Radiation Exposure Claims Development

Instructor Lesson Plan

Time Required: 2 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 # | 4179517 |
| Prerequisites | Prior to this lesson, the Veteran Service Representatives (VSRs) should have completed SHARE, MAPD, PIES, Reference Materials, Tour of C&P Website, Establishing Veteran Status and Claims Recognition.  Trainees should be Post Challenge VSR. |
| target audience | The target audience for Radiation Exposure Claims Development is Post Challenge VSR.  Although this lesson is targeted to teach the Post Challenge VSR, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 2 hours |
| Materials/ TRAINING AIDS | Lesson materials:   * **Radiation Exposure Claims Development** PowerPoint Presentation * **Radiation Exposure Claims Development** Trainee Handouts * **Radiation Exposure Claims Development** Job Aid |
| 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 * VBA Learning Catalog |
| 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 Radiation Exposure Claims Development | | |
| INSTRUCTOR INTRODUCTION | | Complete the following:   * Introduce yourself * Orient learners to the facilities * Ensure that all learners have the required handouts |
| time required | | .25 hour |
| Purpose of Lesson  Explain the following: | | This lesson is intended to teach the trainees how to identify and develop a claim due to radiation exposure.  This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * Identifying the types of radiation exposure * Differentiating between claims filed under 38 CFR 3.309(d) and 3.311 * Determining the basic criteria for radiation exposure claims * Identifying the steps necessary in developing for radiation exposure claims |
| 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:   * Evaluate the general information and the development for Claims for Service Connection for Radiogenic Diseases under 38 CFR 3.309(d) * Evaluate the general information and the development for Claims for Service Connection for Disabilities resulting from Ionizing Radiation Exposure under 38 CFR 3.311 * Determine the basic criteria for radiation exposure claims | |
| 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 | Many Veterans that are claiming exposure to radiation are from World War II. These Veterans are an aging part of the VA population that requires special consideration because of the hardship they endured during World War II.  Here is an example that could be shared with the trainees: A 75 year old World War II Veteran was dying of cancer. Before his claim could be fully adjudicated, the Veteran died. The VSR, who identified him as a World War II Veteran with possible entitlement due to radiation risk activity, proceeded to help the widow with her claim. She was awarded DIC. She was so grateful because the additional compensation enabled her to keep her home after the Veteran died. | |
| STAR Error code(s) | B2 Error – incomplete development  Improper Ready to Rate to RO RVSR instead to Jackson, SC | |
| References  Slide 3  Handout 3 | Explain where these references are located in the workplace.   * **38 CFR 3.309(d),** Disease Subject to Presumptive Service Connection * **38 CFR 3.311,** Claims Based on Exposure and Dose * **38 CFR 3.303,** Principles Relating to Service Connection * **M21-1, Part IV,ii,1.B,** Claims for Service Connection for Radiogenic Diseases Under 38 CFR 3.309(d) * **M21-1, Part IV,ii,1.C,** Claims for Service Connection for Disabilities Resulting from Ionizing Radiation Exposure Under 38 CFR 3.311 * **38 USC 1112,** Presumptive Service Connected Conditions | |

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| Topic 1: Types of Radiation Exposure | |
| Introduction | At the end of this topic, the trainee will be able to:   * Identify the types of radiation exposure * Differentiate the differences between claims filed under 38 CFR 3.309(d) and 38 CFR 3.311 |
| Time Required | .50 hours |
| OBJECTIVES/ Teaching Points | Topic teaching points:   * Discuss the types of exposure * Discuss presumption service connection under 38 USC 1112 * Discuss the differences between radiation claims under 38 CFR 3.309(d) and 38 CFR 3.311 * Review the disabilities associated with radiation exposure under 38 CFR 3.309(d) and 38 CFR 3.311 |
| Types of Exposure  Slide 4- 7  Handout 4 | A Veteran may be eligible for presumptive service connection (SC) under [38 CFR 3.309(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=85bf12b768c222d2a3b78b9c85031c0b&node=se38.1.3_1309&rgn=div8) ([38 U.S.C. 1112](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001112----000-.html)) only if he/she participated in one of the following radiation-risk activities   * internment as a former prisoner of war (FPOW) in Japan * post-war occupation of Hiroshima or Nagasaki * participation in atmospheric nuclear weapons testing * participation in underground nuclear weapons testing at Amchitka Island, Alaska, or * assignment to a gaseous diffusion plant at   + Paducah, Kentucky   + Portsmouth, Ohio, or   + Area K25 at Oakridge, Tennessee.   Veteran must have been exposed to 38 CFR 3.311 ionizing radiation as a result of participation in   * + atmospheric testing of nuclear weapons   + the occupation of Hiroshima or Nagasaki, Japan from September 1945 until July 1946, or   + other radiation-risk activities as claimed |
| Presumptive Service Connection for 38 U.S.C. 1112 Radiogenic Disease    Handout 4-5 | There are two sets of radiogenic conditions with separate development paths.   * Conditions considered presumptive under 38 CFR 3.309(d) are considered service-connected for any veteran who participated in a radiation activity (38 CFR 3.309(d) (3) (ii)) while serving on active duty, active duty for training, or inactive duty for training.      * Service connection for other radiogenic conditions can also be granted but require development for a reconstructed dose estimate. These conditions are in 38 CFR 3.311. |
| 38 CFR 3.309(d) Claims    Handout 5 | Have trainees navigate to 38 CFR 3.309(d) through the C&P Intranet. Ask trainees to identify key words or phrases and discuss each briefly. They should include:   * Diseases covered by this section * Radiation-exposed veteran * Radiation-risk activity * Atmospheric detonation * Onsite participation * Operational period * Occupation of Hiroshima Or Nagasaki, Japan, by US forces   Inform the trainees that the diseases listed under this regulation deal with exposure due to atmospheric testing, occupation duty in Hiroshima and Nagasaki, or internment as a POW in Japan, **NOT** occupational exposure.  Additionally, explain to the trainees that an operation or test covered a period of nuclear shots or detonations. Many Veterans will submit a claim with the name of a test shot or event name.  Reference and emphasize the use of ***Announced United States Nuclear Tests, July 1945 through December 1992***, issued by the Department of Energy. For example, there were a minimum of 69 shots under Operation Nougat with names such as Antler, Danny Boy and Packrat.  Explain to the trainees that the diseases that fall under this regulation (in the absence of evidence to the contrary) are to be considered service-connected. There is no time limit. The amount of radiation to which a Veteran was exposed is not a factor. |
| 38 CFR 3.311 Claims  Handout 6 | Have trainees navigate to 38 CFR 3.311. Hold a brief discussion on the significant differences between claims under 38 CFR 3.309(d) and 38 CFR 3.311. Key phrases and differences should include the following:   * Diseases that fall under this regulation are NOT presumptive in nature. * Some of the diseases are on both lists, some on only one. * Under 38 CFR 3.311, there is a time limit for manifestation of the condition (most conditions, leukemia is an exception- no time limit). * Claims under 38 CFR 3.311 require dose estimates. * Claims under 38 CFR 3.311 may include occupational exposure. * Claims under 38 CFR 3.311 must be referred to Central Office for opinion   ***Note:*** A U.S. serviceman who participated in a test involving the atmospheric detonation of a nuclear device by any government allied with the United States during World War II is still entitled to benefits.  These cases require more development than claims under 38 CFR 3.309(d) and service connection cannot be granted without referral to Central Office. |
| All Other Claims  *Handout 6* | Inform the trainees that if the claimed disability or disease is not one associated with radiation exposure under 38 CFR §3.309(d) or 38 CFR §3.311, consider the disability or disease for direct service connection under 38 CFR 3.303. |

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| Topic 2: Identification of Basic Criteria Prior to Development | |
| Introduction | At the end of this topic, the trainee will be able to identify that the basic criteria of a radiation exposure claim has been met prior to undertaking development. |
| Time Required | .50 hours |
| Criteria Under 38 CFR 3.309(d)  Slide 8 - 10  Handout 7 | Before undertaking development of a claim, the following criteria must be met:  Under 38 CFR 3.309(d)   * One of the presumptive radiogenic diseases listed in 38 CFR 3.309(d) must be showed to exist by medical evidence. * It must be alleged the disability was the result of participation in a radiation-risk activity.   ***If the criteria is not met:***   * No further development under this law is warranted * Consider the claim as * Any other claim for direct SC under 38 CFR 3.303, or * A claim for ionizing radiation exposure under 38 CFR 3.311 |
| Criteria Under 38 CFR 3.311    Handout 7-8 | Before undertaking development of a claim, the following criteria must be met:   * The veteran has one of the radiogenic diseases listed in 38 CFR 3.311(b) (2) or has submitted a verified medical opinion showing that an unlisted claimed condition is a radiogenic disease. * The veteran was exposed to ionizing radiation while a participant involving the atmospheric nuclear weapons testing, the post-war occupation of Hiroshima or Nagasaki from September 1945 until July 1, 1946, POW internment in Japan, or there was exposure to ionizing radiation from other service activities (i.e., X-ray technician, reactor plant activities, nuclear medicine, radiography, etc.).   ***If the criteria is not met:***   * No further development under this law is warranted * Consider the claim as * Any other claim for direct SC under 38 CFR 3.303, or * The denial of benefits under all applicable laws and regulations, if warranted, will be accomplished by a rating decision. |

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| Topic 3: Development | |
| Introduction | At the end of this topic, the trainees will be able to:   * Identify the steps in developing a radiation exposure claim for diseases presumptive under 38 USC 1112 (38 CFR 3.309). * Identify the steps in developing a claim based on ionizing radiation under 38 CFR 3.311. |
| Time Required | .50 hours |
| Presumptive Service Connection Under 3.309(d)  Slide 11  Handout 8 | Before undertaking development of a claim for SC for a radiogenic disease, the following criteria must be met   * one of the radiogenic diseases listed in [38 CFR 3.309(d)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=85bf12b768c222d2a3b78b9c85031c0b&node=se38.1.3_1309&rgn=div8) must be shown to exist by medical evidence, and * the claimant must allege that the disability was the result of participation in a radiation-risk activity as defined in [38 CFR 3.309(d) (3)](http://www.ecfr.gov/cgi-bin/text-idx?SID=85bf12b768c222d2a3b78b9c85031c0b&node=se38.1.3_1309&rgn=div8).   Emphasize that VA must have a copy of the veteran’s service medical records, verification of service, etc., that is required in all basic cases for compensation.  ***Note:*** Veterans seeking benefits in connection with exposure to nuclear radiation are authorized by the Exposure to Nuclear Radiation and DoD Secrecy Agreement to divulge to the VA the name, location of their command, duties performed, dates of service, and related information necessary to validate exposure to nuclear radiation. |
| Ionizing Radiation Claims Under 38 CFR 3.311  Slide 12-13  Handout 9 | If service connection cannot be established under 38 CFR §3.309(d), then consider 38 CFR §3.311. The evidence needed for this type of claim is more extensive than under 38 CFR §3.309(d) and service connection cannot be established without referral to Central Office.  Emphasize that VA must have a copy of the veteran’s service medical records, verification of service, etc., that is required in all basic cases for compensation. Complete development will contain one of the following which is detailed referenced at **M21-1, Part IV.ii.1.C**:  * Exposure to Know Carcinogens * Exposure to Ionizing Radiation by Reason of Military Duties * Exposure to Non-US Nuclear Atmospheric Test * Participation in the American Occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946 * Occupational Exposure * Obtaining Dosimetry Information, and * Referral to Compensation Services Policy Staff (211B) |
| Centralized Processing of Claims Based on Radiation Exposure  Slide 14  Handout 10 | In October 2006, VA Centralized the Processing of all claims for SC based on radiation exposure at the Jackson Regional Office (RO).  Confirmation of the existence of a presumptive disease under 38 CFR 3.309(d) in a “radiation-exposed veteran” or of a “radiogenic disease” as defined in 38 CFR 3.311 is, generally, a medical diagnosis from a health care provider.  When ROs receives a claim identifying exposure to radiation, the existence of a radiogenic disease must be confirmed prior to transferring the claim to the Jackson RO.  After it has been determined that a radiation claim is ready to be transferred to the Jackson RO, the SOO must leave the rating end product (EP) pending, as well as all other EPs *not* related to the radiation claim. The Jackson RO will have jurisdiction of all non-radiation-related claims while processing the radiation issues. |
| 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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| Practical Exercise | | |
| Time Required | | .25 hour |
|  | | Inform the trainees that they will find in their student handout, 3 case scenarios to read and discuss as a group what the best possible resolution is. Will also provide a reference to each answer. |
| EXERCISE  Scenario 1:  scenario 2  scenario 3 | | Thomas Tucker honorably served with the Marine Corps from March 1, 1953 through April 1, 1955. The Sioux Falls Regional Office recently received a claim which stated that he now suffers from cancer of the breast. Additionally, he wrote that he participated in Operation Upshot-Knothole-Test Badger, which was an atmospheric nuclear detonation in the Nevada desert on April 18, 1953. His reported duty was to watch the explosion and “capture an atomized beachhead.” In fact, the New York Times ran a front-page piece on this event on Sunday, April 19, 1953. Thomas claims as verification that the person standing in the photograph pointing his finger into the air was actually he. Attached to the claim was recent medical evidence showing breast cancer.  John Jerger served with the Air Force as a member of the Pacific Air Weather Service on the Korean peninsula in the late 1950s. The Air Force was measuring the size of the Soviet Union’s nuclear weapons detonations by having planes fly into the mushroom clouds and collect radiation samples that deposited into special filters. John submits a claim for service connection claiming that his skin cancer was the result of his occupation. John noted that he was responsible for retrieving the radiation samples from the filter screens while the planes were still “hot.” Medical evidence from the best skin cancer specialist in New York is submitted with his claim.  Steve Bizzner served as a machinist’s mate with the Navy during Vietnam from 1971 through 1973. After his discharge from the service, Steve joined the reserves. He was activated for Gulf War duty in 1991. Steve loved to take cruises or fly to a destination in the Pacific. On one trip, he was able to charter a boat and circle the Bikini Atoll. This had been the site of many nuclear tests. Unable to go ashore, he snapped some pictures and decided to fish. Steve caught some fish and cooked them on the propane stove while at sea. Years later, a claim is received in the Columbia Regional Office citing that he developed cancer of the esophagus as a result of eating radioactive fish that he caught near the Bikini Atoll. As a reservist, Steve filed a claim for radiation exposure. Medical evidence accompanied his claim. |
| EXERCISE ANSWERS  Scenario 1:  SCENARIO 2  SCENARIO 3 | | ***Part I-38 CFR 3.309(d)***  ***Part II-Issue a radiation exposure development letter for 38 CFR 3.309(d) claims. Request all service personnel, medical records, and 201 file. Ask veteran to submit newspaper article and any other medical records. Send development letter response letter to the appropriate governmental agency.***  ***Part I - 38 CFR 3.311 (Skin cancer)***  ***Part II - Issue a radiation development letter for 38 CFR 3.311(d) claims. Request all service personnel, medical records and 201 file. Send letter requesting the date of first diagnosis and treatment, the name and address of the initial doctor, medical records from all subsequent treatment with the names and addresses of the doctors, sun exposure history, smoking history, and immediate family medical history. Telephone Central Office (211B) for instructions. Send development letter response letter to the appropriate governmental agency if Central Office approves the claim.***  ***Part I - 38 CFR 3.303***  ***Part II - Develop as a regular case.*** |
| Lesson Review, Assessment, and Wrap-up | | |
| Introduction  Discuss the following: | The Radiation Exposure Claims Development lesson is complete.  Review each lesson objective and ask the trainees for any questions or comments. | |
| Time Required | .25 hours | |
| Lesson Objectives | You have completed the Radiation Exposure Claims Development lesson.  The trainee should be able to:   * Evaluate the general information and the development for Claims for Service Connection for Radiogenic Diseases under 38 CFR 3.309(d) * Evaluate the general information and the development for Claims for Service Connection for Disabilities resulting from Ionizing Radiation Exposure under 38 CFR 3.311 * Determine the basic criteria for radiation exposure claims | |
| 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. | |