



California Association of County Veterans Service Officers, Inc.
Serving Those Who Served

2025 Winter Professional Training Conference



CVSO Scenarios

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Scenario #1

- I have a Veteran that I filed for Prostate cancer and Diabetes due to Agent Orange on Guam, I originally filed for it in 2017 but it was naturally denied. He came back and we eventually went to the appeal process.
- Unfortunately, he passed away in 2020 from Diabetes complications and I immediately made his wife substitution of claimant. We waited to get in front of a judge for this case but never got that opportunity due to the Pact Act being passed.
- They granted her DIC back to the Pact Act date, but no other back pay. Is there a way to fight that? I feel they were robbed of their opportunity to face a judge and get them an earlier effective date.
- She is happy that we were able to get her the DIC pension, I was just hoping for a bigger victory for her after all these years.

Scenario #2

- My question is regarding a Vietnam Veteran who was recently awarded 100% rating for CAD. We sent in the claim on July 10, 2023. Which was within the year of the law being signed. For some reason the VA gave a zero rating for Hypertension and then dated it for 8/10/2022 but not the CAD.
- VA News reported: *"While there is no deadline to apply for PACT Act-related benefits, there is urgency. Most Veterans and survivors who "apply" for benefits or submit an "Intent to File" by August 9, if granted, will have their benefits backdated to August 10th of last year – the day that President Biden signed the PACT Act into law."*
- My veteran did not receive the back dated money for his CAD rating.

Scenario #3

- Myelofibrosis and Asthma on the death certificate, vet died 15 years ago, DIC filed and 2020 then a supp and a HLR recently denied.
- Vet served in Vietnam....there is a nexus letter but the VA stated it is not sufficient because the VA examiner had access to all the VA records.

Scenario #4

- I am reaching out because I need some clarification regarding 38 C.F.R. § 4.96. I see it says 'Ratings under diagnostic codes 6600 through 6817 and 6822 through 6847 will not be combined with each other. Where there is lung or pleural involvement, ratings under diagnostic codes 6819 and 6820 will not be combined with each other or with diagnostic codes 6600 through 6817 or 6822 through 6847. A single rating will be assigned under the diagnostic code which reflects the predominant disability with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation.'
- A few questions... I have a veteran who is service connected for rhinitis and asthma (30%). He wants to file for sleep apnea secondary to asthma... however, as I read the regulation if he is service connected for sleep apnea, they will only compensate him for the higher rating?
- If we file for the sleep apnea secondary to rhinitis (instead of asthma) does that circumnavigate this regulation?

Scenario #5

- What type of success have you seen with AO claims for Navy vets that were stationed on ships making up Yankee Station?
- I currently have a veteran that passed of multiple conditions including CAD. He was an aircraft mechanic stationed on the carrier USS Kearsarge. It is not listed in conceded Blue Water ships but had a constant rotation of fixed wing and rotor aircraft coming in from the mainland that he worked on.
- I'm going to file for DIC regardless and have been researching exposure probability for enough evidence to justify making the claim but if you have anything that could help it would be greatly appreciated.

Scenario #6

- I need to fact check this – if we are filing an increase within one year of the last VA exam, we would need to provide evidence the condition has worsened, in order for VA to establish claim
VERSUS, it has been more than one year and a claim for increase is filed, VA would automatically establish claim and schedule exam?
- Note – Vet does not disagree with the original rating, so no higher-level review, but 9 months have passed and he currently feels his symptoms are worse. In other words, we aren't trying to pursue the earlier effective date of original filing, only asking for an increase.

Scenario #7

- Someone in VA stated that to get SC for a presumptive condition from the Southwest Asia Theatre of Operation that the veteran must have been boots on ground/exposed directly to burn pits. Is that right?

Scenario #8

- I had assisted one of my Blue Water Navy Veterans to reopen his claim for Coronary Artery Disease. The VA awarded the veteran a 100% rating. They used the date that we had submitted the request to reopen the claim as the effective date. Under the Blue Water Navy Act, the veteran should have been awarded back to the date of the original claim.
- I researched the veteran's file and he had originally filed for Coronary Artery Disease on June 7, 2005. This claim was denied because Coronary Artery Disease was not listed as a Presumptive Issue of Agent Orange Exposure. Coronary Artery Disease was not added to the Agent Orange Presumptive list until October 30, 2010.
- My plan is to file a Higher-Level Review and request that the VA grant the effective date of the claim back to the date that the condition was added as a presumptive issue. I don't think that I can get them to go back to the date of the original claim.

Scenario #9

- Veteran is 100%.
- Veteran has exposure to Radiation from Lawrence Radiation Lab in Livermore, CA and now has Alzheimer's.
- Will I muddy the waters if I file for Alzheimer's due to Radiation Exposure and Alzheimer's aggravated by VA hospitalization at the same time? I have an assessment before and after his hospital stay. Spouse filed an 1151 claim for his heel wound previously VA denied that occurred during the same hospitalization.

Scenario #10

- I am trying to help a surviving spouse with a DIC denial. She is over income for Death Pension and can really use some help. She feels very strongly its related to Agent Orange.
- Veteran had filed for esophageal cancer prior to passing and VA denied based on AO.
- When reviewing the file for DIC I discovered the veteran had a rating that was probable for asbestos. VA also denied based on asbestos.
- I reached out to The Mesothelioma Center for guidance and they provided an article but it isn't a slam dunk. Is it enough to get another look or do you have any other suggestions?

Scenario #11

- I have a gulf war veteran who served in the burn pits. He has asthma. We applied. The VA sent him to an PFT and exam, where the examiner confirmed diagnosis and provided a positive nexus.
- The Veteran then gets a letter saying that the claim was rejected because it wasn't on the proper form because he had previously filed for "undiagnosed illness" with symptoms that include shortness of breath.
- We then turn in a 995. The VA has now ordered a new PFT and exam.
- Is there a way to call BS now and have them cancel this second exam before it does harm or do we really have to wait for a decision to request this second exam be thrown out?
- My fear is that we will, then, play games all the way to the board which isn't at all necessary in this case. All the evidence is there for a positive finding, anything more would be development to deny.
- Is it inappropriate to contact the ordering party's supervisor to ask what value this exam is adding to a case that is decision ready? Would you propose something else, so I don't just piss them off?

Scenario #12

- In condition, the veteran claimed Hypertension
- In Dec 2005 VARO denied claim for Hypertension – not AO condition.
- On 01/09/2023 we submitted a 20-0995 to reopen hypertension and during our office interview he told me he has a heart condition, so we submitted a 21-526 adding his heart secondary to his hypertension.
- On 03/10/2023 VARO issues an AMA letter rejecting our claim for heart because “you would like us to review a claim for heart condition/hypertension that we previously denied. VA regulations require you to file this request on the proper form.”
- On 03/28/2023 VARO grants hypertension with a 0% rating.
- On 09/21/2023 I reviewed the 2 VA letters, and file a 20-0996 HLR based upon the rejection of the 21-526. That his heart was not claimed prior and that a new condition should be on the 526, not the 0995.
- On 01/31/2024 VARO issues a letter stating “unfortunately we can’t accept this request because the issue are now pending under another lane because the issues were missed in the Rating Decision”
- As of today’s review, there is not any pending actions that are open.
- If the heart evaluation is tied with his hypertension, why did VARO not evaluate his heart with the reopen claim for Hypertension?
- What my next step should be?

Scenario #13

- I have a client who we had submitted a claim for Interstitial Lung Disease. He was in the Navy, but was actually boots on ground in Vietnam. VA denied the claim in May 2022 citing no evidence to show it was caused by his military service.
- I found an article on the National Library of Medicine website, regarding the link between Idiopathic Pulmonary Fibrosis and Agent Orange Exposure.
- I want to submit a Supplemental Claim, citing the findings in this article/study, however, I'm feeling we need to get a medical opinion letter.
- I am going to be asking the veteran to ask his pulmonologist to provide a letter with his/her opinion regarding the link to AO.
- Are there any barriers or hurdles you've seen in your experience I could be looking at in moving forward with the Supplemental Claim for the Interstitial Lung Disease?

Scenario #14

- The scenario I'm about to pose has now occurred on two separate occasions within the last week of each other which is concerning to me.
- We have two separate veterans, who's exposure has been confirmed via TERA Memos for each of them, but they are being denied based on a medical opinion being rendered.
- The immediate concern I have is, why is VA requesting a nexus where presumption exists/has been confirmed?
- On both negative opinions, the doctors argue that the veteran did not spend enough time in the exposure location to warrant manifestation of said condition and instead could have been caused by other natural stateside circumstances.
- One of these denials resulted from a Higher Level Review that we thought we had in the bag, this was not the case... Whatever happened to the reasonable doubt doctrine??
- I'm certain you need more details to opine on this but I wanted to check with you first to see if you've heard of this or have any immediate thoughts or solutions.

Scenario #15

- I'm going over this veteran's denial from 2016.
- STRs show disc bulge at L3-L5, disc degeneration from L5-S1 and spondylosis at L5.
- The rating decision states "service connection may be granted on a presumptive basis for degenerative arthritis of the spine. While the medical evidence shows that degenerative arthritis of the spine is currently disabling to a compensable degree, the medical evidence fails to show that the disability became compensable within the time period specified under 38 CFR 3.307. Therefore, service connection on a presumptive basis must be denied."
- What's getting me is the fact that there's evidence of the injury in service, and of current arthritis but they are denying because it was not compensable within the first year.
- Is there another angle here? His back is far more debilitating now.

Scenario #16

- We were appealing the early effective date for the veteran's stomach.
- We submitted an ITF on 06/28/2023.
- On 08/03/2023 we submitted a 20-0995 for OSA which the claim was denied.
- However, on 08/28/2023 we submitted a claim for the veteran's stomach which the claim was granted. The effective date for the stomach is 08/28/2023.
- I'm wondering if we should continue arguing the EED since the claim was submitted within the month or if we should just leave it alone. Please let me know.

Scenario #17

- I have a veteran who continues to be denied for thymic carcinoma, veteran was exposed to asbestos while in the Army, VA conceded TERA, but still denied it, this is their response to the HLR we submitted. What is the best approach for an appeal?
- "According to the VA examination that was conducted on December 2023, the examiner opined that the claimed condition was less likely than not caused by the indicated toxic exposure risk activity(ies), after considering the total potential exposure through all applicable military deployments of the Veteran and the synergistic, combined effect of all toxic exposure risk activities of the Veteran, and rendered that thymic carcinoma is a rare cancer, and it is more common in African American than in White . The etiology of thymic neoplasms remains unknown. There is a strong association of thymomas with myasthenia gravis and other paraneoplastic syndromes such as total red cell aplasia, polymyositis, systemic lupus erythematosus, Cushing syndrome, and syndrome of inappropriate antidiuretic hormone secretion. The claimed condition is not established medically/scientifically that TERA of the Veteran causes thymic carcinoma. Therefore, the service connection for thymic carcinoma due to PACT ACT is denied.
- Favorable Findings identified in this decision: Participation in a toxic exposure risk activity is conceded. TERA Memorandum which was conducted on November and August 2023, conceded exposure due to your MOS as Tank System Mechanic.

Scenario #18

- I have an 85 year old veteran who was a Navy reservist.
- He has a DD-214, 10/20/61 – 04/19/62.
- He filed a claim on Nov 27, 2023 for several conditions. He was denied s/c for lung cancer with metastatic tracheobronchial, sleep apnea with CPAP, essential tremors.
- He just recently was awarded 100% for unspecified depression disorder. MO for the three denials were positive for “at least likely as not service connected”, so I submitted and HLR which they quickly turned around and confirmed and continued the denials.
- The reason we are pursuing this is because he will most likely pass from the lung cancer vice unspecified depression disorder so that is why we would like to get his cancer s/c. He submitted a statement (4138) of how he was exposed to toxins with a helicopter fire (during one of his drill periods), however that did not happen during his DD-214 time so that is why they are not service connecting it. He does not have any report about the helo fire.
- What are your thoughts on how or if to move forward? Is the BVA the next step or is it not worth pursuing because no chance of succeeding?

Scenario #19

- I am a bit confused on this argument for an earlier effective date on my U-Tapao veteran who was finally granted DMII and CAD.
- They gave effective date of 08/05/2022. I said, "The veteran served TDY in Guam in 1967 for 179 days. He served TDY in U-Tapao Royal Thai Navy Airfield in Thailand Aug 1972. He has stated his exposure to Agent Orange on 06/22/2021 form 21-4138. This has been an ongoing claim and continuously pursued. The date of claim should be 11/09/2020, the date of the 21-0966 Intent to File."
- Got it back saying oops CUE should be 08/10/2022 for effective date.

Scenario #20

- Claim was continuously pursued, and they came back with the effective date as the date of the C&P exam for bone spurs. This is the “earliest effective date that show subjective or objective complaints.”
- What the heck here? So I think I need to find where he complained about pain before the C&P exams.
- On the exams the examiner put down no pain. I questioned him and he says it doesn't hurt when you are just sitting there. It is when he tries to go up and down stairs or ladders.
- Do I reopen with his statement about the examiners? I do not understand the law here.

Scenario #21

- I have a prostate cancer vet who has is in remission and the VA sent a proposal to reduce to 60%.
- However, the VA Authorized a procedure which was accomplished inserting a Artificial urinary splinter which allows him to manually express urine.
- He only wears a pad for just in case purposes for now.
- I can not figure out if his percentage will be less than 60 or ?
- Do you have any idea what the possible rating might be? There's nothing identified except how many pads one uses after surgery. Trying to educate my client (and me as well).

Scenario #22

- I'm attempting to bypass the C+P Examiner Lottery for a Veteran that has never filed for PTSD before.
- Where can we locate the Initial PTSD DBQ form? or can we not file for PTSD with a private examiner if they haven't filed for it before?
- The form I sent in was the Review form and they are scheduling him for a C+P Exam now.
- I'm trying to streamline the process and protect his Veteran.

Scenario #23

- I am assisting a Veteran and I recently got him awarded 100% for PTSD. He believes that the VA should have service connected him for depression when he filed for it in 2015.
- I looked over it, and he had been discharged 18 months prior to him being diagnosed through the VA for depression.
- My thinking is that there could possibly be a “duty to assist error.” The VA didn’t send him a letter asking for more information in regard to the event that triggered depression, nor did they schedule him a C&P exam.
- I feel like with it being only 6 months past the 1 year of discharge rule that the VA should’ve asked for more information or scheduled a C&P exam.
- Do you think it may be considered a CUE or do you think this isn’t a duty to assist error?
- He has suicidal thoughts quite often and utilized the crisis hotline so I’m not concerned about his current rating being reduced.

Scenario #24

- I have a question related to burn pit exposure.
- I'm helping a Navy veteran file an appeal to the VA. He was in Bahrain (off the ship and in country), and he was denied for Sinusitis. He was diagnosed with Sinusitis by the VA. In the denial letter the VA conceded service in Bahrain, and Kuwait. The narrative states that "there is no significant inhalation of burn pits noted. Based on the lack of ILER, it is unknown if the veteran actually had exposure to burn pits".
- I was reviewing the VA website, and CFR. However, I could not find any literature on the exact time frame a service member needs to spend around burn pits for the VA to concede exposure. I was looking for a "boots on ground clause" , like the VA has for Agent Orange.
- I'm leaning towards doing a HLR. What advice would you give me?

Scenario #25

- Veteran in Thailand files for two conditions back in 2017——-denied and appealed continuously all the way to the BVA.
- Recently awarded back dated to PACT act date because they were presumptive conditions.
- I think you said something about getting a medical opinion for direct service connection rather than presumptive to get the effective date to 2017? Or am I way off base?

Scenario #26

- This may be a long shot. Veteran served at Camp Santa Barbara Korea – cannot attest to ever going to DMZ.
- VA has denied AO exposure. Any chance at winning this?
- So far I have advised the veteran that Camp Santa Barbara isn't "near" enough, but thought I'd ask.

Scenario #27

- We, VSOs, are not trying to claim that physical disabilities such as back condition, joint issues, etc. are TERA. The VA keeps lumping them in with TERA and then denying them using the reasoning that they are not from toxic exposure.
- Right now our guidance from our State Veteran Affairs, is to submit at least two claims one for TERA and one for physical disabilities.
- When I fill out the claim form I specifically annotate what is toxic exposure and what is do to an injury and/or event in service, etc.
- However, it appears the VA is not reading that and requests exam opinions for everything under Toxic Exposure.
- Is there a way to resolve this beyond submitting multiple claims?

Scenario #28

6/4/21- Original Claim Filed- Sleep Apnea Secondary to PTSD

7/29/21- Denial.

8/16/21- Filed 0995 with the VA's own study of the link between the two conditions.

11/16/21- Denial continued.

7/5/22- Request for hearing with Law Judge.

7/20/22- 526ez for Rhinitis and Sinusitis.

10/31/22- Grant for Rhinitis and Sinusitis with effective date of 8/5/21.

4/11/23- Intent to file for Sleep Apnea secondary to service-connected sinusitis filed.

4/19/23- 526ez for Sleep Apnea secondary to service-connected sinusitis filed.

4/20/23- Withdrawal of hearing with Law Judge sent.

5/12/23- 20-0995 filed as requested for Sleep Apnea secondary to service-connected sinusitis. (I believe it was because it was requested this way after the 526 was sent in.)

10/25/23- Sleep apnea secondary to service-connected sinusitis is granted with effective date of 4/19/23.

Does the fact that I changed the secondary link affect the fact that I still had an open appeal of the denial of secondary to PTSD? I believe the effective date should have been the original date as stated above and not the grant date given.

Scenario #29

- I filed for HL and Tinnitus back in 02/2022.
- It was denied, because his service records didn't show these issues in the exit exam.
- I appealed pointing out VA law showing the examiner can't deny just on the exit exam ignoring the veteran's statement in the process. At the time we were going straight to Higher level review.
- My 4138 was ignored and they did a TERA exam and came to the same dumb conclusion.
- Any ideas on how to appeal this without going to the BVA? I don't have any new evidence.

Scenario #30

- Let me know your thoughts on this denial:
- “Medical evidence available for review includes your statement in support of PTSD on VA form 21-0781a, private treatment records from the Santa Cruz Women’s Health Center which documents treatment for symptoms of PTSD, and medical treatment records from the Palo-Alto VAMC which note complaints for symptoms of PTSD. Other records available for review include your Service Treatment Records which document a dispute with a “boyfriend”, that follow with treatment for back pain. We also received and reviewed your Military Personnel Records that document misconduct and an article 15.
- At the VA exam dated September 16, 2024, the examiner reviewed the above evidence as well as service treatment and personnel records and opined that you do not meet DSM-5 criteria for a diagnosis of posttraumatic stress disorder at this time. Treatment records from your private provider were reviewed and show you have a diagnosis of PTSD however, after a thorough review of your medical records, service records, and interview, the VA medical examiner provided a diagnosis of Other Specified Trauma and Stressor Related Disorder with Major Depressive Disorder, Recurrent, Moderate, with anxious distress.
- Please note that although the VA examiner opined that your Other Specified Trauma and Stressor Related Disorder with Major Depressive Disorder, Recurrent, Moderate, with anxious distress was related to military sexual trauma, as supported by 'marker' evidence found in the record; VA regulations only allow for the grant of service connection based on 'marker' evidence for a diagnosis of PTSD. (38 CFR 3.304)”

Scenario #31

- Rating decision states: "Ultimately, after reviewing all available records, exposure to herbicide agents could not be confirmed, as the evidence of record did not show the Veteran had duty or visitation in the Republic of Vietnam, or on its inland waters, or nautical service in the offshore eligible waters as defined by the Blue Water Navy Vietnam Veterans Act.
- The Veteran did provide his observations where he states that he was able to see the shore of Vietnam from the ship and was able to see people and vehicles on the shore in detail. The Veteran also recounted how the USS Bole would fire its guns inland doing fire support missions. The Veteran argues that the range of the guns would require the ship to be within 12 miles of the coast of Vietnam. The Veteran is competent to describe events he experienced because he was capable of perceiving what he saw while aboard the vessels. While the Veteran is competent (qualified) to observe what he experienced while serving, he is not competent to determine the exact location of the vessel during its time in Vietnam. His statements as to how close the ship was to the coast are simply too speculative to be persuasive evidence, and the actual logbooks far outweigh his lay statements. As noted above, maps have been prepared pinpointing all the locations where the USS Bole and Shelton anchored during the Veteran's tour, and none of those locations were within 12 miles of the coast."
- Any idea on how I can appeal this? He has no other evidence to submit.

Scenario #32

- Veteran applied for Bilateral Hearing Loss on 08/26/2014 and was denied on 04/28/2015.
- He submitted a supplemental claim on 07/12/2022 denied 08/03/2022 because VA examiner provided a negative nexus.
- I submitted a supplemental for the Veteran on 01/29/2024 and on 02/08/2024 and the VA approved his claim.
- My argument was based on VA's failure to apply 38 CFR 3.102 Reasonable Doubt
- The VA is approving this claim now stating "Based on the evidence and resolving any doubt in your favor, service connection is granted for bilateral hearing loss.
- The effective date of this grant is January 29, 2024. Service connection has been established from the day VA received your claim. When a claim of service connection is received more than one year after discharge from active duty, the effective date is the date VA received the claim. (38 CFR 3.400)
- The only new information that was provided for this claim was the fact that the VA did not look at the reasonable doubt that was presented by the medical examiner's opinion. Would this be a good claim to file for an effective date of claim to at least go back to the first supplemental exam?

Scenario #33

- I am submitting a supplemental for OSA secondary to PTSD.
- The original decision only looked at the OSA due to TERA. I have three studies that show a relation of OSA and PTSD. Two of the studies are actually cited in a BVA decision granting OSA second to PTSD.
- Can I cite that decision or copy the short paragraph from the decision to include in my 0995?
- Thoughts?

QUESTIONS?

LIVE
Q&A

More Questions?

Feel free to contact us about questions from this training or **ANYTIME** you have a question about a claim:

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