred to in subregulation (1), barred from delivering such reply except that such period may, either before or after expiry thereof, be extended with the consent of the opposite party, or if such consent be withheld, by the Appeal Board on application made to it.
- (3) Where no answer to an appeal is delivered, the Appeal Board may at the hearing of the appeal take such steps as it may deem necessary or expedient to decide the appeal, including the adjudication of the appeal in the absence of the defaulting party.

11. Intervention by third parties

- (1) Any party having an interest in appeal proceedings before the Appeal Board and wishing to join in the proceedings may at any stage before or during the proceedings apply to the Appeal Board to join in the proceedings, and if the application is granted the provisions of these regulations in so far as they relate to any of the parties to the proceedings, subject to necessary changes required by context, apply to such party.
- (2) The Appeal Board may grant the application referred to in subregulation (1) on such conditions as the Appeal Board may deem necessary or expedient.
- (3) The Appeal Board may at any time, either upon application by any party to proceedings before it or *mero motu*, order that some person other than the appellant or the respondent be joined as a party on such conditions as the Appeal Board may deem necessary or expedient.

12. Amendment of appeal documents

- (1) Any party wishing to amend any notice, process or any other document filed in terms of these regulations in connection with any proceedings must give all other parties notice of his or her intention to amend.
- (2) The notice must state that, unless written objection is made to the proposed amendment within 10 days of delivery of the notice referred to in subregulation (1), the party giving notice will amend the notice, process or other document concerned accordingly.
- (3) If no written objection be so made, the party receiving the notice referred to in subregulation (1) is deemed to have agreed to the amendment.
- (4) If objection is made within the period referred to in subregulation (2), the party wishing to proceed with the amendments must, within 10 days of receipt of the objection, apply to the Appeal Board for permission to amend.

[The word “subregulation” is misspelt in the Government Gazette, as reproduced above.]

- (5) When an amendment has been granted, or when no objection has been made within the period prescribed by subregulation (2), the amending party must deliver the amendment within the time fixed by the order, or within 10 days of the expiry of the time prescribed in subregulation (2), as the case may be.
- (6) When an amendment is delivered under this regulation, the other party concerned may reply or answer thereto or amend accordingly any document handed in by him or her within 15 days of receipt of the amendment concerned.
- (7) The Appeal Board may, during the hearing of an appeal at any stage before judgment, grant leave for an amendment of any notice, process or any other document on such conditions as it may deem fit.
- (8) An amendment granted in terms of these regulations must appear on a separate page, which must be joined to the notice, process or other document concerned at a suitable place.

13. Extension of time and condonation

- (1) In the absence of agreement between the parties, the Appeal Board may, upon application on notice and on good cause shown, extend or shorten any period of time prescribed by these regulations or by any order of the Appeal Board in connection with any proceedings, upon such conditions as it may deem necessary or expedient, and may also extend or shorten any period of time fixed by an order extending or shortening the time for doing any act or taking any step in connection with such proceedings.

- (2) Any such extension or shortening may be granted although the application therefor is not made until after the expiry of the time prescribed or fixed, and the Appeal Board may, at its discretion, make such order as to the cancelling or varying of the results of the expiry of any time so prescribed or fixed, whether such results flow from any order of the Appeal Board or from these regulations.
- (3) The Appeal Board may, on good cause shown, condone the non-compliance with any provisions of these regulations.
- (4) If it appears, at any stage during the hearing of an appeal, that the rights of persons, excluding those notified thereof, may be affected by the judgment in such appeal, the Appeal Board may order that a notice of the appeal, or copy of any process of the Appeal Board, or of any other document, be served on such other persons in such manner as the Appeal Board may order, and the Appeal Board may to that end adjourn the hearing of the appeal concerned.
- (5) The Appeal Board may, upon such conditions as it may deem necessary or expedient, permit a respondent to be heard at the hearing of an appeal, despite the fact that such respondent has failed to file an answer.

14. Interpreter

- (1) Where any of the parties to an appeal or any person called as a witness during appeal proceedings does not sufficiently understand the official language the clerk must appoint a competent person who is sufficiently conversant in the official language and the language that the party or witness may want to use at the appeal hearing as an interpreter.
- (2) An interpreter is appointed for a particular appeal and on a part-time basis and must be paid an allowance from the Fund as may be determined by the Board.
- (3) An interpreter may not commence any duty as an interpreter unless he or she has been sworn in by the presiding officer or has taken an affirmation before the presiding officer in the following form:

I, _____ (full name), do swear/solemnly affirm and declare that I will truly and correctly to the best of my ability interpret into and from the language I am called upon to interpret and from and into the language being used in these proceedings. (in case of oath) So help me God.

Signature of deponent

Presiding officer

15. Securing attendance of witnesses before Board or Appeal Board

- (1) An applicant or person in any matter before the Board or any party to an appeal before the Appeal Board may request the attendance of any person to give evidence or to produce any book or paper or document by taking out a subpoena for that purpose.
- (2) Any person requiring the attendance of any person to give evidence or produce any book, document or paper and desires that such a person be subpoenaed, may request the Board or the Appeal Board, as the case may be, to issue a subpoena.
- (3) On receipt of a request made under subregulation (2) the chairperson of the Board or of the Appeal Board may authorise the Secretary or the clerk, as the case maybe, to issue a subpoena which must be in the form set out in Form AB 2.
- (4) A subpoena must be served in the manner described in regulation 4 or if the person or party suing out the subpoena so desires be served at his or her own expense by any other lawful means.
- (5) The provisions of [section 23](#)(4) to (7) of the Act apply to a person who has been subpoenaed to appear before the Board or the Appeal Board pursuant to this regulation.

16. Setting down of appeal

- (1) After the last process required in terms of these regulations has been filed, the appellant may set down the case on a date to be arranged with the clerk.
- (2) If the appellant fails to apply within 15 days of such last process having been filed for a date of hearing of the application, the respondent is entitled to make such application.
- (3) If the provisions of regulation 10 apply to the further continuation of the hearing of the application, the appellant may, without any reference to any other party, arrange a date for the hearing of the application in consultation with the clerk.

17. Notice of hearing of appeal

The appellant or the respondent, as the case may be, must, at least 15 days before the hearing of the appeal, give notice of date of hearing of an appeal to the other party and the time and place of the hearing must be mentioned in the notice.

18. Incapacity of member of Appeal Board

Where by reason of absence or incapacity the presiding officer or a person appointed as a member of the Appeal Board is unable to perform the functions of his or her office, or whenever such office becomes vacant, the Minister responsible for justice or the Minister may assign another magistrate or person, as the case may be, to act in the place of the absent or incapacitated magistrate or person during such absence or incapacity or to act in the vacant office until the vacancy is filled.

19. Oath office by members of Appeal Board

The presiding officer or person appointed to the Appeal Board must, before commencing with his or her functions take an oath or make an affirmation before a magistrate, subscribed by him or her, in the form set out below:

I, _____ (full name) do hereby swear/solemnly affirm and declare that in my capacity as a member of the Veterans Appeal Board I will fearlessly administer the affairs of the Veterans Appeal Board in justice and fairness to all persons without favour or prejudice and in accordance with the law of Namibia. (in case of an oath) So help me God.

Signature of deponent

Magistrate

20. Hearing and procedures thereof

- (1) The hearing of an appeal before the Appeal Board must-
 - (a) take place at a place determined by the Appeal Board; and
 - (b) be held in public, unless for good cause shown, the Appeal Board directs otherwise.
- (2) At the hearing of the appeal the Appeal Board may, in addition to considering the documents submitted in connection with the appeal, hear such evidence as may be necessary for the determination of the appeal and hear or receive oral or written submissions made by the parties to the appeal.
- (3) Where it is necessary to adduce evidence, the obligation to adduce evidence first rests on the appellant unless the parties agree otherwise.

- (4) If the appellant appears at the appeal proceedings and the respondent fails to appear, the appellant may adduce evidence in so far as it is necessary for his or her case, whereupon the Appeal Board may make a determination.
- (5) If the respondent appears at the appeal proceedings and the appellant fails to appear the Appeal Board may dismiss the appeal.
- (6) Despite the procedures stipulated in these regulations the presiding officer with the consent of the parties concerned, may direct that an appeal be dealt with as an urgent matter and order that it be disposed of in such manner as he or she sees fit.
- (7) In hearing and determining an appeal under these regulations the Appeal Board may determine its own rules of procedure not inconsistent with the provisions of the Act, except that the Appeal Board must in all cases observe principles of fairness and natural justice.
- (8) The Appeal Board must keep a record of the proceedings or cause the proceedings to be recorded in full be it in shorthand or by mechanical means by a person directed by the presiding officer to do so.

21. Judgment

- (1) The Appeal Board must, as soon as is reasonably possible but not later than 60 days after the hearing of the appeal, deliver its judgement on the appeal.
- (2) The judgment of the Appeal Board must be-
 - (a) in writing;
 - (b) signed by the presiding officer; and
 - (c) delivered or caused to be delivered by the clerk to all the parties to the appeal within 10 days of the judgement.

22. Application of rules of court

Where these regulations do not make provision for the procedure to be followed in any matter before the Appeal Board, the rules of court in so far as they apply to civil proceedings in the magistrates courts, do apply to proceedings before the Appeal Board with such qualifications, modifications and adaptations as may be necessary.

23. Appeals to the High Court

- (1) An appeal to the High Court in terms of section 43 of the Act must be noted within 30 days of the passing of the decision appealed against and any cross-appeal must be noted within seven days of the noting of the appeal.
- (2) An appeal or cross-appeal must be noted by delivery, within the period prescribed in subregulation (1), to the clerk, the registrar of the High Court and to the other party, of a notice in Form AB 3 stating-
 - (a) whether the whole or part only of the judgment is appealed against and, if part only, which part; and
 - (b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.
- (3) The presiding officer of the Appeal Board must-
 - (a) within 14 days of the noting of an appeal; or
 - (b) if the proceedings at the appeal hearing were recorded by mechanical means, within 14 days after the transcription of the mechanical record of the proceedings has been placed before him or her by the clerk,

transmit to the clerk a statement in writing setting out-

- (i) the facts he or she found to be proved;
 - (ii) his or her reasons for any finding of fact specified in the notice of appeal; and
 - (iii) his or her reasons for any ruling on a question of law or for the admission or rejection of any evidence specified in the notice of appeal.
- (4) Where an appeal has been noted under this regulation, the clerk must, if the proceedings at the appeal hearing were recorded by mechanical means, forthwith cause the mechanical record of the proceedings to be transcribed.
- (5) An appeal noted in terms of this regulation must be prosecuted, with necessary changes required by context, in accordance with rule 54 of the Rules of the High Court of Namibia published in Government Notice 59 of 10 October of 1990 as if it were an appeal in a civil matter from a magistrates' court to the High Court.

24. Costs

Despite any other law to the contrary, the Appeal Board or any court of law hearing any matter regarding the Act or these regulations may not make an order for costs in favour of or against any party prosecuting or defending an appeal under the Act or these regulations unless that party has acted in a frivolous or vexatious manner by instituting, proceeding with or defending the appeal.

Forms

[Editorial note: The forms have not been reproduced]