Claims Based on Exposure to Ionizing Radiation

Instructor Lesson Plan

Time Required: 2 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 # | 1310291 |
| Prerequisites | Prior to this lesson, the Rating Veteran Service Representatives (RVSRs) should have completed *Challenge Training*. |
| target audience | The target audience for *Claims Based on Exposure to Ionizing Radiation* is Intermediate and Journey RVSRs.  Although this lesson is targeted to teach the Intermediate and Journey RVSR employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 2 hours |
| Materials/ TRAINING AIDS | Lesson materials:   * *Claims Based on Exposure to Ionizing Radiation* PowerPoint Presentation * *Claims Based on Exposure to Ionizing Radiation* Trainee Handouts |
| 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 Claims Based on Exposure to Ionizing Radiation | | |
| INSTRUCTOR INTRODUCTION | | Complete the following:   * Introduce yourself * Orient learners to the facilities * Ensure that all learners have the required handouts |
| time required | | 15 minutes |
| Purpose of Lesson  Explain the following: | | This lesson is intended to further develop the RVSR’s knowledge of how to process a claim based on radiation exposure*.* This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * The list of “radiogenic disease” * How to process a claim based on exposure |
| 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.  TheRVSRwill be able to:   * Recognize a claim based on exposure to ionizing radiation based on the claimed issues * Learn how to address claims based on exposure to ionizing radiation and the correct process of routing the claim to the correct processing center | |
| 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 the trainees about an incident where an RVSR did not recognize a radiation claim, and worked diligently on the claim, only to find out it should have been sent to the correct processing center. | |

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| 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.  Common errors will include whether   * the claim was properly identified as a radiation exposure case * proper development for clarification on the claimed issue was completed * the claim was properly transferred to the correct processing center   The STAR code errors are as follows:  SPECIAL ISSUE IDENTIFICATION, B1, B2 |
| References *Slide 3* *Handout 3* | Explain where these references are located in the workplace.   * [38 CFR 3.309, Disease subject to presumptive service connection](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58" \l "se38.1.3_1309) * [38 CFR 3.311](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58" \l "se38.1.3_1309), Claims based on exposure to ionizing radiation * [M21-1, Part IV, Subpart ii, Chapter 1, B](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014904/M21-1-Part-IV-Subpart-ii-Chapter-1-S), Claims for Service Connection for Radiogenic Diseases Under 38 CFR 3.309(d) * [M21-1, Part IV, Subpart ii, Chapter 1, C](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014905/M21-1-Part-IV-Subpart-ii-Chapter-1-S), Claims for Service Connection for Disabilities Resulting from Ionizing Radiation Exposure Under 38 CFR 3.311 |

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| Topic 1: List of Radiogenic Diseases and Presumptive Cancers | |
| Introduction | This topic will allow the trainee to identify the diseases listed in 38 C.F.R. 3.311 and types of cancer that are presumptively service-connected as listed in 38 U.S.C 1112 and 38 C.F.R. 3.309(d). |
| Time Required | 1 hour |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Recognize the different ways to establish a claim based on ionizing radiation * Be able to identify the diseases that are associated with ionizing radiation exposure * Recognize court cases that effect claims based on radiation exposure   The following topic teaching points support the topic objectives:   * Presumptive diseases * Radiogenic diseases * Pertinent Court cases |
| 38 C.F.R 3.309(d) ~ Presumptive Service Connection  Slide 5-6  Handout 4 | Discuss the definition of “radiation-exposed:” A “radiation-exposed” veteran is one who, while serving on active duty, or as an individual who, while a member of the reserve component of the Armed Forces during a period of ACDUTRA or INACDUTRA, participated in a *radiation risk activity.*  Discuss the definition of a *radiation risk activity* as:   * onsite participation involving the atmospheric detonation of a nuclear device; * the occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period from August 6, 1945 to July 1, 1946; or * internment as a POW in Japan (or active duty service in Japan immediately following such internment) during World War II, which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States forces in Hiroshima or Nagasaki, Japan, from August 6, 1945 to July 1, 1946. * At a gaseous diffusion plant located in Paducah, KY, Portsmouth, OH, or the area identified as K25 at Oak Ridge, TN prior to February 1, 1992 for 250 days.   Refer the RVSRs to the following definitions:   * *Onsite participation* at 38 C.F.R. 3.309 (d)(3)(iv)(A-D) * *Atmospheric detonation* at 38 C.F.R. 3.309 (d)(3)(iii) * Occupation of Hiroshima or Nagasaki, Japan at 38 C.F.R. 3.309 (d)(3)(vi) * Who may claim service connection for interment as a POW in Japan at 38 C.F.R. 3.309 (d)(3)(vii)(A-D)   Discuss with the RVSRs that 38 C.F.R. 3.309 states that if a veteran is a “radiation-exposed” veteran, and he develops one of the diseases listed in the subsection of that regulation, service connection is warranted under the provisions of 38 C.F.R. 3.307. |
| 38 C.F.R. 3.311 ~ Radiogenic Diseases Slides 7&8 Handout 6 | Explain that the claimant must establish that he suffers from a radiogenic disease, which is defined under 38 C.F.R. 3.311(b) (2-4). Note that there are some specified time periods listed in this regulation that must be considered.  Review the list of radiogenic diseases again and have a group discussion to see if anyone has seen these conditions. Then discuss if anyone has seen them in relation to radiation or not. (THIS IS NOT THE LIST UNDER 3.309 BUT RATHER IS THE LIST UNDER 3.311)   * All forms of leukemia except chronic lymphatic (lymphocytic) leukemia * Thyroid cancer * Breast cancer * Lung cancer * Bone cancer * Liver cancer * Skin cancer * Esophageal cancer * Stomach cancer * Colon cancer * Pancreatic cancer * Kidney cancer * Urinary bladder cancer * Salivary gland cancer * Multiple myeloma * Posterior subcapsular cataracts * Non-malignant thyroid nodular disease * Ovarian cancer * Parathyroid adenoma * Tumors of the brain and central nervous system * Cancer of the rectum * Lymphomas other than Hodgkin’s disease * Prostate cancer * Any other cancer |

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| Court cases pertinent to radiation claims  Slide 9  Handout 7-8 | *Hardin v. West* (1998) – The Court, citing *Combee v. Brown*, reaffirmed the principle that service connection for an unlisted condition could be pursued under the general VA compensation entitlement system. In vacating and remanding the Board’s decision that denied service connection for four conditions, none of which was subject to presumptive service connection on a radiation basis pursuant to 38 U.S.C. 1112(c) and 38 C.F.R. 3.309 (d), or deemed “radiogenic” diseases pursuant to 38 C.F.R. 3.311, the Court held that claimants are still entitled to assert service connection on a direct basis under 38 C.F.R. 3.303 (d). The Court also observed that, in light of *Combee v. Brown*, VA amended 38 C.F.R. 3.311 to add subparagraph (b)(4). In addition, VA deleted 38 C.F.R. 3.311 (h), which had provided that the list of diseases at 3.311 (b)(2) was *exclusive*, and redefined the term “radiogenic disease” as a disease that may be induced by ionizing radiation.  *Earle v. Brown* (1994) – The Court held that VA could not rely solely upon the DNA’s (Defense Nuclear Agency) dose estimate as to the veteran’s exposure to ionizing radiation. The Court instructed that the dose estimate of radiation exposure is only one piece of evidence that is considered.  *Hilkert v. West* (1999) – The appellant submitted evidence that the veteran had a radiogenic disease and claimed that the veteran’s exposure to radiation in service had caused the disease. A dose estimate was performed by DNA that confirmed that the veteran had been exposed to radiation during service. The matter was then referred to the Director of Compensation and Pension, who acted on behalf of the Under Secretary for Benefits. The Director requested an advisory opinion from the Under Secretary for Health. On behalf of the Under Secretary for Health, a physician concluded that there was no reasonable possibility that the veteran’s colon cancer resulted from his exposure to radiation during service. In doing so, the physician did not specifically discuss each of the six factors listed in 38 C.F.R. 3.311. The Court held that a discussion by the Under Secretary for Benefits of all the factors listed in subparagraph (e) is not required if the Under Secretary for Benefits recommends that there is no reasonable possibility that the veteran’s disease resulted from radiation exposure during service. This holding vacated the 1998 decision of the Court in *Hilkert v. West (I).*  *Stone v Gober* (2000) – The Court reiterated that, although the Under Secretary for Benefits was not required to explicitly consider each of the factors listed in 38 C.F.R. 3.311, the medical opinion must set forth an adequate rationale for its conclusion.  *Ramey v. Brown* (1996) – The Court affirmed the denial of service connection for a cancer listed in 38 U.S.C. 1112 (c) on the ground that a cancer that metastasizes from a primary site that is not listed in 38 C.F.R. 3.309 (d) does not warrant consideration on the basis of presumptive service connection due to exposure to ionizing radiation.  *Ramey v. Gober* (1997) – The veteran died as a result of colon cancer that metastasized to his liver. The appellant argued that, because colon cancer is listed as a radiogenic disease in 38 C.F.R. 3.311, and in light of the finding that the veteran was exposed to radiation during his period of active duty, service connection on a presumptive basis was warranted. The Federal Circuit held that 38 C.F.R. 3.311 did not create, expressly or implicitly, a presumption of service connection for radiation-exposed veterans who contracted one of the radiogenic diseases listed in the regulation. The Federal Circuit explained that the regulation simply outlined a framework for adjudicating, on a case-by-case basis, claims brought by radiation-exposed veterans and their survivors.  *McGuire v. West* (1998) – The veteran asserted a claim of service connection for esophageal and stomach cancers, each of which is presumptively service connected under 38 C.F.R. 3.309 (d). The Court held, as a matter of law, that a veteran who visited Hiroshima or Nagasaki, Japan, while on leave from duty not related to the occupation of either city, did not participate in the occupation of those cities as the term is defined by statute or by regulation. Therefore, the Court affirmed the Board’s denial, on the merits, of the veteran’s claim for service connection for these cancers.  *Rucker v. Brown* (1997) – The veteran asserted claims of service connection for four cancers on the basis that they were due to his in-service exposure to radiation. None of the cancers was subject to presumptive service connection under 38 C.F.R. 3.309 (d), but three of the four were radiogenic diseases under 38 C.F.R. 3.311 (prostate cancer, along with all other cancers, has since been added to the list of radiogenic diseases effective September 24, 1998). The Court held that, based on DNA’s response that the veteran had no risk of exposure to ionizing radiation from bombs dropped in Hiroshima or Nagasaki, Japan, his claims of service connection due to exposure to such radiation were properly denied. The Court, however, vacated and remanded the Board’s decision as to these claims of service connection due to his exposure to non-ionizing radiation. The veteran asserted that the four cancers were caused by non-ionizing radiation that emanated from naval radar equipment that he operated while on active duty. In support, the veteran submitted scientific evidence in the form of several articles that documented the uncertainty and controversy surrounding microwave (non-ionizing radiation) radiation. The Court stated that the scientific articles had been tested and subjected to peer review. The Court concluded that the articles were sufficient to well-ground the veteran’s claim under the latter theory, when taken together with the medical opinion from the veteran’s doctor indicating that non-ionizing radiation emitted from radar equipment led to the development of the four cancers. **Note – since 38 C.F.R. 3.311 deals with claims based on exposure to ionizing radiation only, this claim should be considered only under 38 C.F.R. 3.303 (d).** |
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| Topic 2: Processing a Claim Based on Exposure to Radiation | | | |
| Introduction | | This topic will allow the trainee to know how to process a radiation claim and how to broker it to the processing center in Jackson, Mississippi. | |
| Time Required | | 30 minutes | |
| OBJECTIVES/ Teaching Points | | Topic objectives:   * Know when to broker the file to the Jackson, MS Regional Office   The following topic teaching points support the topic objectives:   * Processing claims based on radiation exposure | |
| Processing of claims based on radiation exposure  Slide 10-11  Handout 10 | | Explain the process of brokering the claims file to the Jackson, MS Regional Office after the radiogenic disease is confirmed.  The existence of a radiogenic disease must be confirmed by a medical diagnosis prior to transferring the claim to the Jackson RO.  ***Important***: The station of origination (SOO) is responsible for noting the following in the claims folder:   * no development accomplished * partial/complete development – request not sent to DTRA * development completed - request sent to DTRA, or * pending opinion from Compensation Service.   After it has been determined that a radiation claim is ready to be transferred to the Jackson RO, the SOO must leave the rating end product (EP) pending, as well as all other EPs *not* related to the radiation claim. The Jackson RO will have jurisdiction of all non-radiation-related claims while processing the radiation issues.  Upon receipt of the claim, the Jackson RO will   * accept the transfer through Control of Veterans Records System (COVERS) * review the case to determine the status of the radiation claim and any other pending claim, and * establish an EP 682 for control and identification of the radiation claim, using the same date of claim as the concurrent rating EP. | |
| Lesson Review, Assessment, and Wrap-up | | |
| Introduction  Discuss the following: | The *Claims Based on Exposure to Ionizing Radiation* lesson is complete.  Review each lesson objective and ask the trainees for any questions or comments. | |
| Time Required | 15 minutes | |
| Lesson Objectives | You have completed the *Claims Based on Exposure to Ionizing Radiation* lesson.  The trainee should be able to:   * Recognize a claim based on exposure to radiation * Complete the process of routing the claim to the correct processing center | |
| 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.  Allow the trainees 15 minutes to complete the online assessment. | |