### Section C. Records and Examination Requests

#### Overview

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| In This Section | This section contains the following topics: |

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| 1 | Assisting With Federal Records Requests |
| 2 | Assisting With Non-Federal or Private Records Requests |
| 3 | Assisting With Medical Opinion or Examination Requests |
| 4 | Determining Relevance of Records |
| 5 | Providing Notification of Inability to Obtain Records |

#### 1. Assisting With Federal Records Requests

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| Introduction | This topic contains information about assisting in requesting Federal records, including   * VA’s duty to obtain Federal records * definition of Federal Records * definition of reasonable efforts to obtain Federal records * concluding Federal records do not exist or further efforts would be futile, and * claimant cooperation with the duty to assist in obtaining Federal records. |

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| a. VA’s Duty to Obtain Federal Records | The submission of a substantially completed application triggers the Department of Veteran’s Affairs’ (VA’s) duty to assist procedures which include a duty to make reasonable efforts to obtain relevant records in the custody of a Federal department or agency.  ***Reference***: For information on circumstances when VA may refrain from providing assistance, see M21-1, Part I, 1.A.3.b. |

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| b. Definition: Federal Records | ***Federal records*** are any documents in the custody of a Federal department or agency. Federal records include but are not limited to   * service treatment records (STRs) * other service department records (such as personnel records, line-of-duty determinations, inpatient treatment records or behavioral heath records) that are not included with the STRs * VA medical and other records (including Vet Center records and authorized VA medical treatment or examinations at a non-VA facility) * Social Security Administration (SSA) records * Public Health Service records, and * Department of Labor records.   ***References***: For more information on development procedures for     * service department records, see M21-1, Part III, Subpart iii, 2 * Federal records in connection with a Fully Developed Claim (FDC), see M21-1, Part III, Subpart i, 3.B.3 * SSA records, see M21-1, Part III, Subpart iii, 3.A, and * records of other Federal departments or agencies, see * M21-1, Part III, Subpart iii, 4, and * M21-1, Part III, Subpart iii, 1.C. |

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| c. Definition: Reasonable Efforts to Obtain Federal Records | ***Reasonable efforts*** to obtain relevant Federal records means VA must continue attempts to obtain the records until   * records are obtained, or * it is reasonably certain that * the records do not exist, or * further efforts by VA to obtain the records would be futile.   ***References***: For more information on   * the regulatory requirements for requesting Federal records as part of the duty to assist, see [38 CFR 3.159(c)(2) and (3)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8), and * developing for service records, see M21-1, Part III, Subpart iii, 2. |

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| d. Concluding Federal Records Do Not Exist or Further Efforts Would be Futile | Determine on a case-by-case basis whether the requested Federal records do not exist or further attempts to obtain records would be futile based on   * completion of at least the minimum efforts specified in M21-1, Part III, Subpart iii, 1.C.2.b, and/or * any response received from the records custodian.   ***Important***: *DD Form 2963,* *Service Treatment Record (STR) Transfer or Certification* is a certification of the completeness of all available STRs at discharge from service. Treat this, or a predecessor certification letter, as a statement from the records custodian that it is reasonably certain that additional STRs do not exist and further attempts to obtain additional records would be futile except as provided in M21-1, Part III, Subpart iii, 2.B.2.  ***References***: For more information on   * migration of STRs and the procedures for obtaining them, see M21-1, Part III, Subpart iii, 2.B, and * refraining from or discontinuing assistance, see M21-1, Part I, 1.A.3.b. |

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| e. Claimant Cooperation with the Duty to Assist in Obtaining Federal Records | The claimant must cooperate with VA’s attempts to obtain Federal records by providing   * information, when requested by VA, to identify and locate existing records including * the department or agency that is the custodian of the records * the approximate time frame covered by the records, and * for treatment records, a general description of the condition for which the treatment was provided * information sufficient for the records custodian to conduct a search of records when records are requested to corroborate a stressor-event in service, and * authorization to release existing records when requested by the department or agency custodian in the form acceptable to the custodian.   ***References***: For more information on   * specific requirements to request stressor corroboration from the Joint Services Records Research Center (JSRRC), see M21-1, Part IV, Subpart ii, 1.D.3, and * specific requirements to authorize release of Vet Center records, see M21-1, Part III, Subpart iii, 1.C.4.d. |

#### 2. Assisting with Non-Federal or Private Records Requests

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| Introduction | This topic contains information on providing assistance in obtaining non-Federal or private records, including   * VA’s duty to obtain relevant non-Federal or private records * definition of reasonable efforts to obtain relevant non-Federal or private records, and * assisting in obtaining third party records. |

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| a. VA’s Duty to Obtain Relevant Non-Federal or Private Records | VA must make reasonable efforts to assist a claimant in obtaining relevant non-Federal or private records from all sources that the claimant adequately identifies.  ***Note***: VA has a duty to return for clarification unclear or insufficient private or VA medical records if it appears that a request for clarification could provide relevant information necessary to properly decide a claim. If VA does not obtain clarification, then it must explain why such clarification is unreasonable.  ***References***: For more information on   * circumstances when VA may refrain from providing assistance, see M21-1, Part I, 1.A.3.b * returning unclear or insufficient private or VA medical records for clarification, see [*Savage v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bms), 24 Vet.App. 259 (2011), and * the definition of reasonable efforts, see M21-1, Part I, 1.C.2.b. |

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| **b. Definition: Reasonable Efforts to Obtain Relevant Private Records** | ***Reasonable efforts*** ***to obtain relevant private records*** that are not in the custody of a Federal department or agency include making   * an initial request for such evidence, and * at least one follow-up request if no response is received from the custodian of the records *unless* a response to the initial request indicates that * the records do *not* exist, or * a follow-up request would be futile.   If VA receives information showing that subsequent requests toa different custodian of the records could result in obtaining the records sought, then ***reasonable efforts*** include making   * an initial request to the new source, and * at least one follow-up request to the new source if the records are not received.   ***References***: For more information on   * what constitutes reasonable efforts, see [38 CFR 3.159(c)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8), and * requesting evidence from sources other than the claimant, see M21-1, Part III, Subpart iii, 1.C. |

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| **c. Assisting in Obtaining Third Party Records** | VA is obligated to make reasonable efforts to obtain records pertaining to another individual if   * those records are * adequately identified by the claimant * relevant to the claim, and * potentially helpful in substantiating the claim, and * VA would be authorized to disclose the relevant portions of such records to the Veteran under the Privacy Act and [38 U.S.C. 5701](http://www.law.cornell.edu/uscode/text/38/5701) and [38 U.S.C. 7332](http://www.law.cornell.edu/uscode/text/38/7332).   ***Important***: VA adjudicators generally may not consider documents that cannot be disclosed to the claimant.  ***Note***: VA’s duty to assist generally would not require VA to obtain a court order to secure authority for third-party disclosure. Obtaining a court order related to a pending benefits claim would typically be beyond the scope of the  “reasonable efforts” VA must undertake to assist a claimant in obtaining evidence necessary to substantiate a claim as contemplated by [38 U.S.C. 5103A(a)](https://www.law.cornell.edu/uscode/text/38/5103A).  ***Reference***: For more information on seeking records pertaining to an individual other than the claimant, see   * [VAOPGPREC 5-2014](http://www.va.gov/OGC/docs/2014/VAOPGCPREC5-2014.pdf), and * M21-1, Part IV, Subpart ii, 1.D.5.n. |

#### 3. Assisting With Medical Opinion or Examination Requests

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| Introduction | This topic contains information on obtaining a medical opinion or examination, if necessary under the duty to assist, including   * purpose of obtaining medical examinations and opinions * determining when an examination or medical opinion is necessary * reviewing evidence of record prior to requesting examination * direct service connection (SC): reviewing for evidence of current disability or symptoms * direct SC: reviewing for evidence of in-service event, injury or disease * direct SC: reviewing for indication of association * secondary SC and aggravation: reviewing for three evidentiary elements for examination * presumptive SC: reviewing for three evidentiary elements for examination * increase claims: reviewing for examination * timing of the duty to obtain an examination or opinion * effect of non-cooperation on the duty to provide an examination or opinion * definition of good cause * review of returned mail notifying the Veteran of a scheduled examination * action taken after attempting to locate a better address * allegations of non-receipt of scheduling notice, and * timing of offer of good cause or willingness to report and rescheduling. |

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| a. Purpose of Obtaining Medical Examinations and Opinions | The purpose of the statutory duty to assist in ordering an examination and/or medical opinion is to obtain medical evidence relevant to establishing entitlement to benefits such as information about   * diagnosis * onset, or * etiology.   ***Important***: [38 CFR 3.159(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8) provides that an examination or opinion is not part of the duty to assist in a request to reopen a finally adjudicated claim unless new and material evidence is presented or secured.  ***References***: For more information on   * duty to assist, see * [38 U.S.C. 5103A(d)](http://www.law.cornell.edu/uscode/text/38/5103A), and * [38 CFR 3.159(c )(4)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8) * requesting a medical opinion or examination, see M21-1, Part III, Subpart iv, 3.A * scheduling a medical opinion or examination, see M21-1, Part III, Subpart iv, 3.B, and * circumstances when VA may refrain from providing assistance, see M21-1, Part I, 1.A.3.b. |

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| b. Determining When an Examination or Medical Opinion Is Necessary | The test for when an examination is necessary under the duty to assist is in [38 CFR 3.159(c)(4)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8), and each element for this determination is described in more detail separately in M21-1, Part I, 1.C.3.c-f.  A medical opinion or examination is necessary when there is not sufficient medical evidence of record to make a decision on the claim, and   * there is competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability * the evidence establishes that the Veteran * suffered an event, injury, or disease in service, *or* * has a disease or symptoms of a disease listed in [38 CFR 3.309](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1309&rgn=div8), [38 CFR 3.313](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1313&rgn=div8), [38 CFR 3.316](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1316&rgn=div8), or [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1317&rgn=div8) manifesting during an applicable presumptive period, and * the evidence indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected (SC) disability.   ***Important***: An examination and/or opinion is ***not*** warranted until ***all three*** elements described above are present in the evidence.  ***Note***: The bulleted criteria above primarily contemplate claims for service connection (SC). The requirements for providing examinations for other types of claims are addressed in M21-1, Part I, 1.C.3.d-i.  ***References***: For more information on   * when examination is authorized, see * [38 CFR 3.326](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1326&rgn=div8) * [*McLendon v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm)*,* 20 Vet.App. 79, 81 (2006), and * [*Waters v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmw), 601 F.3d 1274 (Fed. Cir. 2010) * when reexamination is authorized, see [38 CFR 3.327](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1327&rgn=div8), and * the competency of lay evidence to establish a diagnosis, see [*Jandreau v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmj)*,* 492 F.3d 1372, 1377 (Fed. Cir. 2007). |

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| c. Reviewing Evidence of Record Prior to Requesting Examination | An examination or opinion is only necessary when there is ***not*** sufficient medical evidence of record to make a decision on the claim.   * Prior to requesting an examination or opinion, review the available medical evidence to determine if such evidence is sufficient to rate the claim. * If evidence, such as a Disability Benefits Questionnaire (DBQ), a private physician’s report, or private medical opinion, is received and such records are *fully sufficient* to rate the claim then ***do not order an examination***.   ***References***: For more information on   * evaluating claims based on the evidence of record, see [38 CFR 3.326(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=93217c2201237d459e2916c8137fef7d&mc=true&node=se38.1.3_1326&rgn=div8) * requesting examinations, see M21-1, Part III, Subpart iv, 3.A * evaluating evidence, see M21-1, Part III, Subpart iv, 5 * assertions by the claimant that an examination is not permitted, see [*Kowalski v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmk),19 Vet.App.171 (2005), and * when an examination is not necessary, see [*McLendon v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm)*,* 20 Vet.App. 79, 81 (2006). |

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| d. Direct SC: Reviewing for Evidence of Current Disability or Symptoms | **Element 1**: The first element, found in [38 CFR 3.159(c)(4)(i)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8)(A), that must be met before an examination is warranted is the presence of competent evidence of   * a current disability, ***or*** * persistent or recurrent symptoms of disability.   Consider the points below when reviewing the evidence to determine whether Element 1 has been satisfied.   * Competent lay *or* medical evidence of current symptoms may be sufficient to raise a medically answerable question that warrants the ordering of a VA examination. * The evidence must be credible. * There is no presumption of credibility for the purposes of determining whether Element 1 has been satisfied. * Do not weigh evidence. If there is contradictory evidence as to whether a disability or symptom of a disability is or is not present, consider that the evidentiary standard for Element 1 has been met. * Do not decline to order an exam simply because there is not a current diagnosis. The evidentiary standard for requesting examination does not require that a disability be diagnosed. * A new examination may be required if before an appeal for SC hearing loss is transferred to the Board of Veterans’ Appeals (BVA) * the Veteran submits competent lay or medical evidence indicating a worsening of the hearing loss during the appeal period, *and* * SC is denied solely based upon the hearing loss not meeting the disability thresholds of [38 CFR 3.385](http://www.ecfr.gov/cgi-bin/text-idx?SID=426bb7c612975de4e098d0feb0a4c95d&mc=true&node=se38.1.3_1385&rgn=div8).   ***Example***: A statement from the claimant in support of his claim for SC for low back condition reveals he experiences severe low back pain, spasms, and shooting pain down his buttocks. Although there is no medical documentation of a low back condition, there is no evidence of record that otherwise contradicts the Veteran’s statement.  ***Analysis***: The Veteran is competent to describe his low back symptoms, and his statement appears credible when reviewing it and all other evidence. Thus, the Veteran meets the first element for determining whether an examination is warranted.  ***References***: For more information on   * examinations in SC hearing loss claims, see [*Palczewski v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmp), 21 Vet.App. 174 (2007) * considering conflicting evidence of current disability, see [*McLendon v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm), 20 Vet.App. 79, 81 (2006) * competent evidence, see M21-1, Part III, Subpart iv, 5.2.c, and * credible evidence, see M21-1, Part III, Subpart iv, 5.2.b. |

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| e. Direct SC: Reviewing for Evidence of In-service Event, Injury, or Disease | **Element 2**: The second element, found in [38 CFR 3.159(c)(4)(i)(B)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8), for determining whether an examination is necessary is establishment of one of the following in service   * an event * an injury, or * a disease.   Consider the points below when reviewing the evidence to determine whether Element 2 has been satisfied.   * Reviewing the evidence involves a factual assessment and may warrant weighing the evidence if contradictory evidence is of record. * In many cases, an entry in the STRs of a specific treatment or injury satisfies this element. * The absence of STR findings does not automatically preclude this element from being met. The element may also be met with lay evidence when * a Veteran provides credible lay statement(s) that his or her disability occurred from an in-service event, injury, or disease, and * the statement(s) is consistent with the places, types, and circumstances of his or her military service. * VA cannot determine that lay evidence lacks credibility merely because it is unaccompanied by contemporaneous medical evidence.   ***Example 1***: Veteran claims SC for right shoulder injury and asserts that the condition originated from loading heavy cargo onto an airplane during an exercise in Korea in June 2009. He provides a statement from his spouse indicating she remembers him complaining of it when he returned home from the exercise. Although the STRs are silent for treatment for a right shoulder injury, the personnel records verify the Veteran was a loadmaster and did participate in an exercise in Korea in June 2009.  ***Analysis***: Because the Veteran’s and spouse’s statements are credible and consistent with the circumstances of his service, the second element for an in-service injury, disease, or event is established for purposes of ordering an examination. Assuming that the Veteran has submitted evidence of a current disability or symptoms as well as indication of an association between the current condition and the in-service event, an examination is warranted.  ***Example 2***: Veteran claims eyesight deterioration due to exposure to gas and chemical tests during his two months of active duty in the U.S. Navy. Service records do not reveal any treatment for the condition nor do they document any exposure to gas or chemicals during service. The Veteran does provide sufficient evidence of a current disability and association to service.  ***Analysis***: The Veteran’s statement of an in-service event is rejected because the statement is found incredible and not consistent with circumstances of his service. The Veteran’s statement regarding an in-service event is weighed along with other facts of the case, (i.e., no documentation of tests in service and short period of active duty time). The preponderance of evidence weighs against the Veteran, and his statement is rejected. Thus, the standard for evidence of an in-service event, injury, or disease is not met and examination is not warranted.  ***References***: For more information on   * the factual assessment necessary in determining if the evidentiary standard is met for evidence of an in-service event, see [*McLendon v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm)*,* 20 Vet.App. 79, 81 (2006), and * considering lay evidence, see * [38 U.S.C. 1154(a)](https://www.law.cornell.edu/uscode/text/38/1154) * [*Buchanan v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmb), 451 F.3d 1331, 1336 (Fed. Cir. 2006), for information concerning the credibility of lay evidence without associated contemporaneous medical evidence, and * [*Bardwell v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmb), 24 Vet.App.36 (2010), for information concerning weighing lay evidence. |

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| f. Direct SC: Reviewing for Indication of Association | **Element 3**: The third element that must be met to warrant an examination under [38 CFR 3.159(c)(4)(i)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8)(C) is an indication that the diagnosis or symptoms may be associated with the established event, injury or disease in service.  Consider the points below when reviewing the evidence to determine whether Element 3 has been satisfied.   * The threshold for determining whether an association may be present is low. Medical assessments that do not support a decision on the merits can still be sufficient to establish an indication of an association for the purposes of requesting an examination. * *Medically competent evidence* is *not* required to serve as an indication of an association for purposes of determining whether an examination is necessary. * Lay evidence only has to indicate a possible connection to the in-service event, injury, or disease to warrant an examination. Examples of adequate lay evidence include * an assertion that the condition has existed since service, or * a statement indicating continuous symptoms since service. * A generalized statement merely asserting a conclusion that a condition is related to an in-service event, injury, or disease is not sufficient to establish an indication of an association. * Consider and assign weight to lay evidence in determining whether there is sufficient indication of an association to warrant requesting an examination.   ***Example***: The Veteran claimed SC for knee disability. He had one complaint of knee pain in service with a negative separation examination. No other lay or medical evidence was submitted in support of the claim.  ***Analysis***: The Veteran’s current claim provided no medical evidence indicating an association and no statement alleging continuous symptoms since service or that the current disability persisted since military service. Therefore, Element 3 has not been satisfied. Further, there is no medical or lay evidence of a current disability, so Element 1 is also not satisfied. Element 2 is satisfied based on the single indication of knee pain in service. As all three elements must be satisfied before examination is warranted, the claim can be denied without an examination/opinion.  ***Example***: STRs show a single complaint of knee strain in service with a negative separation examination. The Veteran’s claim states, “I hurt my knee when I fell off of a truck in Vietnam,and it has hurt ever since that time.” The Veteran claims SC for knee pain.  ***Analysis***: An examination with a nexus opinion is warranted as all three elements have been satisfied. Element 1 is satisfied based on the Veteran’s lay complaint of current knee pain. The Veteran is competent to attest to symptoms of pain. Element 2 is satisfied by the single indication of treatment for in-service knee strain. Element 3 is satisfied by the Veteran’s lay description of persistent symptoms since service.  ***References***: For more information on   * the low threshold for requesting examinations, see [*McLendon v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm)*,* 20 Vet.App. 79, 81 (2006) * considering lay evidence to establish indication of an association for the purposes of requesting examination, see [*Colantonio v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmc), 606 F.3d 1378 (Fed. Cir. 2010), and * why the competency standard does not apply when establishing indication of an association for the purposes of requesting examinations, see [*Waters v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmw), 601 F.3d 1274 (Fed. Cir. 2010). |

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| **g. Secondary SC and Aggravation: Reviewing for Three Evidentiary Elements for Examination** | Determinations as to the need for examination or medical opinions in claims for secondary SC are governed by [38 CFR 3.159(c)(4)(i)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8). Therefore, the three evidentiary elements, as discussed in M21-1, Part I, 1.C.3.d-f, must be satisfied prior to requesting an examination on a secondary claim. The three elements are   * lay or medical evidence of a current disability or symptoms * evidence of a service-connected primary disability (which substitutes for the in-service event, injury, or disease), and * indication that the claimed secondary condition may be associated with the primary disability.   Medical expertise is ultimately required to establish entitlement to SC on secondary basis, but the threshold for ordering an examination is low. However, there is still a threshold that must be met before an examination is provided.   * Medical examinations are not to be automatically provided in all cases. Some degree of judgement must be used in determining whether the threshold has been met to schedule an examination. * Consider whether satisfactory evidence exists that shows the presence of the claimed disability and its association with the existing SC disability. * A medical diagnosis up front is not always required to show * the presence of the claimed disability, or * its link to an SC disability. * A generalized statement merely asserting a conclusion that a condition is secondary to an SC disability is not sufficient to satisfy the Element 3 standard for requesting an examination. * To determine whether the evidence shows that the claimed condition may be associated with the primary SC disability, review the specificity of the claimant’s statement and other evidence of record. * Assessthe *credibility and merit* of the claim prior to ordering an examination. * The following types of evidence may give credibility to the claim * medical evidence showing a relationship between the primary SC disability and the claimed secondary disability * the Veteran’s lay statement describing the symptoms present and how they are related to the claimed primary disability * medical treatise establishing a known relationship between the primary SC disability and the claimed secondary disability, ***or*** * a VA regulation or procedure exists that defines a relationship between the primary SC disability and the claimed secondary disability.   ***Example***: Veteran claims stomach problems secondary to his SC heart condition. He indicates that since he began taking prescribed medications two years ago for his heart condition, he has experienced stomach problems to include constipation, pain, and indigestion. There are no specific diagnoses relating to his stomach symptoms noted in the evidence of record.  ***Analysis***: While the Veteran’s lay statement is not sufficient to ultimately prove the  claim, it is sufficient in this instance to warrant an examination. The Veteran is competent to describe his symptoms and the possible association of symptoms to his SC condition. Furthermore, his statement appears credible when considering the evidence at hand.  ***Example:*** A Veteran submits a statement indicating that he has hypertension secondary to his SC low back condition. Medical evidence of records shows no treatment for hypertension and normal blood pressure readings over the last three years.  ***Analysis***: Although the claimant is competent to describe symptoms of a disability, his statement that he has hypertension secondary to low back condition is not credible as competent medical evidence in this case is required to show elevated blood pressure readings or establish a diagnosis of hypertension. Although Veterans are competent to attest to their symptoms, they are not generally competent to make their own medical diagnoses. The Veteran could attest to symptoms he experiences associated with hypertension, such as dizziness or headaches, but he is not competent to make medical diagnoses. The reason the medical evidence would be required in this case is because the medical evidence of record shows normal blood pressure readings over the last three years and no diagnosis of hypertension. Consequently, the Element 1 standard requiring medical or lay evidence of a current disability has not been met. The substitute evidence from the Element 2 standard is met on the basis that there is an SC disability, a low back condition, present and the claim is being made on a secondary basis. However, the Element 3 standard is not met because the Veteran has submitted a generalized statement suggesting the conclusion that the hypertension is secondary to the back condition, but there is no specific discussion or evidence correlating the hypertension to the back condition. Additionally, there is no VA regulation or procedure or medical treatise establishing an association. Because the three evidentiary elements are not satisfied, no examination is warranted.  ***Note***: If a claimant alleges aggravation of a non-service-connected (NSC) disability by an SC disability, pursuant to [38 CFR 3.310(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=93217c2201237d459e2916c8137fef7d&mc=true&node=se38.1.3_1310&rgn=div8), the following additional factors apply when determining whether examination is warranted   * a baseline level of disability, ***as shown by medical evidence***, must be present for an examiner to opine whether aggravation has occurred, and * the Veteran’s statement alone, without medical evidence of record showing the baseline level of the claimed disability, is not sufficient to order an examination.   ***References***: For more information on   * considering claims for SC based on aggravation of an NSC condition by an SC condition, see M21-1, Part IV, Subpart ii, 2.B.5 * the threshold that must be met before examinations are provided in secondary claims, see [*Waters v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmw), 601 F.3d 1274 (Fed. Cir. 2010), and * claims that are inherently incredible or lack merit, see * [38 CFR 3.159(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8) * M21-1, Part I, 1.A.3.c, and * M21-1, Part 1, 1.B.1.g. |

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| h. Presumptive SC: Reviewing for Three Evidentiary Elements for Examination | Determining whether examinations are warranted in claims for presumptive SC still warrants application of the regular three element standard, although Elements 2 and 3 are satisfied differently in presumptive claims than in direct claims for SC. [38 CFR 3.159(c)(4)(ii)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8) provides that in claims for presumptive SC, part of the standard for determining whether an examination or opinion is necessary is the establishment of   * required service or triggering event qualifying for the presumption (which substitutes for the in-service injury, event, or disease), and * manifestation during the presumptive period (which substitutes for the indication of an association) of either * a disease listed in a regulatory presumptive provision, or * symptoms of a disease listed in a regulatory presumptive period.   However, the evidence in support of the claim must still include lay or medical evidence of a current disability or symptoms to warrant an examination.  ***Example***: A Veteran claims SC for hypertension on a presumptive basis. STRs show no evidence of a diagnosis of hypertension or evidence of elevated blood pressure readings. VA treatment records do show that 11 months following discharge, the Veteran underwent a five-day blood pressure screening that did confirm a diagnosis of hypertension. Medication was prescribed.  ***Analysis***: VA treatment records showing a diagnosis of hypertension satisfy the Element 1 standard for evidence of a current disability. The Element 2 standard is satisfied on the basis of the Veteran’s active duty service which meets the qualifying criteria for chronic diseases subject to presumptive SC as defined in [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=4974fa3e89b9558ad99aab273942c92a&mc=true&node=pt38.1.3&rgn=div5#se38.1.3_1307) and [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ca03d732a48da29466e9368d8036dc4e&mc=true&node=se38.1.3_1309&rgn=div8). The Element 3 standard is satisfied on the basis of the legally established presumption of SC as defined in [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ca03d732a48da29466e9368d8036dc4e&mc=true&node=se38.1.3_1309&rgn=div8). As all three elements have been satisfied, an examination is warranted. Note that no nexus opinion is necessary because the presumptive relationship establishes the nexus. |

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| i. Increase Claims: Reviewing for Examination | In a claim for increase in the evaluation of an SC condition, do not apply the [38 CFR 3.159(c)(4)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8) standard. In other words, there is no prescribed standard for evidence that must be present prior to requesting an examination in a typical claim for increase. Obtain an examination when the medical evidence is not adequate for rating purposes.   * In claims for increased evaluations, an examination is necessary if an examination or other adequate medical evidence within the last year *is not* part of the record. * The decision to request an examination *within one year* of the last examination must be made on a case-by-case basis. Consider the nature of the disability, credibility of claim, findings of the prior examination, and any lay testimony as to worsening of symptoms when making this determination. * A decision to not order an examination shall be supported with adequate reasons and bases. * Prior to requesting an examination, the evidence of record must be reviewed to determine if evidence adequate to evaluate the claim for increase is already present. If there is evidence adequate to evaluate the claim, no examination is warranted. * A claim for increase is a new claim, not a reopened claim. Therefore, there is no regulatory hurdle to reopen before ordering an examination. * For issues under appeal VA is not required under its duty to assist obligation to order an examination solely because of the passage of time since an otherwise adequate examination was performed. However, when the appellant asserts that the disability in question has undergone an increase in severity since the time of the prior examination, additional examination may be warranted.   ***Example***: The Veteran submits a claim for increased evaluation of an SC back disability. The back disability has been evaluated as 10 percent disabling with no recent examination. There is no medical evidence submitted showing any recent treatment for the back.  ***Analysis***: There is no evidentiary standard that must be met prior to requesting the claim for increase. As there has been no examination within the last year and there is no evidence of record that is adequate to evaluate the claim, request an examination.  ***Example***: The Veteran submits a claim for increased evaluation of SC hypothyroidism. The Veteran did recently have an examination within the past year for his prior claim for increased evaluation. Review of the treatment records shows no indication that symptoms have increased or that the hypothyroidism has required treatment other than the continued prescription of Synthroid. The Veteran has submitted no other evidence in support of the claim.  ***Analysis***: Since the prior examination occurred within the past year, there is no medical evidence showing worsening or increased symptoms, and the Veteran has not submitted a lay statement describing increased symptoms, no examination is warranted. The rating decision should directly discuss the determination that no examination is warranted.  ***Example***: The Veteran submits a claim for increased evaluation of SC hypothyroidism. The Veteran did recently have an examination within the past year for his prior claim for increased evaluation of hypothyroidism. Review of the treatment records shows that the Veteran’s dosage of Synthroid required adjustment due to abnormal laboratory test values. Additionally, after the date of the prior examination the Veteran presented to his primary care appointment with complaints of fatigue of unclear etiology. The Veteran has submitted no other evidence in support of the claim.  ***Analysis***: Although the prior examination occurred within the past year, the medical evidence does show possible increased symptoms. However, the evidence is not sufficient to evaluate the hypothyroidism. Therefore, an examination should be requested.  ***Reference***: For more information on requesting examinations in claims for increase, see   * [*Proscelle v. Derwinski*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmp)*,* 2 Vet.App. 629 (1992), and * [VAOPGCPREC 11-95](http://www.va.gov/ogc/docs/1995/Prc11-95.doc). |

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| j. Timing of the Duty to Obtain an Examination or Opinion | Assess whether an examination or opinion is necessary pursuant to the duty to assist, to the extent practicable, after the development of all other relevant evidence. However, do not wait for receipt of requested evidence if the current evidence is sufficient to warrant the scheduling of an examination. |

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| k. Effect of Non-Cooperation on the Duty to Provide an Examination or Opinion | While VA is obligated under [38 CFR 3.159(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8) to provide medical examinations or obtain medical opinions to assist in substantiating claims, the claimant must cooperate by reporting for such examination.  [38 CFR 3.655](http://www.ecfr.gov/cgi-bin/text-idx?SID=17729b3154fbff283097a428f140b8cf&mc=true&node=se38.1.3_1655&rgn=div8) provides that when entitlement or continued entitlement to a benefit cannot be established or confirmed without a current VA examination and the claimant fails to report without good cause, action will be taken as provided in [38 CFR 3.655(b) and (c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=17729b3154fbff283097a428f140b8cf&mc=true&node=se38.1.3_1655&rgn=div8). See the table below for a summary of the actions to take.  ***Note***: If the Veterans Health Administration (VHA) attempted to schedule the exam under their RSVP program, follow the procedures in M21-1, Part IV, Subpart ii, 3.B.2. |

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| If the failure to report for exam without good cause is in connection with... | Then... |
| * an original compensation claim, or * a new claim | decide the claim based on the evidence of record. |
| * an increased evaluation claim * a claim to reopen a previously denied benefit, or * an original claim for a benefit other than compensation | deny the claim. |
| an examination ordered to assess continuing entitlement when there is a running award | * discontinue payment for the benefit, or * reduce payment for the disability for which examination was scheduled to a * minimum evaluation established under [38 CFR Part 4](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd05e981736ba8db975c1054e3bcdce5&mc=true&tpl=/ecfrbrowse/Title38/38cfr4_main_02.tpl), or * lower protected evaluation under [38 CFR 3.951(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd05e981736ba8db975c1054e3bcdce5&mc=true&node=se38.1.3_1951&rgn=div8).   ***Notes***:   * Discontinuance or termination is only finalized after due process, as provided in M21-1 Part III, Subpart iv, 8.E. * Reduction or discontinuance will not be finalized when the claimant submits evidence during the proposed reduction period justifying continuation of the benefit or indicates a willingness to report for examination. |

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| l. Definition: Good Cause | ***Good cause*** means a reason that justifies failure to report for VA examination. VA will accept as good cause *any* reason other than failure to receive notice of the examination. Examples of good cause include, but are not limited to, illness or hospitalization of the claimant or death of an immediate family member.   * The claimant shall provide a reason with the request to reschedule the examination. * Documentation is generally not required to demonstrate good cause. * In cases where there have been two repeated failures to complete an examination, proceed with a decision on the claim. Clear rationale for rejecting an offer of good cause must be included in the rating narrative.   ***Exception:*** Do not reschedule the examination if the claimant   * fails to provide any reason for failing to report * indicates he/she did not receive notice of the examination, or * has previously been rescheduled for the same examination and did not report.   ***Reference***: For more information on allegations of non-receipt of examination notice, see M21-1, Part I, 1.C.3.o. |

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| m. Review of Returned Mail Notifying the Veteran of a Scheduled Examination | If a VA medical facility advises that mail notifying a Veteran of a scheduled VA examination has been returned because the Postal Service reported the letter was undeliverable at the address provided, review the claims folder to determine whether   * the mail was erroneously addressed * a more recent address is of record, or * a valid address is available from non-VA sources, such as the Internet or telephone directory assistance.   ***Notes***:   * VA is authorized to use the Internet address locator service CLEAR® (<https://clear.thomsonreuters.com/clear_home/index.jsp>) to obtain current address information for claimants. * If the Veteran receives VA benefits via direct deposit/electronic funds transfer (DD/EFT), send a letter to the Veteran’s financial institution (FI) asking for a current mailing address.   ***References***: For more information on   * sample language for the letter to the FI, see M21-1, Part X, 8.5, and * using the CLEAR service, see the [*CLEAR User’s Guide*](http://vbaw.vba.va.gov/bl/21/data/progops/misc/CLEARQuickStartGuide.pdf). |

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| n. Action Taken After Attempting to Locate a Better Address | Use the table below to determine the action to take after attempting to locate a better address. |

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| If a better address is … | Then ... |
| identified | * provide the new address to the VA medical facility * request that the VA medical facility * reschedule the examination, and * notify the Veteran at the new address of the pending examination, and * update the corporate record. |
| not identified | proceed with failure to report analysis under [38 CFR 3.655](http://www.ecfr.gov/cgi-bin/text-idx?SID=625f8b0cf612383045d4ee6c1878611a&mc=true&node=se38.1.3_1655&rgn=div8). |

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| o. Allegations of Non-Receipt of Scheduling Notice | A Veteran’s allegation of non-receipt of a notice of scheduled examination and failure to report for a scheduled VA examination is not considered *good cause* for failure to report.  An assertion that a notice of a scheduled examination was not received does not rebut the presumption of administrative regularity that VA discharged its duty to schedule an examination and notified the Veteran of the scheduled examination.  A copy of an examination scheduling notice from the examining facility does not need to appear in the claims folder for the presumption of regularity to apply.  If evidence is available that rebuts the presumption of regularity, such as the failure of VA to timely update the claimant’s address or an assertion that the exam notice was received after the date of the examination, then that evidence must be considered. |

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| p. Timing of Offer of Good Cause or Willingness to Report and Rescheduling | Known impediments to scheduling will generally be resolved by the examination provider and claimant in advance of the scheduled examination.  However, if an examinee offers good cause *on or after* the examination and *before* a decision is issued, communicate with the examination provider to reschedule the examination prior to issuing the decision.  [38 CFR 3.655(c)(3)](http://www.ecfr.gov/cgi-bin/text-idx?SID=78d056416d6b04f735f0659ff1e729a5&mc=true&node=se38.1.3_1655&rgn=div8) provides that in cases of failure to report in connection with examination on continuing entitlement, if notice of willingness to report is received before payment has been discontinued or reduced, action to adjust payment should be deferred.  ***Important***: Although not explicitly stated in the regulation, this guidance also applies to failure to report for examination in other scenarios such as claims for increased evaluation or original SC. |

**4. Determining Relevance of Records**

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| **Introduction** | This topic contains information on determining whether identified evidence is relevant for purposes of providing assistance under [38 U.S.C. 5103A](http://www.law.cornell.edu/uscode/text/38/5103A), including   * definition of relevant records * relevance determined on case-by-case basis * importance of Golz decision in determining relevance of evidence * other examples when records are considered not relevant * clinical mental health records considered relevant, and * documenting the claims folder when identified evidence is not considered relevant. |

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| Change Date | August 26, 2015 |

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| **a. Definition: Relevant Records** | ***Relevant records*** for the purpose of VA’s statutory and regulatory duty to assist are those records that   * relate to the disability or injury for which the claimant is seeking benefits, and * have a reasonable possibility of helping to substantiate the claim.   For the purpose of [38 U.S.C. 5103A](http://www.law.cornell.edu/uscode/text/38/5103A), the Court of Appeals for Veterans Claims (CAVC), in [*Golz v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmg)*,* 590 F.3d 1317 (Fed. Cir. 2010) held that not all medical records have a reasonable possibility of helping substantiate a pending claim and that VA’s duty to assist applies only to ***relevant*** records.  ***Important***: For purposes of determining relevance, the same principles apply to both private and Federal records.  The CAVC, in [*Raugust v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmr), 23 Vet. App. 475 (Vet. App. 2010), further held that the VA has no duty to obtain records without a specific reason to believe that the records identified by the Veteran would contain necessary information to substantiate the claim.  ***Example***: A Veteran files a claim for an increased evaluation for residuals of an SC left ankle fracture. He reports treatment at the Mayo Clinic for headaches.   1. ***Analysis***: The information available on its face shows that the identified private records would *not* be relevant as they do not relate to the Veteran’s SC disability nor do they have a reasonable possibility of substantiating the claim. |

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| **b. Relevance Determined on Case-By-Case Basis** | Because each case presents unique circumstances, relevance of records shall be determined on a case-by-case basis. It is not possible to offer “one-size fits all” guidance on the issue of determining whether an identified piece of evidence is relevant to the issue being adjudicated.  Exercising common sense and sound judgment is critical in determining relevance. In addition to the two broad questions in M21-1, Part I, 1.C.4.a, consider these additional questions when making such determinations:   * ***Can I determine relevance without review of the actual records?*** * In nearly all cases, based on information supplied by the claimant, decision makers can determine relevance without reviewing the actual records. * ***Can an earlier effective date be established by obtaining the identified records?*** * This is a critical question that must be answered when evaluating the evidence. If there is a chance of an earlier effective date, (for example, based on provisions of [38 CFR 3.114](http://www.ecfr.gov/cgi-bin/text-idx?SID=73d047f61d05f17b0fe3446add76ccae&mc=true&node=se38.1.3_1114&rgn=div8) regarding liberalizing changes), then records must be obtained. * ***Can a higher evaluation be assigned?*** * Based on effective date rules, this question can generally be answered without obtaining the identified records. However, if there is a doubt, then obtain the records if it means the claimant can potentially receive an earlier effective date.   ***Reference***:For more information on relevant records, seeM21-1, Part I, 1.A.3.a. |

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| **c. Importance of Golz Decision in Determining Relevance of Evidence** | See the following example of a situation in which records would not be considered relevant. This example is modeled after [*Golz v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmg)*,* 590 F.3d 1317 (Fed. Cir. 2010).  ***Example***: A Veteran files a claim for SC for posttraumatic stress disorder (PTSD). He reports that he is in receipt of SSA disability benefits and attaches a copy of an SSA decision that found him to be disabled due to back and leg pain from a 2001 injury. There is no mention of mental health symptoms or treatment in the SSA decision.  ***Analysis***: The Federal Circuit, in [*Golz v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmg)*,* 590 F.3d 1317 (Fed. Cir. 2010), held that if an SSA decision pertains to a completely unrelated medical condition and the Veteran makes no specific allegations that would give rise to a reasonable belief that the medical records may nonetheless pertain to the injury for which the Veteran seeks benefits, relevance is not established. |

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| **d. Other Examples When Records Are Considered Not Relevant** | ***Example 1***: A Veteran is SC for hypothyroidism evaluated at 30 percent since 1982. She submits a claim for increase in 2014. She indicates she was treated twice for fatigue and constipation in 1984 but no treatment since then. No other rating decisions have been completed since the original award of SC in 1982. An examination is immediately ordered.  ***Analysis***: Although the records from 1984 relate to the claimed issue, they do not present a reasonable possibility of substantiating the claim 30 years later for an increased evaluation. In other words, there is no *reasonable possibility* that an earlier effective date or higher evaluation will be assigned if these records are obtained. Therefore, the records are not relevant.  ***Example 2***: A Veteran claims SC for low back disability. A review of the claims folder indicates the military dental treatment records are missing.  ***Analysis***: Since those STRs are not likely to relate to the back claim, it is reasonable to conclude that the dental records are not relevant to the claim for low back.  ***Example 3***: Presumptive SC for Type 2 diabetes is awarded based on an original claim for SC. A current VA examination and private medical evidence showing treatment for diabetes over the last three years was considered. While the rating decision awaits promulgation, a signed release is received from the Veteran indicating diabetes treatment for a short period of time nine years ago. The Rating Veterans Service Representative (RVSR) determines that the evidence identified by the Veteran is not relevant.  ***Analysis***: The records from nine years ago do in fact relate to the claimed condition. However, since the claim has already been substantiated and there is no reasonable possibility of establishing an earlier effective date or higher evaluation for diabetes, the records are considered not relevant and therefore do not need to be obtained.  ***Example 4***: In Example 3, the Veteran passes away in June 2014 (no claim pending at death). The surviving spouse submits a *VA Form 21P-530,* *Application for Burial Benefits* as well as a death certificate documenting diabetes was a contributing factor for the cause of death. She claims on the application that the Veteran’s death was related to his military service. The spouse also submits a medical release form with the attached *VA Form 21-4142a, General Release for Medical Provider Information to the Department of Veterans Affairs (VA)*, and a statement asking VA to obtain records related to the Veteran’s diabetic treatment prior to death.  ***Analysis***: Although the records relate to the claimed issue, the Veteran’s death certificate is sufficient to link the cause of death to the Veteran’s SC disability, therefore, the medical release form submitted with the claim is not relevant and records do not need to be obtained.  ***Example 5***: A Veteran submits an original claim for pension. The Veteran served in the Navy from 1971-1974. The Veteran submits a report from his family physician for his back condition that is sufficient to grant pension. The Veteran also submits a separate *VA Form 21-4142a* and statement specifying treatment for the back, and they reveal treatment for the low back by a different physician two weeks after the date of treatment by his family physician.  ***Analysis***: Because the current evidence is sufficient to substantiate the claim and grant pension, the records from the second physician are not considered relevant since obtaining such records would not likely result in a greater benefit or earlier effective date.  ***Example 6***: A surviving spouse claims the Veteran’s death (shown as liver failure) is related to his service. The Veteran was SC for bilateral hearing loss evaluated at 30 percent at the time of death. Review of the STRs is silent for any treatment or complaint of a liver condition in service. The surviving spouse submits a medical release form with the attached *VA Form 21-4142a* and a statement with her claim requesting we retrieve records surrounding the Veteran’s liver failure in the year preceding his death.  ***Analysis***: Since it is highly unlikely that retrieval of the records for liver failure would provide a nexus between the Veteran’s hearing loss and his cause of death, nor likely to aid in substantiating the SC death claim, these records are not relevant *unless* the surviving spouse provides a specific reason why they are relevant. |

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| **e. Clinical Mental Health Records Considered Relevant** | For the purposes of adjudicating claims for SC for mental disorders, all clinical records from military service are considered relevant and shall be obtained. See [*Moore v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm), 555 F.3d 1369 (Fed. Cir. 2009).  ***Reference***: For information on clinical records and guidance for requesting such records, see M21-1, Part III, Subpart iii, 2.B.3.d. |

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| **f. Documenting the Claims Folder When Identified Evidence is Not Considered Relevant** | When it is determined that records identified by the claimant are *not* relevant, a formal documentation of this determination must be completed and made part of the claims folder.  Veterans Service Representatives (VSRs), RVSRs, and Decision Review Officers (DROs) shall document the claimant’s record when evidence identified by the claimant is not considered relevant and VA’s duty to assist under [38 U.S.C. 5103A](https://www.law.cornell.edu/uscode/text/38/5103A) does not require VA to obtain those records.  Follow the steps below when documenting the claimant’s record. |

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| **If ...** | **Then ...** |
| during development, the VSR determines evidence is considered ***not relevant*** | the VSR shall   * add the following note in the Veterans Benefits Management System (VBMS) using the note feature: * ***Records from [name of facility or physician] not requested because they are not relevant***, and * associate the note to the corresponding claim. |
| when rating the claim, the RVSR/DRO sees a note in VBMS indicating that certain identified records are ***not relevant*** | * if *RVSR/DRO agrees*, the RVSR/DRO shall insert the above statement into the INTRO/EVIDENCE tab under UPDATE EVIDENCE in FREE TEXT EVIDENCE, **or** * if *RVSR/DRO* ***does not*** *agree*, the RVSR/DRO shall develop or direct development for the records. |

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| ***Notes***:   * If the claim has been excluded from VBMS, then the proper documentation shall be made in Modern Award Processing-Development (MAP-D) by placing the same note in the above table under the Veteran’s profile screen. * It is imperative that RVSRs/DROs, in addition to reviewing items under the DOCUMENTStab in VBMS, also review all electronic notes found in either VBMS or MAP-D, prior to rating the case. * When deciding appeals, RVSRs/DROs shall annotate the *Evidence* section of the Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC) with the same note from the above table when evidence is not considered relevant. |

**5. Notification of Inability to Obtain Records**

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| **Introduction** | This topic contains general information on VA’s obligation to notify the claimant of the inability to obtain records, including   * notification requirements of inability to obtain * private records, and * Federal records. |

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| Change Date | January 15, 2016 |

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| **a. Notification Requirements of Inability to Obtain Private Records** | VA has a duty under [38 U.S.C. 5103A(b)](http://www.law.cornell.edu/uscode/text/38/5103A) and [38 CFR 3.159(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=78d056416d6b04f735f0659ff1e729a5&mc=true&node=se38.1.3_1159&rgn=div8) to notify claimants of the inability to obtain any relevant *private records* that are identified by the claimant and necessary to substantiate a claim.  If VA has made reasonable efforts to obtain relevant private records identified by the claimant, and such records are not obtained, decision makers must ensure that claimants receive the appropriate notification. The notification must   * identify the records that were not obtained * briefly explain the efforts made to obtain the records * describe any further action that will be taken with respect to the claim including follow-up requests and that VA is processing the claim based on the evidence of record, and * indicate that the claimant is ultimately responsible for providing the evidence.   ***Note***: The required notification of inability to obtain private records may also be sent by the VSR at the same time VA makes its final attempt to obtain the records.  ***References***: For more information on   * sending notice of private medical record unavailability, see M21-1, Part III, Subpart iii, 1.C.3.g, and * evidence requested from the claimant, see M21-1, Part III, Subpart iii, 1.B. |

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| **b. Notification Requirements of Inability to Obtain Federal Records** | VA has the duty under [38 CFR 3.159(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=78d056416d6b04f735f0659ff1e729a5&mc=true&node=se38.1.3_1159&rgn=div8) to notify claimants of the inability to obtain relevant *Federal records* that are necessary to substantiate a claim.  If, after continued efforts to obtain Federal records, it is reasonably certain that such records do not exist or further efforts to obtain them would be futile, VA must provide the claimant with a final attempt letter as shown in M21-1, Part III, Subpart iii, 1.C.2.e.  The notification must contain the following information   * the identity of the Federal records that were not obtained * an explanation of the efforts made to obtain the records * a description of any further action that will be taken with respect to the claim including a notice that VA will process the claim based on the evidence of record unless the claimant furnishes such records, and * an indication that the claimant is ultimately responsible for providing the evidence.   ***References***: For more information on   * documenting attempts to obtain VA records, see M21-1, Part III, Subpart iii, 1.C.4.e * control and follow up on requests for service records, see M21-1, Part III, Subpart iii, 2.I * requesting records from SSA, see M21-1, Part III, Subpart iii, 3.A, and * requesting evidence from sources other than the claimant, see M21-1, Part III, Subpart iii, 1.C. |