

Office of Administrative Review (OAR)

Quality Call Bulletin

February 2023

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Threshold for Calling Critical Errors

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

Presenter: Bryan Yost, Management & Program Analyst, OAR Program Administration (PA)

References:

- M21-4 6, *Quality Review Team*
- M21-5 3, *Quality Assurance*
- M21-1 X.ii.5.A, *Revision Due to Clear and Unmistakable Error (CUE)*
- 38 C.F.R. §3.105, *Revision of Decisions*
- Quality Management System (QMS) User Guide 2.0

A critical error is a QMS designation or checkbox used to calculate an employee's quality percentage. The manual and user guide have multiple notations for the specific instances when this checkbox may be unchecked to mitigate an error call and computation of quality percentage.

In some situations, mitigation of cited errors may be appropriate. Mitigation of an error is distinct from overturning an error because the only acceptable reason for overturning an error is that the error citation was incorrect (i.e., it was not a CUE or a clear violation of current regulations or directives).

Mitigation of an error involves editing the error record to uncheck the "Critical Error" box. Mitigation is to be used when the error citation was valid but is not to be counted against the employee's performance for the period during which the error was cited. The error will still require corrective action.

Acceptable reasons for mitigation of an error include:

- the QRS cites an error during an applicable grace period, or
- the employee is in a training status during which errors are not considered against their performance.

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The definition of a clear and unmistakable error is outlined in M21-1 X.ii.5.A.1.a. and 38 CFR 3.105(a).

Under 38 CFR 3.105(a) a clear and unmistakable error (CUE) exists if all three of the following requirements are met:

- either the correct facts, as they were known at the time, were not before the adjudicator, (for example, the adjudicator overlooked them) or the statutory or regulatory provisions extant at the time were incorrectly applied
- the error must be the sort which, had it not been made, would have manifestly changed the outcome at the time it was made, and
- the determination must be based on the record and the law that existed at the time of the prior adjudication in question.

The task-based checklist reviews different tasks taken during the rating process. Task-based error calls are based on CUEs and/or a clear violation of current regulations or directives.

When we refer to something as clear and unmistakable; we are usually just referring to the note in that section that states that CUEs are undebatable and not merely a difference of opinion or best practice. There are a number of descriptors in the task-based checklist that do not affect benefit entitlement nor meet the threshold for a CUE revision, however, they are clear violations of policy or procedures indicative of the decision maker's performance when applicable.

The standard for an error is that the decision made rises to the level of a CUE or a clear violation of current regulations or directives.

When reviewing a claim, maintain objectivity, never allow personal feelings to enter the review process, and always show fairness and courtesy to the decision maker.

To rise to the level of an error, the development directed must clearly be unnecessary and/or erroneous in nature and must also materially affect (for example, delay) the claim. Errors must not be cited based upon a simple difference of opinion between the decision maker and the quality reviewer regarding evidence sufficient to decide the claim.

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Task Based Quality Reviews

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

Presenter: Alexandria Katinos, Senior Management & Program Analyst, OAR PA

References:

- M21-4 6, Appendix A, *VSR Task Based Quality Review Checklist*
- M21-4 6, Appendix B, *RVSR Task Based Quality Review Checklist*
- M21-5 3.A.12.a, *DRO Task Based Quality Review Checklist*
- [September 2020 RQRS QRT Call, Quality Redesign](#)
- [September 2020 AQRS QRT Call, Quality Redesign](#)
- Quality Redesign FAQ Documents (AQRS & RQRS), *TMS 4618098*

Only applicable tasks will be evaluated for quality as it specifically relates to the transaction under review. With task-based reviews, Yes, No, and N/A responses to the task questions are important for accurately measuring quality. N/A tasks are excluded from quality calculation.

When conducting quality reviews, the QRS must review each question on the checklist and select the appropriate response. The QRS should treat every quality review as unique and evaluate the transaction to determine which tasks are applicable to the action taken or should have been taken by the individual under review. QRT must correctly choose Yes, No, or N/A for each task question in every quality review to ensure accurate quality for the employee under review.

As a reminder, the answer to each task question is what determines whether there is an error under that task. The descriptor is chosen to assist with error trend analysis. Multiple descriptors may be chosen under each task to identify multiple errors. Additionally, the systems compliance question applies to all quality reviews and will only be answered as Yes or NO.

As stated early, every review must be treated as unique; however, the QRS should review the FAQs for common scenarios/questions regarding yes, no, and n/a.

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Key Takeaways

The QRS will select:

- Yes: when the question on the checklist applies to the transaction under review and the employee correctly performed the required action.
- No: when the question on the checklist applies to the transaction under review and the employee incorrectly performed the required action or failed to perform the required action.
- NA: when the question on the checklist does not apply to the transaction under review.

As stated earlier every review must be treated as unique; however, the QRS should review the FAQs for common scenarios and questions regarding yes, no and n/a.

Updates to VA Form 20-0995, VA Form 20-0996, and SOC/SSOC Opt-In Fact Sheet

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

Presenter: Shireen Lackey, Senior Management & Program Analyst, OAR PA

OAR recently published updates to VA Form 20-0095, VA Form 20-0996, and the SOC/SSOC Opt-In Fact Sheet.

Updates to VA Form 20-0995, *Decision Review Request: Supplemental Claim*

Instructions:

- Instructions have been updated to help claimants differentiate between the usage of this form as a form to disagree with a VA decision and file for a decision review and not as a claim for increase.
- Within the instructions, verbiage has been added to address the right for a pre-decisional hearing. The statement says, “You are entitled to a hearing at any time in the claims process.” This change was requested through guidance by OGC.
- The link is updated to reflect VA’s new form’s website, www.va.gov/find-forms

Updates within the instructions and on the form:

- Dependency and Indemnity Compensation (DIC) has been added as a benefit type, which is listed with Pension and Survivors Benefits. This helps to eliminate confusion reported by claimants on the original version, which listed only “Survivors Benefits”.
- To align with changes made on VA Form 10182, Decision Review Request: Board Appeal, the opt-in box has been removed. This makes the form more user-friendly by eliminating the requirement for the claimant to have to check the box to opt-in and receipt of the form for a Veteran or claimant who is currently in the legacy appeals system is now automatically considered to be opting into AMA.

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- Finally, verbiage has been added for a 5103 notice acknowledgement for pension, DIC, and accrued benefits, which was added to the existing language for compensation benefits and added accompanying instructions. This included referencing the new website, www.va.gov/resources/evidence-to-support-va-pension-dic-or-accrued-benefits-claims/

Updates to VA Form 20-0996: Decision Review Request: Higher-Level Review Instructions:

- The link for VA's form's website has been updated, www.va.gov/find-forms

Within both the instructions and on the form:

- DIC has been added as a benefit type on this form, also listed with Pension and Survivors Benefits.
- The opt-in box was also removed on this form and language was added to the new to explain the claimant's participation in the modernized review system.

The new forms can be identified by noting the date in the left corner, the new versions will show "SEP 2022".

VA FORM
SEP 2022 **20-0996**

SUPERSEDES VA FORM 20-0996, APR 2021

Since these changes were non-substantive, older versions of both forms which carry the dates April 2021, should still be accepted by VBA offices. The OMB expiration for all versions of these forms, which is the date OMB will allow the forms to be used until is April 30, 2024. This date is observed in the top right corner.

OMB Control No. 2900-0862
Respondent Burden: 15 minutes
Expiration Date: 4/30/2024

 Department of Veterans Affairs

DECISION REVIEW REQUEST: HIGHER-LEVEL REVIEW

VA DATE STAMP
DO NOT WRITE IN THIS SPACE

- The fact sheet was updated and posted to M21-5.4.3.c, *Informing Appellants of the Options*. More about the requirements is explained within this section of the manual.
- The changes made to the fact sheet incorporate the removal of the opt-in boxes to VA Form 20-0996 and VA Form 20-0995.
- The easiest way to identify the new version is by the VA logo at the top and the language "Updated September 2022" in the bottom left of the second page.

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- It is very important to note that from this point forward, all personnel who process legacy appeals must enclose the updated version when releasing a Statement of the Case or Supplemental Statement of the Case. The new fact sheet may be located in the manual or by going to OAR's intranet page and clicking on our [Stakeholder Tools](#) section. It will be listed as a bullet in a section called "SOC/SSOC Opt-In Outreach Materials".
- This version is 508-compliant and approved for distribution. All outdated versions of the fact sheet should be discarded.