Evaluating Lay Evidence

Instructor Lesson Plan

Time Required: 2.75 Hours

**Table of Contents**

[Lesson Description 2](#_Toc442278444)

[Introduction to Evaluating Lay Evidence 4](#_Toc442278445)

[Topic 1: Credibility Determinations 6](#_Toc442278446)

[Topic 2: Competent Lay Evidence 7](#_Toc442278447)

[Topic 3: Plausibility 8](#_Toc442278448)

[Topic 4: Consistency 9](#_Toc442278449)

[Topic 5: Circumstances of Service 10](#_Toc442278450)

[Lesson Review, Assessment, and Wrap-up 12](#_Toc442278451)

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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 # | 4178789 |
| Prerequisites | Prior to this lesson, the Veteran Service Representatives (VSRs) should have 0-6 months of VSR experience. Trainees should also have completed Challenge Training. |
| target audience | The target audience for Evaluating Lay Evidence is Entry Level VSR.  Although this lesson is targeted to teach the Entry Level VSR employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 2.75 hours |
| Materials/ TRAINING AIDS | Lesson materials:   * Evaluating Lay Evidence PowerPoint Presentation * Evaluating Lay Evidence Trainee Handout |
| 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 Evaluating Lay Evidence | | |
| 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 teach VSRs to evaluate Lay Evidence prior to requesting an exam. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * What to consider when reviewing lay evidence * How to determine credibility of lay evidence * Identify four critical issues about lay evidence |
| Lesson Objectives  Discuss the following:  Slide 2  Handout 2 | In order to accomplish the purpose of this lesson, the VSR will be required to accomplish the following lesson objectives.  TheVSRwill be able to:   * Define lay evidence * Identify the four critical points to determine the credibility of lay evidence * Understand the difference between the four issues | |
| 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 | The VA has the ability to determine if lay evidence is acceptable or insufficient before requesting an exam. The VSR must be able to recognize competent, credible evidence prior to requesting an exam. | |
| STAR Error code(s) | **Instructor:** The Systematic Technical Accuracy Review (STAR) Program reviews cases and considers them either “accurate” or “in error” for the purpose of measuring technical accuracy.  Please discuss common errors with the trainees. | |

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| References  Slide 3  Handout 3 | Explain where these references are located in the workplace.   * 38 CFR 3.159, Department of Veterans Affairs assistance in developing claims * 38 CFR 3.304, Direct service connection; wartime and peacetime |

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| Topic 1: Credibility Determinations | |
| Introduction | This topic will allow the trainee to identify the issues of a credibility determination. |
| Time Required | 30 minutes |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Define lay evidence * Identify the four issues of a credibility determination   The following topic teaching points support the topic objectives:   * What are the four issues of credibility determinations? |
| Definition of Lay Evidence  *Slides 4-5*  *Handout 4*  Determination of credibility is a finding of fact  Slide 6  Handout 4 | Explain to the trainees that Lay Evidence is evidence that does not come from a medical or other expert. It can consist of statements from the Veteran supplied with a claim. 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.  Stress to the trainees that when evaluating lay evidence, they should accept it at face value unless there is reason to question it. If there is conflicting evidence, they should weigh it all as appropriate.  Explain that there are four issues that must be taken into account for credibility determinations: competent, plausible, consistent and circumstance of service. Go over each issue and how they relate to credibility.  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 | |
| Introduction | This topic will allow the trainee to identify competent lay evidence. |
| Time Required | 30 minutes |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Understand the definition of competent lay evidence. * Be able to determine what a claimant is competent or qualified to provide in a statement about their disability   The following topic teaching points support the topic objectives:   * 38 CFR 3.159(a)(2) * What a Veteran is competent to provide in a statement * When Lay statements are considered competent or qualified |
| Definition of Competent Lay Evidence Regulation  Slide 7  Handout 5 | Go over the definition of competent lay evidence with the trainees.  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. |
| Competent Lay Statements  Slides 8-10  Handout 5 | Clarify what a Veteran can provide in a lay statement. 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.   Go over examples of competent and qualified statements, which are listed in the PowerPoint. |

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| Topic 3: Plausibility | |
| Introduction | This topic will allow the trainee to determine the plausibility of a lay statement. |
| Time Required | 30 minutes |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Determine if a lay statement is worthy of belief * Decide if a statement is inherently incredible   The following topic teaching points support the topic objectives:   * 38 CFR 3.159(d) * Authority to determine a claim’s believability |
| Definition of Plausibility  Slide 11  Handout 6 | Explain the definition of the plausibility of a statement: A statement that is appearing worthy of belief. The circumstances are reasonable and/or possible.  Example: “The argument was both powerful and plausible.”  Emphasize that the claimed condition must be possible considering all other evidence.  VSRs should ask themselves:  Is there medical evidence to make it possible?  Is there evidence of circumstances of service to make it possible? |
| Inherently Incredible Claims Regulation  Slide 12  Handout 6 | According to 38 CFR §3.159(d), 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.  Emphasize that a VSR or RVSR has the authority to determine whether a claim is incredible or without merit.  Go over following examples of inherently incredible claims.  Examples:   * A Veteran alleges service-connected (SC) tinnitus caused hammertoes but no medical evidence to support the allegation is submitted. * A Veteran claims PTSD as a result of combat service in Vietnam, but their military records clearly show no foreign or combat service. * Tree falls in a forest and the Veteran is 100 miles away. Veteran claims the tree caused a chain reaction which caused his knee disability. |
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| Topic 4: Consistency | |
| Introduction | This topic will allow the trainee to determine the consistency of lay testimony. |
| Time Required | 15 minutes |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Determine the consistency of a lay statement   The following topic teaching points support the topic objectives:   * Statements are or are not consistent |
| Definition of Consistency  Slide 13  Handout 7 | Explain to trainees the definition of consistency: Always acting or behaving the same way, of the same quality and continuing to happen or develop in the same way.  Talk about how this relates to service connected disability claims.  Example: On the Veteran’s entrance and separation exams, there is no indication or complaint of respiratory issues. In 2015 the Veteran files a claim reporting breathing problems since boot camp. The private medical records he submits with his claim do not report any breathing issues.  This claim is not consistent throughout the Veteran’s timeline. |

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| Topic 5: Circumstances of Service | |
| Introduction | This topic will allow the trainee to determine if lay evidence is in line with a Veteran’s circumstances of service. |
| Time Required | 30 minutes |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Understand how to apply a Veteran’s circumstances of service or MOS to their lay statement * Understand how to weigh evidence of Combat Veterans   The following topic teaching points support the topic objectives:   * 38 CFR 3.159(a)(4) * 38 CFR 3.304(d) |
| Circumstances of Service Regulation  Slide 14  Handout 8 | Explain that the VSR, RVSR and DRO must give due consideration to the places, types, and circumstances of service when evaluating lay evidence.  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  Slide 15  Handout 8  **Military Occupations Specialty**  **Combat Veterans Regulation**  Slide 16  Handout 8 | 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.  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.  Explain to trainees that Combat Status is an adjudicative determination, which may involve weighing evidence.  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. (Authority: 38 U.S.C. 1154(b)) |
| Regional Office Specific Topics | At this time add any information pertaining to:   * Station quality issues with this lesson * Additional State specific programs/guidance on this lesson |

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| Lesson Review, Assessment, and Wrap-up | |
| Introduction  Discuss the following: | The Evaluating Lay Evidence 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 Evaluating Lay Evidence l lesson.  The trainee should be able to:   * Define lay evidence * Identify the four critical points to determine the credibility of lay evidence * Understand the difference between the four issues |
| 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. |