Favorable Findings

Instructor Lesson Plan

Time Required: 1.25 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 # | 4492062 |
| Prerequisites | Prior to this lesson, RVSRs, DROs, and RQRSs should have completed entry-level training. |
| target audience | The target audience for Favorable Findings is entry level RVSRs, DROs, and RQRSs.  Although this lesson is targeted to teach rating employees, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 1.25 hours |
| Materials/ TRAINING AIDS | Lesson materials:   * Favorable Findings PowerPoint Presentation * Favorable Findings 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 course survey |
| 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 Favorable Findings | | |
| 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 familiarize rating personnel with favorable findings. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * Defining favorable findings * Documenting, editing, and deleting favorable findings * Overturning favorable findings |
| Lesson Objectives  Discuss the following:  Slide 2 | In order to accomplish the purpose of this lesson, the rating agency will be required to accomplish the following lesson objectives.  Therating agencywill be able to:   * Define favorable findings * Describe process for documenting, editing, and deleting favorable findings * Describe process for overturning favorable findings | |
| 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 | Favorable findings are now a required element of rating decisions. Understanding what they are, how to document them, and how to overturn them is an important part of the core rating duties. | |
| STAR Error code(s) | TBD | |
| 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/).   * [Public Law (PL) 115-55](https://www.congress.gov/115/plaws/publ55/PLAW-115publ55.pdf), Veterans Appeals Improvement and Modernization Act of 2017 * [38 CFR 3.103(f),](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58) Procedural due process and appellate right * [38 CFR 3.104(c),](https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.4&idno=38) Favorable findings (*proposed*) * [M21-1, Part III, Subpart iv, Chapter 6, Section C – Completing the Rating Decision Narrative](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000003098/Chapter-06-The-Rating-Decision) (*proposed*) * [Favorable Findings Job Aid (VBMS-R)](https://vbaw.vba.va.gov/APPEALS/RAMP_Resources.asp) | |

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| Topic 1: Defining Favorable Findings | |
| Introduction | This topic will allow the trainee to define the characteristics of favorable findings. |
| Time Required | 0.25 hours |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Describe what a favorable finding is * Describe the characteristics of a favorable finding * Describe when favorable findings must be listed |
| AMA Improved Decision Notice Requirements  Slide 4 | AMA Improved Decision Notice Requirements consists of 8 elements. In this training we will talk about the first 6 of them.   * 1. Identification of the issues adjudicated   2. A summary of the evidence considered   3. An explanation of the laws and regulations applicable to the claim   4. Summary of any findings made by the adjudicator that are favorable to the Veteran   5. For denied claims, identification of the element(s) required to grant the claim(s) that were not met   6. If applicable, identification of the criteria required to grant the next higher level of compensation |
| VBMS-R Functionality  Slide 5  **Favorable Findings: Definition**  Slide 6 | VBA made updates to VBMS-R to ensure VBA rating decisions meet the new AMA notice requirements. These updates include:   * + Generated language changes,   + Updated glossary fragments, and   + The addition of favorable finding functionality.   Decisionmakers will cover all essential elements through use of the items noted above and existing functionality to include:   * + Calculators,   + The evaluation builder, and   + Limited free text.   38 CFR 3.104(c) will define favorable findings:   * A finding means a conclusion either on a question of fact or on an application of law to facts made by an adjudicator concerning the issue(s) under review. * Any finding favorable to the claimant made by either a VA adjudicator or by the board of veterans’ appeals (board) is binding on all subsequent VA and Board adjudicators, unless rebutted by evidence that identifies a clear and unmistakable error in the favorable finding. * Favorable findings relate to a material element that would be required to grant the benefit sought. |

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| Topic 2: Documenting, Editing, and Deleting Favorable Findings | |
| Introduction | This topic will allow the trainee to document, edit, and delete favorable findings |
| Time Required | 0.5 hours |
| OBJECTIVES/ Teaching Points  **Documenting Favorable Findings**  Slide 7  **Documenting Favorable Findings**  Slide 8  **Good Examples of Favorable Findings**  Slide 9  **Bad examples of Favorable Findings**  Slide 10  Nuts and Bolts of Favorable Findings  Slide 11 | Topic objectives:   * Discuss how to document favorable findings * Discuss how to edit favorable findings * Discuss how to delete favorable findings   Decisionmakers must address any favorable findings in rating decisions based on the decision rendered as shown below:   * Issues Granted, there is no requirement to list favorable findings. * Issues Denied/Confirmed Denials, use the VBMS-R *Favorable Findings Tab* to separately identify and save any favorable findings. * Increase Granted/Confirmed Evaluations, rely on system generated language from the Evaluation Builder (separate favorable findings list is not required). * When documenting Favorable Findings,   + Clearly **identify the material element** found to be met such as     - Incurrence (relationship to service)     - Nexus     - Diagnosis     - Presumptions (i.e. exposure to herbicides, chemical, radiation, etc.)   + Briefly **state the evidence** used to support the finding (only include the most relevant and recent evidence of record)   A list of pre-approved text is available for use in documenting the material element. (see *Favorable Findings Approved Text* handout)  Explain the 3 columns as a flow through a decision process. The element coupled with the material element approved text, then flows into the supporting evidence to construct the favorable finding.  Lack a material element and a brief discussion of evidence. Or it can list excessive or redundant information.   * VBMS-R will have functionality in May 2019 that will give a drop down that will require specific free text. * Prior to May 2019, Favorable Findings will require manual input * VBMS-R will store favorable findings that can either be selected or deselected on subsequent ratings. Once it has been “selected” it does not need to be “selected” again. If it is being overturned, it will be “deselected”. |
| Documenting favorable findings step 1  Slide 12 | Step 1: From the Disability Decision Information Screen (DDI), select the necessary information from the drop-down menus and continue by selecting next. |
| Documenting favorable findings step 2  Slide 13 | Step 2: Once all Decision Screens are complete, the *Facts, Analysis,* and *Favorable Findings* tabs will appeal on the Decision Screen. |
| Documenting favorable findings step 3  Slide 14 | Within the *Favorable Findings* tab, users can *add, edit, and delete* favorable findings free text information for any issue that is created for a claim in the ratings application. Each favorable finding free text is added to the rating’s narrative. |
| Documenting favorable findings step 4  Slide 15  Documenting favorable findings steps 5 - 7  Slide 16  Documenting favorable findings step 8  Slide 17  Documenting favorable findings step 9  Slide 18 | Step 4: Select *Add Favorable Findings* button to manually input the favorable findings to add to your rating narrative.  Step 5: To save your findings, select *Save*  Step 6: To *edit* a favorable finding, select the *pen and paper icon* under the *Actions column.*  Step 7: To *delete* a favorable finding, select the *trash icon* under the *Actions column*  Be sure to save your work.  Step 8: Return to the *Analysis* tab to build the rating narrative.  Step 9: Select *Copy* or *Append* to add the favorable findings to the rating narrative. |

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| Topic 3: Overturning Favorable Findings | | | |
| Introduction | | This topic will allow the trainee to describe process for rebutting and overturning favorable findings. | |
| Time Required | | 0.25 hours | |
| OBJECTIVES/ Teaching Points | | Topic objectives:   * Describe standard to rebut a favorable finding * Describe standard to overturn a favorable finding | |
| Overturning favorable findings  Slide 19  **Clear and Unmistakable Rebuttal Standard**  Slide 20  **Summary & Questions**  Slide 21&22 | | Favorable findings are binding unless rebutted by clear and unmistakable evidence to the contrary. Users must provide a justification in VBMS-R when removing a prior Favorable Finding. Document the decision to overturn favorable findings within the body of the impacted decision. The favorable findings that are overturned will be removed from the list of favorable findings. Adjudicators have single signature authority to overturn or rebut a favorable finding.  In order to overturn a favorable findings, the proper standard to use is the clear and unmistakable rebuttal standard. This standard is fulfilled when the evidentiary record as a whole completely lacks any plausible support for the favorable findings. Overturning previously established favorable findings can be done with single signature authority. However, if overturning a prior favorable finding results in a clear and unmistakable error, the normal signature requirements apply.  Be sure to consider that overturning a favorable findings is a different process than calling a clear and mistakeable error. To overturn a favorable finding the adjudicator does not have to determine that the outcome of the claim would have been different.  We have covered the following topics:   * Defined favorable findings * Described favorable findings entry and deletion procedures in VBMS-R * Described process for overturning favorable findings | |
| Lesson Review, Assessment, and Wrap-up | | |
| Introduction  Discuss the following: | The Introduction to Favorable Findings 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 Introduction to Favorable Findings lesson.  The trainee should be able to:   * Defined favorable findings * Describe VBMS-R entry, edit, and deletion procedures for favorable findings * Describe process for overturning favorable findings. | |
| Assessment | Remind the trainees to complete the online survey in TMS to receive credit for completion of the course. | |