

# Office of Administrative Review: Training Handout

## Legacy Appeals: Board Remands (VA 4571676)

### Instructor Guide – Remand Scenario 2

#### Training Scenario



Veteran's appeal was for service connection for a skin condition and a sleep disorder. Explore and discuss this case as follows:

- [Board Remand](#)
- [Subsequent Development Letter After Remand](#)
- [Exam Request from Remand](#)
- [Classroom Discussion](#)

#### Board Remand

##### REASONS FOR REMAND

1. Entitlement to service connection for a skin condition is remanded.

The Board finds that additional development must be completed before the Veteran's claim for service connection for a skin condition can be finally adjudicated. The VA examiner with whom the Veteran met in February 2020 noted several skin-related diagnoses, opining that none were etiologically related to conceded in-service herbicide agent exposure, adding only the conclusory assessment that no diagnosed condition "began in service or is otherwise related to service," with little explanation. The examiner cited several factors, including the Veteran's fair skin and inability to tan, but did not explain why these factors, coupled with in-service sun exposure, might have coalesced to cause in-service onset, or to contribute substantially to post-service onset, as the Veteran has claimed.

On remand, a new VA examination must be conducted, and a thorough and reasoned medical opinion as to etiology obtained.

2. Entitlement to service connection for a sleep disorder is remanded.

Similarly, the VA examiner with whom the Veteran met in February 2020 for evaluation of his claimed sleep disorder confirmed a current diagnosis of obstructive sleep apnea, but indicated only that the condition was "less likely as not due to herbicide exposure and is secondary to upper airway anatomic conditions leading to airway obstruction and hypoxemia." No assessment was made with respect to in-service onset, or to any direct etiological connection to service. Moreover, no further explanation was furnished as to why herbicide agent exposure bore no causative or aggravating relationship to development of sleep apnea.



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On remand, a new VA examination must be conducted and an expert medical opinion as to etiology obtained, with a clear, thorough, and reasoned medical opinion furnished addressing all theories of entitlement the Veteran has proposed.

The matters are REMANDED for the following action:

1. After obtaining the necessary authorization, obtain any outstanding VA and private treatment records relevant to the Veteran's claims.
2. Then, schedule the Veteran for a VA examination to explore the presence and etiology of a skin disorder or disorders. All indicated tests and studies should be conducted and all clinical findings reported in detail. The entire claims file should be made available to and be reviewed by the examiner in conjunction with this request.

Please identify all current skin-related diagnoses. For any identified diagnosis, please state whether it is at least as likely as not (e.g. at least a 50 percent probability or greater) that the condition began in service or is otherwise related to service, to include as secondary to in-service exposure to herbicide agents. The examiner is reminded that such exposure is conceded in the Veteran's case.

3. Schedule the Veteran for a VA examination to explore the presence and etiology of sleep apnea. All indicated tests and studies should be conducted and all clinical findings reported in detail. The entire claims file should be made available to and be reviewed by the examiner in conjunction with this request.

The examiner should state whether is at least as likely as not (e.g. at least a 50 percent probability or greater) that sleep apnea began in service or is otherwise related to service, to include as secondary to in-service exposure to herbicide agents. The examiner is reminded that such exposure is conceded in the Veteran's case

4. Review the opinions and any examination reports to ensure that they are in complete compliance with the directives of this remand. If an opinion or report is deficient in any manner, the AOJ must implement corrective procedures.
5. Then readjudicate the claims.



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#### Subsequent Development Letter After Remand

##### Important Information

- The Board of Veterans Appeals (BVA) has remanded your appeal for additional development. At this time, you may provide us with any information that you feel may affect your claimed disability(s) on appeal
  - As we continue to work on your appeal for skin condition and sleep disorder, we are requesting you to submit any outstanding medical treatment records if you received treatment at any government and/or non-government medical facilities that was not submitted as evidence for your claim. This does not mean that you must resubmit evidence that you have already sent us. We are only interested in received information that is not already of record at VA.
  - If you are unable to obtain these medical records and want us to try to obtain them on your behalf, please complete and return the enclosed *VA Form 21-4142, Authorization to Disclose Information*, and *VA Form 21-4142a, General Release for Medical Provider Information*, so that we can request treatment records from your private medical sources. Although we will request your private treatment records and VA records, it is ultimately your responsibility to make sure we receive this evidence to support your appeal.
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## Exam Request from Remand

Veteran Priority Issues:

- Remand

**sleep disorder**  
**Classification: Respiratory**  
**Type: NEW**

### Standard Language Output Text:

The Veteran is claiming service connection for sleep disorder. Please examine the Veteran for a chronic disability related to his or her claimed condition and indicate the current level of severity.

### Special Instructions:

Schedule the Veteran for a VA examination to explore the etiology of his diagnosed obstructive sleep apnea. All indicated tests and studies should be conducted and all clinical findings reported in detail. The entire claims file should be made available to and be reviewed by the examiner in conjunction with this request.

The examiner should state whether it is at least as likely as not (e.g. at least a 50 percent probability or greater) that sleep apnea began in service or is otherwise related to service, to include as secondary to in-service exposure to herbicide agents. The examiner is reminded that such exposure is conceded in the Veteran's case.

For this Contention, VBMS expects a results package to at minimum include data pertaining to the following DBQ(s):

- DBQ RESP Sleep Apnea
- DBQ Medical Opinion

**skin condition**  
**Classification: Skin**  
**Type: NEW**

### Standard Language Output Text:

The Veteran is claiming service connection for skin condition. Please examine the Veteran for a chronic disability related to his or her claimed condition and indicate the current level of severity.

### Special Instructions:

Then, schedule the Veteran for a VA examination to explore the presence and etiology of a skin disorder or disorders. All indicated tests and studies should be conducted and all clinical findings reported in detail. The entire claims file should be made available to and be reviewed by the examiner in conjunction with this request. Please identify all current skin-related diagnoses. For any identified diagnosis, please state whether it is at least as likely as not (e.g. at least a 50 percent probability or greater) that the condition began in service or is otherwise related to service, to include as secondary to in-service exposure to herbicide agents. The examiner is reminded that such exposure is conceded in the Veteran's case.

For this Contention, VBMS expects a results package to at minimum include data pertaining to the following DBQ(s):

- DBQ DERM Skin Diseases
- DBQ Medical Opinion



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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. List the development actions required by the Board.

***Instructor Discussion Point:** Review the claim to determine if there are any outstanding medical records that must be requested and obtain necessary permissions from Veteran to request the records; request medical provider information from Veteran and develop accordingly; request skin exam with medical opinion; request sleep apnea exam with medical opinion.*

2. State the form that the VSR must request in the subsequent development letter.

***Instructor Discussion Point:** VA Form 21-4142 for medical records.*

3. Which exams must the VSR request? Is a medical opinion required on either/both? What type of medical opinion (i.e. direct, secondary, etc)?

***Instructor Discussion Point:** Skin and sleep apnea; both require medical opinions; both need direct medical opinions to determine if the conditions are related to service or related to herbicide exposure.*

4. VSR receives the exams back from the provider. Does that end the development required of the VSR?

***Instructor Discussion Point:** No; the VSR needs to review the exams to ensure that the exam is complete and the examiner returned the medical opinion that was requested.*

