OBJECTIVE

- WHAT ARE COMPENSATION SERVICE BULLETINS?
- REVIEW COMPENSATION SERVICE BULLETINS THROUGH JANUARY 2014
COMPENSATION BULLETINS

- VA Exams > one year old, VA should rate (11/12)

- Claims folder to be available for the examiner’s review in any case involving a mental disorder examination. M21-1MR III.iv.3.a.1, (12/12)
NO future exams are requested when
(1/13)
- Recovery not anticipated
- Static over 5 yrs.
- Over 55 years of age – exceptions exist
- Disability at prescribed minimum
- Comb eval. not changed if disability reduced.
(38 CFR 3.327)
Criteria for Hardship Claims (12/12)

Veteran’s statement plus some documentation

- eviction notice or statement of foreclosure,
- past due utilities notice,
- collection notices from creditors, or
- the designation of the Veterans Service Center Manager (VSCM).
Untimely Notice of Disagreements, NOD (10/13)

- If a claimant files an untimely NOD, VA must notify claimant of appellate rights.
- An untimely NOD is not automatically determined to be a claim to reopen a previously disallowed claim.
- The untimely NOD and any accompanying evidence must also be reviewed to determine if it demonstrates **intent** to reopen claim.
Pain on Motion (3/13 & 10/13)


- Examiner must express an opinion on whether pain could significantly limit functional ability during flare-ups or upon repeated use over a period of time.
Pain on Motion  (10/13) DC 5260 Cont.

- Knee flexion – limited to 60 degrees = 0%

- Knee flexion – limited to 60 degrees + 10 degrees more due to Deluca = 10%

- Knee flexion – limited to 60 degrees + 30 degrees more due to Mitchell = 20%
JOINT: Pain on Palpation & 38 CFR 4.59 (9/13)

- Palpation is application of pressure of the hand or fingers to the surface of the body to determine size, shape, or firmness of an underlying part or organ. Examiner may document pain or tenderness to palpation of the body part.

- Mere presence of pain on palpation of a joint does not trigger the application of 38 CFR 4.59 for assignment of a compensable evaluation.
Threshold for Examination with Medical Opinion (4/13) & (12/13)

Standard - evidence of record “indicates that claimed disability/symptoms may be associated with the established event, injury, or disease in service or with another SC disability.” 38 CFR 3.159(c)(4)(i).

- Vet’s claim, unenhanced by a medical nexus evidence or lay testimony does not establish such “indication of association”
Threshold for Examination with Medical Opinion (4/13) & (12/12)

- Evidentiary threshold is low. Lay statement of continuity of symptoms would generally satisfy it, as would private MO, even if based upon incomplete data. McLendon v. Nicholson, 20 Vet.App. 79
Example 1
The Veteran claimed “back condition” and had only one complaint of a sore back during service with no evidence of a back disability at separation. The Veteran’s current claim provided no medical evidence of continuity and no statement that the current disability persisted since military service.

- VA can deny without an examination/opinion, as there is no “indication of association.”
Example 2
Using the same fact pattern as in example 1, with one addition. The Veteran claimed “I hurt my back unloading a truck in service, and it has hurt ever since that time,”

- An examination with a nexus opinion would be warranted, as all of the requirements of 38 CFR 3.159(c)(4)(i) have been met.
Protection of Special Monthly Compensation (SMC) Rates (1/14)

- **38 CFR 3.951(b)**, SC disability continuously rated at or above any evaluation of disability for 20 yrs. will not be reduced unless the evaluation was based on fraud.

- The 20-year rule also applies to SMC.
Understanding Ejection Fraction (6/13)

- DCs 7000-7007, 7015, 7017-7020 are based on left ventricular dysfunction and the level of left ejection fraction percentage.
- Physicians often document the finding with a numerical range, rather than an exact number, such as 45-50% or 50-55%.
  - Left ejection fraction percent of 50-55%, more than 50% but less than 55%. 

MOPH Training  Orlando, FL  March 2014
Understanding Ejection Fraction

A left ejection fraction of less than 30% = 100%.
A left ejection fraction of 30% to 50% = 60%

❖ A left ejection fraction documented as 45-50% would warrant what?
❖ A left ejection fraction documented as 25-30% would warrant what?
❖ A left ejection fraction documented as 50-55% would warrant what?
Carpal Tunnel Syndrome 38 C.F.R. § 3.309(a) (12/12)

- Compression of the median nerve. Commonly associated with repetitive motion but may be idiopathic or caused by as diabetes, hypothyroidism, autoimmune diseases, or tumors.
- Results in neurologic signs and symptoms that, if untreated, or treated too late, may lead to permanent weakness and sensory loss in the hand.
- Carpal tunnel syndrome is a presumptive condition under § 3.309(a) subject to the rebuttable presumption provisions of § 3.307(d).
Migraine Headaches (7/13)

Organic disease of the nervous system. When triggered by various stimuli, this disorder sets off a chain of neurological and biochemical events, some of which subsequently affect the brain's vascular system.

SC if manifested to a compensable level within a year after the date of separation under the provisions of 38 CFR 3.309(a). Rescinds a 2000 decision stating that migraines not presumptive.
Fractures in Service (11/13)

Grant SC for claimed fractures that are documented in service, even if no current residuals, such as LOM or functional loss of a joint.

- Noncompensable.
- STR noting a fracture not sufficient.
- Documentation by X-ray, surgical report, casting of an extremity, or physical evaluation board report that confirms the fracture is sufficient.

VA will solicit a claim if evidence is found and a claim for a fracture wasn’t made.
Osteopenia vs. Osteoporosis (12/13)

- Osteopenia is defined as mild bone density loss often associated with the aging process. Indicates low bone density not bone loss. Lab finding.
  - **NOT a disability. NO service connection**

- Osteoporosis, is considered a disease entity, characterized by severe bone loss that may interfere with the mechanical support structure function of the bone.
Evaluation for Plantar Fasciitis (7/13)

- Rated analogous to DC 5276, Flat Foot
- Most common symptom is heel pain.
- **38 CFR 4.59** may not be applied as heel is not a joint.
- Heel pain is consistent with the criteria for a moderate disability, “pain on manipulation and use of the feet” under DC 5276 and would warrant a 10 percent evaluation.
Service Connection for Hypertension (9/13)

To establish SC a diagnosis of hypertension must be confirmed by serial readings on at least three different days. 38 CFR 4.104, DC 7101, Note (1).

- If SC established, future evaluations do not warrant serial readings on at least 3 separate days to rate.
Hypertension Cont.

- Absence of serial readings on separate days in a VA or private exam after SC established doesn’t render the exam inadequate for rating solely on that basis.
SC may not be granted for male pattern baldness or androgenetic alopecia. (10/13)

- congenital or developmental abnormalities
  - 38 CFR 3.303(c), and 38 CFR 4.9.

- VA recognizes two types of hair loss, scarring alopecia, DC 7830 and alopecia areata, DC 7831
COMPENSATION BULLETINS

Sleep Apnea and Home Sleep Studies (5/13)

- DX of sleep apnea must be confirmed by a sleep study.

- Home sleep study accepted if clinically determined that Vet can be appropriately evaluated by a home sleep study. Must be evaluated by a competent medical provider.

- If SC for sleep apnea established w/o a sleep study, exam with sleep study will be established to clinically confirm the DX.
  - Severance if less than 10 yrs.
If a DBQ is completed by a licensed health care professional who is not a medical doctor, VA may accept it as adequate for rating purposes.

Exceptions to this rule concerns initial, review, and examinations for an increase in a mental disorder, see FL 06-03 and

If PTSD is based on a stressor relating to Vet’s fear of hostile military or terrorist activity, 38 CFR 3.304(f)(3).
**TDIU and Volunteering (9/13)**

- Volunteer work alone is **not** sufficient basis to warrant reduction of a TDIU evaluation.

- However, use of marketable abilities or skills over a sustained period may demonstrate ability to obtain/maintain gainful employment to warrant reduction of a TDIU evaluation under 38 CFR 3.343(c)(1).
Evaluation for Mental Health Disabilities Using the Evaluation Builder (9/13)

- Mental disorders calculator produces a suggested evaluation, based upon data input.
- It does not replace the rater’s judgment the decision maker is still expected to review and weigh the evidence in assigning an evaluation.
- It will allow an evaluation of **one level up** or below the suggested evaluation.
Color Photographs and Evaluating Scars (7/13)

Note (3) under DC 7800 directs the following: “Take into consideration unretouched color photographs when evaluating under these criteria.”

- If color photos accompany exam, rating specialists must consider this evidence. If color photographs are unavailable, the scar should be rated based on the findings reported by the examiner. Do not return the exam as insufficient and request color photographs.
Establishing Stepchildren - Dependents (3/13)

- Vet’s statement sufficient to establish a stepchild as a dependent per 38 C.F.R. § 3.204(a)(1)
  - Date (month, day and year) and place of the event
  - Full name & relationship of the other person to vet
  - SSN of the child
  - When the claimant’s dependent child does not reside with the claimant, the name and address of the person who has custody of the child.
Dependency Development (9/13)

In all cases, when additional information from the claimant is required, claims processors must attempt to obtain the information by telephone. This is the preferred method of communication for confirming dependency information. Document all information received by telephone from the claimant on VA Form 27-0820, Report of General Information (M27-1, Part I.5.8.c), or equivalent.
Loss of a Dependent (5/13)

Question?

- 10-4-2011 - Vet filed original claim for SC
- 09-15-2012 - Vet divorces wife of 10 years
- 08-10-13 VA - grants 100% from 10-4-2011

Is the vet entitled to be paid for the wife?
If so, what date is the wife taken off the award?

M21-1MR, Part III, Subpart iii, 5.F.36.
EXTRACURRICULAR QUESTIONS:

1. Two married vets, Bob & Jane, have a child, Junior. Each vet is receiving 30%. Which vet is entitled to the additional compensation for the child?

2. From the example above, Bob divorces Jane. Jane marries Tom who is also a 30% disabled vet. Bob lets Tom adopt Junior. Who is entitled to the additional compensation for the child?
EXTRACURRICULAR QUESTIONS Cont:
Jim, a 50% disabled vet, marries Ellen who has a child, Bob, from an earlier marriage. Jim receives the additional allowance for a stepchild. Jim and Bob have a great relationship but Jim divorces Ellen. Bob now lives with his mother, Ellen!

Can Jim still receive an additional dependency allowance for Bob?