Rating Determinations of Insanity

Instructor Lesson Plan

Time Required: 1 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 # | 1272926 |
| Prerequisites | Prior to this lesson, the Rating Veteran Service Representatives (RVSRs) should have completed RVSR Challenge or have reached RVSR Journeyman level. |
| target audience | The target audience for Determinations of Insanity is Journey Level RVSRs.  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 | 1 hour |
| Materials/ TRAINING AIDS | Lesson materials:   * Determinations of Insanity PowerPoint Presentation * Determinations of Insanity Trainee Handouts * Determinations of Insanity Practical Exercise * Determinations of Insanity Practical Exercise Answer Key |
| 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. |
| 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 Determinations of Insanity | | |
| INSTRUCTOR INTRODUCTION | | Complete the following:   * Introduce yourself * Orient learners to the facilities * Ensure that all learners have the required handouts |
| time required | | .1 hours (5 minutes) |
| Purpose of Lesson  Explain the following: | | The purpose of this lesson is to provide an overview of things an RVSR must consider when making a determination of insanity. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * Definition of Insanity * When to make a finding of insanity * How a finding of sanity or insanity impacts VA benefits |
| Lesson Objectives  Discuss the following:  Slide 2 | In order to accomplish the purpose of this lesson, the RVSR will be required to accomplish the following lesson objectives.  The trainee will be able to:   * define the term “insanity” * describe the development efforts required to make a determination of insanity ready to rate * explain the importance of identifying pre-existing conditions that affect the veteran’s mental state * define the term “psychosis” and state how it affects a person’s ability to function. * explain why it is necessary to provide the claimant with 5103 notice and wait until the claim is fully developed before making a determination. | |
| 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 | Tell trainees that ratings for determination of insanity are rare, but still very important, as they affect the outcome of subsequent administrative decisions for character of discharge, line of duty, or willful misconduct. | |

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| References  Slide 3 | Explain where these references are located.   * [38 CFR 3.354, Determinations of insanity](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_354.htm) * [38 CFR 3.302, Service connection for mental unsoundness in suicide](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_302.htm) * [M21-1, Part III, Subpart ii.7.3, Specific Decision-Making Responsibilities of the Rating Activity](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/) * [M21-1, Part III, Subpart v.1.D, Willful Misconduct and Line of Duty](file:///C:\Users\esochar\AppData\Local\Temp\M21-1,%20Part%20III,%20Subpart%20v,%20Chapter%201,%20Section%20D%20-%20Willful%20Misconduct%20and%20Line%20of%20Duty) * [M21-1, Part III, Subpart v.1.E, Determinations of Insanity](file:///C:\Users\esochar\AppData\Local\Temp\M21-1,%20Part%20III,%20Subpart%20v,%20Chapter%201,%20Section%20E%20-%20Determinations%20of%20Insanity) * [M21-1, Part III, Subpart v.1.F.3, Facts to Consider in a Wrongful and Intentional Killing](file:///C:\Users\esochar\AppData\Local\Temp\M21-1,%20Part%20III,%20Subpart%20v,%20Chapter%201,%20Section%20F%20-%20Considering%20Eligibility%20When%20Homicide%20Is%20Involved) |

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| Topic 1: Determination of Insanity | |
| Introduction | This topic will enable the trainee to make a determination when a finding is needed on the issue of insanity |
| Time Required | .5 hours (30 minutes) |
| OBJECTIVES/ Teaching Points | Topic objectives:   * define the term “insanity” * describe the development efforts required to make a determination of insanity ready to rate * explain the importance of identifying pre-existing conditions that affect the veteran’s mental state * define the term “psychosis” and state how it affects a person’s ability to function * explain why it is necessary to provide the claimant with 5103 notice and wait until the claim is fully developed before making a determination. * Make a determination of whether insanity exists in a given scenario |
| **TEACHING POINTS**  **Definition of “insanity”**  Slides 4 - 5 | Insanity is a grave, often prolonged condition that prevents a person from being held legally responsible for his or her actions.  For VA purposes, an insane person is defined as one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.  Stress that, although there are other definitions and legal standards by which a person may be found insane (i.e.; the Model Penal Code), rating decisions for determination of insanity must be based on the elements of the aforementioned definition. |
| *Insanity causing discharge*  Slide 6 | If it can be established that a Veteran was insane at the time of the commission of the act or acts that would otherwise result in an adverse character of discharge, line-of-duty or willful misconduct determination, hold that,   * the veteran was without fault, and * is not precluded from any Department of Veterans Affairs (VA) benefits |
| *Insanity as an issue*  Slide 7 | Explain to trainees that insanity is placed into issue in the following ways:   * by specific allegation by the veteran or an authorized representative * by the Veterans Service Representative (VSR) if the evidence indicates the possibility of insanity, and * if suicidal death occurs in service.   When an RVSR determines whether a Veteran was insane at the time he committed an offense leading to his court-martial, discharge or resignation (38 U.S.C. 5303(b)), he or she must base the decision on all the evidence procurable relating to the period involved, and apply the definition above. |
| ***Duty to assist***  *(Dennis v. Nicholson & Gardner v. Shinseki)*  Slide 8 | State that, the duty to assist (under the Veterans Claims Assistance Act of 2000) applies to all claimants regardless of establishment of veteran status. For further guidance trainees should review the court cases of *Dennis v. Nicholson* (03-2099) and *Gardner v. Shinseki* (06-3600). In summary, 5103 notice must be sent to the claimant so he or she may participate in adjudication of the claim. |

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| ***Directing development of the claim***  Slide 9  ***Direct trainees to handout***  Handout  page 1 of 1 | When insanity is at issue, a single piece of evidence can be misleading when taken out of context, and therefore, the RVSR must exercise caution to ensure that the claim is fully developed before making a determination.  The primary sources of evidence for determinations of insanity are the veteran’s service treatment records (STRs) and his or her official military personnel file (OMPF). These will normally provide either the information you need, or direct you to secondary sources of evidence that may need to be obtained before making the determination.  Secondary sources include:   * facts and circumstances surrounding discharge * transcripts of court-martial * board proceedings * clinical records for mental health evaluations or treatment * police reports * statements of family members or witnesses to pertinent events   When preparing requests for these records, VSRs should state that “the issue of insanity has been raised” so that any helpful evidence that is available, but was not specifically requested, may be obtained.  Remind RVSRs that methods for obtaining military records are ever- changing. Therefore, it is important to develop a good working relationship with VSRs and Military Records Specialists (MRSs) to ensure that current development procedures are being followed.  Direct trainees to the handout *Making a Determination of Insanity*.  Point out that the term “mental defect” is defined as mental retardation, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms, or impairment in at least one important area of an individual’s functioning.  Then, explain that “constitutionally psychopathic” means that a person over the age of 18 exhibits a pervasive pattern of disregard for, and violation of, the rights of others and is diagnosed with an antisocial personality disorder. |
| ***Reviewing the evidence***  *Slides 10 - 14* | Tell trainees that it is key to conduct a thorough review of the evidence and determine whether the veteran was diagnosed with a mental defect or found constitutionally psychopathic prior to committing the offense that led to court-martial, discharge, resignation, or suicide.  Are the STRs complete? Is there any indication that clinical records exist and, have efforts been made to obtain them? Do any of the primary or secondary sources of evidence show treatment for a diagnosed mental disability, or a pattern of symptoms sufficient to request a medical opinion?  If a pre-exisiting condition is shown, prepare the Rating decision determining that the veteran was not insane at the time of the commission of the act(s).  If there is no evidence of a pre-existing condition, the next step is to identify the date and nature of the offense (or suicide).  Does the OMPF contain an incident report, police report, witness statement or any other evidence that describes the act(s)? Does it include an assessment of the veteran’s behavior before, during, and (when possible) immediately after the act? Did the veteran accept an other than honorable or dishonorable discharge in lieu of court- martial? Review the facts and circumstances surrounding discharge.  Is there evidence that a psychosis was engrafted on the basic condition (the veteran’s “normal” or typical behavior) at the time of the offense?  If not, prepare a determination that the veteran was not insane.  If so and there is evidence suggesting that the veteran became psychotic:   * Did the psychosis cause a (more or less) prolonged deviation from the veteran’s “normal” behavior, or * has it interfered with “the peace of society”, or * has the veteran so departed from the accepted standards of the community to which he/she belongs (by birth and education) that he/she lacks the ability to adjust/adapt?   If the evidence shows that any of these statements are true, prepare a determination of insanity. If none of the conditions are met, determine that the veteran was not insane at the time of the offense. |

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|  | If the evidence shows that any of these statements are true, prepare a determination of insanity. If none of the conditions are met, determine that the veteran was not insane at the time of the offense. | |
| 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 | .25 hours (15 minutes) |
| EXERCISE | Read the scenarios provided and prepare determinations on whether the Veteran is insane or not. Include the basis for your decision.  Discuss the answers to the exercise as a class, and then proceed to the Review. |

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| Lesson Review, Assessment, and Wrap-up | |
| Introduction  Discuss the following: | The Determinations of Insanity lesson is complete.  Review each lesson objective and ask the trainees for any questions or comments. |
| Time Required | .2 hours (10 minutes) |
| Lesson Objectives | You have completed the Determinations of Insanity lesson.  The trainee should be able to:   * define the term “insanity” * describe the development efforts required to make a determination of insanity ready to rate * explain the importance of identifying pre-existing conditions that affect the veteran’s mental state * define the term “psychosis” and state how it affects a person’s ability to function * explain why it is necessary to provide the claimant with 5103 notice and wait until the claim is fully developed before making a determination * Make a determination of whether insanity exists in a given scenario |
| 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. |