RATING ANALYSIS RVSR IWT

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 # | 4192207 |
| Prerequisites | none |
| target audience | The target audience for **Rating Analysis** RVSR, Entry, Although this lesson is targeted to teach the RVSR, Entry Level employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 2 hours |
| Materials/TRAINING AIDS | Lesson materials:* **Rating Analysis** PowerPoint Presentation
* Rating Analysis Lesson Plan
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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
* **Rating Schedule Job Aid**
* **38 CFR Part 3**
* **38 CFR Part 4**
* **CPKM**
 |
| 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
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| time required | 0.25 hours |
| Purpose of LessonExplain the following: | This lesson is intended to provide information on Rating Analysis during the development of claims for service connection. This lesson will contain discussions and exercises that will allow a better understanding of: * Medical issues related to Rating Analysis
* The rating schedule for disabilities related to Rating Analysis
* Special considerations related to Rating Analysis

Instructors should spend time up front discussing the importance of writing sound Rating Decisions that are clear, concise, and succinct. This is the most crucial skill to acquire in order to become a successful Rating Specialist. Emphasize that we do not want to stifle their personal writing styles but rather provide them with the necessary skills to write high quality decisions. |
| Lesson ObjectivesDiscuss the following:Slide 2  | In order to accomplish the purpose of this lesson, the will be required to accomplish the following lesson objectives.TheRVSRwill be able to: * Explain the types of evidence received
* Identify the factors in reviewing and weighing medical evidence
* Identify service records are complete for rating purposes
* Identifying the importance of lay statements
* Identify the parts of a rating decision
* Identify what is required in a rating decision
 |
| Explain the following: | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed.  |
| STAR Error code(s) | B2,E1,E2,E3,H2, J1e |
| ReferencesSlide 3-4  | 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**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58) **- Reasonable doubt**
* [**38 CFR § 3.303**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58) **- Principles relating to service connection**
* [**38 CFR § 3.304**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58) **- Direct service connection; wartime and peacetime**
* [**38 CFR § 3.328**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58) **- lndependent medical opinions**
* [**38 CFR § 4.2**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5) **- Interpretation of examination reports**
* [**38 CFR § 4.3**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5) **- Resolution of reasonable doubt**
* [**38 CFR § 4.6**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5) **- Evaluation of evidence**
* [**38 CFR § 4.7**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5) **- Higher of two evaluations**
* [**38 CFR § 4.23**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5) **- Attitude of rating officers**
* [**M21-1 Part III, Subpart iv, Section5 - Evaluating Evidence and Making a Decision**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=)
* [**M21-1 Part III, Subpart iv, Section 6 - The Rating Decision**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=)
* [**Barr v. Nicholson , No.04-0534, June 15, 2007**](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [**Wray v. Brown ,No.93-289, April 6, 1995**](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [**White v. Principi ,No.00-7130(Fed.Cir), March 27, 2001**](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
* [**Owens, F v. Brown ,No.94-449, May, 24, 1995**](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)
 |
| Rating Analysis Described *Slide 5* | EXPLAIN that the regulations provide that service connection will be based on review of the entire evidence of record, with due consideration to VA policy to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.* An evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service
* The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations
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| Topic 1: Types of Evidence/Weighing Evidence |
| Introduction | This topic will allow the RVSR trainees to develop skills on how to analyze evidence as it relates to the claim(s) they will make a decision on.  |
| Time Required | 0.50 hours |
| OBJECTIVES/Teaching Points | Topic objectives:* Identify the attitude of the Rating Officers
* Define Probative Value and Dispositive Value
* Identify all relevant evidence to the claim, to include laws, regulations before coming to a legal conclusion about the claim
* Identify Reasonable Doubt for VA Rating purposes.

The following topic teaching points support the topic objectives: * The importance of the attitude of the Rating Officer
* When doubt side in favor of the Veteran/Claimant
* Specialty physician may hold greater weight if opinion is on field they specialize in
 |
| Attitude of Rating officers 38 CFR 4.23 Slide 6 | EXPLAIN the importance of the attitude of VA rating officers. That we must have a “leave it at the door” mentality.* As VA rating officers (RVSR’s) we must not allow our personal feelings to intrude in our decisions
* Fairness and courtesy must at all times be shown to applicants by all employees whose duties bring them in contact, directly or indirectly with claimants
 |
| WhiteboardTypes of Evidence*Slide 7* | ENSURE annotation tools have been turned on for trainees.ASK THE STUDENTS TO DEFINE:Probative: having the effect of proof, tending to prove, or actually proving.Dispositive: relating to or bringing about the settlement of an issue or the disposition of propertyREVIEW the answers trainees provide. Using the stamp annotation tool put a checkmark by the correct responses and verbally validates the responses. |
| **Probative Value**Slide 8 | EXPLAIN that per our regulation (§4.6) every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied in the light of the established policies.* Evidence that is probative, in nature, tends to prove (or disprove) something. (I.e., persuasive)
* It is not necessary to determine the probative value & assign weight if the evidence is not contradictory
 |
| Weighing EvidenceSlide 9 | EXPLAIN that as the decision maker, you must weigh all evidence of record.When there is evidence both for and against a claim is when it must be weighed. In instances where the evidence is inconsistent or contradictory, you should discuss how you resolved the discrepancy.* Review & analyze all relevant evidence
* Must weigh all of the evidence of record before reaching your decision
* Determine probative value & assign weight to the evidence (if necessary)
* Consider all applicable laws & regulations
* Come to a legal conclusion (decision)
* Grant if you can; deny if you must
 |
| WhiteboardTypes of EvidenceSlide 10 | ENSURE annotation tools have been turned on for trainees.ASK “What are examples of types of evidence needed for rating analysis?”REVIEW the answers trainees provide. Using the stamp annotation tool put a checkmark by the correct responses and verbally validates the responses.Correct Responses include:“Service medical and personnel records, VA treatment records, VA examinations, private treatment records, lay statements, medical opinions and treatises” |
| Reasonable Doubt*Slide 11* | EXPLAIN that the Court noted that an equipoise decision is more qualitative that quantitative. The reasonable doubt rule as akin to the principle in baseball that the “tie goes to the runner.”* This does not mean that the Veteran must “prove his claim beyond a reasonable doubt”
* 38 CFR 3.102 and 4.3 dictate that the claimant prevails if the evidence is in equipoise and neither satisfactorily proves or disproves an issue
 |
| Evidentiary Principles*Slide 12* | EXPLAIN that evidence must be from a competent or qualified source. By regulation we need medical evidence sufficient to establish a nexus.Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions.Evidence must be from a competent (qualified) source:* Medical professionals can diagnose and offer medical opinions
 |
| Evidentiary Principles (con’t)*Slide 13* | EXPLAIN that lay persons are qualified to describe symptoms and observations and also may also be competent to report the presence of a disability.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.Evidence must be from a competent (qualified) source:* Lay persons are competent (qualified) to describe their symptoms and observations
* Lay persons also may be competent to report the presence of a disability as evidence in a service connection claim (varicose veins, bone fractures)
* Barr v. Nicholson (06-15-2007)
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| note(s) | none |
| DEMONSTRATION | none |

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| Topic 2: Factors in Weighing Evidence |
| Introduction | This topic will allow the RVSR trainee to expand their scope of reasoning on how to factor in and weigh evidence in order to make an informative decision based on the evidence they received. |
| Time Required | 0.50 hours |
| OBJECTIVES/Teaching Points | Topic objectives:* Identifying credible evidence
* Identifying lay statements must be weighed like any other evidence.
* Identify how medical evidence is weighed
* Identify why medical opinion are necessary and who they must come from
* Identifying and evaluating Private and VA treatment Reports/Opinions
* Identify the importance of Military Service Records and what can be used in place of them
 |
| Evaluating Slide 14Handout < > | EXPLAIN that evidence is evaluated on credibility.EXPLAIN that lay statements must not automatically be discredited and are weighed like any other evidence.The value of lay evidence is dependent upon the following factors:Accuracy or clarity of the individual’s memoryDirect personal knowledge or experience, andThe competence of the reporting person* Credibility- whether or not the evidence is inherently believable or has been received from a competent source
* Lay Statements must not automatically be discredited merely because they are lay statements. They must be weighed like any other evidence
 |
| WhiteboardTypes of EvidenceSlide 15Handout < > | ENSURE annotation tools have been turned on for trainees.ASK “Place a check next to each example of competent lay evidence.”REVIEW the answers trainees provide. Using the stamp annotation tool put a checkmark by the correct responses and verbally validates their responses.Correct Responses include: “hearing loss, migraine headaches, and tinnitus.” |
| Evaluating Medical EvidenceSlide 16Handout < > | EXPLAIN that you must rely on medical evidence to support your rating decision. Support medical conclusions with evidence in the claims folder.Cite medical information and reasoning to•link or separate two disabilities, or•establish or refute prior inception or aggravation.EMPHASIZE a statement from any physician can be accepted for rating purposes without further examination if it•is otherwise sufficient for rating purposes, and•includes clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities.* You cannot rely on your own unsubstantiated medical opinion to decide a claim
* Do not reject expert medical evidence without having other competent medical evidence to support the decision
* Competent medical evidence does not have to be a VA medical report
* Physician’s statements must be evaluated for credibility and probative value (persuasiveness)
* Wray v. Brown, Docket No. 93-289
 |
| VA Medical RecordsSlide 17Handout <> | **EXPLAIN** how VA medical records are weighed. VA medical records do not automatically have a higher probative value than other records.**NOTE** if a diagnosis is not supported by the findings on the examination report or if the report does not contain sufficient detail, we return the report as inadequate for evaluation purposes.* Do not automatically have a higher probative value
* Must be evaluated like any other evidence
* Insufficient VA examinations should be returned (38 CFR § 4.2)
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| Factors in Weighing Evidence*Slide 18* | **EXPLAIN** that regulation (§4.6) notes that every element affecting the probative value assigned to evidence must be studied in light of the established policies.* Analyze evidence that is contradictory and assign weight to each piece of evidence
 |
| Factors in Weighing Evidence*Slide 19* | **EXPLAIN** the basis of a physician’s opinion. In determining the probative value of evidence, factors such as competency, credibility, thoroughness, precision, relevancy, and date of the evidence are important considerations.What is the basis of the physician’s opinion?* History
* Observation
* Theory
* Clinical Practice
* Clinical Testing
* Length of time the physician treated the Veteran
 |
| Treating Physician Reports*Slide 20*  | **EXPLAIN** that treating physician reports are not necessarily considered dispositive and why.* Treating physician’s reports are not necessarily dispositive.
* VA does not follow the Social Security Administration “treating physician rule” which requires that a treating physician’s opinion is always given more probative value. White v. Principi (2001)
 |
| Factors in Weighing Evidence*Slide 21* | **EXPLAIN** that evidence should not be discredited solely on the examiner’s lack of review of the claims file when the Veteran’s self-reported his history is consistent with the record. * Evidence should not be discredited solely on the examiner’s lack of review of the claims file if the Veteran’s self-reported history is consistent with the record.
* Do not discount an opinion solely because the Veteran paid for it, or if the doctor has become an advocate for the Veteran
* Non-adversarial claims process
 |
| Factors in Weighing Evidence*Slide 22* | **EXPLAIN** that the reason for the physician’s contact with the Veteran is a factor in weighing evidence. Consider key elements when evaluating the probative value and relative weight of medical evidence such as a diagnosis/assessment, prognosis, or opinion on etiology/onset.Reason for the physician’s contact with the Veteran * for treatment
* for substantiation of a medical disability claim

Physician’s expertise & experience* Example: A cardiologist opinion may be assigned more weight or value than a general practitioner’s regarding etiology of a heart condition
 |
| Factors in Weighing Evidence*Slide 23* | **EXPLAIN** that a VA physician’s opinion may be assigned more weight and whyVA examiner’s opinion may be assigned more weight if * VA examiner saw claims file

 AND* Private physician relied on unsupported history a provided by Veteran
* (F. Owens v. Brown, 7 Vet. App. 429 (1995))
 |
| Factors in Weighing Evidence*Slide 24* | **EXPLAIN** that the degree of specificity and certainty of the physician’s opinion and appropriate rationale are factors in weighing evidence. * Degree of specificity and certainty of the physician’s opinion and appropriate rationale:
* “It is likely to a reasonable degree of medical certainty” or “as least as likely as not”

 Rather than:* It may be possible

**DIRECT** the trainees to the Wray v. Brown (1995) DAD.**INTRODUCE** the court case and ask trainees to read the case on their own as well as the other court cases noted in the reference list. |
| Factors in Weighing Evidence*Slide 25* | **EXPLAIN** the factors in weighing evidence when evaluating multiple medical opinions.When evaluating multiple medical opinions it is important that:* Each medical opinion is examined individually
* Multiple opinions reaching the same conclusion are analyzed in regards to their corroborative value, however, multiple medical opinions may not be dismissed as merely “cumulative”
* Wray v. Brown (1995)
 |
| Whiteboard*Slide 26* | **ENSURE** annotation tools have been turned on for trainees.**ASK** the question “What factors are important to consider when weighing medical evidence?”Answers will vary but may include: Physicians’ basis for opinion,length of time the physician treated the Veteran, reason for physician’s contact with the Veteran, physician’s expertise and experience, degree of specificity and certainty of physician’s opinion and rationale, each medical opinion is examined individually, etc.**REVIEW** the answers trainees provide. Using the stamp annotation tool put a checkmark by the correct responses and verbally validates their responses. **ERASE** the whiteboard. |
| poll question*Slide 27* | **PRESENT** the trainees with the “Physician as Advocate” poll question. **READ** the question aloud.“True or False: When it is known that a physician has become a Veteran’s advocate, that physician’s opinion cannot be considered viable evidence.” True False**INSTRUCT** trainees to select the correct answer. Give them no more than 5 minutes. Close the poll and reveal the answers.**EXPLAIN** the correct answer: False. Do not 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. The VA system is non-adversarial.III.iv.5.10.a |
| Military Service Records*Slide 28* | **EXPLAIN** how military service records are used to determine what occurred during a Veteran’s military service.* Service records are generally highly probative as to what occurred during the Veteran’s military service (M21-1 III.iv.5)
* They represent contemporaneous statements. (existing, occurring, or originating during the same time).
 |
| Military Service Records (Con’t)*Slide 29* | **REVIEW** information that can be found in a Veteran’s military service record and separation examination.Service Records include:* Medical and Personnel Records
* Enlistment, Periodic & Separation Exams
* Clinical & Sick Call Evaluations
* Duty Profiles

Separation examination includes a “medical history questionnaire” Reflects Veteran’s report of his/her present and past physical and psychiatric history as relates to military service |
| Military Service Records (Con’t)*Slide 30* | **DISCUSS** the probative value of statements made at the time of treatment, using the example provided.Statements made by the Veteran at time of treatment should be assigned more weight than a statement made several years later:* Veteran is claiming depression since service, but the STRs fail to show a diagnosis in service
* However, on the separation medical history questionnaire, he checked the box for symptoms of “depression and excessive worry”
* This information is probative and will trigger the need for a VA examination
 |
| POLL QUESTION*Slide 31* | **PRESENT** the trainees with the “VA Medical Records” poll question. **READ** the question aloud.“True or False: VA medical records do not automatically have a higher probative value.”1. True2. False**INSTRUCT** trainees to select the correct answer. Give them no more than 5 minutes. Close the poll and reveal the answers.**EXPLAIN** the correct answer:1. True: VA medical records do not automatically have a higher probative value

iii.iv.5.1.f/iii.iv.5.2.e (more on probative value) |

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| Topic 3: Rating Decisions |
| Introduction | This topic will allow the RVSR trainee to learn what should be included in rating decisions |
| Time Required | 0.50 hours |
| OBJECTIVES/Teaching Points | Topic objectives:* Identify each section and the required information of the rating decision.
* Explain where to get guidance on rating decisions
* Explain how to list issues/decisions and when partial ratings are appropriate, referring to manual references.

The following topic teaching points support the topic objectives: * Identify the difference between the short form and long form narrative
* Explain when it is appropriate to use a long form narrative
 |
| The Rating Decision*M21-1 Part III, Subpart iv, Chapter 6*Slide 32 | **EXPLAIN** where to get guidance on writing rating decisions in the manual. **EMPHASIZE** that this is a valuable reference and will often be cited when reviewing their case work.* Provides guidance on what should be included in rating decisions
* Discusses each section and required information
 |
| Rating DecisionsSlide 33 | **EXPLAIN** rating decisions criteria, referring to manual references.* Must be based upon consideration of all evidence of record
* as well as applicable laws and regulations
* Do not have to “discuss each and every document in the record”
* relevant evidence used to reach your decision should be discussed
* Must assess the credibility and probative value (persuasiveness) of all the relevant evidence
 |
| Rating Decisions (con’t)Slide 34 | **EXPLAIN** how to list issues/decisions and when partial ratings are appropriate, referring to manual references.Note: Partial ratings are only appropriate if benefits can be granted to the Veteran. If all ready to rate issues are denials, the entire claim is to be deferred for completed development.List all issues/decisionsGood News (grants first; most to least)Deferred (deferred next, see note)Bad News (denials last) |
| Whiteboard  | **ASK** the trainees: Is it proper to prepare a rating deicison that grants SC for hypertension at a noncompensable level based on service treatment records and VA Outpatient treatment records, and defers the issue of an increased evaluation for SC arthritis pending a VA examination?**ANSWER** YES Where would you find this reference? III.iv.6.A.1.d.EXPLAIN this exercise was just to get familiar with using this section of the manual since it will be something the rating activity uses often. |
| QuestionsSlide 36 | **ASK** trainees if they have any questions on the material covered up to this point.**DISCUSS** the answers to their questions. |
| Exercise | none |
| note(s) | none |
| DEMONSTRATION | none |

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| Practical Exercise |
| Time Required | N/A |
| EXERCISE | No practical exercise. |

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| Lesson Review, Assessment, and Wrap-up |
| IntroductionDiscuss 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 the attitude of the Rating Officers
* Define Probative Value and Dispositive Value
* Identify all relevant evidence to the claim, to include laws, regulations before coming to a legal conclusion about the claim
* Identify Reasonable Doubt for VA Rating purposes.
* Identifying credible evidence
* Identifying lay statements must be weighed like any other evidence.
* Identify how medical evidence is weighed
* Identify why medical opinion are necessary and who they must come from
* Identifying and evaluating Private and VA treatment Reports/Opinions
* Identify the importance of Military Service Records and what can be used in place of them
* Identify each section and the required information of the rating decision.
* Explain where to get guidance on rating decisions
* Explain how to list issues/decisions and when partial ratings are appropriate, referring to manual references.
 |