Rating Analysis

Trainee Handout

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Objectives

The RVSR will be able to:

* Identify guidelines for weighing evidence
* Identify the major concepts involved in weighing evidence
* Identify different types of evidence and the principles involved in decision making
* Write clear and concise rating decision narratives discussing the evidence reviewed in the decision processReferences

[38 CFR 4.2 Interpretation of Exam Reports](http://www.ecfr.gov/cgi-bin/text-idx?SID=97d42b95e227ec4129bd831e8d742da5&mc=true&node=se38.1.4_12&rgn=div8)

[38 CFR 4.3 Resolution of Reasonable Doubt](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d42b95e227ec4129bd831e8d742da5&mc=true&n=sp38.1.4.a&r=SUBPART&ty=HTML#se38.1.4_13)

[38 CFR 4.6 Evaluation of Evidence](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d42b95e227ec4129bd831e8d742da5&mc=true&n=sp38.1.4.a&r=SUBPART&ty=HTML#se38.1.4_16)

[38 CFR 4.7 Higher of Two Evaluations](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d42b95e227ec4129bd831e8d742da5&mc=true&n=sp38.1.4.a&r=SUBPART&ty=HTML#se38.1.4_17)

[38 CFR 4.23 Attitude of Rating Officers](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d42b95e227ec4129bd831e8d742da5&mc=true&n=sp38.1.4.a&r=SUBPART&ty=HTML#se38.1.4_123)

[38 CFR 3.159 Duty to Assist](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1159)[38 CFR 3.102 Reasonable Doubt](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034)

[38 CFR 3.303 Principles of Service Connection](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1303)

[38 CFR 3.304 Direct Service Connection](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1304)

[38 CFR 3.328 Independent Medical Opinions](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1328)

[M21-1, Part III, Subpart iv, 5 Evaluating Evidence and making a Decision](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014203/M21-1-Part-III-Subpart-iv-Chapter-5)

[M21-1 Part III, Subpart iv, 6.C Completing the rating decision narrative](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014206/M21-1-Part-III-Subpart-iv-Chapter-6)

[Charles v. Principi, No. 01-1536, October 3, 2002](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm)

[Wray v. Brown, No. 93-289, April 6, 1995](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmw)

[White v. Principi, No. 00-7130, March 27, 2001](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm)

[McLendon v. Nicholson, No. 04-0185, June 5, 2006](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm)

[Barr v. Nicholson, No. 04-0534, June 15, 2007](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmw)

Topic 1: Bases of Weighing Evidence

Topic objectives:

* Identify guidelines for weighing evidence.

The following topic teaching points support the topic objectives:

* Overview of evaluating evidence
* Standards of evidentiary proof
* Reasonable doubt
* Attitude of the rating officer

**Overview of Evaluating Evidence**

There is no single formula for weighing evidence. However, there is a series of analytical steps which may be utilized to assist in findings of fact.

* Determine what facts are required and what standard of proof applies
* Discount any admitted evidence that is not material
* Determine the probative value of evidence that bears on the entitlement standard or procedural issue
* Resolve questions of relative weight or persuasiveness when there are various items of evidence that have been determined to have probative value in order to find facts
* Apply the found facts to draw corresponding conclusions of law necessary to support the decision outcome for the benefit sought and procedural issue

Standards of Evidentiary Proof

There are five different standards which specifies the degree of persuasion or confidence in the evidence with regard to the subject of the proof that is required in order to find a fact proven.

1. Relative equipoise – evidence must persuade the decision maker that the fact is as likely as not
2. Preponderance of the evidence - the greater weight of evidence is that the fact exists. The fact is more likely than not
3. Affirmative evidence to the contrary - the fact is unlikely; and the evidence against the matter is of greater weight. This standard is the opposite of the preponderance standard
4. Clear and convincing - the fact finder has reasonable certainty of the truth of a fact. This is a higher standard of proof than having to find a fact is more likely than not
5. Clear and unmistakable - the evidence must establish the fact without question

Reasonable Doubt

* See 38 CFR 4.2 and 38 CFR 3.102 for reasonable doubt
* 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

**Attitude of Rating Officers**

* See 38 CFR 4.23 attitude of rating officers
* It is essential we maintain objectivity and never allow personal feelings to enter into our decision making process
* Rating officers should maintain impartiality and objectivity, and show fairness and courtesy to claimants at all times

Topic 2: Evidentiary Concepts

Topic objectives:

* Identify the major concepts involved in weighing evidence

The following topic teaching points support the topic objectives:

* Evidentiary Concepts
* Credibility
* Competent Evidence
* Probative Value
* Absence of Evidence

**Evidentiary Concepts**

There are a number of concepts pertaining to how evidence is evaluated. In this lesson, we will define four major concepts:

1. Credibility
2. Competent evidence
3. Probative value
4. Absence of evidence

**Credibility**

Credibility is a blanket term for the fact finding of whether evidence is believable or not believable.

Factors to consider in making a fact finding of credibility include

* facial plausibility (upfront, on the surface)
* consistency with other evidence submitted
* internal consistency (the context of the facts remain the same)
* demeanor of a witness (who is offering in person testimonial evidence), and
* interest/bias.

**Competent Evidence**

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.

Please refer to 38 CRF 3.159(a)(1) & (2)

**Probative Value**

Consider the following when evaluating the probative value of evidence:

* Physician’s qualifications
* Physician’s knowledge of the relevant history
* Context in which the medical evidence was created
* Reasoning employed by the physician
* Degree of specificity
* Degree of certainty

**Absence of Evidence**

Care must be taken when considering the absence of evidence as negative evidence. Do not use the absence of evidence as negative evidence in cases where the claimant has simply failed to prove an element of the claim by the applicable standard. However, the absence of any positive evidence, such as medical evidence showing diagnosis or treatment, may be considered in determining whether the benefit may be awarded.

Topic 3: Making Evidentiary Decisions

Topic objectives:

* Identify different types of evidence and the principles involved in decision making
* Write clear and concise rating decision narratives discussing the evidence reviewed in the decision process

The following topic teaching points support the topic objectives:

* Decision making principles
* Types of evidence
* Reasons and bases requirements

**Decision Making Principles**

When evaluating medical evidence, do:

* Be objective and fair in the consideration of evidence
* Ensure that any inferences, findings, and conclusions made are supported under the facts and law
* Follow the evidentiary guidance in this training
* Be professional and courteous even when claimants are antagonistic, critical, or abusive

When evaluating medical evidence, do not:

* Rely on your own unsubstantiated medical opinion
* Allow any bias or personal feelings into the evaluation of evidence or the decision
* Arbitrarily or capriciously refuse to assign weight to a claimant’s evidence
* Adopt or express an adversarial position towards a claimant or beneficiary
* Refer to the claimant or beneficiary as a liar. Where evidence is not credible, say that and cite facts of record in support
* Minimize the weight of a treating physician’s opinion based upon the idea that he/she has become an advocate for the patient since doing so may appear adversarial and biased

**Types of Evidence**

RVSRs are responsible for reviewing:

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

The four main types of medical assessments for VA purposes are:

* Diagnoses
* Opinions
* Examinations
* History

**Reasons and Bases Requirements**

If there is evidence both for and against the claim, the Narrative should discuss how the evidence was weighed and any discrepancies resolved.

After weighing the evidence to reach a conclusion,

* discuss the evidence in favor of the claim
* discuss the evidence against the claim to include any negative evidence, and explain that
* one set of evidence outweighs the other set, or
* the evidence is in equal balance for and against the claim.

For most claims where evidence was weighed, the denial rationale glossaries in VBMS-R contain adequate explanation.

Practical Exercise

Directions: Review the following scenario and provide answers for discussion:

**Background:**

The WWII Veteran was SC for severe gunshot wounds to the left lower extremity. The death certificate shows the cause of death was heart disease. The widow claims SC for cause of death on the basis that the Veteran suffered from stress and insomnia that aggravated the heart disease and contributed to the cause of death.

**1st evidence scenario:**

“I treated the Veteran for hypertension, diabetes mellitus, pylorospasm, multiple joint pain, and anxiety. Xrays in 1985 revealed degenerative disc disease at the L5-S1 level and advanced DJD of the left knee. It is my opinion that these conditions could have contributed to his death on May 20, 1989.” (Statement from Dr. Joyce, Veteran’s long-time physician)

**Is this evidence credible?**

**How would you assign weight to this evidence?**

**2nd evidence scenario:**

“I treated the Veteran for hypertension, diabetes mellitus, pylorospasm, multiple joint pain, and anxiety. Xrays in 1985 revealed degenerative disc disease at the L5-S1 level and advanced DJD of the left knee. It is my opinion that these conditions could have contributed to his death on May 20, 1989.” (Statement from Dr. Joyce, Veteran’s long-time physician)

**Is this evidence credible?**

**How would you assign weight to this evidence?**

**3rd evidence scenario:**

“Although there are multiple factors which could have contributed to his heart attack and death, including his hypertension and diabetes, stress should be included among the factors that can contribute to the development of coronary artery disease and myocardial infarction. Clearly the Veteran did have a fair amount of stress and anxiety related to the chronic pain from the SC injury and this probably did contribute in some way to the development of his heart problem.” (Dr. Eugene Linfors’s statement)

**Is this evidence credible?**

**How would you assign weight to this evidence?**

**4th evidence scenario:**

Veteran’s son, who is a registered nurse with an advanced degree in psychology, stated that he believed that the constant stress of pain from the Veteran’s SC injuries affected his vital bodily functions, especially his heart, causing his death.

**Is this evidence credible?**

**How would you assign weight to this evidence?**

**5th evidence scenario:**

“The increased physiological arousal due to the pain problem is a plausible contributor to the development of the underlying coronary disease that eventually took his life. To a reasonable degree of medical certainty, it is my expert opinion that the Veteran’s chronic pain condition resulting from his service connected injury did indeed contribute to the hastening of the death.” Statement from Dr. Williams, Professor of Psychiatry, Duke University Medical Center, obtained by Widow on a fee basis and based on review of the death certificate

**Is this evidence credible?**

**How would you assign weight to this evidence?**

**6th evidence scenario:**

“Unfortunately, in spite of hundreds of studies relating to stress on the heart, it is still controversial, unproven, and very complex to link life stress, personality factors, and [certain] other individual attributes (lack or presence of coping skills, etc.), to the development of coronary disease. While I personally believe that chronic stress in susceptible individuals may lead to an acceleration of coronary arteriosclerosis, the evidence is inconclusive and this would only represent a piece of the puzzle. The [veteran] had unfortunately a strong mix of well known, indisputable coronary risk factors, including male sex, advanced age, smoking, hypertension and diabetes.” (Independent Medical Opinion from Dr. Abrams, Professor of Medicine in Cardiology, University of New Mexico Hospital)

**Is this evidence credible?**

**How would you assign weight to this evidence?**

**Considering the given evidence, which evidence is the most probative in deciding the case?**

**Would you grant or deny service connection?**