

**Guide to Statement of the Case (SOC)
Supplemental Statement of the Case (SSOC)
Laws and Regulations Citations**

This guide has been prepared for training purpose only

Purpose: This guide is intended for use by DRO's and RVSR's assigned to the Appeals Team or working appeal issues within their respective team. The list is not all inclusive, therefore the laws and regulations cited herein are those found to be consistently required when preparing an SOC/SSOC.

BASIC LAWS AND REGULATIONS	
To be included in all SOC's . Do not need to repeat in the SSOC if included in the SOC. If law was not on SOC then it needs to be included on the SSOC.	
Title 38 CFR	
38 USC 5107(a)	Claimant Responsibility
38 USC 5107(b)	Benefit of Doubt
38 CFR 3.102	Reasonable Doubt (if evidence equipoise)
38 CFR 3.103	Procedural Due Process and Appellate Rights
CFR 3.104(a)	Finality of Decisions
38 CFR 3.159	Department of Veteran Affairs Assistance in Developing Claims
38 CFR 19.32	Closing of Appeal for failure to Respond to SOC
38 CFR 20.302	Time Limit for Filing NOD, Substantive Appeal, and Response to SSOC
38 CFR 20.201	Requirements for Valid and complete NODs
38 CFR 19.23	Definition of complete NOD
38 CFR 19.24	Definition of NOD
38 CFR 20.501	If Contested Claim
38 CFR 3.1 and 38 CFR 3.6	If Reserves/National Guard

Service Connection	
TITLE 38 USC 1110 (Wartime)	Basic Entitlement
TITLE 38 USC 1131 (Peacetime)	Basic Entitlement
TITLE 38 USC 1153 38 CFR 3.306 38 CFR 3.322 (a) 38 CFR 3.322 (b)	Aggravation ❖ Aggravation of <i>Pre-service</i> Disability ❖ Aggravation of <i>Service-Connected</i> Disability
TITLE 38 USC 1154(b)	Consideration to be accorded time, place and circumstances of service (combat)
38 CFR 3.303	Principles Relating to Service Connection Direct (All)
38 CFR 3.304	Direct Service Connection; Wartime &

	Peacetime (All)
38 CFR 3.304(f)	❖ Post Traumatic Stress Disorder due to Combat or Sexual Trauma

Presumptive (Service Connection)	
38 CFR 3.307	Presumptive (chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947)
38 CFR 3.309(a)	Presumptive Chronic
38 CFR 3.309(b)	Tropical Diseases
38 CFR 3.309(c)	POW Status (interned/detained not less than 30 days)
38 CFR 3.309(d) 38 CFR 3.311	Diseases specific to radiation-exposed veterans ❖ Exposure to Ionizing Radiation
38 CFR 3.309(e)	Disease associated with exposure to certain Herbicide Agents
38 CFR 3.313	Claims Based on Service in Vietnam
38 CFR 3.316	Claims Based on Chronic Effects of Exposure to Mustard Gas
38 CFR 3.317	Undiagnosed Illness (Gulf War)
38 CFR 3.318	Amyotrophic Lateral Sclerosis (ALS)

Specific Issues	
38 CFR 3.1000 38 U.S.C. 5121	Accrued (payment of certain accrued benefits upon death of a beneficiary)
38 CFR 3.808	Automobiles or other conveyances; certification
38 CFR 3.807	Chapter 35
38 CFR 3.12	Character of Discharge
38 CFR 4.9	Congenital or developmental defects
38 CFR 3.358 & 38 CFR 3.800	Claims under 38 USC 1151
38 CFR 3.361	Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program
38 CFR 4.25	Combined Rating Tables
38 CFR 3.6	Duty Periods
38 CFR 3.114	Change of law or Department of Veterans Affairs issue.
38 CFR 3.109	Effective Dates
38 CFR 3.155	Effective Dates
38 CFR 3.400	Effective Dates
38 CFR 3.401	Effective Dates - Veteran

38 CFR 3.402	Effective Dates – Surviving Spouse
38 CFR 3.403	Effective Dates - Children
38 CFR 3.404	Effective Dates – Parents
38 CFR 3.405	Effective Dates – Filipino Veterans and Survivors
38 USC 5313	Fugitive Felon
38 CFR 3.385	Hearing Loss
38 CFR 3.356	Helpless Child (Conditions which determine permanent incapacity for self-support)
38 CFR 4.127	Mental retardation and personality disorders
38 CFR 3.31	Omnibus (Commencement of the period of payment)
38 CFR 3.350	Special Monthly Compensation Ratings
38 CFR 3.51(a-d)	Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings
38 CFR 3.352(a)	Basic criteria for regular aid and attendance and permanently bedridden
38 CFR 3.806	Death gratuity; certification
38 CFR 3.809(a)	Special Adapted Housing under 38 U.S.C. 2101(a)/Special Home Adaptation
38 CFR 3.310	Secondary Conditions (Disabilities that are proximately due to, or aggravated by, service-connected disease or injury)
38 CFR 3.50	Spouse and surviving spouse
38 CFR 3.1(n) -3.301(c)(2) -3.301(c)(3)	Definitions- Willful Misconduct/LOD plus Alcoholism Drug Abuse
38 CFR 3.383	Special Consideration for paired Organs and extremities
38 USC 1702	Presumption of Soundness Related to Psychosis

Increased Evaluation Denied	
38 CFR 3.321(a)(b)(1)	General Rating Considerations
38 CFR 3.655	Failure to report for VAE
38 CFR 4.1	Essentials of Evaluative Ratings
38 CFR 4.2 <i>(only if VAE was performed)</i>	Interpretation of Examination Reports
38 CFR 4.3	Resolution of Reasonable Doubt
38 CFR 4.6	Evaluation of Evidence
38 CFR 4.7	Higher of Two Evaluations
38 CFR 4.10	Functional Impairment
38 CFR 4.20	Appropriate Diagnostic Code(s) 38 CFR Part 4 <i>Schedule for Rating Disabilities</i>

	Analogous Ratings
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NOTE: *Include all Applicable Diagnostic Codes*

Other Laws & Regulations Specific to Issues of Evaluation	
38 CFR 3.321(a)(b)(1)	Extra Scheduler Evaluation
38 CFR 3.324	Multiple Non-compensable SC Disabilities
38 CFR 4.14	Avoidance of Pyramiding
38 CFR 4.20	Analogous Ratings
38 CFR 4.31	A No-percent Rating
38 CFR 4.68	Amputation Rule
<p>NOTE: Cite all applicable diagnostic codes (DCs) that apply to a particular disability. A single DC used in a rating will not always be the only pertinent DC to use when preparing an SOC. You must provide other related codes as needed for clarity.</p> <p>NOTE: If maximum evaluation is assigned, include all potential DC that allow for a higher evaluation.</p> <p>NOTE: When a change in law revises 38 CFR Part 4, <i>Schedule for Rating Disabilities</i>, provide both old and new rating schedule criteria.</p>	

Additional Regulations When Evaluating a Joint	
38 CFR 4.40	Functional Loss (Deluca)
38 CFR 4.45	The Joints (Deluca)
38 CFR 4.59	Painful Motion

Additional Regulations When Evaluating a Mental Condition	
38 CFR 4.126	Evaluation of Disability from Mental Disorders
38 CFR 4.130	Schedule of Ratings-Mental Disorders

Additional Regulations When Evaluating Hearing Loss	
38 CFR 3.383 (a)(3)	Special Consideration for paired Organs and extremities
38 CFR 4.85	Evaluation of Hearing Impairment
38 CFR 4.86 <ul style="list-style-type: none"> ❖ Tables VI ❖ VIA ❖ VII 	<p>Evaluation Tables</p> <p>Hearing impairment based on puretone threshold average & speech discrimination</p> <p>Hearing impairment based only on puretone threshold average</p> <p>Percentage evaluation for hearing impairment (diagnostic code 6100)</p>
<p>Note: Mandated use of Hearing Loss Calculator (User Guide)</p> <p>Review TL 10-02 Adjudicating Claims for Hearing Loss and/or Tinnitus; TL 09-05 Adjudicating Claims for Hearing Loss and/or Tinnitus</p>	

Additional Regulations When Evaluating Scars	
38 CFR 4.118	Schedule of ratings-skin
DC 7800	Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck
DC 7801	Burn scar(s) or scar(s) due to other causes , not of the head, face, or neck, that are <u>deep</u> and <u>nonlinear</u>
DC 7802	Burn scar(s) or scar(s) due to other causes , not of the head, face, or neck, that are <u>superficial</u> and <u>nonlinear</u>
DC 7804	Scar(s), unstable or painful:
DC 7805	Evaluate any disabling effect(s) not considered in a rating provided under diagnostic codes 7800-04 under an appropriate diagnostic code.
Review FL 08-44 Final Rule: Schedule for Rating Disabilities; Evaluation of Scars	

Entitlement To Total Compensation On Account of IU	
38 CFR 3.321(b)(1)	Extra Scheduler Consideration (Compensation)
38 CFR 3.340	Total and Permanent Total Ratings and Unemployables
38 CFR 4.15	Total Disability Ratings
38 CFR 4.16	Total Disability Ratings Based on IU
38 CFR 4.18	Unemployability
38 CFR 4.19	Age in service-connected claims
NOTE: Review Rice v. Shinseki Decision (06-1445) regarding TDIU Claims and, TL 10-07 'Adjudication of Claims for TDIU, September 2010'	

Permanent and Total for Pension Purpose	
38 CFR 3.321	General rating considerations
38 CFR 3.321(b)(2)	Extra-Scholar Consideration
38 CFR 3.327	Reexaminations
38 CFR 3.340	Total and Permanent Ratings and IU
38 CFR 3.342	Permanent and Total Disability Ratings for Pension Purposes
38 CFR 4.15	Total Disability Ratings
38 CFR 4.17	Total Disability Ratings for Pension Based on IU and age of Individual
Diagnostic Code(s) for Disability(ies)	38 CFR Part 4, Schedule for Rating Evaluated Disabilities

Pension Income	
38 CFR 3.3	Pension
38 CFR 3.23	Improved pension rates-Veterans and surviving spouses.
38 CFR 3.24	Improved pension rates-surviving children.
38 CFR 3.29	Rounding
38 CFR 3.260 and 38 CFR 3.271	Computation of Income
38 CFR 3.262	Evaluation of income
38 CFR 3.272	Exclusions from income
38 CFR 3.273	Rate Computation
38 CFR 3.275	Criteria for evaluating net worth
38 CFR 3.277 38 CFR 3.256	Eligibility reporting requirements

Claims Based on New and Material Evidence	
38 CFR 3.105	Revision of Decision
38 CFR 3.156	New and Material Evidence
38 CFR 20.1100 & 38 CFR 20.1104 (only if denial previously upheld by BVA)	Finality of Decisions of the Board and Finality of Determination of the Agency of Original Jurisdiction Affirmed on Appeal

Service Connection for Cause of Death Denied	
38 CFR 3.303	Principles Relating to SC
38 CFR 3.304 ❖ 38 CFR 3.304(f)	Direct SC Post Traumatic Stress Disorder
38 CFR 3.312	Cause of Death
38 CFR 3.307 & 38 CFR 3.309 (<i>delete parts of regulation not applicable</i>)	Presumptive Conditions (chronic, AO, POW, etc)
Veterans Rated Total at Time of Death (10 Years, 5 Years, or 1 Year)	
38 CFR 3.22	DIC Benefits for Survivors of Certain Veterans Rated Totally Disabled at Time of Death

OTHER RATING ISSUES

Competency

38 CFR 3.353

Determination of Incompetency/Competency

Paragraph 29

38 CFR 4.29

Ratings for service-connected disabilities requiring hospital treatment or observation

Paragraph 30

38 CFR 4.30

Convalescent Ratings

Dental (Teeth Only)

38 CFR 3.381

SC of Dental Conditions for Treatment Purposes

Revision of Decision

38 CFR 3.105(a)

38 CFR 3.105(b)

38 CFR 3.105(d)

38 CFR 3.2600

Clear & Unmistakable Error (CUE)

Difference of Opinion

Severance

Review of Benefit Claims Decision

Reductions in Evaluation

38 CFR 3.105(e)

Reduction in Evaluation (Comp)

38 CFR 3.343

Continuance of Total Disability Ratings (If Reduced from Total, including IU)

38 CFR 3.344

Stabilization of Disability Evaluations

38 CFR 3.951

Preservation of Disability Ratings

38 CFR 3.957

Service Connection

Entitlement to an Earlier Effective Date	
38 CFR 3.155	Informal Claim
38 CFR 3.400	General Regulation on Effective Dates
38 CFR 3.400(b)(2) 38 CFR 3.400(c) 38 CFR 3.400(o) 38 CFR 3.400(q) 38 CFR 3.400(r) 38 CFR 3.400(x)	<ul style="list-style-type: none"> ❖ Service Connection (Direct/Presumptive) ❖ Death Benefits ❖ Increased Evaluation ❖ New and Material Evidence ❖ Reopened Claims ❖ Determination of Incompetency
38 CFR 3.400	Effective Dates
38 CFR 3.401	Effective Dates - Veteran
38 CFR 3.402	Effective Dates – Surviving Spouse
38 CFR 3.403	Effective Dates - Children
38 CFR 3.404	Effective Dates - Parents
38 CFR 3.405	Effective Dates – Filipino Veterans and Survivors

Timeliness of Appeal	
38 CFR 3.109	Time Limit
38 CFR 3.156	New and Material Evidence
38 CFR 3.160(d)	Status of Claims-Finally Adjudicated Claim
38 CFR 20.303	Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.
38 CFR 20.305	Computation of time limit for filing.
38 CFR 20.1103	Finality of determinations- appeal not perfected
38 CFR 20.1104	Finality of determinations-affirmed on appeal

Other Appealable Issues	
Burial	
38 CFR 3.954	Burial allowance
38 CFR 3.1607	Cost of flags
38 CFR 3.1608	Non-allowable expenses
38 CFR 3.1612	Monetary allowance in lieu of a Government-furnished headstone or marker

QUICK LINKS

Fenderson v. West , January 29, 1999, No. 96-947	Evaluating disability levels; Application of 38 CFR §§ 4.40 and 4.45; “Staged” ratings
Tatum v. Shinseki , September 28, 2009, No. 07-2728	Applying Various Regulations to Rating Schedule
Hensley v. Brown , May 18, 1993, No. 91-1179	Reasons or bases, 38 CFR § 3.385, benefit-of-the-doubt rule
McLendon v. Nicholson , June 5, 2006, No. 04-0185	Duty to Assist - Examinations.
Nieves-Rodriguez v. Peake , December 1, 2008, No. 06-0312	Medical Opinions
Rice v. Shinseki , May 6, 2009, No. 06-1445	TDIU Claims