

**WEIGHING EVIDENCE**  
**INSTRUCTOR LESSON PLAN**  
**TIME REQUIRED: 3 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 #** 1202940

**PREREQUISITES** Prior to this lesson, the Rating Veteran Service Representatives (RVSRs) should have completed the RVSR Challenge course, have reached the RVSR intermediate level and have 24 months of RVSR experience.

**TARGET AUDIENCE** The target audience for Weighing Evidence is RVSR Intermediate Level.

Although this lesson is targeted to teach the RVSR Intermediate Level employee, it may be taught to other VA personnel as mandatory or refresher type training.

**TIME REQUIRED** 3 hours

**MATERIALS/  
TRAINING AIDS** Lesson materials:

- Weighing Evidence PowerPoint Presentation
- Weighing Evidence Student Handout Packet
- Weighing Evidence Answer Key

**TRAINING  
AREA/TOOLS**

The following are required to ensure the students are able to meet the lesson objectives:

- Classroom or private area suitable for participatory discussions
- Seating, writing materials, and writing surfaces for student 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

Students require access to the following tools:

- VA TMS to complete the assessment
- C&P Training Website
- VBA Intranet

**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 student 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 student 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 students 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 students sign in.

## INTRODUCTION TO WEIGHING EVIDENCE

### INSTRUCTOR INTRODUCTION

Complete the following:

- Introduce yourself
- Orient learners to the facilities
- Ensure that all learners have the required handouts

### TIME REQUIRED

.25 hours

### PURPOSE OF LESSON

*Explain the following:*

This lesson is intended to teach RVSRs at the intermediate level the general principles for weighing evidence and how to weigh conflicting evidence. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:

- Weighing Evidence Overview
- Evidentiary Sources
- Analysis of Evidence

### LESSON OBJECTIVES

In order to accomplish the purpose of this lesson, the RVSR will be required to accomplish the following lesson objectives.

The RVSR will be able to:

*Discuss the following:*

*Slide 2*

*Handout 2*

- Given references and the student handout packet, identify guidelines for weighing evidence, with 85% accuracy.
- Given references and the student handout packet, identify the types of evidence to consider when weighing evidence, with 85% accuracy.
- Given references and the student handout packet, identify qualified evidentiary sources, with 85% accuracy.
- Given references and the student handout packet, identify the five common notions underlying the rules of evidence, with 85% accuracy.
- Given references and the student handout packet, identify the information required to analyze evidence, with 85% accuracy.

*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**

The RVSR received a rating for residuals of fractures that resulted from a Veteran in a motorcycle accident. The RVSR asked the military to produce a Line of Duty (LOD) Investigation report. The Veterans Service Center Manager (VSCM) asked why the issue was taking so long to solve.

The RVSR showed that on form SF 600, the date, time, temperature, blood pressure, list of medicines, and a brief statement of the accident were recorded, including a statement of the strong presence of the odor of alcohol. This was the basis of the demand for the LOD report. This claim was already 300+ days old. The VSCM studied the attending physician's notes.

The physician stated on the form, "This was a line of duty accident". He also stated that the service-member was injured the night before en route to his quarters. An automobile on his right made a left turn and struck him. He complained of stiffness and joint pain in both legs and arms. He did not seek treatment after the accident because of the need to secure his motorcycle. He self-medicated with alcohol to relieve pain.

Orthopedics commented that the service-member had a broken forearm, broken rib, collarbone, and a fractured great toe. Fractures were set. He received a prescription for pain and was released to his quarters for two days bed rest. He was to return to the clinic in one week for follow up.

The VSCM showed this to the RVSR. The RVSR stated that he was trained to get a copy of the LOD when alcohol was involved. The VSCM pointed out that the doctor had cleared up the alcohol odor in his statement and reported the accident in the line of duty. The RVSR rated the claim based on the evidence.

This lesson is designed to provide the knowledge, skills and abilities to understand weighing evidence and to apply the principles to properly weigh evidence based on law and the facts of the claim.

## **STAR ERROR CODE(S)**

The Systematic Technical Accuracy Review (STAR) Program reviews cases and considers them either "accurate" or "in error" for the purpose of measuring technical accuracy.

Please discuss the common errors associated with weighing evidence with the students.

## **REFERENCES**

*Slide 3*

*Handout 3*

Explain where these references are located in the workplace.

- 38 CFR §3.303 through §3.310
- 38 CFR §4.2, §4.3 and §4.6
- M21-1MR, III.iv.5
- M21-1RM, III.iv.6.C.7

## TOPIC 1: WEIGHING EVIDENCE OVERVIEW

### INTRODUCTION

This topic will illustrate the general principles for weighing evidence, the types of evidence and the laws and regulations that form the basis for weighing evidence.

### TIME REQUIRED

.5 hours

### OBJECTIVES/ TEACHING POINTS

Topic objectives:

- Given references and the student handout packet, identify guidelines for weighing evidence, with 85% accuracy.
- Given references and the student handout packet, identify the types of evidence to consider when weighing evidence, with 85% accuracy.

The following topic teaching points support the topic objective:

- Guidelines for Weighing Evidence
- Types of Evidence

### Guidelines for Weighing Evidence

*Slide 4*

RVSRs are similar to the jury in a court of law, except that RVSRs must explain reasons for their decisions and be able to discuss how weight is assigned for decisions made. Use these guidelines for weighing evidence:

*Handout 4*

- Review and analyze all relevant evidence
- Determine probative value and assign weight to the evidence
- Consider applicable laws and regulations
- Reach a legal conclusion or decision

### Reasonable Doubt

*Slide 5*

Reasonable doubt exists because of an approximate balance of positive and negative evidence.

*Handout 4*

38 CFR 4.2 and 38 CFR 3.102 states that reasonable doubt should always be resolved in favor of the claimant.

If evidence for and against is equal, resolve in the claimant's favor and explain your analysis to the reader. Conclusions should be supported by evidence.



Gonzales v. West

*Slide 6*

*Handout 4*

In the court case of *Gonzales v. West*, 218 F.3d 1378 (Fed Cir. 2000), the court held that the decision-maker must review and weigh all relevant evidence, but does not have to discuss each and every piece of evidence. To do otherwise provides no assurance to the Veteran that the favorable evidence was considered and certainly provides no explanation as to why such evidence was rejected when making a decision. The Veterans' benefit adjudication system is designed to help Veterans.

*Check comprehension*

Ask the students the following questions:

1. What are the guidelines for weighing evidence?

**Response:**

- Review and analyze all relevant evidence
- Determine probative value and assign weight to the evidence
- Consider applicable laws and regulations
- Come to a legal conclusion or decision

2. How does 38 CFR 3.102 define reasonable doubt?

**Response:** An approximate balance of positive and negative evidence

1. What was the most important ruling to come out of the court case of *Gonzales v. West*?

**Response:** The decision-maker must review and weigh all relevant evidence but does not have to discuss each and every piece of evidence.

**Types of Evidence**

*Slide 7*

*Handout 4*

RVSRs are responsible for reviewing the following types of evidence:

- Service Medical & Personnel Records
- VA Treatment Records
- VA Examinations
- Private Treatment Records
- Lay Statements
- Medical Opinions & Treatises
- Due Process Letters

Probative Value of Evidence

*Slide 8*

*Handout 5*

Consider the following when evaluating the probative value of evidence:

- Evidence that is probative in nature tends to prove (or disprove) something.
- It is not necessary to determine the probative value and assign weight if the evidence is not contradictory.
- Independent medical expert (IME) opinions (see 38 CFR 3.328) must be reviewed along with all other evidence for probative value.
- The RVSR must review all evidence and explain why any evidence in support of the claim is being rejected even if the Independent Medical Expert (IME or IMO) opinion does not.

*(Gabrielson v. Brown, 7 Vet.App. 36 (1994))*

Interpretation of Exam Reports

*Slide 9*

*Handout 5*

The responsibility of the RVSR is to interpret exam reports in light of the whole recorded history and to reconcile the various reports into a consistent picture so that the current rating may accurately reflect the elements of disability present.

Different examiners at different times will not describe the same disability in the same language. Consider each disability from the point of view of the Veteran working or seeking work. If a diagnosis has no support from the findings on the examination report, or if the report does not contain sufficient detail, it is incumbent upon the rating board to return the report as inadequate for evaluation purposes.

*Check comprehension*

Ask the students the following questions:

1. What the types of evidence the RVSR may have to review?

**Response:**

- Service Medical & Personnel Records
- VA Treatment Records
- VA Examinations
- Private Treatment Records
- Lay Statements
- Medical Opinions & Treatises
- Due Process Letters

2. What type of evidence tends to prove or disprove something?

**Response:** Probative

3. What does Regulation 38 CFR 4.2 state?

**Response:** Reasonable doubt should always be resolved in favor of the claimant.

**EXERCISE**

Have the students turn to Attachment A: Topic 1 Exercise in the student handout packet.

Instructions:

1. The students should read each statement and determine whether the statement is True or False by placing “T” or “F” in the blank.
2. If a statement is false, the student should explain why the statement is false in the space provided.
3. Review the answers and ensure the students are given the correct answers and that they understand what it takes to turn the false statements into truths.

## TOPIC 2: EVIDENTIARY SOURCES

### INTRODUCTION

This topic will allow the student to gain a better understanding of qualified evidentiary sources and the five common notions underlying the rules of evidence.

### TIME REQUIRED

.5 hours

### OBJECTIVES/ TEACHING POINTS

Topic objectives:

- Given references and the student handout packet, identify qualified evidentiary sources, with 85% accuracy.
- Given references and the student handout packet, identify the five common notions underlying the rules of evidence, with 85% accuracy.

The following topic teaching points support the topic objectives:

- Qualified Evidentiary Sources
- Five Notions Underlying the Rules of Evidence

### Qualified Evidentiary Sources

*Slide 10*

*Handout 6*

For rating decisions, evidence must be from competent or qualified medical professionals who can diagnose and offer medical opinions or from lay persons who are competent and qualified to describe symptoms and observations.

### Physician Records

*Slide 11*

*Handout 6*

Factors to consider with regard to physician records include:

- Physician's knowledge of the Veteran's accurate and relevant personal history, (i.e., the Veteran's claim file)
- Length of time the physician treated the Veteran
- Reason for the physician's contact with the Veteran (for treatment or for substantiation of a medical disability claim)
- Physician's expertise and experience
- Degree of specificity of the physician's opinion
  - It is likely to a reasonable degree of medical certainty or at least as likely as not
  - It may be possible

Treating Physician  
Reports

*Slide 12*

*Handout 6*

The following resulted from numerous court cases:

- Opinions of treating physicians are not entitled to greater weight in evaluating Veterans' claims (*Harder v. Brown*, 5 Vet. App. 183, 188 (1993))
- Treating physician's reports must be analyzed and discussed (*Guerrieri v. Brown*, 4 Vet. App. 467, 473 (1993))
- RVSRs must discuss how the evidence was weighed to support the decision, otherwise, it is not "substantially justified" (*Curtis v. Brown*, 8 Vet. App. 104, 107 (1995))
- Opinions based on the Veteran's unsupported history may be discounted (*Wood v. Derwinski*, 1 Vet. App. 190 - 192 (1991))
- VA physician's opinions may be assigned more weight if the VA examiner saw the claims file while the private physician relied on a history provided by the Veteran (*Owens v. Brown*, 7 Vet. App. 429 (1995)) (*Evans v. West*, 12 Vet. App. 22 (1998))

Service Records

*Slide 13*

*Handout 6*

Service records include:

- Medical and Personnel Records
- Enlistment, Periodic & Separation Exams
- Clinical & Sick Call Evaluations
- Duty Profiles
- Separation examination (probably the most probative record)

Service records are considered very probative as to what occurred during the Veteran's military service for the following reasons:

- Service records represent contemporaneous statements (living or occurring during the same period of time)
- Service records are prepared before discharge and are most reflective of the Veteran's physical condition
- The separation examination includes a medical history questionnaire that reflects the Veteran's report of his/her then present and past physical and psychiatric history as it relates to military service
- Statements made by the Veteran at the time of treatment are often assigned more weight than a statement made several years later
- The claimant's mere contention may be insufficient to counter the separation findings

**NOTE(S)**

VA Medical Records

*Handout 7*

Discuss 3.303(a) and 3.156(c) as they apply to service records.

VA medical records do not have a higher probative value than other records and must be evaluated like any other evidence. These examinations and medical opinions should also be analyzed and weighed. If they are deemed insufficient for rating purposes, they should be returned (38 CFR 4.2). Expert medical evidence should not be discounted without independent medical evidence to support the decision to reject it.

See: *Shipwash v. Brown*, 8 Vet. App. 2318, 223 (1995)) and *Colvin v. Derwinski*, 1 Vet. App. 171, 175 (1991)

*Check comprehension*

Ask the students the following questions:

1. Are opinions of treating physicians entitled to greater weight in evaluating Veterans' claims?

**Response:** No

2. Do VA medical records have a higher probative value?

**Response:** No

3. Fill in the blank. If they are deemed not sufficient for rating purposes, they should be \_\_\_\_\_.

**Response:** Returned

4. Expert medical evidence may not be discounted without what?

**Response:** Independent medical evidence to support the decision to discount it.

5. What are examples of service records?

**Response:**

- Medical and Personnel Records
- Enlistment, Periodic & Separation Exams
- Clinical & Sick Call Evaluations
- Duty Profiles

**Five Notions  
Underlying Rules of  
Evidence**

There are five common notions underlying the rules of evidence:

1. Statements of present sense impression
2. Excited utterance
3. Statements made to healthcare professionals for the purpose of seeking treatment or made during diagnosis and treatment
4. Business Records: memoranda, reports, records, and compilation of dates
5. Public Records

*Slide 14*

*Handout 7*

**Notion 1: Statements of  
Present Sense  
Impression**

Statements of present sense impression:

- A statement made at the time of (or shortly after) an event would generally be more accurate and probative than a statement made several years later.
- A statement describing or explaining an event or condition made while the claimant perceived the event or condition, or immediately thereafter.

*Slide 15*

*Handout 7*

Notion 2: Excited Utterance

*Slide 15*

*Handout 7*

Excited utterance is a statement(s) made:

- To medical professionals at the time of the original injury or shortly thereafter.
- By a person in response to a startling or shocking event or condition, the statement is spontaneously made by the person while still under the stress of excitement from the event or condition.

The statement could be a description or explanation, or an opinion or inference. The basis for this is the belief that a statement made under the stress is likely to be trustworthy and unlikely to be premeditated falsehoods.

Notion 3: Statements Made to Healthcare Professionals

*Slide 16*

*Handout 8*

These statements are:

- Made while seeking treatment or during diagnosis and treatment.
- Very probative or having the quality of proving something, because the assumption is that the information is accurate and truthful.
- Made for purposes of describing medical history, past or present symptoms, pain, sensations, or the inception or general character of the cause of injury or illness.

Notion 4: Business Records

*Slide 17*

*Handout 8*

Business Records (memoranda, reports, records, & compilation of dates) are highly probative and are:

- Made at/near the time of event
- Prepared by person with knowledge of event
- Kept during regular course business activity

Examples include:

- Insurance Reports
- Line of Duty Investigation Reports
- Accident Reports from Private Employers



Notion 5: Public Records

Public Records include factual, contemporaneous records prepared by an official with a duty to record the facts in the manner that they are expressed in those records. Public records are considered highly probative and include:

*Slide 18*

- Military Personnel Records
- Military Administrative Records
- Morning Reports
- Birth & Death Records

*Handout 8*

Dispositive Factor in Weighing Evidence

Do not cite the rules of evidence or rely on their underlying premise as *the* dispositive factor in the weighing of evidence.

*Slide 19*

- It is erroneous to base your decision on one statement made by the claimant at the time of the incident because it was akin to a “statement of present sense impression,” without weighing the other evidence of record.
- The rules provide a starting point for weighing evidence

*Handout 9*

*Check comprehension*

Ask the students the following question:

1. What are the five notions underlying rules of evidence? Give examples of each.

**Response:**

- Statements of “present sense impression”
- An “excited utterance”
- Statements made to healthcare professions “for the purpose of seeking treatment or made during diagnosis and treatment
- Business Records (memoranda, reports, records, & compilation of dates)
- Public Records

### **TOPIC 3: ANALYSIS OF EVIDENCE**

#### **INTRODUCTION**

This topic will help the students gain a better understanding of the requirements to analyze and weigh evidence. This topic will also provide a brief overview of the Reasons for Decision section of a rating.

#### **TIME REQUIRED**

.5 hours

#### **OBJECTIVES/ TEACHING POINTS**

Topic objective:

- Given references and the student handout packet, identify the information required to analyze evidence, with 85% accuracy.

The following topic teaching points support the topic objective:

- Evidence Requirements
- Judicial Treatment
- Weighing Medical Opinions
- Reasons for Decision

#### **Evidence Requirements**

For rating decisions, evidence must be from competent or qualified sources:

- Lay persons are competent and qualified to describe their symptoms and observations
- Medical professionals can diagnose and offer medical opinions

*Slide 20*

*Handout 10*

Weighing Lay  
Evidence

*Slide 21*

CFR 3.159(a) (2) states that competent lay evidence is any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person. Examples are:

- The statement of a fellow soldier who was present and engaged in combat during the incident carries significant weight compared to a statement from a fellow soldier who has heard the story at the Veteran center in the post-traumatic stress disorder (PTSD) support group.
- A statement from the Veterans spouse about sleep habits and paranoia tendencies carries more weight than a statement from the Veteran's minister regarding the same issues. The spouse has firsthand observational knowledge of actions while the minister has only the knowledge of what is disclosed to him.
- A statement from a supervisor or co-worker about work performance and interaction with co-workers has more weight than a report from a counselor at the state employment commission. The supervisor or co-worker has observed actions firsthand, while the state counselor has only written reports to base an opinion on.

Weighing Medical Evidence

Slide 22

CFR 3.159(a)(1) states that competent medical evidence is evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence can also mean statements conveying sound medical principles found in medical treatises and in authoritative writings such as medical, scientific and research reports or analyses. Examples are:

- A statement from a Veteran's Cardiologist about his/her coronary disease has more weight than a medical evaluation from a MD, because the Cardiologist is a trained specialist in the field.
- A radiology report of broken bones signed by an X-ray technician weighs more than a written report of an emergency medical technician (EMT) who treated the individual at the accident scene. Even though the EMT has a good eye and general medical knowledge to recognize injuries such as broken bones, all medical professionals rely on X-ray reports to plan appropriate treatment.
- An article from the American Medication Association (AMA) journal written by a competent medical researcher on the benefits and side effects of a medication has more weight than an article in a non-scholarly publication. Publication in AMA carries approval from the medical community as a whole and research that is subject to standards set by its membership.

*Check comprehension*

Ask the students the following questions:

1. What is competent medical evidence?

**Response:** Evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions

2. What is competent lay evidence?

**Response:** Any evidence not requiring that the proponent have specialized education, training, or experience and provided by a person who has knowledge of facts or circumstances

## **Judicial Treatment**

Case law makes clear that the credibility and probative value or persuasiveness of all the relevant evidence must be assessed. Do the following:

### *Handout 11*

- Review each case based on individual merits
- Review each case with empathy and without bias
- Maintain a judicial temperament, approach the evidence in a neutral and unbiased manner
- Consideration of all evidence of record, as well as applicable laws and regulations
- Each and every document in the record does not have to be discussed
- Claims adjudication is non-adversarial
- Analysis is no better than the data from which it is derived
- Distinguish facts from opinions
- Collect evidence and supported conclusions
- Decision must be fair and impartial
- Provide adequate reasons to justify the decision

## Logical Fallacies

A fallacy is faulty reasoning and can be unintentional or deliberate. There are many recognized logical fallacies, of which three follow:

### *Handout 11*

- Hasty generalizations commonly involve basing a broad conclusion upon the statistics of a survey of a small group that fails to sufficiently represent the whole population. An example of this is preconceived bias as to the strength or weakness of a claim based on the Veteran's period of wartime service (i.e. all Vietnam Veterans).
- Post Hoc Ergo Propter Hoc is Latin for after this, therefore, because of this. Another explanation is: since that event followed this one, that event must have been caused by this one. Events that coincide in time are not always related causally. The fallacy lies in reaching a conclusion based solely on the order of events, rather than taking into account other factors that might rule out the connection. A mistaken assumption that X caused Y simply because Y followed X can cause analysis errors. This is an important concept when considering nexus or link between an event in service and claimed disability.
- Ad Hominem or Against the Man occurs when attacking a person rather than what that person is saying and usually involves insulting or belittling one's opponent in order to invalidate their argument. It can involve pointing out factual but ostensible character flaws or actions that are irrelevant to the argument. This tactic is logically fallacious because negative facts about personal character have nothing to do with the logical merits of the arguments or assertions. It can occur in ratings when the claimant is attacked directly or indirectly.

## **Weighing Medical Opinions**

No specific formula exists to use in weighing medical opinions. VBA may favor the opinion of one competent medical expert over that of another with adequate reasons and basis. Factors to weigh include:

*Slide 23*

- Competency of the medical professional or medical evidence provided

*Handout 12*

- Use of the correct factual history
- Adequacy of supporting analysis or basis provided for opinion
- Consideration of a review of the claims file or a full history of disability, injury or disease
- Whether the clinician is the Veteran's treating physician and is familiar with medical records and history
- Level of thoroughness and detail of opinion
- Equivocality of the opinion means allowing the possibility of different meanings, or susceptible of double interpretation or of uncertain significance
- Personal interest in the case on the part of the opinion provider
- Special qualifications or expertise of the opinion provider
- Contradictory or internally inconsistent statements
- Differentiation among multiple opinions based on rationale or analysis
- Consideration of the benefit of the doubt rule if there are multiple conflicting medical opinions

*Check comprehension*

Ask the students the following questions.

1. How can the credibility and probative value or persuasiveness of all relevant evidence be assessed?

**Response:** See above Judicial Treatment

2. What factors should be weighed when considering medical opinions?

**Response:** See above Weighing Medical Opinions

## Evaluating Differing Medical Opinions

To analyze differing medical opinions, assign weight to each piece of evidence while examining them individually. Multiple medical opinions that reach the same conclusion will weigh heavier since they corroborate and support each other. Ask: Is the opinion subjective, or is it based on:

*Slide 24*

- Practice
- Theory
- Clinical Testing
- Observation

*Handout 12-13*

*Reminders*

When evaluating medical evidence, do not:

*Slide 25*

*Handout 12-13*

- Rely on your own unsubstantiated medical opinion to decide a claim
- Reject expert medical evidence without having other competent medical evidence to support the decision
- Think that competent medical evidence has to be a VA medical report
- Discount a physician's opinion because the Veteran paid for it
- Discount a physician's opinion because the physician has become an advocate for the Veteran
- Rely on lay history provided by the Veteran and transcribed into a medical examination report. It is not the same as competent medical evidence.
- Rely on a physician's assertion that he had no doubt as to the Veteran's honesty in relating in-service history (this is opinion, not medical evidence)

*Check comprehension*

Ask the students the following questions.

1. In analyzing differing medical opinions, what questions should be considered?

**Response:** See above Differing Medical Opinions

2. What should be avoided when weighing opinions?

**Response:** Answers provided in associated section of lesson



**Reasons for Decision**

The Reasons for Decision portion of the rating must link the decision to the medical evidence of record or medical treatise and must briefly explain and justify the legal conclusion, including:

*Slide 28*

- The reasons a medical opinion is rejected

*Handout 13*

- The reasons one medical opinion was chosen over another

**DISCUSSION**

Allow the students review Attachment B: Decision Assessment Document Wray v. Brown in the student handout packet.

Conduct a discussion of the information contained in the letter as it relates to the information covered in this topic.

Allow the students to ask questions before concluding the lesson.

**REGIONAL OFFICE  
SPECIFIC TOPICS**

At this time add any information pertaining to:

- Station quality issues with this lesson
- Additional State specific programs/guidance on this lesson

## PRACTICAL EXERCISE

**TIME REQUIRED** .5 hours

**EXERCISE** Allow the students to work in small groups or individually to complete the practical exercise.

**This is a subjective exercise.** Inform the students that there are no right or wrong answers to these questions as long as they weigh the opinions appropriately and can provide rationale for their decisions.

1. Students should review the various opinions, assigning weight to each, and then explain why they believe the weight assigned is appropriate.
2. Based on the assigned weight, they should determine whether to grant or deny benefits to the widow. Why?

After the students to provide their own rationale, explain the following:

- The court ultimately upheld a denial of benefits based on giving the most weight to the cardiologist opinion. There were dissenting opinions.
- Review Attachment C: Decision Assessment Document Nieves-Rodriguez v. Peake, in the student handout packet for additional discussion.

## LESSON REVIEW, ASSESSMENT, AND WRAP-UP

<b>INTRODUCTION</b>	The Weighing Evidence lesson is complete.
<i>Discuss the following:</i>	Review each lesson objective and ask the students for any questions or comments.
<b>TIME REQUIRED</b>	.25 hours
<b>LESSON OBJECTIVES</b>	<p>You have completed the Weighing Evidence lesson.</p> <p>The student should be able to:</p> <ul style="list-style-type: none"><li>• Given references and the student handout packet, identify guidelines for weighing evidence, with 85% accuracy.</li><li>• Given references and the student handout packet, identify the types of evidence to consider when weighing evidence, with 85% accuracy.</li><li>• Given references and the student handout packet, identify qualified evidentiary sources, with 85% accuracy.</li><li>• Given references and the student handout packet, identify the five common notions underlying the rules of evidence, with 85% accuracy.</li><li>• Given references and the student handout packet, identify the information required to analyze evidence, with 85% accuracy.</li></ul>
<b>ASSESSMENT</b>	<p>The assessment will allow the students to demonstrate their understanding of the information presented in this lesson.</p> <p>Remind the students that they will not receive credit for this lesson until the Level 1 and Level 2 assessments have been completed.</p>