

<p style="text-align: center;"><b>INTERMEDIATE LEVEL DUTY TO ASSIST (DTA) TRAINING HANDOUTS</b></p>
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**PREREQUISITE  
TRAINING**

Prior to this training, you must have at least 6 months of Veteran Service Representative (VSR) experience.

**PURPOSE OF  
LESSON**

The purpose of this lesson is to look in depth at VA's duty to assist as it pertains to identifying all issues and developing for all records. This lesson will consist of practical applications that will allow you to apply your acquired knowledge to complex scenarios and situations similar to those which have received numerous national STAR quality errors. In order for the lesson to be effective, there should be very little lecture but extensive discussion and practical application.

Given access to manual and regulation references, and appropriately screened claims, at the end of this lesson, you should be able to:

- Identify a substantially complete application, and the actions to take when a claim is not substantially complete
- Identify all the issues in a claim and ensure all issues have been addressed throughout the claims process
- Review a claim to identify the records (Federal and non-Federal) that must be requested and the steps required to obtain these records, as part of VA's duty to assist
- Identify when an examination is necessary for pension cases where a permanent and total determination is necessary.
- Identifying when to send final notification letters due to inability to obtain Federal records

**TIME REQUIRED**

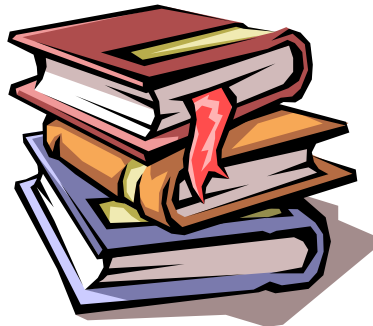
4 hours

**INSTRUCTIONAL  
METHOD**

Participatory discussion and practical application

## **REFERENCES**

- 38 CFR 3.326(a)
- 38 CFR 3.151
- 38 CFR 3.159(a)(3)
- 38 CFR 3.159(b)
- 38 CFR 3.160(a)
- M21-1 I.1.A.1.b
- M21-1 I.1.A.3.f
- M21-1 I.1.B.1.g
- M21-1 I.1.C
- M21-1 III.ii.2.B.1.d
- M21-1 III.ii.1.A.2
- M21-1 III.iii.1.A.1.b
- M21-1 III.iii.1.C
- M21-1 III.iii.1.D.1.d
- M21-1 III.iii.2.B
- M21-1 III.iii.2.E
- M21-1 III.iii.2.I
- M21-1 III.iii.3.A.2
- M21-1 V.i.2.2



## SUBSTANTIALLY COMPLETE CLAIMS

### §3.159 Department of Veterans Affairs assistance in developing claims.

(a) *Definitions.* For purposes of this section, the following definitions apply:

3) *Substantially complete application* means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

### Criteria for Substantially Complete Applications

#### M21-1 I.1.B.1.b

Upon receiving an application, determine if it is substantially complete. A substantially complete application must include the following:

- o claimant's name
- o claimant's relationship to the veteran, if applicable
- o sufficient service information for the Department of Veterans Affairs (VA) to verify the claimed service, if applicable
- o benefit claimed
- o disability(ies) for which the benefit is claimed (*Note:* These should be diagnosed conditions or identified symptoms. Exposure to certain agents, such as Agent Orange and anthrax, is not, in itself, a disability.)
- o claimant's or guardian's signature, unless the application is submitted electronically via Veterans On Line Applications (VONAPP), and
- o statement of income for Veterans pension, Survivors pension, or Parents' Dependency and Indemnity Compensation (DIC).

## IDENTIFYING THE TYPE OF CLAIM(S)

### §3.151 Claims for disability benefits.

(a) *General.* A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA. (38 U.S.C. 5101(a)). A claim by a Veteran for compensation may be considered to be a claim for pension; and a claim by a Veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.

### Identifying an Original Disability Claim

#### M21-1 III.ii.2.B.1.d

Depending on the claimant's manner of preparation and the interpretation by the Veterans Service Representative (VSR) of the claimant's intent, VA Form 21-526, constitutes an original claim for disability compensation, Veterans pension, or both.

**Note:** If any doubt exists as to which benefit the claimant seeks, ask the claimant for clarification.

### Determining the Type of Claim

Use the table below to determine the type of disability claim filed on VA Form 21-526.

If the claimant ...	Then consider the application a claim for ...
provides information claiming in-service treatment for sickness, disease, or injury, or claims to be totally disabled and furnishes information about employment, and/or income	compensation <i>and</i> pension.
provides information claiming in service treatment for sickness disease, or injury	compensation <i>only</i> .
claims to be totally disabled without indicating that this was due to military service, and furnishes information about employment, and/or income, or has attained age 65, claims no disability, and furnishes information about employment, and/or income	pension <i>only</i> .
requests dental treatment <i>only</i>	dental treatment <i>only</i> .
<p><b>Note:</b> Route VA Form 21-526 to the VA outpatient clinic of jurisdiction for that Veteran.</p> <p><b>Reference:</b> For more information on claims for a dental condition only, see <a href="#">M21-1 III.v.7.C</a>, <a href="#">M21-1 IX.ii.2.2</a>, and <a href="#">M21-1 IX.ii.2.3</a></p>	

## IDENTIFYING THE TYPE OF CLAIM SCENARIOS

**SCENARIO #1:** A service connected Veteran files a claim indicating he wishes to file for aid and attendance. He also provides income information in his claim. Is this a claim for Special Monthly Compensation (SMC) or Special Monthly Pension (SMP)? Why or why not?

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**SCENARIO #2:** A Veteran files a claim indicating she is filing for compensation on part I, question 1 of the application, and provides all the needed information regarding the compensation claim. She also provides income information, which exceeds the maximum annual pension rate, and states that she had no unreimbursed medical expenses. Is this a claim for pension?

 Department of Veterans Affairs		VETERAN'S APPLICATION FOR COMPENSAT	
IMPORTANT - Read information and instructions carefully before completing the form. Type, print, or write plainly.			
<b>PART I - VETERAN'S INFORMATION</b>			
1. FOR WHAT BENEFIT ARE YOU APPLYING?			
<input checked="" type="checkbox"/> COMPENSATION <input type="checkbox"/> PENSION <input type="checkbox"/> BOTH COMPENSATION AND PENSION			
2. HAVE YOU PREVIOUSLY APPLIED FOR ANY VA BENEFIT(S)? (Check applicable box)			
<input type="checkbox"/> PENSION <input type="checkbox"/> COMPENSATION <input type="checkbox"/> OTHER (Specify) _____			
3. FIRST, MIDDLE, LAST NAME OF VETERAN			
_____			
4A. VETERAN'S SOCIAL SECURITY NO.	4B. VA FILE NUMBER (If applicable)	4C. SPOUSE'S SOCIAL SECURITY NO.	
_____	_____	_____	

What development action, if any, should we take regarding pension?

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**NOTIFICATION REQUIREMENTS FOR COMPLETE OR INCOMPLETE APPLICATIONS**  
**M21-1 I.1.B.1.b & g**

Use the table below to determine the notification requirements for a complete or incomplete application.

If the application is ...	Then ...
<p><b>substantially complete</b></p>	<p>send a Section 5103 Notice (formerly VCAA Letter) to the claimant (and the claimant's representative, if any)</p> <p><i>Note:</i> This is ONLY required if the claimant does not use a standard EZ application form and does not receive an automated Section 5103 notice upon claims establishment or through online claims submission via eBenefits or the Stakeholder Enterprise Portal (SEP)</p>
<p><b>not substantially complete</b></p> <p><i>Note:</i></p> <p>Establish an EP 400 to control the correspondence, or change the erroneously established EP to an EP 400</p> <p>Do <i>not</i> assist in developing evidence.</p> <p>Use the <i>Incomplete Application</i> letter template to return the incomplete application to the claimant (and representative) and clear the EP 400</p> <p>Establish EP control only when a substantially complete claim is received, using the date of receipt of the incomplete application as the date of claim if received within one year of the incomplete application</p>	<p>notify the claimant (and the claimant's representative, if any) of the information needed to complete the application and inform the claimant that a failure to submit a substantially complete application within one year of the VA notice will result in no benefit being paid or furnished by reason of that application (<a href="#">38 U.S.C. 5102</a>).</p> <p><i>Note:</i> Contact the claimant by telephone whenever possible to obtain the information needed to complete the claim. Otherwise mark the blocks on the application in red that require the claimant's attention, enclose the original application in a letter notifying the claimant what information or evidence is needed to complete the claim, and file a copy of the notification letter in the eFolder.</p>

**SCENARIO #3:** A Veteran indicates he is filing a claim for service connection for a lower back condition and pension, but fails to provide any income information. *What would we do?*

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**DTA CLAIMS REVIEW QUESTIONS**

Break into small groups. You will be handed a sample claim, and as a group, answer the questions below about the claim.

1. What issues are being claimed?
2. What issues require a Section 5103 Notice (formerly VCAA Letter)?
3. Are there any issues that do not require a Section 5103 Notice? What are they? Why do they not require a Section 5103 Notice? What should we do with these issues?
4. Are there any other development actions that are needed, such as requests to third parties for information? How will we request this information?

## OBTAINING NON-FEDERAL RECORDS

The law obligates VA to make reasonable efforts to obtain relevant records for a claim that are not in the custody of a Federal department or agency.

**Reasonable efforts** to obtain relevant records that are not in the custody of a Federal department or agency ordinarily require

- an initial request for such evidence (15 days), and
- at least one follow-up request (15 days)\* if no response is received from the custodian of the records unless a response to the initial request indicates that
  - the records do *not* exist, or
  - a follow-up request would be futile.

“VA should make additional attempts to obtain the requested evidence when there is reason to believe the records exist and subsequent requests will result in obtaining the documents.”

What does this mean?

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**SCENARIO #4:** A Veteran claims service connection for a foot condition. We sent the Veteran a Section 5103 Notice on March 2, 2017.

On March 24, 2017, the Veteran submits a signed VA Form 21-4142 and 4142a indicating treatment by a private physician, but did not list conditions or dates of treatment. The date is now April 2, 2017. What development action should be taken on the claim?

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## OBTAINING FEDERAL RECORDS

VA must attempt to obtain Federal records until:

- the records are obtained, or
- it is reasonably certain that the records do not exist, or that further efforts by VA to obtain records would be futile

VA can be reasonably certain that Federal records do not exist or further attempts to request them would be futile in cases when the minimum efforts to obtain records is complete, or a reply is received from the custodian of the records indicating:

- the requested records do not exist
- the requested records are not in his/her possession
- the requested records are lost, or
- he/she is unable to provide the records for some other valid reason.

The **minimum efforts** to obtain records from a Federal entity are:

- Send a request for Federal records to the appropriate custodian and give them 30 days to respond, then
- Make a follow-up request, by phone or mail, and give 15 days for a response, then
- Notify the claimant about the follow-up action VA took and ask the claimant to provide the records in his/her possession, and
- Attempt to contact the records custodian by telephone. If unsuccessful, then mail another request for the records and give 10 days for a response

If a veteran indicates treatment from 1987, but we only have records in the Capri system going back to 1992, what should we do?

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How many follow up requests would we need?

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What would we do if we received a negative response?

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**SCENARIO #5:** A Veteran files a claim for an increase in her service connected back condition. She also indicates she is receiving SSA disability for her back condition. Should we request the SSA records? Why or why not?

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## VA EXAMINATIONS IN PENSION CASES

If a rating determination of P&T is required because the Veteran does NOT meet the age or presumptive criteria for pension, a VA examination may be necessary if there is inadequate medical evidence available to decide to claim.

Medical evidence, in the form of either a statement from a medical professional or a hospital or examination report, is considered adequate for rating purposes if it addresses ALL of the medical and/or mental condition(s) provided by the Veteran and it can be used to evaluate the impact that the condition(s) have on the Veteran's employability

Use the following table to determine whether a VA examination is necessary:

<b>If the medical evidence</b>	<b>And the medical evidence supports</b>	<b>Then ...</b>
is adequate for pension rating purposes	a <b>grant</b> of pension benefits	grant pension by rating decision. No VA exam is required.
is adequate for pension rating purposes	a <b>denial</b> of pension benefits	deny pension by rating decision. No VA exam is required.
is not adequate for pension rating purposes	a <b>grant</b> of pension benefits	grant pension by rating decision. No VA exam is required.
is not adequate for pension rating purposes	a <b>denial</b> of pension benefits	request a VA exam.

If there is NO medical evidence pertaining to any of the claimed conditions impacting pension, then request medical evidence from the claimant. Once medical evidence becomes of record, determine whether it is adequate or not and following the steps in the table above.

However, if the claimant does not submit any medical evidence and 30 days have passed from the date of request, then

- deny the claim, and
- notify the Veteran that the evidence must be provided in order to reconsider the claim.

**SCENARIO #6:** A World War II Veteran claims pension due to coronary artery disease, chronic renal disease and diabetes mellitus. The Veteran submits private medical records that show cardiac hypertrophy with an ejection fraction of 55 percent and METs of 7. Using CAPRI, we also discover VA medical records that show that he is on a restricted diet and taking insulin, but no regulation of activities. Service treatment records do not show treatment for any of these conditions. If you are developing this case today, what action should you take?

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## THE MILITARY RECORDS SPECIALIST AND FINAL NOTICE TO CLAIMANTS

If efforts to obtain records from a Federal entity are ultimately unsuccessful, regional offices (ROs) must

- prepare a final notification letter using the Letter Creator tool, or prepare an equivalent notice using PCGL, and
- send the letter to the claimant

**Note:** As of October 27, 2017, the final notification letter NO LONGER gives the Veteran 10 days to submit the records that VA could not obtain.

**Important:** All claims processors can prepare final notification letters for any type of Federal record.

However, if the federal records are *service treatment records (STRs)*, regional offices must first attempt to locate the records in Joint Legacy Viewer (JLV) before sending the final notification letter.

If the federal records are *VAMC or VR&E records*, the rating specialist must free text the following into the evidence section of the rating decision:

*We have been unable to obtain records from [insert name of VAMC/VR&E office] for the period [insert date range of treatment/counseling]. We have determined that these records do not exist. We will now make a decision based on the evidence of record.*

Lastly, if the federal records are *fire-related*, the claims processor must prepare and send a final notification letter to a claimant after

- the claimant returns a completed NA Form 13055 or NA Form 13075, or the claims folder contains information sufficient to substitute for the form
- VA uses information from the form to submit a PIES request under request code
  - M05-V or M05 (for NA Form 13055), or
  - S02-V or S02 (for NA Form 13075), and
- NPRC provides a negative response to the request.

**Note:** A final notification letter is NOT required if VA does not receive enough information to request reconstruction of the records from either NA Form 13055 or NA Form 13075.

After a final notification letter has been sent, if applicable, then a Military Record Specialist can complete a formal finding of unavailability (as long as other conditions are also met too). The formal finding is recorded on [VA Form 21-0961](#).

Route the case to the rating activity for final rating action when

- the final notification letter has been sent, or
- when a formal finding is complete

**EXAMPLE OF A FINAL NOTIFICATION LETTER TO THE CLAIMANT**  
**Department Of Veterans Affairs**

November 16, 2017

TEST VETERAN  
1111 MAIN STREET  
ANYTOWN, USA

In reply, refer to:  
VBA/VA Employee  
File Number: XXX-XX  
TEST VETERAN

**IMPORTANT**

Dear VETERAN:

We are continuing to work on your claim.

As previously advised in letters of February 1, 2017, and February 16, 2017, we requested your Service Treatment Records.

We have determined that these records cannot be located and therefore are unavailable for review. All efforts to obtain the needed information have been exhausted, and based on these facts, we have determined that further attempts to obtain the records would be futile. Your claim file contains documentation of the written and telephonic efforts we made to attempt to obtain these records.

We have taken the following actions in an effort to obtain these records:

- We contacted Social Security Administration (SSA) on 01/01/2017 to obtain your Service Treatment Records, however, we did not receive a response.

**What Do We Still Need From You?**

Please submit any relevant documents in your possession including:

- Any available copies of your Service Treatment Records.
- Any other relevant evidence or information that you think will support your claim.

You may be able to furnish documents that can substitute for service treatment records. Submit any copies of the following documents you have that relate to your disability during service:

- Statements from military medical personnel (nurses, medics, corpsmen, doctors)
- "Buddy" certificates or affidavits - (A "buddy" certificate or affidavit is a statement by a person who knew you when you were in service and knows of any disability you had while on active duty. The statement should state the dates and places they saw the condition(s) and should describe what they saw. If the person making the statement was on active duty at the time, they should show their service number and unit of assignment.)
- State or local accident and police reports
- Employment physical examinations

- Medical evidence from hospitals, clinics and private physicians by which or by whom you may have been treated after separation
- Letters written during service
- Photographs taken during service
- Pharmacy prescription records
- Insurance examinations

If you are unable to submit records, you may also advise us of possible locations(s) of these records.

## **How Soon Should You Send What We Need?**

We strongly encourage you to send any information or evidence as soon as you can. VA will decide your claim based on the evidence of record.

## **How Should You Submit What We Need?**

**Please note that the quickest, easiest, and most secure way to submit any documents to us is via the eBenefits website.** Just visit [www.eBenefits.va.gov](http://www.eBenefits.va.gov) to register.

You can also send what we need to the appropriate address listed in the attached *Where to Send Your Written Correspondence* enclosure.

## **What is eBenefits?**

eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Request a Veterans Service Officer to represent you
- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

Enrolling in eBenefits is easy. Just visit [www.eBenefits.va.gov](http://www.eBenefits.va.gov) for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

## **If You Have Questions or Need Assistance**

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

Intermediate DTA Trainee Handout

<b>If you</b>	<b>Here is what to do.</b>
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at <a href="https://iris.va.gov">https://iris.va.gov</a> .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> .

In all cases, be sure to refer to your VA file number, XXX-XX  
If you are looking for general information about benefits and eligibility, you should visit our website at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <http://iris.va.gov>.

Sincerely yours,  
**Regional Office Director**

Enclosures: Where to Send Your Written Correspondence