ORTHOPEDIC DBQS: THE GOOD, THE BAD, AND THE UGLY
WHAT ARE DBQS?

- DISABILITY BENEFITS QUESTIONNAIRES
  - Forms for vets to take to their own doctors
    - Private physicians
    - VAMC physicians
  - Supposed to include all information relevant to decide disability rating
    - Probably NOT service connection, effective date, TDIU
WHAT ARE DBQs?

- No publicly available DBQs for:
  - Gulf War/undiagnosed illness
  - Hearing loss and tinnitus
  - Initial PTSD exam
  - Cold injuries
  - TBI
  - POW
WHAT ARE DBQS?

- Implemented as part of the VBA Transformation Plan
  - VBA’s effort to deal with backlog
    - Backlog = claims pending for 125 days or more
  - Full report available at www.benefits.va.gov/transformation
WHAT ARE DBQS?

- Support the Fully Developed Claim (FDC) Program
  - FDC Program – veteran submits everything needed to process claim in one package
    - Designed to reduce processing time, and in turn, backlog
  - FDCs have been discussed during this training
- DBQs are intended to streamline all claims – both FDC and non-FDC claims.
WHAT ARE DBQS?

- Available on internet
  - [http://benefits.va.gov/TRANSFORMATION/dbqs/ListByDBQFormName.asp](http://benefits.va.gov/TRANSFORMATION/dbqs/ListByDBQFormName.asp)
  - Advocates can give to vets to bring to doctors
  - The 16 musculoskeletal DBQs are VA Forms 21-0960M-1 through 21-0960M-16

- If information contained in completed DBQ inadequate, VA will schedule C&P exam or possibly deny the claim
ORTHOPEDIC DBQS: THE GOOD

- Limitation of motion is reported in a way that can be translated to a disability rating

  + Most conditions are rated based on limitation of motion
Limitation of motion = reduction in normal excursion

- Excursion – movement occurring from a normal, or rest, position of a movable part in performance of a function
- 38 C.F.R. § 4.40 – Disability is the inability to perform movements with normal excursion
ORTHOPEDIC DBQs: THE GOOD

- DBQs also provide sufficient information for adjudicator to determine degree of limitation after three repetitions
- Examiner is asked to conduct three repetitions and note range of motion after repetitions
ORTHOPEDIC DBQS: THE GOOD

- Provide sufficient information to determine whether separate ratings are warranted
Examples of separately ratable disabilities
- Limitation of motion/painful motion/functional loss
- Recurrent dislocation
- Instability
- Associated neurological conditions
- Associated muscle disabilities
ORTHOPEDIC DBQS: THE GOOD

❖ Each DBQ asks physician to list each diagnosis

+ Knee – meniscus injuries
+ Shoulder – humerus problems
+ Spine – sciatica/radiculopathy
Knee DBQ provides info sufficient for adjudicator to determine whether separate ratings are warranted for:

- Instability/subluxation (5257)
  - VA General Counsel opinion 23-97
- Symptomatic removal or dislocation of meniscus (5258/5259)
- Scars
ORTHOPEDIC DBQS: THE GOOD

- Shoulder DBQ provides info sufficient for adjudicator to determine whether separate ratings are warranted for:
  - Recurrent dislocation (5202)
  - Impairment of clavicle or scapula (5203)
  - Scars
Cervical/thoracolumbar spine DBQs provide info sufficient for adjudicator to determine whether separate ratings are warranted for:

- Neurological impairments (Note 1 to General Rating Formula for Diseases and Injuries of the Spine)
- Scars
Physicians are asked about painful motion

38 C.F.R. § 4.59

“It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint.”
Translation: painful motion = 10 percent rating

- Even if no compensable limitation of motion
- *Litchenfels v. Derwinski* – DC 5003 (arthritis) and § 4.59 require 10 percent for painful motion without actual limitation of motion
- *Burton v. Shinseki* - § 4.59 applies to all joint disabilities, not just arthritis
ORTHOPEDIC DBQs: THE GOOD

- BUT painful motion alone is NOT limitation of motion – *Mitchell v. Shinseki*
  + Pain *throughout* range of motion does not mean vet is entitled to maximum rating
  + Vet *is* entitled to at least 10 percent under § 4.59 (*Burton v. Shinseki*)
  + If vet has actual limitation of motion, entitled to higher rating (if any) provided for in DC
  + If vet does not have compensable limitation of motion, pain must cause *functional loss* in order to get more than 10 percent
ORTHOPEDIC DBQS: THE BAD

- DBQs do not provide sufficient information for the adjudicator to determine the degree of functional loss
ORTHOPEDIC DBQS: THE BAD

38 C.F.R. § 4.40

Functional loss = "[T]he inability ... to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance."
ORTHOPEDIC DBQS: THE BAD

38 C.F.R. § 4.40

- Functional loss is:
  - Decreased or abnormal movement
  - Decreased or abnormal strength
  - Decreased or abnormal speed
  - Decreased or abnormal coordination
  - Decreased or abnormal endurance
ORTHOPEDIC DBQS: THE BAD

- 38 C.F.R. § 4.40
  - Possible causes of functional loss
    - Missing bones or muscles
    - Deformity
    - Defective innervation (distribution of nerves to joint)
    - Pain supported by adequate pathology and evidenced by the behavior of the vet (wincing, groaning, spasms, etc.)
  - Whether these things cause functional loss is a medical determination – *Mitchell v. Shinseki*
In layman’s terms, functional loss is the inability to use the joint normally

- Vet may be able to actually move the joint, but normally won’t because of weakness, lack of strength, incoordination, or lack of endurance

- Pain alone is not functional loss, but may cause weakness, lack of strength, incoordination, or lack of endurance
ORTHOPEDIC DBQS: THE BAD

- *DeLuca v. Brown*
  - Examiner must provide opinion as to whether there is additional functional loss when the joint is used repeatedly over a period of time
  - If the veteran reports flare-ups, the examiner must provide an opinion as to whether there is additional
  - To the extent feasible, these opinions must be expressed in terms of loss of range of motion
Mitchell v. Shinseki

“[F]unctional loss caused by pain must be rated at the same level as if that functional loss were caused by some other factor . . . that actually limited motion.”

In order to apply this rule, examiner must state where on the range of motion functional loss occurs.
ORTHOPEDIC DBQS: THE BAD

- DBQs do not provide sufficient information for adjudicator to determine whether there is additional functional loss during flare-ups
  - Ask examiner to provide description of flare-ups in vet’s own words
  - Do not ask examiner to render an opinion in terms of additional range of motion loss
  - Under DeLuca and Mitchell, this is a medical determination
ORTHOPEDIC DBQS: THE BAD

- DBQs do not provide sufficient information for adjudicator to determine whether there is additional functional loss when the joint is used repeatedly over time
  - Only ask examiner to perform a minimum of three repetitions
  - Do not ask examiner to provide opinion as to when joint is used “repeatedly over time,” (i.e., more than three times in a short period of time)
DBQs do not provide sufficient information for the adjudicator to determine at what point in the range of motion functional loss occurs.

Ask examiner to determine whether functional loss is present, but not where it occurs on the range of motion.
ORTHOPEDIC DBQs: THE UGLY

Since DBQs do not provide sufficient information to determine proper rating based on functional loss, the vet and his/her advocate must ensure that this information makes it to the claims file.
ORTHOPEDIC DBQS: THE UGLY

- Ask physician to provide information at the time the DBQ is completed
  + Give vet a written request to bring to physician
Dear Dr. Doolittle:

In addition to providing the information requested in the attached DBQ, please discuss the following:

If Veteran suffers from abnormal motion, or decreased strength, endurance, or coordination, please indicate where on the range of motion it occurs. If the Veteran describes flare-ups, please provide an opinion as to whether there is additional functional loss (i.e., decreased or abnormal excursion, strength, speed, coordination, or endurance) during flare-ups and, if feasible, indicate where on the range of motion such functional loss is expected to occur.

See Next Slide
In addition, please provide an opinion as to whether there is additional functional loss when the joint is used repeatedly over time, and if so, where on the range of motion the additional functional loss is expected to occur.
ORTHOPEDIC DBQS: THE UGLY

- Other sources of information regarding functional loss
  - Treatment records
  - Lay statements
ORTHOPEDIC DBQS: THE UGLY

- Treatment records
  - ER visits during flare-ups
    - Might include ROM testing
  - Vet’s complaints to treating physicians
    - EXAMPLE: vet complains that knee is so swollen and painful at the end of day that can’t move it
      - Shows complete functional loss when the knee is used repeatedly over time
    - EXAMPLE: vet complains that when flare-up of back pain occurs, must spend the day in bed
      - Shows full functional loss during flare-ups
ORTHOPEDIC DBQS: THE UGLY

- Lay statements
  - Vet should detail what happens during flare-ups and when joint is used repeatedly over time
    - EXAMPLE: vet states that during flares, must use a hanger to pick objects up off the floor because can’t bend forward
    - EXAMPLE: vet’s husband states that at the end of the day vet is unable to move ankle and must keep it elevated for several hours