



# **Lesson 19**

## **Winning Claims with Written Advocacy**

*The American Legion DSO School*

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# Lesson 19 Learning Objectives

Learn how to write effective arguments and use them in support of Veteran disability claim with VA:

- Learn the goal of effective written advocacy.
- Understanding VA adjudicators.
- Learn the **IRAC** argument structure.
- Learn principles and rules of effective persuasive writing.

# Claims and arguments

- **What is the relationship between arguments and winning claims?**
- Claims are won by proving all the necessary facts with evidence.
- Arguments help the adjudicator see *which facts matter* and *how the evidence proves them*.

DATA



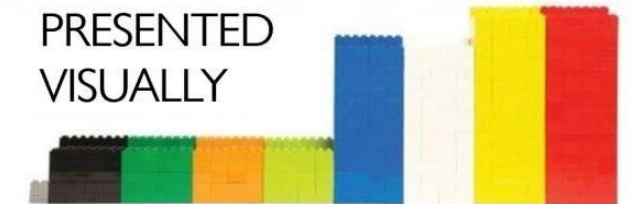
SORTED



ARRANGED



PRESENTED VISUALLY



EXPLAINED WITH A STORY



# Claims and arguments

- Claims file = Data
- VBMS = Sorted.
- Fair argument = Arranged or Presented Visually
- Great argument = explains the information with a story.

**Winning arguments make it obvious to the reader how the pieces fit together!**

DATA



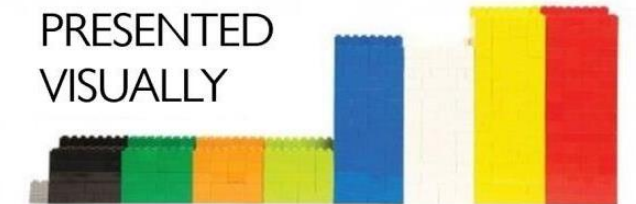
SORTED



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# Approaching Writing

- What is the single biggest problem in communication?
- **“The single biggest problem in communication is the illusion that it has taken place.”** -*George Bernard Shaw*



**Writing tip:** Don't blame the audience for failing to understand your argument.

# Effective Advocacy

**Effective advocacy works backward from the desired result !**

- **Goal:** Have VA's adjudicator grant the desired result.
- **Goal:** Have VA's adjudicator find the facts necessary to meet the legal elements necessary to grant that result.
- **Goal:** Present the evidence in format that makes it as easy as possible for VA's adjudicator to identify the evidence proving the necessary facts.
- **Goal:** Identify and organize the evidence that needs to be understood by the adjudicator.



# Understanding VA Raters – I

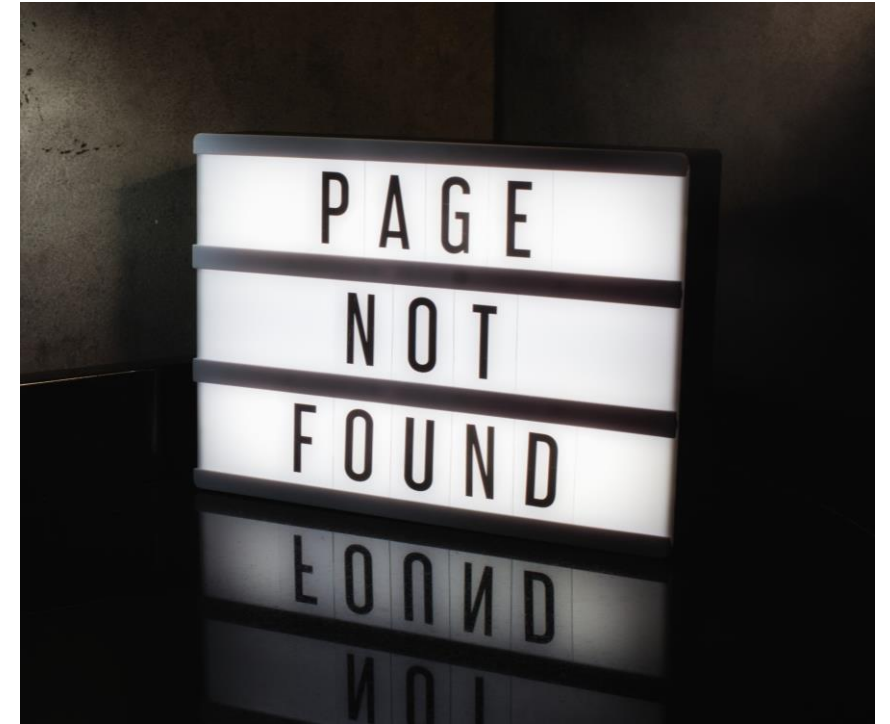
- VA adjudicators must:
  - Find information in the claims file.
  - Write an analysis of how the law applies to that information.



**VA adjudicators are looking to minimize the time and the effort needed to decide a Veteran's claim.**

# Understanding VA Raters - II

- VA adjudicators get in trouble when a VA decision lacks support.
- VBMS presents work in a way that makes it easy to overlook information favorable to a Veteran.
  - Inaccurate labels.
  - Decisions prepopulated from flawed DBQs.



**Overlooked information already in VBMS is the most common reason for erroneous VA denials of Veteran claims.**



# Understanding Your Job as Advocate

- Guide the VA rater to the information needed to **grant** the Veteran's claim.
- Offer a useful analysis of that information which VA staff can adopt to award the best possible outcome for the Veteran.



**Advocacy Tip:** You are trying to minimize the time and effort the VA adjudicator needs to expend to decide a case in a favorable way.

# Effective Writing

**“The goal of writing is not to make it possible to understand your point, but to make it impossible to misunderstand your point.” - *Unknown***



# What is this?

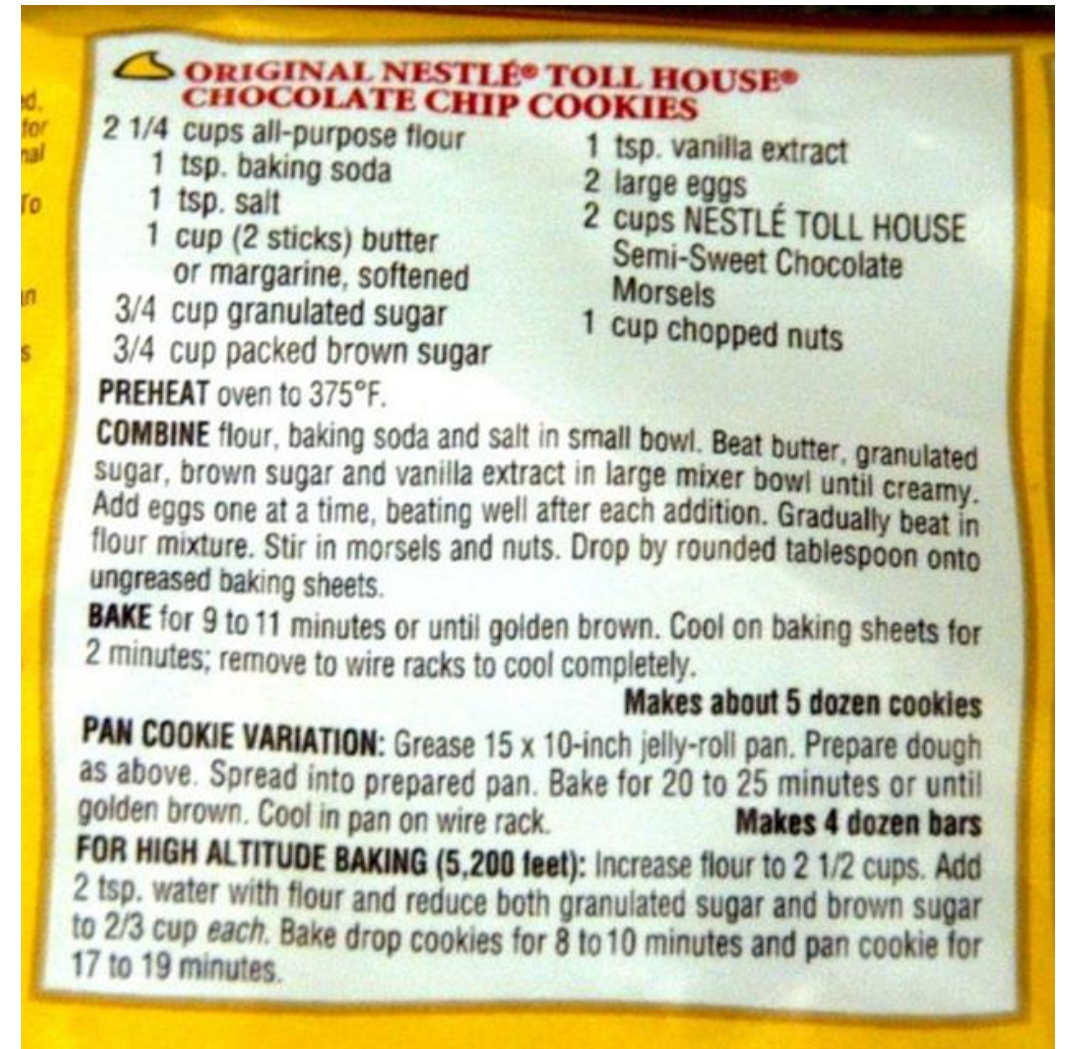
You should be done nine to eleven minutes after you finish preparation. Start with a small sized bowl. Insert some flour and baking soda. The flour should be two and a quarter cups. A teaspoon of soda is right. Then add the same amount of salt. Combine 1 cup of butter with  $\frac{3}{4}$  of a cup of sugar and a similar amount of brown sugar. Add as much vanilla extract as salt. These ingredients should be mixed until creamy in a different bowl than the flour. Add 2 eggs. Mix more and then mix flour into bigger bowl. Add chocolate chips. Once combined, divide into small balls and place on baking sheet. Be sure you warmed oven to three hundred seventy-five degrees. Insert for nine to eleven minutes. When cookies are golden brown, remove and let cool for at least 120 seconds. Enjoy!



# What was that?

- That was the Nestle Toll House chocolate chip cookie recipe.
  - The information was the same.
  - The presentation was horrible.

**How information is presented has a tremendous affect on how well it is understood.**



# IRAC - The Recipe for Legal Writing

- **Issue** - What is the point that this case turns upon?
- **Rule** - What is the rule governing this case?
- **Application** - How does that rule apply to the facts of this case?
- **Conclusion** - What is the outcome of the issue identified at the beginning?





# IRAC – Example Case

**(I)** The issue in this appeal is whether Veteran Gerald I. Joseph's undisputed tinnitus is related to service.

**(R)** Tinnitus is a chronic condition that is presumptively related to service if a Veteran has had symptoms since service.

**(A)** In this case, Gerald submitted a written statement on August 4, 2020, explaining that he has had tinnitus ever since he served on a flight line in service. He never reported it in service or for years afterward because he did not realize that it was a separate condition from his hearing loss.

**(C)** Therefore, his claim should be granted because his tinnitus manifested in service and he has had it ever since.

# Writing Rule 1: Roadmap

**Set up why information matters before you present it!**

- Retaining information requires context.
- Don't surprise the reader.
- Build trust in your competence by setting expectations and then meeting them.



# Rule 2: Identify Key Documents

**Finding key evidence is more important than spinning it.**

- Highlighting the key documents for VA is what helps the most.
- Include the specific date and label that appears in VBMS.
- Overlooked lay statements and private medical evidence are the most common keys to winning.



# Rule 3: Tell a Story

**People often think in stories to make decisions.**



- Start at the beginning.
- Signal when there is a jump in time.
- Tell VA what symptoms the Veteran has and when they began.

## Quiz

Click the **Quiz** button to edit this object

Ron is a retired Army helicopter pilot who separated from service a decade ago. He is seeking your help with a claim for service connection for arthritis of his spine. This is his first claim. After interviewing him, you help him prepare a statement explaining that he has had back pain since service, which he did not report because he feared losing his flight status.

Which of the following is the best way to argue in support of Ron's claim? (This question does not count towards your grade.)

- The attached claim should be granted because it meets all three elements of service connection. The Veteran has arthritis of the spine. He flew helicopters in the Army. And he has had back pain since service, which satisfied the nexus requirement. Therefore, he should be awarded benefits.
- The attached claim from the Veteran should be granted on the basis of continuity of symptomatology. Although Ron's arthritis only recently became so severe that he felt compelled to seek treatment from VA, the attached statement explains that he has had back pain since service due to the physical punishment of flying and landing helicopters in the Army. He did not report these symptoms in service because he feared losing his flight status. He initially tolerated his back problems in his civilian occupation, but they have now progressed to the point where they cannot be ignored. Accordingly, compensation should be awarded for his chronic condition based upon his statements and his VA treatment records.



# Answer 1

The attached claim from the Veteran should be granted on the basis of continuity of symptomatology. Although Ron's arthritis only recently became so severe that he felt compelled to seek treatment from VA, the attached statement explains that he has had back pain since service due to the physical punishment of flying and landing helicopters in the Army. He did not report these symptoms in service because he feared losing his flight status. He initially tolerated his back problems in his civilian occupation, but they have now progressed to the point where they cannot be ignored. Accordingly, compensation should be awarded for his chronic condition based upon his statements and his VA treatment records.

- This is the argument that tells a story.

**Advocacy tip:** It is much better to address the lack of contemporaneous records head on — especially with a written statement from the Veteran — than it is to ignore this fact.

# Rule 4: Keep it Short

## Don't bury the lede!

- Place the important information at the top.
- Short sentences.
- Short paragraphs.
- No extraneous words.



## Quiz

Click the **Quiz** button to edit this object

Morris wants to file a claim for service connection for glioblastoma (a form of brain cancer) based upon exposure to Agent Orange in service. Glioblastoma is *\*not\** a condition that is presumed to be caused by exposure to herbicides in service. In seeking your help, he brings you (1) a copy of his DD-214, which confirms his service in Vietnam, (2) a copy of his VA treatment records, which diagnosed glioblastoma, (3) and a copy of his private treatment records including a positive nexus opinion from his doctor.

Which of those pieces of evidence should be the focus of your argument? (This question does not count towards your grade.)

- The DD-214 triggering the presumption of in-service exposure.
- The VA treatment records proving that he has a current condition.
- All are equally important because all three elements must be proven to win.
- The private treatment records proving a nexus between exposure and the current condition.

# Answer 2

**The private treatment records proving a nexus between exposure and the current condition. Even subjective standards focus on nouns and verbs in application.**

- Focus on the evidence most likely to be overlooked by VA.
- Busy VA raters usually check a Veteran's DD-214 and VA treatment records, yet VA raters often overlook a Veteran's private treatment records.



**Example:** "The Veteran's claim should be granted because his private doctor from [name of facility] provided an opinion on [date] linking his glioblastoma to exposure to Agent Orange in service."



# Rule 5: Avoid Unnecessary Modifiers

- Cases turn on nouns and verbs.
- Even subjective standards focus on nouns and verbs in application.

**Unnecessary modifiers are an unnecessary chance for the adjudicator to disagree with you.**





# Rule 6: Edit Argument

- Edit your argument to make your writing more concise.

**“Perfection is achieved not when there is nothing more to add, but when there is nothing left to take away.”**     - *Antoine de Saint-Exupery*

# Final Advocacy Tip

- Government documents are ***not*** protected by copyright.
- When you copy boilerplate from ***good*** VA decisions, then VA's rater can copy it from you so the Veteran wins.

**Advocacy tip:** Plagiarism of a VA decision is a virtue, not a crime.



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