General Policy

Instructor Lesson Plan

Time Required: 1.5 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 # | 4192851 |
| Prerequisites | N/A |
| target audience | The target audience for General Policy is RVSR, Entry.  Although this lesson is targeted to teach the RVSR, Entry employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 1.5 hours |
| Materials/ TRAINING AIDS | Lesson materials:   * PowerPoint Presentation * General Policy Lesson Plan * General Policy 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 * CPKM * 38 CFR Part 3 |
| 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 General Policy | | | |
| INSTRUCTOR INTRODUCTION | | Complete the following:   * Introduce yourself * Orient learners to the facilities * Ensure that all learners have the required handouts | |
| time required | | 1.25 hours | |
| Purpose of Lesson  Explain the following: | | This lesson is intended to introduce the students to General Policy and the necessary development requirements. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * Title 38 CFR Part 3, Ratings and Evaluations Sections * Basic entitlement considerations * Service connection * Ratings for special purposes * Rating Policy on special issues * General policy information * The importance of “rating policy” as set forth in the schedule | |
| Lesson Objectives  Discuss the following:  Slide 2 | In order to accomplish the purpose of this lesson, the RVSR will be required to accomplish the following lesson objectives.  RVSRwill be able to:   * Demonstrate an understanding of, and apply the general policies in a Rating Decision, as they relate to the principles for establishing service connection * Identify special issues relating to general rating policies | | |
| 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 | Mishandling the initial steps of determining service connection results in improper payments to Veterans, or improper denials to benefits that they are entitled to receive. | | |
| STAR Error code(s) | C1 | | |
| References  Slide 3 | 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 Part 3**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58) * [38 CFR](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.4&idno=38" \l "se38.1.3_1159) **[3.159(a)(2)](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.4&idno=38" \l "se38.1.3_1159)**[,](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.4&idno=38" \l "se38.1.3_1159)**[Competent Lay Evidence](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.4&idno=38" \l "se38.1.3_1159)** * **[M21-1 Part III, Subpart iv, Chapters 2-8, General Rating Process](https://vaww.vba.esp.va.gov/sites/SPTNCIO/focusedveterans/training/VSRvirtualtraining/Curriculum%20Library/Forms/AllItems.aspx?RootFolder=/sites/SPTNCIO/focusedveterans/training/VSRvirtualtraining/Curriculum%20Library/General%20Policy-%20RVSR%20IWT&FolderCTID=0x012000BEA418207E86454DAF46095C67BA230B&View=%7bFF87A4D1-C791-44B6-A5C9-69955A14496C)** * **[M21-1 Part IV, Subpart ii, Chapter 2 Rating (compensation)](https://vaww.vba.esp.va.gov/sites/SPTNCIO/focusedveterans/training/VSRvirtualtraining/Curriculum%20Library/Forms/AllItems.aspx?RootFolder=/sites/SPTNCIO/focusedveterans/training/VSRvirtualtraining/Curriculum%20Library/General%20Policy-%20RVSR%20IWT&FolderCTID=0x012000BEA418207E86454DAF46095C67BA230B&View=%7bFF87A4D1-C791-44B6-A5C9-69955A14496C)** * **[M21-1 Part IV, Subpart ii, Chapter 2, Section B Establishing Direct SC Based on Chronicity](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014553%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-B-Determining-Service-Connection-SC)** * **[McLendon v. Nicholson No. 04-0185, June 5, 2006 Duty to Assist-Examinations](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm)** | | |
| Introduction | | | | This topic will introduce entry-level RVSRs to VA’s General Policy towards rating. |
| OBJECTIVES/ Teaching Points | | | | Topic objectives:   * Identify and Interprett the most frequently used 38 CFR Part 3 regulations by RVSRs |
| Line of Duty and Misconduct, 3.301  Slide 4 | | | | **DISPLAY** slide  “Line of Duty & Misconduct, 3.301”  **DEFINE** that willful misconduct is an act involving conscious wrongdoing or known prohibited action. A wrongful act is either inherently wrong in itself, or forbidden by law.  A service department finding that injury, disease, or death was not due to misconduct will be binding on the Department of Veterans Affairs (VA) unless it is patently inconsistent with the facts and the requirements of laws administered by VA.  Willful misconduct involves deliberate or intentional wrongdoing with knowledge of, or wanton and reckless disregard of, its probable consequences.  **EXPLAIN** that in 1990, 38 U.S.C. 1110 amended to exclude payment of compensation for disability contracted in the line of duty that is the result of the Veteran’s own abuse of alcohol or drugs.  However, further guidance was provided in *Allen v. Principi* (2001), the Federal Circuit found that 38 U.S.C. 1110 **permits a Veteran to receive compensation for an alcohol abuse or drug abuse disability acquired as secondary to, or as a symptom of, a Veteran’s service-connected disability**  **Furthermore, if***a Veteran’s alcohol or drug abuse is determined to be part of, or secondary to, an SC condition* ***then*** *any disease or disability resulting from the alcohol or drug abuse should still be SC under 38 CFR 3.310(a).* ***Give example.***  An if/then table can be found in the manual reference provided here [M21-1.III.v.1.D.1](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000002920%2FM21-4-Manual) |
| Principles Relating to Service Connection, 3.303  Slide 5 | | | | **DISPLAY** slide  “Principles Relating to Service Connection, 3.303”  **EXPLAIN** that service connection means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred, during active duty service, or if preexisting such service, was aggravated therein.  **EMPHASIZE** each claim must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence.  **EXPLAIN** that determinations as to service connection will be based on:   * Review of the entire evidence of record * Due consideration to the policy of the Department of Veterans Affairs to administer the law under **a** broad and liberal interpretation consistent with the facts in each individual case   **DISCUSS** theory of **continuity of symptomatology** under 38 CFR 3.303(b) may only be used to establish service connection for a chronic disease listed under 38 CFR 3.309(a). We will discuss 3.309(a) in subsequent slides.  **EXPLAIN** the theory of **continuity of symptomatology** under 38 CFR 3.303(b) provides that if a **chronic disease**, as listed in 3.309(a) is shown ***in service or within the presumptive period***, subsequent manifestations of the same chronic disease at any later date will be service connected unless clearly attributed to intercurrent causes.  Additional guidance can be found in the court decision *Walker v. Shinseki* and the VSCM Conference Call April 2014.  **Pre-service disabilities noted in service**: We’ll discuss further in the next few slides with *presumption of soundness and under 38 CFR 3.306 for service connection based on aggravation of a pre-existing condition.*  **Post-service initial diagnosis of disease**: Service connection may be granted for any disease diagnosed after discharge when all the evidence, including that pertinent to service, establishes the disease was incurred in service. (38 CFR 3.303(d))  *Example*: Initial diagnosis of tinnitus soon after service and the circumstances of military service (MOS, combat) supports the claim…VAE and medical opinion may be necessary. |
| Direct Service Connection, 3.304  Slide 6  Slide 7 | | | | **DISPLAY** slide  “Direct Service Connection, 3.304”  **EXPLAIN** that the criteria in this section apply only to disabilities which may have resulted from service in a period of war or service rendered on or after January 1, 1947.  **PRESUMPTION OF SOUNDNESS**  **EXPLAIN** that under 3.304(b) the Veteran will be considered to have been in sound condition *when examined, accepted, and enrolled for service,* **except** as to defects, infirmities, or disorders noted at entrance into service or where clear and unmistakable evidence demonstrates that an injury or disease existed before service.  **NOTE**: The presumption of soundness applies only when the Veteran **underwent a physical examination at the time of entry into service on which the claim is based**.  **Only such conditions that are recorded in examination reports are to be considered as noted**. (38 CFR 3.304(b)).  **EMPHASIZE** that the primary difference you should note for Veterans with **peacetime service before January 1, 1947**, is that the presumption of soundness at entry into service does not arise until after six months of continuous service.  **COMBAT (engagement with the enemy)**  **EXPLAIN** that **38 CFR 3.304(d)** is derived from 38 U.S.C. 1154(b), and lightens the evidentiary burden with respect to disabilities alleged to be the result of combat service  **EXPLAIN** that under 3.304(d), we can accept satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat ***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.  **PTSD**  Per 38 CFR 3.304(f), a finding of service connection for PTSD requires   * credible supporting evidence that the claimed in-service stressor actually occurred * medical evidence diagnosing the condition in accordance with 38 CFR 4.125, and * a link, established by medical evidence, between current symptomatology and the claimed in-service stressor.   **Note**: The lay testimony of a Veteran alone may, under certain circumstances, establish the occurrence of an in-service stressor if the stressor is consistent with the places, types, and circumstances of the veteran's service.  **Briefly** note the 3.304 (f) covers the following:   * Section 3.304(f)(1) In-service diagnosis of PTSD * Section 3.304(f)(2) Combat related * Section 3.304(f)(3) Fear of hostile military or terrorist activity related * Section 3.304(f)(4) Former prisoner-of-war related   Section 3.304(f)(5) Personal assault/MST related |
| Service Connection Based on Aggravation, 3.306  Slide 8 | | | | **DISPLAY** slide  “Service Connection Based on Aggravation (§3.306)”  **EXPLAIN** that service connection may be granted if a pre-existing condition was aggravated by military service.  A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.  **EMPHASIZE** where the advancement in service is beyond that to be expected by natural progress of the condition; service connection is warranted.  **EXPLAIN** that aggravation is obviously not for application if the evidence in its entirety shows there was no increase in severity during service. The usual effects of treatment in service, having the effect of ameliorating the disease or injury incurred before enlistment will not be considered service connected unless the disease or injury is otherwise aggravated by service. This includes postoperative scars as well as absent or poorly functioning parts or organs.  **REMIND** that **38 CFR 3.322** is the partner reference, as it explains how to compute the evaluation for aggravation of a preexisting condition  **EXPLAIN** that in cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree of disability existing at the time of entrance into active service, whether the particular condition was noted at the time of entrance into active service, or whether it is determined upon the evidence of record to have existed at that time.  It is necessary to deduct from the present evaluation the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule except that if the disability is total (100 percent) no deduction will be made.  **EMPHASIZE** that if the degree of disability at the time of entrance into service is not ascertainable in terms of the schedule, no deduction will be made. |
| Service Connection Based on Presumptive Provision, 3.307  Slide 9  Slide 10  Special Issues Relating to General Rating Policies, 3.309  Slide 11  Service Connection based on Presumptive Provisions, 3.307  Slide 12  Service Connection Based on Presumptive Provisions, 3.307 (continued)  Slide 13  Slide 14  Secondary Conditions, 3.310  *Slide 15*  *Slide 16*  Certain Disabilities Occurring in Persian Gulf Veterans, 3.317  *Slide 17*      *Slide 18*  *Slide 19*  *Slide 20*  General Rating Considerations, 3.321  *Slide 21*  Multiple Noncompensable Service Connected Disabilities, 3.324  *Slide 22*  Reexaminations, 3.327  *Slide 23*    *Slide 24*  Stabilization of Evaluations, 3.344  *Slide 25*  *Slide 26*  Benefits Under 38 U.S.C. 1151, 3.361  *Slide 27*  Paired Organs and Extremities, 3.383  *Slide 28*  *Slide 29*  Protected Evaluations, 3.951  *Slide 30*  Protection of Service Connection, 3.957  *Slide 31* | | | | **DISPLAY** slide  “Service Connection Based on Presumptive Provisions (§3.307)”  **EXPLAIN** that in certain circumstances, it will be conceded that the conditions may have originated in service without it being known or without apparent symptoms.  Since this is a very liberal provision, there are specific safeguards and rules that must be observed.  **EXPLAIN** that presumptive service connection for chronic disease requires:   * Ninety days of wartime service or any service after December 31, 1946. * The 90 days must be continuous service within or extending beyond a wartime period or after December 31, 1946. * Any length of service satisfies 38 CFR 3.309(c) (POW) and (e) (herbicides) disabilities.   **EXPLAIN** this section also provides the time limits and degree of manifestation for each basis of presumption, we will look at the requirements for chronic, tropical and diseases associated with herbicide exposures in subsequent slides.  **NOTE**: Additional guidance can be found per the given manual reference.  **DISPLAY** slide  “Special Issues Relating to General Rating Policies (§3.309)”  **EXPLAIN** that §3.309 provides the diseases subject to presumptive service connection based on chronicity or specific to certain periods or circumstances of service.  **LIST** the sections are presented as follows:  §3.309(a) chronic diseases  §3.309(b) tropical diseases  §3.309(c) diseases specific to former prisoners of war  §3.309(d) and 3.311 diseases specific to radiation-exposed Veterans  §3.309(e) diseases due to exposure to herbicides  **DISPLAY** slide  “Service Connection Based on Presumptive Provisions (§3.307)”  **EXPLAIN** that tropical diseases listed in 38 CFR 3.309(b) must have become manifest:  • To a degree of 10 percent within one year from date of separation, or  • At a time when standard accepted treatises indicate the incubation period commenced during such service.  **EMPHASIZE** and remind the students to review 38 CFR 3.309(b) for further information on records and evidence.  **DISPLAY** slide  “Service Connection Based on Presumptive Provisions (§3.307)”  **EXPLAIN** that the diseases listed at §3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, **except**:   * Chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and *early-onset* peripheral neuropathy   These diseases shall have become manifest to a degree of 10 percent or more within a year after the last date on which the Veteran was exposed to an herbicide agent during active service.  **EMPHASIZE** that §3.307(a)(6) provides the definition of “Service in the Republic of Vietnam” for purposes of presumption to herbicide exposure. Currently, VA only concedes the presumption of exposure to herbicides for service members who had actually set foot on Vietnamese soil or served on a craft in its inland waterways (VAOPGCPREC 27-97) and [IV.ii.2.C.3.e., Definition of Service in RVN](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000002920%2FM21-4-Manual)  **REFER** that [M21-1, IV.ii.1.H](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000002920%2FM21-4-Manual) provides other circumstances for which exposure to herbicides would be conceded, to include service in areas along the demilitarized zone (DMZ) in Korea between April 1968 and August 1971 for specific units identified by DOD and certain Veterans with service in Thailand who may have been exposed to herbicides.  **REMIND** that [M21-1MR IV.ii.2.C.3.i.](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000002920%2FM21-4-Manual) provides the date disabilities under §3.309(e) became presumptive.  **DISPLAY** slide  “Secondary Conditions, 3.310”  **EXPLAIN** that a disability, which is proximately due to, or the result of a service-connected disease or injury will be service connected.  **EMPHASIZE** the secondary condition will be considered a part of the original condition.  **DISCUSS** that as we will point out in subsequent lessons, there are certain conditions that may not be separately evaluated. In those cases, service connection is established by showing both the primary condition and the secondary condition together with appropriate evaluations.  **EXPLAIN** that an increase in non-service-connected disability caused by aggravation from a service connected disability will also be service connected. (Allen v. Brown, 7 Vet. App. 439 (1995); 38 CFR 3.310(b))  **DISPLAY** slide  “Secondary Conditions, 3.310 (continued)”  **EXPLAIN** that Cardiovascular disease developing in a Veteran who has a service connected amputation of one lower extremity at or above the knee or amputation of both lower extremities at or above the ankles shall be held to be the proximate result of the service connected amputation.  **EXPLAIN** that A Veteran who has a service-connected **traumatic brain injury**, certain disabilities shall be held to be the proximate result of the service-connected traumatic brain injury, such as Parkinsonism, including Parkinson's disease, unprovoked seizures, certain types of dementia, depression and diseases of hormone deficiency that result from hypothalamo-pituitary changes. [Reference: III.iv.4.G.3.a.](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000002920%2FM21-4-Manual)  **DISPLAY** slide  “Certain Disabilities Occurring in Persian Gulf Veterans (§3.317)”  **EXPLAIN** that the Persian Gulf War Veterans who suffer from qualifying chronic disabilities resulting from undiagnosed illnesses may receive disability compensation provided that such disability:  Must have appeared either during active duty in the Southwest Asia Theater of Operations during the Persian Gulf War or manifested to a compensable level at any time since then through December 31, 2016, and,  By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.  **DISPLAY** slide  “Certain Disabilities Occurring in Persian Gulf Veterans, 3.317 (continued)”  **EXPLAIN** that the following medically unexplained chronic multi-symptom illnesses (MUCMI) are considered qualifying chronic disabilities:  o Chronic fatigue syndrome  o Fibromyalgia  o Functional gastrointestinal disorders (excluding structural gastrointestinal diseases).  NOTE: Disability patterns referred to as MUCMIs are diagnosed conditions that can occur without a conclusive etiology (i.e. are medically unexplained). If symptoms fitting the description of an MUCMI are claimed by a Veteran with Gulf War service, a medical opinion should be obtained prior to deciding the claim, even if a diagnosis is shown in the medical records.  **DISPLAY** slide  “Certain Disabilities Occurring in Persian Gulf Veterans (§3.317)”  **EXPLAIN** The term, “Persian Gulf War Veteran” means a Veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.  **EXPLAIN** that the Southwest Asia theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.  **DISPLAY** slide  “Certain Disabilities Occurring in Persian Gulf Veterans, 3.317 (continued)”  **EXPLAIN**: Under 3.317 (c)(3)(ii) for infectious diseases under this section, service on or after September 19, 2001 is applicable.  **DISPLAY** slide  “General Rating Considerations (§3.321)”  **EXPLAIN** that the 1945 Schedule for Rating Disabilities will be used for evaluating the degree of disabilities in claims for disability compensation, disability and death pension, and in eligibility determinations. The provisions contained in the rating schedule will represent as far as can practicably be determined, the average impairment in earning capacity in civil occupations resulting from disability. (Authority: 38 U.S.C. 1155)  Consider the issue of entitlement to an extra-schedular evaluation in compensation claims under 38 CFR 3.321   * where the issue is expressly raised by the Veteran, * or there is evidence of exceptional or unusual circumstances indicating that the Rating Schedule may be inadequate to compensate for the average impairment of earning capacity due to disability or disabilities (for example, marked interference with employment or frequent periods of hospitalization)   **REFERENCE:** [**III.iv.6.B.4.a.**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000002920%2FM21-4-Manual)  **DISPLAY** slide  “Multiple Noncompensable Service-Connected Disabilities (§3.324)”  **EXPLAIN** that if a Veteran has two or more non-compensable (0%) service-connected disabilities that interfere with normal employability, a 10-percent combined evaluation may be assigned.  This is an inferred issue that must be addressed in all cases with multiple non-compensable evaluations, whether to grant or deny.  **DISPLAY** slide  “Re-examinations, 3.327”  **EXPLAIN** Generally, reexaminations will be required if it is likely that a disability has improved, or if evidence indicates there has been a material change in a disability or that the current rating may be incorrect.  **EXPLAIN** that Veterans are required to report for reexaminations.  **EMPHASIZE** that failure to report for such examinations without good cause may result in reductions in evaluations subject to 38 CFR §3.655 and the due process provisions of 38 CFR §3.105 (e).  **DISPLAY** slide  “Re-examinations, 3.327 (continued)”  **DISCUSS** that per 3.327 no future examinations will be scheduled or requested when:   * the disability is without material improvement over five years, and not likely to improve * the Veteran is over 55 years of age (except in unusual circumstances) * the evaluation is the prescribed schedular minimum, or * the combined evaluation would not change even if the reexamination resulted in a reduced evaluation for one or more disabilities.   **EXPLAIN** that [III.iv.3.B.2.b.](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000002920%2FM21-4-Manual) notes when a review exam is needed the examination is scheduled 5 years from the date of the rating decision, with the following exceptions.   * Prestabilization rating decisions under 38 CFR 3.327(b)(1). * Discharge from military service due to a mental disorder caused by traumatic stress under 38 CFR 4.129. * Malignancies that require reevaluation six months following cessation of treatment for active disease. * Any other future examination required under other sections of 38 CFR Part 3 and 38 CFR Part 4.   **DISPLAY** slide  “Stabilizations of Evaluations, 3.344”  **EXPLAIN** that if an examination indicating improvement is less full and complete than the examination on which payments were authorized or continued, it *cannot* be used as a basis for reduction.  **LIST** the ratings on account of disease subject to temporary or episodic improvement, e.g. manic depressive or other psychotic reaction, epilepsy, psychoneurotic reaction, arteriosclerotic heart disease, bronchial asthma, gastric or duodenal ulcer, many skin disease, etc., *cannot* not be reduced on any one examination, except in those instances where all the evidence of record clearly warrants the conclusion that sustained improvement has been demonstrated.  **EXPLAIN** that ratings on account of diseases which become comparatively symptom free (findings absent) after prolonged rest, e.g. residuals of phlebitis, arteriosclerotic heart disease, etc., will not be reduced on examinations reflecting the results of bed rest.  **EMPHASIZE** that furthermore, sustained improvement must be demonstrated under the ordinary conditions of life.  **DISPLAY** slide  “Stabilization of Evaluations, 3.344 (continued)”  **EXPLAIN** if doubt remains after consideration of all evidence, the rating in effect will continue with reexamination in either 18, 24 or 30 months.  **EMPHASIZE** that this only applies to ratings that have continued for a long period at the same level (5 years or more). It does not apply to disabilities that have not stabilized and are likely to improve.  **DISPLAY** slide  “Benefits Under 38 U.S.C. 1151 (38 CFR §3.358 and 3.361)”  **REFER** that §3.358 applies to claims received by VA **before** October 1, 1997 and §3.361 applies to claims received by VA **on or after** October 1, 1997 that if it is determined that there is additional disability resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training, compensation will be payable for such additional disability. This includes original claims and claims to reopen or otherwise re-adjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.  **NOTE:** Certain ancillary benefits cannot be awarded by reason of a qualifying disability under 1151 – see [M21-2 IV.ii.2.G.4.g.](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000002920%2FM21-4-Manual)  **EXPLAIN** that to determine whether a Veteran has an additional disability, VA compares the condition immediately before the beginning of the hospital care, treatment, examination, training, or compensated work therapy (CWT) program upon which the claim is based to the condition after such care, treatment, examination, services, or program has stopped.  **NOTE:** compensation may be paid for disability that is secondary to disability for which compensation is payable under 38 U.S.C. 1151.  **DISPLAY** slide  “Paired Organs and Extremities”  **EXPLAIN** that compensation is payable for the combinations of service connected and non-service connected disabilities listed below as if both disabilities were service connected as long as the non-service connected disability is not due to the Veteran's own willful misconduct.  **DISPLAY** slide  “Paired Organs and Extremities, 3.383 (continued)”  **EXPLAIN**, briefly, that this covers the following:  • Impairment of vision in one eye service-connected, other eye nonservice-connected.  • Loss or loss of use one kidney service-connected, and other kidney non service-connected.  • Hearing impairment in one ear compensable to a degree of 10 percent or more as a result of service connected disability, and hearing impairment as a result of non-service connected disability that meets the provisions of § 3.385 in the other ear. § 3.385 provides the criteria for hearing impairment for VA purposes, which will be discussed further in the lesson on Auditory & Ear Diseases.  • Loss or loss of use of one hand or one foot service- connected, and loss or loss of use of other hand or foot non service-connected.  • Permanent service-connected disability of one lung rated 50% or more, and non-service-connected disability of the other lung.  **DISPLAY** slide  “Protected Evaluations (§3.951)”  **EXPLAIN** that changes to the Rating Schedule are not grounds for reduction of a disability evaluation unless the condition has actually improved**.**  **EMPHASIZE** that any disability which has been continuously rated at or above an evaluation for 20 years or more cannot be reduced, except upon a showing of fraud. The 20-year period will be computed f*rom the effective date of the evaluation to the effective date of reduction of evaluation*.  **EXPLAIN** the 20-year protection rule also applies to special monthly compensation (SMC)  **EXPLAIN** that RVSRs should consider whether the new DC includes the symptoms protected under the current evaluation or whether the new DC considers separate and distinct symptoms. **VA is not prohibited from changing the DC for a protected evaluation if it does not result in a reduced rating for that disability.**  **DISPLAY** slide  “Protection of Service Connection (§3.957)”  **EXPLAIN** and **EMPHASIZE** that service connection for any disability or death that has been in effect for **10 or more years** will not be severed except on a showing that the original grant was based on fraud or it is clearly shown that the person concerned did not have the requisite service or character of discharge.  Measure the ten-year period ***from the effective date of service connection, not the date of the rating,*** to the effective date of the actual or prospective reduction.  **Note**: Point out that there is no protection if the claimant does not have “status” as a Veteran based on qualifying service or character of service. |

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| Lesson Review, Assessment, and Wrap-up | |
| Introduction  Discuss the following: | The General Policy 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 General Policy lesson.  The trainee should be able to:   * Demonstrate an understanding of, and apply the general policies in a Rating Decision, as they relate to the principles for establishing service connection * Identify special issues relating to general rating policies |
| 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. |