



Department of

Veterans Services

Service Connection

Course Objectives

Upon successful completion of this course you will be able to:

- Understand the basics of what is required for service connection disability benefits.
- Identify different types of evidence.
- Where to find the references for service connection disability claims.
- What is the VA responsibility on to assist in service connection disability Claims.



What is Qualifying Service?

- Claimant must be a “VETERAN” § 3.1 Definitions
 - (d) Veteran means a person who served in the “ACTIVE MILITARY, naval, or air service and who was discharged or released under conditions other than dishonorable.
 - (1) For compensation and dependency and indemnity compensation the term Veteran includes a person who died in active service and whose death was not due to willful misconduct.
- “Active military service” includes:
 - Active Duty
 - Active Duty for Training (ACDUTRA)
 - Inactive Duty for Training (INACDUTRA)
 - Source to establish “active military service” = service department records
 - VA is bound by service department findings

- What is service connection disability?
 - Compensation, whether monetary or with services for a disability incurred or aggravated by service.
- What are the main types of Service Connection Disability?
 - Direct
 - Secondary
 - Presumptive
 - Aggravation

38 CFR § 3.303 - 3.344

- What are the 3 elements that must be met for a Veteran to receive Service Connection disability benefits?
 - **Event or injury in service**
 - **Current diagnosis**
 - **A MEDICAL link of the 2 stating, what disability/injury the Veteran has now is the same as the disability/injury in service or a progression of the disability/injury in service. (or aggravation)**

Direct § 3.303

Establishing an event or injury in service

.....basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein.

.....for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence.

In the absence of service medical records and/or personnel records, what else can be used to establish an injury or event in Service?

Current diagnosis

- What proves a current diagnosis?
 - Objective evidence: X-ray, MRI, CAT SCAN, EKG, Current Medical Records
 - Subjective evidence: Talk, lay statements by a non medical professional, Veterans story

Medical NEXUS (link) § 3.328

- Independent medical opinions.
 - (a)General. When warranted by the medical complexity or controversy involved in a pending claim, an advisory medical opinion may be obtained from one or more medical experts who are ***not employees of VA***. Opinions shall be obtained from recognized medical schools, universities, clinics or medical institutions with which arrangements for such opinions have been made, and an appropriate official of the institution shall select the individual expert(s) to render an opinion.

Medical NEXUS (link) § 3.328

Medical NEXUS (link) § 3.328

- A competent medical professional stating it is “AS LEAST LIKELY AS NOT” the in service event or injury has led to the current diagnosis.
- How did the medical professional get there
 - Complete review of Veterans service, medical history, current treatment history and rationale on why the event in service has led to the current diagnosis.

“I have reviewed the Veteran’s medical history, his service treatment records and his current treatment and it is at least as likely as not that his (State Diagnosis) is result of his military service” because.....(RATIONALE)

Why the term “AS LEAST LIKELY AS NOT”?

Medical NEXUS (link) § 3.328

- Decision Assessment Document
Nieves-Rodriguez v. Peake, Dec 1, 2008, 22 Vet. App. 295
U.S. Court of Appeals for Veterans Claims (Court)
- **What the case is about:**
 - The Court held that the **probative value of a medical opinion primarily comes from the physician's reasoning**. A claims file review cannot compensate for lack of a reasoned analysis required in a medical opinion. Factually accurate, fully articulated, and sound reasoning for the medical conclusion, not the mere fact that the claims file was reviewed, contributes probative value to a medical opinion.
 - The Court held that a private medical opinion may not be discounted solely because the physician did not review the claims file. Likewise, a VA medical opinion may not be preferred over a private medical opinion solely because the VA examiner **reviewed the claims file**. It is what the examiner learns from the claims file in forming the expert opinion that matters, not just reading the file.
 - The Court also held that VA does not have a general duty to inform every claimant that seeks or provides a private medical opinion of the availability of the VA claims file. The Court noted that particular medical information contained in a claims file may be significant to the process of formulating a medically valid and well-reasoned opinion and directed that a Veteran should take care to personally provide those medical facts of which a physician should be aware in formulating a medical opinion. Note: The Court provided that although VA physicians have more ready access to a Veteran's claims file, there are regulatory provisions that enable a Veteran to obtain copies of the claims file if he or she chooses. See 38 C.F.R. §§ 1.577 and 20.1200.

Presumptive 3.307-309. 3.316, 3.317. 3.318

- Exposures:
 - The VA says IF your Military record puts you in place in time of various places: Camp Lejeune for 30days, In Country Vietnam, “Bluewater”, POW, Radiation, environmental hazards.....and the Veteran had a condition that is on the presumptive list then the VA will concede there is a medical nexus of that condition to service.
- Within a year of discharge:
 - Certain condition that become compensable to 10% or greater within a year of discharge.
 - Within 7 years for MS
- No time limit for?

Secondary § 3.310

Simply put:

- A medical progression of a SERVICE CONNECTED disability or disease.
 - (a)General. Except as provided in § 3.300(c), disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition

Aggravation § 3.306

- A permanent worsening beyond natural progression. Must be more than a temporary flare-up.
- Aggravation of preservice disability.
 - (a)General. A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

Aggravation § 3.310

- 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.
 - (b) Aggravation of nonservice-connected disabilities. Any increase in severity of a nonservice-connected disease or injury that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected.

Chronic: § 3.303

- Webster Definition:
 - (of an illness) persisting for a long time or constantly recurring
 - (of a problem) long-lasting and difficult to eradicate.

Chronic: § 3.303

VA Definition

(b)Chronicity and continuity. With chronic disease shown as such in service (or within the presumptive period under § 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clear-cut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word "Chronic." When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

Chronic: § 3.303

How do you overcome missing chronicity when a Veteran comes in after 30 years saying he has the same problem he/she complained about in service and no private treatment records to back it up?

- New Medical Evidence:
 - Medical NEXUS causally linking the current condition to an event or injury in service
- Lay evidence
 - Must have personal knowledge of matter derived from his/her own senses
 - Competent testimony is thus limited to that which the witness has actually observed, and is within the realm of his personal knowledge
 - For service connection cases, lay evidence may raise a potential continuity of symptomatology issue to address both in terms of deciding whether an examination or opinion must be provided or obtained, and in deciding the claim on the merits.

Lay Evidence

Lay Evidence is not competent

to report:

- Cancers
- Cause of Death
- Bronchial Asthma
- Meniere's Disease
- Rheumatic Fever
- Chondromalacia
- Disk Herniation
- Diagnosis of any other medical condition that requires specialized training to diagnose

Lay Evidence is competent to report:

- Asthma Symptoms
- Tinnitus
- Headaches, dizziness, etc.
- Pain in feet; Flat Feet (Pes Planus)
- Knee Symptoms
- Dislocated Shoulder & Broken Leg
- Hip Disorder with Rotated Foot
- Varicose Veins
- Psychiatric Symptoms (Paranoid Schizophrenia)
- Fall Injury/Trauma
- Some Skin Disorders (such as a rash)
- Frostbite Residuals

VA ASSISTANCE § 3.159

- Veterans Claims Assistance Act of 2000 (VCAA) USC 5103: VA has a duty to assist Veterans in substantiating their claim.
- VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians.
- VA will make as many requests as are necessary to obtain relevant records from a Federal Department or agency.
- When warranted the VA is required to order a INDEPENDENT medical examine.

Questions?

