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Disability Ratings: Fundamentals

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Polling Question – Warm-up

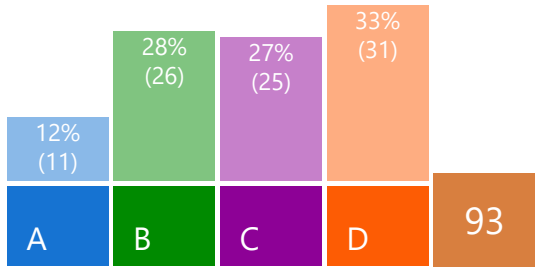
How many Veterans and their Survivors currently receive VA disability compensation or DIC benefits?

A. Less than 4 million

B. Between 4 million and 5 million

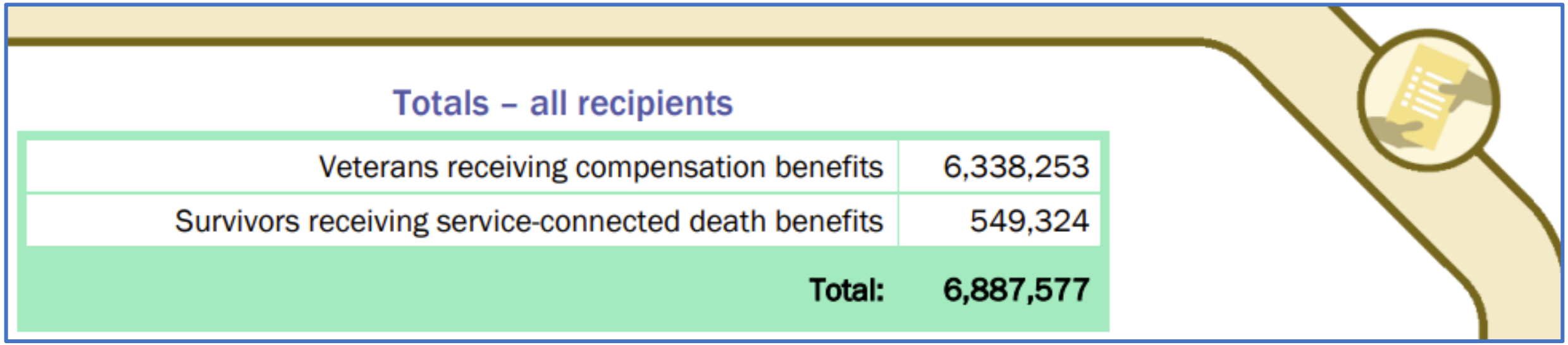
C. Between 5 million and 6 million

D. Over 6 million



Answer

D. Over 6 million



Totals – all recipients

Veterans receiving compensation benefits	6,338,253
Survivors receiving service-connected death benefits	549,324
Total:	**6,887,577**

Source: VBA Annual Benefits Report Fiscal Year 2025.

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

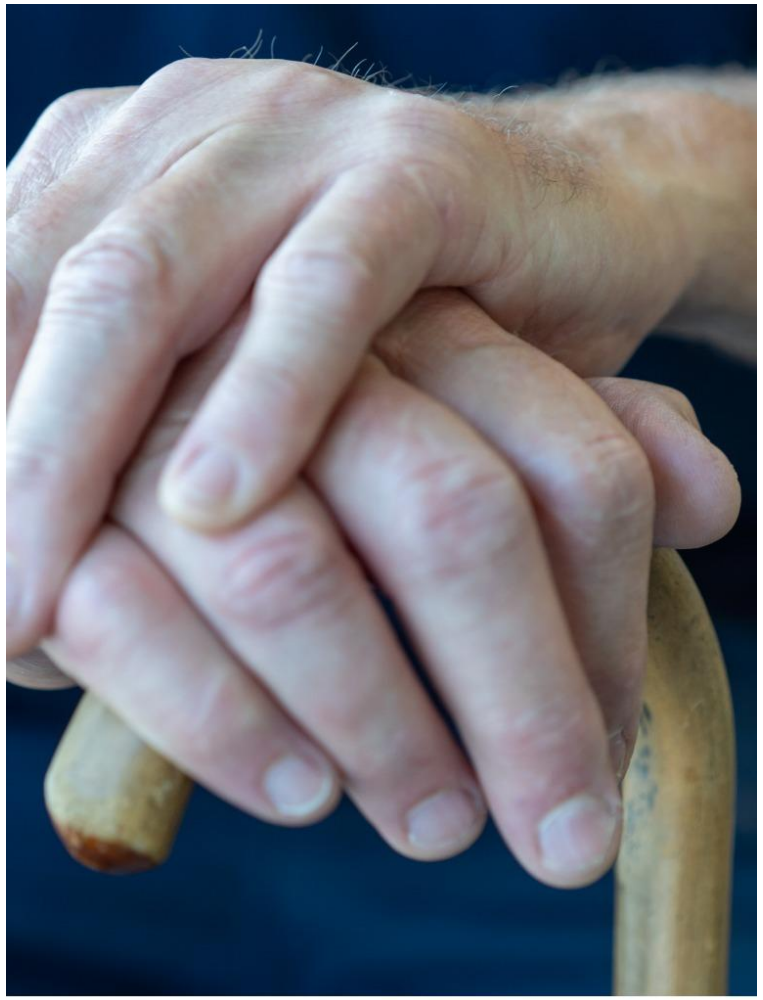
- VA's Rating Schedule for disabilities is based on law.
- VA's Rating Schedule is designed as a practical guide to compensating Veterans based on the ***average*** impairment in ***earning capacity*** from service-connected disabilities.

Definitions

- C.F.R. – Code of Federal Regulations (VA benefits are under Title 38.)
- DC – Diagnostic Code used by VA
  - 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.[1]
- VA can change the Veteran's diagnostic code so long as there is an evidentiary basis for doing so.[2]

[1]*Mittleider v. West*, 11 Vet.App. 181, 182 (1998).
[2]*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 ≠ 70**. Here's an example:

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

	Disabled	Not-Disabled
.40 x 100% able	40%	60%
.20 x 60% able	12%	-12%
		48%
.10 x 48% able	5%	-5%
Veteran's combined rating is **60%**	57%	43%

Source: 38 C.F.R. § 4.25: https://www.ecfr.gov/current/title-38/chapter-I/part-4/subpart-A/section-4.25

Pyramiding

- If no symptoms are overlapping or duplicative, the Veteran is entitled to separate disability ratings for each condition.[1]

BUT

- Evaluation of the same symptom under various diagnoses is prohibited as "pyramiding."[2]

[1]*Esteban v. Brown*, 6 Vet.App. 259 (1994).
[2]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."[1]

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."

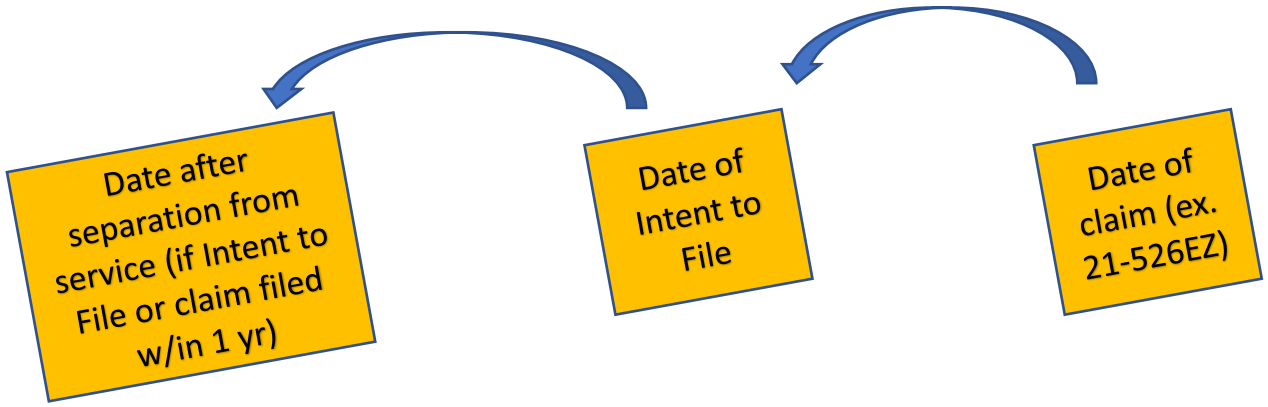
[1]38 C.F.R. § 4.68.

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?

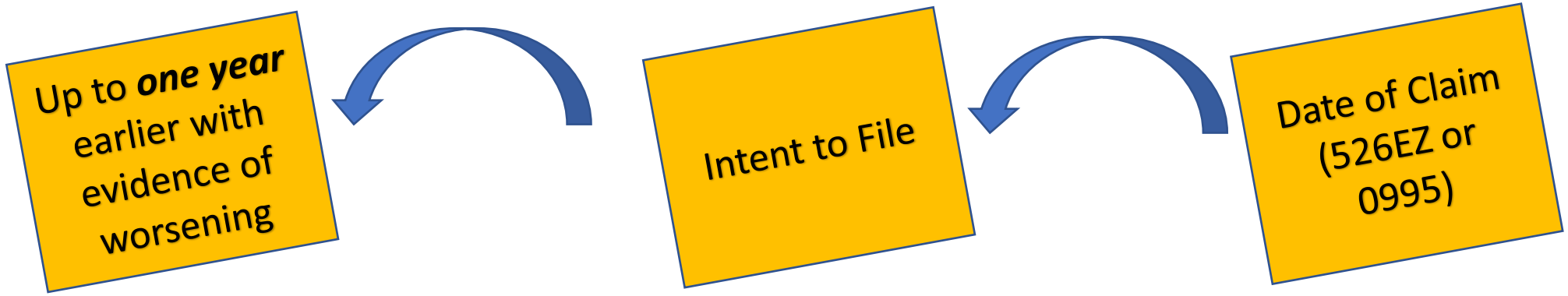
New Claim

- 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."[1]
- Staged ratings are appropriate when the facts show distinct time periods where the service-connected disability exhibits symptoms that would warrant different ratings.

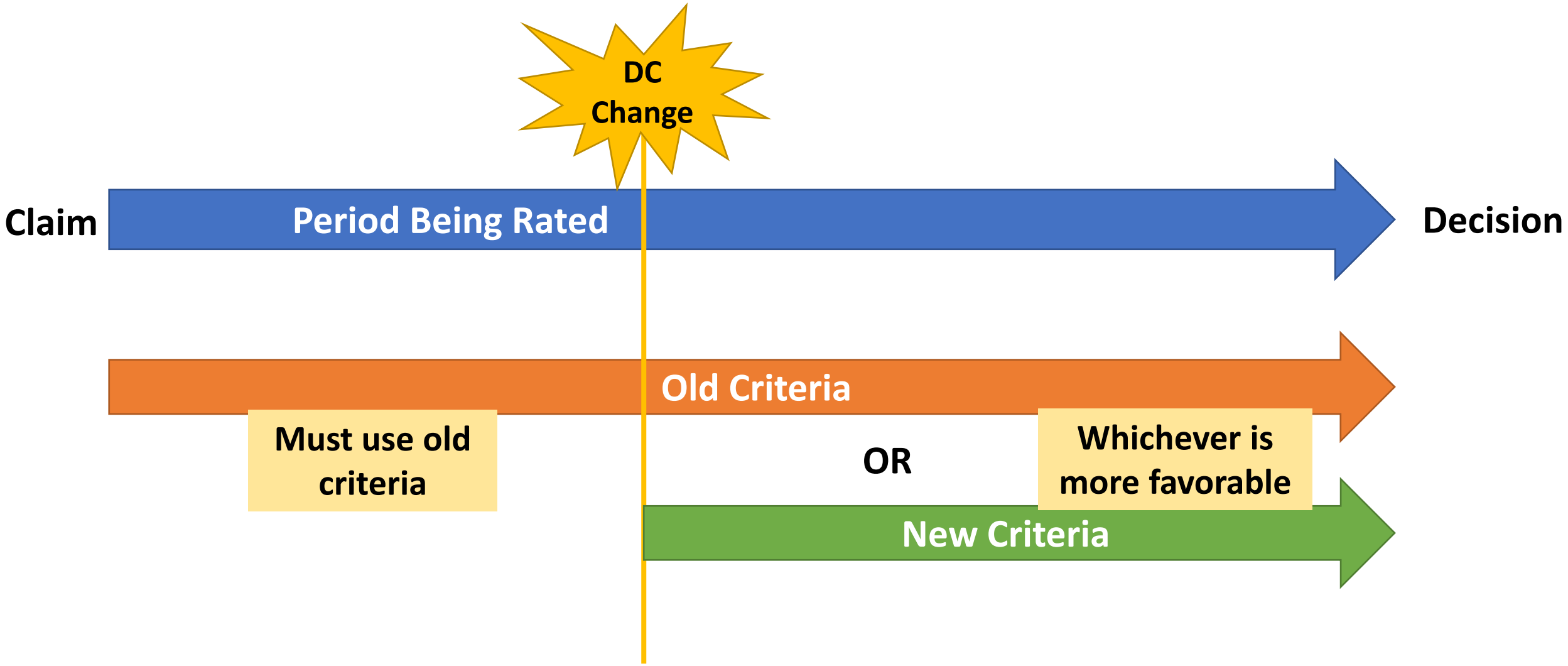
[1]*Fenderson v. West*, 12 Vet.App. 119 (1999); *Hart v. Mansfield*, 21 Vet.App. 505 (2007).

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.[1]

[1]*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.[1]

Know the rating period!

[1] *Vazquez-Claudio v. Shinseki*, 713 F.3d 112 (Fed. Cir. 2013).

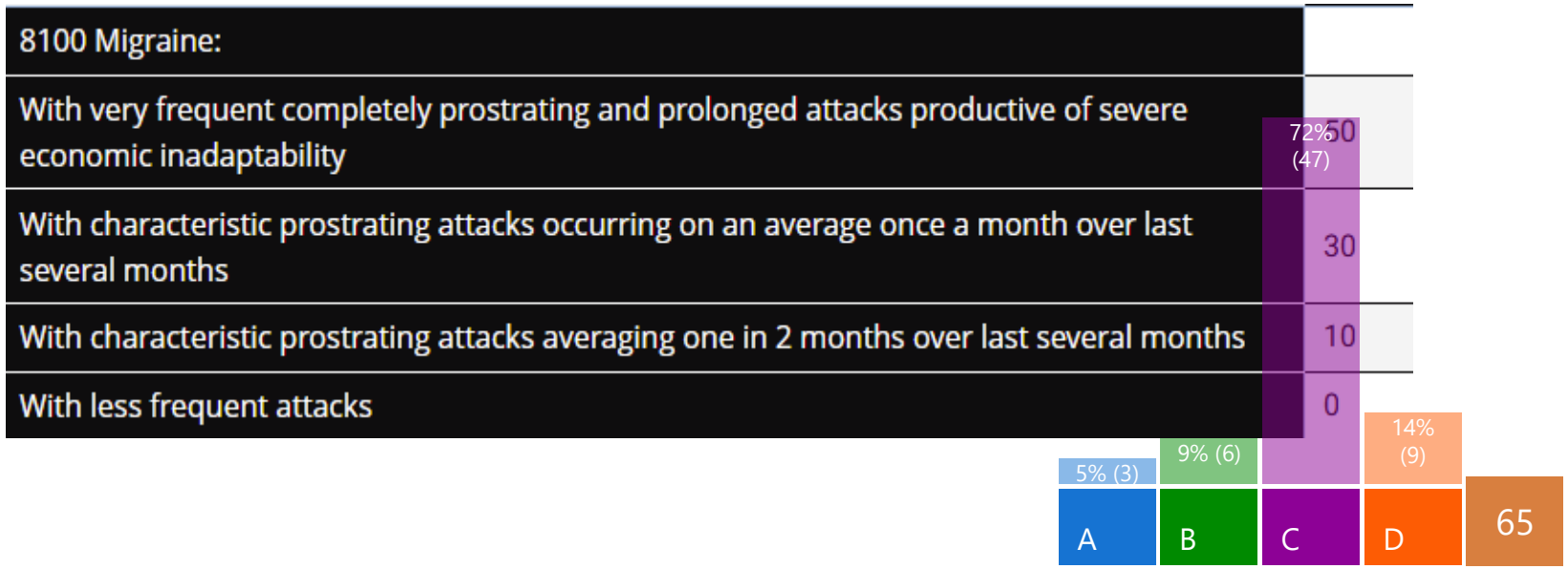
Developing Evidence for Ratings

- 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 4-5 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



Polling Answer 1

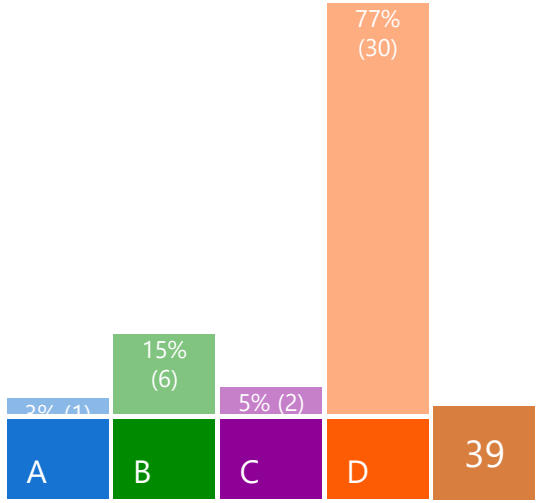
C. 30 percent

- 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 about once a month due to headaches, a 30% rating more nearly approximates his level of disability.
- Even though his headaches are completely prostrating, he doesn’t have the frequency for a 50% rating.

Polling Question 2

Twelve years ago VA granted Mitch service connection for shoulder disability. He filed an Intent to File (0966) on December 24, 2024, and a claim (526EZ) for a higher rating on February 3, 2025. From what date should VA be reviewing evidence to determine whether a higher rating is warranted.

A. February 2, 2023, one year before the 526EZ
B. December 24, 2023, one year before the 0966
C. February 3, 2025, the date of the 526EZ
D. December 24, 2024, the date of the 0966



Polling Answer 2

B. December 24, 2023, 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!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