Are you getting the VA benefits you deserve? **In exchange for your service, our country has promised you certain rights. This book is a guide for understanding the VA claim process** for service-connected disability benefits. Full **of tips, information, and a glossary of terms and acronyms, you will be fully armed with the tools you need to start this often-confusing process.**

"This book has been a wonderful resource for veterans, and you provide a great service to our nation and its veterans when you provide these free copies."
– Bill Dozier, MSGT USMC (RET)

"[This book] is a magnificent tool that every veteran should have… It is a road map to guide veterans through the maze and sometimes confusing VA claims process for service-related disability benefits."
– Pierre Saint-Fleur, PhD, DBA
Vet Center Director
Fresno Vet Center

ISBN: 978-0-9837816-9-1

$17.99

The Road to VA Compensation Benefits

BY MATTHEW HILL

WITH BRENDA DUPLANTIS

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Testimonials

We feature a link to the book on two of the national military organizations I work with and we have provided free copies to our members at our annual reunions. This book has been a wonderful resource for veterans, and you provide a great service to our nation and its veterans when you provide these free copies. Trying to navigate the VA system without professional help and information is difficult, frustrating and generally less successful. Please keep up this very, very important work.

Bill Dozier, MSGT USMC (RET)
Master Mason, Prince Hall Shriner
Secretary, Military Friends of Distinction
Member, Black Marine Reunion

I have read *The Road to VA Compensation Benefits* by Matthew Hill. It is a magnificent tool that every veteran should have. It is more than a book. It is a road map to guide veterans through the maze and sometimes confusing VA claim process for service related disability benefits. All of my clients who have had the opportunity of reading it have found it to be very helpful. It is a must read by all veterans, especially by those veterans who are dealing with disabilities they incurred during their time of service. Many thanks to Hill and Ponton for taking the time to produce this road map for those who have put their lives on the line for our freedom.

Pierre Saint-Fleur, PhD, DBA
Vet Center Director, Fresno Vet Center

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Thank you for sending *The Road to VA Compensation Benefits* by Matthew Hill. I found it informative and helpful. I tell veterans to contact Hill and Ponton.

Michael Magyar
E-4 U.S. Army

I started my original claim three years ago in January. I had no idea of the amount of supportive materials needed and the process of submitting all the materials. If I would have known about your book and website (and the important thing – read and learn) it would have certainly got me off to a much better start and understanding of the system. I have had three C&P exams, and with no knowledge of preparation for the first one (heart stint), though I did get a rating, it could have been higher if I would how to prepare. So by my third C&P exam for PTSD, I was much more prepared and as well discovered your book and website. As the exam began it was like going down a check list of the questions that were being asked and I had appropriate answers for each in detail. It resulted in a 100% rating, that pleased me beyond measure. All this to say, so many Veterans could help themselves if they took time to study and prepare for their claims and C&P exams. My initial thoughts were that once you submitted your papers and filed the claim, that was pretty much it. So from my experience, I preach to Vets filing claims

how important documentation and preparation are to get things right at the beginning, saving a lot headaches and lost time.

Ken Arbuckle

Special Thanks to

Sara Kathryn Hill

Important Disclaimer

This book does not offer legal advice. We provide background information about the VA claims process and what you can expect. If you have already retained an attorney or agent for your VA claim, please discuss the specifics of your case with them.

This book provides information about the VA claims process broken down into simple terms. For more in depth information about specific VA rules and regulations, please visit the blog on our website www.hillandponton.com.

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Introduction

Compensation benefits for our disabled veterans and their families have always received great support from the American public. This book walks through the process of filing a disability claim with the U.S. Department of Veterans' Affairs (VA).

There are many types of benefits for veterans and their family members, yet this book focuses solely on claims for service-connected disability compensation handled by the Veterans Benefits Administration.

There are approximately 3.4 million veterans receiving VA compensation benefits. These benefits are intended to compensate for a veteran's average impairment in earning capacity caused by the disability. In other words, the less a veteran can work due to a service-connected disability, the higher the veteran's rating should be. There are no income or asset limitations for entitlement to these benefits.

Unlike disability benefits paid by the Social Security Administration, total disability or entitlement to a 100% disability evaluation is not required for a veteran to receive service-connected benefits. Moreover, the establishment of service connection, even at a 0% evaluation, may entitle a veteran to many noncompensatory benefits. These may include preference in federal/state employment, job retention rights, and basic entitlement to VA health care. These benefits are not considered taxable income and are not taxed by federal or state governments.

One of the biggest challenges a veteran faces during the claims process is the long wait. The average wait time for a VA disability claim to be adjudicated is two to four years. Although there is very little that can be done to speed up this process, we hope to empower you with the knowledge you need to navigate the journey to service-connected compensation.

Who Can File a Claim for Service Connected Disability Benefits?

As discussed before, this book focuses on a veteran's service-connected disability claim. While some veterans' survivors are also eligible to file a claim, we will concentrate on an individual veteran's disability compensation claim. There are multiple requirements to file a claim for service-connected disability compensation.

First, you have to be a veteran. A veteran is a person that performed active duty service in the military, naval, or air services. Service in the various military academies or attendance in a military preparatory school may also qualify.

A veteran must show evidence of a current disability.

Second, your discharge or separation from service must be under conditions other than dishonorable. There is an exception for veterans who were discharged for committing certain offenses but who were insane at the time of the offense. In these circumstances, the issue of insanity is determined by the VA.

Third, you must have a current disabling condition that can be linked to a disease, injury, or event in service. Specifically, the VA requires evidence that you have a disability on the date you

file the claim for benefits, or at another point during the length of your claim.

There has to be medical evidence of a current disability in order to meet this requirement. The evidence cannot be from a past disability that has ended. It is necessary to submit competent medical evidence that shows that a condition presently exists or existed at some point since you filed the claim.

Furthermore, the in-service disease, event, or injury must have occurred “in the line of duty.” This includes incidents that occurred during the period beginning with induction and ending with discharge from military service. In fact, the Courts have stated that for the purposes of service-connected compensation, a service member’s day never ends. In that case, “in the line of duty” includes events that occur while you are on leave or off base as well. However, there is a caveat: service connection related to an in-service event may be granted only when the disability was not the result of the veteran’s willful misconduct or the result of alcohol or drug abuse. Alcohol and drug abuse will be discussed later in greater detail.

Evidence Needed to Support Direct Service Connection

When filing a claim for service connection, you must provide the following to the VA:

(1) Evidence of your current disability;
(2) Evidence of your in-service disease, injury or event; and
(3) a medical statement that it is “as likely as not” that your current disability is related to service (“nexus” statement).

Provide evidence of your current diagnosis through your VA medical facility or private medical records. If you receive medical care at a VA medical facility, you may obtain copies of those medical records by submitting a VA Form 10-5345 directly to the Release of Information officer at the VA medical facility.

A statement describing your current symptoms is further evidence of your condition.

The key is to provide as much detail as possible regarding (1) the severity of the symptom, (2) how often you experience the symptom, and (3) for how long a period of time you have experienced the symptom.

Furthermore, evidence of your in-service event, disease, or injury may include service records, service medical records, and buddy statements. Buddy statements are sworn statements that can

describe an event in service. In some circumstances, they may be sufficient to support your claim.

For example, consider a veteran who claims service connection for Parkinson's Disease due to exposure to TCE in service. None of his service records document his TCE exposure. Yet, his service buddy writes a statement about how they cleaned weapons with a solvent that included TCE. This statement may help prove the veteran's in-service event of TCE exposure.

Finally, to prove your claim for service connection, you need a nexus statement that links your current disability to the in-service event, injury or disease. In general, this statement must be made by a medical professional who concludes that it is "as likely as not" (50/50) that your current disability is related to service. The written medical opinion must also provide a rationale for the

conclusion. Without a reasoned analysis, the VA will dismiss the medical opinion as unfounded.

Importantly, the VA is required by law to make reasonable efforts to assist you in obtaining evidence necessary to substantiate your claim. This evidence may include, for example, service records, service medical records, VA medical records, and private medical records.

If you would like the VA to obtain records for you, you must adequately identify the records and authorize the VA to obtain them. In certain cases, VA must also provide a physical exam. These are called Compensation and Pension examinations.

Compensation and Pension Examinations

The VA's duty to assist also includes providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim. A medical examination or opinion is considered necessary if the evidence of record contains competent evidence that the veteran has a current disability and indicates that the disability may be associated with the veteran's service.

The Compensation and Pension (C&P) examination department is part of the Veterans Health Administration. The VA also contracts outside providers to perform these examinations. A veteran who is scheduled for a C&P examination must appear at that examination. When a veteran fails to report for a C&P exam without good cause, the VA must decide the claim based on the evidence of record and can deny the claim. Please note that this

exam is practically never performed by the veteran's treating doctor, even if the exam is conducted at the same facility.

Here are some important things for a veteran to consider about the exam:

- Arrive on time. Expect to wait, but being on time is important.

- Be polite. Give the examiner the benefit of the doubt that he is there to help you.

- Be honest and forthright. When the examiner asks you how you are, this is the time your exam really starts. Tell the examiner exactly how you are. This is not a polite question that you would ask someone when first meeting them. This is the first question of the exam. Most veterans are

conditioned to not complain. If you have trouble stating how you are, it's safe to say, "I've had better days." After all, if you were "okay", you wouldn't be at a C&P exam.

- Bring a written list of symptoms (even embarrassing symptoms) to help refresh your memory during the exam. What veterans sometimes feel are unimportant details could very well be the key to success in the claim.

- Take a witness to the examination. A witness can be a spouse, adult child, or close friend. A witness is important because it is very easy for veterans to forget important details about the exam, let alone deal with the normal stress that veterans experience when being evaluated by the VA's C&P examiners. If possible, the veteran should take the witness into the exam room with them; however, the VA frequently denies this request. If the request to take a witness into the examination is denied, it is important that the veteran proceed with the exam. Failure to cooperate with a C&P examination can result in denial of the claim.

- If one of the veteran's treating medical providers has provided a favorable opinion in the matter, it does not hurt for the veteran to give a copy of the favorable opinion to the C&P examiner for consideration.

- Do not complain about the VA system in general. A C&P exam is not the time to air grievances (For example, how long you waited, how long you've had this claim in, what the nurse said to you when you called).

- Ask for the examiner's business card, so you can ensure that the person doing the examination was actually the one who wrote and signed the final report.

Other Avenues to Service Connection

Above we discussed establishing service connection for conditions that are related to service in a direct way (occurring in

service). Yet, there are several other ways a veteran may establish that a disability is service connected. Specifically, a veteran may establish service connection for a disability that:

(1) was caused or aggravated by a service connected condition—this is referred to as secondary service connection;

(2) existed prior to service and was aggravated or worsened during service—this is referred to as service connection by aggravation;

Chronic conditions may change from mild to severe at times, but they never completely go away. They are permanent. The VA's list of chronic conditions includes arthritis, diabetes mellitus, schizophrenia, lupus, and multiple sclerosis.

(3) did not start in service, but is presumed to be connected to service based on a VA regulation—this is referred to as presumptive service connection. Presumptive service connection means that the veteran does not have to prove a connection between the condition and service to receive compensation.

Secondary Service Connection

The VA may grant service connection if the evidence establishes that it is as likely as not that the veteran's otherwise non-service-connected disability was caused or aggravated by an already service-connected disability.

For example, consider a veteran who is service connected for an ankle injury and develops a limp that causes back problems. This veteran can receive secondary service connection for the back problem if the medical evidence establishes that the back problem is as likely as not caused by the gait abnormality.

Service Connection by Aggravation

Even if a veteran has a condition that existed before service, that disability may still be deemed service-connected if it is aggravated during the veteran's service. If a pre-existing condition worsens during service, the condition will be presumed to have been aggravated by service. For example, consider a veteran who suffered from ulcers prior to his enlistment. If his ulcers worsen during service, then he is entitled to compensation for the aggravation (worsening) of his ulcers.

Presumptive Service Connection for Conditions Related to Agent Orange Exposure

Certain diseases are presumed service-connected for veterans who were exposed to Agent Orange. There are two parts to the VA's Agent Orange presumption. First, VA will presume that any veteran who stepped on the landmass of the Republic of Vietnam

Veterans who served in Vietnam were presumed to have been exposed to Agent Orange.

or served on the inland waterways was exposed to Agent Orange. Second, once the Agent Orange exposure is conceded, if the veteran develops any diseases on the list of those presumed to be caused by Agent Orange, that disease will be presumed to be service-connected. The VA maintains a list of diseases that are presumptive. Currently those diseases are:

AL amyloidosis
Chloracne or other acneform disease consistent with chloracne
Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)
Hodgkin's disease
Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease

[including coronary spasm] and coronary bypass surgery; and stable, unstable and Prinzmetal's angina)

All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia)

Multiple myeloma

Non-Hodgkin's lymphoma

Parkinson's disease

Early-onset peripheral neuropathy

Porphyria cutanea tarda

Prostate cancer

Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)

Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

Note 1: The term "soft-tissue sarcoma" includes the following:

Adult fibrosarcoma

Dermatofibrosarcoma protuberans

Malignant fibrous histiocytoma

Liposarcoma

Leiomyosarcoma

Epithelioid leiomyosarcoma (malignant leiomyoblastoma)

Rhabdomyosarcoma

Ectomesenchymoma

Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
Proliferating (systemic) angioendotheliomatosis
Malignant glomus tumor
Malignant hemangiopericytoma
Synovial sarcoma (malignant synovioma)
Malignant giant cell tumor of tendon sheath
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
Malignant mesenchymoma
Malignant granular cell tumor
Alveolar soft part sarcoma
Epithelioid sarcoma
Clear cell sarcoma of tendons and aponeuroses
Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma

The VA is constantly updating this list, so it is important to check with the regulation—38 CFR § 3.309 (e)—itself or hillandponton.com.

Service connection for Agent Orange Exposure Outside of Vietnam

Even if a veteran did not serve in Vietnam, he can still get service compensation for a disease caused by Agent Orange. The VA concedes that service in the Navy or Coast Guard aboard a ship within the territorial waters of Vietnam constitutes service in Vietnam for exposure purposes. The VA acknowledges that the herbicide was used in other locations,

such as the DMZ in Korea and the perimeter of USAF bases in Thailand, during the Vietnam War. If the veteran did not serve in an area where the VA concedes that Agent Orange was used,

then the veteran has to prove exposure through direct service connection. Hill & Ponton has been successful with these kinds of cases in Subic Bay, but the burden to prove them is very high.

If the veteran was exposed to Agent Orange but did not develop a disease on the presumptive list, the veteran could still prove his case through direct service connection. The veteran will need a strong independent medical exam establishing that the condition was caused by the exposure. Hill & Ponton has been successful in these types of situations, including cases such as kidney disease, hypertension, non-presumptive leukemias, and Parkinson-like diseases.

Presumptive Service Connection for Chronic Conditions

Additionally, presumptive service connection is available for diseases that are recognized by the VA as chronic. Chronic conditions may change from mild to severe at times, but they never completely go away. The VA's list of chronic—meaning permanent—diseases includes arthritis, diabetes mellitus, schizophrenia, lupus, and multiple sclerosis (MS), among others. The entire list can be found at 38 CFR § 3.309(a).

Chronic conditions can be granted presumptive service connection even if the condition never manifests in service. It just has to become active during the presumptive period.

These chronic conditions are granted presumptive service connection only if they arose within an applicable time limit (presumptive period) after service. This is true even if the condition did not arise specifically during service. The presumptive period for these conditions is generally one year following service. There are a few exceptions to this presumptive period, such as MS, which has a seven-year presumptive period.

For example, consider a veteran who is diagnosed with lupus within one year of discharge, the presumptive period for lupus.

Following his diagnosis, he suffers no symptoms, receives no treatment, and does not file a claim. If, years later, his lupus comes out of remission and he files a claim, the lupus will be service connected because it began during the appropriate presumptive period.

Consider another veteran who experiences ocular disturbances and lower extremity numbness during the first seven years after his discharge. No official diagnosis is made. Finally, ten years after service, testing indicates a diagnosis of MS. If a physician is able to provide a medical opinion that the symptoms the veteran experienced within those first seven years (the presumptive period for MS) were in fact the early manifestations of MS, then his MS should be service connected.

Presumptive Service Connection for Conditions Related to Persian Gulf Service

The VA also offers presumptive service connection for certain conditions related to service in the Persian Gulf.

Veterans who served in Southwest Asia from August 1990 through the present, in operations such as Desert Shield, Desert Storm, Iraqi Freedom, and New Dawn, may qualify for presumptive service connection for certain illnesses.

These veterans may have been exposed to a wide range of environmental hazards that can contribute to the development of

The VA recognizes that veterans who served in Southwest Asia were most likely exposed to environmental hazards such as smoke from oil well fires, solvent and fuel fumes, and contaminated food and water.

a variety of illnesses. These environmental exposures may include smoke from oil well fires, solvent and fuel fumes, pesticides, contaminated food and water, and air pollutants.

The VA recognizes that these exposures may lead to two medical outcomes. One outcome is referred to as an "undiagnosed illness." This means that a physician cannot diagnose the condition.

The other outcome is described as a "diagnosed medically unexplained chronic multi-symptom illness." This means that a physician can diagnose the illness, but the cause is not known. Examples of a chronic multi-symptom illness include chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome.

Signs and symptoms of these undiagnosed or unexplained illnesses include fatigue, skin rash, headaches, muscle pain, joint pain, indigestion, insomnia, dizziness, respiratory disorders, abnormal weight loss, impaired concentration, forgetfulness, and menstrual disorders.

These illnesses do not need to have started during service to be service connected. In fact, they can be compensated if they begin any time prior to December 31, 2016 (the current deadline stated in the VA regulations).

In addition to the illnesses outlined above, the VA presumes service connection for nine infectious diseases that are prevalent in Southwest Asia. These diseases are known to cause adverse long-term health effects.

To qualify for the infectious disease presumption, a veteran must have served in Southwest Asia during the Persian Gulf War, or must have served on or after September 19, 2001 in Afghanistan.

The qualifying diseases are brucellosis, campylobacter jejuni, coxiella burnetii (Q fever), malaria, mycobacterium tuberculosis, nontyphoid salmonella, shigella, visceral leishmaniasis, and West Nile Virus. Each disease has potential long-term effects. For instance, brucellosis is potentially associated with arthritis, deafness, optic neuritis, sensorineural hearing loss, and Guillain-Barre syndrome. Q fever is potentially associated with chronic hepatitis, osteomyelitis, and post Q fever chronic fatigue syndrome. Moreover, West Nile virus can manifest as variable physical, functional, or cognitive disabilities.

Total Disability Rating Based on Individual Unemployability (TDIU or IU)

A veteran will receive compensation at the 100% disability rating level if his/her service-connected disabilities prevent the veteran from being able to get a job and keep the job. A Total Disability Rating Based on Individual Unemployability (TDIU or IU) is possible even if the veteran's service-connected condition does not equal a 100% disability rating.

Obtaining a 100% schedular rating can be difficult if you are trying to combine multiple disabilities to do so. The alternative IU route can make it easier to gain those same benefits. If you have disabilities related to service that prevent you from holding a job, then you should be eligible for IU.

Unemployability is the VA's way of admitting that, in spite of the assigned ratings that do not combine to a 100% rating, some veterans still cannot work due to their disabilities. The VA determines a veteran's entitlement to IU in the context of the individual veteran's capabilities, regardless of whether an average person would be rendered unemployable under the same circumstances.

Here are some common questions about IU, so you know what the VA is looking for when deciding these claims.

1. How do I know if I'm eligible for IU?

What constitutes eligibility for IU? VA regulations provide that if a veteran cannot work (cannot engage in substantially gainful employment) due to service-connected conditions, he or she is

unemployable. “Gainful employment” is defined as the ability to hold a job which pays more than or equal to the poverty level set by the federal government.

The primary consideration in determining whether or not a veteran is entitled to IU is whether his or her service-connected disabilities prevent him or her from obtaining and maintaining substantially gainful employment. In other words, are you able to find a job that pays enough to put your earnings over the poverty level? And are you capable of keeping such a job if you are able to find one? If your service-connected physical or mental disabilities impair your ability to find and keep a job, you may be entitled to IU.

2. What are the scheduler requirements for IU?

When the VA is evaluating a claim for IU, the first thing they will look at is whether the veteran meets the schedular requirements for IU. These requirements are as follows:

- Veterans with only one service-connected condition must be rated greater than or equal to 60% for that condition;

- Veterans with two or more service-connected conditions must have at least one condition rated greater than or equal to 40%, with a combined rating greater than or equal to 70%.

For the purposes of the IU regulation, the following combinations may be considered a “single disability”:

- Disabilities of one or both upper extremities, or lower extremities, including the bilateral factor

- Disabilities resulting from a common etiology or single accident

- Disabilities affecting a single body system (i.e., orthopedic, respiratory)

- Multiple injuries incurred in action

- Multiple disabilities incurred as a POW

For example: A veteran suffers from several service connected heart disabilities such as diabetes and diabetic retinopathy and neuropathy. These disabilities arise from a common etiology (the veteran's diabetes mellitus). Therefore, according to regulations, the rating for these disabilities need only combine to a 60% evaluation in order for the veteran to qualify for TDIU under 4.16(a).

As another example, a veteran has been service connected for his Lumbar Spine condition at 40%, his left knee at 30%, and his PTSD condition at 30%. Following the combined ratings formula used by the VA, the veteran's total percentage is 70%. Because the veteran has one service connected disability rated at 40%, and because his total rating is 70%, the veteran meets the schedular requirements for IU.

There are a few important things to remember about the schedular requirements for IU. First, when making a determination on IU, the VA can only consider disabilities that

have already been service connected. If a veteran is service connected for his knees and his back, but in reality could not work due to his PTSD-related anger outbursts (which have not been service connected but are part of a pending claim), the VA will only consider the knees and the back when deciding if the veteran can work or not. Until service connection is granted for PTSD (if at all), the veteran must prove that he cannot work due to his knees and back condition alone, as opposed to the PTSD.

Second, and on a related note, the VA cannot consider non-service connected disabilities when making a determination on IU. For example, if a veteran has a 70% service-connected rating for PTSD and a non-service connected back disability, the VA must review the veteran's ability to work solely as it pertains to the service-connected PTSD. Even if the veteran is receiving worker's compensation or Social Security Disability for the back injury, which would indicate that another governmental organization recognized that the veteran could not work due to his back, the VA cannot use this information against the veteran. After all, the veteran may not be able to work for more than one reason.

Also note that the age of the veteran is not a factor when qualifying for IU. This means the VA cannot say that, because the veteran is a certain age, the veteran should not be able to work due to his or her age alone.

3. What if I don't meet the scheduler requirements for IU?

If you do not meet the 60%/single disability or 70% combined/40% single disability requirement, it may still be possible for you to be awarded IU. VA regulation 38 C.F.R. § 4.16(b) recognizes that some veterans will be unable to work because of their service-connected disabilities, but may not meet the schedular requirements. In such cases, the claim is submitted to the Director of the Compensation and Pension Service for extraschedular consideration. The regional office is required to prepare a "full statement as to the veteran's service connected disabilities, employment history, educational and vocational attainment and all other factors bearing on the issue." As you can imagine, this is not a quick process, and receiving an award of IU based on extraschedular consideration can take a long time. Also, note that it is very rare for the Regional Office to refer a claim for IU for extraschedular consideration without a specific request from the veteran for consideration under 38 C.F.R. § 4.16(b). If you believe your claim warrants such consideration, it is best to make the request sooner rather than later.

The standard for awarding IU on an extraschedular basis is that the case must present an exceptional or unusual disability picture with factors such as marked interference with employment or frequent periods of hospitalization as to render impractical the application of the regular schedular standards. Because these cases are granted on an individual basis, it is a good idea to present evidence that shows why the veteran's particular circumstances render him or her unable to work, such as work background, education background, and periods of hospitalization. Again, note that these are very difficult cases to

win, but not impossible. The best thing you can do is gather as much evidence as possible, including an independent medical opinion, which shows that your unique circumstances render you unable to work due to marked interference with employment or frequent periods of hospitalization.

4. How do I apply for IU?

Interestingly enough, you may have already applied for IU without knowing it. A claim for entitlement to IU is not always a separate, free-standing claim. A veteran can file VA Form 21-8940, Application for Increased Compensation Based on Unemployability, at any time to establish a claim for IU. However, if the issue of unemployability is properly raised by the record in conjunction with a claim for service connection or a claim for increased rating, then the VA should consider the issue as part and parcel of the underlying claim, whether or not the veteran has specifically requested IU. But note, it is very rare for the VA to adjudicate the issue of IU without the veteran raising the claim first, and the VA Regional Office will not grant IU without the veteran submitting VA Form 8940. So, if you think you are eligible for IU, it is better to initiate the claim yourself by submitting the required form.

VA Form 8940 is a rather complex and confusing form. Section I of the form deals with Disability and Medical Treatment. In this section, the veteran is asked to answer what disability keeps him or her from working. Remember, the veteran's service-connected disabilities must be the primary reason he or she is unable to

work. If there are any non-service connected disabilities involved, then the veteran should get a statement from a doctor as to why the non-service connected disabilities are not a factor in the veteran being unable to work. There is also a place on the form for the veteran to provide the name and address of the physician or hospital that is treating him or her for the service connected disabilities. It is very important to state the frequency of seeing that doctor (monthly, weekly, every other week, etc.) rather than specific dates for the medical provider to whom the veteran goes for treatment relating to his or her particular disabilities.

Section II of the form asks for all employment history for the five-year period preceding the date on which the veteran claims to have become too disabled to work. So, for example, if a veteran

stopped working in 2010, work history from 2005-2010 would need to be provided, along with the names and addresses of the employers, what type of work was performed, how many hours per week, and the dates of employment.

Finally, Section III addresses schooling and other types of training. In this section the veteran is asked whether he or she acquired any other education or training before becoming too disabled to work, or had any education or training since becoming too disabled to work, and specifically, what kind of education or training it was. In this section, and every other section of the form, accurate and specific information supplied by the veteran goes a long way in helping the VA make a timely decision for IU.

It is important to understand that IU is not a freestanding claim. Rather, it is part of the rating process. For example, the VA grants a veteran a 70% rating for PTSD but does not adjudicate the issue of IU. The veteran may think, “Okay, now I have a 70% rating so I can apply for IU.” However, what he should do is file a Notice of Disagreement to the decision granting the 70% rating for failure to adjudicate the issue of IU. This is important because of the way the VA determines the effective date for IU.

The effective date for IU is something that the VA often gets wrong. In simplest terms, to determine the effective date for IU, you must first figure out the date on which the VA first received evidence of the veteran’s unemployability. This evidence could be a letter from a doctor or a notation in medical records, stating that the veteran is unable to work due to his or her service-connected disability. Second, you must determine the status of

the veteran's claims, if any, at the time the VA received this evidence.

There are three main ways to answer the second question. The first possibility is that the VA first received evidence of the veteran's unemployability when he or she filed a claim for service connection or when the VA was considering whether to grant service connection. If the VA eventually grants service connection for the veteran's disability and awards IU, the effective date for the IU would be the date the VA received the claim for service connection or the date the veteran first became unemployable due to his or her service connected disabilities, whichever is later.

Second, if the VA first received evidence of the veteran's unemployability after the VA granted service connection, but before the VA made a final decision on the rating for the disability, the effective date for an award of IU would be the date the VA received the claim for service connection or the date the veteran first became unemployable due to his or her service connected disabilities−whichever is later.

And finally, if the VA first received evidence of the veteran's unemployability when he or she filed a claim for an increased disability rating, or while a claim for an increased disability rating is pending, the effective date for an award of IU would be the date the VA received the claim for an increase in disability rating or the date the veteran first became unemployable due to his or her service-connected disability rating −whichever is later.

5. Am I automatically disqualified from consideration for IU because I have a job?

No. In fact, unemployability does not always mean that a veteran is not working. The key, however, is that all income earned from employment must be at or below the poverty level, or from a job that is considered to be “sheltered”. These types of marginal employment are not considered as substantially gainful occupation. Marginal employment is considered as “earned annual income that does not exceed the poverty threshold for one person as established by the US Department of Commerce, Bureau of the Census.” For 2014, the poverty level for which a veteran must be working under was $11,670. Alternatively, a job in a “sheltered environment” (such as a family business, sheltered workshop, or a position tailored to the specific needs of the veteran) is considered to be marginal employment, even if that job provides an income over the current poverty threshold.

Sheltered employment means that you are given concessions due to your service-connected disabilities that would not normally be given to other employees. As an example, consider a veteran with PTSD who works for a family friend’s business. The family friend provides the veteran with an office and duties that afford limited interaction with other people. The veteran’s salary pays his bills and is over the current poverty threshold. Because the veteran’s job has been tailored to his individual needs (limited interaction with other people), his job is considered to be sheltered, and therefore falls under “marginal employment.” The VA cannot consider this job as substantially gainful employment and must not use it against the veteran when determining IU.

The VA often overlooks the requirement that a veteran must be able to maintain substantially gainful employment. For instance, a veteran may be able to hold a job for a few months but then

loses the job due to his service-connected disabilities. He then may be able to get another job for a few months before losing that one, and the cycle repeats. T veteran is able to get jobs in such cases, but he is not maintaining employment. This means he is eligible for IU.

So, what does this mean on a practical level? First, it means that VA law allows for some veterans who work to also receive IU benefits, depending on the circumstances. Second, it means that disabled veterans who are working should not automatically assume that they are ineligible for IU simply because they work.

6. What evidence do I need to support my claim for IU?

To establish entitlement for IU benefits, a veteran must obtain evidence of unemployment due to a service-connected condition and support documentation from a medical professional. Evidence that may assist in proving your case could be letters from former co-workers or employers, medical evidence, or evidence from a vocational expert.

The VA also has to consider a veteran's educational and work history when determining if the veteran is entitled to IU. The VA must look at the veteran's prior education and training, as well as how his current disabilities prevent him from working in the field in which he has been trained. If the veteran has participated in a VA vocational rehabilitation program, and still cannot work due to the service-connected disabilities, the VA must consider this as positive evidence that the veteran cannot maintain substantially gainful employment.

The VA will also assess a veteran's earnings to determine whether the veteran is living above or below the poverty threshold. A veteran can produce substantive proof of earnings through pay stubs, tax returns, employer letters, or a Social Security Earnings Record. If the earnings are above the poverty threshold, an evaluation needs to take place to determine if the veteran is working in a "sheltered" environment as discussed above. The veteran will need corroborating evidence to prove that the workplace is sheltered. For example, this evidence may include an employer letter verifying the excessive accommodations.

When it comes to proving to the VA that a veteran is eligible for IU, the best evidence is a professional opinion from a vocational expert or competent medical doctor concerning the veteran's

ability to secure or follow a substantially gainful occupation. The opinion should say it is more likely than not that you are unable to work due to your service-connected disabilities. Again, the key term here is “service connected.”

The VA will often schedule a Compensation & Pension (C&P) exam for a veteran in order to get an opinion on IU. The exam report must include a rationale as to whether it is as likely as not that the service-connected disability or combined disabilities render the veteran unable to secure and maintain substantially gainful employment. Additionally, the exam report must also include and describe the functional impairment caused by the veteran’s disabilities and how that impairment impacts physical and sedentary employment.

One thing to keep in mind is that if a veteran has multiple service-connected disabilities that contribute to unemployability, the VA will likely send the veteran to separate exams for each condition. Each exam will discuss the veteran’s single disability and the functional impairment that the veteran has due to that single disability. For example, a back examiner may say, “The veteran can’t stand or walk, but he could do sedentary work.” A migraine examiner may say, “He has to lie down at least once a week for several hours. As long as an employer will give that benefit, then he could work.” And then a PTSD examiner may say, “Well, he doesn’t get along with people too well, so as long as he’s working by himself, he’s fine.”

The problem is that the VA will usually look at these three opinions separately, rather than look at them together in order to create a complete picture of the veteran’s disabilities. If that is the case, the best thing to do is get an independent medical

opinion that either looks at all the service-connected disabilities together or shows that one service-connected disability in particular is the one that renders the veteran unable to work.

One option for an independent medical opinion is a vocational expert, but getting a vocational expert for a case might be challenging for many veterans. If that's the case, another option is going to a VA vocational rehabilitation center and asking for an assessment. Again, it is important that any medical opinion you are able to get regarding your inability to work be limited to only your service-connected disabilities.

7. Is my IU rating permanent?

IU is not always permanent, and you may have to undergo periodic medical exams to substantiate the continuation of the award, once granted. However, there are safeguards in place that make it more difficult for the VA to take away an award of IU.

If the VA does not follow its own rules and regulations when proposing a reduction, the reduction is considered void and unlawful. If the VA has determined that your current disability rating warrants reduction, it must first issue a notice of proposed reduction. This first notice gives you sixty days to submit evidence showing that your condition has not improved. You also have an option to request a pre-determination hearing within thirty days of the notice. Requesting a hearing may buy you additional time to submit evidence.

The VA has the burden to demonstrate that actual employability has been established by clear and convincing evidence in order to reduce or sever IU. This is a very high burden to meet.

Furthermore, there are several protections set forth in the regulations against a proposed reduction. One of those protections is for 100% ratings when based on unemployability (IU or IU). The VA has the burden to demonstrate that actual employability has been established by clear and convincing evidence in order to reduce or sever IU. This is a very high burden to meet. Even if you are working, you are allowed to keep your IU for a full year. However, in cases where the veteran has not returned to work, then the VA has to have very strong evidence to discontinue IU.

Under the regulations, if the VA determines that the veteran has sustained improvement and that such improvement warrants reduction of an IU rating, but the record reflects that the veteran is unable to engage in substantial gainful employment, then IU must be preserved. In other words, in cases where your disability has materially improved, your IU rating can still be protected from reduction if the evidence continues to show that you are unable to work due to your service-connected disability.

If you submit evidence prior to the expiration of the first sixty-day notice, there is a possibility that the VA will find reasonable basis to send you for a re-examination. If they decide to do so, the final

rating action is deferred pending the outcome of the new examination. It's important to note that an examination that is the basis for reduction must be as thorough as the examination that established the current rating. Attending the examination is very important. If you do not show up, your benefits can be automatically reduced or terminated. If you are unable to attend on the date scheduled, you must call and reschedule or have a very good reason explaining your absence.

The VA must review all of the new evidence, including the report of re-examination, in the context of the entire record. The VA will then issue a final rating decision. The second rating decision starts a new sixty-day period. The implementation of the reduction goes into effect on the last day of the month of the second decision.

This means that even if the VA reduces a disability rating, it can't take away IU unless it has evidence of marked improvement that is clear and convincing, unequivocally demonstrating that you have regained the physical or mental capacity to return to the workforce on a sustained basis.

Posttraumatic Stress Disorder (PTSD)

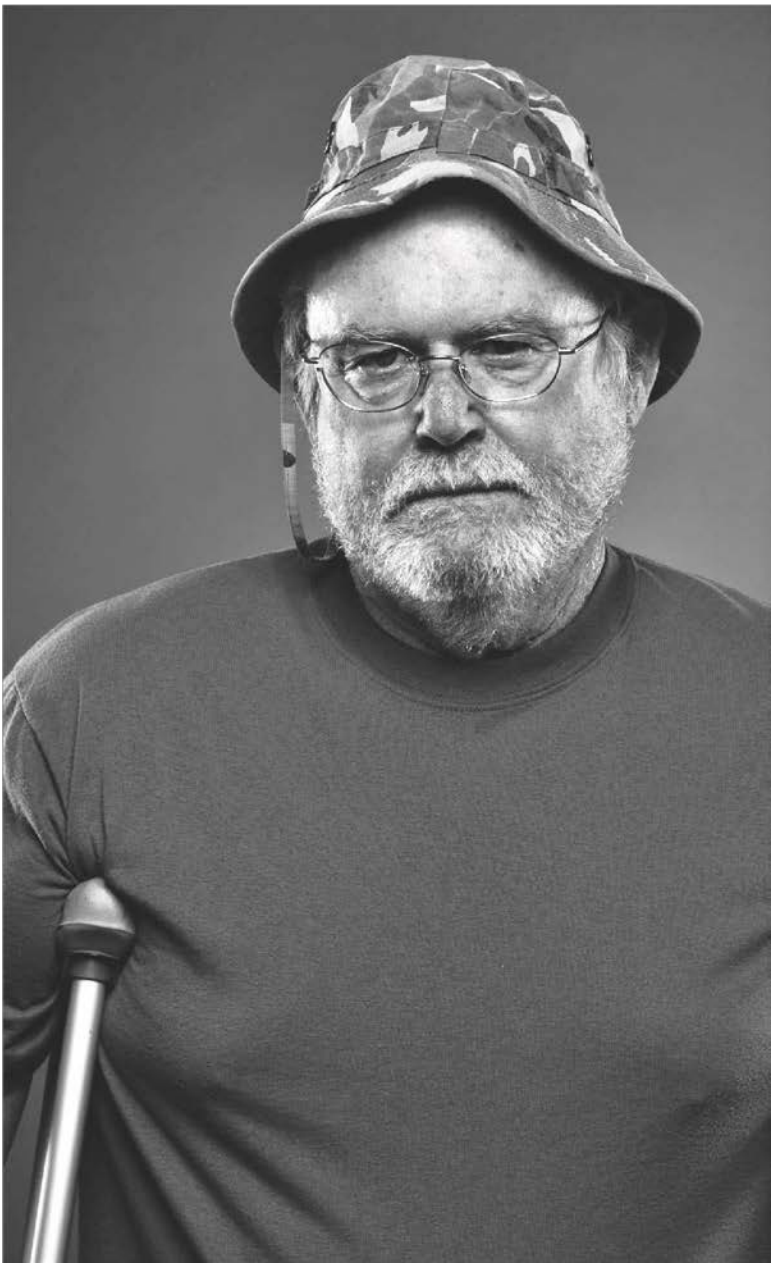
Posttraumatic Stress Disorder (PTSD) is a mental illness that can occur after a traumatic event such as combat, physical abuse, sexual assault, a terrorist attack, a serious accident, or a natural disaster. Even though a clinical diagnosis of PTSD did not exist until 1980, soldiers have been suffering from this illness since there has been war. The condition was just given different names such as "shell shock," "soldier's heart," "combat exhaustion," or "Stress Response Syndrome." But PTSD doesn't

affect just service members who see combat. Anyone who is exposed to a life-threatening event can develop PTSD.

Veterans have had difficulty getting the VA to acknowledge the effects of PTSD. Even though PTSD can devastate a person's ability to maintain relationships and hold a job, the VA does not do a great job recognizing service connection and rating PTSD.

PTSD is the only mental illness to have its own VA regulation. To show service connection for PTSD, the VA requires (1) a diagnosis of PTSD; (2) a link, established by medical evidence, between current symptoms and an in-service stressor, and (3) credible supporting evidence that the claimed in-service stressor occurred.

In order for the VA to recognize a veteran's PTSD in a service-connected compensation claim, a qualified medical professional must provide the diagnosis of PTSD. Even though the VA or private therapists treat many veterans, the VA will not accept initial diagnoses of PTSD from professionals who are not doctors or psychologists (i.e. licensed mental health social workers, licensed counselors, etc.).



In addition, the diagnosis must conform to the diagnostic criteria in the DSM-V. The VA often denies PTSD claims when veterans don't meet all of the diagnostic criteria in the DSM-V for PTSD. This is the most common reason that the VA denies PTSD claims. A veteran may be suffering from extreme PTSD, but if his or her symptoms do not fall neatly within the diagnostic criteria for PTSD, then, for VA purposes, the veteran does not have PTSD, and service connection will be denied. The diagnostic criteria in the DSM-V for PTSD may be found on the VA website.

The VA eases the second requirement of credible supporting evidence in a few circumstances. In the situations outlined below, the veteran's lay testimony alone—without credible evidence of the in-service stressor—may establish the occurrence of the in-service stressor. These situations include:

(1) If the evidence establishes a diagnosis of PTSD during service and the claimed stressor is related to that service.

(2) If a veteran's claimed stressor is related to the veteran's fear of hostile military or terrorist activity, such as exposure to explosive devices, small arms fire, or suspected sniper attacks, and a VA psychiatrist or psychologist confirms both that the stressor is adequate to support a diagnosis of PTSD and that the veteran's symptoms are related to the claimed stressor.

(3) If the evidence establishes that the veteran is a prisoner-of-

war and the claimed stressor is related to that POW experience.

(4) If the evidence establishes that the veteran engaged in combat with the enemy and the stressor is related to that combat.

Additionally, for veterans who suffered an in-service personal or sexual assault (military sexual trauma or MST), the veteran does not need an official record of the stressor. The VA will consider records other than the veteran's service records to be "credible supporting evidence" of the stressor. These records include, but are not limited to, records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; and statements from family members, roommates, fellow service members, or clergy.

Moreover, the VA will consider evidence of behavioral changes following the claimed assault. Examples of behavior changes include a request for a transfer to another military duty assignment, deterioration in work performance, substance abuse, and episodes of depression. The veteran can also show changes in behavior by having family and friends speak to the changes in the veteran. These statements can show how the veteran's behavior changed after the service, when compared to their behavior before the service. Again, the veteran does not need an official record of the assault.

If a veteran's claim for PTSD does not fit into one of the above categories, there must be evidence that corroborates the occurrence of the stressor and shows credible supporting evidence that the claimed in-service stressor occurred. The supporting evidence must include more than the veteran's own testimony. Unless there is no reasonable possibility that assistance by the VA is required to aid in proving the claim, the VA must assist the veteran in developing evidence that supports the existence of a stressor.

For the veteran's service records to corroborate the stressor, they do not need to include every detail of the event. If there is independent evidence showing a stressful event occurred and that evidence shows the veteran's personal exposure to the event, this could be sufficient corroborative evidence. In addition, credible supporting evidence can come from lay sources such as buddy statements.

The final step of establishing service connection for PTSD is proving a causal nexus between the current symptomatology and the claimed in-service stressor. This step requires an

opinion by a medical expert. The evidence must show that the stressor was at least a contributory cause of the current symptoms. As long as there is a relationship between the stressor encountered in service and the current diagnosis of PTSD, a veteran whose service medical records show no evidence of a mental disorder can be entitled to service connection for PTSD, even if the PTSD develops many years after service.

For a medical nexus opinion to be adequate, the doctor must review the relevant records about the veteran's stressor. These most likely would include service medical records, service treatment records, current treatment records and any C&P exams. A medical opinion that relies just on a veteran's statement to the doctor will fail due to the doctor not reviewing all the other evidence in the case. The best place to find all the relevant evidence is in the veteran's Claims File, also known as the C file. This file contains all the evidence from every claim the veteran has filed since service. It should also contain the veteran's service medical records and service records.

The VA's Definition of Alcohol Abuse and Drug Abuse

The VA defines willful misconduct related to alcohol as drinking to enjoy intoxicating effects. Similarly, the VA defines willful misconduct related to drugs as the progressive and frequent use of drugs to the point of addiction.

Direct service connection may be granted only when a disability is not the result of the veteran's willful misconduct or the result of alcohol or drug abuse. Yet, simply drinking alcoholic beverages or infrequently using drugs in isolation is not considered abuse or willful misconduct.

When determining whether a disability that involves alcohol or drug abuse can be service connected, there are three categories of disabilities:

(1) Disabilities from voluntary and willful alcohol or drug abuse that develop during service. Service connection is not awarded for these types of alcohol/drug abuse disabilities.

(2) Disabilities caused by alcohol or drug abuses that are secondary to a service-connected condition. In these cases, service connection may be awarded for the resulting disability.

For example, consider a veteran who is service connected for PTSD and develops alcoholism secondary to his PTSD. If the veteran later develops cirrhosis of the liver due to alcoholism, the veteran would be entitled to service connection for the cirrhosis.

(3) Disabilities aggravated by alcohol or drug abuses that are secondary to a service-connected condition. Here, service connection may be awarded for these disabilities. For instance, consider a veteran who is service connected for PTSD, suffers from alcoholism due to the PTSD, and also has Diabetes

Mellitus II. If the veteran's alcoholism aggravates his Diabetes Mellitus II, then the veteran would be entitled to service connected compensation for his Diabetes Mellitus II.

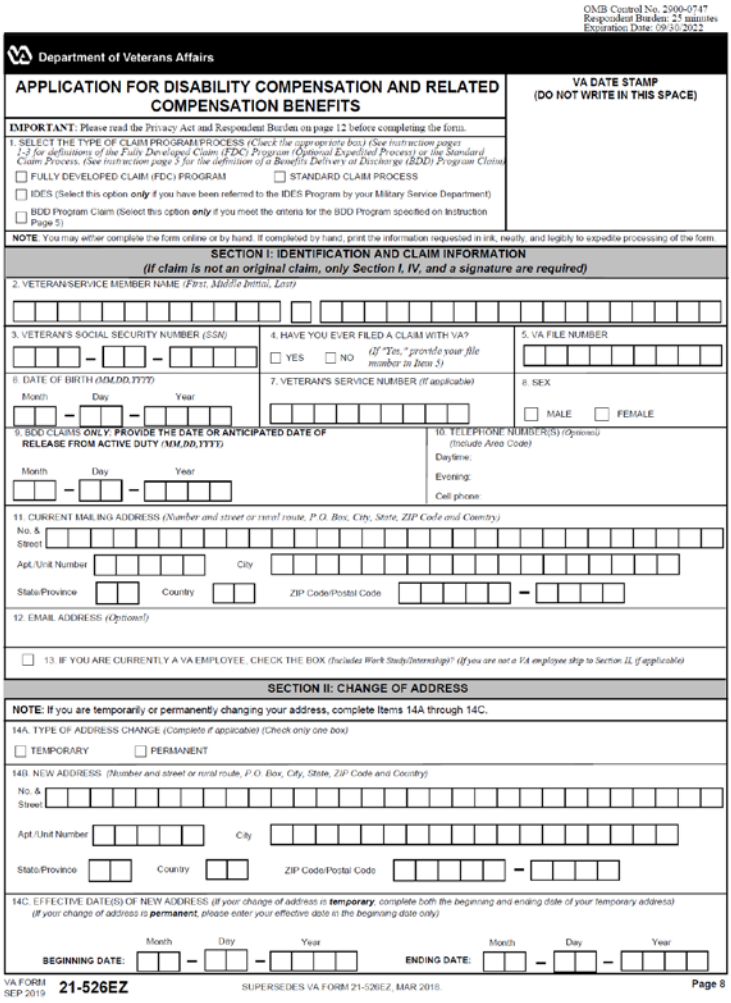
In the same way, the VA will not grant compensation benefits for a disability that was caused by the veteran's use of tobacco products during the veteran's service. However, the VA may grant compensation benefits for a disability caused by the veteran's use of tobacco if that use was caused by a service-connected disability.

VA's New Appeal System: Appeal Modernization Act (AMA)

On February 19th, 2019, the VA drastically overhauled how it handles disability benefit claims. These changes start with the process of filing a claim for benefits. Any open claim with a decision issued before the AMA start date will be in the old system, the legacy system. The VA will run the legacy system until all the claims currently in the system are decided and closed out. However, no new claims will be, or can be, put in the legacy system.

How Do I File a Claim?

The first hurdle in filing a claim through AMA is to know which form to use. If the veteran files a brand new claim, or a claim for increased rating, more than one year after the last decision on that issue, then the veteran files a 21-526 (http://www.vba.va.gov/pubs/forms/VBA-21-526EZ-ARE.pdf). In this scenario, the veteran does not have to file any evidence with the application.



OMB Control No. 2900-0747
Respondent Burden: 25 minutes
Expiration Date: 09/30/2022

Department of Veterans Affairs

APPLICATION FOR DISABILITY COMPENSATION AND RELATED COMPENSATION BENEFITS

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

IMPORTANT: Please read the Privacy Act and Respondent Burden on page 12 before completing the form.

1. SELECT THE TYPE OF CLAIM PROGRAM/PROCESS *(Check the appropriate box) (See instruction pages 1-2 for definitions of the Fully Developed Claim (FDC) Program (Optional Expedited Process) or the Standard Claim Process. (See instruction page 5 for the definition of a Benefits Delivery at Discharge (BDD) Program Claim)*

☐ FULLY DEVELOPED CLAIM (FDC) PROGRAM ☐ STANDARD CLAIM PROCESS

☐ IDES (Select this option **only** if you have been referred to the IDES Program by your Military Service Department)

☐ BDD Program Claim (Select this option **only** if you meet the criteria for the BDD Program specified on Instruction Page 5)

NOTE: You may either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing of the form.

SECTION I: IDENTIFICATION AND CLAIM INFORMATION
(If claim is not an original claim, only Section I, IV, and a signature are required)

2. VETERAN/SERVICE MEMBER NAME *(First, Middle Initial, Last)*

3. VETERAN'S SOCIAL SECURITY NUMBER *(SSN)*

4. HAVE YOU EVER FILED A CLAIM WITH VA? ☐ YES ☐ NO *(If "Yes," provide your file number in Item 5)*

5. VA FILE NUMBER

6. DATE OF BIRTH *(MM,DD,YYYY)* Month Day Year

7. VETERAN'S SERVICE NUMBER *(If applicable)*

8. SEX ☐ MALE ☐ FEMALE

9. BDD CLAIMS **ONLY**: PROVIDE THE DATE OF ANTICIPATED DATE OF RELEASE FROM ACTIVE DUTY *(MM,DD,YYYY)* Month Day Year

10. TELEPHONE NUMBER(S) *(Optional)* *(Include Area Code)* Daytime: Evening: Cell phone:

11. CURRENT MAILING ADDRESS *(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)*
No. & Street
Apt./Unit Number City
State/Province Country ZIP Code/Postal Code

12. EMAIL ADDRESS *(Optional)*

☐ 13. IF YOU ARE CURRENTLY A VA EMPLOYEE, CHECK THE BOX *(Includes Work Study/Internship)? (If you are not a VA employee skip to Section II, if applicable)*

SECTION II: CHANGE OF ADDRESS

NOTE: If you are temporarily or permanently changing your address, complete Items 14A through 14C.

14A. TYPE OF ADDRESS CHANGE *(Complete if applicable) (Check only one box)*
☐ TEMPORARY ☐ PERMANENT

14B. NEW ADDRESS *(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)*
No. & Street
Apt./Unit Number City
State/Province Country ZIP Code/Postal Code

14C. EFFECTIVE DATE(S) OF NEW ADDRESS *(If your change of address is **temporary**, complete both the beginning and ending date of your temporary address) (If your change of address is **permanent**, please enter your effective date in the beginning date only)*
BEGINNING DATE: Month Day Year **ENDING DATE:** Month Day Year

VA FORM SEP 2019 **21-526EZ** SUPERSEDES VA FORM 21-526EZ, MAR 2018. Page 8

If the veteran files a claim to reopen a previously-denied claim, more than one year after the denial, the veteran must file a VAF 20-0995 https://www.vba.va.gov/pubs/forms/VBA-20-0995-ARE.pdf. In this situation, the veteran must also submit new and relevant evidence to the claim. VA has yet to concretely define what new and relevant evidence is. However, we know that this evidence must help to prove the claim (if even just a little bit). It

must also not have been previously submitted. The VA has stated that this burden is less than the old burden of New and Material Evidence.

On the application form, the VA will notify the veteran what they will do to help the veteran win his case. This is the VA's Duty to Assist. In the Legacy system, VA sent this information out in a separate letter. Now they provide all the information in the application. Providing the veteran all this information up front would seem to make sense. However, this new process can be overwhelming as it makes the application 12 pages long.

Where Do I File a Claim?

The veteran has two main options to file a claim:

1. On the internet through the Veterans On-line Application https://www.ebenefits.va.gov/ebenefits/vonapp

2. Via mail. To download a paper copy of the application, go to http://www.vba.va.gov/pubs/forms/VBA-21-526EZ-ARE.pdf or https://www.vba.va.gov/pubs/forms/VBA-20-0995-ARE.pdf depending on the situation.

Paper claims should be filed with the VA's Claims Intake Center:

Department of Veterans Affairs
Claims Intake Center
PO Box 4444
Janesville, WI 53547-4444

There is no time limit to file a claim for disability benefits. However, as a general rule, the effective date of an award will almost always be the date the VA receives the claim. The effective date controls the amount of retroactive benefits a veteran can receive. We will discuss this later in greater detail. However, there are two general exceptions. The first exception is when a veteran files an Intent to File. If the veteran files the claim within the year, then the retro-benefits would go back to the date of the Intent to File. The other exception is when a veteran applies within one year of discharge. Here, entitlement can be established retroactively to the separation date.

There is no time limit to file a claim for disability benefits.

Regarding the Intent to File, a veteran can start a claim by filing an intent to file a claim. This form will give the veteran a year to file the complete claim and preserve the effective date. As long as the full claim form is filed within a year of the in the notice, the effective date will be the date of the Intent to File a Claim.

The veteran can submit an Intent to File three ways.

1. Go online through eBenefits at www.ebenefits.va.gov. The veteran can use the support of a VSO through the Stakeholder Enterprise Portal to complete the form this way.
    a. You must follow this process:
        i. Initiate a claim.
        ii. Complete the personal information page.

iii. Hit save to establish your effective date. This allows one year to complete the application.

2. Mail paper VA Form 21-0966, "Intent to File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC."
    a. You can access this form at www.vba.va.gov/pubs/forms/VBA-21-0966-ARE.pdf.
    b. You can also do a Google search for 'VA Form 21-0966'

3. Over the phone or in person:
    a. National Call Center at 800-827-1000.
    b. Tell a representative in person at one of VA's regional benefit offices. Locate a regional office at www.benefits.va.gov/benefits/offices.asp. You may also appoint a recognized representative to notify VA on your behalf.
    c. Ask for a confirmation that the Intent to File has been received.

Any correspondence submitted to the VA (claim forms, evidence, etc.) should include your claim number. Similarly, if mailing the documents, it is a good idea to **send all documents via Certified Mail Return Receipt Requested.**

The Rating Decision

Once the veteran develops and sends the evidence, and the Regional Office (RO) receives it, the RO will issue a Decision Rating (RD). The RD shows what the RO has granted or denied.

If the VA grants service connection, then the rating decision will focus on the following:

The Rating

Your disability rating depends on the severity of your condition. The rating is based on the criteria laid out in the VA's rating schedule, a list that includes hundreds of different medical conditions. The VA assigns disability evaluations from 0% to 100% in 10% increments. A 100% disability rating is also called a total rating, because it means that a veteran is totally disabled.

Regardless of the rating, it's important to have the VA grant service connection, even if they initially rated your disability or disabilities at 0%. With an award of service connection, even with a 0% rating, you have a right to seek an increased rating if the condition gets worse. Plus, when you are in receipt of two or more separate non-compensable permanent service-connected disabilities of such a character that clearly interfere with normal employability, the VA will assign a 10% disability rating.

The disability rating determines the compensation amount. The higher the disability evaluation, the higher the monthly compensation payment. The dollar amount of the payment at each rating level is exactly the same for everyone, whether a veteran makes a million dollars or no money at all. It's also irrelevant whether the veteran was a general or a private during service. The difference between a 10% compensation rating and a 100% rating is significant. As of December 2019, a 10% rating is worth $142.29 per month; a 100% rating is worth $3,106.04. The monthly amount increases if the veteran has a spouse or other dependents.

The Effective Date

In addition to the disability rating, the Rating Decision will include the effective date assigned for the award of benefits. The effective date is usually the date the veteran filed the claim. As mentioned earlier, the effective date controls the amount of retroactive benefits to which a veteran is entitled.

There are a few exceptions to the general rule regarding the

The effective date is usually the date veteran files the claim.

assignment of an effective date.

First, if a claim is filed within one year of separation from service, then the effective date for benefits would be the latter of (1) the day after the date of separation or (2) the post-service date the disability is documented by medical records.

A rare, but potentially significant, exception is when the VA denies a claim for disability compensation. Later, VA obtains service records not previously associated with the veteran's file that are relied on to grant benefits, then the effective date could be as early as the date the original claim was filed.

For example, consider a situation in which the VA denied a PTSD claim in 1983 due to no stressor found in service. In 2018,

the veteran files a claim with a bronze star. This was not previously in the file. If the VA grants the claim, it needs to reopen the 1983 claim.

AMA REQUIREMENTS FOR RATING DECISIONS

Under AMA, the VA must include eight points of notifications to the veteran in the Rating Decision:

Notification of decisions. The claimant and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting of relief. Written notification must include in the notice letter or enclosures or a combination thereof, all of the following elements:

(1) Identification of the issues adjudicated;

(2) A summary of the evidence considered;

(3) A summary of the laws and regulations applicable to the claim;

(4) A listing of any findings made by the adjudicator that are favorable to the claimant under §3.104(c);

(5) For denied claims, identification of the element(s) required to grant the claim(s) that were not met;

(6) If applicable, identification of the criteria required to grant service connection or the next higher-level of compensation;

(7) An explanation of how to obtain or access evidence used in making the decision; and

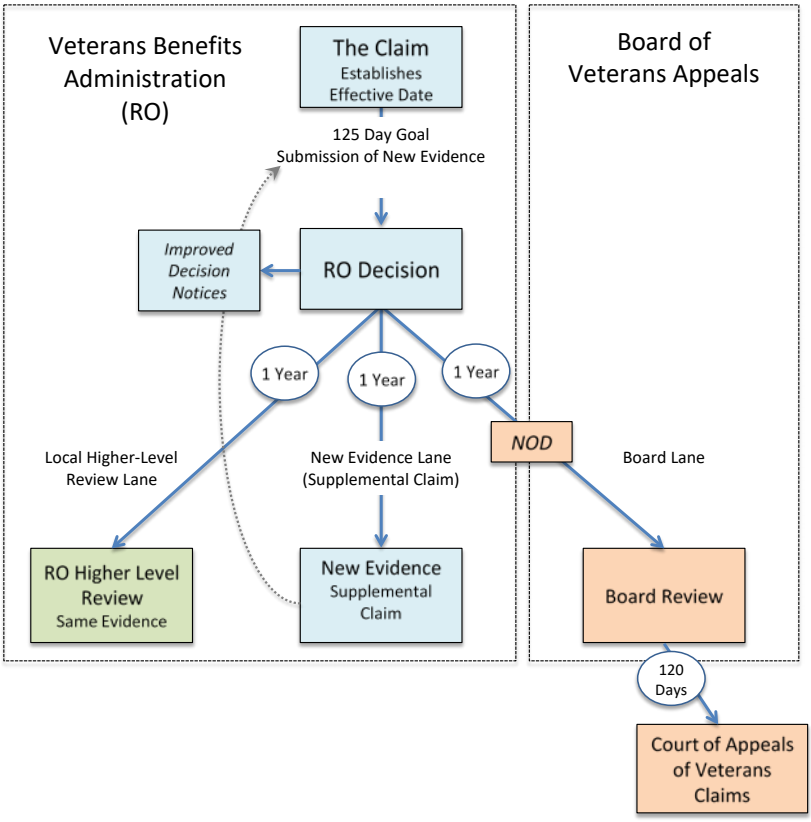
(8) A summary of the applicable review options under §3.2500 available for the claimant to seek further review of the decision.

VA must go through this list for every issue on a veteran's claim. The most common mistake that VA makes on the above list is that it fails to include (4)—favorable findings for a veteran's issue. Even if the VA denies a claim, it has to show what elements the veteran met. Once VA has done this, those findings are binding on VA. So, if a veteran submits a claim for service connection for PTSD, VA must discuss if the veteran has a diagnosis of PTSD, whether there was a stressor in service, and if there was link between the two. If VA denies the claim, they must still state what criteria the veteran met—i.e. if he had a valid diagnosis of PTSD. With that favorable finding, the veteran then need only focus on the other two elements to win his claim: what happened in service and the link between the incident and the diagnosis.

Appealing a Rating Decision Under the AMA

The VA has made significant changes to the Legacy system through the AMA. In the Legacy system, after a denial, the veteran could file a new claim or file a Notice of Disagreement (NOD). In the new system, the veteran can choose one of three different lanes for their appeal.

Visual 1: The Framework (High Level)



Supplemental Claim: The first option is to resubmit a claim with new and relevant evidence. The VA defines new evidence as evidence not previously considered by VA. The VA considers relevant evidence to be information that tends to prove or disprove a matter of the claim. The VA must use its Duty to Assist the veteran if he identifies information that VA can get to help prove the claim. If this claim is submitted within a year of the prior denial, it is a continuation of the claim that was denied. It must be submitted on the same form as when you reopen a claim-- VA Form 20-0995.

Higher Level Review: The next option is called Higher Level Review (HLR). In this lane, the veteran requests a more seasoned VA decision maker to review the previous decision. To file an HLR claim, you must submit VA form 20-0996. It's important to note that a veteran may not submit new evidence in the HLR lane. He can make a legal argument. He also has a right to a hearing. The veteran has to file for HLR within one year of the date that the VA issued the RD. If the veteran is denied at the HLR, the veteran may **not** elect HLR again at this point. The veteran, instead, must choose between an appeal to the BVA or file a supplemental claim.

Differences	**HLR**	**Supplemental Claim**
Ability to submit new evidence?	No, closed record	Yes, new and relevant
Time limit to file after decision?	One year	None. No effective date protection after one year

Differences	HLR	Supplemental Claim
Does Duty to Assist (DTA) Exists?	No	Yes
Decisionmakers?	Decision Review Officers (DROs), Senior Veterans Service Representatives (SVSRs), and Authorization Quality Review Specialists (AQRS)	Veterans Service Representatives (VSRS), Rating VSRs (RVSRs)

Board of Veterans' Appeals: Finally, the veteran can file a Notice of Disagreement (NOD), Form 10-182. Unlike the Legacy system, this NOD takes the veteran's case directly to the Board of Veterans' Appeals. In the Legacy system, the veteran would file an NOD to have his case reviewed in the RO again after the first rating decision. If he disagreed with the second decision, then he would file a VAF9 to appeal the second RO decision (called the Statement of the Case or SOC). This appeal would go to the BVA. In the AMA system, once the veteran files a NOD, the case goes direct to the BVA.

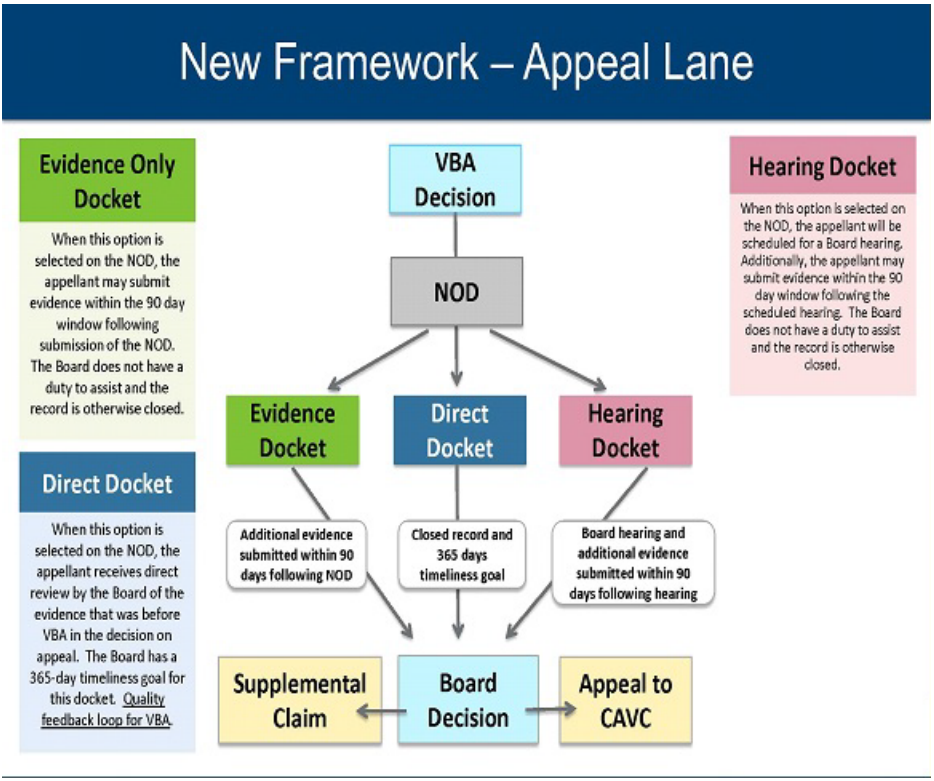
If the claim type is...	**Then VA will subsequently accept...**
Initial claim for compensation or increased evaluation	Supplemental claim HLR Appeal to the Board
A supplemental claim	Supplemental claim HLR Appeal to the Board
An HLR	Supplemental claim Appeal to the Board
A Board decision	Supplemental claim

Board of Veteran's Appeal Options

If the veteran elects to file an NOD to the BVA, the veteran has three options on the appeal to the BVA. But first, the veteran must understand that there are certain requirements for the NOD. The NOD:

1. Must be in writing and identify the specific issues with which the veteran disagrees.
    a. Note: BVA must review the issues the veteran lists liberally and seek clarification from the veteran when it cannot identify a denied issue before dismissing the appeal
    b. Also, a veteran can request to modify the NOD within the year after the decision or within 30 days of BVA receiving the NOD, whichever is later, UNLESS you have already submitted evidence or testimony
2. Must be on the VA's specified form (VAF 10182).
3. The NOD must be filed directly with the BVA.
4. The veteran has three types of review to choose from:
    a. request a hearing before BVA,
    b. submit additional evidence with the NOD, or
    c. request a review without a hearing or additional evidence (see BVA Adjudication below).

The fourth point above is where some confusion will come in. As there are three lanes once an initial decision has been made at the Regional Office, there are three lanes in the new appeals system at the BVA.



In filing the NOD, the veteran must tell BVA how to process it. The first lane, or docket as VA calls it, is the 'Evidence only' docket. In this lane, BVA will consider new evidence submitted with the NOD, within 90 days of filing the NOD, or within 90 days of moving your claim out of one of the other two lanes and into this one.

The middle docket is the 'Direct Docket.' This docket is for veterans who are neither requesting a hearing nor looking to submit new evidence. The decisions in this docket are supposed to be made more quickly than those in the other dockets. The VA is on record saying that these cases should be decided within an average of 365 days.

The third docket is the hearing docket. BVA will consider evidence in this lane up to 90 days before the hearing. There are two types of hearings: in-person in Washington D.C. or by video. There will no longer be travel board hearings where the veteran goes to his local Regional Office and meets with the BVA judge in person. A veteran can ask for a change in date of the hearing or a reschedule if the veteran misses the hearing. However, he or she must have good cause to do so.

Differences	Direct	Evidence Only	Hearing
Ability to submit new evidence?	No, closed record	Yes	Yes
Time limit to file evidence?	No evidence	90 days after NOD or move to docket	90 days after hearing
Does DTA exists?	No	No	No
Hearing available?	No	No	Yes

BVA order of Consideration

BVA will prioritize its review of claims in this order:

1. Direct docket
2. Evidence docket
3. hearing cases.

BVA is disincentivizing veterans from asking for a hearing. The hearing cases could wait as long as the current hearing cases have been waiting in the legacy system.

An appeal can be moved from one BVA lane to another only when the NOD is modified. Moving a case will not change the effective date.

BVA Remands—must have new NOD

In the Legacy system, BVA could remand—or send back—cases to the RO any reason at all. This decision could add years to a veteran's claim. Now the BVA can only remand to correct an error where VA failed to properly help the veteran win his claim. These remands are supposed to be expedited by the RO. VA does not say what expedited means.

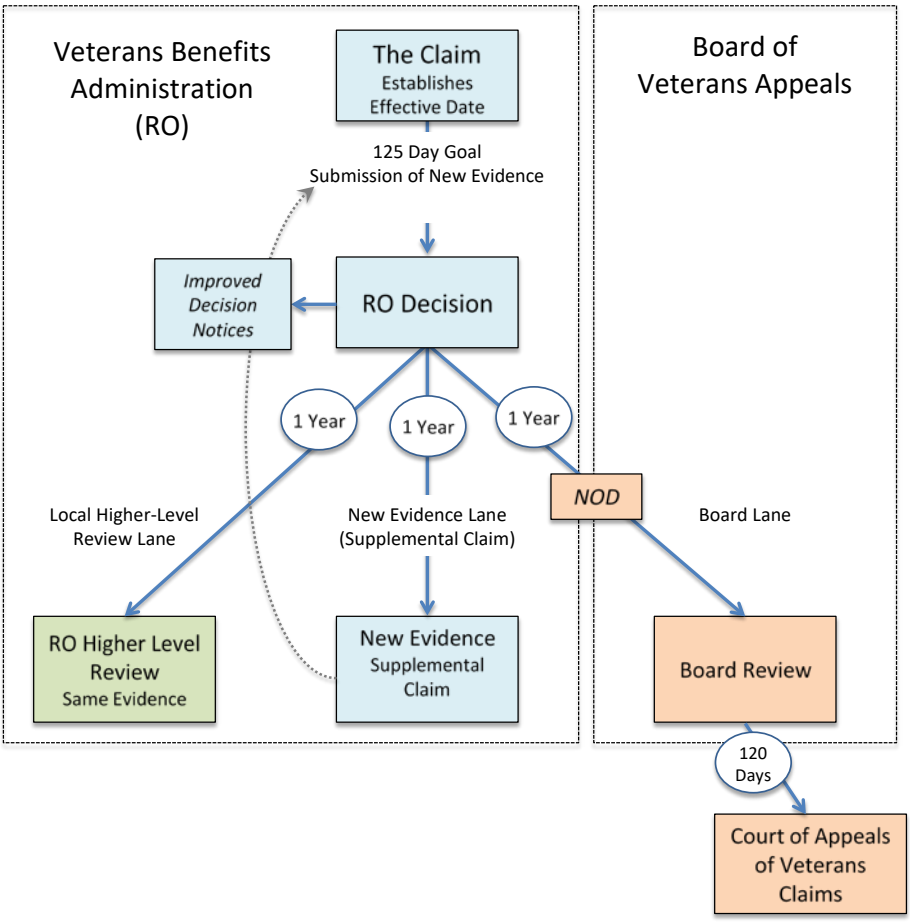
One of the most important changes in this system is that the BVA will not automatically review a remanded claim if it is denied by the RO when it is sent back. In the legacy system, when the BVA remanded the case and the RO denied it, the case was automatically sent back to BVA without any required appeal from the veteran. Now, the veteran must file a new NOD to go back to the BVA.

Why is this so important? In the legacy system up to 90% of remanded cases were denied by the RO and sent back to the BVA. Now those claims denied by the RO will not go back to the BVA without a subsequent appeal from the veteran. Instead, the claim will be closed after a year if there is no follow up NOD.

BVA Decision effective dates

Lastly, it is important to understand how this new program protects the effective date of a potential award. The effective date is the date from which VA will pay benefits. Usually, it is the date of the last reopened claim. With the new system, as long as you choose one of the three lanes within a year, then your effective date of any claim granted should be the date of the claim you filed at the beginning. So, even if your claim was denied multiple times in the RO, your claim will revert to the original claim if you kept it open.

Visual 1: The Framework (High Level)



The Decision by the Board of Veterans' Appeals

The Board will issue a written decision on the appeal. It may (1) grant, (2) deny, (3) remand, (4) refer, or (5) dismiss the appeal for each of the claims. The BVA decision is a final decision for all issues addressed in the "Order" section. If the Board chooses to remand an issue to the local RO for additional development, then a "Remand" section follows the "Order." A remanded issue cannot be appealed to the Court of Appeals for Veterans' Claims because a remand is not a final, appealable decision. A referral is when the BVA believes that the Regional Office did not make a decision on the issue yet, and the Regional Office must make the first decision for the BVA to then review it.

The VA has changed how is handles Remanded claims. In the Legacy system, when the BVA remanded a claim to the RO, that claim automatically went back to the BVA if full benefits were not granted. Now once BVA remands a claim, the RO will issue a new Rating Decision on it. The veteran must then actively appeal the decision. If the veteran does not appeal, the claim will be closed.

Appealing a Decision made by the Board of Veterans' Appeals

With a final BVA decision, you may file an appeal to the United States Court of Appeals for Veterans' Claims (Court or CAVC). It is important to know that you have only 120 days from the date of the BVA decision to file a Notice of Appeal to the Court.

Alternatively, rather than appealing to the CAVC, you may choose to reopen your claim at the local Regional Office by

submitting new and relevant evidence. Under the AMA, choosing this option protects the effective date of your original claim.

Awards

If the CAVC or the BVA grants the claim, the file goes back to the RO to implement the decision.

The RO will issue a new rating decision. If the CAVC or BVA grants only the issue of service connection, and does not address the rating or effective date, the RO will need to decide those issues. If the veteran disagrees with the RO's decision then it must go through the same appeal process as described above.

The Legacy Appeals

If VA issued a decision before February 19, 2019 that is still on appeal, then that decision is in the Legacy system. The veteran's case will be handled like all cases have been for the last half century.

However, if the RO grants any claim and issues a Rating Decision on that issue, then that claim will automatically be in the AMA. So, the RD issued after the AMA takes the claim out of the AMA.

If the VA denies any claim that was on appeal then it must issue an SOC. In this instance, the veteran decides whether to file a

VAF9—the form that finalizes a request for BVA review in the Legacy system—or opt into the AMA system.

Substantive Appeal

The Substantive Appeal is the final document required to perfect the appeal from the RO to the BVA. Think of it this way: a NOD initiates an appeal, and the substantive appeal (VA Form 9) completes it.

The appeal to the BVA may be filed on a VA Form 9 or in another written medium that contains all of the information requested in the VA Form 9.

The deadline to submit the VA Form 9 is the later of either:

• One year from the Rating Decision notice letter, or

• Sixty days from the date of the SOC notice letter no matter how much time has elapsed since the Rating Decision.

Opting-in to AMA from Legacy

The new AMA law allows claimants with legacy appeals to opt-in to the VBA's two AMA review lanes. A legacy appeal stems from any decision (whether from original, new, or reopened claims, or SOCs/SSOCs) the VA made before February 19, 2019. Elections to participate in the new AMA review programs automatically withdraw associated issues from the Board docket, as the HLR or supplemental claim would be a review, rather than a Board appeal. Claimants may appeal any issues to the Board after VA decides the associated HLRs or supplemental claims, if they disagree with VA's decisions. However, these are new appeals under the AMA and would receive new Board docket numbers upon appeal. The new docket numbers would put the claim at the back of the line of cases awaiting BVA review.

Claimants are free to choose various review options when an appeal has multiple issues. For example, claimants may simultaneously opt into different lanes for different issues. However, each issue must have its own distinct lane−i.e., a

claimant may not pursue the same issue in two different lanes simultaneously. Claimants also may not separate issues that are inextricably intertwined.

A claimant with a legacy appeal has the later of two dates to submit an election for review under AMA:

- 60 days from the date of issuance of the SOC/SSOC, or
- the remainder of the one-year period from the date of the contested decision.

RO Certification of Appeal and BVA Docketing Notice

Should you decide to stay in the Legacy system you must perfect your appeal to the BVA. After you file a Substantive Appeal to the RO, the RO will certify your appeal to the Board of Veterans' Appeals. It can take years for the RO to certify your case to the BVA. The VA has never adequately explained this delay, but the case does not immediately go to the BVA following a substantive appeal.

When the RO certifies your appeal to the BVA, you will be notified in the form of a letter that is commonly called the "90 day letter." This letter explains that you have up to ninety days to request a change in representation, request a personal hearing, and/or submit additional evidence. Beware: the BVA can make its decision prior to the expiration of ninety days. Once the BVA receives your file, they will send a notice that the appeal has been docketed.

Hearings

At the BVA, you have several options regarding a hearing: (1) no BVA hearing at all; (2) an in-person BVA hearing in Washington, D.C.; (3) an in-person BVA hearing with a travel Board member at your local RO office; or (4) a video conference hearing at your local RO with a Board member in D.C.

Hiring an Attorney

When you do NOT need an attorney for your VA claim

The VA service-connected disability process can be very confusing and complicated, but it can also be straightforward. There are many claims—in fact, the majority of claims—for which you do not need a paid attorney to help you with. Do not hire an attorney in these situations.

1. **Any first-time claim:** This includes an original claim, a claim for increase, or a reopened claim. In these situations, VA has a duty under the law to help you win your claim by getting any service records, Social Security records, VA medical records and private medical records that you tell the VA are important to your claim. The VA must also send you to one of their doctors, a C&P exam, if there is need for a medical opinion to win your case. In these situations, you need to submit evidence or let the VA know where to get it. You should make the VA fulfill its duty.

2. **An appeal for dependent benefits**: The VA often fails to pay a veteran for dependent benefits when a veteran wins service-connected benefits. A veteran could hire an attorney to appeal in this case, but it would be easier and much faster to apply online through Ebenefits. A veteran service officer (VSO) can handle this claim for a veteran as well.

3. **Denial of benefits on a Rating Decision due to a missed C&P exam:** The news has highlighted situations as of late in which the VA 'sets' C&P exams for which the veteran never received notice. The VA then turned around and denied benefits on this basis. Additionally, there are times where a

veteran does not get notice of the C&P exam if it goes to the wrong address, or the veteran has a conflict. In these situations, it would be best to not appeal. Rather, it's often best to write a letter to the VA and explain why the veteran was unable to attend the C&P exam. Remember that the veteran has a year to appeal the decision. Writing a letter about why the veteran could not attend and then asking for a new exam is potentially a faster way to get the proper benefits. Now, if there is no response to the letter asking for a new exam after several months, then the veteran should consider appealing. The appeal will take longer—most likely years—but if the VA is not going to respond to the request for a new exam, it is better to move the case forward.

4. **When you are confident in what you need to prove the claim**: Was the VA missing evidence that you have and that you know will prove your claim? Can you get a statement from your doctor to prove it? If you are confident that you have the evidence you need, then you do not need an advocate.

What to consider when hiring an attorney

The decision to hire an attorney to represent you for your VA disability compensation claim is an extremely important one. If you are going to pay an advocate, then that advocate must be able to do more for your claim than the free representation that you can get from a VSO. Once you sign a contract with an attorney, you cannot get out of it. So, here are three factors to consider before signing a contract:

1. **Does the attorney have something more to show than just VA accreditation?** Any attorney who holds himself or herself out as a veteran's attorney has to be "accredited" by the

VA. Please understand that the attorney only had to watch a three-hour video to earn "accreditation." The VA has thousands of regulations and rules. Three hours is not enough to even receive an overview of this information. Further, most VSOs have more rigorous training than this, and VSOs do not charge for representation. It's a red flag if the attorney holds this "accreditation" as the only experience that he has in VA law. If this is all the experience and training the attorney has, that means that the attorney will be using your case as training. His or her errors could undermine your case. Your benefits are too important to be an attorney's training. You want an attorney that has practiced in this area for at least several years. You want to see a resume that shows expertise in the field. You want to see someone who is involved in the advocate community, teaching others and writing papers or books on veteran representation.

2. **Does the attorney focus on VA claims?** You want to work with an attorney who focuses on VA benefits. This area of law is complicated and requires constant training and studying of the law, as it changes often. If you see a firm practicing many areas of law, this is a red flag, and you want to look and see if there are attorneys in the firm that only practice VA law. If not, you are entrusting your case to someone who doesn't specialize in this area.

3. **Insist on speaking with an attorney before signing a contract.** Your VA claim is important to you. It is personal. Hiring an attorney is a big decision. You need to speak with the attorney before signing the contract. You need to see what they can do to help you with your claim. An attorney should have time before you sign to tell you how he or she can help you with your claim. Remember, you are agreeing to pay this attorney; make

sure that you are going to get your money's worth. Importantly, once you sign a contract with an attorney, that contract is irrevocable. If you fire that attorney, he or she can still demand a portion of your retroactive benefits. This right would prevent any other attorney from representing you. Bottom line: if the attorney doesn't have time to speak with you before you agree to hire him, do not hire him.

Conclusion

Although the journey to service-connected benefits is often long and confusing, we hope this book has given you the knowledge you need to face the hurdles ahead. If you feel you are entitled to service-connected benefits, do not give up.

Obtaining service-connected compensation and the correct rating is a difficult process. However, it is important to remember that you represented our country, which means that you are entitled to the rights of being compensated for your service-connected disabilities. If the VA continues to deny your claim, and you need help, please give us a call. We represent veterans all across the nation. We know where the VA falls short in their decisions and how to overcome the VA's shortcomings to win benefits for our clients.

We would be more than happy to review your claim, without charge. Additionally, we have a 90-day satisfaction guarantee. If you are unsatisfied with our representation, you can walk away and we will tear up your contract and waive any fees.

For additional and current information, please visit our website and blog at hillandponton.com.

COMMON VA ABBREVIATIONS AND ACRONYMS

AMA : Veterans Appeals Improvement and Modernization Act

AO: Agent Orange

AOJ: Agency of Original Jurisdiction

Usually just means RO (Regional Office).

AMC : Appeals Management Center

Where BVA sometimes sends a case for further development if it doesn't send it back to the RO.

BVA: Board of Veterans Appeals Or "Board"

Located in Washington, D.C. If an appeal is filed to a Rating Decision, claim moves to the BVA.

C-file: Claims file

The file that the VA benefits section keeps on veteran's claims. This file is different from the file that the VA health section keeps on the veteran.

C&P: Compensation & Pension

C&P Service is a part of the VA division that administers benefits. "C&P" most often refers to VA medical exams to determine SC or lack thereof.

CAVC : U.S. Court of Appeals for Veterans' Claims Or "Veterans' Court" or just "Court"

CUE* : Clear & Unmistakable Error

CUE is not really a "claim," but rather a collateral attack on a final decision. It's actually a request for revision based on CUE. It's the only way you can get EED back to original date of unappealed, final claim but it is extremely difficult to prove the necessary elements.

DBQs: Disability Benefits Questionnaire

This is a form that a veteran can take to his VA or private doctor to describe the extent of the veteran's disability. The VA is supposed to accept this form in lieu of a C&P exam but that is not always the case.

DC: Diagnostic Code

4-digit numbers assigned to various conditions listed in rating schedule. This code is used to rate the veteran's disability.

De Novo: Latin for "Do Over"

The adjudicator should not give any weight to the prior decision.

DIC: Dependency & Indemnity Compensation

Widow's (or other survivors') benefit.

DRO : Decision Review Officer

A supervisor at the RO. After you get a RD (rating decision) you want to appeal, you can ask for DRO review first before going on up to BVA.

DTA : Duty to Assist

Addressed by VCAA, described by the VA as “not a one way street,” the veteran must also assist the VA with his claim, failure of DTA can be grounds for appeal, but cannot form the basis of CUE.

DVA: Department of Veterans’ Affairs

An alternative abbreviation for VA.

ED: Effective Date

With some important exceptions, it is usually the date VA receives the claim, including requests to reopen.

EED : Earlier Effective Date

Facts and circumstances may allow argument for an EED. One way to get it is proving CUE.

EPTS or EPTE: Existed Prior to Service/Entrance

Conditions often noted on entrance exam. The VA can try to deny SC based on EPTS, but if veteran shows a worsening in

service, then condition is usually presumed aggravated by service (and therefore SC) and the VA must rebut.

GAF: Global Assessment of Functioning

Common psych test with scores ranging from 0 to 100. The lower the score, the less able a person is to function in work and daily life. GAF has been phased out in the DSM-V.

GWI/GWS: Gulf War Illness/Syndrome

"Diagnosed medically unexplained chronic multisymptom illness" or "undiagnosed" illnesses with symptoms similar to fibromyalgia, chronic fatigue, etc.

GWOT: Global War on Terror

An umbrella term for the conflicts beginning after 9/11.

HLR: Higher Level Review in the AMA

I/R: Increased Rating

Type of claim filed to get higher rating for already SC condition. Veteran just needs to say he thinks problem has worsened. Then he should get a new C&P exam.

IME: Independent Medical Expert/Exam

The BVA sometimes will send a case out for an independent opinion. This is also something that a veteran can obtain to substantiate his/her claim.

IRIS : Inquiry Routing & Information System

On the VA website. A means of contacting them with questions.

JSRRC: Joint Services Records Research Center

Formerly known as USASCRUR or CRUR — Best known as where the VA is supposed to get PTSD stressor confirmation.

M1 – VA: Health Care Adjudication Manual

Internal "How-To" book for conducting medical exams, etc.

M21-1MR: VA Claims Adjudication Manual Rewrite

Usually just called M21.The "How-To" book for managing and evaluating claims. Its provisions are substantive and have the same authority as VA regulations.

MPFs/MPRs: Military Personnel File/Records

If they could be pertinent to the case, be sure you get these from NPRC or be sure they are in the C-file.

NARA: National Archives & Records Administration

Helpful research source. NPRC is a division of it.

NME or N&M: New & Material Evidence

Necessary for reopening. It's easy to get new evidence. (But it's usually just cumulative). What's harder to get is evidence that is

material and capable of substantiating the claim. Usually need a good nexus or quasi-nexus opinion or some strong lay statements to cross the low materiality threshold.

NOD: Notice of Disagreement

What you need to file to appeal a RD. Must be filed with RO within one year of notice of decision. Tell which findings you disagree with and why, say you desire appellate review. NOD may also consist of any pro se correspondence to the VA expressing dissatisfaction with decision.

NPRC: National Personnel Records Center

In St. Louis, where most military records are kept. Site of the legendary 1973 fire that destroyed a lot of records (over 2/3 for those discharged from Army before 1960 and about 2/3 of those discharged from AF before 1964 — certain alphabetical sections. Some records can be reconstructed.

NSC: Non-Service connected

Disabilities often noted on RDs as having been determined (either officially or unofficially) as not related to service. Sometimes a basis for pension as opposed to disability compensation.

OMPF: Official Military Personnel File

Should be available via NPRC.

POW : Prisoner of War

POWs are afforded a broad range of advantages in the disability compensation process, such as having disabilities presumed SC no matter when they manifest themselves.

PTSD: Posttraumatic Stress Disorder

A common mental ailment resulting from service.

QTC: “Quality, Timeliness & Customer Service”

The VA contracts with this company to provide C&P exams.

R&B: Reasons & Bases

The VA is supposed to provide adequate explanations for its decisions.

RD: Rating Decision

Explains issues, discusses the applicable law & evidence relied on, and provides explanation for the decision. If a rating is not involved, can be titled “Administrative Decision.”

RO: Regional Office

Where most benefits claims originate. Usually the one nearest to veteran’s residence and where the C-file is kept. Also called VARO. Where you return if BVA gives you remand.

SC: Service Connected, Service Connection

The first and most important goal in the veteran's claim.

SMC: Special Monthly Compensation

Extra payment for certain SC conditions, often for "loss of use" of certain body parts – including buttocks, feet, hands, etc.

SMRs/STRs: Service Medical/Treatment Records

Often essential for establishing SC.

SOC: Statement of the Case
Submitted by the RO after you file an NOD. This is what you need in order to proceed with a substantive appeal to the BVA. Usually just an expanded form of the RD.

SSC or SiSC: Statement in Support of Claim (Form 4138)

This is the form to use instead of sworn affidavits for statements of the veteran, family or friends. Usually just called 4138s.

SSOC: Supplemental Statement of the Case

Comes out after an SOC, remand, or prior SSOC. Addresses later issues, clarifies findings, or explains their denial again.

TBI: Traumatic Brain Injury

Unfortunately, the common condition for Iraq/Afghanistan (OIF/OEF/GWOT) veterans.

TDIU: Total Disability & Individual Unemployability

Also called IU. When a veteran has one SC disability at least 60% OR if more than one with one at 40% and combined rating at least 70% - and if a veteran can't sustain substantially gainful employment, then the veteran is entitled to 100% rating.

VA: Department of Veterans' Affairs

Also seen as DVA, previously (until 1989) stood for Veterans "Administration," often used interchangeably with "Secretary" as in Secretary of Department of VA.

VACO: Veterans Affairs Central Office

Directs VAROs and medical facilities, provides procedures they're required to follow.

VAMC: VA Medical Center

Usually where C&P exams take place.

VARO: VA Regional Office

Same as RO.

VAE: VA Exam

Just another way of saying C&P exam. The exam to determine service connection and proper rating.

VBA: Veterans Benefits Administration

In charge of all veterans' benefits programs.

VLJ (ALJ): Veterans Law Judge/Administrative Law Judge

They make the BVA decisions.

VSO: Veterans Service Organization (or Officer)

Organizations like DAV, PVA, VVA, VFW, and American Legion, et al.

COMMON FORMS

Form 21-22
Appointment of Individual as Claimant's Representative Form used to document that the veteran is represented by an advocate.

Form 9 - Appeal to BVA
Also called VA-9 or I-9. Generally must be filed within sixty days of SOC to perfect substantive appeal.

Form 10-5345
Request for & Authorization to Release Medical Records Form you use to get VA medical records.

Form 21-526
Original Claim for Compensation or Pension
Only one of these needs to be filed. It will usually support any subsequent claims or actions.

Form 21-534
Claim for Dependency & Indemnity Compensation
Filed for widow's/survivor's benefits. If a dependent files within a year after the veteran's death, then the effective date will be the date of death rather than date of filing.

Form 21-4138
Statement in Support of Claim (SSC/SiSC)
Usually referred to as a 4138. Used for lay statements, NODs, new claims, reopening requests, etc.

Form 21-4142

Authorization & Consent to Release Information to DVA Basic release and consent form.

Form 21-8940
Application for Increased Compensation Based on Unemployability
To file for TDIU. This is considered a claim for increased rating. You don't need to use the form to let them know that you want TDIU, but it's easier for them to process. Plus, they will not grant the claim until they have it.

Form SF-180
For requesting military records
Get it from NPRC website. Look at page 3 of it to see where to fax or mail it.

Form 3288
Request For and Consent to Release of Information from Individual's Records
To obtain copy of C-file, or information therein

Form 21-0958
Required NOD form to file appeal to a Rating Decision

COMMON MEDICAL ABBREVIATIONS

ALS Amyotrophic Lateral Sclerosis (Lou Gehrig's disease) Any qualified veteran with this diagnosis is now automatically service connected for it, no matter when it was diagnosed.

ADLs Activities of Daily Living
Occupational therapy assessments describe veteran's ability to take care of him/herself.

CC Chief Complaint Medical
complaints.

COPD Chronic Obstructive Pulmonary Disease
Often caused by asbestos, fumes, or chemical exposure.

DDD Degenerative Disc Disease

DJD Degenerative Joint Disease

DSM-IV Diagnostic & Statistical Manual (of Mental Disorders), 4th Ed. Assists in diagnosing psychiatric conditions and used in conjunction with rating schedule to assign degrees of disability to PTSD and other mental conditions. A new manual was released in 2013: DSM-V.

DX Diagnosis

EtOH Alcohol
This is noted both in service records and VA records.

F/U Follow-Up

GSW Gunshot Wound
Consider all aspects of the injury—bone, muscle, nerves, scarring. HX history.

LBP Low Back Pain
Pain alone isn't compensable, but it may indicate an underlying secondary condition.

LOC Loss of Consciousness
Mostly associated with TBI. A veteran may still have a substantial concussion without LOC.

MG Muscle Group

NOS Not Otherwise Specified
Often seen with mental diagnoses that can't be pinpointed to a specific disorder.

PULHES Physical capacity/stamina, Upper extremities, Lower extremities, Hearing, Eyes, & S psychiatric

Often noted on entrance and separation exams. Measurement of soldier's overall health.

RA Rheumatoid Arthritis

Often seen in Gulf War Syndrome cases.

R/O Rule Out
Some conditions may look like a diagnosis when they are really just instructions to rule them out.

ROM Range of Motion
What the VA ratings schedule bases most orthopedic conditions on. Testing required to be done with a goniometer.

SFW Shell Fragment Wound
Often call shrapnel wounds.

SX Symptoms

WNL Within Normal Limits
Used for describing virtually any condition that appears normal on exam.

COMMON QUESTIONS

1. What is the C-file?

The file the VA benefits section keeps on your claims. It should have all information on any and every claim you have filed since discharge. This file is different from the file that the VA health section keeps on you. It is important to obtain your C-file to make sure the VA has all the evidence you submitted and all the evidence it told you it would obtain for your claim.

2. What is a C&P exam and do I have to go?

The C&P exam is set up by the VA benefits section. Generally, it will not be conducted by your treating VA doctor. The purpose of the exam is to determine if your disability is service connected and/or to determine the severity of the disability. You must attend this exam, even if you have strong supporting evidence from other VA doctors or private doctors. If you do not attend the exam, then the VA can automatically deny your claim.

3. How far back can my benefits go?

Benefits typically go back to the date you filed your current claim. There are some exceptions though.

4. If I'm approved, how do I get paid?

The VA prefers to pay through electronic deposit, meaning that it deposits the money directly into your bank account.

5. Can the VA ever reduce my benefits?

Yes, the VA can reduce benefits, but only in certain cases and only when specific legal requirements are met. There are some instances in which a rating, or even a disability's status as service connected, is protected. For instance, total/100% ratings (including TDIU determinations), or ratings that have been in effect for five years or more, are afforded special protection. Likewise, those disabilities that have been rated at or above a particular rating level for twenty years or more cannot be reduced below that level unless the VA determines the rating was based on fraud.

6. Will my family continue to get benefits when I die?

Not automatically. Dependents will not receive the benefits that the veteran received when he was living. But the dependents can apply for a death pension, which is income based, and/or Dependency & Indemnity Compensation (DIC), which is based on the veteran's death being related to a service-connected disability or the veteran being rated at 100% for a certain amount of time.

7. Why should I hire an attorney?

We recommend that you apply for benefits first with a VSO or by yourself. The VA must help you with your VA claim. If you receive a decision with which you disagree, then consider hiring an attorney. An attorney can typically offer a more thorough review of your case. An attorney can also provide extra resources to help you, such as finding doctors for outside exams and military historians for record research.

8. What should I look for in an attorney?

An attorney should have more experience with VA law than just VA accreditation. This accreditation is no indication of actual experience. Also, an attorney should have VA law as his or her primary, or only, practice area. VA law is extremely complicated and cannot be practiced well part time. And ideally, an attorney should give presentations or seminars regarding VA law or how to practice VA law, which demonstrates expertise in the field.

9. Can the attorney speed up the appeals process?

No. Any advocate who says he can speed up the process is not telling the truth. As I tell my veteran clients, I have not had much success in getting the VA to act in a timely manner, but I have had great success getting the VA to make the right decision. There are really only two ways that the veteran can speed up his claim: by showing proof of extreme financial hardship or by showing that he has a terminal illness. Unfortunately, even these two situations do not guarantee a timely decision.

10. Do I have to dismiss my VSO?

An attorney cannot represent a veteran who is also represented by a VSO, but you do not have to dismiss one representative to hire another. You simply have to file a new VA form 21-22a (Appointment of Individual as Claimant's Representative), and the VA will recognize your new advocate as your representative.

ABOUT THE AUTHORS

Mr. Hill focuses his practice on representing disabled veterans. He represents veterans and their dependents across the nation. He has review over 10,000 claims of veterans going through the VA service connected disability compensation process. Mr. Hill limits his practice to psychiatric cases—especially PTSD—Agent Orange exposure cases, Individual Unemployability, Gulf War Syndrome and other chemical exposure issues.

Mr. Hill is a recognized authority on VA law. He has authored several books on VA service connected benefits. Mr. Hill gives presentations across the nation on VA disability compensation, including the pitfalls of C&P exams. He is the treasurer for the board of directors of the National Organization of Veterans Advocates (NOVA).

Mr. Hill attended the University of Florida and earned his Bachelor of Arts degree in Spanish in 2002. He was elected into Phi Beta Kappa and graduated Cum Laude. He attended law school at the University of Florida and was awarded the book award in Trial Practice. He earned his law Degree in 2005. Before attending the University of Florida, Mr. Hill spent a year in Uruguay where he became fluent in Spanish.

After graduating law school, Mr. Hill was a Judicial Law Clerk to The Honorable Anne C. Conway, U.S. District Court for the Middle District of Florida. While working for Judge Conway, Mr. Hill drafted orders, researched complex legal issues, and attended trials and hearings. Mr. Hill also assisted Judge Conway when she sat by designation with the Eleventh Circuit Court of Appeals in Atlanta, Georgia.

Brenda Duplantis has been helping clients at Hill & Ponton with disability claims since 1991.

Ms. Duplantis earned an Associate in Arts degree from Valencia Community College, Orlando, Florida. She has also studied Industrial Engineering at the University of Central Florida, Orlando, Florida.

She is fluent in Spanish and is an Ambassador for the Hispanic Chamber of Commerce Metro Orlando where she helps promote and ensure membership involvement for chamber advancement.

She is a certified yoga teacher and during her spare time she enjoys volunteering at schools and non-profit organizations teaching and advocating the benefits of Lymphatic Yoga.