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# Establishing Incurrence Favorable Finding Based on Lay Evidence

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

**Presenter:** Holly Backes-Kozlak, Management & Program Analyst, Office of Administrative Review (OAR)

**References:**

* M21-1, IV.i.1.B.1.b,*In-service Event, Injury, or Disease*
* M21-1, X.ii.1.A.2.a, *Binding Nature of Favorable Findings*
* M21-1, X.ii.1.A.2.b, *Overturning Favorable Findings*
* M21-5, 5.1.b, *Authority of Higher-Level Reviewers*
* M21-5, 5.1.c, *Restrictions of HLRs*
* M21-5, 5.1.j, *Difference of Opinion vs. Duty to Assist Error*
* 38 C.F.R. 3.103(f)(4), *Procedural due process and other rights*
* 38 C.F.R. 3.104(c), *Binding nature of decision*
* 38 C.F.R. 3.105(b), *Revision of decisions*
* 38 C.F.R. 3.159, *Department of Veterans Affairs assistance in developing claims*
* 38 C.F.R. 3.2601, *Higher-level review*

A favorable finding is formalized documentation of a legal threshold met that serves to aid in establishing the necessary legal elements towards service connection. One of those legal elements is whether an in-service event, injury, or disease is established within the evidence of record.

One manner this element may be met is with lay testimony, after considerations to include but not limited to competency, credibility, probative value, and relative weight, which is further discussed within M21-1, IV.i.1.B.1.b.

When a DRO determines lay testimony is sufficient to satisfy the element for “in-service event, injury, or disease,” based upon their authority under 38 C.F.R. 3.2601, which subsequently results in a DTA/DoO return for an examination and/or medical opinion, then it is incumbent upon them to formalize this conclusion by documenting it as a favorable finding on VA Form 20-0999, Higher Level Review Return, which constitutes a formal decision on the issue(s). 38 CFR 3.103(f)(4); 3.104(c); 3.105(b); 3.159; 3.2601. M21-5, 5.1.b, c & j.

It is important to note that any finding favorable to the claimant is binding on subsequent adjudicators, including both higher-level reviewers and other decisionmakers such as RVSRs, except when rebutted by clear and unmistakable evidence to the contrary. M21-1, X.ii.1.A.2.a-b.

Effective FY24, errors for the incorrect use of Favorable Findings and Laws & Regulations on the Individual Quality Review (IQR) checklists will be cited as a correctable comment under Task 12 for transactions occurring on or after October 1, 2023.

Although Favorable Finding deficiencies will no longer be considered a critical error for quality reviews on/after October 1, 2023, if a deficiency is found, corrective action will still be necessary. Therefore, proper documentation of Favorable Findings even in situations of lay testimony under the authority of 38 C.F.R. 3.2601 is still warranted.

# Addressing Service Connection for Surgically Corrected Disabilities

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

**Presenter:** Korrie Shivers, Senior Management & Program Analyst, Office of Administrative Review

**References:**

* 38 C.F.R. § 3.303, *Principles Relating to Service Connection*
* 38 C.F.R. § 3.304, *Direct Service Connection; Wartime and Peacetime*
* 38 C.F.R. § 3.324, *Multiple Noncompensable Service-Connected Disabilities*
* 38 C.F.R. § 3.326, *Examinations*
* M21-1, IV.i.1.A.1.a, *Purpose of Obtaining Medical Examinations*
* M21-1, IV.i.1.A.1.b, *Regulatory Standard for Finding an Examination or Medical Opinion is Necessary*

Scenario: Addressing service-connection for surgically corrected conditions.

The presumption is the conditions have been corrected by surgery in service or service-connected conditions are corrected by surgery and are no longer active.

Rationale: The conditions may reoccur post-surgery. A Veteran would be entitled to a non-compensable evaluation for the conditions. If scars are present, they should be evaluated as a secondary condition.

Medical Examination is Necessary When the Evidence Establishes the Following:

* There is an event, injury, or disease in service.
* There is competent lay or medical evidence of a current disability or persistent or recurrent symptoms of disability and,
* The evidence indicates the claimed disability may be associated with the established event, injury, or disease in service.

# DROC National Quality Review Queue

**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)

**Presenter:** Chelsey Kondrak, Senior Management & Program Analyst, OAR Program Administration

Effective December 5, 2022, all DROC individual quality reviews (IQR) are distributed via a national queue in the Quality Management System (QMS).

* + DROC quality review specialists (QRS) conduct IQRs on all DROC work
	+ The DROC national quality review queue
		- Ensures objectivity, and
		- Promotes further compliance with policies and procedures.

**DROC DC Employee Quality**

The creation of the DROC national quality review queue had a positive impact on the DROC DC individual employee quality.

* From fiscal year (FY) 2022 to FY2023 to date (FY2023TD), there were the following increases in the % of employees who exceeded the quality threshold:
	+ 6% increase in % of VSRs,
	+ 19% increase in % of RVSRs, and
	+ 9% increase in % of DROs.
* From FY2022 to FY2023TD, there were the following decreases in the % of employees whose quality was below the quality threshold:
	+ 67% decrease in % of VSRs,
	+ 38% decrease in % of RVSRs, and
	+ 100% decrease in % of DROs.

**Seattle DROC Employee Quality**

The creation of the DROC national quality review queue had a positive impact on the Seattle DROC individual employee quality.

* From FY2022 to FY2023TD, there were the following increases in the % of employees who exceeded the quality threshold:
	+ 5% increase in % of VSRs,
	+ 27% increase in % of RVSRs, and
	+ 1% increase in % of DROs.
* From FY2022 to FY2023TD, there was a
	+ 0% change in % of VSRs whose quality was below the quality threshold,
	+ 85% decrease in % of RVSRs whose quality was below the quality threshold, and
	+ 0% change in % of DROs whose quality was below the quality threshold.

**St. Petersburg DROC Employee Quality**

The creation of the DROC national quality review queue had a positive impact on the below aspects of St. Petersburg DROC individual employee quality.

* From FY2022 to FY2023TD, there were the following increases in the % of employees who exceeded the quality threshold:
	+ 5% increase in % of VSRs, and
	+ 14% increase in % of RVSRs.
* From FY2022 to FY2023TD, there was a
	+ 12% decrease in % of VSRs whose quality was below the quality threshold, and
	+ 41% decrease in % of RVSRs whose quality was below the quality threshold.

An employee who receives an error on an IQR may submit a reconsideration request when they disagree with the cited error.

* An employee’s reconsideration request must provide statutory, regulatory, or policy citation(s) to support the request.
* A QRS will issue a decision in response to the request.
* The QRS may mitigate, overturn, or uphold the error.

For FY2023TD, DROCs:

* Mitigated 16% of errors for which employees submitted reconsideration requests,
* Overturned 31% of errors for which employees submitted reconsideration requests, and
* Upheld 53% of errors for which employees submitted reconsideration requests.

Additional actions OAR took to improve accuracy and consistency of claims and appeals processing include:

* Requiring DROC QRSs to perform IQRs identified by QMS on other QRSs,
* Requesting DROC QRSs prepare, and present OAR approved topics and presentations on monthly OAR Quality Calls, and
* Updating site visit protocol to include IQR checklist compliance reviews.