Analogous Rating Training
The Basics . . .

- VA Rating Schedule used by VA to assess level of severity of SC and NSC disabilities.
The Basics . . .

- If used to assess an SC disability
  - the % assigned will determine the amount of vet’s monthly disability comp payment

- If used to assess an NSC disability for NSC pension
  - the % assigned will determine whether the NSC conditions are totally disabling
Evaluation involves:

- Determining correct diagnosis
- Determining correct "diagnostic code" (DC) to use
- Determining vet’s symptoms

THEN . . .
Evaluation involves:

- Comparing symptoms of SC condition to the symptoms listed in the appropriate diagnostic code in the VA Schedule for Rating Disabilities.
- The % disability is to reflect average impairment in earning capacity caused by the disability. 38 C.F.R. § 4.1.
Sometimes VA must rate by analogy

- Not all disabilities in existence are listed in the rating schedule.
- Examples of disabilities that are not listed:
  - Any/All undiagnosed illnesses
  - Chondromalacia
  - Peripheral neuropathy
  - Pilonidal cyst
Sometimes VA must Rate by Analogy

- Tonsillectomy (residuals)
- Genital herpes
- Jungle rot/tropical ulcer
- Hyperhidrosis of feet
- Loss of adrenal gland
Sometimes VA must Rate by Analogy (38 CFR 4.20)

“when an unlisted condition is encountered it is permissible to rate under a closely related disease or injury in which not only the functions affected, but the anatomical localization AND symptoms are closely analogous."
How to Rate by Analogy

- three factors are considered:
- **functions** affected by the conditions,
- **location** of the conditions, and
- whether **symptoms** are similar
How to “Build” a DC when Rating by Analogy

- Hyphenated DCs are used in the following situations:
  1) “unlisted” conditions
  2) Residual conditions
  3) Gulf War undiagnosed illnesses (these are “unlisted”—but there are special rules about how to “build” the DC)
How to “Build” a DC when Rating by Analogy

- “Unlisted” Conditions
- If vet’s disability not listed rating activity assigns an analogous code,
  - which is actually two codes hyphenated.
  - 1st code has 2 digits that refer to body system followed by 99.
  - 2nd code is the DC with the diagnostic criteria used to evaluate the disability.
How to “Build” a DC when Rating by Analogy

- Rating Residual Conditions (from M2-1-MR)
- Hyphenated codes do not necessarily denote analogous ratings. Two DCs may be used to identify proper evaluation of residual from disease.
- Example: Ankylosis of wrist from rheumatoid arthritis
- Rated as 5002-5214 (one code identifies the original disease and the other identifies the residual disability)
How to “Build” a DC when Rating by Analogy

- A special hyphenated analogous DC system tracks Gulf War disabilities
- Use 2 four-digit number sets separated by hyphen to identify a qualifying chronic disability
- 1st four-digit number set starts w/ “88”
- Followed by first two numbers of body system DC most closely associated w/ disability pattern
- 2nd second four-digit number set is actual DC that most closely describes vet’s disability pattern (analogous DC) (VA Training Letter 10-01)
How to “Build” a DC when Rating by Analogy

- for example, disability involving bronchial pulmonary system, which begins with DC numbers 66
- 1st four-digit number set would be 8866
- Assume vet has symptoms resembling bronchial asthma, DC 6602
- When two four-digit number sets are combined, hyphenated analogous DC is 8866-6602
Common Errors in Analogous Rating

- Most Important to Catching Error in Analogous Rating:
  - In order to Catch Error, you must be familiar with Rating Schedule Diagnostic Codes
  - Do your Research!!!
Common Errors in Analogous Rating

- **Error:** VA fails to choose the analogous DC that will result in highest possible eval for vet
- If there is a choice between 2 (or more) appropriate analogous DCs, VA should choose DC that results in highest eval for vet (or explain why it has not done so)
Common Errors in Analogous Rating

Another way of saying this:

1) VA chooses one factor (function, location, symptoms) over another factor with no explanation & vet’s evaluation suffers

2) VA doesn’t explain why the DC it chose is more closely related to vet’s disability than other DCs that offer higher eval
Common Errors in Analogous Rating

- Facts:
  - Vet has balance disorder caused by impaired blood flow to brain
  - VA assigns 0% under DC for labyrinthitis (an ear disorder causing tinnitus and dizziness)
  - Labyrinthitis—allows maximum of 30%
Common Errors in Analogous Rating

- Vet argued correct analogous DC is 8007-8009 (injury to blood vessels in brain)
- DCs 8007-8009 provide minimum of 10% and maximum of 100%
- Vet argued rate condition by analogy to DCs for injury to blood vessels in brain b/c his condition is related to blood flow in brain
Common Errors in Analogous Rating

- CAVC remanded for explanation of why DC for ear was used
Common Errors in Analogous Rating

- **Error: VA Requires all Objective Criteria of the Analogous Condition**
- If vet’s SC disability rated by analogy, it need not show all objective criteria of analogous disability
Facts:

- Gulf War vet c/o joint pain in shoulders, elbows, wrists, hands, hips, knees
- Dr. found vet had multiple joint pain of unknown etiology
- VA awards SC for UI for multiple joint pain
Common Errors in Analogous Rating

- VA finds "only reasonably analogous code would appear to be DC 5003, arthritis"
- VA noted under DC 5003, rating assigned on basis of LOM where arthritis shown by X-ray
- Where LOM not shown, assign 10% where there is X-ray evide of 2 or more major joints or minor joint groups w/ arthritis
Common Errors in Analogous Rating

- VA found vet couldn’t get 10% b/c vet doesn’t have LOM of any joint & vet had no X-ray finding of arthritis

- At CAVC . . .

- Court questioned requiring X-ray evid of arthritis in order to award 10% under DC 5003 in a UI case—b/c very essence of UI is that there’s no diagnosis
Common Errors in Analogous Rating

- Court held that function affected, anatomical localization, or symptoms of a UI cannot be analogous if VA requires objective evidence of the diagnosed disability (x-ray evidence of arthritis)
- Board's application of DC 5003 arbitrary & capricious
Common Errors in Analogous Rating

- VA must analyze & explain why particular DC selected as most analogous to vet’s illness
- Applying criteria in analogous DC must take into account nature of vet’s illness
- If vet’s illness **exactly** like analogous disease, would not require analogous rating
Common Errors in Analogous Rating

- disability rated under analogous DC need not show all objective criteria of analogous condition.
- VA may err if it requires all objective criteria of analogous condition
Common Errors in Analogous Rating

- **Error:** After choosing Analogous DC, VA Fails to Follow It

- **Facts:** vet’s SC lymph disease rated analogous to Hodgkin’s disease, DC 7709 at 30%

- DC 7709 was revised to give 100% in all active cases of Hodgkin’s disease for an indefinite period during active disease or during treatment

- Veteran’s lymph disease “active”
Common Errors in Analogous Rating

- Regardless of change in analogous DC, VA denied vet a 100% eval
- Court:
  - Assigning 30% was “gross misapplication of law to facts”
  - 100% should be assigned for lymph disability under DC 7709
  - RO chose DC 7709 b/c vet’s lymph disease similar to Hodgkin’s Disease
  - VA is bound by its choice of DC & is required to assign 100% under DC 7709
Common Errors in Analogous Rating

- **Green**: when VA chooses an analogous DC, it must follow that DC in assigning an evaluation

Common Errors in Analogous Rating

- **Error**: VA rates a “Listed Condition” by Analogy
  (it should only rate “unlisted conditions” by analogy)

- **Facts**:
  - Vet’s medical records showed dx of "peripheral neuropathy . . . etiology [unknown], probably residual from beri-beri".
  - Vet awarded SC for peripheral neuropathy of right and left legs
Common Errors in Analogous Rating

- Each leg rated 10% under DC 8599-8621
  - first 4 digits -- 8599 -- show that rating is for unlisted condition affecting peripheral nerves
  - "85" refers to schedule for disabilities of peripheral nerves & "99" is for unlisted condition
  - second 4 digits -- 8621 -- the DC for rating neuritis of external popliteal nerve (the analogous DC the RO chose)
  - Neuritis is inflammation of a nerve and the external popliteal nerve is a sciatic nerve in lower part of thigh
Common Errors in Analogous Rating

- Neuritis is rated as either "severe" (30% disabling), "moderate" (20%), or "mild" (10%) incomplete paralysis of that nerve.
- 38 C.F.R. § 4.27 says that an analogous rating may be assigned only where the SC condition is "unlisted"
Common Errors in Analogous Rating

- There is a specific DC for beriberi
- says that beriberi eval assigned based on residuals including peripheral neuropathy--DC 6314
Common Errors in Analogous Rating

- DC 6314 (Beriberi)
- 100% -- if congestive heart failure, anasarca, or Wernicke-Korsakoff syndrome
- 60% -- w/ cardiomegaly, or; w/ peripheral neuropathy w/ footdrop or atrophy of thigh or calf muscles
- 30% -- w/ peripheral neuropathy w/ absent knee or ankle jerks & loss of sensation, or; w/ symptoms such as weakness, fatigue, anorexia, dizziness, heaviness and stiffness of legs, headache or sleep disturbance
- Thereafter rate residuals under appropriate body system
Common Errors in Analogous Rating

- CAVC: VA’s failure to consider & discuss vet's entitlement to eval under schedular provision for rating beriberi required remand
- CAVC analysis was part of precedent opinion discussing the VA’s failure to decide inferred claim for beri-beri, considering that vet spent 3 ½ years as POW & beri-beri is POW presumptive disease

Common Errors in Analogous Rating

- **Error: VA Fails to Explain Change in Choice of Analogous DC**

- When VA uses analogous DC to initially evaluate disability & thereafter uses a different analogous DC, must explain change in its choice of DC

- CAVC: shifting of DC creates confusion as to standards & criteria used to evaluate

Examples of Analogous DCs Suggested by VA

- From M21-1MR, Part IV, Subpart II, Chap. 2.D.16.g.
- Note: This list does not contain all possible analogous codes.
- Abnormal weight loss
  8873-7328, (resection of intestine)
- Cardiovascular signs or symptoms
  8870-7013, (tachycardia)
- Cardiovascular signs or symptoms
  8870-7005, ASHD
Examples of Analogous DCs Suggested by VA

● Fatigue
  8863-6354, CFS
● Fatigue
  8877-7700 Anemia
● Gastrointestinal signs or symptoms
  8873-7305 Ulcer or
  8873-7319 IBS
● Headache
  8881-8100 Migraine headaches
● Joint pain
  8850-5002 Rheumatoid arthritis
Examples of Analogous DCs Suggested by VA

- Menstrual disorders
  8876-7622 Uterus displacement

- Muscle pain
  8850-5021 Myositis

- Neurologic signs or symptoms
  8885-85___ peripheral neuropathy

- Neuropsychological signs or symptoms
  8893-9300 Organic mental disorder
Examples of Analogous DCs Suggested by VA

- Signs or symptoms (skin)
  8878-7806 eczema
- Sleep disturbances
  8894-9400 Generalized anxiety
Hypo #1:

Vet is SC for hyperhidrosis of feet w/ episodes of dyshidrotic dermatitis (dyshydrotic dermatitis is eczema & causes burning/itching & blisterring rash)

Rated 10% under DC 7806 (dermatitis)

was just denied an increase
Hypotheticals on Analogous Rating

- 7806  Dermatitis or eczema (also contains a 60% disability level)
- 30%=
  - 20% to 40% of entire body or 20% to 40% of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for total of 6 weeks or more, but not constantly, during past 12-months
10% =

- At least 5% but < 20% of the body, or at least 5% but less than 20% of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for < 6 weeks during past 12-months
Hypotheticals on Analogous Rating

- Claims he should be evaluated under
  - DC 7832 (hyperhidrosis of the hands) or
  - DC 5284 (foot injuries)
- 7832 Hyperhidrosis
  - 30% Unable to handle paper/tools because of moisture & unresponsive to therapy
  - 10% Able to handle paper/tools after therapy
Hypotheticals on Analogous Rating

- 5284 Foot injuries, other:
  - 30%--Severe
  - 20%--Moderately severe
  - 10%--Moderate
Hypo #2:

- Vet is SC for clubfoot
- Some DCs that could apply:
  - DC 5277 (bilateral weak foot)
  - DC 5312 (injury to muscle group XII)
  - DC 5276 (acquired flatfoot)
  - DC 5278 (acquired claw foot)
  - DC 5284 (other foot injuries)
Vet is SC for mechanical back pain w/ scoliosis & degenerative changes

DCs that may apply:

- General Rating Formula for Diseases and Injuries of the Spine (38 CFR § 4.71a)
- Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes (38 CFR § 4.71a)
- DC 5242 (Degenerative arthritis of the spine) (see DC 5003)
- DC 5025 (fibromyalgia) (unlikely)
Hypotheticals on Analogous Rating

Questions?