

establishes procedures a rater must follow fall outside of those parameters, and are therefore not appropriate in a regulation. We propose to retain, with editorial and sometimes substantive changes, §§ 4.40, 4.42, 4.45, 4.46, 4.59, 4.67, 4.68, 4.69, 4.71, and 4.71a. We propose to delete §§ 4.41, 4.43, 4.44, 4.57, 4.58, 4.61, 4.62, 4.63, 4.64, 4.66, and 4.70. The proposed changes are explained in detail below.

In addition, we are proposing to make a number of editorial changes throughout this portion of the rating schedule to condense and clarify the schedule in the interests of efficiency, ease of use, and elimination of ambiguity.

Introductory §§ 4.40 through 4.45 are directed in part at examiners and in part at raters. Much of the material is medical information, some of it outdated, about musculoskeletal diseases. We propose to remove the nonregulatory material, that is, material that does not prescribe VA policy or establish procedures a rater must follow, and the material directed toward examiners because this material is not appropriate in a regulation.

Section 4.40, currently titled “Functional loss,” describes disability of the musculoskeletal system as primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance. It states that it is essential that the examination on which ratings are based adequately portray the anatomical damage and functional loss with respect to all of these elements. It also states that weakness is as important as limitation of motion, and that a part that becomes painful on use must be regarded as seriously disabled. The intent of this section appears to be to provide a general description of musculoskeletal disability and guidelines to examination rather than a specific method for evaluating these functions in musculoskeletal disabilities. As discussed above, there are disability examination worksheets that provide examiners with detailed requirements for musculoskeletal examinations. The current criteria for musculoskeletal diseases do not always call for a rating commensurate with “serious” disability when there is pain on use of a joint. (See, for example, fibromyalgia, diagnostic code 5025 in § 4.71a, a condition that, by definition, includes widespread musculoskeletal pain, and flatfoot, diagnostic code 5276.) Pain is, in fact, almost the hallmark of musculoskeletal disease. We therefore propose to revise § 4.59, to be

titled “Evaluation of pain in musculoskeletal conditions,” and to provide criteria for the evaluation of pain, if appropriate, when pain is not taken into account in the evaluation criteria for a particular condition. Although pain is a subjective complaint, the more severe it is, the more likely there are to be correlative physical or laboratory findings, and this fact is the basis of the criteria in § 4.59.

Of the other characteristics of musculoskeletal disability listed in § 4.40—impairment of normal excursion, strength, speed, endurance, and coordination—speed and endurance are not readily measurable in the setting of a medical examination, and there is no method of evaluating them consistently. They are therefore less useful than limitation of motion as measures of the extent of disability. Coordination is an issue in only a limited number of musculoskeletal conditions, being seen more often in neurological conditions, and is unlikely to occur due to musculoskeletal disorders in the absence of other findings, such as weakness, atrophy, or limitation of motion. In summary, the information in § 4.40 does not prescribe VA policy or establish clear procedures a rater must follow. It is therefore not appropriate in a regulation, and we propose to delete it.

We propose to retitle § 4.40 “Evaluation of musculoskeletal disabilities” and to state that, except for application of the pain scale in § 4.59 when appropriate, the evaluation criteria provided under the diagnostic codes are to be the sole basis of evaluation. Factors such as fatigability and impairment of coordination, speed, and endurance, are common in musculoskeletal disabilities, and § 4.40 would state that disability due to those functions is encompassed by the evaluation criteria that are provided. An evaluation based on one of these factors over and above what is called for under the evaluation criteria will therefore not be assigned. This change would eliminate the need to assess functions that cannot be consistently or readily assessed and would therefore promote consistency of evaluations in musculoskeletal conditions. To promote consistency in assessing muscle strength, we propose to address the evaluation of muscle strength in § 4.46.

Because § 4.41, “History of injury,” is a restatement of parts of §§ 4.1, 4.2, 4.6, and 4.9, we propose to delete it.

Section 4.42, “Complete medical examination of injury cases,” discusses the importance of a complete initial examination, rephrasing basic rating principles that are stated in 38 CFR 4.1

and 4.2 and reflected in the examination worksheets. This material is therefore redundant, and we propose to delete it.

We propose to retitle § 4.42 “Examination of joints”. It would state that the range of motion of a joint will be determined by measurement with a goniometer and indicate that, for VA rating purposes, the normal ranges of motion for major joints and the spine are provided on plates in § 4.71a.

Current § 4.43, “Osteomyelitis,” outlines the principles of evaluating osteomyelitis. It states that osteomyelitis will be regarded as a continuously disabling process and will be entitled to a permanent rating unless the affected part is removed by amputation. This information is not consistent with modern medical knowledge; osteomyelitis can often be treated and cured without resort to amputation, and continuous disability is not always the aftermath. We are proposing revised guidelines for the evaluation of osteomyelitis under diagnostic code 5000 that we believe are clear and comprehensive enough to require no additional guidelines. The proposed criteria are also based on contemporary medical knowledge. We therefore propose to delete this section.

Current § 4.44, “The bones,” states that osseous abnormalities due to injury or disease should be depicted by study and observation of all available data from time of injury, through treatment, convalescence, progress of recovery, and permanent residuals. It also discusses the effect of angulation and deformity of bone, including the effect on other joints, which are medical facts or judgment. Sections 4.2 and 4.6 regulate interpretation of examination reports and the evaluation of evidence which § 4.44 attempts to restate. Since § 4.44 does not prescribe VA policy or establish procedures a rater must follow, is redundant with §§ 4.2 and 4.6, and is not based on current medical knowledge, we propose to delete it.

Section 4.45, “The joints,” lists some of the functional effects of joint disability, including whether there is less movement than normal, more movement than normal, weakened movement, excess fatigability, incoordination, impaired ability to execute skilled movements smoothly, pain on movement, swelling, deformity, or atrophy of disuse, but does not address how to evaluate them. Since modern information about joint disability is available from numerous medical sources, and this portion of the section does not prescribe VA policy or establish procedures a rater must follow, we propose to delete this material. We propose to provide clear criteria for