



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

June 17, 2013

Director (00/21)
All VA Regional Offices

In Reply Refer To: 211B
Fast Letter 13-13

ATTN: All Veterans Service Center Personnel

SUBJ: Claims for Total Disability Based on Individual Unemployability (TDIU)

Purpose

The purpose of this Fast Letter is to revise and clarify VA procedures relating to claims for total disability ratings based on individual unemployability (TDIU).

Overview of Changes

- VA will no longer presume a claim for TDIU is a claim for increase in all service-connected disabilities. As part of a substantially complete application for TDIU, VA will require that the claimant with multiple service-connected disabilities specify at least one disability that he or she believes causes the unemployability.
- VA will consider the Veteran's specification of the disabilities that he or she believes cause unemployability to be claims for increased evaluation for those conditions.
- VA will require the claimant complete and submit VA Form 21-8940, *Veteran's Application for Increased Compensation Based on Unemployability*, to substantiate the claim of TDIU.
- VA will administratively deny TDIU claims if VA requests, but the Veteran does not submit, required forms or evidence.
- VA has the flexibility to request either condition-specific Disability Benefits Questionnaires (DBQs) or a general medical DBQ when VA determines that examinations are needed to decide the claim.
- VA will interpret the schedular requirements in 38 C.F.R. 4.16(a) to mean that a combined 70 percent rating is only required if no single disability is rated at 60 percent disabling.

Director (00/21)

Expressly and Reasonably Raised Claims

As a result of *Rice v. Shinseki* (2009), TDIU claims are no longer adjudicated as freestanding claims. A TDIU claim may be expressly claimed in conjunction with an original service-connection claim, or with a claim for increased evaluation. If, in connection with a claim for increased compensation, the evidence of record shows evidence of unemployability, and the Veteran meets the schedular criteria for TDIU, then the evidence reasonably raises a TDIU claim.

When a claim for TDIU is expressly or reasonably raised, VA will send the Veteran a VA Form 21-8940 for completion. If the Veteran has multiple service-connected disabilities, the Veteran must specify one or more disabilities that he or she believes preclude employability. The Veteran's specification of these disabilities will be treated as a claim for increase for those conditions. If the Veteran only has one service-connected disability, VA will presume that disability to be the cause of the Veteran's unemployability and will treat the TDIU claim as a claim for increase for that disability.

Note: If the evidence reasonably raises the issue of TDIU, the Rating Veterans Service Representative (RVSR) will infer and defer the issue on the rating decision. In these cases, authorization must continue the end product (EP). The TDIU claim must be worked as part of the EP pending when the RVSR inferred the issue.

Section 5103 Notice

Send the Veteran a TDIU-specific Section 5103 notice for all TDIU claims. Include any disability(ies) the Veteran specifies causes the unemployability in the notice as a claim for increase.

IMPORTANT: RVSRs must specifically address any identified disability(ies) as a claim for increase in the rating decision, in addition to the issue of TDIU.

Requirement for VA Forms 21-8940 and 21-4192

If a claim for TDIU has been expressly or reasonably raised by the evidence of record, but a current VA Form 21-8940 is not on file, provide it to the Veteran for completion. Before VA will consider a claim for IU

- the Veteran must complete a VA Form 21-8940, and
- the Veteran with multiple service-connected disabilities must specify one or more service-connected disabilities that he or she believes cause the unemployability.

Handling Receipt/Non-Receipt of the VA Form 21-8940

Follow the guidance in the table below to determine appropriate action based on whether or not the Veteran returns a completed VA Form 21-8940:

Director (00/21)

If	Then
the Veteran fails to complete and return the VA Form 21-8940	administratively deny the claim (see below).
the Veteran returns the VA Form 21-8940	send VA Form 21-4192, <i>Request for Employment Information in Connection with Claim for Disability Benefit</i> , to the former employer(s) listed on the form for which the Veteran worked during his last year of employment. <i>Note:</i> Request VA Form(s) 21-4192 for the Veteran’s last year of employment <i>even if</i> the Veteran has not worked for five years or more.
the Veteran with multiple service-connected disabilities returns the VA Form 21-8940 but does not identify which service-connected disability(ies) causes unemployability	contact the Veteran by telephone to gather that information. <ul style="list-style-type: none">• Document the results of the call on VA Form 27-0820, <i>Report of General Information</i>.
the Veteran with multiple service-connected disabilities returns the VA Form 21-8940 but does not identify which service-connected disability(ies) causes unemployability AND reasonable efforts to telephone the Veteran are not successful	send the Veteran a letter requesting he or she identify which service-connected disability(ies) are believed to cause unemployability. <i>Important:</i> If the Veteran does not respond within 30 days from the date of the written request for clarification, or will not identify one or more service-connected disabilities as the basis for the claim, administratively deny the claim (see below).

IMPORTANT: Do not deny TDIU evaluations solely because an employer failed to return a completed VA Form 21-4192. See [M21-1MR.IV.ii.2.F.25.e](#).

Administrative Denials

Follow the guidance in the table below to complete an administrative denial:

Step	Action
1	In VETSNET Awards, complete a Benefit Eligibility Decision using the reason “Failure to Furnish Requested Evidence.”
2	In PCGL (this letter is not currently available in VBMS), select the “Failure to Prosecute” template. <ul style="list-style-type: none">• When prompted for the date of the letter, enter the date of the Section

Director (00/21)

	<p>5103 notice that initially requested completion of the VA Form 21-8940.</p> <ul style="list-style-type: none"> • The evidence requested is the VA Form 21-8940. <p>The template generates the following first paragraph:</p> <p>“On [date], we wrote and asked you to send us VA Form 21-8940, <i>Veteran’s Application for Increased Compensation Based on Unemployability</i>. Because we have not received it, we must deny your claim.</p> <ul style="list-style-type: none"> • If the Veteran failed to complete and submit a VA Form 21-8940, leave this language as-is. • If the Veteran returned the VA Form 21-8940 but did not identify which service-connected disability(ies) causes unemployability, change the second sentence above as follows: <ul style="list-style-type: none"> ○ “Because you did not provide all requested information on the form, we must deny your claim.”
3	<p>Include paragraphs for:</p> <ul style="list-style-type: none"> • “How Did We Make Our Decision” <ul style="list-style-type: none"> ○ In this section, describe the actions taken by VA to obtain the requested evidence and the Veteran’s response (if any). • Appeal information • How to contact us
4	<p>Prior to authorization, add a note in MAP-D or VBMS (as applicable) to state:</p> <ul style="list-style-type: none"> • “FTP on IU claim. Failure to complete VA Form 21-8940. Admin decision completed [insert date].” <p>Note: This note is necessary in order to provide up-to-date information for national call center (NCC) representatives.</p>
5	<p>Clear the EP at authorization.</p>

The Veteran will still have one year from the original date of request to furnish the information necessary for VA to consider the claim. See 38 U.S.C. §5103(b)(1). The administrative denial will not be reflected on the rating codesheet; since the Veteran failed to submit sufficient information to adjudicate the claim, no rating action is needed. The decision notice should clearly indicate the reason for the administrative denial.

Updating the Rating Codesheet Following an Administrative Denial

If the RVSR inferred and deferred the issue of TDIU and the Veteran fails to complete and return the VA Form 21-8940, the claim is administratively denied (as described above). Although the administrative decision sufficiently handles the denial of TDIU in these

Director (00/21)

cases, a deferred issue remains on the rating codesheet which must be removed. Following completion of the administrative denial, the RVSR must take action to remove the issue.

RVSRs should follow the guidance in the table below for removing the deferred issue:

Step	Action
1	<p>In RBA2000 or VBMS-R, enter the file number and select “Pull for Backfill.”</p> <p><i>Note:</i> A backfill does not require a pending EP, so this action should take place following authorization.</p>
2	Remove the deferred TDIU issue from the Master Record.
3	Return the case to files.

Note: This action removes the deferred issue from the data in RBA2000 and VBMS-R; however, it does not update Share. The deferred issue will still be visible in a Master Record inquiry under “Additional Rating Decisions” in Share. Share will continue to reflect the deferred issue until a subsequent rating is completed and promulgated on the claim. For this reason, the MAP-D or VBMS note regarding the administrative denial, as specified above, is required. If there has been an administrative denial on TDIU previously and TDIU has not been removed from VBMS-R, then delete the issue.

Examinations

VA is not required to provide a general medical examination in connection with every TDIU claim. The decision to request a medical examination or opinion is contingent upon VA’s duty to assist as part of an original disability compensation claim (38 CFR §3.159(c)(4)), or as part of a claim for increased evaluation (38 CFR §3.326). These regulations require VA to provide an examination to a claimant “if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim.”

When developing a claim involving a request for TDIU, normally request condition-specific DBQs for the issue(s) alleged to cause unemployability (e.g., joints, mental, peripheral nerves, etc.). These DBQs should generally be sufficient to fairly and fully adjudicate TDIU claims. Do not order examinations for disabilities not alleged to cause or contribute to unemployability.

Schedule a general medical examination only if the rating activity determines that it is needed to fairly and fully adjudicate the TDIU claim, such as original claims for disability compensation or TDIU claims involving the impact of multiple service-connected and/or nonservice-connected disabilities upon employability.

Director (00/21)

If the facts of the case require VA to examine the Veteran, do not ask the examiner to opine as to whether or not the Veteran is unemployable due to his or her service-connected disabilities. See M21-1MR, III.iv.3.A.9.f. The responsibility for this decision rests solely with the rating activity (see 38 CFR § 4.16(a)). VA should request that the examiner comment instead on the functional impairment caused solely by the service-connected disabilities.

TDIU Scheduler Requirements

38 C.F.R. 4.16(a) provides the schedular requirements for TDIU as follows: “if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more.” However, in some cases, a Veteran will have one disability ratable at 60 percent with an additional disability rated at 0 or 10 percent, and the combined rating will still equal 60 percent. In these cases, consider the schedular requirements to be met. The reference in 4.16(a) to two or more disabilities should be interpreted as applying to cases where no single disability is sufficient to meet the 60 percent criterion.

Appeals Involving TDIU

The table below provides guidance on properly considering an appeal that involves TDIU:

If	And	Then
the Veteran has filed a Notice of Disagreement (NOD) regarding an increased evaluation for a service-connected disability	while the appeal is pending, the Veteran claims TDIU due, at least in part, to the disability on appeal <i>AND</i> the rating decision denies the TDIU claim	the TDIU claim is now part of the pending appeal. VA should send the Veteran a Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC) regarding the TDIU.
the Veteran filed a NOD on a TDIU evaluation	the Veteran subsequently claims that a service-connected disability not on appeal causes unemployability <i>AND</i> the rating decision fails to increase the evaluation to the schedular maximum	that disability will also be considered in appellate status. VA should send the Veteran a SOC or SSOC regarding the evaluation of that disability.

Page 7.

Director (00/21)

Rescission

Training Letter 10-07 is rescinded effective immediately.

M21-1MR Update

We will revise the Adjudication Procedures Manual M21-1MR and training materials to incorporate these procedures.

Questions

E-mail questions to VAVBAWAS/CO/21Q&A.

/S/

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Director
Compensation Service