

Veterans' Benefits Training/CLE

2025

The Honorable Michael Allen
United States Court of Appeals for Veterans Claims,
Washington D.C.

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Director, Veterans Law Institute
Stetson University College of Law

1

Agenda

- ▣ Organization of the VA
- ▣ Advocacy at the VA
- ▣ Basic Eligibility
- ▣ How to Prove Entitlement
- ▣ How to File a Claim
- ▣ The Life of a Claim
- ▣ Right to Appeal

2

Organization of the VA

- ▣ Executive Branch/Cabinet level agency
- ▣ Three main components
 - Veterans Health Administration (VAMC)
 - Veterans Benefits Administration
 - Memorial Affairs/National Cemeteries

3

Organization of the VA

- ▣ Agency of original jurisdiction for claims = VA Regional Office (RO or VARO)
 - ▣ 58 VARO's
- ▣ At the VA a "No" is almost never an absolute "No."
- ▣ Different members of the agency can make different decisions and overturn a previous decision
- ▣ Claimant does not carry his burden alone

4

The Duty to Assist

- ▣ Medical Examinations
- ▣ Records requests
 - Federally Held
 - VA Records
 - Private medical records

5

VA Benefits

- ▣ Medical care (VHA)
- ▣ Home loan guarantees
- ▣ Educational assistance
- ▣ Survivor benefits
- ▣ Pension for indigent wartime veterans
- ▣ Disability compensation
 - Monthly nontaxable check
 - For current disabilities connected to the veteran's military service

6

Things to remember

18 million

Living Veterans in USA

5.3 million

Number of veterans with a recognized service-connected disability

7

Things to Remember

457,919/ \$16,856

Number of **veterans** who began receiving disability compensation in 2024 (increased by approx 100K from 2023)/ estimated annual average individual payment

46,153/ \$20,600

Number of **survivors** who began receiving service-connected death benefits in 2024/ estimated annual average individual payment

8

Stats

	Aug 2024 Total Claims Pending		September 2025 Claims Pending	
Original Claims (Veterans)	207,776	31.7% pending over 125 days.	164,680	32.1% pending over 125 days.
Original Claims (Spouses)	10,391	34.9% pending over 125 days.	4,824	29.1% pending over 125 days.
Supplemental Claims	620,625	37.1% pending over 125 days.	407,424	18.1% pending over 125 days.
Higher Level Reviews	60,798	Avg days pending: 51	80,833	Avg days pending: 44
HLR Returns	62,599	Avg days pending: 142	29,767	Avg days pending: 66
Board AMA Returns	23,335	Avg days pending: 174.9	14,209	Avg days pending: 115.5

9

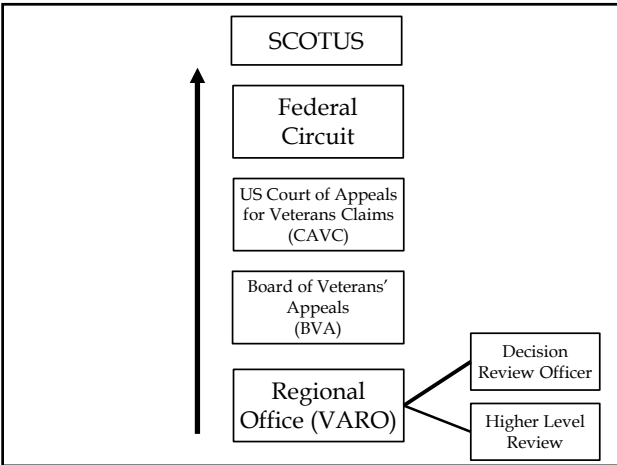
Things to remember



10

ADVOCACY AT THE VA

11



12

Accreditation at VA

- ▣ Agents/Attorneys
- ▣ Application with Office of General Counsel (VA Form 21A)
- ▣ Mandatory yearly certification of good standing
- ▣ CLE every two years (3 hours)

- ▣ <https://www.va.gov/ogc/accreditation.asp>

13

HOW TO FILE A CLAIM

14

How to File a Claim

- ▣ Claim Form (VA Form 21-526EZ)
- ▣ Intent to File (VA Form 21-0966)
- ▣ Supplemental Claim Form (VA Form 21-0995)

15

UNDERSTANDING RECORDS

16

Representation before the VA: Obtaining Records

- ▣ Relevant records include:
 - Official Military Personnel File (OMPF)
 - Medical records (inpatient/outpatient)
 - VA Claims File

17

Representation before the VA: Obtaining Records

- ▣ OMPF and active-duty inpatient and outpatient records may be obtained by filing an SF-180, Request Pertaining to Military Records.
 - Type of record
 - Branch of service
 - Date of discharge
- ▣ All Branches have different places they are holding records depending on year of discharge

18

Representation before the VA: Obtaining Records

- ▣ VA Claims File (“C-File”)
 - Obtained by a FOIA request with the appropriate Regional Office
 - Should have
 - copies of all correspondence between the VA and Claimant,
 - all records obtained by the VA,
 - and all medical evaluations of the Veteran conducted on behalf of the VA

19

REPRESENTATION BEFORE THE VA: WHO IS AN ELIGIBLE “VETERAN?”

20

Who is a Veteran? Four Requirements

- ▣ Requirement of Veteran Status
- ▣ Active Military, Naval, Air, or Space Service Requirement
- ▣ Discharge Requirement
- ▣ Length of Service Requirement

21

Basic Eligibility for Benefits: Veteran Status

- ▣ Who is a veteran?
 - Served in the active military, naval, or air service, **and**
 - Who was discharged or released therefrom under conditions other than dishonorable

22

Basic Eligibility for Benefits: Active Service

- ▣ Active duty:
 - Active troops
 - Reservists/National Guard:
 - ▣ Any period of active duty for training during which the individual was disabled or died from disease or injury incurred or aggravated in line or duty (Title 10 status)

23

Basic Eligibility for Benefits: Discharges

- ▣ To be eligible for benefits, a Veteran must have a discharge under:

“other than dishonorable conditions”

24

What is a Discharge?



25

What is a Discharge?

- ▣ The end of Active Service
 - Includes:
 - Active Duty
 - Active Training
 - Note: National Guard service only counts when it is *federal service*!
 - Service while on duty for your state will not apply

26

How Does a Servicemember Prove He Was Discharged?

- ▣ DD-214
 - "Certificate of Release or Discharge from Active Duty"
 - Began to issue in 1950
 - 1940's-1950 = "WD AGO" (War Department Adjutant General) Forms and the NAVPERS (Naval Personnel) discharge documents
 - Short Form vs Long Form

27

The DD-214

What's on it?

- Biographical information
- Verifies complete span of time served on active duty
- Lists MOS (Military Occupational Specialty)
- Overseas service
- Awards
- Rank
- Character of Discharge
- Reason for Discharge

28

14. MILITARY EDUCATION (Course title, number of weeks and month and year completed)			
PRIMARY LEADERSHIP DEVELOPMENT COURSE, 4 WEEKS, 1996//COMBAT LIFESAVER COURSE, 1 WEEK, 1993			
//NOTHING FOLLOWS			
15. A MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERAN'S EDUCATIONAL ASSISTANCE PROGRAM		16. DAYS ACCRUED LEAVE PAID	
Yes	No	Yes	No
	X	X	60.0
17. MEMBER WAS PROVIDED A COMPLETE DENTAL EXAM AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION			
Yes	No		
X			
18. REMARKS			
DATA HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOD OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS//IMMEDIATE REENLISTMENT THIS PERIOD			
MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE//CONT. FROM BLOCK 13: //COMBINED SERVICE RIBBON//NATO MEDAL//EXPERT INFANTRYMAN BADGE//AIR ASSEMBLY BADGE//DRIVER AND MECHANIC BADGE WITH DRIVER-M BAR//NOTHING FOLLOWS			
19. MAILING ADDRESS AFTER SEPARATION (Include Zip Code)		20. ADDRESS RELAY (Name and address - Include Zip Code)	
[REDACTED]		[REDACTED]	
21. MEMBER REQUESTS COPY 4 BE SENT TO: ON DRIVER LICENSE [X] Yes [] No		22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title)	
[REDACTED]		[REDACTED]	
23. TYPE OF SEPARATION			
DISCHARGE			
24. CHARACTER OF SERVICE (Include approved)			
UNDER HONORABLE CONDITIONS (GENERAL)			
25. SEPARATION AUTHORITY		26. SEPARATION CODE	
AR 639-200, PARA 54-12C(9)		27. REENTRY CODE	
28. NARRATIVE REASON FOR SEPARATION		29. MEMBER REQUESTS COPY 4	
MISCONDUCT		[REDACTED]	
30. DATES OF TIME LOST DURING THIS PERIOD		31. MEMBER REQUESTS COPY 4	
NONE		[REDACTED]	
DD Form 214-AUTOMATED, NOV 88 Previous editions are obsolete. SERVICE - 2			

29

How Many Discharges Can One Servicemember Have?

Officers

- An officer receives a commission from the POTUS to serve.
- Commissions are indefinite
- Commissions come with an obligation of service
- Currently, officers are not automatically discharged at the end of the obligation
- DD-214 received after separation/discharge/retirement

30

How Many Discharges Can One Servicemember Have?

- ☐ Enlisted
 - Sign a contract for a specific period of obligation
 - ETS ("End of Term of Service")= new contract ("Re-enlistment")
 - For each ETS = new DD-214 (or its equivalent)
- ☐ Reservists
 - Get a DD-214 for each period of active duty (Title 10 status)

31

Character of Discharge

- ☐ Honorable
 - ☐ General
 - ☐ Other Than Honorable
 - ☐ Bad Conduct Discharge
 - ☐ Dishonorable Discharge
- Administrative Discharges

Discharges given by Courts-Martial

32

Character of Discharge

- ☐ Honorable
 - Normal
 - Entitled to full benefits
- ☐ General
 - Administrative separation
- ☐ Other Than Honorable
 - Administrative separation
 - More procedural due process

33

Character of Discharge

- ☐ Bad Conduct Discharge (BCD)
 - Punitive discharge
 - Administered by General or Special Courts-Martial
- ☐ Dishonorable Discharge (DD)
 - (Dismissal for officers)
 - Punitive discharge
 - Administered by General Courts-Martial

VA: "other than dishonorable discharge"

34

VA Benefits Eligibility: Discharges

- | | |
|---|---|
| <ul style="list-style-type: none"> ☐ Eligible for benefits <ul style="list-style-type: none"> ▪ Honorable discharge ▪ General discharge | <ul style="list-style-type: none"> ☐ Not eligible for benefits <ul style="list-style-type: none"> ▪ Other than honorable (case-by-case) ▪ Bad conduct discharge ▪ Dishonorable discharge |
|---|---|

35

Basic Eligibility for Benefits: Statutory Bars to Benefits

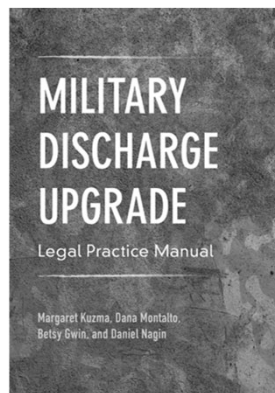
- ☐ Regardless of discharge characterization
 - Separation as a conscientious objector who refused orders
 - Release by reason of sentence of general court martial
 - Officer resigning for good of service
 - Deserter
 - Alien sought discharge in time of hostility
 - AWOL for 180 days (unless there are compelling circumstances to warrant the prolonged absence)

36

Basic Eligibility for Benefits: Upgraded Discharge

- ☐ Upgrade by Board for Correction of Military Records (BCMR) to Honorable or General:
 - Allows the benefits normally proscribed under “issued under dishonorable conditions” clause
 - Sets aside statutory bars to benefits
- ☐ Upgrade by Discharge Review Board (DRB) to Honorable or General
 - Allows the benefits normally proscribed under “issued under dishonorable conditions” clause
 - BUT **not** statutory bars to benefits

37



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ABA

38

Basic Eligibility for Benefits: Length of Service

- ☐ Prior to 1980, no minimum length of service requirement
- ☐ Since 1980
 - NO length of service requirement for service – connected disability compensation or death benefits
 - Some length of service requirement of pensions and health care

39

VA BENEFITS: Pensions & Compensations

40

Pension vs. Compensation: The Basics

- | | |
|---|---|
| ☐ Non-service-connected disability | ☐ Service-connected disability |
| ☐ Needs-based | ☐ Not needs-based |
| ☐ Need to show: | ☐ Need to show: |
| ▪ Low income | ▪ Eligibility |
| ▪ Wartime Service | ▪ Current Disability |
| ▪ Total and permanent disability | ▪ Nexus |

41

ESTABLISHING ENTITLEMENT TO DISABILITY COMPENSATION

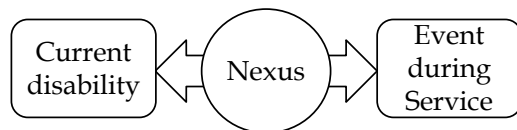
42

Disability Compensation

- ▣ To be awarded disability compensation, like other benefits, a claimant has to show he is eligible for the benefit and entitled to the benefit.

43

Establishing entitlement to disability compensation



(Statute; regulation; case law)

44

Disability Compensation: 1. Medical Diagnosis

- ▣ Made by a medical professional or some other person with specialized training that qualifies them to give medical diagnosis
- ▣ Lay evidence will not normally satisfy

45

Disability Compensation: 1. Medical Diagnosis

- ▣ Must have current disability or current disabling residuals
- ▣ May be awarded disability compensation if resolves prior to adjudication

46

Disability Compensation: 2. In-service Event

- ▣ Does not have to be directly related to military duties if happened between entry and discharge
- ▣ STANDARD: Evidence in the record demonstrates that it is *as likely as not* that there was an in-service aggravation of disease/injury
- ▣ How do you prove this?

47

Disability Compensation: 3. Nexus

- ▣ Direct causative link between current disability and in-service event
- ▣ Aggravation of pre-existing condition
- ▣ Presumptive service connection
- ▣ Secondary service connection
- ▣ Consequence of injury by VA health care

48

Disability Compensation: 3. Nexus (cont'd)

- ▣ Medical evidence of nexus almost always required (Biggest denial basis)
- ▣ Competent medical evidence: Evidence provided by a person qualified through education, training, or experience to offer medical diagnoses, statements, or opinions.
- ▣ Does not have to be a medical doctor.

49

Disability Compensation: 3. Nexus (cont'd)

- ▣ Satisfying the Nexus requirement:
 - Letter or statement from physician expressly connecting disability to occurrence, aggravation, or event
 - Standard of proof:
"As Likely As Not"

50

Disability Compensation: 3. Nexus (cont'd)

- ▣ Standard of proof:
"Benefit of the doubt" v. "Reasonable doubt."
When reasonable doubt arises regarding service origin, such doubt will be resolved in favor of the claimant.
Reasonable doubt = one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim.

51

**SOMETIMES, THE REQUIREMENTS
FOR COMPENSATION ARE HARD TO
PROVE, SO VA CREATED SOME
“SHORT-CUTS” CALLED
PRESUMPTIONS.**



52

Presumptions

- ▣ Agent Orange
- ▣ Gulf War Syndrome
- ▣ Burn Pits
- ▣ Camp Lejeune water/Litigation
- ▣ Other diseases and situations
- ▣ PACT ACT: “Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022” or the “Honoring our PACT Act of 2022” PL 117-168

53

Presumptions: Agent Orange

- ▣ Presumption applies if you: SR51
 - Served in Vietnam
 - Between Jan. 9, 1962 and May 7, 1975
 - Set foot on land or within 12 nautical miles
 - Have one of a list of specified diseases
 - For some diseases, got the disease within 1 year of serving
 - Do NOT need to prove exposure to Agent Orange

PACT ACT 8/2022 additions: Thailand, Laos, Cambodia, Guam or American Samoa (each has a different time frame)

54

Slide 54

SRS1 Change to 12 nautical miles

Added pact act locations

Stacey-Rae Simcox, 2022-09-14T19:46:55.791

Navy Veterans and AO Exposure

- ▣ *Procopio v. Wilkie* (Fed. Cir. Jan 29, 2019)
 - 12 nautical miles
 - Stay on cases
- ▣ Blue Water Navy Vietnam Veterans Act of 2019 (June 25, 2019 became law amending 38 USC 1116A)
 - Vets who filed claims between 9/85 and 1/20 (or survivors)
 - 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia interesting at a number of geographic points latitude and longitude.

55

More Blue Water Act

- ▣ Veterans during naval, air, or military service served in or near the DMZ from 9/1/67-8/31/71 (codified regulation)
- ▣ Children of Thailand veterans with spina bifida
 - Vet served in Thailand between 1/1962 and 5/1975
 - VA and DoD determine vet would have been exposed to an herbicide agent during service there.

56

Presumptions: Agent Orange

- ▣ List of diseases includes:
 - Many types of cancer
 - Lung, prostate, myeloma, leukemia, bladder
 - Hodgkins Disease
 - Non-Hodgkins Lymphoma
 - Bladder Cancer (2021 addition)
 - Ischemic Heart Disease
 - Parkinson's
 - Type 2 Diabetes
 - PACT ACT: Hypertension & Monoclonal Gammopathy (1/1/2023)
 - Many others
 - See <http://www.va.gov/agentorange>

57

Slide 57

SRS1 Updated bladder cancer and pact act
Stacey-Rae Simcox, 2022-09-14T19:50:32.425

Presumptions: Gulf War Syndrome

▣ Presumption applies if you:

- Qualify as a Persian Gulf Veteran
 - ▣ Any time after Aug. 2, 1990
 - Served in Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, UAE, Oman, Saudi Arabia, Somalia (including airspace)
 - ▣ Any time after Sept. 11, 2001 (PACT ACT 2022 change)
 - Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan



58

Presumptions: Gulf War Syndrome

▣ Presumption applies if you have certain symptoms or conditions

- ▣ Includes any *undiagnosed* or “*medically unexplained*” illness (MUCMI= medically unexplained chronic multi-symptom illness)
- ▣ Examples: Chronic Fatigue Syndrome, Fibromyalgia, Irritable Bowel Syndrome

59

Burn Pits

▣ The following types of cancer:

- (A) Head cancer of any type.
- (B) Neck cancer of any type.
- (C) Respiratory cancer of any type.
- (D) Gastrointestinal cancer of any type.
- (E) Reproductive cancer of any type.
- (F) Lymphoma cancer of any type.
- (G) Lymphomatic cancer of any type.
- (H) Kidney cancer.
- (I) Brain cancer.
- (J) Melanoma.
- (K) Pancreatic cancer.

60

Slide 58

SRS1 Updated dates and locations
And PACT act

Stacey-Rae Simcox, 2022-09-14T19:53:49.665

Slide 60

SRS1 added

Stacey-Rae Simcox, 2022-09-14T19:59:00.054

SR51

Burn Pits (continued)

- ☐ Chronic bronchitis.
- ☐ Chronic obstructive pulmonary disease.
- ☐ Constrictive bronchiolitis or obliterative bronchiolitis.
- ☐ Emphysema.
- ☐ Granulomatous disease.
- ☐ Interstitial lung disease.
- ☐ Pleuritis.
- ☐ Pulmonary fibrosis.
- ☐ Sarcoidosis.
- ☐ Chronic sinusitis.
- ☐ Chronic rhinitis.
- ☐ Glioblastoma.

61

Presumptions: Camp Lejeune

- ☐ Served at Camp Lejeune or MCAS New River for at least 30 cumulative days from August 1953 through December 1987; AND
- ☐ Have at least one of these conditions:
 - Adult leukemia
 - Aplastic anemia and other myelodysplastic syndromes
 - Bladder cancer
 - Kidney cancer
 - Liver cancer
 - Multiple myeloma
 - Non-Hodgkin's lymphoma
 - Parkinson's disease

62

Litigation

United States District Court for the Eastern District of North Carolina

SR51

- ☐ party shall produce evidence showing that the relationship between exposure to the water at Camp Lejeune and the harm is – (A) sufficient to conclude that a causal relationship exists; or (B) sufficient to conclude that a causal relationship is at least as likely as not.
- ☐ No punitive damages
- ☐ Effect on VA benefits...

63

Slide 61

SRS1 added

Stacey-Rae Simcox, 2022-09-14T19:59:05.242

Slide 63

SRS1 added

Stacey-Rae Simcox, 2022-09-14T20:01:50.175

Presumptions: For All Veterans

- ☐ Tropical Diseases SRS1
 - Within 1 year of service
- ☐ Tuberculosis
 - Within 3 years after service
- ☐ Multiple Sclerosis
 - Within 7 years after service
- ☐ ALS
 - Anytime after service

64

Presumptions: For Certain Veterans

- ☐ Prisoners of War
- ☐ Veterans injured in combat
 - Note: If records show you were in combat, do NOT have to prove you were injured
- ☐ Veterans exposed to radiation

65

Disability Compensation: Ratings

- ☐ Disability refers to the “average impairment in earning capacity” resulting from the rated condition.
- ☐ VA created a schedule of ratings providing for degrees of impairment evaluated from 0 to 100 percent in increments of 10 percent.

66

Slide 64

SRS1 Added ALS for 2024
Stacey-Rae Simcox, 2023-10-23T14:42:33.553

Disability Compensation: Ratings

- ❑ Zero-percent ratings
- ❑ Combined ratings. *See* "Combined Ratings Table," 38 U.S.C.S. § 1155
- ❑ Total Disability due to Individual Unemployability (TDIU) SRS1
- ❑ Aid & Attendance/Housebound
- ❑ Special Monthly Compensations (SMCs)

67

ENTITLEMENT TO PENSION BENEFITS

68

Pension: Low Income

- ❑ Countable income does not exceed Maximum Annual Pension Rate
 - What is veteran's net worth?
 - What are the incomes of the veteran, veteran's spouse, and the veteran's dependent children?
- ❑ Amount of pension increases with each dependent
- ❑ Need is reassessed annually
- ❑ Can be for a veteran or the spouse of a deceased veteran.



69

Slide 67

SRS1 Added for 2024

Stacey-Rae Simcox, 2023-10-23T14:42:51.597

Surviving Spouse

Person of any sex who was spouse of veteran at time of veteran's death and lived with veteran continuously from date of marriage to date of veteran's death.

Surviving Spouse MAY also have to prove one or more of the following:

1. Married at least one year prior to the veteran's death.
2. Continuous cohabitation with the veteran during the marriage; and
3. No remarriage after the Veteran's death.

70

Non-Service Connected Pension Requirements

- (1) wartime service that ultimately results in a discharge under other than dishonorable conditions,
- (2) permanent and total disability, and
- (3) demonstrated need. The VA determines need by calculating the income and net worth of the claimant.

Periods of War:

1. World War II: December 7, 1941 – December 31, 1946
2. Korean Conflict: June 27 1950 – January 31, 1955
3. Vietnam Era: August 5, 1964 – May 7, 1975.
4. Persian Gulf War: August 2, 1990 – date to be prescribed by Presidential proclamation.

71

Requirement: Wartime Service

- ☐ Discharged under conditions other than dishonorable
- ☐ Minimum period of service (if enlisted after Sept. 8, 1980 24 mos or the full period for which you called up.)
- ☐ PLUS one of the following:
 - Total of 90 days during one or more periods of war
 - 90 or more consecutive days with one day during a period of war
 - At least one day of wartime service resulting in discharge for service-connected disability

72

Requirement: Permanent and Total Disability

- ☐ Permanent = Unlikely veteran's disability will get better over time
- ☐ Total = 100% rating
 - Ineligible if veteran has *substantial gainful employment*
- ☐ Veterans 65+ are *presumed* to be permanently and totally disabled
- ☐ Vets in nursing homes (SNFs) qualify/Not ALF
- ☐ Disability does NOT have to be service-connected!

73

The Requirement of Need

-Needs based program.

In order to establish entitlement to improved pension, the VA considers the claimant's **net worth** as well as his or her **income**.

-Need does not refer to physical disability.

74

Income Requirement

If countable income exceeds the maximum annual pension rate (MAPR), a claim for improved pension will be denied.*

-MAPR for Veteran 2025: \$16,965 [no dependents]

-MAPR for Spouse 2025: \$11,380 [no dependents]

75

Exclusions and Deductions from Income for Improved Pension Purposes

Sources of income excluded and deductions from income for VA improved pension purposes include*:

- 1.)Welfare
- 2.)Fire insurance proceeds
- 3.)Profit from sale of property
- 4.)Funds in joint accounts acquired by death
- 5.)Medical Expenses
- 6.)Interest accrued on retirement annuity accounts
- 7.)Expenses of last illness and burials
- 8.)Educational Expenses

* 38 U.S.C.S. § 501(a); 38 C.F.R. § 3.272

76

The Formula Used to Calculate Improved Pension

Simple Income Example:

- MAPR is \$16,965 a year
- Veteran income is \$10,000
- VA pension will be \$6,965 ($\$16,965 - \$10,000 = \$6,965$) paid in monthly installments

\$580.42/month

77

The Formula Used to Calculate Improved Pension -Deducting Medical Expenses

- ▣ A **portion of your unreimbursed medical expenses** (what you paid out of pocket after medical insurance pays) may **reduce** your countable income. If your medical expenses for a year are \$8,000 and your medical insurance pays \$6,000 of that, your **unreimbursed medical expense is \$2,000.**
- ▣ That **portion** of your unreimbursed medical expenses (\$2,000 in the example above) which is **more than 5%** of the maximum rate of pension, or **\$848.25** in this example ($\$16,965 \times .05 = \848.25), may be deducted from your total combined income which then increases the amount VA will pay to you.

78

The Formula Used to Calculate Improved Pension Deducting Medical Expenses

Since the \$2,000 out of pocket expenses is greater than \$848.25, you may reduce your income by \$1,151.75 (\$2,000 - \$848.25). So, your income for VA pension purposes is now **\$8,848.25** (\$10,000 - \$ 1,151.75).

Your VA pension would then be \$16,965 (maximum rate for a veteran) minus \$8,848.25 (total income after deducting unreimbursed medical expenses), or **\$8,116.75** for that year.

\$676.40/month

79

Net Worth

- ❑ Was an arbitrary standard designed to take into account life expectancy, depletion rate of assets, etc...
- ❑ Now (EFF DATE: 10/18/18) is pegged to the Medicaid CSRA (community spouse resource allowance)
- ❑ 2025: \$159,240
- ❑ The length of the penalty period is determined by dividing the fair value of the income or assets given away by a "penalty divisor." For 2025 the penalty divisor is \$2,795.

80

Spending Down Assets

- ❑ May be expended on any item that claimant pays fair market value for that isn't an ASSET.
- ❑ Transfers change!!!
 - 36 month look-back period. 5 year max penalty period.
 - Any transfer for less than market value that cannot be liquidated for claimant benefit (irrev. Trust) for an amount that would have made claimant ineligible for pension benefits.
 - Exception: trust for child incapable of self-sufficiency.

81

Special Monthly Pension (SMP)

Special Monthly Pension (SMP) is awarded for disability levels exceeding permanent and total disability. There are two types of SMP:

- 1.) Housebound benefits (HB).
also permanently housebound (essentially confined to his or her home).
\$20,732 (2025 Veteran alone)/\$13,908 (2025 Spouse alone)
- 2.) Aid & Attendance (A&A).
needs the regular aid and attendance of another person for ADL.
\$28,300 (2025 Veteran alone)/\$18,187 (2025 Spouse alone)

82

Aid & Attendance

- ☐ Require the aid of another person in order to perform personal functions required in everyday living such as:
 - Bathing, showering, toileting
 - Feeding (not merely meal preparation)
 - Transferring from bed/chair, overall mobility
 - Incontinence
 - Adjustment of prosthetic
 - Bedridden due to disability
- ☐ Patient in a nursing home due to mental or physical incapacity;
- ☐ Limited eyesight (blind or very nearly blind)

83

How to File

New Pension Claim

Useful Forms

- ☐ VA Form 21-256: Veteran's App. For Compensation or Pension
- ☐ VA Form 21-4138: Statement in Support of Claim
- ☐ VA Form 21-527EZ: Fully Developed Claim
- ☐ VA Form 21-2680: Examination for Housebound Status or Permanent Need for Aid & Attendance
- ☐ VA Form 21-0779 (Special Monthly Pension): Request for Nursing Home Info

84

Where to File



- Philadelphia VA Regional Office**
 - PO Box 8079
Philadelphia, PA 19101
 - Service Area:** Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia
- Milwaukee VA Pension Center**
 - PO Box 342000
Milwaukee WI 53234-9907
 - Service Area:** Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, Wisconsin
- St. Paul VA Regional Office**
 - Pension Management Center (335/21P)
PO BOX 11000
St. Paul, MN 55111-0000
 - Service Area:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming

85

Factors to Expedite Your Client's Claim

- Homelessness or a history of homelessness
- Extreme Financial Hardship
 - Home Foreclosure
 - Vehicle Repossession
 - Bankruptcy
 - Inability to Meet Basic Needs
- Advanced Age
 - 75+ Years Old at the Board. (at St Pete VARO they have said you have to be 84 and older)
- Significant illness/terminal

86

DEPENDENCY AND INDEMNITY COMPENSATION (DIC)

87

Survivor Benefit

- ☐ Surviving Spouse (would include stipend for dependent children)
- ☐ Dependent Child
- ☐ Amount is \$1653.07 base. Extra \$409.53 for dependent child. Extra \$351.02 a month if married to veteran for 8 years before death and veteran was rated totally disabled (including TDIU) for those 8 years.
- ☐ **INCREASES FOR ALL AMOUNTS EXPECTED TO RAISE BY 2.5% - 3.0% IN 2026.**

88

Eligibility

- ☐ The Servicemember died while on active duty, active duty for training, or inactive duty training, **OR**
- ☐ The Veteran died from an injury or disease deemed to be related to military service, **OR**
- ☐ The Veteran died from a non service-related injury or disease, but was receiving, **OR** was entitled to receive, VA Compensation for service-connected disability that was rated as totally disabling
 - For at least 10 years immediately before death, **OR**
 - Since the Veteran's release from active duty and for at least five years immediately preceding death, **OR**
 - For at least one year before death if the Veteran was a former prisoner of war who died after September 30, 1999

89

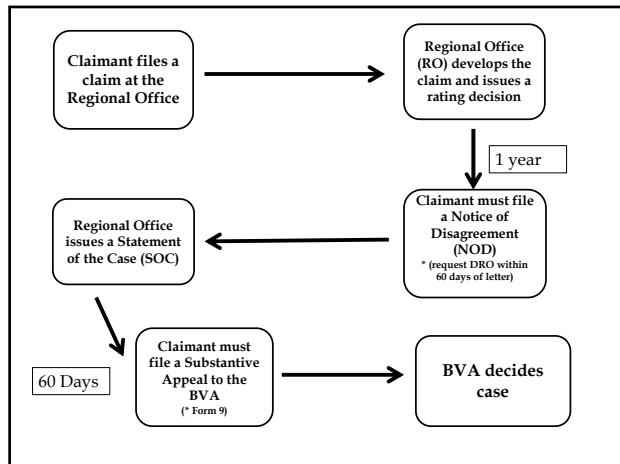
THE LIFE OF A CLAIM IN THE LEGACY SYSTEM

90

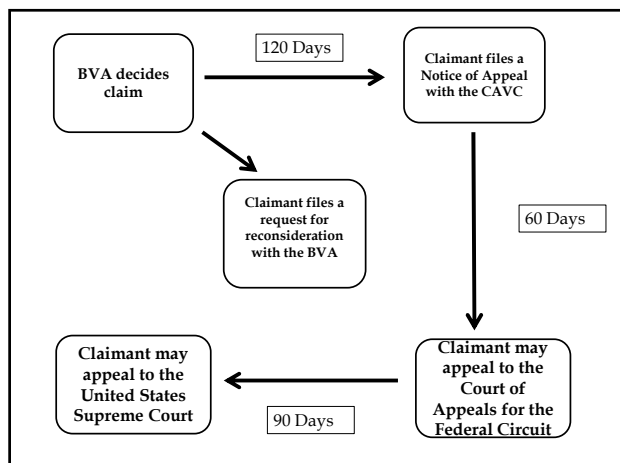
Claims Procedures: Deadlines

- ❑ Missing a deadline makes a decision final, There is a possibility of taking a fresh look at the claim in both the LEGACY and AIMA claims.
- ❑ Initial RO decision / file NOD - 1 year
- ❑ Receipt of letter offering DRO / Request DRO review -
- ❑ SOC / File Substantive Appeal on Form 9 - later of 60 days or remainder of 1 year from mailing of the notice of decision

91



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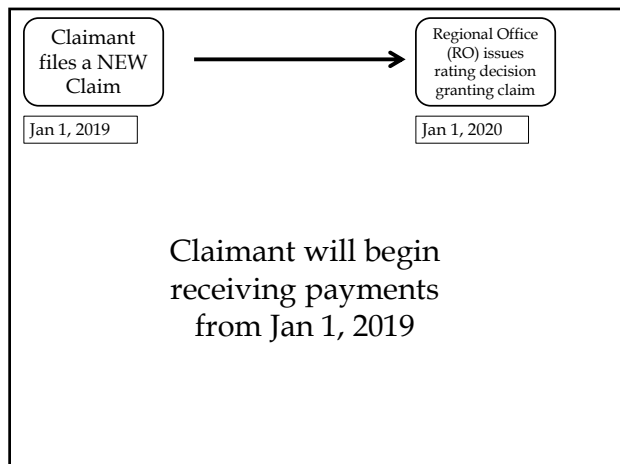


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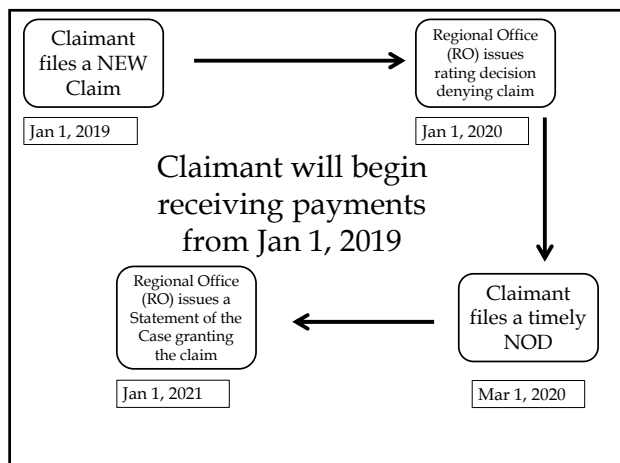
Claims Procedures: Types of Claims

- ▣ Three types of claims:
 - New or original claims
 - Reopened claims
 - Requires new and material evidence
 - Clear and unmistakable error (CUE): error must be *undebatable* and the outcome would have been *manifestly different* had the error not been made. SRS1
 - Facts not before the adjudicator or law incorrectly applied
 - Error occurred based on the record and the law that existed at the time
 - Outcome would have been manifestly different

94



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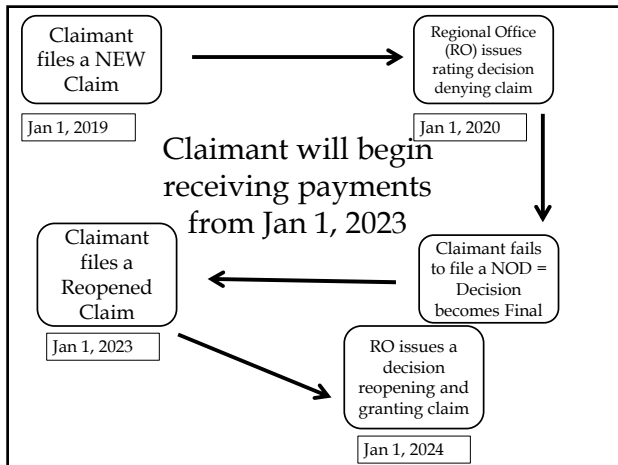


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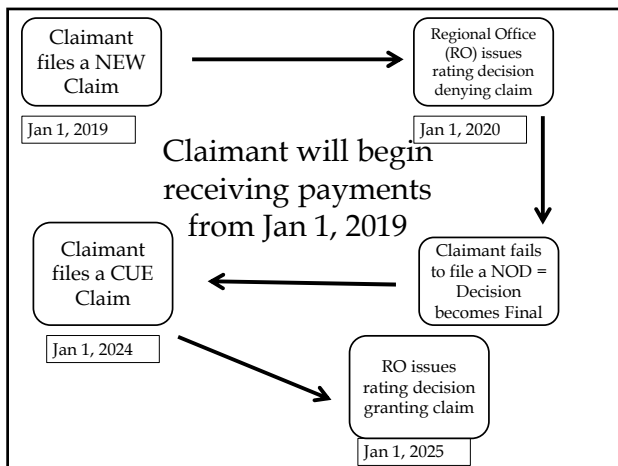
Slide 94

SRS1 added

Stacey-Rae Simcox, 2023-10-23T14:44:03.040



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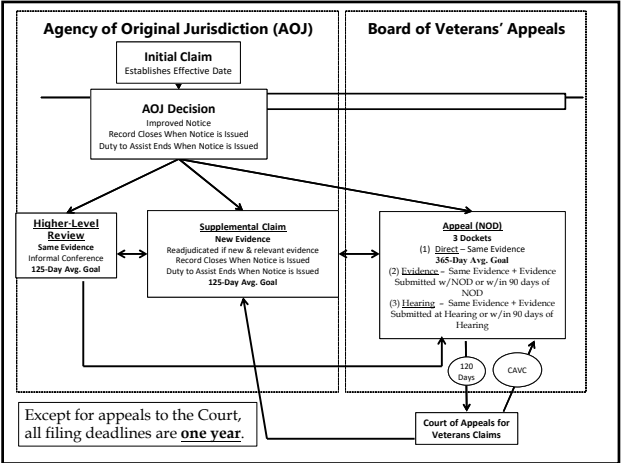
The Right to Appeal

- ❑ Claimant always has the right to appeal if the deadlines are preserved.
- ❑ Appeal from the RO to the BVA (60 days/Form 9)
- ❑ Appeal from the BVA to the CAVC (Notice of Appeal (120 days)
- ❑ Appeal from the CAVC to the Federal Circuit (60 days)
- ❑ Appeal from the Federal Circuit to SCOTUS (90 days)

99

THE LIFE OF A CLAIM
IN THE VETERAN APPEALS
IMPROVEMENT AND
MODERNIZATION ACT OF
2017

100



101

Three Review Options		
VBA		BVA
Supplemental Claim	Higher-Level Review	Board Appeal
Replaces "reconsiderations" and "reopening" claims with "new and material" evidence. VA will readjudicate a claim if "new and relevant" evidence is presented or identified with a supplemental claim (open record). VA will assist in gathering new and relevant evidence (duty to assist). Effective date for benefits is always protected when submitted within 1 year of prior decision. Tracked and controlled under EP 040 series . Decisionmakers are Veterans Service Representatives (VSRs) and Rating VSRs (RVSRs) .	- More experienced VA employee takes a second look at the same evidence (closed record and no duty to assist). - Option for a one-time telephonic informal conference with the higher-level reviewer to discuss the error in the prior decision. <i>De novo</i> review with full difference of opinion authority. - Duty to assist errors returned to lower-level for correction (quality feedback). - Tracked and controlled under EP 030 series. - Decisionmakers are Decision Review Officers (DROs) and Senior VSRs.	Evidence-only docket Direct docket Hearing docket

102

Important Changes

- ▣ **Supplemental Review: new and relevant evidence.**
 - Filing this within one year keeps the same effective date for the claim.
- ▣ **Higher Level Review: Like the DRO but no new evidence.**
- ▣ **Three paths to the BVA**
- ▣ **No more Statement of the Case**
- ▣ **Favorable findings at any level are generally binding on the other levels.**

103

Things to Know

- ▣ Any Rating Decision made BEFORE 2/19/2019 is considered a legacy claim and is appealed with a traditional Notice of Disagreement VA Form 21-0958.
- ▣ Any Rating Decision made AFTER 2/19/2019 is appealed in the AIMA system.
- ▣ Legacy claims can opt into the new system if they do so within 60 days of receipt of the SOC/SSOC by filing a supplemental claim, a higher level review, or a NOD (VA Form 10182)

104

New AMA Application Forms

VBA will include **VA Form 20-0998, Your Rights to Seek Further Review of Our Decision** with all decision notices. This form provides claimants with information on the available decision review options.

Claimants will use the following new enterprise wide VA forms to file under one of the new options:

- **VA Form 20-0995, Decision Review Request: Supplemental Claim**
- **VA Form 20-0996, Decision Review Request: Higher-Level Review**
- **VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement)**

Claimants will access the new forms on the VA.gov forms page.

Use of VA Form 4107 and VA Form 21-0958, *Notice of Disagreement* will be discontinued for decisions issued after the Appeals Modernization Act becomes effective.

Choose A

VA

U.S. Department
of Veterans Affairs

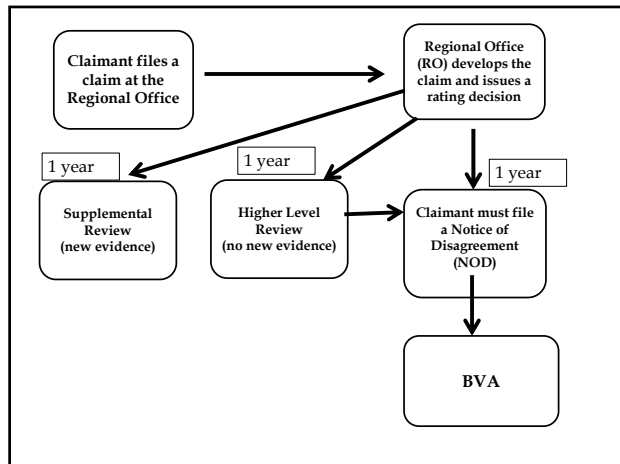
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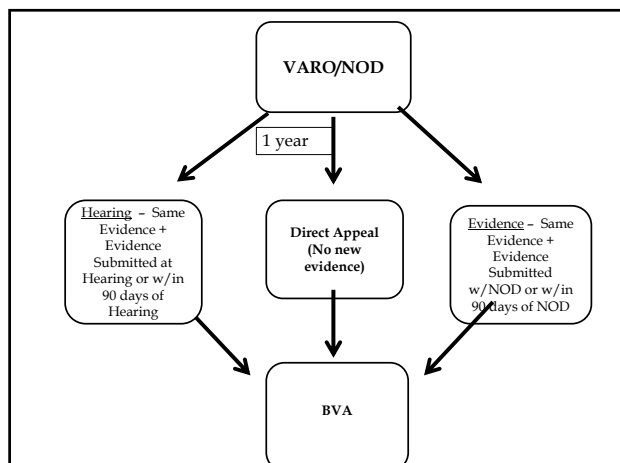
Things to Know

- ▣ National Work Queue
- ▣ Implementation of the AIMA so far...
- ▣ Backlogs at VA and the Board

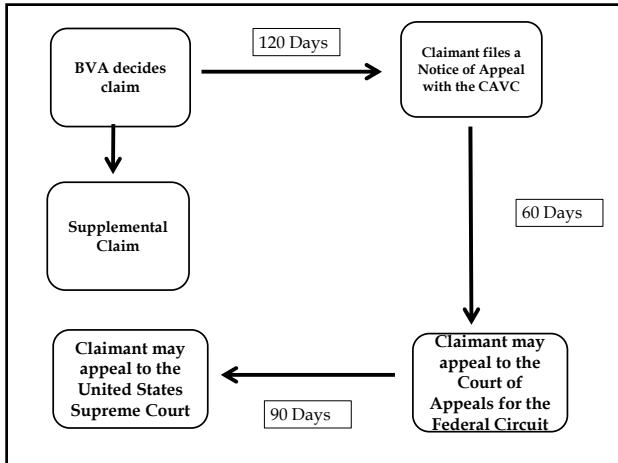
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107



108



109

"We are dealing with veterans, not procedures -- with their problems, not ours."

General of the Army
Omar Bradley, speaking
as Administrator of the
U.S. Veterans Administration
in 1947



110
