

Extra Scheduling Evaluations



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED



Extra Scheduling Evaluations

Regulation: **38 CFR 3.321 (b)(1)**

(b) Extra-scheduling ratings in unusual cases—

(1) Disability compensation. Ratings shall be based, as far as practicable, upon the average impairments of earning capacity ... To accord justice to the exceptional case where the scheduling evaluation is inadequate to rate a single service-connected disability, the **Director of Compensation Service is authorized to approve** on the basis of the criteria set forth in this paragraph, an extra-scheduling evaluation commensurate with the average impairment of earning capacity due exclusively to the disability

Extra Scheduling Evaluations

Regulation: 38 CFR 3.321 (b)(2)

(b) Extra-schedular ratings in unusual cases—

(2) Pension. Where the evidence of record establishes that an applicant for pension who is basically eligible fails to meet the disability requirements based on the percentage standards of the rating schedule but is found to be unemployable ... the following are authorized to approve on an extra-schedular basis a permanent and total disability rating for pension purposes: the Veterans Service Center Manager or the Pension Management Center Manager

Extra Scheduling Evaluations

M21-1 MR III.iv.5.B.2.h. Extra-scheduling Evaluations Under 38 CFR 3.321(b)(1)

Refer a claim to the Director of Compensation Service for a determination on whether an extra-scheduling rating may be assigned when *both* of the following criteria are met:

- the established scheduling criteria are inadequate to describe the severity and symptoms of the claimant's disability, *and*
- there are other indications of an exceptional or unusual disability picture, such as marked interference with employment or frequent periods of hospitalization.

Extra Scheduling Evaluations

M21-1 MR III.iv.5.B.2.h. Extra-scheduling Evaluations Under 38 CFR 3.321(b)(1) Cont.:

Do not routinely refer a claimant's request for extra-scheduling consideration to the Director of Compensation Service. When a claimant requests extra-scheduling consideration for an SC disability, only refer the claim if the referral criteria specified above are met.

M21-1 MR III.iv.5.B.2.h. Extra-schedular Evaluations Under 38 CFR 3.321(b)(1) Cont.:

Do not dismiss the potential for extra-schedular referral based solely on the availability of a higher schedular disability evaluation. The availability of a higher schedular rating is irrelevant in determining whether a request for extra-schedular evaluation is warranted unless the disability is evaluated as 100-percent disabling. A disability may be considered for extra-schedular evaluation when less than the maximum available schedular evaluation is assigned as long as all other criteria for referral, as discussed above, have been met.

Extra Scheduling Evaluations

Example 1: The veteran's only service connected condition is Migraine Headaches @ 50% (DC 8100 max evaluation)

Veteran is unable to maintain gainful employment due to the severity and frequency of migraine headaches

Individual Unemployability requires a minimum evaluation of a single disability be evaluated @ 60%

Extra Scheduling Evaluations

Example 2: The veterans service connected for epilepsy at @ 30% due to the frequency of seizures (DC 8900 allows for a 10 to 100%)

The veteran lost their drivers license due to epileptic seizures

The veteran lost their job due to the loss of the drivers license

Veteran is unable to obtain gainful employment due to the fact he is epileptic and no one wants to take the risk of having seizures on the job

DAV EMPOWERS VETERANS

RESPECT

ADVOCACY

HONOR

SUPPORT

COMMITMENT