Strategies For a
Winning Campaign

Veterans DISABILITY Claims

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Preface

As a child, I lived with my uncle Earl, who was a disabled Veteran. Uncle Earl was a colorful character. Earl told the story of how he was raised in the Tennessee hills near Knoxville, a used car salesman by day and a bootlegger by night. He told of how he used to run moonshine in a fake gas tank under his car, think of the movie Thunder Road (1958) with Robert Mitchum. Around 1940 he finally got caught and the judge gave him an "either/or" – either spend a year in the U.S. Army or spend a year in jail. Not knowing what the Japanese were up to, Uncle Earl chose what he thought would be a year in the army. Before he was honorably discharged in 1954, Uncle Earl served with great distinction in World War II, in the Sicilian and Italian campaigns, and in the Korean War.

An interesting sub-chapter began in 1945 when he began receiving letters from a young woman in Mississippi he had never met named Frances. During WWII, young women were given lists of GI's to correspond with to keep up the troop's morale. They considered it their patriotic duty. A relationship soon developed and in 1946 Aunt Frances and Uncle Earl were married. They had no children and in second grade I went to live with them and they raised me as their own in the small town of Normangee, Texas.

As I grew up, I witnessed firsthand the physical toll that Uncle Earl's service to his country took upon his body as he grew older. I also witnessed the long struggle for him to win his Veterans Disability claim. The reality is that service connected disabilities frequently do not become severe until years after the Veteran has left the military and proving a Veteran's disability claim can be very difficult. Uncle Earl's life has inspired my desire to help disabled Veterans and I dedicate this book to him.

1 Beginning the Claims Process

1.1 How to Get Started with the Veterans Claims Process

The Veterans Claims Process can be complicated, and as a result, many veterans don't obtain the benefits they earned. If you served our country as a member of the US armed forces and were impaired as a result, either physically or psychologically, you deserve compensation for your sacrifice.

An eligible veteran may file a claim for disability compensation:

- for disabilities that occurred during active military service,
- for post-service disabilities presumed to be related to your service, and
- to modify existing compensation.

Without the right weapons, it's hard to win the fight. This holds true for the battle that hundreds of thousands of disabled vets fight every day on their own turf, trying to win veterans disability claims.

If you feel overwhelmed or confused by the process, you should consider working with an experienced veterans benefits attorney. He or she can ensure you are following the veterans' claims process correctly – giving you the best possible chance of getting your veterans benefits approved with the highest possible rating. Your VA rating is of utmost importance, as it not only determines your disability compensation, it determines your eligibility for other veteran's benefits, such as VA health care and dependent benefits.

1.2 What Veterans Benefits Does the VA Handle?

For most, the veterans' claims process starts with the Department of Veterans Affairs (VA).

The VA has two main roles:

1. Providing medical care for veterans, and
2. Paying benefits to veterans.

The veterans' benefits the VA handles include:

- Compensation for service-related disabilities,
- Pensions to low income, wartime veterans or their widows, and
- Compensation to widows and families of veterans.

These responsibilities are divided between the Veterans Benefits Administration (VBA) and the Veterans Health Administration (VHA). Since you are pursuing a claim for veterans' benefits (disability compensation or pension) you would be dealing solely with the VBA.

To start, you want to ensure you qualify as a "veteran" according to the VA's definition: "a person who served in the active military, naval or air services, and who was discharged or released under conditions other than dishonorable."

Be aware that even if you have an honorable discharge, the VA retains the right to determine whether or not your disability came from dishonorable service.

1.3 How Long Does It Take the VA to Decide a Claim in 2021?

Unfortunately, the VA takes a very long time when processing VA claims. As of February 2021, the average number of days to complete claims for disability benefits is 153.1 days.

VBA now serves over 5.5 million veterans in their compensation or pension benefit claims. In just the past five years, over one million veterans have made new claims for compensation.

1.4 Still Battling the Backlong

The VA has taken steps to reduce its unacceptable backlog. It has introduced eBenefits, publicly accessible Disability Benefits Questionnaires (DBQ) to use in the disability evaluation process, the Fully Developed Claims (FDC) program, and most recently the Veterans Appeals Improvement and Modernization Act of 2017 (AMA) — all of which are explained in following chapters.

When we compare VA statistics over the past nine years, we see a reduction in backlog and in waiting time. In 2012, the average time to process a VA claim was 260 days – an unforgivable 8 months! Within a year, VA cut that number almost in half. However, over the past 8 years, waiting times have bounced up and down and today we have the same delays in waiting times as we did in 2013, with 470,000 *fewer* pending claims.

Year	VA Backlog (# of pending claims)	Avg Wait Times
March 2012	867K claims	260 days
March 2013	661K claims	150 days
March 2021	191K claims	153.1 days

Frustrating factors play their part in these oppressive delays, including inadequate case-tracking technology, an increase in complex claims, understaffing and staff turnover, and adjudicator errors. Veterans do not comprehend the wealth of detail required to prove a claim, and many have a mistaken reliance on the VA and VSOs to get the job done for them.

In 2020, the COVID-19 pandemic created further delays for veterans who needed to access their military records from the National Archives and Records Administration (NARA) which was forced to close during the pandemic, serving only urgent requests remotely. The VA also paused in-person C&P exams. The VA is now using contractors to conduct C&P exams in an effort to work down the post-pandemic backlog.

VBA expects the backlog to grow and then peak by August 2021, reaching 225,000-to-240,000 pending claims. Other reasons for the expected peak are due to worthy causes, including:

- VBA will re-adjudicate over 62,000 Blue Water Navy claims
- VBA will begin processing claims for the three new Agent Orange presumptive conditions mandated by Congress of bladder cancer, Parkinsonism, and hypothyroidism.

The only silver lining in this debacle is that if you are denied veterans benefits, there's a good chance it was due to an error in the process – not you. Because of this, a high number of denials are overturned by

experienced VA claims attorneys, and many veterans are ultimately given the benefits they deserve. Still, that's no excuse for having the problem in the first place. For the sake of our armed servicemen and women, training has to get better, and the entire VA claims process needs to improve.

1.5 VA Revamps the Claims Process: Appeals Modernization Act

On February 19, 2019, the Department of Veterans Affairs launched its new, revamped appeals process for veterans disputing their disability claims decisions.

The new law is called the Veterans Appeals Improvement and Modernization Act of 2017, or the Appeals Modernization Act (AMA) for short. Passed into law in 2017, the Act intends to reform the unacceptable wait times and backlog caused by the flawed, archaic system for Veterans appeals. The "old" VA claims and appeals system is now referred to as the "Legacy System."

Under the AMA, you choose from three "processing lanes" to request the VA's review of a denied claim or unsatisfactory decision:

- Lane 1: Higher Level Review
- Lane 2: Supplemental Claim
- Lane 3: Notice of Disagreement – Appeal to BVA

The AMA is fully explained in Chapter 11, Appealing a Denial of a VA Claim.

2 Eligibility Requirements to Receive Veterans Benefits

2.1 What Are the Eligibility Requirements for Successful VA Claims?

All VA benefit programs require anyone applying to meet three basic criteria which is used to determine whether he or she will be classified as a veteran. These three requirements are:

1. Whether the applicant has served in any branch of the military
2. Whether the applicant's military service was considered "active"
3. Under what circumstances the applicant was discharged

These general requirements for veteran status must be met before beginning the claims process. Veterans' dependents and survivors can also apply for benefits after establishing that their loved ones' status met these three criteria.

2.2 What Other Eligibility Factors Will the VA Consider?

Once your veteran's status is established, factors such as the length of your active service or whether your active service was during wartime will impact the types and amount of benefits that you, your spouse, or your dependents are eligible to receive.

In some special cases, a veteran who does not meet the three basic eligibility requirements can still be entitled to some benefits. An accredited VA disability attorney can be invaluable in helping guide you and your family through the challenging rules established by the VA claims process.

2.3 How Does the VA Claims Process Define Military Service?

The first step that either your VA disability lawyer or the VA Board will take in establishing your benefit eligibility will be to examine whether your experience qualifies as military service.

For VA claims, you must be "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable" to establish basic eligibility.

Conventional service in one of the five branches of the US Armed Forces is the most common type of military service. If you served with the US Army, Navy, Marine Corps, Air Force, or Coast Guard, you will meet the military service requirement.

You could also meet the requirement by serving in one of these branches as a member of the Reserve, as a cadet or midshipman at a military academy, as a student in a prep school for one of the academies, or as a member of the Air or Army National Guard.

2.4 What Other Types of Military Service Make You Eligible for VA Benefits?

If you did not serve in one of the five branches of the US Military mentioned above, you may still meet the first requirement of the VA's definition of a veteran. It's always best to consult a VA accredited lawyer on these finer points, but here are a few examples of service that may qualify you for classification as a veteran:

- Commissioned full-time officers in the Public Health Service
- Commissioned full-time officers of the National Oceanic and Atmospheric Administration
- Commissioned full-time officers of the Environmental Science Services Administration
- World War II service in the Philippines' organized military forces
- World War II service as an American Merchant Marine
- Pre-1943 service in the Women's Army Auxiliary Corps
- Other service by civilians during a few specific periods of armed conflict

2.5 What Are the "Active Service" Requirements for Successful Veterans Claims?

The next step in the veterans' claims process is establishing whether your service can be considered "active." This step can be a little trickier than

meeting the requirement for military service, so you may want to consider enlisting the help of a veterans' disability attorney before embarking on your veterans' claims application.

"Active" duty that qualifies a veteran to receive benefits consists of full-time service:

- In one of the five branches of the military
- As a commissioned officer for the Public Health Service or other federal service administrative organizations
- As a cadet or midshipman at a military academy
- In attendance at a military academy preparatory school, if the person had an active duty commitment
- During authorized travel to or from any of the above-listed types of active service

Some veterans' active duty during training periods can also make them eligible for benefits. If the veteran in question was injured or killed during a training period, the veteran or surviving benefactors may be able to receive benefits. This "active duty for training" specification applies to members of the Reserve or National Guard, military prep school students, and some other veterans.

The VA may also consider veterans eligible for benefits who were disabled or died in the line of duty as a result of certain cardiac health problems, like a heart attack, during training. This type of injury is considered a result of "inactive duty for training," and can apply to National Guard members, Reservists, and a few other types of veterans.

The VA's rules for determining active service eligibility can be complicated – for example, you will have to keep in mind that for members of the National Guard, only the periods during which they were called into federal service can make them eligible for veterans benefits.

2.6 How Does the "Character of a Discharge" Affect a VA Claim?

Once you have successfully established active duty service in a branch of the military or other military capacity, you will have to pass a final

criterion: determining the character of your discharge.

The VA states that anyone establishing veteran status for the purpose of receiving benefits must have been discharged "under conditions other than dishonorable." This might seem simple at first – however, the VA's discharge categories do not match up with the military's discharge categories.

2.7 How Is the Character of a Discharge Determined for a VA Claim?

The military's discharge classifications are as follows:

- Honorable discharge (HD)
- Discharge under honorable conditions (UHC) or general discharge (GD)
- Discharge under other than honorable conditions (OTH) or undesirable discharge (UD)
- Bad conduct discharge (BCD)
- Dishonorable discharge (DD) or dismissal

Since the VA's language specifies that to be considered a veteran eligible for benefits, the discharge must be "other than dishonorable," people with the first three types of discharges (HD, UHC, or GD) almost always qualify. People with dishonorable discharges almost never qualify.

Many veterans end up applying to upgrade their discharge statuses before opening a case to determine benefit eligibility, but this involves yet another lengthy and complicated VA claim process. See Chapter 18, "Upgrading a Veteran's Discharge Status" for more detail on this subject.

2.8 How Does the Insanity Exception Affect Eligibility for VA Benefits?

There are a few rare exceptions to the usual rule that veterans can only claim VA benefits for disability if their discharges were "other than dishonorable." If the veteran was ruled insane during the period of misconduct that led to a dishonorable discharge, the VA may waive the discharge requirement and decide to grant benefits to the veteran. Of

course, the diagnosis of insanity is a serious affair. The VA has a fairly strict definition of insanity, relating to behavior that sharply deviates from a healthy individual's usual character due to a mental disease.

To successfully argue that the insanity exception applies to your VA benefits, you will need medical evidence that you were insane, as defined by the VA, during the time of the misconduct that led to your discharge. The VA does not require the misconduct and the insanity be causally connected, so it will be enough simply to prove that mental disease-induced insanity was present at the time of your misconduct. Unlike in civilian law courts, the VA does not require any evidence that the veteran claiming the insanity exception knew right from wrong or understood the consequence of his or her actions.

2.9 How Does Having Multiple Periods of Service Affect VA Claims?

Multiple periods of active service can be an intricate issue when a veteran received different discharges for his or her multiple service periods.

Of course, if a veteran was discharged for anything along the lines of mutiny, treason, or sedition, he or she is not going to receive benefits. But very few veterans are contending with disqualifying discharges for these reasons.

Veterans who were eligible to receive benefits for a previous period of service will typically not lose their benefits if a subsequent period of service resulted in a disqualifying discharge. The VA also has a provision under which back-to-back periods of service can be combined to result in a commitment eligible for a qualifying discharge. This usually only applies when the first period ended early with an honorable discharge, and the second period ended in a dishonorable discharge but after enough satisfactory time that, when combined with the length of the first enlistment, the total satisfactory service is greater than or equal to the initial service commitment.

2.10 How Are You Supposed to Prove All Eligibility Criteria to the VA Board?

The standard of proof of eligibility requires the VA give you the benefit of the doubt if the evidence on both sides is equal. Even so, the burden is still on you to make a convincing case.

The VA's decision is based mostly on service records including your DD214 or other separation papers and your service treatment records. VA also needs to review any personally obtained medical evidence related to your impairment. But you are the one who has to compile and submit these documents. If you have any doubt about the requirements for making your case, consult a VA disability lawyer immediately.

The first step is to submit military records which prove the location and length of your active duty service as well as the type of discharge you received. You have three options to get this done:

1. Submit the original document from your service department,
2. Submit a certified copy of the original document, or
3. Authorize an accredited agent to submit a certified copy.

If by some chance your records don't make it to the VA, the Board is still bound to request the pertinent documents directly from your service department.

However, what if your service document does not paint an accurate picture of your service? In that case, you are allowed to submit what is known as "lay evidence"– (evidence provided by someone without medical expertise) and personal statements – to help make your case. Lay evidence can be a buddy statement corroborating what happened to you during service, or from family, friends, and co-workers who can share exactly what you have been through medically and personally. Solid lay evidence can be the most powerful proof of disability in your claim. It is our experience veterans' claims are often won or lost based on lay evidence.

3 How Does a Veteran File a Disability Claim with the VA?

You can begin the claims process by applying in one of the following ways:

File for Veterans Disability Compensation

- Apply Online through the eBenefits portal at: https://www.ebenefits.va.gov/ebenefits/homepage. Follow the menu to file for Disability Compensation using the online VA Form 21-526EZ
- Submit a Paper Application:
- For Veterans Application for Compensation use the paper VA Form 21-526EZ. Download copies at the U.S. Department of Veterans Affairs website or visit your closest VA Regional Office.

File for Veterans Pension

- **Apply Online** through the eBenefits portal. Follow the menu to file for Pension Benefits.
- **Submit a Paper Application**:
  For Veterans Application for Pension use VA Form 21P-527EZ

  Download copies at the U.S. Department of Veterans Affairs website or visit your closest VA Regional Office.

In applications for either Veterans Disability Compensation or Pension Benefits, using either the electronic or paper filing process, you will have the option to apply using the Fully Developed Claim (FDC) program for expedited claim review.

File Using Accredited Representation

- Appoint a VA-accredited attorney or agent to act on your behalf in the preparation, presentation, and prosecution of claims for VA benefits.

Veterans seeking representation may rely on information found on the VA's website — Office of General Counsel (OGC) Search for Accredited

Attorneys, Claims Agents, or Veterans Service Organizations (VSO) Representatives.

3.1 What Are the Steps of the VA Claims Process?

1. **File a claim.** This should be obvious, but before the claims process can begin, a claim must be filed by the veteran stating he or she believes they are entitled to benefits based on a disability they are experiencing. The veterans' claims process begins at your Regional Office (RO)

2. **Develop a claim.** After you file your claim, the VA is required to help you develop your claim. This means they will try to get your veterans service medical records to follow up, as well as any other medical records that you mention. However, the VA will not look at your military records – if those are important to your claim, get them yourself. The VA will also give you a C&P Evaluation, or physical exam, for any current medical condition related to the claim, and provide a report with medical findings. And finally, the VA must send you a letter explaining the VA claims process – how to substantiate your claim, what the VA has done and will do, and what you need to do. Unfortunately, this "help" leaves a lot to be desired, which is why it is so important to find a good veteran's representative or veterans benefits lawyer.

   Note: an exception to the VA's "duty to assist" veterans in their disability claims occurs with claims filed under the "Fully Developed Claims" program (explained below).

3. **The Rating Decision.** Once all the information is in, a Rating Decision will be made, rendering a decision on the claim. For a favorable decision, you must have proven a service connection, percentage of disability, and effective date of eligibility. Denial of veterans benefits will happen if any one of these things is not met, and each individual element can be appealed.

4. **Notice and Award Letter**. Win or lose the claim, you will get a letter from the VA notifying you of their decision. You need to make sure the VA has your current address, or they simply will not adjudicate your claim. Win and you will get an award letter that states your

percentage of disability and your effective date – the date from which you will start receiving benefits. The exact dollar amount of your compensation will be sent to you in a follow-up letter. You have the right to appeal all rating decisions. If you receive a denial of veterans' benefits, it is in your best interest to get a lawyer involved to assist with the VA claims process.

3.2 File Using the "Fully Developed Claim" (FDC) Program for Fast-Track Decisions

VA provides an option for filing what is called the Fully Developed Claim, for the goal of getting a faster review and decision by submitting evidence along with your claim. Fully Developed Claims are part of the VA's response to expediting disability compensation claims and dealing with the tremendous backlog. Claims submitted under the FDC program may be processed by the VA within 30-60 days of submission.

As an incentive, VA offers one year's worth of retroactive compensation for filing a successful fully developed claim. Once you begin your FDC claim, you will have one full year to complete it and provide all documentation requested. If and when your FDC claim is approved, your disability back pay will be retroactive back to the day you filed your claim.

Under the standard claims filing process, VA is required to help you assemble all the required information about your case. However, as a disabled veteran filing an FDC, you must assume the burden of collecting the necessary documentation, and assembling and preparing your claim without any help from the VA. **You waive your rights to VA's normal "Duty to Assist" you in your claim.**

The FDC process requires you to do the research in advance of submitting the application. You gather all of the important information without VA's assistance and submit all required documentation upfront. You would submit all evidence, records, and information as part of your application for disability benefits.

The theory is in that if your claim is fully developed – it is comprehensive and perfected – and you are providing everything the VA

needs to make a just decision. Aside from ordering medical exams and possible Federal records, all the VA has to do is review your claim and make a determination on it.

While this method does not guarantee an award of benefits, VA hopes the fast track, and for original claims additional benefits, are sufficient incentives for veterans to navigate the military records system and undertake the Veterans claims process on their own.

In theory, because the veteran does all the heavy lifting without VA's assistance, the veteran reaches a fast and accurate decision. In reality, a disabled veteran may or may not have the ability or fortitude needed to understand, locate and assemble all necessary evidence on their own to truly develop a winning claim.

The FDC is difficult because the unrepresented veteran will not know what collection of evidence is "right" and when it is "complete" for his or her specific claim. Success or failure relies on submitting the perfected claim all at once. Without qualified and very dedicated assistance, the veteran has little chance of getting it right. The good news is, VA has made it easy for veterans to get help from the best veterans' attorneys in the country, because all VA disability claims can be filed electronically, and veterans' lawyers are equipped to assume all electronic processes as they strategically help you file.

If the VA decides your claim is not fully developed (is lacking necessary evidence) the VA would take your claim out of the FDC program and the claim would then undergo the standard claims process, and thus you have not saved yourself any time.

Fully Developed Claims are optional and may be filed for:

- **Veterans Disability Compensation** (Form 21-526EZ)

  - Original Claim – the first claim you file for disability compensation from VA.

  - New Claim – for service connection for a disability that has not been filed before.

- Secondary Service-connected Disability Claim – a new claim for a disability that developed as a result of or was worsened by a disability that VA has already determined to be service-connected.

- Supplemental Claim (requiring new and relevant evidence)

Request to Reopen a Disability Claim – a claim already filed that VA could not grant and the decision is over one year old.

Claim for Increased Disability – a claim for an increased evaluation of a disability that VA has already determined to be service-connected.

Other special issues where additional forms and evidence may be needed:

- Individual Unemployability as determined by VA

- Post-Traumatic Stress Disorder)

- Survivor Benefits (Form 21P-534EZ) – Claims for Dependency and Indemnity Compensation (DIC), Survivors Pension, and/or Accrued Benefits.
- Veterans Pension Benefits (Form 21P-527EZ) – including the Aid & Attendance, Housebound, and Basic Pension benefits.

These and other types of claims are detailed in Chapter 5, Types of VA Compensation Claims.

To file an FDC, VA advises filing electronically at eBenefits.gov. If you file a paper FDC for VA disability compensation, you will need to complete VA Form 21-526EZ and visit your local RO.

WARNING! Do not submit both a mail and online application or it could confuse the claim. You should always keep a copy of all completed forms and materials that you provide to the VA for your records. This can be beneficial in case you are denied disability benefits or if the

documents are lost.

3.3 Required Medical Examinations: the C&P Exam

When you begin the VA claims process, you will be subject to an examination at a VA medical center. This is known as the Compensation and Pension Exam, or C&P exam. Not all, but most claims for disability compensation will require a C&P medical exam. If the VA schedules a C&P exam for you, it is critical that you attend. It is a final discovery and assessment of evidence proving you are disabled due to your military service. In this light, it can be the **difference between an award and a denial, or between a 10% rating and a 60% or greater rating.**

An approved examiner will conduct the physical review of symptoms and take note of all your complaints. These examinations are offered for free to all veterans who are concerned their ailments are related to their military service. Once the examination is complete, the results will be considered along with the evidence you provide with your disability claim.

C&P exams are part of the VA's duty to assist. Even so, as veterans' attorneys, we review countless adverse decisions based on inadequate or flawed C&P exams. Some VA examiners' findings may even work against you. Suppose an examiner concludes there are no occupational factors associated with your service duties that are more likely than not to cause the development of your disabling condition. This, of course, can be a devastating blow to your claim.

In these cases, there is no substitute for a carefully developed claim supported by good evidence presented by an accredited veterans' lawyer. From here, your paperwork goes through 8 levels of command and 16 different information systems. It may take months or years to hear back. If you have any questions or concerns about your claim, you can always contact the VA:

- via the VA website, http://www.benefits.va.gov/benefits/
- by visiting the closest VA Regional Office or

- by telephone at 1-800-827-1000

3.4 If You Are Denied Veterans Benefits, You Have the Right to Disagree

In some cases, you may be denied veterans' benefits by receiving a 0 percent disability rating. This means that the VA acknowledges you have a disability, but does not believe you are disabled to a compensable degree. Alternatively, you may find yourself with a lower disability rating than your situation deserves.

In either of these cases, you have the right to appeal. Appeals are explained in Chapter 11, How to Appeal an Unsatisfactory VA Claim Decision.

4 Compensation vs. Pension: Which Benefit Can I Apply for?

Once you have determined you meet the basic definition of a "veteran," you should understand the difference between VA Compensation and VA Pension to ensure you are applying for the appropriate benefits.

4.1 Veterans Compensation — a.k.a. Disability Compensation Benefits

Veterans who have a service-connected injury or illness may be entitled to VA disability compensation. It is a tax-free monthly disability benefit. Compensation is not needs-based and is not restricted to any particular period of service.

4.2 Veterans Pension

A pension is needs-based welfare. Pensions are paid when any total disability – whether it is service-connected or not – leads to the veteran requiring financial assistance. These disability claims payments are substantially less than VA Compensation payments and are only available to certain veterans, such as individuals who served during a period of war, and are totally disabled from any type of work.

Instead of a percentage amount, they are paid in a flat amount, and a veterans benefits pension is offset by other income dollar-for-dollar. However, under the pension program there are some favorable presumptions, such as any veteran over the age of 65 is presumed to be totally disabled for the purpose of the pension program and as stated above, it is not necessary that the disability be service-connected.

Read more about Pensions in Chapter 9, "Veterans Pension Benefits." Under certain conditions, qualifying survivors and dependents of disabled veterans are eligible for important VA Compensation and/or Pension benefits.

Once you know which category you fall into, you can visit the Veterans

Affairs website to get a better estimate of how much you can expect if your claim is approved. VA has two separate rate tables that are used to pay benefits to veterans,

1. One for compensation and

2. One for pension.

5 Types of VA Compensation Claims

VA compensation claims are one of the most common types of VA claims. Unfortunately, the VA and our government have made the process of attaining VA benefits long, difficult, and incredibly complex; leading to uncountable denied veterans' claims. Many veterans are not aware that there are eight different types of compensation claims and the way you prove entitlement to benefits is not the same for each type.

Claims previously considered under the Legacy System are now reclassified under the Appeals Modernization Act or AMA system. The AMA system organizes claims into two categories: Original claims (new, complete claims) and Supplemental claims (to continuously pursue a claim that was unsatisfactorily decided in the past.) Veterans may also claim compensation under Section 1151 claims, DIC claims, CUE claims, and veterans pension.

Common types of VA compensation claims include:

1. Direct Service Connection
2. Secondary Service Connection
3. Supplemental Claims
4. Claims for Increased Disability Ratings
5. Reopened Claims
6. 1151 Claims
7. Dependency and Indemnity Compensation (DIC) and Accrued Benefits
8. Clear & Unmistakable Error (CUE) Claims
9. Non-Service-Connected Pension Benefits

The following are descriptions of each type of compensation claim in detail so you can avoid becoming another statistic for denied veterans' claims:

5.1 Direct Service Connection

This is probably the kind of compensation claim most familiar to veterans. Veterans can file this type of claim at any time, but it becomes harder to prove the longer he or she is out of the service before filing the claim. It is not unheard of for a veteran to have multiple direct service connection claims going through the system at the same time.

The rules governing VA compensation claims state that, for a veteran to qualify for service-connected disability benefits, the medical condition they are afflicted with must have been "suffered or contracted in the line of duty." This also includes any preexisting conditions which were aggravated or made worse in the line of duty.

Basic Definitions: Service Connection" and "In the Line of Duty"

Service Connected Disability means death or disability was incurred or aggravated during active service in the line of duty. A military finding of "incurred in line of duty" can bind VA.

In the Line of Duty means:

- The injury or disease was incurred or aggravated during a period of active service unless a result of willful misconduct or drug/alcohol abuse.

- Covers anything that happened while in service. There is no requirement that the veteran had to have been performing military duties. Injury could have occurred while the veteran was off duty and off base.

- Includes latent medical conditions that were not discovered until years later. For example, a veteran injured her knee while skiing while off base or on leave, but no problems occurred until years later. It could be service connected. This is, of course, as long as they can prove that the condition was acquired while in the line of duty.

Disabilities that Are Not Considered Service Connected

- Congenital defects
- Refractive eye errors
- Some personality disorders and mental deficiencies

Requirements for Obtaining Service-Connected Disability Compensation

In the VA claims process, there are three fundamental requirements that a veteran must satisfy to qualify for service-connected disability compensation. Each element must be proven with "competent evidence." They are:

1. **Currently diagnosed disability:** The veteran must present competent medical evidence of a disability that currently affects you. Many people are denied veterans benefits because they incorrectly believe they are entitled to receive compensation just for being injured while they were serving in the military. This is not the case. For VA compensation claims to go through, you have to be suffering from a medically diagnosed injury that is currently affecting you and causes a decrease in earning capacity. This means that even if you were shot or injured in some other kind of extreme way, but doctors have determined your injury is healed, you cannot receive any benefits.

2. **In-service event or aggravation:** There must be medical evidence of an in-service occurrence or aggravation of the disease or injury. The VA will examine your military service medical records, post-military VA medical records, and private medical records for proof, and also investigate to make sure any conditions diagnosed during your service did not exist prior to your time in the military. If you cannot prove your military service aggravated the condition, it might be denied. In the event the condition is not mentioned in your service medical records, it is possible "proof" can come from private medical records or statements from witnesses.

3. **Medical nexus:** The veteran must prove there is a link (nexus) between

the in-service injury and the current disability by providing competent evidence. VA compensation claims not only have to show the original injury occurred during your service (or that a previous injury was aggravated), but they also have to provide medical evidence showing your current disability stems from that original incident. This key component of your direct service-connected compensation claim is explained in Chapter 6, Establishing Service Connection through a Medical "Nexus."

The VA is required to assist you in obtaining the evidence you need to win your disability claim. Exceptions to the VA's "duty to assist" rule are claims filed under the Fully Developed Claims (FDC) process.

However, in the VA claims process, it is ultimately up to the veteran to satisfy the evidentiary burden of proof in order to successfully qualify for their compensation payments.

5.2 Secondary Service Connection

When a veteran has a condition directly related to their service and later suffers from a different medical condition which developed because of the original condition, it is possible to get veterans benefits for the secondary disability.

For example, a veteran who injured his or her leg while in service might feasibly develop a back condition later in life by favoring one leg over the other. For this secondary condition to qualify for veterans' benefits, a veteran must:

1. already have a condition deemed to be service-connected,

2. currently be suffering from a second condition, and

3. obtain a doctor's opinion stating that the secondary condition "as likely as not" developed as a result of the original, service-connected disability.

It is very important to be aware of and actively pursue benefits for secondary conditions because they can often be more costly and damaging

than the original issue.

5.3 Supplemental Claims

Under the new AMA system, the supplemental claim can be filed to continuously pursue a claim which was denied in the past year and preserve the effective date of the claim. Supplemental claims can be used to reopen claims and as claims to increase ratings. In both cases, you are requesting the VA to re-adjudicate your claim by submitting new and material evidence.

5.4 Reopened Claims

To reopen your claim, you need to show "new and material evidence" that was missing during the original claim and directly relates to the reason the first claim was denied or rated too low. To reopen a claim with new evidence, you will need to submit VA Form 20-0995 (Supplemental Claim) for a reopen. Under the AMA, the old 526 B form is no longer accepted.

5.5 Claims for Increased Disability Ratings

It is common for a veteran's level of disability to increase over time. If you believe the level to which you are disabled has increased since you were first given a "percentage of disability" that was calculated by medical definitions, you may return to the VA and ask for your compensation to be increased. This will require the VA to examine you and give you a diagnosis.

There is no real drawback to this and can be to your advantage if it is determined your condition has worsened. It is also another opportunity for the VA to notice secondary conditions.

Under the Appeals Modernization Act (AMA), the veteran has three routes of appeal to increase a disability rating: Higher Level Review, Supplement Claim for Increased Rating, or NOD and appeal to BVA. The proper option depends on the specific circumstances.

5.6 1151 Claims

This non-service-connected disability benefit is named after the section in Title 38 United States Code where it is found. If a Vet is injured as a result of the treatment received at a VA Vocational Rehabilitation program or in a VA medical facility, a Title 38 U.S.C. 1151 claim may be filed. This is submitted on Form 21-526 and should specify the veteran is claiming his or her condition as an 1151 claim.

Two kinds of claims can be filed – under the Federal Tort Claims Act, a malpractice claim may be entered; but as a civil suit, it's subject to the statute of limitations. Also, any money the Vet receives from the malpractice claim will be deducted from the 1151 claim. One benefit of the 1151 claim is that you may pursue it at any time – there is no statute of limitations.

5.7 Dependency and Indemnity Compensation (DIC) and Accrued Benefits

This type of compensation may be awarded to a spouse or dependent child or parent of any deceased veteran who qualified to receive service connected compensation. To qualify,

- the veteran's death must been due to their service connected disability, or

- their condition must have been 100% disabling for 10 years before the veteran's death.

Normal service connected claims often become DIC claims because veterans die while still battling the VA to receive the benefits to which they are entitled.

5.8 Clear & Unmistakable Error (CUE) Claims

CUE stands for Clear and Unmistakable Error, and the Vets who file these claims believe they were denied disability benefits due to VA mistakes on their original claim. Winning this claim is a big deal because Vets will start getting monthly benefits as well as receive back pay (sometimes

several years!) from the date they filed the original claim. CUE claims can be made at any time, but they are quite difficult to prove. You must show either the adjudicator did not have the correct facts to decide the case (not based on new evidence, but on what was known then), or the VA's provisions were not followed, which resulted in changing the outcome of the case. Only one CUE claim is allowed per condition, so it's not something you want to go into lightly.

5.9 Non-Service-Connected Benefits – VA Pension

Technically, claims of this sort are pension claims, not compensation claims. To qualify, veterans must show (1) their current disability totally prevents them from working; (2) the allowed maximum income for pensions is higher than what they receive, and (3) they served during wartime. Many denied veterans' claims forget one of these three elements.

A good veteran's attorney knows that, although these VA regulations have been established nationally, history shows that not all regional VA offices follow them consistently. If a regional VA office has denied someone their rightful veterans benefits without following the policy that has been set forth by the national VA, the disability attorney can challenge the decision, citing these policies in the appeal.

6 Establishing Service Connection through a Medical "Nexus"

The success of a veteran's claim depends on several factors including – and perhaps most importantly – establishing a service connection or "nexus" between a veteran's current disability and a precipitating incident during the veteran's period of military service. The main cause of denied VA claims is a lack of medical evidence used to provide proof of this nexus.

If a veteran's records do not include medical documentation, the VA will work to provide a medical opinion for the veteran's case. However, no matter how obvious the link between a veteran's service injury and current disability may be, a lack of medical evidence that clearly defines the connection will sink the case.

6.1 Why Is Medical Evidence Needed to Prove a Nexus?

Although veterans may testify about their symptoms and the service-related incidents that led to these symptoms during hearings for VA compensation claims, the fact that these veterans are not medical experts makes this testimony invalid when it comes to proving the service connection. But a veteran's evidence, also known as lay evidence when the veteran is not a medical expert, can be heard in a case as long as it is deemed "competent evidence." This entails the veteran be deemed capable of identifying the medical condition in question (this occurs when the condition does not require specialized expertise for diagnosis). This lay evidence can only be used to establish a diagnosis, not the connection between diagnosis and an inciting service-related incident.

Since most VA compensation claims are lost due to lack of sufficient medical documentation of the nexus, it is crucial to work with a knowledgeable veteran's attorney to help you gather the evidence necessary to win your case.

6.2 The Standard of Proof and the Evidence of Nexus (Nexus Letter)

The required medical opinion is called a nexus letter, or nexus statement.

VA regulations state, if the evidence regarding any part of your claim is equally balanced between favorable and unfavorable proof, the VA must give benefit of the doubt to the claimant and rule in your favor. Thus, any "reasonable doubt" created because of an equal lack of proof on both sides of the argument means the veteran wins the case.

Of course, in an ideal situation there will be enough proof on your side of the argument that the reasonable doubt rule will not need to be invoked. Hiring an experienced VA lawyer can be a key factor in preparing a strong case.

The same rule applies specifically to the nexus of proof requirement. To win your case and start receiving veterans' benefits, the medical opinion you provide to prove the nexus need only state that it is "as likely as not" that your current disability and the precipitating service incident are connected. This removes the burden of providing absolutely definitive proof from medical experts and makes it much easier for veterans to make successful VA claims – a 50% chance of connectivity is all that is required.

Choosing the right medical expert is also key to successfully arguing VA compensation claims. The expert does not have to be a doctor but must have some sort of medical training in the field relevant to the veteran's impairment. Examples of possible experts include nurses, psychologists, and social workers. The better trained and better-respected your medical expert is, the more likely the VA is to rule favorably on his or her opinion, so choose carefully.

6.3 When Is Medical Evidence Not Required for Successful Veterans Claims?

A few circumstances exist in which a medical opinion stating the link is not required.

Disability Is the Obvious Result of Service: Generally, if a veteran's current disability is an obvious result of an injury that occurred during service (such as missing leg amputated after a service incident), the veteran will not be required to provide a medical opinion proving the link and will

be granted veterans benefits. In a case like this, "lay evidence" is sufficient for the VA to make a determination. As long as the disability in question is readily identifiable to someone without medical training, lay evidence will be all that is required for the VA's favorable ruling.

Chronic Condition Diagnosed during Service: Medical evidence is not necessarily required for the VA to make a favorable ruling in claims when the disability currently suffered by the veteran is chronic and was diagnosed during military service. In these cases, the veteran needs to provide a diagnosis made after leaving the service of the same chronic disease identified during active duty. But unlike most other cases, a diagnosis without any additional medical opinion or analysis will be enough.

The VA provides a list of disabilities considered chronic and therefore eligible for this consideration. Veterans are also allowed to prove that disabilities not on this list could be considered chronic, but it is strongly recommended you consult with a qualified legal advocate before trying this strategy.

Presumptive Service Connection: One more circumstance during which a nexus of evidence may not be required to receive veterans' benefits occurs when the veteran's disability qualifies for the presumptive service connection. The VA provides a list of disabilities that automatically qualify for veterans benefits as long as the condition in question was diagnosed during the specified presumptive period.

As an example, veterans who served in the Persian Gulf War or Operations Iraqi Freedom or Enduring Freedom would not need to provide evidence of linkage for fibromyalgia diagnosed during their service in Southwest Asia since it is on the VA's approved list.

Keep in mind that, although the VA does waive the nexus of evidence requirement in these cases, it is always recommended that veterans be ready to provide detailed medical opinions in the case that the VA does not make the assumed allowance. Arguing successful veterans claims is almost always more complicated than the VA's rules might proclaim, so hiring a qualified veterans attorney is a great way to increase the odds of winning your case.

6.4 Proving Direct Service Connection

Of the five strategies by which a veteran can establish the link between a service incident and disability required for VA compensation claims, the direct service connection is usually the first method to which veterans turn. The phrase "direct service connection" means exactly what it says: the veteran's current disability is a direct result of an incident that occurred or a disease that was diagnosed during the period of military service.

The direct service connection is also the first strategy that VA board members are trained to use when evaluating claims. A lawyer accredited by VA will do everything possible to establish that the link between your disability and a presumptive service incident qualifies as a direct service connection.

As explained in Chapter Five, Successful VA compensation claims require the presence of all three of the following types of evidence:

- Medical documentation of the current disability
- Lay or medical evidence of a precipitating incident during service, such as an injury, event, or diagnosis of a related disease
- A medical opinion provided by an expert analyzing the evidence and linking the disability to the precipitating incident, event, or disease

However, there are several circumstances under which a direct service connection can be established without the presence of the second and third types of evidence. These situations occur when the veteran can prove "chronicity" or "continuity of symptomatology."

6.5 What Is Chronicity?

Chronicity" refers to a situation in which a veteran can receive benefits because the disability in question is a chronic condition that was diagnosed during a period of service or a designated presumptive period.

If you feel that your disability could be considered chronic by the VA, you'll need to provide medical evidence showing that you were diagnosed

with the condition during service and that a recent medical examination found that you continue to suffer from the same condition. Though you will have to produce statements from medical professionals, you won't need to present anything other than diagnoses – no need for the detailed medical opinions and analysis required for other VA disability claims. The direct service connection is presumed under the policy of chronicity.

Which Conditions Are Considered Chronic for the Purposes of Disability Claims?

There are two ways for veterans to prove that their current disabilities fall under the VA's policy of chronicity. The first – and easiest – is simply to demonstrate that your illness or impairment is on the list of conditions recognized by the VA as chronic.

If you consider your condition chronic but it is not on the VA's approved list, it may still be possible to successfully argue your case and receive veterans' benefits. In this situation, an experienced veterans' advocate or lawyer can help you build up evidence based on medical reference material or doctor's statements.

Making a successful case based on veteran-provided evidence is slightly more challenging but still highly possible. Chronicity makes it much easier for veterans with long-term conditions to successfully argue their disability claims and receive the veterans' benefits they deserve.

6.6 What Is Continuity of Symptomatology?

Another policy through which VA compensation claims can be successfully argued without providing medical evidence of nexus is "continuity of symptomatology." This policy refers to situations in which a chronic condition most likely manifested during service but was not specifically diagnosed during that time.

The key in proving that continuity of symptomatology applies to your case lies in the description of your symptoms. Although your current disability need not have been diagnosed during your period of military service, you will be required to show evidence that symptoms similar to your current ones were present and "noted" during service.

The U.S. Court of Appeals has ruled that favorable claims using continuity of symptomatology and the direct service connection do not require additional proof of a nexus of evidence. Though this ruling sounds clear-cut, it's a little misleading. Most cases actually do require a medical opinion linking the current disability with the symptoms present during service except in a few rare cases where lay evidence is enough to prove that the condition exists. An experienced VA disability attorney can be a huge help in putting together a case like this.

What Is Required to Prove Continuity of Symptomatology for VA Compensation Claims?

You and your lawyer will need to provide the following three types of evidence:

- Proof that the symptoms of the current disability were "noted" during the period of service
- Proof that these same symptoms continued after the period of service ended
- Medical documentation (or in some rare cases, lay evidence) that a link exists between the post-service symptoms and the current disability

Veterans should not rely merely on the evidence of continuous symptoms as proof. The third element of evidence, the establishment of a link by a medical authority, is crucial to successfully argue VA compensation claims using continuity of symptomatology.

6.7 Can the Direct Service Connection Be Established for Diseases First Diagnosed after Service?

What if veterans discover that their disabilities diagnosed after serving were caused by service incidents? In these cases, the VA has ruled that the direct service connection can be granted when the veteran proves that the condition in question first began during military service, no matter how long it's been since that service period ended.

In these cases, you and your disability lawyer will need to prove that a

nexus of evidence exists connecting the current disability– no matter when it was diagnosed – to an incident or illness that occurred during your time of service. You will need to obtain a medical expert's opinion that states the reasoning behind the declaration of the link.

Finally, a *presumptive* service connection may exist if the current disability manifested within a certain amount of time after your period of service, depending upon the type of medical condition. Presumptive service connections will be automatic and will not require nexus of evidence. Presumptions in the veterans claims process are explained in Chapter 10.

6.8 Which Conditions Diagnosed Post-Service Are Eligible for VA Compensation Claims?

Any disease or medical condition that is proven to be linked to a veteran's period of service can be eligible for a direct service connection, no matter when the disease manifests during the veteran's lifetime. Common conditions eligible for direct service connection include:

- Cancers caused by exposure to harmful substances
- Mental disorders, such as Posttraumatic Stress Disorder or panic attacks
- Degenerative diseases or other conditions caused by serious injuries
- Hearing loss from prolonged exposure to loud noises

Winning these types of VA claims requires gathering a large amount of medical documentation. For the sake of your veterans' benefits, it's best to be as prepared as possible.

6.9 How Does the Service Connection Affect Veterans Claims?

Recall the three requirements that all veterans need to meet before being eligible to receive service-connected disability benefits (see Chapter 5, Types of VA Compensation Claims.)

1. Currently diagnosed disability

2. In-service event or aggravation:

3. Medical nexus.

6.10 Five Ways to Establish the Service Connection

There are a total of five methods a veteran can use to prove the link between military service and a current disability.

- Direct service connection: a clear, causal link between a veteran's current impairment and an event that occurred during the period of service.

- Aggravation: a condition that was present before the veteran's period of service but was worsened during duty, resulting in the present disability.

- Presumptive service connection: although the condition cannot be directly linked to an incident during service, VA regulations state a presumed connection based on the type of disability and date of service.

- Secondary service connection: the veteran's current impairment is not directly connected to a service incident but is a direct result of a medical condition that is clearly linked to the veteran's period of service.

- An 1151: The current disability resulted from an injury sustained as a result of VA healthcare, a VA rehab or training facility, or a VA sponsored work therapy program. (This strategy does not require a service connection and is a unique circumstance made valid for compensation by an act of Congress.)

Each path to VA service connection above is explained in detail in Chapter 12, Strategies to Obtain Medical Evidence and Prove Service Connection.

Consulting a VA disability attorney can be a huge help when choosing the strategy that's right for your case. Keep in mind that the only evidence deemed acceptable in adjudicating these veterans claims is medical documentation. Obtaining clear and thorough evidence from a doctor or other medical professional is of paramount importance in successful veterans claims, no matter which of the five categories of service connection is invoked.

7 Establishing a Disability Rating Percentage

Once a veteran establishes a service connection, the next step in the VA claims process is to establish the amount of their monthly compensation payment. The payment amount of these disability claims is calculated based on what degree the veteran's disability would impair the average person earning a living wage in the United States.

Oddly, a veteran's individual earning ability is not taken into account at all. That means the disability claims for a surgeon are calculated the same way as they are for a secretary.

7.1 The Schedule for Rating Disabilities

To grant your claim and award a benefit, VA "rates" your disability.

The VA Schedule for Rating Disabilities is VA's guide for evaluating the severity of mental and physical disabilities resulting from all manner of injuries or diseases that occurred as a result of military service.

In the Schedule, impairments are categorized based on the part of the body, or body system, impacted. Examples are musculoskeletal, respiratory, digestive, infectious diseases, etc. Each category lists groups of medical issues. Each group of medical issues lists the possible diagnoses. Each diagnosis has a diagnostic code that defines the symptoms that are required for different ratings of disability.

View the current schedule at the Electronic Code of Federal Regulations Title 38, Chapter 1 Part 4, Schedule for Rating Disabilities: https://ecfr.federalregister.gov/

7.2 The 10 Grades of Disability

As far as figuring out just how disabled a veteran is, the VA has established 10 grades of disability. These grades are: 0%, 10%, 20%, 30%, 40%, 50%, 60%, 70%, 80%, 90%, and 100%. The higher the disability evaluation grade, the higher the veteran's monthly payment.

A grade of 100% means the veteran is totally disabled and unable to work, providing them with the highest possible monthly payment. And even veterans with a service connected disability that only leaves them with a 0% disability grade may be entitled to some pretty great benefits that will help support their lives. Some of these benefits can include VA health care, preference in federal/state employment, job retention rights, and priority when applying for state or federal jobs.

Once a disability percentage grade is established, a veteran is not necessarily stuck with that grade for the rest of their life. The VA claims process allows veterans to apply for an increase in their grades if their service-connected condition gets worse. Claims for Increase Disability Ratings are discussed in Chapter 5, Types of VA Compensation Claims.

Eight Points to Remember about VA Ratings

1. Establishment of compensation usually results in monthly payments

2. Payments are designed to offset the degree of disability for average worker

3. No consideration is given to the individual Vet's earning capacity

4. All veterans are paid the same for the same rating regardless of earning ability

5. VA adopts a "Schedule of Ratings in reduced earnings capacity for specific injuries"

6. Ratings are from 0 percent to 100 percent in 10 percent intervals

7. Veterans who receive a 30 percent or more rating are entitled to additional family compensation

8. A 0 percent rating gives no monthly compensation, but can provide other benefits such as preference in federal/state employment, job retention rights, and VA health care

8 Effective Dates

8.1 What Is the General Rule for Establishing the Effective Dates for VA Claims?

The effective date is the date you can start getting benefit payments. Effective dates help determine how much the VA will pay you each month and in some cases the amount of retroactive payment (back pay) you may be owed to you by VA. Of course, you want the earliest effective date possible.

When determining the effective date of any VA claims for benefits, there are certain rules that have been put into place by the Department of Veterans Affairs. These rules cover all types of claims, including original claims, reopened claims, and claims to increase disability ratings.

8.2 Effective Date for Original VA Claims

The general rule that is used to determine the effective date for an original claim is very straightforward. The VA will look at the date it received the claim and the date that the entitlement to the benefit "arose," and choose the later one as the effective date.

If you submitted a claim for disability within one year of the date you left active service, VA will assign the day after the date of your discharge as the date entitlement arose. It will not assign the date you first incurred your condition during active duty, because active service members are not "veterans" and thus ineligible for VA benefits.

"Intent to File" a Claim – The Intent to File (ITF) process allows a veteran more time to collect information to support the claim and protects the earliest possible effective date for any benefits resulting from the claim. The date VA receives a veteran's intent to file will be protected as the effective date. The correct application form must be submitted within one year.

Note, under the legacy system, the intent to file was applicable for most

claim forms a veteran might submit. Under the AMA, an intent to file only applies to original claims where the veteran is claiming conditions that have not been claimed before. Supplemental claims cannot use the intent to file.

8.3 Effective Date for Reopened VA Claims

In certain instances, a veteran may be eligible to increase the rating of their already service-connected disability. In these cases, the effective date that their VA claims benefits are based on is either the date they filed the claim for increase or the date the disability increased in severity, whichever is later.

8.4 How Does the VA Determine the Date a Claim Was Received?

Once the VA decides to award benefits to a veteran, the next step in the claims process is for the VA to determine the date on which they received the claim. Although this seems simple, oftentimes the VA and the veteran's disability lawyer end up disagreeing on exactly what the true date is.

However, if a veteran argues that the effective date should be earlier, the VA claims process obligates the VA to go back and review the claimant's file, interpreting all communications liberally. If the VA finds evidence that the claim was made earlier than they thought it was, they may have to pay the claimant retroactive benefits.

8.5 Effective Dates Then and Now: Legacy vs. AMA

Under the legacy claims and appeals system (before February 2019): If your claim was filed prior to the Appeals Modernization Act, to retain your effective date you must continue to appeal within the time frames VA requires, which varies depending on the case and VA's decision.

Under the modernized claims and appeal system, if a veteran disagrees with an effective date that's issued, you don't have to file a notice of disagreement (NOD) and then trudge through the old appeals system. Now you have three separate options or "lanes" to choose from to review that decision. And you have one year from the date of the rating decision to select that review option.

A key feature of the modernized appeals system is favorable effective date rules. Instead of having to file a NOD, under AMA, you have a choice to pick (1) a higher level review, or (2) file new evidence to the supplemental claim, or (3) file a NOD and go straight to the Board of Veterans Appeal (BVA).

These options are fully explained in Chapter 11 – Appeals Modernization Act (AMA).

VA effective date rules are complex and form an entire body of law to address diverse situations. Many veterans' cases that go to litigation involve effective dates. The new AMA system is still unfolding, and how VA will handle different cases regarding effective dates will continue to be worked out. It is in every veteran's best interest to be represented by experienced legal counsel.

9 Veterans Pension Benefits

The VA defines Pension as follows:

Pension is a needs-based benefit program for wartime Veterans, who are age 65 or older or have a permanent and total non-service connected disability, and who have limited income and net worth. Veterans who are more seriously disabled may qualify for pension at the increased housebound or aid and attendance rates.

9.1 Overview of Non-Service-Connected Disability Pension Veterans Benefits

In certain situations, the VA will provide veterans benefits for a disabled veteran who was forced to give up career opportunities while they were in service during war time. These benefits are designed to compensate the veteran for the resources that they would have built up had they not been called on to serve their country in active duty. In many cases, their career advancement was significantly hindered by their service. Because of this, they may have a very difficult time fully supporting themselves now that they are fully disabled.

9.2 What Are the Five Basic Eligibility Criteria for Pension?

In order to make the VA claims process as straightforward as possible; the Department of Veterans Affairs has established five basic requirements that will be used to determine whether or not a claimant is eligible to receive the veterans' benefits of a pension.

9.3 The Five Requirements for the Pension Claims Process:

1. The veteran must have been discharged under any condition other than dishonorable.

2. Separate rules apply to any veteran who first enlisted in the military on

or after September 8, 1980. In these cases, the veteran in question must have completed either twenty-four months of continuous active duty or the "full period for which the veteran was called or ordered to active duty."

In addition, the veteran must have had at least one of the following:

- A total of 90 days of service during one or more periods of war
- 90 or more consecutive days of service with at least one day coming during a period of war
- At least one day of service during wartime that resulted in a discharge for a service-connected disability

3. The veteran must pass the "need test," which means that they must have a limited net worth and income that doesn't provide them with adequate maintenance. Note that all medical expenses, including those for nursing home care, can be deducted from the veteran's total income. This is very important because it may help some middle and upper class veterans demonstrate that they are in need of these non-service-connected pension veterans' benefits, thereby qualifying for them.

4. At the time of application for pension, the veteran must be permanently and totally disabled.

5. Willful misconduct must not have led to the veteran's permanent disability, or they will not qualify for a pension through the current VA claims process.

9.4 The Three Different Pension Programs

Eligible veterans may be enrolled in one of three different pension programs:

- Improved Pension Program
- Section 306 Pension Program

- Old-Law Pension Program.

Which program a veteran is eligible for depends on when they applied, and the amount of their pension is decided based on disability and need. This is calculated using the veteran's countable income and net worth. It is important to note, however, that each pension program determines "need" in a slightly different way.

The Improved Pension Program

On January 1, 1979, the Improved Pension Program came into effect. Since that point, it is the only pension program for which new applications can be filed. In this program, all of the income coming from the veteran, the spouse, and any dependents is counted when the VA is trying to determine the veteran's need. This obviously works against the veteran but is offset by the fact that the Improved Pension Program has a much higher maximum annual pension rate than the other programs.

The Section 306 Pension Program

Any veteran who applied for a pension between July 1, 1960, and December 31, 1978, was eligible for the Section 306 Pension Program. Under this program, the earned income of the veteran's spouse is almost always added as countable income. The only way the spouse's income is not counted is if either the income is not available to the veteran or if counting the spouse's income would lead to hardship for the veteran.

On January 1, 1979, anyone who was receiving the Section 306 pension was given a choice to either keep that pension or switch to the Improved Pension Program. For those who chose to stay under Section 306, their benefits will be protected but never increased. To this day, veterans may still elect to switch to the Improved Program, but once they switch, they are never allowed to switch back.

The Old-Law Pension Program

Any veteran who applied for a pension before July 1, 1960 received benefits under the Old-Law Pension Program. The main difference in this program is that it does not include spouse's income when calculating

the veteran's countable income. Also, net worth does not come into consideration when determining need.

Much like the Section 306 Program, anyone who was on the Old-Law Pension Program on January 1, 1979, was given a choice of whether or not they wanted to switch to the Improved Pension Program. Again, if they don't switch, their pension benefits are protected but will never increase. But if they do switch their VA claims to the Improved Pension Program, they can never switch back.

9.5 What Is Countable Income as It Relates to Pensions?

Basically, any income the veteran receives from any place is considered to be countable. In the Improved Pension Program, the VA also fully counts the income of the veteran's dependent spouse. Also in the Improved Pension Program, the VA counts income on a prospective, annualized basis. This means that the VA will project the veteran's income for the next 12 months and use that to determine their pension amount.

One benefit a veteran gets from having a dependent spouse is that it will increase the maximum annual pension payment that is available to them. Under 2021 VA pension rates, a veteran with no dependents can qualify for a pension of up to $ 13,931 per year. But a veteran with a dependent spouse or child can qualify for a pension as large as $18,243 per year. These rates are increased from time to time under section 5312 of title 38 USCS § 5312. Veterans can receive more depending on how many dependents they have and/or if they are in need of aid and attendance or housebound benefits.

9.6 Calculating the Veterans Benefits Pension Rate

Congress establishes a maximum amount of pension benefits that the VA can pay a veteran. There are three separate amounts for the three different programs (Improved Pension Program, Section 306 Pension Program, and Old-Law Pension Program). The VA will then deduct the veteran's countable income, dollar-for-dollar, from this maximum limit. What they are left with is the monthly veterans' benefits pension rate.

10 Presumptions and Rules in the VA Claims Process

10.1 Favorable Presumptions in the VA Claims Process

The VA claims process can be tricky, especially if you are a vet trying to navigate it on your own. Veterans claim denial is a common occurrence, and even if your claim is ultimately approved, it can sometimes take years of fights and appeals through the system.

It is important to know that there are a number of presumptions that go along with every claim for benefits from a veteran. Some of these presumptions work to your benefit; others can hurt you. This chapter will detail the favorable or "helpful" presumptions that generally serve to aid veterans, as well as unfavorable presumptions that allow the VA to stonewall and deny aid to veterans who need it.

10.1 Favorable Presumptions: Soundness

One of the most important presumptions that can help you to avoid veterans claim denial is that you entered into your service in good health. After all, you had to pass physical exams – how could you have done this if you weren't in sound health? Unfortunately, the VA often tries to ignore this presumption when arguing that a disabling condition existed prior to a vet entering the service, but at least the burden of proof is on them. They are required to show, through clear and unmistakable evidence that your condition was in fact preexisting.

10.1 Favorable Presumptions: Aggravation

Another presumption in your favor is that any preexisting condition that you had treated while in the service received that treatment due to the condition being aggravated by the nature of your service. For the VA to disprove this and issue a veterans claim denial, clear evidence is again needed. This time, the VA must show that the original condition got worse due to "natural progress" – with most conditions, this isn't the easiest thing in the world to do, since the nature of military service often causes quite a bit of physical wear and tear.

10.1 Favorable Presumptions: Service Connection by Legal Presumption

Certain chronic and tropical diseases may be service connected if the disease becomes at least 10 percent disabling within a specified time limit following service. These favorable presumptions are cases of taking positives from bad situations. Veterans in the following groups may qualify for "presumptive" disability benefits:

- Former prisoners of war who:
  - Have a condition that is at least 10 percent disabling

- Vietnam Veterans who were:
  - Exposed to Agent Orange

  - Served in the Republic of Vietnam between Jan. 9, 1962, and May 7, 1975

- Atomic Veterans exposed to ionizing radiation and who experienced one of the following:
  - Participated in atmospheric nuclear testing

  - Occupied or were prisoners of war in Hiroshima or Nagasaki

  - Served before Feb. 1, 1992, at a diffusion plant in Paducah, Kentucky, Portsmouth, Ohio or Oak Ridge, Tennessee 2

  - Served before Jan. 1, 1974, at Amchitka Island, Alaska

- Gulf War Veterans who:
  - Served in the Southwest Asia Theater of Operations

  - Have a condition that is at least 10 percent disabling by Dec. 31, 2021

Chapters 12 contains detailed information about these favorable Presumptive Conditions.

10.1 VA Disability Benefits: Helpful Rules for Claimants

When you're slogging through the VA disability benefits claims process, it can seem like everything and everyone is stacked against you.

Thankfully, there are some helpful rules and laws the VA uses that actually help claimants. These are "benefit of the doubt," "duty to assist," and "lenient standard of proof."

Helpful Rule 1 – Benefit of the Doubt

This rule revolves around a term called "equipoise." Essentially, equipoise means there are two different opinions on something.

In regards to veterans claim denial, this could mean that one doctor says your condition is not service connected, while another doctor believes it is. Or it could refer to the fact that an initial medical report labels you as 40 percent disabled, but a follow-up report says you're only 20 percent disabled.

Under Benefit of the Doubt, the VA always goes with the outcome that benefits the veteran more. This rarely happens, but obviously it can be quite helpful when it does.

Helpful Rule 2 – Duty to Assist

Duty to Assist sounds like a very simple rule: if a veteran brings forth a claim, the VA has a duty to assist him or her in developing it. Unfortunately, the VA was doing such a horrible job in this duty that Congress passed the Veterans Claims Assistance Act in 2000 to redefine what the VA was required to do in more specific terms and essentially force them to better assist veterans.

The two main things this law requires of the VA are to:

1. Tell veterans what they need to do to prove their claim – the VA must provide documentation to the veteran before the claim is adjudicated on the five specific subject areas the VA uses to determine claims; if they fail to do so, the claim would be remanded.

2. Obtain important records and conduct a thorough examination – it is the VA's responsibility to get not only your service medical records, but (with the exception of a Fully Developed Claim) also any related records you tell them about.

Helpful Rule 3 – Favorable Standard of Proof

In comparison to the standard for civil court proceedings, where proof is determined by a "preponderance of the evidence," the standard of proof for VA claims favors veterans. All veterans must show to win their claim is that their current disability is at least "as likely as not" related to their military service. Now, this doesn't mean it's easy to avoid a veterans' claim denial. Doctors' statements cannot be speculative in nature, and must show that they have taken all medical records into account.

10.1 Unfavorable Presumptions in the Veterans Claims Process

Unfortunately, there are unfavorable presumptions just like there are favorable ones, and these can lead to you being denied veterans benefits.

10.1 Unfavorable Presumption: Substance Abuse

If you smoke, drink, or use recreational drugs and it is at all possible to tie your current disability to these habits, the VA will generally strive to do this. For example, if you believe your lung cancer to be service-connected but you have been a smoker most of your life, the VA will use all of the evidence it can to show that your current condition is not due to your service, but rather your habits.

10.1 Unfavorable Presumption: Misconduct

If your condition resulted from any sort of misconduct on your part, the VA will try to show this in an attempt to deny your claim.

Both substance abuse and misconduct are similar arguments in that the VA is trying to show that your condition is not service-connected. In the case of misconduct, the argument is that your condition did not result from something you were asked to do as a part of your service, even if the actual incident took place during your service.

10.1 Unfavorable Presumption: The Presumption of Regularity

This one is incredibly frustrating, and unfortunately it happens more than it should. As part of the VA claims process, the VA is required to send documentation to vets informing them of any important decisions made on their claim, and their rights to appeal. Sometimes, however, vets won't ever get this information, and because of this, they will miss their chance to appeal.

If they argue that the VA never sent the information, the VA will counter with the Presumption of Regularity, which basically says that government employees generally do the right thing.

What does this mean? Even if there's zero proof of documentation being mailed, it is presumed that it was sent out, and the veteran loses his or her argument.

The only way to win in this instance is if the vet can show that there are records of the paperwork being mailed to the wrong address. Worse, there appears to be a movement growing from the VA General Counsel and Veterans Court judges to widen the Presumption of Regularity to cover more VA activities. One such suggestion argues that it should be "presumed" that VA medical examiners are competent, which would make it more difficult to overturn a veterans claim denial with outside medical evidence.

11 How to Appeal an Unsatisfactory Claim Decision

There is no one legal definition of disability. Every insurance company, the Social Security Administration, and the Veterans Administration all have different definitions.

11.1 Veterans Appeals Improvement and Modernization Act of 2017 (AMA)

The Appeals Modernization Act (AMA) has brought many changes to the VA appeals process. AMA became law in 2017 and was enacted in 2019. The intention is to provide a streamlined appeals process to improve the cumbersome, traditional method (now referred to as Legacy Appeals, and the Legacy System.)

- VA claims with decisions dated after February 19, 2019, must participate in the new AMA method. This also includes veterans who "opted in" to the AMA under a program called "RAMP" which the VA used to test the new AMA system. (RAMP is now concluded.)

- The "old" VA appeals system is now referred to as the "Legacy System." Decisions received before that date, and claims that did not opt into the RAMP process, have a Legacy Appeal and will comply with the rules of the old system.

11.2 What's Determined in a VA Disability Decision?

Let's recap what the issues entail so that you go into your appeal armed and ready to fight for the compensation you deserve. The three elements of the Veterans Disability Claims process are:

1. Connection of your disability to your service.

2. Percentage to which you are disabled.

3. Your effective date.

If you have filed an appeal with the VA under the old Legacy system, you know how abysmally slow and frustrating the appeals process can be. The following summarizes how VA has redesigned the appeals process in hopes of achieving faster resolution of disagreements. Where the legacy system had only one path towards appealing an unsatisfactory VA decision, the new AMA appeals system offers several.

11.3 Appeal a VA Claim under the AMA

Once you get your rating decision, you can accept it, or you can challenge the decision and try to change it by appealing the decision. Under the AMA, you choose from three Agencies of Original Jurisdiction (AOJ) "processing lanes" to request VA's review of a denied claim or unsatisfactory decision.

Lane 1: Higher-Level Review

With this option, a more experienced VA rating specialist at the VA regional office gives a final decision on your claim, where:

- You believe VA made an error in the initial decision;
- Your claim gets a de novo review, meaning the same information gets a completely new review and consideration by the higher-level reviewer;
- You may not submit new evidence;
- Feasibility for overturning a decision may be based on (1) a difference of opinion or (2) a clear and unmistakable error;
- Your or your representative are allowed one informal phone call with the reviewer to pinpoint particular errors in your claim.

To submit a Higher Level Review complete VA Form 20-0996 – Decision Review Request: Higher-Level Review

VA's goal is to complete higher-level reviews averaging 125 days.

Lane 2: Supplemental Claim

This option is helpful if you have identified missing records or have new evidence to back your case:

- You know what records are missing from your original claim, or you have new, additional evidence to submit to better support your claim;
- VA has a duty to assist you in gathering the evidence;
- When all existing or new relevant evidence is submitted, VA will re-adjudicate your supplemental claim taking into consideration all of the evidence of record and render a final decision.
- To retain your Effective Date, you must file the Supplemental Claim within 1 year of the rating decision.
- The adjudicator is the same level as the initial decision maker

To submit a Supplemental Claim, complete VA Form 20-0995 – Decision Review Request: Supplemental Claim
VA's goal is to complete supplemental claims averaging 125 days.

Lane 3: Appeal the Decision to the Board of Veterans' Appeals (File NOD)

The Appeals lane allows you to appeal directly to the Board of Veterans' Appeals (BVA). You initiate appellate review by filing a Notice of Disagreement (NOD). This takes you directly to the BVA. You now also elect one of three dockets that would best serve your case:

- **Direct review docket:** Your claim is fully developed; you have no new evidence and do not want a hearing. VA's goal is to have decisions within 365 days of appeal.
- **Evidence docket:** You have new evidence, but do not want a hearing. You have 90 days from the NOD to submit the additional evidence to VA.
- **Hearing docket:** You have new evidence and want to testify before a

Veterans Law Judge.

- To appeal to the Board of Veterans' Appeals, you would complete VA Form 10182 – Decision Review Request: Board Appeal.

11.4 What Happens After You Appeal in Lane 1, 2, or 3?

Lane 1: Higher-Level Review

The VA rater can (1) continue the prior decision, (2) return the decision to the prior VA rater to correct the clear and unmistakable error, or (3) award the benefit. Your original claim date (Effective Date) is preserved if the decision is favorable. If unfavorable, your choices are to (1) file a supplemental claim or (2) file a NOD to appeal to the BVA.

Lane 2: Supplemental Claim

Once a decision is issued, if you are not satisfied you may choose from the three "lanes": High-Level Review, Supplemental Claim (again), or Appeal to the BVA. To retain your Effective Date, you must file the Supplemental Claim within 1 year of the rating decision. This is referred to as continuously pursuing the claim.

Lane 3: Appeal to the Board of Veterans' Appeals

Your original claim date (Effective Date) is preserved if the decision is favorable. If unfavorable, you have 2 options: If you have new and relevant evidence, you may continue your claim review by filing a supplemental claim inside of one year, or you can elect to file an appeal to the Court of Appeals for Veterans Claims.

Of Note:

- A veteran can submit new and relevant evidence within one year of ANY decision and VA will readjudicate;

- There's no limit to the number of times a veteran may pursue a claimed issue in any given lane;

- The effective date is protected as long as the veteran pursues the issue in any lane or submits new evidence within 1 year of decision;

- Duty to Assist applies only to original claims (aside from Fully Developed Claims) and the supplemental claim lane.

11.5 What Can You Expect with the New VA Appeals System?

It is crucial the AMA meets the challenge of clearing the appeals backlog. For some disabled vets, appeals have taken up to seven years; others have died while waiting.

As attorneys at the BVA, Veterans Court and Federal Circuit, we see both positive and negative things coming to light. The new VA appeals system offers more choices, which is the essence of freedom. Yet this new system is a massive change. Choices made by disabled veterans will involve complex decisions, and decisions have consequences.

Before jumping right into the new process, or instead of losing valuable time wondering how to proceed with your claim, we urge you to seek accredited help from your veterans' attorney.

11.6 Appeal a VA Claim under the Legacy Appeals System

The original decision-making part of the Legacy Process is very similar to the decision provided under the AMA. Under the Legacy process—claims submitted before February 19, 2019—veterans filed VA form 21-526b or 21-526EZ. VA issued a decision that explains either a denial of benefits, or the award of benefits including the rating percentage, and effective date of the claim.

It is when a veteran disagrees with his or her VA decision and appeals it, where things become immensely different between the two systems.

Appeals for VA claim decisions dated before February 19, 2019, are processed under the Legacy System, as follows:

- The veteran files a Notice of Disagreement (NOD) with a Regional Office up to one year after the rating decision. The veteran can request

a hearing before a Decision Review Officer (DRO). In some cases, this is the only time you have the chance to speak with a live person about your VA claim. This hearing is recorded and transcribed, and new evidence can be considered for the final decision.

- After the VA regional office receives your NOD, they are required to send you a Statement of the Case (SOC). This SOC lists the evidence that was considered, adjudicative actions that have taken place, applicable VA law and regulations, and the reasons and bases for the VA's decision.

  The most important thing about receiving the SOC is that you must file a formal appeal (VA Form 9) within 60 days of the date on the letter – or within one year of the original rating decision for your VA claim. From here, your case will move out of the RO and on to the Board of Veterans Appeals (BVA). At the BVA, the veteran was entitled to a hearing and the opportunity to introduce new, relevant evidence. The process can be lengthy, and the BVA may take up to two and a half years to reach a final decision

  Before the BVA makes any decision on your claim, you will be given the option to submit additional evidence. The BVA will eventually issue one of three decisions: to deny the claim, remand the claim for further development, or grant the claim.

  If the BVA denies your appeals claim, you may move up the chain and file an appeal to the Court of Appeals for Veterans Claims (CAVC). It is crucial to file this second appeal within 120 days after receiving the BVA's decision. At the CAVC, the consideration is whether the Board made an error. The CAVC does not decide claims–it decides whether the Board appropriately considered your claim as directed by law—thus the Court need only look at the information.

The VA says it plans to resolve all legacy appeals by the end of 2022.

12 Strategies to Obtain Medical Evidence and Prove Service Connection

It's important to learn about the process for obtaining medical evidence to satisfy the nexus requirement before embarking on VA compensations claims. The format of this linkage evidence is fairly straightforward – all a veteran usually needs is a nexus letter or statement from a physician or medical expert (see Chapter 6, Establishing Service Connection through a Medical "Nexus".). Occasionally the linkage evidence will be provided by way of military medical records or a physician's in-person testimony.

The content of the doctor's statement is absolutely crucial to successful VA compensation claims. The medical opinion linking a veteran's disability to a precipitating service incident must be based on examination and analysis, not just the veteran's testimony, and must detail the reasoning used by the physician to arrive at the opinion.

12.1 Other Strategies to Support Your VA Compensation Claim

Evidence other than medical opinions can also be submitted to support VA compensation claims. Examples of this usually include studies and articles found in medical journals. Although these will not be sufficient to prove a nexus of evidence, they may support the case and sway the VA when the medical opinions provided are not quite definitive enough.

If a veteran doesn't present a medical opinion in his or her claims case, the VA will provide for an examination so that an opinion can be obtained. However, the VA will only do so if the veteran provides sufficient evidence of the disability and of an incident during service that could have led to the disability. The VA will throw out the case if there is "no reasonable way" that an exam would lead to a favorable ruling.

The VA can also rule that veterans providing medical opinions submit to an additional exam conducted by a VA physician – this usually happens when the VA is seeking to disprove a case. If this happens, keep calm and work with your lawyer to ensure that you have provided as much evidence

as possible to strengthen your case.

Finally, it is possible to request reconsideration or appeal directly to BVA if your case is denied. Veterans who are challenging claim decisions by filing Supplemental Claims should be aware that new evidence will be required before the VA will revisit your case. The evidence necessary will depend on the reason you were denied veterans benefits in the earlier case. The road to winning VA compensation claims can be difficult, but with the help of a qualified disability lawyer, you'll be within reach of the veterans' benefits that you deserve.

12.2 Prove Service Connection by Aggravation

When arguing veterans claims, the best way to prove service connection by aggravation is – unsurprisingly – by showing clear evidence in the veteran's service medical records of the current disability having worsened. But most veterans don't have the luxury of providing such straightforward proof. If you feel that the documentation in your service records may not be substantial enough for the VA, there are other methods to successfully establish the service connection by aggravation.

The best alternative is usually to retain the services of a medical expert who can clearly demonstrate the change in severity of your condition before service and after service. The medical records and testimony provided by a private physician, combined with lay evidence from witnesses who can verify the change in your disability's severity, may be enough to win your claim and start you on the road to receiving veterans' benefits.
The clearer and more definitive your physician's statement is, the better your chance at a successful claim will be.

Case Law Regarding Aggravation

Your VA disability lawyer may be able to cite past US Court of Appeals for Veterans Claims decisions that support your claim of service connection by aggravation. Several cases over the last few decades have dealt with whether or not old VA rulings showed "clear and unmistakable error" (CUE) in finding against the veteran. The results of these cases often have direct bearing on current veterans' claims, so make sure that your attorney makes a thorough review of the language in these relevant court decisions.

Service Connection by Aggravation if Disability Was Not Noted During Entrance Exam

Successfully arguing VA compensation claims usually requires proving that the current disability was caused by an incident that occurred during active service. But veterans' benefits may also be awarded if the current disability, though diagnosed before service, was aggravated during the claimant's active service period.

Veterans can usually only use the service connection by aggravation if their current disability was observed and noted during their service entrance examinations. But in some cases, even if your disability was not noted during your entrance examination, you may still be able to successfully argue for veterans' benefits by taking advantage of the fact that the burden of proof is placed squarely on the side of the VA.

Hiring a qualified veterans' advocate will be a crucial factor in proving a case without entrance exam documentation of your current condition.

When Is Service Connection by Aggravation Relevant?

Veterans should only consider arguing VA compensation claims using the service connection by aggravation if the following conditions can be met:

- The disease in question must have worsened during active duty only (periods of active duty for training and inactive duty for training do not apply).

- The disease must have worsened because of the active duty, not because of a natural progression of the disease.

- The aggravation must have been permanent.

If veterans (along with prisoners of war) can prove a definite, permanent worsening of the condition due to time spent in active service, the VA will presume that the aggravation was a result of the veteran's active duty. The task of providing a medical opinion linking the condition to service is therefore removed from the veteran's shoulders.

However, the VA will rule against veterans if it can find "clear and unmistakable evidence" that the aggravation was due either to natural progression of the disease or as an effect of medical treatment for the disease. If this happens during your case, you and your attorney should provide independent medical evidence to argue against the VA's assertion. You may be able to find a physician who will state that your condition increased in severity faster than its normal progression would have allowed due to active service. Though it can be tricky to successfully argue VA compensation claims in these cases, doing so is the only way to ensure receipt of the veterans' benefits you deserve.

12.3 Prove Service Connection by Legal Presumption

The scenarios by which VA claims can be successfully argued are both numerous and complicated. But if your current disability is eligible for service connection by legal presumption, you're in luck. This is one of the easiest methods through which veterans benefits can be won.
Service connection by legal presumption is often called a "liberalizing rule." The rule came about because certain veterans were unable to meet the standard of at least 50% proof (or the benefit of the doubt) that their current condition was connected to active service.

For example, prisoners of war were unable to provide adequate documentation that their current conditions began during periods of captivity. Thus, the service connection by legal presumption was created to remove the burden of proof in cases where basic medical principles trumped the need for a nexus of evidence.

Requirements for VA Claims Using Service Connection by Legal Presumption

Veterans wishing to employ service connection by legal presumption in arguing their VA claims cases must demonstrate diagnosis of a current disability that falls into one of the following categories:

- Tropical diseases acquired during service
- Diseases specifically occurring in former prisoners of war

- Diseases specifically occurring in veterans exposed to radiation during service

- Diseases specifically occurring in veterans exposed to harmful toxins like herbicides (i.e. Agent Orange), mustard gas, or Lewisite during service

- Other diseases pertaining to Gulf War veterans

Veterans must also have served at least 90 consecutive days of active service (NOT including active or inactive training) on or after January 1, 1947, to be eligible for the service connection by legal presumption in their VA claims.

To successfully prove their cases, veterans only need to provide evidence that the current condition presented to at least a 10% degree of disability during the presumptive period specified for the disease in question. Veterans don't have to worry about whether their illnesses were officially diagnosed during service or during the presumptive period, as long as they can prove that symptoms were present during either of those times.

The VA then automatically presumes the service connection. The presumptive period differs for the various eligible diseases, so consult with a qualified veterans' attorney for a clearer idea about whether your case qualifies for this type of service connection.

The only way for the VA to deny veterans benefits in cases that use the service connection by legal presumption is to provide "affirmative evidence" that the disease in question occurred during the presumptive period; not because of active service, but because of an incident that occurred after discharge or because of willful misconduct on the part of the veteran.

If you feel that your current disability may fall under this rule but is not specifically mentioned by the VA on its list of eligible diseases, you may still be able to successfully argue for veterans' benefits. You and your VA attorney can develop a compelling case using medical evidence and private physicians' statements.

Even when your task seems daunting, remember this: many veterans

have faced these same difficulties in arguing their VA claims, but have triumphed and gone on to receive the veterans benefits that they deserved – and so can you!

Service Connection by Legal Presumption for Chronic Diseases

Veterans suffering from chronic diseases connected to their active service may be able to win their VA claims by using the service connection by legal presumption. For certain chronic diseases, the VA automatically presumes the connection between the condition and the time in service and grants veterans' benefits. The list of chronic conditions accepted for this presumption is quite long and includes certain types of cancer, tuberculosis, Parkinson's disease, epilepsy, and many other ailments. Consider consulting a qualified disability lawyer who can help you determine whether the VA includes your condition chronic.

Once you've determined that your disability is on the VA's most current list, you'll need to meet the requirement of the presumptive period. Veterans need to provide medical evidence that the condition in question manifested to a degree of at least 10% no more than one year after their active service ended to be eligible for applying the service connection by legal presumption to their VA claims.

If you were diagnosed and treated with a chronic condition within the presumptive period, your case will be fairly clear-cut and it should be a straightforward process to obtain the service connection by legal presumption. However, if diagnosis occurred after the presumptive period, you will need to provide plenty of medical evidence to successfully receive your benefits.

The most important piece of evidence to provide is a medical opinion stating that it's as likely as not that your disease first manifested during the presumptive period. With a physician's opinion clearly stating that assumption, you will be much more likely to have a successful claim.

Service Connection by Legal Presumption for Tropical Diseases

The requirements for establishing service connection by legal presumption for tropical diseases are quite similar to those applied to chronic diseases.

The tropical disease in question must be on the VA's approved list, which includes dysentery, yellow fever, amebiasis, cholera, and several others specific to military service in tropical locations.

As with the legal presumption for chronic diseases, symptoms of the tropical disease in question must have been noted within one year after discharge for successful VA claims. However, this rule can be relaxed in the cases of certain diseases for which the incubation period is known to be longer than a year. As always, the best strategy is to provide as much medical documentation as possible to support your case.

Although the VA does make it easier for certain veterans to receive benefits by way of the service connection by legal presumption, successfully arguing VA claims can still be a tricky and complicated process.

Service Connection by Legal Presumption for Former Prisoners of War (POW)

The veterans' claims for those who were kept as prisoners of war are given special consideration. Since it is virtually impossible for former prisoners of war to provide medical evidence from the time of their captivity, certain disabilities are assumed by the VA to be connected to this period of their service. The veteran is not required to provide any nexus of evidence, and there is no presumptive period – the current disability may have presented at any time after the former prisoner of war was discharged.

Claimants are required to provide some medical evidence before becoming eligible to receive veterans' benefits. As with other types of veterans' claims, the veteran must provide medical evidence proving that the current condition is at least 10% disabling. But one additional hurdle in these cases requires proof that the veteran spent time as a prisoner of war. The claimant will need to provide documentation that the period of captivity was comparable to the POW circumstances during previous times of war. Hiring a qualified veterans' advocate to help with providing this documentation is always a good strategy.

Which Diseases Make Former Prisoners of War Eligible to Use the Service Connection by Legal Presumption for Veterans Claims?

The VA's list of the conditions that are eligible for the service connection by legal presumption for former prisoners of war is always changing. For some diseases, eligibility is determined by the length of the veteran's time in captivity. The VA has ruled a former prisoner of war must have endured at least 30 days of captivity for a range of diseases including chronic dysentery, avitaminosis, malnutrition, irritable bowel syndrome, and many other disabilities.

Conditions including psychosis, any anxiety disorder, most heart diseases, stroke, hypertensive vascular diseases, posttraumatic osteoporosis and osteoarthritis, and in some cases frostbite do NOT require any minimum amount of time in captivity – merely that the veteran had been a prisoner of war for some period. The service connection by legal presumption can therefore be easily used to argue veterans claims for former prisoners of war with these disabilities.

The VA frequently changes the eligibility requirements for these diseases, so be sure to consult a qualified lawyer to get the latest information. Also, remember that former prisoners of war are eligible for many other types of veterans' benefits, such as priority medical treatment, full dental benefits, and a no co-payment policy for all prescriptions. For former prisoners of war, successfully arguing veterans claims can be a way to get a small amount of restitution for the terrible hardships endured during combat. Service Connection by Legal Presumption for Radiogenic Diseases Veterans (and their surviving spouses) making VA claims on the basis of a disability caused by exposure to ionizing radiation are faced with a unique challenge.

It can be quite difficult to prove exposure to this type of radiation, at least to the degree that the VA usually requires for direct service connection eligibility. So the VA has established a service connection by legal presumption to make it easier for veterans with certain radiogenic diseases to receive benefits.

As long as the veteran can prove diagnosis of a qualifying illness and time spent around ionizing radiation, the connection between the two will be automatically presumed.

Since the VA's lists of qualifying radiogenic diseases and radiation-risk

activities are constantly being updated, be sure to consult a knowledgeable attorney to find out whether your circumstance is eligible. Although only the listed diseases are granted this automatic service connection, veterans who can show compelling medical opinions that their non-listed conditions were caused by ionizing radiation may also be able to successfully argue VA claims and receive benefits.

There is also a special procedure by which veterans can establish a service connection for certain other radiogenic diseases (though not a presumptive one). For these conditions, the veteran's case will be reviewed by several organizations after the Department of Defense provides an estimate of the amount of radiation to which the claimant was exposed. The VA will take this and other opinions into account and then make a service connection ruling. As always, it is helpful to employ a disability lawyer who can help you develop the evidence to make your case as strong as possible.

Service Connection by Legal Presumption for Amyotrophic Lateral Sclerosis

Veterans who suffer from Amyotrophic Lateral Sclerosis are also eligible for special consideration when making VA claims. Also known as ALS or Lou Gehrig's disease, this condition is more likely to present in veterans than civilians for reasons currently unknown to medical experts. Because of the demonstrated connection between active service and ALS, veterans who are diagnosed with the condition at any time after discharge are eligible for the presumptive service connection. The only requirement is that veterans served in active duty for at least 90 consecutive days.

If you currently suffer from ALS, or you are the loved one of a veteran suffering from ALS, consult with an experienced veteran's lawyer to make the most of this special service connection by legal presumption. The road to successful VA claims is never an easy one, but in some cases, the VA lifts the burden of proof off the shoulders of veterans who are in extra need of benefits.

Service Connection by Legal Presumption for Gulf War Veterans with Chronic Disabilities

This chapter has covered the many individual scenarios in which veterans making veterans claims can invoke the service connection by legal

presumption. The VA also extends this option to veterans of three recent conflicts: the Persian Gulf War, Operation Enduring Freedom and Operation Iraqi Freedom.

Essentially, anyone who served in Southwest Asia after August 2nd, 1990, is entitled to use the service connection by legal presumption if their disability can be described as a "medically unexplained chronic multi-symptom illness." Examples of this include chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome.

Persian Gulf War, Operation Enduring Freedom, and Operation Iraqi Freedom veterans may also be entitled to use the presumptive service connection if their current condition is related to certain infectious diseases. Consult with a qualified veterans advocate if you feel that your service makes you eligible to receive veterans' benefits using the legal presumption for any of these illnesses.

Service Connection by Legal Presumption for Exposure to Agent Orange and Other Herbicides

The VA also makes it possible for veterans whose disabilities are related to Agent Orange exposure to use the service connection by legal presumption when arguing their claims. The VA presumes that all veterans who were stationed anywhere in Vietnam during the war, including on inland waterways and certain offshore waters, may have been exposed to Agent Orange. (See Chapter 16, Agent Orange Exposure for details.)

Therefore, a veteran need only prove that he or she served in Vietnam during this presumptive period and has been diagnosed with a condition related to Agent Orange exposure. The VA will then grant veterans benefits via the service connection by legal presumption.

A qualified veterans' advocate should have a thorough knowledge of the conditions that the VA believes are connected to Agent Orange, so it is a good idea for veterans to seek legal consultation before embarking on veterans claims.

Service Connection by Legal Presumption for Camp Lejeune Veterans

As of March 14, 2017, VA announced that eight presumptive conditions eliminate the requirement that a veteran has to prove their diagnosed illness was the result of exposure to the base's contaminated water. If you can show you served at Camp Lejeune from Aug. 1, 1953, to Dec. 31, 1987, for 30 days or more, you are now eligible to file fast-track VA disability compensation claims for one or more of those eight conditions.

The 8 presumptive diseases are:

- Adult leukemia
- Aplastic anemia and other myelodysplastic syndromes
- Bladder cancer
- Kidney cancer
- Liver cancer
- Multiple myeloma
- Non-Hodgkin's lymphoma
- Parkinson's disease

The final rule was published in the Federal Register on 1/13/2017, Diseases Associated with Exposure to Contaminants in the Water Supply at Camp Lejeune.

12.4 Prove Secondary Connection

Veterans whose disabilities are the result of a service-connected condition may be able to receive benefits by using the secondary service connection to successfully argue VA compensation claims. Although in most cases a condition that didn't originate specifically because of a veteran's time in active service would be ineligible, the secondary service connection makes some circumstances of this possible.

The secondary service connection can be established either because a service-connected condition contributed to a veteran's new disability or because a service-connected condition has aggravated a non-service connected condition.

To clarify what is meant by non-service connected condition, here a few examples of successful claims made on the basis of the secondary service connection:

- A veteran's service-connected disability contributes to a diagnosis of depression, so the secondary service connection would apply to the depression.

- A veteran is treated for tuberculosis with a medication that causes hearing loss, so the hearing loss is eligible for the secondary service connection.

- A veteran's knee is wounded in combat and the wound later leads to lower back pain and hip problems, so the later conditions are eligible for the secondary service connection.

How to Use the Secondary Service Connection to Argue VA Compensation Claims?

The process for invoking the secondary service connection in VA compensation claims requires that the veteran develop sufficient medical evidence to prove the connection between the secondary condition and the service-connected disability (or the treatment the veteran received for the service-connected disability). It's a good idea to consult with a VA disability attorney who can help ensure that the medical evidence you bring to your case will convince the VA to find in your favor.

Above all, it's crucial to procure a medical opinion from a private physician stating that the secondary condition was definitely (or at least 50% likely) caused or aggravated by the service-connected disability. Though the VA almost always orders a VA-approved medical examination, it's a good idea to have a private physician's opinion to offer as a supplement. When it comes to VA compensation claims, you can never be too thorough in developing the evidence for your case.

12.5 Conditions Related to Tobacco Use

Veterans may not claim a service connection for any conditions caused by tobacco use during periods of military service. The use of tobacco in any form cannot be used in the nexus of evidence for VA claims.

However, this rule is not completely insurmountable. The possibility exists for claimants to receive veterans' benefits for tobacco-related conditions through other strategies.

How Can Veterans Get Around the Tobacco Use Restriction?
If the disability for which you're seeking veterans benefits could conceivably be eligible for a service presumption that doesn't require providing a nexus of evidence, such as the service connection by legal presumption, you may still be able to make a successful case. This boils down to whether it's possible to make your case without a private physician's opinion.

For example, if you can use the service connection by legal presumption for a diagnosis of lung cancer due to Agent Orange exposure and won't need to provide a physician's opinion in your case, it is possible to game the system and receive benefits even if your doctor is convinced that your lung cancer was caused by smoking.

There is also a loophole regarding the use of secondary service connection for conditions caused by tobacco use. In the rare cases where a veteran took up smoking to calm the symptoms of a service-connected ailment (such as PTSD or another anxiety disorder) and then developed a condition because of this tobacco use, the veteran may be eligible for benefits. The case may be ruled in the veteran's favor as long as he or she can prove the following:

1. The condition that caused the tobacco use was service-connected.

2. The use of tobacco products was a major cause of the secondary disability.

3. The secondary disability wouldn't have manifested had it not been for the use of tobacco products.

13 Family Benefits

13.1 What Veterans Benefits Are Available to Family Members?

In some cases, veterans' benefits are made available to certain members of an injured veteran's family. These benefits may be available to dependents of a living veteran who is unable to support them, or to surviving family members of a veteran who has passed away. Benefits can include death compensation, death pension, accrued benefits, and dependency and indemnity compensation (DIC).

It is important to note that the dependents and survivors who are eligible for veterans' benefits have no actual entitlement rights to the disability claims. The benefits they receive are based solely on their qualifying family relationship to the injured or deceased veteran.

13.2 Which Family Members Might Qualify for These Veterans Benefits?

Spouse: This could be a current spouse in instances where a living veteran is unable to provide enough support for a spouse who is in need or a surviving spouse in the unfortunate situation where a veteran has passed away. To qualify, a spouse must be able to show proof of a legal marriage.

Child: This could be either a current child or the surviving child of a deceased veteran. To qualify for benefits, the child must be the veteran's biological child, adopted child, or stepchild. The child also must: be unmarried, either under 18 years old or between 18-23 and pursuing an education, or be permanently incapable of self-support.

Parent: This could be either a dependent parent or a surviving parent of a veteran who has passed away. For a parent to qualify for these disability claims, they must show that either their financial dependency (in cases of a living veteran) or income eligibility (in cases of a deceased veteran) is reliant on the injured veteran.

The survivors of a deceased veteran or VA claimant may be eligible for a variety of different veterans' benefits. Access to these benefits will depend

on the circumstances surrounding the veteran's service, and also the veteran's relationship to the surviving family members.

13.3 Summary of VA Benefits for Family Members

Some of the smaller, more basic benefits that a qualifying family member may receive are:

- If the deceased veteran was receiving either a VA pension or VA disability compensation, the surviving spouse may be given the veterans benefits during the month that they died.

- If the deceased veteran was service-connected, their survivors will be eligible to receive a certain amount towards their burial and funeral expenses.

- Other veterans' benefits such as VA health care, VA home loans, and VA educational benefits may be available to surviving family members.

There are also more significant benefits that may be available to certain surviving family members of a deceased veteran. Some of these are:

- If the veteran had filed VA claims when they were still alive, certain surviving family members could be entitled to some lump-sum or accrued benefits.

- In certain service-connected deaths, spouses and children may be given a special survivor's benefit called the Restored Entitlement Program for Survivors (REPS).

- In some cases, survivors will be given access to monthly VA benefits such as Dependency and Indemnity Compensation (DIC) or the death pension.

13.4 VA Compensation Claims: Death Benefits Based on a Service-Connected Condition

Dependency and Indemnity Compensation (DIC)

In certain cases, a deceased veteran's surviving family members may be able to file VA compensation claims to receive death benefits. To be eligible for these benefits, it must be shown that the disease, disability, or injury that caused (or contributed to) the death was one for which the veteran had a service connection. In this case, the survivor will qualify to receive VA compensation payments through the VA's Dependency and Indemnity Compensation (DIC) program.

DIC Benefits for Surviving Family of Veterans Exposed to Agent Orange

Surviving family members of veterans who were exposed to Agent Orange may be eligible for monthly VA compensation payments through the DIC program. This includes disability claims that were previously denied. Claims for benefits for veterans and surviving families of veterans exposed to Agent Orange are fully discussed in Chapter 16, "Agent Orange Exposure."

How Do You Show That a Condition Is Eligible for a VA Compensation Claim for Death Benefits?

When a service-connected disability is listed on the death certificate as the primary cause of death, that will be enough evidence for the qualified surviving family members to receive death benefits. However, if the service-connected disability is not the primary cause of death, the family might want to hire a disability lawyer to look into proving that it was at least a contributory cause of death, which would still qualify them for DIC.

Here are some rules to help denote whether or not a service-connected disability might be considered a contributory cause of death.

- The service-connected disability must have contributed "substantially or materially" to the veteran's death, thereby contributing to the actual cause of death. It is not enough to show that the disability was causally involved in the death.

- Minor service-connected disabilities are normally not considered to have contributed to a death that occurred mostly due to a different disability. This includes most disabilities that were not progressive or

did not affect a vital organ.

- Any service-connected disabilities that actively affected vital organs may be considered contributory, even if the primary cause of death was unrelated.

How Does Death in Service Affect a Family's VA Compensation Claim for Death Benefits?

In almost all cases, if a veteran dies in service, the death will be considered service-connected. This includes situations where the soldier has gone missing in action, as their death is presumed.

Only a few situations exist where a veteran's death in service is not automatically considered to be service-related. These are suicide, death by disease within the first six months of active service, and any death that is thought to have come as a result of the veteran's misconduct. In these cases, a formal rating decision will be issued to determine whether or not the death will be considered service-connected, thereby making it eligible for the surviving family members to file VA compensation claims for death benefits.

13.5 Special Survivors Veterans Benefits: The Restored Entitlement Program for Survivors (REPS)

In 1983, the Restored Entitlement Program for Survivors (REPS) was put in place to restore Social Security benefit payments to surviving spouses and children who should have been entitled to these veterans' benefits. If eligible, REPS benefits are paid to surviving spouses and children of soldiers who were killed in active duty before August 13, 1981, or who died of a service-connected disability that began before that same date.

Which Surviving Spouses Are Entitled to REPS?

A surviving spouse is eligible for REPS benefits if the spouse cares for a child of the deceased veteran while the child is between age 16 and age 18. When Social Security payments stop once the child hits 16, the REPS benefits kick in – VA compensation claims shouldn't even need to be filed. If the child is deemed mentally incompetent, the Social Security payments

will usually continue past age 16. In this case, the spouse will receive REPS payments in an amount that will cover the difference between the Social Security payments and what the full REPS payment amount would be. If the spouse remarries, the REPS benefits will terminate. These benefits will, however, be put back in place if that marriage ever ends.

Which Surviving Children Are Entitled to REPS?

A veteran's surviving child is only eligible for REPS benefits in one specific instance. They must be between the ages of 18 and 22 and enrolled full time in an approved postsecondary school. They also cannot be married. Unlike in the case of a spouse, if a child loses eligibility to these REPS veterans benefits for any reason, they may not reestablish it with VA compensation claims.

How Does Income Effect REPS Payments?

Because REPS is run by the Social Security Administration, some very stringent rules govern benefit amounts. Basically, whatever REPS benefits an eligible surviving family member is entitled to, those benefits are reduced by $1 for every $2 they earn in wages over the designated annual limit.

Also, if the survivor is eligible for Social Security, payments will only be made in an amount that covers the difference between what their Social Security payments are and what their REPS veterans' benefits should be.

13.3 Non-Service-Connected Veterans Benefits: What Is a Death Pension?

The spouse of a non-service-connected veteran who has passed away may still be entitled to monthly veterans benefits called the death pension. It is available to qualified spouses in cases where the veteran served at least 90 days of active duty, was discharged under any conditions other than dishonorable, and served at least one day of active duty during a period of war.

If the veteran served after September 7, 1980, in most cases they also must have been in continuous active duty for at least 24 months in order

for their spouse to submit VA claims and qualify for the death pension. Exceptions to this 24-month rule are:

- The veteran served the full period in which they were ordered to active duty.
- The veteran did not serve their full period only because they were granted either early discharge or a hardship discharge.
- The veteran was discharged or released from active duty because they suffered a disability.
- At the time of death, the veteran was eligible to receive some form of compensation for a service-connected disability that occurred during wartime.

13.6 What is the Improved Pension Program?

The improved pension program will be used for any new death pension VA claims filed for by a qualifying survivor. This program bases the awarded pension amount on the survivor's monetary need, taking into account their current income and measurable assets (not including home value). In some cases, this can lead to a qualifying survivor receiving no death pension at all.

Some rules govern whether or not a surviving spouse is qualified to receive the death pension. If the surviving spouse was married to the veteran for at least one year before they died or has a child with the deceased veteran, they qualify. In cases where the surviving spouse married the veteran after discharge, they may still be eligible to file VA claims for the death pension if they were married previous to these dates:

- Mexican Border Period and WWI: They were married before December 14, 1944.
- WWII: They were married before January 1, 1957.
- Korea: They were married before February 1, 1965.

- Vietnam: They were married before May 8, 1985.

- Persian Gulf War: They were married before January 1, 2001.

13.7 Veterans Benefits: The Surviving Child

In most cases, the surviving child of a veteran does not have independent entitlement to the improved death pension if they are in the custody of an eligible surviving spouse. The spouse, however, will be able to qualify for more monthly veterans benefits to take care of the dependent child. If the child is not in the custody of the surviving spouse, the death pension veterans' benefits may be paid to the child's legal guardian.

13.8 How Do Special Allowance Rates Affect Veterans Benefits for Family Members?

When it comes to dispersing veterans benefits to family members, the VA has a few special rules to accommodate loved ones who need extra assistance. These special allowances fall into two categories: family members who require aid and attendance (A&A), and family members who do not need constant supervision but are still permanently housebound (HB).

Both of these allowance categories are available only to family members who qualify as one of the following in relation to the veteran: a spouse, a surviving spouse, a parent, or a surviving parent.

How Do Family Members Qualify for Special Allowance Veterans Benefits?

If your loved one needs daily care and assistance, he or she will be eligible to receive the A&A special allowance benefit only if one of the following criteria is met:

- Documentation that the family member is blind or nearly blind

- Proof that the family member is in a nursing home due to physical or mental limitations

- Medical evidence or a doctor's statement that the family member is

unable to care for himself or herself and/or protect himself or herself from daily hazards

If your loved one's disability does not fall into any of the above categories, he or she may be able to qualify for the HB allowance if you can prove that the person is "substantially confined" to the home and will be for the rest of his or her lifetime.

What Other Rules Affect Special Allowance Veterans Benefits?

Though the above qualifying criteria may seem fairly easy to meet, the VA claims process can still be tricky. If you're even slightly unsure of the process for proving the above requirements, consult a veterans' advocate or lawyer who can clarify everything you need to know. Hiring a lawyer can be especially helpful when it comes to obtaining doctor's statements that are detailed enough for the VA to decide in your favor. A qualified advocate will be able to evaluate all medical evidence to ensure it meets the level of detail required by the VA.

A disability attorney can also help you navigate other intricacies of the VA claims process. You'll need to know that a spouse is only eligible for special allowance benefits if the veteran has been rated at least 30 percent disabled. Also, a spouse can only receive special allowance veterans benefits directly if the veteran is deemed incompetent or is deceased. In all other cases, the veteran collects the funds on behalf of the spouse.

13.9 Spina Bifida Benefits for Children of Vietnam Veterans

Spina Bifida is a spinal cord birth defect. Under the Agent Orange Benefits Act of 1996, children with Spina Bifida born to Vietnam veterans were ruled eligible to receive increased veterans benefits. Benefits include health care coverage, vocational rehabilitation in the case the child is capable of holding down a job, and a monetary allowance that is adjusted yearly to compensate for the increased cost of living.

Eligibility Requirements for Increased Veterans Benefits for Children with Spina Bifida?

The child in question must be the biological offspring of a veteran who

served in:

- The Republic of Vietnam or in Thailand for any length of time between January 9, 1962, and May 7, 1975, or

- Veterans who serviced in or near the Korean DMZ for any length of time between September 1, 1967, and August 31, 1971. The child must also have been conceived after the veteran spent some amount of time in Vietnam, Thailand, or the DMZ.

The child must be diagnosed with a form of spina bifida other than spina bifida occulta.

The children of female veterans who served in Vietnam during the dictated time period that exhibit birth defects other than spina bifida may also be eligible for additional benefits.

How to Claim Veterans Benefits for Children with Spina Bifida

You'll need to file a claim on your child's behalf. Submit VA Form 21-0304, along with proof of the biological relationship between child and veteran parent, service records showing required military service, the child's birth certificate, and diagnosis of spina bifida or another covered birth defect. This process doesn't require the child to be formally examined by the VA (except in cases where the diagnosis is doubted).

It is important to retain counsel who can advocate on your behalf and ensure. The VA will rate your child's spina bifida across four levels of disability and pay benefits out in accordance with the judgment of severity. This is a rare circumstance in which the child, not the veteran, files the disability claim. A good veteran's disability attorney will ensure that that all medical documentation describes your child's symptoms honestly and in great detail.

14 Psychological & Cognitive Disabilities

14.1 Disability Compensation for Mental Disabilities Other Than PTSD

There are many unique issues that a veteran and their disability lawyer must be aware of when going through the VA claims process for a case relating to a mental disorder. First, a veteran must be sure to have their mental disability professionally diagnosed. Once diagnosed, they will need to show that the disability is service-connected in one of five different ways.

14.2 What Are the 5 Ways to Service Connect a Mental Disorder During a VA Claims Process?

1. The mental disorder that the veteran is suffering from was first evidenced during service.

2. The veteran had a preexisting mental disorder that was aggravated by service.

3. The mental disorder in question developed soon after a service-connected physical disorder was incurred.

4. The mental disorder was diagnosed within a year after service ended. This period of time is extended in any case involving a prisoner of war.

5. The mental disorder resulted from an injury that occurred while the veteran was being administered VA medical care.

Because of all the unique issues related to mental disorders, these disability claims are oftentimes very challenging for both the veteran and their disability lawyer. The first thing a veteran must do is figure out what mental disorder they are seeking benefits for. This can be a very difficult thing to have properly diagnosed.

But remember, a claim cannot be denied just because you have applied for the wrong mental disorder. As long as some of the symptoms overlap, the

claim can be applied to the correct disorder once it has been diagnosed. You may, however, be required to provide new evidence in this case.

Another obstacle that many veterans will face is the fact that they may suffer from more than one mental disorder. In these cases, a veteran can receive a separate service connection for each of the different disorders they suffer from. However, only one disability rating will be assigned to cover any disorders with overlapping symptoms that a veteran has applied for during the VA claims process.

14.3 Definition of Important Terms Used in Mental Disorder VA Claims

When dealing with VA claims regarding mental disorders, the U.S. Department of Veterans Affairs uses a certain specialized language. In order to more effectively argue mental disorder claims, a veteran and the VA disability attorney who represents them should make themselves familiar with some of these special terms.

Mental Disorder Definitions

Here are some common terms that anyone involved with VA claims should learn:

Amnestic: Causing loss of memory.

Axis: One of the 5 different types of problems a person making VA claims for a mental disorder may have.

Axis I: Clinical disorders.

Axis II: Personality Disorders and Mental Retardation.

Axis III: General Medical Conditions.

Axis IV: Psychological and Environmental Problems.

Axis V: Global Assessment of Functioning.

Bipolar Disorder: A mood disorder where both excitable (manic) and depressed (depressive) episodes take place.

Cognitive: The process of thinking.

Dementia: A disorder that causes general loss of intellectual abilities and impairment of judgment, memory, and abstract thinking.

Dissociative Disorders: Mental disorders such as multiple personality disorder which cause sudden, temporary changes in memory, identity, or consciousness.

DSM (III, III-R, or IV): The Diagnostic and Statistical Manual of Mental Disorders. These are previous editions of a reference book developed by the American Psychiatric Association (APA) that classifies known mental illnesses and their symptoms. Although superseded by edition DSM-5 (listed below) the transition from DSM-IV to DSM-5 is still ongoing, and many documents still reference past versions of the manual.

DSM-5: The Fifth Edition of Diagnostic and Statistical Manual of Mental Disorders developed by the American Psychiatric Association (APA), is the latest compendium of mental disorder criteria and diagnostic codes used by clinicians in the U.S. healthcare system. Released in May 2013, DSM-5 drops the Roman numeral nomenclature and marks the first major revision to the classification of and diagnostic criteria for mental disorders since DSM-IV was released in 1994.

Dysthymic Disorder: A mood disorder that results in depressed feelings and lack of interest in usual activities, but isn't severe enough to be Major Depression.

Personality Disorder: A pattern of behavior that departs from normal cultural expectations. This usually begins during adolescence or early adulthood.

Psychotic Disorders: Disorders such as Schizophrenia that result in the afflicted individual having regular delusions or hallucinations that put them out of touch with reality.

Psychoneurotic Disorders: A disorder that results in phobias, obsessions, and anxiety attacks. One example of this is Posttraumatic Stress Disorder.

PTSD (Posttraumatic Stress Disorder): A disorder in which the afflicted person re-experiences an extremely traumatic event. This usually results in nightmares, difficulty sleeping, anxiety attacks, and increased arousal.

Schizoaffective Disorder: A mental disorder characterized by the presence of both schizophrenia and mood disturbances such as depression.

Schizophrenia: A disorder where the afflicted are out of touch with reality most of the time. They suffer from grossly disorganized behavior, disorganized speech, delusions, hallucinations, and inappropriate affect.

Somatoform Disorders: A disorder where a person has certain physical symptoms of a medical condition, but tests do not reveal that they actually have that condition.

Superimpose: To lay or place something on or over something else.

When dealing with cases involving VA claims, it is imperative that your attorney knows and comprehends the preceding list of terms so that he or she can effectively represent you when dealing with the VA.

14.4 What Are the 8 Categories of Mental Disorders Eligible for VA Compensation Claims?

Whether the afflicted party is eligible for VA compensation claims or not, mental disorders are a truly awful thing for anyone to have to live with. But establishing a mental disorder as service-connected can certainly make things somewhat easier by giving the veteran access to care. However, in order to qualify for these veterans' benefits, the mental disorder in question must first fall into certain specific categories.

The following are the eight categories of mental disorders that are eligible for VA compensation claims:

1. Schizophrenia and Other Psychotic Disorders

2. Delirium, Dementia, and Amnestic and Other Cognitive Disorders

3. Anxiety Disorders

4. Dissociative Disorders

5. Somatoform Disorders

6. Mood Disorders

7. Chronic Adjustment Disorder

8. Eating Disorder

Any of the disorders included in the above eight categories may be eligible for VA compensation claims, depending on whether or not it is determined to be service-connected.

1. **Schizophrenia and Other Psychotic Disorders.** This category includes any mental disorder that causes loss of contact with reality and derangement of one's personality. Some of these are schizophrenia, shared psychotic disorder, delusional disorder, and brief psychotic disorder.

2. **Delirium, Dementia, and Amnestic and Other Cognitive Disorders.** These are brain-related disorders that include Alzheimer's, alcoholism, dementia due to infection, brain trauma, and drug or poison intoxication.

3. **Anxiety Disorders.** Some examples of anxiety disorders are Posttraumatic Stress Disorder, obsessive-compulsive disorder, panic disorder, phobic disorder, and agoraphobia.

4. **Dissociative Disorders.** These can include multiple personality disorders, dissociative fugue, dissociative amnesia, and depersonalization disorder.

5. **Somatoform Disorders.** Some of these are pain disorder, somatization disorder, conversion disorder, and hypochondriasis.

6. **Mood Disorders.** Some of the qualifying mood disorders may be bipolar disorder, major depression, dysthymic disorder, and cyclothymic disorder.

7. **Chronic Adjustment Disorder.** This involves the inability of the afflicted party to re-adjust to normal society over a long period of time. It can cause symptoms like anxiety, head and stomach aches, and depression.

8. **Eating Disorder.** This category includes both anorexia and bulimia.

14.5 Linking a Mental Disorder to Military Service in the VA Claims Process

If a veteran is suffering from a mental disorder and wants to qualify for compensation, they must first prove through the VA claims process that the disorder is somehow related to their military service. This is not always a simple thing to do. In fact, in many cases, veterans hire a disability lawyer to fight on their behalf.

Diagnosis: The first step is to get the disorder diagnosed. While symptoms of certain mental disorders can often be seen by a layman, to qualify for VA compensation, the afflicted party must be diagnosed by a true expert in the field. This can come in the form of a physician, psychiatrist, or psychologist.

Linkage Evidence: Once diagnosed, the evidence must be presented that will prove that the disorder was either incurred during military service or at the very least aggravated by it. This can be a very difficult thing to prove. One of the best ways to do this is by obtaining a statement from a doctor that says that, in their expert opinion, the patient's mental disorder was either caused by or exacerbated by their military service.

A common time to obtain this sort of expert opinion is during the DSM-5 axis diagnosis. If the examiner includes military service as a factor in their diagnosis, it means they have found it to be a clear contribution to the patient's mental disorder. This can then be used by your disability lawyer during the VA claims process as evidence to link the patient's disorder to their military service.

14.6 How Is the Degree of Disability of a Mental Disorder Evaluated for VA Compensation Claims?

Diagnosing the illness and linking it to the patient's military service is just the first step. Next it must be determined just how impaired the person is. This is done using a sliding scale called the "General Rating Formula for Mental Disorders."

This formula measures just how impaired the veteran's social and occupational functioning are. The unique thing about this scale is that it focuses specifically on how a veteran's symptoms affect his or her life. The outcome of this test is then used to determine the extent of their VA compensation claims.

14.7 What Are the Specific Criteria Used to Determine VA Compensation Claims for Mental Disorders?

The "General Rating Formula for Mental Disorders" is measured in percentages of disability based on the veteran's level of impairment.

100 Percent Total Social and Occupational Impairment. Symptoms include persistent delusions or hallucinations, grossly impaired communication or thought processes, disorientation, memory loss for things that should be familiar, persistent danger of hurting self or others, and intermittent inability to perform normal daily activities.

70 Percent Social and Occupational Impairment. This results in deficiencies in thinking, mood, family relations, work, school, and judgment. Symptoms include intermittently illogical speech, suicidal ideation, near-continuous depression or panic that affects the ability to function, obsessed rituals which interfere with the daily routine, unprovoked irritability with occasional violence, neglect of appearance and hygiene, inability to maintain relationships, and spatial disorientation.

50 Percent Social and Occupational Impairment. This will result in reduced reliability and productivity. Symptoms include panic attacks more than once per week, circumstantial or stereotyped speech, difficulty comprehending complex commands, flattened affect, memory impairment, impaired abstract thinking, impaired judgment, difficulty with work and

social relationships, and disturbances of motivation and mood.

30 Percent Social and Occupational Impairment. This is marked by an occasional decrease in work efficiency. Routine behavior, conversation, and self-care generally remain normal. Symptoms include anxiety, depression, panic attacks once per week or less, suspiciousness, mild memory loss, and chronic sleep impairment.

10 Percent Social and Occupational Impairment. Symptoms here are mild and result in a decreased ability to perform occupational tasks during periods of high stress. This can be controlled by medication.

0 Percent Social and Occupational Impairment. A mental condition has been diagnosed, but the symptoms are not severe enough to affect social or occupational functioning.

By using the preceding scale during the VA claims process, the appropriate amount of VA compensation claims can be accurately determined for any veteran who suffers from a service-induced mental disorder, but it still may be in your best interests to use a qualified VA disability lawyer to ensure that the scale truly reflects your condition.

14.8 How Can a Soldier With Traumatic Brain Injuries Avoid VA Claim Denial?

In recent years, the importance of soldiers having their brain injuries correctly evaluated in order to avoid denial of veterans' claims has become a hot-button topic. One of the main reasons for this is the steep increase in traumatic brain injuries (TBI) suffered by soldiers during our most recent wars.

This increase can be linked directly back to an uptick in the use of roadside improvised explosive devices (IEDs), whose blasts often cause head trauma. This can result in Posttraumatic Stress Disorder and depression for those veterans who have been inflicted with these horrible brain injuries.

Because of the significantly higher levels of TBI, the VA has revised the criteria they use to determine the true effects of brain trauma on those who are applying for disability. However, a lot of people feel that the

criteria are still too stringent and inaccurate, resulting in far too many underpaid and denied disability claims.

14.9 Evaluating Traumatic Brain Injuries Correctly to Avoid Veterans Claim Denial

Any veteran who thinks they may be feeling the effects of a traumatic brain injury suffered during service should immediately see a professional. They should also make sure to claim a service connection for any mental condition that may be associated with their injury. This includes both Posttraumatic Stress Disorder and depression.

Another thing that an afflicted veteran must do is obtain a professional opinion on their ability to be regularly employed. This evaluation should include a "Global Assessment of Functioning (GAF)" score, which is a 0 through 100 rating by a mental health doctor that measures how well the person in question can adapt to handle various problems they might encounter in their social or work life.

If a soldier is proactive in following these steps, it will make them significantly less likely to be the victim of a denial of veterans' claims.

14.10 Disability Claims for Posttraumatic Stress Disorder

With an estimated 12 to 20 percent of returning Iraq War veterans currently suffering from Posttraumatic Stress Disorder, it's no wonder that PTSD-related disability claims are on the rise. For many years, the stigma associated with psychological disorders prevented a huge number of Vietnam veterans suffering from PTSD from seeking treatment. But recent studies highlighting the need for improved mental health care for returning troops, as well as increased social acceptance of psychological disorders, has led to greater focus by the VA on acknowledging and treating PTSD.

14.1 Who Is Eligible for PTSD Disability Claims?

The criteria for a diagnosis of PTSD are fairly varied, but in general, most returning veterans experience some of the following symptoms:

- Emotional numbness for a long period after the traumatic event
- Survivor's guilt
- Nightmares about and flashbacks to the traumatic event
- Difficulty sleeping and concentrating
- Strong reactions to sounds mimicking the traumatic event
- Difficulty reconnecting emotionally with friends and family
- Generalized anxiety, nervousness, or depression

If you are a veteran and are experiencing one or more of these symptoms, you may be eligible for veterans' benefits on the basis of a PTSD diagnosis. Consider contacting a good VA benefits lawyer to help make your case to the review board. The process can be tricky, and a qualified lawyer will be prepared to work hard and win you the benefits to which you are entitled.

The brave men and women who lay their lives on the line for this country deserve healing through competent and compassionate mental healthcare. The VA is able to provide this to all veterans who successfully argue their disability claims, so don't hesitate to put together a case if you feel you are entitled to veterans benefits based on a diagnosis of Posttraumatic Stress Disorder.

14.11 The Three Qualification Requirements for PTSD Disability Claims

The VA has a series of strict criteria in place to determine the validity of PTSD-related disability claims. These rules can be tough to navigate, but a qualified disability lawyer can see you through the process and help you obtain the benefits you deserve.

PTSD Requirement #1: Medical Diagnosis

The most important qualification is a current medical diagnosis of Posttraumatic Stress Disorder. The diagnosing doctor must be in good

standing with the VA and must strictly adhere to the criteria set out in the DSM-5 when making the determination. If the VA rejects your original claim, your medical report will be returned for clarification, and in some cases, the VA will conduct an independent medical inquiry.

However, because PTSD diagnoses are so subjective, all you need for a positive determination is 50 percent surety on the part of your doctor. Also referred to as an "as likely as not" decision, this makes it easier for the veteran to gain the necessary PTSD diagnosis.

PTSD Requirement #2: In-Service Stressor

The veteran must provide Credible supporting evidence that shows that the claimed in-service stressor actually occurred. The incident doesn't have to take place during combat, because in a war zone many disturbing incidents can occur during an otherwise mundane day.

If your PTSD diagnosis was made during service, the only evidence this second step requires is a personal account of the traumatic event or events that led to this diagnosis. Unless there is clear evidence your personal statement is false, the VA will accept the story as sufficient evidence that the event occurred.

The requirements are slightly different if your PTSD diagnosis occurred after service. In this case, the circumstances of the trauma make all the difference:

- If the stressor occurred during combat, your personal statement is the only evidence necessary to satisfy this step;

- If the stressor is related to a persistent and debilitating fear of hostile military or terrorist activity, again the only evidence necessary is your story, along with a psychiatrist's evaluation;

- If the stressor is related to an in-service personal assault, you may need to present evidence outside military records to substantiate the claim;

- If the stressor occurred under other circumstances, you may also need to present additional evidence.

PTSD Requirement f#3: Medical Nexus (Link) between Diagnosis and Stressor

The final step is medical evidence that shows a causal connection between the current set of symptoms and the claimed in-service stressor. In most cases, this will not be a problem as the medical records proving the diagnosis will contain details about the stressor claimed in step two of the process.

Special VA Compensation Claims Rules on Service Connection for PTSD

As with any other illness or injury being claimed by a combat veteran, proving a claim of PTSD requires much less evidence than it would with a non-combat veteran. In most cases, the combat veteran's lay testimony will be all that is needed to establish that an in-service stressor actually occurred.

14.12 Rule Changes Made Service Connection Easier for PTSD Sufferers

With the issue of Posttraumatic Stress Disorder coming to the forefront in recent years, it was decided that both combat and non-combat veterans should be given an easier path to establishing the occurrence of their in-service PTSD stressors. In 2008, there was an amendment made to reflect this. This amendment now allows veterans to prove an in-service occurrence of PTSD with lay evidence alone.

However, any disability lawyer should note that this rule only applies to those veterans who were diagnosed with PTSD while they were still in service. But if their PTSD didn't appear until after service, the normal service connection rules for VA compensation claims apply.

15 Special Rules for Combat Veterans

VA law makes it significantly easier for combat veterans to prove that their disability occurred or was aggravated during service, thereby lowering the chances that they will be denied veterans benefits.

15.1 Combat Veterans Do Not Need to Prove an In-service Event Occurred

Unlike other veterans, a combat veteran doesn't need to show facts to prove that their disability stemmed from a service-related incident. They just have to make a claim that shows to be consistent with the circumstances and conditions in which they were deployed. In almost all cases, their statement that the disability occurred from a combat incident will be considered as fact. The only way anyone can even dispute them on this is if they provide "clear and convincing evidence to the contrary." (38 C.F.R. §3.304 - Direct service connection; wartime and peacetime.)

The main reason for this favorable treatment is that during combat military record-keeping can be very inefficient. Records can easily get destroyed and are often not completely kept. And in some cases, no records are created at all. Because of this, the VA has chosen to err on the side of the combat veteran with regard to compensation claims.

This doesn't, however, make them exempt from proving the other two service connection requirements to avoid being denied veterans benefits. The combat veteran will need to provide competent evidence that they currently have a disability as well as competent evidence that links their current disability to the in-service event that they claim caused the disability, if they want their VA compensation claims approved.

15.2 How Do You Know If an Incident Occurred While "Engaged In Combat"?

It is absolutely critical that the VA accurately determines whether or not the event happened while the veteran was "engaged in combat with the enemy." But how do they make this determination?
Proving that an injury or illness occurred while in combat may be more

difficult because the VA is not required to accept the veteran's statement that they were in combat as fact. They are, however, required to weigh and consider the veteran's statement when making this important determination.

According to the U.S. Court of Appeals for Veterans Claims, the veteran doesn't have to provide evidence corroborating their statement. However, any VA disability attorney should note that corroborating evidence would certainly be helpful in persuading the VA to accept the veteran's statement that they were engaged in combat.

Ways to Corroborate a Veteran's Statement about Their Combat Service

- The veteran's combat service may be indicated on their service records. This can include documentation of any combat decoration, citation, or reward.

- Any evidence that shows that the area or base the veteran was in was attacked by the enemy. Whether or not the veteran in question was directly exposed to fire does not matter.

- Any documentation that the veteran received hazardous duty pay.

- "Buddy statements" from fellow soldiers regarding the veteran's inclusion in combat.

Again, a good veteran's attorney will note that even if a veteran cannot provide any of this corroborating evidence, it does not necessarily mean that the VA will determine that the veteran was not engaged in combat. When going through the VA claims process, each veteran's case and circumstances will be individually considered and assessed.

15.3 Step by Step Application of How a Veteran's Statement Is Analyzed

Once someone has established their position as a combat veteran, the next step in the VA claims process is for the VA to analyze their statements and make sure they meet certain conditions. If these conditions are met, the combat veteran's lay statements regarding the injury or disease will be

accepted. To analyze these statements, the VA will go through three steps.

STEP 1: The Combat Veteran's Evidence Must Be Satisfactory

STEP 2: The Evidence Provided by the Combat Veteran Must Be Consistent with Circumstances of Service

STEP 3: There Cannot Be Clear and Convincing Evidence in the Record against Incurrence or Aggravation during Combat

If there is no unfavorable evidence, the VA will accept the combat veteran's statement. However, a veteran should note that even if there is negative evidence, it's still difficult for the VA to oppose a combat veteran's statement. That's because the VA claims process requires the high standard of "clear and convincing" negative evidence to be presented, as opposed to just a "fair preponderance of evidence."

16 Agent Orange Exposure

16.1 VA Benefits Available to Veterans Exposed to Agent Orange (AO)

If you are a veteran with disabilities associated with herbicide exposure, including Agent Orange, you may qualify for health care, vocational rehabilitation, and payment of monetary compensation benefits. These exposures have been associated with a variety of cancers and other diseases.

If you are a surviving spouse or surviving child of a veteran exposed to herbicides, you may also be eligible for benefits, including Dependency and Indemnity Compensation (DIC) benefits, CHAMP-VA health care, and educational benefits.

To qualify for service-connection based upon herbicide exposure, veterans must establish that they have a current disability related to exposure to herbicides during military service. Once a current disability is established by medical evidence, it is necessary to determine where the veteran was located during military service and whether such location(s) involved exposure to herbicides.

The critical questions are:

- Where was the veteran?
- When was the veteran there?
- Where were the herbicides?
- When were the herbicides there?

During the Vietnam Era, chemical herbicides such as Agent Orange were used to defoliate areas of Vietnam and in some cases, the perimeter of certain military bases as well as areas near the Demilitarized Zone (DMZ) in Korea. Herbicides were also tested at a variety of locations prior to being used in Vietnam. In addition, herbicides were stored at various locations such as Johnston Island, Guam, and Gulfport, Mississippi during

various time periods.

Because records of herbicide use were not maintained, finding documentation can be difficult; however, the VA continues to identify information and evidence concerning locations of exposure.

16.2 Veterans Outside of Vietnam Eligible for VA Benefits Based on Herbicide Exposure

Did you know that you or a loved one may be eligible for VA benefits due to exposure to herbicides even if you served in areas other than Vietnam?

Serving Outside of Vietnam

Herbicides were used to provide perimeter base control on bases in Vietnam and Thailand, along the Ho Chi Min Trail and near the Demilitarized Zone in Korea beginning in September of 1967. Testing and storage of these herbicides also occurred at various locations in the United States and foreign locations.

If a veteran can establish that he or she was exposed to herbicides on a direct basis, VA will apply the presumption of nexus granted to diseases associated with herbicide exposure.

Serving in Vietnam

Of course, veterans who served during active military, naval, or air service in the Republic of Vietnam during the period beginning January 9, 1962, and ending May 7, 1975, may qualify for a presumption of exposure to herbicide agents. The Republic of Vietnam includes the landmass of Vietnam and its inland waterways.

Blue Water Navy Veterans

Additionally, the Blue Water Navy (BWN) Vietnam Veterans Act of 2019 (PL 116-23) extended the presumption of herbicide exposure, such as Agent Orange, to Veterans who served in the offshore waters of the Republic of Vietnam between Jan. 9, 1962, and May 7, 1975. As of January 1, 2020, Veterans who served as far as 12 nautical miles from the

shore of Vietnam, or who had served in the Korean Demilitarized Zone, are presumed to have been exposed to herbicides, such as Agent Orange, and may be entitled to service connection for any of the conditions related to herbicide exposure.

16.3 Proving Exposure

Regardless of location, establishing evidence that a veteran had exposure is the first hurdle to acquiring benefits. Evidence of "boots on the ground" might include:

- Veteran's military records,
- Service treatment records (STR),
- Deck logs and/or
- Ship newsletters, cruise books, buddy statements, or photographs.

Veterans who served on "brown" water are eligible for a presumption of service connection for any disability recognized as associated with exposure to herbicides even if they did not have "boots on the ground."

16.4 New Diseases Added to VA Agent Orange Presumptive Illnesses List

VA has recently added 3 presumptive conditions to its list of Agent Orange exposure-related diseases:

- Bladder cancer
- Hypothyroidism
- Parkinsonism

If VA denied your claim for any of these conditions in the past, it should automatically review your case again. These conditions are presumed to be service-connected to herbicide exposure in Vietnam.

16.5 Agent Orange Conditions

The VA already presumes that the following conditions are Agent Orange related:

- Adult Fibrosarcoma
- AL Amyloidosis (also known as Primary Amyloidosis)
- Alveolar Soft Part Sarcoma
- Angiosarcoma
- B-cell Leukemias
- Birth Defects
- Cancer of the Bladder
- Cancer of the Bronchus
- Cancer of the Larynx
- Cancer of the Lung
- Cancer of the Prostate
- Cancer of the Trachea
- Chloracne
- Chronic Lymphocytic Leukemia
- Clear Cell Sarcoma of Aponeuroses
- Clear Cell Sarcoma of Tendons
- Congenital Fibrosarcoma
- Dermatofibrosarcoma
- Ectomesenchymoma
- Epithelioid Malignant Leiomyosarcoma
- Epithelioid Malignant Schwannoma
- Epithelioid Sarcoma
- Extraskeletal Ewing's Sarcoma
- Hairy-cell Leukemia
- Hemangiosarcoma
- Hodgkin's Disease
- Hypothyroidism
- Infantile Fibrosarcoma
- Ischemic Heart Disease
- Leiomyosarcoma
- Liposarcoma
- Lymphangiosarcoma
- Lymphoma
- Malignant Fibrous Histiocytoma

- Malignant Giant Cell Tumor of the Tendon Sheath
- Malignant Glandular Schwannoma
- Malignant Glomus Tumor
- Malignant Hemangiopericytoma
- Malignant Mesenchymoma
- Malignant Schwannoma with Rhabdomyoblastic
- Multiple Myeloma
- Non- Hodgkin's Lymphoma
- Parkinsonism
- Parkinson's Disease
- Peripheral Neuropathy
- Porphyria Cutanea Tarda
- Proliferating (systematic) Angiendothelimatosis
- Rhabdomyosarcoma
- Sarcoma
- Soft Tissue Sarcoma
- Spina Bifida
- Subacute Peripheral Neuropathy
- Synovial Sarcoma
- Type 2 Diabetes (also known as Diabetes Mellitus)

16.6 DIC Disability Claims: Benefits for Surviving Family of Veterans Exposed to Agent Orange

For a long time, veterans were not able to file disability claims for any conditions related to the spraying of the chemical Agent Orange during Vietnam. This was because the VA denied that exposure to the chemical could cause any serious diseases or deaths. As a result, thousands of qualified surviving family members of deceased veterans were denied veterans benefits that they deserved.

In the 1990s, the VA changed its position on Agent Orange by admitting that certain diseases could be caused by exposure to the chemical. Because of this change in policy, the VA now has to pay out these previously denied veterans benefits to the qualified families of those soldiers who died from related diseases.

But thousands more are entitled to these benefits and just need to apply.

Many also may be eligible to receive back compensation to make up for the money that the veteran should have been paid when they were still alive.

An important thing to remember is that the surviving family member does not actually need to prove that the veteran was exposed to Agent Orange to make disability claims, because the law presumes that anyone who served in Vietnam was exposed to the chemical. The surviving family must just be able to show that the deceased veteran was diagnosed with a disease that is linked to Agent Orange exposure. This could be as simple as sending the VA copy of the death certificate that lists an Agent Orange-related disease as one of the causes of death.

But even if one of these diseases is not listed as the cause of death, a family member can still use a doctor's opinion to prove that it might have been. That would be enough evidence to receive the deceased veteran's Dependency and Indemnity Compensation (DIC) benefits.

16.7 The National Veterans Legal Services Program (NVLSP) and AO Exposure Disability Claims

For years, the VA continued to do all they could to deny and underpay death and disability claims related to Agent Orange exposure. Time and time again, lawyers from the National Veterans Legal Services Program (NVLSP) repeatedly took the VA to court and forced them to pay huge sums of retroactive benefits to make things right.

The NVLSP has set up a Nehmer Lawsuit Division to help make sure that the VA provides qualified veterans and their surviving families with the proper compensation. If you or your attorney contacts them, they will answer any questions you may have on matters related to AO exposure disability claims.

16.8 Effective Dates for Agent Orange Exposure in Vietnam

For years, the VA continued to do all they could to deny and underpay death and disability claims related to Agent Orange exposure. Time and time again, lawyers from the National Veterans Legal Services Program (NVLSP) repeatedly took the VA to court and forced them to pay huge sums of retroactive benefits to make things right.

16.9 Qualifying Diseases and Their Special Effective Dates for Agent Orange VA Compensation Claims

There are many different Agent Orange-connected diseases that a Vietnam veteran may have been afflicted with. Each of these diseases has been assigned a corresponding effective date that is used to determine the amount of retroactive benefits that they or their surviving family members are entitled to when making VA compensation claims.

The NVLSP has published the Nehmer Training Guide, in which the official list of diseases presumptively service-connected due to Agent Orange Exposure is presented. The following is a list of these diseases and their effective dates as listed in the Nehmer Training Guide, Appendix 1 – List of Presumptive Conditions in 38 C.F.R. § 3.816.

- Chloracne – 2/6/91
- Soft-tissue sarcoma (STS) – 9/25/85
- Non-Hodgkin's lymphoma – 8/5/64
- Porphyria cutanea tarda – 2/3/94
- Hodgkin's disease – 2/3/94
- Cancer of the lung – 6/9/94
- Cancer of the larynx – 6/9/94
- Cancer of the bronchus – 6/9/94
- Cancer of the trachea – 6/9/94
- Multiple myeloma – 6/9/94
- Prostate cancer – 11/7/96
- Acute and subacute peripheral neuropathy – 11/7/96
- Type 2 Diabetes – 5/8/01
- Chronic lymphocyte leukemia – 10/16/03
- Primary AL Amyloidosis – 5/7/09
- Ischemic heart disease – 8/31/10
- Chronic B-bell Leukemias (except chronic lymphocytic leukemia) 8/31/10
- Parkinson's disease – 8/31/10
- Bladder Cancer
- Hypothyroidism
- Parkinsonism

A veteran can cite the "Nehmer Training Guide" when trying to get the

VA regional office to assign the correct effective date for VA compensation claims for any of these Agent Orange-related diseases.

16.10 Why Were Special AO Effective Date Rules for Death and Disability Claims Established?

Throughout most of the 1970s and 1980s, the VA denied tens of thousands of Agent Orange-based death and disability claims by maintaining that the only illness AO exposure caused was the skin condition chloracne. However, in the early 1990s, the VA was forced to acknowledge that many other serious diseases could be caused by AO exposure. This came about as a result of the class action lawsuit Nehmer v. U.S. Department of Veterans Affairs.

Now, any Vietnam veteran who is afflicted with any of these many AO-related diseases is eligible for a service connection for that disease. This even applies to veterans and their surviving family members who have been denied benefits for that same disease in the past.
Take note! Veterans who suffer from one of the three newly added conditions to the AO presumptive list (Parkinsonism, bladder cancer, and hypothyroidism) may now be considered part of the Nehmer class. This is especially pertinent for veterans who previously filed a claim for one of the three conditions but were denied. These veterans may now pursue benefits with an effective date back to the date of the original claim.

16.11 What Communications Count as Disability Claims for Agent Orange-Related Diseases?

Any disability claims for Agent Orange-related diseases that were denied or filed after September 24, 1985, and before the List of Presumptive Conditions was published, could be considered Category 1 claims. In these cases, the rules that define what is considered to be an official disability compensation claim are very liberal.

Some examples of communications that should be sufficient to allow a veteran to qualify for the special Agent Orange effective date rules for disability compensation are:

- The veteran submitted an official VA document to the VA stating that they should grant him or her service-connected disability benefits for

a specific disease that is listed in the List of Presumptive Conditions. These documents do not have to refer specifically to Vietnam or Agent Orange.

- The veteran made disability claims for a disease that was never specifically identified. However, while the claim was pending, medical records that diagnosed the veteran with a listed disease were filed with the VA.

- The veteran filed a compensation claim for a disability that was not listed in the List of Presumptive Conditions, but while the claim was pending, the veteran was officially diagnosed with a listed disease that was put into their VA claim file. This rule is often violated by the VA when setting effective dates. To improve their compliance with this rule, the VA added more details to its Nehmer Training Guide.

16.12 Do Medical Records Count as Disability Claims?

Your VA disability attorney will note that a veteran's medical records do not count as a claim by themselves. However, if medical records are present at the time the veteran files separate disability claims, the condition shown on the medical records will be considered part of those claims.

16.13 What Other Requirements Exist for Agent Orange VA Claims?

For a Vietnam veteran to fit into Category 1 with regards to Agent Orange-related diseases, they must have either filed their VA claims or had them denied during a specific period of time. This period runs from September 24, 1985, to whatever date the ruling on the disease they suffer from was made official. This publication date can be found in the second column of the Nehmer Training Guide, Appendix 1 – List of Presumptive Conditions in 38 C.F.R. § 3.816.

16.14 Category 1 Effective Date Rules for Agent Orange VA Claims

The Category 1 rules are very clear and easy to comprehend when it comes to disability claims that were filed during the window period. These will

always qualify a veteran for Category 1 status.

However, the rules can be a bit more confusing when trying to figure out if VA claims that were denied during the window period will still qualify the sufferer for Category 1.

If you are filing VA claims for Agent Orange exposure, hiring a disability lawyer can be a big help in navigating the many requirements and getting the best possible outcome for your situation.

16.15 Category 2 Effective Date Rules for Agent Orange VA Claims

The effective date rules for Category 2 VA claims determine whether or not a Vietnam veteran's surviving family members will qualify for death compensation or death pension. These rules apply to the families of those veterans who served overseas in Vietnam and died from a disease that was at least caused in part by one of the Agent Orange-related diseases on the List of Presumptive Conditions.

For a surviving family member to be included in Category 2, the claim in question must meet the following criteria:

1. There must have been a death benefits claim for either DIC or death pension. A VA disability attorney should note that a claim for pension is automatically considered as a claim for DIC even if the survivor indicated that the veteran's death was not due to service.

2. The VA claims in question must have been denied or filed in the effective date window, which is after September 24, 1985, and before the publication date in the List of Presumptive Conditions for the disease that led to the veteran's death.

Once it is decided that a DIC claim fits within Category 2, the next thing that needs to be determined is the effective date. This is normally set on the date the VA received the claim for DIC or death pension. It can also be set on the first day of the month in which the veteran's death occurred in cases where the claim was filed within one year of the veteran's death.

Because the Nehmer rules are so complex, not to mention other aspects of the VA bureaucracy, the VA often gets Agent Orange effective dates wrong. The difference in effective dates could result in a major amount of money. Meanwhile, a veteran may not understand how or why the effective date of their Agent Orange claim has been mishandled. It pays to work with a VA attorney who can help you appeal and reopen claims to obtain the VA disability ratings and maximum monthly benefits you deserve.

17 Persian Gulf Veterans' Claims

The disability claims process for veterans of the Persian Gulf War can be a confusing one. However, the road to gaining your rightfully deserved compensation may be less treacherous than you think. Several cases decided by the US Court of Appeals for Veterans Claims have made it easier for veterans to receive their disability benefits by way of the presumptive service connection.

17.1 How Does the Presumptive Service Connection Affect Disability Claims?

To be eligible for benefits, a veteran must prove that he or she is suffering from a "qualifying chronic disability" that was incurred during active military service. In 1994, Congress made it easier for veterans who specifically served in the Persian Gulf War, including both Operations Desert Shield and Desert Storm, to prove a service connection by enacting 38 USC Section 1117 and 38 USC Section 1118.

These sections of the US Code establish a "presumptive" connection between the veteran's qualifying disability and his or her military service. Previously, the vague nature of many of the multi-symptom ailments affecting Gulf War vets had made both verifiable diagnoses and proven connection to military service almost impossible to attain, leading to many cases of veterans being denied their rightful benefits.

Under Section 1117, a veteran merely has to prove that his or her qualifying disability manifested during service in the Persian Gulf or to a degree of 10 percent after being discharged from active duty. This altered rule makes it much easier for Gulf War vets to receive their hard-earned veterans benefits.

17.2 Does Section 1117 Affect Other Veterans' Disability Claims?

The limits of Section 1117 extend the presumptive service connection to military veterans who served in the Persian Gulf area even after the conclusions of Operations Desert Shield and Desert Storm. Thus, all veterans of Operation Iraqi Freedom and Operation Enduring Freedom,

as well as all active military serving in the Gulf area, can make use of the expedited VA claims process made possible by Section 1117.

However, the VA still has ways of denying benefits to deserving veterans. They may try to prove that your qualifying disability was caused not by the stresses of active service but by outside events before or after service or even by willful misuse of alcohol or drugs.

Successfully presenting your disability claims to the VA Board can be a challenging task. You must prove that your case fulfills the three requirements for a presumptive service connection, as laid out by 38 USC Section 1117, and then undergo a VA-mandated physical examination. Hiring an experienced disability lawyer can be a huge help in ensuring that your case meets the requirements laid out by the VA.

17.3 The Three Requirements for Establishing a Presumptive Connection in Persian Gulf Claims

The first requirement that must be fulfilled to receive the presumptive service connection is definitely the simplest – you must prove that you were on active duty somewhere in the Southwest Asian Theater sometime on or after August 2, 1990. Active duty includes time on land or in sea or air, and most countries surrounding the Persian Gulf as well as Afghanistan are included. The official language from the Veterans Benefits Manual covers "Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations."

The second requirement deals with proving that you have a "qualifying chronic disability." Simply put, to be eligible for veterans benefits under a disability claim you must be suffering from some sort of undiagnosed illness, a medically unexplained chronic multi-symptom illness, or any diagnosed illness previously ruled eligible. A qualified disability lawyer can help you parse which of your symptoms makes you eligible and which do not.

The third requirement is proving that your disability manifested during the eligible time period. Your symptoms must have manifested either

during active service in the Persian Gulf or "to a degree of 10 percent or more during the presumptive period" that follows active duty. The length of the presumptive period varies depending on the nature of the illness or ailment.

17.4 Special Considerations for the Disability Claims of Certain Veterans

The VA has recognized that veterans who served in Iraq or Afghanistan during Operation Iraqi Freedom or Operation Enduring Freedom are entitled to some special considerations when it comes to their disability claims. A few injuries and ailments common among veterans of Iraq and Afghanistan have been made eligible to establish the presumptive service connection that is required to receive benefits.

Traumatic Brain Injury (TBI) Claims

Studies have shown that incidences of traumatic brain injury, or TBI, are much higher when it comes to veterans of these two conflicts – so prevalent that TBI is often considered to be the "signature disability" of vets returning from Iraq and Afghanistan. In addition, the VA has acknowledged that several environmental hazards present in Iraq, Afghanistan, and Djibouti have led to an increased risk for certain other ailments, and has implemented special considerations to deal with victims of these hazards.

What TBI Signs and Symptoms Are Relevant to Veteran Disability Claims?

Veterans who served in Operation Iraqi Freedom or Operation Enduring Freedom were at a unique risk to injury from enemy combatant IED blasts. Some of the symptoms that indicate a brain injury include:

- Loss of or lessened consciousness
- Loss of memory
- Confusion, disorientation, or other evidence of altered mental state
- Neurological deficits such as loss of balance, praxis, aphasia, sensory

loss, or paresis/plegia

- Intracranial lesion

At least one of these symptoms must have manifested immediately after the event for a successful diagnosis of TBI.

17.5 Which Environmental Hazards Are Relevant to Veterans Disability Claims?

Several environmental hazards present in Iraq, Afghanistan, and Djibouti are known to have contributed to an increase in veteran health issues. Burn pits that released toxic substances were utilized by the US military to dispose of waste starting in 2001. Dust storms, local industry emissions, and a few specific incidents such as the three-week burning of the Mishraq Sulfur Mine in 2003 are also noted as having increased veterans' exposure to dangerous environmental hazards. A wide range of respiratory, neurological, autoimmune, cardiopulmonary, and skin disorders have been linked to time served in the area of these environmental hazards.

If you are an Operation Iraqi Freedom or Operation Enduring Freedom veteran and you feel that you may have been affected by the factors listed under these special considerations, think about hiring a qualified disability attorney to help you fight for the veterans' benefits that you deserve. Making successful disability claims isn't easy, even for a veteran of Iraq or Afghanistan, and qualified legal counsel can make all the difference when it comes to bringing your case to the VA.

18 Upgrading a Veteran's Discharge Status

18.1 Can Upgrading a Discharge Make You Eligible for Veterans Benefits?

If you were the recipient of a less than honorable military discharge, then you already know that you are ineligible for veteran's benefits. But by upgrading your discharge, you can start receiving the compensation that you are entitled to as a former member of the US armed forces.

In general, only veterans who received an honorable discharge or general discharge can be considered eligible for benefits. So if you feel that you were issued an incorrect discharge – other than honorable, bad conduct, or dishonorable – you can fight to overturn that judgment and receive the benefits that you deserve.

With the help of a qualified attorney and veterans' advocate, you might also be able to change your bad discharge to a disability separation or simply a retirement. Although you will not receive damages for an incorrectly characterized discharge, you may be eligible to receive back pay benefits if your discharge is deemed illegal or wrongful.

18.2 Are There Any Risks Associated With Upgrading a Discharge to Receive Veterans Benefits?

Many veterans worry that fighting a discharge can lead to stigmatization or even potential harassment, but the discharge upgrading process is completely confidential to all individuals and organizations outside the military. However, it is true that members of the VA Board may not be incredibly sympathetic to veterans with less than honorable discharges.

That is why it is so incredibly helpful to have the assistance of a qualified veterans advocate as you navigate your way through the VA claims process. The VA's rules of eligibility for benefits are notoriously confusing, so an advocate will be invaluable in helping to parse those requirements.

18.3 Is Eligibility for Veterans Benefits Easier through Discharge Upgrading or VA Adjudication?

There are several different avenues available to those who wish to upgrade their discharges in order to become eligible for veterans benefits. The circumstances of your discharge will determine which path is right for you. If you're unsure as to which process will be most effective in gaining your benefits, consult a qualified attorney who can help you make the right choice.

All branches of the armed service offer two different forums in which veterans can upgrade their discharges, the Discharge Review Board (DRB) and the Board for Correction of Military Records (BCMR). Once the discharge has been changed to general or honorable in one of these two forums, the VA Board must then be utilized to grant veterans benefits.

In addition, VA adjudication provides another avenue through which servicemen and women can obtain veterans benefits, though the VA does not have the power to upgrade a discharge.

18.4 How Do I Choose the Right Path to Make Me Eligible for Veterans Benefits?

There are a series of factors that must be taken into consideration when choosing whether discharge upgrading or VA adjudicating is the best fit for your situation. When it comes to discharge upgrading, the choice between filing with the DRB or BCMR can be affected by each forum's statute of limitations. Veterans have a hard and fast fifteen years from the date of discharge in which to file with the DRB – and this forum makes no exceptions or waivers. The BCMR only has a three-year statute of limitations from the date of discovery of the discharge error, but that forum can usually waive this limit on request.

You must also take into account each forum's eligibility rules concerning the classification of your discharge. Veterans with certain statutory bars can only file with the BCMR. Similarly, veterans with bad conduct discharges or dishonorable discharges issued by general court-martials can only file with the BCMR.

If you are not encumbered by a statutory restriction or a certain classification of discharge and you have a compelling personal story, applying to the DRB may be the best strategy. Because the DRB review process guarantees a personal hearing, you'll have the chance to make your case in person.

Most veterans apply for a discharge upgrade with the DRB or the BCMR and then apply for veterans' benefits eligibility with the VA Board only after receiving the upgrade. But it is possible to skip straight to VA adjudication, although the VA Board is much more likely to grant eligibility to veterans who have upgraded their discharges than to veterans who still carry any discharge other than honorable.

There are a few rare cases in which it may be advantageous to apply simultaneously to a discharge review forum and to the VA Board, or even to the VA Board before the forum, but the problem of getting military records to multiple agencies at the same time is usually too much of an obstacle.

Your attorney can help you navigate this question as well as any other questions about discharge upgrading and the best way to make yourself eligible for veterans benefits.

18.5 How Do I Become Eligible for VA Benefits through Discharge Review?

The discharge review process is fairly straightforward, although it helps to have a qualified veterans advocate assist you in presenting your case. Any veteran may at any time apply to have his or her discharge reviewed. You'll have to go through either the Discharge Review Board (DRB) or the Board of Correction of Military Records (BCMR) for your branch of the armed services. There are considerations to weigh when choosing between the DRB and the BCMR:

- If your discharge is less than fifteen years old and is a general discharge other than honorable discharge, uncharacterized discharge, or bad conduct discharge from a special court-martial, go with the DRB and use a DD Form 293.

- If your discharge is more than fifteen years old OR is a bad conduct or dishonorable discharge from a general court-martial, apply to the BCMR with a DD Form 149.

Once you've chosen the forum to which you'll apply, you'll need to request a copy of your military records using an SF 180 Form. It's usually best not to file your claim until you've received the copy of your records. After filing, the review process may take anywhere from six to twelve months, and occasionally longer. If your discharge upgrade is successful, you'll then need to begin the VA claims process to start receiving the veterans' benefits that you've earned.

18.6 What Factors Will Make a Discharge Review More Likely to Result in Veterans Benefits Eligibility?

You and your lawyer will want to discuss the specific strategy you'll use to make the best possible discharge review case. The burden is on the veteran to prove that the facts presented by military records don't tell the whole story. Developing evidence to counter or give more detail to the facts found in your records will be crucial to building a successful argument and winning your veterans benefits.

However, the review boards do tend to reconsider the discharge decision under current standards. If your discharge was based on factors that would today make such a discharge illegal, such as alcoholism, personality disorders without a psychiatric diagnosis, "unsuitability," or even bed-wetting, it may be fairly easy to get your discharge upgraded.

In cases where the discharge basis was not so blatantly illegal, you and your lawyer will need to develop a defense that proves your good character. Evidence of your education and work achievements, community service history, letters of recommendation, or any documents that support your good character will go a long way in proving to the review board that you deserve to have your discharge upgraded.

19 Attorney Representation and Fee

Since the Civil War, the federal policy has been to discourage the veteran from using legal representation in claims made against the VA. This policy was accomplished by making it a federal crime for an attorney to charge a veteran more than $10 to represent them before the VA. This financial limitation prevented qualified lawyers from practicing in the field of veterans disability. Over time Congress began to lift some of these restrictions until finally, Congress passed the Veterans Benefits, Health Care, and Information Technology Act of 2006.

Under this act, an attorney may charge a reasonable fee for representation after a Notice of Disagreement has been filed, so long as the NOD was filed on or after June 20, 2007. The VA reviews fees for reasonableness and has stated that any fee of more than 1/3 of past-due benefits will be considered unreasonable.

As a result of the passage of the Appeals Modernization Act (AMA) in 2019, a veteran may hire an attorney or agent after an initial decision on a claim.

The net effect of this change in the law is that veterans in need of assistance can now hire a qualified attorney on a contingent fee basis. Under a contingent fee agreement, the veteran does not have to pay the lawyer money for their services upfront.

The attorney will get paid a percentage of the veteran's back due benefit only if the claim is successful. If the claim is unsuccessful, then the veteran owes the attorney nothing for their services. However, the veteran may still be responsible for out-of-pocket expenses, such as the cost of getting medical records or medical opinions from their doctors. This change in how veterans are able to seek qualified attorneys has dramatically increased the success rate of disability claims.

19.1 What to Look for in a VA Disability Lawyer

Not just any lawyer is allowed to represent veterans before the VA. An attorney must be "Accredited" by the Department of Veterans Affairs

before they are allowed to represent a Veteran on a VA disability claim. To get this accreditation, the attorney must complete specific legal education courses regarding the VA claims process and apply and be admitted to practice before the VA. An attorney that has met these criteria is allowed to hold themselves out as an "Accredited Veterans' Claims Attorney."

A good VA disability lawyer can be an incredibly useful ally when trying to obtain veterans' benefits. Even though the VA is required by law to provide you with free help on your claim, their definition of "help" can often be lacking. Most veterans say they don't really understand what is going on with their claims and where they are in the process at any given time.

An experienced VA disability lawyer can make sure that you understand the veterans' claims process and receive correct and complete information on your rights and responsibilities, and he or she can advocate on your behalf to push your claim forward.

19.2 What Do Good VA Disability Lawyers Need to Know?

It may seem obvious, but the number one thing a veterans' representative should know is VA law. This means having Title 38 of the US Code close by, which contains VA law and regulations, as well as knowing the Claims Adjudication Manual (M21-1).

Actually having this documentation is incredibly important. It is fairly common for the VA to assert something as "law" that is not, and the only way to know for sure is to compare what the VA has done to the Code as written. And for older cases, representatives should have access to VA regulations that applied at that time. No one wants to be denied veterans benefits because their lawyer was following the wrong code.

Good VA representatives should also at least understand basic medical concepts and terminology. Vets should ask potential reps if they have medical sourcebooks and dictionaries like The Merck Manual of Medical Information, Dorland's Medical Dictionary, The Physician's Desk Reference, and DSM-5 (for mental disorders).

19.3 Secure Your VA Disability Benefits through an Accredited Veterans Claim Attorney, Agent, or Representative

Most veterans don't even think about talking to a VA disability attorney at first. After all the VA is there to help them, right? In fact, there are even laws and rules in place that say the VA is required to help you with your claim. Why would you pay someone when they do it for you free of charge?

But there's a reason that veterans' attorneys exist, and after struggling with the frustrations of an overwhelmed VA claims process, many veterans understand this all too well. The VA faces immense challenges. It is hard-pressed to improve its services to veterans, specifically to speed up the process of decisions and appeals, end the backlog of claims, and perfect the accuracy and consistency of decisions.

After dealing with the VA for a while, veterans realize that despite the VA's responsibility to assist veterans with their claims, there are many ways that the VA can get around or even blatantly ignore its responsibilities. The right representative can be especially helpful when it comes to obtaining doctor's statements that are detailed enough for the VA to decide in your favor. A qualified advocate will be able to evaluate all medical evidence to ensure it meets the level of detail required by the VA.

The rules and restrictions that affect VA claims are notoriously difficult to interpret and understand. If you're even slightly unsure of the process for proving the many requirements touched upon in this guide, a veterans' advocate or lawyer can clarify everything that you need to know and take the burden off of your shoulders.

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The National Defense Authorization Act for Fiscal Year 2021 (NDAA) (H.R.6395), specifically:

SEC. 9109. Additional Diseases Associated with Exposure to Certain Herbicide Agents for which there Is a Presumption of Service Connection for Veterans Who Served in the Republic of Vietnam.
Section 1116(a)(2) of title 38, United States Code, is amended by adding at the end the following new subparagraphs:
``(I) Parkinsonism.
``(J) Bladder cancer.
``(K) Hypothyroidism.".

Statutes

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Disclaimer

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Marc Whitehead Biography

Marc Stanley Whitehead is the founding partner of Marc Whitehead & Associates, Attorneys at Law, LLP which was established in 1992 in Houston, Texas. Born in Memphis, Tennessee, Marc was raised in Normangee, Texas. He graduated in 1985 from Normangee High School as class valedictorian. Marc attended Texas A&M University where he graduated in 1989 with a Bachelor of Business Administration in Finance.

Marc attended the University Of Houston Law Center and received his law degree (J.D.) in 1992, graduating in the top quarter of his class. He was admitted to the State Bar of Texas in 1992. He is also admitted to practice before all U.S. Federal District Courts in Texas, the U.S. Court of Appeals-Fifth Circuit and the U.S. Court of Appeals for Veterans Claims.

Marc's areas of practice include veterans' disability compensation, Social Security disability, long-term disability insurance denials, ERISA litigation and insurance claims and pharmaceutical and medical device litigation.

He is also a former adjunct professor of Law at the University Of Houston Law Center teaching Civil Trial Advocacy. He has also been an instructor for the National Institute of Trial Advocacy teaching Civil Trial Advocacy and an instructor for the National Business Institute teaching Social Security Disability Law.

Marc is board certified in Personal Injury Trial Law by the Texas Board of Legal Specialization and in Social Security Disability Law by the National Board of Trial Advocacy.

Professional Activities & Associations

American Association for Justice-Leader Forum Member
AAJ Risperdal Litigation Group Member
AAJ Xarelto Litigation Group Member
AAJ Transvaginal Mess Litigation Group Member
AAJ Toxic, Environmental, and Pharmaceutical Torts Section

Houston Trial Lawyers Association
President (2009-10)
President Elect (2008-2009)
Secretary/Treasurer (2007-08)
Vice-President (1999-2007)
Texas Trial Lawyers Association
Board Member (1997-Present)
Board of Advocates (1999-2001)
HBA Social Security Section Chairman (2004-2005)

Memberships and Honors
Association of Civil Trial and Appellate Specialists
National Organization of Social Security Claims Representatives
College of the State Bar of Texas
Houston Bar Association
National Organization of Veterans Advocates
AV Rated by Martindale Hubble
10.0 AVVO Rating
Rated by Super Lawyers
Top 100 Trial Lawyers in Texas by National Trial Lawyers Association

Books and Publications

Published Books:

- The Disabled Dentist's Guide: How to Win Against Wrongful Disability Insurance Denials
- The Complete Guide to Winning Disability Claims
- The Disabled Doctor's Guide: Fight Your Disability Insurance Denial and Win the Benefits You Have Paid For!

- The Social Security Disability Puzzle: How to Fit the Pieces Together and Win Your Claim;
- Disability Insurance Policies: How to Unravel the Mystery and Prove Your Claim
- Veterans Disability Claims: Strategies for a Winning Campaign
- Denied Disability by Unum: How to Fight Back and Prove Your Claim
- Denied Disability by Aetna: How to Fight Back and Prove Your Claim
- Denied Disability by Liberty Mutual: Your Battle Plan for Winning Disability Insurance Benefits
- Car & Truck Crashes: 10 Secrets Victims Should Know to Protect Their Rights
- Transvaginal Mesh Lawsuits: What You Need to Know If You Have Suffered Harm from Vaginal Mesh Implants
- The Fall of Testosterone: How a Vaunted "Low T" Therapy Has Backfired and Put Millions of Men at Risk for Heart Problems and Stroke
- The Xarelto Disaster: How Johnson & Johnson Failed to Warn Consumers of Deadly Internal Bleeding Risks
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- Viagra: The Unvarnished Truth – The Link between the Deadly Skin Cancer Melanoma and Viagra
- The Life Insurance Claims Kit: What To Do If Your Life Insurance Benefits Are Denied
- Published Articles
- Tort Reform As It Relates to Strict Products Liability
- A Lawyer's Guide for Determining Eligibility of Social Security Disability Claimants
- Nuts & Bolts of Social Security Disability Law
- The Five Step Sequential Evaluation Process Used in Determining Disability For Social Security Claimants