

Office of Administrative Review (OAR)

Quality Call Bulletin

January 2022

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REQUIRED ELEMENTS OF A SUPPLEMENTAL STATEMENT OF THE CASE (SSOC)

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

Presenter: James Fogg, Program Analyst, OAR Program Administration (PA)

References:

- 38 C.F.R. §3.103(f), *Notification of decisions*
- 38 C.F.R. §19.31, *Supplemental statement of the case*
- M21-1 V.iv.1.A.4.a, *Overview of the Evidence Section of a Rating Decision*
- M21-5 3.A.12, *DRO Task Based Quality Review Checklist*
- M21-5 3.B.7, *National Compensation/Pension Rating Quality Review Checklist*
- M21-5 7.D.3.b, *Purpose of an SOC*
- M21-5 7.D.3.c, *SOC Format*
- M21-5 7.D.4.b, *How to Prepare an SSOC*
- M21-5 7.D.4.c, *Additions to an SSOC if a Substantive Appeal is Not Filed*
- M21-5 7.D.4.d, *Items Not Included in an SSOC*
- M21-5 7.G.4.a, *Developing Evidence in Remands*

What is an SSOC?

An SSOC is a document prepared by an agency of original jurisdiction (AOJ) to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case (SOC) or any prior SSOC.

The SSOC presents the appellant with changes or additions to the SOC, usually based on additional evidence received:

- after the issuance of the SOC,
- before or after receipt of a substantive appeal, or
- after a remand.

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When should the Decision Review Operations Center (DROC) issue an SSOC?

The AOJ will furnish the SSOC if:

- the AOJ receives additional pertinent evidence after a SOC, or the most recent SSOC, has been issued and before the appeal is certified to the Board of Veterans' Appeals (Board) and the appellate record is transferred to the Board,
- a material defect in the SOC or a prior SSOC is discovered, or
- for any other reason the SOC or a prior SSOC is inadequate.

The AOJ will also issue a SSOC if, pursuant to a remand by the Board, it develops the required evidence or cures a procedural defect, unless:

- the only purpose of the remand is to assemble records previously considered by the AOJ and properly discussed in a prior SOC or SSOC, or
- the Board specifies in the remand that a SSOC is not required.

Essentially, issue an SSOC to document a continued denial of an appealed issue, after an SOC has been issued and an SSOC is required as detailed above.

How to prepare an SSOC:

Prepare an SSOC in the same format as an SOC and use the appropriate transmittal letter. Limit the SSOC to those changes or additions to the SOC needed to give complete information to the appellant. For those issues that have undergone a change, repeat in full the:

- issue
- decision, and
- decision narrative

Important: Appeal decision must follow the rating decision guidelines for listing evidence as noted in M21-1 V.iv.1.A.4.a

Do not:

- repeat evidence cited in the SOC
- include the Pertinent Laws and Regulations section unless an additional statute or regulation is relied upon, or
- use the phrase as "previously stated" in any of the sections.

SOC format:

The SOC must provide the appellant:

- a summary of the relevant evidence
- a summary of the applicable laws and regulations
- a discussion of how such laws and regulations affect the determination
- the determination of each issue, and
- the reasons for each such determination.

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Issue:

- This section identifies the issue(s) covered by the SOC.
- State and number each issue if there are multiple issues.

Evidence:

- Summarize all evidence relative to the issue(s) being considered.
- Appeal decisions must follow the rating decision guidelines for listing evidence as noted in M21-1 V.iv.1.A.4.a.

Adjudicative Actions:

- Cite only those rating and authorization actions relevant to the issues raised.

Pertinent Laws and Regulations:

- Summarize the provisions in the statute(s) or regulation(s) that govern the decision(s) rendered.

Decision:

- State the decisions
- If there are multiple issues, number each to correspond to the number shown in the issue section of the SOC

Reasons for Decision:

- Include the reasons for the decision
- Explain how the evidence supports the underlying decision
- Analyze the evidence of record under the applicable legal principles governing the decision, and
- Indicate why most of the evidence is against the claim.

What must the SSOC Reasons for Decision include?

The Reasons for Decision must:

- Discuss the laws and regulations cited and explain how they relate to the adverse decision.
- Address the appellant's contentions.
- Attempt to clarify and reduce the reasoning to simple terms so the reader will understand the precise basis for the decision.
- Number the Reasons for Decision to correspond with the issues and decisions.

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How does this relate to a QRS review of an SSOC?

- The QRS must verify the SSOC provides all elements required to be included in the SSOC.
- The SSOC should comply with the appropriate Quality Review Checklist.

Examples of errors:

- If the Reasons for Decision addresses facts from a specific piece of evidence, then the Evidence section of the SSOC must include that evidence, in accordance with M21-1 V.iv.1.A.4.a and M21-5 7.D.3.c.
- The SSOC must address all contentions specified by the appellant or raised by the Board, if applicable. This is in accordance with M21-5 7.D.3.c.
- The SSOC must apply and discuss/summarize all laws or regulations applicable to the specific issue unless those laws or regulations were supplied and discussed in a previous SOC or SSOC. This is in accordance with M21-5 7.D.4.b & d.
- Because the SSOC is a denial of the appeal, it must identify the elements required to grant the claim that were not met, in accordance with 38 C.F.R. §3.103(f), *Notification of decisions*.
- If a higher level of compensation is possible for the condition at issue, then the SSOC must provide the criteria for the next higher evaluation, in accordance with 38 C.F.R. §3.103(f)(6) and M21-5 7.D.3.c.
- If the Board Remands an issue to VBA for additional development, then VBA may not certify the appeal back to the Board until VBA has substantially complied with the Remand's directions. This includes a requirement to ensure any medical opinions requested to comply with the Remand addresses the contentions required by the Remand, such as an aggravation opinion or discussion of specific evidence. This is in accordance with M21-5 7.G.4.a.

REQUIRED DEVELOPMENT FOLLOWING A BOARD REMAND

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

Presenter: James Fogg, Program Analyst, OAR PA

References:

- M21-5, 4.5.d, *Review of Board Actions*

M21-5, 4.5.d, *Review of Board Actions*, states:

- VSRs will complete all development actions based on review of the e-folder and any Board remand instructions, in accordance with existing [M21-1](#) and [M21-5](#) procedures.

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Guidance:

- VSRs are required to complete any, and all, necessary development even if it is not directed in the remand.
- Before making the case ready to rate the VSR should:
 - Review all exams to ensure they are adequate,
 - Upload all applicable VHA medical records,
 - Tab all other applicable evidence within the claims file,
 - Close all tracked items and,
 - Refer the EP for assignment based on locally established procedures.

DECISION REVIEW OPERATIONS CENTER (DROC) HIGHER-LEVEL REVIEW (HLR) INTAKE PROCEDURES

Target Audience: DROC Management, QRT, and Claims Assistants (CA)

Presenter: Jose Vidrio, Management and Program Analyst, OAR Operations

References:

- M21-5 Chapter 4, *Appeals Modernization Act Control & Other Activities*
- M21-5 4.2.e, *Placing Review Elections Under Control*
- M21-5 1.A.4.a, *Duties of CAs, Mail Clerks, File Clerks, and PSCs*
- [Centralized Mail Portal \(CMP\) User's Manual](#)

Reviewing HLRs in CMP:

When reviewing a HLR claim through the CMP, CAs must review the forms for completion and timeliness. It is important to review the forms to identify an Informal Conference request.

- Review Part II “Higher Level Review Options,” block 14 “Informal Conference” of the original (February 2019) version of VA Form 20-0996.

PART II - HIGHER-LEVEL REVIEW OPTIONS

13. IF YOU WOULD LIKE THE SAME OFFICE THAT ISSUED YOUR PRIOR DECISION TO CONDUCT THE REVIEW, YOU CAN MAKE THAT REQUEST BY CHECKING THE BOX BELOW. IF YOU DO NOT CHECK THE BOX, VA WILL TAKE THAT AS A REQUEST TO HAVE A DIFFERENT OFFICE CONDUCT THE REVIEW. (Please note VA may be unable to grant your request.)

If available, I would like **HIGHER-LEVEL REVIEW** conducted at the same office within the agency of original jurisdiction.

14. IN ADDITION, YOU OR YOUR AUTHORIZED REPRESENTATIVE MAY REQUEST AN INFORMAL CONFERENCE WITH THE HIGHER-LEVEL REVIEWER. (This is a telephonic communication with the higher level reviewer for the sole purpose of pointing out errors of fact or law in the prior decision. VA will only conduct one informal conference associated with this request for higher-level review. Check the box below to request an informal conference.)

I, or my representative, would like an **informal conference**. (VA will make up to two attempts to call you between 8:00a.m. and 4:30p.m. Eastern Standard Time at the telephone number and time period you select below to schedule your informal conference. Please select up to two time periods you are available to receive a phone call.)

8:00a.m. - 10:00a.m. 10:00a.m. - 12:30p.m. 12:30p.m. - 2:00p.m. 2:00p.m. - 4:30p.m.

If you would like for VA to contact your representative, please provide your representative's name and telephone number where he or she can be reached at the above checked time.

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- Review Section IV "Optional Informal Conference," block 16A "Informal Conference," of the electronic or updated April 2021 version of VA Form 20-0996.

SECTION IV - OPTIONAL INFORMAL CONFERENCE	
16. YOU OR YOUR AUTHORIZED REPRESENTATIVE MAY REQUEST AN INFORMAL CONFERENCE WITH THE HIGHER-LEVEL REVIEWER FOR THE SOLE PURPOSE OF POINTING OUT ERRORS OF FACT OR LAW IN THE PRIOR DECISION. (VA will only conduct one informal conference by telephonic communication associated with this request for Higher-Level Review.)	
<input type="checkbox"/>	16A. I WOULD LIKE AN INFORMAL CONFERENCE. I understand electing an informal conference is optional and may delay a decision.

- Take note of these two sections of the HLR request to identify and control IC requests.

Caseflow Intake:

The intake team (CAs) will follow the Caseflow instructions to properly input a request for review. Transcribe the Claimant's request for an Informal Conference within Caseflow, as shown in the screenshot below. The portal will establish the HLR claim and auto update the Veterans Benefits Management System (VBMS) with the contentions listed on the VAF 20-0996 except for the Informal Conference request. The intake team must perform a manual update in VBMS to add the Informal Conference request.

Note - Caseflow tracks all HLRs, with or without Informal Conferences, for data integrity.

What is the Receipt Date of this form?
mm/dd/yyyy

What is the Benefit Type?

- Compensation
- Pension & Survivor's Benefits
- Fiduciary
- Insurance
- Education
- Vocational Rehabilitation and Employment
- Loan Guaranty
- Veterans Health Administration
- National Cemetery Administration

Was an informal conference requested?

- No
- Yes

Is the claimant someone other than the Veteran?

- No
- Yes

Did the Veteran check the "OPT-IN from SOC/SSOC" box on the form?

- N/A
- Yes (SOC/SSOC Opt-in)

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VBMS Contention Special issue Flash:

After establishing the HLR claim in Caseflow, review VBMS to ensure the claim was accurately effectuated. To update VBMS with the Informal Conference, use the “Edit” feature in the Contentions chevron.

- Select the contention box, which will prompt VBMS to allow an update.
- Choose the “Edit” button to add the special issue, this will display a window to add the flash

Contention ↑	Type	Date of ...	Classification	Verified	Medical	Special I...	Rated Is
<input checked="" type="checkbox"/>	Coronary artery disease	Higher Level Review	11/05/2021	Heart/Veins/Arteries	Yes	Yes	

Editing Contentions:

In the “Edit Contention” feature, locate the “Informal Conference” flash in the Special Issue(s) box. After selecting the flash, hit the “Save” button to allow the update to populate.

Edit Contention

* Contention: achalasia, gastroesophageal re... Type: Increase * Classification: Adhesions - Digestive

* Date of Contention: 10/03/2019 Medical: Yes

Special Issue(s): Choose a special issue
Hepatitis C
HIV
IDES Deferral
IDES Development
Informal Conference
Intertwined Issue
Local Hearing
Local Mentor Review

Rated Issue(s): Choose a rated issue
achalasia, gastroesophageal reflux, and stricture phagus (previously rated as achalasia): 50%

Save and Next Save Cancel

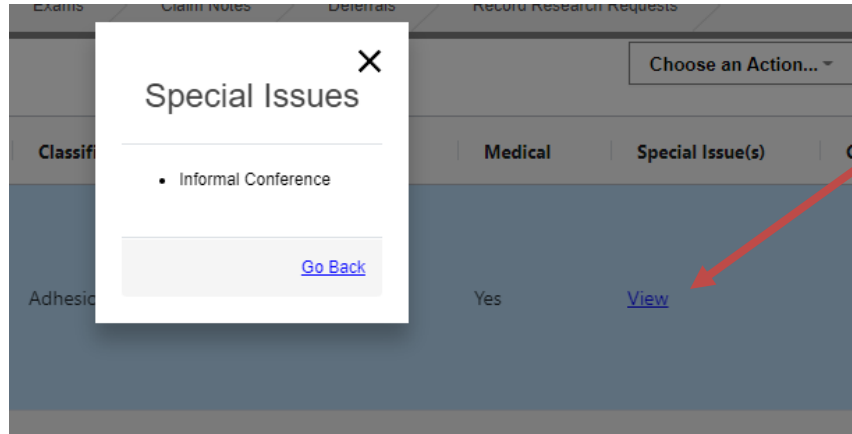
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Informal Conference Special Issue:

After saving the flash update, verify the “Informal Conference” Special Issue flash was annotated. Select the “View” option in the Contention’s Special Issue tab and a window will display to show the Informal Conference was added.



CONDITIONAL DISCHARGES

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

Presenter: Suzanne Ribish, Management and Program Analyst, OAR PA

References:

- 38 U.S.C. §101, *Definitions*
- 38 C.F.R. §3.12, *Character of Discharge*
- M21-1 X.iv.1.A, *Character of Discharge (COD) and Bars to Benefits*
- M21-1 X.iv.1.B, *Special Topics Involving Character of Discharge*

Conditional Discharge:

38 U.S.C. §101(18) provides that an individual who enlisted or reenlisted before completion of a period of active service may establish eligibility for VA benefits if he/she satisfactorily completed the period of active service for which he/she was obligated at the time of entry. The satisfactory completion of one contracted period of enlistment while serving on a subsequent contracted period of service under a new enlistment is considered a conditional discharge.

The provisions of 38 U.S.C. §101(18) apply even if:

- the subsequent discharge was under dishonorable or OTH conditions, or
- a statutory bar exists for entitlement to benefits for the later period of service.

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Note: VA has the authority to determine the COD for any type of discharge that is not binding on it; therefore, VA has the authority to determine the COD for all periods of service identified in a conditional discharge.

When to Develop for a Conditional Discharge:

Development for a conditional discharge must be undertaken, if:

- An individual's service exceeded three years, especially if the discharge dates do not line up to an exact number of years or months;
- There is any question about how many periods of service an individual enlisted for; or
- An individual's DD Form 214 shows prior service exists.

Identifying Need for a Conditional Discharge Decision:

After development has occurred, the claims processor must determine if there is a need for a conditional discharge decision.

If development discloses a prior and separate period of honorable service that qualifies the claimant for the benefit he/she is seeking, then the claims processor should adjudicate the claim on that basis, without making a conditional discharge determination.

Note: A complete and separate period of service is defined as a break in service greater than one day.

If the development does not disclose a prior and separate period of honorable service that would qualify the claimant for the benefit he/she is seeking, then the claims processor should make a COD determination (whichever is appropriate) and document it according to the instructions in [M21-1, Part X, Subpart iv, 1.A.1.I.](#)

Determining Dates for a Conditional Discharge:

When determining the dates of service for a conditional discharge, it is necessary to know the length of each enlistment contract the claimant signed.

Dates of faithful and meritorious service are calculated by:

- adding the full length of the first enlistment contract to the claimant's entry into service date, thus calculating the date the individual *would* have completed his first period of obligation and would have been discharged, then
- adding the full length of the next enlistment contract to the date determined above, thus calculating the next date that the individual would have completed his period of obligation and would have been discharged, then
- continuing to add the full length of each enlistment contract to the date determined above, until no more enlistment contract periods remain.

Many times, DD Form 214s do not have date ranges that are reflective of the time frames that take into consideration the full enlistment contract period.

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Conditional Discharge Example:

The DD Form 214 pictured below for the former service member reflects an entrance on date (EOD) of February 4, 1972, with a release from active-duty date (RAD) of March 27, 1974.

8a. TYPE OF SEPARATION DISCHARGE (TC 300)			b. STATION OR INSTALLATION AT WHICH EFFECTED FORT RILEY, KS 66442		
c. AUTHORITY AND REASON AR 635-200, SPD 313, IMMEDIATE REENLISTMENT, AR 601-280			d. EFFECTIVE DATE 74	YEAR Mar	DAY 27
9. CHARACTER OF SERVICE HONORABLE			f. TYPE OF CERTIFICATE ISSUED DD FORM 256A		10. REENLISTMENT CODE RE-1
11. LAST DUTY ASSIGNMENT AND MAJOR COMMAND CO B 2-16th Inf, FT RILEY, KS FORSCOM			12. COMMAND TO WHICH TRANSFERRED DNA		
13. TERMINAL DATE OF RESERVE/MSR OBLIGATION YEAR MONTH DAY DNA		14. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City, State and ZIP Code) AFES ABILENE TX		15. DATE ENTERED ACTIVE DUTY THIS PERIOD YEAR MONTH DAY 72 Feb 04	
16a. PRIMARY SPECIALTY NUMBER AND TITLE 11B20 Lt Wpns Inf 720720 PMOS 77 Nov 73		b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER NONE		18. RECORD OF SERVICE	
17a. SECONDARY SPECIALTY NUMBER AND TITLE 71B20 Clerk Typist 730901		b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER Clerk Typist 209		18. RECORD OF SERVICE	
				(a) NET ACTIVE SERVICE THIS PERIOD	YEARS MONTHS DAYS 02 01 24
				(b) PRIOR ACTIVE SERVICE	00 00 00
				(c) TOTAL ACTIVE SERVICE (a + b)	02 01 24
				(d) PRIOR INACTIVE SERVICE	00 00 00
				(e) TOTAL SERVICE FOR PAY (c + d)	02 01 24
				(f) FOREIGN AND/OR SEA SERVICE THIS PERIOD	00 00 00

The next DD Form 214 for the former service member, pictured below, reflects an EOD of March 28, 1974, with a RAD of February 27, 1976.

c. AUTHORITY AND REASON			d. EFFECTIVE DATE 76	YEAR 02	DAY 27
9. CHARACTER OF SERVICE UNDER OTHER THAN HONORABLE CONDITIONS			f. TYPE OF CERTIFICATE ISSUED DD FORM 258A		10. REENLISTMENT CODE
11. LAST DUTY ASSIGNMENT AND MAJOR COMMAND A Co, 1/2 Inf 1st Inf Div Fort Riley, Kansas - FORSCOM			12. COMMAND TO WHICH TRANSFERRED DNA		
13. TERMINAL DATE OF RESERVE/MSR OBLIGATION YEAR MONTH DAY DNA		14. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City, State and ZIP Code) Fort Riley, Kansas 66442		15. DATE ENTERED ACTIVE DUTY THIS PERIOD YEAR MONTH DAY 74 03 28	
16a. PRIMARY SPECIALTY NUMBER AND TITLE 11B20 20 Jul 72 Lt Wpns Infan NONE		b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER NONE		18. RECORD OF SERVICE	
17a. SECONDARY SPECIALTY NUMBER AND TITLE 76Y20 27 Jun 74 Unit Sup Spec		b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER 223.387 Stock Clk		18. RECORD OF SERVICE	
				(a) NET ACTIVE SERVICE THIS PERIOD	YEARS MONTHS DAYS 1 8 22
				(b) PRIOR ACTIVE SERVICE	2 1 24
				(c) TOTAL ACTIVE SERVICE (a + b)	3 10 16
				(d) PRIOR INACTIVE SERVICE	0 0 0
				(e) TOTAL SERVICE FOR PAY (c + d)	3 10 16
				(f) FOREIGN AND/OR SEA SERVICE THIS PERIOD	0 0 0

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Review of the enlistment documents in file (pictured below) shows the Veteran signed the following contracts:

- The former service member signed an initial 3-year enlistment contract on February 4, 1972.
- The former service member signed a 4-year reenlistment contract on March 28, 1974.

57. OATH OF ENLISTMENT (For service in Regular or Reserve Component of the Armed Forces except National Guard or Air National Guard)

I, _____, do hereby acknowledge to have voluntarily enlisted under the conditions prescribed by law, this 4TH day of FEBRUARY, 19 72, in the UNITED STATES ARMY for a period of THREE (3) years unless sooner discharged by proper authority; and I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations, and the Uniform Code of Military Justice. So help me God.

57. OATH OF ENLISTMENT (For service in Regular or Reserve Component of the Armed Forces except National Guard or Air National Guard)

I, _____, do hereby acknowledge to have voluntarily enlisted under the conditions prescribed by law, this 28TH day of MARCH, 19 74, in the UNITED STATES ARMY for a period of FOUR (4) years unless sooner discharged by proper authority; and I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations, and the Uniform Code of Military Justice. So help me God.

To calculate the first conditional discharge period, we take the claimant's entry into service date and add the full length of the first enlistment contract. Adding 3 years to February 4, 1972, results in a period of February 4, 1972, to February 3, 1975.

To calculate the second conditional discharge period, we take the day following the end of period one, February 4, 1975, and since the claimant did not serve their full 4-year reenlistment contract, the end date would be their final discharge date, resulting in a period of February 4, 1975, to February 27, 1976.

BLUE WATER NAVY NEHMER (BWN-N) SPECIAL FOCUSED REVIEW (SFR)

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

Presenter: Suzanne Ribish, Management and Program Analyst, OAR PA

Background and Purpose:

On November 5, 2020, the U.S. District Court of the Northern District of California ordered readjudication of disability compensation claims in which the Department of Veterans Affairs (VA) previously denied compensation on the grounds Veterans were not entitled to the presumption of herbicide exposure because they did not set foot on the landmass of Vietnam or perform service in its inland waterways.

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OAR conducted a SFR on EP 687 BWN-N work performed by the DROCs between May 28, 2021 to September 2, 2021. The purpose of the SFR was to examine error trends on claims related to BWN-N issues. If OAR analysts identified errors, the DROCs were notified within the Quality Management System (QMS). The 687 EPs were established to identify and readjudicate claims implicated by the November 5th court order.

SFR Findings:

OAR's Compliance staff conducted a review of 32 BWN-N cases worked by the DROCs. OAR cited a total of 16 errors on these cases, which accounted for 50% of the cases reviewed. Only 3 of the errors OAR cited were considered critical errors, 9.38% of the cases reviewed. All critical errors cited by OAR were for failure to address and decide all claimed issues. The most frequently occurring non-critical error was for failure to upload an appropriate Subject Matter Expert (SME) checklist for Nehmer readjudications in accordance with the Nehmer Readjudication SOP. Compliance cited this error eight times, which accounted for half of the errors cited during the review.

Breakdown of Errors Cited:

Error Question	Total Errors Cited	Percent of Errors Cited	Percent of Cases Reviewed
Were SME checklists completed?	8	50%	25%
Were all Claimed issues addressed and decided?	3	18.75%	9.38%
Was notification correct?	2	12.5%	6.25%
Was decision documentation correct?	1	6.25%	3.13%
Were there errors associated with an EP not under review?	1	6.25%	3.13%
Is use of the Nehmer Memorandum for the record proper?	1	6.25%	3.13%

SME Checklist Reminder:

As a result of the BWN-N SFR findings, OAR would like to emphasize the importance of uploading all appropriate SME checklists to the eFolder when reviewing this type of casework, in accordance with the Nehmer Readjudication Standard Operating Procedure (SOP): Blue Water Navy (BWN) and Public Law (PL) 116-283.