Preparation of VA Disability Compensation Claims

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You are here: We are here to help you achieve your goals.

Objectives

- Describe and explain the ABA Veterans’ Claims Assistance Network (ABA VCAN)
- Define Veteran
- Explain eligibility for VA benefits
- Distinguish types of service connection
- Discuss Veteran’s right to representation
- Describe Fully Developed Claim (FDC) process, benefits, and exclusions
- Explain the claims process within the Regional Office (RO)
- Address Non-Service Connected Pension Benefits and Dependent Indemnity Compensation
- Discuss Veteran’s right to appeal, including the process for Administrative Appeal
- Explain confidentiality issues when working with Veterans.
The American Bar Association
Veterans’ Claims Assistance Network (ABA VCAN)

• A formal partnership between the VA and ABA

• The goal: Connect veterans with attorneys who will provide pro bono legal assistance to develop and complete the veterans’ claims for benefits.

• Who are the veterans assisted by this pilot project?
  – Located in the areas covered by the Chicago and St. Petersburg Regional Offices
  – Have filed claims for benefits that are not yet completed
  – Are not represented (i.e., do not have a POA)
  – Are currently in the VA case backlog, pending 125+ days

The American Bar Association
Veterans’ Claims Assistance Network (ABA VCAN)

• Attorneys are needed to volunteer for this effort!

• How to be eligible to assist veterans through VCAN:
  – Register online at www.ABAVCAN.org
  – Apply for and receive VA Attorney Accreditation
  – Complete this webinar training and submit certification to the VA
  – Read, sign, and submit the ABA VCAN Attorney Affirmation form to the ABA
The American Bar Association
Veterans’ Claims Assistance Network (ABA VCAN)

• What you can expect if you volunteer for ABA VCAN:
  – The ABA will make every effort to connect you with a veteran client within the
timeframe you indicate on the VCAN Attorney Affirmation form.
  – You will be provided all of the necessary forms to execute a pro bono representation
agreement and obtain a POA for the veteran if you agree to take the case.
  – You will be provided with the veteran’s VA file electronically.
  – You will have access to expert support as you work on your veteran’s case.

• You will have 60 days to complete the development of your veteran’s claim!
  – Provide all necessary documents to the ABA, which will then be submitted to the VA for
expedited adjudication.
  – You may still submit documents after 60 days.
  – You may continue to represent the veteran post-decision.

References

• Web Automated Reference Material System (WARMS – M21-1MR)
  http://www.benefits.va.gov/WARMS/M21_1MR1.asp
• VA Forms http://www.va.gov/vaforms/default.asp
• Disability Benefits Questionnaires (DBQs)
  http://www.benefits.va.gov/compensation/dbq_disabilityexams.asp
• Veterans Benefits Administration website  http://www.benefits.va.gov/benefits/
Who is a Veteran?

- A person who served in the active military, naval, or air service
- Discharged or released under conditions other than Dishonorable
  - Proof of service and character of discharge required, most common is DD Form 214
  - Character of discharge may be administratively determined

<table>
<thead>
<tr>
<th>Acceptable for VA Benefits</th>
<th>Requires VA Development and Administrative Decision</th>
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<tbody>
<tr>
<td>Honorable</td>
<td>Dishonorable</td>
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<tr>
<td>General</td>
<td>Under Conditions Other Than Honorable</td>
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<tr>
<td>Under Honorable Conditions</td>
<td>Bad Conduct</td>
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<tr>
<td>Uncharacterized – Entry Level Separation</td>
<td>Uncharacterized – Void Enlistment or Dropped from the Rolls</td>
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</tbody>
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- 38 CFR 3.1, 3.6, 3.7, 3.12, 3.12a, 3.13, 3.14

What is Compensation and Service Connection?

- Compensation is a tax-free monthly payment made by VA to a Veteran because of service connected disabilities
- Service connected disability means that such disability was incurred or aggravated in the line of duty in the active military, naval, or air service
- Disabilities are individually rated from 0% to 100%, with a combined overall rating
  - Compensation is paid when combined rating is 10% or higher
  - Additional allowance for dependents when rated 30% or higher
- 38 CFR 3.4
Requirements for Service Connection

• EVENT: Evidence that the Veteran suffered an event, injury, or disease in service, or has a disease or symptoms of a disease listed as a presumptive condition and meets the service requirements to qualify for that presumption;
• DIAGNOSIS: Competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;
• LINK: Indication that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service connected disability.
• 38 CFR 3.159

Types of Service Connection – Direct

• The Veteran was either injured or contracted a disease within the dates of his/her service as shown by evidence during service
• Chronic diseases first manifested or diagnosed during service
• Evidence must be consistent with the circumstances, conditions, or hardships of service
• 38 CFR 3.303, 3.304
Types of Service Connection – Aggravation

- Preexisting injury or disease which worsened during active service as shown by evidence during service, unless worsening was due to the natural progress of the disease
- Need medical opinion providing whether it is likely the condition worsened due to the natural progress or from event in service
- Veteran is considered to have been in sound condition at the time of entrance examination unless otherwise noted
- 38 CFR 3.304, 3.305, 3.306

Types of Service Connection – Presumptive

- Veteran may be granted service connection for a qualifying condition with qualifying service and current diagnosis; no additional link is needed

<table>
<thead>
<tr>
<th>Qualifying Service</th>
<th>Qualifying Condition</th>
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<tbody>
<tr>
<td>90 days of active, continuous service</td>
<td>Chronic diseases, amyotrophic lateral sclerosis (ALS)</td>
</tr>
<tr>
<td>90 days of active, continuous service with service in certain localities</td>
<td>Tropical diseases</td>
</tr>
<tr>
<td>Herbicide exposure</td>
<td>Diseases related to herbicide exposure</td>
</tr>
<tr>
<td>Radiation exposure during nuclear testing or occupation of Hiroshima or Nagasaki</td>
<td>Diseases related to radiation exposure</td>
</tr>
<tr>
<td>Former prisoner of war</td>
<td>Diseases specific to former prisoners of war</td>
</tr>
</tbody>
</table>
- 38 CFR 3.307, 3.309, 3.311, 3.318
Types of Service Connection – Secondary

- Disability is due to, or a result of, or has been worsened by, a service connected disability

Claims to Reopen

- A claim may be reopened after it has been finally adjudicated (one year following notification of decision) if new and material evidence is submitted
  - New evidence: has not been previously submitted
  - Material evidence: by itself or when considered with previous evidence of record establishes a fact to substantiate the claim
- 38 CFR 3.156
Claims for Increase

- Veteran may claim an increase for any service connected disabilities
- Evidence must show worsening of condition
- VA will request exam if necessary
- 38 CFR 3.160

Effective Dates

- Effective date is generally the day after discharge if claim is received within one year of release from active duty; otherwise, date of receipt of claim or date entitlement arose
- 38 CFR 3.400
Representation

• Veteran may designate a person or organization as his or her representative for VA purposes
• Attorney must be accredited
• VA Form 21-22a signed by Veteran and attorney

Filing a Claim

• Veteran may file an original claim on a VA Form 21-526 or VA Form 21-526EZ in paper or online
• Supplemental claims may be filed on VA Form 21-526b or VA Form 21-4138 in paper or online
• Substantially complete application includes name, service information, benefit claimed (i.e., Compensation), disability claimed, and signature
  – Claim is considered informal if it is not substantially complete
• 38 CFR 3.159
**Fully Developed Claim (FDC)**

- Veteran may submit a claim with all evidence included for faster processing, which is referred to as a Fully Developed Claim.
- Must be submitted on VA Form 21-526EZ and include all required supplemental forms.
- VA Form 21-526EZ includes 5103 notice.
- VA personnel are held to stricter timeliness requirements for FDCs.
- VA is still responsible for obtaining federal records and any necessary exams.
- M21-1MR Part III.i.3.

**FDC Exclusions**

- Veteran indicates desire to be excluded.
- There is already a claim pending.
- There is an appeal pending.
- Veteran fails to simultaneously submit required information/forms (as listed on VA Form 21-526EZ).
- Needs character of discharge determination.
- Development is needed to the Veteran, private medical facility, or Reserve/Guard unit.
- May be subsequently excluded after submitting an FDC if:
  - Veteran fails to report for a VA exam and asks for it to be rescheduled.
  - Veteran submits another claim, additional evidence, or Notice of Disagreement (NOD).
FDCs submitted prior to August 5, 2015

- Section 506 of Public Law 112-154 allows up to a one year retroactive effective date for awards of disability compensation for original claims received between August 6, 2013 and August 5, 2015
  - Must be received on VA Form 21-526EZ (in paper or online)
  - Must have separated from active duty more than one year ago
  - Informal/incomplete claims are not eligible
- VA will apply the one year retroactive effective date unless there is clear medical evidence to the contrary

Disability Benefits Questionnaires (DBQs)

- Downloadable forms which private examiner completes for the claimed disability; includes all information to evaluate current level of disability
- Veterans have the option of submitting a DBQ from their private provider instead of attending a VA exam
- Reduces time to complete claim
- Over 70 DBQs available for use by private providers
  - Some DBQs for VA use only: PTSD, Traumatic Brain Injury (TBI), Cold Injury Residuals, Former Prisoner of War (POW), General Medical, Gulf War, and Hearing Loss and Tinnitus
Claims Process – Intake

- Claim is received at Regional Office and stamped with date of receipt
- Intake Processing Center (IPC) establishes claim in VA system
- Claim is routed to Veterans Service Representative (VSR) for development of claim

Claims Process – Development

- VSR is responsible for requesting all evidence to substantiate claim
  - Verification of service
  - Service treatment records (STRs) from service department
  - Service personnel records from service department
  - Private treatment records, if identified by Veteran (VA Form 21-4142)
  - Employment records, if identified by Veteran (VA Form 21-8940)
  - Federal records (i.e., Social Security Administration, VAMC)
  - VA examination, if necessary
- VSR sends 5103 Notification to the Veteran (and Veteran’s representative) of actions taken by VA
  - Includes evidence requested for the Veteran to submit
  - Veteran has one year to submit evidence to retain effective date of compensation, but 30 days before VA may make a decision
- Claim is routed to Rating Veterans Service Representative (RVSR) for final decision
Claims Process – Rating

- RVSR is responsible for reviewing all evidence of record and making a determination of whether to grant or deny service connection
  - If granted, determination of evaluation is made
- RVSR may determine that additional information is needed before a decision can be made; these cases result in a deferral for additional development
- Claim is routed back to VSR for finalization and notification of decision

Claims Process – Award

- VSR is responsible for generating a letter notifying the Veteran of the decision – decision is considered final one year after the date of this notification
- Decision and evidence are reviewed to determine if dependency can be established and if there are any payment offsets
- VSR generates award through system which will start payments
- Claim process is complete
Reconsideration

• New evidence related to the claimed condition(s) received prior to the decision becoming final will be considered and a new decision will be issued
• 38 CFR 3.156

Right to Appeal

• Veteran may submit a Notice of Disagreement (NOD) in writing within one year of the notification of the decision
• 38 CFR 3.103
Final Discussion

- Use the resources at your disposal
- Contact VBA at 1-800-827-1000 or Inquiry Routing & Information System (IRIS)
  https://iris.custhelp.com/

Non-Service Connected Pension Benefits
Requirements

(1) Wartime service that ultimately results in a discharge under other than dishonorable conditions,
(2) permanent and total disability, and
(3) demonstrated need. The VA determines need by calculating the income and net worth of the claimant.

Periods of War:
1. World War II: December 7, 1941 – December 31, 1946
The Requirement of Permanent and Total Disability

Veterans claiming entitlement to pension benefits must be permanently and totally disabled from non-service-connected conditions or a combination of non-service-connected and service-connected conditions. 38 U.S.C.S. § 1521(a); 38 C.F.R. § 3.342(a) (2008).

Veterans are presumed to be permanently and totally disabled if:

- 65 years of age or older
- A patient in a nursing home

The Requirement of Need

Pension is a needs based program. Even if a veteran satisfies all of the other requirements, if the veteran's countable income exceeds the maximum annual pension rate (MAPR), a claim for improved pension will be denied.*

- MAPR for 2013: $12,652

In order to establish entitlement to improved pension, the VA considers the claimant's net worth as well as his or her income.

*The MAPR is adjusted to reflect changes in cost of living when social security benefits are adjusted to reflect changes in the cost of living.
**Exclusions and Deductions from Income for Improved Pension Purposes**

Sources of income excluded or deducted from income for VA improved pension purposes include*:

1.) Welfare
2.) Fire insurance proceeds
3.) Funds in joint accounts acquired by death
4.) Medical Expenses
5.) Interest accrued on retirement annuity accounts
6.) Expenses of last illness and burials
7.) Educational Expenses

* 38 U.S.C.S. § 501(a); 38 C.F.R. § 3.272 (2010).

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**The Formula Used to Calculate Improved Pension**

Simple Income Example:

If, for example, the annual income limit for a Veteran, as set by Congress, is $10,000 and your income is $7,000, your VA pension will be $3,000 ($10,000 - $7,000 = $3,000) paid in monthly installments.
A portion of your unreimbursed medical expenses (what you paid out of pocket after medical insurance pays) may reduce your countable income. If your medical expenses for a year are $8,000 and your medical insurance pays $6,000 of that, your unreimbursed medical expense is $2,000.

That portion of your unreimbursed medical expenses ($2,000 in the example above) which is more than 5% of the maximum rate of pension, or $500 in this example ($10,000 x .05 = $500), may be deducted from your total combined income which then increases the amount VA will pay to you.

Since the $2,000 out of pocket expenses is greater than $500, you may reduce your family income by $1,500 ($2,000 - $500). So, your income for VA pension purposes is now $5,500 ($7,000 - $1,500).

Your VA pension would then be $10,000 (maximum rate for a veteran) minus $5,500 (total family income after deducting unreimbursed medical expenses), or $4,500 for that year.
Special Monthly Pension (SMP)

Special Monthly Pension (SMP) is awarded for disability levels exceeding permanent and total disability. There are two types of SMP:

1.) Housebound benefits (HB). These benefits are awarded when the VA determines that a veteran who has already been determined to be disabled, is now also permanently housebound (essentially confined to his or her home).

2.) Aid & Attendance (A&A). If the VA determines that a veteran, who has established entitlement to pension, needs the regular aid and attendance of another person.

Information That Must be Provided Annually by Current Improved Pension Beneficiaries

The VA is authorized to require pension applicants and recipients to file annual reports detailing their previous year’s income (as well as that of their spouses and dependent children) and estimating anticipated income for the current year. 38 C.F.R. §§ 3.256, 3.277 (2010).

The VA calls these reports Eligibility Verification Reports (EVRs) and uses them to determine whether applicants and current pension recipients are in fact entitled to the benefits they receive.
Failing to Report Income

If a veteran fails to report income or underreports income to the VA, a debt may be created. This debt is usually referred to as an overpayment.

An overpayment may occur when a veteran gets divorced and then forgets to inform the VA of the dissolution.

If VA Determines there is an Overpayment

Dispute Validity or Amount of Debt
- No deadline for submitting this dispute
- However, if it is done within 30 days collection will be stayed

Request a Waiver of Collection
- Must be submitted within 180 days of notice
- May not waive the debt, if there is any indication of fraud or bad faith
Dependent Indemnity Compensation
Qualifying Family Relationships

- Surviving Spouse
- Surviving Child
- Surviving Dependent Parent

Surviving Spouse

Person of opposite sex who was spouse of veteran at time of veteran’s death and lived with veteran continuously from date of marriage to date of veteran’s death.

Surviving Spouse MAY also have to prove one or more of the following:
1. Married at least one year prior to the veteran’s death.
2. Continuous cohabitation with the veteran during the marriage; and
3. No remarriage after the Veteran’s death.

Same Sex Marriages

38 U.S.C. § 103(c) – requires the Department to look to the place of residency rather than the place of celebration to determine whether a Veteran’s marriage is recognized for the purposes of VA benefits.
Surviving Child

- Biological, Adopted, Stepchild
- Unmarried
- Qualifying Age
  - Under 18 years of age
  - Between 18-23 if pursuing course of education
    • 38 U.S.C.S. § 104(a)
  - Any age if child became incapable of self-support before reaching the age of 18. “Helpless Child”
    • 38 C.F.R. § 3.315(a) (2010)

Dependent or Surviving Parent

These benefits are given only in limited circumstances.

Key eligibility requirements:
- Parental relationship to the veteran
- Financial dependency of the parent
Availability of Dependent Indemnity Compensation (DIC)

Monthly DIC benefits available in two situations:

- Service-connected death of a veteran
- Veteran had a service-connected disability that was totally disabling for the last 10 years, 5 years, or, in some cases, one year of the veterans' life.
- 38 U.S.C. § 1318

Entitlement to DIC

- DIC claims filed after January 21, 2000:
  - Veteran must have filed a claim for benefits while alive.
  - If no claim was filed while the veteran was alive, there is no possibility of DIC benefits for survivors.
    - 38 C.F.R. 3.22 (2007)
    - NOVA II, 314 F.3d at 1378
- DIC intended to provide continued support to survivors who had become dependent on VA disability compensation during veteran's lifetime.
Dependency and Indemnity Compensation

- Surviving Spouse is first in line to receive benefits
  - VA will increase benefits to reflect surviving children
  - If surviving spouse does not apply, or if there is no surviving spouse, a qualifying child is next in line to receive DIC benefits.
    - 38 U.S.C.S. § 1313

Filing for DIC

- **No time limitation to file**, but:
  - If claim is filed within 1 year of death and granted, retroactive benefits will be awarded back to the 1st day of the month following Veteran’s death.
    - 38 U.S.C.S. §§ 5111(a), 5110(d).
  - Claims filed after 1 year of death, and granted, only receive benefits dating back to the 1st day of the month after the month in which the claim was received.
Entitlement to DIC

Surviving Spouse Can Show:

1. Veteran's death resulted in whole or in major part from a medical condition that itself is connected to veteran's military service
   OR
2. Veteran had a service-connected disability that was totally disabling for the last 10 years of veteran's life.

• 38 C.F.R. § 3.312 (2010)

Entitlement to DIC: Primary & Principal Causes of Death

• Service connected disabilities are considered the “principal” or “primary” cause of death when that disability, singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related to the death.

• 38 C.F.R. § 3.312(b) (2011).
A. Notice of Disagreement (NOD)

- The deadline to file an NOD is very important; it is within one year from the date of the mailing of the VA notice to the claims of the adverse decision.
  - 38 C.F.R. § 20.302(a) (2010).

- The date on the letter notifying the claimant of the decision is considered the “date of mailing” of the notice.
  - 38 C.F.R. § 20.302(a) (2010).
B. De Novo Review by a Decision Review Officer (DRO)

- A claimant who files an NOD may obtain de novo review of the initial decision, occurring between the filing of the NOD and the VA's issuance of the statement of case.
- The claimant may initiate a de novo review by either requesting it in the NOD, or requesting it within 60 days after the VA sends notice of the right to the de novo review.
- A de novo review by a DRO suspends the traditional appeals process.

C. Statement of the Case (SOC)

Upon receipt of the NOD, the RO must review the claims file and either grant or deny a claim. After reviewing the claims file, the RO will issue a Statement of the Case (SOC).

A SOC must contain:
- Summary of the evidence,
- Applicable law and regulations, and
- Reasons for denying the claims with respect to the issues raised by the NOD.
  - Herndon v. Principi, 311 F.3d 1121, 1124 (Fed. Cir. 2002).
D. Supplemental Statement of the Case (SSOC)

- When an SOC is “inadequate” for any reason the RO is required to prepare and issue the claimant and the claimant’s advocate a SSOC.
- An SOC is presumed to be inadequate when “additional pertinent evidence” is received by the RO after the SOC was issued, when a “material defect” is discovered, or if “[f]or any other reason” the SOC or prior SSOC is inadequate.” 38 C.F.R. § 19.31 (2010)

E. Substantive (Form 9) Appeal

- The Form 9 Appeal is an important document, it is the one instance under the VA procedural rules where the veteran's factual and legal arguments are required to be submitted.

- The veteran must set forth specific arguments relating to the errors of fact or law in the RO’s initial decision denying benefits.

- The Form 9 must be submitted within 60 days of the date of the SOC or SSOC.
Confidentiality & Privacy Considerations

Client-Lawyer Relationship
Rule 1.6 Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary...
(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

QUESTIONS?

• REMINDERS:
  – Register on www.ABAVCAN.org if you haven’t already.
  – Complete and submit the VA CLE Certification form.
  – Complete and submit the ABA VCAN Attorney Affirmation form.
Contact Information

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