LLT Lab Annotation Protocol (Public): FindingSentence Type (Sentences That Primarily State Findings of Fact)

The following guidelines and examples govern our annotation of spans of text using the type "FindingSentence".

Part I: Guidelines

This protocol annotates text that has previously been annotated using the annotation protocol for the type "Sentence." In addition, it assumes that you have already annotated for the types "LegalRuleSentence" and "CitationSentence." Each and every annotation should span one (and only one) entire sentence.

A finding sentence is one that primarily states a finding of fact. The essential function of a finding of fact is to determine whether a rule condition in the rule tree has been satisfied. Therefore, a necessary condition for a finding of fact is that it primarily states a decision on whether a specific rule condition in the rule tree is satisfied in the case, especially a terminal or leaf condition in the rule tree. Very often, judges write their findings using the same legal terminology that is contained in the rule condition. Therefore, very often, a sentence that states a finding of fact will contain some of the key words and phrases as the rule condition does. In some situations, it might even be difficult to determine whether a particular sentence is a legal-rule sentence or a finding-of-fact sentence. These protocols are designed in part to provide guidance on how to make and apply that distinction.

In addition, it might be difficult on occasion to distinguish sentences that primarily state findings of fact (which we annotate under this protocol) from sentences that primarily state rulings or holdings as a matter of law (which we will annotate under another protocol). "Rulings" or "holdings" are authoritative decisions by the Board or court that declare, as a matter of law, whether or how the legal rules apply in the specific litigation situation. The essential characteristic of rulings or holdings is that appeals are decided *de novo*, without deference to the factfinder. The ruling or holding might be on a procedural issue, or it might be on an evidentiary issue if the evidence is necessarily insufficient or it is legally conclusive. In BVA decisions, the main sentences listed under the heading "CONCLUSIONS OF LAW" are rulings as a matter of law; they are not findings of fact. While some words used by courts or administrative tribunals, such as the verbs *rule* or *hold*, are indicative of rulings or holdings, their presence is not necessary, nor even sufficient. For further guidance on identifying and annotating rulings or holdings, you should consult another protocol that we will be developing for that type of annotation.

Sometimes sentences that state findings of fact are combined with conclusions of law, with the former being a reason for the latter. For example, a sentence may state, "Because the Board finds X, the Veteran is entitled to Y". For now, we should annotate these sentences as FindingSentences, provided they contain a clause that qualifies as a finding of fact. The reason is that we do not want to overlook findings of fact in our analysis, because they have a critical function of being the conclusion of a line of reasoning or argument, and at the same time they connect that argument to a particular rule condition in the rule tree.

A finding of fact must be a conclusion or decision of a factual nature, and it must be made by a person or institution having fact-finding authority (e.g., the Board of Veterans Appeals). Having said that, a sentence that primarily states a finding of fact can occur within an appellate judicial decision, for example -- as when the appellate court restates the "facts" as found by the BVA.

We are annotating at the sentence level, so a sentence that primarily states a finding of fact, but which also includes within it a legal rule or a citation, should be annotated as a finding-of-fact sentence. Correspondingly, a sentence that is primarily a citation, but which incidentally also contains a parenthetical with text that states a finding of fact, should be annotated as a citation sentence. A sentence that is primarily a legal-rule sentence, but which incidentally contains a statement of fact, should be annotated as a legal-rule sentence. (Note that on a second layer of analysis, looking inside the content of a sentence, we can still extract the citation or legal rule embedded in a finding-of-fact sentence, or the finding of fact embedded in a citation or legal-rule sentence, so no information is lost. It's just that for now we are annotated whole sentences only.)

In general, in deciding whether you should annotate a particular sentence as being a finding sentence, you should move through the following steps. These steps do not contain mechanical tests, but rather factors that can "add up" to the sentence's probably being a finding sentence. Think of yourself as computing a "likelihood score" that the sentence is a finding sentence.

1. If the ultimate decision on service-connectedness for a disability (e.g., PTSD) is in favor of the veteran, then there must have been favorable findings on all of the necessary conditions required for that conclusion to be true, and a sentence that affirmatively states one of those necessary conditions is more likely to be a finding-of-fact sentence. So, if the decision is ultimately for the veteran, you should hunt for at least three positive finding sentences, one for each branch of the rule tree.

2. If the ultimate decision on service-connectedness for a disability (e.g., PTSD) is against the veteran, then there must have been at least one unfavorable finding on the necessary conditions required for a decision in the veteran's favor, and a sentence that negatively states one of those necessary conditions is more likely

to be a finding-of-fact sentence. Even after you locate that negative finding, keep looking for findings on the other branches of the rule tree.

3. If the document contains an early section with the heading "FINDINGS OF FACT" (as most BVA decisions do), then the sentences listed in that section are highly likely to be FindingSentences.

4. If a finding sentence is listed in the section "FINDINGS OF FACT", then there is likely to be at least one corresponding sentence that makes the same assertion in the section "REASONS AND BASES FOR FINDINGS AND CONCLUSIONS." A sentence in the latter section that corresponds to a finding sentence in the former section is likely to be a finding sentence. Moreover, it is common to identify multiple finding sentences that state the same proposition.

5. If the sentence contains words or phrases expressing satisfaction or failure to satisfy a proof obligation (e.g., phrases like *did not satisfy the requirement that, succeeded in proving* or *failed to prove*), then the sentence containing these words is more likely to be a finding-of-fact sentence. Sometimes these invoke technical legal concepts, such as: *failed to carry the burden of persuasion on*, *it is at least more likely than not that*, *the evidence is in equipoise on the question of*.

6. If the sentence contains an appropriate attribution cue (e.g., *finds that*, *concludes that*, *is persuaded that*) to a person or institution with fact-finding authority (e.g., the Board), then the sentence containing the attribution is more likely to be a finding-of-fact sentence.

    - If the sentence in #6 has a quotation as the attribution object, then the sentence is less likely to be a finding-of-fact sentence, and is more likely to be an evidence or legal-rule sentence.

7. A necessary condition for a finding of fact is that it must decide whether a rule condition in the rule tree is satisfied in the case, especially a terminal or leaf condition in the rule tree. Therefore, if the sentence contains legal terminology or concepts from legal rules, especially those that are terminal conditions in the rule tree for the legal area, then the sentence containing these words is more likely to be a finding-of-fact sentence.

    - If the sentence satisfies the criterion in #7, but it contains at least one reference to definite subjects referring to the specific veteran, or other specific objects or events, then the sentence containing these words is more likely to be a finding-of-fact sentence rather than a legal-rule sentence.

    - If the sentence satisfies the criterion in #7, but it satisfies the protocols for being a legal-rule sentence, then it is more likely to be a legal-rule sentence than a finding sentence.

8. A sentence that describes “weighing” a piece of evidence, or assessing the “credibility” of a witness, or that the evidence “indicates” something, is not necessarily a finding of fact. Based on a small sample, if the sentence occurs in the middle of a paragraph, it is more likely to be a ReasoningSentence, rather than a FindingSentence.

9. Based on our experience with our small sample of cases, it appears that there may be a tendency for BVA judges to begin or end paragraphs with sentences that state findings of fact. We can tentatively state that if a sentence in the “REASONS AND BASES” section otherwise meets multiple criteria for being a finding sentence, then the fact that it is the first or last sentence of a paragraph makes it more likely to be a finding sentence.

10. A sentence that indicates that “all evidence has been reviewed” is more likely to state a finding of fact.

11. A sentence that contains a definite reference to a fact that is normally at issue (e.g., “the Veteran’s diagnosed PTSD”), and takes that fact for granted, is more likely to be a finding sentence if no other sentence in the decision makes an explicit finding of that fact.

12. A sentence that is a likely candidate for being a finding sentence (based on the above criteria), and which refers only to definite persons, places, things or events, is more likely to be a finding sentence.

Part II: Lists of Examples (Organized into 3 lists)

List A: Normal Form -- A sentence in "normal form" is one for which we are highly confident that it states a finding of fact, and this confidence is based on some evidence from the text of the sentence (the "linguistic cue"). Also, a sentence in "normal form" has a certain fixed format or pattern, which we find recurring numerous times. These should be the easiest types of sentences for computer software to identify.

Typical format: {Authoritative Source Making the Finding} {Attribution Cue} {Finding of Fact Being Stated}, where:

- The “authoritative source making the finding” = a noun or noun phrase that refers to the governmental institution making the finding as a matter of fact (in our veterans decisions, the Board of Veterans Appeals, or BVA, or “the Board”).
- The attribution cue = {fact-finding verb + *that*} (this is the evidence that fact-finding is occurring, and for attributing the factual proposition to the fact-finding institution). In the normal form, we may see signature or formulaic signals of fact-finding, such as: *find that*, *conclude that*, *successfully demonstrated that*, or *is persuaded that*.

- The "finding of fact being stated" = a complete clause stating the content or substance of the finding proposition. Look for the following characteristics:
    - Very often such clauses will contain signature or formulaic legal terminology from the rule condition to which the finding is directly relevant, such as (in BVA decisions about PTSD) the existence of an "*in-service stressor*", or of a "*causal link*".
    - In contrast with the general or abstract propositions of legal rules, findings of fact contain references to specific objects or events (definite subjects), often as the subject of classification or predication -- such definite subjects as the specific veteran (e.g., *the Veteran*) or a specific injury or disease (e.g., *the Veteran's PTSD*).
    - There will probably be an absence of words or phrases that are indicative of legal rules -- such as universal quantifiers or adjectives, or deontic words.
    - The content of the finding will be the same as, or at least consistent with, the finding of fact on the ultimate issue.

EXAMPLES:

Thus, the Board finds the Veteran does not have PTSD.

The Board finds that service connection for PTSD and major depressive disorder is warranted.

Here, in applying the law to the facts of the case, the Board finds that the evidence is at least in a state of relative equipoise on all material elements of the claim.

On review of all evidence, both lay and medical, and resolving all reasonable doubt in favor of the Veteran, the Board finds that it is at least as likely as not that her bilateral pes planus was aggravated by her military service.

In considering the evidence of record under the laws and regulations as set forth above, the Board concludes that the Veteran is not entitled to service connection for PTSD.

Here, the Board determines that the in-service element of service connection - an in-service injury, disease or relevant event - is not met as to the left fifth finger disability claim.

Without nexus evidence, the Board cannot find that the Veteran's current diagnoses are at least as likely as not related to his in-service psychiatric symptoms.

Thus, the Board finds that the Veteran's VA treatment records constitute probative medical evidence of a link between the Veteran's PTSD and the combat related stressor.

However, upon review, in the present case, the Board concludes that the most probative medical evidence weighs against a finding that the Veteran has a PTSD diagnosis in accordance with 38 C.F.R. § 4.125(a) (i.e., DSM-IV) due to alleged in-service sexual assaults.

Upon review, in the present case, the Board finds that the most probative medical evidence weighs against a finding that the Veteran has a PTSD diagnosis in accordance with 38 C.F.R. 4.125(a) (i.e., DSM-IV) as a result of his alleged sexual assault stressors.

Based on the evidence of record, both lay and medical, the Board finds that the weight of the evidence is against a finding of relationship between the Veteran's currently diagnosed PTSD and her corroborated in-service stressor events.

List B: Linguistic Transforms of Normal Forms -- A sentence that is a "linguistic transform" of a "normal form" is one for which we are also highly confident that it states a finding of fact in the abstract, a confidence based on some evidence from the text of the sentence (the "linguistic cue"). However, while a sentence in "normal form" has a certain recurring format or pattern, a "linguistic transform" has a more unusual linguistic pattern. Yet there might be some linguistic rules that would make it easier for computer software to identify them. So here we are looking for merely grammatical variants of the normal form finding sentences.

Sometimes the sentence will contain a linguistic cue that alone (without a subject of attribution to the Board) will indicate a finding of fact. For example, the sentence might use signature and formulaic words or phrases for fact-finding, such as: *satisfied her burden of proof that*, *proved more likely than not that*, or *demonstrated by a preponderance of the evidence that*.

Also, we place in this category sentences that have a noun phrase instead of a clause as the attribution object. Sometimes, instead of explicitly stating the proposition that constitutes the content of the finding, a finding sentence will refer to the proposition (stated elsewhere, perhaps in a legal rule) by a name (e.g., "*in-service stressor*"). For example, "*the Board finds for the veteran on the issue of in-service stressor*").

EXAMPLES:

Consequently, service connection for such acquired psychiatric disorders is warranted.

Although psychosis is an enumerated disease, the evidence does not indicate that the Veteran has a current psychotic disorder; thus, this presumption is not for application.

Because the preponderance of evidence is against a finding that the in-service element of service connection is met for residuals of a left fifth finger injury, the appeal as to this issue must be denied.

[NOTE: The main clause in the sentence above is a ruling or holding of law, with the finding of fact embedded in the subsidiary clause. However, for our purposes we will annotate it as a finding sentence, so as not to overlook the finding of fact.]

Therefore, the Board finds that the evidence is not at least in equipoise as to whether the first element of service connection is met and his appeal as to this issue must be denied.

[NOTE: two attribution cues are present in the sentence above.]

The determination was that the evidence did not show that the Veteran had a psychiatric disability that was incurred in or aggravated by service.

Next, the evidence of record makes at least equally likely that the Veteran manifested symptoms of his condition during service.

The criteria for entitlement to service connection for a psychiatric disorder, to include PTSD, for accrued benefit purposes are not met.

The Board finds that a preponderance of the evidence is against the claim, and it must be denied.

There is no reasonable doubt to be resolved as to this issue.

There is no credible supporting evidence that the Veteran's claimed in-service stressors occurred and no evidence a diagnosis of PTSD is etiologically related to the alleged in-service stressors.

List C: Aberrant Forms of Normal Forms -- Some sentences have very unusual linguistic structures, but we are still confident that they state findings of fact. This confidence might be based more on the context than on linguistic cues within the sentence itself (e.g., co-references to words or phrases in other sentences). In the case of such sentences, we would have to determine from what evidence we have whether they probably state findings of fact.

EXAMPLES:

As the preponderance of evidence is therefore against a finding that the Veteran suffered any injury or disease of his knees, any part of his spine, his left shoulder or his right ankle, his appeal as to these issues must be denied.

> [Note: the last clause in the above example is a ruling or holding of law, but we should annotate the entire sentence as a finding of fact, so as not to lose the important finding in the first part of the sentence.]

The evidence in this case is not so evenly balanced so as to allow application of the benefit-of-the-doubt rule.

> [Note: the use of the noun phrase highlighted in yellow; the entire sentence makes an assertion based on a finding about not applying the benefit-of-the-doubt rule, based on the finding that the evidence is not evenly balanced on some issue of fact; which issue of fact is involved we would have to extract from the context.]

Resolving all doubt in his favor, the Veteran's current acquired psychiatric disorder, diagnosed as PTSD and major depressive disorder, is, at least in part, due to traumatic events during combat in Vietnam.

> [Note: in context, the above sentence is probably an important finding of fact.]

The Veteran did not have a valid diagnosis of PTSD or have a psychiatric disorder that was causally or etiologically related to his military service.

> [Note: the above sentence gives us no linguistic cues as such, and we need context to determine whether this was a finding by the Board or a description of evidence from an earlier examination.]

The Board finds the opinion to be the most persuasive evidence in this case and to outweigh any conflicting lay evidence.

> [Note: the above sentence might be viewed as intermediate reasoning assessing the probative value of the evidence (a ReasoningSentence); but it is possibly a finding of fact and not merely an assessment of evidence, because it sums up a weighing of a range of evidence. If, for example, the only evidence on point is “the opinion” and the “conflicting lay evidence,” then this sentence could be a statement that the substantive issue is resolved -- i.e., a finding on the issue.]

Such an equivocal medical opinion, especially where it is based on the VA examiner's own assessment that the factual predicate was unreliable, does not meet VA's clear and unmistakable burden of proof.

> [Note: the above could be a finding that the presumption being discussed is not rebutted.]

It was noted that there was no evidence that what happened was attributable to his service such that it would not have occurred absent this service.

[Note: in the above sentence, if the Board did the "noting" in the opening phrase, then this is probably a finding, given the conclusion that there was "no evidence." If the attribution object is not attributed to the Board, but to a medical record (e.g.), then it would probably be an EvidenceSentence.]

Post-service treatment records show a current diagnosis of PTSD with depression.

[Note: the above sentence may be an evidentiary sentence, but it could also be a finding of fact, depending on the context.]

Thus, there is evidence of record that indicates that the Veteran has a current diagnosis of PTSD related to his alleged combat stressors in service.

[NOTE: while the sentence above, on its face, would not normally be considered a finding of fact, its position at the end of a long recital of evidence and immediately before positive findings for the veteran, and in a case where the claim for service connection for PTSD is granted, make it clearly a finding of fact for the veteran.]

The Veteran's Form DD 214 reflects that he was awarded the Combat Action Ribbon, thus he is presumed to have engaged in combat with the enemy.

[NOTE: the sentence above begins with a clause that attributes a proposition to an evidentiary source; however, we would annotate it as a sentence that states a finding of fact because the second clause makes a finding on the applicability of a legal presumption (legal rule).]