

Introduction to Veterans' Benefits Law

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Most Common Claims

Compensation

- Presumptive service connection
- Direct service connection
- Secondary service connection
- Increased rating including total disability
- Reopen previously denied claim with new and material evidence

Pension

Veterans Who Qualify

- Discharged under conditions other than dishonorable. 38 U.S. C. sec 101(2). (Includes Coast Guard)
- Disease or injury incurred or aggravated by service.
- Disability is not a result of wilful misconduct.

Elements of a compensation claim

1. Current disability
2. Evidence of precipitating disease or injury in the service
3. Nexus evidence linking current disability to in-service disease, injury or event.

Current Disability

Currently diagnosed chronic condition,

examples:

Residuals from in service injury

or

condition that has developed over time, i.e. cancer from Agent Orange exposure or PTSD from combat.

Presumptions and favorable treatment

1. Presumption of Soundness - Veteran will be presumed to have been in good health when they entered service absent clear evidence to the contrary, 38 USC 1111, 38 C.F.R. sec. 3.304(b); or
2. Presumption of Aggravation - If a veteran is treated in service for a condition that predated service, the condition will be presumed to be aggravated unless there is clear and convincing evidence to the contrary, 38 USC 1153, 38 CFR 3.306.

Disease or injury occurred in the service.

2 ways to establish:

Presumption

Notation in service records

Nexus, 3 Ways to Establish

- Medical Opinion and sometimes lay evidence
- By presumption for certain conditions and symptoms within 1 year of discharge
- "Chronicity and continuity of symptomatology"

Secondary Service Connection

Medical condition caused or aggravated by service connected condition.

3 Elements:

Existing service-connected condition

Current, second condition

Medical opinion stating it is at least as likely as not the second condition was caused or aggravated by the service connected condition.

Reopen final, previously denied
CLAIMS with "New & Material
evidence".38 C.F.R. 3.156(a)

Elements: evidence must be
New - not previously considered, and

Material - evidence that, by itself, raises
a reasonable possibility of
substantiating the claim.

INITIAL RATING-

Compensation for illness or condition based on impact on the average veteran's earning capacity. Higher degree of disability - higher rating.

COMPENSABLE

RATINGS range from

LOWEST 10% (\$123) TO

HIGHEST 100% (\$2,673)

38 U.S.C. 1155

<http://www.vba.va.gov/bln/21/rates/comp01.htm>

Claim for Increased Rating

If a veteran notifies VA that the condition has Veterans automatically entitled to a medical exam if they notify VA that service connected disabilities have worsened.

Increased rating is retroactive to the date of the request for higher rating unless made within one year of initial decision, then can be retroactive to date of original claim if evidence supports higher initial rating.

Total Disability Based on Individual Unemployability (TDIU)

Equivalent of 100% rating.

Test:

1. Veteran's service connected disabilities satisfy percentage requirements?
2. Is the veteran prevented from securing or following a "substantial, gainful occupation" because of service connected disabilities?

38 C.F.R. sec. 4.16(a)

Pension Eligibility Requirements

1. Veteran's discharged under other than dishonorable conditions;
2. 90 days of consecutive service, one day of which was during a time of war;
3. need based low income, limited net worth;
4. Total disability at the time of application;
5. Disability is not due to wilful misconduct.

Also, veterans 65 and older may qualify. 38 U.S.C. sec. 1514.

COMPENSATION v. PENSION

Compensation is for service connected conditions. Income does not matter and there are no offsets.

Pension is for low income, totally disabled veterans whose conditions are not service connected.

Veterans can't get both.

Survivors Benefits

Dependents Indemnity Compensation (DIC)

Accrued Benefits

Surviving spouse or dependent children of a deceased veteran entitled to DIC if:

- The veteran's primary or contributory cause of death was a condition that was service connected, or at a minimum, met all three criteria for entitlement to service connected compensation; or
- The veteran had a 100% service connected disability for ten years prior to death.

DIC Claimants

File claim within one year of death to get maximum benefits but can file at any time.

Must have been married to veteran at least 1 year prior to death.

Accrued Benefits

Any unpaid benefits veteran was entitled to at time of death may go to spouse or eligible survivors.

Limitations:

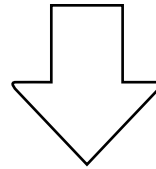
- Award must be based on evidence in file at time of veteran's death.
- Claim must be filed within 1 year of veteran's death.

38 U.S.C. sec. 512(c); 38 C.F.R. sec. 3.1000(c)

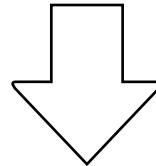
Requirements for Attorney Representation of Veterans

Claim Processing Procedure

Claim Filed



RO Decision



Notice of Disagreement

(Representation Begins Here)

Attorney Accreditation

After June 22, 2008, all attorneys must be accredited *before* filing 21-22a and/or assisting veterans in the preparation, presentation, and prosecution of claims for benefits.

Apply for accreditation using VA Form 21a. www.va.gov/ogc/accreditation.asp

Attorneys in good standing with a State bar are not required to take accreditation exam.

Accreditation determinations are typically made within 30 days.

3 CLE hours are required within the first year of accreditation and every 2 years following. Annually submit certification of good standing for every jurisdiction attorney is admitted to.

Representation for a fee

1. All cases in which the notice of disagreement was filed after June 20, 2007. 38 U.S.C. sec. 5904.
2. In cases in which a notice of disagreement was filed before June 20, 2007, an attorney can represent the veteran for a fee:
 - Only if representation commenced within one year after the veteran received a final adverse board decision, or
 - The attorney represented the veteran at the Court of Appeals for Veterans Claims (CAVC).

VA will withhold attorney's fees

1. Accredited at time of fee award.
 2. Submitted form 21-22a
 3. Submitted a fee agreement within 30 days of execution to RO and office of General Counsel.
 4. Fees are contingent and limited to 20% or less.
- 38 U.S.C. sec. 5904(d).

Reasonable fee

Fees: contingent, hourly or fixed.

Fee agreements subject to VA review for reasonableness. 38 U.S.C. sesc. 5904(c)(2).

20% contingent fee presumed reasonable.