



## ***HOW TO GET SERVICE CONNECTED DISABILITY FROM THE VA***

Obtaining service connected disability benefits from the VA can be a long and tedious process. The sheer volume of cases currently before the VA makes it such that a new claim may take well over a year before it is even seen by VA officials. While there is little that can be done to eliminate this long wait, there are important steps that can be taken before filing your claim that can help you obtain a successful result once your case is decided.

This brochure will cover the basic requirements needed to win your Veterans Disability Claim, and provide you the information you need to determine:

- 1.) If you qualify for Veterans Disability Service Connected Injuries?
- 2.) How to obtain evidence of your military injuries?
- 3.) How to use the evidence to obtain a monthly payment from the Department of Veterans Affairs for service connected disabilities and how much will you receive?
- 4.) How to actually file a claim for veteran's service connected disability?

## **WHO QUALIFIES FOR VETERANS DISABILITY?**

Ask three people to define a veteran and you might get three different answers. Some will say it is a soldier who spent their entire career in the military and retired to a full pension. Some might say it is a soldier that served in combat warzone environment. Others might say it is anyone who served in the military, regardless of whether it was the active military or the reserve.

For purposes of determining Veterans Disability Benefits, parts of the three above answers are correct. When determining veterans benefits, a veteran is a person who:

1. Has served in the active military – (either the Army, Navy, Marine’s, or Air Force): AND
2. Served at least 24 continuous months; AND
3. Was discharged under conditions other than dishonorable

Additionally, members of the reserves are defined as veterans only if they were activated for FEDERAL service for any length of time and completed it.

Finally, note that the 24 month requirement for active duty or the completion of federal service for reserve components can be waived if the soldier incurred an injury in the line of duty that prevented the completion of either.

## **WHAT IS A SERVICE CONNECTED INJURY?**

Once you have established that you are a veteran under the above criteria, you next need to show that you have a service connected injury. A service connected injury is one of the following:

1. You suffered the injury during your time in the military in the performance of your job. For example, combat related injuries would fall under this category, however, injuries that occurred stateside during training, day-to-day military activities, or Physical Training (PT) would also count.

2. An injury that has occurred in your post military life that was caused by something that happened while you were in the military. For example, if you were involved in combat operations, and years after returning home you suffered from Post Traumatic Stress Disorder (more on this below), you would fall under this category.
3. An injury that was the result of negligent VA Health Care System. A real life example of this is currently on display in the state of Florida and other states. In Florida, a VA dentist may have exposed his patients to the HIV virus due to unsanitary conditions. This is an extreme case of negligent VA care.
4. An injury that was caused by a service connected injury. For example, if you suffered a service connected foot injury that caused you to walk in an abnormal manner, this foot injury may soon lead to ankle problems. In this case, the ankle injury would be eligible for service connected disability even though it was not injured or caused while in the military.

### **PROVING SERVICE CONNECTED INJURIES**

Many veterans know they have a service connected injury, but it is not enough to simply ask the VA for compensation. Instead, the injury must be proven. Once it comes to this step, an attorney can be very helpful. The process of proving the injury involves many steps. These steps will be simplified in this brochure, but make no mistake, they can be difficult, time consuming, and complicated.

To prove your service connected injury you MUST:

1. Have a current diagnosis of the disability
2. Have proof of its onset during a qualifying period
3. Have “nexus evidence.” - This is defined as a causal relationship between the diagnosis and the onset.

## **PRESUMPTIVE INJURIES, AGENT ORANGE, GULF WAR ILLNESS, PTSD**

Some injuries that are suffered by a veteran are presumed to be service connected and they do not have to prove the above listed elements.

Common examples of these injuries are:

1. Chronic diseases that manifest within one year of discharge – includes diabetes, arthritis, epilepsy, leukemia, and psychosis
2. Tropical diseases – cholera, dysentery, and malaria that manifests within seven years of discharge
3. POWs – peptic ulcer, peripheral neuropathy, psychosis, and heart disease that manifest within seven years of discharge
4. Radiation exposure, multiple sclerosis, and ALS that manifests within seven years of discharge.

### **Agent Orange**

Agent Orange is also a presumptive condition, but it falls under a separate class of rules. Agent Orange was a chemical used by the United States Military during the Vietnam War. Its purpose was similar to that of a weed killer. It was sprayed into the Vietnam jungles in order to kill the terrain and make it easier for the United States military to conduct combat operations. The name originated because it was carried in large orange barrels, and hence was given the name “Agent Orange” by American soldiers.

Unfortunately, Agent Orange turned out to be extremely poisonous. Soldiers who touched it, breathed it, or drank water that was exposed to it, later suffered from cancer and other deadly diseases. Accordingly, the VA has a presumptive policy that states ANY soldier that set foot in Vietnam was exposed to Agent Orange, and if that soldier suffers from Diabetes Mellitus, Prostate Cancer, Lung

Cancer, Non-Hodgkin's lymphoma, or Parkinson's disease at ANY time in their life, they are entitled to service connected compensation. (For a complete list of Presumptive Agent Orange Conditions, please visit: <http://www.publichealth.va.gov/exposures/agentorange/diseases.asp#veterans> ).

While this presumptive policy by the VA has helped thousands receive benefits, it unfortunately has also excluded thousands more. As stated above, a soldier must "set foot" in Vietnam in order to qualify for compensation. Unfortunately, many navy sailors never set foot in Vietnam but were still exposed to it. These soldiers are classified as "Blue Water" Veterans and are not entitled to Agent Orange compensation, unless they can prove that they left the ship and set foot in Vietnam.

Finally, soldiers that left the ship and went on patrol boats into the rivers of Vietnam are classified as "Brown Water" Veterans. These soldiers never technically set foot in Vietnam, but are entitled to the presumption anyway, and therefore can more easily receive benefits.

### **GULF WAR**

Gulf war illness or syndrome is also another presumptive condition. To qualify for it, the veteran must have served in the first gulf war, or in the current Iraq and Afghanistan missions. Afterwards, the veteran must obtain a diagnosis from a medical professional showing that the veteran is suffering from PTSD. Major symptoms of Gulf War Illness include fatigue, skin problems, headache, muscle and joint pain, neurologic and respiratory symptoms. (For a complete list of Gulf War Illness symptoms, please visit: [http://www.publichealth.va.gov/exposures/gulfwar/associated\\_illnesses.asp](http://www.publichealth.va.gov/exposures/gulfwar/associated_illnesses.asp) ).

### **POST TRAUMATIC STRESS DISORDER (PTSD)**

Nearly 20% of veterans of the Iraq and Afghanistan Wars suffer from PTSD or major depression. PTSD is a major injury and can be compensated through monthly service connected veterans disability. As defined, PTSD is an anxiety disorder caused by exposure to an intensely traumatic event. Those who

suffer from PTSD may experience flashbacks, nightmares, hyper vigilance, anger, fear, and difficulty concentrating or sleeping.

To qualify for service connected post traumatic stress compensation, the veteran must first be diagnosed by a medical profession. Note, that this diagnosis can occur at ANY time after military service. Next, the medical professional must state that the PTSD is related to a “stressor event” that happened while in military service. To determine if the event was a “stressor event” it must be one that is:

1. Related to fear of hostile military or terrorist activity; AND
2. Is consistent with the places, types, and circumstances of the veteran’s service

### **OBTAINING EVIDENCE**

Without a doubt, the most time consuming element when trying to obtain VA disability is the process of obtaining evidence. There are only two types of records that really matter: 1) Personnel records that prove you were in the military, where you served, and the what happened to you while in the military; and 2) Medical records that prove how your military service has affected your physical health. Additionally, lay evidence, such as statements, letters, and photographs can be helpful but are generally not as strong as personnel or medical records.

Now that you know you need personnel and medical records, the next question is how to get them. Some of these records you may already have. For example, a DD-214 form is a basic piece of paper that every veteran is given upon discharge. It states many of the basic pieces of information in your personnel record. If a veteran no longer has one, one can be obtained for free by requesting it from the Department of Defense. However, additional personnel records may be needed to show more specific facts. These records can be obtained for free by filing the proper paperwork with the VA. Generally speaking the forms can be found on the VA website, downloaded and mailed into the VA.

While there are hundreds of forms to choose from on the VA website, the most important ones to get the ball rolling are: (visit this link here)

1. Standard Form 180
2. VA Form 3288
3. VA Form 10-5345

Similar to personnel records, medical records may be found in files given to the soldiers upon discharge, or can be requested through the VA for free on the same webpage where personnel records are found. The recommended form to download, fill out, and mail back to the VA is the 10-5345 form.

### **HOW MUCH CAN YOU GET & COMBINING INJURIES**

Ok, so at this point you have proven you are a veteran, you know you have a service connected disability, you know how to prove it, and you have medical evidence of the injury. Therefore, one of the last questions remaining is how much will you get?

Put simply, the VA has a ratings system, in which your injury or injuries are given a numeric value between 0 – 100. If your injury or injuries are given a 0% then you will receive nothing. However, it is important to note that over time a 0% rating can be more easily increased than a new injury, and therefore it is better than nothing. On the other hand, a 100% disability rating equals \$2,673 per month.

Below is a table of the current disability ratings as of June 2011:

<b><u>TOTAL PERCENTAGE</u></b>	<b><u>MONTHLY COMPENSATION</u></b>
10%	\$123
20%	\$243
30%	\$376
40%	\$541
50%	\$770
60%	\$974
70%	\$1,228
80%	\$1,427
90%	\$1,604
100%	\$2,673

It is also important to note that multiple service connected injuries can be combined for a higher rating. Each injury must meet the same requirements as discussed above. While this may seem simple, the VA does not combine the injuries as one might expect. For example, if a soldier has five injuries: one at 50%, another at 30%, and three separate injuries at 10%, this would NOT add up to 100% disability. The VA uses a somewhat complicated formula that will not be discussed here, but needless to say that in the above example, the combined disability rating would be 80%. Therefore, it is important to remember that multiple injuries will not always be added up in simple math. Instead there is a complex formula, and it is important to work with your attorney in order to understand it, and achieve the highest rating possible.

## **PROCEDURE & HOW TO SUBMIT A CLAIM**

At this point the only issue left is how to put all this information together to achieve a monthly service connected disability benefit. For purposes of this brochure, the process will be simplified, but make no mistake, a good attorney can help, and statistics show that veterans with an attorney have a far greater success record than those that go it alone.

The first step is to submit an informal letter to your regional VA office. This letter should state your name, social security or service number, your branch of service and your injuries. At the end of the letter, the veteran should request service connected compensation.

The informal letter services two purposes. One, it allows the VA the opportunity to successfully process your claim and there is an outside chance you could begin receiving compensation immediately. More realistically, is the second purpose: the VA will most likely reject your claim, but reception of the letter begins your "effective date." The effective date is important because if you eventually succeed in your claim, the VA may owe you back pay from the time of the effective date. For example, if the VA receives an informal letter on June 6, 2011, rejects the claim, and then on June 1, 2013 the soldier receives 50% compensation. In this circumstance the VA would owe the soldier two years of monthly



back pay at 50% per month, which currently is \$770. It does not take a math genius to realize this is a lot of money. Therefore, it is always recommended that the claim process begins with an informal letter.

Not long after receiving the informal letter, the VA will respond. Most likely, they will respond with a rejection. At this point, the veteran will want to begin acquiring all the personnel and medical records discussed above, and file out a formal request for service connected disability benefits. This form can be found on the VA website and is titled VA Form 21-526.

Once this request is filed, the VA will most likely ask the veteran to be examined at a VA facility in order to gain current evidence of the injuries. If the physical exam is consistent with the evidence presented by the veteran, the VA will make a decision regarding the rating of disability.

## **COMMON REASONS FOR REJECTIONS**

If the VA rejects the claim, they will most likely claim that this is because the soldier is not a veteran, is suffering from a pre-military service injury, the injury is not connected to military service, or the injury is a result of willful misconduct caused by the veteran. Regardless of whether the claim is rejected outright, or if a low rating was given, the veteran can always appeal the decision.

## **APPEALS**

An appeal begins when the veteran files a "Notice of Disagreement – VA form 21-41-38. This notice must express disagreement with specific part(s) of the rating decision and desire for appeal. It is due one year from the initial VA decision.

At this point the veteran can request a review with either the Board of Veterans Appeals or the Decision Review Officer. Generally speaking it is faster to go through the Decision Review Officer; however, this decision should not be taken lightly as there are many pros and cons in each route. It is best to choose the path that is part of the overall legal strategy.

Whichever option is chosen, the veteran must file a VA Statement of the Case. This motion will include a cover letter, notice of right to appeal, recitation of the pertinent law, statement of the case itself, and VA Form 9 "Appeal to Board of Veterans Appeals." Once the case has been accepted for appeal, there are five general motions that can be filed: 1) Motion for Reconsideration; 2) Motion to Vacate; 3) A Motion for a Clear and Unmistakable Error; 4) Notice of Appeal with the Court of Appeals for Veterans Claims; and 5) Reopen the Claim.

## **SHOULD YOU HIRE AN ATTORNEY**

While the process of filing a claim seems straight forward, it can be rather difficult. There are many strict time requirements that must be followed. Additionally, figuring out how to combine multiple injuries and acquiring all the necessary paperwork requires some experience working with government agencies. Lastly, pursuing an overall legal strategy may involve arguing the case before a Veterans Appeals Board.

Due to these reasons, and the sheer volume of time required to successfully file a claim, an attorney is highly recommended. On the positive side many attorneys will perform this work pro bono, which means that it will not cost the veteran one single penny. The only cost will be if any back pay is awarded. In that case, the government allows attorneys to receive 20% of the back pay, but only the back pay. All current and future payments go directly to the veteran and never to the attorney.

## **FINAL THOUGHTS**

Receiving veterans disability can be a life changing experience. You have earned the benefits, and you deserve them. No matter what you decide, you should always consult with an attorney for free legal advice. If you decide to do so, contact:

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