

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

November 29, 2006

Director (00/21)
VA Regional Offices

In Reply Refer To: 213B
Fast Letter 06-25

SUBJ: Clarification of *DeLuca* Guidelines for Compensation and Pension
Examiners

Purpose

Due to requests for clarification on how to conduct and measure DeLuca requirements from the Veterans Health Administration (VHA) and contract medical examiners, this letter provides instructions for a standardized method of assessing additional limitation of joint function in C&P examinations.

Background

Under *DeLuca v. Brown*, when evaluating a musculoskeletal disability, the Secretary has a duty to assess the degree of functional loss due to pain. 38 C.F.R. § 4.40 provides that a disability rating may be based on “functional loss . . . due to pain, supported by adequate pathology and evidenced by the visible behavior of the claimant undertaking the motion.”

The Compensation and Pension Examination Project (CPEP) office assembled a workgroup to discuss *DeLuca* issues at its August 2006 conference. This group included representatives from VBA, VHA, a quality consultant for a contract examination provider, and a member of the Board of Veterans’ Appeals. Based on literature review and clinical expertise, the group agreed that having a claimant perform at least three repetitions of range of motion should yield sufficient information on any functional loss due to an orthopedic disability. Medical contraindications would override any requirement for repetitive testing.

The committee noted that repetitive motion testing is called for by the *American Medical Association’s Guides to the Evaluation of Permanent Impairment*. This manual is an internationally recognized assessment tool for disability examinations used in most state jurisdictions and workers’ compensation claims.

Requirements

C&P service policy requires that repetitive testing include at least three repetitions of the joint's or spine's range of motion, if feasible.

The disability examination worksheets for Joints and Spine will be changed to incorporate this new guideline. The requirement that all measurements be made with a goniometer will still be in effect. Pending issuance of the new disability examination worksheets, VSRs and RVSRs should request that examiners base all *DeLuca* findings on at least three repetitions of range of motion.

Questions

If you have any questions about information in this letter, please submit them to the VAVBAWAS/CO/21Q&A mailbox.

/S/

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Acting Director

Compensation & Pension Service