Effectively Representing Wounded and Disabled Veterans in VA Benefits Matters

- Introduction
- The Veteran Community Today
- Basics of Compensation Claims
- Representation and Advocacy
- Overview of the ABA Veterans Claims and Assistance Network (VCAN)
- Conclusion
Objective of Presentation...

- Discuss the current status of the veteran community;
- Provide an overview of veterans benefits and how to effectively develop benefits claims;
- Create awareness of veterans’ need for legal assistance;
- Allow issue-spotting and referral to highest and best resource for assistance; and ...
- Provide information of the ABA Veterans Claims and Assistance Network

The Veteran Community Today...
Distinct Generations of Veterans...

- WWII - 16.1 M served; 291K KIA; 670K WIA; 1,111 M still living as of 2013"; 92 median age

- Korea – 1.7 M served in theater (6.7 M overall during KW era); 54K KIA; 103K WIA; 1,878 M still living"; 81 median age

- Vietnam – 3.403 M served in theater (8.74 M overall during VW era); 55K KIA; 153K WIA; 6,962 M still living"; 62 median age

- Peacetime – Served during a “non-war” era: 5,337 M

- Gulf War – 694K Deployed (2,322 M serving during conflict; 338 KIA; 467 WIA; 2,244 still; median age varies, on average mid-40’s

- Post 9/11 - 2.3 M served (serving) since 9/11; multiple deployments; increased % of women veterans; PTSD/TBI; downsizing expected to have a 1M exit service. 4,486 OIF KIA; 2309 OEF KIA

Women Veterans...

A growing part of the veteran community!

Unique Challenges:
- Larger combat role and experiences
- Deployed and left dependents in “fragile system of care”
- Younger demographics, with unique healthcare needs
- Lack of self-identification and accessing veteran resources
- Caregiver Status complicates access to resources
- Military Sexual Trauma experiences...
Snapshot of Illinois Veterans...

- Veterans: 782,747 (6.1%) of 12.8 M Illinois Residents
  7th most populous veteran state in US
- Male: 725,647
- Female: 57,100 (12%)
- Wartime: 581,600 (75%)
- Peacetime: 201,100
- OIF/OEF Casualties: OEF 83 KIA; 376 WIA (459 Casualties)
  OIF 162 KIA; 1092 WIA (1244 Casualties)
- ILNG/Reserve Personnel Deployed Since 9/11 in Iraq/Afghanistan: 22,000
- ILNG/Reserve currently deployed: Appx 540

Societal disconnect...

- All Volunteer Force
- .4 of 1% of US Pop
  WWII = 9%
- Values Training Education
- Transition to civilian status is the biggest challenge, and is determined by the factors of the era of service
- High-quality Force
  HS Grad/GED @ minimum
  Battle tested
  Combat hardened
  Social issues - resolved in service
  Not Society Rejects
Challenges in Transition...

Integration – Education – Employment
Common underlying issues affecting a veteran’s quality of life...

- Non-user friendly transition
- Access to health care
- Mental health issues
- Financial assistance
- **Access to federal benefits**
- Lack of legal support (Civil/Criminal)
- Employment/Unemployment
- Access to education/training/certification

Common underlying issues affecting a veteran’s quality of life...

- Housing/Homelessness
- “Bad paper”
- Addiction/alcohol and substance abuse
- Criminal history (non-access to expungement)
- Terminal un-employability
Trends & Challenges...

- An incomplete narrative, with veterans as victims rather than assets
- A hard-to-find community
- Worst time to re-enter the economy for employment purposes
- “Veteran” resources will decrease...
- Unnavigable “Sea of Goodwill”...but state collaboratives are forming...

Layers in the Veterans System...

- **Federal:** Health Care + Disability Compensation
  - Department of Veterans Affairs

- **State:** Veteran Homes, Veteran Service Officers, Special Projects

- **County Veteran Assistance Commissions:** Transportation + Emergency Assistance

- Veterinary Service Organizations
- Organizations w Veterans Programs
Basics of Disability Compensation Claims...

Objectives

- To describe the traditional claims process vs. the fully developed claim process
- To familiarize participants with the life of a claim
- To provide a foundation of claims processing that will assist you in serving Veterans
VBA's Transformation

- Veterans Benefit Management System (VBMS)
- Stakeholders Enterprise Portal (SEP)
- Digits 2 Digits (D2D)

The Traditional Claims Process

- Received on a standard VA Form 21-526 application for Compensation and Pension
- Allows the Veteran to submit evidence throughout the life of the claim
- Veteran needs the VA to obtain records
- Allows Veteran to add disabilities
Claim Comes Into The Intake Processing Center (IPC)

- Date stamped with the date that we received it
- 7 days to put the claim under control
- The claim is assigned an End Product (EP)
- The claim leaves the IPC and goes to the file bank

Claim Goes Into Segmented Lanes

- Express (1-2 issues)
- Core (3 or more issues)
- Special Ops

- All initial development is completed here
  - Military records (medical, personnel, financial)
  - Private medical records
  - Letter is sent to the Veteran
  - Exam request
Rating Team

- The claim is rated based on the evidence of record

Promulgation

- The claim is awarded or denied.
- A letter is sent to the Veteran along with a copy of the rating decision
- This process takes on average 269 days to complete nationwide
Fully Developed Claim (FDC)

- 2009 President signed into law the Claims Improvement Act
- 2010 VA conducted a pilot in five regional offices
- 2011 the FDC program rolled out nationally

FDC Claim Process

- Receive claim on a VA Form 21-526EZ Application for compensation under the fully developed claim program
- The Veteran submits all of their evidence with their application.
- All pertinent records are in VA custody or obtainable (active duty service members only)
FDC Exclusions

- The claimant has a claim pending at the time of receipt of the EZ form
- The claimant has an appeal pending at the time of receipt of the EZ form
- The claim requires a character of discharge determination
- The claim requires development for records in the custody of the Veteran’s Guard/Reserve unit(s)

FDC Exclusions (con’t)

- Further evidence is needed from the claimant or an identified private medical provider.
- The claim requires any development except:
  - Federal records in the custody of the Federal government
  - Claimant-identified Federal treatment records such as VA medical center (VAMC) treatment records
  - A VA examination/DBQ
Exclusions After Receipt

In addition to being excluded at receipt, the claim can be subsequently excluded if:

- The Veteran fails to report for a VA exam (and the fault is not with the VA due to using an incorrect address)
- A supplemental claim, additional evidence, or an notice of disagreement (NOD) on any claim is received after receipt of the FDC

FDC Development

Despite the name, we do not expect FDC claims to be ready for a decision immediately upon receipt. VA will still complete the following development on an FDC:

- Request any identified federal records. These records include service treatment records (except Guard/Reserve), VAMC records, personnel records, Social Security records, etc.
- Request a VA exam and opinion if necessary to decide the claim
Guard and Reserve Records

If the Veteran is a member of the National Guard or Reserves, they must submit copies of their service treatment records and any relevant personnel records along with their claim in order to be eligible for the FDC program.

If, during the development of a claim, VA determines that relevant records (that were not submitted by the Veteran) are in the custody of the Veteran’s Guard or Reserve units, the claim will have to be excluded from the FDC program.

Private Medical Records

In the FDC program, the Veteran must submit copies of the treatment records for VA to consider in order to remain eligible for the FDC program.

If the Veteran submits a completed VA Form 21-4142 (Authorization and Consent to Release Information to the Department of Veterans Affairs) for a private provider along with their claim, the claim will be excluded and VA will develop for the medical records under the standard claims process.
FDC

- Received in IPC (with all evidence attached)
- Gets flagged for priority processing
- Short time in the development stage
- Rated
- Promulgated

This process takes on average 113 days to complete nationwide

Questions
Break

Basics of Disability Compensation Claims...
Most common types of claims...

- Disability Compensation Claims
  - Common complex claims
    - Mental Condition
    - TBI
    - Physical limitations
    - Stomach and respiratory
    - Presumption categories
- Pension Claim
- Dependency and Indemnity Compensation (DIC)
- Total Disability based on Individual Unemployability (TDIU)

Standardized Forms...

- **DD 214 -- Certificate of Release or Discharge from Active Duty**: Provided to every servicemember upon release or discharge from Active Duty status. It will contain critical information and the characterization of service.
- **NBG 22 National Guard Report of Separation and Record of Service**: Provided to NG servicemembers for status purposes for separation and record of service.
- **VA Form 21-526 EZ -- Application for Disability Compensation and Related Compensation Benefits**: Used to apply for compensation benefits if the veteran currently has a disability that is a result of an injury, disease, or injury that resulted in military service.
- **VA Form 21-4138 -- Statement in Support of a Claim**: A form used to allow the claimant to make additional statements in support of their claim for benefits.
- **VA Form 21-22-A -- Appointment of Individual as Claimant’s Representative**: Used to recognize the individual appointed by the claimant to act on their behalf in the preparation, presentation, and prosecution of claims for VA benefits and for those individuals to accept appointment. The VA also uses this form to verify consent for disclosure of VA records to the appointed representative.
**Standardized Forms...**

- **Disability Compensation Questionnaire (DBQ)** -- 71 new electronic forms that allow private physicians to submit medical evidence to support a claim now deployed in all 56 Regional Offices.
- **SF 180 -- Request Pertaining to Military Records** -- Used to request military records that are secured at the National Personnel Record Center.
- **VA Form 21-4142 Authorization and Consent to Release Information to the Department of Veterans Affairs** -- Provides authority and consent for the VA to request and obtain a claimant’s medical records.
- **VA Form 21-526b -- Supplemental Application for Compensation** -- Used to apply for compensation benefits for those veterans that seek to obtain service connection for new disabilities, reopen a previously denied claim, seek a secondary disability from an existing condition.
- **VA Form 21-527 -- Income, Net Worth and Employment Statement** -- Used in support of a Pension claim and provides information on income, net worth, and employment status.

**Filing a Disability Compensation Claim...**

- **Requirements**
  - Incurred or aggravated by military service
  - Creating the nexus with current symptomology
- **Forms/E-benefits**
  - **VA Form 21-526 EZ -- Application for Disability Compensation and Related Compensation Benefits**
  - E-benefits
    - Provides a customer service portal for life-long DoD to VA engagement
    - Enables Veterans to submit electronic forms to initiate claims and receive status updates
    - Enables collaboration with VSOs, SDVAs and CVSOs to assist Veterans with all interactions with VA
Filing a Disability Compensation Claim...

- Timeline
  - No timeline requirement for initiating a claim, however, if filed within a year of discharge = is technically considered a presumption (that the condition/injury was incurred or aggravated by military service)
- Timing requirements exist for appeal actions
- Obtaining military records – VA will satisfy this requirement by making an electronic request; but claimant should parallel this VA Duty to Assist requirement
- VA will schedule a Compensation and Pension Examination – critical that claimant timely appears for appointment
- Seeking private medical provider – claimant, if access is available will provide claims file any and all private medical records. Use of the Disability Benefits Questionnaire (DBQ) will assist in streamlining the process.
- Claimant will submit “Lay evidence” in support of their claim

Questions
Establishing Service Connection...

Objectives...

- Familiarize participants with the necessary elements of a disability claim

- Describe the ways to establish service connection between a disability and military service
**Necessary Elements of a Claim...**

- Evidence of a Current Disability
- Evidence of an incident or event during service
- Evidence of a link between the current disability and the incident or event during service

**Ways to Establish Service Connection...**

- Direct
- Aggravation
- Presumption
- Secondary
- Caused by VA Medical Treatment or Vocational Rehabilitation
Questions

Appealing a Decision...
Overview of the Appeals Process...

Questions
Role of the Attorney as the Representative and Advocate

How Attorneys Can Assist…
Role of the Attorney as the Representative and Advocate

- File “Appearance” form with VA
- Intake process
  - obtaining Claims File
  - Contacting veteran; maintaining contact...
- Confirming status of current file as it relates to claim sought
- Obtaining additional military service records, supporting statements, etc...
- Maintaining awareness of timeliness issues
  - guide veteran through process

Veterans Claim Development – Service Connected Disability...

3 Requirements to Obtain:
1. medical diagnosis of current disability
2. evidence of in-service occurrence or aggravation of a disease or injury
3. link or nexus (usually medical evidence) between the in-service occurrence or aggravation of a disease or injury and the current disability
The 60 Day Window in the VCAN...

Suggested actions to take during the “60 Day window”

- **File Review: accuracy and gaps**
  - Review any communications between the VA and the client
    - Looking for gaps in what was asked for and what was submitted
  - Review documented evidence that was submitted by the veteran
- **Communicate to the veteran that the file requires medical documentation to support the claim**
  - Do they have private provider?
  - As useful guide, use a DBQ if possible. Confirm the DBQ required and provide to veteran. Looking for a “more likely than not” opinion...
  - Time of C/P may be untimely (after the 60 day window…).

Role of the Attorney

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The 60 Day Window in the VCAN...

- When C/P is scheduled – hound your veteran to attend, cannot miss the appointment
- If there are any added communications with the VA and veteran, the veteran needs to contact the attorney immediately.
- Establish internal case file timeline – date of receipt to 60 days, and backward plan to submitting evidence NLT day 56 so that it is timely.
- Additional evidence can be submitted after the 60 days….buddy statements, etc…lay evidence…
Veterans Claim Development – Due Diligence...

- In establishing in service occurrence / aggravation, a claimant should point to something of “evidentiary value” to support entitlement
  - utilize public records repositories / FOIA to obtain military personnel and medical records
    - obtain C-file (claims file from VA)
    - obtain military records (NPRC - National Personnel Records Center)
      - Meet Me in St. Louis (MMIS 1944)
    - Unit histories
    - Deck logs

Veterans Claim Development – Due Diligence...

- In establishing in service occurrence / aggravation, a claimant should point to something of “evidentiary value” to support entitlement
  - Obtain lay evidence
    - Veterans own statements describing in detail circumstances of injury or event
      - a/k/a declarations
    - Buddy statements
    - Private medical records
    - Newspaper articles
    - Letters to family / friends
    - Internet resources can be of tremendous value
Veterans Claim Development – Due Diligence...

- In establishing in service occurrence / aggravation, a claimant should point to something of “evidentiary value” to support entitlement
  - obtain *lay evidence*
    - Internet resources can be of tremendous value
    - Brave New World of social networking is of incredible value in making the world smaller and distances in time bridgeable

Veterans Claim Development – Making the Link – Nexus...

**Medical Evidence in General**
- “compe**n**ent medical evidence” must establish that “it is as likely as not” that current disability resulted from disease, injury, or precipitating event during service. 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102.
  - referred to as “benefit of the doubt” standard
  - In other words, a 50% chance
    - *significantly different* than standard lawyers and doctors otherwise encounter

- “competent medical evidence” can also come from
  - Letter or statement of VA or private physician
  - Evidence in veteran’s service medical records and treatment records
  - Evidence in medical textbooks, treatises or journals
Questions

Advocacy -- Connecting the Veteran to Resources...
Role of the Attorney as the Power of Attorney (and veteran advocacy [?])...

- Veteran advocacy
  - Consider cross-leveling non-claim [underlying] issues with the ABA triage center [or supporting VSO]
  - Assist/Connect Veteran with resources/services
    - VSO’s, VAC’s, Aid Clinic
    - Community organizations
    - NFP’s
    - Referral networks
    - State collaborative initiatives

Warm hand-off...

Available Resources and Services...

- Federal and State agencies
- Community based programs
- Veteran Service Organizations (VSO’s)
- Veteran Assistance Commissions (VAC’s)
- Veteran Treatment Courts (VTC’s)
- Veteran Justice Outreach Coordinators (VJOC’s)
- NFP Aid Clinics
- Legal Clinics
- State collaboration initiatives
Navigating the Resources...

I.JF is a joint effort to better serve veterans, service members, and their families throughout the state.

I.JF brings together, under a common umbrella, public (DVA/DMR), non-profit, and volunteer organizations in order to foster increased awareness of available resources and collaboration among participating organizations.

Legal Trends and Needs...

Veterans needs are broader than legal assistance during the claims process:

- Family Law
  - Child Custody Matters
  - Child Support Order Modification/Vistation
  - Dissolution of Marriage (Benefits?)
  - Domestic Violence

- Consumer/Property Law
  - Debt Management
  - Credit Repair
  - Bankruptcy
  - Mortgage/Foreclosure Defense
  - Unfair practices/consumer fraud

- Elder Law
  - Transitioning Benefits for survivors/widows
  - Estate Planning
  - Health Care for Seniors
Questions

ABA Veterans Claims and Assistance Network...

- Accreditation
- USDVA Certification requirements
- POA Code and access to Claims file
- ABA Triage Center