

# Code of Conduct

<https://calvets.participoll.com/>



# Polling Question – Warm Up

How long have you been involved in helping Veterans obtain VA compensation benefits?

- A. Less than one year.**
- B. More than one year, less than five years.**
- C. More than five years, less than ten years.**
- D. Over ten years.**



# Lesson 2 Learning Objectives

Learn about professional standards for VSOs, as set by VA:

- VA's Standards of Conduct.
- How to complete VA Form 21-22.
- How and when to withdraw representation.
- Learn about protecting a Veteran's confidential information and the type of information that must be disclosed to VA.

# Definitions and Handouts

- VSR: Veteran Service Representative
- CVSO: County Veteran Service Officer
- SDVA: State Department of Veterans Affairs (CALVET)
- VSO: Veteran Service Organization (EX. American Legion, DAV, VFW, ETC)
- POA – Power of Attorney. The authority granted by the Veteran to an organization to represent the Veteran before VA, “Appointment of a Veterans Service Organization as Claimant’s Representative,” VA Form 21-22.

# Lesson 2 Handouts

- Handout 1: **Standards of Conduct, these are set by VA,** including how VA can cancel an individual's accreditation.



**The standards of conduct in 38 C.F.R. § 14.632 establish the appropriate behavior for VA-accredited attorneys, agents, and representatives.**

- Handout 2: **VA's Accreditation Program Enforcement Authority.**

# What Service Officer's *Must* Do

- **Faithfully execute their duties on behalf of a VA claimant.**
- **Be truthful in their dealings with claimants and VA.**
- **Provide claimants with competent representation before VA.**
- **Act with reasonable diligence and promptness in representing claimants.**
- Remember that you are an advocate – you are working on behalf of the Veteran.
- You must be truthful, with both VA and the Veteran.
- You must be competent - you must know what you're doing.
- Do more than the bare minimum and help the Veteran win the most VA benefits in the shortest amount of time.

# What Service Officer's *Must Not* Do

- (1) Violate the standards of conduct as described in 38 C.F.R. § 14.632.
- (2) Circumvent the rules of conduct through the actions of another.
- (3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty.
- (4) Violate one or more of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations.
- (5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation.
- (6) Solicit, receive, or enter into agreements for gifts related to representation provided before an agency of original jurisdiction has issued a decision on a claim or claims and a Notice of Disagreement has been filed with respect to that decision.
- (7) Delay, without good cause, the processing of a claim at any stage of the administrative process.
- (8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA.
- (9) Engage in, or counsel or advise a claimant to engage in, acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA.
- (10) Disclose, without the claimant's authorization, any information provided by VA for purposes of representation.
- (11) Engage in any other unlawful or unethical conduct.

# Loss of Accreditation

VA can cancel a VSO's accreditation if the VSO:

- Knowingly violates or refuses to comply with the law,
- Knowingly presents a fraudulent or frivolous claim,
- Knowingly presents false information to VA, or
- Commits any other unlawful, unprofessional, or unethical practice.

# Fraudulent Claims

- Fraud is committed when a person knowingly makes, or assists in making, a false statement concerning a claim for VA benefits.
  - Submitting doctored documents.
  - Making false statements about their service.
  - The key is “knowing.”

# Frivolous Claims

- A claim is frivolous if the service officer is unable to make a good faith argument on the merits of the claim.
- For example:
  - A Veteran never served in the Persian Gulf, yet wants to file a VA claim based on presumptive conditions only for Veterans deployed to Southwest Asia.
  - This would be a *frivolous* because there is no legal basis to support the Veteran's claim.

# VA Form 21-22

OMB Control No. 2900-0321  
Respondent Burden: 5 minutes  
Expiration Date: 7/31/2026

Department of Veterans Affairs		VA DATE STAMP (DO NOT WRITE IN THIS SPACE)
<b>APPOINTMENT OF VETERANS SERVICE ORGANIZATION AS CLAIMANT'S REPRESENTATIVE</b>		
<p><b>INSTRUCTIONS:</b> Before completing the form, read the Privacy Act and Respondent Burden on Page 3. The VA Office of General Counsel maintains a list of all attorneys, claims agents, and Veterans Service Organization (VSO) representatives accredited by VA to assist in preparing, presenting, and prosecuting claims for VA benefits at: <a href="https://www.va.gov/ogc/apps/accreditation/index.asp">https://www.va.gov/ogc/apps/accreditation/index.asp</a>. You can search this list by name, state, or zip code. We recommend you use the list to confirm and validate VA accreditation before signing any contract or appointing someone to represent you on your VA benefits claim. If you prefer to have an individual assist you with your claim instead of a VSO, complete VA Form 21-22a, <i>Appointment of Individual as Claimant's Representative</i>. For more information, you can contact us through Ask VA: <a href="https://ask.va.gov/">https://ask.va.gov/</a>, or call us toll-free at 1-800-827-1000 (TTY: 711). VA forms are available at <a href="http://www.va.gov/vaforms">www.va.gov/vaforms</a>. After completing the form, use the mailing addresses provided on Page 4.</p>		
<b>SECTION I: VETERAN'S INFORMATION</b>		
<p><b>NOTE:</b> You can <i>either</i> complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing of the form.</p>		
1. VETERAN'S NAME (First, Middle Initial, Last)		
<input type="text"/>		
2. SOCIAL SECURITY NUMBER (SSN)	3. VA FILE NUMBER (If applicable)	4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/>	Month <input type="text"/> - Day <input type="text"/> - Year <input type="text"/>
5. VETERAN'S SERVICE NUMBER (If applicable)	6. INSURANCE NUMBER(S) (If applicable) (Include letter prefix)	
<input type="text"/>	<input type="text"/>	
7. MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)		
No. & Street <input type="text"/>		
Apt./Unit Number <input type="text"/>	City <input type="text"/>	
State/Province <input type="text"/>	Country <input type="text"/>	ZIP Code/Postal Code <input type="text"/> - <input type="text"/>
8. TELEPHONE NUMBER (Include Area Code)	9. EMAIL ADDRESS (Optional)	
<input type="text"/>	<input type="text"/>	

**START HERE:**

**Complete [VA Form 21-22](#), as it is required in order to assist a Veteran.**

# VA Form 21-22, cont.

**Section II: If someone other than the Veteran files the claim, then complete this section.**

**Box 15: Enter CalVet**

**Box 16A & 16B: Enter your name and title.**

**Box 17: Enter an e-mail address.**

**Box 18: Enter the date.**

SECTION II: CLAIMANT'S INFORMATION <i>(If other than veteran)</i>	
10. CLAIMANT'S NAME <i>(First, Middle Initial, Last)</i> <input type="text"/>	
11A. CLAIMANT'S DATE OF BIRTH Month <input type="text"/> Day <input type="text"/> Year <input type="text"/>	
11B. RELATIONSHIP TO VETERAN <input type="text"/>	
12. MAILING ADDRESS <i>(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)</i> No. & Street <input type="text"/> Apt./Unit Number <input type="text"/> City <input type="text"/> State/Province <input type="text"/> Country <input type="text"/> ZIP Code/Postal Code <input type="text"/>	
13. TELEPHONE NUMBER <i>(Include Area Code)</i> <input type="text"/>	14. EMAIL ADDRESS <i>(Optional)</i> <input type="text"/>
SECTION III: SERVICE ORGANIZATION INFORMATION	
15. NAME OF SERVICE ORGANIZATION RECOGNIZED BY THE DEPARTMENT OF VETERANS AFFAIRS <i>(See list on Page 3 before selecting organization)</i> <input type="text"/>	
16A. NAME OF OFFICIAL REPRESENTATIVE ACTING ON BEHALF OF THE ORGANIZATION NAMED IN ITEM 15 <i>(This is an appointment of the entire organization and does not indicate the designation of only this specific individual to act on behalf of the organization)</i> <input type="text"/>	16B. JOB TITLE OF PERSON NAMED IN ITEM 16A <input type="text"/>
17. EMAIL ADDRESS OF THE ORGANIZATION NAMED IN ITEM 15 <input type="text"/>	18. DATE OF THIS APPOINTMENT <i>(MM/DD/YYYY)</i> <input type="text"/>

# VA Form 21-22, page 2

**Top of Every Page: Enter the Veteran's SSN.**

**Box 19: Veteran must check the box so VA releases information to CalVet.**

**Box 20: We don't advise limiting consent as it can prevent VSOs from viewing the claims file.**

**Box 21: If the Veteran wants VSO to be able to change the Veteran's address, then check the box.**

VETERAN'S SOCIAL SECURITY NUMBER

-   -

## SECTION IV: AUTHORIZATION INFORMATION

**19. AUTHORIZATION FOR REPRESENTATIVE'S ACCESS TO RECORDS PROTECTED BY SECTION 7332, TITLE 38, U.S.C.** - By checking the box below I authorize VA to disclose to the service organization named on this appointment form any records that may be in my file relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.

☐ I **authorize** the VA facility having custody of my VA claimant records to disclose to the service organization named in Item 15 all treatment records relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia. Redisclosure of these records by my service organization representative, other than to VA or the Court of Appeals for Veterans Claims, is not authorized without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the service organization named in Item 15, either by explicit revocation or the appointment of

**20. LIMITATION OF CONSENT-** I authorize disclosure of records related to treatment for all conditions listed in Item 19 except:

☐ DRUG ABUSE

☐ INFECTION WITH THE HUMAN IMMUNODEFICIENCY VIRUS (HIV)

☐ ALCOHOLISM OR ALCOHOL ABUSE

☐ SICKLE CELL ANEMIA

**21. AUTHORIZATION TO CHANGE CLAIMANT'S ADDRESS** - By checking the box below, I authorize the organization named in Item 15 to act on my behalf to change my address in my VA records.

☐ I **authorize** any official representative of the organization named in Item 15 to act on my behalf to change my address in my VA records. This authorization does not extend to any other organization without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I file a written revocation with VA; or (2) I appoint another representative, or (3) I have been determined unable to manage my financial affairs and the individual or organization named in Item 16A is not my appointed fiduciary.

I, the claimant named in Items 1 *or* 10, hereby **appoint** the service organization named in Item 15 as my representative to prepare, present and prosecute my claim(s) for any and all benefits from the Department of Veterans Affairs (VA) based on the service of the veteran named in Item 1. I authorize VA to release any and all of my records, to include disclosure of my Federal tax information (other than as provided in Items 19 and 20), to my appointed service organization. I understand that my appointed representative will not charge any fee or compensation for service rendered pursuant to this appointment. I understand that the service organization I have appointed as my representative may revoke this appointment at any time, subject to 38 CFR 20.6. *Additionally, in some cases a veteran's income is developed because a match with the Internal Revenue Service necessitated income verification. In such cases, the assignment of the service organization as the veteran's representative is valid for only five years from the date the claimant signs this form for purposes restricted to the verification match.* Signed and accepted subject to the foregoing conditions.

# VA Form 21-22, page 2, cont.

SECTION V: SIGNATURES				
<b>NOTE: THIS POWER OF ATTORNEY DOES NOT REQUIRE EXECUTION BEFORE A NOTARY PUBLIC</b>				
22A. SIGNATURE OF VETERAN OR CLAIMANT (Required)			22B. DATE SIGNED (MM/DD/YYYY)	
23A. SIGNATURE OF VETERANS SERVICE ORGANIZATION REPRESENTATIVE NAMED IN ITEM 16A (Required)			23B. DATE SIGNED (MM/DD/YYYY)	
<b>NOTE:</b> As long as this appointment is in effect, the organization named herein will be recognized as the sole representative for preparation, presentation and prosecution of your claim before the Department of Veterans Affairs in connection with your claim or any portion thereof.				
<b>VA USE ONLY</b>	COPY OF VA FORM 21-22 SENT TO:		DATE SENT (MM/DD/YYYY)	ACKNOWLEDGED (Date) (MM/DD/YYYY)
	<input type="checkbox"/> VR&E FILE <input type="checkbox"/> EDU FILE <input type="checkbox"/> LG FILE <input type="checkbox"/> INSURANCE FILE			
<b>PENALTY:</b> The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement of a material fact, knowing it to be false or for the fraudulent acceptance of any payment to which you are not entitled.				

**Box 22A: Veteran signs form.**

**Box 22B: Veteran dates form.**

**Box 23A: Accredited representative signs form.**

**Box 23B: Accredited representative dates form.**

# Withdrawing Representation

**Every organization retains the right to revoke a Power of Attorney (POA) at any time.**

***Revocations must be filed with VA to withdraw representation.***

# Polling Question

Veteran Sarah has completed and signed VA Form 21-22, establishing CalVet as her representative. She wants to file a claim for service connection for PTSD based on experiences during her service in Afghanistan, but she now refuses to complete any of the claim forms. "You're supposed to do this for me," she says. "You're my representative now."

Is Sarah's refusal to cooperate in filing her claim a valid basis to withdraw as representative?

**A. Yes**

**B. No**



# Answer 1

**Yes.**

- Yes, a Veteran's refusal to cooperate in working on their claim is a valid basis to withdraw as representative. Submit a withdrawal memo to CALVET District Office.
- A representative's obligations toward a Veteran are not unlimited.
- Try to discuss the issue with the Veteran to determine if there are any issues affecting their ability to work on their claim.

# Examples of Reasons to Withdraw Representation

- Tampering or altering evidence.
- Providing false information.
- Refusing to cooperate with a VSO.
- Threats of violence toward the VSO, your office staff, or VA personnel.
- Harassment of VSOs by phone or in person.

# Examples of Reasons to Withdraw Representation

- Representation could lead to conflict of interest.
- Representation could lead to violation of privacy.
- Representation of coworker or friend could risk inadvertent disclosure of confidential information.
- Representation of coworker or friend could create unreasonable expectations and disappointments.
- Benefits being received are contrary to law or regulation.

# “Fair Representation”

- When you and the organization assume accept a Power of Attorney from an eligible claimant, it assumes an **obligation** to provide “**fair representation**” and **assistance and counseling**”



# Fair Representation



- “Fair Representation” means:
- Ensure that the claimant gets full due process.
  - Take no action that would negatively impact the Veteran.
  - Do not make any unauthorized disclosure of information.
  - Act with reasonable diligence and promptness.

# Confidential Nature of Claims



- All files, records, reports, and other papers and documents pertaining to any claim...shall be **confidential** and **privileged**.

38 U. S. Code § 5701(a)

# Confidential Nature of Claims 1



- Office files are confidential.
- Requests for documents must be in writing and signed by the claimant.

# Confidential Nature of Claims 2

**Veterans are trusting *YOU and the organization* on the *POA* to protect their private information.**



- Keep documents locked up.
- Don't leave papers lying around.
- Safeguard computers:
  - Log off when away from desk.
  - Don't share passwords or access cards.
- Don't discuss a case outside of the office.

# What Must be Disclosed?

- You must not knowingly make false statements about a material fact, and
- You are required to submit evidence requested by VA.

***But ...***

- You are not required to present all evidence.



# VA Records- FOIA

- VSO's are provided access to VA's systems as needed to advocate for Veterans.
- In some cases, VSOs can print records from VA systems.
- This functionality is to provide you the opportunity to advocate for Veterans for VA purposes.
- **DO NOT** use VA records as the means to provide information directly to a Veteran.
- Veterans may request files from their record through the Freedom of Information Act (FOIA). VA Form 20-10206

<b>Department of Veterans Affairs</b>		<b>VA DATE STAMP</b> (DO NOT WRITE IN THIS SPACE)
<b>FREEDOM OF INFORMATION ACT (FOIA) OR PRIVACY ACT(PA) REQUEST</b>		
<b>INSTRUCTIONS:</b> Read the <i>Privacy Act</i> and <i>Respondent Burden</i> information on Page 4 before completing the form. This form must be signed by the requester, authorized organization, or third party who has been authorized by the requester. For additional information on VA FOIA and PA requests visit our website at <a href="https://www.va.gov/FOIA/Requests.asp">https://www.va.gov/FOIA/Requests.asp</a> . You may also contact the VA at <a href="https://iris.custhelp.va.gov">https://iris.custhelp.va.gov</a> or call us toll-free at 1-800-827-1000. If you use a Telecommunications device for the deaf (TDD), the Federal Relay number is 711. VA forms are available at <a href="http://www.va.gov/vaforms">www.va.gov/vaforms</a> .		
<b>SECTION I: REQUEST FOR INFORMATION ON YOURSELF</b>		
(If you are seeking information on yourself, complete Sections I, III, V and VI. Complete Section IV, if applicable.)		
NOTE: You may complete the form on-line or by hand. If completed by hand, print the information requested in ink, neatly and legibly, and completely fill in each applicable circle to help expedite processing of the form.		
1. NAME (First, Middle Initial, Last) <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>		
2. SOCIAL SECURITY NUMBER <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	3. ALIEN REGISTRATION NUMBER (A-number) (If applicable) <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	4. VA FILE NUMBER (If applicable) <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>
5. DATE OF BIRTH <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span>Month</span> <span>Day</span> <span>Year</span> </div> <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	6. PLACE OF BIRTH (Provide City and State, County and State or City and Country) <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	
7. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country) <div style="margin-top: 5px;">           No. &amp; Street <div style="border: 1px solid black; width: 100%; height: 20px;"></div> </div> <div style="margin-top: 5px;">           Apt./Unit Number <div style="border: 1px solid black; width: 100px; height: 20px;"></div>           City <div style="border: 1px solid black; width: 150px; height: 20px;"></div> </div> <div style="margin-top: 5px;">           State/Province <div style="border: 1px solid black; width: 50px; height: 20px;"></div>           Country <div style="border: 1px solid black; width: 50px; height: 20px;"></div>           ZIP Code/Postal Code <div style="border: 1px solid black; width: 100px; height: 20px;"></div> </div>		
8A. TELEPHONE NUMBER (Include Area Code) <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div> <div style="font-size: small; margin-top: 5px;">           Enter International Phone Number (If applicable)         </div>	8B. FAX NUMBER (If applicable) <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div> <div style="font-size: small; margin-top: 5px;">           Enter International FAX Number (If applicable)         </div>	
9. E-MAIL ADDRESS <div style="display: flex; align-items: center; margin-top: 5px;"> <input type="checkbox"/> I agree to receive electronic correspondence from VA in regards to my claim.         </div> <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>		
<b>SECTION II: REQUEST FOR INFORMATION ON A PERSON OTHER THAN YOURSELF</b>		
(If you are seeking information on an individual other than yourself, complete Sections II, III, V and VII or VIII. Complete Section IV, if applicable.)		
10. NAME (First, Middle Initial, Last) OR YOUR ORGANIZATION'S NAME <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>		

# Managing Your Workload



**Advocacy Tip:** If you can't give a Veteran's claim the full attention it deserves, then encourage the Veteran to obtain another accredited representative.

# Last Slide

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.

# Fundamentals of Direct Service Connection

<https://calvets.participoll.com/>



# Polling Question – Warm Up

How many Veterans began receiving **new** VA compensation benefits in FY2024?

- A. Less 250,000**
- B. Between 250,000 and 500,000**
- C. Between 500,000 and 1 million**
- D. Over 1 million**



# Answer

## **B.** Between 250,000 and 500,000

### Estimated annual payments – new recipients

Benefit program	Number of recipients	Estimated annual total payments	Estimated annual average individual payment
Compensation	457,919	\$7.72 Billion	\$16,856

*Source: VBA Annual Benefits Report Fiscal Year 2024.*

# Learning Objectives

Recognize the requirements for receiving service-connected benefits from VA.

- Identify the three basic elements required for service connection.
- Identify the characteristics of a current condition eligible for compensation.
- Identify in-service injuries, diseases, or events eligible (and not eligible) for compensation.
- Describe common ways that nexus can be established for a medical condition.

# Elements of Service Connection

A “service-connected” condition requires three basic elements:

1. Current condition,
2. In-service disease, injury, or event,
3. Nexus (“connection”) between #1 and #2.

# Elements of Service Connection

## 1. Current condition

- An injury or disease that happened in service is not compensable if it does not result in a present condition.
- Condition can be one that has been cured (ex. cancer), but the condition must have been present while the claim was pending.
- To be compensated, the current condition must be a "**disability.**"



# Pain as a Current Condition

- Undiagnosed pain can be a disability.<sup>1</sup>

**“To establish a disability, the Veteran’s pain must amount to a functional impairment. To establish the presence of a disability, the Veteran will need to show that her pain reaches the level of a functional impairment in earning capacity.”<sup>1</sup>**

<sup>1</sup> *Saunders v. Wilkie*, 886 F.3d 1356,1367 (Fed. Cir. 2018)

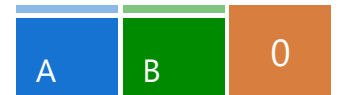
# Polling Question

Veteran Cynthia injured her shoulder in service. Now her shoulder periodically acts up if she over uses it or sleeps on it wrong. When this happens, she can't raise it above chest level for a day or so. Her doctor explained that she has cartilage debris in the joint, which is causing problems. However, Cynthia has a job where she works at a desk and it does not substantially interfere with her employment.

Does Cynthia have a present disability?

**A.** Yes

**B.** No



# Answer

## Yes

- Cynthia's shoulder is functionally impaired because it does not work as it would if she were completely healthy.
- It *does not matter* that it does not affect her *current* job.
- The determination of whether a condition is a disability does not depend on the circumstances of the individual Veteran.

# Current Condition, cont.

- Not every current condition is a disability.
- Clinical findings that do not manifest in any symptoms are not compensable.
- Congenital or developmental defects are not compensable.
  - *But* a congenital disease can be compensated if service **aggravates** the condition.

# Polling Question

Luis Martinez-Bodon is service connected for diabetes. His diabetes causes symptoms of anxiety. However, the psychiatric professionals who have examined him have all concluded that his symptoms do not qualify for a psychiatric diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

May he be awarded service connection for his undiagnosed anxiety?

**A. Yes**

**B. No**



# Answer

## No

- In *Martinez-Bodon v. Wilkie*, 32 Vet.App. 393 (2020), the CAVC held that VA has expressly limited compensation for psychiatric disabilities to disabilities with a DSM diagnosis by a qualified professional.
- This holding is specific to claims for psychiatric disabilities.
- Other undiagnosed symptoms may still be claimed for other disabilities.

# Elements of Service Connection, cont.

## Army officer gunning for 2nd Olympic bobsled medal

By Katie Lange, Defense Media Activity February 23, 2018



Source: army.mil

## 2. In-service disease, injury, or event:

- Veterans may be entitled to benefits “[f]or disability resulting from personal injury suffered or disease contracted in line of duty.” 38 U.S.C. § 1110, 1331.
- Virtually anything can qualify as an in-service injury or disease.

# Polling Question

Veteran Jerry broke his wrist in service. He was in a cast for eight weeks. When he retired seven years later, he indicated on his exit physical that he was not having problems with any of his joints.

Can the broken wrist be the in-service injury for his claim if he later develops arthritis of the wrist?

**A. Yes**

**B. No**



# Answer

Yes

There is no requirement that an in-service injury result in a disability *in service*. If a disability manifests later in life it can be compensated if it is related to service.

# In-Service Disease/Injury, cont.

- Injuries off-duty are **eligible** (ex. sports injuries).
- Willful misconduct is **excluded** (ex. driving under the influence).



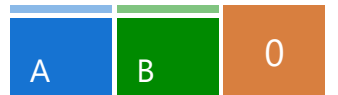
# Polling Question

Suppose a Veteran served in the Army for two years in the 1970s without any documented medical complaints. In 2003, he applies for service connection for a back condition based upon “extended marching with a 40-pound backpack, extended physical training, and hand-to-hand combat” training in service.

Could benefits be granted upon these in-service events?

**A. Yes**

**B. No**



# Answer

Yes

These are the facts of a single-judge decision in *Harlston v. Shinseki*, No. 09-4379, 2011 WL 1534555 (Vet. App. Apr. 25, 2011). Although the medical examiner found that the present condition was not related to the events in service, there was no dispute that benefits could have been awarded had a nexus been found.

# Conditions That Manifest in Service

- If a condition ***manifested*** in service, then it is service-connected.
- Symptoms that first manifest in service can later be diagnosed as the condition for which benefits are claimed.<sup>1</sup>
- A diagnosis in service is ***not*** required.<sup>1</sup>
- Documentation / treatment in service is ***not*** required.<sup>2</sup>

<sup>1</sup> *Perry v. Brown*, 9 Vet. App. 2 (1996).

<sup>2</sup> *Buchanan v. Nicholson*, 451 F.3d 1331 (Fed. Cir. 2006).

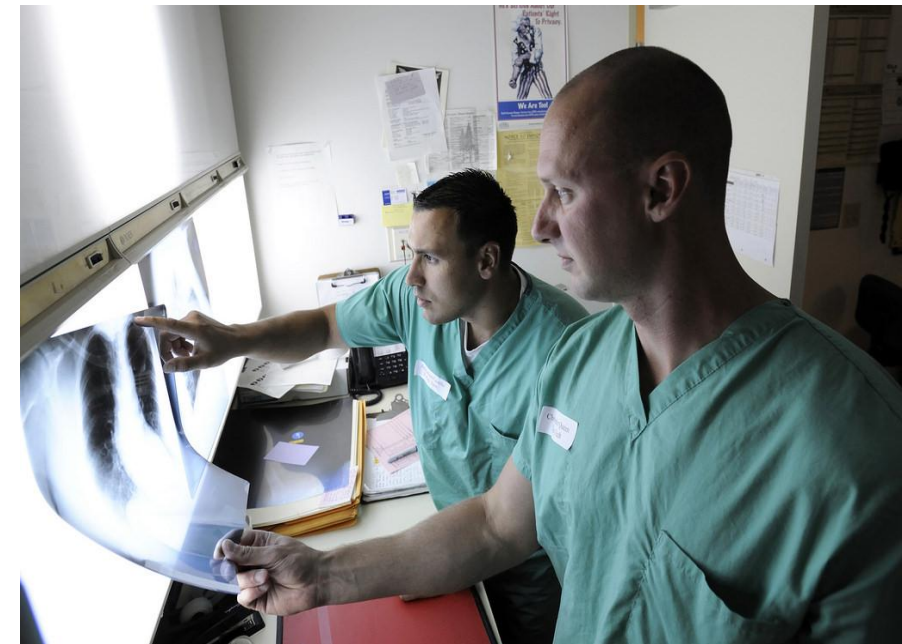


Photo: U.S. Govt. work

# Elements of Service Connection, cont.

## **3. Nexus (“connection”) between elements #1 and #2:**

- If a condition does not manifest in service, then an opinion from a qualified expert can establish a *nexus* between the current condition and service.
- A positive (or negative) opinion must be supported by adequate analysis.
- Nexus examinations (“C&P exam” or “DBQ”) are usually provided by VA.

# Medical Opinions



A medical opinion must:

- Detail the facts of the case as the expert understands them and
- Give some justification for the opinion, such as commonly accepted medical principles, research, or experience with similar cases.

# Polling Question

Veteran Cathy has tinnitus in her left ear. She has a medical examination through her health insurance from her job at an insurance company. The private audiologist attributes her tinnitus to her four years in the Navy working on the deck of an aircraft carrier given her young age and her lack of post-service noise exposure. At her request, the audiologist explains this in writing in a letter on his letterhead.

Is this opinion sufficient to establish a nexus to her service?

**A.** Yes

**B.** No



# Answer

Yes

Veterans may submit evidence from a private medical professional.

Decades ago, VA had a regulation prohibiting VA from granting claims based upon evidence from a **non**-VA source. However, in 1994, Congress abolished this rule.

Veterans may have a private medical professional complete a DBQ. See 38 U.S.C. § 5125.

# Smoking, Alcohol, and Drug Abuse

- No compensation can be awarded for diseases related to smoking or tobacco use.<sup>1</sup>
- Primary alcoholism or drug use is ***not compensable***
- However, benefits for those conditions may be awarded on a ***secondary basis***.

<sup>1</sup> 38 U.S.C. § 1103.



# Last Slide

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.

# Disability Ratings: Fundamentals

<https://calvets.participoll.com/>



# Polling Question – Warm-up

How many Veterans and their Survivors currently receive VA disability compensation or DIC benefits?

- A. Less than 4 million**
- B. Between 4 million and 5 million**
- C. Between 5 million and 6 million**
- D. Over 6 million**



# Answer

## D. Over 6 million

### Totals – all recipients

Veterans receiving compensation benefits	5,992,967
Survivors receiving service-connected death benefits	519,450
<b>Total:</b>	<b>6,512,417</b>

*Source: VBA Annual Benefits Report Fiscal Year 2024.*

# Learning Objectives

Learn how VA uses the **rating schedule** to determine disability ratings for Veterans.

- Learn how VA uses a VA diagnostic code to rate a disability.
- Learn special concepts on how diagnostic codes are interpreted.
- Learn about how ratings can change over time.
- Recognize what evidence a Veteran should submit to document all compensable ratings.

# VA's Schedule of Rating Disabilities

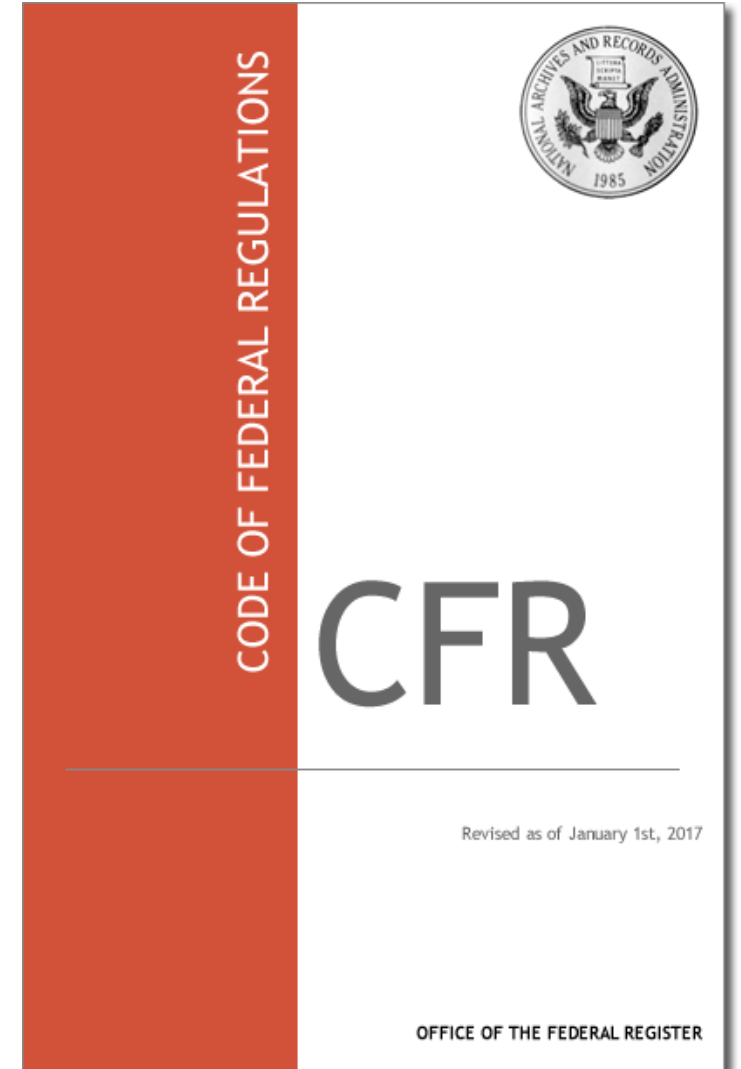


- VA's Rating Schedule for disabilities is based on law.
- VA's Rating Schedule is designed as a practical guide to compensating Veterans based on the ***average*** impairment in ***earning capacity*** from service-connected disabilities.

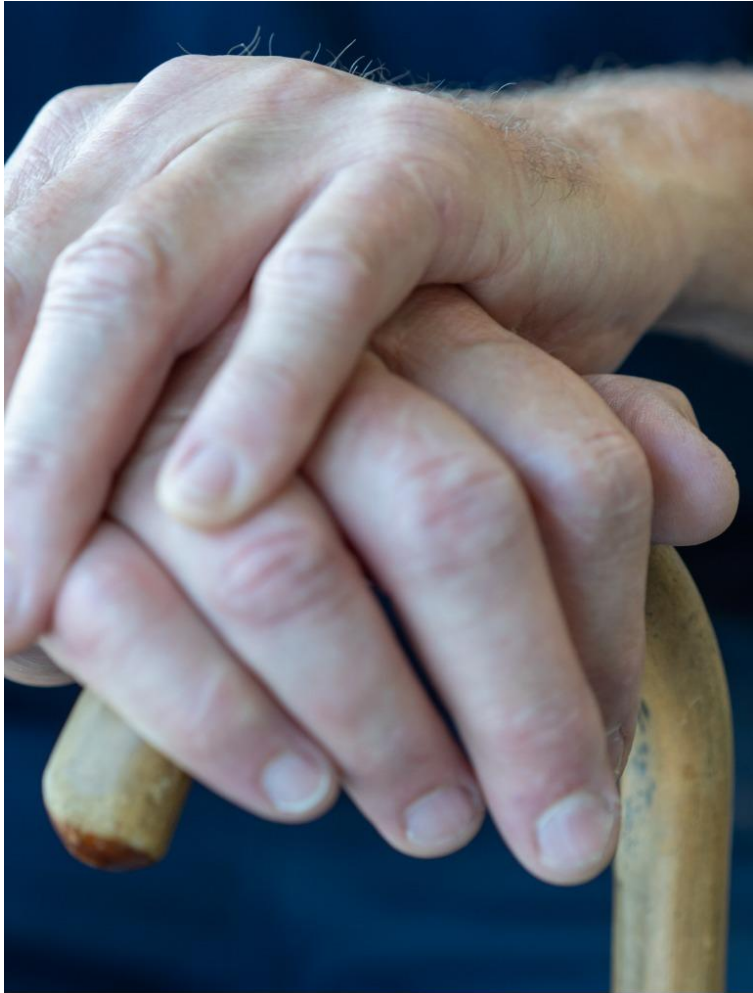
# Definitions

- C.F.R. – Code of Federal Regulations (VA benefits are under Title 38.)
- DC – Diagnostic Code
  - Part of 38 C.F.R.

**Courts have no authority to decide whether VA's system is fair.**



# What is the Core Issue?



- VA must determine the Veteran's **functional impairment**. 38 C.F.R. § 4.10.
- Functional impairment is based on what the Veteran can do on a day-to-day basis, especially **in a work environment**.
- **Full and accurate descriptions** of the Veteran's symptom manifestations and limitations are necessary so VA can assign the maximum rating allowed.

# Diagnostic Codes

- Most disabilities have a VA diagnostic code (DC) in the rating schedule.
- The DCs are in 38 C.F.R., Chapter 4.
  - Codes are grouped by body systems.
  - For unlisted conditions, "--99" is used
    - Ex: 5099 for an unlisted musculoskeletal condition.
    - These conditions are then rated by analogy.
  - For residuals or related symptoms, a hyphenated code is used.

# Identifying the Diagnostic Code

## SUBJECT TO COMPENSATION (1. SC)

7913

TYPE 2 DIABETES MELLITUS (HERBICIDE) WITH NEPHROPATHY

Service Connected, Vietnam Era, Presumptive

Static Disability

20% from 03/07/2005

5299-5226

RIGHT THIRD FINGER FRACTURE

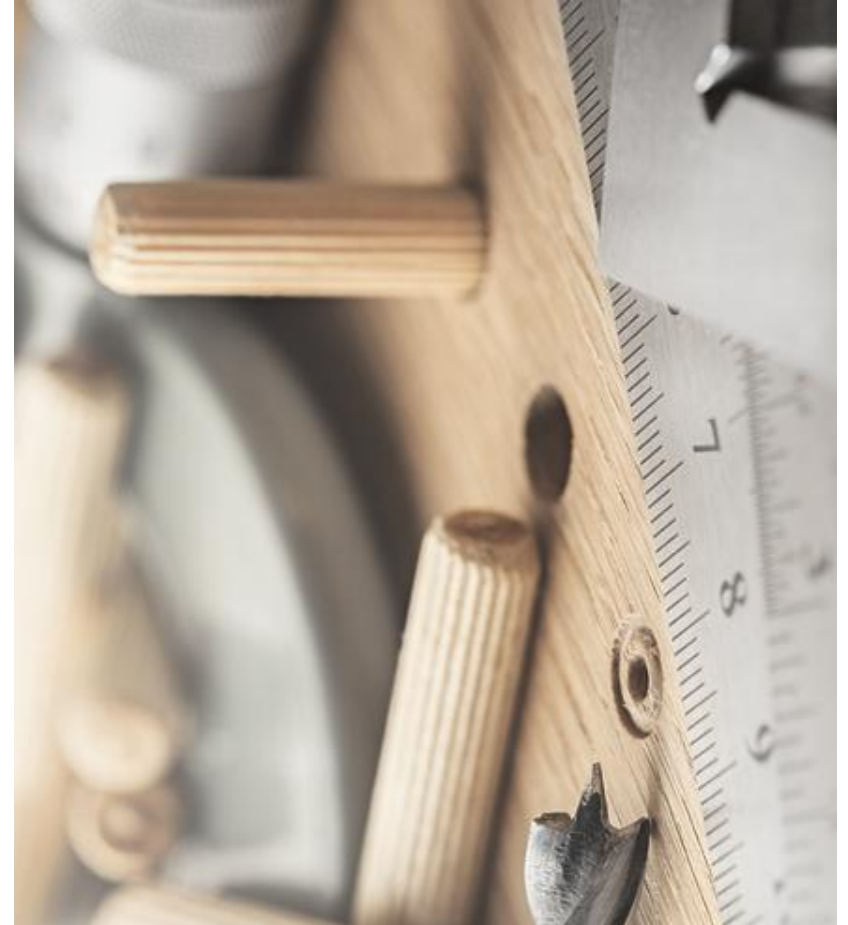
Service Connected, Vietnam Era, Incurred

Static Disability

0% from 02/28/1995

# Applying a Diagnostic Code

- A Veteran does not always need to have **all** the criteria in the DC to get a higher VA rating.
- Where symptoms fall between two levels, VA must assign the level that “***more nearly approximates***” the Veteran’s disability picture.
  - Regulation is 38 C.F.R. § 4.7.



# Example: Old DC 7346

7346 Hernia hiatal:	
Symptoms of pain, vomiting, material weight loss and hematemesis or melena with moderate anemia; or other symptom combinations productive of severe impairment of health	60
Persistently recurrent epigastric distress with dysphagia, pyrosis, and regurgitation, accompanied by substernal or arm or shoulder pain, productive of considerable impairment of health	30
With two or more of the symptoms for the 30 percent evaluation of less severity	10

- **Numerous symptoms which may or may not be present.**
- **Undefined words such as “severe” or “considerable” impairment.**

**Which rating “more nearly approximates” the Veteran’s level of impairment?**

# Successive Diagnostic Codes



- If there are “successive” rating criteria, then the assignment of a higher rating requires that elements from the lower rating be met.
- The Veteran must satisfy every element of the lower rating level before the Veteran can be assigned the higher rating level.
  - *Camacho v. Nicholson*, 21 Vet. App. 360 (2007).

# Example: DC 7913 (Diabetes Mellitus)

- Requiring more than one daily injections of insulin, restricted, diet, and regulation of activities with episodes of ketoacidosis or hypo-glycemic reactions requiring at least 3 hospitalizations year plus progressive loss of weight and strength.....100%
- Requiring one or more daily injections of insulin, restricted, diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring at least 3 hospitalizations per year.....60%
- Requiring one or more daily injections of insulin, restricted diet, **and regulation of activities**.....40%
- Requiring one or more daily injections of insulin and restricted diet .....20%
- Manageable by restricted diet only.....10%



# Applying a Diagnostic Code

- Only the symptoms from the service-connected condition may be considered.
  - If it is not medically possible to separate the effects of the service-connected condition from the nonservice-connected condition, all symptoms should be attributed to the service-connected condition.<sup>1</sup>
- VA can change the Veteran's diagnostic code so long as there is an evidentiary basis for doing so.<sup>2</sup>

<sup>1</sup>*Mittleider v. West*, 11 Vet. App. 181, 182 (1998).

<sup>2</sup>*Butts v. Brown*, 5 Vet. App. 532 (1993); *Pernorio v. Derwinski*, 2 Vet. App. 625 (1992).

# Combined Ratings

- When a Veteran has multiple ratings, the ratings are combined in a complicated way called the “whole person” method.
- In VA math,  $40 + 20 + 10 \neq 70$

## Example:

Veteran has 3 ratings: diabetes-40%, knee injury-20%, neuropathy-10%

	<u>Disabled</u>	<u>Not-Disabled</u>
.40 x 100% able	40%	60%
.20 x 60% able	12%	<u>-12%</u>
		48%
.10 x 48% able	<u>5%</u>	<u>-5%</u>
	57%	43%

Veteran's combined rating is **60%**

# Pyramiding

- If no symptoms are overlapping or duplicative, the Veteran is entitled to separate disability ratings for each condition.<sup>1</sup>

***BUT***

- Evaluation of the same symptom under various diagnoses is prohibited as “pyramiding.”<sup>2</sup>

<sup>1</sup>*Esteban v. Brown*, 6 Vet. App. 259 (1994).

<sup>2</sup>38 C.F.R. § 4.14.



# The Amputation Rule

- VA Regulation: “The combined evaluation for disabilities of an extremity shall not exceed the evaluation for the amputation at the elective level, were amputation to be performed.”<sup>1</sup>

**The combined rating for a limb cannot be greater than the rating for an amputation of that limb**

- Exceptions: “The amputation rule **does not apply** to evaluations of peripheral nerve disabilities of the extremities including:
  - Diabetic neuropathy
  - Radiculopathy/sciatica due to a spinal disorder
  - Peripheral nerve injuries of non-musculoskeletal etiology.”

<sup>1</sup>38 C.F.R. § 4.68.

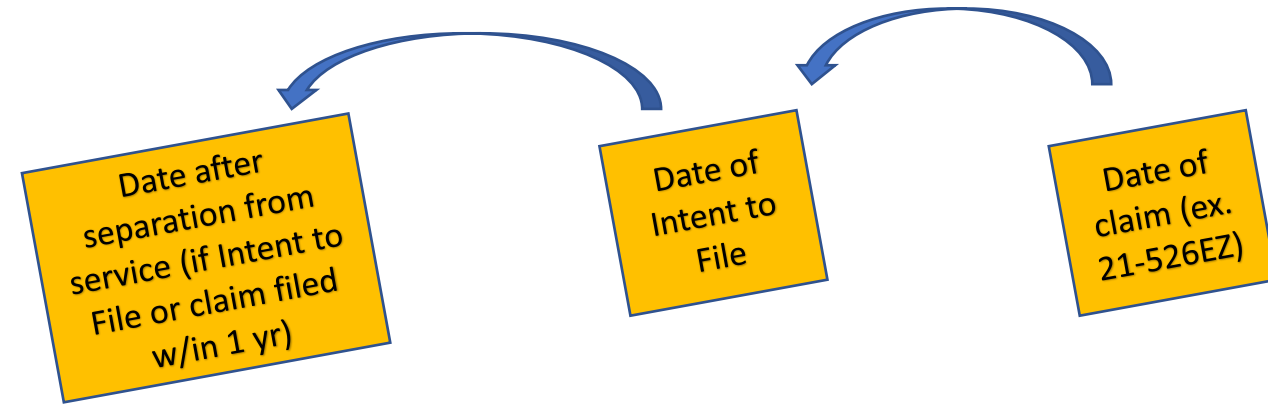
# Ratings Can Change Over Time

- Think about ***both*** the rating assigned ***and*** the effective date of the rating.
- What should be the effective date of a rating when the Veteran first files a claim?
- What should be the effective date of a rating when the Veteran's conditions worsen?



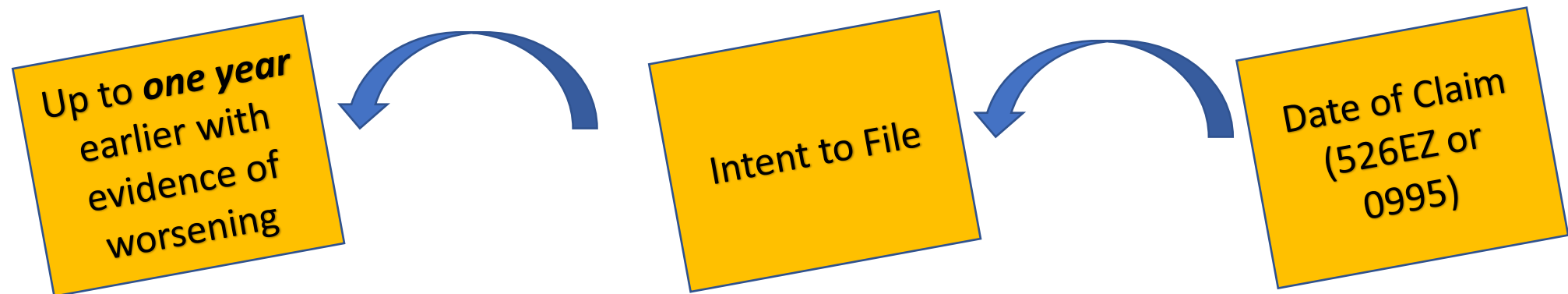
# New Claim

- When he wins his claim, he will be assigned an initial rating.
- An initial rating is assigned from the date of the intent to file, or the date of claim, or the day after separation from service, if either form was filed within 1 year of that date.



# Worsening Symptoms

- Service-connected disability is getting **worse**, a Veteran files a claim for an **increased rating**.
- When the claim is granted, the effective date for the increased rating is up to 1 year prior to the date of filing of the intent to file or the claim, *if*:
  - The worsening happened within that 1-year window **and**
  - There is medical evidence of the worsening.



# “Staged” Ratings

- VA can assign different ratings during the rating period, based on the facts found.
  - VA calls this a “staged rating.”<sup>1</sup>
- Staged ratings are appropriate when the facts show distinct time periods where the service-connected disability exhibits symptoms that would warrant different ratings.

<sup>1</sup>*Fenderson v. West*, 12 Vet. App. 119 (1999); *Hart v. Mansfield*, 21 Vet. App. 505 (2007).



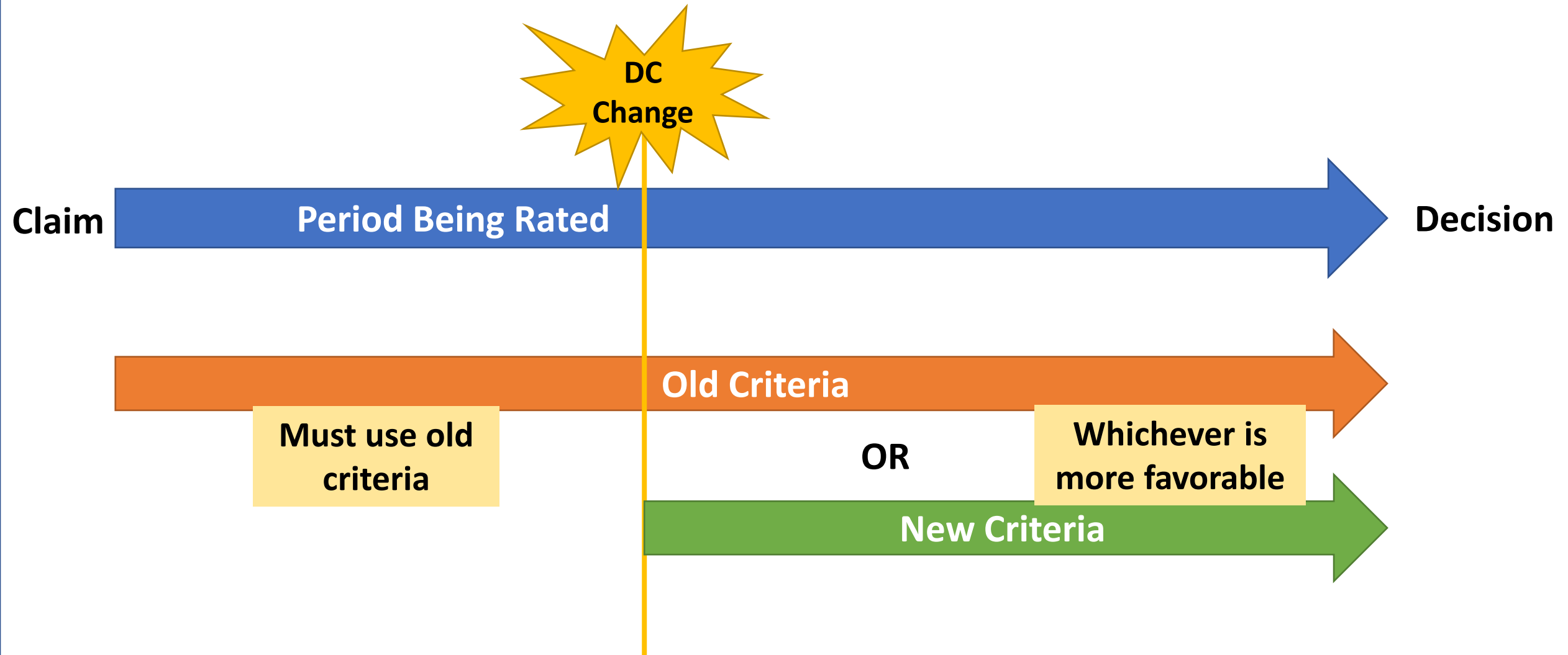
# Regulation Changes

- Where a rating period spans a change in law, the Veteran is entitled to a rating under whichever version of law or regulation is **more favorable**.
- The new / changed / amended version of the law or regulation only applies to the period of time on and after its effective date.<sup>1</sup>

<sup>1</sup>*Kuzma v. Principi*, 341 F.3d 1327 (Fed. Cir. 2003).



# Rating Changes Diagram



# Developing Evidence for Ratings

- Veteran and others should submit detailed, written lay statements.
- Describe ***frequency, duration, and severity*** of Veteran's symptoms.<sup>1</sup>

**Know the rating period!**



<sup>1</sup>*Vazquez-Claudio v. Shinseki*, 713 F.3d 112 (Fed. Cir. 2013).

# Developing Evidence for Ratings

- What evidence is usually ***not*** relevant?
- Service treatment records and evidence concerning what happened during service.
  - Except for gunshot cases or evidence within 1 year of separation.
- Evidence from many years before the rating period.
- Evidence from a period for which a rating was already assigned and the decision has become final.

# Polling Question 1

Veteran, Miles has service-connected migraine headaches. He says that every 3-4 weeks, his headaches are so bad that he must spend the entire day in bed and miss work. Migraines are rated under Diagnostic Code 8100. What rating is warranted?

- A. 0 percent**
- B. 10 percent**
- C. 30 percent**
- D. 50 percent**

8100 Migraine:	
With very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability	50
With characteristic prostrating attacks occurring on an average once a month over last several months	30
With characteristic prostrating attacks averaging one in 2 months over last several months	10
With less frequent attacks	0



# Polling Answer 1

## C. 30 percent

- DC 8100 is an example of a successive DC. The Veteran must satisfy every element of the lower rating before VA will assign a higher one.
- This is a tricky DC because it has undefined terms. Because Miles misses work at least once a month due to headaches, a 30% rating more nearly approximates his level of disability.

# Polling Question 2

Twelve years ago VA granted Mitch service connection for shoulder disability. He filed an Intent to File (0966) on December 24, 2022, and a claim (526EZ) for a higher rating on February 3, 2023. From what date should VA be reviewing evidence to determine whether a higher rating is warranted.

- A. February 2, 2022, one year before the 526EZ**
- B. December 24, 2021, one year before the 0966**
- C. February 3, 2023, the date of the 526EZ**
- D. December 24, 2022, the date of the 0966**



# Polling Answer 2

## **B. December 24, 2021, one year before VA received the VA Form 21-0966, Intent to File**

VA allows for an increased rating as of the “earliest date as of which it is factually ascertainable based on all evidence of record that an increase in disability had occurred if a complete claim or *intent to file* a claim is received within 1 year from such date, otherwise, date of receipt of claim.” 38 C.F.R. § 3.400(o)(2).

**Advocacy Tip:** Make sure Mitch files an “Intent to File” with VA as soon as he thinks about submitting a claim for an increased rating!

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.

# **VA's Duty to Assist and Issues with Locating Records**

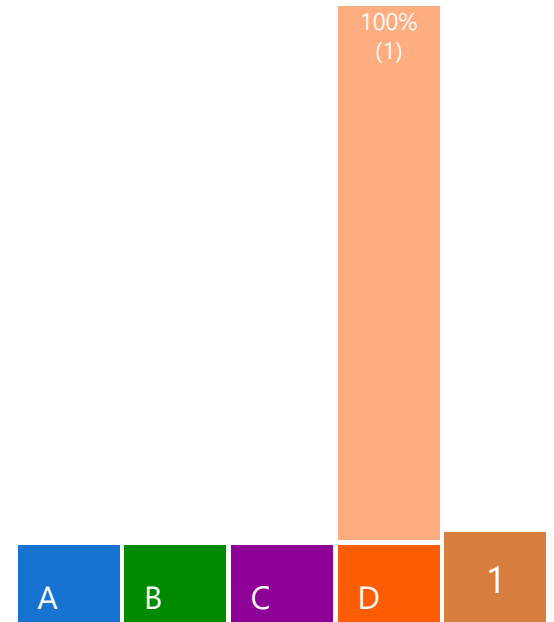
<https://calvets.participoll.com/>



# Polling Question – Warm-up

What does the acronym “DTA” mean at VA (or more accurately, VBA – i.e., not necessarily VHA or NCA)?

- A.** Delayed time of arrival
- B.** Department of Transitional Assistance
- C.** Dental Trade Alliance
- D.** Duty to assist



# Learning Objectives

Learn about VA's **duty to assist (DTA)** Veterans with developing evidence.

- Learn what VA's duty to assist requires and **how it is triggered**.
- Learn about VA's duty to **collect records** and **provide C&P examinations**.
- Learn **strategies** for deciding what **evidence to locate and then collect**.

# Overview of the Duty to Assist

- VA's **duty to assist** was established by Congress in 2001. 38 U.S.C. § 5103A.
- Two main components:
  - VA's **duty to collect records**, and,
  - VA's duty to **provide a medical opinion or examination if necessary**.



# Duty to Obtain Records



- **Automatic:**
  - DD-214.
  - Service treatment records (STRs).
- **Triggers:**
  - Other relevant records that are adequately identified.  
38 U.S.C. § 5103A.

# Triggering Duty to Obtain Records

- The records have to be:
  - Relevant, and
  - Adequately identified.
- **Relevance:** Indicate that the records relate to the claimed condition or will support the claim.<sup>1</sup>
- **Adequately identified** means providing:
  - Sufficient details to contact custodian of records.
  - Sufficient details for custodian to locate records.

<sup>1</sup> *Golz v. Shinseki*, 590 F.3d 1317, 1323 (Fed. Cir. 2010).

**Advocacy Tip:** Discuss with the Veteran whether the records help win the claim. Not all records will be pertinent or supportive.

# Triggering Duty to Obtain Records, continued

- VA is not required to go on “fishing expeditions.”<sup>1</sup>
- Authorization from Veteran may be required, use [VA Form 21-4142](#).

<sup>1</sup>*Gobber v. Derwinski*, 2 Vet. App. 470 (1992).

**SECTION IV - RECORDS TO BE RELEASED TO THE DEPARTMENT OF VETERANS AFFAIRS**

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange) of: **All my medical records that relate to my ability to perform tasks of daily living. This includes specific permission to release:**

1. All records and other information regarding my treatment, hospitalization, and outpatient care for my:
  - a. Psychological, psychiatric, or other mental impairment(s) excluding "psychotherapy notes"
  - b. Drug abuse, alcoholism, or other substance abuse,
  - c. Sickle cell anemia,
  - d. Records which may indicate the presence of a communicable or non-communicable disease such as HIV/AIDS,
  - e. Gene-related impairments (including genetic test results)
2. Information about how my impairment(s) affects my ability to complete tasks and activities of daily living
3. Information created within 12 months *after* the date this authorization is signed in Item 13, as well as any information created prior to that date

**YOU SHOULD NOT COMPLETE THIS FORM UNLESS YOU WANT THE VA TO OBTAIN PRIVATE TREATMENT RECORDS. IF YOU HAVE ALREADY PROVIDED THESE RECORDS OR INTEND TO OBTAIN THEM YOURSELF, THERE IS NO NEED TO COMPLETE THIS FORM. IT WILL ONLY LENGTHEN YOUR CLAIM PROCESSING TIME. THIS FORM IS NOT NEEDED TO REQUEST VA MEDICAL RECORDS.**

**IMPORTANT:** In accordance with 38 C.F.R. §3.159(c), "VA will not pay any fees charged by a custodian of records for the production of records." This includes any fee charged by a third party for the production of records.

VA FORM  
AUG 2024 **21-4142**

SUPERSEDES VA FORM 21-4142, JUL 2021.

# Medical Records



- All medical records related to the claimed condition are “relevant on their face.”<sup>1</sup>
- No matter when or where treatment occurred, VA must obtain all pertinent medical records.

<sup>1</sup>*Moore v. Shinseki*, 555 F.3d 1369, 1375 (Fed. Cir. 2009).

# Service Records

## Service Records

- Service Treatment Records (STRs)- outpatient
- Clinical Records – inpatient
- Personnel Records
  - (ex. DA 20)



- VA uses the Personnel Information Exchange System (PIES) to request STRs and personnel records.
- For more information on “service records,” see M21-1, VA Adjudication Procedures Manual.

# What About Lost Records?



Available at <https://apnews.com/article/military-records-fire-veterans-2f8337c58bc87c10179a2cf6ee54136a>

Image from July 2023 AP News Article showing destroyed records months after massive fire that started 7/12/1973 in Overland, Missouri.

Duty to notify:

- In July 1973, the “St. Louis Fire” at a VA storage facility destroyed an estimated 16 to 18 million personnel files.
- More recently, many Guard and Reserve records were lost in Iraq and Afghanistan as those units often did a very poor job of records control.

# VA Treatment Records

- **VBA does not automatically get treatment records from VHA.**
- If the Veteran wants to submit Veterans Health Administration (VHA) records, then they must provide the Veterans Benefits Administration (VBA) with treatment locations.
  - Include Community Based Outreach Clinics (CBOCs) and
  - Vet Centers.

**Advocacy Tip:** VA must obtain **all** identified VA medical records, not just relevant ones.

# Private Treatment Records

- VA's duty to assist includes obtaining relevant private treatment records.
- Veteran must provide sufficient information for VA to contact private locations where treatment was provided.
- Veteran must sign **VA Form 21-4142**, a request and authorization to release private records.
  - Even if VA authorized their private community care.
- Most private providers have record-destruction schedules.

**Advocacy Tip:** Be prepared to submit alternative evidence in lieu of obtaining older records, such as a statement.

# Mandatory Minimum Efforts

- Sometimes VA will be unable to obtain a Veteran's records.
- VA must make at least **two** attempts to obtain private records.
- VA must make **unlimited** attempts to get **government** records, *but ...*
  - VA can give up if the custodian says the records do not exist or when further efforts would be futile.



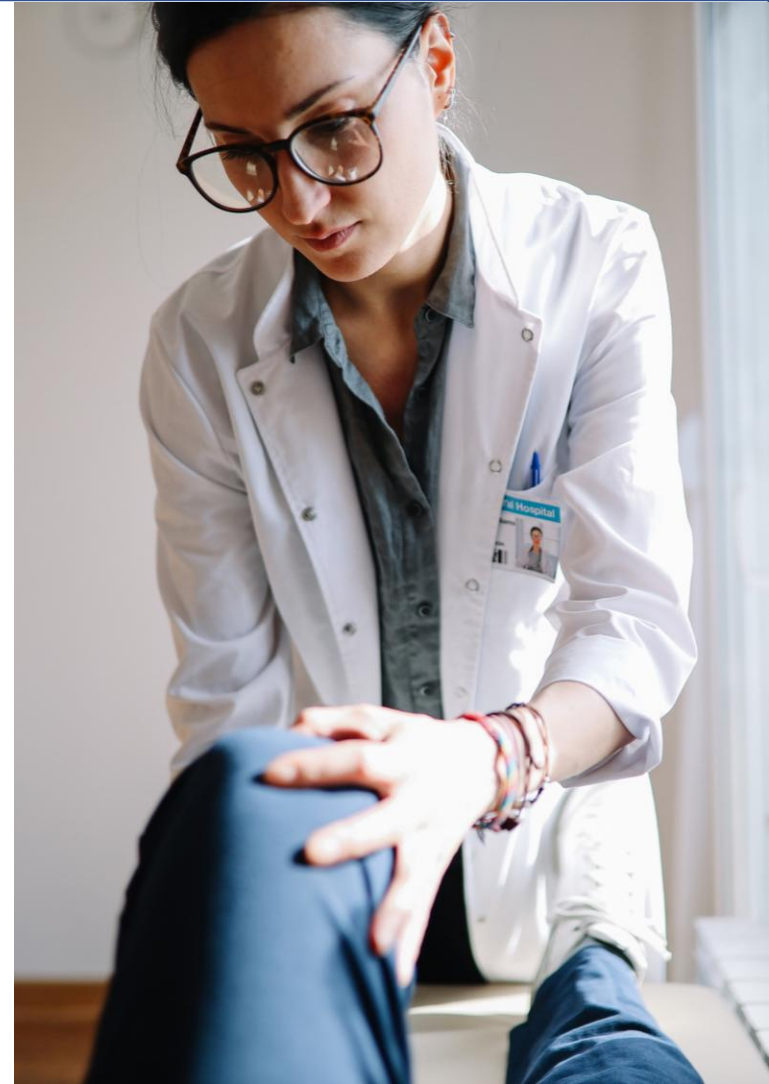
# When VA is Unable to Obtain Records

- If VA cannot obtain records, then VA must:
  - Notify the Veteran, and
  - Provide an opportunity to find the records or submit other evidence before deciding the claim.
- If the Veteran receives such written notice, consider:
  - Other places that might have copies of the records.
  - Alternative ways to prove the facts at issue, such as the Veteran's statement or other lay testimony.

# General Duty to Obtain Medical Exam

- VA generally must obtain a medical exam or opinion when:
  - There is some evidence on each of the elements, but
  - Not enough medical evidence to decide the claim.
- The threshold for obtaining a nexus opinion is **very low**.<sup>1</sup>
- VA gets **millions** of medical opinions each year!
- VA can't change its mind about providing an exam or opinion.

<sup>1</sup> *McLendon v. Nicholson*, 20 Vet. App. 79 (2006).

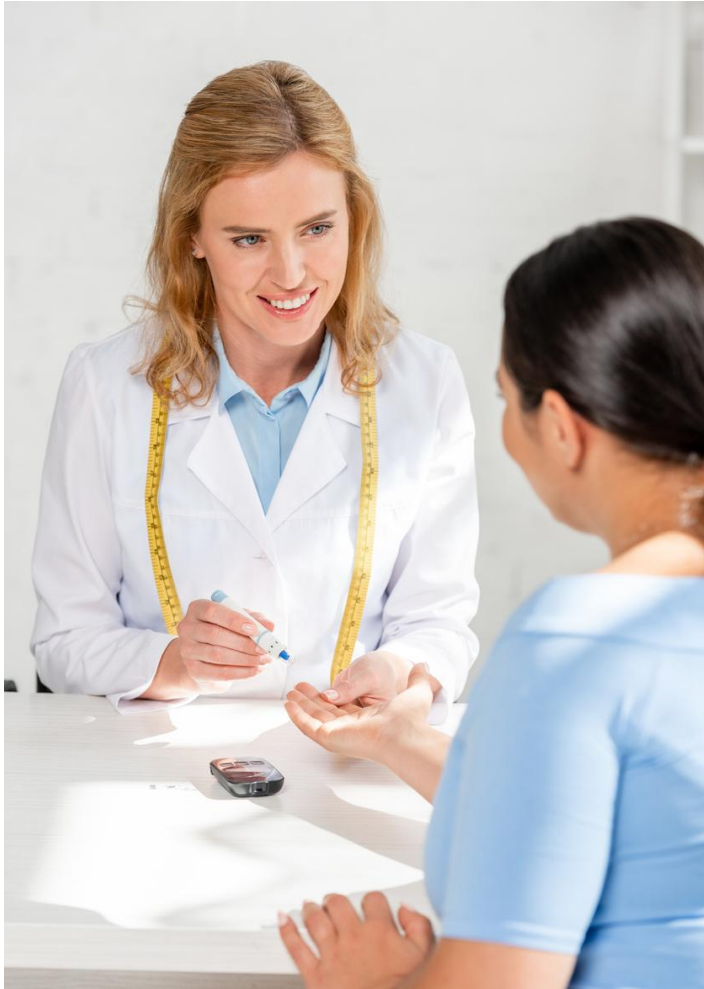


# General Service Connection Exams

- For a current condition:
  - A diagnosis is not required.
  - Persistent or recurrent symptoms are sufficient.
- For the in-service event, injury or disease:
  - Documentation in STRs is helpful, but not necessary. Lay evidence may be sufficient.
- For nexus:
  - The record **indicates** a possible association.<sup>1</sup>
  - Generally, a Veteran's statement indicating a possible connection between a disability and service will trigger an exam.

<sup>1</sup> *McLendon v. Nicholson*, 20 Vet.App. 79 (2006).

# Service Connection Exams



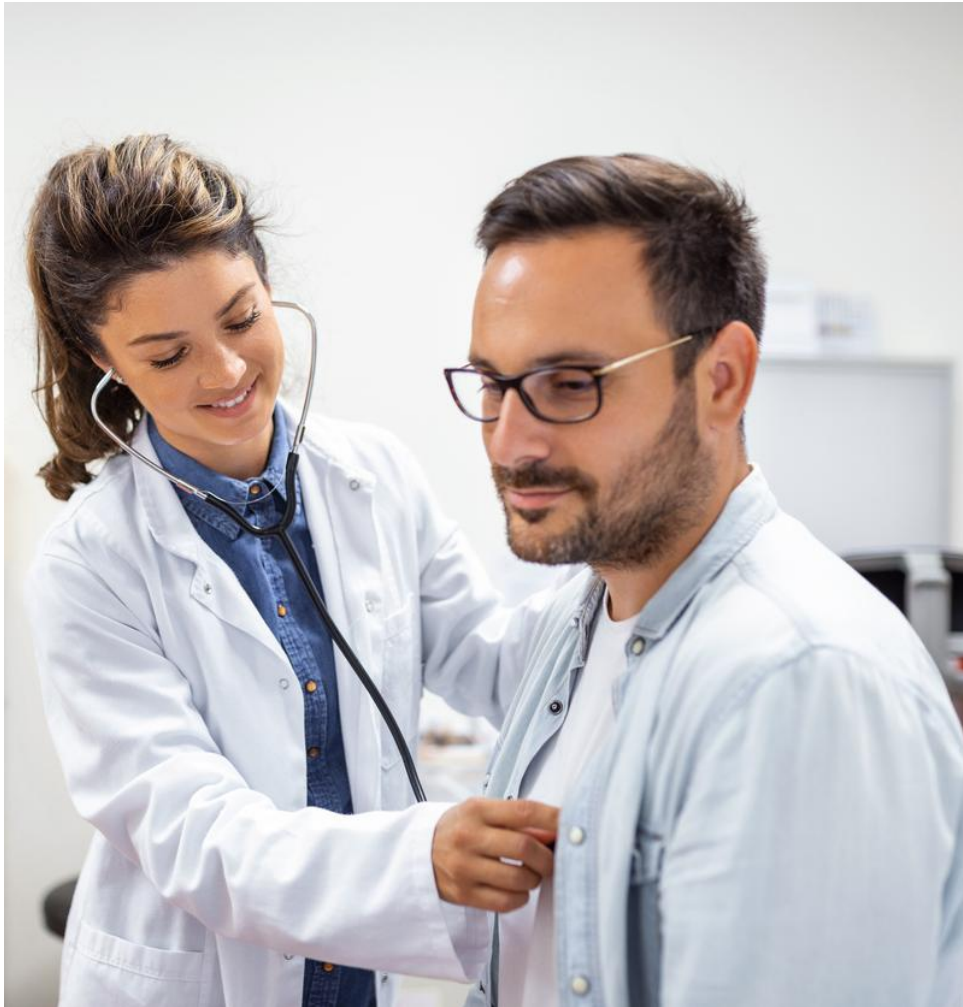
- Examples of what is sufficient to trigger an exam:
  - A paratrooper with numerous jumps in service developing arthritis in knees
  - In-service exposure to noise, such as from a rifle range, bombing, artillery fire, trucks, and heavy equipment, and ringing in the ears since service.
- What is not sufficient to trigger an exam:
  - General statement that all veterans could make, such as service caused current conditions.

# TERA Service Connection Exams

- If a Veteran participated in toxic exposure risk activity ("TERA") during service, then VA should provide a VAX if the Veteran: (38 U.S.C. § 1168)
  - Submits a claim and
  - Has "evidence of a disability."
- **No indication of nexus is required.**
- "PACT requires a medical opinion examination when service connection for a condition cannot be granted, rather than when a decision cannot be made."



# Examinations for Disability Ratings



- The mere passage of time does not entitle a Veteran to a new examination to determine the level of disability.<sup>1</sup>
- But the Veteran only needs to state that the condition has gotten worse since the last examination.

<sup>1</sup> *Palczewski v. Nicholson*, 21 Vet. App. 174 (2007).

# Examinations for Disability Ratings

- Neither the **21-526EZ** nor the **20-0995** claim forms includes a place for the Veteran to make a statement that the condition worsened.
- Use a **21-4138** to submit a description of the worsening.
  - Describe how the symptoms are worse and when the worsening started.

The image shows the top portion of VA Form 21-4138, 'Statement in Support of Claim'. A red circle highlights the title 'STATEMENT IN SUPPORT OF CLAIM' and the Department of Veterans Affairs logo. The form includes instructions, a section for beneficiary identification information (name, SSN, VA file number, date of birth, service number, telephone number, email address, and mailing address), and a section for remarks. The remarks section is currently blank.

Department of Veterans Affairs

**STATEMENT IN SUPPORT OF CLAIM**

INSTRUCTIONS: Read the Privacy Act and Respondent Burden on Page 2 before completing the form. Complete as much of Section I as possible. The information requested will help process your claim for benefits. If you need any additional room, use the second page.

SECTION I: BENEFICIARY'S IDENTIFICATION INFORMATION

NOTE: You will either complete the form online or by hand. Please print the information request in ink, neatly, and legibly to help process the form.

1. VETERAN/BENEFICIARY'S NAME (First, Middle Initial, Last)

2. VETERAN'S SOCIAL SECURITY NUMBER

3. VA FILE NUMBER (If applicable)

4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)

5. VETERAN'S SERVICE NUMBER (If applicable)

6. TELEPHONE NUMBER (Include Area Code)

7. E-MAIL ADDRESS (Optional)

8. MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

No. & Street

Apt./Unit Number City

State/Province Country ZIP Code/Postal Code

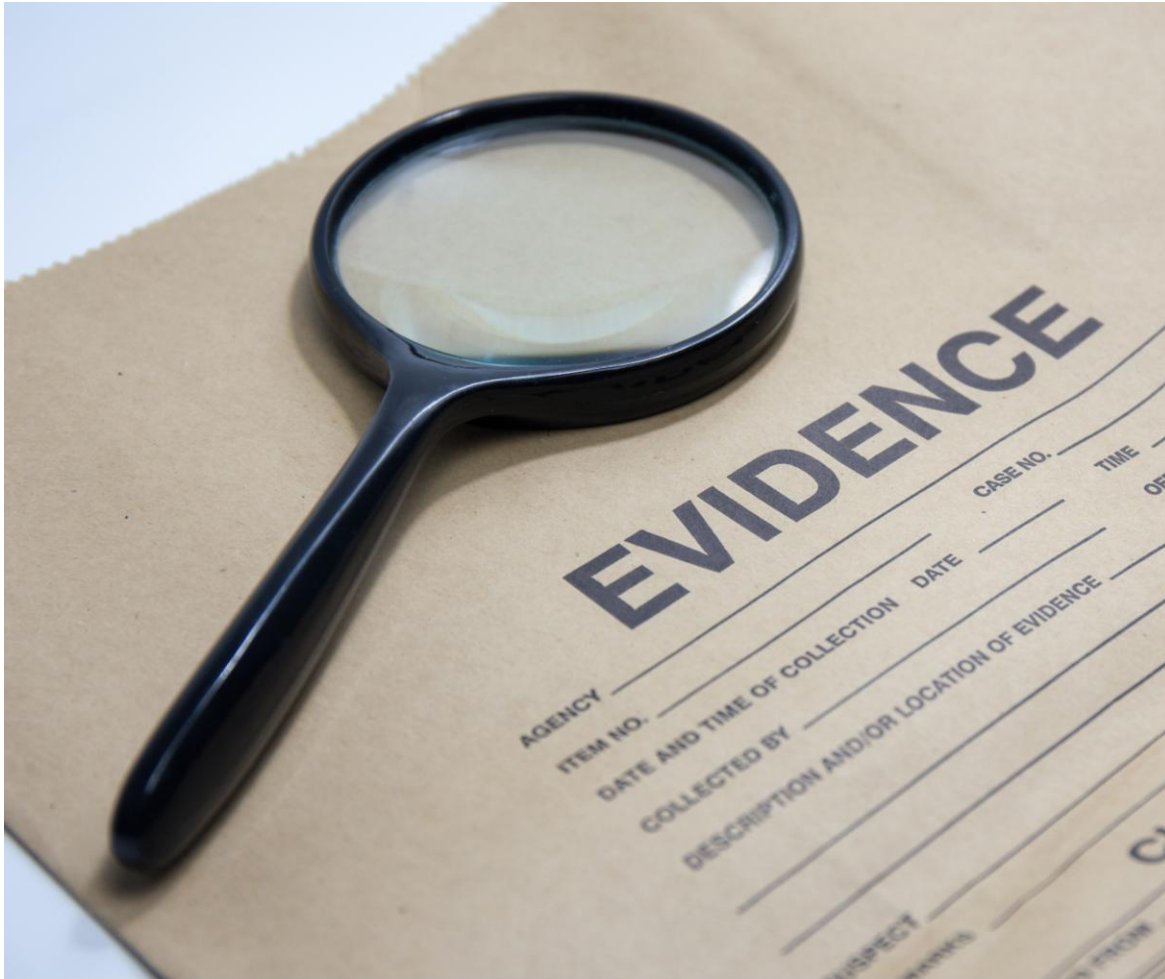
SECTION II: REMARKS

(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary.)

**Advocacy Tip:** Submit claims *with* evidence!

# Locating Records

# Main Questions about Evidence



- What evidence do you want to collect?
- How will the evidence **support** the Veteran's claim?
- **You do not have to submit all evidence.**

# Service Records

- VA will automatically collect the Veteran's service treatment records.
- Ask the Veteran if he or she has any original records.
- Ask the Veteran if they ever received treatment at any military hospital.
- Consider if service personnel records could help.



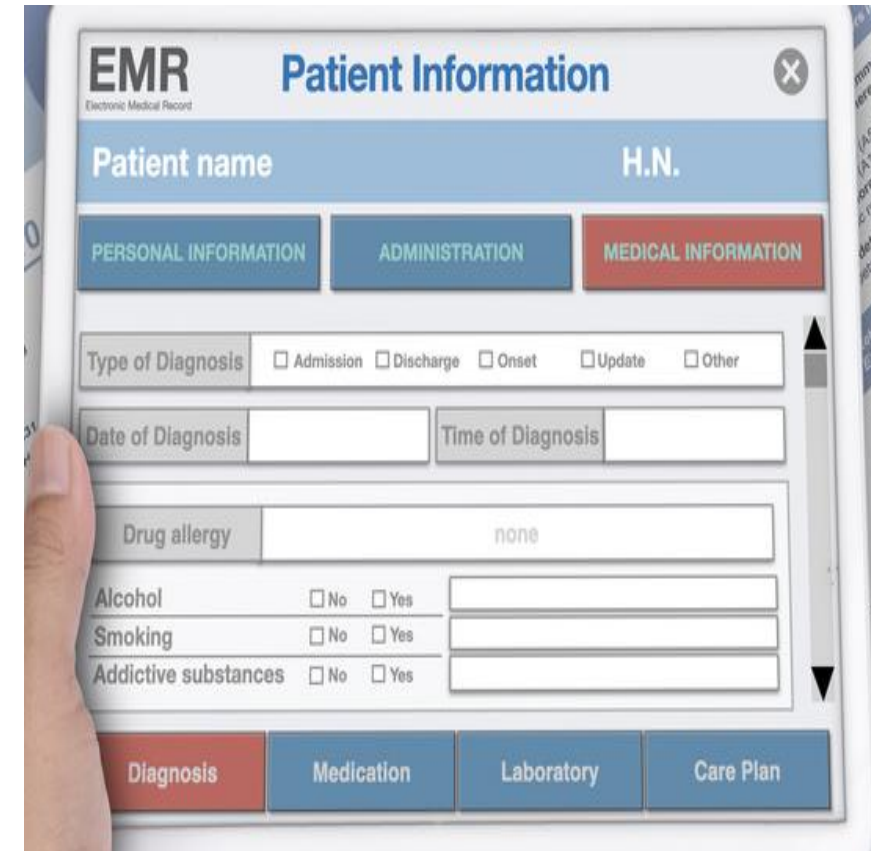
# VA Medical Records



- Ask the Veteran about every VA medical center where they ever received treatment.
- Ask about VA's Community Based Outpatient Clinics (CBOC) and VA's Vet Centers.
- VA does not automatically collect CBOC and Vet Center records.
- It's probably easier for VA to collect these VA records than the Veteran.

# Private Medical Records

- Ask the Veteran about every **private** facility where they received treatment.
  - Include private community care treatment authorized by VA.
- Don't focus on specialist treatment for conditions that aren't relevant.
- It's probably easier and faster for the Veteran to collect records than VA.
  - Most facilities charge a fee.



The image shows a screenshot of an Electronic Medical Record (EMR) system interface. At the top, it says "EMR" and "Patient Information". Below this, there's a section for "Patient name" with the value "H.N.". There are three tabs: "PERSONAL INFORMATION", "ADMINISTRATION", and "MEDICAL INFORMATION". The "MEDICAL INFORMATION" tab is selected. Under this tab, there's a "Type of Diagnosis" section with checkboxes for Admission, Discharge, Onset, Update, and Other. Below that are fields for "Date of Diagnosis" and "Time of Diagnosis". There's a "Drug allergy" section with a dropdown menu showing "none". At the bottom, there are three rows of checkboxes for "Alcohol", "Smoking", and "Addictive substances", each with "No" and "Yes" options. At the very bottom, there are four buttons: "Diagnosis", "Medication", "Laboratory", and "Care Plan".

# Focusing Evidence on What Matters

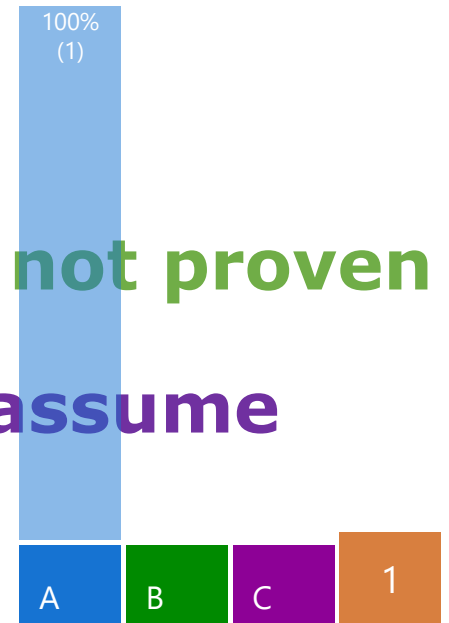


- Be focused! Submit evidence targeting the specific elements of the Veteran's claim.
  - Service connection claims: What is the Veteran's disability and how is it related to service?
  - Increased rating claims: What are the Veteran's symptoms and how do they support a higher rating under the correct diagnostic code?
- Tell VA your theory of entitlement and submit evidence to support that theory.

# Polling Question 1

Veteran David is seeking service connection for a left knee disability. Does this statement trigger the duty to assist?  
“After I twisted my knee playing basketball off-base in Korea, they sent me to a local doctor, then to an Army hospital. I don’t remember the name, but I was there a couple days.”

- A. Yes, because VA must collect clinical records**
- B. No, because the statement is too vague and has not proven the hospital records are relevant**
- C. No, if the documents aren’t in the STRs, VA can assume they don’t exist**



# Polling Answer 1

## **A. Yes, because VA must collect clinical records**

- No, if the documents are not already in his STRs then VA can assume that they do not exist. Incorrect. VA cannot assume they do not exist because they are not already in their possession.
- No, because the Veteran has not proven that the hospital records would be relevant to the claim. Incorrect. The hospital records appear to be directly related to the in-service injury. They are relevant “on their face.”

# Polling Question 2

Veteran Gina's right foot frostbite residuals are already service connected. Which statement triggers VA's duty to provide a new VA exam?

- A.** "I receive care from my private doctor."
- B.** "My right foot has changed color in the last year, and my toes are turning brown."
- C.** "I don't wear shoes anymore, only sandals."
- D.** "I think I should receive more compensation."



# Polling Answer 2

**B. “My right foot has changed color in the last year, and my toes are turning brown.”** This is the only answer showing that the Veteran’s condition has worsened.

- **“I receive care from my private doctor.”** This only shows that the Veteran presently receives medical care.
- **“I think that I should receive more compensation.”** This doesn’t show that the Veteran’s right foot condition has gotten worse.
- **“I don’t wear shoes anymore, only sandals.”** This is a statement that does not indicate a worsening of his service-connected right foot condition.

# Last Slide

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.

# Agent Orange, Blue Water, and *Nehmer*

<https://calvets.participoll.com/>



# Polling test question

When was it first determined that dioxin was harmful to human beings?

<https://calvets.participoll.com/>

- A. 1888**
- B. 1922**
- C. 1951**
- D. 1964**
- E. 1975**
- F. 1988**



# Learning Objectives

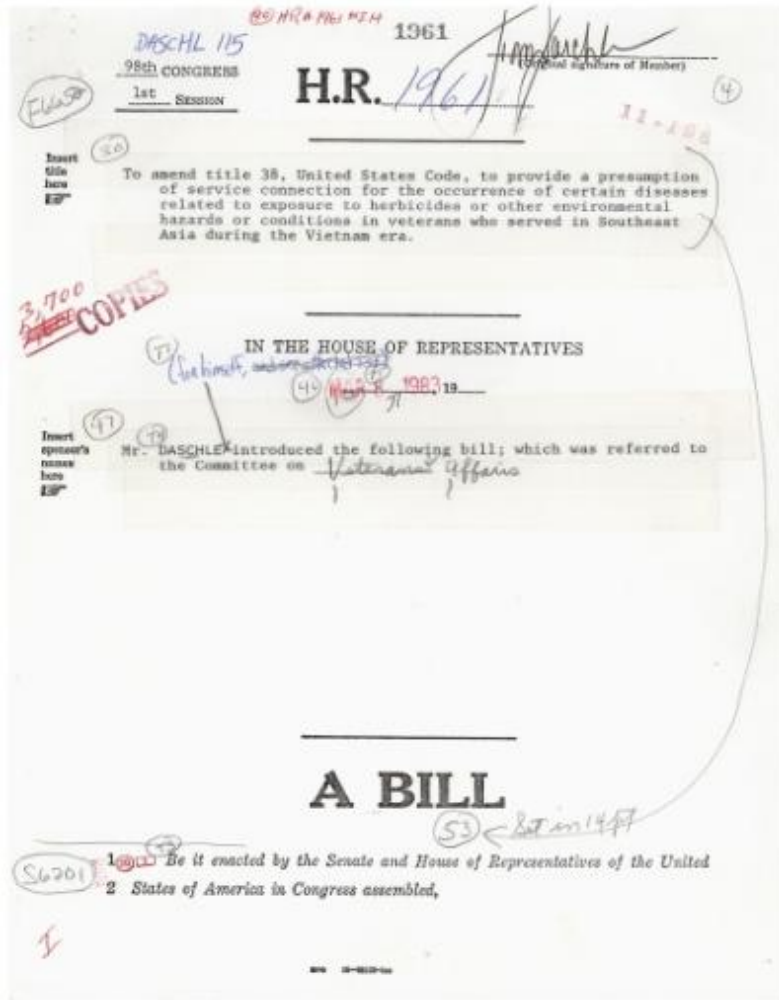
Learn about claims for service connection due to exposure to Agent Orange.

- Review the history of herbicide presumptions that include Agent Orange and dioxin.
- Review the presumption of exposure and learn how *Nehmer* applies to Blue Water Veterans.
- Review the presumption of causation and learn how to argue for non-presumptive conditions.

# Presumptive Conditions Recap

- Certain diseases and disabilities are presumed by VA to be related to military service due to exposure to these conditions:
  - 1. Tropical Diseases:** 38 CFR § 3.309(b)
  - 2. Prisoner of War:** 38 CFR § 3.309(c)
  - 3. Radiation:** 38 CFR § 3.309(d)
  - 4. Herbicide - Agent Orange:** 38 CFR § 3.309(e)
  - 5. Gulf War:** 38 CFR § 3.317(e)
  - 6. Camp LeJeune:** 38 CFR § 3.309(f)
- For a Veteran with qualifying service and a qualifying health condition, presumption removes the need to show a nexus between the Veteran's military service and the Veteran's current condition.

# History of AO Presumptions



- In the 1984 Veterans' Dioxin and Radiation Exposure Compensation Standards Act Congress ordered VA to study herbicides containing dioxins and write regulations covering the disabilities they caused.
- In their regulations, VA said that chloracne was the only disease associated with exposure to herbicides such as Agent Orange.
- A group of Vietnam War Veterans sued VA challenging VA's regulation.

# Nehmer Lawsuit

- Because that was before CAVC was established, the lawsuit was filed in U.S. Federal Court in California in 1987.
- Named on behalf of Beverly Nehmer, the widow of a Vietnam Veteran.
- A class action lawsuit on behalf of all Vietnam Veterans and their survivors who has been denied VA benefits for a condition associated with herbicide exposure.
- In 1989, the Veterans won, and the court invalidated VA's regulation.



# Nehmer Settlement



U.S. Federal Courthouse, Los Angeles,  
California

- VA settled the lawsuit in 1991.
- This settlement requires that every time VA adds a new disease to the list of AO presumptives VA must:
  1. Identify all claims for this new disease that was previously denied, and
  2. Pay retroactive disability benefits back to the initial date of claim.
- The settlement is codified in 38 C.F.R. § 3.816.
- VA has paid more than **\$4.5 billion** in retroactive benefits due to this settlement.

# Agent Orange Presumptions

**There are two different presumptions:**

1. Qualifying Service = presumption of toxic exposure.
2. Qualifying Health Condition = presumption of causation.

**Advocacy tip:** A claim may be granted using both, one, or neither presumption. That means a claim may be won based on **direct** service connection.

# The Presumption of Exposure

## **General Qualifying Service:**

- Set foot in Republic of Vietnam, or served on board ships in the territorial waters of Vietnam, between January 9, 1962, and May 7, 1975.

## **Excluded by VA regulations:**

- Merely flew over Vietnam airspace.
  - (except for non-Hodgkin's lymphoma presumption created under the 1984 Act).

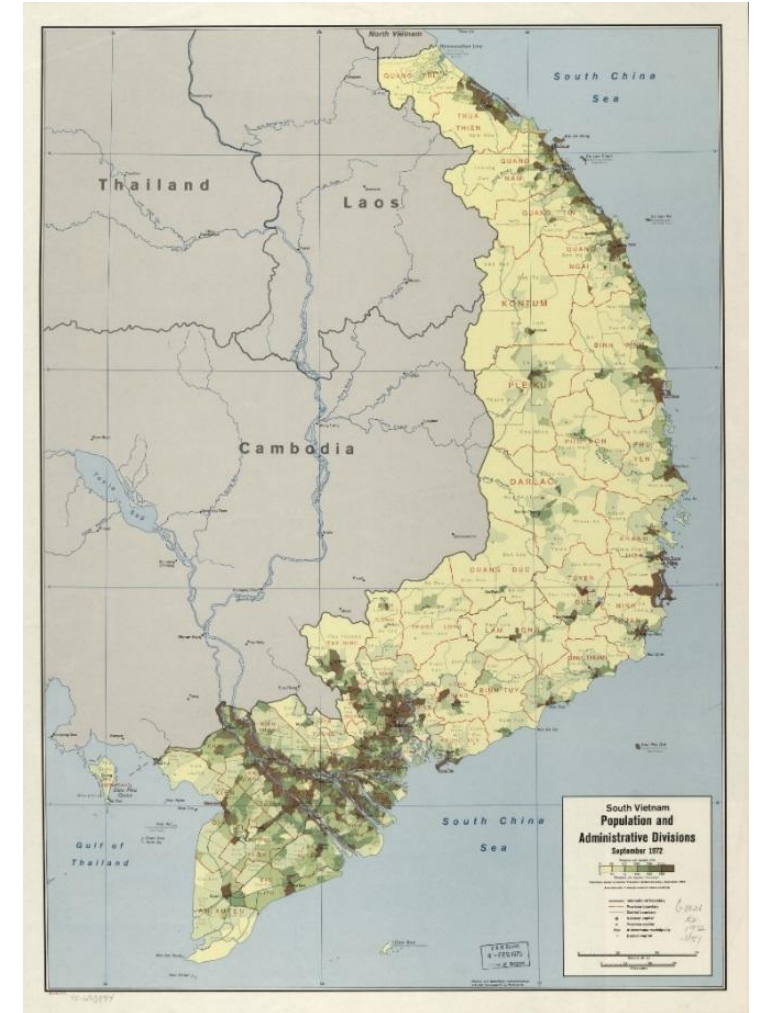


Photo: Map of South Vietnam, Library of Congress

# Herbicide Exposure and Blue Water Veterans

**Jan. 2019**: In the *Procopio* decision, the Federal Circuit Court ruled that Congress intended in 1991 to include naval personnel who served in the territorial seas of the Republic of Vietnam within the presumption of herbicide exposure. “Territorial seas” extend up to 12 nautical miles from the shore.

*Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019).



Photo: U.S. Navy

# Blue Water Navy Vietnam Veterans Act of 2019



Photo: Architect of the Capitol

**Congress passed a law that expanded and clarified *Procopio*.**

- The new law broadly defined “territorial waters” using offshore islands.
- The new law did **not** require VA to automatically readjudicate claims.

# Blue Water Navy Question

Veteran Larry served on the USS Kitty Hawk during the Vietnam War. This aircraft carrier did not pass within 12 nautical miles of the shore of Vietnam, but many of the aircraft on the carrier flew over Vietnam—sometimes at relatively low altitude. His claim for service connection for diabetes was denied due to lack of exposure.

Was Larry presumptively exposed to Agent Orange?

**A. Yes**

**B. No**



# Answer – I

**No**

To be presumptively exposed, Blue Water Navy Veterans must have passed through the territorial waters within 12 nautical miles of Vietnam. Not all ships that served off the coast — especially aircraft carriers — came that close to shore.

Larry would have to show that he was **directly** exposed to Agent Orange.

# *Nehmer* and Blue Water Veterans

- Initially, VA argued that *Nehmer* did not apply to Blue Water Veterans.
- Vietnam War Veterans went back to the same U.S. Federal Court in California that decided *Nehmer*.
- In November 2020, the Veterans won again. The Court held that the *Nehmer* settlement required VA to automatically readjudicate all Blue Water Navy Veterans' claims and award retroactive benefits to the date of initial claim.

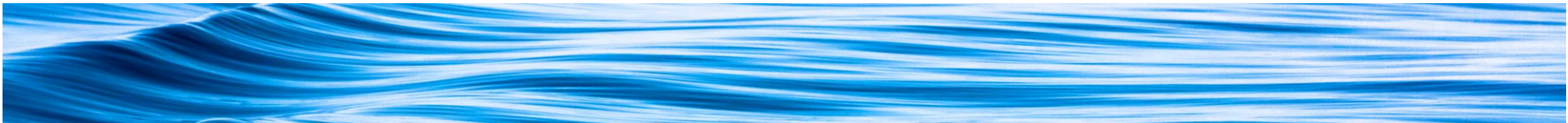
# *Nehmer* Order Blue Water Veterans



- Under the Court's order, VA was required to identify all Veterans who were denied for only "Blue Water" service by March 2021.
- VA had to readjudicate all of these identified claims by July 6, 2021, and award retroactive payments.
- **VA missed some of these claims.**

# Blue Water Advocacy

- If you have a Veteran or survivor who was previously denied service connection for an agent orange presumptive disease because they only served in “Blue Water,” then:
- File a **Supplemental Claim, VA Form 20-0995**.
- And submit a VA Form 21-4138 and list:
  - Date the Veteran originally filed this claim.
  - Point out the claim was only denied because the Veteran served in “Blue Water.”
  - And argue retroactive benefits should be granted effective the initial date of the claim, per *Nehmer*.



# Other Pre-PACT Act Exposures



- Veterans who served along the perimeter of Army or Royal Thai Air Force bases in Thailand.
- Veterans who served in or near the Korean DMZ between September 1, 1967, and August 31, 1971.
- Air Force Veterans who operated, maintained, or served onboard C-123s used to spray herbicides.
- Or Veterans can otherwise prove they were exposed to Agent Orange during service.

# New Herbicide Exposure Locations

PACT Act added new qualifying service:

- **Any military base in Thailand** from Jan. 9, 1962, to Jun. 30, 1976.
- Laos: Dec. 1, 1965 to Sep. 30, 1969.
- Guam and American Samoa from Jan. 9, 1962, to Jul. 31, 1980.
- Johnston Atoll Jan. 1, 1972, to Sep. 30, 1977.
- Certain locations in Cambodia during April 1969.

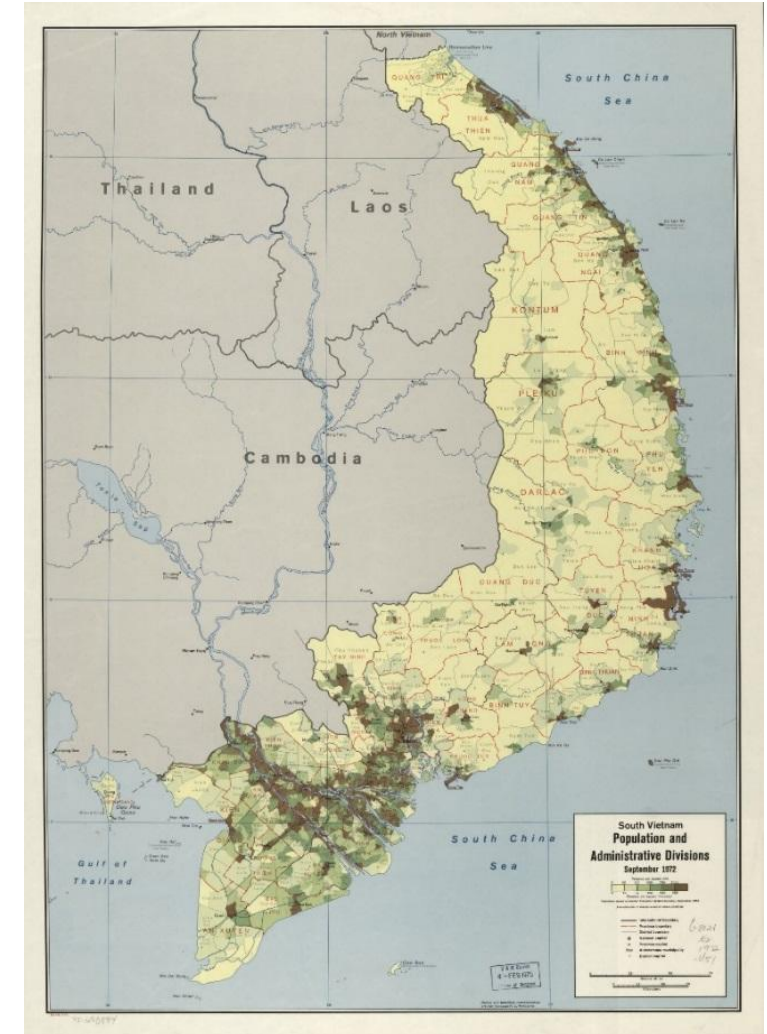


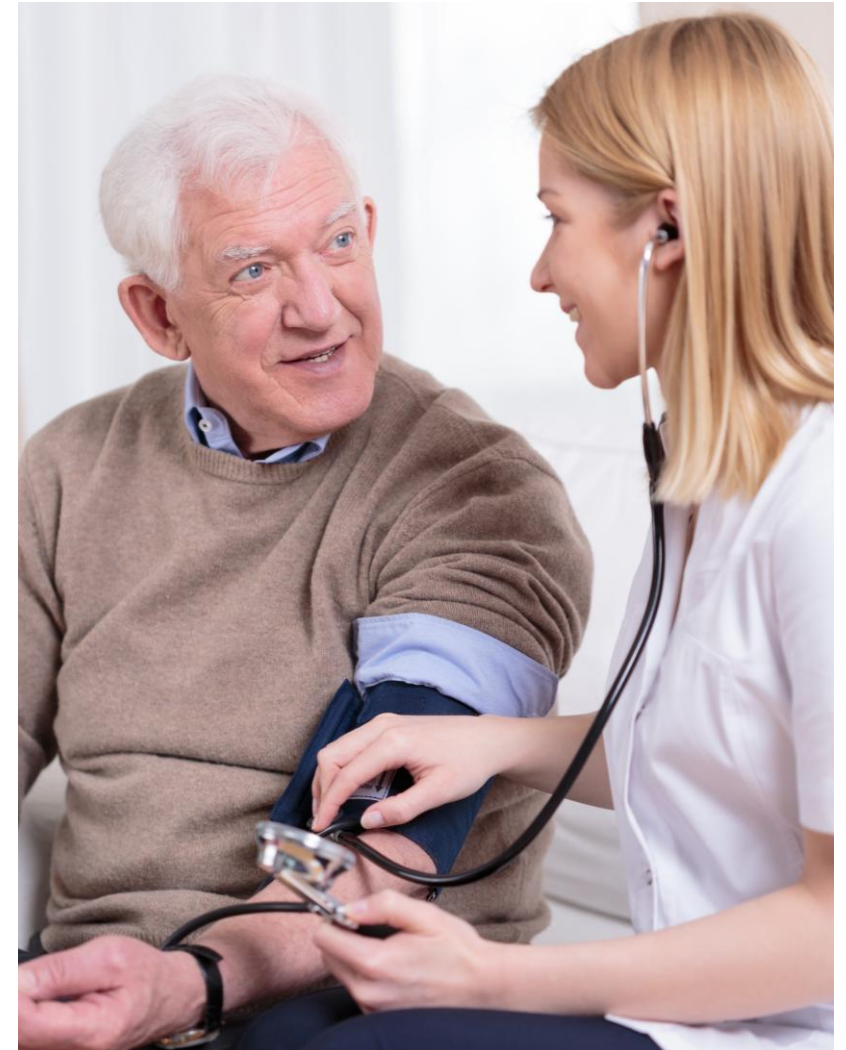
Photo: Library of Congress

# The Presumption of Causation

## Qualifying Health Conditions:

Listed at 38 C.F.R. § 3.309(e), include leukemia, Parkinson's disease, Hodgkin's disease, type 2 diabetes, prostate cancer, ischemic heart disease, lung cancer, etc.

**In 2021 Congress added bladder cancer, hypothyroidism, and Parkinson's Disease-like symptoms to the list.**



# New Herbicide Qualifying Conditions



PACT Act added two new conditions to the presumptive list:

- Monoclonal gammopathy of undetermined significance (MGUS).
- **High blood pressure (hypertension).**

# Non-Presumptive Conditions

- ***Direct service connection*** for exposure is still possible to prove for conditions not on the presumptive lists.
- Evidence must be based upon ***specific risk factors*** of the individual Veteran.
- Provide expert medical opinion on:
  - Why the Veteran's case is special, and
  - Why the Veteran's exposure is at least as likely as not to be the underlying cause.

**You may be able to prove a non-presumptive condition is related to one of these exposures by using “Direct” service connection.**

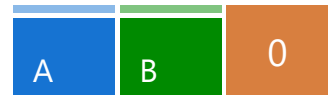
# Adequate Examination Question

Veteran John is claiming that he has itchy skin on his legs, arms, and back due to his presumed exposure to Agent Orange during service. He is diagnosed with seborrheic dermatitis. The VA examiner provided a negative nexus opinion reasoning that because John was not diagnosed with chloracne in service then his current skin disorder is not related to Agent Orange exposure.

Is this VA examination adequate?

**A. Yes**

**B. No**



# Answer - II

**No**

The VA examiner effectively provided a negative opinion only because John's diagnosed skin disorder was not presumptively caused by exposure to Agent Orange. The examiner did not address if Agent Orange directly caused John's current skin disorder.

John should submit a **Higher-Level Review, VA Form 20-0996**, arguing that the VA examiner's opinion is inadequate.

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.



# **Gulf War Illness and Burn Pit Claims**

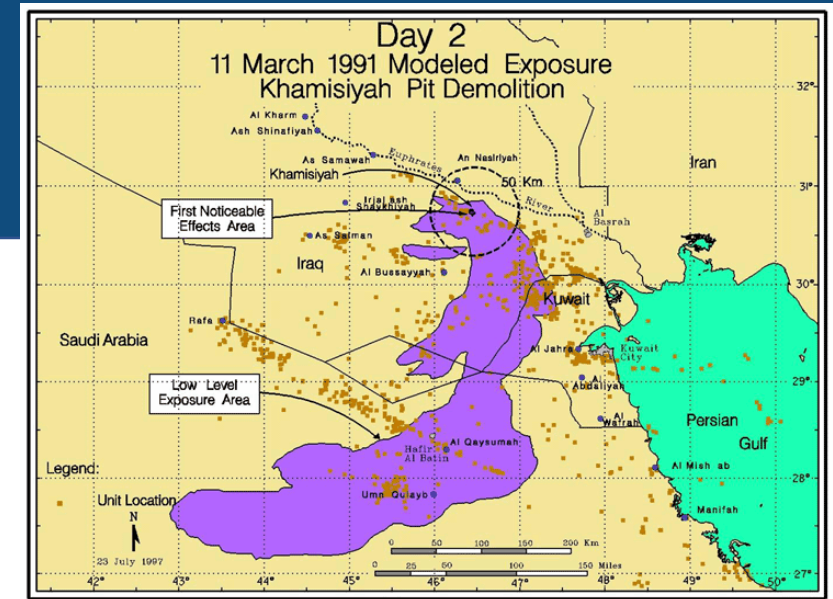
# Learning Objectives

Learn about issues related to claims for Gulf War illness and burn pits.

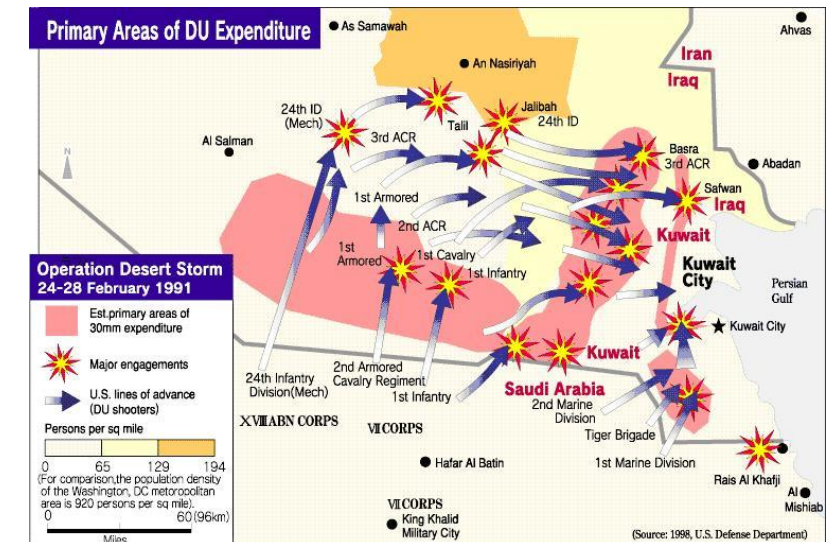
- Learn about how a Veteran qualifies for a Gulf War illness presumption.
- Learn about conditions covered under the presumption.
- Learn about issues related to burn pit exposures.

# Gulf War Presumption

- VA will pay benefits to a “Persian Gulf War” Veteran who develop certain conditions. 38 C.F.R. § 3.317.
- The Veteran must have qualifying service.
- The Veteran must have a qualifying disability.
- If a Gulf War Veteran develops a qualifying disability, the Veteran does not have to prove a nexus between the disability and service. VA grants service connection on a presumptive basis.



Source: Department of Defense, sarin plume, where up to 145,000 service members were exposed on March 11, 1991.



Source: Department of Defense, widespread areas of Gulf War depleted uranium contamination, February 24-28, 1991.

# Expanded Gulf War Qualifying Service Locations

- Service in the Persian Gulf War previously included areas shown in red below:



- The PACT Act added service in six nations:
  - Afghanistan
  - Israel
  - Egypt
  - Turkey
  - Syria
  - Jordan

**Qualifying start date is August 2, 1990.  
Locations include land, bodies of water,  
and the airspace above them.**

# No Time Restrictions

105 STAT. 88

PUBLIC LAW 102-25—APR. 6, 1991

(1) The armed services shall strive to devise and implement a uniform policy with respect to the deployment of mothers of newborn children.

(2) Such policy should provide that to the maximum extent possible, mothers of new born children under the age of 6 months shall not be:

(A) deployed in the case of a mother on active duty; or

(B) activated, if activation requires separating the mother and child, or deployed in the case of a mother serving in a reserve component.

Persian Gulf  
War Veterans'  
Benefits Act  
of 1991.  
38 USC 101  
note.

## PART C—VETERANS BENEFITS AND PROGRAMS

### SEC. 331. SHORT TITLE

This part may be cited as the "Persian Gulf War Veterans' Benefits Act of 1991".

### SEC. 332. INCLUSION OF PERSIAN GULF WAR WITHIN DEFINITION OF "PERIOD OF WAR" FOR PURPOSES OF VETERANS BENEFITS

Section 101 of title 38, United States Code, is amended—

(1) in paragraph (11), by inserting "the Persian Gulf War," after "the Vietnam era,"; and

(2) by adding at the end the following new paragraph:

"(33) The term 'Persian Gulf War' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law."

- The "Persian Gulf War" officially began on **August 2, 1990, and continues to the present**. See 38 U.S.C. § 101(33).
- ***All deployed*** Gulf War Veterans benefit from VA's presumption.

# Gulf War Qualifying Conditions

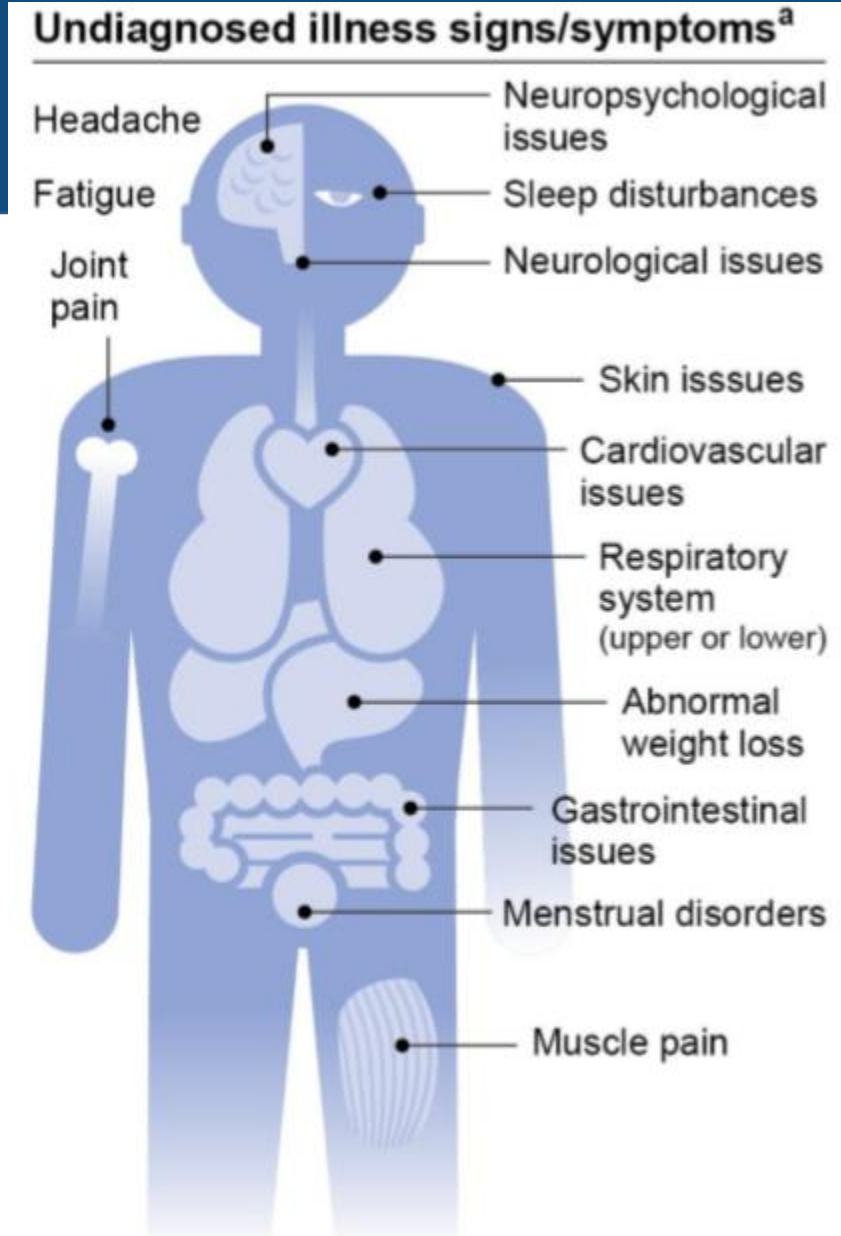
- VA **will** pay compensation to Veterans who exhibit objective indications of a *chronic qualifying disability*.
- Chronic qualifying disability:
  - Undiagnosed illness (**UDX**)
  - Medically unexplained chronic multisymptom illness (**MUCMI**)
    - Chronic fatigue syndrome
    - Fibromyalgia
    - Functional gastrointestinal disorders
- If a Veteran has a UDX or MUCMI they do **not** need to prove a nexus with service.



Source: Department of Defense, pyridostigmine bromide (PB) pills, administered to an unknown number of service during Desert Shield / Desert Storm, 1990 - 1991.

# Undiagnosed Illnesses

- Except for a list of “signs and symptoms,” VA’s regulation provides no additional guidance for what constitutes an undiagnosed illness.
- A UDX claim is difficult to win because most VA doctors provide diagnoses for patients’ symptoms.
- A UDX can have many possible signs or symptoms.
- If a Veteran has a diagnosis, then there is no undiagnosed illness.



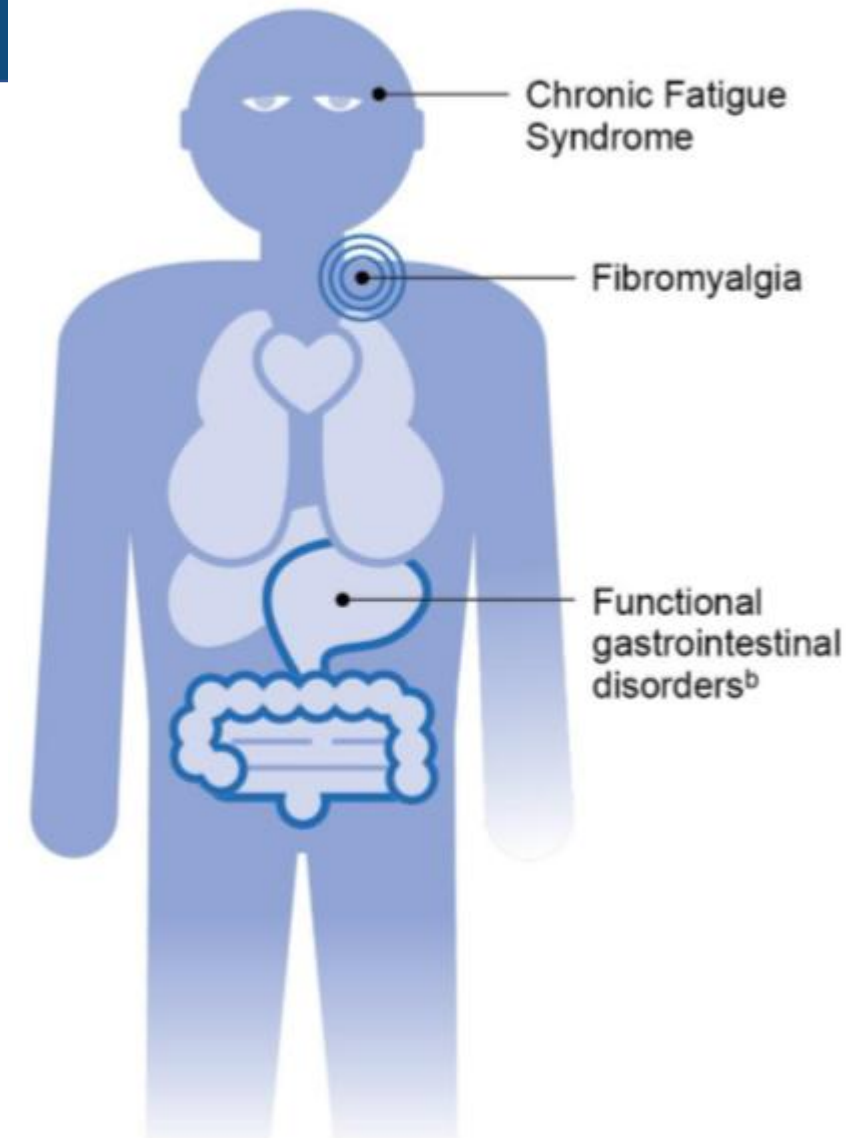
Source: GAO analysis of 38 C.F.R. § 3.317. | GAO-17-511

# MUCMI

- Unlike UDX, VA's MUCMI regulation provides guidance about MUCMI.
- MUCMI is a "diagnosed illness without conclusive pathophysiology or etiology."
  - *Etiology*: cause of a disease
  - *Pathophysiology*: the bodily changes caused by a disease
- The Court has stated that if ***either*** of the above is not conclusive, then the disease is a MUCMI.<sup>1</sup>

<sup>1</sup>*Stewart v. Wilkie*, 30 Vet.App. 383 (2018).

## Medically unexplained chronic multisymptom illness



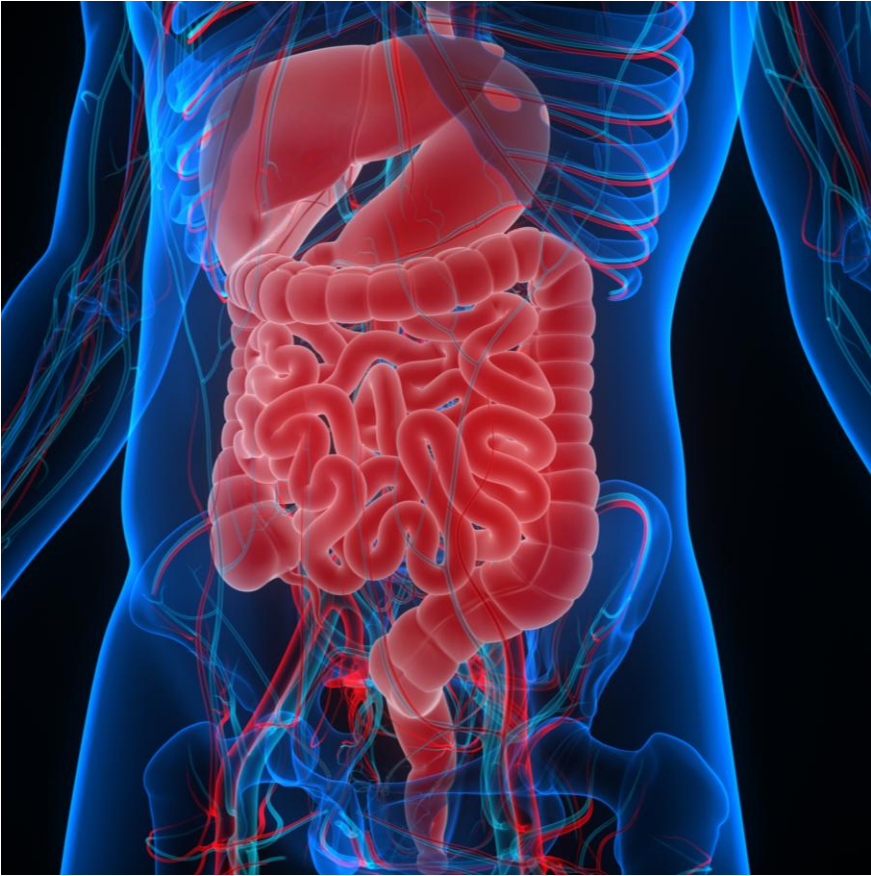
Source: GAO Report

# MUCMI and Diabetes and MS

- Chronic multisymptom illnesses of partially understood etiology and pathophysiology are **not** considered medically unexplained.
  - Diabetes and multiple sclerosis are listed by VA as specific conditions that are **not** MUCMI.
  - If the Veteran argues that either is related to Gulf War exposures, then the Veteran must provide nexus evidence.



# MUCMI and Gastro Disorders



- VA's regulation states that gastrointestinal symptoms that are unexplained by any injury or disease are MUCMI. The diagnosis must be made in accordance with "medical principles." Example: irritable bowel syndrome (IBS).
- A 2018 Court decision said that GERD is **not** a MUCMI.

# MUCMI Question

Veteran Michael served in Desert Shield/Desert Storm and has filed a claim for service connection for fibromyalgia. He attends a VA exam, and the examiner provides a negative opinion. The examiner writes, “the vet does not have fibromyalgia because he does not have the typical symptoms of such. Instead, the vet’s hypothyroidism is causing a lot of his symptoms if his hypothyroid is not properly treated.” Is this an adequate rationale?

- A. Yes, because the symptoms were attributed to another diagnosis.**
- B. No, because the C&P examiner failed to explain how he determined that Michael's symptoms were due to hypothyroidism.**
- C. Yes, because the examiner used the correct legal standard.**
- D. No, because the examiner did not presume that Michael suffers from fibromyalgia.**



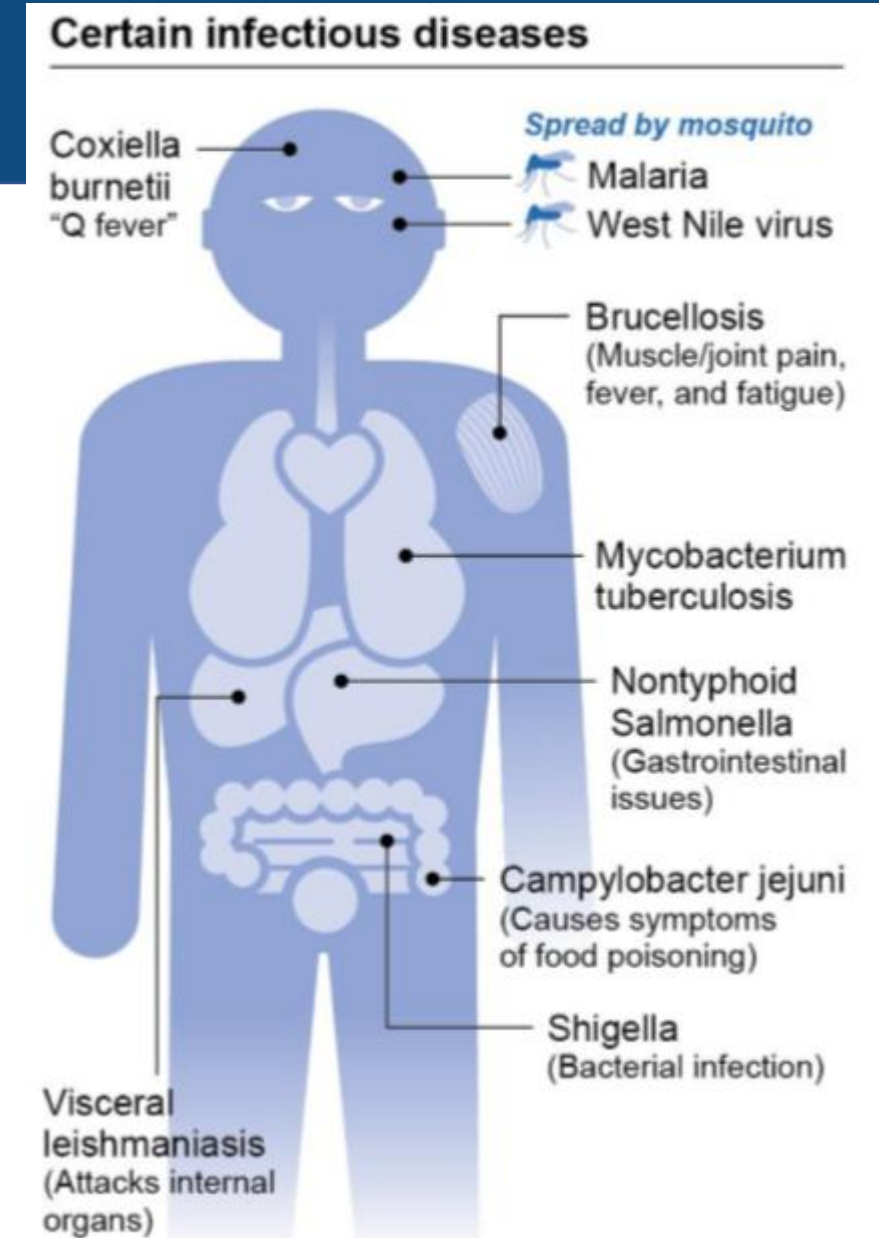
# MUCMI Answer

**No, because the C&P examiner failed to explain how he determined that Michael's symptoms were due to hypothyroidism.**

- This is based upon a Court case, *Calderon v. Shinseki*, No. 11-3805 (Oct. 17, 2013).
- The Court said that the examiner failed to describe the symptoms of fibromyalgia, which is relevant to deciding if he has that diagnosis.
- The examiner also failed to explain *how* he determined that the symptoms were due to hypothyroidism. The opinion was a statement offered without any rationale. See *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008) ("[A] medical examination report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two.")

# Infectious Diseases

- Nine diseases listed.
- Must be manifest to a degree of 10% or more within one year of separation from service, except for:
  - Malaria: 1 year or within incubation period
  - TB and leishmaniasis: no time limit
- Long-term effects may be service connected.
- Qualifying service includes service in Afghanistan after Sept. 19, 2001.



# Burn Pits

- In the Gulf War theater, service members were often instructed to dispose of waste and trash in “burn pits.”
- The burn pits produced smoke and fumes and particulate matter.
- Visit VA’s [public health website](#) for more information.



U.S. service member tosses trash into a Burn Pit in Iraq, 2008.  
Source: [Wikipedia \(public domain\)](#)

# New Presumption for Burn Pits

**PACT Act created a new presumption that Veterans with qualifying service were exposed to Burn Pits.**

- On or after Aug. 2, 1990:
  - Bahrain
  - Iraq
  - Kuwait
  - Oman
  - Qatar
  - Saudi Arabia
  - Somalia
  - The UAE
- On or after Sep. 11, 2001:
  - Afghanistan
  - Djibouti
  - Egypt
  - Jordan
  - Lebanon
  - Syria
  - Uzbekistan
  - Yemen

# Burn Pits Qualifying Conditions

- Cancers involving:
  - Brain
  - Gastrointestinal
  - Glioblastoma
  - Head
  - Kidney
  - Lymphatic and lymphoma
  - Melanoma
  - Neck
  - Pancreatic
  - Reproductive
  - Respiratory
- Plus these medical conditions:
  - Asthma
  - Chronic Bronchitis
  - COPD
  - Chronic Rhinitis
  - Chronic Sinusitis
  - Bronchiolitis
  - Emphysema
  - Granulomatous Disease
  - Interstitial Lung Disease
  - Pleuritis
  - Pulmonary Fibrosis
  - Sarcoidosis

# Burn Pit Conditions Cont.

- The PACT Act created large categories of conditions that are presumptively related to Burn Pit exposure.
- Attachment A to VBA Letter 20-24-6 includes a long list of medical diagnoses that fall into those categories.
- Starts on page 24 of the PDF.

Attachment A: Presumption of Service Connection for Certain Diseases Associated with Exposure to Burn Pits and Other Toxins	
Diagnostic Codes for Gulf War Presumptions	
Disease	CS - Identified Diagnostic Conditions
Asthma	<ul style="list-style-type: none"><li>• 6602 – asthma, bronchial</li></ul>
Chronic Bronchitis	<ul style="list-style-type: none"><li>• 6600 – bronchitis, chronic</li></ul>
Constrictive Bronchiolitis or Obliterative Bronchiolitis	<ul style="list-style-type: none"><li>• 6600 – bronchitis, chronic</li><li>• 6601 – bronchiectasis</li><li>• 6602 – asthma, bronchial</li><li>• 6603 – emphysema, pulmonary</li></ul>
Chronic Obstructive Pulmonary Disease	<ul style="list-style-type: none"><li>• 6604 – chronic obstructive pulmonary disease</li></ul>
Emphysema	<ul style="list-style-type: none"><li>• 6603 – emphysema, pulmonary</li></ul>
Granulomatous disease	<ul style="list-style-type: none"><li>• 6820 – neoplasms, benign</li><li>• 6524 – granulomatous rhinitis</li><li>• 6828 – eosinophilic granuloma</li></ul>
Interstitial Lung disease	<ul style="list-style-type: none"><li>• 6825 – fibrosis of lung, diffuse interstitial</li><li>• 6826 – desquamative interstitial pneumonitis</li><li>• 6827 – pulmonary alveolar proteinosis</li><li>• 6828 – eosinophilic granuloma</li><li>• 6829 – drug-induced, pneumonitis &amp; fibrosis</li><li>• 6830 – radiation-induced, pneumonitis &amp; fibrosis</li><li>• 6831 – hypersensitivity pneumonitis</li><li>• 6832 – pneumoconiosis</li><li>• 6833 – asbestosis</li></ul>
Pleuritis	<ul style="list-style-type: none"><li>• 6732 – pleurisy, active or inactive</li><li>• 6845 – pleural effusion or fibrosis</li></ul>
Pulmonary Fibrosis	<ul style="list-style-type: none"><li>• 6825 – fibrosis of lung, diffuse interstitial</li><li>• 6826 – desquamative interstitial pneumonitis</li><li>• 6827 – pulmonary alveolar proteinosis</li><li>• 6828 – eosinophilic granuloma</li><li>• 6829 – drug-induced, pneumonitis &amp; fibrosis</li><li>• 6830 – radiation-induced, pneumonitis &amp; fibrosis</li><li>• 6831 – hypersensitivity pneumonitis</li><li>• 6832 – pneumoconiosis</li><li>• 6833 – asbestosis</li><li>• 6845 – pleural effusion or fibrosis</li></ul>
Sarcoidosis	<ul style="list-style-type: none"><li>• 6846 – sarcoidosis</li></ul>
Chronic Rhinitis	<ul style="list-style-type: none"><li>• 6501 (historic)</li><li>• 6522 – allergic or vasomotor rhinitis</li><li>• 6523 – bacterial rhinitis</li></ul>

# Burn Pit Opinion Question

Veteran Ben served in Iraq in 2003. He has developed prostate cancer and thinks it might be related to burn pit exposure. He attends a VA exam and the examiner writes, "Review of the most current medical literature finds that no adequate clinical evidence has been established to support a causal relationship between exposures from military service in Southwest Asia (to include "burn pits") and prostate cancer. It is less likely than not that prostate cancer is related to a specific exposure event that may have been experienced by the veteran during service. Is this an adequate opinion?

- A. Yes, because the examiner reviewed the relevant medical literature.**
- B. No, because the examiner failed to discuss functional limitation.**
- C. Yes, because the examiner used the correct legal terminology.**
- D. No, because the examiner required a higher standard of proof that required by law.**



# Burn Pits Opinion Answer

**No, because the examiner required a higher standard of proof that required by law.**

- VA has a unique standard of proof: as least as likely as not (50/50 chance).
- Medical science requires a higher level of proof before a consensus is reached, but “Congress has not mandated that a medical principle have reached the level of scientific consensus to support a claim for VA benefits.” *Wise v. Shinseki*, 26 Vet.App. 517 (2014).
- The negative VA opinion was based on a lack of scientific consensus supporting Ben’s claim, but VA must resolve scientific or medical questions in the Veteran’s favor so long as the evidence for and against a question is in approximate balance.

# Reviewing a VA Opinion

- Opinions involving toxic exposure claims often suffer from several typical flaws.
- An examiner cannot provide a negative opinion simply because there is no presumptive service connection for any burn pit claims. *See Polovick w. Shinseki*, 23 Vet.App. 48 (2009).
- An examiner should discuss whether there are other risk factors that might be the cause of the condition and whether the condition manifested in an unusual manner. *Polovick*.
  - An adequate VA examination is based on the specific facts of the Veteran's case.
- An examiner cannot require a higher level of proof than required under the law ("at least as likely as not"). *See Wise v. Shinseki*, 26 Vet.App. 517 (2014).

# Elements of a Good Private Opinion

- If the Veteran can obtain a nexus opinion from a private doctor, then work with the Veteran to ensure the opinion is adequate.
- Provide the VA fact sheet about the Veteran's exposure.
- The doctor should address:
  - The Veteran's lay statements,
  - The Veteran's medical history,
  - The Veteran's other risk factors.
- Remember: A nexus opinion with no rationale adds no value to the Veteran's claim.

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.



# **Service Connection: Mental Health**

# Learning Objectives

Learn how to establish VA service connection for a Veteran with a mental health condition:

- Learn how to establish a **mental health diagnosis**.
- Learn how to establish **nexus** for a mental health condition.
- Recognize the unique requirements of establishing **service connection for Posttraumatic Stress Disorder (PTSD)**.

Approximately how many Veterans are service-connected for a mental health disability?

- A. 290,000**
- B. 713,000**
- C. 1.21 million**
- D. 1.95 million**
- E. 2.84 million**
- F. 4.11 million**

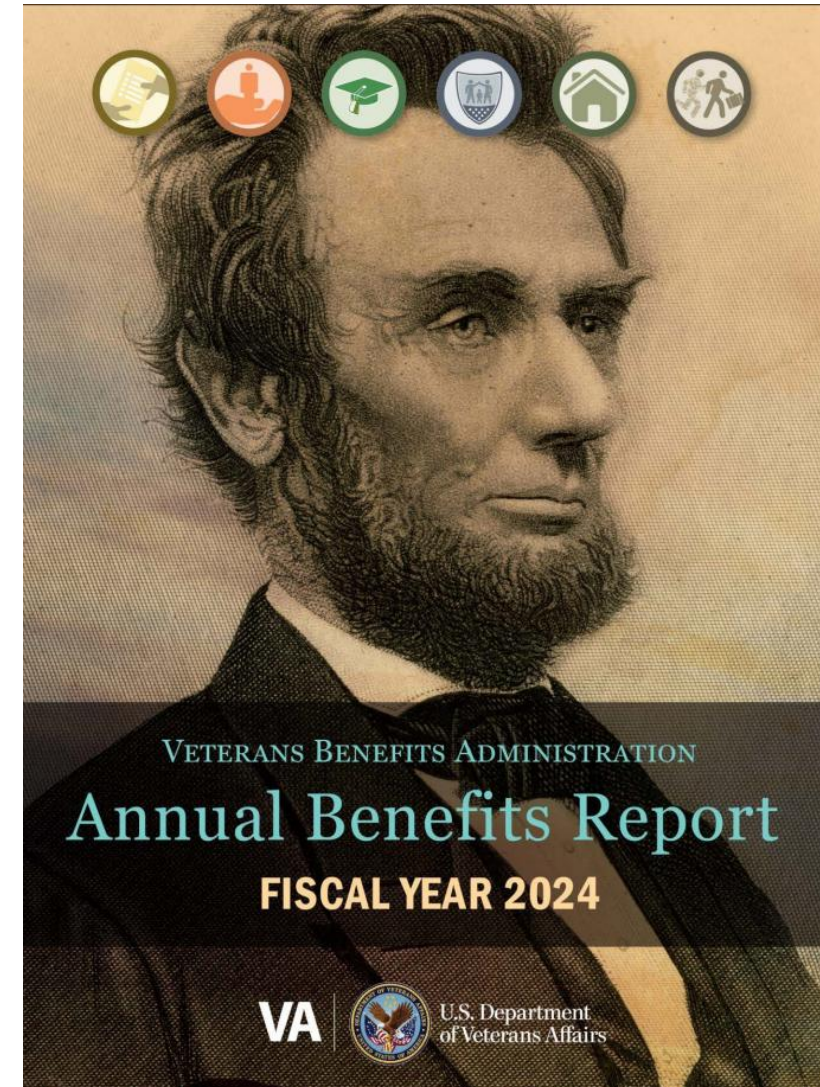


# Answer

**2.84 million**

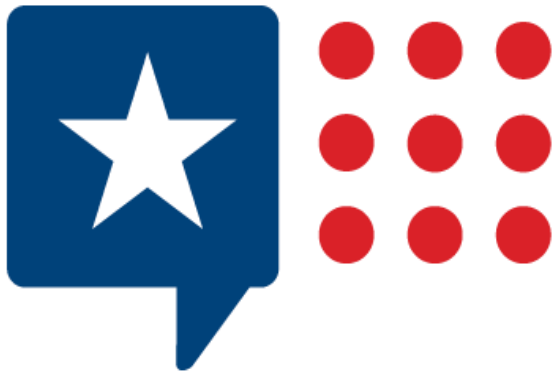
- As of the end of FY24, approximately 2,837,602 Veterans were service-connected by VA for a mental health condition.

Source: U.S. Department of Veterans Affairs, Veterans Benefits Administration, "Annual Benefits Report, Fiscal Year 2024," page 100.  
<https://www.benefits.va.gov/REPORTS/abr/docs/2024-compensation.pdf>



# Suicide Prevention Resources

## Veterans Crisis Line



**DIAL 988** then  
**PRESS 1**

- Add VA's Veterans Crisis Line (VCL) to your phone: **988, then press 1.**
- Veterans contacted the VCL nearly **10 million times**, from 2007 to 2025.
- VCL expedited access to VA healthcare for more than **1.6 million Veterans.**
- VA dispatched emergency services to more than **369,000 Veterans.**

Source: VA's Veteran Crisis Line, "About Us,"  
<https://www.veteranscrisisline.net/about/about-us/>

# Service Connection for Mental Disorders

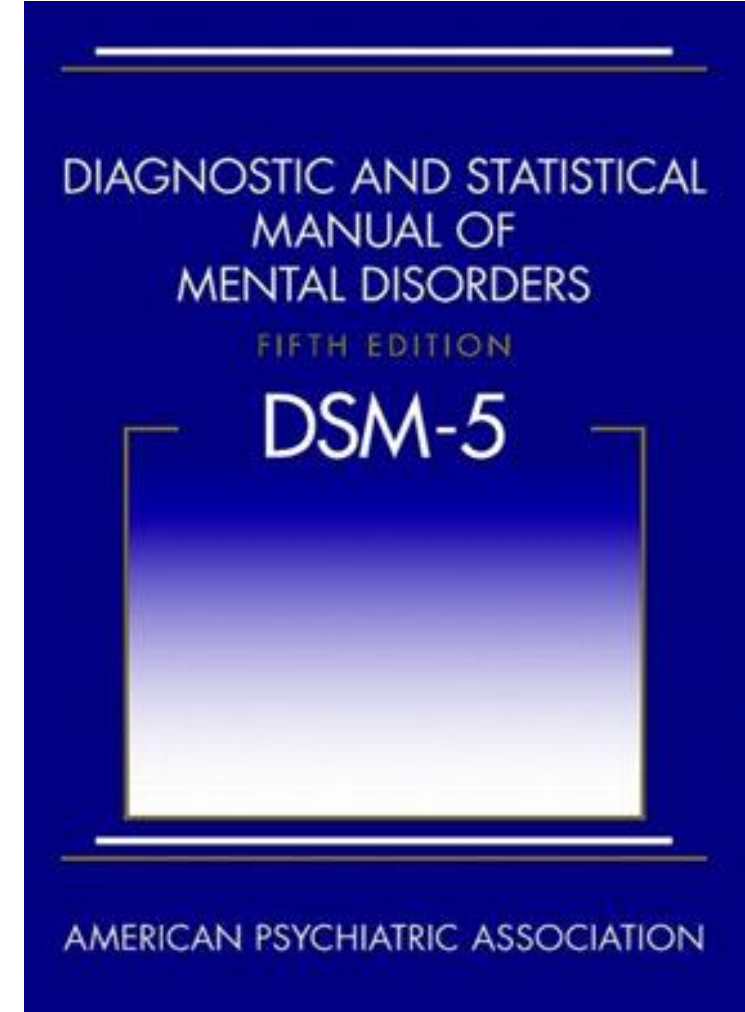
General principles of service connection apply:

1. Present disability: Does the Veteran have a **current** mental health condition?
2. In-service incident or injury: Was there an **in-service event or incident** that caused the mental health condition?
3. Nexus between the two: Has a mental health practitioner **linked** the above two elements?

# Diagnoses of Mental Disorder

- A diagnosis of a mental disorder must conform to the “DSM-5.”
  - Replaced the DSM-IV on August 4, 2014.
- A diagnosis is not required to trigger VA’s duty to assist.

**Advocacy tip:** Veterans are generally competent to describe their mental health symptoms in a statement to VA.



# Diagnoses of Mental Disorder is Required



- A Veteran must have a diagnosis of a mental disorder for service connection.
- In other words, *Saunders* doesn't apply to mental disorders.
- From *Martinez-Bodon v. Wilkie*, 33 Vet. App. 393 (2020).

# What is the Veteran claiming?

- A Veteran is understood to be seeking VA service connection for their mental health **symptoms**, not a specific diagnosis.
- VA should consider service connection for **any and all** mental disorders diagnosed.
- If service connection is granted, all mental health disorders are rated based on the same symptoms.

**Advocacy tip:** It may be easier to establish service connection for some mental health diagnoses than others.

# Nexus for Direct Service Connection



- Clearly **established if diagnosed during service.**
  - Check service medical treatment and personnel records.
- Medical opinion likely needed if only symptoms were documented in service, or if the Veteran waited years before seeking care.

# “Chronic” Presumption

- Chronic disease manifest during service, or to 10% rating within one year of service, is presumptively service connected.
  - 38 C.F.R. § 3.307.
- “Psychoses” is listed as a “chronic” condition.
  - 38 C.F.R. § 3.309(a).
- 38 C.F.R. § 3.384 defines “psychosis” to include **schizophrenia**.



# Secondary Service Connection



- VA may grant service connection for a Veteran's mental disorder on a secondary basis because it is related to another service-connected disability.
  - Common with **depression**.
  - Frequent with **physical conditions**.
- Mental disorders may also be **aggravated** by service-connected disabilities.
  - ***Allen* aggravation**.

# Service Connection for PTSD

- Generally requires corroboration of an in-service **stressor**. 38 C.F.R. § 3.304(f)(2).
  - **Combat Veterans:** Veteran's lay testimony is enough if stressor is related to combat.
  - **War Zone Veterans:** Stressor can be fear of hostile military activity for deployed Veterans.

**Advocacy tip:** Consider other mental health diagnoses that do not require corroboration of a stressor.

# Duty to Assist & PSTD Stressor



- Veterans should provide as many details about the stressor as possible, including the **location (such as the country), date,** and any known **unit, ship, base, or facility.**
- Service mental health treatment records are stored separately from other service treatment records.

**Advocacy tip:** Focus on triggering VA's duty to assist to search for and find records to assist the Veteran's claim.

# PTSD and Military Sexual Trauma

- VA can grant service connection for PTSD associated with Military Sexual Trauma (MST).
  - Includes **physical assault OR sexual harassment**.
- VA requires corroboration of the stressor.
  - 38 C.F.R. § 3.304(f)(5).
- VA must send the Veteran specific notice about the types of evidence that can corroborate MST.



# MST Corroboration

- MST corroboration “markers” may be circumstantial:
  - A change in behavior in service, including performance.
  - Seeking medical care or counseling.
  - Statements from people who knew the Veteran.
  - Records of in-service treatment consistent with pregnancy, sexually transmitted disease, or a mental health condition.
- A diagnosis of PTSD due to MST may be accepted by VA as corroboration.

## Key Point:

The fact a Veteran did not report the MST event in service may **never** be considered by VA as evidence that the event did not occur.

[illegible]

- Statement in Support of Claim for Service Connection for PTSD Secondary to Personal Assault.
- This form prompts for information of the traumatic event, any resulting behavior changes, and additional possible sources of evidence.

# Personality Disorders

- Personality disorders are **not** considered a disability for the purposes of VA benefits. 38 C.F.R. § 3.303(c)
- VA will not grant service connection for a personality disorder diagnosis.

**Advocacy tip:** Carefully review VA's C&P examination diagnosing the Veteran with a personality disorder. Make sure the examiner had the right facts, as there may be another diagnosis in the Veteran's medical records.

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.

# Higher-Level Review

<https://calvets.participoll.com/>



# Polling Question – Warm-up

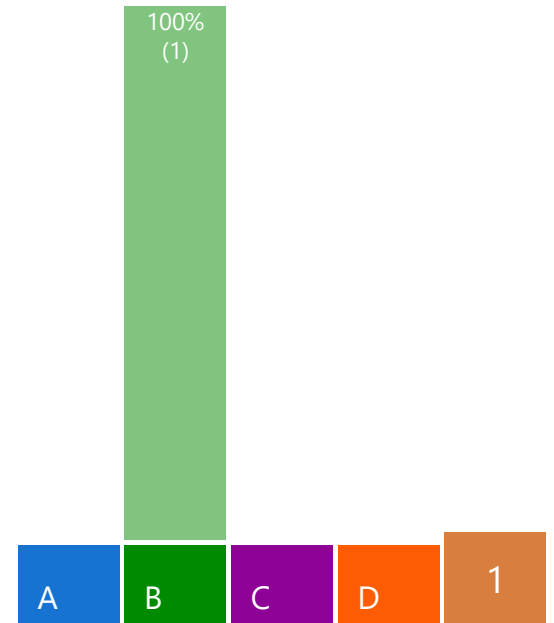
What is the old appeal system (NOD/SOC/9) called?

**A. Legendary**

**B. Legacy**

**C. Lexus**

**D. Legal**

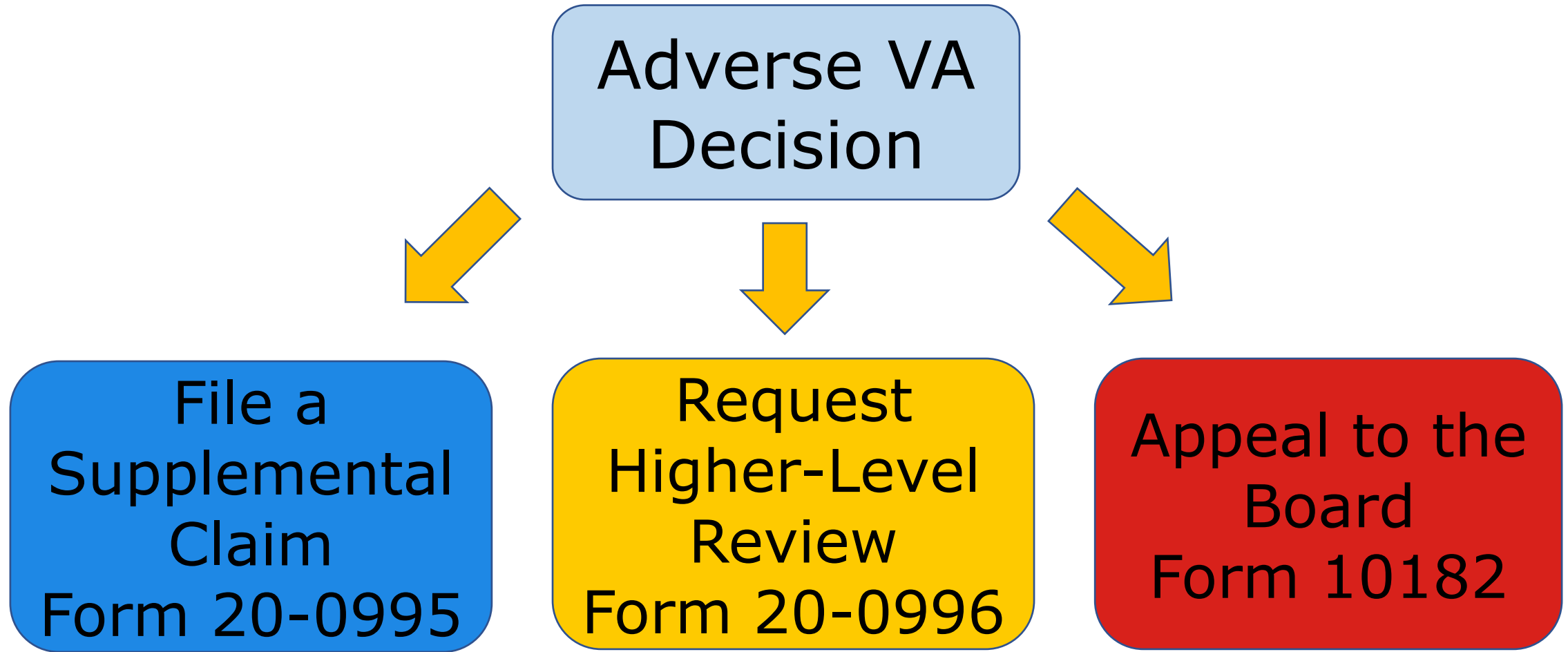


# Lesson Learning Objectives

Learn about VA's Higher-Level Review (HLR) option:

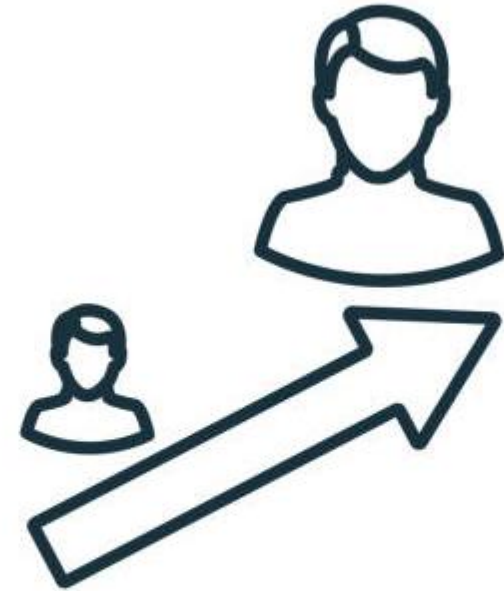
- Learn about the advantages and limitations of HLR.
- Learn when to choose HLR.
- Learn how to complete VA Form 20-0996, Decision Review Request: HLR.
- Learn options after VA issues a rating decision based on HLR.

# Appeals Modernization Act (AMA)



# Higher-Level Review

- Higher-Level Review, or HLR, is one of the two review lanes within VBA at the Regional Office (RO) level.
- Review by a higher trained employee at an RO to see if VBA made an error in VBA's rating decision.
- Similar to Decision Review Officer (DRO) review under the legacy system.



**ESCALATION**

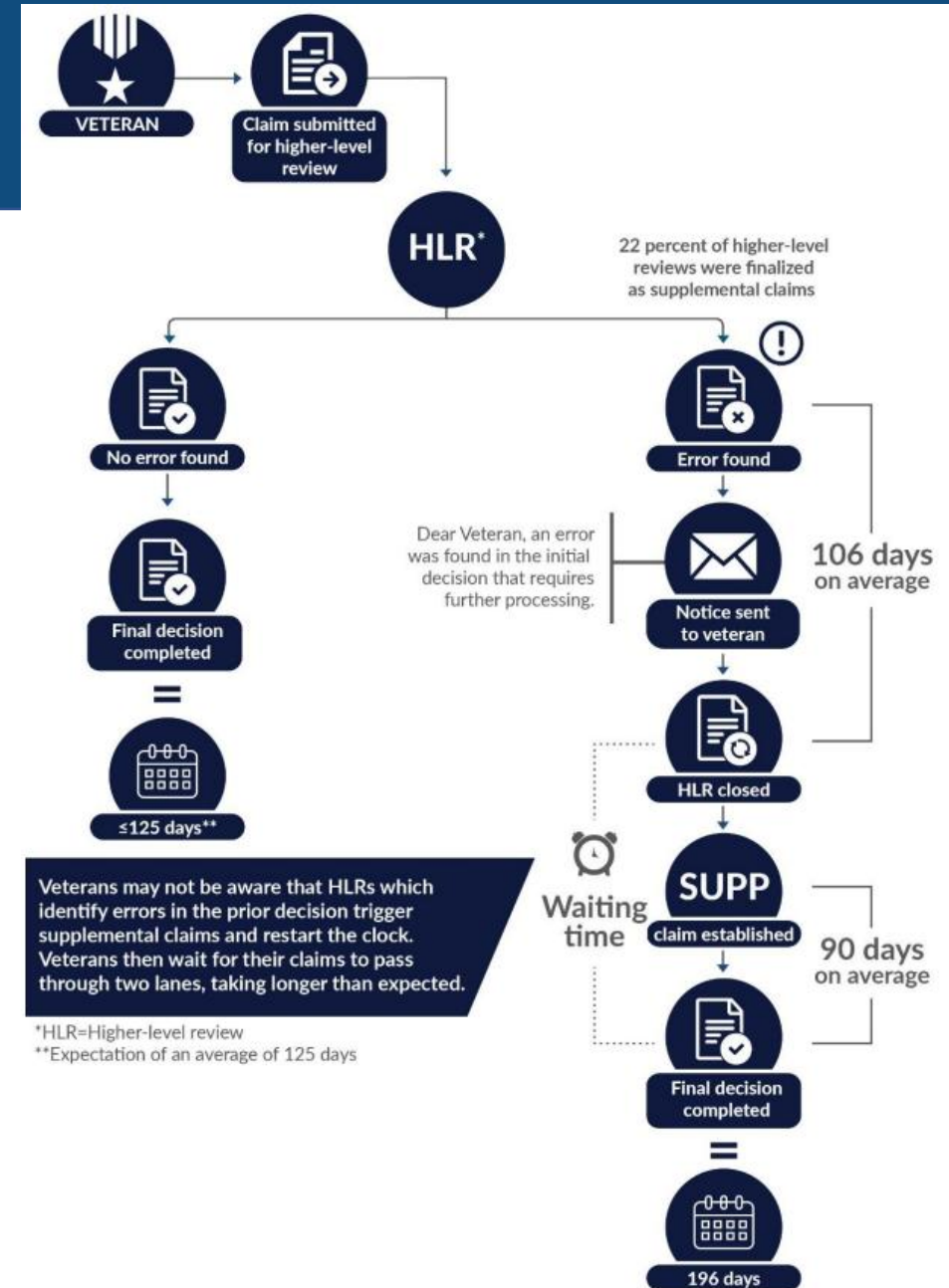
# Higher-Level Review: Advantages



- Use HLR form to argue and describe errors VA made.
- VA promises HLR will be decided in an average of **125 days**.
  - Same time as Supplemental Claim.

# HLR Grant Wait Time

- A 2023 OIG report revealed that the average days to completion for HLR returned for VA collection is longer.
- This is because the returned issue is sent to the supplemental claim lane and the clock restarted.
- At the time of the report the average wait time was 196 days until VA's error was fixed.



# Higher-Level Review: Limitations


- The Veteran's record is closed:
  - No new evidence.
  - VA only looks at errors **before** VA's rating decision.
- VA has no Duty to Assist:
  - VA adjudicator only checks if VA made a duty to assist error **before** the rating decision.
- VA does not look at anything that happened **after** VA issued rating decision.



# Higher-Level Review: Results

- **Average HLR results, through April 2025:**

OMB Control No. 2900-0862  
Respondent Burden: 15 minutes  
Expiration Date: 4/30/2024

 **Department of Veterans Affairs**

**DECISION REVIEW REQUEST: HIGHER-LEVEL REVIEW**

**INSTRUCTIONS:** Before completing this form, read the Privacy Act and Respondent Burden on page 5. Use this form to request a Higher-Level Review of a decision you received. A Higher-Level Review is a new review of an issue(s) previously decided by VA based on the evidence of record at the time of the original decision. For more information call us toll-free at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal relay number is 1-800-827-1000. VA forms are available at [www.va.gov/vaforms](http://www.va.gov/vaforms).

**SECTION I - VETERAN'S IDENTIFICATION INFORMATION**

**NOTE:** You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, insert one letter per box, and completely fill in each applicable circle to help expedite processing of the form.

1. VETERAN'S NAME (First, Middle Initial, Last)

2. SOCIAL SECURITY NUMBER

3. VA FILE NUMBER (If applicable)

4. DATE OF BIRTH (MM/DD/YYYY)

5. VA INSURANCE POLICY NUMBER (If applicable)

6. CURRENT MAILING ADDRESS (Number, street or rural route, City or P.O. Box, State and ZIP Code and Country)

No. & Street

Apt./Unit Number City

State/Province Country ZIP Code/Postal Code

☐ I AM HOMELESS OR AT RISK OF HOMELESSNESS

7. TELEPHONE NUMBER (Include Area Code)

Enter International Phone Number (If applicable)

8. E-MAIL ADDRESS (Optional)

Upheld (VA prevails)	47%
Returned for Correction of VA Error	35%
Overtured (at least in part for Veteran)	12%

# Informal Conference

- Veterans can request an informal conference call with a VBA rater.
- Request must be made when submitting the HLR, VA Form 20-0996, using Section IV.

SECTION IV - OPTIONAL INFORMAL CONFERENCE	
16. YOU OR YOUR AUTHORIZED REPRESENTATIVE MAY REQUEST AN INFORMAL CONFERENCE. (VA will only conduct one informal conference associated with this request for Higher-Level Review.)	
<input type="checkbox"/> 16A. I WOULD LIKE AN OPTIONAL INFORMAL CONFERENCE. I understand I will not be able to discuss or introduce new evidence that was not part of my file at the time of the decision at issue, and that VA may be able to make a decision faster if I do not request an informal conference. By requesting an informal conference, I understand VA may contact me or my representative in an available manner, such as mail, telephone, electronic notice, or by other means to schedule my conference.	
16B. IF YOU SELECTED THE BOX ABOVE, VA will make two attempts to contact you OR your representative to schedule the informal conference. INDICATE ONE PREFERENCE BY CHECKING THE APPROPRIATE BOX:	
<input type="checkbox"/> Contact the veteran/claimant. If contact will be by phone, contact in the morning hours based on time zone.	<input type="checkbox"/> Contact the veteran/claimant. If contact will be by phone, contact in the afternoon hours based on time zone.
<input type="checkbox"/> Contact the representative. If contact will be by phone, contact in the morning hours based on time zone.	<input type="checkbox"/> Contact the representative. If contact will be by phone, contact in the afternoon hours based on time zone.

- VBA limits this call to only discussing errors of law or fact.
- No new evidence can be submitted during the conference.

# Scheduling Informal Conference

- Request VA to call the Veteran or their representative/POA.
- VA will make 2 attempts to contact Veteran/POA to schedule.
- Informal Conference scheduled within 7 days of contact.



# Written Argument

**Advocacy tip:** Submit a detailed written ***argument*** to VA as part of a Higher-Level Review.



- **Evidence** is not allowed, but ***argument*** is recommended and expected.
- VA's appeals manual states written argument is allowed [M21-5, Chapter 5, Part 4.d](#).

# Argument vs Evidence

- Argument ***is allowed*** in HLR, but evidence is not allowed.
- VA's M21-5 defines argument vs. evidence.

## Argument

- Definition: "Attempt to persuade someone to particular view or belief using reason and facts."
- Example: Highlighting VA's **misreading of facts** or **misapplication of the law** to the facts.

## Evidence

- Definition: "Every type of proof offered to establish a fact."
- Example: new medical records.

# Argument vs Evidence Examples

## Argument

- Statutes
- Regulations
- Court cases
- M21-1
- M21-5
- Pointing out errors based on evidence already in the record

**Argument should cite to documents already in VBMS.**

## Evidence

- Medical Records
- Medical research, studies, or articles
- Statements from the Veteran or others
- Photographs
- Blogs or articles from the internet

**Download documents and submit as new evidence in *different* lane.**

# Argument vs Evidence Practice Tip

- Tricky new area, the line between evidence and argument may be unclear.

**When in doubt: submit the additional documents in support of Veteran's claim.**



# When to Choose HLR?

**Yes:** When VA made a mistake.

**Yes:** When the Veteran wants a fast VBA resolution.

**Yes:** When you or the Veteran want to talk to a VBA employee before VBA decides the review.

**No:** When the Veteran has ***new evidence*** to submit to VBA.

# VA Form 20-0996 Page 1

<b>SECTION I - VETERAN'S IDENTIFICATION INFORMATION</b>																											
<b>NOTE:</b> You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, insert one letter per box, and completely fill in each applicable circle to help expedite processing of the form.																											
1. VETERAN'S NAME (First, Middle Initial, Last)																											
2. SOCIAL SECURITY NUMBER														3. VA FILE NUMBER (If applicable)										4. DATE OF BIRTH (MM/DD/YYYY)			
5. VA INSURANCE POLICY NUMBER (If applicable)																											
6. CURRENT MAILING ADDRESS (Number, street or rural route, City or P.O. Box, State and ZIP Code and Country)																											
No. & Street																											
Apt./Unit Number										City																	
State/Province						Country		ZIP Code/Postal Code						-													
<input type="checkbox"/> I AM HOMELESS OR AT RISK OF HOMELESSNESS																											
7. TELEPHONE NUMBER (Include Area Code)																											
														Enter International Phone Number (If applicable)													
8. E-MAIL ADDRESS (Optional)																											

**Section I is for the Veteran's information.**

**Boxes 7 and 8 are for the Veteran's contact information.**

**\*If requesting informal conference, make sure phone number is accurate.\***

# VA Form 20-0996 Page 1 Cont.

**Section II is for the Claimant's information (if different than the Veteran).**

**Section III: Benefit type.  
Select only one per form. If more than one benefit type, then use separate forms.**

SECTION II - CLAIMANT'S IDENTIFICATION INFORMATION (If other than veteran)	
9. CLAIMANT'S NAME (First, Middle Initial, Last) <input type="text"/>	
10. SOCIAL SECURITY NUMBER (If applicable) <input type="text"/> - <input type="text"/> - <input type="text"/>	11. DATE OF BIRTH (MM/DD/YYYY) (If applicable) <input type="text"/> - <input type="text"/> - <input type="text"/>
12. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country) No. & Street <input type="text"/> Apt./Unit Number <input type="text"/> City <input type="text"/> State/Province <input type="text"/> Country <input type="text"/> ZIP Code/Postal Code <input type="text"/> - <input type="text"/>	
13. TELEPHONE NUMBER (Include Area Code) <input type="text"/> - <input type="text"/> - <input type="text"/> Enter International Phone Number (If applicable) <input type="text"/>	
14. E-MAIL ADDRESS (Optional) <input type="text"/>	
SECTION III - BENEFIT TYPE	
15. <b>SELECT ONLY ONE</b> (If you file for multiple benefit types, you must complete a separate VA Form 20-0996 for each benefit type)	
<input type="checkbox"/> COMPENSATION	<input type="checkbox"/> LIFE INSURANCE
<input type="checkbox"/> PENSION/DIC/SURVIVORS BENEFITS	<input type="checkbox"/> VETERAN READINESS AND EMPLOYMENT
<input type="checkbox"/> FIDUCIARY	<input type="checkbox"/> VETERANS HEALTH ADMINISTRATION
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION
<input type="checkbox"/> LOAN GUARANTY	

# VA Form 20-0996 Page 2

SECTION IV - OPTIONAL INFORMAL CONFERENCE	
16. YOU OR YOUR AUTHORIZED REPRESENTATIVE MAY REQUEST AN INFORMAL CONFERENCE. (VA will only conduct one informal conference associated with this request for Higher-Level Review.)	
<input type="checkbox"/> 16A. I WOULD LIKE AN OPTIONAL INFORMAL CONFERENCE. I understand I will not be able to discuss or introduce new evidence that was not part of my file at the time of the decision at issue, and that VA may be able to make a decision faster if I do not request an informal conference. By requesting an informal conference, I understand VA may contact me or my representative in an available manner, such as mail, telephone, electronic notice, or by other means to schedule my conference.	
16B. IF YOU SELECTED THE BOX ABOVE, VA will make two attempts to contact you OR your representative to schedule the informal conference. INDICATE ONE PREFERENCE BY CHECKING THE APPROPRIATE BOX:	
<input type="checkbox"/> Contact the veteran/claimant. If contact will be by phone, contact in the morning hours based on time zone.	<input type="checkbox"/> Contact the veteran/claimant. If contact will be by phone, contact in the afternoon hours based on time zone.
<input type="checkbox"/> Contact the representative. If contact will be by phone, contact in the morning hours based on time zone.	<input type="checkbox"/> Contact the representative. If contact will be by phone, contact in the afternoon hours based on time zone.
17. IF YOU WOULD LIKE VA TO CONTACT YOUR REPRESENTATIVE, YOU MUST PROVIDE YOUR REPRESENTATIVE'S CONTACT INFORMATION BELOW:	
17A. REPRESENTATIVE'S NAME (First, Last)	
<input type="text"/>	
17B. REPRESENTATIVE'S TELEPHONE NUMBER (Include Area Code)	
<input type="text"/> - <input type="text"/> - <input type="text"/>	
17C. REPRESENTATIVE'S E-MAIL ADDRESS	
<input type="text"/>	

**Box 16A:**  
Request a  
conference.

**Box 16B:**  
Preferred time and  
point of contact.

**Box 17:** Contact  
information for  
representative/POA.

# Include VA Form 21-4138

<b>Department of Veterans Affairs</b>	<b>VA DATE STAMP</b> (DO NOT WRITE IN THIS SPACE)
<b>STATEMENT IN SUPPORT OF CLAIM</b>	
<b>INSTRUCTIONS:</b> Before completing this form, read the Privacy Act and Respondent Burden on page 2. Use this form to submit a statement to support a claim. For more information you can contact us through Ask VA: <a href="https://ask.va.gov/">https://ask.va.gov/</a> , or call us toll-free at 800-827-1000 (TTY: 711). VA forms are available at <a href="http://www.va.gov/vaforms">www.va.gov/vaforms</a> . After completing the form, mail to: Department of Veterans Affairs, Evidence Intake Center, P.O. Box 4444, Janesville, WI 53547-4444.	
<b>SECTION I: VETERAN/BENEFICIARY'S IDENTIFICATION INFORMATION</b>	
<b>NOTE:</b> You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, and insert one letter per box to help expedite processing of the form.	
<b>1. VETERAN/BENEFICIARY'S NAME (First, Middle Initial, Last)</b> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>	
<b>2. VETERAN'S SOCIAL SECURITY NUMBER</b> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>	<b>3. VA FILE NUMBER (If applicable)</b> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
<b>4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 20%;">Month</div> <div style="width: 20%;">Day</div> <div style="width: 20%;">Year</div> </div> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>	
<b>5. VETERAN'S SERVICE NUMBER (If applicable)</b> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>	
<b>6. TELEPHONE NUMBER (Include Area Code)</b> <div style="border: 1px solid black; height: 25px; width: 100%;"></div> Enter International Phone Number (If applicable) <div style="border: 1px solid black; height: 25px; width: 150px;"></div>	<b>7. E-MAIL ADDRESS (Optional)</b> <div style="border: 1px solid black; height: 25px; width: 100%;"></div> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
<b>8. MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)</b> No. & Street <div style="border: 1px solid black; height: 25px; width: 100%;"></div> Apt./Unit Number <div style="border: 1px solid black; height: 25px; width: 100px;"></div> City <div style="border: 1px solid black; height: 25px; width: 150px;"></div> State/Province <div style="border: 1px solid black; height: 25px; width: 50px;"></div> Country <div style="border: 1px solid black; height: 25px; width: 50px;"></div> ZIP Code/Postal Code <div style="border: 1px solid black; height: 25px; width: 100px;"></div> - <div style="border: 1px solid black; height: 25px; width: 50px;"></div>	
<b>SECTION II: REMARKS</b>	
(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary)	

- VA Form 20-0996 does not include any space to explain what errors VA made in the prior rating decision.
- Use VA Form 21-4138, statement in support of claim, to write **argument** explaining why VA is wrong.

**Advocacy tip:** Don't submit empty or "naked" forms!

# Claims Accuracy Review (Intro)

<div style="border: 2px solid red; padding: 5px; display: inline-block;"> <h2 style="margin: 0;">Claim Accuracy Request</h2> </div>	<div style="border: 2px solid red; padding: 5px; display: inline-block;"> <h2 style="margin: 0;">CAR</h2> </div>	OMB Control No. 2900-0862 Respondent Burden: 15 minutes Expiration Date: 4/30/2024
<div style="display: flex; align-items: center; justify-content: center;"> <div> <h3 style="margin: 0;">Department of Veterans Affairs</h3> <h2 style="margin: 0;">DECISION REVIEW REQUEST: HIGHER-LEVEL REVIEW</h2> </div> </div>		<b>VA DATE STAMP</b> <b>DO NOT WRITE IN THIS SPACE</b>
<p><b>INSTRUCTIONS:</b> Before completing this form, read the Privacy Act and Respondent Burden on page 5. Use this form to request a Higher-Level Review of a decision you received. A Higher-Level Review is a new review of an issue(s) previously decided by VA based on the evidence of record at the time of the prior decision. For more information call us toll-free at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal relay number is 711. VA forms are available at <a href="http://www.va.gov/vaforms">www.va.gov/vaforms</a>.</p>		
<b>SECTION I - VETERAN'S IDENTIFICATION INFORMATION</b>		
<p><b>NOTE:</b> You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, insert one letter per box, and completely fill in each applicable circle to help expedite processing of the form.</p>		
1. VETERAN'S NAME (First, Middle Initial, Last)		
<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 100px; height: 30px; margin: 5px;"></div> <div style="border: 1px solid black; width: 30px; height: 30px; margin: 5px;"></div> <div style="border: 1px solid black; width: 100px; height: 30px; margin: 5px;"></div> </div>		

- A process established by VBA to identify and rectify Clear and Unmistakable Errors (CUE) in a VBA rating decision.
- Filed on a VA Form 20-0996, with the phrase "CLAIMS ACCURACY REQUEST" or "CAR"
- Must be received by VA within 30 days of the decision notification letter.

# Claims Accuracy Review (Intro)



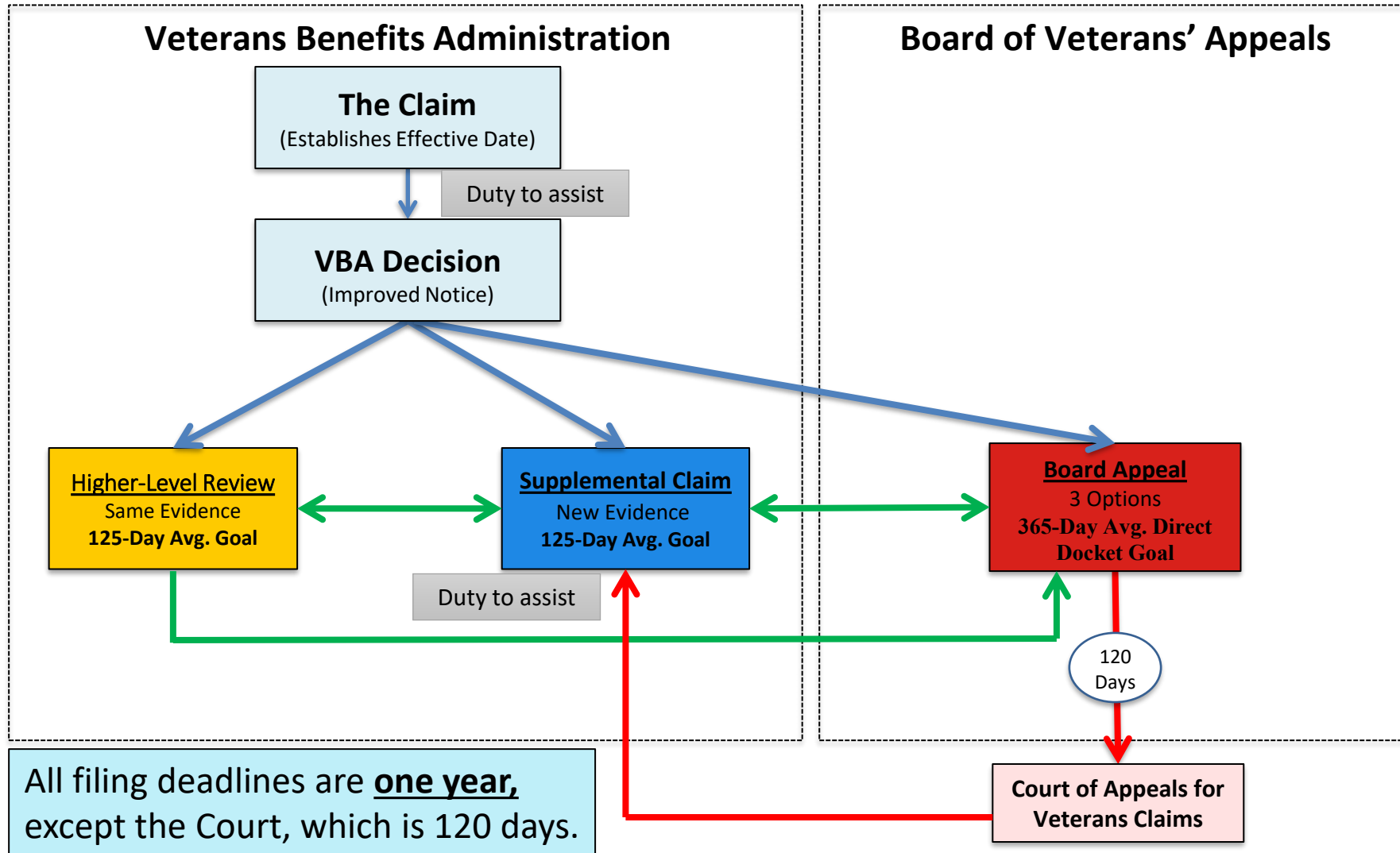
- Eligibility for a CAR; must have a obvious and significant error that affected a benefit award.
- If a CUE is identified the case will receive an expedited decision.
- This process is **not** eligible to have an informal conference.
- Disagreements of a decision should follow the traditional HLR process.

# Claims Accuracy Review (Intro)



- Informal conferences are not allowed in CAR.
- If the CAR is deemed ineligible (no CUE identified) it will be processed as a standard HLR, with informal conference rights restored.
- To retain informal conference rights complete Part IV.

# Review Options after HLR



# Polling Question 1

Veteran Brad's claim for service connection for fatigue was denied and he timely requested Higher-Level Review. Which of the following can be submitted to VA in the Higher-Level Review lane?

- A. A copy of 3.317 that shows fatigue can be a symptom of an undiagnosed illness.**
- B. A copy of a new medical study showing higher rates of fatigue in Persian Gulf Veterans.**
- C. A new medical opinion from Brad's physician.**
- D. Written argument that the VAX was inadequate.**



# Polling Answer 1

**There are two proper items to submit for HLR:**

**A. A copy of 3.317 that shows fatigue can be a symptom of an undiagnosed illness.**

**D. Written argument that the VAX was inadequate.**

- Both of the above answers are good arguments because they are trying to highlight errors VA made in denying the Veteran's claim.
- The other two answers are new evidence, trying to establish new facts, and should be used in another review lane.

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.

# Completing VA Forms

<https://calvets.participoll.com/>



# Polling Question – Warm-up

VA very recently granted service connection for PTSD and assigned a 30 percent rating from the date of claim. The Veteran believes this is too low. Which of the following forms would be appropriate to dispute the rating assigned?

- A. VA Form 21-0958**
- B. VA Form 21-526EZ**
- C. VA Form 20-0996**
- D. VA Form 20-0995**



# Learning Objectives

Learn how to complete key VA forms used when filing a compensation claim for a Veteran:

- Learn the mechanics of completing VA forms.
- Learn tips for completing specific VA forms.
- Learn how to complete a “Statement in Support of Claim,” VA Form 21-4138, **with the Veteran.**

# How to Complete VA Forms

- When using a VA form from VA's, you can click to type in any blue box.
- Once a form is complete, remember to save it.
- Then upload the finished form directly through VETPRO claims activity package for CALVET to review.

SECTION I: IDENTIFICATION AND CLAIM INFORMATION (If claim is not an original claim, only Section I, IV, and a signature are required)		
<b>NOTE:</b> You may <i>either</i> complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing of the form.		
2. VETERAN/SERVICE MEMBER NAME (First, Middle Initial, Last) <input type="text"/>		
3. VETERAN'S SOCIAL SECURITY NUMBER (SSN) <input type="text"/> - <input type="text"/> - <input type="text"/>	4. HAVE YOU EVER FILED A CLAIM WITH VA? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," provide your file number in Item 5)	5. VA FILE NUMBER <input type="text"/>
6. DATE OF BIRTH (MM-DD-YYYY) <input type="text"/> - <input type="text"/> - <input type="text"/>	7. VETERAN'S SERVICE NUMBER (If applicable) <input type="text"/>	8. GENDER YOU CURRENTLY IDENTIFY WITH <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> OTHER
9. BDD CLAIMS ONLY: PROVIDE THE DATE OR ANTICIPATED DATE OF RELEASE FROM ACTIVE DUTY (MM-DD-YYYY) <input type="text"/> - <input type="text"/> - <input type="text"/>		10. TELEPHONE NUMBER (Optional) (Include Area Code) <input type="text"/> - <input type="text"/> - <input type="text"/> Enter International Phone Number (If applicable) <input type="text"/>
11. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country) No. & Street <input type="text"/> Apt./Unit Number <input type="text"/> City <input type="text"/> State/Province <input type="text"/> Country <input type="text"/> ZIP Code/Postal Code <input type="text"/> - <input type="text"/>		
12. EMAIL ADDRESS (Optional) <input type="checkbox"/> I agree to receive electronic correspondence from VA in regards to my claim. <input type="text"/>		
<input type="checkbox"/> 13. IF YOU ARE CURRENTLY A VA EMPLOYEE, CHECK THE BOX (Includes Work Study/Internship)? (If you are not a VA employee skip to Section II, if applicable)		

**Advocacy tip:** Make an extra copy the Veteran. Include the date you submitted the documents to VA.

# Tips for All VA Forms

PART I - CLAIMANT'S IDENTIFYING INFORMATION											
<b>NOTE:</b> You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing the form.											
1. <b>VETERAN'S NAME</b> (First, Middle Initial, Last) <div></div>											
2. VETERAN'S SOCIAL SECURITY NUMBER <div></div>				3. VA FILE NUMBER (If applicable) <div></div>				4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY) Month <div></div> Day <div></div> Year <div></div>			
5. VETERAN'S SERVICE NUMBER (If applicable) <div></div>				6. INSURANCE POLICY NUMBER (If applicable) <div></div>							
7. <b>CLAIMANT'S NAME</b> (First, Middle Initial, Last) (If <b>other</b> than veteran) <div></div>											
8. CLAIMANT TYPE: <input type="checkbox"/> VETERAN <input type="checkbox"/> VETERAN'S SPOUSE <input type="checkbox"/> VETERAN'S CHILD <input type="checkbox"/> VETERAN'S PARENT <input type="checkbox"/> OTHER (Specify) <div></div>											

- Read the text above each box to see what information VA is requesting.
- Complete all boxes on the form to the best of your ability to avoid VA delays or denials.
- Pay attention: See if VA asks about “Veteran” or “Claimant.”

# Sign and Date All VA Forms

- Sign and date all VA forms.
- Valid POA can sign most VA forms, except for list on right →
  - *VA Form 21-526 / 21-526EZ: an original application for compensation*
  - *VA Form 21P-527EZ: an original application for pension*
  - *VA Form 21P-0510: a pension Eligibility Verification Report*
  - *VA Form 21-4140: Employment Questionnaire*
  - *VA Form 21-8940: Veteran's Application for Increased Compensation Based on Unemployability*
  - *VA Form 21-4142: Authorization to Disclose Information to the Department of Veterans Affairs*
  - *VA Form 21-4192: Request for Employment Information in Connection with Claim for Disability Benefits*
  - *VA Form 21-0538: Mandatory Status of Dependents*
  - *VA Form 21-8951-2: Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances*
  - *VA Form 21-651: Election of Compensation in Lieu of Retired Pay or Waiver of Retired Pay to Secure Compensation from Department of Veterans Affairs.*

# How to Complete 21-526EZ

- Box 1, most often, “Standard Claim Process.”
- Box 4 asks if the Veteran has filed **ANY** claim with VA before.

1. SELECT THE TYPE OF CLAIM PROGRAM/PROCESS (Check the appropriate box) (See instruction pages 1-3 for definitions of the Fully Developed Claim (FDC) Program (Optional Expedited Process) or the Standard Claim Process. (See instruction page 5 for the definition of a Benefits Delivery at Discharge (BDD) Program Claim)	
<input type="checkbox"/> FULLY DEVELOPED CLAIM (FDC) PROGRAM	<input checked="" type="checkbox"/> STANDARD CLAIM PROCESS
<input type="checkbox"/> IDES (Select this option <b>only</b> if you have been referred to the IDES Program by your Military Service Department)	
<input type="checkbox"/> BDD Program Claim (Select this option <b>only</b> if you meet the criteria for the BDD Program specified on Instruction Page 5)	

4. HAVE YOU EVER FILED A CLAIM WITH VA?	5. VA FILE NUMBER
<input type="checkbox"/> YES <input type="checkbox"/> NO    (If "Yes," provide your file number in Item 5)	<input type="text"/>



# How to Complete 21-526EZ Cont.

SECTION V: CLAIM INFORMATION (Continued) (For additional space, use Section XIII: Claim Information (Addendum))				
	CURRENT DISABILITY(IES)	IF DUE TO EXPOSURE, EVENT, OR INJURY, PLEASE SPECIFY (e.g., Agent Orange, radiation, burn pits)	EXPLAIN HOW THE DISABILITY(IES) RELATES TO THE IN-SERVICE EVENT/EXPOSURE/INJURY	APPROXIMATE DATE DISABILITY(IES) BEGAN OR WORSENERD
1.	Tinnitus	Noise exposure-	Infantry	2004
2.	Traumatic Brain Injury	Multiple IED Blasts	Convoy Iraq	2004
3.	Sinusitis	Burnpit	Iraq	2004
4.	Right Knee Condition	Active Duty Injury-See 21-4138	Training	2006

- Section V asks for Claim Information:
  - VA is requesting a lot of information in these small boxes.
  - Use a 21-4138 to expand on the contention if it is not clear.
  - Don't just reference a 21-4138.

# How to Complete 20-0995

- Box 12 asks for benefit type. Check only one box.

12. BENEFIT TYPE: <b>PLEASE CHECK ONLY ONE</b> (If you would like to file for multiple benefit types, you must complete a separate request form for each benefit type.)							
<input type="checkbox"/> COMPENSATION	<input type="checkbox"/> PENSION/SURVIVORS BENEFITS	<input type="checkbox"/> FIDUCIARY	<input type="checkbox"/> LIFE INSURANCE	<input type="checkbox"/> VETERANS HEALTH ADMINISTRATION			
<input type="checkbox"/> VETERAN READINESS AND EMPLOYMENT	<input type="checkbox"/> LOAN GUARANTY	<input type="checkbox"/> EDUCATION	<input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION				

- Part II- List issues as they were phrased on the rating decision.
  - Include the date of the VA decision notice
  - "See attached 21-4138."

PART II - ISSUE(S) FOR SUPPLEMENTAL CLAIM	
13. YOU MUST LIST EACH ISSUE DECIDED BY VA THAT YOU WOULD LIKE VA TO REVIEW AS PART OF YOUR <b>SUPPLEMENTAL CLAIM</b> . Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision. (You may attach additional sheets of paper, if necessary. Include your name and file number on each additional sheet.)	
Check this box if any issue listed below is being withdrawn from the legacy appeals process. <input type="checkbox"/> OPT-IN from SOC/SSOC	
13A. SPECIFIC ISSUE(S)	13B. DATE OF VA DECISION NOTICE
Service Connection for an acquired psychiatric disorder	1/15/2020
See attached 21-4138	

# Polling Question 1

Veteran Mike filed a VA claim when he left the Army in 2001. In June 2002, VA denied service connection for a back disability and denied education benefits. In May 2010, VA denied service connection for hypertension. Mike wants to “reopen” all of three claims. How many VA Forms 20-0995 should Mike submit?

- A. Only one because all claims were previously denied**
- B. Three, one for each claim**
- C. Two, one for the compensation claims and one for the education claim**



# Polling Answer 1

## **C. Two VA Forms 20-0995, one for the compensation claims and one for the education benefits.**

- Mike's claims for service connection for his back and service connection for hypertension are both compensation claims, so they can go on the same 20-0995.
  - It does not matter that they were previously denied in separate rating decisions.
- Mike's claim for education benefits is a different type of VA benefit, so he should claim this issue on a separate 20-0995.

12. BENEFIT TYPE: <b>PLEASE CHECK ONLY ONE</b> <i>(If you would like to file for multiple benefit types, you must complete a separate request form for each benefit type.)</i>							
<input type="checkbox"/> COMPENSATION	<input type="checkbox"/> PENSION/SURVIVORS BENEFITS	<input type="checkbox"/> FIDUCIARY	<input type="checkbox"/> LIFE INSURANCE	<input type="checkbox"/> VETERANS HEALTH ADMINISTRATION			
<input type="checkbox"/> VETERAN READINESS AND EMPLOYMENT	<input type="checkbox"/> LOAN GUARANTY	<input checked="" type="checkbox"/> EDUCATION	<input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION				

# How to Complete 21-4138

SECTION I: VETERAN/BENEFICIARY'S IDENTIFICATION INFORMATION			
<b>NOTE:</b> You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, and insert one letter per box to help expedite processing of the form.			
1. VETERAN/BENEFICIARY'S NAME (First, Middle Initial, Last) <input type="text"/>			
2. VETERAN'S SOCIAL SECURITY NUMBER <input type="text"/>	3. VA FILE NUMBER (If applicable) <input type="text"/>	4. VETERAN'S DATE OF BIRTH Month <input type="text"/> Day <input type="text"/> Year <input type="text"/>	
5. VETERAN'S SERVICE NUMBER (If applicable) <input type="text"/>			
6. TELEPHONE NUMBER (Include Area Code) <input type="text"/>	7. E-MAIL ADDRESS (Optional) <input type="text"/>		
8. MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country) No. & Street <input type="text"/> Apt./Unit Number <input type="text"/> City <input type="text"/> State/Province <input type="text"/> Country <input type="text"/> ZIP Code/Postal Code <input type="text"/>			

- Complete Section I with information of the Veteran or Claimant.
- Most important parts are the Name and VA File Number.
- Use the open text box to explain why the Veteran is entitled to benefits.
- Discuss every issue claimed.
- If more than one issue, then number each issue.
- Sign and date the form.



# Polling Question 2

What information should be included on a VA Form 21-4138 to support a claim for service connection?

- A. A complete list of the disabilities that the Veteran is claiming**
- B. An estimate as to when each disability started**
- C. An explanation as to how each disability is related to service**
- D. All of the above**



# Polling Answer 2

## **D. All of the above**

A VA Form 21-4138 supporting claims for service connection should include:

1. A complete list of all the disabilities the Veteran is claiming.
2. An estimate of when the claimed disabilities started.
3. An explanation of how the claimed disabilities are related to service.

# 21-4138 for Service Connection Claims

## SECTION II: REMARKS

*(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary)*

### **1. Service Connection for Hearing Loss**

The Veteran started to notice that he had a hard time hearing other people in 1975, while he was on active duty in the Air Force. His hearing loss was caused by his exposure to loud jet engine noise while working close to the flight line.

### **2. Service Connection for Diabetes**

The Veteran was diagnosed with diabetes in 2020. The diabetes was caused by his exposure to Agent Orange while maintaining C-123 aircraft that had been used to spray Agent Orange in Vietnam.

# Polling Question 3

What information should be included on a VA Form 21-4138 to support a claim for increased ratings?

- A. A complete list of the service-connected disabilities that have gotten worse**
- B. An estimate as to when each disability worsened**
- C. A description of the frequency, duration, and severity of the symptoms.**
- D. All of the above**



# Polling Answer 3

## **D. All of the above**

A VA Form 21-4138 supporting claims for increased ratings should include:

1. A complete list of all of the increased ratings the Veteran is seeking.
2. An estimate of when the Veteran's symptoms got worse.
3. An explanation of the frequency, duration, and severity of the Veteran's symptoms.

# Example 21-4138 for IR Claims

## SECTION II: REMARKS

*(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary)*

### **1. Increased Rating for Headaches**

The Veteran's service-connected headaches have gotten worse in the last six months. He now has headaches once a week that are so severe he has to go lay down in a dark place. Each time they occur the headaches last for two to four hours.

### **2. Increased Rating for Back**

The Veteran's back disability has gotten worse since the winter of 2021. Every morning when he wakes up his back is stiff and he cannot bend forward for at least two hours. His back pain radiates into his upper thighs on a daily basis.

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.

# Supplemental Claim

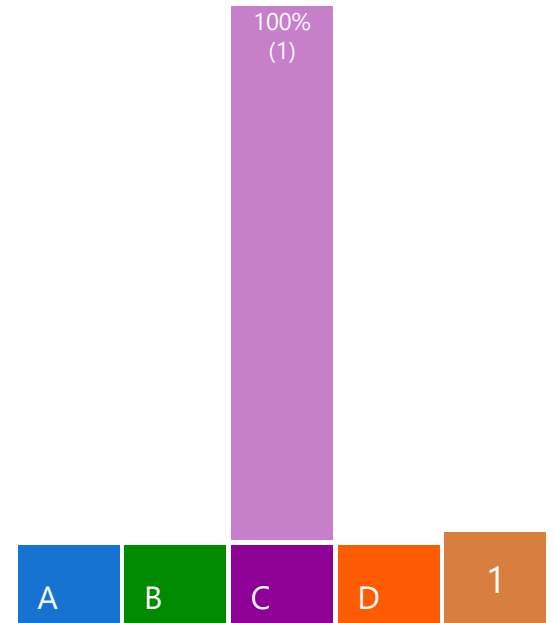
<https://calvets.participoll.com/>



# Polling Question – Warm-up

Prior to the Appeals Modernization Act, what type of “claim” was initiated by filing a VA Form 20-0995?

- A. Educational Benefits Claim**
- B. Burial Benefits Claim**
- C. Supplemental Claim**
- D. Exponential Claim**

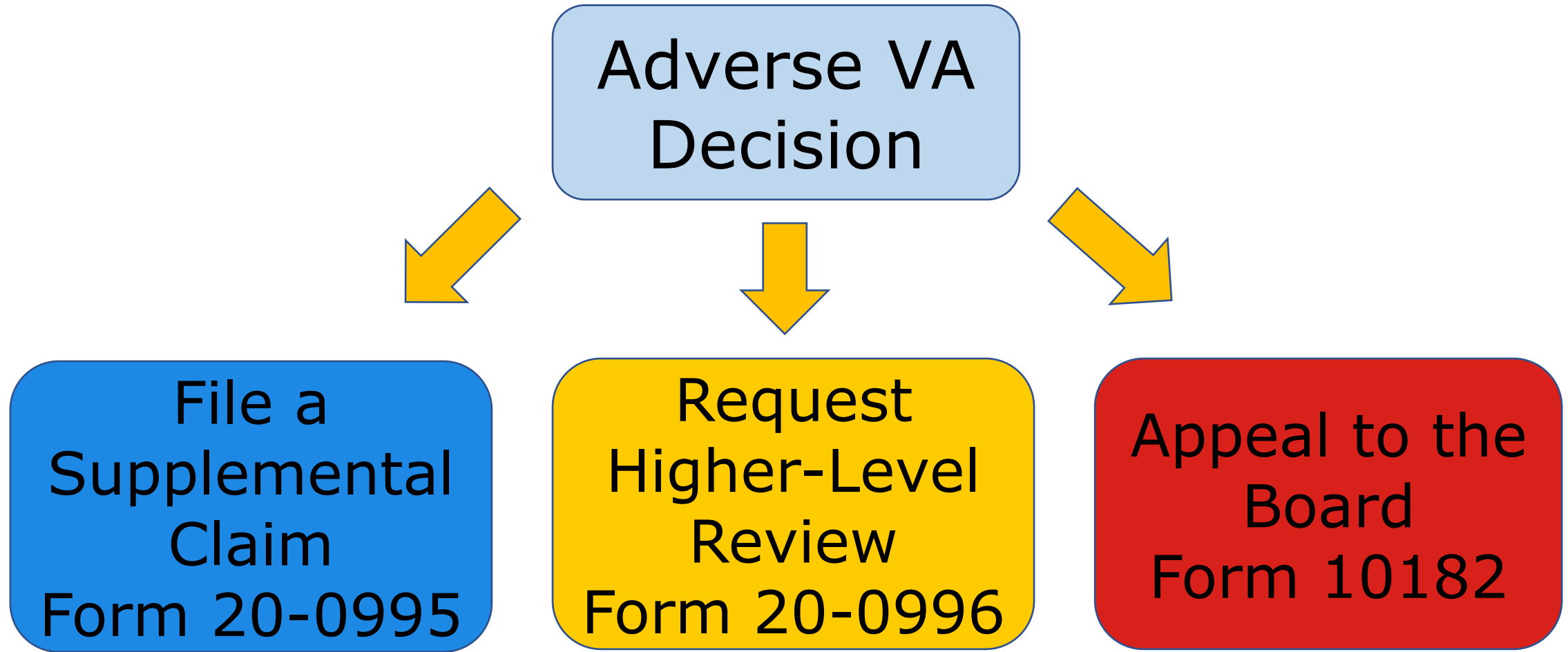


# Lesson Learning Objectives

## Learn about Supplemental Claims:

- Learn advantages and limitations of Supplemental Claims.
- Learn what is required for new and relevant evidence to submit with a Supplemental Claim.
- Learn when to choose Supplemental Claim.
- Learn how to complete a Supplemental Claim, VA Form 20-0995.
- Learn which review options are available after VA issues a rating decision on a Supplemental Claim.

# Appeals Modernization Act (AMA)



# Supplemental Claim

- One of the VBA review lanes.
- Establish by submitting VA Form 20-0995 **plus *new and relevant* evidence.**
- Allows the Veteran to submit new evidence, as well as argument, to VA.
- VA's goal is to decide in an average of 125 days.

VA U.S. Department of Veterans Affairs		VA DATE STAMP (DO NOT WRITE IN THIS SPACE)
<b>DECISION REVIEW REQUEST: SUPPLEMENTAL CLAIM</b>		
<b>IMPORTANT:</b> Please read the Privacy Act and Respondent Burden information on page 3 before completing the form. Use this form to submit a claim if you disagree with a decision you received. For more information you can contact us online through Ask VA: <a href="https://ask.va.gov/">https://ask.va.gov/</a> or call us toll-free at 1-800-698-2411 (TTY: 711). If you prefer you may complete and submit the form online <a href="#">by using the addresses and weblinks listed in the Instructions, Page 1 or 2.</a>		
1. BENEFIT TYPE (PLEASE CHECK ONLY ONE BOX) <b>Note:</b> If you would like to file for multiple benefit types, you must complete a separate VA Form 20-0995 for each benefit type.		
<input type="checkbox"/> COMPENSATION <input type="checkbox"/> PENSION/DIC/SURVIVORS BENEFITS <input type="checkbox"/> FIDUCIARY <input type="checkbox"/> EDUCATION <input type="checkbox"/> LOAN GUARANTY <input type="checkbox"/> LIFE INSURANCE <input type="checkbox"/> VETERAN READINESS AND EMPLOYMENT <input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION <input type="checkbox"/> VETERANS HEALTH ADMINISTRATION (NOTE: If checked, specify in the space provided below, which benefit type you are claiming for VHA. (e.g., Travel/Mileage Reimbursement, Medical Treatment Reimbursement, Health Care Eligibility, Clothing Allowance, etc.)		
<b>SECTION I: VETERAN'S IDENTIFICATION INFORMATION</b>		
<b>NOTE:</b> You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, insert one letter per box, and completely fill in each applicable checkbox to help expedite processing of the form.		
2. VETERAN'S NAME (First, Middle Initial, Last)		
3. SOCIAL SECURITY NUMBER		
4. VA FILE NUMBER (If applicable)		
5. DATE OF BIRTH (MM/DD/YYYY)		
6. SERVICE NUMBER (If applicable)		
7. VA INSURANCE POLICY NUMBER (If applicable)		
8. MAILING ADDRESS (Number, street or rural route, P.O. Box, City, State, ZIP Code and Country)		
9. TELEPHONE NUMBER (Optional) (Include Area Code)		
10. E-MAIL ADDRESS (Optional)		
<b>SECTION II: CLAIMANT'S IDENTIFICATION INFORMATION</b> (Complete this section ONLY if the claimant is NOT the veteran)		
11. CLAIMANT'S NAME (First, Middle Initial, Last) (if other than veteran)		
12. SOCIAL SECURITY NUMBER		
13. VA FILE NUMBER (If applicable)		
14. DATE OF BIRTH (MM/DD/YYYY)		
15. VA INSURANCE POLICY NUMBER (If applicable)		
16. RELATIONSHIP TO VETERAN (Check one)		
17. MAILING ADDRESS (Number, street or rural route, P.O. Box, City, State, ZIP Code and Country)		
18. TELEPHONE NUMBER (Optional) (Include Area Code)		
19. E-MAIL ADDRESS (Optional)		

VA FORM 20-0995 MAY 2024

SUPERSEDES VA FORM 20-0995, SEP 2022.

Page 4

# Supplemental Claim as Dispute

- A Supplemental Claim can be used to file a new claim for a benefit VA previously denied:
  - Like reopening in the legacy system.
- A Supplemental Claim can also be used to dispute an adverse VA decision.
- If filed within one year of VA's denial, a Supplemental Claim preserves the original effective date of the claim.
  - This advantageous process is called "Continuous pursuit."



# Intent to File



- VA's current regulation at 38 C.F.R. § 3.155 still says that Intent to File does not apply to Supplemental Claims.
- In a July 2021 decision, the Federal Circuit said VA's prohibition was contrary to the law, and the Court threw out VA's regulation. *MVA v. Sec. of VA*, 7 F.4<sup>th</sup> 1110 (Fed. Cir. 2021).
- Therefore, an **Intent to File applies to a Supplemental Claim.**
- The M21-1 also recognizes that Intent to File applies to a Supplemental Claim.

# Supplemental Claim: Advantages

- Veterans can submit new evidence, as well as argument to describe the errors VA made.
- **Duty to assist applies.**
  - Remember: This is the only lane where it applies!
- VA usually meets their 125-day goal to decide Supplemental Claims.



# Supplemental Claim: Limitations



- Decided by same level VA employee who decided the prior rating decision.
  - Not necessarily the same employee, but an employee with the same level of training.
- Veterans must submit new and relevant evidence.
  - If a Veteran does not have new evidence, that Veteran should pick another lane.

# New and Relevant Evidence

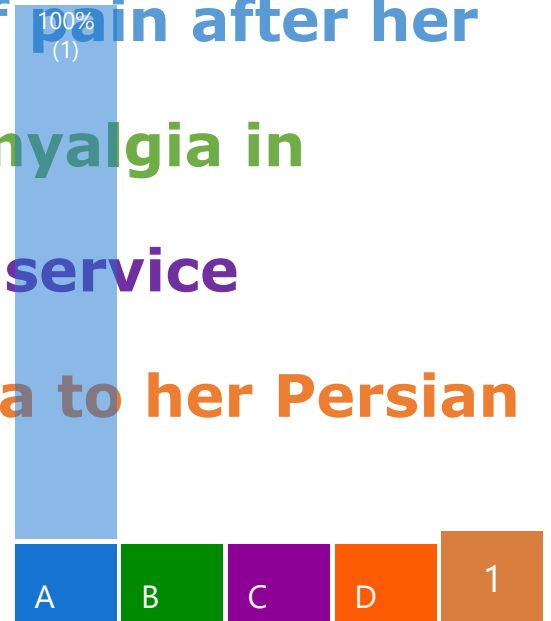
- “New and Relevant” under the Appeals Modernization Act (AMA) means evidence not previously part of the record before the VA that tends to prove or disprove a matter at issue:
  - “New and Relevant” is a lower standard of evidence for AMA when compared with the previous legacy requirement for “new and material” evidence.
- Veterans can use VA form 20-0995 to identify new and relevant medical records for VA to obtain and use as evidence.

**Advocacy tip:** Focus on submitting or identifying new evidence that would win the claim or trigger VA’s Duty to Assist.

# Polling Question 1

VA denied Veteran Jane's claim of service connection for fibromyalgia due to a lack of nexus. Now she wants to file a Supplemental Claim. Which of the following is considered "new and relevant" evidence?

- A. A new statement from Jane detailing her symptoms of pain after her Iraq deployment**
- B. A copy of a study showing a higher incidence of fibromyalgia in Persian Gulf Veterans**
- C. A copy of 38 C.F.R. § 3.317 showing a presumption of service connection for fibromyalgia for Persian Gulf Veterans**
- D. A letter from Jane's doctor attributing her fibromyalgia to her Persian Gulf service**



# Polling Answer 1

These three answers provide VA with new and relevant evidence that would tend to prove Jane's claim:

**A. A new statement from Jane detailing her symptoms of pain after her Iraq deployment**

**B. A copy of a study showing a higher incidence of fibromyalgia in Persian Gulf Veterans**

**D. A letter from Jane's doctor attributing her fibromyalgia to her Persian Gulf service**

The other answer, a copy of VA's regulations on Gulf War illness, is an argument, not evidence. (Perhaps there was an option better than a Supplemental Claim?)

# Disputing New and Relevant Evidence

- Whether the Veteran has submitted new and relevant evidence is a separately appealable issue.
- If VA rejects a Supplemental Claim for the lack of New and Relevant Evidence, the Veteran can dispute VA's rejection in any review lane.
- Continuous pursuit preserves the Veteran's original effective date on the merits.



# When to Choose Supplemental Claim?

**Yes:** When the Veteran has new evidence to submit to VA.

**Yes:** When the Veteran needs VA's help obtaining new evidence.

**Yes:** When the Veteran wants a quick VA resolution.

**No:** When the Veteran has no new evidence to submit or identify.

# VA Form 20-0995

**Box 1: Check only one box for type of benefits seeking.**

**If the Veteran seeks more than type one benefit, then complete a separate form for each type of benefit.**

## Section I: Enter the Veteran's information first.

**Section II: Enter then Claimant's (ex. widow). (If the Veteran is the claimant, then leave II blank.)**

U.S. Department of Veterans Affairs	<div style="text-align: right; border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>VA DATE STAMP</b>          (DO NOT WRITE IN THIS SPACE)       </div> <div style="text-align: center; border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>DECISION REVIEW REQUEST: SUPPLEMENTAL CLAIM</b> </div> <p><b>IMPORTANT:</b> Please read the Privacy Act and Respondent Burden information on page 3 before completing the form. Use this form to submit a claim if you disagree with a decision you received. For more information you can contact us online through Ask VA: <a href="https://ask.va.gov/">https://ask.va.gov/</a> or call us toll-free at 1-800-698-2411 (TTY:711). If you prefer you may complete and submit the form online <a href="#">by using the addresses and weblinks listed in the Instructions, Page 1 or 2.</a></p>												
<p><b>1. BENEFIT TYPE (PLEASE CHECK ONLY ONE BOX)</b>  <b>Note:</b> If you would like to file for multiple benefit types, you must complete a separate VA Form 20-0995 for each benefit type.</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> COMPENSATION</td> <td><input type="checkbox"/> PENSION/DIC/SURVIVORS BENEFITS</td> <td><input type="checkbox"/> FIDUCIARY</td> </tr> <tr> <td><input type="checkbox"/> EDUCATION</td> <td><input type="checkbox"/> LOAN GUARANTY</td> <td><input type="checkbox"/> LIFE INSURANCE</td> </tr> <tr> <td><input type="checkbox"/> VETERAN READINESS AND EMPLOYMENT</td> <td><input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION</td> <td></td> </tr> <tr> <td colspan="3"> <input type="checkbox"/> VETERANS HEALTH ADMINISTRATION (<b>NOTE:</b> If checked, specify in the space provided below, which benefit type you are claiming for VHA. (e.g., Travel/Mileage Reimbursement, Medical Treatment Reimbursement, Health Care Eligibility, Clothing Allowance, etc.)         </td> </tr> </table>		<input type="checkbox"/> COMPENSATION	<input type="checkbox"/> PENSION/DIC/SURVIVORS BENEFITS	<input type="checkbox"/> FIDUCIARY	<input type="checkbox"/> EDUCATION	<input type="checkbox"/> LOAN GUARANTY	<input type="checkbox"/> LIFE INSURANCE	<input type="checkbox"/> VETERAN READINESS AND EMPLOYMENT	<input type="checkbox"/> NATIONAL CEMETERY ADMINISTRATION		<input type="checkbox"/> VETERANS HEALTH ADMINISTRATION ( <b>NOTE:</b> If checked, specify in the space provided below, which benefit type you are claiming for VHA. (e.g., Travel/Mileage Reimbursement, Medical Treatment Reimbursement, Health Care Eligibility, Clothing Allowance, etc.)		
<input type="checkbox"/> COMPENSATION	<input type="checkbox"/> PENSION/DIC/SURVIVORS BENEFITS	<input type="checkbox"/> FIDUCIARY											
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> LOAN GUARANTY	<input type="checkbox"/> LIFE INSURANCE											
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<p><b>2. VETERAN'S NAME (First, Middle Initial, Last)</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>													
<p><b>3. SOCIAL SECURITY NUMBER</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	<p><b>4. VA FILE NUMBER (If applicable)</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>												
<p><b>5. DATE OF BIRTH (MM/DD/YYYY)</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>													
<p><b>6. SERVICE NUMBER (If applicable)</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	<p><b>7. VA INSURANCE POLICY NUMBER (If applicable)</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>												
<p><b>8. MAILING ADDRESS (Number, street or rural route, P.O. Box, City, State, ZIP Code and Country)</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <p>No. &amp; Street</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 20%;"> <p>Apt./Unit Number</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> <div style="width: 40%;"> <p>City</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> <div style="width: 40%;"> <p>State/Province</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 20%;"> <p>Country</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> <div style="width: 40%;"> <p>ZIP Code/Postal Code</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> <div style="width: 40%;"> <p></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> </div>													
<p><b>9. TELEPHONE NUMBER (Optional) (Include Area Code)</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <p>Enter International Phone Number (If applicable)</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	<p><b>10. E-MAIL ADDRESS (Optional)</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>												

# VA Form 20-0995 - 2

## SECTION IV: ISSUE(S) FOR SUPPLEMENTAL CLAIM

21. YOU MUST LIST EACH ISSUE DECIDED BY VA THAT YOU WOULD LIKE VA TO REVIEW AS PART OF YOUR **SUPPLEMENTAL CLAIM** (Note: Refer to your decision notice(s) for a list of adjudicated issues. For each issue, identify the date of VA's decision.)

If you are responding to a Statement of the Case (SOC) or a Supplemental Statement of the Case (SSOC): By submitting this form, I agree to participate in the modernized review system for the following issues decided in a SOC or SSOC. I am withdrawing the eligible appeal issues listed in Item 21A in their entirety, and any associated hearing requests, from the legacy appeals system. I understand I cannot return to the legacy appeals system for the issue(s) withdrawn.

21A. SPECIFIC ISSUE(S)

21B. DATE OF VA DECISION NOTICE

**Section IV: List each issue in a separate box. Hint: list disabilities as well as benefits such as TDIU and SMC.**

**Use VA Form 21-4138: Statement in Support of Claim for additional room.**

## SECTION V: NEW AND RELEVANT EVIDENCE

**IMPORTANT:** To complete your application, you must submit new and relevant evidence to VA or tell us about new and relevant evidence that VA can assist you in gathering in support of your **supplemental claim**. If you have records in your possession, attach the records to this form. List your name and file number on each page. If you would like VA to obtain non-Federal records, review your decision notification letter or read the instructions for this section on Page 3 that lists the appropriate forms to complete and submit those forms to VA with this request form. **Note:** Unless your **supplemental claim** is based on a change in law, you'll need to submit supporting evidence that's **new and relevant** for your application to be complete. You can also identify evidence you'd like us to gather for you.

22A. IDENTIFY WHERE YOU HAVE RECEIVED TREATMENT (Check all that apply)

- ☐ PRIVATE HEALTH CARE PROVIDER (including non-Federal records)
- ☐ VA VET CENTER
- ☐ COMMUNITY CARE (Paid for by VA)
- ☐ VA MEDICAL CENTER(S) (VAMC) AND COMMUNITY-BASED OUTPATIENT CLINICS (CBOC)
- ☐ DEPARTMENT OF DEFENSE (DOD) MILITARY TREATMENT FACILITY(IES) (MTF)
- ☐ OTHER (Specify): \_\_\_\_\_

**Note:** VA has access to VAMC, CBOC, and MTF records. A consent form is not needed. However, if you would like VA to attempt to obtain your **private provider**, (excluding community care (paid for by VA)) or VA Vet Center health records, VA requires your consent by completing VA Forms 21-4142, *Authorization to Disclose Information to VA*, and 21-4142a, *General Release for Medical Provider Information to VA*. VA forms are available at [www.va.gov/vaforms](http://www.va.gov/vaforms).

**Note:** If treatment began from 2005 to present, you **do not** need to provide in Item 22C the date(s) of treatment.

22B. NAME AND LOCATION OF THE TREATMENT FACILITY

22C. DATE(S) OF TREATMENT  
(Approximate dates are acceptable)  
(MM-YYYY)

22D. CHECK THE BOX IF YOU DO NOT HAVE DATE(S) OF TREATMENT

\_\_\_\_ - \_\_\_\_

☐ Don't have date

**Section V: Check all applicable boxes in 22A. 22B list each provider on a separate line**

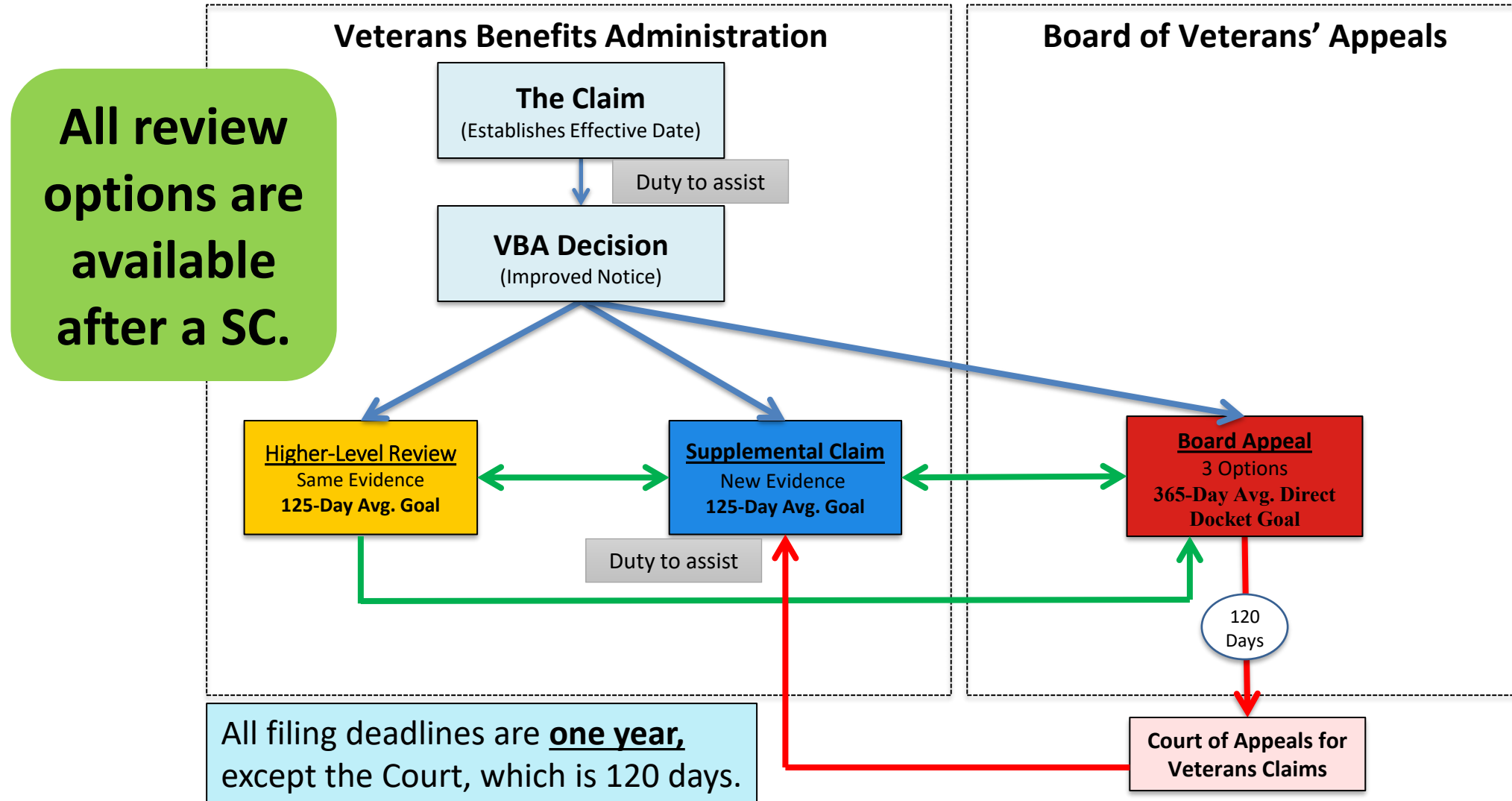
# VA Form 20-0995 - 3

- Listing the name of private medical facilities on 20-0995 is not enough for VA to get those records!

**Note:** VA has access to VAMC, CBOC, and MTF records. A consent form is not needed. However, if you would like VA to attempt to obtain your **private provider**, (excluding community care (paid for by VA)) or VA Vet Center health records, VA requires your consent by completing VA Forms 21-4142, *Authorization to Disclose Information to VA*, and 21-4142a, *General Release for Medical Provider Information to VA*. VA forms are available at [www.va.gov/vaforms](http://www.va.gov/vaforms).

**Advocacy tip:** Remember to attach to the 20-0995 a separate [VA Form 21-4142](#), Release for Private Medical Records, for each private facility.

# AMA Basic Structure



- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.