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**38 USC §1151 CLAIMS (Post Challenge) INSTRUCTOR LESSON PLAN TIME REQUIRED: 2.75 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 #** | 1209945 |
| **PREREQUISITES** | Prior to this lesson, the Rating Veteran Service Representatives (RVSRs) should have 24 months of experience. |
| **TARGET AUDIENCE** | The target audience for 38 USC §1151 Claims is the RVSR Journey Level.Although this lesson is targeted to teach the RVSR Journey Level employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| **TIME REQUIRED** | 2.75 hours |
| **MATERIALS/ TRAINING AIDS** | Lesson materials:* 38 USC §1151 Claims PowerPoint Presentation
* 38 USC §1151 Claims Trainee Handouts
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| **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
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| **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.
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| **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.
* The instructor completes a roll call attendance sheet or provides a sign-in sheet to the students. The attendance records are forwarded to the Regional Office Training Managers.
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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
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| **TIME REQUIRED** | .25 hour |
| **PURPOSE OF LESSON***Explain the following:* | This lesson is intended to inform the trainees of requirements under 38* + 1. §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:
			- 38 USC §1151 Criteria and Laws
			- Reasons for Decision
 |
| **LESSON OBJECTIVES***Discuss the following: Slide 2**Handout 2* | 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:* Given the trainee handout packet and references, identify the criteria and associated laws for 38 USC §1151, with 80% accuracy.
* Given the trainee handout packet and references, distinguish which benefits are applicable for 38 U.S.C §1151 claims, with 80% accuracy.
* Given the trainee handout packet and references, differentiate between a tort claim and 38 U.S.C §1151 claim, with 80% accuracy.
* Given the trainee handout packet and references, differentiate between reason for decision and rating criteria requirements, with 80% accuracy.
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| *Explain the following:* | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed. |

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| **MOTIVATION** | Claims under 38 USC §1151 are uncommon and complex to process; therefore it is crucial for the Rating Veterans Service Representative (RVSR) to possess knowledge of the 38 USC §1151 claims process in the event a claim is filed.The RVSR will review the claim folder for completeness, decide and rate the claim based on evidence and facts.This lesson is designed to provide the RVSR with knowledge of the laws and VA regulations that govern 38 U.S.C. 1151 claims. The RVSR will be able to employ that body of knowledge to recognize proper development, and rate 38 U.S.C. 1151 claims. |
| **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. The following are examples of common errors called during STAR review.Please discuss the common errors with the trainees:* B1 Error: Premature decisions prior to proper Section 5103 Notification to claimant: The Regional Office denied claim for entitlement to compensation under 38 USC 1151 for left wrist with left hand and left thumb pain prior to sending the appropriate Section 5103 notification to the Veteran. The letter sent to the Veteran did not include 1151 WTEMS, nor did it inform the Veteran how to substantiate his claim. \*38 CFR 3.159(b); \*M21-1, I.1.B.1.b

B2 Error: Premature decisions prior to obtaining competent medical opinion to determine nexus: The rating decision prematurely denied the claim for entitlement to compensation under 38 USC 1151 for broken/loosened teeth do to use of VA prescribed Methotrexate without first obtaining competent medical opinion to determine nexus, if any, between the complaint and the prescribed drug usage. Prior to denial, competent medical personnel should have reviewed evidence in order to render the necessary nexus opinion. M21-1, IV.ii.2.G.3.g; M21-1, III.iv.3.A.9.h;38 CFR 3.361(b-d), M21-1, I.1.C.7.a-f;38 CFR 3.159(c)(4)* B2 Error: Premature decision prior to obtaining all identified supporting evidence: The Regional Office failed to request all records identified by the Veteran pertaining prior to making a decision on the claim for entitlement to compensation under 38 USC 1151. 38 CFR 3.159(c)(2)&(3); M21-1 I.1.C.5.a-f
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References

*Slide 3&4*

*Handout 3*

Explain where these references are located in the workplace.

* [38 USC §1151 Benefits for Persons Disabled by Treatment or Vocational Rehabilitation](http://www.law.cornell.edu/uscode/text/38/1151)
* [38 CFR §3.154 Injury due to hospital treatment, etc](http://www.ecfr.gov/cgi-bin/text-idx?SID=41ba91920fcf7d183ebc3507eafd0f14&mc=true&node=se38.1.3_1154&rgn=div8)
* [38 CFR §3.358 Compensation for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training](http://www.ecfr.gov/cgi-bin/text-idx?SID=41ba91920fcf7d183ebc3507eafd0f14&mc=true&node=se38.1.3_1358&rgn=div8)
* [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.](http://www.ecfr.gov/cgi-bin/text-idx?SID=41ba91920fcf7d183ebc3507eafd0f14&mc=true&node=se38.1.3_1361&rgn=div8)
* [38 CFR §3.800 Disability or death due to hospitalization, etc.](http://www.ecfr.gov/cgi-bin/text-idx?SID=41ba91920fcf7d183ebc3507eafd0f14&mc=true&node=se38.1.3_1800&rgn=div8)
* [38 CFR §14.600 Federal Tort Claims Act – general.](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=32343a909d02efa45194f300c7351ef3&ty=HTML&h=L&mc=true&r=SECTION&n=se38.1.14_1600)
* [M21-1, Part IV, Subpart ii, Chapter 1, Section A - Developing Claims Filed Under 38 U.S.C. 1151](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014321/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-A-Developing-Compensation-Claims)
* [M21-1, Part IV, Subpart ii, Chapter 2, Section G - Benefits under 38 U.S.C 1151](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014567/M21-1-Part-IV-Subpart-ii-Chapter-2-Section-G-Benefits-Under-38-USC-1151?fromQuery=1151)
* [M21-1, Part IV, Subpart ii, Chapter 3, Section D - Disability Compensation Under 38 U.S.C 1151](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014596/M21-1-Part-IV-Subpart-ii-Chapter-3-Section-D-Disability-Compensation-Under-38-USC-1151?fromQuery=1151)
* [M21-1, Part IV, Subpart iii, Chapter 3, Section E - DIC Benefits Under 38 U.S.C 1151](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014638/M21-1-Part-IV-Subpart-iii-Chapter-3-Section-E-old-G-Dependency-and-Indemnity-Compensation-DIC-Benefits-Under-38-USC-1151?fromQuery=1151)
* [M21-1, Part IX, Subpart i - Ancillary Benefits](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014997/M21-1-Part-IX-Subpart-i-Chapter-2-A)
* [Viegas v Shinseki, No. 2012-7075, January 31, 2013](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014356/Viegas-v-Shinseki-January-31-2013-No)
* [Bartlett v Shinseki, No. 08-4092, March 10, 2011](http://vbaw.vba.va.gov/bl/21/advisory/DADS/2011dads/Bartlett.doc)

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| Topic 1: 38 U.S.C. §1151 Criteria And Laws |
| **INTRODUCTION** | This topic will introduce the trainee to the criteria and laws governing 38 USC §1151 claims. |
| **TIME REQUIRED** | 1 hour |
| **OBJECTIVES/ TEACHING POINTS** | Topic objectives:* Given the trainee handout packet and references, identify the criteria and associated laws for 38 USC §1151, with 80% accuracy.
* Given the trainee handout packet and references, distinguish which benefits are applicable for 38 U.S.C **§**1151 claims, with 80% accuracy.
* Given the trainee handout packet and references, differentiate between a tort claim and 38 U.S.C **§**1151 claim, with 80% accuracy.

The following topic teaching points support the topic objectives:* 38 USC §1151 Claims
* 38 USC §1151 Benefits
* Fault on the Part of VA
* Tort Claims vs. 38 USC §1151 Claims
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| **38 USC §1151 Claims***Slide 5**Handout 4* | 38 USC §1151 covers claims regarding compensation based on:* A disability, or aggravation of a pre-existing disability due to hospitalization furnished by VA
* Injuries that occur as a result of Vocational Rehabilitation Training
 |
| **38 CFR Provisions***Slide 6-7**Handout 4* | The following regulations govern the claims under 38 USC §1151:* 38 CFR §3.358 applies to claims received before *October 1, 1997* in which the condition for compensation is not based on the “fault requirement”.
* 38 CFR §3.361 discusses how compensation is based on the requirement that fault on the part of VA be found for claims received on or after October 1, 1997.
* 38 CFR §3.361a (2) applies to claims alleging disability or death due to Compensated Work Therapy (CWT). This section applies to claims that were pending with VA on *November 1, 2000*, or that were received by VA after that date.
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| **38 USC §1151 Benefits***Slide 8-10**Handout 4* | If compensation is granted for a disability under 38 USC §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 USC §1151 is not entitled to all ancillary benefits that are payable to Veterans with service-connected disabilities.Under 38 USC §1151, a claimant is entitled to compensation **as if** the claimed disability or death were service-connected, provided the Veteran’s disability or death resulted from:* Hospital care, medical or surgical treatment, or examination furnished by the Department of Veterans Affairs (VA)
* Participation in vocational rehabilitation training under any VA- administered law
* Participation in Compensated Work Therapy (CWT)

Compensation is **not** payable under 38 USC §1151 if injury or death was due to the Veteran’s own willful misconduct.According to VAOPGCPREC 8-97, compensation may be paid for disabilities secondary to disabilities for which compensation is payable under 38 USC §1151. |
| **DISCUSSION***Handout 11 (Attachment A)* | Discuss Attachment A: *Bartlett v. Shinseki* case located in the trainee handout packet. Be sure to emphasize how the case changes the paradigm for what constitutes hospital care.Also reference VAOPGCPREC 4-2001 and *Kilpatrick v. Principi*, 2002 court case. |
| **NOTE(S)** | Advise trainees that they can review more information on the adjudication of death claims involving 38 USC §1151, see M21-1, Part IV, Subpart iii, 1.B (Developing DIC claims under 38 USC §1151). |
| **Claim Identification***Slide 11-12**Handout 5* | There is no official form for claiming 38 U.S.C §1151 benefits.Any form or other written communication used to claim compensation benefits may be accepted as a claim for benefits under 38 USC §1151.It is important to remember the following:* When a formal claim for compensation or pension is received and entitlement under 38 USC §1151 is ultimately established, the formal claim must be accepted as a claim for 38 USC §1151 benefits.
* 38 USC §1151 does not apply to service-connected disabilities made worse by treatment or Vocational Rehabilitation.
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| **Qualification Requirements***Slide 13-14**Handout 5* | In order to meet the qualifications of 38 USC §1151, the proximate cause of additional disability or death must be due to:* Carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of VA in furnishing the hospital care, medical or surgical treatment, or examination
* An event not reasonably foreseeable
* The provision of training and rehabilitation by VA or one of its service providers as part of an approved rehabilitation program under 38 USC Chapter 31
* The provision of a Compensated Work Therapy (CWT) program
 |
| **NOTE(S)** | Advise trainees that they can find more information on proximate cause under 38 CFR §3.361(d). |
| ***Check Comprehension*** | Ask the following questions aloud to the group of trainees and review the correct responses.1. What do 38 USC §1151 claims cover?

**Response:*** + Compensation based on a disability, or aggravation of a pre-existing disability due to hospitalization furnished by VA
	+ Compensation based on injuries that occur as a result of Vocational Rehabilitation Training
1. When compensation is granted for a disability under 38 USC

§1151, what does it mean when the disability is treated ‘as if’ service-connected?**Response:** The compensation for Veterans who are treated as if service-connected is very similar to Veterans compensated at the serviced-connected rate. However, there are a few ancillary benefits the as if service-connected Veteran would not be entitled to.1. What form is used to file a claim under 38 USC §1151?

**Response:** There is not an official form for 1151 claims; any written communication to VA can be used for filing a claim based on 38 USC 1151. |

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| **Non-VA Facility Disability or Death***Slide 15**Handout 5* | Under 38 USC §1151, the following are not considered hospital care, medical treatment, surgical treatment, or examination within the meaning of:* Hospital care or medical services provided in a non-VA facility under a VA contract prepared under 38 USC §1703
* Nursing home care furnished under 38 USC §1720
* Hospital care, medical services, or examination provided under 38 USC §8153 in a facility over which VA does not have direct jurisdiction

VA treatment or examination that results in additional disability or death coincident with a Veteran’s residence in a contracted non-VA facility might result in eligibility under 38 USC §1151. |
| **NOTE(S)** | Inform the trainee additional information for care in non-VA facilities can be located under 38 CFR §3.361(f). |
| **Ancillary Benefits***Slide 16**Handout 5* | A Veteran with a qualifying disability under 38 USC §1151 may also be eligible for the following ancillary benefits:* Clothing allowance
* Specially adapted housing benefits, including a special housing adaptation grant
* Automobile or adaptive equipment benefits.
 |
| **Unavailable Ancillary Benefits***Slide 17**Handout 6* | Under 38 USC §1151, the following ancillary benefits are not available by reason of a qualifying disability:* Service Disabled Veteran (RH) Insurance
* Civilian Health and Medical Program of VA (CHAMPVA)
* Waiver of the loan guaranty funding fee
* 38 USC Chapter 31 education benefits
* 38 USC Chapter 35 education benefits
* 10-point Civil Service Preference
* Special allowances under 38 USC §1312(a) and *Public Law (PL) 87-377*, Section 156, Restored Entitlement Program for Survivors (REPS)
* SC burial allowance
* Loan guaranty benefits for a surviving spouse
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| **Fault on the Part of VA***Slide 18**Handout 6* | M21-1, Part IV.ii.2.G states that in order to establish fault on the part of VA in furnishing medical care, treatment, or examination as the proximate cause of a Veteran's disability or death, the evidence must show that:* The medical care, treatment, or examination caused the additional disability or death
* VA failed to exercise the degree of care that would have been expected of a reasonable healthcare provider
* VA furnished the care without the Veteran's or Veteran's representative's informed consent
 |
| **NOTE(S)** | Discuss Viegas v. Shinseki. This decision opens 1151 up to when a disability is caused by VA’s installation and maintenance of the equipment necessary for such treatment to occur. Inform the trainees that 38 CFR §3.361(1) contains additional information regarding fault on the part of VA. |
| **Expressed Consent vs. Implied Consent***Slide 19**Handout 6* | When determining if the fault is on the part of VA, it is crucial to consider the type of consent the Veteran elicited to the treatment.M21-1, Part IV.ii.2.G differentiates the two forms of consent as:* **Expressed 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.

Example: 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. |
| **Reasonably Foreseeable Event***Slide 20**Handout 6* | According to M21-1, Part IV.ii.2.G, 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.The incident is not required to be completely unfathomable, however it must be one that a reasonable health-care provider would not consider an ordinary risk of the treatment provided. |
| **NOTE(S)** | Inform the trainees that 38 CFR §17.32 provides additional information regarding unforeseeable events. |

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| **Tort Claims vs. 38 USC§1151 Claims***Slide 21**Handout 7* | 38 USC §14.600 states that tort claims are claims filed in Federal Court against the United States, whereas 38 USC §1151 claims are filed with the Department of Veterans Affairs.Tort claims are another way for a person to be compensated for injuries caused by Government employees. The Veteran may sue and recover damages after a trial or agreeing to a settlement.According to M21-1, Part IV.ii.3.D, when a Veteran is injured under circumstances that result in possible entitlement to benefits under 38 USC §1151, the Veteran may also seek a judgment against the U.S. in a civil action, called a Tort Claim. |
| **NOTE(S)***Handout 13 (Attachment B)* | 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 for damages.Attachment B: Federal Tort Claims Act in the trainee handout packet and M21-1, Part IV.ii.3.D contain additional information. |
| **Duplication of Benefits***Slide 22**Handout 7* | The prohibition against duplication of benefits applies when the following two events occur:* A claimant receives a sum of money or property to settle a legal claim arising from the injury or death of a Veteran
* Then the claimant files a claim for compensation with the Department of Veterans Affairs (VA) for that same injury or death
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| ***Check Comprehension*** | Ask the trainees the following questions:1. What must the evidence show in order to indicate that VA is at fault for the disability?Response:* The medical care, treatment, or examination caused the additional disability or death
* VA failed to exercise the degree of care that would have been expected of a reasonable healthcare provider
* VA furnished the care without the Veteran's or Veteran's representative's informed consent

2. What are the similarities and differences between Tort claims and 38 USC §1151 claims?Response:* Both types of claims require VA to be at fault for additional disability
* 38 USC §1151 Claims are filed within the VA
* Tort Claims are filed with the Federal Court resulting in a case against the government
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| Topic 2: Reasons For Decision |
| **INTRODUCTION** | This topic will allow the trainee to gain a better understanding of the considerations and decisions that must be weighed when making decisions regarding 38 USC §1151 claims. This topic will also discuss factors to consider when rating the 38 USC §1151 claims. |
| **TIME REQUIRED** | .75 hour |
| **OBJECTIVES/ TEACHING POINTS** | Topic objective:* Given the trainee handout packet and references, differentiate between reason for decision and rating criteria requirements, with 80% accuracy.

The following topic teaching points support the topic objective:* Reason for Decision
* Rating Decisions
* Rating Criteria
 |
| **Reason for Decision***Slide 23**Handout 8* | According to M21-1, Part IV.ii.2.G, when preparing the Reasons and Bases section for 38 USC §1151 claims, the RVSR should:* Provide an adequate discussion of the factual bases for the claim
* Specify any treatment, surgery, or therapy that was provided

If VA treatment is found to have been erroneous, resulting in an additional disability, the RVSR should discuss ‘fault’ as the basis of an award of benefits under 38 USC §1151. |
| **NOTE(S)** | 38 U.S.C. 1151 Ratings are exempt from the Simplified Notification Letter procedures. 1151 ratings must be completed in the legacy-rating format. |

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| **Decision Considerations***Slide 24**Handout 8* | Take the following steps when preparing a decision:1. Prepare a decision whenever possible.
2. Seek Veteran Health Administration (VHA) opinion to avoid remand of a case.
3. Seek and interpret relevant materials:
	* Follow-up treatment reports
	* Medical records
	* Surgical records
	* Hospital clinical records
	* Nurses' notes
	* Consent Forms
	* Accident or incident reports
	* Records in connection with Federal Tort Claims Act based upon the same alleged disability
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| **Compensation for Disabilities***Slide 25**Handout 8* | Compensation is authorized under 38 USC 1151 for disabilities resulting from:* Examination
* An act of omission
* Premature discharge
* Medication
* Vocational rehabilitation or CWT
* Veteran’s failure to follow instructions
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| **DISCUSSION***Handout 14-16* | Refer the trainees to Attachment C: Occurrences for Consideration in§1151 Claims in the trainee handout packet. Discuss each type of occurrence as well as the included examples. |
| **Independent Medical Evidence and Medical Opinions***Slide 26**Handout 9* | According to M21-1, Part IV.ii.2.G, a medical opinion is frequently needed to determine whether:* There is actually additional disability
* The additional disability or death of the Veteran was a continuance or natural progression of the disease or injury for which treatment was provided
* The additional disability is merely coincident with treatment
* Any additional disability would be considered a necessary consequence of treatment
 |
| **Advisory Position***Slide 27**Handout 9* | M21-1, Part IV.ii.2.G suggests submission of unusually difficult cases involving claims for compensation under 38 USC §1151 to VA Central Office (CO) (211B) for an advisory opinion. |

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| **Rating Decisions***Slide 28**Handout 9* | Claims under 38 USC §1151 are uncommon and complex to process; therefore it is crucial for the RVSR to possess knowledge of the 38 USC§1151 claims process in the event a claim is filed.Often making a decision and a rating for this type of claim will require seeking advisory opinions from the Veterans Health Administration (VHA) in addition to the VA Central Office. |
| **3 Elements for a Successful 38 USC****§1151 Claim***Slide 29**Handout 9* | The following elements iterate the basic elements indicative of a successful 38 USC §1151 claim:1. Determine if there were VA Therapeutic and Rehabilitative activities, Vocational Rehabilitation, Hospitalization, Medical/ Surgical Treatment, or Examination.
2. Determine if additional disability exists by comparing the physical condition prior to claimed disease or injury with subsequent physical condition that resulted from claimed disease or injury (Reference 38 CFR §3.361(b).
3. Establish a ***nexus*** between VA therapeutic or vocational rehabilitation activities, hospitalization, medical or surgical treatment, or examination, and the additional disability or death.
 |
| **Uncorroborated Conclusions***Slide 30-31**Handout 9* | The RVSR should not make any uncorroborated conclusions in the rating decision regarding a relationship between treatment, surgery, or medication provided and the claimed disability.The following are examples of what an RVSR may not simply state without corroborating medical evidence:* The evidence does not show a myelogram caused the claimant’s tinnitus.
* It is unlikely that the Veteran’s medication caused a claimed side effect.
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| **NOTE(S)** | For more information on evaluating medical evidence, see M21-1, Part III.iv.5. |
| **Rating Criteria***Slide 32**Handout 10* | The rating criteria for 38 USC §1151 includes:* Combining Qualifying Disabilities under §1151 and Service- Connected Disability
* Additional Degree of Disability
* Entitlement of Benefits for Additional Disability
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| **Combined Ratings***Slide 33**Handout 10* | Disability ratings for which compensation is payable under 38 USC§1151 are to be combined with disability ratings assigned to service- connected disabilities as if the former were service-connected.If two or more disabilities (at least one being a qualifying disability under §1151) are rated at 0 percent but interfere with the Veteran’s employability, the RVSR will assign a 10% rating under 38 CFR§3.324. |
| **Additional Degree of Disability***Slide 34**Handout 10* | According to M21-1, Part IV.ii.2.G, the following steps will assist the RVSR in determining the additional degree of disability for benefits payable under 38 USC §1151:1. Determine the current level of disability (expressed as a percentage) based on all symptoms and findings.
2. Determine the level of disability prior to the treatment or examination, vocational rehabilitation, or participation in Compensated Work Therapy (CWT) that resulted in additional disability.
3. Subtract the percentage of disability reached in Step 2 from the percentage of disability reached in Step 1. (If the percentage of disability in Step 1 is 100, do not subtract the percentage of disability in Step 2, even if it is also 100.)
 |
| **NOTE(S)** | If a percentage of disability cannot be determined in Step 2, no subtraction may be made. |
| **Entitlement of Benefits for Additional Disability***Slide 34**Handout 10* | Under 38 USC §1151, establish entitlement to benefits for an additional disability if the evidence shows aggravation of a non service-connected (NSC), pre-existing condition as a result of the following:* VA medical treatment or examination
* Course of vocational rehabilitation
* Compensated Work Therapy (CWT) program
 |
| **EXERCISE***Handout 18-19* | Refer the trainees to the exercise Attachment E, in the trainee handout packet. Allow the trainees 10 minutes to complete the training exercise.Review the correct responses to ensure the trainees understand the material that has been presented. |

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| Practical Exercise |
| **TIME REQUIRED** | .5 hour |
| **EXERCISE***Handout 20* | The practical exercise consists of two scenarios geared towards the RVSR. Allow the trainees 15 minutes to read, assess, and discuss the scenario. The trainees must decide whether to approve or deny the claim and explain why. Afterwards discuss the decisions that the groups came to and review the reasoning.Ask if there are any questions about the information presented in the exercise, and then proceed to the Review. |

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| Lesson Review, Assessment, And Wrap-Up |
| **INTRODUCTION***Discuss the following:* | The 38 USC §1151 Claims lesson is complete.Review each lesson objective and ask the trainees for any questions or comments. |
| **TIME REQUIRED** | .25 hour |
| **LESSON OBJECTIVES** | You have completed the 38 USC §1151 Claims lesson. The trainee should be able to:* Given the trainee handout packet and references, identify the criteria and associated laws for 38 USC §1151, with 80% accuracy.
* Given the trainee handout packet and references, distinguish which benefits are applicable for 38 U.S.C **§**1151 claims, with 80% accuracy.
* Given the trainee handout packet and references, differentiate between a tort claim and 38 U.S.C **§**1151 claim, with 80% accuracy.
* Given the trainee handout packet and references, differentiate between reason for decision and rating criteria requirements, with 80% accuracy.
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| **ASSESSMENT** | The assessment will allow the participants to demonstrate their understanding of the information presented in this lesson.Remind the trainees that they will not receive credit for this lesson until the Level 1 and Level 2 assessments have been completed. |

**38 U.S.C. §1151 Claims**

**Practical Exercise**

Instructions: Allow the trainees 10 minutes time to complete the training exercise and then review their responses.

1. The provisions of which 38 CFR apply to claims under 38 USC §1151 received on or after October 1, 1997?
2. When compensation is granted for a disability under 38 USC §1151, what is the difference between compensation payable as if it were service-connected and compensation that is service-connected?
3. \_\_\_\_\_\_\_\_\_\_\_\_ is consent that has been clearly stated either orally or in writing.
4. When a Veteran is injured under circumstances that result in possible entitlement to benefits under 38 USC §1151, he/she may file what type of claim that is seeking a judgment against the U.S. in a civil action?
5. List the three elements of a successful 38 USC §1151 claim.
6. \_\_\_\_\_\_\_\_\_\_\_\_\_ is consent that may be inferred from the circumstances in the case.
7. How do 38 USC §1151 claims apply to service-connected disabilities made worse by treatment or Vocational Rehabilitation?
8. To what ancillary benefits may a claimant granted compensation under 38 USC §1151 be entitled?
9. What must the evidence show to establish that 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?
10. Disability or death alleged due to Compensated Work Therapy is only applicable on or after what date?

Scenario:

Rex, a Veteran who is an orthopedic doctor, was hospitalized at a VA medical facility following a myocardial infarction. He was treated at the VA facility for six days and released, with a prescription for Coumadin from his treating VA physician, Dr. Hartman. Afterwards, he dropped the prescription off with George, the local (VA) pharmacist. However, George, who was distracted with distressing news concerning his wife Bree, replaced Rex’s Coumadin tablets with Prozac.

Within two weeks, Rex began experiencing additional chest pains and was again hospitalized at the VAMC. The hospital admission report, signed by Dr. Angina, contains a notation that “the Veteran’s Coumadin dose appears to have been inadequate.” Three days later, Rex sustained another cardiovascular infarction and passed away.

Following Rex’s death, in 2005, his spouse filed a 38 USC §1151 cause of death claim with the VA.

What action would the RVSR have to take in this scenario?