Evaluating Lay Evidence

Trainee Handout

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Objectives

* Define lay evidence
* Identify the four critical points to determine the credibility of lay evidence
* Understand the difference between the four issues

References

* 38 CFR 3.159, Department of Veterans Affairs assistance in developing claims
* 38 CFR 3.304, Direct service connection; wartime and peacetime

Topic 1: Credibility Determinations

Lay evidence definition:

Evidence that does not come from a medical or other expert. It can consist of statements from the Veteran supplied with a claim, but also can include spouses, parents and children of the Veteran, or even fellow Veterans who served with the Veteran.

Four issues of a credibility determination:

Competent: Competent lay evidence means 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.

Plausible: Are the veteran’s statements regarding in-service manifestations of injury, disease, or of an event reasonable or otherwise capable of being true?

Consistent: Is the Veteran consistent with their statement? Are there conflicting statements of record?

Circumstances of Service: Is the Veteran’s statement consistent with their service? The VSR, RVSR or DRO must conclude if the statement is consistent with the circumstances of service.

Topic 2: Competent Lay Evidence

38 CFR §3.159(a)(2), *Department of Veterans Affairs assistance in developing claims* states the definition of competent lay evidence as:

*Competent lay evidence* means 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 is competent (qualified) to describe symptoms of a disability that he or she is experiencing but he or she may not be competent to diagnose their own medical condition or offer a medical opinion.

Competent or Qualified Lay Statements are sufficient when:

* A layperson is competent to identify the medical condition
* A layperson is reporting contemporaneous medical diagnosis
* Or, lay testimony describing symptoms at the time supports a later diagnosis by a medical professional.

Topic 3: Plausibility

Definition of plausibility:

A statement that is appearing worthy of belief. The circumstances are reasonable and/or possible.

Inherently Incredible Claims:

38 CFR §3.159(d), *Department of Veterans Affairs assistance in developing claims* states the VA will not provide assistance in obtaining evidence if a claim is inherently incredible or clearly lacks merit, even when the application itself is substantially complete.

Topic 4: Consistency

Definition of consistency:

Always acting or behaving the same way, of the same quality and continuing to happen or develop in the same way.

Topic 4: Circumstances of Service

Circumstances of Service Regulation:

38 CFR §3.159 (a)(4) states for purposes of paragraph (c)(4)(i) of this section, *event* means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

Service Lay Statements:

A claimant is competent (qualified) to describe events, places and circumstances of their service. However, in most cases the circumstances of service must be corroborated.

Military Occupations Specialty:

The service records, to include a Military Occupation Specialty (MOS), of a Veteran can establish the “event” in service if the service treatment records themselves do not show an event occurred.

Combat Veterans Regulation:

38 CFR §3.304(d) *Combat*. Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation.

Practical Exercise

**Review the scenarios and provide the answers to the associated questions.**

**Scenario 1:**

A Veteran submits a claim for service connection for low back pain sustained during operation Iraqi Freedom. The Veteran asserts that he was in Iraq and injured his back diving for cover while under attack. STRs are negative for any thoracolumbar spine injury, or disease.

Separation document shows award of Combat Infantry Badge and service in Iraq.

Select all correct components:

Competent

Plausible

Consistent

Service

**Scenario 2:**

A Veteran submits a claim for service connection for hearing loss caused by acoustic trauma in service. STRs are negative for any threshold shift or diagnosis of hearing loss by VA standards. However, the separation document shows he was a jet mechanic in service.

Select all correct components:

Competent

Plausible

Consistent

Service

**Scenario 3:**

A Veteran submits a claim for service connection for his right knee noting that it is still painful after many parachute jumps during service. STRs are negative for any right knee injury, disease, or event. However, the separation document shows he earned a Master Parachutist Badge in service.

Select all correct components:

Competent

Plausible

Consistent

Service

**Scenario 4:**

Veteran files a claim for Diabetes due to exposure to Agent Orange.

Records indicate the Veteran served from 1980 to 1989.

Select all correct components:

Competent

Plausible

Consistent

Service