

Office of Administrative Review (OAR)

Quality Call Bulletin

March 2021

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DRO IQR ACCURACY AND DECISION REQUIREMENTS

Target Audience: DROC QRTs and Management

Presenter: Chelsey Kondrak, Acting Chief, OAR

DRO IQR Accuracy:

The nationwide average DRO Individual Quality Review (IQR) task-based applicable accuracy for the month of January 2021 is 97%.

Since implementation of the updated DRO Quality Review Checklist in QMS on October 1, 2020, RQRSs cited 1,204 errors on DROs for the period from October 1, 2020 through January 31, 2021.

RQRSs have cited the greatest number of errors for questions 9) *Was the decision free of other deficiencies?*, 12) *Is the c-file free from other defects requiring correction which are not considered “critical” to the item(s)/transaction currently under review?*, 8) *Are all effective dates assigned correct?*, and 11) *Were all systems updates completed when needed?*

Since implementation of the updated DRO Quality Review Checklist on October 1, 2020, RQRSs have cited the greatest number of IQR errors on the following:

- failure to provide laws and regulations applicable to the claim;
- failure to properly identify or document favorable findings;
- failure to include the proper EP on the Rating Decision Codesheet to include proper DOC for EP; and
- failure to apply or inappropriately apply an effective date equal to DOC.

Let's review some important reminders.

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Applicable Laws and Regulations:

For the period from October 1, 2020 through January 31, 2021, nationwide RQRSs cited 143 errors, or 11.9% of errors, on DROs for failure to provide applicable laws and regulations.

As a reminder, and pursuant to M21-1 III.iv.6.C.5.a, *Purpose of the Reasons for Decision*, M21-5 7.D.3.c, *SOC Format*, and M21-5 7.D.4.b, *How to Prepare an SSOC*, decision makers must provide a summary of laws and regulations applicable to the claim when preparing a decision or decision notice (such as a rating decision or administrative decision).

Employees should continue to use the evaluation builder and canned text in VBMS-R as most generated text within the system includes the applicable law and/or regulation.

To assist with this process, decision makers should refer to the [VA Schedule for Rating Disabilities](#), other available regulations on [eCFR.gov](#), the [Applicable Laws and Regulations – Citations \(DOC\)](#) guide, as well as Appeals Modernization Act (AMA) training materials.

Favorable Findings:

For the period from October 1, 2020 through January 31, 2021, nationwide RQRSs cited 131 errors, or 10.9% of errors, on DROs for not properly identifying or documenting favorable findings.

Pursuant to M21-1 III.iv.6.C.5.f, *Addressing Favorable Findings in the Rating Narrative*, and M21-1 III.v.2.B.1.b, *Decision Notice Requirements*, employees must provide a listing of findings that are favorable to the claimant when preparing a Rating Decision or decision notice.

Rating decisions generated on or after February 19, 2019 must address, as a narrative element for each decided issue, any findings made by the adjudicator that are favorable to the claimant under 38 CFR 3.104(c). Decision makers should follow the table in M21-1, III.iv.6.C.5.f. for determining when to address favorable findings in the *Reasons for Decision* section of the rating decision narrative.

Decision makers are not required to include favorable findings within Statements of the Case (SOC) and Supplemental Statements of the Case (SSOC).

Favorable findings, or lack thereof, are not subject to a critical error on the DRO Quality Review Checklist for legacy appeals.

We encourage employees to refer to the 'AMA Improved Decision Notices – Rating Decisions' training (TMS #: 4491280) in the VBA Learning Catalog and the '[VBMS-Rating: Favorable Findings Job Aid](#)' for assistance with identifying and documenting favorable findings within decisions.

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COVID-19 Claims and Appeals Processing Guidance:

Finally, for the period from October 1, 2020 through January 31, 2021, RQRSs nationwide cited 58 errors on DROs for failure to apply or inappropriately apply an effective date equal to the date of claim and 77 errors on DROs for failure to reflect the proper end product (EP) on the Rating Decision Codesheet, to include date of claim for the EP.

Of the 135 errors pertaining to effective dates and date of claim, 58 errors (43%) were related to COVID-19, and RQRS comments for the cited errors reference Policy Letter 20-02.

COVID-19 related errors account for at least 4.8% of all DRO error for the period from October 1, 2020 through January 31, 2021.

As part of VBA's efforts to continue processing claims during the COVID-19 pandemic, OAR would like to remind employees to review [Policy Letter 20-02, Novel Coronavirus \(COVID-19\) Claims and Appeals Processing Guidance](#) and the previously released [Frequently Asked Questions \(FAQ\) Document](#).

Employees should pay close attention to date of receipt guidance outlined and discussed within these documents.

In addition, the FAQ addresses consideration of postal tracking information, when available, in determining the date of construed receipt of correspondence.

OAR will continue to monitor DRO quality to determine any reductions in errors in these areas.

NATIONAL ERROR EXAMPLES

Target Audience: DROC QRTs and Management

Presenter: James Fogg, Program Analyst, OAR

National Authorization Error Example:

Error: Was necessary administrative decision or award generated/completed and correct?

OAR cited the following error:

Veteran requested the same office that conducted the prior decision to conduct the HLR. The decision does not notify the Veteran that the request could not be accommodated. M21-1 I.6.2.c. *Requests to Conduct HLRs at Specific Offices.*

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M21-5 5.2.c, and M21-1 I.6.2.c (Historical), *Requests to Conduct HLRs at Specific Offices*, state, in part:

When unable to accommodate the claimant's request regarding venue for the HLR, insert the following paragraph in the introduction of the decision document:

You requested to have your higher-level review conducted at the same office that decided your claim. Unfortunately, we were unable to fulfill your request because that office does not have personnel available to conduct higher-level reviews (see 38 CFR 3.2601(e)). Accordingly, we conducted your review at an office with the appropriate personnel available.

VA regulations and policy require VA to notify a claimant if their request for the same office that decided the issue under review cannot conduct the Higher-Level Review (HLR). In this case, the decision maker should have notified the Veteran that VA was unable to accommodate their request by inserting the paragraph required by the manual.

National Rating Error Example:

Error: Was the decision documentation correct?

OAR cited the following error:

Supplemental Statement of the Case (SSOC) dated 1/26/20 did not identify the basis for the denial of service connection on a secondary basis for scars/tightness. The SSOC only stated that "service connection on a secondary basis is not warranted" for this issue. Prepare an SSOC in the same format as a Statement of the Case (SOC). The Reasons for Decision of the SOC explains how the evidence supports the underlying decision and states the analysis of the evidence of record under the applicable legal principles governing the decision and indicates why most of the evidence is against the claim. M21-1 I.5.D.3.b & c; I.5.D.4.b

38 C.F.R. § 3.103(f)(5), *Notification of decisions*, states, in part:

Written notification must include in the notice letter or enclosures, or a combination thereof for denied claims, identification of the element(s) required to grant the claim(s) that were not met.

M21-1 I.5.D.3.c (Historical) and M21-5 7.D.3.c, *SOC Format* state, in part:

- Reasons for Decision:
 - includes the reasons for the decision, and
 - indicates why most of the evidence is against the claim

VA regulations and policy require VA decision makers to identify, for denied claims, the criteria required to grant the claim(s) that were not met. In this case, the DRO should have explained the basis for the denial of service connection on a secondary basis.

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EARLIER EFFECTIVE DATE DECISIONS

Target Audience: DROC QRTs and Management

Presenter: James Fogg, Program Analyst, OAR

OAR has noticed that the DROCs are issuing decisions concerning earlier effective dates, but not addressing the basis for the current evaluation or the criteria for the next higher evaluation, if applicable.

Decision makers must provide the information concerning the basis for the current evaluation and the criteria for the next higher evaluation, if applicable, if the decision maker is granting an earlier effective date. Pursuant to M21-1, III.iv.6.C.5.a., *Purpose of the Reasons for Decision*, the decision maker is required to include information concerning the basis for the evaluation and the requirements for the next higher evaluation, if applicable, when awarding the claim or when confirming and continuing an existing evaluation.

QUESTION FROM THE MARCH 2021 QUALITY CALL

1. Should the Informal Conference special issue remain on the contention once the Informal Conference is completed as failure to add this special issue is a critical error?

Response: Yes, the special issue should not be removed once the Informal Conference is completed. The addition of the Informal Conference special issue is required, per M21-4 6.A, *VSR Task Based Quality Review Checklist*.