

PREPARING A FULLY DEVELOPED VETERANS' SERVICE-CONNECTED DISABILITY CLAIM

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April 28, 2017



VETERANS' SERVICE-CONNECTED DISABILITY

- Tax free monetary benefit paid to veterans
- Reflects compensation for illness, injury, or disease acquired while in or aggravated by service in the military
- Conditions are rated on a percentage disability scale and a monetary benefit amount is assigned to each percentage
- Disability compensation replaces lost earning capacity
- Military retirement pay, pension, disability severance pay, and separation incentive payments may impact the amount of other compensation the VA will pay a disabled veteran.
- Not going to be talking today about other benefits programs within the VA. There are many and each deserves its own forum for discussion. Today we will focus only on service connection.



PRELIMINARY CONSIDERATIONS

- File an accreditation form: VA Form 21A

Va Form 21A

By law, an individual must be accredited by VA as an agent, attorney, or representative of a VA-recognized veterans service organization to assist in the preparation, presentation, and prosecution of a claim for VA benefits. 38 U.S.C. §§ 5901-5902, 5904; 38 C.F.R. § 14.629.

- File a representative form for your specific client: VA Form 21-22A

VA Form 21-22A

- Stay accredited pursuant to VA regulations. Qualifying CLE credit cannot be acquired prior to filing form 21A.

You must: (1) Complete 3 hours of qualifying CLE requirements during the first 12-month period following the date of initial accreditation by VA, and an additional 3 hours no later than 3 years from the date of your accreditation, and every 2 years thereafter; (2) Provide a copy of your training certificate or certify in writing to VA's Office of the General Counsel your completion of the qualifying CLE, including the CLE title, date, time, and provider; (3) Submit an annual certification of good standing for any court, bar, or Federal or State agency to which you are admitted to practice.

- Note: This CLE does not count toward VA accreditation.



PRELIMINARY CONSIDERATIONS (CONT.)

- Representation can begin at 3 different times in the claims process
 1. At the time of the initial filing. (It is important to note the fee restrictions at this point.)
 2. At the regional office level after the filing of a Notice of Disagreement.
 3. At the Board of Veterans Appeals if a Notice of Disagreement was filed on the issue after the filing of a notice of disagreement or at Court.



5 THINGS YOU HAVE TO PROVE (BASIC ELIGIBILITY REQUIREMENTS)

- **Service**

1. Active duty
2. May include training time, but it depends on the circumstances of the injury
3. Does not include National Guard or Reservists UNLESS they are actually called up for active service
4. Service-connection does not require a minimum length of active duty service time (other VA benefits can have minimum time requirements)
5. Can be established with the DD-214

- **Illness, Injury, or Aggravation Occurred During Service**

1. Does not have to be combat related.



5 THINGS YOU HAVE TO PROVE (BASIC ELIGIBILITY REQUIREMENTS)

- **Currently Suffering**

1. Must have symptoms that are presently manifesting (past acute symptoms).
2. Past symptoms that have no current physical or psychological indication are inadequate.
3. Cannot allege future harm will result.

- **Causal Link**

1. Must show the connection between service and condition.
2. Can use timing, place, or circumstances of service.

- **Appropriate Discharge Status: Other than Dishonorable**

1. Honorable
2. Under Honorable Conditions
3. General



DETERMINING DIRECT SERVICE CONNECTION

Must demonstrate that a particular condition arose in service. There are 3 components:

- A current disability
 - An event, injury, or disease developed in service
 - Causal Link
1. Timing and continuity OR
 2. Continuous symptoms or medical nexus opinion



DETERMINING DIRECT SERVICE CONNECTION (CONT.)

- Determinations made on a case by case basis.
- Present all relevant medical and lay evidence.
- If the vet is experiencing symptoms at the time of filing and those symptoms resolve, the claim still has merit.
- Near-contemporaneous diagnosis (within 1 year of filing a claim) MUST be considered in determining eligibility.



DETERMINING PRESUMPTIVE SERVICE CONNECTION

Certain illnesses and injuries are considered presumptively connected to service in the military. These include:

- Chronic disease as articulated in 38 CFR 3.309(a)
- Disease associated with service in the following categories:
 1. Tropical
 2. FPOW
 3. Exposure to ionizing radiation OR
 4. Exposure to certain herbicides
- Diseases based on full-body exposure to mustard gas
- Diseases associated with service in Southwest Asia
- Diseases associated with service in Afghanistan
- ALS with at least 90 days of continuous active service
- Other organic diseases of the nervous system



DETERMINING SECONDARY SERVICE CONNECTION

- Has a few different manifestations:
 1. Conditions that are proximately due to, or the result of a service-connected condition.
 2. Increased severity of a non service-connected disability that IS attributable to aggravation by an service-connected condition and NOT attributable to the natural progression of the non service-connected condition.
- Medical evidence of the onset of aggravation is necessary and must be included in an examiner's report.
- Must establish or have already established the service-connected condition.



THE IMPACT OF ALCOHOL/DRUG USE AND ADDICTION

- While in service/on active duty: Injuries related to drug and alcohol use may be considered willful misconduct that justifies denial of benefits. The VA usually considers whether the alcohol or drug use at the time of the injury impaired judgment and ability.
- Post-separation addiction: The VA will consider whether the addiction is a secondary service-connection related to other injuries, illnesses, etc. acquired while in service. The veteran will have to prove the service connection for the underlying illness or condition, however.



EVALUATING THE EVIDENCE

- Non-adversarial process
 1. Ex-parte system of adjudication within the VA.
 2. Vet is entitled to receive the benefit of the doubt.
- Standard of Proof
 1. Preponderance of the evidence
 2. If the scales are balanced equally, the decision must go to the vet.
- Quality of Evidence
 1. Credible
 2. Probative
- Other Evidentiary Issues
 1. Competent – offered by a qualified source
 2. Non-VA sources – should be accepted at face value
 3. Conflicting evidence – “use good judgment” in assessing issues like bias



WEIGHING MEDICAL EVIDENCE

- The information in the claims file must support the medical conclusions.
- The Regional Office MUST consider all of the following:
 1. Medical Records
 2. Lay evidence
 3. Medical Opinions by examining and treating physicians, whether VA or non-VA
 4. Medical Treatises
- The the RO must consider the following questions:
 1. Did the evidence originate in service or in close proximity to service?
 2. Is the medical opinion supported by clinical data and review of records?
 3. How detailed, clear, or persuasive is the opinion?
 4. Is the opinion based on personal knowledge or on information provided by someone else?
- The VA may order its own exams, commonly referred to as C&P exams to aid in evaluating the claim and to assess the general health of the veteran.



THE DISABILITY RATING SYSTEM

- Rating evaluator's job is to interpret the medical evidence to decide if the service-connection decision should be favorable or unfavorable to the vet.
- Ratings decisions are not necessarily made by people with medical backgrounds.
- If the decision is favorable, the VA will assign a rating to the disability from 0% to 100%.
- If multiple conditions are rated, they are not combined in the aggregate. There is complicated math involved.
- **NOTE:** Even if you get a disability rating of 0%, you still have established service-connection. This can be important if your vet later needs to file based on a secondary condition or a worsened condition.



SPECIAL MONTHLY COMPENSATION

- Additional compensation award given to veterans who have lost or lost the use of certain extremities or organs.
- The rates of payment are higher.
- Additional amounts are also available if the veteran is diagnosed paraplegic with complete loss of bowel and bladder function.



STEPS TO FILE A FULLY DEVELOPED SERVICE-CONNECTION CLAIM

- Ask whether the condition warrants a claim.
- Intent to File Form, VA 21-0966

The vet has one year from the date of filing the Intent to File form to submit her application.

<https://www.vba.va.gov/pubs/forms/VBA-21-0966-ARE.pdf>

- Obtain Discharge Record, DD-214
- Obtain Treatment Records (VA Medical)
- Obtain Treatment Records (Private Medical Providers)
- Obtain Disability Evaluations (Private Medical Providers)



STEPS TO FILE A FULLY DEVELOPED SERVICE-CONNECTION CLAIM (CONT.)

- Obtain Opinion Letters
- Obtain Lay Statements
- Obtain Duty Assignment Records
- Evaluate the weight of your accumulated evidence.
- Complete the “Fully Developed Claim Form”
- File appropriate form and all supporting documentation

E-filing is allowed, but is not always recommended, particularly if the claim is dense or is filed a significant time after separation from the service.

- Sign form indicating you will not submit new evidence for consideration
- If the claim is denied, file a Notice of Disagreement which begins the appeals process.



DRAWBACKS

- What happens if you can't get everything together? Should you still file a fully developed claim?
- What happens if new evidence materializes after you've filed?
- What happens if your vet is currently receiving SSDI or SSI?



CALCULATING RETROACTIVE BENEFITS

- Benefits are calculated retroactive to the date of the initial filing for the claim.
- Filing the “Intent to File” Form is critical to establishing the date for retroactive benefit calculation.
- The math is done using each active rating scale for that year, not the current scale applied retroactively.
- Because veterans can have multiple disability claims in one filing, important to investigate if all previous claims have been denied in total. Discovering lost and as yet undecided claims can provide a significant benefit to the vet.



FEE AGREEMENTS

- Fees may not be charged by an agent or an attorney for work performed in connection with the initial filing of a claim for VA benefits. An agent or attorney may assist a veteran or a claimant without charge in the initial presentation of an application for benefits.
- Agents and attorneys may charge or be paid for services with respect to services provided after the date on which a notice of disagreement is filed with respect to a vet's case. 38 U.S.C. § 5904(c)(1).
- **Fees may be charged on an hourly basis, a flat fee, or a contingent fee basis, or a combination of all three. 38 C.F.R. § 14.636(e).**



FEE AGREEMENTS (CONT.)

To be valid, a fee agreement must include the following information:

- The name of the veteran.
- The name of the claimant or appellant if other than the veteran.
- The name of any disinterested third-party payer and the relationship between the third-party payer and the veteran, claimant, or appellant.
- The applicable VA file number.
- The specific terms under which the amount to be paid for the services of the attorney or agent will be determined. 38 C.F.R. § 14.636(g)(1).



FEE AGREEMENTS (CONT.)

- Fee agreements must also clearly specify if VA is to withhold and pay the agent or attorney directly out of the claimant's award of past-due benefits (a direct-pay fee agreement). See 38 C.F.R. § 14.636(g)(2).
- A fee agreement that does not clearly specify that VA is to pay the agent or attorney out of past-due benefits or that specifies a fee greater than 20 percent of past-due benefits awarded by VA shall be considered to be an agreement in which the agent or attorney is responsible for collecting any fees for representation from the claimant without assistance from VA.
- A copy of the agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420.



DISCHARGE STATUS UPGRADES

- Status other than honorable, undesirable, bad conduct, and other types of dishonorable discharges may qualify for VA benefits depending on a determination made by VA. This is a case by case determination based on the facts and circumstances of the vet's service history and discharge.
- Should request a discharge status upgrade through the discharge review board for the branch of the military in which the veteran served, not the VA. It is possible to ask the VA to review a discharge status, but not recommended.
- Can be a complicated and difficult process.
- If the veteran has a dishonorable discharge, that veteran will need to apply for and receive the upgrade before applying for benefits or the benefits will be summarily denied.
- For more information:

https://www.va.gov/opa/publications/benefits_book/benefits_chap15.asp



ADDITIONAL RESOURCES

- VA Website

<https://www.va.gov>

For Accreditation Information Specifically:

<https://www.va.gov/ogc/accreditation.asp>

- National Organization of Veterans' Advocates

<https://vetadvocates.org>

For Fee Agreement Information Specifically:

<https://vetadvocates.org/veterans-help/the-fees-which-may-be-charged-by-an-agent-or-attorney/>

- Senior Veterans Service Alliance, *How to Apply for Department of Veterans Affairs Benefits for Veterans and Their Survivors* (2017).



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