Rating Analysis

Instructor Lesson Plan

Time Required: 3.25 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 # | 4178055 |
| Prerequisites | Prior to this lesson, the Rating Veteran Service Representatives (RVSRs) should have completed the RVSR Challenge course.. |
| target audience | The target audience for Weighing Evidence is RVSR (Post Challenge)  Although this lesson is targeted to teach the RVSR employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 3.25 hours |
| Materials/ TRAINING AIDS | Lesson materials:   * Weighing Evidence PowerPoint Presentation * Weighing Evidence Student Handout Packet |
| 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 |
| 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 Rating Analysis | | |
| INSTRUCTOR INTRODUCTION | | Complete the following:   * Introduce yourself * Orient learners to the facilities * Ensure that all learners have the required handouts |
| time required | | 0.25 hour |
| Purpose of Lesson  Explain the following: | | This lesson is intended to identify the process of weighing evidence. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * bases of Weighing Evidence * evidentiary concepts * making Evidentiary Decisions |
| 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:   * 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 process | |
| 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 | This lesson is designed to provide the knowledge, skills and abilities to understand weighing evidence and to apply the principles to properly weigh evidence based on law and the facts of the claim. | |
| STAR Error code(s) | TBD | |
| References  Slide 3&4  Handout 3 | Explain where these references are located in the workplace.  All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).   * [38 CFR 3.102 Reasonable Doubt](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034) * [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 3.303 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) | |

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| Topic 1: Bases of Weighing Evidence | |
| Introduction | This topic will illustrate the general principles for weighing evidence, the types of evidence and the laws and regulations that form the basis for weighing evidence. |
| Time Required | 0.75 hour |
| OBJECTIVES/ Teaching Points | 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  Slide 7  *Handout 4* | 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  Slide 6  Handout 4 | The first step in evaluating evidence is determining what facts are required and what standard of proof applies. This is a qualitative, not quantitative assessment. Weight or persuasiveness of the evidence, not the number of items of evidence, is the determining factor.  There are five different standards which specify 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  Slide 7  Handout 5 | Reasonable doubt exists because of an approximate balance of positive and negative evidence.  38 CFR 4.2 and 38 CFR 3.102 states that reasonable doubt should always be resolved in favor of the claimant.  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. |
| 38 CFR 4.23  Slide 8  Handout 5 | There may be times when as a rating officer you find evidence associated with a claim to be contrary to your personal beliefs or values. It is essential we maintain objectivity and never allow personal feelings to enter into our decision making process.  A claimant may be antagonistic or abusive, but may very well be telling the truth. Rating officers should maintain impartiality and objectivity, and show fairness and courtesy to claimants at all times. |

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| Topic 2: Evidentiary Concepts | |
| Introduction | This topic will allow the trainee to determine the value of evidence based on the concepts of credibility, competency, and probative value. |
| Time Required | 0.75 hours |
| OBJECTIVES/ Teaching Points | 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  Slide 9  Handout 6 | 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  Slide 10-12  Handout 6 | Credibility is a blanket term for the fact finding of whether evidence is believable or not believable.  VA decision makers should accept evidence at face value unless called into question by other evidence of record or sound medical or legal principles. VA decision makers are expected to make credibility determinations when credibility is raised by the evidence available.  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.   When making a credibility determination, you should consider if the evidence originated in service or in close proximity to service. For example, is there evidence of involvement in combat or was a medal or badge awarded? |
| Competent Evidence  Slide 13-16  Handout 6 | 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.  CFR 3.159(a)(1) states that competent medical evidence is evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions.  Competent medical evidence can also mean statements conveying sound medical principles found in medical treatises and in authoritative writings such as medical, scientific and research reports or analyses.  CFR 3.159(a)(2) states that competent lay evidence is any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.  A claimant may be considered competent to describe symptoms relating to their claimed disability, but is not considered competent to provide a diagnosis or a nexus opinion. |
| Probative Value  Slide 17&18  Handout 6 | At times you may find evidence presented with a claim that is considered contradictory. When this occurs, we must analyze this evidence and assign weight, or probative value, to determine the persuasiveness of the evidence.  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  Slide 19  *Handout 6* | When analyzing a claim, we may find evidence to be positive or negative. Positive evidence are the actual items that affirmatively support the claimant’s position. Negative evidence is that which actually disproves the claimant’s position, or may be an inference taken from there being an absence of evidence on a matter supporting a claimant’s position.  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. |

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| Topic 3: Making Evidentiary Decisions | |
| Introduction | This topic will allow the trainee to identify the types of evidence used to determine claims, the principles involved in decision making, and the requirements for discussing evidence in the rating decision narrative. |
| Time Required | 0.75 hours |
| OBJECTIVES/ Teaching Points | 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  Slide 20&21  Handout 7 | 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  Slide 22&23  Handout 8 | 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:   1. Diagnoses 2. Opinions 3. Examinations 4. History   Remember, the RSVR may not rely upon his/her own unsubstantiated medical conclusions to reject expert medical evidence provided by the claimant. |
| Reasons and Bases Requirements  Slide 25  Handout 8 | 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. |

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| Practical Exercise | |
| Time Required | 0.5 hours |
| EXERCISE | Review the attached scenarios and answer the associated questions.  Ask if there are any questions about the information presented in the exercise, and then proceed to the Review. |
| Note | This exercise in analysis is designed for completion in small groups, with presentations to the entire group of their findings. There are no specific answers to these questions. Trainees should review the various opinions, assigning weight to each of them and then explain why the weight assigned is appropriate. Ask them to then make a decision as to whether they would grant or deny benefits to the widow and why. |

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| Lesson Review, Assessment, and Wrap-up | |
| Introduction  Discuss the following: | The Rating Analysis lesson is complete.  Review each lesson objective and ask the trainees for any questions or comments. |
| Time Required | 0.25 hours |
| Lesson Objectives | You have completed the Rating Analysis lesson.  The trainee should 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 process |
| 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. |