

# Office of Administrative Review (OAR)

## Quality Call Bulletin

### May 2021

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#### VIRTUAL QUALITY REVIEW TEAM (QRT) SYMPOSIUM FEEDBACK CONCERNING QUALITY CALLS

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**Target Audience:** Decision Review Operations Center (DROC) QRTs and Management

**Presenter:** James Fogg, Program Analyst, OAR

**Feedback:**

OAR noted during the recent Virtual QRT Symposium that there were concerns from the DROCs that they were not receiving answers to questions presented during the Quality Calls. OAR attempts to answer every question asked, concerning a topic presented during that Quality Call, during that Quality Call. It has been OAR's practice not to repeat those answers in a subsequent Quality Call or in the Bulletin for the Quality Call. Additionally, if a DROC asks a question during a Quality Call that is not related to a topic presented during that Quality Call, OAR has asked the DROC to submit the question, through management and via email, to OAR's Compliance mailbox. If there are specific questions of which it appears OAR may not have answered, please submit them to your management and ask them to submit the questions to OAR, via email, to OAR's Compliance mailbox. However, before submitting these questions, we suggest the DROC listen to the audio recordings for the Quality Call that generated the question, as well as review the Bulletin for that Quality Call.

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#### VA FORM 20-0996, DECISION REVIEW REQUEST: HIGHER-LEVEL REVIEW

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**Target Audience:** DROC QRTs and Management

**Presenter:** Bryan Yost, Management Analyst, OAR

#### **Why a Re-Design was Needed:**

The Forms Re-Design project has been in progress for over a year and OAR is pleased to share one of the final products. OAR revised VA Form 20-0996, *Decision Review Request: Higher-Level Review*, as part of OAR's commitment to continually reviewing and improving the processes related to the Veterans Appeals Improvement and Modernization Act of 2017, otherwise referred to as AMA.

The Veterans Benefits Administration (VBA) owns two of the three decision review processes, with the Higher-Level Review being one of them. If the claimant disagrees with an original VA decision and believes the decision is based on an error of fact or law, the Higher-Level Review provides the opportunity for an experienced claims adjudicator to review the issue or issues, based on the evidence of record at the time of the prior decision.

OAR decided to update this form based on feedback from claimants and Veterans Service Officers (VSOs) that the form was confusing. VBA completed the re-design as a structured, managed project, with a goal to create a form which was simpler, easier for claimants to understand and complete, while also making it easier for VA to process.

#### **Re-Design Overview:**

Data drove the changes we made to the form, based on feedback from employees, VSOs, and accredited attorneys. This led OAR to making substantive changes to the form's content and formatting.

#### **Re-Design Specifics:**

Specifically, the improvements we made include:

- Using clearer, simpler language while making sure not to change the meaning
- Updating the instructions to ensure they are easier to read
- Adding new sections, including:
  - Separating claimant's Identification Information from the Veteran's Identification Information
  - Moving Benefit Type into a separate section to clearly allow this information to be seen and correctly filled out
  - Optional Informal Conference is now a section with revised contact options and specified areas for a representative's contact information
  - Separated Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC) Opt-In from Legacy Appeals Systems, with clearer instructions

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and a clearly identified circle for claimants to show they wish to opt-in following the issuance of an SOC or SSOC

- One of the most significant changes is the removal of the option for claimants to select the same office of jurisdiction processing from the form and instead fully explained this option in the instructions
- Added a homeless or at risk of homelessness check box
- Added examples in the specific issues of disagreement subsection
- Simplified the Certification and Signature section to minimize confusion regarding the appropriate location for claimants and authorized representatives to sign

#### **VA Form 20-0996 - Instructions:**

OAR modified the content in the instructions to make it more concise by removing extraneous words or content and refining the remaining instructions to ensure they are well-written and clearly formatted to match the form formatting.

The form date is April 2021, and the expiration date is 4/30/2024.

#### **VA Form 20-0996 – Identification Information:**

As you might have noticed in other recently updated VBA forms, OAR separated Veteran's Identification Information (Section I) from Claimant's Identification Information (Section II). This allows clearer identification between the Veteran and the claimant, if applicable.

#### **VA Form 20-0996 – Benefit Type:**

OAR created a new section called "Benefit Type" as this had previously been rolled into Veteran Identification Information, which didn't make sense. Having its own section helps ensure the benefit type will be filled out correctly.

#### **VA Form 20-0996 – Informal Conference:**

- This new section was based primarily on feedback.
  - OAR added the word "optional" to the title to ensure claimants understand they do not have to select a conference.
  - OAR also clearly delineated the selection box to elect for an informal conference, based on feedback that claimants sometimes seemed to select the option without meaning to select it.
- OAR made new time options available, which equate to a morning and an afternoon timeframe, and the claimant must elect either to have the scheduling attempt made to them OR to their representative.
- The instructions state:
  - VA will make 2 attempts to schedule the informal conference, and
  - that the attempt will be to schedule the informal conference NOT to hold the informal conference.

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- VA needs to make sure personnel are following this guidance.
- The representative contact information now includes fields for the representative's name, telephone number, and email address versus the old version which was just an open block.

#### **VA Form 20-0996 – Opt-In & Issues:**

OAR separated the SOC/SSOC opt-in section into its own section, based on feedback this section was often overlooked by claimants who were attempting to opt-into AMA.

- The opt-in section is simple, with instructions and a legal disclaimer that they cannot return to the legacy system if they elect to opt-into AMA.
- Any issues they wish to opt-in will still be input into the issues section.

OAR made changes to the Issues for Higher Level Review section (Section VI):

- including clarification of the instructions,
- examples of what an “issue” might be, and
- rewording of the phrase for the date subsection, which now states “Date of VA Decision Notification Letter”
  - OAR knows from employee feedback this is a confusing field for claimants and hopes the new wording will increase understanding by the claimant of what date to place in this column.

#### **VA Form 20-0996 – Certification & Signature:**

Finally, OAR simplified the Certification and Signature section (Section VII) by removing the Alternate Signer section and changing the titles and instructions to clearly identify who must sign the form for VA to accept it.

#### **Actions Required:**

As a result of the noted changes to the form, each business line and partner administration should take action to update internal documentation such as manuals, letters, internal web links, etc. to ensure the new version is correctly referenced.

#### **Questions:**

If you have any questions about the 20-0996 Redesign, please send your questions via email to Shireen Lackey, the project lead.

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#### VETERANS SERVICE REPRESENTATIVE (VSR) LEGACY REMAND DEVELOPMENT ERROR TREND ANALYSIS: FEBRUARY 2021

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**Target Audience:** DROC QRTs and Management

**Presenter:** Erik E. DeGregorio, Authorization Quality Review Specialist (AQRS), DROC District of Columbia (DC)

**Trend Analysis: Legacy Appeals Development:**

10 of the 22 Task #11 errors were tracked item related, and 5 of the 22 were Flash related.

- In February 2021, the DROCs cited 53 critical Individual Quality Review (IQR) errors for legacy remand development.
- System compliance errors accounted for 52.8% of the development errors, with incorrect tracked items and corporate flashes representing most errors in this category.

**Strategies for Improvement:**

- Provide guidance and analysis on the development of legacy appeals, using such tools as the Compensation and Pension Knowledge Management (CPKM) and the exam Electronic Performance Support System (EPSS) modules.
- Additional training on exam requests and application of Medical Disability Examination Program Office (MDEPO) Coronavirus disease 2019 (COVID-19) guidance.
- Encourage VSRs to utilize existing station Question and Answer (Q&A) resources (e.g., SharePoint, Help Desk, QRT Question Queue) for assistance on remand exam requests.
- Provide individual, small group or station training on Legacy Appeals: Board Remand Directed Development.

#### DEFERRAL JOB AID/ORDER OF OPERATIONS

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**Target Audience:** DROC QRTs and Management

**Presenter:** Olga Polyakova, Rating Quality Review Specialist (RQRS), DROC Seattle and Denise Henderson RQRS, DROC DC

**Impact:**

The first slide deals with the impact of deferral finalization and order of operations on the Rating Veterans Service Representative (RVSR) quality (in particular). RQRS cited 1/3 of the deferral error calls for not following deferral finalization procedures (i.e. electronic deferral/Deferral tab in VBMS) and order of operations. The other task 10 calls were nearly evenly split between deferrals for records that were already on file (7 calls) and

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deferrals for records that were not required (8 calls). Deferrals not encompassing all the required development or incomplete deferrals were the least cited subcategory of task 10 with only 4 errors cited during that period.

#### **Deferral Order of Operations:**

As shown on the second slide, per M21-4, 6.8.e, *Veterans Benefits Management System (VBMS) Deferrals* and the National Work Queue (NWQ) Playbook:

Using VBMS deferral functionality is required for any situation in which a claim returns to a previous step in the process.

VA tracks deferrals with Task 10 on the Quality checklist. The decision maker must follow the order of operations for deferrals. Please note, the decision maker must include manual references in the deferral (under the Deferral tab). However, the lack of a manual reference supporting the deferral does not rise to the level of an error on an IQR but it may result in a subsequent mitigation on the deferral.

**Reminder from QR:** The RVSR must utilize the Deferral tab functionality in VBMS **even if** they are going to immediately input the exam/MO/clarification request and that is the only development action needed. The chart shown during this QC separates the deferral order of operations into two categories, one for a deferral without a rating and one for a deferral with a partial rating. Once again, per M21-4, 6.8.e, *VBMS Deferrals* and the NWQ Playbook:

Using VBMS deferral functionality is required for any situation in which a claim returns to a previous step in the process.

The RVSR must follow the order of operations for deferrals and all deferral actions must be completed in the same day. It is essential to input the deferral before ordering the exam or opinion so the system correctly updates, the deferral closes, and the claim properly routes in the NWQ. Accordingly, failure to do so would be an error on the RVSR. This reminder is focused specifically towards RVSR deferrals because Decision Review Officers (DROs) never utilize the deferral tab on Higher-Level Reviews (HLRs).

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### **ERROR CALLS ON INCORRECT EFFECTIVE DATES FALLING WITHIN THE SAME MONTH AS THE CORRECT EFFECTIVE DATE**

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**Target Audience:** DROC QRTs and Management

**Presenter:** Lydia Turpin, RQRS, DROC St. Petersburg and James Fogg, Program Analyst, OAR

#### **Clear and Unmistakable Error (CUE) versus Harmless Error:**

As we know, a CUE under 38 CFR 3.105(a)(1)(i), *Revision of decisions: Definition of*

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*clear and unmistakable error* is an error of fact or law to which reasonable minds could not differ (it is undebatable). The error must be the sort which, had it not been made, would have manifestly changed the outcome at the time it was made. However, errors that would not have changed the outcome are considered harmless.

So, then we have the question, is an incorrect effective date that falls within the same month as the correct effective date considered a CUE or a harmless error since the error does not affect payment? An incorrect effective date error is not a "harmless" error because an effective date error inherently results in a manifestly changed outcome even if it doesn't affect payment. Preservation of disability rating evaluations under 38 CFR 3.951 and protection of service connection under 38 CFR 3.957 are based on the effective date granted. The decision maker must change an incorrect effective date based on a CUE since an incorrect effective date is never a harmless error.

#### **When is Due Process Required?**

VA must provide due process notification and period when:

- a decision adversely affects the beneficiary *AND*
  - creates a reduction in the amount of compensation currently being received
  - OR
  - creates a reduction in the past combined disability evaluation or other benefit entitlement.

If correction of a CUE does not result in a reduction in the current or a prior combined disability evaluation, due process is not required. However, the decision maker must correct the error by rating decision, with update of the Codesheet so that it reads how it should have read had no error been made.

**Note:** The current decision maker does not need to correct the previous error if a rating decision issued after the erroneous decision, but before the current decision, corrected the previous error and the correction is still showing in the system, i.e. the current Codesheet shows the correct information.

See M21-1 III.iv.8.B.1.a, *When to Prepare a Proposed Rating Decision*, M21-1 IV.ii.3.A.2.a, *Handling a CUE That, When Corrected, Will Not Benefit the Beneficiary*, and M21-1 IV.ii.3.A.2.b, *Exception to the Instructions in M21-1, Part IV, Subpart ii, 3.A.2.a* for further clarification.

#### **Quality Error:**

An incorrect effective date rises to the level of a critical quality error.

Failing to provide the correct effective date is a critical error under Task 8 of the DRO/RVSR Task Based Quality Review Checklists. It is irrelevant how many days off the incorrect effective date is, or whether the correct date falls within the same month as the

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incorrect date and therefore does not affect the Veteran's payment.

For example: Veteran submits a claim for service connection (SC) for asthma on September 18, 2020 and we incorrectly grant SC effective September 10, 2020:

Is this a CUE? **Yes.** An incorrect effective date error is a CUE because an effective date error inherently results in a manifestly changed outcome even if it doesn't affect payment, like this example.

Is a quality error warranted? **Yes.** The RQRS must cite a quality error under Task 8 of the DRO/RVSR Task Based Quality Review Checklists.

Is due process warranted? **No.** In this case, the correct effective date falls within the same month as the incorrect effective date, and therefore, a proposed rating decision is not needed because even though this CUE does not benefit the beneficiary, the Veteran's combined evaluation/payment is not affected/reduced.

In summary:

- The RQRS will cite a quality error under Task 8, if an effective date is incorrect (even if the incorrect effective date falls within the same month as the correct effective date or is only a day or two off from the correct effective date).
- The decision maker must issue a CUE rating decision to correct an effective date error (regardless of what the incorrect and correct effective dates are).
- Due process (a proposed rating decision) is not required UNLESS correcting the date will not benefit the beneficiary AND results in a reduction in the current or a prior combined disability evaluation (not the case for within the same month effective date error).

Please note the RQRS may also need to call a quality error under Task 11 if the error is not properly corrected by the appropriate CUE rating decision (i.e. an additional signature for the rating was not obtained when required or the Codesheet was not correctly updated for final CUE action)

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#### QUESTIONS FROM THE MAY 2021 QUALITY CALL

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1. Is the VA Form 20-0996, *Decision Review Request: Higher Level Review* incomplete if the date of the notification letter is missing?

**Response:** No, VA Form 20-0996, *Decision Review Request: Higher Level Review* is not incomplete if the date of the notification letter is missing. M21-5 5.2.a, *Definition: Complete Request* states, in part:



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The absence of the notification date on the HLR does not necessarily preclude the acceptance of the HLR request. If blank, the Intake Analyst or Claims Assistant should contact the Veteran and/or applicable representative for clarification of the date and document contact on VA Form 27-0820, *Report of General Information*.

2. If there is no overpayment when the incorrect effective date is within the same month as the correct effective date, then no due process is needed?

**Response:** Correct, if an incorrect effective date in the same month as the correct effective date does not result in an overpayment, due process is not needed. M21-1 I.2.A.1.b states, in part:

Due process in the administration of VA benefits informs the beneficiary of a proposed adverse action that could reduce or terminate benefits.

In most instances, due process applies when VA proposes to reduce or terminate a benefit.

3. When will OAR provide feedback on the questions from the Virtual QRT Symposium?

**Response:** On Thursday, May 6, 2021, OAR emailed the 2021 Virtual QRT Symposium Questions and Answers to the DROCs. This document provides answers to the questions asked during the 2021 Virtual QRT Symposium.

Also, on April 21, 2021, OAR released the Claim Accuracy Request (CAR) pilot FAQ to the Seattle and St. Petersburg DROCs within a Microsoft Teams CAR site.