

## Continuity of Treatment

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achieve  
your goals



# OBJECTIVES

- Understand the need of VA examinations
- Describe criteria warranting an examination
- Identify evidence that can substitute a medical opinion
- Discuss changes in TL 14-01

## References

- *Waters v. Shinseki*, April 6, 2010
- *McLendon v Nicholson*, June 5, 2006
- 38 § CFR 3.159
- December 2013 VSCM Bulletin
- TL 14-01
- *Walker v Shinseki*, February 21, 2013
- 38 § CFR 3.303(a)
- 38 § CFR 3.303(b)
- 38 § CFR 3.309(a)
- April 2014 VSCM Bulletin

# Examination Threshold

## **Waters vs Shinseki**

The Federal Circuit held that the Board used the stricter standard under 38 U.S.C.

**§ 5103A(d)(2)(A)**, no “competent evidence of a nexus”, whereas the *correct standard* under section **5103A(d)(2)(B)** only required the Board to state that the record did not *indicate* that the veteran’s current disabilities had a causal connection or were associated with active military service.

## 38 § CFR 3.159 (a)(2)

- Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience
- Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person

## Examination Threshold (cont.)

### 38 § CFR 3.159 (c)(4)(i)

- In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim
- A medical examination or medical opinion is necessary if the information and evidence of 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) Establishes that the Veteran suffered an event, injury or disease in service...
  - (C) Indicates that the claimed disability or symptoms *may* be associated with the established event, injury, or disease in service or with another service-connected disability

# Medical Opinion Threshold

- The requirement for an “indication of association” can be satisfied by lay testimony
- The Veteran’s indication that his/her condition has existed “since service” satisfies the requirement
- However, without a medical or lay indication of association, no examination would be warranted in *most* cases

## ***McLendon v Nicholson, June 5, 2006***

- 3rd prong element requires a nexus between a current disability and an in-service injury, disease or event, is a low threshold.
- Veteran’s credible testimony of continuation of pain since service is sufficient to satisfy the 3<sup>rd</sup> prong element

## Summary: Impact of *Waters* Court Decision

- Veteran's claim or statement of back pain is acceptable as current persistent or recurrent symptoms of disability
- STRs, DD 214, etc. showing an event, injury, or disease in service
- Veteran's lay statement "since service" is adequate to indicate an association or causal connection with service

# Walker vs. Shinseki

- Acceptable nexus:
    - Medical opinion
    - Medical evidence of continuous symptoms
    - Continuity of symptomatology of chronic disabilities
  - 38 CFR § 3.309(a) – chronic disabilities
  - 38 CFR § 3.307 – presumptive period
- Other organic diseases of the nervous system:
- Glaucoma
  - Sensorineural hearing loss
  - Carpal tunnel syndrome
  - Migraine headaches

**Questions?**