



Medical Opinions

Gregory Holland
Don Gibson
2016 Annual Fall Training Conference





Objectives

- Know and understand the definition of a medical opinion
- Know when and why an opinion is required and the purpose it serves
- Learn appropriate phrasing to be utilized within a medical opinion
- Understand the importance of the medical rationale behind the opinion





Elements to Service-Connect a Condition

- In-service incurrence, aggravation of disease or injury, or exposure to agent or situation
- The existence of a present disability
- A casual relationship between the present disability and the disease/injury/exposure/aggravation during service

Shedden v. Principi, 381 F.3d 1163, 1167 (Fed. Cir. 2004, citing *Hansen v. Principi*, 16 Vet. App. 110,111 (2002)); see also *Caluza v. Brown*, 7 Vet. App. 498 (1995)

September 2016 Helping Veterans Start Here




DEPARTMENT OF VETERANS AFFAIRS

Request for a Medical Examination

What is the reason the VA would request an examination?

 September 2016 Helping Veterans Start Here 4


DEPARTMENT OF VETERANS AFFAIRS

Competent Medical Evidence

- Evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions.
- It may also mean statements conveying sound medical principles found in medical treatises
- Finally, it would include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses

38 C.F.R. §3.159(a)(1)

 September 2016 Helping Veterans Start Here 5


DEPARTMENT OF VETERANS AFFAIRS

Medical Opinion Examination

What are the reasons the VA would request an opinion from the examiner?

 September 2016 Helping Veterans Start Here 6



What is an Opinion?

- A view, judgment, or appraisal formed in the mind about a particular matter
- Belief stronger than impression and less strong than positive knowledge or a generally held view.
- A formal expression of judgement or advice by an expert.
- The formal expression [as by a judge, court, or referee] of the legal reasons and principles upon which a legal decision is based

Merriam-Webster

 September 2016 Helping Veterans Start Here 7



Is this an opinion?

To Whom It May Concern

Mr. X has been a patient of mine for several years now. He suffers from prostrating migraine headaches one to two times a month. He is under treatment which helps but has not resolved his problems. Please be aware of these medical facts.

Sincerely,
Dr.

 September 2016 Helping Veterans Start Here 8



When is an opinion needed?

The record does not contain sufficient competent medical evidence to decide the claim, but...

- (A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;
- (B) Established that the veteran suffered an event, injury, or disease listed and manifesting during an applicable presumptive period;
- (C) Indicates that the claimed disability or symptoms MAY be associated the established event, injury, or disease in service or with another service-connected disability.

 September 2016 Helping Veterans Start Here 9



What is the Expected Outcome?

The opinion examination will allow the rater / judge to

- Determine if there is supporting evidence to establish service connection
- And determine the current severity of the disability per the VA rating schedule

 September 2016 Helping Veterans Start Here 10



Medical Opinion Musts

The offered opinion must be credible and probative:

- Credible = worthy of belief
- Probative = tending to prove or disprove

The Rater / Judge had the duty to determine credibility and probative value and give their reason for rejecting the opinion

 September 2016 Helping Veterans Start Here 11



What Must Be Present?

For a private medical opinion to be probative,

- the private examiner must be qualified to provide an opinion and
- must be informed of the relevant facts pertinent to the case.

Court stated that what is more important in a medical opinion is the physician's articulated, reasoned analysis based upon the relevant facts and not bare statement that the claim folder or service treatment records were reviewed.

Nieves-Rodriguez v. Peake

 September 2016 Helping Veterans Start Here 12



“Medical Certainty” vs. “Benefit of the doubt”

- Medical Doctors are usually trained to follow the more stringent “medical certainty”
- “Benefit of the Doubt” is more favorable to veteran and expressed as
 - 50% or less “as likely as not”
 - 51% or more “more likely as not”

 September 2016 Helping Veterans Start Here 43



When should you get a private opinion exam?

Before the rating?

After the rating?

 September 2016 Helping Veterans Start Here 44



What to ask for in the opinion?

- Look at the examination findings
 - What did the examiner see and report?
 - What evidence did the examiner relate opinion too?
- Discuss with veteran and provider
 - What evidence is available to private medical provider to refute these findings?
 - Was this evidence available to the VA examiner?
 - Can the private medical provider demonstrate the importance of this difference in judgement?

 September 2016 Helping Veterans Start Here 45



Results of Your Review

- Read your findings – do they address the previous examination and pass the Judge Judy test.
- Reopen vs. Notice of Disagreement
- Getting a third opinion – limits of the Regional Office



September 2016

Helping Veterans Start Here

16
