

Office of Administrative Review

Reading and Analyzing Board Remands- Training Handout 4

Instructor Guide

REMAND DATE: December 18, 2021

REMANDED

Entitlement to an evaluation higher than 70 percent for service-connected posttraumatic stress disorder (PTSD) is remanded.

Instructor Notes: Discuss that the issue here is the evaluation for the service-connected PTSD. Learners should understand that they will likely be looking at a remand that addresses medical records and possibly a new exam instead of a medical opinion since service connection is already established.

REASONS FOR REMAND

The Veteran served on active duty from November 1967 to June 1970.

This appeal comes before the Board on appeal from a September 2016 rating decision.

Instructor Notes: Discuss that the Board included the dates of service and a brief adjudicatory history.

Entitlement to an evaluation higher than 70 percent for service-connected PTSD is remanded.

First, remand is required to obtain outstanding treatment records. VA has a duty to assist claimants to obtain evidence needed to substantiate a claim. 38 U.S.C. § 5103A (2012); 38 C.F.R. § 3.159(c) (2019). This includes making reasonable efforts to obtain relevant private medical records. 38 C.F.R. § 3.159(c)(1). In a July 2016 VA treatment record the Veteran reported he attended group meetings at the Vet Center in Montrose and he also sees a doctor there. During the appointment he expressed a desire to get a copy of those records. No such Vet Center records are associated with the claims file. Accordingly, remand is required to obtain all outstanding VA treatment records.

Second, remand is required for a current VA addendum opinion that addresses the severity of the Veteran's PTSD after reviewing the relevant treatment records.

Instructor Notes: Discuss that the Board provided two reasons for remand. First the Board discusses the insufficient treatment record development. Second the Board states the exam must be based on those records. This informs the claims processor that these instructions must be followed in that specific order.

The matters are REMANDED for the following action:

1. Contact the appropriate VA Medical Center and obtain and associate with the claims file all outstanding records of treatment. If any requested records are not available, or the search for any such records otherwise yields negative results, that fact must clearly be documented in the claims file. Efforts to obtain these records must continue until it is determined that they do not exist or that further attempts to obtain them would be futile. The non-existence or unavailability of such records must be verified, and this should be documented for the record. Required notice must be provided to the appellant and his attorney.

Instructor Notes: Discuss that the first action regards VA treatment records. The Board included multiple steps in this area: contacting the VAMC, obtaining the records, associating the records, documenting unavailability of records, and notifying the appellant of unavailability. Claims processors must adhere to every single step and ensure the entire action is completed fully.

2. Contact the appellant and afford him the opportunity to identify by name, address and dates of treatment or examination any relevant medical records, to specifically include Vet Center records from the facility in Montrose. Subsequently, and after securing the proper authorizations where necessary, make arrangements to obtain all the records of treatment or examination from all the sources listed by the appellant which are not already on file. All information obtained must be made part of the file. All attempts to secure this evidence must be documented in the claims file, and if, after making reasonable efforts to obtain named records, they are not able to be secured, provide the required notice and opportunity to respond to the appellant and his representative.

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Instructor Notes: Discuss that the second action regards Vet Center records. Recall that Vet Center records are federal records and development must comply with federal record requests. Again, the Board lists several steps: contacting the appellant, giving him the opportunity to identify the records, securing proper authorization for the records, obtaining the records, documenting attempts to obtain the records, and notifying the appellant of any unsuccessful attempts at obtaining identified records.

3. After any additional records are associated with the claims file, obtain an addendum opinion to determine the severity of the service-connected PTSD. The entire claims file must be made available to and be reviewed by the examiner. An explanation for all opinions expressed must be provided. The relevant Disability Benefits Questionnaire must be utilized.

The examiner must address the following: 1) any relevant VA treatment records, including the July 2016 VA treatment record in which the Veteran reported having suicidal thoughts; 2) the July 2016 statement from the Veteran's wife; 3) the July 2016 VA examination; and 4) any obtained Vet Center records.

Instructor Notes: Discuss that the final step depends upon the completion of the first two steps and can only be requested after all records are obtained and/or attempts are documented and appellant notified. The Board requires an addendum opinion on the severity of the PTSD, with review of the file. The addendum request must inform the examiner that they are required to review the claims file. The Board included three specific items for the addendum and the request must inform the examiner of these items. The examiner must, in the addendum, actually address the elements mentioned. Merely mentioning these pieces of evidence does not suffice as a discussion of the elements. When the addendum is returned, the claims processor must ensure that the examiner addresses all three. If not, then the claims processor must return the addendum as insufficient until the examiner addresses the items.