38 U.S.C. 1151 CLAIMS (VSR)

Instructor Lesson Plan

Time Required: 4 Hours

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| Lesson Description | |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. | |
| TMS # | 1197940 |
| Prerequisites | Prior to this lesson, the target audience should have 6 months experience. |
| target audience | The target audience for 38 U.S.C. §1151 Claims is the VSR Journey Level.  Although this lesson is targeted to teach the VSR Journey Level employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 4 Hours |
| Materials/ TRAINING AIDS | Student materials:   * Handout, 38 U.S.C. §1151—Advanced VSR * 38 U.S.C. §1151 Claims—Advanced PowerPoint Presentation * Notepad   Instructor Materials/Training Aids:   * Lesson Plan, 38 U.S.C 1151 Claims – Advanced VSR * Handout, 38 U.S.C 1151 Claims – Advanced VSR * 38 U.S.C. §1151 Claims—Advanced PowerPoint Presentation |
| Training Area/Tools | The following are required to ensure the trainees are able to meet the lesson objectives:   * Classroom or private area suitable for participatory discussions * Seating, writing materials, and writing surfaces for trainee note taking and participation * Handouts, which include a practical exercise * Large writing surface (easel pad, chalkboard, dry erase board, overhead projector, etc.) with appropriate writing materials * Computer with PowerPoint software to present the lesson material   Trainees require access to the following tools:   * VA TMS to complete the assessment * Access to VA Intranet * *RBA Combinator* or the *Combined Ratings Table in §4.25* |
| Pre-Planning | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session. * Become familiar with the content of the trainee handouts and their association to the Lesson Plan. * Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the trainee handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson. * Ensure that there are copies of all handouts before the training session. * When required, reserve the training room. * Arrange for equipment such as flip charts, an overhead projector, and any other equipment (as needed). * Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson. * This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins. |
| Training Day | * Arrive as early as possible to ensure access to the facility and computers. * Become familiar with the location of restrooms and other facilities that the trainees will require. * Test the computer and projector to ensure they are working properly. * Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly. * Make sure that a whiteboard or flip chart and the associated markers are available. * Provide a sign in sheet and at the conclusion of the session, ensure that all trainees sign in. |

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| Introduction to 38 U.S.C. §1151 Claims | | | | | |
| INSTRUCTOR INTRODUCTION | | | | Complete the following:   * Introduce yourself * Orient learners to the facilities * Ensure that all learners have the required handouts | |
| time required | | | | 0.25 minutes | |
| Purpose of Lesson  Explain the following: | | | | This lesson is intended to inform the trainees of requirements under 38  §1151 pertaining to compensation involving non service- connected disabilities resulting from VA hospitalization, treatment, or rehabilitation training. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * Identifying claims for entitlement to 38 U.S.C. §1151 claims * Promulgate entitlement to 38 U.S.C. §1151 claims | |
| Lesson Objectives  Discuss the following:  Slide 2  Handout 2 | | | In order to accomplish the purpose of this lesson, the target audience will be required to accomplish the following lesson objectives.  Given the trainee handout packet and references, the VSR trainee will be able to:   * Identify the criteria and associated laws for 38 U.S.C. §1151 * Distinguish which benefits are applicable for 38 U.S.C §1151 claims, * Identify proper development procedures when adjudicating U.S.C **§**1151 claims * Recognize correct effective dates for U.S.C **§**1151 claims * Distinguish which promulgation actions are applicable for 38 U.S.C **§**1151 claims * Prepare the correct notification letter for claims involving entitlement to U.S.C **§**1151 benefits | | |
| Explain the following: | | | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed. | | |
| Motivation | | | This course can be taught with or without a computer. The optional material listed above is for computer classes only.  Students should have completed non-journey level VSR training prior to beginning this course. VSRs that fall in this category have attended most, if not all, beginner and intermediate level training sessions. Understanding of the material is demonstrated through response to the 38 U.S.C. 1151 Claims Review Exercise questions located in the student Handout. Please have the students complete this exercise at the end of the course, either individually or in a group. Explain to them that you will go over the answers after they are done with the exercise.  Sample scenarios and cases from your office can be used to supplement the material in this packet. You can also use the student Handout for teaching purposes, as more comprehensive material is included with this material. Claims under 38 U.S.C. §1151 are uncommon and complex to process; therefore it is crucial for the Veterans Service Representative (VSR) to possess knowledge of the 38 U.S.C. §1151 claims process in the event a claim is filed. | | |
| STAR Error code(s) | | | B1, B2 | | |
| References  Slide 3-4  Handout 2 | | | Explain where these references are located in the workplace.   * [38 U.S.C §1151](http://www.law.cornell.edu/uscode/text/38/1151) Benefits for Persons Disabled by Treatment or Vocational Rehabilitation * [38 CFR §3.154](http://www.ecfr.gov/cgi-bin/text-idx?SID=41ba91920fcf7d183ebc3507eafd0f14&mc=true&node=se38.1.3_1154&rgn=div8) Injury due to hospital treatment, etc. * [38 CFR §3.358](http://www.ecfr.gov/cgi-bin/text-idx?SID=41ba91920fcf7d183ebc3507eafd0f14&mc=true&node=se38.1.3_1358&rgn=div8) Compensation for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training * [38 CFR §3.361](http://www.ecfr.gov/cgi-bin/text-idx?SID=41ba91920fcf7d183ebc3507eafd0f14&mc=true&node=se38.1.3_1361&rgn=div8) Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program. * [38 CFR §3.400(i) Disability or death due to hospitalization, etc.](http://www.ecfr.gov/cgi-bin/text-idx?SID=a8af408e8e6c5e3af4047f2a36ed05ac&node=se38.1.3_1400&rgn=div8) * [38 CFR §17.32](http://www.ecfr.gov/cgi-bin/text-idx?SID=d9f73a4061ddae1dafebd25dc25b08a5&node=se38.1.17_132&rgn=div8) Informed consent and advance care planning * [M21-1, Part IV, Subpart iii, Subpart V, Chapter 4, Section B](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014245%2FM21-1-Part-III-Subpart-v-Chapter-4-Section-B-Recoupment-of-Separation-Benefits) - M21-1, Part III, Subpart v, Chapter 4, Section B - Recoupment of Separation Benefits * [M21-1, Part IV, Subpart ii, 1, A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014321%2FM21-1-Part-IV-Subpart-ii-Chapter-1-Section-A-Developing-Compensation-Claims-to-Include-Claims-Filed-Under-38-USC-1151) - Developing Claims Filed Under 38 U.S.C. 1151 * [M21-1, Part IV, Subpart ii, 2, G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) - Benefits under 38 U.S.C. 1151 * [M21-1, Part IV, Subpart ii, 3, D](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014596%2FM21-1-Part-IV-Subpart-ii-Chapter-3-Section-D-Disability-Compensation-Under-38-USC-1151) - Disability Compensation Under 38 U.S.C. 1151 * [M21-1, Part IV, Subpart iii, 1, A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014601%2FM21-1-Part-IV-Subpart-iii-Chapter-1-Section-A-Overview-of-Death-Compensation-and-Dependency-and-Indemnity-Compensation-DIC) - DIC Under 38 U.S.C. 1151 * [M21-1, Part IV, Subpart iii, 3, E](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014638%2FM21-1-Part-IV-Subpart-iii-Chapter-3-Section-E-old-G-Dependency-and-Indemnity-Compensation-DIC-Benefits-Under-38-USC-1151) -Determining Entitlement to Ancillary Benefits * [M21-1, Part IX, Subpart i](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000003234%2FSubpart-i-Ancillary-Benefits) - Ancillary Benefits * [VBMS-Awards User Guide](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp) * [VETSNET Awards User Guide](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp) | | |
| Topic 1: General Information on Entitlement to Benefits Under 38 U.S.C. 1151 | | | | | | |
| Introduction | | | | | | This topic will introduce the trainee to the criteria and laws governing 38 U.S.C. §1151 claims. |
| Time Required | | | | | | 1.5 hours |
| OBJECTIVES/ Teaching Points | | | | | | Topic objective:   * Identify the criteria and associated laws for 38 U.S.C. §1151 * Distinguish which benefits are applicable for 38 U.S.C **§**1151 claims * Differentiate between a tort claim and 38 U.S.C **§**1151 claim   The following topic teaching points support the topic objectives:   * General Information on Entitlement to Benefits Under 38 U.S.C. 1151 * Tort Claims and Entitlement to Benefits Under 38 U.S.C. 1151 * Identifying and Developing Claims for Entitlement to 38 U.S.C. 1151 |
| **What is a 38 U.S.C. 1151 Claim?**  *Slide 5*  Handout 3 | | | | | | Compensation “*as if”* service-connected, provided that disability or death is a result of:   * hospital care, medical or surgical treatment, or exam furnished by the VA * participation in vocational rehabilitation training under the VA law, or * participation in compensated work therapy (CWT)   See [M21-1, Part IV, Subpart ii,1,A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014321/M21-1-Part-IV-Subpart-ii-Chapter-1-S)  *Compensation is not payable if disability is due to Veteran’s willful misconduct!*  **Explain to the VSRs that compensation may also be paid under 1151 for:**   * a disability secondary to 1151 disability * aggravation of a pre-existing disability due to treatment or hospitalization by the VA   See [M21-1, Part IV, Subpart ii, 2, G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014567/M21-1-Part-IV-Subpart-ii-Chapter-2-S)  Advise VSRs that specific information regarding DIC under 1151 can be found under M21-1, Part IV.iii.1.A.2.i and IV.iii.1.B.2. |
| ***“As if”* Defined**  M21-1, IV.ii.1.A and  M21-1, IV.ii.2.G  Slide 6  Handout 3 | | | | | | If compensation is granted for a disability under 38 U.S.C. 1151, the disability is **not service connected**. However, compensation is payable “*as if”* it were service connected. The distinction is that a Veteran receiving compensation solely under 38 U.S.C. 1151 is not entitled to all ancillary benefits that are payable to Veterans with service-connected disabilities. |
| 38 CFR §3.358 vs.  38 CFR §3.361  Slide 7  Handout 3 | | | | | | * §3.358 applies to claims before *October 1, 1997*, where there is no fault requirement * §3.361 applies to claims after *October 1, 1997*, where there is a fault requirement * §3.361 a (2) applies to claims after *November 1, 2000*, whereas claimants could now file 1151 claims for disabilities or death due activity under a CWT program. |
| **Proximal Cause**  M21-1, Part IV. Subpart ii.1.A.2 and Part IV. Subpart ii.2.G.3.b  CFR 3.361 (c) and (d)  Slide 8  *Handout 4* | | | | | | Disability or death must be proximately caused by:   * carelessness, negligence, lack of proper skill, error in judgment or similar instance of fault on the part of the VA * an event not reasonably foreseeable, or * training or rehabilitation under Ch. 31 or CWT   **Refer the VSRs to page 5 of their *Handout,* and have them read the paragraphs listed below. Highlight the following points:**  *Actual causation required.* Must show disability or death due to the VA. Merely showing treatment at the VA and having a disability, does not establish cause alone.  *Continuance or natural progress of a disease or injury.* VA care cannot cause the continuance or natural progression of a disability, unless the VA failed to timely diagnose and properly treat that disability.  *Veteran's failure to follow medical instructions.* Disability or death due to the Veteran’s failure to follow properly given medical instructions is not caused by the VA.  Explain to them that the “fault on part of the VA” and “not reasonable foreseeable, basically pertain to disabilities and death due to VA hospital care, medical or surgical treatment, or examination.   * See [M21-1, Part IV, Subpart ii, 2, G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014567/M21-1-Part-IV-Subpart-ii-Chapter-2-S) |
| **Fault on VA**  CFR 3.361 (d)  *Slide 9*  *Handout 5* | | | | | | To establish fault, the evidence must show that the medical care, treatment, or examination caused the additional disability or death, and the VA either:   * failed to exercise the degree of care that would have been expected of a reasonable health-care provider, or * furnished the care without the Veteran's or Veteran's representative's informed consent |
| **Not Reasonably Foreseeable**  CFR 3.361 (d)  *Slide 10*  *Handout 5* | | | | | | An event is considered "not reasonably foreseeable" if it is not the type of risk that would be disclosed as part of the informed consent procedures shown in 38 CFR §17.32.  Explain to the VSRs that the incident need not be completely unimaginable, but it must be one that a reasonable health-care provider would not consider an ordinary risk of the treatment provided.  You can find the link to §17.32 under M21-1, IV.ii.2.G Show the VSRs how to find this reference, and have them follow along if they have computer access. Explain to them that we will not go into great detail with this reference, as we have highlighted the key-points on the PPT presentation and student Handout, starting on page 5.  See [M21-1, Part IV, Subpart ii,2, G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014567/M21-1-Part-IV-Subpart-ii-Chapter-2-S) |
| **Express Consent and Implied Consent**  M21-1 Part IV. Subpart ii.2.G.1.m. Definition: Express Consent  M21-1 Part IV. Subpart ii.2.G.1.n. Definition: Implied Consent  *Slide 11*  *Handout 6* | | | | | | Refer the VSRs to page 6 of their Handout, and have them read the paragraphs listed below. Highlight the following points:  ***Express consent*** is consent that has been clearly stated either orally or in writing.  ***Implied consent*** is consent that may be inferred from the circumstances in the case.  Explain the difference between these two, and provide them with example below:  If a Veteran requires emergency care to preserve life or prevent serious impairment to health, and the Veteran or his/her representative is unable to consent orally or in writing, then consent is implied.  See [M21-1, Part IV, Subpart ii, 2, G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014567/M21-1-Part-IV-Subpart-ii-Chapter-2-S) |
| **Types of Occurrences**  M21-1, Part IV.Subpart ii.2.G.2, (a)(b)(c) - Considering Specific Instances of Causation and Fault Under 38 U.S.C. 1151.  *Slide 12*  *Handout 6* | | | | | | Refer students to page 7 of the student Handout and discuss the disabilities resulting from:   * an examination * an act of omission * premature discharge * medication   See [M21-1, Part IV, Subpart ii, 2, G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014567/M21-1-Part-IV-Subpart-ii-Chapter-2-S) |
| **Disability Resulting From an Examination**  **M21-1, Part IV.Subpart ii.2.G.2, (a)(b)(c) - Considering Specific Instances of Causation and Fault Under 38 U.S.C. 1151.**  *Slide 13*  *Handout 6* | | | | | | 38 U.S.C. 1151 authorizes compensation for disability resulting from a Veteran's "having submitted to an examination" under any law administered by VA.  *Note*: The U.S. Court of Appeals for Veterans Claims (CAVC) has interpreted this portion of the statute to mean that compensation is payable *only* for injuries that result from the examination itself, and not from the process of reporting for the examination.  *Example*: A Veteran injured by another patient while awaiting the start of his/her scheduled VA examination would not qualify for compensation for residuals of that injury under 38 U.S.C. 1151.  Please refer to [M21-1, Part IV Subpart.ii.2.G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) for more information |
| **Disability Resulting From an Act of Omission**  **M21-1, Part IV.Subpart ii.2.G.2, (a)(b)(c) - Considering Specific Instances of Causation and Fault Under 38 U.S.C. 1151.**  *Slide 14*  *Handout 7* | | | | | | Entitlement to compensation under 38 U.S.C. 1151 may be based on acts of omission as well as acts of commission. A Veteran may be entitled to benefits under 38 U.S.C. 1151 if VA failed to perform one of the following actions:   * timely diagnose or properly treat a disability, thereby causing an increased disability or death, and/or * obtain informed consent from the Veteran or the Veteran's representative prior to treatment.   *Note*: The natural progression (i.e. worsening) of a disease or injury may be the basis of eligibility under 38 U.S.C. 1151 only if it is attributable to VA's failure to timely diagnose or properly treat the disease or injury.  Please refer to [M21-1, Part IV.Subpart ii.2.G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) for more information. |
| **Disability Resulting From Premature Discharge**  **M21-1, Part IV.Subpart ii.2.G.2, (a)(b)(c) - Considering Specific Instances of Causation and Fault Under 38 U.S.C. 1151.**  *Slide 15*  *Handout 7* | | | | | | Compensation may be payable under 38 U.S.C. 1151 when a physician determines that a Veteran should be discharged from a hospital after a period of treatment, but the Veteran claims that the discharge:   * was too early, and * led to a relapse and worsening of the disability.   Consider whether the timing of the discharge aggravated the disability beyond the level of natural progression (i.e. worsening).  Note: Development should include a request for a medical certificate indicating that the Veteran's condition at discharge was not stable, and that the discharge was premature.  An independent medical opinion may be necessary in such a case.  Please refer to [M21-1, Part IV.Subpart ii.2.G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) for more information. |
| **Disability Resulting From Medication**  **M21-1, Part IV.Subpart ii.2.G.2, (a)(b)(c) - Considering Specific Instances of Causation and Fault Under 38 U.S.C. 1151.**  *Slide 16-17*  *Handout 8* | | | | | | Compensation is payable under 38 U.S.C. 1151 for any disability caused by medication that was prescribed by VA and taken or administered as prescribed, if the disability was directly due to   * fault on the part of the VA, or * an incident that could not have been reasonably foreseen.   *Example*: Compensation is payable under 38 U.S.C. 1151 if:   * VA prescribed a medication at ten times the proper dosage, *and* * additional permanent disability or death resulted from the erroneous prescription   Please refer to [M21-1, Part IV.Subpart ii.2.G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) for more information. |
| **Ch. 31 and CWT Program**  §3.361 (d) (3)  *Slide 18*  *Handout 8* | | | | | | §3.361(d)(3) states that in order to establish that the provision of training and rehabilitation services or a CWT program proximately caused a Veteran's additional disability or death, it must be shown that:   * The Veteran participated in one of the VA approved programs, and * The participation in an essential activity of the training or services caused the disability or death.   *It need not be shown that VA approved of the activity or function, as long as it is generally accepted as being a necessary component of one of the programs.* |
| **Entitlement to Ancillary Benefits**  ***M 21-1, Part IV. Subpart ii.2.G.4.f. Possible Eligibility for Ancillary Benefits Based on Qualifying 1151 Disability***  *Slide 19*  *Handout 9* | | | | | | Briefly explain the following ancillary benefits to which there may be entitlement based on a qualifying disability under [38](http://assembler.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001151----000-.html)  [U.S.C. 1151](http://assembler.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001151----000-.html):   * clothing allowance * specially adapted housing benefits, including a special housing adaptation grant, and * automobile or adaptive equipment benefits.   See [M21-1, Part IV. Subpart ii.2.G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) |
| **Non-Entitlement to Ancillary Benefits**  **M21-1 Part IV. Subpart ii.2.G.4.g. Ancillary Benefits Not Available by Reason of a Qualifying 1151 Disability**  *Slide 20*  *Handout 9* | | | | | | The following ancillary benefits are not available by reason of a qualifying disability unde[r 38 U.S.C. 1151](http://straylight.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001151----000-.html):   * Service Disabled Veteran (RH) Insurance * waiver of the loan guaranty funding fee * 38 U.S.C. Chapter 31 Education Benefits * 38 U.S.C. Chapter 35 Education Benefits * 10-point Civil Service Preference * special allowance under 38 U.S.C. 1312(a) * special allowance under *Public Law (PL) 87-377*, Section 156, Restored Entitlement Program for Survivors (REPS) * Civilian Health and Medical Program of VA (CHAMPVA) * SC burial allowance, and * loan guaranty benefits for a surviving spouse   Please refer to [M21-1, Part IV. Subpart ii.2.G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) for more information. |
| **Tort Claims and Entitlement to Benefits Under 38 U.S.C. 1151**  M21-1, Part IV. Subpart ii.3.D.1.b. Considering the Consequences of Civil Action  *Slide 21*  *Handout 9* | | | | | | When a Veteran is injured under circumstances that result in possible entitlement to benefits under 38 U.S.C. 1151, the Veteran may also seek a judgment against the U.S. in a civil action, called a Tort claim. The Veteran may sue and recover damages after   * A trial, or * Agreeing to a settlement or compromise.   Note: When a Veteran agrees to a settlement or compromise, he/she signs away the right to sue in court in return for payment of an agreed-upon amount of damages.  Please refer to [M21-1, Part IV. Subpart ii.2.G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) for more information.  ***Explain to the VSRs that a tort claim is not an 1151 claim. Tort claims are filed in the federal court system, while an 1151 claim is filed through the VA.*** |
| Topic 2: Identifying and Developing Claims for Entitlement to 38 U.S.C. 1151 | | | | | | |
| Introduction | | | | | | This topic will allow the trainee to understand procedural actions that should be taken when adjudicating claims for entitlement to 38 U.S.C. 1151. |
| Time Required | | | | | | 0.5 hours |
| OBJECTIVES/ Teaching Points | | | | | | Topic objectives:   * Identifying and Developing Claims for Entitlement to 38 U.S.C. 1151   The following topic teaching points support the topic objectives:   * Identifying 1151 Claims * Development of 38 U.S.C. 1151 Claims   + Requesting Information from the Medical Facility   + Quality Assurance Investigative Reports |
| Identifying 1151 Claims  **38 CFR3.154**  Slide 23  Handout 10 | | | | | | There is no specific application form for 38 U.S.C. 1151 benefits. Any form or other written communication used to claim compensation benefits may be accepted as a claim for this type of benefit. This would imply that 1151 claims should be in writing.  Please refer to [M21-1 Part IV, Subpart ii.1.A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014321%2FM21-1-Part-IV-Subpart-ii-Chapter-1-Section-A-Developing-Compensation-Claims-to-Include-Claims-Filed-Under-38-USC-1151), and [M21-1 Part IV. Subpart ii.2.G](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014567%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151) and §3.154 for more information. |
| Development of 38 U.S.C. 1151 Claims  **M21-1, Part IV, Subpart ii.1.A.1.a. General Overview of the Compensation Claims Development Process**  CFR §3.154  Slide 24-25  Handout 10 | | | | | | **Requesting Information from the Medical Facility:**  VA Form 10-7131*, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action*, usually does not provide enough space for detailing the claimed incident. You may request information from the VA medical facility by generating a local letter by using the verbiage provided in the M21-1 reference into an electronic 7131 request in *Compensation and Pension Record Interchange* (CAPRI). If there are any electronic records in CAPRI, you may want to print them out and have them reviewed by a Rating Veterans Service Representative (RVSR).  When requesting information, provide as much information as possible about the incident in the request. Request all evidence and documents pertinent to the incident. Possible sources of information about the incident may include:   * medical records * surgical records * hospital clinical records, or * nurses' notes   ***Explain that they will copy and paste the text provided in this Manual Reference into the general comments area and add the necessary details about the claimant to the text, as applicable. A Quick Reference – Development Guide and Sample 1151 Development Notification are also provided on page 18 of the student Handout.*** |
| Development of 38 U.S.C. 1151 Claims  Slide 26  *Handout 11* | | | | | | **Quality Assurance Investigative Reports:**  Do *not* request quality assurance investigative reports. They are investigative reports that are confidential under 38 U.S.C. 5705, and *cannot* be used as evidence in the adjudication of a claim.  If quality assurance investigative reports are received from a VA medical facility, return the reports immediately. Do *not* file copies of these reports in the Veteran's claims folder.  \*See the [QUICK REFERENCE DEVELOPMENT GUIDE](#_QUICK_REFERENCE_–_1) and [SAMPLE DEVELOPMENT NOTIFICATION](#_SAMPLE_1151_DEVELOPMENT) included in this student handout (linked in this document as well). |
| Topic 3: Promulgation of Entitlement to Benefits Under 38 U.S.C. 1151 | | | | | | | | |
| Introduction | | This topic will allow the trainee to understand the requirement for promulgating an award for entitlement to benefits under 38 U.S.C. 1151. | | | | | | |
| Time Required | | 0.75 hour | | | | | | |
| OBJECTIVES/ Teaching Points | | Topic objectives:   * Promulgate an award for entitlement to benefits under 38 U.S.C. 1151   The following topic teaching points support the topic objectives:   * Identify Correct Effective Dates * Determine if there is an Offset Required * Determiine the Final Date of a Judgment * Action to take if an is Offset Required * When an Offset is Not Required | | | | | | |
| **Identifying the Correct Effective Dates**  M21-1. Part IV. Subpart ii.2.G.4.d. Assigning an Effective Date for 1151 Compensation  Slide 27  *Handout 11* | | Compensation is either the:   * date of the injury or aggravation, if the claim is received within one year of the incident, or * date of receipt of the claim, and   DIC is either the:   * first day of the month in which the Veteran's death occurred, if a claim is received within one year following the date of death, or * date of receipt of the claim.   ***This is more relevant to RVSRs when they are completing the Rating, but VSRs should be aware of the impact that effective dates have on development and promulgation.*** | | | | | | |
| Determining if there is an Offset Required  M21-1, IV.ii.3.D  Slide 28  Handout 12 | | One of the first things you should do prior to award promulgation is to determine whether or not an offset is warranted. Disability compensation awards under 38 U.S.C. 1151 are subject to an offset effective the first of the month after the month during which a judgment becomes final.   * If there is reason to believe a Tort claim for damages may have been finalized, defer a compensation award for possible offset,   but   * do not defer a compensation award just because a Tort claim may be pending   *Prior to December 1, 1962, Tort settlements were a bar to compensation. See M21-1, Part IV.ii.3.D for more details.* | | | | | | |
| Determining the Final Date of a Judgment  M21-1,IV.ii.3.D.3.e. Determining the Final Date of a Judgment  Slide 29  Handout 12 | | Use the information in the table below to determine when various judgments are considered final.   | If the judgment is ... | Then the ... | | --- | --- | | a VA administrative award | judgment is considered final on the date of approval. | | an Attorney General agreement | settlement or compromise entered into by the Attorney General after a suit has been filed is considered final when the agreement is approved by the court, even though a final order of dismissal may not be entered until a later date. |   *Note*: If, after reviewing the evidence of record, there is any question as to the date the judgment became final, request clarification from the local Regional Counsel.  If a judgment is made to, or for, two or more persons (either in individual capacities or as a personal representative(s) of the estate) and involves a claimant subject to offset, the individual distribution of the monies *must* be determined by [M21-1, **Part IV, Subpart ii, 3, D**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014596/M21-1-Part-IV-Subpart-ii-Chapter-3-S)**.** | | | | | | |
| Tort Settlement and Offset Requirement  **M21-1. Part IV. Subpsrt ii.3.D.3.d. Determining the Offset Amount Under 38 U.S.C. 1151**  Slide 30  *Handout 13* | | An offset is required when a Tort settlement is finalized, and:   * An 1151 grant increases the total compensation payable; or, * Compensation is payable solely due to 1151   *The amount of offset must never deprive a Veteran of compensation payable if an 1151 claim had not been filed.*  *If warranted, withholding is the first of the month following finalized judgment!*  ***Ask the VSRs to determine the effective date of the offset given the circumstances below. Use the easel pad to outline this information.***  The rating activity grants entitlement to compensation on March 16, 2008, and we later found that a Tort judgment was finalized on January 12, 2009.  What is the effective date of the offset if any? | | | | | | |
| Action to take if an Offset is Required  Slide 30-33  Handout 13 | | The amount of offset must not deprive a Veteran of any part of the compensation payable if a claim under 38 U.S.C. 1151 had not been filed. If there are existing service connected disabilities and the total compensation is increased by the grant of an 1151 disability, a partial offset is required. If the only disability for which compensation is paid is granted under the provisions of 1151, than a total offset is required. In any case, the offset will be the effective the first of the month following the date the settlement is finalized.  If an increase in the evaluation of a service-connected (SC) disability is awarded, such that the existence of the disability compensable under 38 U.S.C. 1151 no longer increases the total amount of compensation payable, then   * determine the total compensation payable for all disabilities (SC and those compensable under 38 U.S.C. 1151) * determine the total compensation payable for SC disabilities only * withhold the difference between the two totals, and * discontinue the previously established offset.   See [M21-1, **Part IV, Subpart ii, 3, D**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014596/M21-1-Part-IV-Subpart-ii-Chapter-3-S)  ***Refer to screenshots in Student Handout page 14 and page 15*.**  ***Ask the VSRs to determine the offset amount, given the circumstances below. Use the easel pad to outline this information.***  A Veteran has two SC disabilities each evaluated at 30% disabling, and he also has a compensable disability under 38  U.S.C. 1151 evaluated at 20% disabling. The combined evaluation of all disabilities is 60%. The combined evaluation for the SC disabilities alone is 50%.  If the VSRs have access to a computer, have them use the 12/01/08 rates for a Veteran alone to come up with the monetary offset amount. If not, provide them with the following amounts for each percentage: 20% - $243, 30% -  $376, 50% - $770, and 60% - $974.  They should answer that the offset amount should be $204; the difference between the overall combined rate (60%) and the SC disability rate (50%). | | | | | | |
| When an Offset is Not Required  Slide 34  Handout 15 | | Do not offset the award if any of the following circumstances exits:   * A Tort settlement has not been finalized. * A claimant elects to continue pension payments even though entitlement to 1151 exists for a qualifying disability. *Note: The monetary amount from a Tort settlement will be counted as income for pension purposes.* * The Veteran has service connected disabilities (aside from the 1151 disabilities), and the combined evaluation does not warrant an increase with the grant of an 1151 disability. * Compensation is otherwise payable (i.e. an established service connected disability being aggravated under the provisions of 1151). * Rating decision grants service connection for a disability as secondary to an established service connected disability, as opposed to granting under the provision of 1151.   ***Ask the VSRs to determine whether or not an offset is warranted in the following scenario. Use the easel pad to outline this information.***  See [M21-1, Part IV, Subpart ii, 3, D](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014596/M21-1-Part-IV-Subpart-ii-Chapter-3-S)  A Veteran has two SC disabilities, one at 60% and another at 70%. He also has a compensable disability under 38 U.S.C. 1151 evaluated at 50% disabling. *Note: there are no bilateral factors involved.*  If the VSRs have access to a computer, have them use the *RBA Combinator* or the *Combined Ratings Table in §4.25* to determine the answer. If not, let them know that the overall combined and SC combined, are both 90% disabling.  To access the RBA Combinator, you will need to go to the Training Website under the Rating Job Aids. On this webpage is a link entitled, “Disability Rating Calculator.” Click on the link and open the zip file. Access the tool by clicking on the RatingTool.exe file. You can also save this file to your desktop for quicker access in the future.  They should answer that there is no offset involved since the overall combined and the SC combined are both 90%. When the grant of 1151 does not increase the overall combined rate, no offset is warranted.  ***Explain to VSRs the two scenarios below, which are examples of when “compensation is otherwise payable for a disability”. Use the easel pad if necessary.***   1. A Veteran is rated 10 percent for a SC foot condition. He enters a VAMC for treatment and a Tort settlement is finalized, as the VA was found to have aggravated the disability. In this case, “compensation is otherwise payable” because the disability was already service connected prior to the Veteran being injured by the fault of the VA 2. A Veteran is service connected for a pulmonary condition that is treated with significant doses of steroids. He later develops cataracts and files an 1151 claim for this disability. The Rating VSR determines that the disability is related to his service connected disability, as opposed to negligence or any other fault on part of the VA. In this case, no offset is required as “compensation is otherwise payable.” | | | | | | |
| **Duplication of Benefits**  M21-1MR, IV.ii.3.D.1.a. Applicability of Prohibition Against Duplication of Benefits  *Slide 35*  *Handout 17* | | The prohibition against duplication of benefits applies whenever a claimant receives a sum of money or property to settle a legal claim arising from the injury or death of a Veteran, and then files a claim for compensation with the Department of Veterans Affairs (VA) for that same injury or death.  ***Inform the VSRs that any monetary allowance granted under a tort claim is subject to an offset of VA benefits.***  See [M21-1, Part IV, Subpart ii, 3, D](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014596/M21-1-Part-IV-Subpart-ii-Chapter-3-S). | | | | | | |
| **Award Input**  M21-1, IV.ii.3.D  *Slide 36*  *Handout 17* | | The instructions in [M21-1, Part III, Subpart v, 4.B](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014245%2FM21-1-Part-III-Subpart-v-Chapter-4-Section-B-Recoupment-of-Separation-Benefits) concerning the preparation of awards involving readjustment and disability severance pay, generally apply to the preparation of awards under 38 U.S.C. 1151.  The provisions in this topic apply specifically to the preparation of awards under 38 U.S.C. 1151.  Follow the steps in the table below concerning the preparation of awards under 38 U.S.C. 1151 with an offset.   |  |  | | --- | --- | | **Step** | **Action** | | 1 | On the RECORD DECISIONS page in the AWARD ADJUSTMENTS screen, click the DISABILITY PAY tab. | | 2 | Click the ADD button | | 2 | Select TORT in the PAYMENT TYPE field. | | 3 | Enter the amount that will be recouped in the ORGINIAL BALANCE field. | | 4 | In the AWARD EFFECTIVE DATE field, enter date the adjustments begin | | 5 | When finished, click ACCEPT to save the entry to the decision grid. | | 6 | * For awards processed in VETSNET Awards, select OK to save the decision and close the screen. * For awards processed in Veterans Benefits Management System-Awards (VBMS-A), click the DONE button when finished. |  |  | | --- | | ***References***: For more information on processing awards under 38 U.S.C. 1151 in   * VBMS-A, see the [VBMS-Awards User Guide](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp), or * VETSNET Awards, see the [VETSNET Awards User Guide](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp). | | | | | | | |
| Entitlement to Ancillary Benefits if Compensation Is Awarded for a Disability Under 38 U.S.C. 1151  M21-1, IV.ii.3.D  *Slide 37-38*  *Handout 18* | | If compensation is awarded for a disability under 38 U.S.C. 1151, the Veteran, if otherwise eligible, may receive   * the annual clothing allowance administered by the Veterans Health Administration * automobile or adaptive equipment, per [M21-1, Part IX, Subpart i, 2](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014997/M21-1, Part IX, Subpart i, Chapter 2 - Automobile and Adaptive Equipment Allowance Under 38 U.S.C. Chapter 39), and * specially adapted housing benefits, including a special housing adaptation grant, per [M21-1, Part IX, Subpart i. 3](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000015030/M21-1, Part IX, Subpart i, Chapter 3 - Specially Adapted Housing (SAH) or Special Housing Adaptation (SHA) Grants).   There is no entitlement to the following ancillary benefits unless the Veteran is entitled based on disabilities for which compensation is payable without regard to the provisions of [38 U.S.C. 1151](https://www.law.cornell.edu/uscode/text/38/1151):   * Dependents’ Educational Assistance (DEA), per [M21-1, Part III, Subpart iii,  6.C.1](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014182/M21-1, Part III, Subpart iii, Chapter 6, Section C - Department of Veterans Affairs (VA) Education Benefits Under 38 U.S.C. Chapter 35). * vocational rehabilitation, per [M21-1, Part IX, Subpart i, 1.A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000015025/M21-1, Part IX, Subpart i, Chapter 1, Section A - Vocational Rehabilitation and Employment (VR&E) Eligibility), and * the Civilian Health and Medical Program   Please refer to [M21-1, **Part IV, Subpart ii, 3, D**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014596/M21-1-Part-IV-Subpart-ii-Chapter-3-S) for more information. | | | | | | |
| Topic 4: Preparing a Locally-Generated Letter for Entitlement to Benefits Under 38 U.S.C. 1151 | | | | | | | |
| Introduction | | | This topic will allow the trainee to understand how to generate the correct notification letters for claims for entitlement to 38 U.S.C. 1151. | | | | |
| Time Required | | | 0.5 hours | | | | |
| OBJECTIVES/ Teaching Points | | | Topic objectives:   * Prepare a locally-generated letter for claims for entitlement to 38 U.S.C. 1151.   The following topic teaching points support the topic objectives:   * **Providing Notice for Claims for Entitlement to 38 U.S.C. 1151** * **Providing Notice of an Offset Requirement** | | | | |
| **Providing Notice for Claims for Entitlement to 38 U.S.C. 1151**  **M21-1. Part IV. Subpart ii.3.D. 4. Preparation of Awards**  **M21-1. Part IV. Subpart ii.3.D. 5. Providing Notice of Awards**  Slide 39  Handout 18 | | | When required, prepare a locally-generated letter, referring to the benefit as “*compensation under 38 U.S.C. 1151*” and ***not*** “*service connection*.”  When using a locally-generated letter to inform a claimant of the formal denial of a claim filed under 38 U.S.C. 1151, include   * a list of the evidence considered * reasons for the determination * procedural and appellate rights, and * a copy of [*VA Form 21-0958*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-0958-ARE.pdf), *Notice of Disagreement*.   ***Important***: Do ***not*** refer to entitlement under 38 U.S.C. 1151 as “service connection.” | | | | |
| Providing Notice of an Offset Requirement  Slide 40  Handout 19 | | | Use the information below to provide the notice of an offset and the related requirements.   |  |  | | --- | --- | | If the award … | Then … | | includes an offset | include the offset information in the locally-generated letter to the Veteran. | | does not include an offset | inform the Veteran that the VA must be notified of any court judgment or Tort award resulting from this disability or injury.  ***Note***: Include this information whether or not there is any indication that a Tort claim has or will be filed. | | is a zero-rate award, meaning that a total offset is in effect until an amount equal to the judgment has been recouped | advise the Veteran to keep the VA informed of any changes of address. | | | | | |
|  | | | Please refer to M21-1, Part [IV. Subpart ii.3.D](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014596%2FM21-1-Part-IV-Subpart-ii-Chapter-3-Section-D-Disability-Compensation-Under-38-USC-1151) for more information. | | | | |

|  |  |  |
| --- | --- | --- |
| Practical Exercise | | |
| Time Required | | 0.25 hours |
| EXERCISE  *Handout 20* | | *Inform the students to complete the practical exerise. You should allow them 15 minutes to complete this task.*  Ask if there are any questions about the information presented in the exercise, and then proceed to the Review. |
| Lesson Review, Assessment, and Wrap-up | | |
| Introduction  Discuss the following: | The 38 U.S.C. §1151 Claims lesson is complete.  Review each lesson objective and ask the trainees for any questions or comments. | |
| Time Required | 0.25 hours | |
| Lesson Objectives | You have completed the 38 U.S.C. §1151 Claims lesson.  The trainee should be able to:   * Identify the criteria and associated laws for 38 U.S.C. §1151 with 80% accuracy * Distinguish which benefits are applicable for 38 U.S.C §1151 claims, with 80% accuracy * Identify proper development procedures when adjudicating U.S.C **§**1151 claims with 80% accuracy * Recognize correct effective dates for U.S.C **§**1151 claims with 80% accuracy * Distinguish which promulgation actions are applicable for 38 U.S.C **§**1151 claims with 80% accuracy * Prepare the correct notification letter for claims involving entitlement to U.S.C **§**1151 benefits with 80% accuracy | |
| Assessment | Remind the trainees to complete the on-line assessment in TMS to receive credit for completion of the course.  The assessment will allow the participants to demonstrate their understanding of the information presented in this lesson. | |

**38 U.S.C. §1151 Claims Practtical Exercise Answer Key**

Instructions: Allow the trainees 15 minutes time to complete the training exercise and then review their responses.

1. What 38 CFR reference applies to 38 U.S.C. 1151 claims received on or after October 1, 1997? What are the provisions of this reference?

***§3.361 – After this date, the fault requirement on part of VA applies.***

References: 38 CFR §3.361 Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program.

1. True or False. When compensation is granted for a disability under 38 U.S.C. 1151, the claimant’s compensation is payable as if it were service-connected.

***True***

References: M21-1, IV.ii.1.A and M21-1, IV.ii.2.G

1. \_\_\_\_\_\_\_\_\_\_\_\_ is consent that has been clearly stated either orally or in writing.

***Expressed Consent***

References: M21-1, IV.ii.2.G

1. True or False. When a Veteran is injured under circumstances that result in possible entitlement to benefits under 38 U.S.C. 1151, they may also seek a judgment against the U.S. in a civil action.

***True***

References: M21-1,IV.ii.2.G

1. List the four primary sources of information you should consider obtaining information from when developing a 38 U.S.C. 1151 claim.
2. ***medical records***
3. ***surgical records***
4. ***hospital clinical records, or***
5. ***nurses' notes***

References: M21-1, IV, ii.1.A, and M21-1, IV.ii.2.G and §3.154

1. True or False. You should always request quality assurance investigative reports when investigating a 38 U.S.C. 1151 claim.

***False***

References: M21-1, IV, ii.1.A, and M21-1, IV.ii.2.G and §3.154

1. \_\_\_\_\_\_\_\_\_\_\_\_\_ is consent that may be inferred from the circumstances in the case.

***Implied Consent***

References: M21-1, IV.ii.2.G

1. True or False. A Veteran who is service connected at 20% for a right knee condition, files a claim under 38 U.S.C. 1151. The evaluation is increased to 30% due to aggravation as a result of surgical treatment at the VAMC, and he/she successfully sues the hospital for damages. In this situation, we must offset the award due to the increase in the service connected disability under 38 U.S.C. 1151.

***False. Since he is already service connected for this disability, no offset is warranted.***

References: M21-1, IV.ii.3.D

1. What are the ancillary benefits that a claimant would be entitled to when granted compensation under the provisions of 38 U.S.C. 1151?

* ***a clothing allowance***
* ***specially adapted housing benefits, and***
* ***an automobile or adaptive equipment***

References: M21-1, IV.ii.2.G

1. To establish fault on the part of the VA in furnishing medical care, treatment or examination, was the proximate cause of a Veteran’s disability or death, the evidence must show what?

***(i) VA failed to exercise the degree of care that would be expected of a reasonable health care provider; or***

***(ii) VA furnished the hospital care, medical or surgical treatment, or examination without the veteran's or, in appropriate cases, the Veteran's representative's informed consent.***

References: §3.361 (d); M21-1, IV.ii.2.G

1. Upon receipt of a 38 U.S.C. 1151 claim you should send a letter to whom, requesting information about the incident and documents pertinent to the incident upon which you are investigating.

***VAMC in which the alleged incident incurred.***

References: M21-1, IV, ii.1.A, and M21-1, IV.ii.2.G and §3.154

# QUICK REFERENCE – DEVELOPMENT GUIDE

* Edit letters as usual.
* Track VAMC treatment records and/or any requests made for VAMC records.
* If the dates and/or location of the treatment at the VAMC are unknown (and cannot be identified through CAPRI), we must request this information from the Veteran in the Section 5103 notification letter.
* When treatment records are requested from a VAMC, remember to include the following statement in the Section 5103 notification letter:

***“We have requested your treatment records from the [LOCATION OF THE VAMC] VA Medical Center. If you have copies of these records, please send them to us.”***

* After the Section 5103 notification is sent, forward the file for review when there are relevant VAMC records in the file.

# SAMPLE 1151 DEVELOPMENT NOTIFICATION

When requesting information from the medical facility, provide as much information as possible about the claimed incident.

The electronic VA Form 10-7131, *Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action* request functionality in the Compensation and Pension Record Interchange (CAPRI) supports text entry up to four pages and maintains tracking information regarding the status of requests.

Use the *7131 Request* tab in the patient record. Copy and paste the following text into the general comments area and add the necessary details about the claimant to the text, as applicable.

Request all evidence and documents pertinent to the incident upon which the claim is based. Possible sources of information about the incident may include

* medical records
* surgical records
* hospital clinical records, or
* nurses’ notes

See required text template on next page.

**SAMPLE 1151 DEVELOPMENT NOTIFICATION TEXT**

**We have received a claim from the person identified below for benefits under 38 U.S.C 1151 based on alleged injury while at your facility.**

**Name: XXXXX XXXXX**

**File Number: XX XXX XXX**

**SS Number: XXX-XX-XXXX**

**Date of Birth: XX-XX-XXXX**

**The claimant alleges sustaining an injury to his/her [CONDITION]. This injury occurred in [MM-DD-YYYY].**

**To assist us in making a determination, please furnish all of the following evidence, if available, for this patient for the period of medical care from [MM-DD-YYYY] to [MM-DD-YYYY].**

* Medical records
* Surgical records
* Hospital clinical records
* Nurses' notes
* Any other documentation of patient injury.