

# Office of Administrative Review: Training Handout

## Higher-Level Review Returns (VA 4571667)


### Instructor Guide – Return Scenario 1



### Training Scenario

Veteran has two periods of service. Veteran filed a claim for service connection for sleep apnea and was denied without an examination because service treatment records did not show any complaints related to sleep. Veteran received the notification letter on January 4, 2021, and filed a higher-level review request on June 1, 2021. Decision Review Officer (DRO) issued the following decision to return for duty to assist error.

### Higher-Level Review Return

 Department of Veterans Affairs		HIGHER-LEVEL REVIEW RETURN	
POA American Legion	DATE OF RETURN: 06/04/2021	REGIONAL OFFICE NUMBER 317	
NAME OF CLAIMANT John Anderson		VA FILE NUMBER TRA-12-3456	
SECTION I			
THE HIGHER-LEVEL REVIEW BEING RETURNED RELATES TO THE FOLLOWING ISSUES:			
LIST ALL SPECIFIC ISSUES BEING RETURNED (Continue on additional page as necessary)		DATE OF VA DECISION NOTICE	
sleep apnea		01/04/2021	
SECTION II			
THE HIGHER-LEVEL REVIEW HAS BEEN RETURNED FOR THE FOLLOWING REASONS:			
DUTY TO ASSIST ERRORS (Select all that apply)			
<input type="checkbox"/> PRIVATE MEDICAL RECORDS	<input checked="" type="checkbox"/> FEDERAL MEDICAL RECORDS	<input type="checkbox"/> OTHER MEDICAL RECORDS	<input type="checkbox"/> EXAMINATION OR MEDICAL OPINION
REQUIRED DEVELOPMENT - DIFFERENCE OF OPINION (Select all that apply)			
<input type="checkbox"/> FEDERAL RECORDS	<input type="checkbox"/> OTHER RECORDS	<input type="checkbox"/> EXAMINATION OR MEDICAL OPINION	<input type="checkbox"/> OTHER DEVELOPMENT
EXPLANATION FOR ITEMS CHECKED (Continue on additional page as necessary)			
<p>STRs from the Veteran's 2nd period Army service (1/5/90-9/5/97) are not of record. Only the records from the 1st period Air Force service are of record. Please develop for the STRs from the 2nd period of service. III.iii.2.B.2.e. After those are obtained, please review for the need for an exam and medical opinion based on those records.</p>			



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#### Classroom Discussion

**NOTE:** Allow students to ask questions as needed about this exercise, outside the pre-determined discussion questions. This is an exercise to introduce students to real sample remands and development actions from actual claims. It is important that their questions and thoughts drive the discussion.

1. Why did the DRO determine there was a duty to assist error in this claim?

**Instructor Discussion Point:** *STRs were not complete; since this is a direct service connection claim, all STRs must be of record.*

2. Review the M21 reference cited by the DRO. What are the steps the VSR should undertake to obtain the missing records?

**Instructor Discussion Point:** *Request the STRs from the RMC based on the Veteran's date of discharge from the Army.*

3. VSR receives the missing STRs. What should the VSR do next?

**Instructor Discussion Point:** *Review the STRs and determine if there is sufficient evidence for an exam and medical opinion; request exam and medical opinion if there is sufficient evidence; seek assistance from DRO if unsure whether an exam and medical opinion are needed.*

*Once all development is completed in accordance with the DRO's instructions, the VSR should refer the claim to an RVSR as Ready for Decision. The RVSR should then review the claim and rate as with any other claim, if all development is complete. If additional development is needed, the RVSR should defer the claim back to the VSR with instructions.*

