



# **AMA SMALL GROUP PRACTICAL EXERCISE**

# GENERAL INSTRUCTIONS



- **We will be covering hypothetical scenarios in which you help a veteran with a claim subject to the AMA**
- **First steps:**
  - Split into small groups for discussion
  - Designate one person per group who will share your group's answers



# HYP0 1

## SERVICE CONNECTION

# INITIAL MEETING WITH CLIENT



- **Jean - Army Vet, new client, needs representation**
- **Has a pending VA appeal and tells you:**
  - She filed a claim for compensation for GI symptoms in 2023
  - VA denied the claim and she filed an appeal, but she isn't sure which lane she chose
  - She does not know the current status of her appeal

# SMALL GROUP BREAKOUT



- Which VA form will you submit to become Jean's representative?
  - How will you file it?
- How can you help Jean check the status of her appeal, even before you get access to her claims file?

# DISCUSSION



# REVIEWING CLAIM STATUS



- You gain access to her claims file and review it
- **7/25/2023: Jean filed VA Form 21-526EZ**
  - She sought service connection for “GI problems – diarrhea, cramping, etc.” but didn’t submit medical records
- **10/7/2024: RO issued notice of 9/28/2024 rating decision**
  - Denied the claim, finding no current disability
    - No medical evidence shows current treatment for a GI condition
- **12/2/2024: Jean filed VA Form 10182**
  - Chose BVA hearing lane

# SMALL GROUP BREAKOUT



- **As of 9/30/2025, is Jean locked into her choice of the BVA hearing lane?**
- **What are some potential pros and cons of the hearing lane?**

# DISCUSSION



# REVIEWING EVIDENCE



- **You closely review the evidence on file:**
  - Military personnel records show she served from 2005 to 2009, with one deployment to Afghanistan
  - STRs show one instance of diarrhea and abdominal distress shortly after returning to U.S. from deployment
  - CAPRI records from 2015 to 2021 do not contain a GI diagnosis
  - In a VA Form 21-4138, Jean stated she has experienced frequent episodes of cramping, diarrhea, gas, and bloating since service
  - VA did not offer her a C&P exam before denying the claim

# SMALL GROUP BREAKOUT



- **Did the RO err by not providing her with a C&P exam?**
- **What questions could you ask Jean to identify possible sources of additional evidence?**

# DISCUSSION



# INTERVIEW WITH VET



- **Medical treatment:**

- Jean says she told a private doctor about her symptoms a few years ago, and the doctor suggested that she try Imodium
- She has been treating herself with OTC medications like Imodium ever since

- **Lay statements:**

- She says her husband has witnessed her symptoms
- They have been together since 2008

# SMALL GROUP BREAKOUT



- **What review/appeal option would you recommend to Jean and why?**
- **What are the drawbacks of the other options based on the facts of Jean's case?**

# DISCUSSION



# SMALL GROUP BREAKOUT



- **Jean decides to withdraw her BVA appeal and file supplemental claim**
- **What is the deadline for filing the supplemental claim in order to continuously pursue the issue?**
- **What does she need to submit to VA before that deadline?**

# DISCUSSION



# SMALL GROUP BREAKOUT



- **What do you need to submit to get VA to adjudicate the merits of the supplemental claim?**
- **What type of evidence would you recommend she submit or try to obtain?**
  - **What form should she submit to VA if she wants VA to obtain the private medical records?**

# DISCUSSION



# SMALL GROUP BREAKOUT



- You help Jean prepare / obtain additional lay statements, but she is unable to obtain new medical evidence sufficient to support granting her claim
- How would you frame an argument that Jean is entitled to a VA medical exam/opinion?

# DISCUSSION



# VA DEVELOPMENT



- **Jean withdraws her BVA appeal and files a Supplemental Claim on 10/6/2025**
  - You submit argument that VA should provide a C&P exam
  - You help Jean submit a VA Form 21-4142
- **VA obtains Jean's private treatment records**
  - Although there are only a few, one from 5/2022 includes a notation of "R/O IBS" and results of associated testing, but Jean did not return to the doctor
- **VA orders a VA exam, and the examiner**
  - Diagnoses IBS and states Vet has likely had IBS since at least 5/2022
  - Opines that the "IBS is less likely than not related to service, because the cause of IBS is not definitely known in the medical community"

# SMALL GROUP BREAKOUT



- **Is the evidence sufficient to support an award of service connection?**
- **If not, what else is needed?**

# DISCUSSION



# RATING DECISION



- **VA grants SC on a presumptive basis under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317**
- **VA assigns a 30% rating (highest schedular rating available for IBS)**
- **VA assigns an effective date of 10/6/2025, the date of her supplemental claim**

# SMALL GROUP BREAKOUT



- **Is the effective date correct?**
- **If not, which review option would you recommend to contest the effective date?**
- **How would you frame your argument that she is entitled to an earlier effective date?**

# DISCUSSION



# RESOLUTION



- **VA grants an earlier effective date of 8/10/2022 for SC for IBS, with a 30% rating**



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# **HYP0 2**

## **INCREASED RATING**

# MEETING WITH CLIENT



- **Ben – Navy Vet w/ TDVS POA**
- **Considering filing a claim for an increased rating of his major depressive disorder (MDD), one of his two SC disabilities (the other is tinnitus, rated 10% disabling)**
  - **MDD (DC 9434) is rated 30% disabling under the General Rating Formula for Mental Disorders, effective 7/1/2015**
  - **He says that his symptoms have gotten worse in the last year**

# MEETING WITH CLIENT



- He filed a claim for an increased rating of his MDD in 2020, which was denied in 2021, and he did not seek review of that decision
- Ben is nervous that if he applies for an increase, VA might decrease his MDD rating, and in turn his overall combined rating of 40%
  - He receives additional compensation for his dependents (wife and school-age daughter), which would end if his combined rating is reduced below 30%

# SMALL GROUP BREAKOUT



- **Is Ben protected from a rating reduction?**
- **What questions would you ask to evaluate the risk of VA proposing a rating reduction?**

# DISCUSSION



# FILING A CLAIM



- **You ask him more about his symptoms**
  - He has panic attacks every couple of days
  - He has become more isolated. He has no desire to stay in touch with old friends or make new friends. He spends most of his time on his couch, playing video games or napping.
  - He has an “okay” relationship with his wife and daughter, but it has become more strained as he has become more distant

# FILING A CLAIM



## • Ben's symptoms (cont'd)

- He often feels depressed and that he can't handle being around other people, so he takes many days off
  - He is self-employed as a handyman
- On the few occasions he does accept a job, more and more, he finds himself forgetting how to make certain repairs that used to be second nature to him. He often has to refresh his memory by watching YouTube videos. He sometimes forgets to send the customer a bill for his work.
- Rather than seeking professional care, he has been drinking alcohol and smoking marijuana as a way to cope with his symptoms

# SMALL GROUP BREAKOUT



- **Would you advise Ben to file a claim for an increased rating?**
- **If so, would you limit the application to MDD, or should you consider including any other issues?**

# DISCUSSION



# SMALL GROUP BREAKOUT



- **What questions would you ask to help you determine whether to claim entitlement to TDIU?**

# DISCUSSION



# EMPLOYMENT INFO



- **Ben tells you he usually works 2 or 3 days a week**
- **He earns about \$300-\$500 a week**
  - **Annually, this is probably a little over the poverty threshold of \$16,320**
- **He has a high school education**
- **Ever since leaving the Navy, where he served as an Engineman, he has worked as a handyman, sometimes for a company, but on his own for the past few years**

# SMALL GROUP BREAKOUT



- **Would you advise Ben to claim TDIU?**
- **If so, what form should Ben use to apply for:**
  - **Increased rating for MDD?**
  - **TDIU?**
- **What evidence will you try to obtain for his claim(s)?**
- **How can you preserve Ben's effective date while gathering evidence?**

# DISCUSSION



# FILING THE CLAIM



- On 9/30/2025, you file an ITF for Ben
- On 12/15/2025, you file complete claims for an increased rating for MDD and TDIU using VA Forms 21-526EZ and 21-8940, with supporting evidence including:
  - Lay statements from him and his wife detailing his symptoms and their impact on his ability to work
  - Records documenting income of \$18,900 from his handyman business over the past year
  - A DBQ completed on 10/15/2025 by a local psychiatrist, documenting MDD symptoms and occupational and social impairment consistent with a 50% rating

# VA ACTIONS



- **VA schedules Ben for a mental health conditions contract exam on 2/20/2026**
  - The examiner finds that his symptoms and level of occupational and social impairment are consistent with a 50% rating
- **On 4/2/2026, VA issues notice of a rating decision dated 3/30/2026:**
  - Granting a 50% rating for MDD, effective 2/20/2026
  - Denying entitlement to TDIU, because Ben does not meet the rating percentage requirements of § 4.16(a) and his income is above the poverty threshold

# SMALL GROUP BREAKOUT



- **Following a 2-week spring break vacation and 2 weeks of medical leave for treatment of a tropical disease you caught while on vacation, you return to the office on May 4, 2026, and review the rating decision**
- **Should you advise Ben to seek review of the decision?**
- **If so, what issues would you challenge and why?**

# DISCUSSION



# SMALL GROUP BREAKOUT



- Presuming Ben does not have additional evidence to submit, which decision review option would you recommend for Ben for each issue and why?

# DISCUSSION



# HLR REVIEW



- **You and Ben decide to request HLR of both issues in the 4/2/2026 decision**
  - You include a request for an informal conference and include your contact information on the VA Form 20-0996

# SMALL GROUP BREAKOUT



- **What should you advise Ben about the informal conference?**
- **What should you be on the lookout for from the VA with respect to the scheduling of the informal conference?**
- **How should you prepare for the informal conference?**

# DISCUSSION



# HLR REVIEW



- **The VA emails you a link to self-schedule the conference. You participate in the conference and present argument to the reviewer.**
- **On 9/23/2026, the HLR issues a decision:**
  - **Granting an effective date of 9/30/2025 for the increased MDD rating**
  - **Continuing the denial of TDIU, because it doesn't consider the Ben's work as a handyman to be "protected employment"**

# SMALL GROUP BREAKOUT



- **What options does Ben have if he wants to continuously pursue the TDIU issue?**
- **What option do you recommend?**

# DISCUSSION



# NEW EVIDENCE



- **Ben chooses the BVA Direct Review lane and you file the VA Form 10182 on 8/13/2027. You submit argument in support of his claim.**
- **On 9/30/2027, Ben tells you he was able to obtain a great opinion from a vocational expert about why his MDD prevents him from obtaining or maintaining a substantially gainful occupation and that his self-employment should be considered to be in a protected environment**

# SMALL GROUP BREAKOUT



- **Is it too late for Ben to continuously pursue his claim by withdrawing his appeal and filing a supplemental claim?**
- **Is it too late for Ben to change BVA review lanes?**

# DISCUSSION



# SMALL GROUP BREAKOUT



- **Ben submits a new NOD on 10/5/2027 with the vocational expert's report and elects the Evidence Submission lane**
- **On 3/14/2030, the BVA denies the claim for TDIU**
- **What are Ben's options if he wants to continuously pursue the claim?**

# DISCUSSION



# RESOLUTION



- **Ben appeals to the CAVC, which finds that the BVA misapplied the law regarding employment in a protected environment and remands the case for the BVA to apply the law correctly**
- **In 2032, BVA finally grants the veteran entitlement to extrashedular TDIU under 38 C.F.R. § 4.16(b), based on employment in a protected environment**
- **In 2033, the RO implements that decision and assigns an effective date of 9/30/2025 for TDIU**



# Questions?