



Veterans Service-Connected Compensation What it is and How to Get it



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Questions

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What is VetsFirst?



- We represent 60 years of service to veterans and their families.
- We provide representation for veterans, their dependents and survivors in their pursuit of VA benefits.
- We fight to ensure all veterans with disabilities have the ability to live and work in their communities and achieve greater independence.



Service-connected disability compensation

BASIC ELIGIBILITY REQUIREMENTS

What is Service-Connected Disability Compensation?

Disability compensation is a monetary benefit paid to veterans on a monthly basis because of injuries or diseases that happened while on active duty or were made worse by active military service.



Who is a “Veteran” for VA Disability Compensation?

A “veteran” is defined as a “person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.”

Basic Eligibility Requirements

Must meet the “active duty requirement” which means that the veteran must have “active military, naval, or air service.”

- Examples:

- Full-time service in the Army, Navy, Marines, Air Force, or Coast Guard
- Training (if disability is related to training)
- Guard or Reserves qualify only if called up to serve on active duty

Type of Discharge Required

- A veteran must have been discharged or released under conditions other than dishonorable.
- Service branches use five types of discharges:
 1. Honorable discharge
 2. Discharge under honorable conditions or general discharge
 3. Discharge under other than honorable conditions
 4. Bad conduct discharge
 5. Dishonorable discharge

Statutory Bars to Benefits

- Dishonorable, bad conduct discharges, or other conduct may operate as a statutory bar to benefits.
- Veterans may seek a discharge upgrade from a military discharge review board or the Board for Correction of Military Records.

When is Service-Connected Compensation Available?

Service-connected disability compensation is available where a claimed disability was incurred or aggravated "in the line of duty" and is not the result of willful misconduct and the veteran's discharge was other than dishonorable.

“In the Line of Duty”

Examples of injuries that could be deemed in the line of duty:

- A service member injures her knee while navigating an obstacle course during mandatory physical training.
- A service member injures his knee during an IED blast in Iraq.
- A service member injures her knee while playing football on base after normal working hours.

Three Requirements for Service-Connected Compensation

1. Medical diagnosis of a current disability
2. Evidence of an in-service occurrence or aggravation of a disease or injury
3. Link or nexus between the in-service occurrence or aggravation of a disease or injury and the current disability

Medical Diagnosis of a Current Disability

- A veteran must have a current disability to meet the first requirement for compensation.
- A veteran can submit VA, military, and private medical records to VA as proof of a current disability.
- Under the Veterans Claims Assistance Act, VA also has a statutory duty to assist claimants in developing evidence for VA benefits.

Veterans Claims Assistance Act

- If a veteran files a claim without medical evidence, VA will be required to develop it.
- Part of this duty includes ordering a medical examination by a VA, or VA contracted physician.
- When possible, however, do not rely on VA to develop the claim.

In-Service Occurrence or Aggravation

- The disability must have occurred or been aggravated while on active duty.
- VA relies heavily on the contents of the service medical records and military personnel records.
- VA is required to consider lay evidence which may be sufficient when an issue relates to an observable event.

In-Service Occurrence or Aggravation: Combat Veterans

The law requires VA to take combat veterans at their word if the event they are testifying about:

1. Occurred while engaged in combat with the enemy
2. Their statement is consistent with the circumstances of such service; and
3. There is no clear and convincing evidence to the contrary

Link or Nexus

There are five ways to establish a link or nexus between active military service and current disability:

1. Direct service connection
2. Aggravation
3. Statutory presumption
4. Secondary service connection
5. 1151 and Federal Tort Claims Act (FTCA) claims

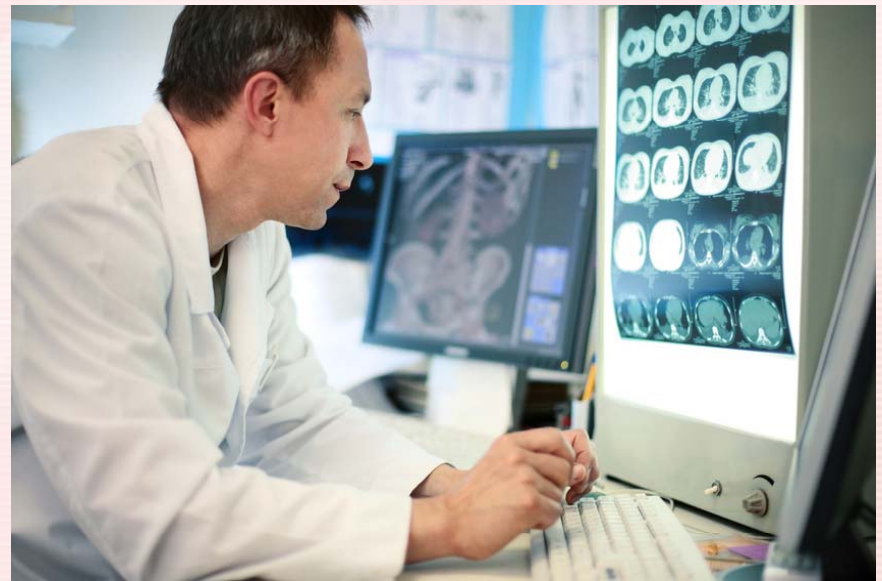


Establishing the link between active military service and a current disability

MEDICAL EVIDENCE IN GENERAL

Medical Evidence

Competent medical evidence must establish that it is at least as likely as not that the current disability resulted from disease, injury, or precipitating event during service.



Benefit of the Doubt



When the evidence is relatively equal (50% to 50%) the benefit of the doubt belongs to the veteran and the veteran wins.

Nexus Presumed

Medical evidence is not required if nexus is presumed such as in the following instances:

- Chronic disability diagnosed in service
- Disability presumed to be service connected if diagnosed within presumptive period following service

Presumption of “Sound Condition”

- Veterans are considered to be in sound condition when they are inducted into the service.
- Exception—if there is a notation in their induction physical. A veteran’s personnel comments are not sufficient.
- The presumption of sound condition can only be rebutted with “clear and unmistakable evidence.”



Establishing the link between active military service and a current disability

DIRECT SERVICE CONNECTION

Delayed Direct Service Connection

An event or incident in-service caused the veteran to suffer a disease or disability many years later.

- Examples:
 - Veteran develops PTSD later in life due to exposure to a traumatic event while on active duty.
 - Veteran breaks his hand while on active duty. Although it heals, he later develops arthritis due to the break.

Chronicity

- If the veteran was diagnosed with a chronic disability while on active duty or during the applicable presumptive period and currently suffers from the same chronic disability, then VA will assume the disability is related to military service.
- A chronic disability is permanent. It may get better and it may get worse but it never fully goes away.

Continuity of Symptomatology

Shown through military medical records that the condition was diagnosed or manifested during active duty.



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Establishing the link between active military service and a current disability

AGGRAVATION

Aggravation

Veteran shows worsening of a pre-existing condition due to military service.

- Example:

- A veteran enters the service with history of a back strain. The back strain has fully healed and the veteran had it examined prior to entering the service. While humping a 100 pound pack, the veteran pulls her back muscle again. The injury may be service connected.

Congenial or Developmental Disabilities

- Certain disabilities cannot be service connected because they are “congenial or developmental.”
- Congenial or developmental means that the veteran was born with the condition or that it is genetic.

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Establishing the link between active military service and a current disability

STATUTORY PRESUMPTION

Statutory Presumption

Congress has determined that certain disabilities and conditions are presumed to be related to military service.



Types of Presumption

- Chronic or tropical diseases that are manifested within a defined period of time
- Prisoners of War
- Persian Gulf War veterans that have a manifestation of certain disabilities including certain undiagnosed disabilities
- Radiation exposed veterans
- Agent Orange

Agent Orange

- In 2010, VA added three new diseases to those associated with exposure to Agent Orange:
 - Hairy cell leukemia and other chronic B-cell leukemias
 - Parkinson's disease
 - Ischemic heart disease
- Other diseases may be added based on the scientific determination of the Institute of Medicine and the VA's review.



Establishing the link between active military service and a current disability

SECONDARY SERVICE CONNECTION

Secondary Service Connection

If a service-connected condition causes or aggravates a second condition, then that second condition is treated as also service connected.

- Example:
 - If a veteran is service connected for a knee condition due to a gunshot wound and the knee condition causes him to walk differently and he develops a back and hip disability, then these disabilities can be service connected.

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Establishing the link between active military service and a current disability

SECTION 1151 AND FTCA CLAIMS

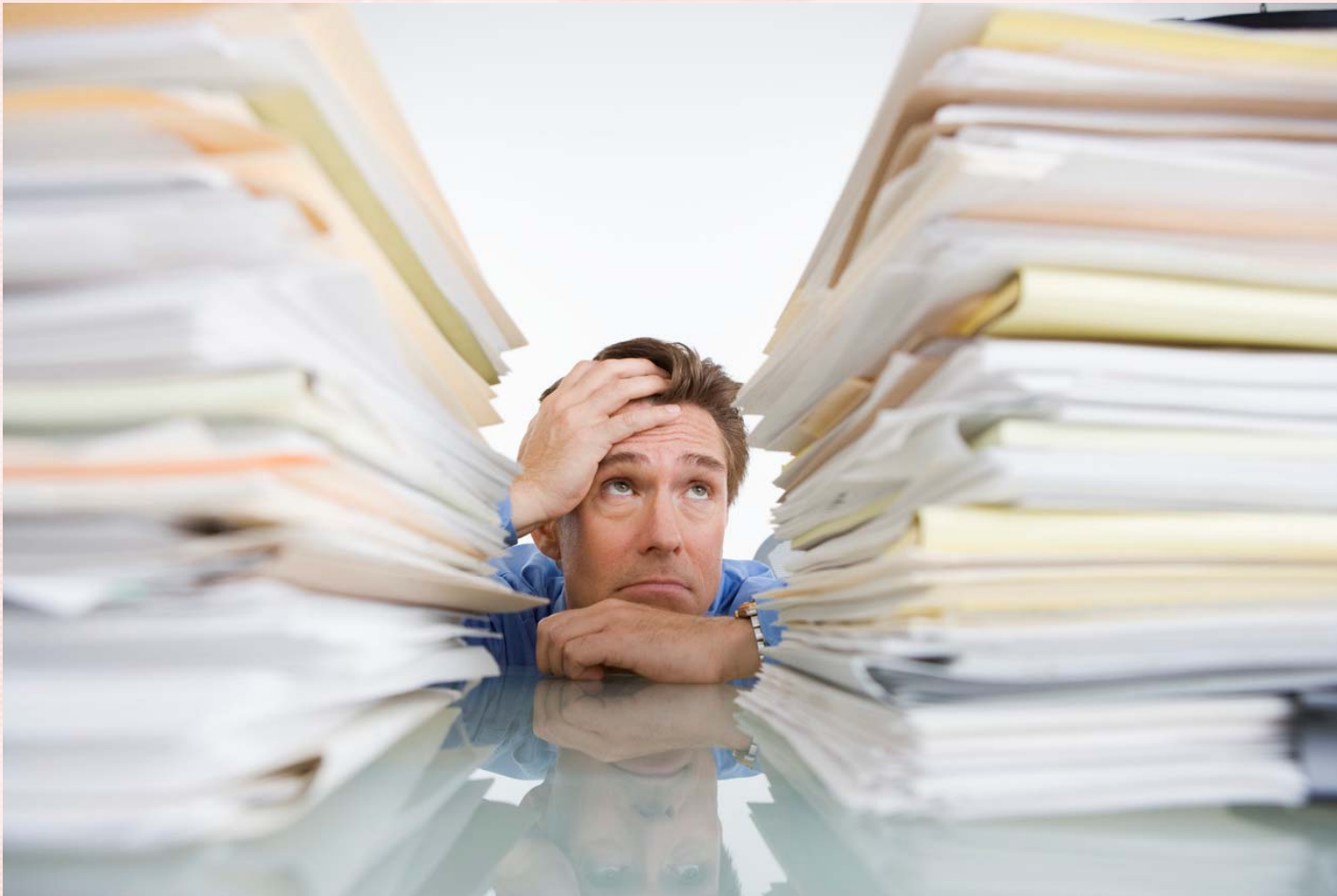
Section 1151

- If a disability or disease is caused by VA medical treatment or vocational rehabilitation, then that disability or disease is treated as if it is connected to the veteran's military service.
- This legal fiction is provided for under Title 38, Section 1151 of the United States Code.

FTCA Claims

- A veteran eligible to file an 1151 claim for VA benefits may also file an FTCA claim.
- An FTCA claim must be filed with VA prior to filing a lawsuit.
- This type of claim usually must be filed within two years.
- Contact an attorney if you have a potential FTCA claim.

How Do You Get Help in Filing a Claim for VA Disability Benefits?



Why Get Help With Your VA Claim?

- Applying for and establishing entitlement to VA benefits can be difficult.
- Successful claims usually require knowledge of the specific benefits that VA offers.
- Even if VA grants your claim, you will need to know whether VA has granted everything you are entitled to.

Can You Go It Alone?

- Many veterans have successfully won their own claim without any assistance.
- It is helpful to have a background in law or medicine and the requisite knowledge and ability to conduct legal research.
- A successful veteran must also have the time to invest in understanding the VA system.

Three Main Ways to Get Help

1. Service officers
2. Claims agents
3. Attorneys



Service Officers

- Also known as service representatives, service officers are individuals who are employees of a recognized veterans service organizations or a state or county department of veterans affairs.
- Through experience, education, and training, service officers have been recognized or accredited by VA as having the ability to represent claimants against VA.

Claims Agents

- Registered claims agents are non-attorneys who have been authorized by VA to represent claimants.
- They must successfully complete a background investigation, show they are of good moral character, and pass a VA examination with a score of 75% or more.
- Unlike service officers, agents may charge a fee in some situations.

Attorneys

- Attorneys may represent veterans who are filing initial VA claims or appeals.
- A veteran may only be charged for an attorney's assistance once a claim has reached the appeals stage.
- Lack of ability to receive payment in all situations can make it difficult for a veteran to obtain an attorney's assistance.

Representing Yourself

- If you decide to represent yourself, please visit the VetsFirst website at www.vetsfirst.org.
- VetsFirst.org includes extensive self-help resources and allows you to submit any questions you may have through the “Ask VetsFirst” feature.
- Even if we can't provide representation, we would be happy to provide you with advice and guidance.

Be Prepared to Wait

- Remember that VA moves extremely slowly, so be prepared to wait.
- But don't give up because receiving VA assistance may be life changing.



Questions

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Resources

- VetsFirst:
www.vetsfirst.org
- Ask VetsFirst:
<http://helpdesk.vetsfirst.org/>
- Department of Veterans Affairs:
www.va.gov
- Federal Benefits for Veterans, Dependents, and Survivors:
www.va.gov/opa/publications/benefits_book.asp