



Evaluating Lay Evidence



Compensation Service Training Staff



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Lesson Overview



This lesson is a self-study course intended to teach VSRs and RVSRs to evaluate Lay Evidence prior to requesting an exam.

Use your mouse to navigate through the course by selecting the next arrow on each slide  

Practical Exercise slides will require additional selections before the next arrow appears 

Target Audience

This lesson is intended for Entry Level VSRs and RVSRs



Objective

Identify critical points to determine the credibility of lay evidence



Electronic Code of Federal Regulations

e-CFR

TM

Title 38: Pensions, Bonuses, and Veterans' Relief

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

38 CFR §3.159 Department of Veterans Affairs
assistance in developing claims



When Evaluating Lay Evidence

Accept it at face
value unless
there is reason
to question it

When
conflicting
evidence exists,
weigh all as
appropriate



Credibility Determinations

The determination of credibility is a finding of fact.

- **Competent/Qualified**
- **Consistency**
- **Plausibility**
- **Circumstances of Service**

Is the Lay
Evidence
Credible



Credibility Determinations

Competent

Plausible

Consistent

Circumstances of
Service

Credibility

**The VSR, RVSR or DRO must make
a credibility determination for Lay
Evidence**

**Select each tab on the left for more
information**

Credibility Determinations

Competent

Plausible

Consistent

Circumstances of Service

Competent

Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

Credibility Determinations

Competent

Plausible

Consistent

Circumstances of
Service

Plausible

Are the veteran's statements regarding in-service manifestations of injury, disease, or of an event reasonable or otherwise capable of being true?

Credibility Determinations

Competent

Plausible

Consistent

Circumstances of
Service

Consistent

Is the Veteran consistent with their statement? Are there conflicting statements of record?

Credibility Determinations

Competent

Plausible

Consistent

Circumstances of Service

Circumstances of Service

Is the Veteran's statement consistent with their service? The VSR, RVSR or DRO must conclude if the statement is consistent with the circumstances of service.



Competent Lay Evidence Regulation

38 CFR §3.159 Department of Veterans Affairs assistance in developing claims.

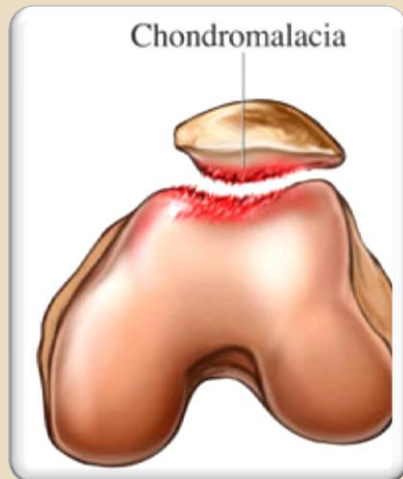
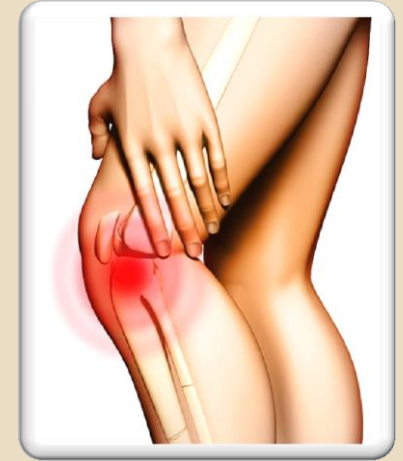
(a) *Definitions.* For purposes of this section, the following definitions apply:

(2) *Competent lay evidence* means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.



Competent Lay Statements

A claimant is competent (qualified) to describe symptoms of a disability that he or she is experiencing, such as knee pain.



However, he or she may not be competent to diagnose their own medical condition or offer a medical opinion.



Competent or Qualified Lay Statements are sufficient when:

- **A layperson is competent to identify the medical condition**
- **A layperson is reporting contemporaneous medical diagnosis**
- **Or, lay testimony describing symptoms at the time supports a later diagnosis by a medical professional.**

The next slide provides a few examples



The lists are just a few examples

Not qualified to provide a diagnosis without medical evidence

- Cancers
- Cause of Death
- Bronchial Asthma
- Meniere's Disease
- Rheumatic Fever
- Chondromalacia
- Disk Herniation
- Diagnosis of any other medical condition with requires special training to diagnose

Is qualified to describe symptoms

- Asthma Symptoms
- Tinnitus
- Headaches, dizziness, etc.
- Pain in feet; Flat Feet
- Joint Symptoms, dislocations and broken bones
- Varicose Veins
- Psychiatric Symptoms (Paranoid Schizophrenia or Depression)
- Fall Injury/Trauma
- Some skin disorder (rashes)
- Frostbite residuals



Select the Not Competent statements

Click on 5 Correct Answers to move here

Cancers

Disk
Herniation

Incorrect Try
Again

Meniere's
Disease

Cause of
Death

Incorrect Try
Again

Bronchial
Asthma

Incorrect Try
Again

NEXT

Select the Competent statements

Click on 5 Correct Answers to move here

Tinnitus

Psychiatric
Symptoms

Incorrect Try
Again

Injury or
Trauma

Joint
Symptoms

Incorrect Try
Again

Headaches

Incorrect Try
Again

NEXT

Plausibility

Appearing worthy of belief <the argument was both powerful and plausible>

The circumstances are reasonable and/or possible.



Plausibility

Plausibility: The claimed condition must be possible considering all other evidence.

Is there medical evidence to make it possible?

Is there evidence of circumstances of service to make it possible?



Inherently Incredible Claims Regulation

38 CFR §3.159(d), VA will not provide assistance in obtaining evidence if a claim is inherently incredible or clearly lacks merit, even when the application itself is substantially complete.

A VSR or RVSR has the authority to determine whether a claim is incredible or without merit.



Examples of Inherently Incredible

A Veteran alleges service-connected (SC) tinnitus caused hammertoes, but no medical evidence to support this allegation is furnished.

A Veteran claims PTSD as a result of combat service in Vietnam, but military records clearly show no foreign or combat service.



NOT

Tree falls
in forest

Possible

Veteran is 100 miles
away

Claims the tree caused a chain
reaction which

Caused his knee disability



The Lay Testimony is Consistent

The claimants statements “are” or “are not” consistent.

Definition:

- always acting or behaving in the same way
- of the same quality; especially : good each time
- continuing to happen or develop in the same way



Circumstances of Service Regulation

Due consideration must be given to the places, types, and circumstances of service.

38 CFR §3.159 Department of Veterans Affairs assistance in developing claims.

(a)(4) For purposes of paragraph (c)(4)(i) of this section, *event* means one or more incidents associated with places, types, and circumstances of service giving rise to disability.



Service Lay Statements

- A claimant is competent (qualified) to describe events, places and circumstances of their service.
- However, in most cases the circumstances of service must be corroborated.



Military Occupational Specialty

The service records, to include a Military Occupation Specialty (MOS), of a Veteran can establish the “event” in service if the service treatment records themselves do not show an event occurred.



Combat Veterans Regulation

38 CFR §3.304(d) Combat. Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection 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. (Authority: 38 U.S.C. 1154(b))

Combat Status is an adjudicative determination, which may involve weighing evidence. M21-1MR IV.ii.1.D.13.c, III.iii.2.E.32.c, III.iv.5.9.a, III.iv.4.H.32.c; VAOPGCPREC 12-99



Combat Lay Statement

Veteran submits a claim for service connection for frostbite of his feet sustained during WWII; states that he still has cold feet and pain.



STRs are negative for any frostbite or foot injury, or disease. Separation document shows a WWII European-Middle Eastern medal, and participation in the campaigns in Ardennes and Rhineland. (The Battle of the Bulge, fought from December 16, 1944, through January 28, 1945, was fought in the Ardennes.)



Combat Lay Statement Credibility Finding

Lay Statement: Claims frostbite, exposed to cold during WWII and has continued cold feet and pain.

Evidence of Record: WWII Battle of the Bulge Veteran

- Veteran is competent in statement ✓
- Plausible – exposure to extreme cold causes frostbite ✓
- Veteran's statement is consistent in all claims ✓
- Statement is consistent with the circumstances of service. Extreme cold conditions existed in service. ✓



Combat Veteran Practical Exercise

A Veteran submits a claim for service connection for low back pain sustained during operation Iraqi Freedom. The Veteran asserts that he was in Iraq and injured his back diving for cover while under attack. STRs are negative for any thoracolumbar spine injury, or disease.

Separation document shows award of Combat Infantry Badge and service in Iraq.

Select all correct components below then select next to continue

Competent

Plausible

Consistent

Service



Combat Veteran Practical Exercise Answer

The Veteran is competent to describe low back pain.

The claim is plausible. The Veteran asserts that he was in Iraq and injured his back diving for cover while under attack.

The Veterans statement is consistent throughout.

The claim is consistent with service. Separation document shows award of CIB and service in Iraq.

Competent
Plausible



Consistent
Service



In-Service Decisions

When there is not a clear nexus, the relationship between the in-service activities and the claimed current condition must be determined or other evidence showing a nexus between service and current disability.

Establishing events or conditions of service to have occurred is generally an adjudicative decision.

VSR, RVSR and DRO

The nexus linking the in-service event to a current disability is a medical decision or opinion.

Examiner



In-Service Decisions

The VSR, RVSR or DRO informs the examiner about the in-service event.



The examiner establishes if the in-service event is linked to the current diagnosis.*

*There is one exception to the rule in cases involving PTSD due to Military Sexual Trauma. The examiner may establish the in-service event with identified markers.



Course Summary

For many cases decided by VA, we are not dealing with certainty, but rather what is more likely than not of what happened.

The Department must consider lay evidence, but may give it whatever weight it concludes the evidence is entitled to.



Practical Exercise 1

A Veteran submits a claim for service connection for hearing loss caused by acoustic trauma in service. STRs are negative for any threshold shift or diagnosis of hearing loss by VA standards. However, the separation document shows he was a jet mechanic in service.

Select all correct components below then select next to continue

Competent	<input type="checkbox"/>
Plausible	<input type="checkbox"/>

Consistent	<input type="checkbox"/>
Service	<input type="checkbox"/>



Practical Exercise 1 Answer

- The Veteran is competent to state hearing loss.
- It is plausible for noise exposure to cause hearing loss.
- The Veteran's statement is consistent throughout.
- The statement is consistent with service for noise exposure as a jet mechanic.

Competent
Plausible



Consistent
Service



Practical Exercise 2

A Veteran submits a claim for service connection for his right knee noting that it is still painful after many parachute jumps during service. STRs are negative for any right knee injury, disease, or event. However, the separation document shows he earned a Master Parachutist Badge in service.

Select all correct components below then select next to continue

Competent	<input type="checkbox"/>
Plausible	<input type="checkbox"/>

Consistent	<input type="checkbox"/>
Service	<input type="checkbox"/>



Practical Exercise 2 Answer

- The Veteran's statement is competent. Right knee pain after many parachute jumps during service.
- Plausible. Knee conditions are common with parachute jumps.
- Consistent. The Veteran's statements do not change.
- Consistent with Service. Master Parachutist Badge in service.



Competent	✓
Plausible	✓

Consistent	✓
Service	✓



Not Credible Practical Exercise

Veteran files a claim for Diabetes due to exposure to Agent Orange.

Records indicate the Veteran served from 1980 to 1989.

Select the reasons the statement is NOT credible

Competent

Plausible

Consistent

Service



Not Credible Practical Exercise Answer

The Veteran is not competent to provide a diagnosis for Diabetes without medical evidence.

The claim is not plausible. The Veteran was not exposed to Agent Orange during service.

The claim is not consistent with service due to the agent orange exposure periods.

X = did not meet credibility standards

Competent	X
Plausible	X

Consistent	✓
Service	X



You have now completed the Evaluating Lay Evidence Lesson



Log into TMS, and complete the evaluations for TMS 3879907 to receive credit for this course. Print the course after completing the evaluations.

Exit