

Office of Administrative Review: Training Handout

Legacy Appeals: Board Remands (VA 4571676)

Instructor Guide – Remand Scenario 1



Training Scenario

Veteran's appeal was for increased evaluation in bilateral hearing loss and individual unemployability (IU). Explore and discuss this case as follows:

- [Board Remand](#)
- [Classroom Discussion](#)

Board Remand

REASONS FOR REMAND

1. An initial, compensable rating for a bilateral hearing loss disability is remanded.

While a VA audiology examination was conducted in 2019 as directed in our 2018 remand, there was a subsequent VA audiogram conducted at VA in June 2020. The report of this audiogram is not of record, but the VA treatment notes reflect that it “may be viewed in VISTA imaging.” We also note that the record reflects that the Veteran apparently got hearing aids at about that time, as a September 2020 primary care note indicates he received hearing aids at a hearing exam four months ago.

This is VA medical evidence which must be obtained and added to the claims folder prior to the Board's review of this claim on the merits, consistent with VA's duty to assist.

2. IU is remanded.

Where a claimant, or the record, raises the question of unemployability due to the disability for which an increased rating is sought, then part of the increased rating claim is an implied claim for IU. *Rice v. Shinseki*, 22. Vet. App. 447 (2009). The IU claim was articulated at his Board hearing and identified as an issue in the 2018 remand. Ultimately, because a decision on the hearing loss rating issue being remanded could significantly impact a decision on the issue of IU, the issues are inextricably intertwined. Adjudication of the Veteran's IU claim must therefore be remanded.

The matters are REMANDED for the following action:

1. Obtain a copy of the VA audiogram conducted in June 2020 which “may be viewed in VISTA imaging,” along with any additional audiological treatment records for hearing loss not yet of record.
2. Then, conduct any development of the claims deemed necessary, and readjudicate these claims. If any of these claims remain denied, then issue to the Veteran a Supplemental Statement of the Case. After allowing an appropriate amount of time for response from the Veteran, return the claim(s) to the Board.



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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. Based on the remand directive, what action should take the VSR take first and why?



Instructor Discussion Point: The first action should be to obtain the VA audiogram. Also, ensure that any other audiological records for hearing loss are associated with the file.

2. Where can the VSR find the June 2020 VA audiogram?

Instructor Discussion Point: If not in CAPRI, then use VISTA imaging.

3. What other action does the VSR need to take for the IU issue?

Instructor Discussion Point: Review the claim to ensure there is no other missing development on the IU issue (i.e. ensure that all employment verification was completed).