

# Office of Administrative Review (OAR)

## Quality Call Bulletin

### November 2021

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#### PENSION ERROR TRENDS

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**Target Audience:** DROC Management, Quality Review Teams (QRT), Decision Review Officers (DRO), Rating Veterans Service Representatives (RVSR) and Veterans Service Representatives (VSR)

**Presenter:** Suzanne Ribish, Management and Program Analyst, OAR Program Administration (PA)

#### **Pension Error Trends:**

OAR Compliance began reviewing pension work completed by the DROCs in July of 2021. Several trends for errors cited on National DROC Pension Authorization Quality Reviews were observed that we would like to present on today's call that affect benefit entitlement.

While there is not currently an abundance of data since OAR Compliance recently began conducting national reviews on this work type, there were several notable error trends observed as follows:

- Missed Issues
- Correction of Issues on Prior Claims
- Income Counting Issues

We will go over several examples of actual errors cited as well as some examples of scenarios for the trends to demonstrate the issues noted.

#### **Missed Issues:**

Missed issues represented the most frequently occurring error among pension and survivor benefit related work. It is important to keep in mind, particularly with survivor benefits cases, that the likelihood of needing to address several different benefit types will be common; for example, Survivor's Pension, Dependency and Indemnity Compensation (DIC) benefits, month of death benefit, burial benefits, and accrued benefits.

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Regulations require VA to address all issues that the requestor identifies on VA Form 20-0996, *Decision Review Request: Higher Level Review*. It is essential that claims processors thoroughly review VA Form 20-0996 to identify all pertinent issues.

An example of an error that relates to this error trend was cited as follows:

**Error Cited by OAR:** Higher level review award dated 6/30/21 and notification letter dated 7/1/21, failed to adjudicate the issues of entitlement to death pension and accrued benefits, which were expressly claimed on VA Form 20-0996 received on 6/9/21. M21-5 5.6.a-b.

SECTION VI - ISSUES FOR HIGHER-LEVEL REVIEW	
19. INDICATE EACH ISSUE DECIDED BY VA FOR WHICH YOU ARE REQUESTING A HIGHER-LEVEL REVIEW. Refer to your decision notice(s) for a list of adjudicated issues. For each issue, identify the date of VA's most recent decision on the issue. You may attach additional sheets, if necessary - include your name and file number on each additional sheet. <b>IMPORTANT:</b> You may only list issues for the benefit type selected in Section III. A separate form is required for each benefit type.	
19A. SPECIFIC ISSUE(S) OF DISAGREEMENT (REQUIRED)	19B. DATE OF VA DECISION NOTIFICATION LETTER (REQUIRED)
Example 1: Service connection for left knee Example 2: Earlier effective date for hearing loss Example 3: Reimbursement for non-VA emergency care Example 4: Denial of entitlement to VR&E benefits and services Example 5: Entitlement to Service-Disabled Veterans Insurance	MM/DD/YYYY MM/DD/YYYY MM/DD/YYYY MM/DD/YYYY MM/DD/YYYY
We denied your claim for dependency and indemnity compensation (DIC), death pension and accrued benefits.	05 - 11 - 2021

As you can see from review of the submitted 20-0996, the claimant indicated they would like a review of the entire decision dated 5/11/2021. While they are not separated out individually on the form, we still must address all the issues.

Another issue that is important to point out with initial claims for survivor's benefits, is ensuring the initial decision addressed all issues of survivor's pension, DIC, and accrued, regardless of which box was checked on the VA Form 21-534. 38 CFR §3.152(b), *Claims for Death Benefits*, provides that a submission of a 534EZ is a claim for all benefits and VA is obligated to address the claimant's entitlement to all benefits: DIC, Survivor's Pension and accrued benefits. M21-1 II.iii.1.A.3.e, *Non- Discretionary Application of 38 CFR §3.152(b)*, also contains discussion on this topic. This note also ties in with our next trend observed, since we must ensure the prior decision was rendered correctly.

#### Correction of Issues on Prior Claims:

Our next trend noted the need for correction of issues on the prior claims. For this trend, rather than go over some of the errors cited verbatim, we have several examples to consider. It is important to review the prior claim to ensure it was worked correctly.

#### Examples:

- While the overall decision to deny due to excessive income or terminate due to excessive income was in fact correct, there were income counting issues not addressed by the Higher-Level Review (HLR). We must ensure that income was

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- counted correctly on the initial claim that the individual is requesting review upon.
  - Income was reported but not considered in the decision
  - Income was considered with an incorrect total amount
- Month of death benefit was not amended after increased entitlement for a beneficiary was granted on an accrued claim
- The initial decision was correct; however, the prior notification letter did not provide all necessary notifications.
  - Correct time limits.
  - Correct notification of income considered when determining income for VA purposes (IVAP).

Please ensure we properly notify the claimant of these things in the HLR notification letter if they were not previously.

#### **Income Counting Issues:**

It is critical to ensure we properly account for, and consider, all income when determining the beneficiary's overall entitlement.

There are two examples of errors cited which particularly highlight this issue.

**Error Cited by OAR:** The \$255 Social Security Lump Sum death benefit is a one-time payment (nonrecurring income). It was not removed from the award correctly after the 12-month period following receipt. M21-1 IX.iii.1.E.6.a.

- In this example, the \$255 was correctly considered on the award, however, it was not removed after the 12-month period. It is critical that nonrecurring income is removed appropriately after the 12-month period so that the beneficiary's IVAP, and thus, their monthly rate of payment is calculated correctly. The surviving spouse is entitled to an increased rate of payment following the removal of the \$255, as such, this caused an underpayment of benefits.

**Error Cited by OAR:** Interest income is evidenced on a bank statement in file dated 5/21/2021 and was not considered on the award. See bank statement showing receipt of an interest credit on 3/31/221 (which is during the widow's initial year) in the amount of \$8.10. M21-1 IX.iii.1.E.6.i.

- This example highlights the importance of reviewing all documents in the file for any possible income that may be listed on supporting documentation that was not reported on the VA Form 21-526EZ (in the case of a Veteran) or the VA Form 21-534 (in the case of a surviving spouse). The beneficiary potentially could be overpaid in this type of scenario, if we are not properly considering all income evidenced in the file.

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#### LAWS, REGULATIONS AND BOARD OF VETERANS' APPEALS (BOARD) GRANTS

**Target Audience:** DROC Management, QRT, DROs, RVSRs, and VSRs

**Presenter:** JaVon Lázaro, Senior Management and Program Analyst, OAR PA

**References:**

- 38 CFR §3.103(f), *Procedural due process and other rights: Notification of decisions*
- M21-1 V.iv.1.A.5.a, *Purpose of the Reasons for the Decision*
- M21-1 V.iv.1.A.5.e, *Using VBMS-R to Produce Text for the Rating Narrative*
- Appeals Modernization Act (AMA) Frequently Asked Questions (FAQs)

**Laws, Regulations and Board Grants:**

38 CFR §3.103(f) indicates the claimant or beneficiary and his or her representative will be notified in writing of decisions and the written notification must include a summary of the laws and regulations applicable to the claim.

M21-1 V.iv.1.A.5.a provides what decision elements must be discussed in a Rating Decision, including the laws and regulations applicable to a claim.

M21-1 V.iv.1.A.5.e states when using VBMS-R:

“System-generated language will typically be sufficient to satisfy the requirement for inclusion of any laws and regulations applicable to the claim. In the event, however, that all applicable laws or regulations are not cited via system automation, identify those outstanding laws or regulations by inserting free-text parenthetical annotations.”

If the decision-making process included consideration of other applicable laws and regulations or the generated regulations are erroneous or inadequate, the decision maker should update the reasons for decision to reflect the appropriate regulations. The regulation merely requires a summary of the laws and regulations applicable to the claim.

Note the relevant AMA FAQ indicates:

“There is nothing in 38 CFR 3.103(f) that limits applicability of providing laws and regs to specific types of claims.”

A subsequent relevant AMA FAQ states:

“You should cite regulations that informed any decision element you include in your narrative, including weighing of evidence. If there is regulatory authority for any part of your decision, it should be cited.”

Board decisions are neither law nor regulation to be cited but rather a decision to implement. The authority to implement Board decisions belongs to Rating Veterans Service Representatives (RVSRs) for rating issues and VSRs for non-rating issues.

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RVSRs and VSRs must take care to ensure all required elements, as noted in 38 CFR 3.103(f) and M21-1 V.iv.1.A.5.a, are provided in the rating decision, and to update any erroneous or missing VBMS-R generated information, as necessary.

Board Decisions included with the current VBA Rating Decision would fulfill the requirement in 3.103(f) to provide summary of laws and regulations applicable to the claim. 3.103(f) requires “Written notification must include in the notice letter or enclosure or a combination thereof, all of the following elements...”, thus, the issued Board Decision with all laws and regulations pertaining to the decision must be included with the Rating Decision at that time if the decisionmaker does not separately list the laws and regulations in the Reasons and Bases of the rating decision effectuating the Board grant.

If the Board Decision accurately cites the applicable law and regulations and is not included with the rating decision/notification, then this would be a non-critical error requiring correction.

#### **PRESUMPTIVE SERVICE CONNECTION AND THE REQUIREMENT FOR FAVORABLE FINDINGS AND LAWS AND REGULATIONS**

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**Target Audience:** DROC Management, QRTs, DROs, RVSRs and VSRs

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

#### **References:**

- 38 C.F.R. §3.103(f)(3) & (4), *Procedural due process and other rights: Notification of decisions*
- 38 C.F.R. §3.104(c): *Binding nature of decisions: Favorable findings*
- M21-1 II.iii.1.A.2.e, *Considering Unclaimed Theories of SC*
- M21-1 V.iv.1.A.5.a, *Purpose of the Reasons for Decision*
- M21-1 V.iv.1.A.5.e, *Using VBMS-R to Produce Text for the Rating Narrative*
- Compensation Services Email, *For RQRSs: Favorable Findings & Supplemental Claims*, dated July 23, 2021

#### **Presumptive Service Connection:**

When to address presumptive service connection:

- A claim for service connection (SC) encompasses all potential theories of SC, whether claimed or unclaimed.
- All claims must be liberally read to consider other potential theories of SC raised by the evidence of record, to include based upon presumption.
- The claimant need not specifically claim SC based upon presumption, but it is the duty of the decision maker to recognize and consider SC based upon presumption where the evidence supports it.

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- Although VA is obligated to determine all potential claims raised by the evidence, theories of SC which have no support in the record need not be specifically addressed in a rating decision.

#### **Favorable Findings in a Rating Decision Denial:**

- If denying the claim, then the Reasons for Decision must address:
  - theory of SC being addressed in the decision (for example, direct SC or presumption) if applicable and
  - findings favorable to the claimant, if any.
- If the rating decision addresses multiple bases of SC and/or multiple denial reasons, then the decision maker must add relevant text to the Rating Narrative to discuss the favorable findings relative to each claimed and reasonably raised theory of SC.
- When denying entitlement to the sought benefit, the Rating Decision is only required to address the claimed theory of SC and those reasonably raised, along with any favorable findings applicable only to the claimed theory and those reasonably raised. But what should the decision maker do about laws and regulations?

#### **Laws and Regulations in a Rating Decision:**

The Rating Decision must include all laws and regulations applicable to the theory of entitlement being addressed:

- If the RVSR/DRO is only discussing direct SC, which was the only claimed theory, then the decision maker only needs to include applicable and direct favorable findings and those laws and regulations applicable to direct service connection.
- If the RVSR/DRO is only discussing presumptive SC, whether raised by the evidence of record or the only claimed theory, then the decision maker only needs to address applicable and presumptive favorable findings and those laws and regulations applicable to presumptive service connection.

What should the RQRS do when the rating decision includes accurate favorable findings irrelevant to the currently addressed theory(ies) of entitlement or laws and regulations not applicable to the currently address theory(ies) of entitlement?

#### **RQRS Identified Errors:**

- It is not an error if the rating narrative includes accurate favorable findings inapplicable to the theory(ies) of entitlement being addressed in the rating narrative or laws and regulations inapplicable to the theory(ies) of entitlement being addressed in the rating narrative.
- Having too many accurate favorable findings or laws and regulations is acceptable, but we should not encourage this.

#### **Summary:**

- The decision maker must provide accurate favorable findings and applicable laws and regulations when denying the claim, failure to do so is an error.

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- The RQRS will not cite an error for including or not including inapplicable but accurate favorable findings or inapplicable laws and regulations, but we should not encourage this.

#### OAR FISCAL YEAR 2021 (FY21) SITE VISIT FINDINGS

**Target Audience:** DROC Management, QRTs, DROs, and RVSRs

**Presenter:** Kat Calvitti, Program Analyst, OAR PA

#### FY21 Site Visit Findings:

During FY21, OAR conducted virtual site visits to assess workload and operational activity at each DROC. In preparation for the site visits, the Site Visit Team conducted random quality reviews to determine claims processing accuracy.

- The Site Visit Team reviewed a total of 211 claims and cited 33 errors for 84.4% accuracy.
  - The error trends identified were related to assigning incorrect effective dates, failing to identify or properly document applicable favorable findings and failing to provide applicable laws and regulations in the decision.
- The Site Visit Team called 15 action items related to quality and training as follows:
  - 8 action items related to training; action items included completion of mandatory training, station selected training and specialized training
  - 7 action items related to local quality assurance; action items included IQR completions, IQR overturns and targeted IPRs

#### Local Quality:

Local Quality Accuracy				
Position	# Claims Reviewed	# Applicable Tasks Reviewed	# Errors Cited	Accuracy
CA	626	-	18	97.1%
VSR	6,609	21,966	817	96.3%
RVSR	2,328	15,551	794	94.9%
DRO	4,209	26,087	721	97.2%

The Site Visit Team reviewed local quality data for the site visit review periods. The local quality accuracy shown on this slide is a total of the data compiled from the site visits. The site visit review periods were:

- Seattle DROC: October 1, 2020 – February 28, 2021
  - *Note:* Task-based applicable quality results were not obtained for the site visit; however, on October 27, 2021, the task-based applicable report was used to obtain data for the review period which is included in this slide

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- St. Petersburg DROC: October 1, 2020 – April 30, 2021
- DROC DC: October 1, 2020 – July 31, 2021

#### Local Quality Error Trends:

The Site Visit Team identified the following local error trends:

- CA:
  - Systems Compliance: tracking and routing of claims
- VSR:
  - Systems Compliance: failure to update all periods of active duty, add necessary flashes, and tracked items
  - Exams: incorrect exam type/DBQ selected, incorrect jurisdiction requested
- RVSR:
  - Failure to identify or document favorable findings: decision makers introduced extraneous theories of entitlement without including necessary favorable findings
  - Failure to provide applicable laws and regulations in the decision
  - Effective Dates: failure to assign the correct effective date
- DRO
  - Failure to identify or document favorable findings: decision makers introduced extraneous theories of entitlement without including necessary favorable findings
  - Failure to provide applicable laws and regulations in the decision

#### National Quality:

National Quality Accuracy			
Type	# Claims Reviewed	# Critical Errors Cited	Accuracy
Authorization (Claim Based)	137	4	97.1%
Rating (Claim Based)	205	33	83.9%
Rating (Issue Based)	717	60	91.6%

The Site Visit Team reviewed national quality data for the site visit review periods. The national quality accuracy shown on this slide is a total of the data compiled from the site visits. The site visit review periods were:

- Seattle DROC: October 1, 2020 – February 28, 2021
- St. Petersburg DROC: October 1, 2020 – April 30, 2021
- DROC DC: October 1, 2020 – July 31, 2021



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The FY21 Director's Performance Dashboard (DPD) reflected the following goals:

- Authorization accuracy (at fully successful level): 90%
  - Note: Authorization (Claim Based) data does not include DROC DC
- Rating (IB) accuracy (at fully successful level): 96%
- There is not a goal for Rating (Claim Based) on the DPD

#### National Quality Error Trends

The Site Visit Team identified the following error trends:

- Authorization:
  - Failure to properly notify the Veteran (Task 10): The Veteran requested the higher-level review be conducted at the same office as the previous decision; however, the decision did not include the notice that this could not be granted.
  - Systems compliance (Task 11): Failure to update all periods of active duty
  - Incorrectly generating award (Task 7)
- Rating:
  - Record did not show VCAA compliant development (Task 4): majority cited for insufficient exam/medical opinion
  - Effective dates: failure to assign correct effective dates

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#### FOLLOW-UP QUESTION AND ANSWER

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**Target Audience:** DROC Management, QRTs, DROs, RVSRs and VSRs

A question was asked during and following the November 2021 Quality Call, which is addressed below.

#### Pension Error Trends

**Original Question Asked:** If an HLR for a Pension denial must include income factors in the HLR decision, how will this be worked? DROs can review any Pension rating decisions, but a SVSR will need to review income decisions. Will the HLR be split into Rating and Non-rating EP's (2 EP's). DRO's don't work Pension income, VSR's work the income portion. Please clarify the logistics of a DRO reviewing Pension rating and VSR reviewing Pension income on the same HLR decision. 2 Decision? 2 EP's? How will this work?

For ease of clarity, the questions have been individually addressed as separate questions and answers below.

**Question:** If a pension HLR involves both rating and non-rating issues, are these issues split into multiple decisions?

**Answer:** It is unlikely the scenario presented in the question would occur for a Veteran

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requesting an HLR on a pension denial. A Veteran's denial for pension would be solely for *one reason* only, not multiple reasons. For example, a Veteran may not meet permanent and total requirements, so VA would have denied via a rating decision for that reason. If the Veteran requested a HLR on that decision, it would be a rating issue and the DRO's responsibility to address. Afterwards, if the DRO granted entitlement, a VSR would effectuate a decision using income information in file, however that would not need to be addressed in the DRO's decision.

Another scenario for consideration would be if we denied the Veteran's pension claim due to excessive income and the Veteran requests an HLR. That would be a SVSR's responsibility to address this HLR. Any possible rating needed afterwards to implement a grant, if the SVSR determined the Veteran met income requirements, is not part of the Non-Rating HLR itself.

The one scenario where the need for both rating and non-rating review may occur is with HLRs for survivor benefits. For example, if a widow requested HLR on a decision where DIC was denied by rating and survivor's pension was denied due to excessive income. The [PMC Appeals Modernization Act \(AMA\) Frequently Asked Questions \(FAQ\)](#) page on the intranet addresses this question. If the HLR involves both rating and non-rating issues the decision does not get split. The DRO may use VBMS-R to address all the issues involved. The HLR decision should be listed as an enclosure on the notification letter. If the HLR includes only non-rating issues, the higher-level reviewer should use the HLR non-rating decision template ([AMA letter guide Appendix B](#)). The non-rating HLR decision shall be listed as an enclosure on the notification letter.

**Question:** If a HLR involves both rating and non-rating issues, are these handled under multiple EPs?

**Answer:** All issues would be addressed under one EP. This question is also addressed on the [PMC Appeals Modernization Act \(AMA\) Frequently Asked Questions \(FAQ\)](#) page on the intranet as well as in the manual at M21-5, 5.1.g, *Defining Evidentiary Records for HLRs*.

**Question:** How does workflow move between SVSRs, RVSRs, and DROs when a pension-related HLR may involve rating and non-rating issues?

**Answer:** Workload management flow is subject to your local management's guidance and instruction.

**Statement:** DROs don't work pension income.

**OAR Response:** DROCs should have trained DROs assigned to process pension related work, to include understanding income counting as it pertains to pension eligibility

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criteria once pension work transitioned from the Pension Management Centers (PMCs) to the DROCs.