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# Specialized Claims Processor Second Signatures

**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:** Beth Huck, Management and Program Analyst, OAR

**References:**

* M21-5, 1.A.3.f., *Designated Specialized Claims Processors*
* M21-5, 1.A.3.g., *Training and Signature Requirements for MST Development and Decisions*
* M21-5, 1.A.3.h., *Training and Signature Requirements for TBI Decisions*
* M21-5, 1.A.3.i., *Training and Signature Requirements for ALS Decisions*

On July 17, 2023, OAR updated M21-5, *1.A.3.g-I*, to state that AQRS and RQRS must successfully complete the single signature requirements to independently review specialized cases, to include receipt of a specialized memo for each individual specialization.

M21-5, 1.A.3.f was also updated to indicate that QRSs can second sign specialized claims while still on second signature.

On January 10, 2024, OAR provided clarifying guidance to the DROCs explaining:

* It is permissible for an AQRS or RQRS to log a review of a specialized case, reviewed by another AQRS or RQRS, toward achieving single signature authority.
* This includes second signature reviews, Individual Quality Reviews (IQR) and In-Process Reviews (IPRs) completed by QRS staff.

# DRO/RVSR Quality Review Checklist: Task 12 vs. Critical Errors

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

**Presenter:** Lynn Rowzee, Management and Program Analyst, OAR

**References:**

* 38 C.F.R. § 3.2600, *Legacy review of benefit claims decisions*
* 38 C.F.R. § 3.2601, *Higher-level review*
* M21-5, 3.A.4.a, *Overview*
* M21-5, 3.A.5.a, *Purpose of IQRs*
* M21-5, 3.A.5.c, *Standard for Review of IQRs*
* M21-5, 3.A.6.a, *Purpose of QRT IQRs*
* M21-5, 3.A.6.c, *Standard of Review for QRT IQRs*
* M21-4, 6, Appendix B.a, *RVSR Task Based Quality Review Checklist*
* M21-4, 6, Appendix B.b, *Instructions and Guidelines for RVSR Review*
* M21-4, 6, Appendix B.c, *Rating Review Elements*
* M21-5, 3.A.12.a, *DRO Task Based Quality Review Checklist*
* M21-5, 3.A.12.b, *Instructions and Guidelines for DRO Review*
* M21-5, 3.A.12.c, *DRO Review Elements*
* M21-5, 5.1.a, *Definition: Higher-Level Reviews*
* M21-5, 7.A.1.e, *Definition: De Novo Review*
* M21-5, 7.C.4.c, *What May Be Subject of a De Novo Review*
* September 2020 Compensation Service Quality Assurance RQRS Quality District Meeting Q&A
* May 2022 RQRS QRT Call Q&A
* CS Quality Assurance Communication dated October 5, 2023: FY24 Checklist Changes
* TMS #4504942 RVSR Checklist

The RVSR Checklist training in TMS states on slide 8, “The QRS will not cite an error on actions completed previously by another RVSR on the current review unless pertinent to the action under review.”

DROC management reported that RQRSs have different standards of determining whether an error made in a prior rating decision is pertinent to the action under review.

OAR was asked to provide clarification regarding the definition of “pertinent to the action under review” or “related to” to qualify for a Task 12 vs. a critical error under Tasks 1-11.

Excerpt: Slide 8 from RVSR Checklist Training:



Question Posed to OAR: What is the most appropriate definition of “pertinent to the action under review” or “related to” to qualify for a Task 12 versus a critical error task? The following options were offered as possible definitions, though not an all-inclusive list of options:

1. Same rating decision
2. Same EP
3. Same contention and same basis within the appeal period (e.g., evaluation of CAD was incorrect on prior rating and evaluation of CAD was addressed on current transaction under review)
4. Same contention within the appeal period, but not the same basis (e.g., effective date assigned incorrectly on prior rating but only the evaluation is addressed under current transaction under review)
5. Same contention and basis outside of the appeal period
6. Same contention outside of appeal period, but not the same basis

Answer**:** It depends on the facts of the case. Legacy appeals and higher-level reviews present more complicated fact patterns and longer pendency of continuously pursued issues. As an appeal or HLR keeps the prior contention open for review, DROC decisionmakers are required to ensure the decision under review, which includes that which has been continuously pursued, is proper and correct.

Keep in mind what de novo is and what de novo is not.

Definitions of De Novo Review:

* 38 C.F.R. § 3.2601(i) De novo review. The higher-level adjudicator will consider only those decisions and claims for which the claimant has requested higher-level review, and will conduct a de novo review giving no deference to the prior decision, except as provided in § 3.104(c).
* M21-5,5.1.a. – Higher-level reviews (HLRs) consist of de novo reviews of the issues defined by requesters on a completed VA Form 20-0996. De novo review means the reviewer reexamines and re-adjudicates the claim in question without deference to the prior decision, except for proper favorable findings.
* M21-5,7.A.1.e. – A de novo review is a new and complete review of the appealed issue with no deference given to the decision being appealed. This review leads to a new decision, which may be a full grant, partial grant, clear and unmistakable error, or no change.
* M21-5,7.C.4.c. – De novo review, when elected by the appellant, will encompass only the decision(s) with which the appellant has expressed disagreement in the NOD.

The QRS will review all associated actions that were taken or should have been taken associated with the transaction under review.  IQRs should not be a de novo review of the entire case file but limited to the actions of the individual for whom the IQR is being completed.

The standard of review for the Checklists:

* Task-based review
* Each question is a stand-alone question and the QRS must apply each question to each contention to determine if that task was successfully met.
* “NA” is selected when a task doesn’t apply to the actions taken (or that should have been taken) under review.

Descriptors for each question are designed to assist Quality Assurance with data gathering. The lack of a descriptor for a given error is not indicative that it is not a critical error. QRSs are expected to select the closest descriptor possible when multiple descriptors may apply. If no descriptor describes the situation, the QRS should select the closest approximation.

What does Task 12 say?

Task 12 includes several options which include the word “past.”

* Past claimed issues have not been addressed or decided.
* Past inferred and/or ancillary issues have not been addressed.
* The past grant of issues was not correct.
* The past denial of issues was not correct.
* The past evaluation(s) assigned was/were not correct, to include combined evaluation.
* The past SMC coding was not correct.
* The past effective dates(s) assigned was/were not correct.

**Scenario 1**

Veteran filed initial claim for coronary artery disease on 01/01/2012 and Rating Decision (RD) dated 06/01/2012 granted service connection (SC) effective the date of claim (DOC) and assigned a 10% evaluation. Veteran filed an increase for CAD 01/01/2023 and RD dated 04/01/2023 granted an increase to 30% effective the DOC for increase. On 01/01/2024 Veteran filed HLR of the 04/01/2023 decision contesting the 30% evaluation of CAD and on 02/01/2024 HLR Decision confirmed and continued the 30% evaluation. The case has now been pulled for IQR and you discover the 30% evaluation was warranted at the time of the initial grant in the 2012 decision.

How should you cite this error?

**Answer 1**

This error should be classified under Task 12 correctable action as the 2012 decision failed to assign the proper evaluation. While the error in the 2012 decision did not pertain to the transaction under review, it does require correction.

The higher-level reviewer was required to perform a de novo review of the evaluation of CAD in conjunction with the April 2023 decision but was not required to perform a de novo review of the entire file for that contention.

**Scenario 2**

Veteran filed initial claim for coronary artery disease on 01/01/2012 and RD dated 06/01/2012 granted SC effective the DOC and assigned a 10% evaluation. Veteran filed an increase for CAD 01/01/2023 and RD dated 04/01/2023 granted an increase to 30% effective the DOC for increase. On 01/01/2024 Veteran filed HLR of the 04/01/2023 decision contesting an **earlier effective** date of the 30% evaluation, and stated his CAD met the 30% evaluation back when his claim was first granted. HLR conducted 02/01/2024 failed to assign an earlier effective date for the increased evaluation based on the 2012 decision and confirmed and continued the 01/01/2023 effective date. The case has now been pulled for IQR and you discover an earlier effective date for the 30% evaluation is in fact warranted at the time of the initial grant in the 2012 decision.

How should you cite this error?

**Answer 2**

This error should be classified under Task 8 as a critical error. The higher-level reviewer performed a De Novo review of the April 2023 decision, and the Veteran’s statement in his higher-level review brings the CUE from the 2012 decision into the realm of “pertinent to the action under review.”

**Scenario 3**

On 01/01/2023 the Veteran’s appeal for the evaluation of his residuals of prostate cancer, currently evaluated at 10% disabling, was remanded by BVA for an additional evaluation examination. The examination was conducted 05/01/2023 and showed the veteran was awakening to void three to four times per night. RD dated 06/01/2023 granted an increased evaluation of 20% effective the date of the exam, and an SSOC was completed in conjunction with the RD for the continuation of the 10% prior to 05/01/2023 and the 20% from 05/01/2023. The case was certified back to BVA on 08/01/2023, and the case was pulled for IQR. Upon review of the file, you notice that the 05/01/23 exam noted a daytime voiding interval of less than one hour, and that a 40 percent evaluation was warranted.

How should you cite this error?

**Answer 3**

This is a Task 9 error for improper or premature certification back to BVA. There was an error in the evaluation assigned on May 1, 2023, and this should have been corrected prior to certifying the case back to BVA.

Even though the decisionmaker who certified the appeal didn’t make the error, it was still pertinent to the action under review.

**Scenario 4**

On 03/01/2023 Veteran claims an increase for PTSD. RD dated 06/01/2023 increases the evaluation to 70%. It should be noted that the increased evaluation brought the overall combined evaluation to 100% with no routine future exams scheduled. The Veteran submitted an HLR on 10/01/2023 contesting the evaluation of PTSD decided in the RD 06/01/2023. HLR completed 02/01/2024 confirmed and continued the 70% evaluation as the only decided issue. An IQR was pulled to address the transaction dated 02/01/2024.

How should you cite this error?

**Answer 4**

A Task 2 error should be cited rather than a Task 12.

Although the 06/01/2023 RD failed to address and grant DEA, the issue is pertinent to the action under review within the 02/01/2024 RD because the higher-level reviewer is reviewing and reexamining the claim in question without deference to the prior decision. In addition, the 06/01/2023 rating decision has been continuously pursued via higher-level review.

Summary:

* There is no black and white answer to this question and in many cases, it is up to the QRS’s discretion whether something is pertinent to the action under review.
* Remember the intent of an IQR is to determine if an individual’s work met the minimum standard for correctness.
* Incidental findings of CUEs made on previous decisions, in most cases, should be cited under Task 12, but there are situations when failure to correct a CUE from a previous decision would rise to the level of a critical error under Tasks 1-11.

# HLR DTA Error Letters

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

**Presenter:** Katrina Ice, Management and Program Analyst, OAR

**References:**

* M21-5, Chapter 5, Section 5.e, Handling DTA Errors
* 38 C.F.R. § 3.157(b), VA's duty to notify claimants of necessary information or evidence.

M21-5 5.5.e. (step 3) states that in the course of a HLR return, the EP 030 should be promulgated, and the first paragraph of the notification letter should inform the claimant of that error and that correction will be made with a further decision to follow.

This action concludes the EP 030. The failure to communicate this information in the notification letter is an error.

The reference for handling DTA errors, M21-5 5.5.e. step 4, states that after the establishment of the EP 040, the claimant should be again notified.

This is indicated:

* IF: the duty to assist error includes a requirement to directly develop to the claimant in means of a subsequent development letter for evidence which the claimant must supply.
* IF: the duty to assist error does not include direct development to the claimant, then a HLR DTA letter should also be separately generated.

**Critical vs. Non-Critical Error**

VA’s Duty to Assist requires that “VA will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim… VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant.”

\*Not sending a subsequent development letter when development to a claimant is needed constitutes a critical error under Task 1 of the VSR Task Based Quality Review Checklist

\*Failing to notify the claimant of activity that will be undertaken on their behalf does not rise to the level of a critical error but does constitute a correctable comment.

# February 2024 AQRS Practicum Results

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

**Presenter:** Katrina Ice, Management and Program Analyst, OAR

Compliance

* The QAP was finalized by 29 of 34 AQRSs for a completion rate of 85%

Overall Percentage of Perfect Score

* 22 of 29 AQRSs (76%) completing the practicum did so with a perfect score.

Percentage of Perfect Scores by DROC

* Washington, DC, 67%
* St. Petersburg, 90%
* Seattle, 70%

Among those who did register an error, the most frequent (4 participants - 14%) was on Question 3 in failing to recognize that there was no notification error (checklist task 10) based on the information provided within the scenario.

Three participants (10%) incorrectly answered Question 1 which concerned proper development to the Veteran (checklist task 1).

Two participants (7%) incorrectly answered both Question 2 about all issues being addressed and decided (checklist task 6) and Question 4 which asked about systems compliance issues (checklist task 11).

# Questions and Answers

Several questions arose during the quality call. We have detailed those questions below**.**

**Q1:** When citing a correctable comment for failure to send the HLR DTA Letter when no development to the claimant is necessary, where on the VSR Checklist this should be called as there doesn't seem to be an applicable Task 12 subtask?

**A1:** While not every circumstance is controlled within the Task 12 correctable comments of the quality checklist, in the case of the HLR DTA letter when no development to the claimant is required, a “Best Fit” error description of “Notification on a prior decision not issued” is a good approximation for capturing the requirement. The HLR DTA letter, in this circumstance, notifies the claimant of the preceding decision (on the EP 030) and indicates that action is being taken on the returned review. This situation pertains only when we are not soliciting evidence from the claim but notifying that we are undertaking action associated with their request for a Higher-Level Review.

**Q2:** If HLR DTA letter had not been previously sent, would it still be a comment or correctable comment on the promulgation action of the EP 040?

**A2:** On the EP 040 promulgation/award action of the HLR DTA return, it would not be necessary to include the language as it could be confusing to the recipient. When all appropriate evidence is listed in the rating, the essential DTA and duty to notify of claim development are satisfied.

**Q3:** Additional scenarios were posed regarding the topic of Task 12 correctable comment vs. critical error, as it pertains to the definition of “pertinent to action under review.”

Scenario 1: RD dated 01/22/22 granted SC for right knee with an evaluation of 10 percent effective 01/30/21. HLR received on 01/01/23 only shows right knee in VAF 0996. HLR RD correctly confirmed and continued 10 percent evaluation. The claim was pulled for IQR. Review shows SC was granted in error. Should a critical error be cited for the DRO for failing to complete a CUE rating?

Scenario 2: RD dated 01/22/22 granted SC for right knee with an evaluation of 10 percent effective 01/30/21. HLR received on 01/01/23 only shows right knee evaluation in VAF 0996. HLR RD correctly confirmed and continued 10 percent evaluation. The claim was pulled for IQR. Review shows the effective date assigned was in error for failure to consider the ITF. Should a critical error be cited for the DRO for failing to complete a CUE rating, or assign a correct effective date?

**A3:** In response to follow-up scenario questions, received after the April 2024 Quality Call, OAR reminds DROC decision-makers that a claimant’s notation of service connection, evaluation, or effective date on a VA Form 20-0996, Higher-Level Review, does not in any way absolve the decision-maker from conducting a full and complete review of the issue under review.

The nature of the higher-level review (HLR) is a new review of the previously decided issue as a closed record. The decision-maker issues a new decision, based upon the same body of evidence. In doing so, the decision-maker is assessing for a difference of opinion or a duty to assist error in the decision identified on the 0996. All evidence and aspects of the prior decision should be considered during the HLR. As a result, any CUE in the decision under HLR review, that is not identified by the DRO during the HLR, should be cited under Tasks 1-11 as opposed to Task 12.