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| Seal of the U.S. Department of Veterans Affairs | **DEPARTMENT OF VETERANS AFFAIRS**  **Veterans Benefits Administration**  **Washington, D.C. 20420** |

June 13, 2014

Director (00/21) In Reply Refer To: 211

All VBA Regional Offices and Centers Training Letter 14-01

**Purpose and Background**

This Training Letter (TL) will help regional office personnel understand the requirements that must be met before a Veteran warrants a VA examination/opinion, and offers helpful reminders regarding VA examinations. We hope this will make regional office personnel more confident in their knowledge of the laws, regulations, and policies regarding examinations, and empower them to make decisions without over-development of claims.

**Policies, Procedures, and Guidance**

The Three Requirements That Must be Met Before an Examination is Warranted

[38 C.F.R. §3.159(c)(4)(i)](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_159.htm), provides that an examination or medical opinion is necessary when the evidence of record does not contain sufficient medical evidence to decide the claim, but the following three parts are present:

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| **Element** | **Guidance** |
| **Element A**  Competent medical or lay evidence of current diagnosed disability or persistent or recurrent symptoms or disability. | In many instances the Veteran’s lay testimony in a claim is enough to establish that there is a current disability or persistent or recurrent symptoms of disability. Lay statements are generally competent to describe symptoms. In some instances, medical evidence is required to establish the presence of a diagnosed disability, such as identifying a form of cancer.  VA defines “competent medical evidence” and “competent lay evidence” in 38 C.F.R. § 3.159(a)(1) and (2). |
| **Element B**  Injury, disease, or event in service. | To establish an event, injury, or disease in service, the Veteran merely has to have a single entry in the service treatment records; or, the Veteran’s lay statement will be sufficient if such statement is credible and otherwise consistent with the circumstances of the Veteran’s service. If the Veteran’s claim relates to combat, the Veteran’s lay statement(s) must be accepted as sufficient if consistent with the circumstances, conditions, or hardships of the Veteran’s service. In addition, this element is present if the Veteran has a disease or symptoms of a disease listed in 38 C.F.R. §§ 3.309, 3.313, 3.316, or 3.317 manifesting during an applicable presumptive period (provided that the claimant has the required service or triggering event to qualify for that presumption). |
| **Element C**  Indication of association with the injury, disease, or event in service. | There must be an indication that the claimed disability or symptoms may be associated with the in-service injury, disease, or event or with another service-connected disability. For example, lay or medical evidence that a symptom has persisted “ever since service” would be an indication that a disability may be associated with service. Lay evidence of association can satisfy element C if the layperson is competent to indicate association. However, conclusory, generalized lay statements by the Veterans of an association may not be of sufficient weight to satisfy element C. Unlike element B, the evidence need not establish an association, but only indicate a possible association. |

Case Law

In *McLendon v. Nicholson*, 20 Vet.App. 79 (2006), the Court of Appeals for Veterans Claims held that the element C “indicates an association” standard is a “low threshold standard.” In *Waters v. Shinseki*, 601 F.3d 1274, 1277 (Fed. Cir. 2010), the Court of Appeals for the Federal Circuit held that element C only requires evidence indicating an association; this evidence does not need to be competent, nor does it need to be medical. The *Waters* case also clarified that, even with the low threshold standard of element C, a conclusory generalized statement by a claimant that an in-service illness or injury caused a present medical condition would not be sufficient to “indicate” an association between a currently claimed condition and disability/symptoms in service. Evidence that would be sufficient to meet element C would include a Veteran’s lay testimony regarding evidence of continuous symptoms, including an assertion that a condition has existed “since service.” Additionally, medical evidence that suggests a nexus but is too equivocal or lacking in specificity to support a decision on the merits would satisfy this element.

Example Showing the Elements for Obtaining a Nexus Opinion Not Satisfied:

The Veteran claimed service connection for “knee disability.”  He had one complaint of knee pain in service with a negative separation examination.  The Veteran’s current claim provided no medical evidence indicating an association and no statement alleging continuous symptoms since service or that the current disability persisted since military service.  The case can be denied without an examination/opinion, as element C has not been satisfied.  Using the same example as above, a single complaint of knee pain in service with a negative separation examination, if the Veteran claimed “I hurt my knee when I fell off of a truck in Vietnam, *and* it has hurt ever since that time,” then an examination with a nexus opinion is warranted, as all three elements have been satisfied.

Example Showing the Elements for Obtaining a Nexus Opinion Were Satisfied:

The Veteran’s service treatment records show one complaint of back pain after playing basketball. On a VA Form 21-4138, he states “I hurt my back playing basketball in service, and it has been painful ever since.” The Veteran has an event in service and lay testimony provides the current symptomatology and indication of association; therefore, a nexus opinion is warranted.

Example Showing an Examination or Nexus Opinion Not Required:

In this example, all three elements for requiring an examination are satisfied, but an examination or nexus opinion is not required since the claims file contains sufficient medical evidence to decide the claim: The Veteran claimed “knee condition” two years after discharge. His service treatment records show a sprained knee due to falling in a ditch. The Veteran submitted a fully completed Disability Benefits Questionnaire (DBQ) which included an opinion from the examiner that it was “more likely than not” that the Veteran’s current diagnosis of chronic knee strain was caused by his fall into a ditch during service. The DBQ provided the required information to properly evaluate the knee and rule out a higher evaluation. Service connection could be granted without further examination or nexus opinion, as there is an event during service, a current disability, and a nexus opinion provided by the private physician.

Nexus opinions may not be required. For example, if the Veteran files for service connection for a disability shortly following separation from service (generally, within a year) and the record contains post-service evidence of a disability consistent with an injury, disease, or event shown in service, a nexus opinion is not required. In another example, if a Veteran’s service treatment records document treatment for tinnitus and he or she files a claim for service connection for tinnitus immediately following separation from service, a diagnosis of tinnitus on a post-service examination conducted within a few months after separation from service also does not require a medical nexus opinion to support a grant of service connection for the disability.

Routine Future Examinations

[38 C.F.R. § 3.327(a)](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_327.htm) provides that reexaminations “will be requested whenever VA determines there is a need to verify either the continued existence or the current severity of a disability” and that “[g]enerally, reexaminations will be required if it is likely that a disability has improved, or evidence indicates there has been a material change in a disability or that the current rating may be incorrect. There are many cases in which the evidence of record will show that the Veteran continues to meet the requirements of a specific evaluation, and no examination would be necessary. For example, the Veteran is set to undergo a routine future examination for his lumbar spine condition rated as 20 percent disabling. CAPRI records include a note from a few months prior that indicated forward flexion was limited to 50 degrees. No review examination is necessary, as the Veteran continues to meet the requirements for a 20 percent evaluation.

[38 CFR § 3.327(b)(2)](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_327.htm) provides six specific scenarios in which no periodic reexamination will be scheduled.

Changing the Game Training

The *Changing the Game* training, which instructed that, in many cases, contemporaneous examinations were not required if service connection could be established or an increase to the next higher evaluation could be given based on the evidence of record, continues to be in effect and should be applied in determining whether to schedule an examination or rate a claim based on the available evidence of record.

Do Not Develop To Deny

If the evidence of record is adequate for rating purposes and sufficient to grant the claim, do not continue to develop (i.e. order an examination/opinion) merely to deny the claim. See [*Mariano v. Principi*](http://vbaw.vba.va.gov/bl/21/advisory/CAVC/2003dec/Mariano.doc)*,* 17 Vet.App. 305 (2003).

Returning Examinations for Clarification

DBQs should be accepted as adequate for rating purposes and should not be returned for clarification unless the DBQ findings lack clarity and/or sufficient rationale, or are otherwise insufficient for rating purposes. If there is a defect in the DBQ, such as not being completely filled out, but the defect does not render the examination inadequate for rating purposes, do not send it back for clarification. For example, if a Veteran is service-connected for bronchial asthma under diagnostic code (DC) 6602 and the pulmonary function testing fails to include DLCO(SB), sending the examination back to the examiner for completion of DLCO (SB) testing would be unnecessary as DC 6602 does not consider DLCO (SB) in rating bronchial asthma.

Guidance that Required Color Photographs for Evaluations Under DC 7800 is Rescinded

Color photographs are no longer required for evaluations under DC 7800. The April 2012 Compensation Bulletin provided guidance that under [38 C.F.R. § 4.118](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part4/4_118.htm), DC 7800, required color photographs be taken and incorporated into the claims file unless the evidentiary record, without the photographs, is sufficient to grant the maximum schedular evaluation for the scar. This guidance is now rescinded. If color photographs accompany the examination, then the Rating Veterans Service Representative (RVSR) must consider this evidence. However, if color photographs are unavailable, the scar condition should be rated based on the findings reported by the examiner. Please do not return the examination as insufficient and request color photographs to be completed.

Accept Home Sleep Studies for Diagnoses of Obstructive Sleep Apnea

Previously, only observed nocturnal polysomnogram diagnoses of sleep apnea were accepted for the purposes of service connection. Now, VA will accept at-home sleep study diagnoses of sleep apnea for purposes of service connection if it has been clinically determined that the Veteran can be appropriately evaluated by a home sleep study. The study’s results must be evaluated by a competent medical provider.

Receipt of medical evidence disclosing a diagnosis of sleep apnea without confirmation by a sleep study is sufficient to trigger the scheduling of an examination if the other provisions of

[38 C.F.R. § 3.159(c)(4)](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_159.htm) have been satisfied. However, a diagnosis alone is not sufficient to establish a grant of service connection for sleep apnea.

General Medical Examinations are not Required for Claims for Individual Unemployability

[TL 10-07](http://vbaw.vba.va.gov/bl/21/publicat/Letters/TrngLtrs/TL10-07.doc) provided guidance that a claim for Total Disability based on Individual Unemployability (TDIU) was considered a claim for increase in all service-connected disabilities unless TDIU was expressly claimed as being due to one or more specific disabilities. The TL indicated that a general medical examination was required, with an opinion from the examiner regarding employability based on service-connected disabilities. This guidance has been rescinded by the new guidance provided in the Fast Letter 13-13 ([FL 13-13](http://vbaw.vba.va.gov/bl/21/publicat/Letters/FL13/FL13-013.doc)). Under the current guidance, claims for TDIU do not require a general medical examination, nor is VA required to address all service-connected disabilities. Only the disabilities that the Veteran alleges are the cause of or are reasonably raised by the evidence of record to have caused unemployability must be examined and addressed in the Rating Decision.

VA has the flexibility to request either condition-specific DBQs or a general medical DBQ when examinations are needed to decide the TDIU claim. Do not order examinations for disabilities not alleged or reasonably raised by the record to cause or contribute to unemployability. Schedule a general medical examination only if the rating activity determines that it is needed to fairly and fully adjudicate the TDIU claim.

**Questions**

Submit questions regarding this training letter to the Veterans Service Center Manager mailbox and email to [VAVBAWAS/CO/21Q&A](mailto:21QA.VBACO@va.gov?subject=Training%20Letter%2014-01).

/S/

Thomas J. Murphy

Director

Compensation Service