

VA BENEFITS AND THE VA CLAIMS PROCESS

VA Accreditation Training

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

1



ALEXIS IVORY



- Senior Staff Attorney, NVLSP Training Dept. & Lawyers Serving Warriors
- Previously served as Counsel to BVA
- Helped develop NVLSP's VA Benefit Identifier App
- VBM Author

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

2




AGENDA



- Representation Before VA
- Basic Eligibility for VA Benefits
- Disability Compensation
- Non-Service-Connected Disability Pension
- Dependency and Indemnity Compensation
- Claims for VA Benefits
- Review / Appeal of Adverse VA Decisions

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org


3



REPRESENTATION BEFORE VA

Presented by Alexis Ivory

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org




WHO CAN REPRESENT CLAIMANTS BEFORE VA?

- An accredited
 - Veterans Service Officer
 - Attorney
 - Agent
- Exception: Any person may be authorized to prepare, present, and prosecute one claim
 - 38 C.F.R. § 14.630

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org





WHO CAN REPRESENT CLAIMANTS BEFORE VA?

- VA accreditation is required to:
 - Prepare a claim
 - Present a claim
 - Prosecute a claim
 - See 38 C.F.R. §§ 14.626, 14.627(a), 14.629(b)(1)
- Accreditation not required for advice/consultation prior to claimant's decision to file a claim

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

ATTORNEY ACCREDITATION INITIAL REQUIREMENTS 38 C.F.R. § 14.629(b)



• STEP 1: File VA Form 21a with VA OGC

• Must provide info about

- Employment
- Education
- Jurisdictions/agencies where admitted to practice
- Character and fitness (convictions, charges, discipline, etc.), including character references
 - VA will presume character and fitness of attorneys to practice before VA based on membership in good standing in state bar

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

7

AGENT ACCREDITATION INITIAL REQUIREMENTS 38 C.F.R. § 14.629(b)



• STEP 1: File VA Form 21a with VA OGC (same as attorneys), but:

- VA must make an affirmative determination of character and fitness (not presumed) after receiving responses from 3 professional character references

• STEP 1A: Pass a written exam (score at least 75%)

- Offered by VA OGC online about every 3 months

• NOTE: Under temp VA policy, which VA has proposed to make permanent, applicant must pass exam before VA will seek responses from character references

- www.va.gov/ogc/accreditation.asp; Improving Accreditation Process and Strengthening Legal Education Requirements for Accredited Agents and Attorneys, 89 Fed. Reg. 82546 (proposed Oct. 11, 2024)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

8

MAINTAINING ATTORNEY/AGENT ACCREDITATION 38 C.F.R. § 14.629(b)



- If VA OGC approves application (and agent passes exam), individual will be accredited to represent claimants before VA, but within 1 year of accreditation, must complete 3 hours of state bar-approved CLE covering the specific topics in this training

- Every two years thereafter, attorney/agent must complete an additional 3 hours of state bar-approved CLE on veterans benefits law and procedure

- VA has proposed requiring applicants to meet initial CLE requirement w/in 6 months *prior to* application and *annually* after approval

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

9

MAINTAINING ATTORNEY/AGENT ACCREDITATION 38 C.F.R. § 14.629(b)



- **EVERY YEAR** after initial accreditation, attorney/ agent must submit to VAOGC a letter certifying:

- Good standing in every court, bar, and Federal or State agency where admitted to practice or authorized to appear, including ID number and membership info
- For years in which CLE required, that the CLE requirement was met, including title of CLE, date and time taken, and CLE provider

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

10

MAINTAINING ATTORNEY/AGENT ACCREDITATION 38 C.F.R. § 14.629(b)



- Initial application and annual certification letter can be submitted to VAOGC at:

- Email: ogcaccréditationmailbox@va.gov
- Fax: (202) 495-5457
- Mail:

Department of Veterans Affairs
Office of the General Counsel (022D)
810 Vermont Ave, NW
Washington, DC 20420

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

11

VSO ACCREDITATION REQUIREMENTS 38 C.F.R. § 14.629(a)



- **VA-recognized service organization must file VA Form 21 with VA OGC**

- Must be signed by org's certifying official, who certifies that applicant:
 - Is of good character and reputation and has demonstrated an ability to represent claimants before VA
 - Is either a member in good standing or a paid employee (1,000+ hours/year) of the org., is accredited by another org., or is a county/tribal VSO recommended by a recognized State org (and meets other criteria)
 - Is not employed by the U.S.

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

12

STANDARDS OF CONDUCT 38 C.F.R. § 14.632(a)



• Representatives must:

- Faithfully execute their duties as individuals providing representation on a particular claim
- Be truthful in their dealings with claimants and VA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

13

STANDARDS OF CONDUCT 38 C.F.R. § 14.632(b)



• Representatives must also:

- Provide claimants with competent representation
 - Requires the knowledge, skill, thoroughness, and preparation necessary for the representation.
 - Includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of 38 U.S.C. and 38 C.F.R.
- Act with reasonable diligence and promptness
 - Includes responding promptly to VA requests for info or assisting a claimant in responding promptly to VA requests for info

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

14

STANDARDS OF CONDUCT 38 C.F.R. § 14.632(c)



• Representatives must NOT:

1. Violate these standards of conduct
2. Circumvent a rule of conduct through the actions of another
3. Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty
4. Violate any provisions of 38 U.S.C. or 38 C.F.R.
5. Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation
6. Solicit, receive, or enter into agreements for gifts related to services for which a fee could not lawfully be charged

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

15

STANDARDS OF CONDUCT 38 C.F.R. § 14.632(c)



• Representatives must NOT (cont'd):

7. Delay, without good cause, the processing of a claim at any stage of the administrative process
8. Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under VA programs
9. Engage in or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of VA proceedings
10. Disclose, without the claimant's authorization, any info provided by VA for purposes of representation; or
11. Engage in any other unlawful or unethical conduct

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

16

STANDARDS OF CONDUCT 38 C.F.R. § 14.632(d)



• Additionally, attorney representatives must NOT:

- engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which the attorney is licensed to practice law

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

17

APPOINTMENT AS REPRESENTATIVE




- Before VA will recognize an attorney/agent as a claimant's representative, they must execute and file with VA a **VA Form 21-22a, Appointment of Attorney or Agent as Claimant's Representative** (VSOs must submit **VA Form 21-22**)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

18


APPOINTMENT AS REPRESENTATIVE



- Attorneys/agents (but not VSOs) may limit representation to a particular claim or claims
 - Must specify in block 24 of Form 21-22a
 - Consider doing so if:
 - certain claims Vet wants to pursue lack merit
 - you don't want to be surprised by claim filed by Vet w/out your knowledge
 - But, if Vet has different representation for different claims:
 - Ability to view c-file in VBMS may be hindered
 - Anticipate VA communication/notice problems

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
19

APPOINTMENT AS REPRESENTATIVE




- Generally, once a POA form is filed with VA, it stays in effect until revoked by claimant or representative, or claimant appoints a different representative
- If VSO or individual holds POA for all claims and then attorney/agent files VA Form 21-22a limited to certain claims, original POA holder will retain POA for all other claims

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
20

WHEN FEES CAN BE CHARGED

38 C.F.R. § 14.636



- Attorneys / agents may charge fees for certain work with VA claimants:
 - Pre-filing consultation
 - Prior to claimant's decision to file claim
 - Not associated with preparation and presentation of specific claim for benefits
 - "Legacy" claims – work done after NOD filed
 - "AMA" claims – work done after decision on initial claim
 - Including all work on supplemental claims

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
21

WHEN FEES CAN BE CHARGED 38 C.F.R. § 14.636



- Fees can be charged for filing a request for revision of a VA decision based on clear and unmistakable error (CUE), if challenging:
 - Decision on a claim in which RO issued initial decision after 2/18/2019 (i.e., subject to AMA), or
 - Decision in which a legacy NOD was filed on or after 6/20/2007, or
 - Decision in which a legacy NOD was filed prior to 6/20/2007, and there is a final BVA decision that followed the NOD
- Otherwise, fees can only be charged *after* decision on CUE request

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

22

FEE AGREEMENTS 38 C.F.R. § 14.636(g)



- Must be in writing and signed by attorney/agent AND VA claimant
- Must include name of Vet and VA file number
- Must include terms for determining amount of fees
- Must specify if VA is to pay directly out of past-due benefits, and if so, it must be
 - Filed with AOJ w/in 30 days of execution
 - For no more than 20% of past-due benefits
- If not to be paid from past-due benefits, must be filed w/ OGC w/in 30 days of execution
- OGC may review for reasonableness and eligibility

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

23


AMOUNT OF FEES 38 C.F.R. § 14.636(e), (f)



- Fees may be based on:
 - Fixed fee
 - Hourly rate
 - Percentage of benefits recovered
 - A combination of the above
- Fees must be “reasonable”
 - Factors to be considered listed in § 14.636(e)
 - 20% or less of past-due benefits presumed reasonable
 - More than 33 1/3% of past-due benefits presumed unreasonable
 - Presumptions rebuttable

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org


24



BASIC ELIGIBILITY FOR VA BENEFITS

Presented by Alexis Ivory


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
25



VETERAN STATUS

- To be eligible for VA benefits, claimant must meet the statutory definition of “veteran”
 - Because 38 U.S.C. § 1111 uses the word “veteran,” it only applies to claimants who meet the definition of “veteran” under 38 U.S.C. § 101(2)
 - *Smith v. Shinseki*, 24 Vet. App. 40 (2010)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
26



VETERAN STATUS

- “Veteran” is a person who:
 - Served in the active military, naval, air, or space service

AND

 - Was discharged or released under conditions other than dishonorable


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
27



ACTIVE SERVICE

- “Active military, naval, air, or space service”
 1. Active duty
 2. Active duty for training, if person disabled or died from disease or injury incurred or aggravated in line of duty during that period of service
 3. Inactive duty training, if person was disabled or died from injury incurred or aggravated in line of duty OR suffered heart attack or stroke during that period of service


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
28



CHARACTER OF DISCHARGE

- Discharge “under conditions other than dishonorable”
 - No statutory bars to VA benefits
 - Discharge reason: general court-martial, desertion, OTH due to AWOL for at least 180 continuous days, etc.
 - 38 U.S.C. § 5303(a)
 - No regulatory bars to VA benefits
 - Discharge reason: mutiny, spying, willful and persistent misconduct, offense involving moral turpitude, etc.
 - 38 C.F.R. § 3.12(d)
 - If any bar exists, the insanity exception applies, or
 - If AWOL, moral turpitude, or W&P misconduct bar exists, there are compelling circumstances


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
29



INSANITY EXCEPTION

- VA benefits may be granted even though the discharge would normally be considered to be under dishonorable conditions, if it is established that, at the time of the offense leading to the discharge, the Vet was insane
 - 38 U.S.C. § 5303(b); 38 C.F.R. § 3.354

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
30



LENGTH OF SERVICE

- If Vet enlisted for first time after 9/7/1980, or entered service for the first time as an officer after 10/16/1981, to be eligible for some VA benefits, Vet must have served 24 months of continuous active duty OR the full period for which the Vet was called or ordered to active duty
- Benefits subject to requirement include:
 - Non-service-connected disability pension
 - Health care
 - Education benefits
 - Burial benefits

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
31



LENGTH OF SERVICE

- Exceptions to the length-of-service requirement include:
 - SC disability compensation
 - VA life insurance benefits
 - Vets with hardship discharge under 10 U.S.C. § 1173 or an early discharge under 10 U.S.C. § 1171
 - Vets retired/separated due to a service-related disability
 - Vets with a compensable SC disability

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
32



WILLFUL MISCONDUCT

- VA benefits cannot be based on an injury, disease, or death that was the result of “willful misconduct”
 - See 38 U.S.C. §§ 105, 1110, 1521(a); 38 C.F.R. § 3.301
- Willful misconduct is “an act involving conscious wrongdoing or known prohibited action”
 - It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences
 - A technical violation of a police regulation or ordinance does not necessarily constitute willful misconduct
 - 38 C.F.R. § 3.1(n)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
33




BART STICHMAN



- Special Counsel to and Co-founder of NVLSP
- Member of the Judicial Advisory Committee of the U.S. Court of Appeals for Veterans Claims
- Past president of the U.S. Court of Appeals for Veterans Claims Bar Association
- Veterans Benefits Manual editor

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
34



DISABILITY COMPENSATION

Presented by Bart Stichman

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
35



DISABILITY COMPENSATION AGENDA

- General Information
- Current Disability
- In-Service Event
- Nexus
 - 5 theories of SC
- Disability Rating
 - TDIU
 - SMC
 - Reductions
- Effective date of benefits




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
36



GENERAL REQUIREMENTS

- Vets are entitled to compensation for disabilities incurred in or aggravated during active military, naval, air, or space service
 - 38 U.S.C. § 1110
- Service dep't findings are binding on VA
 - Service records authoritative of whether individual served & dates of service


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
37



BENEFIT OF THE DOUBT RULE

- When there is an approximate balance of positive and negative evidence (it is "nearly equal") regarding any issue material to the determination of a matter, VA shall give the benefit of the doubt to the claimant
 - 38 U.S.C. § 5107(b); *Lynch v. McDonough*, 21 F.4th 776 (Fed. Cir. 2021)
- Benefit of the doubt rule is a core principle in VA disability benefits law and is representative of the intended pro-veteran system


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
38



ELEMENTS OF A VA DISABILITY COMPENSATION CLAIM

1. Veteran status (previously discussed)
2. Existence of current disability
3. In-service event, disease, or injury
4. Connection between disability & service
5. Degree of disability
6. Effective date of benefits

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
39



CURRENT DISABILITY


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
40



EXISTENCE OF CURRENT DISABILITY

- **Disability = functional impairment of earning capacity**
 - Diagnosis not always required
- **Claimant must have disability at time of filing or during pendency of claim**
 - Can resolve prior to adjudication
- **VA has duty to assist in developing evidence**
 - May need to provide free exam

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
41



IN-SERVICE EVENT, DISEASE, OR INJURY

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
42

IN-SERVICE EVENT, DISEASE, INJURY



- VA gives great weight to SMRs/STRs and SPRs
- But, VA must consider lay evidence
 - No requirement that in-service incident be confirmed by military records
- Relaxed evidentiary standard for combat Vets
 - VA shall accept lay evidence as sufficient proof of injury incurred in combat, if consistent with circumstances of service
 - 38 U.S.C. § 1154(b)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

43

LINK BETWEEN DISABILITY AND SERVICE



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

44

LINK BETWEEN DISABILITY & SERVICE



- A nexus (link) between the current disability and military service is needed
- 5 ways to establish nexus
- VA must consider all theories reasonably raised by the record

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

45

5 THEORIES OF SERVICE CONNECTION

- Direct
- Aggravation
- Presumption
- Secondary
- Caused by negligent VA medical care, VR&E, or CWT

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
46

1ST THEORY OF SC:
DIRECT SERVICE CONNECTION


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
47

ELEMENTS OF DIRECT SERVICE CONNECTION

1. A current disability
2. In-service incurrence of a disease, injury, or event
3. Evidence that links the current disability to the precipitating disease, injury, or event in service

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
48

DIRECT SERVICE CONNECTION




A. Chronicity

- If chronic disease diagnosed in service, later manifestations of same disease at any later date SC, unless clearly attributable to intervening causes
- Only for chronic diseases listed in 38 C.F.R. § 3.309(a)
- 38 C.F.R. § 3.303(b)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
49

DIRECT SERVICE CONNECTION




B. Continuity of Symptomatology

- If symptoms of a chronic condition “noted” during service, but first diagnosed as a § 3.309(a) disease after service, SC warranted if continuity of symptoms from service to diagnosis
- If lay person is competent to observe condition, medical evidence “noting” condition not required
- Only for chronic diseases listed in 38 C.F.R. § 3.309(a)
- 38 C.F.R. § 3.303(b)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
50


DIRECT SERVICE CONNECTION




C. Delayed Direct Service Connection

- SC established if event, injury, disease in service caused Vet to suffer disability/disease years later
- Usually requires medical opinion that current disability is at least as likely as not (50% or greater probability) related to military service
- VA often required to obtain medical nexus opinion under its duty to assist the Vet
- 38 C.F.R. § 3.303(d)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
51



2ND THEORY OF SC: AGGRAVATION




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
52



AGGRAVATION

- Vets are entitled to SC for disability that pre-existed service, if disability was aggravated during active service
 - Increase in severity during service must be permanent
 - Vet only compensated for degree of disability caused by service
 - Severity of disability at entrance deducted from current level of disability
 - Exception: When Vet totally disabled by condition

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
53




PRESUMPTION OF SOUNDNESS 38 U.S.C. § 1111

- If Vet has entrance exam, VA presumes Vet is sound, except for conditions found on exam
- To rebut presumption of soundness, VA must show:
 - Clear and unmistakable evidence that condition pre-existed service; and
 - Clear and unmistakable evidence that condition was not aggravated during service
- If presumption applies, SC can't be based on aggravation, even if condition clearly & unmistakably pre-existed service

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
54

PRESUMPTION OF AGGRAVATION


38 U.S.C. § 1153




- If Vet shows that disability found on entrance exam permanently worsened during service, then “presumption of aggravation” applies
- Burden then shifts to VA to show by clear and unmistakable evidence that the condition was NOT aggravated by service
- VA can only meet this burden by showing that the increase in disability was due to the natural progression of the disease

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
55


3RD THEORY OF SC: PRESUMPTION







© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
56

PRESUMPTION



- Congress and VA have directed that certain conditions are to be presumed SC, unless affirmative evidence proves particular Vet’s condition unrelated to service
- Permits VA to assume that disease was incurred in or due to service, even if no evidence directly links the condition to service
- Medical opinion linking current disability to Vet’s service not needed
- Law presumes a medical linkage exists


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
57




PRESUMPTION

- Condition must manifest, not necessarily be diagnosed, w/in presumptive period
- In most cases, Vet must have served on active duty for 90 continuous days to be eligible for SC under presumption
- Does not apply to POW, herbicide, or Camp Lejeune contaminated water presumptive conditions


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
58



PRESUMPTION

- Chronic diseases
- Tropical diseases
- Diseases common in former POWs
- Diseases linked to radiation-exposure
- Diseases linked to exposure to certain herbicides
- Diseases associated with mustard gas exposure
- Conditions linked to Persian Gulf War service
- Diseases linked to fine particulate matter
- Diseases linked to contaminated water at Camp Lejeune
- ALS
- 38 C.F.R. §§ 3.307, 3.309, 3.316, 3.317, 3.318, 3.320


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
59



CHRONIC AND TROPICAL DISEASES


- Must manifest to a degree of at least 10% w/in 1 year of separation (for most diseases)
- Diagnosis w/in time period not required
- Chronic diseases listed in 38 C.F.R. § 3.309(a)
 - Ex: arthritis, diabetes mellitus, leukemia, psychoses
- Tropical diseases listed in 38 C.F.R. § 3.309(b)
 - Ex: cholera, dysentery, malaria, yellow fever

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
60



POW DISEASES

- Diseases common among former POWs
- Must manifest to degree of 10% any time after separation
- Ex: psychosis, anxiety, depression, post-traumatic osteoarthritis
- Full list at 38 C.F.R. § 3.309(c)



This Photo is a trademark of the National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

61



DISEASES IN RADIATION-EXPOSED VETS


- Vet must have participated in a radiation-risk activity (occupation of Hiroshima or Nagasaki; Nuclear weapons testing; Palomares, Spain & Thule AFB nuclear weapons cleanup; etc.)
- Numerous cancers listed in 38 C.F.R. § 3.309(d)
- No time limit for manifestation



This Photo is a trademark of the National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

62



HERBICIDE-RELATED DISEASES


- If Vet exposed to certain herbicides (Agent Orange), VA will presume SC for certain diseases
- Diseases listed in 38 C.F.R. § 3.309(e)
 - Ex: IHD, hypertension, type 2 diabetes, prostate cancer, respiratory cancers, Parkinson's disease
- **Most** diseases will qualify no matter when they first manifest
 - Chloracne, porphyria cutanea tarda, and early-onset PN must manifest w/in 1 year of last exposure to herbicides
- Some diseases must manifest to a disabling degree of 10% to qualify, while others do not

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

63

HERBICIDE-RELATED DISEASES

- VA presumes AO exposure for many Vets who served in served in SE Asia, along the Korean DMZ, Guam, and other locations during certain periods in the Vietnam era and shortly thereafter
- Vets who do not qualify for the presumption of exposure may be able to prove actual exposure



This Photo by Unknown Author is licensed under CC BY-SA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

64

GULF WAR ILLNESS

- Must satisfy following requirements:
 - "Persian Gulf War Veteran"
 - Qualifying chronic disability
 - Undiagnosed illness
 - MUCMI (fibromyalgia, chronic fatigue syndrome, IBS, etc.)
- Persian Gulf War Vets also qualify for presumptive SC for certain infectious diseases
 - 38 U.S.C. § 1117; 38 C.F.R. § 3.317




This Photo by Unknown Author is licensed under CC BY-SA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

65

DISEASES CAUSED BY EXPOSURE TO BURN PITS AND OTHER TOXINS

- Vets who served in certain locations in Asia and Africa
 - on or after 8/2/1990, or
 - on or after 9/11/2001—depending on location—are entitled to presumptive SC for >30 types of diseases as due to exposure to burn pits and other toxins
 - 38 U.S.C. § 1120



This Photo by Unknown Author is licensed under CC BY-SA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

66

CAMP LEJEUNE CONTAMINATED WATER



• Requirements for presumptive SC:

- Active duty, active duty for training, or inactive duty training service for no less than 30 days (consecutive or non-consecutive) at Camp Lejeune during the period 8/1/1953 – 12/31/1987
- Have diagnosis of a covered disease
- Disease must manifest to a disabling degree of at least 10% any time after service



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

67

CAMP LEJEUNE CONTAMINATED WATER



• Diseases subject to presumptive SC:

1. Kidney cancer
2. Liver cancer
3. Non-Hodgkin's lymphoma
4. Adult leukemia (all types of leukemia with onset in adulthood)
5. Multiple myeloma
6. Parkinson's disease
7. Aplastic anemia and other myelodysplastic syndromes
8. Bladder cancer

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

68

AMYOTROPHIC LATERAL SCLEROSIS




- Vets with 90 days or more of continuous active service are entitled to presumptive SC for ALS if it develops after separation




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org


69



4TH THEORY OF SC: SECONDARY SERVICE CONNECTION




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
70




SECONDARY SC

- If SC condition causes or aggravates a secondary condition, secondary condition may be service connected
- VA examiners often fail to adequately address aggravation
- Not relevant how long after service secondary disorder manifested
- Includes mental conditions caused by physical conditions and vice versa

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
71




5TH THEORY OF SC: CAUSED BY NEGLIGENT VA MEDICAL CARE, VR&E, OR CWS



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
72


CAUSED BY VA MEDICAL CARE, VR&E, OR CWS



- Disability caused by VA medical care, VR&E, or CWT may be treated “as if” it is SC
- 38 U.S.C. § 1151
- If based on VA medical care, requires:
 - Fault by VA (negligence, lack of proper skill, carelessness, error in judgment),
 - Accident by VA (not foreseeable), or
 - Lack of informed consent

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
73

CAUSED BY VA MEDICAL CARE, VR&E, OR CWS



- If VA negligence is a factor, Vet can file a claim under the Federal Tort Claims Act (FTCA)
- Pursuing both avenues simultaneously is advised
- Vets should seek the assistance of an attorney in pursuing an FTCA claim

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
74



DEGREE OF DISABILITY

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
75

DEGREE OF DISABILITY

- After VA grants SC for a condition, it assigns a disability rating for that condition based on the severity of the disability
- Establishing the appropriate disability evaluation involves application of the VA Rating Schedule in 38 C.F.R. Part 4
- VA compares symptoms of Vet's SC condition with the rating schedule

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

76

DEGREE OF DISABILITY

- VA rating schedule has hundreds of Diagnostic Codes (DCs) covering almost all types of diseases and injuries
- Each DC lists sets of symptoms – with each set matched to a particular rating percentage
 - Percentages in increments of 10, and may be 0%
 - Most do not go to 100%
 - Ex: DC 5167, loss of use of foot, triggers a 40% evaluation

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

77


DEGREE OF DISABILITY

5260	Leg. limitation of flexion of:	
	Flexion limited to 15°	30
	Flexion limited to 30°	20
	Flexion limited to 45°	10
	Flexion limited to 60°	0

8100	Migraine:	
	With very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability	50
	With characteristic prostrating attacks occurring on an average once a month over last several months	30
	With characteristic prostrating attacks averaging one in 2 months over last several months	10
	With less frequent attacks	0

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org


78



DEGREE OF DISABILITY

- Disability percentage is designed to reflect the average impairment in earning capacity caused by the disability
- If Vet has multiple SC disabilities, the percentage is combined (not added) via the Combined Ratings Table, 38 C.F.R. § 4.25
- Ex: 30% & 20% combine to 40%


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
79



DEGREE OF DISABILITY

- When after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding the degree of disability such doubt will be resolved in favor of the claimant
- 38 C.F.R. § 4.3
- Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned
- 38 C.F.R. § 4.7


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
80



DEGREE OF DISABILITY

- Depending on the total combined rating percentage, the level of payment is fixed by statute
- VA compensation is paid on a monthly basis and is not taxable and usually not subject to garnishment or attachment
- If Vet has a disability rating at or above 30%, the level of payment will be increased depending on the number of Vet's dependents (spouse, dependent parents, and children)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
81




DEGREE OF DISABILITY

Current monthly compensation rates for a single Vet without dependents:

10% = \$175.51	60% = \$1,395.93
20% = \$346.95	70% = \$1,759.19
30% = \$537.42	80% = \$2,044.89
40% = \$774.16	90% = \$2,297.96
50% = \$1,102.04	100% = \$3,831.30

*Effective 12/1/2024; adjusted annually


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org



DEGREE OF DISABILITY

- **Extraschedular ratings**
 - VA Director of Compensation may approve extraschedular evaluation for an SC disability if it presents an exceptional or unusual disability picture (symptoms/effects not part of rating criteria) with related factors such as:
 - Marked interference with employment or
 - Frequent periods of hospitalization

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org




TDIU GENERAL PRINCIPLES

- A total disability rating based on individual unemployability (TDIU) may be assigned where Vet who fails to meet criteria for a 100% rating under VA's Rating Schedule is unable to secure substantially gainful occupation due to SC disabilities
 - 38 C.F.R. § 4.16
- Marginal employment is not substantially gainful
 - Annual income less that poverty threshold (\$16,320)
 - Protected environment

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

TDIU



GENERAL PRINCIPLES



- Two ways to obtain TDIU:
 - "Schedular" TDIU
 - 1 SC disability \geq 60%, or
 - Combined SC rating \geq 70%, w/ 1 disability \geq 40%
 - "Extraschedular" TDIU
 - If above criteria not met
- If Vet can't work due to SC disabilities, Vet entitled to TDIU!

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
85


FACTORS VA SHALL CONSIDER

- Educational background
 - Pederson v. McDonald*, 27 Vet. App. 276 (2015)
- Occupational background
 - Cathell v. Brown*, 8 Vet. App. 539, 544 (1995)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
86

FACTORS VA CANNOT CONSIDER



- Vet's age
- Effects of NSC disabilities on Vet's ability to work
- Reason Vet left prior employment
 - Irrelevant if Vet left because of retirement or other reason unrelated to SC disabilities
 - Relevant inquiry is whether SC disabilities currently render Vet unemployable

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
87

29



SPECIAL MONTHLY COMPENSATION

- SMC is paid to Vets for certain disabilities or combinations of disabilities to compensate for loss of lifestyle
 - 38 U.S.C. § 1114
- Up to 3 awards of SMC(k) (lowest level - \$136.06/month) can be paid in addition to basic comp or SMC rates
- Other levels of SMC paid in lieu of basic comp
- Highest level of SMC (R.2/T) pays nearly \$11,000/month for a single Vet


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
88



SPECIAL MONTHLY COMPENSATION

- SMC is paid if, due to SC disabilities, Vet:
 - Housebound
 - Needs aid & attendance of another
 - Has loss or loss of use of extremities, parts of extremities or breasts, creative organs used for reproduction, buttocks
 - Is blind, deaf, or completely lost voice
 - Has various combinations of other disabilities


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
89



SMC(S)

- Vet entitled to SMC(s), if either
 1. Housebound due to SC disabilities, or
 2. Has the following combination of SC disabilities:
 - One SC disability rated 100% or that alone supports TDIU; AND
 - Additional SC disabilities that combine to at least a 60% rating


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
90



RATING REDUCTIONS

- VA may reduce disability rating of SC condition
- VA's burden to show condition improved by preponderance of the evidence (51%)
- Before assigning different rating, VA usually schedules exam
 - Vet required to undergo this review exam
- Certain protections apply based on rating % and length of time rating has been in effect


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org
91



RATING REDUCTIONS

- Ratings in effect < 5 years / <100%:
 - Reduction must be based on a review of the entire history of the disability
 - VA must determine whether there has been an actual change in the disability
 - Any improvement must reflect an improvement in the Vet's ability to function under the ordinary conditions of life and work
 - VA can't reduce benefits based on exams that are not thorough


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org
92



RATING REDUCTIONS

- Where rating in effect 5 years or more:
 - VA may not reduce rating unless all evidence shows sustained improvement
 - Exam on which reduction is based must be at least as thorough as exam used to grant rating
 - VA can't reduce rating if the improvement is temporary or can't be maintained while Vet is working or actively seeking work


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org
93



RATING REDUCTIONS

- Where disability continuously rated for at least 20 years
 - VA cannot reduce the rating below its lowest level during that period
 - EXCEPTION:** VA discovers rating based on fraud


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
94



RATING REDUCTIONS

- Reduction of 100% schedular rating
 - Exam showing “material improvement” under “ordinary conditions of life” required to reduce
 - Condition must improve while Vet working or actively seeking a job
 - VA compares symptoms of next-to-last exam report, which formed basis for grant or continuation of 100% rating, with symptoms of most recent exam


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
95



RATING REDUCTIONS


- Reduction of TDIU
 - Actual employability must be shown by clear and convincing evidence.
 - May not be reduced because Vet begins to engage in substantially gainful occupation, unless Vet maintains occupation for 12 consecutive months

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
96



EFFECTIVE DATE OF BENEFITS


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
97



EFFECTIVE DATE OF BENEFITS

- The effective date is the date from which VA benefits are paid
- VA begins to owe the claimant benefits on the first day of the calendar month following the effective date
- Ex: if VA grants claim for disability comp on 6/15/2025, and assigns effective date of 9/21/2024 for the award of benefits, Vet would receive comp retroactive to 10/1/2024. However, first payment made as if on 11/1/2024, covering the period 10/1/2024-10/31/2024 (plus additional months through first payment date)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
98




EFFECTIVE DATE OF BENEFITS


- The effective date of an award of SC disability compensation based on an initial claim or supplemental claim is generally the LATER of:
 - Date VA received the claim (or the first claim in the stream of continuously pursued claims in AMA), or
 - Date the entitlement arose
- Some exceptions (discussed later)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
99

EFFECTIVE DATE OF BENEFITS




- **Date of Claim Exception:**
 - Claims received within one year of separation from service are treated as if received the day following separation
 - 38 C.F.R. § 3.400(b)(2)




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
100

EFFECTIVE DATE OF BENEFITS




- **Date of Claim Exception:**
 - Intent to File (ITF) allows a claimant to protect the effective date by filing a complete initial or supplemental claim within one year of the ITF.
 - 38 C.F.R. § 3.155



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
101

EFFECTIVE DATE OF BENEFITS



- **Date Entitlement Arose:** The initial date the Vet satisfied the substantive criteria for SC. Two considerations:
 - The date the disability first manifested
 - First symptoms that can later be linked to the current disability
 - The date entitlement to benefits was authorized by law and regulation

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
102

CHANGE IN LAW

- If effective date of a favorable law (statute or reg) is 8/10/2022, then the effective date of any benefits granted due to that law can't be earlier than 8/10/2022, even if VA received claim before 8/10/2022, unless law provides otherwise
- If Vet satisfied criteria for SC on the effective date of the change in law, but files claim for SC after the effective date of the change, effective date can be up to one year earlier than the date of claim, but in no event earlier than the effective date of the change in law

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

103

NEWLY OBTAINED SERVICE DEP'T RECORDS

- If VA receives/associates with the claims file relevant official service dep't records any time after VA issues a decision denying a claim, VA usually must reconsider the denied claim, even if benefits have since been granted due to a later claim
- If the newly obtained service dep't records would have resulted in a grant of the original claim, the effective date will be the date VA received the original claim

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

104

EFFECTIVE DATES FOR INCREASED RATING CLAIMS

- **General rule**
 - The effective date for an increased rating will be the later of:
 - Date of receipt of the claim for the increased rating; or
 - The date entitlement to the higher rating arose

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

105

EFFECTIVE DATES FOR INCREASED RATING CLAIMS



• Exception to the general rule:

- If an increase in the severity of the disability occurred in the year prior to the date of the IR claim, the effective date for the IR can be the date of the increase in disability
- Specifically, the earliest date as of which it is factually ascertainable based on all evidence of record that an increase in disability had occurred if a complete claim or ITF is received within 1 year from such date
- 38 C.F.R. § 3.400(o)(2)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

105

ELIZABETH TARLOSKI



- Staff Attorney, focused on Training, BVA representation, and CAVC litigation
- Previously a Staff Attorney at Legal Aid of Southeastern PA - Veterans Advocacy Project
- Visiting Professor of Practice at the William & Mary Law School Lewis B. Puller, Jr. Veterans Benefits Clinic
- VBM Author

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

107

NON-SERVICE-CONNECTED DISABILITY PENSION




Presented by Elizabeth Tarloski




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

108



IMPROVED PENSION

- Needs-based program, similar to SSI
- Benefits are based on disability (with one exception for age)
- Designed to provide supplemental income to wartime Vets
- Special monthly pension (SMP) available for Vets who require aid and attendance (A&A) or meet housebound requirements



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
109



IMPROVED PENSION


Eligibility for VA pension:

- Wartime service
- Permanent and total disability
- Low income
- Low net worth



- **Total and permanent disability does not need to be connected to Vet's service!**


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
110



WARTIME SERVICE

- **Wartime service requirement for pension:**
 - 90 consecutive days of service, 1 of which during period of war; or
 - Total of 90 days active service during one or more periods of war; or
 - At least 1 day of wartime service resulting in discharge for SC disability
- **Vets who entered service after 9/7/1981 may also need to have served 24 months of continuous active duty or the full period for which called/ordered to active duty**

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
111



WARTIME SERVICE

- **Relevant Periods of War (38 C.F.R. § 3.2):**
 - **World War II:** 12/7/1941 – 12/31/1946
 - **Korean War:** 6/25/1950 – 1/31/1955
 - **Vietnam War:** 8/5/1964 – 5/7/1975, but also 11/1/1955– 8/4/1964 for Vets who served in RVN during that earlier time
 - **Persian Gulf War:** 8/2/1990 – present

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
112



PERMANENT & TOTAL DISABILITY

- **The following qualify as P&T for pension:**
 - Vet is in nursing home long-term due to disability
 - Disabled for SSA benefits purposes
 - Unemployable from disability expected to continue for life
 - Suffering from permanent disability making it impossible to be gainfully employed or any disorder VA finds P&T

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
113




PERMANENT & TOTAL DISABILITY

- **No P&T requirement for Vets age 65 or older**
- **Permanent and total disability cannot be due to Vet's willful misconduct**




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
114

LOW INCOME



- **Vet's countable annual income must be lower than applicable maximum annual pension rate (MAPR), which are, as of 12/1/2024:**
 - Vet w/out dependents: \$16,965
 - Housebound rate w/out dependents: \$20,732
 - A&A rate w/out dependents: \$28,300
 - Higher MAPRs for Vets with dependents




This Photo by Unknown Author is licensed under CC BY-SA-NC

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

115

COUNTABLE INCOME




- **ALL INCOME of Vet and Vet's spouse is countable for pension purposes unless specifically excluded by 38 C.F.R. §§ 3.272 and 3.279**
- **Countable income includes, among other things:**
 - Gross salary
 - Business, farm, professional income
 - Income from property
 - Retirement or survivors' programs
 - Interest
 - Dividends
 - Most annuity payments
 - Unemployment compensation
 - Inheritance and gifts
 - Life insurance proceeds

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

116

EXCLUSIONS FROM INCOME



- **Exclusions/deductions include:**
 - Medical Expenses
 - Welfare
 - VA Pension
 - State & local veterans benefits
 - Reimbursement for casualty loss
 - Profit from sale of property
 - Funds from joint accounts due to death of joint owner
 - Interest accrued on retirement annuity accounts
 - Income from tax returns
 - Expenses of last illness & burial of spouse or child
 - Educational expenses
 - Child's income (in some cases)
 - Cash surrender value of life insurance
 - Numerous types of payments to Native Americans
 - Income from state/municipality due to injury or disease
 - Numerous types of Federal compensation or restitution payments

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

117

MEDICAL EXPENSES

- Unreimbursed medical expenses for Vet and family that are above 5% of MAPR can be deducted from countable income
- For this calculation, use the normal (non-A&A / non-housebound) MAPR for the Vet and Vet's dependents
- Ex: For Vet with dependent spouse, medical expenses over \$1,110 (5% of applicable \$22,216 MAPR, rounded down to the nearest dollar) can be deducted

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
118

NET WORTH

- Vets with excessive net worth will not qualify for pension
- Current net worth limit: \$159,240
 - See 38 C.F.R. § 3.274(a)
- Net worth = assets + annual income
 - 38 C.F.R. § 3.274(b)(1)
- Includes Vet's and spouse's assets

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
119

EXCLUSIONS FROM NET WORTH

- Claimant's primary residence and residential lot area, but not to exceed 2 acres
 - Value of acreage in excess of 2 acres included as an asset, unless not marketable
- Personal effects consistent with "a reasonable mode of life," such as appliances and family transportation vehicles
- 38 C.F.R. §§ 3.275(b) and 3.279 provide full list of exclusions from assets

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
120

DETERMINING AMOUNT OF ASSETS



- **Assets:** the fair market value of all property an individual owns, including all real and personal property, unless excluded under 38 C.F.R. § 3.275(b), minus the amount of mortgages or other encumbrances specific to the mortgaged or encumbered property

- 38 C.F.R. § 3.275(a)(1)



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

121

ASSET TRANSFERS



- Claimant may not create pension entitlement by transferring a “covered asset”
- “Covered asset” means:
 - Part of claimant’s net worth;
 - Transferred (sold, conveyed, gifted, or exchanged) for less than fair market value; and
 - If the asset had not been transferred, it would have caused or partially caused claimant’s net worth to exceed limit

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

122


ASSET TRANSFERS AND PENALTY PERIOD



- VA will review terms and conditions of asset transfers made during a 36-month period prior to date of claim to determine if there was transfer of a covered asset
- Claimants who transfer covered assets are subject to a penalty period, not to exceed 5 years, during which they will not be eligible for pension
- Only amount in excess of the net worth limit will be subject to a penalty


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

123




SURVIVORS' BENEFITS

Presented by Elizabeth Tarloski




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

124




AGENDA

- Dependency and Indemnity Compensation (DIC)
- Qualifying Relationships
- Accrued Benefits and Substitution
- Survivor's Pension and Other Benefits Available



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

125




DEPENDENCY AND INDEMNITY COMPENSATION (DIC)

- A Vet's surviving spouse, child, or parent may qualify for a monthly payment from VA based on:
 1. Death during active service
 2. Medical condition connected to Vet's military service that was principal or contributory cause of death
 3. Vet had a totally disabling SC disability for the 10 years, 5 years, or, in limited cases, 1 year, prior to death
 4. Death due to negligent VA medical treatment, VR&E, or CWT

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

126


PRINCIPAL CAUSE OF DEATH



- Disability, by itself, or jointly with some other condition, was the immediate or underlying cause of death, or was etiologically related to death
- 38 C.F.R. § 3.312(b)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
127


CONTRIBUTORY CAUSE OF DEATH



- Condition must be shown to have:
 - Contributed substantially or materially to death
 - Combined with another disability to cause death
 - Aided or lent assistance to the production of death
 - See 38 C.F.R. § 3.312(c) for full explanation of what constitutes contributory cause of death

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
128

DIC BASED ON 100% RATING PRIOR TO DEATH



- Vet had totally disabling SC disability
 - Either a 100% combined rating or TDIU
- Continuously had 100% rating for at least:
 - 10 years immediately preceding death, or
 - 5 years from the date of discharge/release from active duty to death, or
 - 1 year immediately preceding death if a former POW
- 38 U.S.C. § 1318

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
129

DEATH DUE TO DISABILITY NOT SC PRIOR TO DEATH



- Survivor can prove entitlement to DIC even if cause of death not SC at time of death
- Survivor can receive DIC even if Vet never filed a compensation claim during lifetime
- If VA denied Vet SC for disability that caused death, survivor is entitled to a new opportunity to show that the condition was SC
 - 38 C.F.R. § 20.1106
- Survivor must prove disease or disability that caused or contributed to Vet's death was connected to service

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org

130

DIC MEDICAL OPINIONS



- VA must obtain a medical opinion for DIC claim when such an opinion is necessary to substantiate the claim
 - *Wood v. Peake*, 520 F.3d 1345, 1348 (Fed. Cir. 2008); 38 U.S.C. § 5103A(a)(1), (2)
- **EXCEPTION:** if there is no reasonable possibility that such assistance would help to prove entitlement
 - 38 U.S.C. § 5103A(a)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org

131

QUALIFYING RELATIONSHIPS: SURVIVING SPOUSE



- To qualify as surviving spouse, claimant must first show that they were the valid or deemed-valid spouse of the Vet at time of death
 - Includes common law marriages, if permitted in state
- If spouse divorced from Vet at time of death, spouse NOT eligible for DIC
 - Regardless of who was at fault



This Photo by iStockphoto.com is licensed under CC BY-SA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org

132

QUALIFYING RELATIONSHIPS: SURVIVING SPOUSE



• May also have to prove:

- One year of marriage to Vet
- Continuous cohabitation with Vet during the marriage or deemed-valid marriage (several exceptions)
- No remarriage after Vet's death (in some cases)



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

133

REMARRIAGE AFTER DEATH



• Exceptions to the general rule that remarriage bars entitlement to DIC include:

- Remarriages voided or annulled
- Surviving spouse still remarried, but remarriage occurred on or after age 57 and initial claim for DIC pending on or filed after 1/1/2004
- Surviving spouse still remarried, but remarriage occurred on or after age 55, and claim for DIC pending on or filed (or refiled) after 1/5/2021

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

134

QUALIFYING RELATIONSHIP: SURVIVING CHILD



• For purposes of DIC (and other VA benefits), a child is:


- An unmarried person, and
- Meets age restrictions
 - Under the age of 18
 - Between 18 and 23, if pursuing higher education
 - Any age, if a "helpless child" (and became "helpless" before the age of 18)
- 38 U.S.C. § 101(4)(A); 38 C.F.R. § 3.57




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

135

QUALIFYING RELATIONSHIP: SURVIVING CHILD




- Can be:
 - A biological child, legally adopted child, a stepchild who is a member of the household or was a member at the time of Vet's death, or an illegitimate child, in certain circumstances
 - 38 U.S.C. § 101(4)(A); 38 C.F.R. § 3.57




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
136

ADULT CHILD




- Adult children generally **cannot** receive DIC (or Survivor's Pension). They can receive accrued benefits / substitute if they paid the expenses of the Vet's last sickness and burial (and there is no other eligible claimant), but only up to the amount of those expenses
- 38 U.S.C. § 5121(a)
- 38 C.F.R. § 3.1000(a)-(b)




© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
137

QUALIFYING RELATIONSHIP: SURVIVING PARENT



- Parents' DIC, a benefit separate from DIC for surviving spouses and children, is payable to surviving parents of deceased Vets in limited circumstances. Eligibility requires:
 1. A parental relationship to the Vet; and
 2. Very low annual income
- Because income qualifications are so strict, very few parents qualify for Parents' DIC


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
138



FILING DIC CLAIM


- Application is VA Form 21P-534EZ
- Prior to filing 21P-534EZ, claimant can submit ITF on VA Form 21-0966 to protect date of claim
 - If claimant submits Form 534EZ w/in 1 year of ITF, date of ITF = date of claim
- Shorter application form for survivors of Vet who died in service (VA Form 21P-534a)
- Parents' DIC claim filed on VA Form 21P-535
- SSA survivor benefits claim = claim for DIC

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
139




DIC EFFECTIVE DATES

- No time limit for filing DIC a claim, BUT the date the claim is filed will determine effective date
- DIC claim filed w/in one year of Vet's death
 - Effective Date = First day of month of Vet's death
- DIC claim filed more than one year after Vet's death
 - Effective Date = Date of claim
- Special rule for previously denied claims if SC for cause of death now warranted under PACT Act
 - 38 U.S.C. § 1305


This Photo by Unknown Author is licensed under CC BY-SA 4.0

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
140



ACCRUED BENEFITS VS. SUBSTITUTION

- **Accrued Benefits**
 - "Accrued benefits" represent benefits owed to the deceased claimant at time of death
 - Accrued benefits determinations are based on evidence in VA's possession at time of claimant's death (no new evidence can be submitted)
 - To recover benefits that the deceased claimant was owed, survivor must file a claim for "accrued benefits" within 1 year of death

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslp.org
141

ACCRUED BENEFITS VS. SUBSTITUTION



• Substitution

- Eligible substitute can “step into the shoes” of deceased claimant
- If VA grants substitution request, substitute can continue the claim or appeal
- Substitute can submit additional evidence
- If benefits are ultimately awarded, they are paid to the substitute



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

142

WHEN ARE SUBSTITUTION/ACCRUED BENEFITS AVAILABLE?



- To be eligible for substitution/accrued benefits, at time of claimant's death, there must be either:

- A pending claim

or

- A pending appeal/review

- 38 C.F.R. § 3.1010 (g)(1); Manual M21-1, XI.ii.3.A.2.a (change date May 2, 2023)



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

143

SUBSTITUTION PRIORITY ORDER



- Substitution eligibility is determined based on a priority order listed in 38 C.F.R. § 3.1000(a):

1. Surviving spouse
2. Surviving children (equal shares)
3. Surviving dependent parents
4. Person who bore the expense of last sickness or burial, but only as much as necessary to reimburse those expenses

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

144

HOW TO FILE A SUBSTITUTION REQUEST



- Must be filed no later than one year after claimant's death
 - Standard application not required. VA will consider a claim for accrued benefits, Survivor's Pension, or DIC; or a written request to substitute as a substitution request.
- Evidence of eligibility to substitute must be provided to VA
- Substitute may not add issues or in any way expand the claim but can raise new theories of entitlement
- Substitute can submit additional evidence, request a hearing, and appeal/request review of an adverse decision

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

145

OTHER BENEFITS



- Survivor's Pension – MAPR for surviving spouse with no dependents: **\$11,380**
 - Housebound: \$13,908
 - Requires A&A: \$18,187
- Burial Benefits
- Education Benefits (in some cases)
- Healthcare Benefits (in some cases)



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

146


CLAIMS PROCEDURES



Presented by Rick Spataro

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org


147



TYPES OF CLAIMS

- **VA claims that can be filed as of 2/19/2019:**
 - **Initial claim**
 - Benefit not previously requested
 - Increased Rating
 - **Supplemental claim**
 - For benefit previously denied
 - **CUE claim**


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
148



INTENT TO FILE

- **Vets can preserve date of claim for effective date purposes by submitting an Intent to File (ITF)**
 - VA Form 21-0966
 - Orally (by telephone or in-person)
 - Beginning online application
- **Must indicate type of benefit (comp, pension, DIC/Survivors Pension)**
- **Will apply to first complete initial or supplemental claim for that benefit filed w/in 1 year of ITF**


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
149



INITIAL CLAIMS

- **Application forms for common initial claims:**
 - **Disability Compensation: VA Form 21-526EZ**
 - Claims for comp for different disabilities are different claims; each disability should be listed
 - Exception if evidence shows disability secondary to (complication of) claimed condition
 - Ancillary benefits (SMC, etc.) may be listed, but don't need to be
 - 38 C.F.R. §§ 3.151(c); 3.155(d)(2)


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
150



INITIAL CLAIMS

- **Application forms for common initial claims (cont'd):**
 - **Pension: VA Form 21P-527EZ**
 - **DIC, Survivors Pension, and Accrued Benefits by Surviving Spouse or Child: VAF 21-534 or 21-534EZ**
 - **TDIU: VA Form 21-8940**
 - Should be filed with VA Form 21-526EZ


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
151



SUPPLEMENTAL CLAIMS

- **Filed to attempt to obtain benefits previously denied in a VA decision that has become final**
 - Applies to past denials of claims for the same or a similar benefit on the same or a similar basis
 - 38 U.S.C. § 5104C(b); 38 C.F.R. § 3.1(p)(2)
 - **NOTE: can also be filed to continuously pursue a claim denied less than 1 year prior – more on this later**

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
152



SUPPLEMENTAL CLAIMS

- **Filed using VA Form 20-0995**
 - But claims filed on other VA forms, such as a TDIU application, may qualify as supplemental claims
- **Must identify or submit new & relevant evidence**
 - **Relevant evidence:**
 - Evidence that tends to prove or disprove a matter in issue
 - Includes evidence that raises new theory of entitlement
- **After finding N&R evidence, VA considers both new and old evidence during readjudication**
- **If granted, effective date based on date supplemental claim filed (unless continuously pursued)**

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
153

CLEAR AND UNMISTAKABLE ERROR (CUE)

- **Claimant is asking RO or BVA to revise a prior final decision because of CUE in that decision**
- CUE is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error
- 38 C.F.R. §§ 3.105(a)(1)(i); 20.1403(a)
- **Must be based on law and evidence of record at the time of the decision being attacked**

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

154

CLEAR AND UNMISTAKABLE ERROR (CUE)

- **No prescribed VA form for requests for revision of VA decisions based on CUE**
- **Can be filed on:**
 - VA Form 21-526EZ
 - Statement in Support of Claim, VA Form 21-4138
 - Letter to VA
- **If granted, effective date for benefits based on date of initial claim, not date CUE claim filed**

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org


155

CLEAR AND UNMISTAKABLE ERROR (CUE)

- **CUE claims are difficult to win:**
- Error must be “undebatable”
- Error must be outcome determinative
 - Must show result would have manifestly been different if not for the alleged error
- Error in weighing evidence cannot be CUE
- Breach of duty to assist cannot be CUE
- Benefit of doubt standard does not apply to CUE motions

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org


156



DUTY TO ASSIST

- **VA must make reasonable efforts to assist claimants in obtaining evidence necessary to substantiate a claim for benefits**
- **Exception: When there is “no reasonable possibility” that assistance would help prove claim**
- 38 U.S.C. § 5103A; 38 C.F.R. § 3.159(c)


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
157



DUTY TO ASSIST

- **Duty to attempt to obtain records adequately identified by claimant**
- **Federal records, such as:**
 - Military records, including STRs and personnel records, if relevant
 - VA medical records
 - SSA records, if relevant
- **Non-federal records**
 - Ex: private medical records, employment records
 - Vet must authorize VA to obtain


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
158



DUTY TO ASSIST

- **VA has duty to provide medical opinion for most compensation claims when record:**
 - Has competent evidence Vet has a current disability, or persistent or recurrent symptoms of disability; and
 - Establishes an in-service event, injury, or disease, or that a certain disease manifested during an applicable presumptive period; and
 - *Indicates that the disability or symptoms may be associated with Vet's active service; but*
 - Does not contain sufficient medical evidence for VA to make a decision on the claim
 - *McLendon v. Nicholson*, 20 Vet. App. 79, 83 (2006)
- **Lower burden for claims involving TERA**
 - 38 U.S.C. § 1168


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
159



DUTY TO ASSIST

- Legacy system: applies throughout claim process
- AMA system: Applies at RO level only
 - Initial claims: full DTA
 - Supplemental claims:
 - DTA in obtaining records after receipt of substantially complete claim
 - Full DTA (including medical exam/opinion) after finding of new and relevant evidence
- Does not apply to BVA or HLR, but may need to return to RO if RO committed DTA error

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
160



RO DECISIONS

- RO's decision on a claim includes a notice letter and rating decision, that must include:
 - Issues adjudicated
 - Summary of evidence considered
 - Summary of applicable laws and regs
 - Favorable findings (usually binding on future adjudicators)
 - Claim elements not met
 - Criteria to grant SC or next higher rating
 - How to obtain / access evidence considered
 - Review options


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
161



RIGHT TO APPEAL

Presented by Rick Spataro

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
162




LEGACY VS. AMA

- If VA RO issues a decision that either denies a benefit or fails to grant complete relief, claimant has right to seek review of / appeal decision
- VA has two different review/appeal systems:
 - Legacy
 - Will continue until claims in this system are exhausted (~28,000 pending as of 5/2025)
 - Modernized
 - Created by the Veterans Appeals Improvement and Modernization Act of 2017 (AMA)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

153




LEGACY VS. AMA

- Modernized system applies to:
 - Claims for which notice of decision issued by AOJ on or after 2/19/2019
 - "initial" decision on claim for a particular benefit
 - decision on reopened claim
 - decision denying CUE claim
 - Claims in RAMP (AMA pilot program)
 - "Legacy" opt-ins:
 - W/in 60 days after SOC or SSOC issued on or after 2/19/2019
 - Supplemental claim w/in 1 yr of decision issued < 2/19/2019

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

154




LEGACY VS. AMA

- All other claims remain in "legacy" appeal system
- Notice of decision issued prior to 2/19/2019 and Vet appealed decision
- Vet has not opted in to AMA system
- Vet did not participate in RAMP

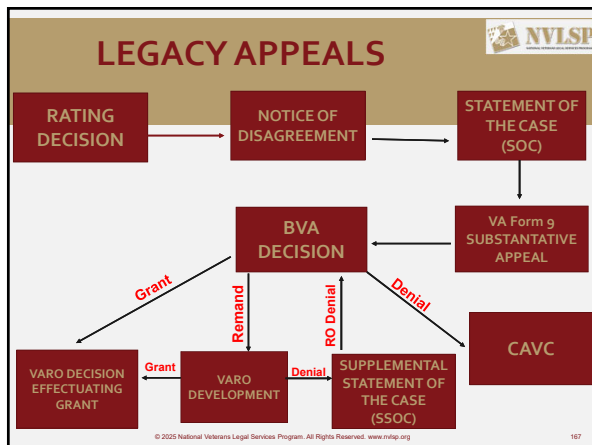
© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org


155



LEGACY APPEALS PROCESS

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org






INITIATING THE APPEAL PROCESS

- **Notice of Disagreement (NOD)**
 - After claimant received an adverse RO decision, the first step in the appeal process was the filing of an NOD
 - As of 3/24/2015, NODs needed to be filed on VA Form 21-0958
 - **Deadline: 1 year** from notice of RO decision
 - Provided opportunity to argue and focus the issues in a particular claim, as well as to submit additional evidence


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org



DRO REVIEW

- Decision Review Officer (DRO) review was an optional process available after the claimant filed an NOD
- DROs are senior-level RO employees who review the claim de novo (giving no weight to original decision)
- Claimants could elect DRO review on the NOD form
- Opportunity for a formal or informal hearing before the DRO


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org
169



STATEMENT OF THE CASE (SOC)

- If DRO continued denial or only partially granted claim, or claimant did not elect DRO review, VA next issued an SOC
- Meant to provide claimant with a better understanding of the reasons for the decision
 - A summary of the evidence considered
 - Applicable laws and regulations
 - Reasons for the decision
- No deadline for issuing SOC


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org
170



SUPPLEMENTAL STATEMENT OF THE CASE

- If SOC is inadequate, VA is required to issue a Supplemental SOC
- SOC inadequate when:
 - RO receives additional pertinent evidence after SOC issued, but before substantive appeal filed
 - BVA remands for further development and RO continues denial
 - A material defect is discovered
- Multiple SSOCs may be issued


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org
171



SUBSTANTIVE APPEAL

- After VA issues SOC, claimant must file substantive appeal with RO, typically using VA Form 9
- Initiates process of transferring case from RO to BVA
- Allows claimant to respond to VA's rationale in the SOC for denying the claim
- Can elect BVA hearing on Form 9
- Deadline for filing VA Form 9 is the later of:
 - 60 days from the date of the SOC; or
 - 1 year from the date the original RO decision was mailed to the claimant


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
172



BVA DECISION

- BVA may grant, remand, or deny claim
- Remands go to the Office of Administrative Review (OAR) (through an RO or DROC)
 - The most common reason for remand is the need for additional development
- If claim remains denied after additional development completed, OAR issues an SSOC and the claimant has 30 days to respond before the case is referred back to BVA


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
173



OPTIONS IF BVA DENIES CLAIM


- Appeal to Court of Appeals for Veterans Claims
 - 120 day deadline
- File motion for reconsideration with BVA
 - No deadline
- File motion to vacate with BVA
 - If BVA failed to provide due process; no deadline
- File motion to revise BVA decision based on CUE
 - No deadline
- File supplemental claim with/identifying new and relevant evidence
 - Starts new claim stream

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
174




THE AMA / MODERNIZED REVIEW SYSTEM

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org




3 OPTIONS TO CHALLENGE RO DECISION

- Supplemental claim w/ new and “relevant” evidence
- Higher-level review by RO/AOJ
- BVA appeal by filing NOD



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org



3 OPTIONS TO CHALLENGE RO DECISION

- Claimant may choose different review “lane” for different “issues”
 - Issue = adjudication of a specific entitlement
 - Ex: SC for knee disability and SC for PTSD are different “issues”
 - Ex: Effective date and disability rating for SC knee disability are part of same “issue”

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

3 OPTIONS TO CHALLENGE RO DECISION



- Main consideration in choosing type of review:
- Which option gives the claimant the best chance of success at the earliest date?

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

178

SUPPLEMENTAL CLAIM



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

179

OPTION 1: SUPPLEMENTAL CLAIM



- Supplemental claims can be filed to:
 - Continuously pursue a claim that was denied in the past year and preserve the effective date of the claim
 - 38 U.S.C. § 5104C(a)
 - Attempt to obtain benefits that were previously denied in a VA decision that has become final (previously discussed)
 - 38 U.S.C. § 5104C(b)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

180

OPTION 1: SUPPLEMENTAL CLAIM



- Filing deadline: To preserve effective date of claim, must file w/in 1 year of previous denial; otherwise, no deadline
- VA Form 20-0995, Decision Review Request: Supplemental Claim
 - Other VA Form may be considered a supplemental claim
- May file supplemental claim while simultaneously pursuing an appeal of a BVA denial of the same claim at CAVC, Fed. Cir., or Supreme Court
- Decision in 102 days on avg (as of 5/2025)
- Cannot file for CUE denial or simultaneously contested claim

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslsp.org

181

OPTION 1: SUPPLEMENTAL CLAIM



- Supplemental claim will be considered complete and filed if claimant:
 - Submits potentially new evidence, OR
 - IDs new evidence for VA to obtain
 - Triggers DTA in the gathering of evidence

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslsp.org

182

OPTION 1: SUPPLEMENTAL CLAIM



- Upon finding that there is “new and relevant” evidence, AOJ will readjudicate issue, including consideration of old evidence
- If new and relevant evidence not presented or obtained, AOJ will issue decision finding there was insufficient evidence to readjudicate claim

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvslsp.org

183

OPTION 1: SUPPLEMENTAL CLAIM



- **Effective date if granted:**
 - If filed w/in 1 year of denial: date denied claim was filed (usually)
 - If filed more than 1 year after previous denial: date of supplemental claim
 - ITF can count as date of supplemental claim

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

184

OPTION 1: SUPPLEMENTAL CLAIM



- **If supplemental claim denied, to preserve date of claim as effective date for potential benefits, claimant has 1 year to:**
 - Request HLR,
 - File another supplemental claim, or
 - Appeal to BVA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

185

OPTION 1: SUPPLEMENTAL CLAIM



- **When to choose supplemental claim:**
 - **Additional evidence needed to grant claim**
 - Vet can get on own
 - Vet can trigger duty to assist
 - **A new theory of entitlement or change in law supports the claim**


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

186




HIGHER-LEVEL REVIEW

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
187




OPTION 2: HIGHER-LEVEL REVIEW

- De novo review by “experienced” AOJ adjudicator who did not participate in prior decision
- Can grant benefit based on:
 - Error in prior decision
 - Difference of opinion



© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
188



OPTION 2: HIGHER-LEVEL REVIEW

- Filing deadline: **1 year** from notice of AOJ decision
- **VA Form 20-0996**, Decision Review Request: Higher-Level Review
- Decision in **84 days** on avg (as of 5/2025)
- Cannot file for denial of simultaneously contested claim

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
189

OPTION 2: HIGHER-LEVEL REVIEW



- **HLR cannot consider new evidence**
 - Record limited to evidence of record as of date AOJ issued notice of decision under review
- **HLR can consider written argument**
 - "A claimant or representative may properly add, and the reviewer may properly consider, new argument to pinpoint or highlight VA's potential misreading of facts, or its potential misapplication of law to the facts that the evidentiary record has already established."
 - Manual M21-5, 5.4.d (change date Feb. 3, 2022)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

190

OPTION 2: HIGHER-LEVEL REVIEW



- **Informal Conference**
 - Can request on VAF 20-0996
 - Self-scheduling available as of 5/2025, but DROC will eventually call to schedule
 - Conducted by telephone (usually)
 - Purpose is to ID errors of fact or law in prior decision
 - Cannot supplement record with testimony / evidence

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

191

OPTION 2: HIGHER-LEVEL REVIEW



- **Duty to assist does not apply, but if HLR identifies DTA error committed by AOJ:**
 - If max benefit can be granted, HLR ignores
 - If max benefit cannot be granted:
 - HLR returns claim to AOJ for expedited correction and readjudication
 - Evidence received after prior decision can be considered
 - Claim will not return to HLR unless claimant submits new request for HLR review of new decision

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

192

OPTION 2: HIGHER-LEVEL REVIEW



- Effective date if claim granted: date of original claim (usually)
- If HLR continues denial, to preserve date of original claim as effective date for potential benefits, claimant has **1 year** to:
 - File supplemental claim, or
 - Appeal to BVA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

193

OPTION 2: HIGHER-LEVEL REVIEW



- **When to choose HLR:**
 - Evidence:
 - No new evidence needed, or
 - DTA error
 - Rating decision contained error of fact or law
 - Ex: RO missed key piece of evidence
 - Evidence nearly balanced

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

194

CLAIMS ACCURACY REQUEST (CAR)




- **CAR pilot provides for expedited review of significantly flawed rating decisions**
 - One time request for VA to review a decided issue based on an obvious and significant error of fact or law that changed the outcome of the decision, such as
 - Missed issues
 - Erroneous removal of dependent
 - Clearly incorrect effective dates
 - Limited to C&P claims, with some exclusions

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org


195

CLAIMS ACCURACY REQUEST (CAR)



- Must request on VAF 20-0996 (HLR form) and write "CAR" prominently on application
- Must be filed w/in 30 days of decision notice letter
- Must describe in Part V or on separate page the alleged error w/ sufficient specificity to persuade reviewer that outcome would have been different
- Informal conference not permitted


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
195




APPEAL TO BVA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
197

OPTION 3: APPEAL TO BVA




- BVA conducts de novo review
- 3 options / "lanes" at BVA:



 - DIRECT: No hearing and no new evidence
 - EVIDENCE: Submit new evidence w/out BVA hearing
 - HEARING: BVA hearing (can also submit new evidence)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org
198



OPTION 3: APPEAL TO BVA

- **VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement):**
 - Must list “specific determination” with which the claimant disagrees (construed liberally)
 - Issue
 - Date of decision
 - Must elect lane for review
 - Can choose different lanes for different issues
 - Must file different NODs for each different lane


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
199



OPTION 3: APPEAL TO BVA

- **Filing deadline: 1 year from date of RO or HLR decision**
- **Must file with BVA**
 - Fax: 844-678-8979
 - Mail: Board of Veterans' Appeals
PO Box 27063
Washington, DC 20038
 - Upload: VA's Centralized Mail Portal/QuickSubmit


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
200



OPTION 3: APPEAL TO BVA

- **No limitation on when written argument can be submitted to BVA in any lane**
 - Any time between NOD and BVA decision
- Evidence submission rules differ in each lane
- Decision times differ in each lane


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
201



OPTION 3A: DIRECT LANE

- **BVA will base decision on only evidence of record at time of AOJ decision**
- No evidence rcvd by VA after date of prior decision will be considered
- **“Quick” decision**
- 484 days pending from NOD on avg (5/2025) (goal: 1 year)


© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
202



OPTION 3A: DIRECT LANE

- **When to choose**
- More likely to get favorable decision than at RO
 - Complicated facts/law
- RO erred
- Evidence of record supports award
- Want quick BVA decision

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
203



OPTION 3B: EVIDENCE LANE

- **Claimants can submit evidence:**
 - With NOD; and/or
 - W/in 90 days following BVA’s receipt of NOD
- **BVA will also consider evidence of record at time of decision on appeal**
- **BVA will NOT consider evidence rcvd at other times**
- **2nd slowest AMA option & lower priority than legacy**
 - 706 days pending from NOD on avg (5/2025) (goal: 550 days)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org
204

OPTION 3B: EVIDENCE LANE



• When to choose:

- More likely to get favorable decision than at RO
 - Complicated facts/law
- Additional evidence will increase chance of success
- Can get evidence w/in 90 days of filing NOD
- Timely decision not important to claimant
 - Unless appellant qualifies for AOD

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

205

OPTION 3C: HEARING LANE



• Hearings conducted

- At BVA's office in D.C. (Central Office Hearing)
- By videoconference
- By virtual telehearing

• Appellants can choose hearing type on NOD

- Same VLJ who presides at a BVA hearing is NOT required to make the final determination and author the BVA decision

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

206

OPTION 3C: HEARING LANE



• Claimants can submit evidence:

- At hearing
- W/in 90 days following scheduled hearing (even if claimant does not appear)
- W/in 90 days of request to withdraw hearing
- BVA will also consider evidence of record at time of decision on appeal
- BVA will NOT consider evidence rcvd at other times
- Longest wait for decision and long wait for hearing
 - 837 days pending from NOD on avg (5/2025) (goal: 730 days)

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvls.org

207

OPTION 3C: HEARING LANE



• When to choose:

- More likely to get favorable decision than at RO
 - Complicated facts/law
- Opportunity to testify important to claimant
 - Compelling / credible testimony could sway decision
- Can't get evidence w/in 90 days of filing NOD
- Timely decision not important to claimant
 - Unless appellant qualifies for AOD

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

208

OPTION 3: APPEAL TO BVA



• Duty to Assist does not apply

- But for DTA errors committed prior to issuance of decision on review:
 - If max benefit can be granted:
 - BVA ignores
 - If max benefit cannot be granted:
 - BVA remands for AOJ for expedited correction of DTA errors and readjudication
 - RO must consider all evidence of record, including evidence rcvd outside evidence submission window

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

209

OPTION 3: APPEAL TO BVA



• BVA may also remand for correction of any other error by AOJ in satisfying a regulatory or statutory duty

- Only required if reasonable possibility correction would aid in substantiating claim
- BVA can remand for advisory medical opinion/IMO
- If remanded claim remains denied in new rating decision, it does not automatically return to BVA

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

210

OPTION 3: APPEAL TO BVA



- Effective date if claim granted: date of original claim (usually)
- If BVA denies claim, claimant can:
 - Appeal to CAVC w/in 120 days of decision; or
 - File supplemental claim w/in 1 year of decision; or
 - Pursue both avenues simultaneously
- These options preserve date of original claim as effective date for potential benefits

© 2025 National Veterans Legal Services Program. All Rights Reserved. www.nvlsp.org

211
