

# Office of Administrative Review: Training Handout

## Legacy Appeals: Board Remands (VA 4571676)

### Instructor Guide – Remand Scenario 4

#### Training Scenario



Veteran's appeal was for service connection for PTSD and acquired psychiatric disorder, as well as IU. Explore and discuss this case as follows:

- [Board Remand](#)
- [Memo on Directed Development for Remand](#)
- [Exam Request from Remand](#)
- [Classroom Discussion](#)



#### Board Remand

##### REMANDED

Service connection for posttraumatic stress disorder (PTSD).

Service connection for an acquired psychiatric disorder other than PTSD.

A total disability rating based on individual unemployability due to service-connected disability (IU).

##### REASONS FOR REMAND

In the August 2018 remand, the Board of Veterans' Appeals (Board), in part, instructed the agency of original jurisdiction (AOJ) to obtain the Veteran's complete VA Vocational Rehabilitation file and associate it with the claims file. A review of the record does not reflect that the VA Vocational Rehabilitation file was sought or obtained. Therefore, another attempt should be made to associate those records with the file.

As part of the August 2018 remand, the Veteran underwent a VA psychiatric examination in August 2019. The examiner indicated that the Veteran was diagnosed with unspecified depressive disorder and unspecified anxiety disorder. Although the examiner stated that it was at least as likely as not that the psychiatric disorders had their onset during service, the explanation/rationale completely undercut the stated opinion.

Further, the examiner provided no opinion as to whether it was at least as likely as not that the diagnosed psychiatric disorders were the result of disease or injury in service, to include notations of disciplinary actions in service.



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Where the remand orders of the Board are not complied with, the Board errs as a matter of law when it fails to ensure compliance. *Stegall v. West*, 11 Vet. App. 268 (1998). Consequently, a remand is required.

The matters are REMANDED for the following action:

1. Obtain updated VA clinical records and associate them with the claims file.
2. Obtain the Veteran's complete VA Vocational Rehabilitation file and associate it with the claims file.
3. Return the claims file, to include a copy of this remand, to the August 2019 VA examiner, if available. If not available, the requested opinion should be provided by another clinician.

The clinician is asked to review the claims file, to include a copy of this remand, and provide the following opinion:

- Is it at least as likely as not that the Veteran's psychiatric disorders had their onset in service, or are otherwise the result of a disease or injury in service, to include notations of disciplinary actions in service?

All opinions expressed must be accompanied by a complete rationale.

4. If the clinician determines that an examination is necessary in order to provide the requested opinions, then one should be scheduled.

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#### Memo on Directed Development for Remand

Purpose: Misdirected Development

Mitigation For Missed Dev of VR&E

BVA remand directed development:

2. Obtain the Veteran's complete VA Vocational Rehabilitation file and associate it with the claims file.

Directed Error:

Please complete Directive #2. Once complete please send the claims file back to the examiner who provided the 03/30/2021 medical opinion for an addendum opinion. The VA examiner must state that they reviewed the c-file to include the records that were not available when they wrote their medical opinion on 03/30/2021 and state whether the evidence provided changes the previous opinion rendered. M21-5 7.G.4.a

Problem with this is SHARE shows these Federal records never existed (III.iii.1.C.2.i) since VR&E was never established this would be considered over development (Shoffner v Principi, M21-5 3.A.12.a, M21-4 6.A.a.

#### Exam Request from Remand

Veteran Priority Issues:

- Remand

**Post Traumatic Stress Disorder (PTSD)**

**Classification: Post Traumatic Stress Disorder (PTSD) Personal Trauma - Mental Disorders**

**Type: REP**

**Standard Language Output Text:**

The Veteran is claiming service connection for Post Traumatic Stress Disorder (PTSD). Please examine the Veteran for a chronic disability related to his or her claimed condition and indicate the current level of severity.

If more than one mental disorder is diagnosed please comment on their relationship to one another and, if possible, please state which symptoms are attributed to each disorder. PTSD is claimed due to the following stressor(s): claimed stressors due to military duties and abuse during service

**MEDICAL OPINION REQUESTED: Direct Service Connection**

As per the Remand request:

Is it at least as likely as not that the Veteran's psychiatric disorders had their onset in service, or are otherwise the result of a disease or injury in service, to include notations of disciplinary actions in service?

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All opinions expressed must be accompanied by a complete rationale, CARSWELL BRITTANY B PH.D Psychology at QTC.

Clinician: If using the ACE process to complete the Medical Examination, please explain the basis for the decision not to examine the Veteran, and identify the specific materials reviewed to complete the Medical Examination.

The Veteran does not need to report for all examinations for the following Contention:

- Post Traumatic Stress Disorder (PTSD)

NOTE: Your (examiner) review of the record is NOT restricted to the evidence listed below. This list is provided in an effort to assist the examiner in locating potentially relevant evidence.

1. Complete Service treatment records
2. BVA Remand 01/06/2021 (TAB AA)
3. C&P Examinations 08/21/2019 (TAB AB, AC, AD)

Special Instructions:

As per the Remand requesting review and Return the claims file, to include a copy of the remand, to the August 2019 VA examiner [CARSWELL BRITTANY B PH.D Psychology at QTC], if available. If not available, the requested opinion should be provided by another clinician.

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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. Identify the actions required by the Board remand.



***Instructor Discussion Point:*** Obtain updated VA treatment records and upload to claims folder; obtain Vocational Rehabilitation file and upload to claims folder; request medical opinion; request exam if necessary.

2. Why did the VSR complete a memo for directed development?

***Instructor Discussion Point:*** Remand asked for Vocational Rehab records but those records do not exist.

3. Which is required: a new exam or an addendum to a previous exam?



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***Instructor Discussion Point:*** Addendum only. New exam is required if the examiner states it is required.

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

***Instructor Discussion Point:*** No, VSR must review the addendum to ensure it was completed in accordance with the instructions. The medical opinion asked if the diagnosed mental condition had its onset in service. If the medical opinion that is returned does not answer that question, then it must be sent back.