

An Overview: Department of Veterans Affairs (VA) Office of General Counsel and Benefits Programs

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***This presentation is not intended as a complete review of all types of VA benefits and corresponding eligibility criteria for such benefits. Additional information concerning such benefits can be located in Title 38 of the United States Code and Title 38 of the Code of Federal Regulations. Views expressed in this presentation are that of the author and do not constitute official views of the Department of Veterans Affairs.**

Summary of Topics Covered



- I. Overview of VA's Organizational Structure
- II. Overview of VA's Office of General Counsel
- III. Claims for VA Benefits
- IV. Veteran Status
- V. Major Types of Monetary Benefits and Important Nuances
- VI. Health Care Programs
- VII. Other Major VA Benefit Programs
- VIII. New Developments to VA Regulations, Federal Court Decisions, and VA General Counsel Opinions

Topic I

Overview of VA's Organizational Structure— Three Major Programs



Veterans Health Administration

- The Veterans Health Administration is America's largest integrated health care system with over 1,700 sites of care, serving 8.76 million Veterans each year.



Veterans Benefits Administration

- 58 Regional Offices
- Monetary benefits
- Disability compensation
- Non-service connected pension
- Education
- Dependency and indemnity compensation
- Home loan guaranty
- Life insurance
- Monetary burial benefits
- Vocational rehabilitation

National Cemetery Administration

- 131 national cemeteries
- Headstones and markers
- Burial flags
- Presidential memorial certificates



Locating VA Offices



VA's Facilities Locator & Directory contains an interactive map showing VBA, VHA, and NCA office locations and contact information.

- Search by zip code, state, type of facility, and services available at:
<https://www.va.gov/directory/guide/home.asp>

VA Regions



MyVA Regional Alignment





Topic II: Overview of VA's Office of General Counsel

The General Counsel provides legal advice and services to the Secretary (SECVA) and all organizational components of the Department. The General Counsel is, by statute, the Department's Chief Legal Officer.

VA

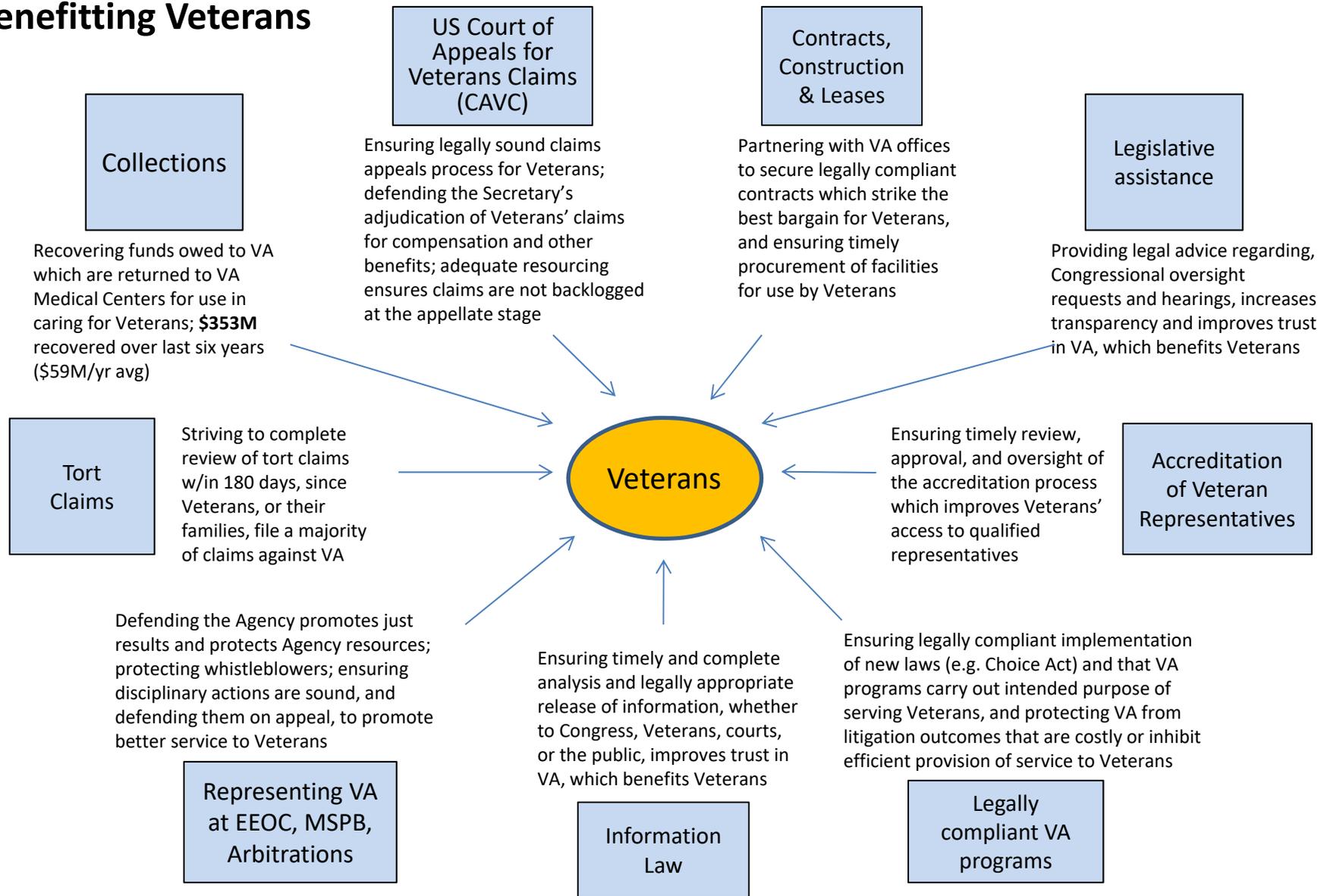


U.S. Department of Veterans Affairs
Office of General Counsel

OGC's Mission

- The Office of General Counsel serves as VA's in-house counsel and is committed to ensuring that every member of our organization has a Veteran focus and an understanding and commitment to the business priorities of our VA clients.
- OGC's attorneys act as business partners, providing sound legal expertise, and as needed, critical problem-solving skills and risk-management advice.
- OGC strives to provide real-time legal advice. Our goal is to be involved with Department decision-makers during the initial phases of decisions and actions, rather than focusing only on defending actions after the decisions have been made. This proactive, preventive approach promotes better outcomes and reduces risk.

OGC focuses its operations on benefitting Veterans



Topic III

Claims for VA Benefits



- VA must receive a claim for VA benefits as a prerequisite to making a benefits award. 38 U.S.C. § 5110(a).
 - There is no time limit on filing a VA benefit claim
 - The failure to file a claim for benefits until years, and sometime decades, after service often complicates VA's adjudicative process.
 - An Integrated Disability Evaluation System (IDES) claim (an integrated DoD/VA claim by servicemember who is being processed for separation as a result of medical disability) satisfies VA requirements for submission of a claim.
- VA decisions denying the full amount of benefits sought may be appealed through VA's administrative appeals process.

Recent Change to VA's Claims Process



- New requirement to fill out Standard Application Form as described by the Secretary.
- VA Form 21-526 EZ for compensation is now required for claims submission. 79 Fed. Reg. 57,660 (Sept. 25, 2014) (Effective March 25, 2015).
- Once someone separates from service and wants to file a new claim for compensation, he/she must now do so using a VA Form 526EZ. The link to this form is:
<http://www.vba.va.gov/pubs/forms/vba-21-526ez-are.pdf>
- Informal claims are no longer accepted.

The Claims Process



**Claim
Received**

Extensive and Non-Adversarial

**Evidence
Gathered**

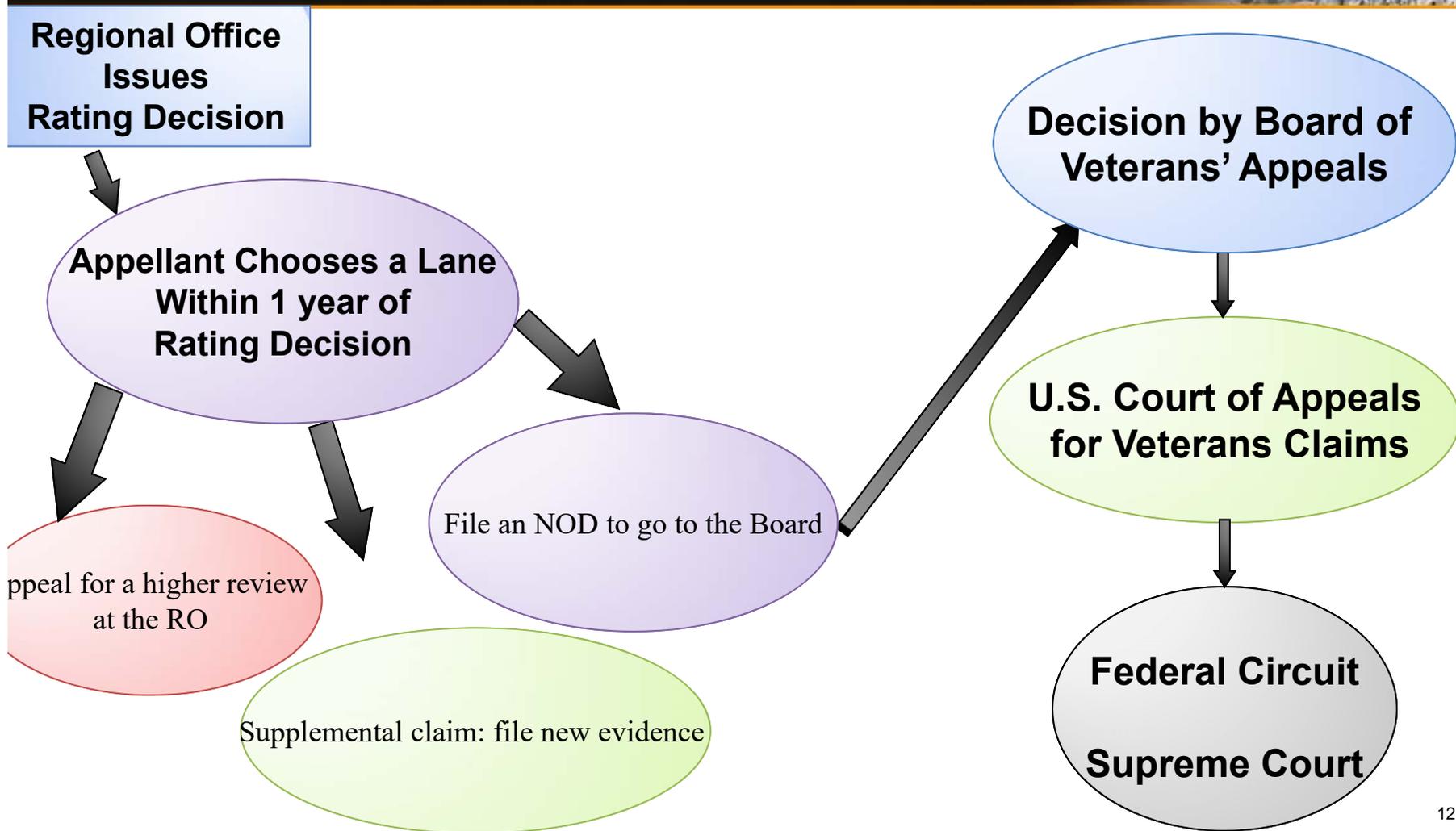
Rating decision awards service connection, obligates Government for compensation

**Claim
Decided**

Appeal period begins with notification of rating decision

**Veteran
Notified**

The new VA Appeals Process – Appeals Modernization



Themes in Veterans Law



- Elements of a claim of entitlement to VA benefits:
 - Intent to apply for benefits
 - Identification of the benefits sought
 - Written communication
 - Elements of a granted claim of entitlement to VA benefits:
 - Service connection: current condition, in-service event, and nexus between the two
 - Rating: degree of disability (VASRD/rating schedule), and the effective date of compensation
-

Topic IV

Veteran Status, Military Discharges and Their Impact on VA Benefits



- Veteran status, for VA purposes, generally equates to an individual who was discharged or released from active duty in the Armed Forces of the United States “under conditions other than dishonorable.” 38 U.S.C. § 101(2).
- The “conditions other than dishonorable” phrase used in the title 38 definition does not match the terms used by in DOD statutes and regulations and the UCMJ to describe discharges—this creates confusion.

Status as Veteran—The Cornerstone of VA's Benefits Eligibility



- Definition of a Veteran for VA purposes
 - An individual discharged or released from active duty in the Armed Forces of the United States under conditions other than dishonorable 38 U.S.C. § 101(2). Such persons must also have:
 - Served at least two years on active duty (minimum active service requirement) if service was after 16 October 1981 38 U.S.C. § 5303A;
 - OR served the full time called to active duty;
 - OR became disabled, or died during active duty, active duty for training, or inactive duty training.
 - Members of the Reserves or National Guard do not qualify as Veterans based solely on inactive duty training, or active duty for training unless they become disabled or die during training activities. See 38 U.S.C. §§ 101(21), (22), (23) and (24).
- DoD honorable discharge determinations are binding on VA

Topic V

Major Types of VA Monetary Benefits Disability Compensation



- Title 38 is over 1,000 pages long.
- Definition of VA disability compensation
 - A monthly payment for a disability that is incurred or aggravated during military service that is not a result of the service member's own misconduct (i.e., in line of duty).
38 U.S.C § 1110.
- Once a condition is determined to be service connected, VA will assign a disability rating for the condition(s)
 - Ratings range from 0% (non compensable) to 100% (total)
 - A total disability rating results in high priority for medical care and PX and commissary eligibility.
 - Ratings are based on the Rating Schedule, Part IV of Title 38 of the C.F.R.

Grants of VA Compensation



- Ratings may be increased or decreased over time
 - Changes in rating are usually based on VA medical exam.
 - Any change in rating results in notice to the claimant and other procedural rights 38 C.F.R. § 3.103(a).
 - Combat-related injuries are usually assigned a “pre-stabilization rating” that is minimally a 50% rating.
- Extraschedular ratings
 - Exceptional cases where the schedular ratings are found to be inadequate in light of the Veteran’s disability picture.
- Total Disability Due to Individual Unemployability (TDIU)
 - A Veteran rated at less than 100%, may be paid at the 100% rate if the Veteran is found by VA to be unemployable.

Protected Ratings



- VA disability ratings, pension determinations, and other VA benefit determinations are subject to change over time.
 - Change can result from periodic re-evaluation or change in medical condition.
- A determination of service connection that has been in place for ten or more years is “protected” and not subject to severance. 38 U.S.C. § 1159.
- A disability rating, determination of total disability made for compensation or pension purposes, if continually in place for 20 or more years may not be reduced. 38 U.S.C. § 110.

Important Facts About VA Compensation



- VA compensation is not subject to tax.
- Military retirement pay is generally offset against VA compensation.
 - Howell v. Howell, ___ U.S. ___, 137 S. Ct. 1400 (2017)
- VA pays compensation under 38 U.S.C. § 1151 to claimants who are injured or disabled as a result of VA medical treatment.
 - Such cases are evaluated like disability compensation claims, but the conditions are not “service connected” and payments received as a result of a malpractice award are offset against VA compensation.

VA Disability Pension



NEW: New pension rules, effective 10/18/18 Address Changes in Regulations on Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits

- VA Disability Pension.
 - Is governed by Chapter 15 of Title 38 of the United States Code
 - Is a needs-based program
 - Is not subject to taxation
- Eligibility is premised on wartime service in the United States Armed Forces coupled with an inability to pursue gainful employment.
 - While the former service member must be disabled, the disability need not be service-connected.
- VA pension rates are adjusted annually to keep pace with increases in the cost of living.

Dependency and Indemnity Compensation (DIC) Eligibility



- DIC is paid to dependents of veterans who:
 - Died as a result of a service-connected condition.
 - Were totally disabled due to a service-connected condition for a specified period prior to death. 38 U.S.C. § 1318.
- Dependents of veterans who are in receipt of 100% rating will receive notice of potential eligibility for DIC.
 - A claim must be filed as a prerequisite for a grant of benefits.

Accrued Benefits



- Benefits due and unpaid at the time of the veteran's death:
- Class of eligible recipients:
 - The veteran's spouse.
 - The veteran's children (in equal shares)
 - The veteran's dependent parents (in equal shares)
 - Death of a surviving spouse → children of the deceased veteran
 - Death of a child → surviving children who are entitled to death compensation, dependency and indemnity compensation, or death pension
 - Death of a child claiming benefits under chapter 18 (spina bifida) → surviving parents
 - "In all other cases, only so much of the accrued benefits may be paid as may be necessary to reimburse the person who bore the expense of last sickness and burial."
- Each group is statutorily defined

Topic VI

Major VA Health Care Programs



- Hospital Care
 - Inpatient care in a hospital including all needed medical services. 38 U.S.C. §§ 1701(5); 1710(a), (c), (e)-(h).
- Outpatient Care
 - Medical services including medical examination, treatment, and rehabilitative services. 38 U.S.C. 1701(6); 1710(a),(c), (e)-(h).
- Domiciliary Care
 - Inpatient care, but not in a hospital or nursing home, including needed medical services. 38 U.S.C. § 1710(b).
- Nursing Home Care
 - The accommodation of persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services. 38 U.S.C. §§101(28), 1710(a)(2)-(5), 1710A.

Applying for VA Health Care



- Enrollment is a prerequisite to receiving care
 - VA Form 10-10EZ
<https://www.1010ez.med.va.gov/sec/vha/1010ez/>

VA Veterans Centers (Vet Centers)



- The Department of Veterans Affairs Vet. Center Program operates a system of 232 community-based counseling centers. These Vet. Centers are staffed by small multi-disciplinary teams of dedicated providers, many of whom are combat veterans.
- Services provided at VA Vet. Centers
 - Readjustment counseling is normally provided at one of 232 community-based Vet. Centers.
 - Vet. Centers provide counseling and outreach services to all servicemembers and veterans, regardless of discharge status, who served in any combat zone.
 - Services are also available for family members of eligible veterans on military-related issues.

Mental Health Services



- VA has a full range of mental health services available for Veterans. Detailed information on such services can be located at <http://www.mentalhealth.va.gov/>.
- Services range from clinical mental health evaluation and treatment to specialized services for Veterans suffering from alcohol or drug dependency.
- Services include sexual trauma counseling and counseling for those suffering from stress-induced illnesses.

Topic VII

Other Major VA Benefit Programs



- Education Benefits
- Vocational Rehabilitation
- Loan Guaranty
- Non-Monetary Burial Benefits
- Life Insurance

New Developments in VA Benefits Law



VA Office of General Counsel Precedent Opinion (VAOPGCPREC)

- VAOPGCPREC 1-2017 – Service Connection Based on Obesity
 - Not a “disease” or injury that can be service-connected *but* it can be a factor for extraschedular consideration
 - Not an in-service event (not discrete occurrence/incident; multiple factors)
 - May be an intermediate step between a service-connected condition and a condition that may be secondarily service-connected
 - Three-factor analysis
 - Did the service-connected condition cause obesity?
 - Is obesity a “substantial factor” in the cause of the condition?
 - Is obesity the but-for cause of the condition?

New Developments in VA Benefits Law



Regulatory Updates

- **Camp Lejeune Veterans (8/1/53–12/31/87)**
 - Established presumptive S/C for eight (8) conditions (six cancer types; anemia; Parkinson's) for Veterans who served at Camp Lejeune (contaminated water supply). See 38 C.F.R. §§ 3.307(a), (a)(1), and (a)(7); 38 C.F.R. § 3.309(f); 82 Fed. Reg. 4173 (Jan. 13, 2017).
 - Extended hospital care and medical services for Camp Lejeune Veterans who served from 8/1/53-12/31/56 with fifteen (15) conditions. See 38 C.F.R. § 17.400; 81 Fed. Reg. 46603 (July 18, 2016).
- **GWS/MUCMI**
 - Extended period during which conditions/symptoms manifested from 12/31/16 to 12/31/21. See 38 C.F.R. § 3.317(a)(1)(i); 81 Fed. Reg. 71382 (Oct. 17, 2016).

New Developments in VA Benefits Law



Expanding Mental Health Care for Service Members with Other-Than-Honorable Discharges (OTH)

- OTH discharge is “a character of discharge that can foreclose the receipt of veterans’ benefits.” Robertson v. Gibson, 759 F.3d 1351, 1352 (Fed. Cir. 2014).
- Estimated 500,000 former service members with OTH discharge
- Secretary Shulkin meeting with DoD, VSOs, and Congress before plan is finalized (expected this summer)
- Expand provisions for urgent mental health care needs to former service members with OTH discharges, a number of whom may face mental health distress or be at risk for suicide or other adverse behaviors.
- Veterans Crisis Line: (800) 273-8255 (option 1), or text 838255

Questions?



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