Subordinate Issues

Trainee Handout

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Objectives

* Define the term subordinate issue and associated requirements
* Identify the purpose of an initial review
* Identify types of subordinate issues
* Differentiate common Subordinate Issues
* Recognize when to infer a claim

# References

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

[38 CFR §3.321](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_321.htm), General rating considerations

[38 CFR §3.324](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_324.htm), Multiple noncompensable service-connected disabilities

[38 CFR 3.350](https://www.ecfr.gov/cgi-bin/text-idx?SID=f05af9221e710f02049e108cb3ca50a8&mc=true&node=se38.1.3_1350&rgn=div8), Special Monthly Compensation

[M21-1, Part III, Subpart iv.2.A](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000003094/Chapter-02-Reviewing-Claims), Pre-Rating Review of Claims by the Rating Activity

[M21-1, Part III, Subpart iv.4.](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000074738/M21-1-Part-III-Subpart-iv-Chapter-4-Section-M-Endocrine-Conditions#2f)M, Endocrine Conditions

[M21-1, Part III, Subpart iv.5.A](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014203/M21-1-Part-III-Subpart-iv-Chapter-5-Section-A-Principles-of-Reviewing-Evidence-and-Decision-Making#1e), Principals of Reviewing Evidence and Decision Making

[M21-1, Part III, Subpart iv.6.B](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014205/M21-1-Part-III-Subpart-iv-Chapter-6-Section-B-Determining-the-Issues?articleViewContext=article_view_browse_tree&isFeatured=undefined&topic=undefined), Determining The Issues

[M21-1, Part III, Subpart iv.8.A](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014211/M21-1-Part-III-Subpart-iv-Chapter-8-Section-A-Evaluating-Competency?articleViewContext=article_view_browse_tree&isFeatured=undefined&topic=undefined), Evaluating Competency

[M21-1, Part III, Subpart iv, 6.C](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014206/M21-1-Part-III-Subpart-iv-Chapter-6-Section-C-Completing-the-Rating-Decision-Narrative?articleViewContext=article_view_browse_tree&isFeatured=undefined&topic=undefined), Completing the Rating Decision Narrative

[M21-1, Part IV, Subpart ii.2.A](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014324/M21-1-Part-IV-Subpart-ii-Chapter-2-Section-A-Deciding-Claims-for-Disability-Compensation?articleViewContext=article_view_browse_tree&isFeatured=undefined&topic=undefined), Deciding Claims for Disability Compensation

[M21-1, Part IV, Subpart ii.2.F](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014564/M21-1-Part-IV-Subpart-ii-Chapter-2-Section-F-Compensation-Based-on-Individual-Unemployability-IU?articleViewContext=article_view_browse_tree&isFeatured=undefined&topic=undefined), Compensation Based on Individual Unemployability (IU)

[M21-1, Part IV, Subpart ii.2.H](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014571/M21-1-Part-IV-Subpart-ii-Chapter-2-Section-H-Special-Monthly-Compensation-SMC?articleViewContext=article_view_browse_tree&isFeatured=undefined&topic=undefined), Special Monthly Compensation

[M21-1, Part IX, Subpart i.3](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000003239/Chapter-03-Specially-Adapted-Housing-SAH-or-Special-Home-Adaptation-SHA-Grants), Specially Adapted Housing (SAH) or Special Home Adaptation

(SHA) Grants

[M21-1, Part IX, Subpart ii.2](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000003257/Chapter-02-Ratings-for-Special-Purpose), Ratings for Special Purpose

[M21-4, 3.A.](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000002923/Chapter-3-National-Quality-Reviews), Appendix A, National Compensation Rating Quality Review Checklist

[M21-4, 6.B., Appendix](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000003593/Appendix-A-Regional-Office-Station-Numbers-and-Payee-Codes) B, **Rating Veterans Service Representative (RVSR) Task Based**

**Quality Review Checklist**

Topic 1: Subordinate Issues

***Definition****:* For VA purposes, and as stated in M21-1, Part III, Subpart iv.6.B.1.d, a subordinate issue is one that results from the consideration or outcome of another.

We do not infer merely to deny a benefit with **one** **exception** - non-compensable evaluations under §3.324. This subordinate issue must always be addressed regardless of a grant or denial.

**Initial Review Process -** During the initial review, the RVSR must consider the following:

* Does a **Proper Claim** exist?
* Does the claim fall within the **Rating Jurisdiction**?
* Is there **Sufficient Evidence**?
* Is there evidence of **Qualifying Service**?
* Are there **Statutory and Regulatory Bars**?

Additional information is available in [M21-1, Part III, Subpart iv.2.A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/).

**Discussion** - what questions might you ask during the initial review process?

**Issue Identification**

Upon review of a claim, RVSRs must recognize all issues prior to making a decision. This may involve further development, making a decision, and seeking clarification.

The following references provide additional guidance:

* [M21-1, Part III, Subpart iv.5.A.](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/), Attitude When Evaluating Evidence
* [M21-1, Part III, Subpart iv.6.B.](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/), Considering Within Scope of a Claim

***Remember -* failure to address all issues is considered a critical quality error!**

**Types of Issues**

The following types of issues (expressly claimed, reasonable raised, unclaimed subordinate issues and ancillary benefits) with examples may be encountered during the claims process. This list is not all-inclusive, and as an RVSR you should take the necessary steps to identify and address all issues presented with each case.

**Expressly claimed -**

***Example:***

Epilepsy is listed as a claimed disability on VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits.

**Reasonably raised -**

***Example:***

The Veteran's VA examination shows that his service-connected post-traumatic stress disorder (PTSD) warrants an increase to a 70 percent evaluation at the examination, the Veteran reported that he has been fired from several jobs due to his inability to deal with stress, and the VA examiner identified the Veteran's stress management problem as a symptom of his PTSD.

***Result:*** The RVSR addresses the issue of individual unemployability (IU) in the rating decision.

**Note:** additional development may be needed prior to rating IU.

**Reference:** For more information on identifying reasonably raised claims for individual unemployability, see M21-1, Part IV, Subpart ii.2.F., Identifying Reasonably Raised Claims of IU.

**Unclaimed subordinate issues and ancillary benefits -**

***Example:***

The Veteran is evaluated at 100 percent for amyotrophic lateral sclerosis (ALS) and complications, and the VA examination shows that he requires the daily assistance of his wife to attend to his activities of daily living.

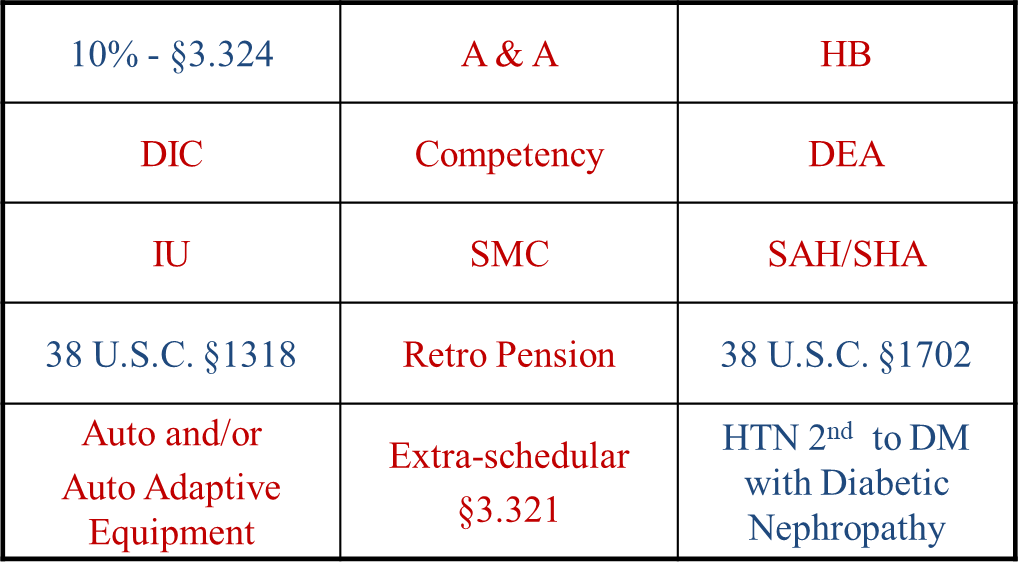
***Result:*** The RVSR addresses the issue of A&A in the rating decision.

**Reference:** For more information on subordinate issues and ancillary benefits, see M21-1, Part III, Subpart iv.6.B., Considering Subordinate Issues and Ancillary Benefits.

**Common Subordinate Issues**

Below, please find a list of types of common Subordinate issues that you may encounter during the claims process. Note that this list is not all-inclusive and you should take the necessary steps to identify and address all Subordinate issues presented with each case that is reviewed.

**Note:** Always refer directly to M21-1 Adjudication Procedures Manual to ensure no additional updates to this topic have taken place.

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**When to Address Subordinate Issues and Ancillary Benefits**

RVSRs must address subordinate issues in the “Reasons for Decision” portion of the Rating Decision.

Competency must be addressed in cases where a mental condition is evaluated as totally disabling. When the evidence shows the Veteran is competent, address the competency determination as part of the narrative within the mental condition issue. M21-1, Part III, Subpart iv.8.A, Evaluating Competency.

**Important Note:** In general, address entitlement to a subordinate issue or ancillary benefit only when entitlement can be awarded. Do not put a benefit at issue merely to deny it.

***Exception:***  Consider a 10-percent evaluation under 38 CFR 3.324 in all applicable ratings regardless of whether the benefit is awarded or denied.

Use the table below to determine when to address entitlement to subordinate issues and ancillary benefits in a rating decision.

| **If …** | **Then address entitlement to …** |
| --- | --- |
| there is a severe degree of disability involving   * the loss or loss of use (L/LOU) of an extremity or sensory organ, or * any other functional loss providing entitlement to special monthly compensation (SMC) under [**38 CFR 3.350**](http://www.ecfr.gov/cgi-bin/text-idx?SID=4b56c4b615c22efcbaf31e35b5de75cb&mc=true&node=se38.1.3_1350&rgn=div8) | SMC. |
| a permanent and total (P&T) SC evaluation is established   * on a schedular basis, or * based on entitlement to IU | DEA.    ***Note***:  Also consider entitlement to DEA whenever permanency of a total evaluation is subsequently established. Do *not* put entitlement at issue merely to deny it.    ***References***:  For more information on   * handling free-standing requests for P&T status in compensation cases, see [**M21-1, Part III, Subpart ii, 2.B.1.j**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014119/M21-1,-Part-III,-Subpart-ii,-Chapter-2,-Section-B---Claims-for-Disability-Compensation-and-or-Pension,--and-Claims-for-Survivors-Benefits), and * determining entitlement to DEA, see [**M21-1, Part IX, Subpart ii, 2.1**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015112/M21-1,-Part-IX,-Subpart-ii,-Chapter-2---Ratings-for-Special-Purposes). |
| a single 100-percent evaluation is assigned in a compensation or pension case | A&A.    ***Note***:  Do *not* put A&A benefits at issue if the evidence does not show entitlement. |
| * a single 100-percent evaluation is assigned in a compensation or pension case, and * A&A is not payable | housebound.    ***Note***:  Do *not* address entitlement to housebound benefits if the evidence does not show entitlement exists. |
| retroactive Veterans Pension is not claimed, but a qualifying disability may exist | retroactive benefits.    ***Note***:  Advise the claimant that retroactive benefits may be payable.    ***Reference***:  For more information on retroactive pensions, see [**38 CFR 3.400(b)(1)(ii)(B)**](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb7493eb29df5c572d488350d31b4925&node=se38.1.3_1400&rgn=div8). |
| a pension claimant fails to meet the schedular requirements for P&T disability | extra-schedular consideration under [**38 CFR 3.321(b)(2)**](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb7493eb29df5c572d488350d31b4925&node=se38.1.3_1321&rgn=div8). |
| a Veteran has   * no compensable evaluation(s), and * more than one non-compensable evaluation | a 10-percent rating under [**38 CFR 3.324**](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb7493eb29df5c572d488350d31b4925&node=se38.1.3_1324&rgn=div8).    ***Important***:   * This benefit *must* be considered in all applicable ratings, including confirmed ratings, even when entitlement is denied. * An ***applicable rating*** is one in which a noncompensable SC evaluation is assigned or confirmed. * The guidance expressed in this row applies without regard to whether or not the Veteran is in receipt of SMC separate and distinct from his/her non-compensable schedular evaluations. |
| a claim for SC is denied for   * a psychosis based on wartime service, or * any mental disorder based on Gulf War service   ***Reference***:  For more information on periods of war, see [**38 CFR 3.2**](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb7493eb29df5c572d488350d31b4925&node=se38.1.3_12&rgn=div8). | treatment under [**38 U.S.C. 1702**](https://www.law.cornell.edu/uscode/text/38/1702).    ***Note***:  Do *not* address entitlement if the evidence does not show entitlement exists. |
| * there is a reasonable probability that the Veteran’s death may be SC, whether from   + disease   + injury, or   + self-infliction, and * a claim for survivors benefits is received | DIC. |
| * at the time of death the Veteran was rated 100-percent disabled due to SC disabilities or entitled to IU, and * a claim for survivors benefits is received | * DIC under [**38 U.S.C. 1318**](https://www.law.cornell.edu/uscode/text/38/1318), if SC for cause of death cannot be awarded, and * DEA under [**38 U.S.C. Chapter 35**](https://www.law.cornell.edu/uscode/text/38/part-III/chapter-35)  if DIC under [**38 U.S.C. 1318**](https://www.law.cornell.edu/uscode/text/38/1318) is awarded. |
| a rating initially establishes SC for P&T disability due to   * the L/LOU of   + one lower extremity, requiring the use of braces, crutches, canes, or a wheelchair for mobility due to     - the L/LOU of the other lower extremity     - the L/LOU of an upper extremity, or     - another organic disease or injury that affects balance or propulsion   + one lower extremity plus bilateral vision loss, with only light perception, or   + both upper extremities such as to preclude use of the arms at or above the elbows * full thickness or subdermal burns that have resulted in contractures with limitation of motion of   + two or more extremities, or   + at least one extremity and the trunk, or * ALS | SAH.    ***Reference***:  For more information on entitlement to SAH, see   * [**38 U.S.C. 2101(a)**](https://www.law.cornell.edu/uscode/text/38/2101) * [**38 CFR 3.809**](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb7493eb29df5c572d488350d31b4925&node=se38.1.3_1809&rgn=div8), and * [**M21-1, Part IX, Subpart i, 3**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015030/M21-1,-Part-IX,-Subpart-i,-Chapter-3---Specially-Adapted-Housing-(SAH)-or-Special-Home-Adaptation-(SHA)-Grants). |
| a rating initially establishes SC for P&T disability due to   * bilateral vision loss, with visual acuity of 20/200 or less * L/LOU of both hands * full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk, or * residuals of an inhalation injury, including, but not limited to   + pulmonary fibrosis   + asthma, and   + chronic obstructive pulmonary disease | SHA award.    ***Reference***:  For more information on entitlement to the SHA award, see   * [**38 U.S.C. 2101(b)**](https://www.law.cornell.edu/uscode/text/38/2101) * [**38 CFR 3.809a**](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb7493eb29df5c572d488350d31b4925&node=se38.1.3_1809a&rgn=div8), and * [**M21-1, Part IX, Subpart i, 3**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015030/M21-1,-Part-IX,-Subpart-i,-Chapter-3---Specially-Adapted-Housing-(SAH)-or-Special-Home-Adaptation-(SHA)-Grants). |
| a rating initially establishes SC for P&T disability due to   * L/LOU of a hand or foot * bilateral vision loss with corrected acuity 20/200 or worse in the better eye * bilateral vision loss with field constricted to 20 degrees in the better eye * severe burn injury with deep partial thickness or full thickness burns resulting in scar formation that causes contractures and limit motion of one or more extremities or the trunk and preclude effective operation of an automobile, or * ALS | * automobile, and * automobile adaptive equipment.   ***Reference***:  For more information on entitlement to an automobile or automobile adaptive equipment, see   * [**38 CFR 3.808**](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb7493eb29df5c572d488350d31b4925&node=se38.1.3_1808&rgn=div8), and * [**38 U.S.C. 3902**](https://www.law.cornell.edu/uscode/text/38/3902). |
| SC is established for ankylosis of the hip or knee | automobile adaptive equipment. |
| * SC is established for diabetes mellitus, and * there is a diagnosis of hypertension | SC for hypertension as secondary to diabetes mellitus only as described in [**M21-1, Part III, Subpart iv, 4.M.2.f**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000074738/M21-1,-Part-III,-Subpart-iv,-Chapter-4,-Section-M---Endocrine-Conditions). |
| * the schedular disability requirements for IU under [**38 CFR 4.16(a)**](http://www.ecfr.gov/cgi-bin/text-idx?SID=21045a0c9f1643abb30d9ac595098a82&node=se38.1.4_116&rgn=div8http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.5&idno=38#se38.1.4_116) are met, *and* * there is evidence in the Veteran’s claims folder or under VA control that indicates he/she may be unemployable due to SC disability | IU.    ***Reference***:  For more information on reasonably raised claims for IU, see   * [***Norris v. West***](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000063223/Norris-v.-West,-Jun-9,-1999,-12-Vet.App.-413-(1999)), 12 Vet.App. 413 (1999), and * [**M21-1, Part IV, Subpart ii, 2.F.2.m-o**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014564/M21-1,-Part-IV,-Subpart-ii,-Chapter-2,-Section-F---Compensation-Based-on-Individual-Unemployability-(IU)). |

exercise 1

Read the scenarios below and the information in the handout to complete the following:

1. Determine the type of issue you are dealing with (Expressly claimed, Reasonably Raised, Unclaimed subordinate issues and ancillary benefits); and,
2. Identify the action you should take as a RVSR.
3. You received a claim as ready for decision, in which the Veteran claimed an increase for service-connected coronary artery disease. The VA exam shows an ejection fraction less than 30%. You also have outpatient records showing that the Veteran is not able to leave the home without assistance, due to the fatigue and dizziness experienced as a result of this disability. There is no evidence showing that the Veteran needs assistance with daily activities.
4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
6. A Veteran filed an original claim for compensation on a VA Form 21-526EZ received February 26, 2020, in which she claimed that she suffers from depression. She served in the Marine Corps from July 2, 2002 to June 29, 2006. The evidence of record first shows she was diagnosed with depression on August 16, 2007. Service Treatment records show no evidence of a mental condition in service. You received this claim as ready for decision.
7. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
8. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
9. A Veteran is service-connected for prostate cancer status post prostatectomy at 20% disabling. He files an increase and submits medical evidence showing urinary incontinence requiring the use of absorbent materials that must be changed five times per day. On VA Form 21-526EZ, he states that he cannot work due to this disability. You received this claim as ready for decision.
10. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
11. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
12. A Veteran is service-connected for sleep apnea at 50% disabling. He files a new claim for service-connection of diabetes, and you decide to service-connect this disability based on the evidence you received. A VA examination shows that the diabetes is controlled with insulin, an AMA diet, and regulation of activities. There are no complications of diabetes identified. Upon review of the evidence, you find evidence the Veteran lost his job as a truck driver due to these disabilities.
13. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
14. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Service Treatment Records (STRs) and chronic, unclaimed disabilities**

While there are several chronic disabilities listed in 38 CFR §3.309(a) as presumptive conditions, it is important to note that this regulation is not an all-inclusive list of chronic disabilities. It therefore should not be used as the sole source in identifying chronic disabilities. For example, hiatal hernia is considered a chronic disability but it is not listed as a presumptive condition under 38 CFR §3.309(a).

Sometimes a Veteran does not claim a disability, but a chronic disability is found when an RVSR reviews the STRs. Chronic disabilities found during a review of the STRs (either original or subsequent receipt of STRs) that were not claimed by the Veteran cannot be decided without an actual claim for that chronic disability. The United States Court of Appeals for Veterans Claims has held that VA cannot generally construe the mere existence of medical records as a claim as there must be some intent by the claimant to apply for a benefit.

If a chronic disability is found, and the Veteran has not claimed that condition, do not defer the issue on your rating decision. Decide all of the claimed issues, and consider ***soliciting*** a claim for the chronic disability found in the STRs. Complete a deferred rating decision directing the VSR to send a letter to the Veteran and his/her representative, if applicable, and enclose VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits. See M21-1, Part IV.ii.2.A., Soliciting a Claim for a Chronic Unclaimed Disability for additional language to be included in the letter.

**Important:**

* Do not establish EP control or initiate development or duty-to-notify/assist procedures until the Veteran responds affirmatively to the letter.
* When the Veteran responds affirmatively, the date of claim of the EP is the date the regional office (RO) received the Veteran's response.

**Exceptions:**

If the following exceptions apply, do not invite a claim for benefits:

* Acute and transitory disorders without residual disability
* Non-compensable residual disabilities from venereal disease
* Disabilities noted only during an induction examination
* Disorders noted by history only
* Disabilities authorization activity determines were not incurred in the line-of-duty
* Abnormal clinical findings, such as cholesterol or blood sugar levels, that are not generally recognized as disabilities or subject to service connection

Also remember that per M21-1, Part IV.ii.2.A, Deciding Claims for Disability Compensation a claim mentioning an exposure but not specifying a disability from the exposure is not substantially complete.

**Benefits Entitlement Error** – See M21-4.3.A., Appendix A, for STAR Rating Quality Review Checklist. The checklist is used to facilitate consistent and structured reviews. Failure to address an issue is a critical Benefit Entitlement error in the Quality Assurance process.

In the checklist, subordinate issues are addressed under the A2 category, “Were all inferred and/or ancillary issues addressed?” Subordinate issues are one of the first components of a STAR review, and our goal is to reduce the Benefit Entitlement errors nationwide by complying with the rules and regulations set in place for addressing these issues.

# Practical Exercise

Use the section Common Subordinate Issues and the Word Bank below, to match the scenarios with the issue that is involved.

|  |  |  |
| --- | --- | --- |
| **Word Bank** | | |
| **§**3.324 | SMC S (Housebound) | DEA |
| Chronic Disability  Found in STRs | Automobile Adaptive  Equipment (Only) | 38 U.S.C. **§**1702 |
| IU | SAH | Competency |

1. A Gulf War Veteran was denied PTSD on July 13, 2020, as a result of the VA exam showing a diagnosis of anxiety disorder. He served in the Army from 09/14/05 to 09/15/19.
2. A Veteran files an original claim for service connection of hearing loss and hemorrhoids. Based on the evidence, you decide to grant both disabilities at 0% each.
3. A Veteran with a service-connected heart condition was temporarily increased to 100% for a heart attack that occurred over 3 months ago. You recently decided to reduce the evaluation based on an ejection fraction of 50%, and there is evidence showing that he is unable to work due to this disability.
4. A Veteran is currently service connected for diabetes with a left below-the-knee amputation. She files a new claim for service connection as she had to have her right knee amputated due to complications of diabetes, and you have granted this disability based on the evidence of record.
5. A Veteran files for an increased evaluation for PTSD, and you grant a 100% evaluation based on the evidence of record.
6. A Vietnam Veteran is service connected for diabetes mellitus at 40% disabling, and peripheral neuropathy of the lower extremities each at 20% disabling. He files a new claim for prostate cancer, and he is currently undergoing chemotherapy. You decide to grant the prostate cancer. There is no evidence showing that he needs help with his daily activities.
7. A Veteran is service connected for ankylosis of the left knee.
8. A Veteran files an original claim for service connection of migraine headaches. Upon review of the STRs you didn’t find treatment for migraines, but there were several reports showing that he was diagnosed with hypertension.
9. You recently increased a Veteran’s combined service connected disability to 90% disabling, and granted IU with no future examinations.

Assessment Subordinate Issues – TMS # 1202946

You have completed the instructional part of training on Subordinate Issues. You must log in to TMS and enter ID# 1202946 to complete the online assessment and survey to receive credit for this training. The assessment requires a 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.