Practical Scenarios

**Diabetic Complications**

If we have a claim for diabetes mellitus and can grant a 20 percent evaluation based on evidence of a diagnosis and required insulin, can we grant the 20 percent evaluation and clear the EP without requesting an examination to determine if there are diabetic complications?

**Answer:** Yes, but please remember that if there is any evidence showing potential complications then a VA examination would be required if the evidence in the file is not sufficient to rate those disabilities.

**Total Disability based on Individual Unemployability**

The Veteran files a claim for total disability based on individual unemployability (TDIU) in December 2012 stating he last worked in June 2012. The evidence of record is sufficient to grant a 100 percent scheduler evaluation from the date of claim. Do we have a duty to assist since we are granting the total evaluation?

**Answer:** Remember TDIU is not a freestanding claim. If there is any potential entitlement to an earlier effective date, thewe have the duty to assist in obtaining evidence for the time period between the date the claim was filed and awarded the total evaluation and the date the Veteran stopped working.

**Asthma**

The Veteran is service connected for asthma at 10 percent disabling and the medical records show use of an inhaler daily. Do we have to obtain pulmonary function testing?

**Answer:** The requirements that PFTs be obtained as noted in 38 C.F.R. 4.96(d)(1) do not apply to diagnostic code 6602. The claim can be rated and the Veteran’s evaluation can be increased to 30 percent, thus granting the benefit sought. However, if the respiratory condition is one in which PFT’s are required under 38 C.F.R. 4.96, the PFTs would have to be obtained.

**General Medical Examination**

For Veterans who have been out of service less than one year and who require a general medical examination, would we still have to get an exam if the STRs or other evidence provide sufficient evidence for granting? For example, a Veteran diagnosed with sleep apnea and prescribed a CPAP machine in service with no other claims associated with the original claim.

**Answer:** Since the medical evidence is clear that service connection is warranted and the 50 percent evaluation should be assigned, a general medical examination would not be required with no other claimed disabilities. However, if other issues were noted, an interim rating should be prepared and the other claims should receive proper development including a VA general medical examination.

**ACE Examinations and Tender Scars**

If a physician conducts an exam via telephone in accordance with ACE procedures, can we use that to grant a tender scar if it is noted as tender on the ACE examination?

**Answer:** Under 38 C.F.R. 4.118, a compensable evaluation may be granted for a painful scar. There is no requirement in the rating schedule for the pain or tenderness to be objectively observed by the examiner. After any examination, review of the records available, and taking a history from the Veteran, if the physician feels the scar is painful, we should base our evaluation on the findings from the examination.

**METs, hypertrophy, and dilatation**

For cardio cases involving ischemic heart disease (IHD), can an evaluation of 10 percent be assigned based on continuous medication noted in the medical evidence or do we need an examination?

**Answer:** Under 38 C.F.R. 4.100, we much ascertain cardiac enlargement in all cases and a METs level unless contraindicated or otherwise not required in 38 C.F.R. 4.100(b). If the medical evidence does not indicate METs or cardiac enlargement, an examination would be required. However, an interim decision should be completed.

**Goldman Chart**

Is the Goldman chart for vision cases still needed?

**Answer:** Yes, per 38 C.F.R. 4.77 and 4.78, a Goldman perimeter chart is required to evaluate visual field defects associated with a disability and for diplopia. However, when this type of testing is required and will always be determined by the physician.

**Tinnitus**

Can we grant tinnitus based on evidence in the STRs? When STRs show complaints versus a diagnosis of tinnitus, should we get an examination? In which case?

**Answer:** If the Veteran has complaints of tinnitus in service and post service medical evidence showing a diagnosis of tinnitus, service connection can be granted without a nexus (M21-1 III.iv.4.B.3.g). We do not service connect complaints, only a diagnosed disability. Be cautious, as physicians often times diagnose tinnitus in parts of an examination that are not necessarily labeled as the diagnosis section of the report.

**Chiropractor**

Can we use chiropractor reports for range of motion testing for rating purposes?

**Answer:** Chiropractor reports are medical evidence and should be given weight when evaluation evidence as directed in 38 C.F.R. 4.6. However chiropractic reports alone ahowing range of motion values are not sufficient to assign an evaluation based on limitation of motion in the rating schedule.

**VA Form 21-4142**

We can grant the benefit sought, but the Veteran submitted VA Form 21-4142s. Do we have to obtain those records?

**Answer:** Yes, we have to obtain the records. We should do the interim rating granting the benefits sought, and then obtain the records for review.

**Non-compensable Evaluations**

How do we balance doing an interim rating as opposed to getting an exam altogether? What if the “grant” is only 0 percent?

**Answer:** An interim rating for any evaluation is only required when we still need to develop some type of evidence in relation to the level of disability impairment needed to evaluate under the rating schedule. Any disability evaluation, including a non-compensable evaluation may be assigned if evidence adequate for rating purposes is received from any source as noted in 38 CFR 3.326.

**Painful Motion**

A Veteran who is already service connected at 0 percent for a knee disability submits a claim for increased evaluation. In addition, the Veteran submits medical evidence from his physician showing painful range of motion testing on examination. May we assign a 10 percent evaluation and not order an examination to assess all potential means to rate a knee disability?

**Answer:** Under 38 CFR 4.59, an evaluation of 10 percent should be granted. Interim ratings and scheduling VA examinations are **not** required to assess every potential means of evaluating the disability. Granting the 10 percent satisfies the requirement to grant the benefit sought and the Veteran retains the right to submit further evidence in relation to the evaluation of the disability or to request an increase evaluation with a VA examination.

**Appeals**

Does “changing the game” and developing an “examination by exception” mentality apply to claims on appeal?

**Answer:** No, this process does not change what a total grant of the benefit sought on appeal is. During appeals, if the Veteran claims an increase, only the schedular maximum for that condition is considered a total grant of the benefit sought. This process does not change the examination requirements for appeals, particularly if the claim has been remanded for a VA examination.