Ready for decision

Trainee Handout

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Objectives

* Recognize the basic responsibilities of a Veterans Service Representative (VSR)
* Recognize the basic responsibilities of a Rating Veterans Service Representative (RVSR)
* Recognize the basic requirement to determine if a case is ready to rate

References

* **M21-1, III.iv.2.A**, *Preliminary Review of Claims*
* **M21-1 III.ii.1.A**, *Process Overview*
* **M21-1 III.ii.7.3**, *Responsibility of Rating Activity*
* **M21-1 I.1.B***, Duty to Assist*

Topic 1

Roles of the veterans service representative (vsr) and rating veterans service representative (rvsr)

Role of a Veteran Service Representative (VSR)

The VSR position is to provide complete and streamlined service to Veterans and their dependents. The VSR’s role is to assist the potential claimant with completing applications and other required forms for benefits. This assistance may occur via telephone, mail, e-mail, or personal interview. (It should be noted that the VSR performs many other customer service related functions during telephone interactions and personal interviews that may or may not initiate a claim). The VSR can establish an end product on a non-original claim. Next, the VSR begins working on developing the claim (i.e., obtaining evidence). It is the VSR’s responsibility to develop a case properly. This responsibility is extremely time consuming and requires a great deal of coordination between the VSR, Veteran, and Veteran Service Officer (if applicable). Case development is followed by decision making.

Role of a Rating Veteran Service Representative (RVSR)

RVSR reviews all the evidence of record to ensure completeness and adequacy of the evidentiary record, including service treatment records, (military personnel records, if required), VA treatment records, private treatment records, examinations, and any other evidence identified by the claimant. The RVSR may request additional examinations, medical opinions, medical or lay evidence in order to reach a fair and equitable decision. If additional evidence is required, the RVSR will prepare a deferred rating decision directing specific development action to complete the claim. The RVSR is prohibited from denying a claim before all efforts to obtain evidence have been exhausted. Also, the RVSR cannot rate a claim before the expiration of the notice period (i.e. Duty to Assist/Section 5103 Notice).

Topic 2: Review of application

The application should be reviewed to ensure completion and that all conditions claimed were addressed before the claim can be forwarded to the rating activity.

* A **s*ubstantially complete application*** means an application containing
	+ the claimant's name
	+ his or her relationship to the Veteran, if applicable
	+ sufficient service information for VA to verify the claimed service, if applicable
	+ the benefit claimed and any medical condition(s) on which it is based
	+ the claimant's signature (if submitted in paper form), and
	+ a statement of income in claims for Veterans or Survivors Pension and Parents' Dependency and Indemnity Compensation (DIC).
* An ***incomplete application*** is any submission on a prescribed form; however, information is missing from the above listed requirements for a substantially complete application.

.See 38 CFR 3.159(a)(3), M21-1, III.ii.1.A.2.d, and M21-1, III.ii.2.C.1.n

Topic 3: Duty to assist

VA has a duty to assist a claimant who files a substantially complete application in obtaining evidence to corroborate his or her claim before making a decision on the claim. 38 USC 5103A provides that the Veterans Administration (VA) shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate a claim for benefits.

VA has a duty to obtain all relevant records in the custody of a Federal Department or Agency. This includes:

* + Service Treatment Records (STRs)
	+ VA medical records
	+ Social Security Administration records
	+ Any other federal agency

Relevancy is determined by what is being claimed. For example, in claims for service connection, relevant documents are those that may substantiate one of the elements of service connection (incurrence, current condition, or links).

Our duty to assist also includes developing for non-Federal records like:

* + Private medical records, and
	+ Lay or other evidence, such as
	+ employment records, or
	+ state workers compensation records

If an examination is necessary to make a decision on a claim for compensation, then our duty to assist includes examining claimants, and/or obtaining a medical opinion.

Duty to Assist ends when…

* + The evidence cannot be obtained despite reasonable efforts.
	+ All evidence is obtained.
	+ The benefits claimed are granted.

Discontinuance of Assistance

VA will not provide assistance in obtaining evidence if a substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim.

Circumstances which permit discontinuance of assistance in obtaining evidence include, but are not limited to:

* + The claimants’ ineligibility due to lack of qualifying service, lack of Veteran status, or other lack of legal eligibility
	+ Claims that are inherently incredible or clearly lack merit
	+ An application requests a benefit to which the claimant is not entitled as a matter of law
	+ The claimant fails to notify us of relevant records
	+ The claimant fails to cooperate (does not provide medical release forms, etc.)

BELOW ARE Excerpts From the Veterans Claims Assistance Act of 2000

Public Law 106-475 – November 9, 2000

**5103A. Duty to Assist Claimants**

(a) DUTY TO ASSIST.

(1) The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant’s claim for a benefit under a law administered by the Secretary.

(2) The Secretary is not required to provide assistance to a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.

1. The Secretary may defer providing assistance under this section pending the submission by the claimant of essential information missing from the claimant’s application

Duty to assist in obtaining relevant records

(b) ASSISTANCE IN OBTAINING RECORDS.

(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain.

(2) Whenever the Secretary, after making such reasonable efforts, is unable to obtain all of the relevant records sought, the Secretary shall notify the claimant that the Secretary is unable to obtain records with respect to the claim. Such a notification shall

(A) Identify the records the Secretary is unable to obtain;

(B) briefly explain the efforts that the Secretary made to obtain those records; and

(C) describe any further action to be taken by the Secretary with respect to the claim.

(3) Whenever the Secretary attempts to obtain records from a Federal department or agency under this subsection or subsection (c), the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

(c) OBTAINING RECORDS FOR COMPENSATION CLAIMS.

In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (b) shall include obtaining the following records if relevant to the claim:

(1) The claimant’s service treatment records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant’s active military, naval, or air service that are held or maintained by a governmental entity.

 (2) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

(3) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

Duty to obtain a VA exam or medical opinion.

(d) MEDICAL EXAMINATIONS FOR COMPENSATION CLAIMS.

(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim.

***Securing Evidence***

When you have determined what evidence is needed, then decide how you will secure that evidence.

Organize your search. Consider the need to go to two or more sources simultaneously. Ask for everything at once to avoid having to prolong the gathering process. Be prepared initially to follow up on a request since you may be dealing with a source that is too burdened by internal business to respond promptly.

Control the length of your search. Establish deadlines for information to be returned and establish controls to monitor those deadlines. In general, 30 days is the length of time used for response from a Veteran or claimant; however, time periods of 60 days are also used for such deadlines as due process and requests for information related to continued eligibility.

**Proof of Service**

Verification of Active Duty military service is necessary before benefits can be paid. Verification of all periods of Active Duty should be completed.

**Acceptable proof of verification of Active Duty military service includes the following:**

1. an original, copy 1, or carbon copy (usually copy 4) of an original DD Form 214 or discharge certificate;
2. original or carbon copies of separation document versions prior to the DD Form 214 that include Veteran’s name, rank, service number, dates and character of service and the Veteran’s signature;
3. photocopies of all of the above if certified as a true and exact copy by authorized VA personnel or an appropriate government official in whose office military service records are filed;
4. A digitally signed DD Form 214 submitted by a Veteran or national service officer, received from DoD, a military service branch, or a State Adjutant General if the DD Form 214 appears genuine and unaltered, and the Veteran was discharged under honorable conditions on or after August 1, 2008;
5. VA Form 21-3101 signed by NPRC Personnel;
6. PIES 050 or DPRIS system; or
7. The BIRLS VID screen if *all* of the following apply:
* Character of service is *Honorable* (*HON)* or *Under Honorable Conditions* (*UHC),*
* Branch of service code is *not* *Army National Guard* or *Air National Guard,*
* Separation reason is *Satisfactory* (*SAT),*
* There is a “*Y*” or “D” in the VADS field, or
* There is a “*Y*” in the VER field.

Topic 4

examinations

Exam Request

**Review of Veterans’ Claims Assistance Act**

What does the law say? 38 CFR 3.159 directs us that…

A medical opinion or examination is necessary when, after the development of all other relevant evidence, including the statement of the claimant, the file

* contains competent evidence that the claimant has a current disability,
* persistent or recurrent symptoms of disability
* shows an in-service event, injury or disease, and
* indicates the claimant’s disability **may** be associated with service
* does **not** contain enough competent medical evidence to let VBA decide the case without an examination.

*These are the main points of VBA’s “duty to assist” Veterans as they relate to ordering examinations and opinions. If they are met, then we must obtain an exam and/or opinion in order to decide the claim.*

As VSRs you will typically order examinations for hearing loss, general medical and claims for increase, not requests for medical opinions.

Exams are ordered using the Exam Request Builder (ERB). More information regarding the ERB is found under the Rating Job Aids.

A medical opinion frequently incorporates a physical exam and also

* Reconciles multiple diagnoses
* Determines the relationship between conditions
* Gives a nexus to a condition in service and a current diagnosis
	+ *For example, a Veteran’s STRs show he fell and bruised his low back several years ago in service. He now has lumbar arthritis, which his doctor thinks might be related to this injury. We would need to get a medical opinion to decide this issue.*

We do not typically need medical opinions for Veterans examined within one year of release from active duty (RAD). The best way for VA to fulfill its duty to assist these Veterans is to afford them a general medical examination.

Review Exam Report

VA examinations are to be conducted using Disability Benefit Questionnaires (DBQs) which are disease and condition-specific, organized as a documentation tool to provide the precise medical evidence needed to rate specific disabilities. You are required to review the report to ensure that there is a DBQ for each condition claimed before sending the claim to the rating activity for decision.

***Please note that the VA examination report submitted to the rating activity must be as complete as possible.***

Any missing required information on the report makes the examination insufficient for rating purposes. This can include, but is not limited to, the following instances

* The examination report is unsigned.
* The examination report did not address all disabilities for which an examination was requested.
* The required question(s) on the DBQ were left blank.
* The required review of the claims folder was not accomplished.
* Missing information on the report pertinent to the disability under review, such as failure to discuss the impact of musculoskeletal pain on the functional loss of an affected joint.
* A medical opinion is not properly supported by a valid rationale and/or by the evidence of record.
* A requested medical opinion was not furnished.

***Note***: Examinations that are cancelled by VHA or a contractor, without a valid reason, should be returned as insufficient for rating purposes if the rating activity determines that the examination is warranted.

Topic 5

making claim ready for decision

Checklist

Once the following information is obtained a claim is considered to be ready to rate:

* VA Form 21-526 (all types)
* Veteran status (DD214 or PIES 050),
* Service Treatment Records (E-mail to RMC or PIES 050)
* Sep/Sev pay (DFAS or PIES O03) remind trainees the separate request for financial records means separate PIES sheet
* Private treatment records (VA Form 21-4142/21-4142a)
* Treatment from the VA Medical Center (CAPRI or 10-7101)
* VA examination or QTC/MES exams
* Section 5103 Notice addresses all issues claimed
* Any Federal Records noted by the Veteran
* Verify the actions required by 38 CFR 3.159 have been completed.

Then update the following systems to make a case ready for decision in the system to include VBMS and Covers.

<attachment a>

VBA-21-0960M-14-DBQ

Practical Exercise

Directions: Answer the questions below. Review the attached DBQ to answer the Questions 1 and 2.

1. The Veteran is seeking service connected compensation for\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. What is the diagnosis for Mr. Veteran? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. You are reviewing a claim, all evidence is received, to include the exam and enough medical evidence to grant the benefit but you do not see a 5103 notice was ever sent to the Veteran who submitted his claim on a VA Form 21-526, can this claim be sent for a rating decision? Please provide a reference to support your answer.
4. You are reviewing a two year old claim for a Veteran who was released from service July 28, 2004, all evidence was received to include the exam and you notice the Veteran claimed a right knee condition that was tabbed in his STRs but no DBQ was found for this condition in the exam report. Capri records show that Veteran was treated for his right knee September 1, 2009 (but no recent treatment). Because of the age of the claim and all the evidence was received, can we forward this claim for a rating decision?
5. While reviewing a claim, you notice the Veteran stated on his application that he received treatment records from Dr. Jones. We sent the Veteran a VA Form 21-4142 and 21-4142a two months ago for completion but it was not returned. We have the Capri records, STRs, and exam report. Is this claim ready for decision?
6. While reviewing a claim, you notice the Veteran had multiple periods of service (serving in the Army February 1, 1962 – January 31, 1968). His first period of service was from 1962 – 1966; however, there were no treatment records for this period in his file. You notice the VSR working the claim (before you were assigned this claim) requested a PIES 050 and his treatment records were received. Thus, you have the available STRs, the private treatment records, and the exam report. Is this claim ready for decision? Please explain your answer.