



Lesson 17

Disability Ratings: Joint Conditions

The American Legion DSO School

March 2022

Lesson 17 Learning Objectives

Learn how to obtain the maximum VA disability benefit for a Veteran's joint conditions.

- Learn general principles for rating joint conditions.
- Learn some special rules that apply to joint rating.
- Learn about rating certain joints.

Rating Joint Conditions

- VBA's Diagnostic Codes (DC) are in the 5000 series (38 C.F.R. §§ 4.40-4.73).
- Usually rated by range of motion (ROM).
- Minimum ratings are allowed for painful motion.

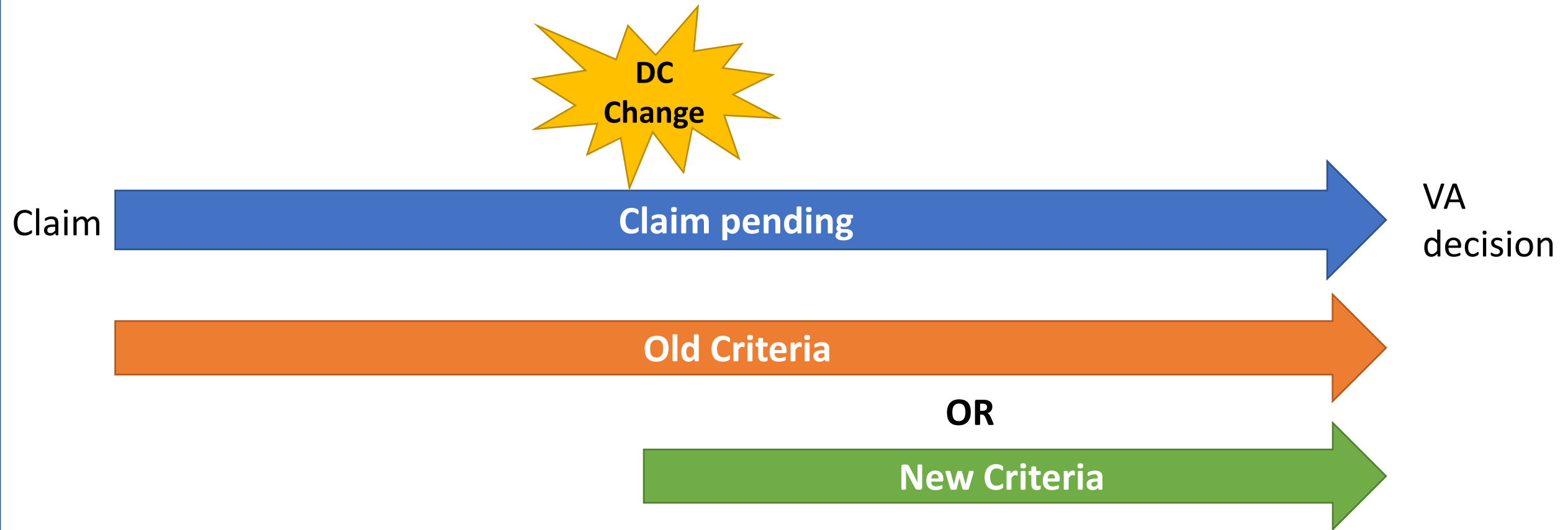


Revised in February 2021



- VA updated the DCs related to joint conditions and VBA claims in **February 2021**.
- VA added objective criteria to previously subjective standards.
- If you're working on a Veteran's claim filed before February 2021, then check VA's old criteria to see if it is more favorable to the Veteran.

VA Criteria Changes



Rating Joint Conditions

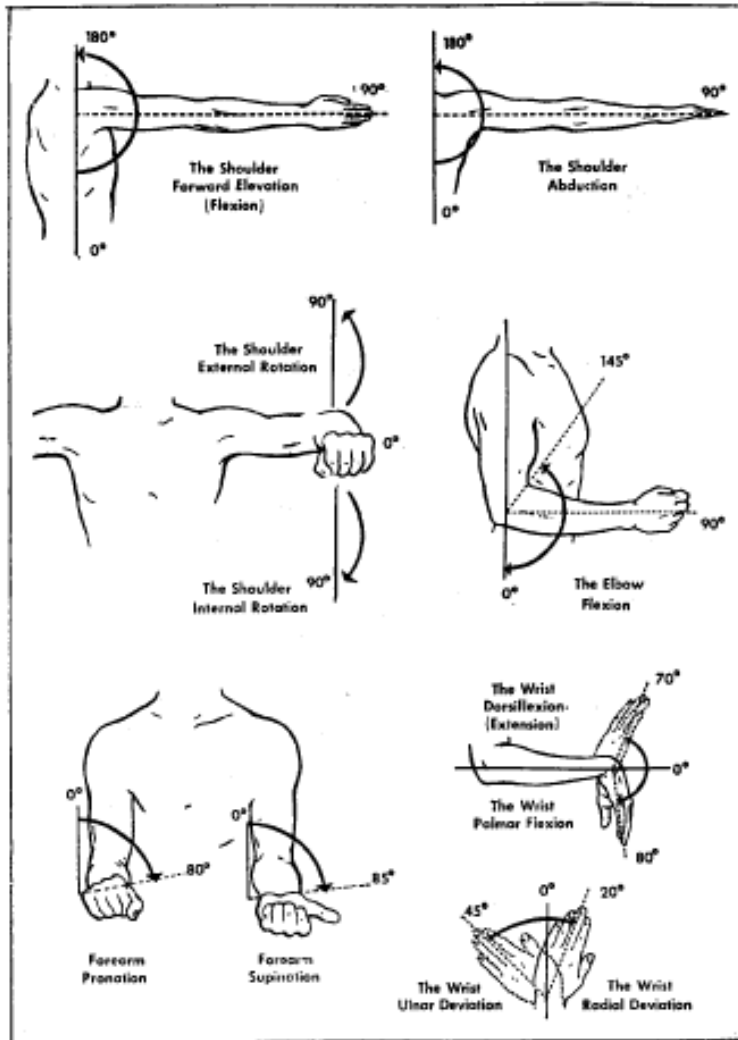
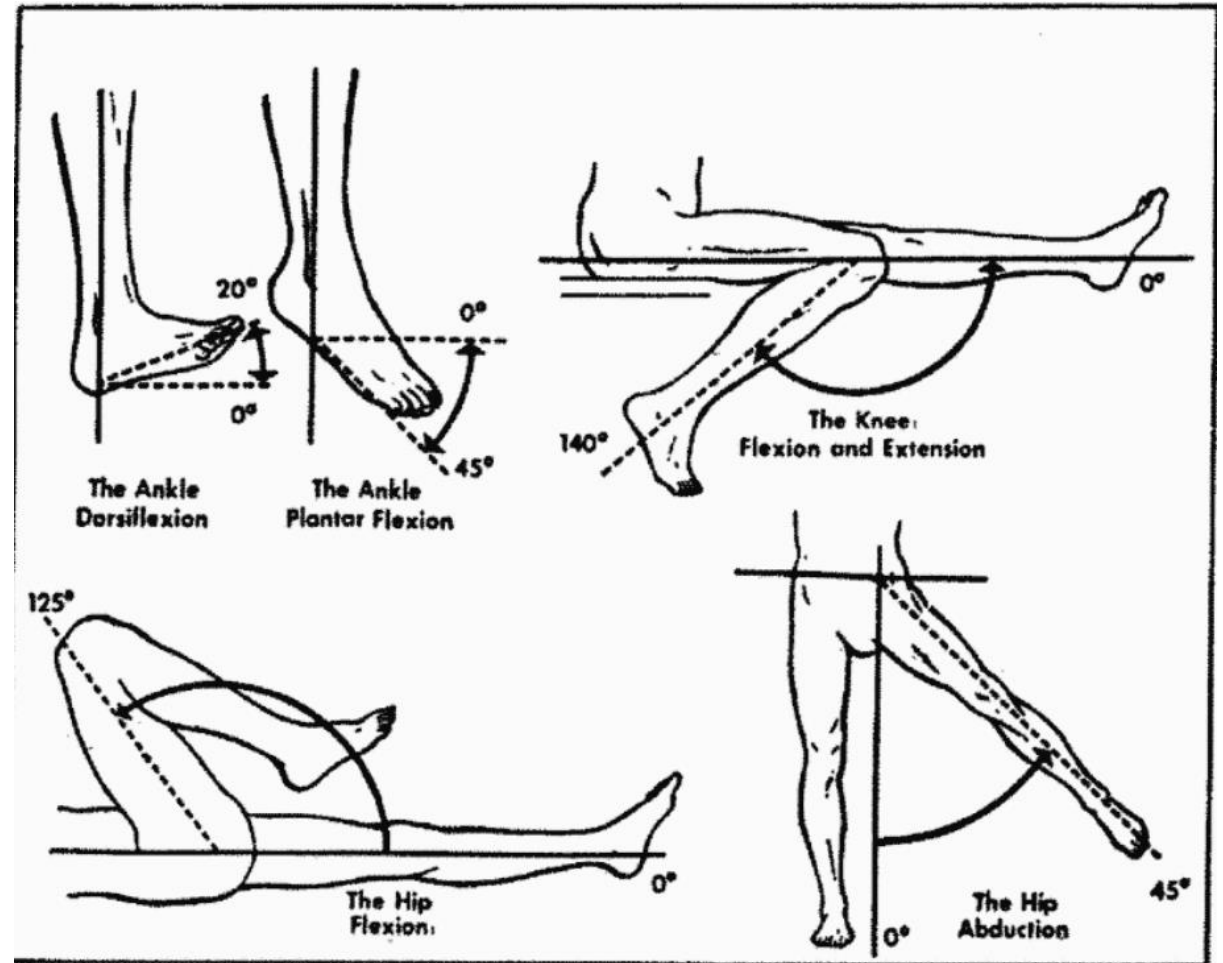


PLATE I



Range of Motion

- “The joints involved should be tested for pain:
 - On both active and passive motion,
 - In weight-bearing and nonweight-bearing positions,
 - And, if possible, with the range of the opposite undamaged joint.”¹

138 C.F.R. § 4.59; *Correia v. McDonald*, 28 Vet.App. 158 (2016); Manual M21-1, Part III, iv.3.D.4.g

PATIENT/VETERAN'S SOCIAL SECURITY NO. []-[]-[]

SECTION III - INITIAL RANGE OF MOTION (ROM) MEASUREMENTS (Continued)

3B. DO ANY ABNORMAL ROMs NOTED ABOVE CONTRIBUTE TO FUNCTIONAL LOSS?
 YES (you will be asked to further describe these limitations in Section 6 below)
 NO, EXPLAIN WHY THE ABNORMAL ROMs DO NOT CONTRIBUTE:

3C. IF ROM DOES NOT CONFORM TO THE NORMAL RANGE OF MOTION IDENTIFIED ABOVE BUT IS NORMAL FOR THIS VETERAN (for reasons other than a knee condition, such as age, body habitus, neurologic disease), EXPLAIN:

SECTION IV - ROM MEASUREMENTS AFTER REPETITIVE USE TESTING

4A. POST-TEST ROM MEASUREMENTS

Knee	Is the veteran able to perform repetitive-use testing?	Is there additional limitation in ROM after repetitive-use testing?	Joint Movement	Post-test ROM Measurement
RIGHT KNEE	<input type="checkbox"/> Yes if yes, perform repetitive-use testing <input type="checkbox"/> No if no, provide reason below, then proceed to Section 6	<input type="checkbox"/> Yes <input type="checkbox"/> No, there is no change in ROM after repetitive testing If yes, report ROM after a minimum of 3 repetitions. If no, documentation of ROM after repetitive-use testing is not required.	Flexion	---
			Extension	---
LEFT KNEE	<input type="checkbox"/> Yes if yes, perform repetitive-use testing <input type="checkbox"/> No if no, provide reason below, then proceed to Section 6	<input type="checkbox"/> Yes <input type="checkbox"/> No, there is no change in ROM after repetitive testing If yes, report ROM after a minimum of 3 repetitions. If no, documentation of ROM after repetitive-use testing is not required.	Flexion	---
			Extension	---

4B. DO ANY POST-TEST ADDITIONAL LIMITATIONS OF ROMs NOTED ABOVE CONTRIBUTE TO FUNCTIONAL LOSS?
 YES (you will be asked to further describe these limitations in Section 6 below)
 NO, EXPLAIN WHY THE POST-TEST ADDITIONAL LIMITATIONS OF ROMs DO NOT CONTRIBUTE:

SECTION V - PAIN

5A. ROM MOVEMENTS PAINFUL ON ACTIVE, PASSIVE AND/OR REPETITIVE USE TESTING

Knee	Are any ROM movements painful on active, passive and/or repetitive use testing? (If yes, identify whether active, passive, and/or repetitive use in question 5D)	If yes (there are painful movements), does the pain contribute to functional loss or additional limitation of ROM?	If no (the pain does not contribute to functional loss or additional limitation of ROM), explain why the pain does not contribute:
RIGHT KNEE	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes (you will be asked to further describe these limitations in Section 6 below) <input type="checkbox"/> No	
LEFT KNEE	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes (you will be asked to further describe these limitations in Section 6 below) <input type="checkbox"/> No	

5B. PAIN WHEN USED IN WEIGHT-BEARING OR IN NON WEIGHT-BEARING

Knee	Is there pain when the joint is non weight-bearing? (If yes, identify whether weight-bearing or non weight-bearing in question 5D)	If yes (there is pain when used in weight-bearing or non weight-bearing), does the pain contribute to functional loss or additional limitation of ROM?	If no (the pain does not contribute to functional loss or additional limitation of ROM), explain why the pain does not contribute:
RIGHT KNEE	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes (you will be asked to further describe these limitations in Section 6 below) <input type="checkbox"/> No	
LEFT KNEE	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes (you will be asked to further describe these limitations in Section 6 below) <input type="checkbox"/> No	

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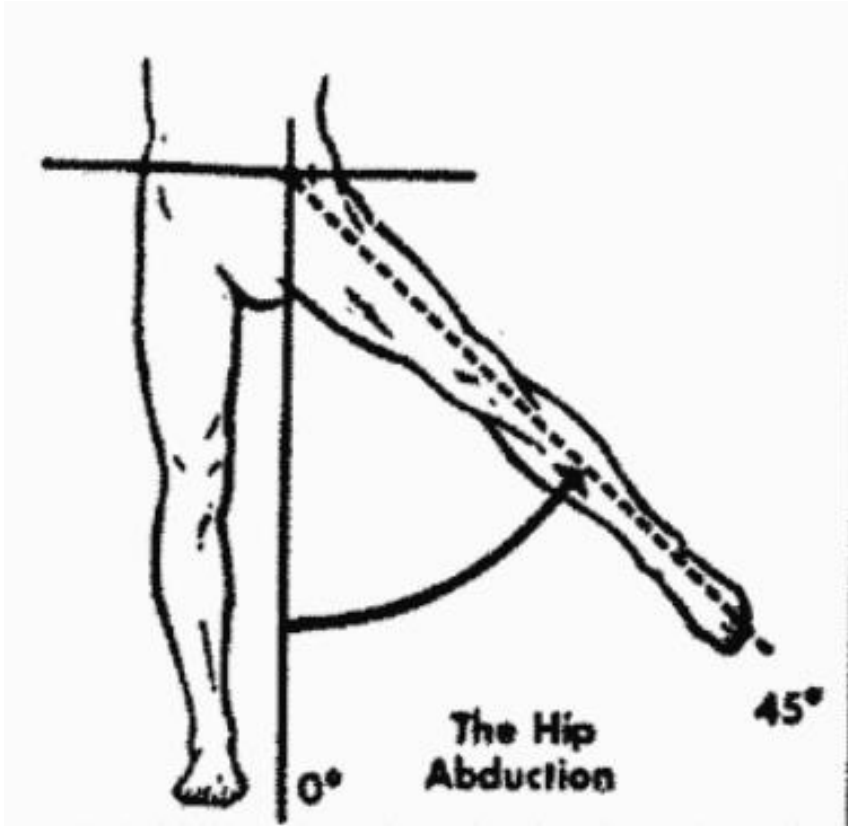
Functional Loss



- “It is essential that the examination on which ratings are based adequately portray the anatomical damage and **functional loss.**” See 38 C.F.R. § 4.40.
 - Pain, deformity, instability
 - Excess fatigability
 - Less movement than normal
 - Weakened movement
 - Incoordination
 - More movement than normal

Advocacy Tip: Assist the Veteran with submitting a statement to VA describing their **functional loss** for the joint condition.

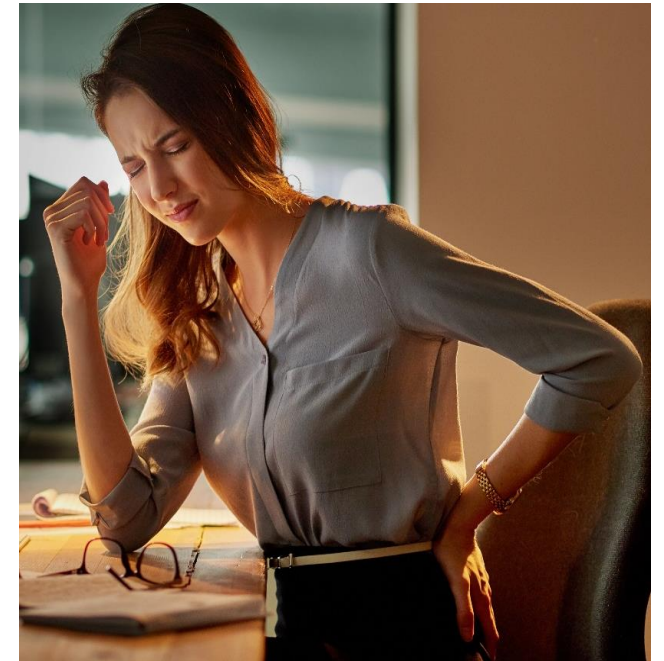
Minimum Ratings for Pain



- 38 C.F.R. § 4.59 provides even if limitation of motion is non-compensable, painful motion in joints warrants the minimum compensable rating.
- Not limited to arthritis.
- For most joints the minimum rating is 10%.
- For the shoulder the minimum rating is **20%**.

Repetitive Use and Flare-ups

“When painful motion on **repeated use** over time **or** during a **flare-up** results in additional loss of [range of motion], then the condition should be evaluated based on the additional loss of ROM.”¹



Advocacy Tip: Assist the Veteran with submitting a statement to VA describing their symptoms **during flares.**

¹VA Disability Compensation Manual M21-1, Part III, iv.4.A.1.e.

Quiz

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Veteran Bobby is seeking a higher rating for his service-connected shoulders. During his VA examination he described that he experiences flares of shoulder pain after repetitive lifting. During these flares he experienced additional pain and lack of endurance. The examiner indicated that the examination was not medically consistent nor inconsistent with Bobby's descriptions of functional loss during flares and stated, "It is not possible without mere speculation to estimate either loss of range of motion during flares because there is no conceptual or empirical basis for making such a determination without directly observing function during a flare." Is this VA examination adequate?

- Yes
- No

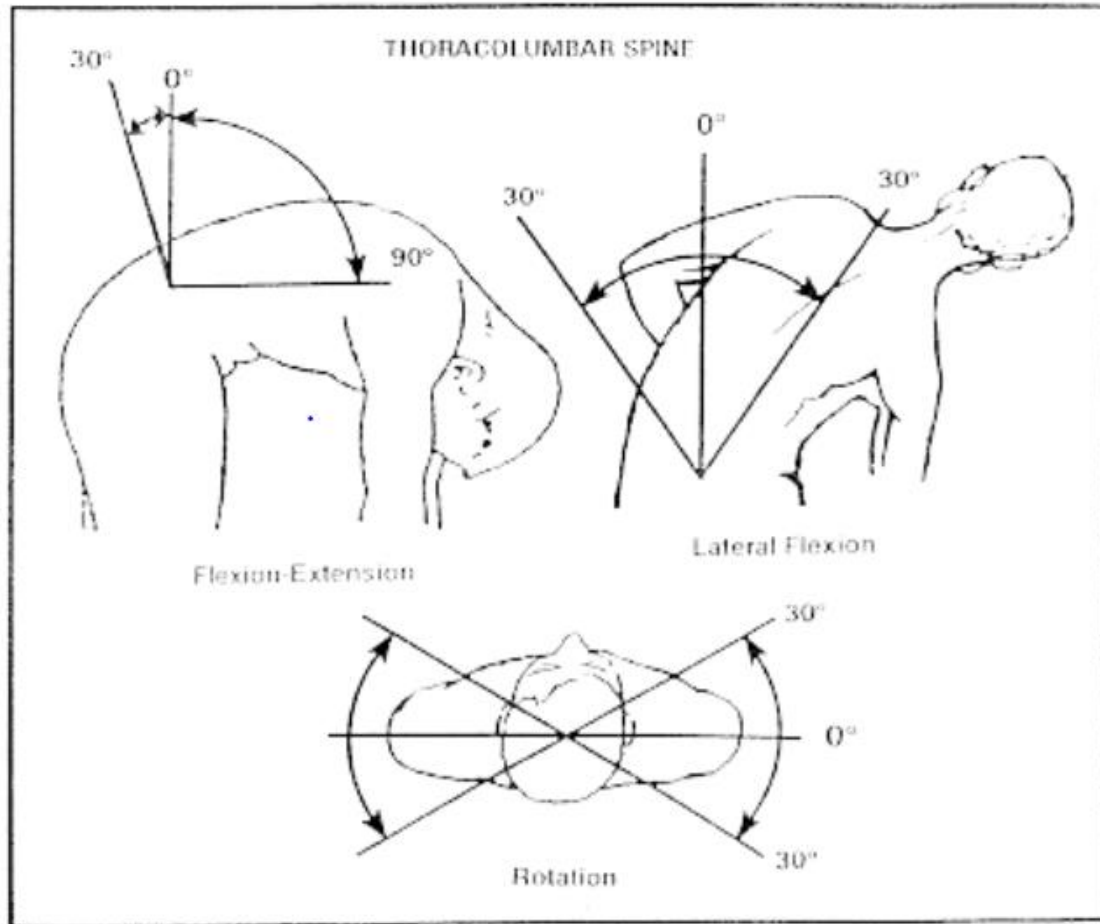
Quiz Answer

No.

This is based on the facts of *Sharp v. Shulkin*, 29 Vet. App. 26 (2017). The Court found that VA was not required to provide an examination during a flare-up, however the examiner must determine whether the medical records provide information about the “**severity, frequency, duration, or functional loss manifestations**” during flares, or **must ask the Veteran to provide this information.**

In this case, the examiner did not ask the Veteran to provide information about the degree of his functional loss during flares.

Why is all this information necessary?



- The Veteran's joint should be rated on the most severe manifestation of their joint symptoms.
- If repetitive use or flare-ups result in a greater limitation of motion, then that additional limitation can be the basis for their rating.
- Veterans should provide as much information as possible about their symptoms and loss of range of motion.

Joint Replacements

- DC 5051 (shoulder), 5052 (elbow), 5053 (wrist), 5054 (hip), 5055 (knee), 5056 (ankle) provide specific ratings for joint replacements.
- Includes set period of temporary 100% rating after surgery, followed by a minimum rating.



The Amputation Rule

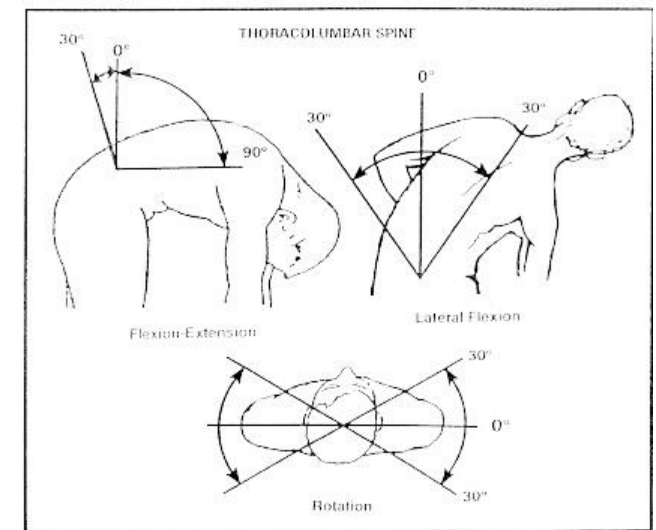
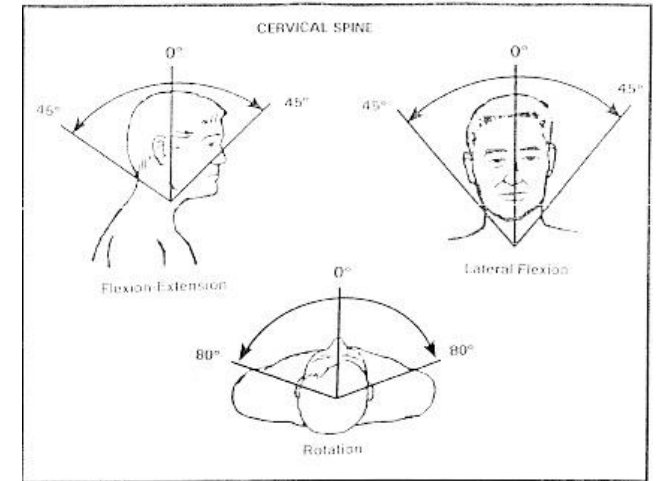
- “The combined evaluation for disabilities of an extremity shall not exceed the rating for the amputation at the elective level, were amputation to be performed.” 38 C.F.R. § 4.68
- Exceptions: “The amputation rule **does not apply** to evaluations of peripheral nerve disabilities of the extremities including:
 - Diabetic neuropathy,
 - Radiculopathy/sciatica due to a spinal disorder,
 - Peripheral nerve injuries of non-musculoskeletal etiology.”

The combined rating for a limb cannot be greater than the rating for an amputation of that limb.

Rating the Spine

- DCs 5235-5242 rate spine conditions based upon *range of motion*.
- Except in extreme cases, VA must give thoracolumbar and cervical spine segments *separate* ratings.
- Highest VA ratings require ankylosis, which is stiffness that prevents, or nearly prevents, movement.

Advocacy Tip: Have Veterans write written statement if they have functional loss of use of their back.



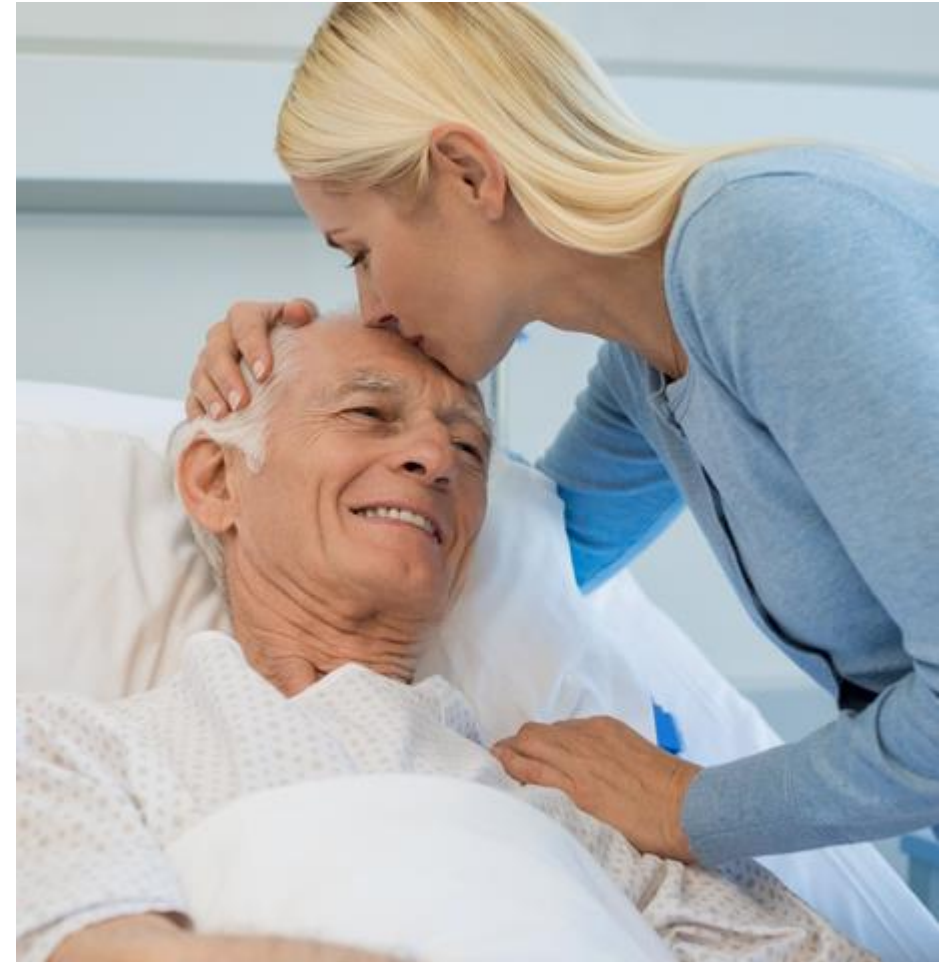
Rating the Spine-Neuro Issues



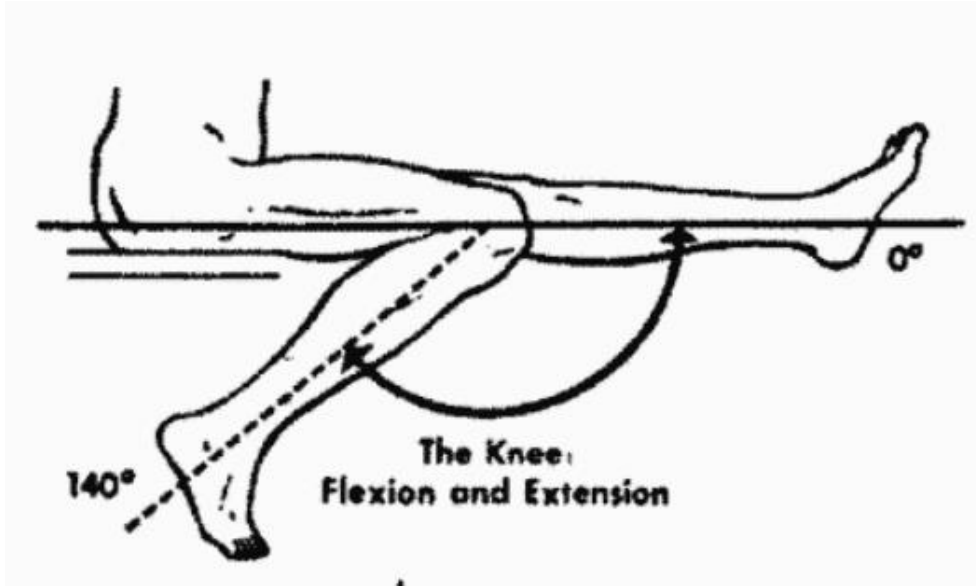
- A Note after Spine DCs provides that associated Neurological issues should also be considered.
- VA must separately rate these neurological issues.
- VA should look for these issues even if Veteran doesn't separately claim.
- Examples include:
 - Radiculopathy
 - Neuropathy
 - Bowel or bladder impairment

Rating the Spine-IVDS

- DCs also provide that spine with diagnosis of Intervertebral Disc Syndrome (IVDS) can be rated based on frequency of incapacitating episodes.
- This requires bedrest prescribed by a physician.
- Extended bed rest for back pain is no longer standard medical practice.



Rating Knees



- 5256-Ankloysis
- 5257-Instability
- 5258 & 5259- dislocated or removed semilunar cartilage
- 5260-Limitation of flexion
- 5261-Limitaiton of extension
- 5262-Impaired tibia and fibula
- 5263-Genu recurvatum

Advocacy Tip: Veterans can receive separate VA disability ratings under more than one DC for the knee.

Quiz

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Veteran Thomas is seeking an increased rating for his service-connected left knee. He currently receives a 20% rating under DC 5257 based on instability in his left knee. Last year he had a partial lateral meniscectomy surgery in his left knee and since the surgery experiences pain, locking, swelling, and limitation of extension.

The RO granted a separate 10% rating under DC 5261 for his limitation of extension. The RO denied a separate rating under 5258 or 5259 (see image for criteria) because those symptoms were already compensated under his current ratings for instability (5257) and limitation of extension (5261) and therefore would be improper pyramiding.

Was the RO's decision correct?

- Yes
- No

5258 Cartilage, semilunar, dislocated, with frequent episodes of "locking" pain, and effusion into the joint.	20
5259 Cartilage, semilunar, removal of, symptomatic	10

Quiz Answer 2

No.

This is based on the facts of *Lyles v. Shulkin*, 29 Vet. App. 107 (2017). The Court held that a Veteran can have separate ratings for the same knee under DC 5257 (for instability of the knee) and 5258 or 5259 (for meniscal impairment) without pyramiding.

Rating Knees-Instability

- Under the old criteria, the Court held that the Veteran's lay evidence was enough to establish instability.
- Under the new criteria for DC 5257 VA requires a medical diagnosis.
- Always a good idea for the Veteran to submit a written statement describing their symptoms.



Exercise Overview

- In the next slide, you will interview a Veteran who comes into your office seeking help in applying for an increased rating for his back.
- Don't forget that after you reach the end you can restart the interview if you want to try different answers.
- During the interview, think about what forms the Veteran will need to complete to win their claim.
- Then when you are finished with the interview, we will go over some take-aways together.

Simulation

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What Form Does the Veteran Need?

- What form does this Veteran need to file to establish his increased rating claim?
 - Intent to File (21-0966) OR
 - VA Form 21-526EZ
- His last decision was 5 years ago and his back has gotten worse.



Wally
Worsening

What Issues Should He List?

SECTION IV: CLAIM INFORMATION

16. LIST THE CURRENT DISABILITY(IES) OR SYMPTOMS THAT YOU CLAIM ARE RELATED TO YOUR MILITARY SERVICE AND/OR SERVICE-CONNECTED DISABILITY (If applicable, identify whether a disability is due to a service-connected disability; confinement as a prisoner of war; exposure to Agent Orange, asbestos, mustard gas, ionizing radiation, or Gulf War environmental hazards; or a disability for which compensation is payable under 38 U.S.C. 1151)

NOTE: List your claimed conditions below. See the following three examples for guidance on how to complete Section IV.

EXAMPLES OF DISABILITY(IES)	EXAMPLES OF EXPOSURE TYPE	EXAMPLES OF HOW THE DISABILITY(IES) RELATE TO SERVICE	EXAMPLES OF DATES
Example 1. HEARING LOSS	NOISE	HEAVY EQUIPMENT OPERATOR IN SERVICE	JULY 1968
Example 2. DIABETES	AGENT ORANGE	SERVICE IN VIETNAM WAR	DECEMBER 1972
Example 3. LEFT KNEE, SECONDARY TO RIGHT KNEE		INJURED LEFT KNEE WHEN BRACE ON RIGHT KNEE FAILED	6/11/2008

CURRENT DISABILITY(IES)	IF DUE TO EXPOSURE, EVENT, OR INJURY, PLEASE SPECIFY (e.g., Agent Orange, radiation)	EXPLAIN HOW THE DISABILITY(IES) RELATES TO THE IN-SERVICE EVENT/EXPOSURE/INJURY	APPROXIMATE DATE DISABILITY(IES) BEGAN OR WORSENERD
1. Higher Rating for Back		See attached 21-4138	
2. Neuropathy of Legs		See attached 21-4138	
3. TDIU		See attached 21-4138	
4.			

What Include on the 21-4138?

SECTION II: REMARKS

(The following statement is made in connection with a claim for benefits in the case of the above-named veteran/beneficiary.)

I am seeking a higher VA disability rating because my back pain is worse, especially in the last six months.

Every night I have flares and muscle spasms so bad that I can't use my back and have to sit down. I can't even play with my kids. The muscle spasms and flares last until I get sleep and rest overnight.

During these flares my back pain extends into my legs. My doctor diagnosed neuropathy in my legs due to my back.

I am also unable to work due to my service-connected back disability and radiating pain into my legs.

I receive medical treatment at the VA medical facility and the private hospital near my house.

What Other Forms?

- What other forms should this Veteran submit?
- Private Medical Release, VA Form 21-4142
- Application for Increased Compensation Based on Unemployability, VA Form 21-8940



- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.