Applying DeLuca

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 # | 4180078 |
| Prerequisites | Prior to this lesson, the Rating Veteran Service Representatives (RVSRs) should have 24 months of RVSR experience, and have reached the RVSR Journey level. Students should also have completed the RVSR lesson on the musculoskeletal system and have a thorough knowledge of rating issues involving joints. |
| target audience | The target audience for **Applying Deluca** is **Journey level Rating Veteran Service Representatives (RVSRs)**.Although this lesson is targeted to teach the **Journey level Rating Veteran Service Representative** employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 2 hours |
| Materials/TRAINING AIDS | Lesson materials:* **Applying Deluca** PowerPoint Presentation
* **Applying Deluca** Trainee Handouts
* **Applying Deluca** Level II Assessment
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| 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
* **Applying Deluca** PowerPoint Presentation
* **Applying Deluca** Trainee Handouts
* **Applying Deluca** Level II 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.
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| 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 Applying DeLuca |
| INSTRUCTOR INTRODUCTION | Complete the following:* Introduce yourself
* Orient learners to the facilities
* Ensure that all learners have the required handouts
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| time required | .25 hours |
| Purpose of LessonExplain the following: | This lesson is intended to provide training to journey level RVSRs in order to reinforce their rating skills on considering and applying the requirements of 38 CFR 4.40 and 4.45 when evaluating disabilities involving the joints, as set forth in the Court decision *DeLuca v. Brown.* This lesson will contain discussions and exercises that will allow you to gain a better understanding of: * An analysis of functional loss (38 CFR 4.40)
* An analysis of the joints (38 CFR 4.45)
* The requirements to consider 38 CFR 4.40 and 4.45 in accordance with (IAW) the court decision *DeLuca v. Brown*
* Applying the provisions of the *DeLuca* when evaluating disabilities involving the joints
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| Lesson ObjectivesDiscuss 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.TheRVSRwill be able to: * Identify manual references for joints, functional loss and painful motion
* Define functional loss
* Know how to apply the requirements of 38 CFR 4.40, 4.45 and 4.59
* Identify court decisions concerning 38 CFR 4.40, 4.45 and 4.59
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| 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 | Tell the students about an incident where failure to consider and/or apply the requirements of 38 CFR 4.40 and 4.45 (*DeLuca*) to their evaluation of a joint(s) caused a clear and unmistakable error. |
| STAR Error code(s) | A1, B2, C1, C2 |
| ReferencesSlide 3Handout 3 | Explain where these references are located in the workplace.* [38 CFR 4.21, Application of rating schedule](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5" \l "se38.1.4_121)
* [38 CFR 4.40, Functional loss](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5" \l "se38.1.4_121)
* [38 CFR 4.45, The joints](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5" \l "se38.1.4_121)
* [38 CFR 4.59, Painful motion](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5" \l "se38.1.4_121)
* [38 CFR 4.71, Measurement of ankylosis and joint motion](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5" \l "se38.1.4_121)
* [M21-1, Part III, Subpart iv, Chapter 4, Section A, Musculoskeletal conditions](https://ssologon.iam.va.gov/CentralLogin/Default.aspx?appname=core&URL=https://ssologon.iam.va.gov/CentralLogin/core/redirect.aspx&TYPE=33619969&REALMOID=06-d403f59d-c057-477f-9c49-c0d2a2d13e2b&GUID=&SMAUTHREASON=0&METHOD=GET&SMAGENTNAME=$SM$Dc1iJnfj0EDnZgoGbQhY8pxQ5cSvKdwMq%2fM4NhznJAhElAp4fDXcFkTew7jYCcYk&TARGET=$SM$HTTPS%3a%2f%2fvaww%2ecompensation%2epension%2ekm%2eva%2egov%2fsystem%2ftemplates%2fselfservice%2fva_ka%2fportal%2ehtml%3fportalid%3d554400000001034)
* *[Schafrath v. Derwinski](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)*[, 1 Vet App 589, 592](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* *[Hicks v. Brown](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)*[, 8 Vet App 417, 421](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [*DeLuca v. Brown*, 8 Vet App 202](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [VBN Broadcast, “Considering *DeLuca*”, March 29, 2005](http://vbaw.vba.va.gov/bl/21/Calendar/vbn/transcripts.htm#2005)
* [FAQ on *DeLuca*, April 7, 2005](http://vbaw.vba.va.gov/bl/21/FAQ/faq.htm)
* [FAQ on Painful Motion, September 17, 2008](http://vbaw.vba.va.gov/bl/21/FAQ/faq.htm)
* [Medical EPSS](http://cptraining.vba.va.gov/C%26P_Training/Job_Aids/Medical_EPSS.htm)
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| Topic 1: Applying DeLuca Laws and Regulations |
| Introduction | This topic will introduce the RVSRs to the regulations and court cases applicable to applying DeLuca |
| Time Required | 1 hour |
| OBJECTIVES/Teaching Points | Topic objectives:* Identify manual references for joints, functional loss and painful motion
* Define functional loss
* Know how to apply the requirements of 38 CFR 4.40, 4.45 and 4.59
* Identify court decisions concerning 38 CFR 4.40, 4.45 and 4.59

The following topic teaching points support the topic objectives: * 38 CFR 4.40 Functional Loss
* 38 CFR 4.45 The Joints
* 38 CFR 4.59 Painful Motion
* DeLuca v. Brown court case
* Schafrath v. Derwinski court case
* Hicks v. Brown court case
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| Functional LossSlide 4-5Handout 4 | **38 CFR 4.40. Functional Loss*** Discuss with students the role functional loss plays in evaluating disabilities of the musculoskeletal system.
* Disability of the musculoskeletal system is primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance.
* It is essential that VA examinations portray the anatomical damage and functional loss, with respect to all elements.
* Functional loss may be due to the absence of part, or all, of the necessary bones, joints and muscles, or associated structures in the body. It may also be the result of deformity, adhesions, defective innervation, or other pathology. In certain instances, functional loss may be due to pain, when supported by adequate pathology and evidenced by the visible behavior of the claimant undertaking the motion.
* Weakness is as important as limitation of motion. A body part, which becomes painful on use, must be regarded as seriously disabled. A little used part of the musculoskeletal system may show evidence of disuse, either through atrophy, or a skin condition (such as absence of normal callosity).

Simply put, functional loss occurs when the joints are either damaged or infected and the range of movement that can normally be repeated when performing a function is impeded.  |
| The JointsSlide 6Handout 4 | **38 CFR 4.45. The Joints**Discuss with students considerations for evaluating the joints. Point out that, with regard for the joints, the factors of disability reside in the reduction of the normal excursion of movement in different planes. Inquiry will be directed to these considerations: (a) Less movement than normal (due to ankylosis (frozen joint), limitation or blocking, adhesions, tendon-tie-up, contracted scars, etc.). (b) More movement than normal (from flail joint, resections, nonunion of fracture, relaxation of ligaments, etc.). (c) Weakened movement (due to muscle injury, disease or injury of peripheral nerves, divided or lengthened tendons, etc.). (d) Excess fatigability. (e) Incoordination, impaired ability to execute skilled movements smoothly.(f) Pain on movement, swelling, deformity, or atrophy from disuse. Instability of station, disturbance of locomotion, interference with sitting, standing and weight-bearing are related considerations. For the purpose of rating disability from arthritis, the shoulder, elbow, wrist, hip, knee, and ankle are considered major joints; multiple involvements of the interphalangeal, metacarpal and carpal joints of the upper extremities, the interphalangeal, metatarsal and tarsal joints of the lower extremities, the cervical vertebrae, the dorsal vertebrae, and the lumbar vertebrae, are considered groups of minor joints, ratable on a parity with major joints. The lumbosacral articulation and both sacroiliac joints are considered to be a group of minor joints, ratable on disturbance of lumbar spine functions.  |
| Painful MotionSlide 7-9Handout 5 | **38 CFR 4.59 Painful Motion**Discuss with students the considerations for evaluating painful motion of the joints. * With any form of arthritis, painful motion is an important factor of disability. The facial expression (wincing, etc.), on pressure or manipulation, should be carefully noted and definitely related to the affected joint(s). Muscle spasm greatly assists with identifying painful motion. Sciatic neuritis is commonly caused by arthritis of the spine.
* The intent of the schedule is to recognize painful motion in a joint, or periarticular pathology that is productive of disability. *It is the intention to recognize that, actually painful, unstable, or malaligned joints, due to healed injury are entitled to at least the minimum compensable rating for the joint*. Crepitation (a crinkly, crackling or grating feeling or sound), either in the soft tissues (such as the tendons or ligaments), or within the joint structures, should be noted carefully as areas that are diseased. Flexion elicits such manifestations. The joints involved should be tested for pain on both active and passive motion, in weight-bearing and non-weight-bearing and, if possible, compared to the range of the opposite, undamaged joint.

Note: Stress that pain, in and of itself, is not a disability for compensation purposes; however, for evaluation consideration under 38 CFR 4.59, we must consider pain when evaluating the joints.  |
| DeLuca v. BrownSlide 10 - 12Handout 5 | ***DeLuca v. Brown***Discuss how this court decision affects how we evaluate disabilities of the joint. * In *DeLuca v. Brown,* the Court required that we consider evidence showing not only limitation of motion, but any evidence demonstrating weakened movement, excess fatigability, in coordination, and pain in evaluating disabilities.
* The Court held that the Rating Schedule does not prohibit consideration of a higher evaluation based on a greater limitation of motion due to pain on use, including during flare-ups. The medical examiner must provide an opinion as to whether pain could significantly limit functional ability during flare-ups, or when used repeatedly over time. The examiner must express any additional limitation **in degrees of range of motion lost**, due to pain on use or during flare-ups. If the examiner cannot provide this opinion without resorting to speculation, he/she is to express that, rather than guess whether or not any additional limitation of motion occurs on repetitive movement.
* The Rating Schedule provides that, in evaluating the joints, a complete medical examination is required to understand the nature and extent of the claimant’s disabilities. Examiners should provide information not only on the history and objective findings on exam, but also furnish findings of any of the following factors discussed above under 38 CFR 4.45.
* The examination report should note the factors of 38 CFR 4.45, either by objective findings, or by absence of them. Further, the examiner should furnish the limitation of motion (in degrees), resulting from these factors; and ask the claimant for information on flare-ups, and the frequency of symptoms that are intermittent, or experienced only after a period of use or time.
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| Schafrath v. Derwinski*Slide 13**Handout 6* | ***Schafrath v. Derwinski***BVA routinely employs the following analysis: Functional loss due to pain is to be rated at the same level as functional loss where the motion is impeded. ***Schafrath v. Derwinski*, 1 Vet. App. 589, 592 (1991)**. Under 38 CFR 4.59, painful motion is considered limited motion even though range of motion is possible beyond the point when pain sets in. *Hicks v. Brown*, 8 Vet. App. 417, 421 (1995); See also *DeLuca v. Brown*, 8 Vet. App. 202 (1995). **Note**: The definition of “impede” is to interfere with or slow the progress of to retard or obstruct the progress of. Synonyms - to hinder (be a hindrance or obstacle to) *Merriam Webster Online Dictionary.*  |
| Check Comprehension*Slide 16-17* | Ask the following questions aloud to the group of RVSRs and review the correct responses:1. A Veteran is seen at an examination for his left knee condition. During the examination, he shows no pain on motion and the active range of motion is 110 – 0 degrees.

After the third range of motion test, the Veteran’s flexion is now reduced to 45 degrees.What evaluation does this warrant?**Response:*** 10 percent, per the DeLuca standards
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| Check Comprehension*Slide 18-19* | 1. A Veteran is seen at an examination for his right shoulder condition. During the examination, there is no evidence of arthritis and the range of motion through all three repetitions is 180 – 0.

However, there is evidence of pain and weakness at 145 degrees of flexion, on each of the three tests.What evaluation does this warrant?**Response:*** 10 percent, per 38 CFR 4.59
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| Exercise | Remind students that the *DeLuca* decision requires us to consider the provisions of 38 CFR 4.40 and 4.45 when evaluating disabilities of a joint. Additionally the provisions of 38 CFR 4.59 specify that we consider pain when evaluating the joints.As part of the review exercise – have students review the following attachments in the Student Handout:* Inter-Rater Reliability (IRR) Case Study Fact Pattern dated

September 2008* IRR Case Study Fact Pattern dated April 2009
* Frequently Asked Questions (FAQ) dated September 17, 2008,

Painful Motion* FAQ dated April , 2005, DeLuca Question
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| 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 | .5 hour |
| EXERCISE | The practical exercise consists of three scenarios. Allow one hour to read, assess and discuss the scenarios.Afterwards, discuss the decisions that the group came to and review the reasoning.Ask if there are any questions about the information presented in the exercise, and then proceed to the Review. |

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| Lesson Review, Assessment, and Wrap-up |
| IntroductionDiscuss the following: | The Applying DeLuca 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 Applying DeLuca lesson. The trainee should be able to: * Identify manual references for joints, functional loss and painful motion
* Define functional loss
* Know how to apply the requirements of 38 CFR 4.40, 4.45 and 4.59
* Identify court decisions concerning 38 CFR 4.40, 4.45 and 4.59
 |
| Assessment  | Remind the trainees to complete the level II assessment in order 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. |