

**TIMOTHY J. URBAN,** )  
 Petitioner, )  
 )  
 v. ) Vet. App. No. 15-3744  
 )  
**DAVID J. SHULKIN,** )  
 Secretary of Veterans Affairs, )  
 Respondent. )

Pursuant to U.S. Vet. App. E-Rule 7, the Secretary hereby provides a table of contents for the attachments to his response to the Court's order.

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**IN THE UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS**

<b>TIMOTHY J. URBAN,</b>	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 15-3744
	)	
<b>DAVID J. SHULKIN, M.D.,</b>	)	
Secretary of Veterans Affairs,	)	
Appellee.	)	

**APPELLEE'S RESPONSE TO THE COURT'S MARCH 7, 2017, ORDER**

On March 7, 2017, the Court ordered the Secretary to submit a copy of the "bulletin" that his counsel referred to during the Court's oral argument on February 7, 2017. The Secretary responds to the Court order with that "bulletin" attached, along with two concomitant exhibits for context.

The document that the Secretary's counsel referred to as a "bulletin" was an answer, *infra* at 3 (Q&A Committee – Question and Answer (last viewed January 30, 2017)), published on March 5, 2014, by the Q&A Committee of Compensation Service of the Veterans Benefits Administration (Q&A Committee) on the Department of Veterans Affairs Intranet in response to a question from regional office staff concerning the proper way to rate respiratory disorders. By way of background, the Q&A Committee used to post responses to various questions from regional office personnel concerning compensation benefits matters on the VA Intranet where they could be reviewed by all regional office personnel. See *infra* at 4 (FAQ – Q&A Committee intranet home page (last viewed March 8, 2017), which in turn refers users to Fast Letter 99-126, *infra* at 5-6). As the "bulletin" indicates, these posted responses have been rescinded due to their incorporation into the M21-1 as part of the "Live Manual" project, but they remain available for viewing for historical purposes.

The question posed in this instance was “When is it considered pyramiding in regards to the separation of rating respiratory conditions?” In responding to that question, the Q&A Committee pointed to the rule against pyramiding in 38 C.F.R. § 4.14 and the rule in 38 C.F.R. § 4.96(a) that ratings under particular Diagnostic Codes would not be combined with one another. To illustrate, the Q&A Committee explained that, if service connection were in effect for both emphysema and chronic lung abscess, both of which are among those subject to the limitation in § 4.96(a), the Veteran “would receive one evaluation, based on the highest possible, under either DC 6603 or 6824.”

**WHEREFORE**, Appellee respectfully responds to the Court’s March 7, 2017, order, and provides the Court with the document his counsel referred to at the oral argument on February 7.

Respectfully submitted,

**MEGHAN FLANZ**  
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## Q&A COMMITTEE - QUESTION AND ANSWER

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### Issue: Pyramiding - Separation of Respiratory Conditions

#### Question

**This item was rescinded due to its incorporation into the M21-1 as part of the "Live Manual" project.**

When it is considered pyramiding in regards to the separation of rating respiratory conditions?

#### Answer

Pyramiding, in general, occurs when the same disabling manifestations are rated more than once. See [38 CFR 4.14](#) and *Esteban v. Brown*, 6 Vet.App. 259 (1994).

The regulations involving the respiratory system include specific rules under [38 CFR 4.96\(a\)](#) that direct diagnostic codes (DC) 6600 through 6817 and 6822 through 6847 will not be combined with each other. Likewise, pleural involvement in disabilities rated under DCs 6819 and 6820 (malignant and benign neoplasms) would preclude rating these disabilities separately from 6600 through 6817 and 6822 through 6847.

For example, a Veteran that is service connected for emphysema and a chronic lung abscess would receive one evaluation, based on the highest possible, under either DC 6603 or 6824. Separate evaluations would not be granted because that would violate [§4.96\(a\)](#).

Also, Note (3) under the General Rating Formula for Restrictive Lung Disease, which covers DCs 6840 through 6845, contains specific instructions regarding the evaluation of gunshot wounds (GSW) of Muscle Groups I to IV and XXI. Gunshot wounds of the pleural cavity must be considered under this formula and rated no less than 20% disabling if there is a bullet or missile retained in the lung, pain or discomfort on exertion, or with scattered rales or some limitation of excursion of diaphragm or of lower chest expansion. Sseparate ratings may be granted for Muscle Groups I through IV and combined with ratings for respiratory impairment under the General Rating Formula for Restrictive Lung Disease. However, Muscle Group XXI (Diagnostic Code 5321) will not be separately rated and combined with the evaluation for respiratory disability.

#### REFERENCES:

[38 CFR 4.14](#)

[38 CFR 4.96\(a\)](#)

[38 CFR 4.97](#), Note (3) under the General Rating Formula for Restrictive Lung Disease

[Esteban v. Brown](#)

[Wednesday, March 5, 2014]

## FAQ - Q&A COMMITTEE

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Use the left side menu to locate Q&As by Recent, Date, Topic, Hot Topic, or Search. Use the characters below to locate Q&As by an alphabetical index.

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**Email for FAQ inquiries:** [Q&A Committee](#).

### Information/Reminders for FAQ submissions:

- Inquiries should pertain to conflicts between the Law, regulations, and manual irresolvable at the RO level
- Inquiries only accepted from an RO's VSCM, AVSCM, [FAQ Coordinator](#) or VSC Corporate Mailbox.
- Inquiries should be in the body of the email (no attachments)
- Inquiries will be posted that have wide-ranging application or address significant interpretation of Law, regulation, or manual provisions.
- Notify [Q&A Committee](#) of any FAQ Coordinator changes

Refer to [Fast Letter 99-126](#) for more information.

**Disclaimer:** If we post an answer to a question which appears on its face to conflict with established Compensation Service policy, it should be brought to the attention of the [Q&A Committee](#). We are not intending to change policy through answers to these questions.

### Questions for Other Compensation Mailboxes:

The information about other mailboxes to which you may need to submit questions is posted here for your convenience. Please submit questions about other topics to the mailboxes indicated.

If your question pertains to ...	Then email this mailbox
End Products (EPs)	<a href="#">214A</a> (Program Operations Staff)
Retired, Separation, Severance and Drill pay	<a href="#">VAVBAWAS/CO/MILPAY</a>
Pension, Burials, Accrued/Substitution, and Survivors Benefits	<a href="#">VAVBAWAS/CO/PENSION POL &amp; PROC</a>
STAR error issues	<a href="#">214B</a> (Program Review Staff)
VETSNET Awards processing	<a href="#">VETSNET Awards</a>

December 23, 1999

Director (00/21)  
All VBA Regional Offices and Centers

In Reply Refer To: 211  
Fast Letter 99-126

SUBJ: Compensation and Pension Service Question and Answer Committee

Regional Office/Service Center employees are increasingly submitting questions of varying degrees of complexity to individual C&P Service employees. While we view answering such questions to be an inherent part of the assistance we provide you, many of these questions involve issues needing discussion and policy formulation, with the answers having national implications. Some questions are repeated many times by different individuals and require multiple duplicate staff responses, and sometimes these responses differ. This fact, together with the volume of these questions, has led us to establish a committee in the C&P Service specifically to discuss and answer questions from field personnel with respect to controversial aspects of the adjudication and rating process.

We receive many questions which are routine in nature. These are generally fact specific, limited to the facts of the particular case, and do not involve VA-wide policy issues. We believe that the majority of these questions can be answered locally through discussion within the rating or authorization activities, involving station management where necessary. Where an office has moved to a team concept, discussion of questions within the team should be initiated. Only those questions which cannot be resolved through local discussion and/or which have national policy implications should be submitted to the C&P Service for resolution. In order to facilitate the submission of such questions to the Service, we are requesting that each Regional Office/Service Center select and assign an individual to act as a "Question Coordinator." This individual will be responsible for:

- Reviewing questions to be presented to the C&P committee;
- Ensuring that a local answer is unavailable prior to the submission of a question to the committee; and
- Providing local management notification of the questions and answers.

Our vision is that a station's most highly skilled decisionmaker would serve in this capacity.

We have created a special mailbox for your questions:

**VAVBWAS/CO/21Q&A.**

We ask that you begin using this mailbox by sending the name of your Question Coordinator to this mailbox no later than December 31, 1999, as the committee will begin reviewing your questions on January 3, 2000. Questions submitted to the committee should include a reference to any critical time constraints that may be involved, i.e., the answer is needed to respond to a congressional inquiry or there is some other time-sensitive issue to be decided. Questions having national implications and multiple questions pertaining to a particular subject will be addressed with training letters and conference calls on a regular basis, as well as with a reply to the

requestor. Questions not felt to be appropriate for widespread dissemination will be handled by a response only to the coordinator of the inquiring station.

Please note that this procedure will not preclude the Adjudication Officer/Veterans Service Center Manager or their assistants from asking questions directly of C&P Staff. This procedure is also not intended, nor should it be interpreted, as precluding simple non-controversial questions from being submitted to appropriate C&P Service Staff via e-mail or telephone.

All questions concerning this new procedure should be addressed to 211. Please note the Calendar Pages for this date on our Intranet Site at:

**<http://vbaw.vba.va.gov/bl/21/calendar/calendar.htm>.**

/s/

Robert J. Epley, Director  
Compensation and Pension Service