

# CHAPTER 21

## STUDY PLAN

# HOW TO READ A RATING DECISION

## OBJECTIVE

To become familiar with the format of a rating decision and to understand reasons for the decision in order to advise the veteran on the best course of action if the decision is not favorable.

## REFERENCES

- 38 Code of Federal Regulations, Part 4
- Adjudication Manual M21-1MR (Manual Rewrite), Part 3, Chapter 6, Sections B, C, D, and E
- Veterans Benefits Manual, § 16.3.2.4

## INTRODUCTION

In order for an advocate to adequately advise a veteran as to whether or not a VA rating decision is both a fair representation of the facts, and accurate interpretation of the law, he or she must be familiar with the basic format of the rating decision, understand whether all the relevant issues claimed or inferred were properly and adequately addressed, and be able identify which elements must be satisfied if the veteran wishes to pursue the claim further.

If the advocate determines that the reason for denial was a lack of evidence to support some aspect of the claim, the best course of action is to try to collect the needed evidence and submit it within one year—as a request for reconsideration—in order to avoid a years-long appeal process. If, however, the VA has misjudged the evidence, failed to sufficiently explain its decision, or erred in some other way, an appeal will be necessary.

## TYPES OF ISSUES

When a claim is deemed "ready for decision" and referred to a VA Rating Veterans Service Representative (RVSR), the RVSR must decide all issues and claims, whether they are expressly claimed issues, reasonably raised claims, or unclaimed subordinate issues and ancillary benefits.

An **expressly claimed** issue is one that is specifically listed by the veteran on a VA form or other written correspondence where the disability is claimed for service connection. For example, where a veteran files a claim for diabetes mellitus, type II, due to Agent Orange exposure in Vietnam, his diabetes mellitus is an expressly claimed issue.



A **reasonably raised** issue is one that is not specifically claimed by the veteran, but it is directly related to the claimed issue. For example, if the veteran above, who is only claiming service connection for diabetes mellitus, Type II, receives a diagnosis of peripheral neuropathy of the lower extremities and diabetic retinopathy during his C&P exam, the RVSR can take these issues into consideration even though the veteran did not specifically claim them.

Note that a RVSR is **never** to infer an issue, only to deny it. It will only be inferred if it can be granted.

A **subordinate** issue is derived from the consideration or outcome of related issues. For example, where a veteran is granted service connection at 100% for his/her claimed amyotrophic lateral sclerosis (ALS), and the VA examination shows that the veteran requires the daily assistance of his/her spouse to attend to his/her activities of daily living, the subordinate issue would be consideration of aid and attendance or housebound under Special Monthly Compensation (SMC).

An **ancillary** issue is a benefit that is secondary to the issues specifically claimed. Examples of ancillary benefits are Dependents' Educational Assistance under Chapter 35 (DEA), Specially Adapted Housing, Automotive and Adaptive Equipment, and Vocational Rehabilitation.

## BASIC FORMAT OF THE RATING DECISION

Traditionally, the decision consists of the Notice of Decision, the Narrative, and the Code Sheet. In March 2012, the VA started using a **simplified notification letter (SNL)** in some cases. The SNL is not used in cases of TBI, pension, survivor claims, claims for an earlier effective date, reduction of a disability evaluation, and clear and unmistakable error (CUE) claims. The traditional format and the SNL format are discussed separately below.

### TRADITIONAL RATING DECISION

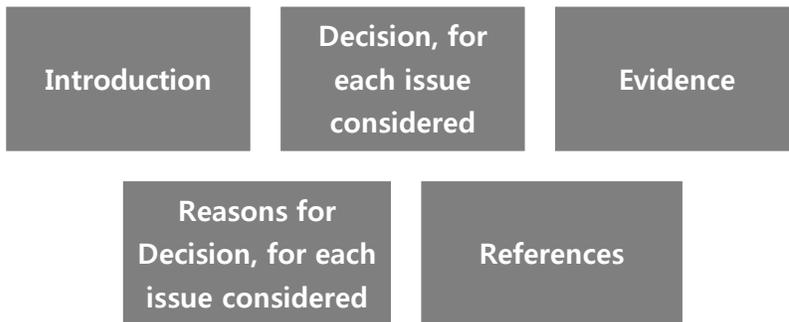
#### Notice of Decision

The Notice of Decision is typically stapled on top of the Narrative Decision. The date on the Notice of Decision is the date that starts the one-year clock for submission of new and material evidence for reconsideration or a Notice of Disagreement. The Notice of Decision briefly explains the VA's decision. Where benefits are granted, the Notice of Decision will also specify the amount of and effective date for payment. The Notice also advises the veteran of the right to appeal and attaches a number of forms for the veteran's use (e.g. VA Form 21-686c, *Declaration of Status of Dependents*).



## Narrative

The narrative includes the following elements:



### Introduction

The purpose of the *Introduction* is to:

- Identify the claimant, and
- Acknowledge the veteran's qualifying service, including any special considerations relevant to the claim, such as former prisoner of war (POW) status.

### Decision

The *Decision* lists the issues and specific outcomes for each (whether a grant, denial or deferral), and assigns a rating and effective date for each issue granted.

### Evidence

The *Evidence* includes a clear and concise inventory of all evidence considered in arriving at the decision, including the following information:

- Applicable dates, such as dates covered by service treatment records (STR), identifying at least the month and year;
- Treatment reports;
- Hospitalizations;
- Information sources, such as the names of:
  - Department of Veterans Affairs (VA)



#### ADVOCACY TIP

A review of the evidence listed is very important for the advocate to go over with the claimant, as pertinent evidence may have been overlooked or never obtained by the VA, which could have been significant to the outcome of the decision. It is not uncommon for VA to exclude from this list evidence the VSR submitted.

- and private medical facilities
- Private physicians
- Other information sources; and
- A list of items of evidence requested but not received.

## REASONS FOR THE DECISION

This is the most significant part of the rating decision. It is a window into the thinking of the RVSR as to how he or she reached the decision. In writing a rating decision, the RVSR has a number of requirements to fulfill; if he or she fails to do so, it is reason enough for an appeal. Some raters simply quote the Schedule of Rating Decisions diagnostic code for the condition and the assigned rating; this is unacceptable and may be appealed. Although each RVSR has her or his own writing style, she or he should outline in detail how the evidence considered and the regulations applied brought her or him to this conclusion. The RVSR must support all conclusions with an adequate level of analysis and explanation. For example, where service connection is granted, the RVSR must state or discuss the in-service event and/or developments that link the condition to service, the basis for the percentage evaluation, the requirements for the next higher evaluation, and the basis for the effective date.



If the RVSR denies service connection, he or she must cite and evaluate all evidence that is relevant and necessary to the determination, address all of the claimant's contentions, and clearly explain why that evidence is found to be persuasive or unpersuasive. If the reason for the denial is that there is no record of treatment in service, the RVSR should state that a thorough review of the STRs did not show complaints of, treatment for, or a diagnosis of the condition being claimed. If there is treatment in service, but the RVSR finds it to be treatment for a condition that is merely *acute and transitory* (e.g., a sprained ankle, or a bout of bronchitis), the VA should still grant service connection *if* that in-service diagnosis or symptomology was an early manifestation of a chronic condition diagnosed after service.

Keep in mind, however, that in order to obtain service connection this way, the current diagnosis must be one of the chronic conditions listed in 38 C.F.R. § 3.309(a), and a medical professional has to state that the current chronic condition is a continuation of that in-service symptomology.

In many instances, the RVSR must request a medical opinion from a physician before making a determination as to whether a current condition may be related to some in-service event or not. The advocate should be cognizant for situations in which the RVSR fails to request a medical opinion and dispute any decisions where the RVSR makes a medical determination that only a medical professional has the qualifications to make.

If the RVSR grants service connection, she or he must refer to the Schedule for Rating Disabilities in 38 C.F.R., Part 4, to find the proper diagnostic code (DC) for each condition, and assign a percentage evaluation based on the medical evidence and how it fits into the criteria for the evaluation for that condition. The RVSR must explain how the evidence in the case relates to the disability criteria for the evaluation assigned. For example, when assigning a 10 percent evaluation to a knee disability, the RVSR should state: "You meet the criteria for a 10 percent evaluation because at your examination, slight instability was found in your left knee."

The RVSR should also state the criteria for the next higher evaluation under that diagnostic code and explain why the veteran does not meet the criteria for the next higher evaluation. For example: "You do not meet the criteria for the next higher evaluation of 20 percent because the evidence does not show that your knee instability is moderate."



### ADVOCACY TIP

Some of the criteria for evaluation are very subjective, and an argument for a higher evaluation can always be made with supporting evidence for the next higher evaluation. Remember, advocates should assist veterans in obtaining the highest possible rating warranted for each condition claimed.

When reviewing a rating decision, the advocate must look at the *Reasons and Bases* the RVSR uses to explain his or her decision. Unless the advocate has a copy of all of the evidence that was considered by the RVSR in the decision, he or she should review copies of the documents in VBMS. Sometimes, the veteran has copies of evidence submitted that can readily prove the RVSR has made a mistake. For example, if the rating decision states the basis for the denial of service connection is that there is no evidence of treatment in service, yet the veteran has a copy of his/her STRs that clearly show treatment, the denial should be disputed. (Note this may be a an opportunity for a reconsideration or Clear and Unmistakable Error (CUE) claim; refer to Chapter 2, *VA Claims Process*, for additional information on CUE claims). In addition, if the decision cites medical evidence that shows a less severe degree of disability, yet the veteran submitted evidence indicating a higher degree of disability, this too should be submitted for reconsideration. The advocate's role is to review the rating decision with the veteran, explain the RVSR's expressed rationale for the decision to the veteran—in non-technical terms—and together determine what evidence may be obtainable for a more favorable decision. For example, if the denial states that there was no evidence of current diagnosis of the claimed condition, the veteran would need to obtain this from his physician. Alternatively, if an increased evaluation is denied, the veteran needs to obtain medical evidence that more closely approximates the criteria for the next higher evaluation. If the advocate disagrees with the RSVR's subjective opinion or believes the RSVR has erred, options for appeal should be explained to the veteran as well. **An appeal should only be filed if it has merit; a veteran's dissatisfaction is not sufficient reason to appeal.**

### **EFFECTIVE DATE**

Finally, the RVSR must assign an effective date and explain why that effective date is assigned. Generally, the effective date will be the date of claim, but the RVSR must also consider situations where an earlier effective date is possible (e.g. a claim filed within one year of separation from active duty or presumptive service connection that allows for an earlier effective date).

## REFERENCES

The *reference* most often listed is 38 C.F.R., Code of Federal Regulations, with no specific sections listed.

## CODE SHEET

The code sheet is attached at the end of the narrative. It is not sent to the veteran, only to the advocate. The code sheet includes the following:

- Data table;
- Jurisdiction;
- Coded conclusion; and
- Signature(s).

## DATA TABLE

The Data Table consists of the following:

- The Active Duty fields contain the dates of the veteran's active duty service (EOD & RAD), the branch of service, and the character of discharge .
- The Legacy Codes provide information on additional service, combat status, special provisions and future exam dates.
- Additional Service Code is automatically generated when the VA Rating Veterans Service Representative (RVSR) selects combat-related disabilities. It shows **1-WT** for additional service, some of which is wartime; **2-PTE** for additional service, all of which during peacetime; and **3-SCD** is only used in pension ratings for veterans with less than 90 days service and was discharged for a service-connected disability.

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
02/19/2002	08/05/2005	Marine Corps	Honorable for VA Purposes

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	3		None

- Combat Status Code refers to combat disabilities: "1-None" is for no combat disabilities; "2 (Comp)" is for one or more combat disabilities, all of which are compensable; "3 (NonComp)" is for one or more combat disabilities, none of which are compensable; and "4 (Both)" is for more than one combat disabilities, not all of which are compensable.
- Special Provision Codes (SPC) are used to identify those rating cases that contain an evaluation or combined degree that would not ordinarily be acceptable but for a special provision of the rating schedule or other VA regulation. SPC **1** indicates Medal of Honor pension; SPC **2** indicates Naval pension allowance; SPC **3** indicates extra-schedular entitlement to IU or pension; SPC **4** indicates an under-schedular evaluation (by reason of deduction of the pre-service level of disability) to a pre-service disability aggravated by service; SPC **5** indicates veteran incarcerated, pension awarded to dependents under 38 CFR 3.666; SPC **6** may indicate one of the following – computer audit acceptance of any combination of the special provision codes, a total evaluation is continued because it is protected under 38 CFR 3.951, or acceptance of a combined evaluation that is not justified by the individual evaluations; SPC **7** indicates disability of death compensation (DIC) under 38 USC 1151.
- On the field showing whether a future exam is necessary to continue entitlement, the month and year of the exam is entered in the field, unless there will be none (in which case it states "none").
- Another field *only appears* if the veteran is receiving special monthly compensation, in which case it reads "SMC".

## JURISDICTION

The jurisdiction section of the code sheet explains why the case is before the rating activity, refers to the claim at issue, and cites the pertinent jurisdictional date(s).

## CODED CONCLUSIONS

This section lists all disabilities that have been found to be service-connected and subject to compensation and those found to be not service-connected/not subject to compensation. Each disability is listed separately and given the Schedule of Rating Disabilities diagnostic code assigned. Some disabilities do not have a specific listing in the rating schedule so must be assigned a diagnostic code that is *analogous* to a similar disability in the rating schedule. These disabilities will be shown with a hyphenated diagnostic code. Each disability will be described with the applicable evaluation, its historical evaluations, and effective dates.



### ADVOCACY TIP

The coded conclusion with its clear list of disabilities and their historical evaluation, and the effective dates can be the easiest way for an advocate to learn about the veteran's history of claims.



### SIGNATURE(S)

Each rating decision must be signed by the RVSR who makes the decision. Sometimes there is a second signature because the RVSR is not yet at a journeyman level and their work must be reviewed by a journeyman RVSR or a Decision Review Officer. In special circumstances, the Veteran Service Center Manager must also sign the rating decision (e.g. a clear and unmistakable error has been called on a prior rating decision, there is an extra-schedular grant of permanent and total disability for pension, or if the decision will result in a very large retroactive award).

### SIMPLIFIED NOTIFICATION LETTER

The SNL is in the form of a notice letter, but provides more detailed reasons for the VA's decision than the Rating Decision itself. However, the rationale for the decision is greatly shortened from that of the traditional Reasons for Decision. The Rating Decision does not have Introduction, Decision, Reasons for Decision, and References sections. Instead, it has an "Evidence Summary" that lists the evidence considered and evidence that the VA requested but did not receive.

The code sheet of the SNL is almost the same as a traditional rating decision, but it contains an additional box in which a single sentence states the disability evaluation and effective

date for benefits. Where a claim is denied, a code explains the denial using a standardized denial rationale.

### **HYBRID RATING DECISION**

For cases in which the VA must use the traditional rating format for some issues, but can use SNL for others, the VA uses a hybrid approach using the traditional format for those issues in which it is required and the SNL format for the others.

**Note:** The VA only used the Simplified and Hybrid Rating Decision versions for about a year, they have since reverted back to the traditional Rating.



## STUDY QUESTIONS

Using the assigned references and reading materials, answer the following questions:

1. What is the term used when a particular condition is not listed in the Rating Schedule, so the VA uses the rating criteria for another condition that affects the same body system and has similar symptomatology?
2. The *Decision* section of the Rating Decision that grants service connection covers:
  - a. The determination that the issue is service connected
  - b. The assignment of an evaluation
  - c. The effective date
  - d. All of the above
3. What section of the *Code Sheet* would indicate if a future exam is directed?
  - a. Reasons for Decision
  - b. Jurisdiction
  - c. Data Table
  - d. Coded Conclusions

M21-1MR, Part 3, Subpart IV, Chapter 6, Section D, 13(a)

4. The veteran served on active duty from July 1, 1969 to June 30, 1971 and from November 15, 1972 to December 1, 1973. The Rating Decision denied service connection stating that the service treatment records do not contain any complaints of, diagnosis of, or treatment for the claimed conditions. The *Evidence* section of the decision lists the following evidence that was considered:
  - Service treatment records November 1972 to December 1973
  - VAMC Phoenix outpatient treatment records December 2012 through January 2014
  - VA examination report of December 15, 2013

Is this Rating Decision adequate? (Y/N)

*Why or why not?*

5. The veteran is granted service connection at 100% for multiple sclerosis because he/she is confined to a wheelchair. The Rating Decision also grants entitlement to

specially adapted housing. The consideration of the specially adapted housing entitlement is what type of issue?

- a. Expressly claimed
- b. Reasonably raised
- c. Subordinate
- d. Ancillary

6. The veteran filed a claim for an increased evaluation for his/her service-connected disability. The veteran was afforded a VA exam. The Rating Decision listed the VA exam as evidence but denied an increase stating: "*The evidence does not warrant any change in your current evaluation.*"

Is this Rating Decision adequate? (Y/N)

*Why or why not?*

7. All Rating Decisions must be signed by at least two Rating Veterans Service Representatives (RVSR). (T/F)