

(4) TRAINEE HANDOUT

TRAINING FOR VSO LESSON FOUR INTRODUCTION TO THE DEVELOPMENT PROCESS

- Objectives:

Given a claim exercise, a pen, and access to regulatory or manual references, the participant will be able to do the following such that proper development will result:

1. Identify what elements make up a claim and whether a claim is formal or informal.
2. Identify who can be a claimant.
3. Identify all issues of a claim, direct and inferred.
4. Define evidence and identify the different classes of evidence and how evidence is weighed in reaching a decision.
5. Identify scope of VA's and the claimant's duty to assist.
6. Review how the VA notifies the claimant of the decision on their claim.
7. Identify ways the service officer can help their clients in the claims development process.

- References:

- 38 CFR §§3.1 (p), (r), 3.102, 3.150, 3.151, 3.152, 3.155, 3.159, 3.160, 3.201-217.
- M21-1, Part III,
 - Chapter 1 Paragraphs 1.04 and 1.05 (evidence); 1.06 (primary and secondary evidence)]
 - Chapter 6, Paragraph 6.02 (basic development principles)
- M21MR,
 - Part I, Chapter 1
 - Part III, Chapters 1-8

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Development, What is It?

Every claim for VA benefits requires a decision from the VA. The decision is a complex document that determines the origin, extent and effective dates of disabilities and the amount and circumstances of payment of monetary benefits. These decisions are reached by evaluating the *evidence* against the applicable law. In the development process, we attempt to gather all the evidence we are aware of that will have a bearing on the decision. Your role is to make us aware of the evidence we should consider, and to furnish whatever evidence the claimant has in their possession that he/she wants us to consider. Gathering and submitting the evidence that forms the decision is the role where a Service Officer can be most effective in assisting their client.

What does the term “development” mean in relationship to a claim for VA benefits?

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Claims

Development begins when a claim is received. But what is a claim? “Claim” is defined in the law as:

(p) "Claim"- "Application" means a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit. [38 CFR 3.1(p)]

Claimants vs. Applicants

In order for the VA to have an actionable claim, it must be filed by a claimant. A claimant is someone who has potential entitlement to VA benefits under the law. An honorably discharged veteran is a claimant. A person who never served in U. S. Military (or one of the other recognized qualifying groups) and is not a dependent of a veteran, cannot be a claimant. They can be an applicant; anyone who knows how to fill out a form can become an applicant, but only potential entitlement under the law can make them a claimant. The VA has no obligation to adjudicate the application of someone who is not a claimant. We will only advise them that they have no legal standing to receive VA benefits.

Formal Claim

The law (38 CFR 3.151) requires that the original claim must be a formal claim on a form required by the VA. For live veterans, that form is VA Form 21-526, Veteran's Application for Compensation and/or Pension. Before a 21-526 can be accepted as a formal claim, it must have sufficient information on it for us to identify the claimant, attempt to verify his/her status as a veteran, identify a disability or benefit claimed, and MUST have a signature of the claimant. If these items are not completed, the application is not considered a formal claim. It will be returned to the claimant for completion of the required items.

“A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid....” 38 CFR §3.151

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For example: A claimant completes VA Form 21-526 with your help. He is asking for the first time for compensation benefits. He states he has a right knee disability. He signs and dates the form before giving it to you.

The claim is: _____

Why? _____

Informal Claim-38 CFR §3.155

Once a formal claim is of record, any other subsequent claims are not required to be on a specific form or follow a specific format. Even so, it is usually in the claimant's best interest to make a claim that specifies what the claimant is attempting to claim. Remember that we must make a decision on all issues that the claimant raises, so if you want us to consider something, specify it clearly in the claim.

"Any communication or action, indicating an intent to apply...from a claimant.... Such informal claim must identify the benefit sought." 38 CFR §3.155

For example: A veteran comes into your office with a hand-written letter. It has been written in crayon on the margins of the Wall Street Journal. The letter states I want VA money. My knee hurts more than ever. He wants you to submit it to the VA. Is this a claim?

The claim is: _____

Why? _____

Date of Claim- 38 CFR 3.1(r):

"Date of receipt" means the date on which a claim, information or evidence was received in the Department of Veterans Affairs..." In many cases the date the claim is received by the VA is the beginning date of entitlement to a benefit. Therefore, it is imperative that if you take a claim from a claimant, you should get it into the VA's system as soon as possible. If you hold the claim in your office, you may cost the claimant money. The date of payment is almost always the first day of the month following the date of entitlement.

Claim for All Available Benefits:

By law, the VA is obliged to decide all claims placed before us. In live veteran claims, the law states that a claim for compensation *may be* considered a claim for pension, and vice versa. But

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in order for us to consider both benefits, *there must be some indication that the veteran is claiming them*. If the completed application lists disabilities that are alleged to have their inception while on active duty, we will take that as a claim for compensation. If the income portion of the application is completed, we will consider that an application for pension. It is in the claimant's best interest that the claim you file in his/her behalf clearly indicates the benefits sought. Leaving us guessing requires us to ask the question, delaying the decision. By contrast, in claims for death benefits, a claim for DIC *is* a claim for death pension and accrued benefits, and unless the claimant specifically states that they are not claiming one of the benefits, we are required to develop for and make a decision on all benefits.

Issue

Identifying an Issue

A single claim can have multiple issues. Each item listed on a claim is a separate issue. All claims processing depends on identifying the issue(s) being raised. Correct identification directs you into the appropriate developmental action.

For example: The veteran is explaining to you that he has just returned from Iraq. While there, shrapnel from a land mine wounded him. He has obvious facial disfigurement. He asks if the VA can help him enter a job-training program, since he has not been able to find work. He has made no previous claim with VA.

The claim is for _____

However, the issues are:

1. _____
2. _____
3. _____
4. _____

Issue versus Claim

An issue is a direct or inferred request for a benefit that we can give to a claimant. Responding to that request can be as simple as providing information on a topic or as complicated as assisting in proving an injury occurred in service and is related to a current disability. Issues can be related or unrelated to the specific claim being made.

For example: A veteran comes into your office and says that his wife is disabled. You bring up his record on your computer and see that he receives 100% compensation. The claimant has no wife of record

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The issue is not simply that the wife is disabled, but the issues are:

1. _____
2. _____

Inferred Issues and Downstream Issues

We are obliged to address all claims and issues made by the claimant, but in addition, we should also address any other benefits the claimant could be entitled to whether they specifically claim them or not. For example, we received a claim for increased evaluation of the veterans service connected knee condition, and obtain the outpatient treatment records from the VA clinic. Upon reviewing those records, we note that he is also receiving treatment for type II diabetes. His DD-214 shows he had in-country Vietnam service. We will take jurisdiction of a claim for service connection for the diabetes, even though the veteran did not claim it. We will also take jurisdiction of “downstream issues”. If we establish potential entitlement to greater benefits as the result of a decision we make, we will automatically consider the additional benefit. For example, if we rate a veteran permanently and totally disabled due to service connected conditions, we will also determine whether his dependents can be eligible for education benefits under Chapter 35.

Claims & Issues Exercises

Directions

Identify:

- a) Type of Claim (formal, informal, & benefit sought)
- b) The Issue(s)

1. Joe Braun, a Gulf War veteran with honorable service as verified by VADS, calls you. He states he is in receipt of 30% disability compensation for his right knee. He says his right knee is now locking on him and he cannot bend it more than a few inches. He says he has a lot of pain. He saw his doctor at the VAMC two days ago and the doctor is thinking of an operation. Joe also tells you he has just married Felicia.

- a) Type of Claim (formal, informal, & benefit sought)
- b) The Issue(s)

2. A client comes into your office carrying a packet of service medical records and his DD Form 214, which shows honorable service with a release date from several years earlier. The claimant,

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Maury Richter, states he broke his leg in service and that he has never filed a claim with the VA before. He also tells you that he recently had a heart attack and has had to stop working.

a) Type of Claim (formal, informal, & benefit sought)

b) The Issue(s)

3. Mary Dal has stated her service-connected disability, diabetes, has gotten worse. She has had to increase her medication. She also states that her husband, George, has had to reduce the number of hours he works in order to take care of her. The claims file verifies her disability at 40% and her marriage to Roger.

a) Type of Claim (formal, informal, & benefit sought)

b) The Issue(s)

4. George Knott comes to see you saying that his wife, a veteran, recently died. He was married to Rochelle in 1995 in Queenstown, MD, and he has a copy of her DD-214 showing honorable service during Desert Storm. He says that Rochelle had two children from a prior marriage that ended when her spouse died. The children, age 15 and 17, are living with them. He says that she died from a heart attack and that she had taken heart medication since before he met her and that she told him her heart problems began while she was deployed to Kuwait.

a) Type of Claim (formal, informal, & benefit sought)

b) The Issue(s)

5. Joy Noel calls you and asks for money. She says she was a veteran during the Vietnam Era. BIRLS shows she served honorably for four years during that time frame. Joy says she has severe Type II diabetes, not controlled by medication or diet and that she cannot work more than two hours a day.

a) Type of Claim (formal, informal, & benefit sought)

b) The Issue(s)

Evidence

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Defining Evidence

Evidence is something that establishes a fact. Evidence can be testimony, a document, a photograph, a doctor's diagnosis, etc. For our purposes, the fact established is usually something that:

1. Happened at a certain time.
2. In a certain place.
3. And a certain individual was involved.

Evaluating Evidence

Evidence is ranked in classes based on the ability of the evidence to prove a fact. The highest class of evidence is called primary. Primary evidence is first hand evidence, created by someone who has a personal knowledge of a fact they are qualified to observe. In all lists of evidence found in 38 CFR, primary evidence will be the top item on the list. An example of primary evidence would be an entry in the service medical record that shows the veteran was treated for a condition with chronic residuals, such as arthritis.

The subsequent categories of evidence are referred to as secondary. Secondary evidence would be a statement from someone who did not actually observe an event, but had knowledge of it. For example, the veterans' mother could testify that the veteran told her he was treated for arthritis in service. When the primary source is not available, the top secondary source then becomes the primary source.

Due to the 1973 fire at the National Personnel Records Center in St. Louis, we are faced with the fact that thousands of veteran's SMR's were destroyed, thus eliminating the primary source of evidence that would verify the incurrence of a disability while on active duty. In these cases, we have learned to search for and accept secondary evidence, such as daily reports that would show that a particular veteran was in sick bay on certain days, or lay (buddy) statements.

Weighing Evidence

Evidence is weighed. In considering primary or secondary evidence, the credibility of the evidence is weighed as to its ability to prove or disprove the fact in question. The VA decision maker must assign weight to each piece of evidence considered, pro or con, and make a decision that comports with the law. When the evidence is balanced equally for and against establishing a particular fact, reasonable doubt will be resolved in favor of the claimant. Your job as the claimant's representative is to put as much positive evidence as you can find in front of the VA.

What Type of Evidence to Obtain for VA Review

Sometimes this is fairly obvious. If a veteran is seeking an increased evaluation of his/her service connected disability, the best evidence to submit would be records of medical treatment showing that the condition worsened. Sometimes the evidence is less apparent, such as when you are assisting a veteran in establishing the facts of a stressor for a claim for PTSD. Each claim presents its' own challenge. It may be helpful to put yourself in the place of a VA decision maker and ask yourself "what would I need to see to be able to grant this claim?"

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A veteran's testimony or statement is evidence and has weight, but the weight assigned will depend on the point being considered. For example, the statement of an Ex-POW that he was exposed to extreme cold while confined in Germany during the winter of 1944-45 has the weight of fact. In contrast, the statement of a veteran that he had a duodenal ulcer while in service is of little value unless there is medical evidence to corroborate his statement. Diagnosis of this condition usually requires diagnostic tests, such as X-ray evidence during both the active and residual stages and is not likely something the veteran is qualified to state.

Types of Primary Evidence

- Service records, including the DD-214 and service medical records.
- VA Health Care records, such outpatient treatment reports and hospital summaries.
- A VA exam.
- Other Federal Records, such as Social Security disability decisions.
- Private physician treatment records or private hospital reports.
- Lay statements that relate to something the observer is qualified to observe.
- The veterans statement as it relates to things he/she is qualified to observe.
- Marriage, divorce, birth and death records.

Securing Evidence

As we will discuss under the "Duty to Assist" section below, the VA will attempt to obtain all the evidence we are aware of. You may be able to help the process by sending the evidence you want considered with the claim, but do not delay submitting the claim to gather the evidence. In most circumstances the date the claim is received controls the grant or increase of benefits, so delaying is the claim is not in the claimant's best interest.

The VA is responsible for obtaining any VA treatment records it is aware of, so it would probably not help the client for you to get those. However, you may be able to help us obtain any private treatment records. We will go into greater detail on that in a separate lesson. When you have determined what evidence is available and you want the VA to consider, then decide how you will secure that evidence.

Discuss the Need for Evidence with the Claimant: The claimant is in a position to know what they were treated for and by whom. Ask them for their best recollection of the facts surrounding their claim.

Organize your search. Consider the need to go to two or more sources simultaneously. Ask for everything at once to avoid having to prolong the gathering process. Be prepared initially to follow up on a request, since you may be dealing with a source that is too burdened by internal business to respond promptly.

Control the length of your search. Establish deadlines for information to be returned and establish controls to monitor those deadlines. In general, 60 days is the length of time used for deadlines in VA. If you need more time, ask for it.

Get the Claimant Involved: Ultimately, it is the claimants' responsibility to get you the evidence you need to submit a successful claim. A patient would probably have better luck in getting a doctors' treatment reports than you will.

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Duty to Assist

The VA has a duty to assist claimants in gathering the evidence necessary to decide their claim, and must consider all evidence gathered, for and against the claimant, in reaching their decision. We are obliged to obtain or attempt to obtain all the evidence the claimant makes us aware of. So it is important to have a full listing of all the evidence the claimant wants us to consider from the earliest submission of the claim. Your role will be to assist the claimant in giving us a list of evidence they want us to consider.

Substantially Complete Application

Under the Veterans Claims Assistance Act (VCAA), our duty to assist claimants begins when we receive a “substantially complete application”. This is defined in 38 CFR 3.159 and includes:

- claimant’s name
- claimant’s relationship to the veteran, if applicable
- sufficient service information for VA to verify the claimed service, if applicable
- benefit claimed
- disability(ies) for which the benefit is claimed

Note: These should be diagnosed conditions or identified symptoms. Exposure to certain agents, such as Agent Orange and anthrax, is not in itself a disability.

- claimant’s or guardian’s signature, and
- statement of income and net worth for nonservice-connected disability, death pension or parents' DIC.

If the application is not “substantially complete”, our only obligation is to return it to the claimant with instructions on what is lacking.

VA’s Duty to Assist

Once we have an adequate application, our duty to assist begins. Our obligations to the claimant are:

- Advise them that we will make a decision based on the evidence we have on hand when we make the decision, and that they may furnish or direct us to any evidence they want us to consider.
- What the evidence must show.
- Give them the forms to use to give us additional information and to request information from non-federal government sources.
- Give them time limits to submit evidence or direct us to evidence they want us to consider.

We also have an obligation to obtain all federal records, such as SMR’s, that we are aware of and would have a bearing on the claim. These would include VA treatment records *we are aware of*. If your client is receiving treatment at a VA facility, you should tell us when the claim is submitted. We will also order a VA exam if it is needed to fairly decide the claim.

We will also attempt to obtain private treatment records the claimant directs us to. We will make two attempts to get these records and advise the claimant of our efforts. If the records do not reach us within 30 days after our second attempt to get them, we will decide the claim without them.

The Claimant’s Duty to Assist the VA

VCAA also provides specific obligations for the claimant. First, they must provide a “substantially complete application” as defined above. Second, they must direct us to the evidence they want us to consider. We will not request evidence unless we know it exists. The claimant must also provide us adequate information for us to go after the evidence. This is usually the name and complete address of

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the source of the evidence. The claimant must also prepare and sign a release of information required by the holder of the evidence. This usually means a release form that is Health Information Portability and Accountability Act (HIPAA) compliant. The VA form 21-4142 is HIPAA compliant and is included in our first VCAA notification letter. You can help your clients and speed up the decision making process by keeping the latest version of VA Form 21-4142 on hand and have the client complete the form upon the initial submission of the claim. Finally, the claimant must submit evidence within the time limits specified in our letters if they want it included in our decision.

When Duty to Assist Does Not Apply: The VA does not have a duty to assist when:

- The claim cannot be granted under the law, such as the applicant does not have military service, and no additional evidence could affect the outcome.
- When the claim is inherently incredible.
- When the claimant does not furnish a substantially complete application.

The VA's Duty to Assist Ends When:

- The claim can be granted based on the evidence in the record.
- All the known evidence has been received.
- We received notice that requested records cannot be found or are unavailable.
- Any further attempts to obtain records would be futile or could not possibly furnish the basis for a successful claim.

Time Limits

VCAA provides that the claimant has one year to submit evidence from the date of the letter we send to them advising them of their rights to provide evidence. The letters we send usually give them 60 days to respond. The law provides that the VA can make a decision at any time after 30 days has expired from our initial notice, but if the claimant provides additional evidence any time within the year, we must reconsider the claim. Given that each development and decision-making cycle consumes time, it is usually in the best interest of the claimant to submit all the evidence at one time and as soon as possible.

The Decision and Notification

The Decision

Every claim made requires a decision on the part of the VA. The majority of the claims we receive progress through the entire development and duty to assist stages to a decision. However, not all claims make it that far. If we ask the claimant for a specific piece of evidence required to establish entitlement, and they do not furnish it within the time limits specified, the claim is considered abandoned. Whether or a formal decision is made on such a claim will depend on the circumstances of the particular claim.

Most claims will get a formal decision. If the claim involves issues that can only be decided by a formal rating, the decision will be made in that format. All issues of service connection, evaluation of disabilities, and other similar issues require a rating. Issues regarding dependency, income and other similar issues do not require a rating and will not be decided in a rating format.

Notification

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Once the decision has been made, we will notify the claimant by letter of the decision. A decision letter will inform the claimant of what decision was made, what evidence was considered, and how their benefits will be affected. In decisions where a rating was required, a copy of the narrative of the rating will be included in the notification. Also included will be a notice of appeal rights, detailing how the claimant can begin the appeal process if they are dissatisfied with the decision. Often these letters are lengthy and packed with technical details. You may be able to provide your clients with an explanation of some of the more technical terms. We try to keep the language in the letters understandable by the average person, but some issues involving law become difficult to explain in simplistic terms. Copies of our decision letters are sent to the office of the accredited representative in the regional office.

Role of the Service Officer in the Development Process

The claimant comes to you because you know how the VA system works and your expertise can make a difference in their claim. Your knowledge is your best tool in your efforts to get every claimant every benefit the law allows. We, the VA, try to give you the knowledge you need to help the claimant. Access to the electronic record for a claimant can give you insight into the best way to submit a successful claim. For example, if you look into the electronic record and see that the veteran is service connected for diabetes at 10%, but is now taking oral medication for it, you immediately know what to do—initiate a claim for an increased evaluation for the diabetes.

Everyone benefits from the submission of a persuasive, well developed claim. We can grant the benefit sought quickly and to the claimant's satisfaction when we get one.

Your intervention begins with the first contact, determining what the claimant wants and putting that into a claim that the VA can address. The greater the clarity of the claim, the better we can develop for the right evidence.

- Once you have stated the claim, you can direct us to the known evidence you want us to consider, or better yet, gather it and submit it with the claim, or at a later date. The submission of a fully developed claim helps the entire process go smoothly and quickly. Remember that even if you send in all the evidence with the claim, we must still give the claimant VCAA notification of their rights under the law. The claimant's statement that they have furnished all the evidence they want us to consider will permit us to reduce the waiting time before making a decision, but does not release us from our notification requirements. You can advise the claimant to expect the letter to arrive and how you would like them to handle it when it does.
- Discuss with the claimant what a reasonable time to wait for a decision is going to be. Of course, the time needed will depend on the nature and complexity of the claim filed. Discuss with them when and how to follow up on the progress of their claim. If they follow up too soon, we will have nothing of any value to tell them, and they will be disappointed. If they wait too long the claim could have gone off track and we won't know until you or they call us.
- If it is likely that a VA exam will be part of the claim, discuss the exam with the claimant. Let them know what to expect and what they should tell the examining physician. Be sure they understand that canceling the exam or refusing to show up could delay or hurt the claim.

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- Try to get them to come back to you if they get a letter from the VA they don't understand. While we try to make our letters easy for everyone to understand, there are some clients who will have a feeling of panic when they get a letter from the VA asking them to provide something to us. Your assistance can be a big help here. If the VA requests something, failure to respond will likely hurt the claim. Help the client respond by either supplying the evidence or explaining why it is not available to them.

- Ask the claimant to get back to you when the final decision is made. If the decision did not come out as you had hoped for, our letter and rating should explain why. If you think we made a mistake, you can discuss the appeal process with your client.

Your assistance before, during and after the claim is filed can smooth the entire process for your client, and we appreciate your good service to the veterans we are all trying to serve.