



An Introduction to VA Service-connected Disability Benefits

A Veteran's Resource Guide

A Publication of Chisholm Chisholm & Kilpatrick LTD

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Table of Contents

Introduction

I. Resources for Veterans

II. Claims & Appeals: a Guide to the VA Process

III. Combined Ratings & VA Math

IV. A Guide to TDIU (IU or Total Disability Based on Individual Unemployability)

V. Bad Paper Discharge / Updating Service Records

VI. Medical Malpractice and the VA: Filing a Federal TORT Claim vs. 38 U.S.C. § 1151

Conclusion



SECTION ONE

Resources for Veterans



Resources for Veterans

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VA Disability Compensation Homepage:

<http://www.benefits.va.gov/compensation/>

List of all VA Regional Offices:

<https://www.va.gov/directory/guide/allstate.asp?dnum=3>

VA Public Health Site:

<https://www.publichealth.va.gov/>

VA Dependents' Educational Assistance program Homepage:

<http://www.benefits.va.gov/gibill/dea.asp>

VA Dependents' Indemnity Compensation Homepage:

http://www.benefits.va.gov/COMPENSATION/types-dependency_and_indemnity.asp

VA Forms:

<https://www.va.gov/vaforms/>

VA Evidence Intake Center:

<http://www.benefits.va.gov/COMPENSATION/ mailingaddresses.asp>

Top 13 Veterans Health Administration Links:

<https://www.va.gov/health/NewsFeatures/20121015a.asp>

VA Compensation Benefits Rates:

<http://www.benefits.va.gov/compensation/rates-index.asp>

VA Compensation Benefits Rate Tables:

http://www.benefits.va.gov/compensation/resources_comp01.as



SECTION TWO

Claims & Appeals: A Guide to the VA Process



Claims & Appeals: A Guide to the VA Process

The US Department of Veterans Affairs (VA) provides compensation to veterans who have a disability or disease related to their period of active duty military service. In order to obtain this benefit, you must meet the requirements of “service connection.” A veteran is entitled to service connection for a condition or injury if he or she can establish the following: (1) an in-service disability, injury, or incident; (2) a current disability; and (3) a medical nexus, or link, between the current disability and the in-service disability, injury, or incident.

Filing a Claim – How Do I Start? If you feel your disability or disease is related to your military service, immediately file a claim for benefits. There are multiple ways to file a claim. The standard application form is VA Form 21-526, which can be found on the VA’s website (see Online VA Resources section). The newer form that can also be used is VA Form 21-526EZ, which shortens the standard application from twenty-six to six pages. Keep in mind that if you submit the 526EZ, the VA will eventually ask for all of the information requested on the 526. The benefit of the 526EZ is that it shortens the filing process initially, but you will still have to provide the VA with all requested information at some point. Be sure to complete the form as fully and accurately as possible.

Development – What Happens Next? The next steps are initiated by your local VA Regional Office. You may receive a Veterans Claims Assistance Act (“VCAA”) letter requesting supporting evidence regarding your claim:

We are working on your claim.

What Do We Still Need From You?

We need additional evidence from you. *Please put your VA file number on the first page of every document you send us.*



You may be required to complete VA Form 21-4142, which will give the Regional Office permission to request medical documents that may support your claim. If you do not respond to these letters, the Regional Office may decide your claim based on the evidence of record.

Your local Regional Office may also decide it is necessary for you to attend a Compensation and Pension examination before VA can decide your claim. You may receive notification of a scheduled exam via letter or phone call. Plan to arrive early to your appointment, and be honest with the examiner about the details of your disability. Keep in mind that these examinations can be difficult to reschedule, so try your best to attend on your scheduled date. Notification of an examination via letter may look something like this:

Important Information

- We have requested an examination through a private medical facility in order to determine the current level of your disability. The private facility will soon advise you of the date, time, and place of this examination. This notification will be in writing, by telephone, or perhaps both. If you can't keep the appointment or want to be re-scheduled, contact the medical facility on the appointment notice as soon as possible.

The VA needs all available evidence to make an accurate decision on your claim. It is in your best interest to provide VA with all evidence necessary for a favorable decision in your case. If you cannot acquire the evidence yourself, you should notify the VA of its existence and request that they obtain the evidence on your behalf.

After completing the form, gather all supporting documentation in your possession (service records, service medical records, x-rays, doctors' reports, etc.) and make copies. Send the photocopies via certified mail with your application to your local VA Regional Office. As these documents are sensitive in nature, it is always good to keep the originals for your own records. Certified mail offers some peace of mind to you because you can track the VA's receipt of your documents.

A Decision is Made – What Should I Expect? It will take several months for the Regional Office to make an initial decision on your claim. The Regional Office will mail you its decision. If you are not satisfied with the decision, you have one year from the date on the decision's notification letter to file a Notice of Disagreement. If you file an appeal, the claim will remain "open" back to the original date of claim.



Appealing a Decision – Now What? At this point, you can decide to accept the VA’s decision, or to [file an appeal](#). To appeal a Rating Decision, you need to complete and submit VA Form 21-0958, also known as a Notice of Disagreement (NOD). In your appeal, identify the parts of the decision with which you disagree, whether it is a denial of service connection, the rating assigned, or the effective date assigned. Clearly state your reasons for appealing and provide the VA with evidence that supports your appeal.

The VA does make mistakes – you can succeed in your appeal if you have the evidence and legal knowledge to back it up. To avoid delays in your appeal being processed, submit all evidence to the Regional Office as soon as possible. The appeals process is long, averaging over 3 years. If you are not sure if you should appeal a recent denial, consult a veterans law professional before you spend several years in the appeals process. You don’t have to go it alone. Our office specializes in appeals, and we will be happy to review any denial you may receive to determine if we may be able to assist you.

What Happens After I File a Notice of Disagreement? When the VA makes a decision on a claim you have appealed, they send a Statement of the Case to explain why and how the decision was made. A Statement of the Case should include a summary of all the evidence relevant to your case, a summary of the laws and regulations that were used to make the decision, and the reasons for the VA’s decision. This information can help you identify which parts of your case you will need to further support if you decide to appeal again.

Can I Appeal a Statement of the Case? If you disagree with the decision in your Statement of the Case, you may choose to appeal to the Board of Veterans’ Appeals (also known as the Board or the BVA). You will need to file a Substantive Appeal on a VA Form 9. You have 60 days from the date of the notification letter sent with your Statement of the Case to file your appeal. If you do not appeal in 60 days, the decision will become final. On your Substantive Appeal (VA Form 9), you have the option to request a hearing with a Veterans Law Judge. The hearing can be in-person in Washington D.C., in-person with a traveling Veterans Law Judge who comes to your local regional office, or by teleconference with you at your local regional office and a Veterans Law Judge in Washington D.C.



These hearings are informal and normally last less than one hour. The Veterans Law Judge will not make a decision at your hearing. Rather, a transcript of the hearing will be added to your file and reviewed with the rest of your evidence in deciding your appeal.

What Happens After I File My Substantive Appeal? A Veterans Law Judge at the Board will review your case and issue a decision, which you will receive in the mail. If you disagree with the Board's decision, you have 120 days to file an appeal to the Court of Appeals for Veterans Claims. From there, the Court will examine your case so far, and determine if reconsideration of your appeal is justified. If the Court agrees that errors were made by the Board in deciding your case, the case will be returned to the Board, and you will receive a letter giving you 90 days to submit additional evidence. After this 90-day period, the Board will issue a new decision.



SECTION THREE

Combined Ratings & VA Math



Combined Ratings & VA Math

Let's be honest, VA math is hard. When you have multiple ratings for different conditions, VA does not simply add together your disability percentages. Instead, VA calculates combined ratings by using a formula designed to calculate for "what's left" of your usable body percentage. It splits your body into two parts: Your "disabled body" and your "usable body."

Imagine a completely healthy person. For VA purposes, that person has a body that is 100% usable, meaning they have 100% function in all of their body systems with no disabilities. Now picture someone who has a VA-rated disability. The disability percentage assigned is the Veteran's disabled body percentage. This is what your combined total rating represents. For example, if a Veteran is rated at 70% disabled for PTSD, his disabled body percentage is 70%. His usable body rating becomes 30%, as that is the percentage of function remaining in his body.

But what happens when you have more than one rated VA disability? The answer isn't as simple as it seems. Say the same Veteran who has PTSD rated at 70% disabling also has a left knee disability rated at 30% disabling. His rating would not be 100. Rather, it would be $70\% + (30 \times 30\%)$. VA always calculates each disability by taking the disability's percentage from your remaining usable body total.

In this case, VA takes the left knee disability rating of 30% from the usable body rating of 30% to get an additional 9% of disabled body percentage. VA then adds that additional disabled body percentage (9%) to the total disabled body percentage (70%). The Veteran's new disabled body percentage 79%. His usable body percentage becomes 21%. Each additional disability is calculated in this manner.

As such, the higher a Veteran's disabled body percentage goes, the lower a Veteran's usable body percentage becomes, meaning each additional disability adds less and less to the Veteran's disability rating.



As if calculating VA math wasn't complicated enough, there's the Bilateral Factor to consider. VA recognizes that having disabilities in extremities on both sides of your body (both arms, both legs, or paired skeletal muscles) is additionally disabling. In order to better preserve a Veteran's combined total rating, the Veteran's extremity injuries are combined and an additional 10% added before any other disabilities are calculated. Please note that in order for the bilateral factor to be applied, there must be a disability on each side of the body. For example, a right leg injury at 10% and a left leg injury at 10% would be combined to equal 21% total ($10\% + 10\% = 19$, 10% of 19 is 1.9, $19 + 1.9 = 21\%$). The resulting combined bilateral factor total will then be treated as a single disability for combined rating purposes and added into the equation in order of severity. Always calculate a bilateral factor before combining all disabilities to the correct combined rating. The extra 10% can boost a combined rating significantly.

In sum, VA math is confusing, but easy to figure out once you know the steps. Calculate the bilateral factor before combining all disabilities. Always combine from the highest disability rating to the lowest disability rating. Always take disability percentages from the usable body percentage before adding to the disability percentage. And finally, round to the nearest 10% in order to get your combined total rating. For more on VA math, please go to (<http://www.benefits.va.gov/compensation/rates-index.asp>) for a combined ratings table.



SECTION FOUR

A Guide to TDIU (IU or Total Disability Based on Individual Unemployability)



A Guide to TDIU

What is TDIU? TDIU (also known as IU or Total Disability based on Individual Unemployability) is a VA disability benefit available to veterans whose service-connected disabilities render them unable to work. IU compensates veterans at the 100% disability rating level, even if their combined schedular rating is less than 100%. Basically, the VA recognizes that the regular schedular rating does not always sufficiently compensate veterans whose service-connected disabilities prevent them from maintaining “substantially gainful employment.”

What is a 100% “schedular” rating? To rate veterans’ service-connected disabilities, VA uses the Veterans Affairs Schedule for Rating Disabilities. Disability ratings are based on how severe your symptoms are for any given diagnosis. A “schedular” rating is a rating determined via the rating system. A 100% rating indicates that a veteran is “totally” disabled. The 100% rating can be established with either a single disability or a combination of disabilities.

How are these evaluations the same? Veterans receiving TDIU or a 100% schedular rating are paid the same [amount of compensation](#) each month – currently that’s \$2915.55 per month for a veteran without dependents, but additional money is added for eligible dependents (spouse, children, etc.).

How are they different? The only difference between TDIU and a 100% schedular rating for individual veterans is whether or not they are able to work (see above).

Confusion about these two types of 100% ratings usually stems not from the difference between the two but from whether the evaluation is *temporary* or *permanent*. The permanence of the rating can affect which benefits a veterans’ dependents are eligible for.



Can I work while receiving these benefits? Scheduling rating – A veteran with a 100% scheduling rating is free to work if they are able, unless the rating criteria specifically state that a veteran must be totally impaired from an occupational standpoint. **TDIU** – A veteran receiving TDIU, however, is eligible for TDIU due to their inability to maintain employment. So unless the veteran is working as part of a rehabilitation program or working in a “[protected work environment](#),” the veteran would not be able to work without losing TDIU benefits.

How do I know if my 100% rating is temporary or permanent? Neither type of evaluation is automatically permanent or temporary. However, whether a disability is deemed permanent or temporary by VA can affect which benefits your dependents can receive.

Temporary Ratings – Temporary ratings are awarded when VA believes that your condition may improve. VA awards temporary total disability (100% rating) to veterans who are hospitalized for more than 21 days for a service-connected condition and for the six months following that hospitalization. Many totally disabling mental health disorders and cancers are deemed temporary because, according to VA, they are expected to improve with treatment. Temporary ratings can be reduced if a VA re-examination (C&P Exam) indicates your symptoms have improved enough to a) no longer meet the 100% level as defined by the rating criteria, or b) allow you to maintain employment, in the case of TDIU.

Permanent Ratings – A permanent rating is awarded when VA believes that the chances of your condition improving are zero (or close to zero). VA refers to permanent 100% scheduling rating and permanent TDIU evaluations as “Permanent & Total” (“P&T”).

You can find out if your condition is considered permanent and total on your VA rating decision. If you are found permanently and totally disabled by the VA, your dependents will be eligible for Dependents’ Educational Assistance (also called “DEA”). See our online resource guide for more information about DEA benefits. You can determine whether your disability is “permanent and total” by checking to see if your decision grants you entitlement to DEA – if you are eligible for DEA, then VA has found you totally and permanently disabled.



SECTION FIVE

Bad Paper Discharge / Updating Service Records



Bad Paper Discharge / Updating Service Records

A veteran's character of discharge can impact their eligibility for VA benefits. In order to receive VA compensation benefits and services, a veteran's character of discharge or service must be under other than dishonorable conditions (i.e., honorable, under honorable conditions, general). Veterans who are discharged under dishonorable conditions are not eligible for VA compensation benefits and services.

Veterans whose discharge status is listed as other than honorable may be subject to a review by the VA. VA will then determine whether or not the Veteran's period of service is honorable for VA disability purposes or dishonorable for VA purposes. Any veteran whose period of service is found to be dishonorable for VA purposes becomes ineligible for VA benefits. It is possible to separate service into periods of "honorable for VA purposes" and periods of "dishonorable for VA purposes," particularly with multiple re-enlistments. Many times VA misses this point and denies claims.

If a Veteran's period of service is dishonorable or found by a VA panel to be dishonorable for VA purposes, a Veteran may seek an upgrade of their discharge status. Title 10, USC, § 1553 allows the Secretary of the service to "establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative." If successful, a change in discharge status may allow for the Veteran to receive VA compensation benefits and services going forward. Please note that if your discharge is over 15 years old, you have to apply for a Correction of Military Records.

The act of upgrading a discharge status or correcting a military record is a Department of Defense Matter. Our office does not handle the upgrading of discharge statuses and/or revision of military service records. We recommend you contact a local legal referral service, or the Disabled American Veterans ("D.A.V.") for more information regarding these matters.



Veterans interested in a change in discharge status or military records will need to go through their associated military branch in order to begin the process. The link to each branch's review board is provided below:

<http://arba.army.pentagon.mil/index.html>

<http://www.secnav.navy.mil/mra/CORB/Pages/Home.aspx> (Also for Marines looking to upgrade their discharge status)

<http://www.afpc.af.mil/Air-Force-Discharge-Review-Board/>

<https://www.uscg.mil/legal/BCMR.asp>



SECTION SIX

**Medical Malpractice and the VA:
Filing a Federal TORT Claim vs. 38 U.S.C.
§ 1151**



Medical Malpractice & the VA

One of the frequent topics of inquiry our firm receives is medical malpractice involving VA facilities. Medical malpractice can be confusing because there are two ways to seek damages from the government. The two methods are governed by different areas of law and each has its own rules and benefits.

The first method of seeking damages is through the Federal Tort Claims Act. This Act prescribes a uniform procedure for the handling of claims against the United States on account of personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.

The second method of seeking benefits is through VA Disability Compensation Services under Title 38 U.S.C. § 1151. Section 1151 allows VA to pay compensation for death or disability for injuries incurred or aggravated while receiving VA-sponsored medical treatment, injuries incurred or aggravated while pursuing a course of vocational rehabilitation under 38 U.S.C. Chapter 31, or participating in compensated work therapy under 38 U.S.C. 1718 as if the injury were service-connected.

In other words, veterans who file for and are granted entitlement to disability under Section 1151 are assigned a rating using the VA's disability rating criteria and receive a monthly disability check from VA as if the disability was service-connected. Unlike a tort claim, there is no strict timeline on filing a claim for VA disability benefits under 38 U.S.C. § 1151. Just like other VA disability claims, however, the date of the back pay for an 1151 claim stems from the date that the claim was received by VA.

You can file for both a Federal Tort Claim and an 1151 claim. If you win your Federal Tort Claim Act and you receive VA disability benefits there will be an offset between the two benefits.



Our office does not handle Federal Tort Claims. Because Federal Tort Claims fall outside the realm of VA disability compensation, we do not have the expertise to provide legal advice in the Federal Tort area of law. If you are looking to file a Federal Tort Claim, we recommend contacting a local legal referral service to secure representation.

Did the VA deny your disability benefits claim?

Don't fight the VA alone.

If you received an unfavorable decision from the VA, contact us today for a free case consultation. We have the knowledge and experience to get you the service-connected disability benefits you deserve.

Contact us today!
(800) 544-9144



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