Evaluating Evidence

Student Handout

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Objectives

Given all available resources to include the live manual, VSR will be required to accomplish the following lesson objectives.

* Define evidence and identify examples of evidence
* Identify benefits to properly evaluating evidence
* Demonstrate fact finding using a variety of evidence types
* Define and identify relevant records for the purpose of VA’s duty to assist
* Recognize the relevancy of clinical records for mental health claims
* Demonstrate the documentation of non-relevant records

References

All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).

* [38 U.S.C. 5103A, Duty to assist claimants](http://www.law.cornell.edu/uscode/text/38/5103A)
* [38 CFR 3.156, New Evidence](http://www.ecfr.gov/cgi-bin/text-idx?SID=229c3db3fdc3db346cb7ae0cf9524a39&mc=true&node=pt38.1.3&rgn=div5)
* [38 CFR 3.159, Department of Veterans Affairs assistance in developing claims](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8)
* [38 CFR 3.303, Principles relating to service connection](http://www.ecfr.gov/cgi-bin/text-idx?SID=229c3db3fdc3db346cb7ae0cf9524a39&mc=true&node=pt38.1.3&rgn=div5)
* [38 CFR 3.304, Direct service connection; wartime and peacetime](http://www.ecfr.gov/cgi-bin/text-idx?SID=229c3db3fdc3db346cb7ae0cf9524a39&mc=true&node=pt38.1.3&rgn=div5)
* [M21-1](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)[, Part I, 1.A, Description and General Information on Duty to Notify and Duty to Assist](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000013969/M21-1-Part-I-Chapter-1-Section-A-Description-and-General-Information-on-Duty-to-Notify-and-Duty-to-Assist)
* [M21-1, Part I, 1.C, Duty to Assist with Obtaining Records and a Medical Examination or Opinion](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014066/M21-1-Part-I-Chapter-1-Section-C-Duty-to-Assist-with-Obtaining-Records-and-a-Medical-Examination-or-Opinion)
* [M21-1, Part III, Subpart ii, 2.D, Supplemental Claims](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014116/M21-1-Part-III-Subpart-ii-Chapter-2-Section-D-Supplemental-Claims)
* [M21-1, Part III, Subpart ii, 2.E, Claims for Increase](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014121/M21-1-Part-III-Subpart-ii-Chapter-2-Section-E-Claims-for-Increase)
* [M21-1, Part III, Subpart iii, 1.B, Evidence Requested From the Claimant](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014152/M21-1-Part-III-Subpart-iii-Chapter-1-Section-B-Evidence-Requested-From-the-Claimant)
* [M21-1, Part III, Subpart iv, 5, Evaluating Evidence and Making a Decision](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000003097/Chapter-05-Evaluating-Evidence-and-Making-a-Decision)
* [M21-1, Part IV, Subpart ii, 2.B, Determining Service Connection (SC)](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014553/M21-1-Part-IV-Subpart-ii-Chapter-2-Section-B-Determining-Service-Connection-SC)

Topic 1: Evaluating Evidence

**Evaluating evidence** refers to a series of analytical steps that must be performed by a VA decision maker in making findings of fact for the purpose of drawing conclusions of law on each aspect or criterion of the legal standard for entitlement to the benefit and on applicable procedural matters.

**Definition:** Evidence is every type of proof offered to establish facts. Examples are:

* Testimony and statements
* Medical records
* Personnel records
* Financial records
* VA Forms
* Legal documents

**Proper evaluation** of evidence allows VSRs to perform many duties:

* Identify the issues and facts necessary to substantiate the claim
* Examine the significance and relevancy of evidence
* Discount non-relevant evidence
* Relate facts to appropriate laws and regulations
* Identify if further development or clarification is needed
* Decide if an examination and/or medical opinion is required
* Recognize if a claim is ready for decision
* Decide claims that don’t require a rating decision

**Benefits** to properly evaluating evidence efficiently can improve processing by:

* Reducing extraneous development
* Simplifying folder review
* Decreasing review time
* Improving claim processing time

**Identify Facts from Evidence**

As claims adjudicators we analyze evidence to determine facts:

**Example evidence:** DD 214

**Example fact:** We can determine from analysis the character of discharge. (e.g. Honorable)

**Identify the Issues and Facts Required**

A VSR must first consider the benefit (pension, compensation, dependency, etc.) and procedural issue (initial, new, increase, supplemental, etc.) to be addressed and facts necessary to substantiate the claim. *What facts are needed to support this claim?*

**Example:**

**Issue:** Service connection on a direct basis

**Facts:** focus on finding evidence to support obtaining a direct medical opinion with examination:

* Competent lay or medical evidence of current disability
* Evidence establishing an event, injury, or disease in service
* Indication that the disability or symptoms may be associated with established event, injury, or disease in service

**Discount Non-Relevant Evidence**

After knowing what facts are required, a VSR can discount evidence that is not **relevant** (that does not relate to) the components of the entitlement standard or procedural issue in the case. *What evidence in the file should I not review?*

This effectively reduces the amount of evidence on which the VSR must focus.

**Identify Relevancy of Identified Evidence**

Claimants often identify records that do not relate to the issue or have the possibility of substantiating the claim. We can create a note that indicates the records were not requested because they are not relevant.

**Example**: A Veteran notes VAMC treatment for his low back while filing a claim for increase for his SC hearing loss. We have no duty to assist in obtaining these records.

**Documenting Non-Relevant Evidence**

If you do not obtain records because they are not relevant, formal documentation should be completed.

* To do this, add the following note to VBMS using the note feature:
	+ ***Records from [name of facility or physician] not requested because they are not relevant***, and
* Be sure to associate the note to the corresponding claim.

**M21-1 I.1.C.–** RVSRs/DROs will review VBMS notes and agree or disagree. If they agree, the statement will be inserted into the intro/evidence tab. If they disagree, they shall develop or direct development for the records.

**Facts and Laws Guide Development**

VSRs establish facts by reviewing relevant evidence, applying conclusions of law, and undertaking development to obtain necessary evidence to decide a claim.

**Example:** Veteran submits a statement as part of the claim that an injured to low back was occurred in the Air Force while loading cargo onto a C-130 aircraft during an exercise in July 2002. Personnel records reveal the Veteran served in the Air Force as a loadmaster and participated in a military exercise in the Philippines in July 2002.

**Analysis:** The Veteran’s statement, when viewed along with evidence of record, appears believable. Therefore, the statement is credible.

Topic 2: Determining Relevancy of Records

**Relevant Records**

**Definition**: Relevant recordsfor the purpose of VA’s duty to assist are those records that:

* relate to the disability or injury for which the claimant is seeking benefits, *and*
* have a reasonable possibility of helping to substantiate the claim.

The claimant must provide enough information to identify and locate records:

* The condition for which treatment was provided
* The custodian or agency holding the records
* Approximate time frame covered by records

**TIP:** Clarifying this information via telephone with the claimant can help determine the relevancy of the records and/or provide the information VSRs need to locate and obtain records.

Relevant Records – Duty to Assist

VA’s duty to assist includes making reasonable efforts to obtain relevant records

* in the custody of a Federal department or agency, and
* from all non-Federal or private records sources adequately identified by the claimant.

**Important:** Not all medical records have a reasonable possibility of helping to substantiate a pending claim, VA’s duty to assist applies only to relevant records.

**How to Determine Relevancy**

In nearly all cases, relevance can be decided based on information supplied by the claimant, without reviewing the actual records. Because each case presents unique circumstances, however, relevance must be decided on a case-by-case basis. Refer to the following table for assistance in determining whether or not records are considered relevant, and therefore should be obtained.

|  |  |
| --- | --- |
| ***If…*** | ***Then…*** |
| the records* relate to the disability or injury for which the claimant is seeking benefits, and
* have a reasonable possibility of substantiating the claim
 | obtain the records |
| there is a chance that an earlier effective date (EED) can be established by obtaining the records\* | obtain the records |
| a higher evaluation can be assigned | obtain the records |
| no reasonable possibility exists that such assistance would aid in substantiating the claim | do not obtain the records |
| there is no specific reason to believe that the records identified by the Veteran would contain necessary information to substantiate the claim | do not obtain the records |

***\*Example:*** Potential EED based on provisions of [38 CFR 3.114](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=4ab6e47cf4761b4937b2af1502452fa8&mc=true&n=sp38.1.3.a&r=SUBPART&ty=HTML#se38.1.3_1114) (liberalizing changes)

***Note: Clinical Records for SC MH:*** For the purposes of adjudicating claims for service connection for mental disorders,all clinical records from military service are considered relevant and shall be obtained.

**Documenting Non-Relevant Evidence**

If you do not obtain records because they are not relevant, formal documentation should be completed.

* Be sure to associate the note to the corresponding claim.

|  |  |
| --- | --- |
| If… | Then… |
| during development, the claims processor determines evidence is considered *not relevant.* | that claims processor shall* add the following note in VBMS using the note feature:
* ***Records from [name of facility or physician] not requested because they are not relevant*,** and

Associate the note to the corresponding claim. |

# Knowledge Check

This is designed as a classroom discussion to foster understanding and clarity. It is expected that you will participate in discussions to enhance the overall learning experience.

|  |
| --- |
| ***Scenario 1*** A Veteran is SC for hypothyroidism evaluated at 30 percent since 1982. She submits a claim for increase in 2020. She indicated she is currently being treated for hypothyroidism at Denver VAMC.**Are records relevant? Do we have a duty to assist in obtaining these Denver VAMC Federal records? Why or why not?** |
| ***Scenario 2*** A Veteran files a claim for an increased evaluation for residuals of an SC left ankle fracture. He reports treatment at the Mayo Clinic for headaches.**Are records relevant? Do we have a duty to assist in obtaining Mayo Clinic medical records? Why or why not?**  |

|  |
| --- |
| ***Scenario 3*** A Veteran with verified RVN service was previously denied for diabetes mellitus due to no current diagnosis. The Veteran submits a VA Form 21-4142/21-4142a indicating treatment for diabetes mellitus.**Are records relevant? Do we have a duty to assist in obtaining these private treatment records? Why or why not?** |

# Practical Exercise

*Directions: Answer the following questions. You may use your Student Handout.*

1. True or False: The VA’s duty to assist includes making reasonable efforts to obtain all records identified by the Veteran.
2. True or False: The only way to determine if records identified by the Veteran are relevant is to obtain them.
3. What are two benefits to properly evaluating evidence?
4. Fill in the blank: For the purposes of adjudicating claims for service connection for mental disorders,all \_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ from military service are considered relevant and shall be obtained.
5. Fill in the blank: \_\_\_\_\_\_\_\_\_\_ is every type of proof offered to establish facts.
6. Provide two facts that a DD-214 can provide.
7. Fill in the blank: If during development, you determine the evidence is considered \_\_\_\_\_, \_\_\_\_\_, then you can add a note in VBMS using the note feature.

Evaluating Evidence – TMS ID# 4201894

You have completed the instructional part of training on Evaluating Evidence. You must log in to TMS and enter ID# 4201894 to complete the online assessment and survey to receive credit for this training. The assessment requires a minimum score of 80% to pass. Any available resource can be utilized to complete the assessment. This includes but not limited to lesson handout, internet/intranet web sites, job aides, PowerPoint and any applicable reference materials. You will have unlimited attempts to pass this assessment.