SECOND EDITION

Veteran's Guide to Disability Benefits

How to cut through the VA's red tape in the shortest possible time so you collect disability benefits – even if your claim has been ***denied!***

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CHAPTER 1

Why Did VA Deny Your Claim?

"Deny, deny, until you die."

Perhaps you have been fighting the Veterans Administration (VA) for 5, 10, 15, or perhaps 20 years or longer. No matter how many times you explain your case and submit evidence, the VA continues to deny your claim. It may seem as if the VA is not even reading what you send them. Your case may involve multiple rounds of appeals, denials, and re-filing of claims. You may be worn out, tired, stressed, or wondering if it is even possible to win VA benefits. You are probably wondering whether you will ever live to see your claim granted.

As an experienced veterans' benefits attorney, I have seen veterans lose cases that could have been won—if only they had had the proper information and representation. I have also seen cases where veterans have won up to 29 years of back pay. This means that their cases were on appeal for almost 30 years!

In my many years of practice, I have discovered several key reasons why the VA denies claims. The first reason concerns the lack of legal training on the part of most veterans. Veterans typically rely on logic instead of evidence to present their cases. What do I mean by this? Consider a typical Agent Orange-exposed veteran, for example. Let's assume he develops a rare form of cancer late in life for which he has no family history. He does additional research and concludes that he has no other known risk factors for the cancer. Thus, he concludes, logically, that the only possible cause for the cancer was Agent Orange exposure. However, the cancer is not on the list of diseases known to be associated with Agent Orange exposure.

Nevertheless, the veteran lays out a logical argument in his presentation to the VA and his claim still gets denied. Veterans routinely place significant weight on flawless logic as a means of "reasoning" with the VA to grant the claim.

But you see, "logic" is not the same as evidence. In the arena of legal cases, it doesn't matter how logical your position is, or even if your story is true. At the end of the day, the VA and the Board of Veterans' Appeals (BVA) judges only care about what you can prove—with cold, hard evidence.

So, back to our example of the rare cancer in our Vietnam veteran. Instead of reasoning with the VA and presenting the logic of his position, the veteran should obtain an expert medical opinion from an oncologist or environmental medicine doctor which states that the veteran had a unique presentation of cancer and that due to unique features of the veteran's physiology, he was more susceptible to the effects of dioxin, which is in Agent Orange. The medical opinion could then conclude that although epidemiological studies do not support a connection between the rare cancer and Agent Orange exposure, this veteran's unique physiological circumstances caused him to develop cancer when exposed to Agent Orange.

The first approach is for a veteran to simply present a logical argument as to why their claim should be granted. The second approach—which is the evidentiary-based approach—relies on specific pieces of evidence and does not rely solely on logic.

Obtaining the evidence you need to prove a case is a daunting task. This leads to the second reason why the VA denies claims: lack of adequate assistance. I salute all the hard work that service organizations do to help veterans file their claims. These Veterans Service Organizations (VSO) are tireless advocates for our veterans, and I commend them. They are overworked, however. In addition, these organizations are not connected with the world of expert witnesses, and they are not in a position to fund the cost of obtaining these experts for the veterans. This means that a veteran is often left alone to navigate the minefield of trying to obtain expert medical opinions to support their case.

The third reason the VA denies claims is improper strategy. Veterans often go into a case with a preconceived theory as to why their disability should be service connected. They doggedly maintain

this theory even though the VA continues to deny their claim. Because they lack professional distance and objectivity to assess their own cases, veterans often have difficulty developing alternative strategies. In many cases, winning VA benefits comes down to a combination of a winning strategy and good medical experts. Both elements are hard to achieve without the assistance of experienced legal counsel.

A winning strategy involves finding a theory that bypasses the VA's primary objections. You are much more likely to succeed if you go at the VA through a back door, rather than a direct frontal assault on their preconceived notions about you or your case. Often, veterans pursue theories of their cases that are contingent upon the VA accepting the truth of uncorroborated statements—either of the veteran or his buddies. It's not difficult for the VA to concoct reasons to find that you are "not credible." If the VA determines that you are not credible, then they will deny the whole claim on the grounds that the claim was founded upon unreliable evidence.
The point about a proper strategy cannot be emphasized enough. I thought it would be useful to provide a few examples of real-life cases where we developed a new strategy for a veteran and won his case.

7 Costly Mistakes to Avoid When Filing for Veterans Disability Benefits

MISTAKE #1: Failing to learn how the Department of Veterans Affairs decides to give benefits. Many veterans think it's just a matter of filling out forms—sending them in—and waiting for their check. But the process of getting your disability claim approved is much more complicated. The VA decides whether to award benefits based on whether you can prove the presence of all the following criteria:

Question #1: Are you eligible to receive VA benefits? First, the VA determines whether you are eligible to receive benefits. This means that the VA will determine if you were discharged or separated under other than honorable conditions. If you were discharged or separated under conditions other than honorable, you will ordinarily be barred from receiving VA benefits. (There are exceptions to this rule).

Question #2: Do you have a current disability? You must have a current diagnosis of an actual medical condition that existed at the time you filed your claim. If your condition existed in the past, but later healed, your claim will not be successful unless the medical condition existed at the time you filed your claim or during the time the claim was pending. If your claim is based only on pain, without a diagnosis, you will likely not be successful. Your pain must be the result of a diagnosed condition.

For example, neck pain by itself will not qualify as a disability. But if the neck pain is shown to be the result of a herniated disc or degenerative disc disease of the spine, then you will satisfy the "current disability" requirement. To prove a current disability, you must have a medical report from a doctor or other trained medical professional. (Keep in mind VA regulations provide that "developmental or congenital" defects are not disabilities for VA purposes. This means that such things as personality disorders and refractive eye error (you wear glasses) will not count as a disability by VA standards.)

Question #3: Do you have proof that something happened in the service? You must submit evidence to prove that the disease, event, or injury that later caused your current disability happened during your service. Although your own statements as to what happened can be sufficient proof, the VA will generally put more weight on your service treatment and personnel records. As such, it is best to obtain a copy of your service records to make sure there is documentation that proves something happened.

If you served during World War II or during the Korean Conflict era, there may be a chance your records burned up in the 1973 National Personnel Records Center fire in St. Louis. Unfortunately, even though the fire was not your fault, the VA does not give you a break or make it easier for you to prove your claim. They have a duty to obtain alternative evidence, but you still must prove something happened in the service.

Question #4: Do you have medical evidence linking your current disability to something that happened in the service? Out of all the necessary criteria to win your claim, failure to have evidence connecting your current disability to something in service is probably the most common

reason why the VA denies claims. You may strongly believe that your disability is related to service, but the difference between success and failure in disability compensation claims frequently involves proving the connection with service. You can state your opinion that your disability is linked to service, but the VA will not give your opinion any weight unless you show that you are a doctor or have medical training. There are **five basic ways** to show that your disability is linked to service:

1. **Your condition is directly shown to exist in service.** If you can show that your condition had its onset or was diagnosed in service, then you will be able to directly show that your condition is linked to service. For example, after a blood test in the service you are diagnosed with diabetes. If you later file a claim for diabetes, you will likely win this claim due to the in-service diagnosis of diabetes. However, an actual diagnosis of a condition in service is not always possible. When you don't have an in-service diagnosis of a chronic disability, you must use a medical expert to link the current disability to something that happened in the service. You accomplish this by having a doctor or other medical professional review your medical records and write a report stating that your current disability was caused by or had its onset during service. We strongly recommend that you obtain a doctor's report linking your current disability to service.

   If you have a condition that is shown to be "chronic" during service, if you later have an outbreak of the same problem—even if many years later—the VA regulations allow for you to win service connection.

   If your condition was not shown to be chronic during service, you must show evidence of continuous symptoms since discharge from service. It is also best to obtain a doctor's report stating that your continuous symptoms are linked to service.

2. **Your condition was aggravated by service**. If you had a condition before you entered service, and it worsened during service, the VA must presume that your pre-service condition was aggravated by service. Under these circumstances, the VA can only deny your claim if they can show clear and unmistakable evidence that the increase in the severity of the condition during service was due to the natural progression of the disease. On the other hand,

if your enlistment exam did not note any medical problems, then the VA must presume that you were fit for duty and in sound medical condition. The VA is required to consider you in sound medical condition at induction unless they can prove by clear and unmistakable evidence that your condition pre-existed service and was not aggravated by service.

Note: The law provides that "clear and unmistakable evidence" is evidence that is beyond debate.

3. **Your condition is on a list of diseases that are presumed to be related to service.** If you develop certain chronic diseases within a certain time frame, the VA will presume that they are related to service.

   Here is a partial list: Within one year after discharge from service: examples include: arteriosclerosis, arthritis, brain hemorrhage, cardiovascular-renal disease, cirrhosis of the liver, diabetes, epilepsy, Hodgkin's disease, leukemia, psychosis (not mood disorders like depression, anxiety, etc.), sarcoidosis, scleroderma, or malignant tumors. Within three years of discharge: examples include tuberculosis, and leprosy. Within seven years of discharge: examples include multiple sclerosis. If you develop certain tropical diseases within one year of discharge, the VA must also presume them to be related to service. Examples include cholera, dysentery, and malaria. If you were a Prisoner of War (POW) and you develop certain diseases at any time, they will be considered service connected. Examples include cirrhosis of the liver, beriberi, peptic ulcer disease, malnutrition, irritable bowel syndrome, psychosis, anxiety disorders, atherosclerotic heart disease, hypertension, and stroke. If you are a veteran of the Persian Gulf War, you can benefit from the Persian Gulf War Syndrome Compensation Act to provide benefits and compensation for a medically unexplained chronic multisymptomatic illness or a chronic undiagnosed disability with symptoms including fatigue, skin rashes, headaches, muscle pains, joint pains, and neurological and respiratory symptoms. Conditions related to these symptoms will be presumed to be related to service. If you had in-country service in the Republic of Vietnam, the VA will presume that you were exposed to Agent Orange. If you were exposed to Agent Orange, it will be presumed that certain diseases are related to service. Examples include AL Amyloidosis,

bladder cancer, chronic B-cell leukemias, chloracne, diabetes mellitus type II, hypertension, Hodgkin's disease, hypothyroidism, ischemic heart disease, MGUS (monoclonal gammopathy of undetermined significance), multiple myeloma, non-Hodgkin's lymphoma, Parkinsonism, Parkinson's disease, peripheral neuropathy (early onset), porphyria cutanea tarda, prostate cancer, respiratory cancers, and soft tissue sarcoma. If you were exposed to ionizing radiation, the VA will presume that certain diseases are related to radiation exposure. Examples include bile duct cancer, bone cancer, brain cancer, breast cancer, colon cancer, esophageal cancer, gallbladder cancer, liver cancer, lung cancer, pancreatic cancer, pharynx cancer, ovarian cancer, salivary gland cancer, small intestine cancer, stomach cancer, thyroid cancer, kidney and bladder cancer, leukemias, lymphomas, and multiple myeloma.

Note: It is important to remember that if your disease is not on the list, you may still be able to prove it is linked to service. For example, if the doctors believe your condition was linked to service, it should be service connected even if the disease is not on the list.

4. **Your condition is secondary to service connection.** If you have a disability that is caused by or linked to a service-connected disability, then the VA must pay you benefits for the second condition. For example, if you are service connected for a severe spine condition that is disabling and extremely painful, and the constant pain causes depression, then you are entitled to service connection for the depression. Another common example is a veteran who is service connected for an ankle or knee problem that results in an altered way of walking. Over time, the altered gait causes a lower back disability. The lower back disability would be eligible for service connection. The other possibility is if a service-connected disability aggravates a non-service-connected disability. An example would be a service-connected anxiety disorder that aggravates an ulcer condition. When it comes to aggravation, you must be able to prove the level of disability before the aggravation.

5. **Your disabilities were caused by VA medical treatment.** If you sustained an additional disability because of VA medical treatment, you may be entitled to compensation benefits if you can show that the additional disability was caused by VA medical negligence. The important

thing to remember is that just because a medical procedure turned out bad, it does not mean that there was medical negligence. With any medical procedure there are inherent risks, but you must show that the doctor or medical professional provided substandard or negligent care that caused the additional disability. You cannot prevail on this type of claim unless there is a doctor's report stating that the VA provided negligent medical care. Therefore, we strongly recommend that you obtain a medical expert's report.

Question #5: Do you have medical evidence demonstrating the severity of your condition? Assuming you are successful in proving service connection, the VA will take the next step in the process, which is rating your disability. In other words, the VA will assign a percentage to your disability. This could range anywhere from 0 percent to 100 percent. You should obtain a copy of the VA's rating schedule so that you can see what criteria the VA will use to assign a rating.

MISTAKE #2: Failing to hire a lawyer after they've been denied. Most people who apply for VA disability benefits do not understand the fine points and technicalities in the law. People hire accountants to make sure their tax returns comply with the law. Likewise, disabled veterans should hire a lawyer to help them through the difficult appeal process.

MISTAKE #3: Failing to submit detailed statements from friends and family members. It is important to document the symptoms of your condition and how it has affected your life. Many veterans fail to obtain sworn statements from service buddies, friends, or family members who personally witnessed the symptoms of their disability. If you know a buddy from service who can corroborate what happened in the service, you should obtain a statement from them and send it to the VA. If you have friends or family members who have observed your symptoms and suffering over the years, then obtain their statements describing their personal observations of your disability. Your friends and family can document that you were always complaining about the problem, that you were in constant pain, or that you were always limited in some way.

MISTAKE #4: Overstating the impact of your disability. Some people think they must exaggerate their symptoms to convince the VA that their disability is serious. When you overstate your disability, you call into question your entire claim. Every piece of evidence becomes suspect. And, in the

end, all you do is hurt yourself. While you need to explain your case thoroughly, make sure what you present is accurate. The VA doesn't like to accept what a veteran says anyway. When there are inconsistent statements in your file, this gives the VA an easy way to discredit you and conclude that you are not credible.

MISTAKE #5: Failing to obtain a medical opinion linking your disability to service. One of the biggest reasons the VA denies claims is the absence of medical evidence linking your disability to service. If all you have is your own statements claiming the problem is related to service, the VA will almost certainly deny the claim. Make sure your claim contains the written opinion of a medical professional linking your disability to service. In other words, the doctor or other medical professional must state that your disability is related to service.

MISTAKE #6: Relying on the VA compensation and pension examiner. Although some VA examiners (called "C&P examiners") write reports that are favorable to veterans' claims, it is a mistake to assume that the C&P examiner will say something favorable about *your* claim. You must take the responsibility to make sure your file contains a well-written and well-reasoned medical opinion from your doctor (preferably a private doctor). This can be of tremendous value in persuading the C&P examiner to write a favorable opinion. Don't hang your hopes and your future on a C&P examiner. If the VA sends you to a C&P examination, make sure you obtain a copy of the exam report. If it is not favorable, we strongly recommend having your own doctor respond to the C&P examiner's report.

MISTAKE #7: Failing to pursue your claim and, instead, just giving up. The appeal process is long and cumbersome. Add to that your disability and the financial hardship, and you may decide "It's just not worth it." Please don't give up. If you meet the VA's requirements, you have earned the right to receive disability benefits. In addition, a finding of service connection is required to secure other VA benefits such as health care. Hiring a lawyer to represent you can make this appeal process much easier on you—and greatly increase your chances of success. Over the years, I have seen that success comes to those veterans who continue to fight their claims.

11 Secrets for Winning Veterans Disability Benefits

SECRET #1: Recognize the problem (disability) when it arises. If you are like most veterans, you muster out of the service when you are relatively young. You are anxious to get out and the last thing you feel like doing is complaining about any medical conditions. You don't want to be held over and you want to get home as soon as possible. As a result, you don't make a big deal about any problems. Since you're young, you think you can handle it or that it will go away. You deal with the problem on your own for many years without going to the doctor. Finally, after decades, the problem becomes too severe, and you finally break down and see a doctor. By this time, years have passed, and the VA doesn't believe you when you say you had the problem since service. You must document ongoing problems even if you perceive them to be minor. If you failed to do this, you must explain the gap in medical treatment and provide alternative forms of evidence such as statements from friends who can corroborate that you had the problem all these years, but just did not go to the doctor, or just took over-the-counter medicines.

SECRET #2: File your claim as soon as possible. The sooner you apply, the sooner you'll receive your first benefits check. More importantly, the sooner the VA receives your claim, the sooner you will lock in your back pay date. But remember, as of March 2015, the VA now requires special forms to file claims and appeals. Failure to use the correct government form could cause you to lose out on the earliest effective date possible.

SECRET #3: Use the statements of friends and family to document the nature and symptoms of your disability. Unless your friends and family members are medical professionals, their statements should address their personal observations of symptoms and the impact of your disability on your daily life.

SECRET #4: Obtain a complete copy of your claims file, including your service treatment records and post-service treatment records. To properly develop your case, you need to analyze what evidence exists and then be able to assess whether you have sufficient evidence to meet all the required criteria. For example, assume that you have a current disability of lower back disorder. A review of your service records shows numerous treatment notes for back pain.

The missing link would be a medical expert's report linking your current disability to the back pain from the service. Without a complete copy of your claims file, you will not know what is missing. You need to know what's missing, so that you can take steps to obtain and submit missing evidence.

SECRET #5: Pursue all possible theories in support of your claim. The VA is required to develop your claim under all possible theories. The VA often fails in its duty. Therefore, you should be prepared to assert all theories that are supported by the evidence. For example, let's assume you have a current disability of depression that you claim resulted from being mistreated by fellow servicemen during service. You also happen to be service connected for a severe lower back disorder that causes extensive pain. The records suggest that some of your depression is linked to back pain. You should make sure that your claim also includes a theory that the depression is linked to the service-connected lower back disability.

SECRET #6: Do not limit your claim to one diagnosis. Frequently, veterans will make a claim based on their own idea of the correct diagnosis. Later, medical evidence suggests a different diagnosis. Although the VA is required to consider all possible diagnoses, you cannot be assured that it will perform its duty correctly. Make sure your claim includes all possible medical conditions that relate to your symptoms. The law presumes that veterans will be making claims for the symptoms and effects of a disability regardless of the label or "diagnosis." For instance, don't lock yourself into a claim only for anxiety when the evidence may also suggest you have depression.

SECRET #7: Continue to make periodic requests for your current VA treatment records. If you are already service connected, a change in your condition could give rise to an increased rating claim, and the treatment for the condition could impact the effective date for any increased rating. New medical records may contain evidence that could be helpful to your claim. Therefore, you should periodically obtain your updated VA treatment records.

SECRET #8: Obtain your own medical expert report linking your disability to service. This strategy cannot be overemphasized. To substantially increase your chances of success, you should have your own medical expert review your claims file and provide a written opinion as to whether

your current condition is related to service. If you can afford it, having your own private medical expert is almost always better than relying on VA doctors.

SECRET #9: Obtain a copy of the VA compensation and pension examiner's report. If the VA sends you for a C&P examination, make sure you obtain a copy of the doctor's report. If it is not favorable, you will then be able to submit rebuttal evidence from your own doctor.

SECRET #10: Don't accept "no" for an answer. A high percentage of all first-time applications for VA disability benefits are denied. Often, this is because applicants don't know the facts the VA requires before it can award benefits. Many applicants hire a veterans' disability lawyer to help them prove their case.

SECRET #11: If the regional office or the BVA denies your claim, file an appeal. You have the legal right to appeal your claim if your benefits are denied at the administrative level. Once you receive an initial decision on your claim, you are permitted to hire an attorney. We recommend that you hire a veterans' attorney. Your veterans' disability lawyer can advise you if he thinks he can win your case on appeal.

Success Story #1

The following is a true story taken from our case files. Only the names have been changed to protect the privacy of our client. The veteran served in the Navy during the Vietnam era. He made a claim for Post-Traumatic Stress Disorder (PTSD) which was repeatedly denied for seven years because there was no proof of the stressor.

He served as a cook and worked on board a ship. He had no particular training as a Special Forces Operative, or anything like that.

His service personnel records indicated no evidence that he ever set foot on the land mass of the Republic of Vietnam. Moreover, his ship records indicated that the ship did not even get anywhere close to the inland waterways, or otherwise near the shore.

Nevertheless, the veteran filed a claim for PTSD and recounted an elaborate story of Special Forces Operations in clandestine missions into the Republic of Vietnam. The claim for PTSD was obviously denied because of the lack of ability to corroborate the stressor. The VA denied his claim for years on the grounds that there was no proof that he actually served in Vietnam, and there was no proof that he engaged in these covert operations.

There was nothing in his personnel file that suggested participation in such activities. His training and specialty were inconsistent with his description of his Special Forces Operations.
The case went up on appeal. The veteran hired our law firm based on our extensive experience in representing veterans before the U.S. Court of Appeals for Veterans Claims. The issue before the Board was entitlement to service connection for an acquired psychiatric disability to include PTSD.

The evidence in the file also raised the suggestion of other psychiatric diagnoses. The Board decision denied the PTSD but remanded the psychiatric claim for a diagnosis other than PTSD back to the Regional Office. After a thorough review of the case file at the U.S. Court of Appeals, we determined that there was no viable way to sustain an appeal for the PTSD denial. The veteran's story was too improbable and unprovable.

But an interesting thing happened during our review. We noticed uncanny parallels with the storyline and plot of the Vietnam era movie, *Apocalypse Now*, starring Robert Duvall. The story recounted by our client read like a screenplay for Francis Coppola's *Apocalypse Now*. So, we began to wonder. Is this veteran the world's biggest liar, or is there something else going on here from a psychiatric standpoint?

In conversing with the veteran, I ascertained a deep and sincere honesty with respect to his recitation of the facts. This veteran genuinely believed he experienced these events in Vietnam as a Special Forces Operative. The problem from a legal perspective was that his story was impossible to prove.

There was virtually no way to prove his theory of the case involving his presence in Vietnam on a special mission to assassinate a rogue colonel.

So, what could explain the sincere honesty of this veteran and how he perceived events directly contradictory to the official record? This is where our keen legal minds and experience came in. I thoroughly reviewed the file, and I determined that the veteran had at least two head traumas during active duty.

These head traumas were documented. I then set to work to ascertain whether head trauma can cause a delusional disorder. I reasoned that he could not be so sincere and yet be untruthful at the same time. I reasoned that his perception was that these events had really occurred, and he was being sincere and honest about it. But they had never happened.

The situation started to remind me of another motion picture called *A Beautiful Mind,* starring Russell Crowe. I was convinced that this scenario was happening in this case. My research uncovered evidence that would link head trauma to a delusional disorder.

Therefore, we enlisted the services of one of the top forensic psychiatrists available in veterans' disability cases. This psychiatrist is an individual who works with our office on extremely difficult cases. His involvement has been instrumental in winning some of our firm's biggest and most complex cases.

He was able to conclude that it was at least as likely as not that the veteran's delusional disorder was caused by the in-service head trauma.

We presented these arguments directly to the Regional Office on the remanded claim. As a result, the Regional Office was forced to concede the validity of our theory of the case. The VA granted service connection and awarded a 100 percent disability rating for this veteran. The veteran received a retroactive award in excess of $220,000.

This case illustrates the importance of a winning strategy. Without experienced legal counsel, the veteran would have continued to beat the proverbial dead horse as to the PTSD claim. The PTSD claim was effectively unwinnable. However, we knew that a claim for PTSD also includes a claim for other psychiatric illnesses. Therefore, we transformed his claim into one for delusional disorder

and pursued a theory that was rooted in a head trauma that was documented in the veteran's service treatment records. This way, we got around the whole problem of trying to prove his story, which we could not do. The result: a substantial victory for a seriously disabled veteran.

Success Story #2

This second example is also taken from our real-life case files. It also illustrates the power of strategic re-framing of the issues. In this case, the veteran had filed a claim for a disorder called hypospadias. Hypospadias is a congenital defect of the urethra. It is essentially a birth defect. In males, it means that the urethra does not open at the end of the penis. The condition is surgically corrected in childhood.

Our client had the condition surgically repaired as a child and lived a normal childhood. He then joined the service with no problems whatsoever. He was examined and considered fit for duty. Shortly after basic training started, the veteran had a problem. He was doing physical training when he suddenly felt the urge to urinate. When he did, there was blood in his urine.

Naturally, he presented to sick call. Upon examination, the medical corps noted that he had congenital hypospadias, which had been surgically repaired. The veteran was medically discharged on the grounds that he had a pre-existing congenital condition.

Following service, the veteran continued to have problems with his urethra. He had several dozen surgeries to correct the problem, but it only got worse. He was forced to catheterize himself several times per week just to keep his urethra open enough to allow for urination.

The VA continued to deny the claim on the grounds that hypospadias is a developmental birth defect and not subject to service connection. The VA was correct to the extent that birth defects are not subject to service connection unless an additional disability develops as a result. But our client never gave up. He hired our law firm, and we successfully overturned his case on appeal at the U.S. Court of Appeals for Veterans Claims.

Once the case was back at the Board of Veterans' Appeals, we developed a new strategy. We realized that the veteran was never going to win benefits by claiming service connection for hypospadias. Based on our research, we realized that hypospadias is a condition that is surgically treated in children and most go on to live normal lives. We also discovered, however, that hypospadias repair surgery is a risk factor for a condition called urethral strictures.

We concluded that the condition causing our client's need for repeated self-catheterization was a urethral stricture. We further discovered that the symptoms of urinary urgency and blood in the urine are symptoms of urethral stricture. As such, we recharacterized the claim as one for urethral stricture. We then hired a urology expert who concluded that the symptoms documented in the service medical records were the symptoms of the onset of urethral stricture, and that these symptoms had their onset during active duty.

Consequently, we won service-connected benefits for our client and eventually obtained for him a total disability rating. He received a substantial six-figure retroactive paycheck.
The key to success in his case was developing a new theory that completely got around the VA's primary reason for the denial. We never would have won the case had we attempted to argue that hypospadias was not a congenital condition. However, when we shifted the focus away from the congenital abnormality, we secured victory for our client.

Success Story #3

I will provide one final example to illustrate the importance of developing a winning strategy. We had a client who was claiming service connection for PTSD. He was airborne and had numerous physical problems for which he was service connected. However, the VA continued to deny his claim for PTSD on the grounds that the stressor was not verified.

Our client claimed he was in Iraq. He also claimed that he experienced a roadside bombing that killed several members of his unit. In denying the claim, the VA concluded that there were no records he was in Iraq when he said he was.

Despite this lack of evidence, we were still able to get the case overturned on appeal at the U.S. Court of Appeals for Veterans Claims. Once the case was back at the Board, we began developing a new strategy. It was clear that the PTSD theory was a losing strategy. Why? There were ambulance records from California showing that the veteran was in a motorcycle accident at the same time he claimed to be in Iraq. The bottom line was that the VA was going to find our client not credible if we pursued this theory.

So, we sent our client to a medical expert who evaluated his orthopedic problems, which included severe lower back problems. It was clear that the veteran experienced severe chronic pain. Next, we hired a forensic psychologist who examined our client and determined that he suffered from major depression because of the chronic pain associated with his service-connected knee, ankle, and lower back problems. The psychologist concluded that the veteran was unable to maintain a gainful occupation because of his disabilities.

We then recharacterized the PTSD claim as one for depression instead. We utilized a 2009 case from the U.S. Court of Appeals for Veterans Claims, which held that a claim for PTSD can also include a claim for other psychiatric conditions that are noted in the evidence. As a result of this new strategy, the VA granted service connection for the veteran's psychiatric disorder and awarded a total disability rating. The result: a retroactive award in excess of $160,000. If we had continued to pursue the PTSD claim, the veteran would never have won his benefits.

The importance of the right legal strategy cannot be overemphasized. With the professional, objective distance that a lawyer can provide, we were able to think outside the box and develop winning strategies.

CHAPTER 2

How to Develop Your Case to Win

As discussed in Chapter 1, lack of assistance and improper strategy are often to blame for unfair VA denials. To develop a winning strategy, you must be able to acquire all available evidence and be proficient in legal and medical research.

At the heart of a good strategy is knowing the applicable laws, regulations, and cases from the U.S. Court of Appeals for Veterans Claims. You must also be knowledgeable in medical issues. In this chapter, I will discuss several strategies for collecting evidence to build a winning claim. You will also learn about what types of assistance can be obtained to help you.

How to Collect Evidence to Support Your Claim

Obtaining the evidence you need to analyze and develop your claim can be challenging. However, part of a winning strategy involves laying the groundwork by first obtaining all available evidence. You should obtain not only your claims file, but any relevant Social Security records and medical records from private doctors. Obtaining all the relevant records on your own is very important in the early stages of case development. Having all the evidence allows you to pursue theories that are suggested by the evidence that you might not otherwise have considered had you not seen the complete file. Having a complete picture of the evidence also allows you to make an honest and objective assessment about your chances of success. You should consider the following strategies:

STRATEGY #1: Request that the VA obtain all records that are being held by another federal agency. The VA has a duty to do this under the applicable regulations.

STRATEGY #2: Submit a VA Form 3288 to obtain your records in the possession of the VA.

STRATEGY #3: Obtain your VA medical treatment records.

STRATEGY #4: Obtain buddy statements and statements from friends and family.

STRATEGY #5: Obtain your own private medical expert report.

STRATEGY #6: Do your own medical research. You can submit medical articles and texts to support your claim.

How To Conduct Your Own Medical Research to Support Your Claim

VA regulations allow you to support your claim with medical articles. You should undertake basic medical research to obtain articles in support of your medical theory and to inform yourself of the basic medical issues concerning your disability. Further, you should research all known risk factors for the illness or disease for which you are claiming service connection. You should also be familiar with all the symptoms of the disease or condition. I also recommend that you research how long it usually takes for a disease or illness such as yours to get formally diagnosed. In other words, there are typical time periods where a disease festers unrecognized before the doctors finally figure it out.

You want to know this information so you can counter any VA arguments regarding a gap between service and when your condition was actually diagnosed. For instance, there is research that shows that people suffer from depression symptoms for many years before actually going to the doctor and getting formally diagnosed. Without this information, your treatment records would give the impression that you had no problems whatsoever until the day you went to the doctor.

We recommend several resources to consult in your medical research:

Online resources: www.webmd.com, www.merck.com, www.medlinplus.com, and www.mayoclinic.com. We also recommend Google Scholar for other useful articles on scientific and medical topics.

Offline resources: At the library, we recommend you consult the Merck Manual, Dorland's Illustrated Medical Dictionary and, if your claim involves mental disability, the latest edition of the Diagnostic and Statistical Manual of Mental Disorders, fifth edition.

How to Make a Freedom of Information Act (FOIA) Request

The FOIA can be very helpful in obtaining documents from government agencies, such as the VA. For information on making a FOIA request, we recommend going to the VA's website at https://department.va.gov/foia/. You should also be aware that the VA has an electronic FOIA program.

VA's Duty to Assist

The VA has an obligation under the law to make reasonable efforts to assist a veteran or a claimant in obtaining evidence necessary to win their claim. The VA must comply with this obligation before it can deny your claim. There are several types of records that the VA is required to obtain. First, it must obtain records in the possession of the federal government, and second it must obtain non-federal records such as private medical records and records held by a state government. The VA must continue its efforts to obtain the records held by the federal government until it is reasonably certain that the records do not exist, or that further efforts to find them would be futile. For non-federal records, the VA is required to make reasonable efforts to obtain the records the claimant identifies and authorizes the VA to obtain. This usually means that the VA will make an initial request and at least one follow-up request.

We strongly recommend that you first obtain your private medical records on your own and review them before submitting them to the VA. Similarly, with Social Security records, we recommend obtaining them first and reviewing them prior to submitting them to the VA.

The VA also has a duty to obtain a medical examination or opinion. As indicated, although it is our preference that veterans utilize private medical experts, we are also aware that not every veteran can afford the cost of a private doctor. In this scenario, you should take steps to maximize the chances that the VA doctor will write a favorable opinion. You should make sure that (1) your

file contains lots of statements from friends and family that document your continuous symptoms since discharge; (2) you request that the VA make a finding as to what evidence is considered true before any exam takes place. If you have medical articles and texts to support your claim, give these to the VA examiner.

Developing to Deny

This means that the VA tries to obtain its own medical expert reports to support a denial of the claim. Sometimes, when the VA does not want to accept your favorable private doctor's report, it will schedule an unwanted C&P exam in hopes of obtaining a negative medical opinion that it can later rely on to deny your claim. If this occurs, we recommend submitting another private medical opinion along with medical articles.

How to Obtain Your Claims File

Your claims file contains all communications and documents that refer to your VA claims. The claims file also includes your military records if you are claiming a disability, all compensation and pension exam reports, letters from the VA, VA decision documents such as rating decisions, statements of the case, and medical treatment records. Any documents related to veterans' benefits are kept in your claims file. This is generally the only place where these documents are kept. However, your Vocational Rehabilitation file is kept separately.

Before requesting any other records, we recommend that you request a copy of your claims file. You can use VA Form 3288 to request a copy of your claims file. You can also use Form 3288 to request other medical records not in your claims file. In addition, you can make any other request in accordance with the Privacy Act or the Freedom of Information Act to obtain your claims file. Under the Freedom of Information Act, the VA is required to provide a response within 20 business days. However, the VA rarely complies with this time requirement. The VA can charge a fee to copy your claims file, but you are allowed one free copy. We recommend that if you are thinking about hiring an attorney, let your attorney obtain your one free copy of the claims file.

How to Request Your Military Records

The National Personnel Records Center in St. Louis, Missouri is the location that stores military records. Unfortunately, in 1973 a fire destroyed many records located at this facility. You can obtain copies of your military records by submitting Standard Form 180. You can download this form from the Internet at http://www.archives.gov/veterans/military-service-records/. Fill out this form and mail it to the address indicated on it.

How to Obtain a Private Medical Expert Report

Using a private medical expert is a very powerful strategy. But obtaining a private expert report can be challenging. The challenge is made worse if you have no money. If you have a private physician, you may be able to obtain a report from them for little or no extra cost. However, most treating doctors are unfamiliar with the VA claims process and will likely need instruction on how to write a report that will pass muster for VA purposes. Also, private doctors unfamiliar with the VA's legal system may be nervous about getting involved in any legal procedure. Doctors are notoriously afraid of the legal system. You should put your doctor's mind at ease by explaining to them that they will never be called to testify in Court or anywhere else.

We recommend that you explain to your doctor that exact proof or medical certainty is not required. Explain to them that it only needs to be fifty percent likely or greater that your disability is linked to service. You should request that they phrase their opinion in terms of whether it is "as likely as not" or "more likely than not" that your disability is linked to service.

You must also explain to your doctor that they must provide reasons for their conclusion. In other words, they can't just write one short sentence stating that your condition is related to service. They must provide reasons and a detailed explanation as to how and why they arrived at their conclusion. The VA is known to discredit the opinions of private doctors based on their failure to provide reasons for their conclusions.

Also, you should make your claims file available for your doctor's review. Their opinion is only as strong as the evidence upon which it is based. You want to make sure that their opinion is based

on your complete history. It is advisable that you tell your doctor to write in their report that they reviewed the claims file.

Claims files are often very large. To make it easier for your doctor, you should organize the medical records in chronological order and put sticky notes or tabs on the relevant records that pertain to your disability.

If you do not have a private treating doctor that is willing to help you, then obtaining a private medical expert can be more costly and difficult. You will have to find an independent medical expert. There are several strategies for doing this. First, if you have a Social Security claim, your Social Security lawyer may be able to refer you to a private medical expert. Generally, attorneys who handle Social Security claims, workers' compensation claims, or negligence cases may be able to recommend a good medical expert. If you don't know a lawyer who can recommend someone, then you may want to consult several independent medical expert services. If you have any questions about locating a medical expert, please contact our office. In developing the cases of our clients, we utilize our own network of private experts that have a proven track record. We usually advance the cost of the expert and when we win the case, our clients reimburse us.

Can You Obtain a Medical Report from a VA Treating Doctor?

From about 1998 until 2005, VA treating doctors were permitted to express opinions concerning the disabilities of their veteran patients. The VA changed its policy to allow its doctors to make statements only about a veteran's current medical condition or functional capacity. However, you can still ask for an opinion from your treating doctor. We have had numerous cases where clients have obtained favorable letters from VA treating doctors. It never hurts to ask.

You can go to the VA's website and download the relevant Disability Benefits Questionnaire (DBQ) form. It's the form the VA uses for medical reports, and it serves as a guide and makes the process of obtaining information from the doctor much easier. Have your doctor fill out the form and then submit it to the VA to support your claim.

Appeals Modernization Act

The Veterans Appeals Improvement and Modernization Act of 2017 (AMA) was implemented on February 19, 2019, replacing the legacy appeals system. The intention was to provide veterans with faster and more efficient resolution of their claims.

Most cases that were filed since 2019 are most likely under the newer AMA rules. The idea behind the AMA rules was to streamline the VA appeals process. So, if you have received an initial VA denial on or after February 19, 2019, then you are likely in the modernized appeal process.

Under AMA, once you receive an initial VA decision, you may retain legal counsel. With or without a veterans' benefits lawyer, you have one year from the date of the VA decision to file an appeal. But unlike the older legacy system, there is not a single appeal method. By contrast, under the legacy system, once you received an initial rating decision denying the claim, you had 1 year to file a Notice of Disagreement ("NOD"). From there, if the VA did not resolve the disagreement in your favor, the VA would issue a Statement of the Case, which was supposed to further explain the reasons why the VA was not granting the claim. Once you received a Statement of the Case, you had 60 days to file a Substantive Appeal to the Board of Veterans' Appeals using what is called a Form 9. Once Form 9 was filed, you would wait for a Board of Veterans' Appeals decision. If that was not favorable, you had to file an appeal with the U.S. Court of Appeals for Veterans Claims within 120 days of the date of the Board decision.

AMA provides options after the initial denial. Once an initial adverse rating decision is received under AMA, a claimant has three appeal options that must be taken within 1 year. First, they can choose what is called a Higher-Level Review appeal, which means no new evidence can be submitted or considered and a higher-level VA adjudicator will look at the case. Second, they could choose a Supplemental Claim Appeal, which involves submission of new and relevant evidence. And third, they can file a Notice of Disagreement with the Board of Veterans' Appeals.

If the veteran files a Board appeal, they can select from three different options. They can choose the evidence submission lane, the direct review lane, or the hearing lane. Each of the lanes has strategic

advantages and disadvantages. Depending on your circumstances, your VA appeals lawyer may opt for the lane that is most suited to achieve your strategic objectives.

There are many strategic considerations when deciding which appeal lane to choose under AMA. Now, more than ever before, it is critical to obtain the legal counsel of an experienced VA appeals lawyer after you receive an initial VA denial.

Claims to Reopen

If the VA has denied your disability claim and your appeal period has expired, you may still have options. Thanks to changes in VA regulations, you can now reopen your claim at any time by submitting new and relevant evidence through a Supplemental Claim—a process designed to give veterans another opportunity to secure the benefits they deserve.

Understanding the VA's Supplemental Claim Process

Under the AMA, the VA replaced the traditional "reopening" process with the Supplemental Claim Lane. This change allows veterans to submit new and relevant evidence without having to start over completely.

- A Supplemental Claim (VA Form 20-0995) lets you submit new evidence and have the VA reconsider your case.
- There is no time limit to file a Supplemental Claim after a denial.
- If you file after the one-year period to appeal, the Supplement Claim will reset your claims effective date to the day you file this Supplement Claim.

First and foremost, you must know exactly why VA denied you before. The VA will usually deny you for the lack of one or more elements. So, you will need to read the prior VA decisions carefully to understand what VA found to be the missing link in your case. The most common reason is the lack of a medical connection between your current disability and your military service.

If the VA denied you because of the lack of a medical connection, you cannot simply submit new medical records concerning your treatment. Unless those medical records give the opinion that your disability is caused by service, the VA will not reopen your claim.

To get a claim reopened, you must present evidence that is new and material. If the evidence did not exist before, then it is "new." But the evidence must also be "material." Unless the new evidence addresses the reason why the Board denied you before, then it is unlikely VA will reopen your claim. In our example, if the VA denied you before because there was an absence of a medical connection to service, then to reopen the claim you would need to obtain and submit a doctor's letter stating that your current disability is linked to service. If you simply submit more treatment records, do not be surprised if VA refuses to reopen the claim.

To be successful in reopening claims, we strongly recommend that veterans contact a private physician to review their file and write a report. If the file contains a negative VA medical opinion, your new evidence should include your doctor's analysis as to why the VA doctor was wrong.

Keep in mind that if the VA eventually grants your claim after you file a Supplemental Claim, the effective date will be the date VA received the Supplemental Claim, and not the original date you filed the claim. The only exception to this rule is if the Supplemental Claim is filed within the one-year period to appeal your claim. I realize this seems unfair, but it is, unfortunately, the law.

The Top 7 Reasons Why VA Rejects Private Medical Opinions

REJECTION REASON #1: The private doctor relied only on the veteran's statements concerning their medical history.

REJECTION REASON #2: The private doctor's opinion is uninformed and not based on a review of the complete claims file.

REJECTION REASON #3: The private doctor failed to provide reasons to support their conclusion.

REJECTION REASON #4: The private doctor used speculative language. The doctor used words like "it could be" or "it may be" related to service.

REJECTION REASON #5: The private doctor failed to address unfavorable evidence.

REJECTION REASON #6: The private doctor failed to address any long periods of time between discharge and when the veteran was diagnosed with his disability.

REJECTION REASON #7: The private doctor relied on inaccurate facts when formulating their opinion.

7 Secrets to Getting a Good Private Medical Opinion

SECRET #1: Supply a copy of your claims file to the private doctor. We recommend that you organize it and put sticky notes or tabs on the relevant documents to make the doctor's review easier.

SECRET #2: Provide a factual summary to the doctor. Make sure you provide facts that the VA has accepted as true. Keep in mind that the VA will reject the private doctor's report if they believe their opinion is based on inaccurate facts.

SECRET #3: Advise the private doctor not to use speculative language. They should phrase their opinion in terms of "at least as likely as not," "more likely than not," or "within a reasonable degree of medical certainty."

SECRET #4: Advise the private doctor as to the standard of proof. The doctor should know that they do not need to know the cause of your disability with certainty. It should be at least 50 percent probable.

SECRET #5: Advise the private doctor to avoid, as far as possible, basing their conclusions solely on your statements, especially if your statements are not corroborated by medical or military records.

SECRET #6: Provide copies of any medical research that supports your theory of the case.

SECRET #7: Insist that the private doctor provide an explanation and reasons to support their conclusion. You should inform the doctor that a simple two-sentence conclusion without reasons will not be sufficient.

Do's and Don'ts for Your Compensation and Pension (C&P) Exam

You'll find these tips are mostly common sense. Still, many veterans don't conduct themselves in this manner and it hurts their claims.

1. **DO** … make sure you are on time—or even early.
2. **DO** … remain polite. Yelling at the examiner about the problems in the VA system won't help you, and it will probably hurt you.
3. **DON'T** … swear. Use proper English to get your point across. When you curse, you create a bad impression, which only works against you.
4. **DO** … show that you are a troubled veteran who is doing the best that he/she can. If you leave the impression that you're trying to get money you don't deserve, then you only make your situation worse.
5. **DON'T** … talk about VA horror stories. The examiner has heard them all. Don't waste your time telling them how badly you've been mistreated. The examiner doesn't have much time to determine how impaired you are. They need facts that you provide in coherent sentences and not rants about how bad VA is.
6. **DO** … answer the examiner's questions as best you can. If you don't know the answer, say so. If a VA psychologist is giving you a psychological test, answer accurately. If you exaggerate your symptoms, the test will pick up on it, and this could invalidate the results. The VA will then use that to make it look like you are exaggerating.
7. **DO** … be honest in your answers. Don't embellish your stories. Just provide the facts and

answer the questions. Make sure you can document everything you tell the examiner. Many examiners check out the stories to see if they're true. So, bring letters from the people you served with, unit diary copies of incidents that occurred during your service, and letters from family members. If you have a favorable private medical opinion or medical research articles, bring copies of this information. It's also helpful to bring a factual summary and excerpts of supporting service treatment records.

8. **DO** … go to the exam when you're exhausted. If you have trouble sleeping, then don't sleep the night before the exam. Let the examiner see the results of your inability to get a good night's sleep.

9. **DO** … talk about the worst moment of time when answering the examiner's questions. You need to be rated for the worst times you have had. Pick a really bad day and then relate all your answers to what you experienced that day. The day you couldn't sleep—were anxious and startled easily—were grouchy to your wife and friends—felt like your heart was coming out of your chest—and nothing went right for you. That day should have been within the past 90 days.

10. **DO** … obtain a copy of the exam report from VA within a week or two. If you have a lawyer, give this to your lawyer as soon as possible.

How to Research Veterans Law – Resources

Title 38 of the U.S. Code governs entitlement to VA benefits. Title 38 of the Code of Federal Regulations (C.F.R.) spells out how the VA interprets the U.S. Code that is binding on the regional office and the Board.

The U.S. Court of Appeals for Veterans Claims is a separate federal Court that publishes its own cases.

The U.S. Code and the C.F.R. books can be accessed at a law library. Some local libraries may have access to *Westlaw* or *LexisNexis*, which are legal research services. The U.S. Code and the C.F.R. may also be accessed via the Internet. The cases of the U.S. Court of Appeals for Veterans Claims

are available in book format with the *West's Veterans Appeals Reporter*, which would be available in a law library or electronically through either *Westlaw* or *LexisNexis*. You can also find the Court's decisions on its website at www.uscourts.cavc.gov.

The decisions of the Board of Veterans' Appeals can be accessed on its website at www.index.va.gov/search/va/bva.html. Keep in mind that Board decisions in another case are not binding in your case.

The Importance of Having the Last Word

In a VA appeal, there is always a back-and-forth volley between the veteran and the VA. For instance, you may submit a private medical opinion or a DBQ form that favors your claim. The VA may respond by scheduling you for another C&P exam. Although the VA does not say so, when this happens, it is an indication that VA is trying to obtain another medical opinion to refute your doctor's report.

So, it is important to obtain a copy of VA's recent C&P report. If it is not favorable, then you need to have another doctor write a rebuttal opinion to explain why the VA doctor is wrong. It is also critical that you send the VA, in writing, your written objections as to the inadequacy of the VA medical opinion and any objections you may have as to the competency of the VA medical examiner.

You must always seek to have the last word on your case. If the unfavorable VA medical opinion is the final word on your claim, then the chances of winning are low.

CHAPTER 3

The Board Denied My Claim. Now What Do I Do?

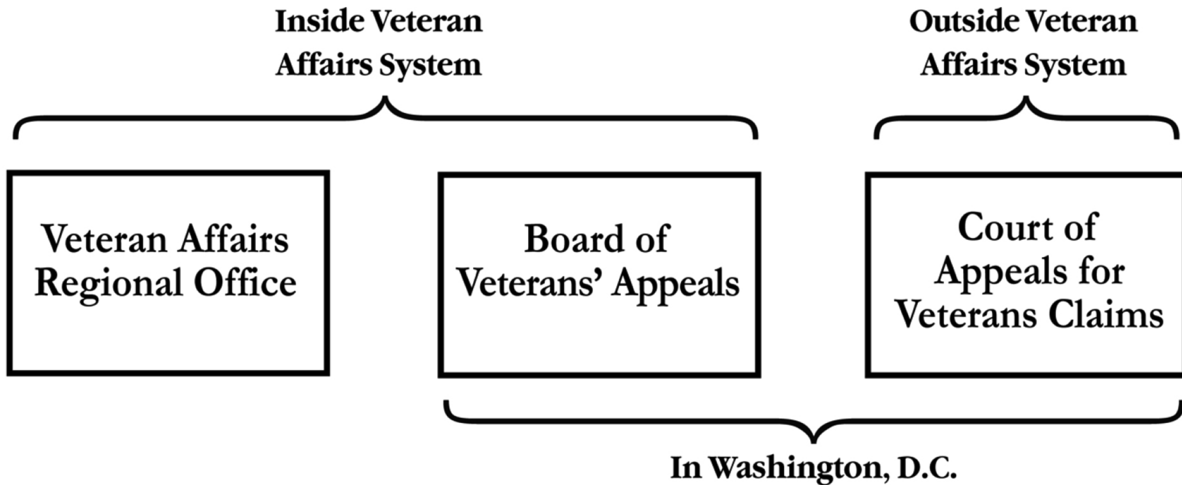
Why do I need a lawyer now? Up until now, you made your disability claim *inside* the Veteran Affairs system. You've sent your claim to your regional office. They denied it. You've sent your claim to the Board of Veterans' Appeals. They also denied it.

NOW… you're appealing your claim at the Court of Appeals for Veterans Claims (CAVC). Fortunately, the CAVC is *outside* of the Veteran Affairs system. In other words, you are no longer dealing with people in Veteran Affairs.

What's the difference? The people in Veteran Affairs are bureaucrats—people who sit behind desks and do paperwork. The people at the CAVC level are professional lawyers and judges hired by the government to look at your claim.

What is the Appeal Process?

Dealing with your regional office may be confusing, but it can get even more confusing when we throw the **CAVC** (Court of Appeals for Veterans Claims) into the mix. Here's a diagram I made to help explain this better:



So, as you can see...

The first place you made a claim was at your regional office. When that was denied by a "Rating Decision," you appealed it at the national level, in Washington, D.C., at the Board of Veterans' Appeals. Both these places are *inside* the Veteran Affairs system.

What confuses many veterans is that the Board and the Court are both in Washington, D.C.—yet they are not related.

When you appeal to the Court of Appeals for Veterans Claims (CAVC), it is ***outside*** the VA system, even though it's in Washington, D.C.

What Do I Need to Know About The Court Of Appeals for Veterans Claims (CAVC)?

The most important thing you need to know about the CAVC is that they are an "appellate" Court. This means…

All this Court does is rule on what's already there.
You *cannot* add any new evidence or new testimony.

If the CAVC disagrees with the Board's decision, you get what's called a **remand**, which lets you take your case back to the Board. There, you can reopen your case and ***then*** add new evidence, new testimony, and new doctor reports.

What does the Court (CAVC) look at exactly? They look at the *way* the Board of Veterans' Appeals denied your claims. For example, they want to know --

- Did the VA give enough reasons or "bases" for their decision to deny your claim? Were they *good* reasons?
- Did the VA miss, forget, or not look at an important piece of evidence when denying your claim?
- Did the VA use the "best" regulation or set of rules—or did they use an older "set of rules" to make their decision look better?
- Did you, your family, or your friends talk about how much pain you're in... but the VA claim did not address this properly?
- Did the VA help you get service records or give you a medical examination when you asked for one? By law, they have a "duty to assist."

As you can see, the Court of Appeals for Veterans Claims ***does not*** look at whether the evidence is right. Instead, they look at ***how*** the evidence was analyzed and presented.

If you or your lawyer can find a hole in the VA's arguments, or how they analyzed your evidence, you will get a **remand**. A remand lets you reopen your case at the VA level and add new evidence and make new arguments.

Exactly what can a lawyer do for me? Here are three important reasons why you should hire a lawyer at the Court level:

REASON #1: You need to punch holes in the Board's decision. You're not arguing whether your

evidence is right; you're arguing that the Board did not analyze your evidence the right way. An experienced lawyer can quickly punch holes in the Board's decision.

REASON #2: You must wade through a ton of paperwork. When you file your appeal with the Court, you will probably get a stack of papers, anywhere from maybe 1,000 to as many as 5,000 pages. This is called the **Record Before the Agency (RBA)**. It's important for you to know how to review everything and find holes in the Board's decision. Then you must prepare your counterarguments.

REASON #3: You need an experienced lawyer working *for* you because the government's lawyers are working *against* you. At the Court level, since it is outside the VA, the U.S. government hires skilled lawyers to review your appeal. These lawyers have 10 to 15 years of experience reviewing veterans' appeals. They work on veterans' appeals every day. They know all the laws… rules… and technicalities – ***inside out!***

When you hire a lawyer to help with your disability claim, your lawyer will help you…

- Discover weaknesses and holes in the Board's decision,
- Review the mountains of paperwork and prepare the best arguments, and
- "Fight fire with fire." They have professional lawyers working against you.

How Long Will It Take For Me to Get a Remand?

After your lawyer reviews your case, they will get on the phone with the Court and the VA attorney. They will talk and attempt to negotiate a remand. This will result in one of two scenarios:

SCENARIO #1: Your lawyer successfully negotiates a remand with the VA attorney. It is then filed with the Court in the form of a joint motion for remand. In this situation, it could take six to eight months to resolve the case. Or…

SCENARIO #2: The VA attorney takes a defensive position. (He's not willing to negotiate, or they can't reach an agreement.) This means that both sides must now lay out their arguments in a "formal brief" (a really long, detailed legal document). Both your lawyer and the VA's lawyer submit a formal brief to the Court for review. In this scenario, it could take anywhere from one to one-and-a-half years to decide your case.

What Are My Chances for Getting a Remand?

No one can predict with certainty what will happen in your case. However, we know from the CAVC Annual Reports that over the past decade the Court has remanded or reversed about 40 percent of the cases that it decided on the merits.

It can be misleading for an attorney to publish a "success rate" for their cases. Published success rates can be misleading because most lawyers will not take on extremely difficult cases. This distorts the estimates. A lawyer who takes on any case, and doesn't choose carefully, will have a lower batting average. A lawyer who is very picky will have a higher success rate.

On the other hand, the VA is horribly overworked and has historically made a lot of simple mistakes in presenting their cases. This increases the chances of getting a remand.

How Does a Lawyer Get Paid? Why Do They All Say It Won't Cost Me Anything to Hire Them?

Not everyone can afford a lawyer. But it is important to have one. That's why Congress passed a federal law called the Equal Access to Justice Act (EAJA). This law allows the government to pay your lawyer's fees and expenses.

What's more, the money the government pays to your lawyer does not reduce or affect any money that you receive from the VA. This money is ***not*** part of your VA benefits.

Best of all, the lawyer will ***not*** get paid unless they win a remand or reversal at the Court level. If the lawyer does not get a remand or reversal, they will not get paid. This gives your lawyer a strong incentive to win a remand or reversal – because ***your lawyer gets paid only if they win***.

IMPORTANT NOTE: A **remand** means you get to reopen your case at the VA level and get another chance to win the case—with new evidence and new doctors' reports. It **does not mean** you have won your case. Instead, it means that you have won the right to present your case again. In a case like this, your lawyer may get their legal fees paid under the Equal Access to Justice Act before you win benefits from the VA.

What Happens after I Get a Remand? Will I Get More Free Help from My Lawyer?

Yes and no. Your lawyer may or may not be able to help you beyond getting a remand. Once you get a remand, your case goes back to the VA level. At this point, you want to add new evidence and plug holes in the case so that the Board will not deny your claim again.

Since this is not at the Court level, your lawyer will not get paid under the Equal Access to Justice Act (EAJA).

However, some lawyers ***will*** work with you at this level. They will help you get stronger medical evidence and present a stronger case. They will show you ***how*** to talk to the VA... in the best way possible, so you get your disability claim approved.

Lawyers who do this usually ask for part of your back pay, usually 20 percent to 30 percent.

For example, let's say you were disabled several years ago, and you've been fighting this claim for many years. Let's say the VA owes you $15,000 in back pay. If your lawyer helps you get your claim approved, they could ask for a fee of $3,000 (20 percent) or perhaps $4,500 (30 percent).

Is it important for my lawyer to be near the VA or the Court in Washington, D.C.? No, not at all. The Court of Appeals for Veterans Claims (CAVC) is national. It handles cases from Alaska

to Puerto Rico… from Maine to Hawaii. The CAVC handles cases via the Internet, fax, e-mail, telephone, or mail. In rare cases, the CAVC may call for an oral argument.

How do I choose a veterans' disability lawyer? Choosing a lawyer can be difficult. Even so, it's no exaggeration to say that you ***should*** have a lawyer represent you. Why? Because the VA has highly skilled, experienced lawyers working ***against*** you. If you try to handle your case by yourself, there may be a higher chance of losing. After all, you lost your initial claim with the VA. So, it stands to reason you could lose your appeal—unless you increase your chances by hiring a skilled veterans' disability lawyer to work ***for*** you.

Now, you know the process for getting a remand from the Court can take many months. You must ask yourself: Who are you comfortable working with over the next several months?

Big law firms usually have hundreds of cases on their desks. Sole practitioners (the lawyer who practices alone) may be quite busy because they're a one-man law firm. In other words, there are pros and cons to every situation.

I suggest you call and speak with me—or another lawyer in my office. We will make time to talk with you. You are our highest priority.

Frankly, most of the lawyers that concentrate their practice exclusively on veterans' law are highly competent. You'd be in good hands with any of them. Pick the one you feel comfortable with. If you would like more information about the process of attorney representation of veterans, you are invited to call our office and request a copy of ***"The Veterans' Guide to Hiring a Disability Lawyer."*** It's an informative resource that we make available for free.

What's the first step? Call my team toll free at **1-888-878-9350** because you no longer have to "go it alone."

We represent veterans before the U.S. Department of Veterans Affairs (VA) and in Federal Court for Service-Connected Disability and Rating Increases, DIC, and other claims.

As a result, my team has an in-depth legal background with a wide range of experience. This includes extensive experience in building and developing evidence in complex cases. We will gladly review your case and give you an honest evaluation of whether we think it's a winner. Then we'll suggest how we should proceed. If we think we can win your case, we'll offer to represent you before the VA or the Court of Appeals for Veterans Claims.

The sooner you call us, the sooner we can help you. Please don't wait one moment longer. Call us today.

10 Common *(And Costly!)* Mistakes in Board Decisions

If you filed an appeal to the U.S. Court of Appeals for Veterans Claims, you made a wise decision. Published statistics from the last decade suggest that the Court remanded or reversed close to sixty percent of final Board decisions. However, when analyzing a case on appeal at the Court, there are several common areas where the Board tends to make mistakes.

COSTLY MISTAKE #1: The Board fails to consider favorable evidence. The Board is not required to decide the case in your favor. But it cannot reject favorable evidence without a valid explanation. If the Board ignores or mischaracterizes favorable evidence that is material, then you may be able to successfully argue for a remand.

COSTLY MISTAKE #2: The Board fails to properly analyze favorable medical reports. The Board will often improperly reject a private doctor's opinion. The Board may improperly reject the private doctor's report solely because they did not state that they reviewed the claims file. The Board may also reject a private doctor's opinion if it is based on the veteran's own statements about their medical history. The Board cannot reject the doctor's report just because it's based on the veteran's statements unless the veteran's statements are found not to be credible.

COSTLY MISTAKE #3: The Board relied on an inadequate VA medical exam. You will frequently notice that the VA will aggressively scrutinize and attack the favorable opinions of private doctors, but then bend over backwards to accept the negative opinions of their own doctors. Because the

VA tends to side with its own doctors, they frequently rely on negative reports that are not adequate for rating purposes. You want to analyze the VA doctor's report to make sure the facts upon which they base their conclusions are accurate. If they assumed certain facts to reach their conclusion, but the evidence in the file shows they are wrong about their factual assumptions, their report can be attacked as being inadequate. The VA doctor may also fail to provide sufficient reasons to support their conclusion or may fail to perform required tests. Again, these factors may be used to successfully attack a VA examination.

COSTLY MISTAKE #4: The Board fails to properly consider lay evidence. Lay evidence means evidence from non-medical professionals. The Board's treatment of lay evidence is very important because it frequently is the only evidence you may have documenting either what happened in service or the ongoing symptoms you experienced since discharge. The VA likes to discredit your statements if they are not corroborated by medical or military records. The VA does not like to accept the statements of veterans. When analyzing the Board decision in your case, you should look carefully to determine if the Board rejected lay statements simply because they are not corroborated by medical or military records. It is an error for the Board to reject lay statements simply because they are not corroborated by medical or military records.

COSTLY MISTAKE #5: The Board fails to consider all possible diagnoses. To explain this type of Board error, it is useful to give an example. Let's say you have a mental disability, and some of your doctors tell you it's PTSD. As a result, you file a claim for PTSD. The VA sends you for a C&P exam and the VA doctor says you have depression and not PTSD. The Board then denies your PTSD claim because you have depression and not PTSD. Under these circumstances, the Board is required to consider service connection for depression, even though you filed a claim for PTSD.

COSTLY MISTAKE #6: The Board fails to consider a claim or theory. This is a situation where you may not specifically make any arguments for a particular claim or theory, but the evidence you submit suggests other claims or theories. The VA is required to consider all possible claims or theories that are suggested by the evidence even if you do not specifically say anything.

COSTLY MISTAKE #7: The Board fails to make sure the VA satisfies the duty to assist. The VA is required to assist you in obtaining evidence to support your claim. This means the VA is required to request records that you identify and authorize them to obtain, and it also means that the VA is sometimes required to provide a medical exam. There are certain circumstances where the VA must provide an exam. If your claims file shows the following four factors, then the VA will have to provide you with a medical exam: the evidence must show (1) you have a current disability; (2) something happened in the service; (3) an indication that your disability may be associated with service; and (4) there is not enough medical evidence to decide your case. If you meet these four criteria, the VA will be required to give you a medical exam. The Board will often overlook the evidence that meets these four elements and fail to send your case back to the regional office for a medical exam.

COSTLY MISTAKE #8: The Board plays the role of a doctor. The Board cannot pretend to be a doctor and decide the medical issues in your case without relying on the medical reports of doctors. For example, the Board cannot piece together various medical records and come up with its own diagnosis. You must carefully analyze the language in a Board decision to make sure the Board is not violating this rule.

COSTLY MISTAKE #9: The Board fails to comply with a prior order of the Board or the U.S. Court of Appeals for Veterans Claims. If your case has previously been at the Board or the Court and was "remanded" or sent back with special instructions, the Board must comply with those instructions. If it doesn't, it is grounds for a remand.

COSTLY MISTAKE #10: The VA failed to provide you with proper notice. Sometimes the VA fails to provide you with proper notice of all the information that is required under the law. The law requires that the VA notify you concerning the types of evidence that are needed to support your claim. You should look carefully at the letters the VA sends you to make sure the VA has adequately provided to you the necessary information before it makes a decision in your case.

CHAPTER 4

What You Need to Know About the U.S. Court of Appeals for Veterans Claims

The U.S. Court of Appeals for Veterans Claims, referred to as the CAVC, was created by the Veterans' Judicial Review Act of 1988. Congress gave the CAVC jurisdiction to hear final denials from the Board of Veterans' Appeals. If you are a veteran and you file your appeal with the CAVC, you are called the "appellant" and the VA Secretary is called the "appellee."

To appeal to the CAVC, you must have a final decision from the Board that denied your claim. You cannot appeal the Board's decision to remand your claim. You also must generally file your appeal to the CAVC within 120 days of the Board's denial. There are some exceptions with motions for reconsideration that are involved.

You also need to understand that the CAVC bases its decisions on the evidence that was in your file at the time the Board made its decision. You cannot submit new evidence at the CAVC. The idea behind your appeal is that you want to get the case "remanded," or sent back to the Board so that you can submit new evidence.

The Importance of a Remand at the U.S. Court of Appeals for Veterans Claims

If the Board denies your claim and you appeal to the U.S. Court of Appeals for Veterans Claims (known as the "CAVC"), you should be aware that this is a very powerful strategy. If you had to refile your claim back at the regional office, the effective date for your claim will usually be the date

that the VA received your refiled claim. In most cases, if you must refile your claim, you lose several years of potential back pay. On the other hand, if the Court overturns and remands (sends back) your case to the Board, you are free to submit any new arguments you wish. If this legal submission results in a victory, your effective date will be the original date the VA received your claim. A remand from the Court allows your claim to survive and keep the original effective date. If you have to refile, then your effective date will be the date the VA receives the refiled claim.

Rate of Success at the U.S. Court of Appeals for Veterans Claims

According to the CAVC Annual Reports (https://m.uscourts.cavc.gov/annualreport.php, over the past 10 years nearly 40 percent of cases decided on the merits were reversed or remanded.

Important Timeframes for Cases at the CAVC

Time to File the Appeal	120 days from the date of the Board denial
Time for service of the RBA	60 days after the notice of docketing
Response to the RBA	19 days after VA mails the RBA
Time to file the appellant's brief	60 days after the notice to file brief
Reply brief	14 days after the Secretary files the brief

The term "RBA" refers to the Record Before the Agency. This is essentially your entire claims file with the VA. The Secretary of Veterans Affairs must serve a copy to the veteran or their lawyer within 60 days of the Notice of Docketing. The veteran or their attorney then must review the file and either approve it or file an objection within 19 days of the date that the Secretary mailed the RBA.

Once the RBA is approved, the Court will issue a Notice to File Brief. If you have a lawyer, your lawyer will handle this for you. You will then have sixty days from the Notice to File Brief to actually file your brief.

With most of the time deadlines in CAVC cases, the Court rules provide for up to forty-five days of extension.

Both sides in a CAVC case typically file extension motions. This is routine and a normal part of the lawyers' tools to manage a docket.

Strategies for Winning at the CAVC

One of the most common areas that we focus on is whether the Board provided adequate "reasons or bases." This refers to the Board's consideration of all the relevant evidence and its analysis of applicable laws, rules, and regulations. If the Board overlooks key evidence or fails to apply relevant laws, then we can often get the Board's decision overturned on the grounds that the Board provided an inadequate statement of "reasons or bases."

This concept can be applied to many different areas. For instance, there could be a "smoking-gun" document that the Board ignored. There could be statements from friends or family that were mischaracterized. There could be medical records that contradict the VA doctor. The list of possibilities is extensive. The point is that a primary strategy is to analyze the evidence in the file and compare it with the Board's analysis.

The other area concerns the VA's duty to assist. This is another key area where the Board often makes mistakes. The VA has a duty to assist you in developing your case. This means helping to obtain medical records and in certain situations, providing a medical opinion. For example, if certain factors exist, the VA is required to provide a medical exam. If it doesn't, then this is an error that could result in your case being overturned on appeal. In addition, once the VA provides a medical exam, it is required to make sure it is an adequate one. If the exam overlooks key evidence or provides a faulty analysis, then this could also result in your case being overturned on appeal.

It is generally easier to get cases overturned on appeal if the Board overlooked key evidence than if the Board discussed the evidence and explained its rejection of the evidence. The CAVC will give deference to the findings of the Board in most cases. If the Board explains why it is rejecting your favorable evidence, and there is a plausible basis for the conclusion, then this is hard to overturn on appeal. Generally, a disagreement with how the Board weighed or analyzed the facts is not a

winning strategy. However, showing that the Board failed to even discuss key evidence or applicable laws, is a winning strategy.

CAVC Case Studies

To illustrate the use of the common CAVC strategies, consider several case histories taken from our actual case files.

Example #1: CAVC Remand for a veteran of the Vietnam Era of his claim for military sexual assault.

This case involved a veteran who was the victim of military sexual trauma or MST during service. The facts of this typical MST case involve an in-service sexual assault. It's important to understand the extent to which you can use a report from a mental health professional obtained after the fact to assist in corroborating the in-service personal, or sexual assault.

In short, the veteran stated that he was attacked and sexually assaulted during boot camp. He explained that he did not report the rape to anyone at the time. He said that he was ashamed, horrified, and humiliated. He believed that not telling anyone was the right thing to do. Indeed, the VA C&P examiner confirmed that the veteran had not disclosed the nature of the attack to anyone due to profound shame. Later, the veteran attempted to get away from the individual that had assaulted him. And he made several excuses to try to get transferred. The veteran was clear in his assertion that he got himself transferred by complaining about things other than the sexual assault. The claims file corroborated the veteran's multiple transfers to different occupational specialties.

The VA provided the veteran with a C&P exam. The VA examiner observed that the veteran never disclosed the nature of the attack to anyone. Most importantly, the VA doctor gave the opinion that the veteran had PTSD related to the claimed in-service assault.

The Board, nevertheless, denied the claim. In this case, the applicable regulation was 38 C.F.R. § 3.304(f)(5). This provision states: "If a post-traumatic stress disorder claim is based on in-service personal assault, evidence from sources other than the veteran's service records may corroborate

the veteran's account of the stressor incident. . . Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to: a request for a transfer to another military duty assignment. . ."

So, the scenario here involved a favorable C&P exam report to the extent that the examiner found that the veteran had PTSD due to the military sexual trauma or MST. The Board denied the claim on the grounds that the stressor was not verified, but this decision failed to account for the VA exam report within the context of its ability to corroborate the in-service stressor.

Until recently, the CAVC held that a post-service psychiatric opinion could not be used to establish the occurrence of an in-service stressor. *See Cohen v. Brown*, 10 Vet. App. 128, 145 (1997). However, in *Menegassi v. Shinseki*, 638 F.3d 1379 (Fed. Cir. 2011), the Federal Circuit held that under 38 C.F.R. § 3.304(f)(5), medical opinion evidence may be submitted for use in determining whether the occurrence of a stressor is corroborated.

The Federal Circuit observed that section 3.304(f)(5) affords a veteran claiming PTSD from an in-service personal assault to submit evidence other than in-service medical records to corroborate the occurrence of a stressor. *Id*. The Court noted that the regulation specifically designates that medical opinion evidence may be submitted. *Id.* Therefore, the Federal Circuit held that the CAVC erred when it determined that a medical opinion based on a post-service examination of a veteran cannot be used to establish the occurrence of a stressor. *Id*.

In this case, the VA examiner opined that the veteran had PTSD related to the claimed in-service stressor. The Board apparently dispensed with the analysis of the VA exam report on the grounds that it did not find the stressor credible. By doing so, it violated the Federal Circuit's ruling in *Menegassi*. The Board should have weighed the VA examiner's opinion when assessing the overall credibility of the claimed stressor. Its failure in this regard constituted grounds for a remand.

We were able to get this case remanded because the Board had failed to consider applicable case law from the Federal Circuit. This case further illustrates the strategic approach to handling cases at the

CAVC. You must examine whether the Board has applied all potentially applicable laws. If it hasn't, then you can often succeed in getting the case remanded.

Example #2: CAVC remand in PTSD case for not addressing fear of hostile attack.

The veteran served on active duty during the Vietnam War. The evidence of record indicated that he served in Operation Frequent Wind and Operation Eagle Pull in 1975. The evidence revealed that these operations involved the evacuation of Saigon. The evidence indicated that there was some ground fire during these operations.

The veteran was diagnosed on several occasions with chronic PTSD. The veteran indicated that his stressors included, among other things, his activities related to his battalion landing team activity. The veteran also stated that he heard rockets while in Vietnam that seemed to remind him that he could be killed.

Indeed, the evidence of record contained published eyewitness accounts regarding the final days before the fall of Saigon, which corroborated that shells and rockets pounded the outskirts of the city. The veteran further stated that his impressions upon arriving in Vietnam were that he would not go back home alive. In considering these statements from the veteran, as well as others, the Vet Center diagnosed the veteran with PTSD in accordance with the DSM-IV. In this regard, the Board conceded that the veteran's statements could be interpreted as fear of hostile military takeover.

The Board ostensibly denied the veteran's claim for lack of a verifiable PTSD stressor. Similarly, the Board observed that a VA exam was not provided for PTSD because the veteran has not provided proof of a verifiable PTSD stressor and "an examination would not aid in substantiating his claim."

Interestingly, in acknowledging that the veteran's statements may be interpreted as fear of a hostile military takeover, the Board stated that VA examiners have not confirmed that this would be adequate to support a diagnosis of PTSD and related that diagnosis to service.

We argued that the Board's decision on the duty to assist to provide an exam was problematic. We

noted that under the PTSD regulation, a veteran does not necessarily have to prove a verifiable stressor. *See* 38 § C.F.R. 3.304(f)(3). Thus, if the veteran has a fear of hostile military or terrorist activity, and a VA psychologist or psychiatrist confirms that this is sufficient to support a PTSD diagnosis, then his statements alone can establish the stressor. Here, the VA's reasoning for not providing an exam was based solely on his inability to corroborate a stressor—yet it appeared to acknowledge that his statements evidenced fear of a hostile military takeover. Under section 3.304(f) only a VA psychiatrist or psychologist can address the issue of PTSD in the context of fear of hostile military or terrorist activity. Accordingly, there was a reasonable possibility of substantiating the claim if an exam was provided.

Phrased differently, the Board essentially said that it did not need to provide an exam because the veteran had not proven a stressor. Yet the Board will not consider service connection under 38 § C.F.R. 3.304(f)(3) when no VA examiner has confirmed the sufficiency of the stressor and related it to service. How was the veteran supposed to get such a VA exam unless the VA provided it? In sum, we argued that given the evidence of the veteran's time, place, and circumstances of service, he was likely exposed to events that could make one fearful of hostile military or terrorist activity. Therefore, there was a reasonable possibility of substantiating the claim, and the Board erred in not providing an exam. We presented these arguments and were successful in getting the case remanded.

The strategic aspects of this case involved using all the applicable regulations and focusing on areas where there was inconsistency and where the VA failed to exercise its duty to assist.

CHAPTER 5

Common Types of Post-Traumatic Stress Disorder (PTSD) Cases

If you are reading this because you have been denied veterans' benefits for PTSD, you are not alone. In 2012, the VA claimed its own claims error rate was 14 percent. However, the VA's own inspector general found a claims error rate of 38 percent. That means, even by the VA's own estimates, that they make mistakes in almost 4 out of 10 benefits claims cases! Additionally, appeals represent a third of the VA's pending disability claims, which means one in three cases the VA is processing are veterans appealing a denial.

How Do I Get Veterans' Benefits for PTSD?

To get veterans' benefits for PTSD, you need to establish a service connection between your PTSD disability and your time in service. PTSD is unique among veteran disability types because of the importance placed on stressors in diagnosing PTSD. So, to get VA disability benefits for PTSD, you will need to get a service connection by establishing a stressor or stressors that qualify you for a diagnosis of PTSD.

There are essentially 3 different approaches to proving stressors.

1. The first type of stressor involves a situation where a combat veteran describes a stressor that is consistent with his or her combat exposure.

2. The second type of stressor involves a situation where the veteran describes a stressor that is not associated with verified combat exposure.

3. The third type of stressor involves cases where the veteran's PTSD stressor is related to fear of hostile military or terrorist activity while stationed in a combat theater of operations.

Credible supporting evidence is important in getting approved for PTSD VA benefits. But in practice, the "credible supporting evidence" requirement has been a major impediment to many veterans receiving compensation for their PTSD diagnosis. Frankly, many things that happen in the service are never properly documented or recorded. As a result, it can be very difficult to prove that the stressor took place.

Fortunately, in July 2010, the VA issued a new rule making it somewhat easier to prove that a stressor event happened during service. Under the new regulation, if a veteran's claimed stressors are related to the veteran's fear of hostile or military or terrorist activity, then they could qualify for PTSD based on this as a stressor.

Additionally, you might also need to get a private medical opinion to establish a connection between your service and your diagnosis to get VA benefits for PTSD. Once you have established the stressors that qualify you for a PTSD diagnosis and you receive a service connection, the VA will determine your level of disability and award benefits accordingly. To learn more about how to get veterans' benefits for PTSD, read the articles listed at the bottom of this page.

What Are PTSD Veterans' Benefits?

Veterans' benefits for PTSD are granted based on graduated disability ratings of 0 percent, 10 percent, 30 percent, 50 percent, 70 percent, or 100 percent. Veterans who receive a disability rating of 0 percent do not receive disability benefits because there is little or no impairment. Disability benefit payments begin at 10 percent and increase at each rating level.

Veterans have a wide range of benefits available to them. These range from VA pension benefits (non-service-connected) and VA compensation benefits—to vocational rehabilitation and grants for adapted vehicles, housing, and equipment.

Why Did the VA Deny My Veterans' Benefit Claim for PTSD?

The most common reasons why the VA denies benefits for PTSD include:

1. The stressor is not verified, and the veteran did not provide enough information to verify the stressor.

2. The VA's failure to submit stressor information to the JSRRC, which was part of the government that is assigned the task of research. The VA cannot simply do its own research and then deny the claim.

3. No diagnosis of PTSD. In many cases, however, if you are not diagnosed with PTSD, you may be diagnosed with depression or generalized anxiety. It would be an error for the VA to reject your PTSD claim on the grounds that you have depression instead. The VA would have to investigate whether service connection is appropriate for depression or some other mental disability.

4. Veterans make the mistake of refiling or submitting a Supplemental Claim for PTSD benefits without any new evidence, or they submit evidence that is not really material to their PTSD.

To ensure the greatest degree of success in reopened disability claims, we recommend that you look very carefully at the reason why VA denied your claim the last time. For instance, if the VA denied your claim for PTSD disability benefits because there was no evidence linking your disability to service, then submitting more treatment records showing the severity of your PTSD disability is not going to help. In other words, if the issue is the lack of "linking" evidence, you should submit a medical report from a doctor stating that your disability is linked to service. On the other hand, if the reason they denied you before was because there was no evidence of a present disability, then submitting a new medical record showing a diagnosed condition could potentially aid in getting your claim reopened. The new and relevant evidence you submit should address one of the reasons why VA denied your benefits before.

Common VA Mistakes With PTSD or Mental Disability Cases

In a PTSD case where a veteran claims that a stressor happened in service, the stressor will generally have to be verified. (There are exceptions to this rule). The VA will frequently:

1. Deny the claim on the grounds that the stressor is not verified, and that the veteran did not provide enough information to verify the stressor. However, veterans will often provide enough information to enable VA to verify the stressor, and it is an error for VA to not make efforts to verify the stressor events.

2. Fail to submit the stressor information for research so that the stressor information can be verified.

When evaluating what rating to assign a PTSD or mental disability case, the VA will frequently make the mistake of expecting the veteran to exhibit most of the symptoms listed in the rating formula before granting the higher rating. Under the Court's cases, this is an error. The VA must look at the overall picture of your mental disability and determine whether you suffer symptoms or effects that result in occupational or social impairment that would be similar to the symptoms listed in the rating formula. If you analyze a Board decision and it appears as if the Board is requiring you to have all the symptoms listed under the rating criteria, then there may be a VA error.

In addition, the VA also likes to deny PTSD claims on the grounds that you don't have a diagnosis of PTSD. In many cases, however, if you are not diagnosed with PTSD, you may be diagnosed with depression or generalized anxiety. It would be an error for the VA to reject your PTSD claim on the grounds that you have depression instead. The VA would have to investigate whether service connection is appropriate for depression, or some other mental disability.

The VA also makes errors in how they rate a mental disability. Frequently, if you are already service connected for a mental disability, the VA will often give you a rating that is too low. In doing so, the VA will incorrectly expect you to have all the symptoms listed under the rating criteria. This may be an error, and you should consult legal counsel if this has happened to you.

PTSD Provides Service Connection for a Host of Diseases and Illnesses

Far too often, veterans do not realize that PTSD can lead to a wide array of health problems, including diabetes, sleep apnea, cardiovascular issues—even cancer.
The Department of Veterans' Affairs supplies benefits for several illnesses stemming from PTSD. You just have to know how to demonstrate the connection.

Look at how the experts put together a bulletproof claim for VA benefits supporting a wide variety of health issues related to PTSD. Powerful evidence demonstrated through scientific research findings and the opinions of medical and legal experts can win your claim for disability benefits secondary to PTSD.

Mental Response to Traumatic Events Influences Physical Health

"Disease results from an error in the mind." When I first heard that axiom, I was tempted to think it referred to psychosomatic illnesses. If you think your arm hurts, it eventually will. But considering recent research, it is apparent that a number of diseases are highly associated with the PTSD patient's state of mind.

In my veterans' disability legal practice, I am increasingly connecting PTSD with a host of non-psychiatric disabilities. For veterans suffering from PTSD, a traumatic event has made a significant impression on the mind and therefore the body.

Veterans with PTSD show dysregulated neuroendocrine systems. This dysregulation can lead to impaired immune function and, when combined with genetic vulnerabilities and maladaptive psychological states, can lead to behaviors that permanently impair a veteran's health.

PTSD and Treatment Medications Can Exacerbate COPD

Research from the National Center for Post-Traumatic Stress Disorder has linked PTSD with increases

in medical care requirements, morbidity, and premature death. Individuals with PTSD show impaired reasoning and an increased tendency to engage in risky behavior that can cause serious health problems.

For example, the National Comorbidity Survey reports that over 45 percent of American PTSD patients are smokers, compared to just 23 percent of the general adult population. Although half of all smokers eventually stopped using tobacco, only 23 percent of smokers with PTSD quit smoking, placing PTSD sufferers third from the bottom in quit-rate rankings for 13 mental disorders.

Peer-review studies show 31.7 percent 10-year cumulative evidence of smoking among PTSD patients, compared to 19.9 percent in non-PTSD sufferers with a history of trauma and 10.5 percent in those with no history of trauma.

Although the VA will not pay benefits for tobacco-related illnesses, PTSD exhibits wide-ranging effects in other areas of pulmonary and cardiovascular health. The stress and anxiety associated with PTSD may manifest in respiratory illness like chronic obstructive pulmonary disease (COPD). In addition, medications often prescribed to treat PTSD, like benzodiazepines, can lead to respiratory depression and aggravation of COPD.

PTSD-Induced Alcohol Consumption Can Lead to Seizures, Cardiomyopathy, and Liver Disease

Like smoking, several epidemiological studies document the high prevalence of drug and alcohol abuse disorders among PTSD patients. The National Comorbidity Survey reports that 51.9 percent of lifetime PTSD patients had lifetime alcohol abuse/dependence diagnoses and 34.5 percent had a lifetime drug abuse/dependence diagnosis.

I recently had the privilege of working on an appeal for a veteran who developed a neurological seizure disorder secondary to alcoholism. The veteran's PTSD led to self-medication via heavy use of alcohol. This, in turn, led to neurological impairment that resulted in the development of epileptic-type seizures.

Alcohol consumption can also lead to liver disease and cardiomyopathy, not to mention an increased risk for accidents associated with driving under the influence, pulmonary aspiration, and hypothermia.

Diabetes, Heart Disease, Orthopedic Problems, and Sleep Apnea May Be Linked to PTSD

Our practice has expanded the scope of secondary claims that we make with respect to PTSD. PTSD is associated with poor diet, physical inactivity, and obesity. These conditions may partially explain the elevated prevalence of diabetes and cardiovascular disease among people with PTSD. Obesity (a body mass index greater that 30) is also a major risk factor for sleep apnea.

Veterans with PTSD who are overweight and physically inactive, and develop diabetes, heart disease, or sleep apnea, may be able to link these conditions back to PTSD.

Consider an orthopedic problem associated with morbid obesity. I have had several cases involving veterans who are service connected for PTSD and suffer from obesity and knee disabilities. Obesity is not typically a disability for which the VA grants service connection. When the knee problem is not an issue during service and is caused by joint stress associated with obesity, the VA will try to deny the claim.

However, if obesity stems from PTSD, one can conceivably argue secondary service connection for resulting orthopedic problems.

PTSD May Provide Secondary Service Connection for Pancreatic Cancer

In addition, I have recently seen a number of cases involving pancreatic cancer among Vietnam veterans. Though pancreatic cancer is not associated with Agent Orange exposure, I have won many of these cases for veterans on a direct basis. Yet, sometimes a direct basis is not the most viable option.

For instance, a Vietnam veteran's widow recently contacted me concerning a claim stemming from her husband's death due to pancreatic cancer. Usually, if type II diabetes exists years prior to a pancreatic cancer diagnosis, we can establish a secondary relationship between pancreatic cancer and the pre-existing diabetes. But in this case, her husband did not have type II diabetes at least six to seven years prior to the pancreatic cancer diagnosis.

As the Vietnam veteran was service connected for PTSD, I sought to determine whether the pancreatic cancer was somehow linked to the PTSD. The widow confirmed that her husband suffered with a heavy drinking problem.

If the excessive drinking had begun after the traumatic event and scientific evidence showed a link between heavy alcohol use and pancreatic cancer, then the pancreatic cancer could be secondary to the service-connected PTSD—and the widow could win service connection for her husband's cause of death.

A holistic approach to evaluating a veteran's health and their disabilities is essential in obtaining the maximum benefit for a disabled veteran. The more one examines the medical literature, the more one realizes the interconnected nature of health issues. The body is not separate from the mind. A disease of the mind is invariably going to affect the body—and vice versa.

Claiming DIC Benefits for Diseases Caused by Service-Connected PTSD

If you are a widow of a deceased veteran who was service connected for post-traumatic stress disorder (PTSD) and the veteran died of vascular dementia or adult failure to thrive, you may be able to prove your DIC claim based on PTSD.

VA examiners continue to view PTSD as a narrow, separate entity and fail to consider the holistic, synergistic effects that psychiatric disease has on overall health.

But there's some good news for veterans facing a disability benefits denial.

Our veteran's disability benefits law firm continues to win DIC appeals based on extensive research findings that demonstrate a strong correlation between PTSD and death due to vascular dementia or aggravation of underlying diabetes or hypertension. The close relationships between brain diseases and other physical illnesses are well documented.

I hope that sharing a past case of mine will help families of veterans realize these claims are worth pursuing.

VA Errs In Maintaining PTSD Cannot Contribute to Vascular Dementia

As a busy veterans' benefits attorney, I was recently contacted by a widow in her 90s (despite her age, she still plays golf daily at her Florida retirement community). Her husband of over 60 years served on active duty from 1943 to 1946. He returned from service with PTSD and was subsequently determined to be service connected. His wife described the impact that her husband's PTSD had on their lives. They could no longer go to parties or be around people. It was difficult to deal with, yet she remained a loving and devoted wife.

The couple resided in an assisted living facility for several years until the facility could no longer handle the veteran's condition. The veteran became combative with staff and eventually required a higher level of care than could be provided in an assisted living setting.

The husband transferred to a more specialized skilled nursing facility. As time went on, he became more difficult, refused to eat, and was eventually diagnosed with adult failure to thrive. Compounding the problems, the veteran developed diabetes, hypertension, and vascular disease or vascular dementia.

The veteran eventually passed away. The cause of death was listed as vascular disease or dementia. An amended death certificate filed several years later listed PTSD as the cause of death.

The widow filed a claim for DIC benefits, only to have the VA deny her claim on the grounds that PTSD does not cause dementia. The VA supported their denial with several opinions by VA

examiners, two of three being Ph.D.-level psychologists who lacked the medical training necessary to properly address dementia or vascular disease.

PTSD Produces Conditions Leading to Vascular Dementia and Aggravation of Underlying Diabetes and Hypertension

The issue in this case concerned whether PTSD can cause or aggravate diabetes and hypertension. If so, could this then contribute to vascular dementia or some other type of adult failure to thrive?

Fortunately, the widow hired our veterans' disability benefits law firm to represent her DIC claim. The U.S. Court of Appeals overturned the VA's denial and remanded the matter back to the Board.

Our research uncovered a June 2010 article from the Archives of General Psychiatry reporting that adult male veterans with PTSD are at a nearly two-fold higher risk of developing dementia than those without PTSD.

We also referred to a highly cited PTSD Research Quarterly article showing an elevated prevalence of diabetes and cardiovascular disease among individuals with PTSD. Numerous studies suggest that diabetes and cardiovascular disease can be relevant in the development of vascular dementia. In predisposed individuals, PTSD certainly aggravates hypertension. Hypertension can then lead to stroke or other problems with the brain.

PTSD indeed produces conditions that can lead to vascular dementia. We have discussed the higher incidents of obesity and cardiovascular disease among PTSD sufferers in numerous articles on our site at veteransdisabilityinfo.com. The risk of vascular dementia from PTSD is so obvious that it hardly needs further explanation.

Veterans' Family Members Seeking DIC Benefits on PTSD Vascular Dementia Can Win

Any family member seeking DIC benefits for a veteran who was service connected for PTSD and

diagnosed with vascular dementia or some type of adult failure to thrive can absolutely win their claim.

Unfortunately, the VA and its examiners often view psychiatric diseases as confined, distinct conditions and fail to consider the complex effects that PTSD has on overall health. If the VA has denied your DIC benefits because they don't believe the PTSD caused vascular dementia, diabetes, hypertension, cardiovascular disease, or failure to thrive, you should strongly consider hiring a veterans' disability attorney as soon as possible to help you prepare and win your VA appeal.

Total Disability Individual Unemployability (TDIU)

The VA defines total disability based on individual unemployability (TDIU) as "part of VA's disability compensation program that allows VA to pay certain veterans compensation at the 100 percent rate, even though VA has not rated their service-connected disabilities at the 100 percent level."

General Requirements for Total Disability

The general requirements for total disability are that you must have a combined rating of at least 70 percent with at least one disability rated at 40 percent by itself. Or, you must have one disability rated by itself at 60 percent disabling. If you meet these percentage requirements and the service-connected disabilities are shown to prevent you from maintaining a regular job, then you probably have a strong case for total disability.

These are not the only circumstances under which you may qualify for TDIU. You may qualify for TDIU if any of your service-connected disabilities keep you from being able to maintain gainful employment regardless of your disability rating.

There are many complicated factors that go into winning a TDIU claim. It is very important that you be aware of these factors. If you need assistance, call our office at 1-888-878-9350 to learn more about how our attorneys can help you get veterans' disability benefits.

Not all Levels of Impairment Are Created Equal

With a TDIU analysis, the VA looks at your particular circumstances to determine how disabilities affect your ability to work. A TDIU disability benefits claim is more subjective than a regular disability benefits claim based solely on a rating schedule, meaning there is more room for interpretation in a TDIU disability claim. You must analyze your individual work and educational factors to determine whether your service-connected disabilities make you incapable of working.

The VA does NOT base its decision on the average person's ability to work. Instead, they work from the assumption that each veteran is unique and your individual skills, work history, and education should be considered in determining your ability to work. For example, if you were a concert pianist and you played the piano professionally, and you suffered an amputation of several fingers, this would clearly render you incapable of maintaining your occupation. On the other hand, if you were a truck driver, you could probably still work if you lost a few fingers. In other words, what makes one veteran totally disabled may not be the same thing that makes another veteran totally disabled. It all depends on your individual circumstances.

When Should I Apply for TDIU?

Now, let´s consider some scenarios when you should apply for TDIU.

1. When You Cannot Maintain Steady Employment

TDIU indicates a level of employability that is less than 100 percent. In practical terms, if you have a combined disability rating of 70 percent with at least one disability rated at 40 percent, and these disabilities make it impossible for you to keep a job, then you would be well advised to seek total disability individual unemployability.

Keep in mind that the higher you are on the combined rating scale, the less difference it will make in your combined rating if you add smaller disabilities to your service-connected list of disabilities. Additionally, if you are rated at 60 percent for one disability alone and this disability

makes it impossible for you to keep a job, then you should also consider filing a claim for total disability.

2. When Your Disabilities Make It Impossible for You to Earn More than the Poverty Limit

TDIU does not require you to be incapable of doing any type of work, but you must be unable to maintain gainful employment. Marginal employment is generally not considered to be gainful employment, and it should not prevent you from getting a rating of total disability individual unemployability. In general, the Veterans' Court has interpreted the term "substantially gainful occupation" as meaning an occupation that provides the veteran with an annual income that exceeds the poverty threshold for one person, irrespective of the number of hours or days that the veteran actually works.

3. When Any Service-Connected Disability Meets the TDIU Minimum Requirements

There are times when you have a TDIU claim, and you may not even be aware of it. There is automatically an implied claim for total disability when a claim for an increased rating meets the minimum requirements for total disability and the disabilities are service connected. In other words, if you were granted service-connection for a disability rated at 60 percent disabling by itself, and the evidence before the VA also shows that this disability renders you incapable of working, then I recommend that you apply for total disability.

How Can Gang & Associates Help Me Get TDIU Benefits?

Even if you do not meet the percentage requirements for TDIU, you should still consider a total disability claim if your service-connected disabilities render you incapable of maintaining a gainful occupation. The VA is very reluctant to grant TDIU claims in situations where a veteran does not meet the percentage requirements, but the law allows for consideration of these TDIU claims on an extra-schedular basis. To win such a claim, you need very strong evidence from a vocational expert and probably several medical experts as well. Also, your work circumstances must be very unique to justify granting such a rating. As a general rule, I strongly recommend that veterans contact our office about making a claim for TDIU in any circumstance where their service-connected disability

makes it impossible for them to maintain regular employment. We can put you in touch with medical and vocational experts who can help us make a strong disability benefits claim for TDIU.

You should also keep in mind that VA is not allowed to consider non-service-connected disabilities when determining TDIU. So, in developing your TDIU claim, you must be able to separate the service-connected disabilities from the non-service-connected disabilities. This often means constructing a hypothetical analysis in determining whether the service-connected disability, standing alone, caused the veteran to be unable to work. This is a complicated task and an area where an experienced veterans' benefits attorney can be extremely valuable.

In general, our law firm fights for TDIU with strong evidence from a vocational expert to analyze your work history, education, and training. We look to determine whether the service-connected disabilities outweigh your ability to perform the tasks necessary for your profession. We can also help you support these claims with strong medical opinions from medical experts who are of the opinion that your disabilities render you incapable of maintaining gainful employment.

If you are in a situation where your service-connected disabilities make it impossible for you to keep a job, I strongly urge you to contact our office to discuss the ways in which our law firm may be able to help you win TDIU veterans' disability benefits.

The VA, through its notices to veterans, has caused a great deal of confusion about this type of claim. Don't believe everything you hear or read that says you must have a 60 percent service-connected disability rating—or a combined service-connected disability rating of 70 percent with at least one disability rated at 40 percent. This is not true. Here's the correct statement:

> A veteran can qualify for a TDIU rating any time one or more of his/her service-connected disability(ies) prevents him/her from getting employment, ***regardless of the percentage of the disability rating.***

However, you should also be aware that VA does not like to grant TDIU in cases where you don't meet the percentage requirements. So, even though it is possible to get TDIU if you don't have a

60 percent rating for one disability, or 70 percent combined (with at least one disability rated at 40 percent), you must have very strong evidence to support the claim.

Three Reasons Why VA Denies TDIU (And What You Can Do About It)

Veterans with service-connected disabilities are often unable to work. Most of these veterans also lack a 100 percent schedule rating. The Department of Veterans Affairs expects these veterans to live on disability checks of less than 100 percent without any means to supplement their income. Why does the VA deny total disability individual unemployability claims?

The VA makes three frequent mistakes in adjudicating TDIU claims: requiring veterans to prove 100 percent unemployability from all forms of work, considering age or non-service-connected conditions, and failing to examine the veteran's educational and occupational history.

REASON #1. The VA mistakenly requires veterans to prove 100 percent unemployability from all forms of employment.

VA regulations do not require veterans to be totally unemployable from all forms of employment for TDIU claim approval. The regulations merely require that a veteran be disabled from "substantially gainful" occupation. If the income falls below the poverty threshold, veterans who are earning income are still able to win TDIU claims.

The Federal Circuit case ***Roberson v. Principi*** noted that requiring a veteran to prove they cannot maintain substantially gainful employment of any sort is error on the part of the VA. According to the Court, the word "substantially" suggests there is some flexibility, and total and complete unemployability is not necessarily the required standard.

Being disabled from substantially gainful employment does not mean you cannot work at all. It means that the amount or type of work you can do is limited and infrequent enough to result in wages less than the annual poverty threshold level (set at $15,650 in 2025).

REASON #2. The VA mistakenly considers age and/or non-service-connected conditions when determining employability.

The VA is prohibited from considering the veteran's age (I have had a TDIU claim for a gentleman in his 90s) or non-service-connected disabilities. The VA may not come right out and say they believe non-service-connected factors are causing the inability to work, but if there is a significant non-service-connected issue, it will invariably taint the VA adjudicators' objectivity.

For example, consider a veteran with both a back disability and post-traumatic stress disorder (PTSD). The back disability is not service connected, but the PTSD is. The veteran's work history involves physical labor. The VA would typically deny this veteran's TDIU claim. Why? They would say the real reason they are not able to work is that their back disability prevents them from doing physical labor.

Now, say that the veteran's physical labor job requires close contact with coworkers and supervisors. This is a key piece of information. The veteran could now ignore the back problem and base their entire argument on whether the PTSD, standing alone, would prevent them from dealing with coworkers and supervisors to the extent that they could no longer work.

Don't allow the VA to get away with denying a claim based on age or non-service-connected disabilities. Try to construct a scenario that only involves the service-connected disability. The VA must then determine whether that disability, standing alone, would prevent you from engaging in gainful employment.

REASON #3. The VA fails to consider the veteran's educational and occupational history.

Frequently, the individuals determining your employability are medical evaluators who lack any training as vocational experts. They base their employability assessments solely on medical standards without any regard for the veteran's educational and vocational background. How can they make an individualized determination as to employability without even asking about the veteran's educational and vocational background?

The short answer? They can't.

TDIU is a very individual analysis that must consider an individual's background. In the case of ***Gleicher v. Derwinski,*** the Court explains that when a veteran "submits a claim for a TDIU rating, the BVA may not reject that claim without producing evidence, as distinguished from mere conjecture, that the veteran can perform work that would produce sufficient income to be other than marginal." The mere fact that a veteran is under 65, recently employed, or highly educated is not decisive. Standing alone, these facts are insufficient to deny a TDIU claim.

While a veteran may be physically able to perform certain employment, their educational and vocational qualifications might not allow them to do the work. The problem? VA examiners are not trained vocational experts. Our veterans' disability benefits law firm represents disabled veterans worldwide and routinely uses vocational experts in TDIU cases. We advise obtaining an opinion from a vocational expert who can refute what the VA doctor says. These experts are trained in assessing work history and qualifications and how they relate to an individual's ability to do certain jobs.

In TDIU appeals, our veterans' disability benefits law firm challenges the VA examiners, showing that their lack of investigation into the veteran's educational or vocational background prevents them from truly establishing TDIU. I object to any VA medical opinion that denies TDIU on the grounds that it did not consider the veteran's educational or vocational background.

If you are a veteran who has been denied a claim for TDIU, don't just walk away. You may have a strong argument to win a TDIU appeal. Pick up the phone and call an experienced veterans' disability attorney.

Two Costly Mistakes Veterans Make in Filing a Claim for TDIU

Veterans make many mistakes in filing their TDIU claims. When we take over cases where previous representation has failed, we encounter these two costly mistakes time and again.

Costly Mistake #1: Maintaining Full-Time Employment

Under 38 C.F.R §4.16(a), total disability ratings for compensation may be assigned when the disabled person is unable to secure or maintain "substantially gainful occupation" because of service-connected disabilities.

Veterans granted 100 percent under TDIU are prohibited from working full time since the veteran is claiming to be unable to work on account of disability. Yet many disabled veterans continue to work full time while seeking TDIU benefits.

This is somewhat understandable. Not many veterans are willing to forfeit their income for the chance that they might receive TDIU benefits, even though working is difficult for them. Despite debilitating conditions, some veterans may be able to maintain a full-time job due to employer leniency or other accommodating factors. In addition, the veteran may feel TDIU rates cannot supply an adequate income.

A married veteran with one child receives $3,831.30 per month in TDIU benefits. However, for a veteran to be eligible for TDIU, their income must fall below the annual poverty level, and veterans applying for TDIU who are working full time will often be denied.

Though TDIU benefits do not allow full-time employment, I have had several cases over the years where the VA granted 100 percent for PTSD while a client was employed. A veteran earning an income that is below the annual poverty level can hold "marginal employment" and still be eligible for TDIU benefits.

In addition, veterans working for a family business or in a sheltered workshop (a supervised workplace for physically disabled or mentally handicapped adults) may be eligible for TDIU benefits, even if income exceeds the annual poverty level.

Another way a veteran can collect income with 100 percent TDIU is through the Vocational Rehabilitation and Employment program. Some psychiatrists prescribe vocational rehabilitation as a

therapeutic endeavor for PTSD. This is a rare and unique circumstance, and once rehabilitated, the veteran would no longer be eligible for TDIU, but it does happen.

For a veteran to prove they are earning income from "marginal employment," proof of earnings should be available, including employment contracts, tax returns, paycheck stubs, and Social Security earnings reports.

Those whose income is above the poverty level must be able to show proof of employment by a family business or sheltered workshop that provides special accommodations for the service-connected disability.

Costly Mistake #2: Using Non-Service-Connected Disability

Medical evidence that a service-acquired physical condition or a mental impairment like PTSD prevents you from engaging in "substantially gainful employment" is required to support a TDIU claim. To qualify for TDIU, veterans must have a 60-percent or higher disability rating on a single service-connected disability, or a 70-percent combined disability rating on multiple service-connected disabilities, plus at least one disability rated at least 40 percent.

The VA cannot consider non-service-connected disabilities in granting a claim for TDIU. They must construct a hypothetical analysis to determine whether a veteran's service-connected disabilities alone would prevent engagement in gainful occupation.

If a veteran's only service-connected disability is a relatively minor one that does not cancel out any work skills or educational background, and the real reason for their unemployability is a severe, non-service-connected disability, then they are unlikely to win a claim for TDIU.

However, the VA does include secondary service connection in evaluating a disability for TDIU benefits. Many veterans are unaware that their main debilitating (but non-service-connected) condition is actually physically related to a service-connected disability. For example, scientific research has associated sleep apnea, type II diabetes and cardiovascular disease, as well as a number of autoimmune conditions, with service-acquired PTSD and physical injuries.

Rather than pursuing a TDIU claim based on a non-service-connected disability, consider service connecting a condition on a secondary basis.

If the VA has approved service connection for PTSD, but your sleep apnea is what is making it difficult to work, pursue a secondary service connection relationship between the PTSD and the sleep apnea.

To prove a claim for VA compensation, you need only to establish 50-percent probability. As a veterans' disability attorney, I would not hesitate to seek a connection between PTSD and autoimmune disorder by citing a study that demonstrates a relationship between the two as evidence to establish 50-percent probability.

If you are receiving income above the poverty threshold or are suffering from a non-service-connected disability that prevents you from working, you may still qualify for TDIU benefits.

Veterans must be able to prove their employment conditions and use the relevant medical literature and scientific research to demonstrate service connection.

Death or DIC Benefits

If you qualify as a surviving spouse, child, or parent of a veteran, you may be entitled to monthly VA death benefits. If you are looking for a veterans' benefits attorney, you have most likely submitted a claim and had it denied by VA. If you believe you qualify for death benefits or Dependency and Indemnity Compensation (DIC) and your claim has been denied by VA, contact our office today at 1-888-878-9350.

What Types of Death Benefits are Available to Surviving Family Members of Veterans?

There are basically two programs that pay benefits to survivors of veterans whose deaths were service connected. These benefits are dependence and indemnity compensation (DIC) and death compensation.

Benefits can include a tax-free monetary payment for eligible survivors, a survivors' pension, educational assistance, home loans, healthcare, and educational and vocational training.

When Should I File a Claim for Death or DIC Benefits?

Keep in mind that there is no time requirement for filing a DIC claim. But if the DIC claim is received within one year of the veteran's death, the back-pay award for the benefits would go back to the first day of the month following the month in which the veteran died. Even if the claim for the underlying disability was made during the veteran's lifetime and denied, the surviving spouse can still file the claim for DIC, and the VA must consider it as a brand-new claim.

Who Qualifies for VA Death Benefits:

Surviving Spouse of a Veteran

To qualify as a surviving spouse, you must be validly married to the veteran. You must also have proof of marriage. To qualify, you must establish that you were the valid or deemed valid spouse of the veteran at the time of his death. You may also have to satisfy several other requirements such as: being married one year; have continually cohabited with the veteran during the marriage; and not have remarried after the veteran's death. Keep in mind that the one-year marriage requirement does not apply if the marriage occurred before or during the veteran's service, or if the couple had children at any time.

Can I Still Qualify for Spousal Benefits if I did Not Live with the Veteran for at Least One Year?

With respect to the requirement that you cohabitate with the veteran, there are exceptions to the co-habitation requirement if the separation was due to misconduct or the actions of the veteran. In the experience of our veterans' benefits attorneys, a veteran may be suffering from extreme cases of PTSD or other psychiatric problems which make living with him or her difficult, or impossible. A surviving spouse might also live apart from the veteran for business reasons. Therefore, a separation occurring under these circumstances doesn't have to impair a surviving spouse's ability to qualify for death benefits.

Child of a Veteran

If you are the child of a veteran, you may qualify for death benefits if you are not included in the surviving spouse's DIC, you are unmarried, meet certain age requirements, and are attending school. To receive death benefits, you will need to provide certain evidence about the veteran, their service, and their death.

Parent of a Veteran

If you are the parent of a service member who died in the line of duty or due to a service-related injury or illness, you may qualify for DIC benefits. You must be the biological, adoptive, or foster parent of the service member and have income below a certain level. To receive death benefits, you will need to prove that the cause of death was service connected.

How Does Service Connection Relate to Death Benefits?

To qualify for death benefits, the cause of death must be determined to be service connected. The service-connected disability—either by itself or in combination with another condition—needs to be the main or underlying cause of death. As a contributory cause of death, the disease must be shown to have contributed "substantially or materially" to the veteran's death. It is not enough to show that it causally shared in producing death. But it must be shown that there was a causal connection between the service-connected disability and death.

There are several situations where service-connection for the cause of death is obvious. If the veteran died in-service and the death resulted from disease or armed conflict, the VA will obviously consider the death to be service connected. Another easy case would be a situation where a veteran is receiving service-connected disability benefits for the disability that was the principal or contributory cause of death.

More difficult cases involve situations where the cause of death was not service connected prior to the veteran's death. To prove that the veteran died of a disability that should be service connected,

you must go through the typical analysis for service connection. There must be medical evidence that the veteran had a disability at the time of death, evidence of an in-service event, and a link between the disability at the time of death and the in-service event.

Why Did the VA Deny My Death Benefit or DIC Claim?

If you have been denied death benefits by the VA, you know how frustrating it can be to deal with them. Often, their denial of your claim seems arbitrary, but here are some common reasons why death benefits are denied.

1. **No service connection.** – The VA determines there is no connection between the veteran's cause of death and their military service.

2. **The surviving spouse, child, or parent does not meet the criteria for death benefits.** – As you can see, there are many criteria you must meet to qualify for death benefits. If you do not provide all the necessary paperwork, the VA will deny your claim.

3. **You did not prove you were married to and lived with the veteran for the required period of time.** – As stated above, you may still qualify for death benefits if you did not cohabitate with the veteran for at least one year, but if your reasons for living apart are not well documented, your claim can be denied.

How Can a Lawyer Help Me Get VA Death Benefits?

In general, winning these types of claims involves aggressive representation and advocacy by a veterans' benefits attorney and the utilization of highly qualified medical experts. Frequently, the actual cause of death may be misdiagnosed, and there may be a lot of evidence that is missing. That is why these cases require expert analysis by an experienced veterans' benefits attorney and review by well-qualified medical experts.

If you are the surviving spouse of a deceased veteran and your claim for DIC benefits has been denied, then I urge you to take a moment to contact our office to determine if there is something our veterans' benefits attorneys can do to help you.

Depression

Depression can be a very debilitating condition and can render one incapable of maintaining a gainful occupation. We have helped countless veterans obtain high ratings for depression. Sometimes these depression claims are the basis of a direct service-connection theory, or they involve secondary service connection. On a direct theory, the depression would have its early onset during service. On a secondary theory, depression would develop because of something that is service connected already. For example, if you are service connected for a chronic lower back issue with pain that is very debilitating and the pain produces depression, then you would be service connected for the depression secondary to the lower back condition.

Currently, secondary claims for depression constitute a large percentage of depression claims in our office. If you suffer from depression and you are service connected for other debilitating service-connected disabilities, then you may wish to consider pursuing the depression claim on a secondary basis. Regardless, winning a depression claim and obtaining the appropriate rating requires aggressive representation. If the VA cannot deny the claim, then their next strategy will be to assign an unfair rating. If you have been denied an appropriate rating for depression or another mental health disability, then you need to aggressively respond to this with an appeal.

The VA is notorious for lowballing veterans on ratings of mental disabilities. In general, if you are unable to maintain a gainful occupation and have total social impairment, then you should be rated at the 100 percent rate, assuming that you are not otherwise functioning at a high level in other areas of your life.

In addition, sometimes the key to winning these claims involves establishing the onset of depression at a time and proximity to discharge where there is an absence of intervening events that could otherwise explain the onset of depression. In other situations, a veteran may turn to drugs or alcohol during

service as a way of self-medicating for depression. In these circumstances, it can be argued that the use of drugs or alcohol represents a symptom of underlying depression that is being masked by illicit drugs or alcohol. Many times, a veteran's use of drugs and alcohol is a self-medicating attempt and in and of itself, in our professional opinion, it represents the existence of psychiatric problems.

Personality Disorders and Mental Illness

Has the Department of Veterans Affairs (VA) denied your benefits claim based on a personality disorder diagnosis? The VA is denying disability and medical benefits for soldiers misdiagnosed with personality disorder, preventing people who have risked their lives to serve our country from receiving necessary medical care. The government continues to deny legitimate claims to save billions in medical expenses.

Don't despair. There are ways to fight back. Prove your diagnosis, prepare a bulletproof case, and reclaim your right to benefits.

Military Misdiagnosis: Pre-Existing Personality Disorder

At the height of the Iraq War, the military routinely discharged countless veterans for "personality disorders." According to the Department of Defense (DoD), the military discharged 31,000 service members with a personality disorder diagnosis between 2001 and 2010. From 2001 to 2007, the military discharged over 4,000 enlisted service members per year for "pre-existing personality disorders;" these veterans were more likely suffering from the early stages of an acquired psychiatric disorder like post-traumatic stress disorder (PTSD).

The military considers personality disorders "pre-existing conditions," congenital disorders we are born with rather than disorders that develop during service. So how do many discharged veterans pass their induction examinations? Why do examiners fail to note any trace of these "pre-existing" personality disorders? Does exposure to psychiatrically traumatizing events on active duty suddenly trigger a dormant disorder?

Personality Disorder May Actually Be PTSD

Following several publications highlighting how the military saves billions of dollars by discharging Iraq and Afghanistan soldiers for personality disorders, the DoD began to acknowledge that a personality disorder diagnosis might indeed be a misdiagnosis of the early signs of PTSD.

In August 2008, the DoD changed its policies to require higher level case reviews in diagnosing PTSD, including whether the service member was deployed to a combat zone within 24 months from the time of diagnosis.

After the policy change, the number of personality disorder discharges dropped by nearly 75 percent. In 2009, the Army discharged a mere 260 soldiers for personality disorder diagnoses. During this same period, the number of PTSD cases skyrocketed. In 2008, the Army diagnosed more than 14,000 soldiers with PTSD—nearly double the amount diagnosed a year before.

The Army acknowledges that the change in policy resulted in higher numbers of PTSD diagnoses. Notwithstanding the obvious duplicity, the Army still maintains its position that it made no wrongful diagnoses prior to the policy change.

Two Steps to Reclaim Benefits with a Personality Disorder Diagnosis

If you are a veteran who was discharged for personality disorder and the VA is denying your claim because you have a pre-existing congenital problem, not an acquired psychiatric disorder, there are ways to fight back.

1. Demonstrate the absence of a present personality disorder. Hire a forensic medical examiner to evaluate your prior psychiatric history and medical records. The examiner can then determine the exact diagnosis and address any misdiagnoses obtained during your service.

When a veteran carries a personality disorder diagnosis at one point, but over time, physicians predominantly diagnose that veteran with PTSD, major depression, or some other acquired psychiatric

disability, the prior personality disorder diagnosis was likely made in error.

An immutable, congenital problem remains constant and symptomatic over time. The condition does not suddenly transform into an acquired psychiatric disability. Furthermore, personality disorders and acquired psychiatric disorders often exist concurrently, at the same time, in one patient.

The mere presence of a personality disorder does not negate the simultaneous presence of an acquired psychiatric disability like PTSD.

2. Consult with an experienced veterans' disability attorney. Locating a forensic medical examiner and explaining your needs can prove difficult for veterans who do not understand precisely what is required to prove your case. Quality veterans' disability attorneys deal in the world of VA lawyers and expert witnesses daily.

They have access to an extensive network of hard-hitting forensic experts that are accustomed to going head-to-head with VA doctors. An experienced veterans' disability attorney will ensure the development and presentation of your case is strong. Our job is to acquire evidence, manage evidence and seek out leading experts and powerful witnesses to help prove your claims.

Is There a Link Between Heart Disease and PTSD?

More and more often, I see scenarios where a veteran who obtained service connection for PTSD has a heart attack or a stroke years later. When they try to get a service connection for the heart attack or stroke, the VA denies their claim. A related situation is when a veteran who is service connected for PTSD suffers a heart attack or stroke and dies. Their surviving spouse then files a claim for service connection for the cause of death, but the VA denies that claim as well.

A common pattern in these situations is the total absence of any symptoms of heart disease during service or for many years after the veteran was in the military. Any veteran's disability lawyer will tell you that the VA uses the lack of documentation in the service treatment records and the number

of years before symptoms appear as justification to deny a VA appeal. When the VA denies a claim, these two factors are—9 times out of 10—cited as a basis for rejecting the claim.

It would help many veterans and their spouses if there were a way to link heart disease and service-connected PTSD. However, the challenge is answering the question, "What evidence exists that establishes a secondary relationship between PTSD and heart disease or stroke?"

We now have the evidence to answer this question. But before diving into it, let's first address what PTSD does inside the human body. When you have a PTSD episode, there is a sudden release of catecholamines from the adrenal glands in response to the perceived threat. This is essentially the fight or flight response and catecholamine release results in a transient but significant increase in pulse, sweating, glucose, and blood pressure.

This spike in blood pressure can be enough to burst the wall of an artery—depending on arterial condition, the presence of a clot, an arterial aneurysm, or arteriovenous malformation. So, if there is arterial wall damage or a clot, you are at risk of a stroke.

But how does this arterial wall damage or clot take place in a veteran with PTSD? Researchers have explained that PTSD results in inflammation and lipid changes that lead to arterial wall damage. Moreover, physicians also know that PTSD is associated with platelet dysfunction which can contribute to the formation of a clot. In a study that demonstrates the link between PTSD and heart disease, the researchers state, "Cardiovascular alterations associated with autonomic arousal and cardiovascular health outcomes have long been reported to be associated with PTSD or wartime traumatic exposure. People suffering from PTSD and chronic PTSD have been shown to have increases in basal heart rate and blood pressure and increased heart rate and blood pressure in response to stimuli such as loud sounds and visual slides that remind them of the trauma."

The bottom line is that PTSD, which is considered a psychiatric problem, contributes to physical problems, including heart disease and stroke. For instance, a study that included 32 Vietnam veterans with combat-related PTSD and 26 Vietnam-era veterans without combat exposure found that those with the combat-related PTSD had significantly higher heart rates. Elevated blood pressure

is an established risk factor for cardiovascular disease, according to scientific literature. So, as one study observed, the link between PTSD and hypertension may explain the reported associations between PTSD and heart disease. (See McFarlane, AC. World Psychiatry 2010 Feb; 9(1):3-10.)

Therefore, if you are service connected for PTSD and develop heart disease or have a stroke, the scientific evidence supports a secondary relationship between the PTSD and the cardiovascular event. If you are a widow(er) and VA has denied your claim for DIC, you may also be able to link a terminal heart attack or stroke to your spouse's service-connected PTSD.

The VA is notorious for denying physical disability claims that result from psychiatric conditions. To an uninformed observer, the connection between the mental and physical may not be apparent. But as a veterans' disability attorney with many years of experience, I can recount many cases where we established a link between a service-connected psychiatric disability and a physical disability.

For example, I represented a widow whose husband was service connected for PTSD. He suffered a gastric hemorrhage and died. She filed her DIC claim, trying to service connect the cause of the veteran's death. The VA denied the claim repeatedly for almost 10 years. She finally retained our veterans' benefits law firm to represent her. We successfully got her claim remanded from the U.S. Court of Appeals for Veterans Claims. On remand, we obtained an expert medical opinion that conceded that there was no known linkage between the PTSD and the gastric incident. We discovered the veteran was taking non-steroidal anti-inflammatory medication ("NSAID") along with an SSRI medication. The SSRI is a selective serotonin reuptake inhibitor. The VA prescribed the SSRI to treat the PTSD. It's a psychiatric medication.

We further learned through our investigation that combining an SSRI with an NSAID increased one's risk for a gastric hemorrhage. In other words, the two classes of medications work together to cause an increased risk of gastric hemorrhage. Our medical expert explained this concept thoroughly. As a result, the Board granted service connection for the cause of death. So, PTSD can cause many other physical health problems, and you should undertake a thorough investigation of the possible link between service-connected PTSD and any other medical issues.

Admittedly, winning some of these cases requires top-notch medical experts. Such experts are hard to find if you are trying to handle your case on your own. So, if you are trying to win a secondary service-connection claim, it is wise to hire a veterans' disability lawyer who has built relationships with experts on the medical issues of veterans.

Winning Service Connection for a Non-PTSD Psychiatric Disability Without Evidence of In-Service Psychiatric Problems

For non-PTSD psychiatric cases, proving a service connection between mental illness and military service still requires you to establish the occurrence of an in-service event linking the two. Normally, you need to have a service treatment record documenting some psychiatric complaints. At the very least, you need to have a complaint of nervous trouble noted on your separation history.

But as a veterans' disability lawyer, I know that soldiers are reluctant to report psychiatric problems. Doing so contradicts the unwritten code of machismo that permeates military culture. Complaining of issues like depression, anxiety, or even hallucinations is considered weak, and weakness is not allowed. In addition, there are situations where no psychiatric symptoms were present during service, thus making connecting psychiatric problems with military service even more difficult.

With PTSD, we can point to combat with the enemy or witnessing the death of friends to prove service connection. So how do you link a current psychiatric disability to military service when you have no record of an in-service event? What we're talking about here is non-PTSD psychiatric illnesses that cannot be linked to any external stressful events. Most advocates working with veterans to qualify for benefits would consider it impossible to establish a service connection for a non-PTSD psychiatric disability without an obvious in-service mental health complaint. However, an experienced veterans' disability benefits lawyer knows how to think creatively about how to approach the issue.

Our veterans' disability law firm recently represented a veteran who suffered from multiple psychiatric issues, including psychosis, depression, and PTSD. There were no verifiable stressors in his records; he did not have combat exposure, and there were zero psychiatric complaints noted in the

service treatment records. In fact, his service medical records contained the usual litany of common ailments such as a cough, sore throat, sore muscles, dental problems, and the usual venereal diseases. To the casual observer, there was nothing of a psychiatric nature in the service treatment records. After all, symptoms of the common cold have no significance. Similarly, the usual venereal diseases have been a ubiquitous part of military service throughout history.

Syphilis has had a deleterious impact on U.S. military personnel dating all the way back to the Revolutionary War. According to a 1944 article in the journal Modern Clinical Syphilology, WWII draftees from the southern Atlantic states had syphilis infection rates as high as 11.3 percent.

Although the exact origins of syphilis are unknown, it was first described in Europe in 1530 by Italian physician and poet Giralomo Fracastro. Throughout history, syphilis has been considered a frightening disease, and outbreaks were recorded across Europe during the Middle Ages. But during the latter part of the 20th century and early 21st century, syphilis became much less common and, as a result, many physicians are not well-versed in the progression of the disease. This lack of familiarity combined with the disease's stealthy characteristics results in many undiagnosed or misdiagnosed cases.

What makes syphilis so hard to diagnose is that it can include a wide range of symptoms over a long period of time. While syphilis can be contracted in other ways, it is primarily transmitted by sexual contact. Like other types of venereal disease, early symptoms include lesions on the penis. The second stage of the disease occurs 4 to 10 weeks after the initial infections and can include a rash on the torso, palms, and soles of the feet. Symptoms can also include fever, sore throat, malaise, weight loss, hair loss, and headache. Then, the disease can go latent for years before it moves into the third phase 3 to 15 years after the initial infection. There are different types of syphilis at this stage, but symptoms can include gummas (soft, tumor-like balls of inflammation) on the skin, bones, or liver; neurological symptoms such as poor balance, sharp pains in the legs, apathy, seizures, and dementia; and heart problems such as aneurysms.

Another problem with accurately diagnosing syphilis is that it has many symptoms in common with Lyme Disease which has become more common in the 21st century. It is also helpful to know

that although the presentation of gonorrhea and syphilis are different, the U.S. Army Medical Department has found that out of 102,334 drafted men with gonorrhea, 27,140 also had syphilis. So, roughly 1 in 5 soldiers with gonorrhea also had syphilis. The treatment is often adequate to resolve the gonorrhea, but not the syphilis, which progresses to the latent, inactive phase.

Here's where the novice advocate and the seasoned lawyer part ways. Because I have spent hundreds of hours over the years studying the symptoms of physical and psychiatric problems typically experienced by soldiers and veterans, I knew the venereal disease diagnosis was the hook upon which we would be able to hang our proverbial service-connection hat. In this case, the veteran's records documented venereal disease symptoms such as penile discharge, skin rash, swollen lymph nodes, and pain on urination. The medical corps assumed a diagnosis of gonorrhea and prescribed some pills to treat it. However, the problem persisted for some time and his records included a reference to possible chicken pox. Also, buried in the service treatment records—in almost illegible handwriting—was a notation of "r/o syphilis" but there was no evidence that the medical corps did any work up to rule out syphilis.

Because of my research, I knew that the neuro-syphilis condition typical of the third phase of syphilis includes psychiatric problems such as the ones my client was experiencing. Although this veteran had a prior veterans' disability lawyer, no one had developed the neuro-syphilis theory. So, I engaged a well-respected forensic psychiatrist who has had extensive experience treating VD cases during his time as a member of the medical corps in the Soviet military.

Due to the decline in syphilis during the latter part of the 20th century, present-day physicians usually have less familiarity with the disease and its psychiatric consequences. The strategy here involves establishing by expert testimony that our client had undiagnosed syphilis in service that progressed to the latent stage, resulting in a psychiatric pathology.

The lesson in all this is that you should analyze very carefully the service treatment records to determine if venereal disease was noted. If it was gonorrhea, there is a one in five chance that there was concurrent syphilis that may have gone undiagnosed, passing into the latent stage. In turn, this can cause neurological and psychiatric problems in the subsequent years. The syphilis-psychiatric connection should be explored in cases of mental illness. For anyone with a VA appeal for the

denial of VA benefits, great care should be taken to fully research the possible underlying diseases of any symptoms noted in the service treatment records.

As an experienced VA appeals lawyer, I realize that understanding these medical connections is not easy. There's also no easy way to gain sufficient medical proficiency to see these types of connections. It comes from years of experience.

VA Publishes Data That May Explain the Delayed Onset of Serious PTSD Symptoms in Older Veterans

As a veterans' disability attorney, I've seen the same scenario more times than I can count. A veteran files a claim for PTSD after retiring from a 30-year career with the same company. If they are fortunate enough to obtain service connection for PTSD, the VA will typically award a rating that is not consistent with their true level of PTSD disability impairment. The VA is notorious for under-rating veterans for psychiatric disabilities. This causes veterans with PTSD who are unable to work to receive less than the maximum rating. There's a reason why VA would rate a veteran too low for PTSD in these circumstances.

To the skeptics at VA, it appears as if the veteran has minimal problems. After all, they reason, if they were really that messed up, they would not have had such a successful career. The other concern pertaining to the rating is that VA may reason that since they are retired, they would not be working anyway. So, this means they are not unemployable due to the PTSD.

But a study published by VA contains clues that explain why veterans are having increased difficulties with PTSD as they age. The increase in PTSD symptoms is particularly relevant to the aging Vietnam, Korea, and WWII veterans.

The article explained several reasons why PTSD symptoms can increase with age. It mentions stressors such as retirement, increased health problems, decreased sensory abilities, reduced income, decreased social support, and cognitive impairment as being factors facing older veterans with PTSD.

In addition, the researchers observed that in early to mid-life, veterans may cope with PTSD by engaging in what they termed as "avoidance-based coping strategies." In other words, veterans may occupy themselves with work or use alcohol and drugs as a means of avoiding PTSD symptoms and coping with the mental trauma. However, when a veteran retires from work, they may not have activities to keep them mentally occupied. The result is that the veteran has nothing else going on in their life to distract them from the increasing PTSD symptoms such as depression, panic attacks, suicidal thoughts, nightmares, and flashbacks.

For some, the use of alcohol or drugs, which had been used to mask the PTSD symptoms, cause other problems that force a veteran to give them up. When this happens, they are faced with the reality of their severe PTSD symptoms such as an increase in flashbacks and nightmares or hypervigilance.

Indeed, in my practice as a veterans' disability attorney representing veterans worldwide, I have seen many examples of these situations. I can think of one veteran that I represented in a VA appeal for military sexual trauma. He had completed a successful career and upon retirement experienced an increase in his PTSD symptoms. He told me that at least when he was working, he had something to occupy his mind.

Once he retired and didn't have a job to keep his mind occupied, his PTSD symptoms became severe. His relationship with his wife deteriorated, he developed problems sleeping and had more frequent intrusive thoughts. I have also had cases where VA C&P examiners incorrectly determine that a veteran doesn't qualify for a PTSD diagnosis because they don't realize that ongoing alcohol use had been masking the PTSD symptoms and prevented an accurate diagnosis.

The other problem that makes PTSD worse for older veterans is the prevalence of co-existing medical issues. The researchers observed that PTSD was associated with a higher prevalence of other health problems such as cardiovascular disease, diabetes, obesity, and sleep apnea. These health problems, in turn, could make the PTSD worse.

Another concern is cognitive impairment. The study noted that veterans with dementia experience more severe PTSD symptoms. But on the other hand, PTSD can be a risk factor for dementia. Either

way, dementia is a reality for many older veterans. This further explains the increasing magnitude of PTSD symptoms with older veterans.

Although VA publishes this data and makes it available on its website, many of its rating decisions fail to appreciate these dynamics.

How to Win Secondary Service Connection for Physical Diseases Related to PTSD

Over the years, particularly in DIC cases, I have seen surviving relatives of veterans advance the theory that their loved one's heart disease or high blood pressure were caused or aggravated by service-connected PTSD. Usually, the VA denies these claims based on the idea that psychiatric problems are separate from physical problems. Their theory essentially is, "Psychiatric problems don't cause physical problems and vice versa." However, I have been successful in winning service connection for many of these cases on an aggravation theory. The aggravation theory of service connection is where an existing service-connected disability aggravates a non-service-connected disability and makes it worse.

As a veterans' disability attorney, I approach my clients from a holistic perspective considering how the body and brain are interconnected. No matter what disabilities my clients have, I always research possible connections between their service-connected disabilities and any other health problems.

The more research I do, the more evidence I find establishing closer links between the brain and the physical body. For example, while trying to prove the occurrence of an in-service personal assault, I retained a renowned psychiatric expert who explained how psychiatric problems can have dermatologic manifestations. In this case, the client broke out in hives when under stress. The presence of hives in the service medical records was the only evidence I had to support the occurrence of the assault, and my expert used whole brain/skin connection to corroborate the in-service stressor.

In my never-ending quest to stay on the cutting edge of law and science as it pertains to disabled veterans, I ran across a study from the journal Obesity. The article, "Association of Post-Traumatic

Stress Disorder and Obesity in a Nationally Representative Sample," researchers found a greater likelihood of obesity in people with PTSD. The study indicated a link between PTSD and obesity. This may not seem important. After all, the VA does not recognize obesity as a disability for VA purposes. (Although the American Medical Association recently categorized it as a disease.)

I believe this study is important to disabled veterans with PTSD because although obesity is not considered a "disease" and cannot be service connected, it is a health risk for numerous diseases including sleep apnea. Considering the high rate of sleep apnea in veterans with PTSD, it becomes necessary to find a method of proving service-connection for sleep apnea in the absence of sleep or breathing problems while in service.

In this regard, obesity is a well-known risk factor for sleep apnea. Thus, if a connection between the service-connected PTSD and obesity is established, then sleep apnea can, in turn, be linked to the PTSD by way of the obesity link. So, if a veteran is service connected for PTSD, but has been denied for sleep apnea, then the advocate should examine whether the veteran has gained weight and become obese. If this is the case—and gaining weight after discharge is common—then a link between PTSD and obesity should be made.

But the obesity/PTSD link has broader uses than just sleep apnea. Consider the risk of cardiovascular disease, diabetes, and metabolic syndrome that result from obesity. If a widow is making a claim for service connection for the cause of death, and her husband was service connected for PTSD, but died of a non-service-connected cardiac event, and he was obese, then this study in the journal Obesity may prove useful in this situation as well.

Moreover, diabetes has vast effects on a person's health. It is also well known that excess body fat serves as a risk factor for type II diabetes. So, if a veteran is service connected for PTSD, but later gains weight and develops diabetes, a skilled advocate should closely examine a link between obesity and PTSD and the resulting diabetes.

Similarly, I too often see advocates taking a simplistic approach to developing strategic theories for disabled veterans. I believe that a good veterans' disability lawyer is also someone who has a

great interest in science, medicine, and health. There is no substitute for good medical research; it's just as important as the legal research. Accordingly, any disabled veteran with PTSD, who also has other health problems, should closely examine whether a link can be made between their PTSD and other physical problems.

PTSD and Iraq-Afghanistan Veterans: Why the Higher Prevalence?

The VA recently published data that reveals an alarming increase in the number of disabilities affecting veterans and a rising prevalence of post-traumatic stress disorder ("PTSD"). At the same time, trends in the personal lives of the "millennial generation" of veterans may contain clues that explain the higher rates of PTSD.

Gone are the days when the average veteran had only a few fairly simple disabilities. The global war on terror has produced medically complicated cases involving multiple disabilities that often overlap and are intertwined. As a veterans' disability lawyer, I can attest to this trend from personal experience.

The VA has observed that the nature of the disabilities is now more complex, involving issues like PTSD, traumatic brain injury (TBI), diabetes and related issues, and environmental diseases.

The VA now concludes that the average veteran is listing 16 different medical conditions on their claim for benefits. This is compared with an average of 3.9 issues for WWII veterans, and 6.4 issues for Vietnam-era veterans.

PTSD Is on the Rise

What's striking about the current data is the prevalence of PTSD. Among Iraq and Afghanistan veterans, the VA reported 261,998 cases of diagnosed PTSD as of the first quarter of 2013. This rate is far higher than among any previous generation of combat veterans.

Prior to the global war on terror, commentators observed a much higher rate of PTSD in Vietnam-era veterans compared with their predecessors from Korea or WWII. Various explanations

were offered for the disparity. But now, the data suggests an even higher prevalence of PTSD amongst the current generation of veterans.

Many Explanations for Higher Rates of PTSD

Some observers have cited the chronic, low-grade violence associated with the war on terror, which involves situations where the combatants are commingled with civilians. It is suggested that this type of warfare magnifies the psychological stress on service personnel. There's no doubt that the unconventional nature of warfare plays a role.

The disparate hypotheses for the increasing prevalence of PTSD, which appears to have increased with successive generations following the Korean Conflict, suggest there may be more to the picture than meets the eye. In other words, there would be more consistency in the explanations if researchers really understood the complete picture.

PTSD in the Military vs. the General Population

Consider this: There is a wide range of responses, both behaviorally and cognitively, among trauma survivors. Research has determined that a relationship exists between psychological trauma and the development of PTSD. This is well known. But statistically, most people exposed to psychologically traumatic events do not develop PTSD. Some studies suggest that the percentage of the general population experiencing a lifetime prevalence of events capable of producing PTSD is somewhere between 50 to 90 percent. Yet, the prevalence of PTSD in the general population is only about 8 percent. One study found that the risk of developing PTSD after a traumatic event in the general population was about 9 percent.

It appears that neuroscientists have looked at personality factors to explain this disparity. With PTSD victims, neuroimaging studies also show reduced volume and activation of the hippocampus and left hemisphere of the brain. The medial pre-frontal cortex, anterior cingulate, and the pre-frontal dorso-lateral cortex also show reduced activation.

So, there are physical impairments to the brain of PTSD sufferers. So why do some individuals demonstrate a resilience to regain a normal life after trauma exposure and others do not? One researcher drew upon the experiences of WWII concentration camp survivors. The researcher, Antonovsky, coined the phrase, "sense of coherence" to explain why some prisoners of war were able to live normally despite their past trauma.

A Sense of Coherence Can Help

Apparently, people with a strong "sense of coherence" have a greater degree of resilience. In short, individuals who find positive means of coping with trauma do better. Whereas individuals that resort to self-victimization or self-pity appear to experience an intensification of negative feelings.

One researcher suggested that spirituality or religiosity may also be important in setting the stage for a positive sense of coherence. An interesting study of WWII veterans in the ***Journal of Religion and Health*** observed that, "The more a combat veteran disliked the war, the more religious they were 50 years later." It was suggested that the level of combat intensity may be related to subsequent religious activity.

Religion & PTSD

On the other hand, the more a veteran associated the combat experience with valor and victory, the less interested they were in religion. The study further found that among the WWII generation, religious behavior was high. It found that 69.1 percent of WWII veterans were church members, attending church 3.1 times per month. Those experiencing the heaviest combat still attended church 2.3 times per month.

The researchers concluded that church attendance was a much stronger cultural norm for the WWII generation than it was for their children and grandchildren. Indeed, the Pew Research Center found that the WWII generation, as a whole (not just veterans) had the highest percentage of regular church attendance. The numbers continued to decline with each successive generation.

The so-called "greatest generation" saw 75 percent of its demographic attending church regularly whereas the so-called "millennial generation" (born 1981 or later) had only 40 percent of its demographic attending church regularly.

This raises an interesting question. The children of the WWII generation were the Vietnam-era veterans. There were higher rates of PTSD among the Vietnam veterans. Is there a correlation between religiosity and resilience to psychological trauma?

We know suicide among veterans is currently at epidemic proportions. So, consider the results of one VA study from a sample of 5,378 veterans: veterans with suicidal ideation rate their spiritual health as worse than veterans without suicidal ideation. Further, among the military population, the "no religious preference" group is the largest single group.

As a veterans' disability lawyer, I have represented an enormous cross-section of the veteran population from all over the world and from every geographic region of the country. From an anecdotal perspective, I will say that religiosity appears to be higher for veterans living in the so-called "Bible Belt." Recent surveys reveal that except for Utah, the top 10 most religious states are in the South.

Thus, the data may support a correlation between rising rates of PTSD and declining religiosity. With some researchers suggesting that a sense of coherence can explain the resiliency of those who do not develop PTSD, perhaps military chaplains may play a larger role in helping to prevent future cases of PTSD. These uncanny correlations demand further research. Veterans suffering from PTSD know all too well the horrors they continue to re-experience with PTSD. In this scenario, the evidence militates in favor of society, the clergy, and individuals taking a candid look at the wide-ranging psychiatric consequences of our post-religious, post-modern culture.

As the owner of a veterans' benefits law firm dedicated to representing disabled veterans in VA appeals, I am deeply concerned about the plight of veterans suffering from PTSD, TBI, and other psychiatric problems. In our day-to-day practice handling VA appeals, we know firsthand how much more needs to be done to ensure the full recovery of those suffering from military-related

PTSD or psychiatric illness. To the professionals treating veterans with PTSD, every possibility to improve resiliency should be considered. As a veterans' disability attorney, I believe we owe it to those veterans who have sacrificed so much.

How to Overcome an Other-than-Honorable Discharge and Still Win VA Benefits

It seems as if a week doesn't go by without our office receiving a call from a veteran who has an other-than-honorable discharge. As a veterans' disability lawyer, I hear the desperation of a veteran in need of their benefits, but the VA keeps denying them because of the character of their discharge. The good news is that in many cases there are ways around the OTH discharge. In all our years of experience as veterans' disability attorneys, we know that there is an exception to this rule that is applicable in many cases.

The typical scenario goes something like this: A veteran joins the service with no problems whatsoever. They go through boot camp or are otherwise sent to a combat zone and experience something traumatic. They don't know how to deal with it and turn to drugs or alcohol to cope with the mental strain. They then get busted for some type of "misconduct" such as illicit drugs and end up with an OTH discharge. Or, for whatever reason the veteran has difficulty coping with military life and develops some psychiatric problems in service, but the medical corps calls it a personality disorder. The psychiatric problems cause them to engage in "misconduct" that is often nothing more than a symptom of an underlying psychiatric problem.

In many of these cases, the disabled veteran's life spirals out of control, and they are left with a severely disabling mental illness that causes them to be unable to work. They may suffer periods of homelessness and other problems. They desperately need financial assistance but VA refuses to grant benefits because of the character of discharge. What should a veteran do under these circumstances?

Well, they can try to upgrade their discharge, but that is often unsuccessful. The other option is to pursue the "insanity" exception. Now, "insanity" for VA purposes does not mean that you are a stark-raving lunatic; it just means that you had a psychiatric illness, which could be depression,

anxiety, adjustment disorder, bipolar disorder, PTSD, schizophrenia, somatic disorder, delusional disorder, or psychotic disorder.

Here's how it works. Basically, if you had mental illness during service at the time you committed the offenses that led to your OTH discharge, then you may be able to successfully argue "insanity" and still obtain VA benefits even though you did not have an honorable discharge.

Most of the successful cases we have had in our law firm, focused exclusively on VA appeals and veterans' disability benefits, were situations where the "misconduct" was just a symptom of the underlying mental illness. In other words, mental illness causes people to act in certain ways that can be disruptive to life in a military context. Too often the military focuses on the "misconduct" and fails to realize the veteran is suffering from an underlying mental illness.

Instead of booting the veteran out with an OTH discharge, medical assistance should be offered. For this strategy to work, you must actually have a current mental illness that had its onset during service even though it was not diagnosed for many years after service. It's not important that you were not diagnosed during service if the evidence contains enough information to allow a forensic psychiatrist to establish the early stages of mental illness at the time of service.

You want to have a forensic psychiatrist look at your service treatment records and give an opinion as to whether your current psychiatric disorder had its onset during active duty. In other words, was your "misconduct" due to mental illness? If so, you can be entitled to VA benefits even if you have an OTH discharge.

Again, the key is to have a current diagnosis with some hints of psychiatric symptoms during service. Armed with this information, retain a forensic psychiatrist to evaluate your state of mind during service. Keep in mind that if your current claim involves an ankle or knee problem, then it would be tough to win. But if the claim is for a psychiatric condition, then it is more likely to be successful.

Over the years, as veterans' disability lawyers, we have been successful in obtaining service

connection for numerous veterans with other than honorable discharges. These cases can be won so long as you have the right facts, experts, evidence, and VA appeals lawyer.

Diabetes

Diabetes is a serious health condition that, when not properly managed, can lead to serious injury and the development of other issues. If you are suffering from diabetes that was caused by an event, injury, illness, or exposure during your active service or is a secondary condition to one, then you could qualify for significant VA disability benefits. To be eligible to collect VA disability compensation for diabetes, you must prove that you are currently diagnosed with diabetes, and that your diabetes is connected to your qualifying service in the U.S. military.

To prove your current diagnosis, you may submit your own medical records to the VA, which must effectively demonstrate the following:

- The date your diabetes began and what treatment you receive for it.
- The medications and diet restrictions needed and if exercise has been recommended.
- A discussion, as applicable, concerning prior and current episodes of hypoglycemic reactions or ketoacidosis, and whether they required hospitalization, and if so, how often.
- A complete description of any complications resulting from the diabetes condition, such as renal, vascular, cardiac, vision, neurologic, amputation, and other related complications.

If the private medical evidence you provided does not fulfill the above, the VA may require you to undergo an examination, generally a Compensation and Pension Exam (C&P Exam). Providing the VA with comprehensive evidence in your initial application supports the accurate rating of your condition, directly impacting the compensation you receive.

The most frequent type of diabetes that we see in our practices involves type II diabetes, or adult-onset diabetes. Sometimes it is called diabetes mellitus. The reason for this is because this disease is associated with Agent Orange exposure. Therefore, if you can establish your presence on the ground

in Vietnam during the Vietnam War, your entitlement to service connection for diabetes will be automatic. So, frequently, litigation involving type II diabetes in individuals who believe they were exposed to Agent Orange involves proving that they were in fact exposed to Agent Orange.

Most of these cases involve individuals who cannot prove that they were on the ground in Vietnam, but were otherwise exposed either in other capacities or in other parts of the world. In those cases, the determinative issue involves proving exposure rather than proving the connection between the herbicides and the type II diabetes. The VA has already conceded medical science establishes a link between type II diabetes and exposure to herbicides.

However, there are other cases involving diabetes that are unrelated to Agent Orange exposure. These cases typically involve individuals who served long after the end of Vietnam era and who were not in a location known to be contaminated with Agent Orange. These cases will usually involve situations where the veteran believes that the early onset of their diabetes occurred during active duty but was not officially diagnosed until many years later. In these cases, strong forensic medical evaluations are required to carefully assess notations in the service treatment records that could be interpreted as the early symptoms of type II diabetes.

There are numerous prediabetic conditions and symptoms that may frequently be missed by the average member of the medical corps during active duty. In addition, there is scientific research to indicate that the average type II diabetic case goes undiagnosed for a number of years before it is actually diagnosed by the medical profession. So, if you are officially diagnosed with type II diabetes within a short time frame following active duty, and assuming it is beyond the one-year period following active duty, then a fair question would be whether this condition was undiagnosed during active duty.

In other cases, there may not be overt signs of diabetic symptoms during service, but there may be other medical factors that would suggest the presence of metabolic syndrome during service, which is something that would lead to type II diabetes. In our experience, we would typically look for significant weight gain during service, elevated cholesterol, and elevated blood pressure during service. These factors would allow a forensic evaluator to determine that there was an existence at the time of active duty of some form of metabolic syndrome. Although this is a cutting-edge area of

litigation right now, it is our professional opinion that significant weight gain is a predisposing risk factor for the development of type II diabetes. Therefore, many individuals who were in the weight reduction program during service and were later diagnosed with type II diabetes may be able to pinpoint their type II diabetes to the weight gain that occurred during active duty. The point is that with non-Agent Orange type cases involving type II diabetes, a careful analysis must be undertaken to determine the exact time of onset of type II diabetes.

The other concerns with diabetes involve increased rating claims. To get into the upper range of the rating scale for service-connected diabetes, a veteran must demonstrate that they are on insulin and that a doctor has prescribed regulation of activities. Otherwise, it is advisable that the veteran look to determine what additional secondary problems they are experiencing because of diabetes and then try to get ratings for those separate conditions on a secondary basis. For instance, we recently had a case in the office involving a veteran who died of pancreatic cancer.

Although he was in Vietnam, pancreatic cancer is not on the presumptive list of things associated with Agent Orange exposure. However, research indicates that there is a link between diabetes and pancreatic cancer. So, under these circumstances, a veteran, rather than seeking a higher rating for diabetes, would want to obtain a separate rating for the residuals of pancreatic cancer, secondary to diabetes. Other diabetic problems include peripheral neuropathy and diabetic retinopathy. Diabetes can also cause a host of cardiovascular problems which can result in heart disease and stroke. Erectile dysfunction is also a factor in type II diabetes cases. In short, if you are seeking an increased rating for your service-connected diabetes, you will want to ascertain all additional disabilities that can be linked to diabetes. Recently, we have seen some cases involving kidney cancer secondary to diabetes and some novel research that tends to show at least a correlation between those two factors.

Exposure to Agent Orange

If you were exposed to Agent Orange in Vietnam, you have undoubtedly had a long hard fight trying to get the benefits you deserve. There is no firm data on how many U.S. service members were exposed to Agent Orange, but the backlog of Agent Orange veterans' disability cases at the VA is estimated to be about half a million. We've talked to many Vietnam and Korea veterans who

firmly believe VA is prolonging the disability claims process in the hopes the veteran will die before they get benefits. We'll do everything in our power to make sure they don't do that.

If the VA or Board of Veterans' Appeals has denied your claim for a disease related to Agent Orange exposure, call our office at 1-888-878-9350 to learn more about how we can help you.

How to Qualify for VA Benefits for Agent Orange Exposure

The VA presumes service connection if you have any of 19 specific diseases related to Agent Orange exposure. To establish service connection and get disability benefits, you need to provide:

1. A medical diagnosis of a disease which VA considers a result of Agent Orange exposure

2. Proof of service in Vietnam or the Korean DMZ or exposure to Agent Orange in another location

3. Medical evidence that the disease began within the deadline (if any)

If a veteran has a disease that is not on the list, they can still make a claim for disability benefits. However, they must prove that Agent Orange caused their disease. For example, if the veteran has a form of cancer that is not on the list, but their oncologist says the cancer was a unique type of cancer that could only come from exposure to Agent Orange, then the veteran would have a basis for a claim. In deciding claims for disability benefits due to Agent Orange exposure, the VA cannot simply disregard a claim because it is not on the presumptive list of Agent Orange diseases. The VA must take further steps to analyze whether the disease in fact came from exposure to Agent Orange.

Additionally, there may be other diseases that might be associated with Agent Orange exposure. Just because your disease is not on the list of Agent Orange diseases, it doesn't mean you can't prove a service connection. A case like this would be analyzed under the normal criteria for service connection. For instance, if your service medical records have a treatment note describing the early symptoms of the current diagnosed disability, then you may be able to make the benefits claim on a direct basis.

Why Did the Board or Regional Office Deny My Disability Benefits Claim for Agent Orange Exposure?

The VA usually sides with their doctor over a private doctor or any doctor that writes a medical report in favor of a veteran. Over the years, we have seen a litany of standard reasons why the VA denies disability claims such as:

- "The Board finds the VA examiner's report to be more probative. He reviewed the claims file and provided a detailed rationale for his decision. The private doctor did not review the claims file and thus his report is less probative."
- "The medical evidence of record indicates that 24 years have elapsed since discharge and the first documentation of a claimed disability."
- "The Board has carefully considered the veteran's statements and his opinion that his disability was caused by service. While the veteran may sincerely believe there is a connection, he is not a doctor and therefore not competent to offer opinions on questions of medical causation or diagnosis."
- "The service medical records reveal no treatment for or complaint of the claimed condition during service. The condition was not shown during service or for many years thereafter. Thus, in the absence of any evidence of a nexus to service, service connection must be denied."
- "The veteran's separation physical exam showed normal findings on clinical examination."

What Should I Do if my Claim for Agent Orange Exposure is Denied by the VA?

Hopefully, if you've read this far, you're beginning to realize that you have options if your claim for disability benefits due to Agent Orange exposure has been denied.

VA's "presumptive policy" simplifies the process for receiving compensation for a number of diseases since "VA foregoes the normal requirements of proving that an illness began during or was worsened by your military service." What they don't tell you is that if your disease is not "on the list" of approved presumptive diseases, then VA will deny you. Also, if you cannot establish "boots on the ground" in Vietnam, or at the DMZ, then the VA will deny you on the grounds that you were

not actually exposed to Agent Orange. Sometimes the VA will grant you benefits for Agent Orange or herbicide diseases but assign a rating that is too low.

If your claim has been denied for any of these reasons, you should hire a qualified veterans' disability benefits lawyer who can help you appeal the decision and make the case for why you deserve disability benefits.

Continued Changes in Medical Science and VA Regulations Bolster Veterans' Appeals

The recent news from Institute of Medicine's biannual review of evidence provides further proof that veterans should never give up on their claims or appeals. As time goes on, changes in the law occur, and they can eventually lead the veteran to a successful outcome.
As a veterans' disability attorney who has been practicing for a significant amount of time, I have seen continual changes and additions to the Agent Orange list over the years.

My hope is that the VA eventually adds pancreatic cancer to the list as well. All too often, I've seen veterans lose their lives to pancreatic cancer—veterans with no risk factors for the disease other than Agent Orange exposure. The VA currently denies these claims, saying there is no scientific evidence linking Agent Orange exposure to pancreatic cancer.

Winning Veterans Benefits for Pancreatic Cancer Due to Agent Orange Exposure

For many disabled veterans who were exposed to Agent Orange, winning service connection for a disease not presumed to be caused by Agent Orange exposure seems like an impossible task. Often, these veterans call our veterans' benefits law firm because they have various forms of cancer and other rare diseases that VA says are not known to come from Agent Orange exposure. Without professional guidance from a veterans' disability lawyer, these veterans too often see their claims unfairly denied.

However, many of these cases can be won. Each case is different, and a carefully crafted legal and medical strategy is needed to win these types of cases. Our veterans' benefits law firm had a case where we were able to win service connection for a veteran diagnosed with pancreatic cancer,

which is not on the VA list of diseases known to result from Agent Orange exposure.

In Agent Orange cases where the disease is not on the list, you need strong medical and scientific evidence to make your case. If you are trying to win service connection due to Agent Orange exposure to a disease not on the Agent Orange list, then you need to show that the unique features of your disease and how it manifests in your life compels the conclusion that the disease could only have come from exposure to a toxin like Agent Orange.

The veteran served in Vietnam and so his exposure to Agent Orange was presumed. But his combat exposure in Vietnam also resulted in the veteran's delayed-onset PTSD, for which VA granted service connection.

In August 2001, his blood sugar was found to be more than 300 mg/dL when the normal range is 100 – 14 mg/dL, so the doctors diagnosed him with diabetes. About two weeks later, the veteran was diagnosed with obstructive jaundice and at that time he was diagnosed with pancreatic cancer. Two weeks later, he died. The death certificate noted pancreatic cancer and pulmonary embolism as the cause of death.

The time from the veteran's initial diagnosis of diabetes to his death was only 26 days. His widow filed a claim for service connection for the pancreatic cancer that caused his death. She argued two primary theories. First, she argued that the pancreatic cancer was due to Agent Orange exposure. Second, she argued that the pancreatic cancer was caused by diabetes.

The VA denied her claim on both grounds. The VA asserted that pancreatic cancer was not shown to be caused by Agent Orange exposure, and it noted that there were no signs of pancreatic cancer in the veteran's service treatment records. Also, the VA medical examiners said that diabetes did not cause the pancreatic cancer because the diagnosis of diabetes had existed for only two weeks prior to the pancreatic cancer. So, the VA denied the claim for pancreatic cancer.

Our client appealed the initial denial. She hired two prominent veterans' disability lawyers to assist her, but the VA continued to deny the claim. To make a long story short, the claim was on appeal for about 14 years until we helped her win the claim for service connection for the cause of death.

After the first two lawyers struck out, the widow finally hired our veterans' disability law firm to represent her in the appeal at the U.S. Court of Appeals for Veterans Claims. We were successful in getting the Board's decision overturned and remanded back to the Board for review.

After the Court returned the case to the Board, we developed new and additional evidence. We undertook further research and discovered that in 1994 the veteran had had his blood sugar checked. The test showed a blood sugar of 166 with high cholesterol and triglycerides.

We then hired a medical expert who wrote an extensive opinion explaining that a blood sugar of 166 makes the case for a diagnosis of diabetes. We further addressed the scientific literature that discussed the average time a person has type II diabetes before it gets diagnosed.

The medical expert then explained that a diagnosis of pancreatic cancer 7 years or more after a diagnosis of diabetes usually means diabetes caused the cancer. On the other hand, a diagnosis of diabetes within 5 years before a diagnosis of pancreatic cancer is the other way around and usually means the cancer caused the diabetes.

In this case, the laboratory test showed that the veteran had diabetes, which went undiagnosed for 7 years prior to the diagnosis of pancreatic cancer. Somehow, the blood tests showed a blood sugar of 166 but no one recognized it and officially diagnosed diabetes. Nevertheless, in hindsight, our medical expert was able to conclude that the blood sugar of 166 meant that he had diabetes 7 years prior to his pancreatic cancer diagnosis. Thus, based on the scientific literature, the diabetes—caused by Agent Orange exposure—caused this veteran's pancreatic cancer, which, in turn, caused his death.

The Board of Veterans' Appeals did not immediately fold and grant the claim. They referred the matter to a Veterans Health Administration examiner for another medical opinion. In other words, the VA was trying to get evidence against the claim.

Not surprisingly, the VA doctor returned an opinion against the claim. He argued that the blood sugar reading of 166 in 1994 didn't mean anything because there was no evidence that it was a fasting blood sugar.

Not to be outdone, we retained a second high-powered medical expert to refute the VA doctor. The expert noted that the blood sugar was done prior to 9 AM and along with a cholesterol and triglyceride test. The medical expert explained that these tests are meaningless if done without fasting. So, he reasoned that the 1994 blood test presumably was a fasting blood sugar test.

Based on this theory, the Board of Veterans' Appeals granted service connection for the cause of death after 14 years on appeal. In the end, we prevailed. We established service connection for the cause of death for pancreatic cancer due to Agent Orange exposure—even though pancreatic cancer is not on the Agent Orange list.

This represents a case study in how the unique circumstances of a case can lead an experienced veterans' disability lawyer to win service connection as a result of Agent Orange exposure for a disease that is not on the list of Agent Orange diseases. Admittedly, these cases can be complicated and expensive to prove. It cost our veterans' disability law firm thousands of dollars in medical expert fees to win this case. But the result is worth it for this widow. She will receive a high 6-figure back paycheck and a monthly compensation check going forward.

How to Win VA Benefits for Obesity

In August 2021, the U.S. Federal Circuit Court of Appeals held that veterans may claim obesity as a service-connected disability for VA benefits if the obesity impairs the veteran's earning capacity.

In the landmark *Larson v. McDonough* decision, the Court held that a disability can be service connected even when it isn't listed on the VA rating schedule. The only requirement is that the condition causes a "functional impairment of earning capacity," making it possible for veterans to collect VA benefits for obesity and other conditions left off the rating schedule.

This means veterans can also use obesity to establish secondary service connection for numerous related conditions, including diabetes, heart problems, sleep apnea, depression, and PTSD.

Around 35 percent of U.S. adults are considered obese. The World Health Organization and the

American Medical Association recognize obesity as a disease characterized by an excessive buildup of adipose tissue in the body to the point that presents a health risk. Excess adipose tissue places metabolic, hormonal, and physical restraints on body function, adversely affecting multiple body systems.

Excess fat buildup in the body is the result of the consumption of more calories than needed for body function. Many mental and physical factors can lead to excess calorie consumption or lessened calorie metabolism. Genetics may play a role, but research suggests environmental and behavioral influences are leading contributors to obesity.

Obesity shows up in U.S. veterans more frequently than in the general population. VA estimates that around 78 percent of military veterans are overweight or obese. Nearly 8 out of 10 veterans will face health problems caused by obesity.

Why the higher numbers among veterans? Military service exposes individuals to numerous events that civilians will never experience. Many of these events have been associated with the development of obesity, including exposure to psychological trauma and exposure to toxins from pesticides, burn pits, water contamination, military vaccines, and other sources. Obesity can also be caused by medications used to treat PTSD, depression, or other service-related health conditions.

Overconsumption of calories can serve as a coping mechanism in patients suffering from depression, anxiety, PTSD, and other mental conditions. Exposure to chemical toxins can alter the body's metabolic pathways, leading to inefficient metabolism.

Individuals diagnosed with obesity are at higher risk for numerous health problems, including (but not limited to): acid reflux, arthritis, breast cancer, cataracts, chronic fatigue, herniated discs, chronic pain, colon cancer, depression, type II diabetes, esophageal cancer, fatty liver disease, gallbladder disease, gout, heart disease, hernias, hypertension, knee pain, lower back pain, metabolic syndrome, osteoarthritis, plantar fasciitis, polycystic ovaries, prostate cancer, sleep apnea, stroke, and varicose veins.

If you can obtain service connection for obesity, you may be able to obtain secondary service connection for any health conditions associated with your service-connected obesity. For example, if you are service connected for obesity, but have been denied benefits for heart disease, you can file a claim for heart disease benefits secondary to the obesity.

Establishing service connection for obesity is critical to getting the health-care benefits and financial compensation you deserve. To collect VA benefits for obesity, you must show that you currently have a BMI of 30 or greater, that the obesity is associated with your time in service, and that your obesity functionally impairs your earning capacity.

Associating obesity with service is difficult. In most cases, you will need to provide a medical expert's written opinion that includes references to scientific literature showing that your exposure to a traumatic event or a chemical toxin is "as much as likely as not" to have caused your obesity. To show functional impairment of earning capacity, you will need to provide evidence that your obesity affects your ability to perform certain tasks required to earn a paycheck.

Sometimes a veteran does not develop full-blown obesity during service. But often, they will begin to gain weight during service. The weight gain continues steadily after service until the veteran is so overweight and obese that they begin developing serious health problems. It is important to demonstrate the upward trajectory in weight when trying to establish an in-service onset to obesity issues.

Often, obesity is part of metabolic syndrome. We have had many cases in our office where our theory for winning service connection was based upon the in-service origins of metabolic syndrome, which is characterized by high blood pressure, high triglycerides, and being overweight. This often leads to type II diabetes and heart disease in the years after service.

Gulf War Veterans

Gulf War Veterans may receive disability compensation for chronic disabilities resulting from undiagnosed illnesses and/or medically unexplained chronic multi-symptom illnesses defined by

a cluster of signs or symptoms. A disability is considered chronic if it has existed for at least six months.

The undiagnosed illnesses must have appeared either during active service in the Southwest Asia Theater of Operations during the Gulf War period of August 2, 1990, through July 31, 1991, or to a degree of at least 10 percent at any time since then through December 31, 2011. This theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

Examples of symptoms of an undiagnosed illness and medically unexplained chronic multi-symptom illness defined by a cluster of signs and symptoms include: chronic fatigue syndrome, fibromyalgia, irritable bowel syndrome, fatigue, signs or symptoms involving the skin, skin disorders, headache, muscle pain, joint pain, neurological signs or symptoms, neuropsychological signs or symptoms, signs or symptoms involving the respiratory system (upper or lower), sleep disturbances, gastrointestinal signs or symptoms, cardiovascular signs or symptoms, abnormal weight loss, and menstrual disorders.

Presumptive service connection may be granted for the following infectious diseases: Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), Malaria, Mycobacterium tuberculosis, Nontyphoidal Salmonella, Shigella, Visceral leishmaniasis, and West Nile virus. Qualifying periods of service for these infectious diseases include active military, naval, or air service in the above stated Southwest Asia theater of operations during the Gulf War period of August 2, 1990, to July 30, 1991, or active military, naval, or air service on or after September 19, 2001, in Afghanistan.

PACT ACT

On August 10, 2022, President Biden signed the PACT Act into law, making several important changes to the VA system. The PACT Act aims to offer faster, more comprehensive benefits and healthcare for veterans and others who have been injured by toxin exposure related to military service.

In the past, veterans and others exposed to toxins on military bases or other contaminated areas found it nearly impossible to get financial compensation or healthcare benefits for illnesses caused by those toxins. Toxin exposure was hard to prove and proving that toxin exposure caused an illness was equally difficult. Service connection for toxin exposure was rare.

But extensive scientific research and increased awareness have boosted the knowledge surrounding toxin exposure and illness, primarily involving toxins associated with burn pit smoke and fumes, Camp Lejeune drinking water, radiation, and Agent Orange.

The *Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act* (PACT Act) was signed into law to help veterans exposed to toxins get the funds and treatment they deserve. Through the PACT Act, veterans and others who meet certain criteria will automatically qualify for VA benefits and healthcare to help compensate and treat toxin exposure.

The PACT Act introduces several changes to the VA claims process, presumptive disease lists, and eligible service dates and locations for Afghanistan, Iraq, and Vietnam-era veterans. Even if you already receive VA benefits, or have been denied benefits in the past, you may qualify for financial compensation and healthcare benefits under the PACT Act.

Four areas of coverage are included, each with its own data and location requirements and presumptive disease lists: Burn Pit Exposures, Camp Lejeune, Gulf War and Southwest Asia, and Vietnam Era.

To receive PACT Act benefits, claimants in each area of coverage must meet two requirements:

- Date and location requirements, and
- Diagnosis with a disease on the presumptive list

Burn Pit Exposure PACT Act Criteria

Dates and Locations of Burn Pit Exposures: on or after September 11, 2001, in Yemen, Uzbekistan, Syria, Lebanon, Jordan, Egypt, Djibouti, Afghanistan, or the airspace above these locations; and on

or after August 2, 1990, in the United Arab Emirates, Somalia, Saudi Arabia, Qatar, Oman, Kuwait, Iraq, Bahrain, or the airspace above these locations.

Under the PACT Act, there is no longer a 10-year limit on manifestation of symptoms.

Burn Pit Presumptive Diseases List:

- Sarcoidosis
- Respiratory cancer
- Reproductive cancer
- Pulmonary fibrosis
- Pleuritis
- Pancreatic cancer
- Neck cancer
- Melanoma
- Lymphoma
- Lymphatic cancer
- Kidney cancer
- Interstitial lung disease
- Head cancer of any type
- Granulomatous disease
- Glioblastoma
- Gastrointestinal cancer
- Emphysema
- Constrictive bronchiolitis or obliterative bronchiolitis
- Chronic sinusitis
- Chronic rhinitis
- Chronic obstructive pulmonary disease
- Chronic bronchitis
- Brain cancer
- Asthma (diagnosed post-service)

Camp Lejeune PACT Act Criteria

Under the PACT Act Camp Lejeune Justice Act, you can file a Camp Lejeune lawsuit against the U.S. government if you meet the requirements listed below.

Dates and Locations of Camp Lejeune Toxic Water Exposure: Marine Corps Base Camp Lejeune for at least 30 consecutive days between August 1, 1953, and December 31, 1987; and North Carolina's Marine Corps Air Station New River for at least 30 consecutive days between August 1, 1953, and December 31, 1987.

Camp Lejeune Presumptive Diseases List:

- Systemic sclerosis
- Renal toxicity scleroderma
- Scleroderma
- Parkinson's Disease
- Neurobehavioral disorders
- Non-Hodgkin's lymphoma
- Myelodysplastic syndrome
- Miscarriage
- Multiple myeloma
- Infertility
- Liver cancer
- Lung cancer
- Leukemia
- Hepatic steatosis
- Kidney cancer
- Female infertility
- Cardiac defects
- Esophageal cancer
- Breast cancer
- Birth defects
- Bladder cancer
- Aplastic anemia

Gulf War and Southwest Asia PACT Act Criteria

Dates and Locations of Gulf War and Southwest Asia Toxin Exposures: active duty from August 2, 1990 to the present in the Persian Gulf, Red Sea, Arabian Sea, Gulf of Oman, Gulf of Aden, United Arab Emirates, Saudi Arabia, Qatar, Oman, the neutral zone between Iraq and Saudi Arabia, Kuwait, Iraq, Bahrain, or the airspace above these locations; cleanup teams or nuclear response teams at the Enewetak Atoll from January 1, 1977 to December 31, 1980; cleanup teams or nuclear

response teams at the Palomares, Spain, B-52 plane crash from January 17, 1966 to March 31, 1967; and cleanup teams or nuclear response teams at the Greenland, Thule Air Force Base B-52 plane crash from January 21, 1968 to September 25, 1968.

Gulf War & Southwest Asia Presumptive Diseases List:

- Myalgic encephalomyelitis
- Chronic fatigue syndrome
- Gastrointestinal disorders (functional)
- Fibromyalgia
- Cancers of the bile ducts, bone, breast, colon, esophagus, gallbladder, liver (primary site, but not if cirrhosis or hepatitis B is indicated), lung (including bronchioalveolar cancer), pancreas, pharynx, ovary, salivary gland, small intestine, stomach, thyroid, urinary tract (kidney/renal, pelvis, urinary bladder, and urethra)
- Leukemia (except chronic lymphocytic leukemia)
- Lymphomas (except Hodgkin's disease)
- Multiple myeloma (cancer of plasma cells)

Vietnam Era PACT Act Criteria

Dates and Locations of Agent Orange Exposure: Thailand (all U.S.and Royal Thai military bases) from January 9, 1962 to June 30, 1976; American Samoa or Guam (and territorial waters) from January 9, 1962 to July 30, 1980; Johnston Atoll (off or on ship) from January 1, 1972 to September 30, 1977; Korean Demilitarized Zone from April 1, 1968 to Aug 31, 1971; Laos from December 1, 1965 to September 30, 1969; Cambodia (Kampong Cham Province, Krek, Memot) from April 16, 1969, to April 30, 1969; Vietnam and Blue Water Navy (within 12 miles) from January 9, 1962 to May 7, 1975; and C-123 Airplanes (ground maintenance, crew, flight of listed C-123s) from 1969 to 1986.

Agent Orange Presumptive Diseases List:

- Soft tissue sarcomas
- Respiratory cancers
- Prostate cancer
- Porphyria Cutanea Tarda

- Peripheral neuropathy, early onset
- Parkinsonism
- Parkinson's Disease
- Non-Hodgkin's lymphoma
- Multiple myeloma
- Ischemic heart disease
- Hypothyroidism
- Hypertension
- Hodgkin's disease
- Diabetes Mellitus Type II
- Chronic B cell leukemias
- Chloracne
- Bladder cancer
- AL Amyloidosis
- Monoclonal gammopathy of undetermined significance (MGUS)

In addition to expanding eligibility for VA benefits and health care due to toxin exposure, the PACT Act includes many other provisions aimed at increasing VA efficiency. The passing of the PACT Act is a momentous victory for veterans across the U.S.

Heart Disabilities and Other Cardiovascular Conditions

Heart disabilities can be very disabling and potentially life threatening. If the VA has denied you for a cardiovascular disability or has provided a rating that is too low, then you may want to consider an appeal. Cardiovascular disabilities include ischemic heart disease, hypertension, and other conditions affecting the cardiac system. These conditions can produce secondary effects that can cause stroke and/or heart attacks, which can be very disabling. The VA has added ischemic heart disease as a disability associated with Agent Orange exposure. This represents a large area of litigation. The resulting coronary artery bypass surgery that can come from this condition is also associated with Agent Orange exposure.

A lot of veterans do not know, however, that there is documented scientific evidence linking cognitive decline to coronary artery bypass grafting surgery. This means that if you are service connected for ischemic heart disease and underwent a coronary artery bypass procedure, and you

have suffered cognitive and mental decline, a secondary service-connection claim should be made for mental deficiencies. This is also crucial if you are making a claim for total disability. For instance, you might if you are rated 60 percent disabled for a heart condition, but the VA says you are merely disabled from sedentary work. If your mental alertness has declined significantly following the heart surgery, making it so you cannot do any sedentary work, then this must be considered when making a claim for total disability. If the VA grants you 60 percent for one disability under the heading of a heart disability and you are not able to work, then you should also make certain that the VA decides a claim for total disability at the same time.

If you have been denied service connection for a heart disability, or VA has rated you too low for a cardiac disability, then I invite you to contact our office to discuss how we may be able to assist you.

Multiple Chemical Sensitivity Syndrome

Multiple Chemical Sensitivity syndrome is a condition that is caused by exposure to toxins. As explained by OSHA, Multiple Chemical Sensitivities (MCS) is “a highly controversial issue.” MCS is defined as “an adverse physical reaction to low levels of many common chemicals.” The body develops a sensitivity to any type of synthetic products causing a person to react in serious ways when exposed. We have seen cases where the sensitivity to different substances continues to become more and more pronounced over time. We have seen veterans who have virtually had to sleep on steel-spring bed frames without mattresses as a result of the sensitivity they experience to chemicals.

We have also seen people suffer from organic brain diseases and psychotic delusional disorders because of toxic exposure. These can be very serious medical conditions that can drastically alter the way you live your life. Many veterans with severe cases of Multiple Chemical Sensitivity syndrome must live in a proverbial bubble to avoid being affected by the synthetic substances that are all around our environment.

Symptoms reported by sufferers of MCS syndrome include: Skin problems, migraine headaches, difficulty breathing, red or watery eyes, nausea, fast or irregular heartbeat, swollen lymph nodes, and muscle and/or joint pain.

Winning a case like this requires aggressive representation and very careful selection of well-qualified medical and scientific experts. Winning a difficult case involving Multiple Chemical Sensitivity syndrome requires a very devoted and coordinated legal team. In many of these cases, the effects of these chemicals can be delayed and there can be a hiatus between exposure in service and the onset of symptoms many years later. This hiatus in symptoms is used by the VA to suggest that the condition was due to something that happened after service.

A good understanding of the typical case involving Multiple Chemical Sensitivity syndrome is important when developing a strategy in a case of this nature. The VA typically does not understand these intricacies, or they purposely ignore them, by focusing on factors that they think are plausible to justify a denial.

When evaluating these cases, we typically look for telltale signs of the beginnings of a problem during active duty. Good medical and legal research is often needed to prevail in these cases, and our team of lawyers, medical experts, and investigators has been successful on many occasions.

A recent win for one of our clients illustrates how chemical exposure cases can be won. This is an actual case from our case files. The veteran's real name is used with his permission. Here's his story:

Marine Sergeant's Vieques Exposure: Agent Orange, Uranium, Carcinogens

As a young Marine Sergeant, Hermogenes Marrero[1] was stationed at the Navy's Camp Garcia in Vieques, Puerto Rico, which was closed in 2003, after a horrifying history spanning over half a century. From the use of the infamous Agent Orange and uranium to dangerous chemical weapon drills, the marines who served at Vieques, were exposed to some of the most hazardous materials imaginable, including the carcinogenic trioctyl phosphate, among other deadly substances.

When my client was appointed to his post in Vieques, he was not informed about the level of

1 Mr. Marrero consented to our public disclosure of his case details and appeared with this author in the German Public Television documentary, *Kings In Paradise*, which featured Mr. Marrero and his case.

danger he would be exposed to. But he would soon learn about the consequences of the exposure, as he went on to develop a ghastly series of serious medical conditions following his service and, as we have now proved, because of the nature of his work at Vieques.

Veteran Marrero: Nearly Blind, Cancer, Heart Disease – VA Said Not Our Problem

Nearing 65 at the time, Marrero is almost blind, needs a wheelchair and an oxygen tank, suffers from Lou Gehrig's disease, and has a host of other maladies from cancer to heart disease.

Between 1970 and 1972, when his job consisted of assisting officers during the testing of hazardous airborne chemicals on animals, he would often ask the camp's chemical experts whether what he was doing was safe. "It's safe, you'll be O.K., kid," they used to tell him. But in the end, it was far from safe, and he is now far from OK as a result.

According to Dr. John Wargo, an expert on the effects of toxic exposures on humans, Vieques "is probably one of the most highly contaminated sites in the world." Wargo has also explained that this is a result of "the longevity of the chemical release, the bombs, the artillery shells, chemical weapons, biological weapons, fuels, diesel fuels, jet fuels, flame retardants," which have been released on the island.

Veterans' Lawyer Eric Gang "Massive Victory for Veterans' Community"

Despite the abundance of evidence regarding Marrero's ordeal, the VA spent over a decade refusing his disability claims. He was the star witness in a large-scale lawsuit by some 7,000 inhabitants of Vieques Island, who claimed they had been getting sick because of what was happening at Camp Garcia.

Recently, my client's claim was finally approved. This doesn't have much of the flavor of victory for Hermogenes Marrero, a sick and aging man whose life has been ruined by his service to our country. But it is a massive victory for the community of veterans as a whole, and for the people of Vieques. This determination of service connection represents vindication, and every individual whose rights have been violated will now know that there is hope of being heard and compensated.

Both Mr. Marrero and I are dedicated to helping those affected. As he dedicates the rest of his life to help those who have suffered because of Vieques' toxicity, I am personally determined to assist everyone I can in receiving the benefits the military should have granted them decades ago.

It is shameful that the VA has worked so hard to try to deny that Vieques was one of the most covertly dangerous spots on U.S. soil. With every individual that comes forward, more light will shine on this dark chapter of our military history.

Other Toxic Sites

When we were able to obtain disability benefits for my client Hermogenes Marrero after 14 years of rejected appeals, we set an important precedent. Marrero had been stationed at Vieques Island, one of the highest toxicity U.S. military sites on the planet.

Although the government has abundantly recognized that highly toxic substances were being handled and released on the Vieques camp, disability claims continue to be denied by the VA.

While researchers and physicians from the most prestigious institutions have concluded that people exposed to such toxicity routinely develop life-threatening conditions, this is seldom enough to prompt a favorable decision from the VA.

Unfortunately, there is a long road ahead until all our veterans receive the medical attention and compensation they deserve. In the case of Vieques, as mentioned earlier, thousands of islanders filed a lawsuit with Marrero as the prime witness, but the Court ruled against them. Beyond the lovely Puerto Rican island, there are many other infamous former military sites.

Like Vieques, the Enewetak Atoll in the Pacific Ocean was the site of extensive bomb testing, in this case, nuclear bomb tests. The case of Tim Snider, a former Air Force radiation technician, reminds us once more why we must keep fighting for the often forgotten veterans who unknowingly put their lives at risk while working in polluted environments and manipulating hazardous materials.

Snider was brought on the Enewetak Atoll when he was barely 20 years old. His job: nuclear fallout cleanup. The veteran recalls being dressed up in modern protective gear for a promotional video when he arrived on Enewetak, but never seeing such gear again. He was subjected to massive amounts of radiation as he walked around the island, doing his job, wearing nothing but shorts and a sun hat. “I never saw one of those suits again,” he has commented.

The nuclear cleanup on the Enewetak Atoll was the largest ever undertaken by the U.S. military. As a likely result of his exposure to radiation, Snider now has tumors in his skull, spine, and ribs. Thousands of Snider’s coworkers recall no respirators or other protective gear while cleaning up the nuclear testing site.

Hundreds of them are now suffering from multiple diseases commonly associated with exposure to nuclear radiation. Some have even parented kids with rare birth defects.

Many of the people who did the same job as Snider are now dead. While the government has recognized that the people who participated in the nuclear tests at Enewetak were harmed by radiation, they do not include those who oversaw cleaning up the site.

The nuclear tests on the Atoll wiped out entire islands. The cleanup was originally going to be done by a private contractor, but the government decided to cut costs by using troops.

Possibly to reduce costs even further, the military failed to provide servicemen with adequate protective gear for the Enewetak cleanup, veterans claim. As a result, Snider and his colleagues walked around the Atoll in a cloud of plutonium dust.

Even if the veterans cleaning up Enewetak were to receive disability checks, they would be poor compensation for a life of disease and hardship. In many cases, the nuclear site cleaners lost the ability to earn their living. For some of them, radiation not only affected them, but also their families. Decades after their stints on the Enewetak Atoll, these veterans have yet to receive any acknowledgment from the government, let alone benefits.

Snider is fighting the same fight we fought with Marrero over Vieques. There are many brave men and women out there who will go to great lengths to get to the truth and fight for justice. But it is outrageous that in 2025 we still witness ailing, cancer-ridden veterans fighting for basic health coverage and disability benefits.

If a high-ranking officer in the military were to order someone to work in the conditions Marrero or Snider once had to endure, it would be considered a criminal act. That alone should be proof enough that the U.S. military owes these veterans infinitely more gratitude than it appears prepared to give them.

Orthopedic Claims

Orthopedic claims refer to all claims involving the muscles or the joints. Perhaps the biggest area of litigation in the realm of orthopedics involves lower back disability claims. But this category may also include any disabling conditions of the knees, ankles, elbows, shoulders, or feet. Entitlement to service connection for these conditions is analyzed under the standard rules for service connection. We have discussed these basic rules throughout this book.

The way the VA has historically treated lower back disability claims is of special interest. The typical lower back disability claim involves a veteran who experienced some degree of back pain during service either without an explanation or as a result of lifting something. Their initial soreness resolves in a matter of days or weeks and the remainder of their service treatment records are empty.

Sometimes, many years elapse between discharge and the onset of serious back problems. When the veteran finally makes a claim, the VA denies it thinking that there were no problems for many years and that they are just complaining about it now. The VA suggests that this means there is no connection. However, in taking such a position, VA ignores reality. Ninety-nine percent of veterans say at the time of discharge that there is nothing wrong with them, even though there may be significant problems. They do not want to be held over because of some abnormality, and they are anxious to go home. Thus, they tend to minimize any health problems they may be experiencing. Then, many years pass without significant treatment, and a claim is only made decades after service.

The VA makes it appear as if there were no problems before, and this problem somehow just popped up in recent years. However, this approach is inconsistent with the medical evidence. Typically, an injury to the lower back, even after the acute pain stage subsides, can predispose one to the early degenerative onset of problems involving the spine, which do not appear until many years later. The VA fails to understand this fact and as a result, they repeatedly and unfairly deny lower back disability claims.

In addition, other orthopedic issues concern disabilities to the lower extremities causing arthritis or degeneration in other joints. For example, if a veteran is service connected for a right knee problem and this produces a limp when they walks, then over time, the altered gait may affect their lower back and put extra stress on the left knee, causing an arthritic condition in the left knee. This is a very common occurrence, but VA often appears skeptical of such claims.

The other area involving orthopedic claims deals with increased ratings. Generally, orthopedic claims will be based upon the amount of range of motion that is impaired because of the disability. The VA regulations do provide for consideration of pain and other limitations. So, if you have a normal range of motion but with extreme pain, then the VA regulations will consider that disability to be extremely serious. But in practice, the VA often fails to consider these matters in the appropriate fashion. In other words, they fail to take pain into consideration.

Schizophrenia or Psychotic Disorders

Schizophrenia is a psychiatric disability for which you can obtain service connection. This condition can drastically affect your life. It is not unusual for these types of problems to begin to appear in the late teen years and early twenties when many veterans are on active duty. Unfortunately, the early symptoms of this problem are often missed, and veterans typically do not want to discuss the symptoms that they are beginning to experience. Consequently, many years often go by without this condition being appropriately treated and diagnosed.

Perhaps most disturbing, however, is the fact that in the military, symptoms of schizophrenia are often labeled as a "personality disorder." A veteran is often discharged as being unfit for retention due to a congenital defect called a personality disorder. The VA will not pay compensation for

personality disorders because they believe that these are conditions that you are born with. However, the symptoms that are labeled as a personality disorder during service are often nothing more than the early signs of schizophrenia.

These symptoms begin to develop over time until they are fully diagnosed many years after service. Usually, at that time, the diagnoses of a personality disorder are no longer attributed to the Veteran. Clearly, when you look back at the course of a person's mental illness, the early signs can only be ascertained by viewing the case in hindsight. For example, I have litigated cases where a veteran was diagnosed with a personality disorder during service, and his current diagnosis is schizophrenia. In reality, the diagnosis of a personality disorder was incorrect, and the correct diagnosis can only be determined in hindsight. If he did, in fact, have only a personality disorder, then that diagnosis would logically be present at the current time, and there would be no diagnosis of schizophrenia.

Therefore, in these cases, our experience has indicated that there is no substitute for top-notch medical and psychiatric experts who can undertake a forensic evaluation to determine the exact onset for schizophrenia. Usually, these symptoms can be identified in hindsight, allowing us to pinpoint the beginnings of the disability to the time of active duty.

If you have recently been denied benefits for schizophrenia or another psychotic disorder, you are welcome to contact our office to discuss the possibility of pursuing an appeal. These can be difficult and complex cases, and we certainly approach them with an aggressive strategy.

Serious Neurological Disorders and Organic Brain Syndrome

We represent veterans who suffer from a variety of neurological and organic brain syndrome conditions. We have represented veterans who have suffered brain damage because of exposure to toxins as well as from head trauma. Sometimes a veteran may suffer from multiple sclerosis as a result of whiplash trauma in service. Other conditions may involve the residuals of venereal disease which have affected the brain and neurological functioning. We have seen many types of cases involving conditions that are rare and difficult to diagnose.

Sometimes veterans have serious neurological conditions that may be caused by exposure to Agent Orange, but these conditions are not on the list of Agent Orange related diseases. We have helped countless veterans obtain service connection for conditions involving neurological and brain disorders.

With most complex cases, we develop a comprehensive legal strategy based on sound legal and medical research. Our successful approach centers around top-notch medical experts and scientific research. Frequently, scientific research requires proof to a degree higher than what is required to prove service connection for VA purposes. For instance, medical science may not recognize causation unless it can be determined to a high degree of scientific certainty. However, for VA purposes, we need to demonstrate merely that the service-related cause is 50 percent probable.

Understanding this distinction, and educating our medical experts on this distinction, is critical to success in these cases. Your legal team must be able to coordinate a comprehensive strategy by utilizing top medical and scientific experts.

VA Medical Malpractice (Negligence) Victim?

Our Medical Malpractice Lawyers Can Help You Receive the Right Compensation for Negligent Care by a VA Physician.

Veterans sacrificed to keep our country safe and strong. As a veteran, you expect the VA to help when medical issues arise. Unfortunately, overwhelmed, short-staffed VA hospitals sometimes make terrible mistakes when it comes to treating their patients.

As experienced veterans' medical malpractice attorneys, we have helped clients severely harmed by VA doctors or VA hospitals receive damages for their pain and suffering and other losses. In the case of a wrongful death, the late veteran's spouse or dependent may sue the VA.

The Federal Tort Claims Act & VA Medical Negligence

In most instances, it is not possible to sue the federal government. That is not true when it comes to medical malpractice and the VA system. A veteran, or his or her legal representative, may file a claim under the Federal Tort Claims Act (FTCA).

That does not mean a lawsuit is filed in Court, as is the case with other types of medical malpractice. The complaint, known as Standard Form 95, must first go to the VA. The form requires a great deal of detail, and an attorney specializing in VA medical malpractice should help you with it. The agency then reviews the complaint and may or may not offer a settlement.

If the VA does not agree to settle the claim, offers an unacceptable amount, or simply ignores the claim for the following six months, a veteran may then take the case to Court. However, successfully suing the federal government requires an experienced VA medical malpractice attorney, not someone who only handles civilian cases.

You May Be Entitled to Compensation and Damages

VA medical negligence victims may receive three types of damages. These are:

1. **Economic damages** – these include medical bills, lost wages, and similar losses that you can substantiate.

2. **Non-economic damages** – these include pain and suffering, disability, disfigurement, emotional distress, and other quality-of-life issues.

3. **Future damages** – this may include future lost income if you cannot work or can no longer work at your previous level of employment.

The FTCA does not allow for punitive damages. Such damages "punish" the doctor or VA hospital responsible for your condition. Since there is no punitive damage mechanism, it is imperative that

a veteran victim of VA medical malpractice specifies exactly the right amount of compensatory damages.

That is the maximum possible amount the veteran may receive, unless there is some new development in the case that was unknown when Form 95 was filed.

An experienced VA medical negligence lawyer will help you make an accurate estimate of the economic and non-economic damages, as well as future expenses related to the injury. Call (888)878-9350 or e-mail us at info@veteransdiabilityinfo.com.

Mushrooming VA Medical Malpractice Claims — Rampant Negligence

Over the past decade, the VA has paid millions of dollars in medical malpractice claims, and the numbers are growing.

As reported by ***Bloomberg News***, veterans have received damages relating to misdiagnosis, treatment delays, and procedures done on the wrong body parts. Five veterans died after an outbreak of Legionnaire's Disease at a VA hospital, and surviving family members said the veterans were not immediately informed of the health problem after VA officials knew about it.

Another reason for mushrooming malpractice claims involves veteran age. Amputate the wrong leg of a veteran in his 70s and it's still a tragedy—but the actuarial tables don't make for a huge malpractice payout.

Amputate the wrong limb of an Iraq or Afghanistan vet—who may not have celebrated their 30th birthday—and their lifespan and the effect on their future working life makes a malpractice payout much larger. A VA malpractice payout might be larger still, but ***Bloomberg News*** quotes a former Navy judge advocate general as saying, "My strong belief is a lot of lawyers don't know how to sue the VA."

Don't make that mistake. Hire an experienced VA medical malpractice attorney.

Waiting Could Mean You're Out of Luck — Statute of Limitations

Under the FTCA, a strict statute of limitations applies. You must file a medical malpractice claim against the VA within two years of the date of the injury, or when you first became aware of the injury. Once that date has passed, a victim of VA medical malpractice can no longer sue.

Spinal Cord and Back Injuries

One of the most common types of disabilities that we have seen involves injuries to the lower back. Historically, the VA has been biased against lower back disability cases. These cases present a very typical scenario. Usually, a veteran will suffer some type of back injury during service, and they may go to sick call, where they are treated once or twice for muscle stiffness or soreness. Then, the service treatment records contain very little follow-up for the condition, and the separation exam is usually normal.

The typical scenario involves a normal separation exam followed by many years without any documentation in the medical records concerning a lower back problem. Time combines with the effects of age and the condition progressively worsens to the point that the veteran is forced to go to a doctor. They finally begin treating their condition many, many years after service and then finally file a claim. The VA will then deny the claim on the grounds that the veteran was normal at separation and there is a huge gap between discharge and the onset of significant treatment.

What the VA fails to understand is that usually when you are a young person getting discharged from service you are likely not going to make a big deal about a little bit of back pain. You typically believe that it will go away and that you can handle it. So, you get out of service and life goes on. You try to earn a living and support a family and make the best of it. Yet, the VA believes that you were not suffering from any problems during those interim years. As a result, you experience the frustration of repeated denials for a claim you know originated with active duty.

What the VA fails to understand is that a trauma at a young age, even though the initial pain subsides, predisposes you for early degeneration of the spine that does not become symptomatic

until many years later. The VA, out of ignorance, believes that you develop degenerative disc disease immediately following an accident. This has not been the experience of my clients over the years. Nevertheless, we have been successful in helping many veterans obtain service connection for spine disabilities involving very difficult fact patterns. If you were recently denied a claim involving a spine disability, you are more than welcome to contact our office to discuss your situation.

Clear and Unmistakable Error Claims

All too often, VA makes terrible decisions that veterans, not knowing any better, fail to appeal. Barring a few exceptions, these decisions then become final after a year. However, one way to overcome this rule of finality is by establishing that VA made a clear and unmistakable error in denying the benefits sought.

Clear and unmistakable error (referred to as CUE) involves a situation where the correct facts as they were known at the time were not before the VA, or the law and regulations in effect at the time of the VA's decision were not applied correctly. If you are challenging a prior VA decision on the grounds of clear and unmistakable error, you must do more than disagree with how the VA evaluated the facts. The error must be of such a magnitude that had it not been made, it would have "manifestly changed the outcome at the time it was made."

The error must be undebatable, so that reasonable minds could not disagree. Clear and unmistakable error can only be based on the laws in effect at the time of the VA's decision. Also, you cannot prevail on a clear and unmistakable error claim based on the VA's failure to assist you in getting records or scheduling examinations. These claims can be complex, and consulting legal counsel is recommended.

What You Need to Know About Effective Dates for Original Claims

The effective date for an original claim will be the date the VA received your claim or the date you became entitled, whichever is later. In practical terms, if your claim was denied and you did not appeal it, and you then re-filed the claim several years later and it was granted, the effective date

will be the date the VA received the re-filed claim—and not the original date you first started filing claims for VA benefits. This also means that your effective date for an original claim is generally not the date that you first developed a medical problem. You may have lived with your disability for decades before filing a VA claim. But unfortunately, the VA will generally not go back earlier than the date you filed the claim (there are some limited exceptions, of course).

The general rule also means that you cannot file a separate "freestanding" claim for an earlier effective date. Once the underlying decision granting benefits becomes final, you cannot file a new claim for an earlier effective date. Generally, to address this type of issue, you should consult counsel or your service officer to investigate a possible Clear and Unmistakable Error claim.

There are many intricate factors that are involved in setting effective dates. A full discussion of this issue is beyond the scope of this guide and requires consultation with a legal professional.

Military Sexual Trauma ("MST")

The VA regulations speak to what is termed "personal assault." This is an event of human design that threatens or inflicts harm. It could include rape, physical assault, or harassment. Because of the personal nature of these types of incidents, they are typically not officially reported, and the victims may find it difficult to come forward with information. Therefore, it is critical in personal assault or military sexual trauma cases to look at alternative forms of evidence that could establish that the in-service event took place.

Collecting compensation for your MST requires the following: A current diagnosis for a condition; that condition was caused by MST during qualifying active service; you have the opinion of a medical expert; and other evidence to link your current diagnosis to your MST experienced during active service.

VA has an obligation to develop alternative sources of information. It is very important to note that VA must tell you what evidence other than the information found in your service records can be submitted, and to afford you the opportunity to submit such evidence.

In other words, if there is no other official documentation proving that you were assaulted in some way, then you must look to more circumstantial evidence as a means of establishing the fact that you were assaulted in some fashion. Examples of such evidence include records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals or physicians; pregnancy tests or tests for sexually transmitted diseases; statements from friends, family members, roommates, or other fellow soldiers. Evidence of behavioral changes after the claimed assault is also important. Behavior change evidence can include requests to transfer, deterioration in work performance, the beginnings of substance abuse, episodes of depression or anxiety, or unexplained economic or social behavior changes.

There could be many other types of evidence that could tend to corroborate that a stressor of this nature took place. If you were the victim of some type of personal assault during military service, you should know that there may be assistance available, and you should be prepared to look to alternative forms of evidence to prove that this stressor took place. If you have been denied service connection for a personal or military sexual assault, it is strongly recommended that you retain competent legal counsel to assist you with your appeal. You are welcome to contact our office to discuss your situation. The call is totally confidential. We have a depth of experience in handling military sexual trauma cases.

Traumatic Brain Injury ("TBI")

One of the signature injuries of the wars in Iraq and Afghanistan is traumatic brain injury (TBI). The reason for this is the frequent use of roadside improvised explosive devices and the resulting blasts. Keep in mind, however, that there are many TBIs that have not come from improvised explosive devices in Iraq or Afghanistan. Other causes of TBI include an in-service motor vehicle accident, or an in-service fall where a veteran hit their head. They may also come from a personal assault or any other type of trauma where the head was injured.

The consequences of traumatic brain injuries are far-reaching and affect many areas of a veteran's life. TBIs often produce not only physical problems, but cognitive (aka thinking) problems, and behavioral problems. According to a study from the policy think tank RAND, about 19 percent of

troops surveyed report a probable TBI during deployment. Traumatic brain injuries are difficult to identify and are often not easily distinguished from Post-Traumatic Stress Disorder or depression. In fact, tens of thousands of troops are suffering from PTSD and depression in addition to TBI.

If you have suffered a TBI and your VA disability benefits claim was denied, call our offices today at **(888) 878-9350** for a free consultation to learn more about how we can help you.

Change in Rating Criteria for TBI

The old rating criteria for evaluating TBIs were clearly not sufficient to address the wide range of issues veterans face, so VA revised the rating criteria in January 2008. This change became effective October 23, 2008.

Under the old rating system, any one subjective symptom could not be given a service rating above 10 percent. A subjective symptom is one where severity depends on self-reporting by the veteran. Subjective symptoms include things like severity of headaches, dizziness, or ability to concentrate. Under the new VA disability rating system, symptoms are evaluated in the three categories described below, and the disability rating is based on the combined total level of disability in all areas.

Symptoms of TBI in Veterans

There are three main areas of dysfunction that need to be evaluated when considering veterans' disability benefits for TBI.

1. **Cognitive Symptoms of TBI**
   The symptoms of cognitive impairment include decreased memory, concentration, attention, and executive functioning of the brain. Executive functioning skills include goal setting, information processing, planning, organizing, prioritizing, problem solving, judgment, decision making, and mental flexibility.

2. **Emotional & Behavioral Symptoms of TBI**
   Emotional symptoms of TBI include PTSD, depression, anxiety, and other mental disabilities. Behavioral symptoms include irritability, aggression, withdrawal, and poor impulse control. Additionally, cognitive, emotional, and behavioral problems can lead to social problems including immature behavior, over-dependency, excessive talking, inappropriate sexual behavior, and overspending.

3. **Physical Symptoms of TBI**
   Common physical symptoms of a traumatic brain injury include vision loss, hearing loss and tinnitus, constant headaches, seizures, motor or sensory dysfunction, and perhaps pain in the face or other parts of the body. Some veterans also report a loss of smell or taste, and they may suffer from an inability to communicate as they previously did. There are also endocrine dysfunctions, bladder or bowel impairments, and other autonomic nerve dysfunctions.

Diagnosing TBI in Veterans is Complicated

While the new VA disability rating system was expanded to acknowledge the complexity of TBI, it doesn't necessarily make TBI easier to diagnose. TBI is a complicated disability to diagnose for several reasons.

1. **TBI symptoms overlap with other disabilities.** As noted earlier, a veteran with a TBI may also experience depression and PTSD.

2. **Each TBI is unique.** The number and type of brain functions affected can vary widely from person to person. Additionally, some functions may be affected more severely than others. To further complicate the issue, symptoms may fluctuate in severity from day to day.

3. **Symptoms can change over time.** The symptoms a veteran experiences in the days immediately after a TBI may be very different from the symptoms they experience months down the road.

4. **The VA uses multiple diagnostic codes.** The cognitive symptoms of TBI are evaluated using one set of diagnostic codes. Physical symptoms are evaluated under another. Emotional behavioral symptoms are evaluated using at least 2 different sets of diagnostic codes.

How the VA Handles TBI Claims

The VA handles TBI claims by first assigning an evaluation for all the separately diagnosed conditions. Then, VA takes the conditions that are not separately diagnosed and evaluated and classifies them under one of 10 factors listed in the VA table.

The VA evaluators then assign a scale to the different components of cognitive impairment. This scale goes from 0 to 4. The VA evaluators determine which symptoms are classified under each component and then assign the appropriate number. After each symptom has been classified and assigned a number, the VA takes the highest number assigned to any one component. Then, the highest number assigned to each one of the components is the percentage evaluation that will be assigned. In practice, the VA should assign a 100 percent rating if any component is determined to be totally disabling.

Why You Need an Attorney

As you can see, TBIs are extremely complex disabilities, and there is a lot of room for interpretation. A qualified veterans' benefits attorney can connect you with the proper experts and help you make the strongest case possible.

In our experience, perhaps one of the biggest issues involving TBI cases is cognitive impairment. As a result, veterans with TBIs have an even harder time navigating the VA disability system. An experienced veterans' benefits attorney can help you make sense of the VA system, the various reports, and the process of dealing with the VA.

If you have suffered a traumatic brain injury in the service, you are no doubt experiencing a wide range of difficulties and you may need assistance with your claim. The law surrounding the grant of

service connection for these injuries, as well as the law concerning the proper rating of them, can be complex. We recommend that you hire a veterans' disability attorney if you are trying to appeal the denial of a TBI claim or appealing a failure of VA to grant the appropriate rating for a TBI.

When evaluating whether to grant veterans disability benefits for a traumatic brain injury, VA examiners tend to operate under the assumption that there is a direct correlation between how long the veteran was unconscious after their injury and the severity of the TBI. Research suggests that a single concussion can cause lasting structural damage to the brain. A study published in the Journal of Radiology demonstrates that the brain undergoes a measurable loss of volume after a concussion. These volume changes correlate with cognitive changes in memory, attention, and anxiety.

The research results are interesting because mild traumatic brain injury or MTBI accounts for at least 75 percent of all traumatic brain injuries. This means that individuals suffering from what appears to be routine concussions may be suffering far more extensive structural brain damage than previously realized. The symptoms of TBI include headaches, dizziness, memory loss, attention deficit, depression, and anxiety. Some of these symptoms can persist for months or years. The researchers found that even one year after a concussion, there was noticeable global and regional brain atrophy in a mild traumatic brain injury patient. The takeaway lesson from this is that TBI results in structural injury to the brain even though it may not be seen on routine radiographs.

I think the practical effects of this research are that traumatic brain injuries can cause significant problems years later even though there may be no routine clinical imaging to support it. I have a client who suffered traumatic brain injury during his time in the service but did not develop psychotic disorders until 20 years later. In addition, I have veteran clients who had multiple traumatic brain injuries in service and later become delusional. The scary thing is that their delusional disorder did not manifest until several years after their TBI. How many veterans diagnosed with psychiatric impairment are suffering today because of a head injury that happened many years ago?

It's hard not to conclude that the connection between TBI and later psychosis is often missed because of the time delay between the injury and symptoms of long-term damage. Certainly, it is standard operating procedure for VA adjudicators to deny claims when there is a lengthy hiatus

between the events of service and the onset of a diagnosis or symptoms in the years following service. But considering the research regarding structural injury to the brain following traumatic brain injury, VA adjudicators must be more cautious about summarily rejecting claims for veterans' disability benefits.

Finally, VA disability advocates must look very carefully to determine if structural injury to the brain has occurred after a TBI because injury to the brain can result in a whole host of problems including mood disorders and neuroendocrine problems.

Whenever a traumatic brain injury is involved, and the VA has denied the claim, it is highly advisable that a disabled veteran consult with an experienced veterans' disability attorney to have their case properly evaluated.

Autoimmune Diseases

Research shows that lupus among the military population is becoming more prevalent. Lupus is a chronic, autoimmune disease whose signs and symptoms can last for years. The disease can damage any part of the body (skin, joints, and/or organs inside the body) and can be life-threatening for some. The result of the immune system dysfunction in lupus is widespread inflammation, which is the primary feature of the disease in most patients.

As a veterans' disability attorney, I applaud the research being done by Dr. Joseph Ahearn, MD of the University of Pittsburgh. He is studying biomarkers that indicate who could develop lupus.

This is important from both the VA and disabled veterans' perspective. Over the last few years, we have seen demographic changes in the military population that have resulted in an ever-increasing prevalence of lupus in military and veterans' hospital clinics.

As a veteran's disability attorney and staunch advocate for veterans, it would be unlikely to find an actual diagnosis of lupus in service medical records. Rather, the effort would likely entail looking for risk factors or other hints of a medical problem that later developed into lupus after service.

In addition, a veteran may exhibit symptoms of lupus during service, but it is missed by the medical community, even when the veteran seeks treatment. This is because the military population is relatively young and oftentimes more serious and chronic conditions are overlooked as possible causes for various symptoms.

Lupus can be a very disabling condition. Veterans suffering from lupus are often denied benefits because the VA says there was no evidence that lupus was diagnosed in service or was already in existence during service. That is why a better understanding of the various risk factors and early symptoms of lupus is so critical: it would help us better pinpoint the onset of lupus during a time of active duty. This in turn would allow veterans to obtain service-connected benefits for this incurable disease.

Accordingly, we support any necessary research to better understand lupus so that veterans can receive the appropriate compensation they deserve if this condition is proven to have developed during active duty. Our attorneys are also interested in learning if there are factors about military service that raise one's risk for developing lupus.

For instance, it has long been known that people who served in the military generally have a higher risk of developing ALS (amyotrophic lateral sclerosis), also known as Lou Gehrig's disease.

In terms of explaining the in-service causes of lupus in veterans' disability cases, researchers have pointed to environmental factors. I have written in the past about Multiple Chemical Sensitivity syndrome and have helped many veterans win service connection for the MCS. But with lupus as well, there is some research suggesting a possible chemical etiology.

Research implicating infectious agents in the cause of lupus is of interest. Examples noted by some researchers include cytomegalovirus and hepatitis B. But more important still is the research linking the Epstein-Barr virus (EBV) to the development of lupus. EBV causes chronic fatigue syndrome, which is common in the Gulf War veteran population.

Lupus is like many of the chronic illnesses that I have seen over the years in my veterans' benefits practice. The common scenario is that the prodrome or the early manifestations of a

disease—especially one like lupus—cannot be identified except in retrospect. This explains why medical corpsmen in the service simply record symptoms in isolation. The medical corps simply lacks the historical perspective to evaluate whether an isolated symptom is part of a systemic and chronic problem, like lupus or chronic fatigue syndrome. Only in hindsight can a forensic medical examiner connect the dots and identify the earliest signs of a problem, which frequently occur during active duty.

Whistleblower Awards for Those Who Report Fraud Against the U.S. Government or Military

The U.S. government grants nearly $300 billion each year to defense contractors who provide clothing, food, weapons, aircraft, ships and other military supplies for our armed forces. Unfortunately, many defense contractors attempt to abuse these funds for their own financial gain, wasting taxpayer dollars and putting the safety of our nation and its servicemen and servicewomen at risk.

Our defense contractor whistleblower lawyers help weapons manufacturers, military equipment mechanics, aircraft engineers, cybersecurity technicians, and other defense contractor employees fight fraud, waste, and abuse at its source. Holding the largest whistleblower settlement in U.S. history ($16.65 billion), our experienced team of defense contractor whistleblower lawyers have already earned clients over $100 million dollars in award money.

Do you have information on defense contractor fraud against the U.S. government? Veterans, Air Force, Marines, Navy, Army, and other defense contractor personnel who have information on fraud against the Department of Defense are encouraged to contact us and learn more about whistleblower rights in a free, confidential consultation.

Call 888-878-9350 or email us at info@veteransdisabilityinfo.com.

Department of Defense Uses False Claims Act To Expose Defense Contractor Fraud

You might be entitled to a large cash award. Enacted during the Civil War to expose overcharging and defective goods supplied to the Union Army, the False Claims Act, or "Lincoln Law," pays cash incentives to urge those with information on fraud to come forward.

When a whistleblower's information leads to a successful settlement or verdict, the federal False Claims Act, 31 U.S.C. §§ 3729 - 3733, offers that whistleblower between 15 and 30 percent of the total government recovery. Our defense contractor whistleblower lawyers' have helped veteran and active military clients obtain cash awards that range in the hundreds of thousands to millions of dollars.

Common False Claims Act violations committed by defense contractors include:

- Violations of best-price requirements
- Violations of Truth in Negotiations Act (TINA) obligations
- Using defective, refurbished, or otherwise unsafe materials and parts
- Skirting design specifications, or other contract requirements
- Overbilling or submitting fraudulent invoices for defense contract labor, services, or goods
- Making fraudulent statements or misrepresentations in defense contract bidding
- Failing to notify the government of product deficiencies upon discovery
- Failing to adhere to government environmental or worker safety standards
- Cross-charging from fixed-price contracts to cost-plus contracts

Evidence of intent to defraud the government is not required. If you are questioning whether some act by a defense contractor may be a violation of the False Claims Act, our defense contractor whistleblower lawyers are happy to answer your questions in a free, confidential consultation.

Legal Protections for Defense Contractor Whistleblowers

Because of the potential for employer retaliation, the False Claims Act provides legal rights and protections to whistleblowers who report fraud, waste, and abuse of government funds. False Claims Act anti-retaliation provisions prohibit employers from firing, demoting, harassing, denying promotion, or otherwise discriminating against employees or other individuals because they choose to report a violation.

Defense contractor whistleblowers subjected to retaliation have the right to sue for damages, including:

- Other special damages
- Job reinstatement
- Interest on lost wages
- Double payment of lost wages
- Attorneys' fees and costs

Together, we can help combat fraud against the U.S. government and potentially save lives. Contact our defense contractor whistleblower lawyers today for a fully confidential, free case evaluation.

Call (888) 878-9350 or email us at info@veteransdisabilityinfo.com.

How To File a Defense Contractor Whistleblower Claim

The moment you suspect a defense contractor is acting in violation of the False Claims Act, it is critical to contact an experienced defense contractor whistleblower lawyer. Defense contractors considering or committing fraud against the government put the very lives of our military servicemen and servicewomen at stake.

Initial consultations are free of any obligation and are kept fully confidential. We will answer your questions about your role and ours, clarify your rights, and determine whether your information makes you eligible for a cash award.

Act Fast! Whistleblower Time Limits Restrict Cash Award Eligibility

Due to "first to file" bars, only the first individual to report an incident of defense contractor fraud is eligible to collect a cash whistleblower award. In addition, various federal and state statutes of limitations apply.

Your initial consultation with us solidifies your role as a whistleblower and your eligibility for a cash award.

We protect the rights of defense contractor whistleblowers who choose to come forward and protect our nation from U.S. government and military fraud.

Service-Disabled Veteran-Owned Small Business Fraud

Do You Know Of A Company Attempting To Defraud The Service-Disabled Veteran-Owned Small Business Program?

Our SDVOSB Whistleblower Lawyers Help Veterans and Others Report SDVOSB Fraud and Maximize Their Cash Awards

Since the founding of our nation, small businesses have shaped the core of the American economy. Congress is specifically interested in supporting small businesses owned by service-disabled veterans.

The U.S. government sets aside 3 percent of its small business contracts for service-disabled veteran-owned small businesses (SDVOSB) to level the playing field and help disabled veterans compete and flourish amidst huge, more successful corporations.

While thousands of combat-wounded and service-disabled men and women work hard to succeed in American business, corrupt business owners continue to defraud the U.S. government by falsely claiming they are eligible for these set-aside service-disabled veteran-owned small business contracts.

When these fraudsters illegally secure SDVOSB contracts, our nation's taxpayers and legitimate service-disabled veteran-owned small businesses suffer.

Each year, the Justice Department pays whistleblowers hundreds of millions in award dollars.

Our own whistleblower clients have received over $100,000,000.00 in award monies. Veterans, military personnel, contracting officers, competitors, billing clerks, accountants, construction foremen, and anyone else with inside information about SDVOSB fraud can earn an award. Call us today for a free, fully confidential case evaluation.

Call (888) 878-9350 or email info@veteransdisabilityinfo.com.

Government Pays Large Cash Awards Whistleblowers Who Report SDVOSB Fraud

The Veterans Benefits Act of 2003 established a procurement program for service-disabled veteran-owned small businesses, allowing contracting officers to restrict competition to SDVOSBs and award set-aside contracts to businesses that meet certain criteria.

Qualification criteria for service-disabled veteran-owned small business contracts include:

- Service-connected disability validated by the Department of Veterans Affairs or the Department of Defense.
- < 500 employees and < $5,000,000 annual revenue.
- Service-disabled veteran is unconditional owner of 51 percent of the business.
- Service-disabled veteran holds the highest officer position of the business.

- Service-disabled veteran ownership must be direct (a company owned by another entity that is owned and controlled by a service-disabled veteran is not eligible).
- Service-disabled veteran must control decision making, day-to-day management, and administration of business operations (in the case of permanent and severe disability, the veteran's spouse or caregiver may control the business).

You might be entitled to a substantial cash award. When a company obtains a SDVOSB contract that does not meet the above criteria, that business may be submitting claims to the U.S. government in violation of the federal False Claims Act, 31 U.S.C §§ 3729 - 3733. When a whistleblower's information leads to government recovery of funds, the False Claims Act offers that whistleblower between 15 percent and 30 percent of the total government recovery.

Common False Claims Act violations committed by fraudulent SDVOSB contractors include:

- Misrepresenting company size or earnings
- Misrepresenting veteran company ownership
- Misrepresenting veteran company control
- Modifying corporate structure to indicate veteran owns controlling interest and manages day-to-day affairs.
- Creating a business owned by a disabled veteran, then passing the work on to a non-qualifying business.
- Claiming SDVOSB status when the owner is not a service-disabled veteran.

Our SDVOSB whistleblower lawyers help maximize cash awards for veterans, active military and other clients. If you feel your company has fraudulently obtained a SDVOSB contract, contact us to learn whether your information qualifies you for a cash whistleblower award in a free, fully confidential consultation.

Call (888) 878-9350 or email info@veteransdisabilityinfo.com

Red Flags that Alert Whistleblowers to SDVOSB Contractor Fraud

Several activities occurring in your place of employment or your competitor's company serve as good indicators that the business is committing SDVOSB contract fraud.

These red flags may include:

- Veteran receives one-time payment or ongoing, low salary payments.
- Veteran has little on-site presence or contact with the contracting agency.
- Points of contact are mostly through larger companies.
- Payroll records show veteran does not receive top company pay.
- Payroll records show minimal SDVOSB work.
- Minimal employee presence at "official" address.
- Employees unaware controlling member is a veteran.
- Corporate records altered to list veterans in controlling capacity.

SDVOSB whistleblowers are the nation's number one defense against service-disabled veteran-owned small business fraud. Together, we can help combat SDVOSB fraud and level the competitive playing field for our heroic and deserving veterans. Contact our SDVOSB whistleblower lawyers today for a fully confidential, free case evaluation.

Call (888) 878-9350 or email info@veteransdisabilityinfo.com.

Legal Protections for SDVOSB Whistleblowers

Worried about employer retaliation? False Claims Act anti-retaliation provisions prohibit employers

from firing, demoting, harassing, denying promotion, or otherwise discriminating against employees or other individuals because they chose to report a violation.

Defense contractor whistleblowers subjected to retaliation have the right to sue for damages, including double back pay, interest on lost wages, job reinstatement, and attorneys' fees and costs. Air Force, Marines, Navy, and Army veterans and others with knowledge of SDVOSB fraud are encouraged to contact us and learn more about whistleblower rights and protections in a free, fully confidential consultation.

Call (888) 878-9350 or email info@veteransdisabilityinfo.com

Time Limits On Whistleblower Claims Restrict Award Eligibility

Act fast! Under the False Claims Act "first-to-file" means only the first individual to report an incident of SDVOSB fraud is eligible to collect a cash whistleblower award. In addition, numerous federal and state statutes of limitations apply.

Here's a real-life example of an employee winning big money by reporting fraud.

Whistleblower John Rubar recently won $857,000 for reporting allegations that New York-based construction company, Hayner Hoyt, fraudulently obtained a service-disabled veteran-owned small business (SDVOSB) contract.

If you have knowledge of fraud against the SDVOSB program, contact our team of SDVOSB fraud specialists today to ensure you can be eligible for a large cash award.

Government Set-Aside Contracts Help Veteran-Owned Businesses Compete

Government-funded service-disabled veteran-owned small business contracts are a wonderful resource our nation provides to help our heroic veterans succeed in business. The government sets aside 3 percent of its small business contracts specifically for service-disabled veterans with an entrepreneurial spirit and a desire to help grow the American economy.

Unfortunately, large companies and non-eligible businesses attempt to use fraud and deceit to obtain these contracts for themselves. Our veterans' disability benefits law firm has partnered with a SDVOSB whistleblower law team to represent individuals willing to fight SDVOSB fraud.

The government pays these whistleblowers large cash awards—often in the hundreds of thousands to millions of dollars—for their willingness to come forward with information on SDVOSB fraud.

Feds Pay John Rubar $875,000 For Reporting SDVOSB Fraud

Consider the case of John Rubar. Rubar worked for the Syracuse, New York-based construction company Hayner Hoyt Corporation when he claims he discovered that the company was working under an SDVOSB contract without being eligible.

To be eligible for a SDVOSB contract, a service-disabled veteran must be the primary owner of the business, control and manage the day-to-day operations, and make the strategic decisions.

John Rubar alleged the Hayner Hoyt Corporation had created a sham company—called 229 Constructors LLC—and hired a service-disabled veteran, Ralph Bennett, as president. Rubar alleges Bennett was not involved in making any Hayner Hoyt business decisions—instead, he merely handled the Hayner Hoyt tool inventory and plowed snow on Hayner Hoyt property.

John Rubar decided to file a whistleblower lawsuit against Hayner Hoyt in 2014. According to Rubar, rather than service-disabled veteran Bennett making the decisions, Hayner Hoyt CEO Gary Thurston and his son, Jeremy Thurston, made all the decisions.

In addition, Hayner Hoyt had obtained its SDVOSB contract by allegedly making false statements and certifications representing that 229 Constructors met all SDVOSB requirements.

In March 2016, John Rubar's whistleblower lawsuit paid off. Because Rubar's information resulted in a $5 million False Claims Act settlement with Hayner Hoyt, he received a whistleblower cash

award of $875,000. More importantly, he helped all legitimate service-disabled veteran-owned small businesses who must compete for these valuable SDVOSB contracts.

Sleep Disorders

Increasingly, veterans are being diagnosed with sleep apnea or other sleep disorders. There is rarely an in-service diagnosis for sleep apnea or insomnia. These disorders are usually diagnosed years after service. This can often make proving these claims very difficult.

However, if VA denied your claim for sleep apnea or another sleep disorder, with the help of a veterans' disability lawyer, you may be able to win your appeal for VA benefits. Many doctors attribute sleep apnea to obesity. There is also an indication in the medical literature that sleep apnea occurs with high frequency in people who have had a traumatic brain injury (TBI). So, if you had an in-service weight gain or TBI, you may want to retain a veterans' benefits attorney to help. In fact, we have seen cases involving a systemic medical condition called metabolic syndrome that causes weight gain, high blood pressure, type II diabetes and other conditions.

Often, our experts have been able to link the sleep apnea to medical conditions noted in the service treatment records. Sometimes, sleep apnea can be aggravated by service-connected rhinitis or sinus problems.

Even with extensive medical research and statistically significant correlations between sleep apnea and post-traumatic stress disorder (PTSD), weight gain, type II diabetes, and cardiovascular disease, it can be difficult to get VA approval for sleep apnea claims.

The VA repeatedly denies these claims without fully considering the medical significance of sleep apnea and its physical effects on the body. As many as 38 percent of all claims are denied in error, due in part to a weak initial application that lacks medical evidence or doesn't clearly demonstrate service connection.

The good news is that many sleep apnea-based denials have a strong chance of successful appeal.

Demonstrate the medical significance, justify your service connection, and you can win your sleep apnea VA benefits claim.

Veteran Service-Connected Sleep Apnea Claims on the Rise

An increasing number of sleep apnea claims are cropping up among younger veterans. Since 2009, veterans' claims for sleep apnea have increased 150 percent, more than 94 percent of these coming from veterans of Gulf War I or the Iraq and Afghanistan wars. According to the Department of Veterans Affairs Fiscal Year 2014 Annual Benefits Report, sleep apnea has become the most common service-connected respiratory disability and makes up more than 22 percent of all body system disabilities.

There is an alarming correlation between individuals with PTSD and sleep apnea. Studies by the VA San Diego Healthcare System and the National Center for PTSD show that over 69 percent of veterans with PTSD are at high risk for sleep apnea and the risk of sleep apnea increases with PTSD symptom severity.

Demonstrating Sleep Apnea-Related Health Conditions Is Crucial

As a veterans' disability lawyer, veterans often ask me how they should go about winning a claim for sleep apnea secondary to PTSD. Success in winning these claims comes from understanding the medical evidence that associates sleep apnea with other health problems. Veterans who are aware of the physical connections between their disabilities are better equipped to make additional claims for service connection, claims they may not have considered otherwise.

1. Sleep Apnea Increases Risk For Type II Type IIII Diabetes

Most veterans link PTSD and sleep apnea in that PTSD can lead to weight gain and sleep apnea is associated with obesity. Rapidly accumulating data suggests sleep apnea is also associated with alterations in glucose metabolism, increasing the risk for type II type IIII diabetes. Research shows that 83 percent of type II diabetes patients suffer from sleep apnea. As the severity of sleep apnea

increases, glucose regulation in the body weakens. Patients with sleep apnea experience reduced sleep duration and intermittent periods of hypoxia—a lack of oxygen to the brain. Both sleep deprivation and hypoxia exert a detrimental effect on glucose metabolism.

Medical literature recommends doctors evaluate sleep apnea patients for the presence of type II diabetes. Type II diabetes can go undiagnosed for several years, but a sleep apnea diagnosis can lead to early detection due to the recommendation for regular testing. If you have been diagnosed with sleep apnea and are gaining weight, ask to be examined for the presence of type II diabetes. You may then file a claim for type II diabetes as secondary to the sleep apnea.

2. Sleep Apnea Is Associated With Cardiovascular Disease

A typical scenario we see in our veterans' disability law firm is a veteran who starts gaining weight during service. The veteran is placed in the weight reduction program and may show evidence of elevated cholesterol and/or elevated blood pressure readings. After they leave service, the weight continues to increase, the BMI reaches the obesity range, and the veteran is diagnosed with sleep apnea. At this point, they often develop type II diabetes and cardiovascular disease. They must be able to get treatment to reduce the risk of more serious, potentially fatal complications.

If this veteran files a claim for type II diabetes and heart disease, the VA will likely deny it saying there is no evidence the conditions existed during service. While that may be true, the VA has taken a narrow and simplistic view of these issues – and you can argue this view. A veteran's health is complex and multifaceted. One body system cannot be altered without affecting another. If a veteran begins gaining weight during service, the entire spectrum of obesity-related problems is open for service connection.

3. Physical Injury During Service Can Lead To Sleep Apnea

Consider a veteran who suffers a physical injury during service and is eventually service connected for an orthopedic problem involving their knees. This injury prevents them from engaging in

strenuous physical activity, leading to inevitable weight gain. The weight gain leads to the development of sleep apnea, type II diabetes, and eventually heart disease.

The VA typically denies these claims, reasoning that none of the conditions had their onset during service and obesity is not a disability for VA purposes. Although that is generally true, this claim can demonstrate that physical injury during service caused weight gain, a risk factor for type II diabetes, sleep apnea, and cardiovascular disease.

4. How Sinusitis and Sleep Apnea are Linked

Veterans may be prone to developing both sleep apnea and sinusitis due to military service, potentially qualifying them for a VA rating for sleep apnea secondary to sinusitis.

Sinusitis is another common condition among veterans. This condition arises when the sinuses in your nose and head become swollen and inflamed, disrupting normal mucus drainage. Common symptoms of sinusitis include congestion, tender eyes or facial pain, ear discomfort, postnasal drip, breathing difficulties, and fatigue. Should sinusitis persist beyond three months, despite treatment efforts, it transitions into chronic sinusitis.

Sleep apnea can emerge as a secondary condition to sinusitis or be exacerbated by sinusitis in several ways. Inflammation resulting from sinusitis may impact the soft tissues of the throat and airway, thereby obstructing airflow and heightening the likelihood of developing sleep apnea.

Furthermore, sinusitis has the potential to exacerbate preexisting airway obstructions, leading to intensified sleep apnea symptoms. Additionally, frequent sleep disturbances caused by sinusitis can aggravate existing symptoms and contribute to both the development and long-term progression of sleep apnea.

In fact, managing sinusitis is important in treating sleep apnea. Enhancing nasal airflow can significantly mitigate the severity of sleep apnea symptoms and enhance overall sleep quality.

5. Proving VA Claims for Sleep Apnea Secondary to Rhinitis

Allergic rhinitis is a common condition among veterans, often resulting from exposure to toxic substances such as airborne burn pit toxins and Agent Orange. Many veterans diagnosed with allergic rhinitis may subsequently develop sleep apnea.

When allergic rhinitis triggers or aggravates sleep apnea, the resulting conditions can severely impact productivity, leading to chronic fatigue, difficulty concentrating, and additional challenges that hinder daily tasks and employment outlook.

For this reason, the VA offers disability compensation for sleep apnea secondary to allergic rhinitis. However, veterans must be able to demonstrate a connection between these conditions and military service.

6. Depression Secondary to Sleep Apnea

The topic of whether veterans can receive VA disability benefits for depression, secondary to sleep apnea, has gained significant attention in recent years. Scientific research suggests a potential link between obstructive sleep apnea (OSA) and depression. The oxygen deprivation, chronic daytime sleepiness, and impact on daily functioning caused by sleep apnea ultimately increase the risk of developing depression.

Veterans with a sleep apnea VA rating should be aware of this connection to maximize their VA disability rating. Obtaining secondary service connection is less straightforward than getting a PTSD VA rating. Many veterans can secure VA benefits for depression secondary to service-connected OSA with the help of a VA disability lawyer.

7. Winning VA Benefits for Sleep Apnea Secondary to PTSD

Military veterans are particularly susceptible to developing sleep apnea due to its close association with PTSD. Veterans are three times as likely to get a PTSD diagnosis than civilians. Studies have shown that over half (52 percent) of veterans test positive for sleep apnea.

In the civilian population, the risk of sleep apnea increases with age. But age doesn't play a significant role among veterans. Nearly 70 percent of Vietnam veterans with PTSD also have sleep apnea and, in one study, 69 percent of young Iraq and Afghanistan veterans tested positive for sleep apnea.

Veterans with combat experience, mental health disorders, cancer, or cardiovascular disease also experience higher rates of sleep disorders. PTSD patients who test positive for sleep apnea show greater risk for substance abuse, depression, suicide, and early death.

To win an appeal for sleep apnea, veterans must use the relevant medical literature and scientific research to demonstrate the existence of in-service risk factors. All relevant conditions must then become the subject of the VA claim. An experienced veterans' disability lawyer with access to medical experts and investigative resources can help you prepare your claim.

Mesothelioma

Are you a veteran who has been diagnosed with mesothelioma or have you lost a loved one to mesothelioma? The Department of Veterans Affairs recognizes that members of the U.S. Air Force, Army, Marines, and Navy worked closely with asbestos between the 1940s and the 1980s, putting millions at risk for developing mesothelioma years later.

Veterans diagnosed with mesothelioma due to asbestos exposure during service have a right to VA Disability Compensation for medical treatment, housing, and other expenses. Families of veterans who lost their lives to mesothelioma may also collect Dependency and Indemnity Compensation (DIC) benefits. Don't pass up your right to these essential VA benefits. Learn how to establish service-connected asbestos exposure for mesothelioma and win your VA benefits claim.

Asbestos Exposure During Service Leads to Mesothelioma Diagnosis

Asbestos is a naturally occurring, fibrous, crystalline mineral that was commonly used in electrical insulation and building materials from the 1910s through the 1970s due to cheap production costs,

tensile strength, and heat-resistant properties. Exposure to asbestos is the cause of over 80 percent of mesothelioma cases. Even only one to three months of asbestos exposure can lead to development of mesothelioma.

Mesothelioma takes decades to develop—anywhere from 15 to 50 years after asbestos exposure. Between 1973 and 1984, mesothelioma cases among white males increased 300 percent, evidence of the high exposure experienced between 1940 and 1979. While those being diagnosed with mesothelioma today are largely from the Vietnam War-era, several World War II veterans now suffer with mesothelioma.

All Branches of U.S. Veterans at High Risk for Mesothelioma

Since construction of planes, ships, tanks, and barracks used asbestos extensively, veterans in all branches of the U.S. Armed Forces are at high risk for asbestos exposure. Service on U.S. Navy vessels built prior to 1980 poses the highest risk for asbestos exposure. Navy veterans make up approximately 33 percent of mesothelioma diagnoses each year.

U.S. Coast Guard, Navy, and Marine servicemen living on ships meant exposure to toxic asbestos fibers day and night. Prior to 1980, shipbuilders used asbestos-based paint and insulated ships with fire-resistant asbestos insulation. Asbestos fibers made up ship ropes, gaskets, pipes, and pumps.

Likewise, U.S. Air Force veterans faced significant asbestos exposure from planes, bases, and control towers insulated with asbestos. Air Force mechanics working with electrical wiring, brakes, and valves and pilots spending hours in asbestos-insulated cockpits were vulnerable to asbestos exposure.

Our nation has decreased asbestos use significantly over the past 30 years, yet asbestos exposure still poses a threat for the U.S. military. For example, the 9/11 terrorist attacks exposed thousands of guardsmen to an estimated 400 tons of asbestos used in the 1960s and 1970s construction of the World Trade Center towers. Rescue missions after Hurricane Katrina in 2005 exposed thousands more guardsmen as they entered destroyed homes built prior to 1980.

Today, nations like Iraq and Afghanistan continue to use low-cost asbestos in roofing, pipes, flooring, cement blocks, drywall, and fireproof paints. Our nation's veterans serving during Desert Storm and the Afghanistan Wars may well be showing signs of mesothelioma over the next 50 years.

How to Prove Service-Connected Asbestos Exposure

The U.S. Department of Veterans Affairs qualifies mesothelioma resulting from asbestos exposure during active duty as eligible for service-connected compensation benefits. Veterans diagnosed with mesothelioma should file a claim for benefits under the classification, "Exposures to Hazardous Materials" as a "Post-Service Disabilities" claim, since the service-related disability developed post-discharge.

To establish a claim for VA benefits due to asbestos exposure resulting in your mesothelioma diagnosis, VA adjudicators want to see two things:

1. Evidence of asbestos exposure during active duty.

Proof of asbestos exposure during active duty should include documentation showing military occupation. Occupations most associated with asbestos exposure include shipyard workers, miners, boiler techs, carpenters, demolitionists, electricians, insulators, plumbers, welders, pipe fitters, cement workers, and servicemen who work with clutch facings or brakes.

In addition, include documentation showing specific service locations and hours spent at that location. Be specific, including country, city, and specific addresses of buildings or factories or names and numbers of ships or aircraft. U.S. ship names, building addresses, and other such information can be tracked for construction dates prior to 1980.

2. Evidence of affliction with a disease or disability resulting from asbestos exposure.

Medical records demonstrating a diagnosis of mesothelioma or other debilitating asbestos-related disease, along with a physician statement that asbestos exposure is the likely cause of the disease, is the second important component of a mesothelioma-related VA benefits claim.

Establishing Proof of Service-Connected Asbestos Exposure for VA Benefits

Establishing proof of service-connected asbestos exposure can be difficult. When a veteran has been retired from service for many years, the task of listing specific locations of service can seem daunting. Hiring a veterans' disability attorney who specializes in preparing mesothelioma compensation claims can be crucial for a successful claim or appeal for VA benefits.

Our veterans' disability attorneys know precisely what the VA is seeking, have access to resources that can determine specific service locations, and will help you prepare a detailed and solid asbestos exposure report.

River Fish Consumed in Vietnam Linked to Deadly Cancer

In the past 15 to 20 years, 700 veterans were diagnosed with a rare form of cancer called cholangiocarcinoma. Common in Southeast Asia, this bile duct cancer is caused by parasites present in river fish, which is often consumed raw in Vietnamese cuisine.

In the U.S., except for the recent epidemic among Vietnam veterans, cholangiocarcinoma remains rare, most often seen in travelers coming from Asia.

Eating Vietnam River Fish Can Cause Cancer — Decades Later: VA Disability Benefits

During the Vietnam War, U.S. soldiers were encouraged to accept the local food offered by villagers. Brochures were even distributed advising them to enjoy all the exotic dishes available.

As a result, many servicemen ate fish containing the parasites on a regular basis. The fish paste that was very popular among them was in fact made of raw fish.

It is easy to get rid of the parasites, known as liver flukes, by taking a pill shortly after intake. But if no remedy is taken rapidly, the liver flukes can live inside the body, dormant for many years,

without causing any symptoms. Bile duct cancer can manifest itself decades later, often killing patients within months.

Less than half of the veterans who have suffered from this condition have submitted benefit claims to the VA and 75 percent of those claims were rejected.

On the one hand, many veterans are unaware of the connection between the raw/undercooked river fish they ate during service in Vietnam, liver flukes, and cancer. On the other hand, the VA has had trouble both understanding and acknowledging the problem.

Veterans (and Their Widows) Fight for Vietnam Service-Related Cancer Benefits

"When [veterans] go to regional VA offices, [doctors] might not recognize it... Often, the veterans have to make the link," an AP journalist investigating the issue told NPR. In many cases, veterans have spent their last months of life fighting to obtain benefits from the VA.

In most cases, it is left to widows to continue the fight. Typically, they must go through several rounds of appeals and maybe wait as long as 10 years to succeed, if they are lucky.

Servicemen stationed in Vietnam would often run out of rations while on a mission in the depth of the jungle. On many occasions, they would fish for food, and cook whatever they caught as best they could, often not enough to kill the parasites.

Now, claims for benefits are being either approved or denied rather randomly. Regulations establish that it takes a 50/50 chance that a health problem is connected with service for veterans to be eligible for benefits.

While VA spokespeople and independent experts alike have already acknowledged that is the case, valid claims are routinely being denied.

VA Fails to Test for Cholangiocarcinoma Caused by Vietnam River Fish

For veterans who have been diagnosed, one of the most pressing issues is the need for tests to detect the cancer at earlier stages. Because of the nature of the disease, unless someone is looking for it specifically, cholangiocarcinoma can only be diagnosed through symptoms at a very advanced stage.

If the VA tested all veterans who might have been exposed, many lives might be spared. If regional VA offices received information about the link between service in Southeast Asia and bile duct cancer, they might also be able to diagnose it earlier.

Veterans who served in the region and are suffering from bile duct cancer are, by law, entitled to receive benefits. Science has backed up the link with river fish consumption, and it is now too late for the VA to try to obscure the sun.

With more and more claims being filed every year, advocating for the recognition of this rampant problem can truly save lives.

Other Types of Disabilities

There are numerous other disabilities for which you can obtain disability compensation. These include anxiety, cancer, accrued benefits, gastrointestinal problems, eye problems, skin problems, chronic pain syndrome, metabolic syndrome, radiation poisoning, and general medical conditions.

No matter what type of problem you have, if the VA has been denying you repeatedly, it may be time to consult an experienced veterans' benefits attorney.

CHAPTER 6

Veterans Disability Law, An Overview

In this chapter, I will explain in simple terms the most important concepts related to veterans disability law, from disability compensation to presumptive service connection.

Disability Compensation

Disability compensation is money paid to veterans who are disabled by injury or disease incurred or aggravated during active military service. These disabilities are considered to be service connected.

Disability compensation varies with the degree of disability and the number of dependents and is paid monthly. Veterans with certain severe disabilities may be eligible for additional special monthly compensation. The benefits are not subject to federal or state income tax.

Military retirement pay, disability severance pay, and separation incentive payments, known as SSB (Special Separation Benefits) and VSI (Voluntary Separation Incentives), may affect the amount of VA compensation paid to disabled veterans.

To be eligible, the service of the veteran must have been terminated through separation or discharge under conditions other than dishonorable.

Receiving Disability Benefit Payments

Most veterans receive their disability benefit payments by direct deposit to a bank, savings and loan, or credit union account. Other veterans may still be receiving benefits by paper check.

Compensation and pension beneficiaries can establish direct deposit through the Treasury's Go Direct helpline. Call toll-free 1-800-333-1795 or enroll online at www.GoDirect.org.

Veterans also have the option of receiving their benefits via a prepaid debit card, even if they do not have a bank account. There is no credit check, no minimum balance required, and basic services are free. To sign up for the debit card program, call toll-free 1-888-878-9350.

Often-Used Abbreviations

- **RO** (Regional Office) – Your local veteran affairs office
- **NOD** (Notice of Disagreement) – What you file when the regional office denies your disability claim.
- **SOC** (Statement of the Case) – What the VA regional office sends to you if they disagree with your NOD. This is usually a recap of their denial. To appeal to the Board, you must file a VA Form 9 within 60 days after the SOC was mailed.
- **BVA** (Board of Veterans' Appeals) – Where you send your appeal when you've received an SOC. (For example: After your claim has been denied and your regional office also sent you a "Statement of the Case.")
- **RBA** (Record Before the Agency) – A collection of everything you've ever submitted to the regional office, the Board of Veterans' Appeals, every medical record, letters, and so on. Basically, every piece of communication you've had with the VA regarding your disability claim.
- **CAVC** (U.S. Court of Appeals for Veterans Claims) – A national Court outside of the Veterans Affairs system. If your VA office denies your claim at the Board level, you make your appeal here. **Important Note:** This Court has *nothing* to do with the VA. The CAVC is part of the federal Court system.
- **EAJA** (Equal Access to Justice Act) – This law requires the government to pay for your lawyer at the CAVC level. This is why lawyers say you can hire them at no cost to you. That's true. The government pays for your lawyer.'

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Presumptive Service Connection for Certain Conditions

Prisoners of War

For former POWs who were imprisoned for any length of time, the following disabilities are presumed to be service connected if they are rated at least 10 percent disabling any time after military service: psychosis, any of the anxiety states, dysthymic disorder, organic residuals of frostbite, post-traumatic osteoarthritis, atherosclerotic heart disease or hypertensive vascular disease and their complications, stroke and its complications, residuals of stroke and, effective October 10, 2008, osteoporosis if the veteran has post-traumatic stress disorder (PTSD).

For former POWs who were imprisoned for at least 30 days, the following conditions are also presumed to be service connected: avitaminosis, beriberi, chronic dysentery, helminthiasis, malnutrition (including optic atrophy associated with malnutrition), pellagra and/or other nutritional deficiencies, irritable bowel syndrome, peptic ulcer disease, peripheral neuropathy except where related to infectious causes, cirrhosis of the liver, and, effective September 28, 2009, osteoporosis.

Veterans Exposed to Agent Orange and Other Herbicides

A veteran who served in the Republic of Vietnam between January 9, 1962, and May 7, 1975, is presumed to have been exposed to Agent Orange and other herbicides used in support of military operations.

Nineteen illnesses are presumed by the VA to be service connected for such veterans: AL amyloidosis, bladder cancer, all chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia), chloracne or other acne-form disease similar to chloracne, diabetes mellitus (type II), hypertension, Hodgkin's disease, hypothyroidism, ischemic heart disease, monoclonal gammopathy of undetermined significance (MGUS), multiple myeloma, non-Hodgkin's lymphoma, Parkinsonism, Parkinson's disease, acute and subacute peripheral neuropathy, porphyria cutanea tarda, prostate cancer, respiratory cancers (lung, bronchus, larynx, trachea), and soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma or mesothelioma).

Veterans Exposed to Radiation

For veterans who participated in "radiation risk activities" as defined in VA regulations while on active duty, active duty for training, or inactive duty training, the following conditions are presumed to be service connected: all forms of leukemia (except for chronic lymphocytic leukemia); cancer of the thyroid, breast, pharynx, esophagus, stomach, small intestine, pancreas, bile ducts, gallbladder, salivary gland, urinary tract (renal pelvis, ureter, urinary bladder and urethra), kidney, brain, bone, lung, colon, and ovary; bronchioloalveolar carcinoma; multiple myeloma; lymphomas (other than Hodgkin's disease), and primary liver cancer (except if cirrhosis or hepatitis B is indicated).

To determine service connection for other conditions or exposures not eligible for presumptive service connection, VA considers factors such as the amount of radiation exposure, duration of exposure, elapsed time between exposure and onset of the disease, gender and family history, age at time of exposure, the extent to which a non-service-related exposure could contribute to disease, and the relative sensitivity of exposed tissue.

Gulf War Veterans with Chronic Disabilities

Gulf War veterans may receive disability compensation for chronic disabilities resulting from undiagnosed illnesses and/or medically unexplained chronic multi-symptom illnesses defined by a cluster of signs or symptoms. A disability is considered chronic if it has existed for at least six months.

The undiagnosed illnesses must have appeared either during active service in the Southwest Asia Theater of Operations during the Gulf War period of August 2, 1990 through July 31, 1991, or to a degree of at least 10 percent at any time since then through December 31, 2011. This theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

Examples of symptoms of an undiagnosed illness and medically unexplained chronic multi-symptom illness defined by a cluster of signs and symptoms include: chronic fatigue syndrome, fibromyalgia, irritable bowel syndrome, fatigue, signs or symptoms involving the skin, skin disorders, headache, muscle pain, joint pain, neurological signs or symptoms, neuropsychological signs or symptoms, signs or symptoms involving the respiratory system (upper or lower), sleep disturbances, gastrointestinal signs or symptoms, cardiovascular signs or symptoms, abnormal weight loss, and menstrual disorders.

VA considers these undiagnosed illnesses presumptive if you served in a recognized location, a healthcare provider diagnosed you while you were on active duty or at any time after separation, and you've been ill for at least 6 months: Chronic fatigue syndrome, fibromyalgia, functional gastrointestinal disorders, medically unexplained chronic multi-symptom illness, and other undiagnosed illnesses, such as cardiovascular signs and symptoms, muscle and joint pain, and headaches.

VA considers these infectious diseases presumptive if you served in a recognized location and a healthcare provider diagnosed you within one year of separation: Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), Malaria, Nontyphoidal Salmonella, Shigella, and West Nile virus.

VA considers these infectious diseases presumptive if a healthcare provider diagnosed you any time after separation: Mycobacterium tuberculosis and Visceral leishmaniasis.

If you served in any of the listed locations on or after August 2, 1990, the VA will presume your undiagnosed illness is associated with your service:

- Afghanistan (airspace not included)
- Bahrain
- Egypt (airspace not included)
- Iraq
- Israel (airspace not included)
- Jordan (airspace not included)
- Kuwait
- Neutral zone between Iraq and Saudi Arabia
- Oman
- Qatar
- Saudi Arabia
- Syria (airspace not included)
- Turkey (airspace not included)
- The United Arab Emirates (UAE)
- The waters of the Arabian Sea, Gulf of Aden, Gulf of Oman, Persian Gulf, and Red Sea

If you served in any of the listed locations on or after August 2, 1990, the VA will presume your infectious disease is associated with your service:

- Afghanistan (airspace not included and only service after September 19, 2001)
- Bahrain
- Iraq
- Kuwait
- Neutral zone between Iraq and Saudi Arabia
- Oman
- Qatar
- Saudi Arabia
- The United Arab Emirates (UAE)
- The waters of the Arabian Sea, Gulf of Aden, Gulf of Oman, Persian Gulf, and Red Sea

Concurrent Retirement and Disability Payments (CRDP)

CRDP restores retired pay on a graduated 10-year schedule for retirees with a 50 to 90 percent VA-rated disability. Concurrent retirement payments have increased 10 percent per year through 2013. Veterans rated 100 percent disabled by the VA are entitled to full CRDP without being phased in. Veterans receiving benefits at the 100 percent rate due to individual unemployability are entitled to full CRDP effective December 31, 2004.

Eligibility: To qualify, veterans must also meet all three of the following criteria:

1. Have 20 or more years of active duty, or full-time National Guard duty, or satisfactory service as a reservist, or

2. Be in a retired status.

3. Be receiving retired pay (must be offset by VA payments). Retirees do not need to apply for this benefit. Payment is coordinated between VA and the Department of Defense (DoD).

Combat-Related Special Compensation (CRSC)

CRSC provides tax-free monthly payments to eligible retired veterans with combat-related injuries. With CRSC, veterans can receive both their full military retirement pay and their VA disability compensation if the injury is combat-related.

Eligibility: To apply for CRSC, retired veterans with combat-related injuries must meet all the following criteria:

1. Active or Reserve component with 20 years of creditable service or medically retired.

2. Must be entitled to retirement pay due to retirement, not solely for medical reasons.

3. Have a 50 percent or greater VA-rated injury.

4. Military retired pay is reduced by VA disability payments (VA Waiver).

In addition, veterans must be able to provide documentary evidence that their injuries were a result of one of the following:

- Training that simulates war (e.g., exercises, field training)
- Hazardous duty (e.g., flight, diving, parachute duty)
- An instrument of war (e.g., combat vehicles, weapons, Agent Orange)
- Armed conflict (e.g., gunshot wounds, Purple Heart)

CHAPTER 7

Frequently Asked Questions About Veterans' Disability

These FAQs provide answers to some of the most common questions that may arise when a veteran is filing a claim for VA disability benefits.

Who Is Considered a Veteran?

A veteran is anyone who served full time in the active military, naval or air services, including the Coast Guard—and who was discharged or released from the service in all conditions other than dishonorable.

What Benefits Are Available to Disabled Veterans?

Veterans have a wide range of benefits available to them. They range from VA pension benefits (non-service-connected) and VA compensation benefits—to vocational rehabilitation and grants for adapted vehicles, housing, and equipment. If you are a disabled veteran, you're invited to call my toll-free Disability Information Answer Line at 1-888-878-9350 and I can outline the benefits that may be available to you.

What Is the VA's Non-Service-Connected Pension Benefits?

Veterans who served during wartime and have a low income and few assets may qualify for non-service-connected pension benefits. The veteran's disability does not have to be related to their military service.

Are Members of the National Guard Entitled to VA Benefits?

Members of the National Guard activated for federal service during a period of war or domestic emergency may be eligible for certain VA benefits, such as VA healthcare or compensation for injuries or conditions connected to that service. Activation for other than federal service does not qualify guardsmen for all VA benefits. Claims for VA benefits based on federal service filed by guardsmen should include a copy of the military orders, presidential proclamation, or executive order that clearly demonstrates the federal nature of the service.

Does the VA Grant Allowances for Dependents?

Veterans whose service-connected disabilities are rated at 30 percent, or more, are entitled to additional allowances for dependents. The additional amount is determined according to the number of dependents and the degree of disability.

What Benefits Are Available for a Veteran Who Needs Help or Is Housebound?

A veteran who is determined by VA to need the regular aid and attendance of another person, or a veteran who is permanently housebound, may be entitled to additional disability compensation, or pension benefits. A disabled veteran evaluated 30 percent, or more, also is entitled to receive a special allowance for a spouse who needs the aid and attendance of another person.

How Much Are the Monthly VA Compensation Benefits?

The benefits for disabled veterans range from $175.51 per month to $4,201.35 per month, depending on your disability. (These amounts may have changed since this guide was printed.)

How Does a Veteran or Dependent Apply for VA Benefits?

The form is called VA Form 21-526EZ, Veterans Application for Compensation or Pension. You can

get an application form online at the VA website www.va.gov/find-forms/about-form-21-526ez/ or you can call the VA Regional Office at 1-800-827-1000.

As a Veteran, Do I Have to Testify in Support of My Claim?

No, you cannot be required to testify; however, you have the right to request a hearing before the Regional Office or the Board, if you desire. No testimony is permitted before the Court.

As a Veteran, Can I Receive Disability Benefits and Continue to Work?"

Yes. You can work regardless of the VA's assigned disability level, even if you are rated as 100 percent disabled. However, if you receive VA benefits due to individual unemployability or if you receive a VA pension, you cannot work.

May I Receive Social Security Disability and VA Disability Compensation Benefits at the Same Time?"

Yes, you can receive both Social Security Disability and VA disability compensation benefits simultaneously. If you receive a VA disability pension, the VA usually will reduce your pension amount by the amount of your Social Security Disability benefits because the VA pension is based upon need.

Are Benefits Continued If a Beneficiary Is Incarcerated?

VA benefits are affected if a beneficiary is convicted of a felony and imprisoned for more than 60 days.

Disability or Death Pension paid to an incarcerated beneficiary must be discontinued. Disability compensation paid to an incarcerated veteran rated 20 percent or more disabled is limited to the 10 percent rate. For a surviving spouse, child or dependent parent receiving Dependency and Indemnity Compensation, or a veteran whose disability rating is 10 percent, the payment is reduced to half of the rate payable to a veteran evaluated as 10 percent disabled.

Any amounts not paid may be apportioned to eligible dependents. Payments are not reduced for participants in work-release programs, residing in halfway houses, or under community control.

Failure to notify the VA of a veteran's incarceration can result in overpayment of benefits and the subsequent loss of all VA financial benefits until the overpayment is repaid. Persons convicted of a federal or state capital crime cannot receive VA burial benefits.

Is Disability Compensation Affected if the Veteran Is a Fugitive?

VA disability compensation and pension benefits may not be paid to any veteran named on an outstanding felony warrant, or their dependents, until the veteran has surrendered to authorities, or the warrant is cleared.

How Long Will It Take VA To Consider My Claim?

The VA claims processing and appeal systems are overwhelmed with applications. You will face long delays at every level of the claims and appeals process. Unfortunately, the current backlog and high rate of errors continue to plague VA with no relief in sight. The 2023 Board of Veterans' Appeals fiscal year report established that for Legacy appeals, the average length of time between the filing of an appeal, that is, Substantive Appeal (VA Form 9), at the AOJ and the Board's disposition of the appeal was approximately 2,082 days.

For AMA appeals, the average time to complete appeals from date of the Notice of Disagreement varies depending on the type of review option: Direct Review 314 days; Evidentiary Submission 695 days; and Hearing 927 days.

If My Claim for VA Benefits Is Denied, Should I Appeal?

In most cases, the answer is "yes." While the law says the VA is supposed to give the veteran the benefit of the doubt and help the veteran with his/her claim, the fact is many claims are improperly denied. In recent years, the Board of Veterans' Appeals has remanded or sent back nearly 50 percent

of the Regional Office decisions. For instance, in 2001, the Board sent back 48.8 percent of claims. In 2010, it sent back 42.4 percent of claims. In 2023, it sent back 38.5 percent of claims.

If you hope to win your appeal, you must make sure you meet the VA's appeal deadlines.

In addition, you should carefully review the rating decisions, Statement of the Case, and Supplemental Statement of Case to determine the reasons for the VA's denial. These VA documents should explain why your claim was denied, which helps you understand what is necessary for your claim to succeed. In your initial appeal, make sure you provide any evidence that you did not provide with your initial claim because the appeal will reach a point at the Board level when you may not submit any additional evidence.

The claims and appeal process are so difficult that many veterans become discouraged and simply give up on their claims. On some occasions, veterans choose to reopen their claims many years later and discover they have lost years of unpaid benefits.

May I Hire A Lawyer to Help Me with My Claim?"

A veteran can hire an attorney to represent them in their VA disability claim after the VA has issued an initial decision on their claim. Under VA regulations, attorneys cannot charge fees for assisting with the initial application but may represent veterans once an initial decision has been made by the VA. Generally, attorneys will begin to represent veterans at the appeal stage, such as when challenging a denial. Veterans may also hire attorneys for representation before the U.S. Court of Appeal for Veterans Claims (CAVC) if they wish to appeal a Board of Veterans' Appeals (BVA) decision.

What's the First Step?

Call me toll free at **1-888-878-9350** because you no longer have to "go it alone."

I represent veterans before the U.S. Department of Veterans Affairs (VA) and the U.S. Court of Appeals for Veterans Claims (CAVC).

As a result, I have an in-depth legal background with a wide range of experience. This includes extensive experience in building and developing evidence in complex cases. I will gladly review your case and give you an honest evaluation of whether I think it's a winner or loser. Then I'll suggest how we should proceed. If I think I can win your case, then I'll offer to represent you before the VA or the Court of Appeals for Veterans Claims.

The sooner you call me, the sooner I may be able to help you. So please don't wait one moment longer. Call me today. **Call me toll free at 1-888-878-9350** for a free, honest evaluation of your claim, at no cost or obligation.

Eric A. Gang's Veterans Disability Commitment

The Government Pays My Fee in Cases at the CAVC.
I commit that I will not get one cent in attorney's fees unless I win a remand or reversal for you. And even then, the government will pay me under the Equal Access to Justice Act. My fee will not come out of your disability benefits.

No Lawyer's Fee from Your Current Monthly Benefits.
If I win current and future benefits for you, I will not receive any fee from your monthly benefit checks, now or in the future. If I win ***past*** benefits for you, I may receive a small percentage of those past benefits, which you and I will agree on in advance. And if you don't win your case, you pay me nothing.

My No-Risk, No-Cost, No-Questions-Asked, Take-Your-File Commitment.
I commit that if you are not delighted with my services during the first 30 days, I will gladly give you your file—at no cost—containing all the work I've done to date—so you can hire another lawyer or law firm. It's that simple.

Eric A. Gang

Eric A. Gang, Esq.

Gang & Associates, LLC
Veterans Disability Lawyers

17 Reasons Disabled Veterans Ask Eric A. Gang to Represent Them – And Why We Hope You Will, Too!

Reason #1: Disability Information Answer Line. To provide the highest possible level of service, I have set up a Disability Information Answer Line (toll free 1-888-878-9350) to answer your questions and educate you about how to win the disability claims process.

Reason #2: Exclusively Veterans Disability Cases. I focus my efforts entirely on cases involving Veterans Disability. When you call me, you can be sure you'll receive accurate information and aggressive, experienced representation.

Reason #3: Success. In my office, we achieve success in the majority of cases. Although I consider it unethical to publish exact success rates, I can assure you that we have achieved exceptional results for countless disabled veterans. Now you can benefit from my knowledge, skill, judgment, and experience.

Reason #4: Realistic Case Evaluations. I have dealt with a wide variety of veterans' disability claims. As a result, my team will counsel you on what will happen during the claims process and what to expect if your claim is denied. Our in-depth experience helps you make informed, intelligent decisions about your case.

Reason #5: Competent Representation at Every Stage. My team can assist you with all stages of your claim, including representing you at the regional office, the Board, and on appeal at the Court of Appeals for Veterans Claims. At the agency level, we will explain what issues are most important and help you obtain the evidence you need. On appeal at the CAVC, we will submit written legal arguments and legal briefs.

Reason #6: Nationwide Service. I represent clients in veterans' disability claims across the United States, the U.S. territories, and in countries where veterans may be living abroad. Don't hesitate to call me, even if you're far from my office. Distance will not be a problem.

Reason #7: I Accept Hard Cases. Not all cases are easy to win. But after representing hundreds of clients, my team gained a high level of knowledge and practical know-how. As a result, we don't shy away from hard cases if we believe your claim is valid and you deserve disability benefits. Even if your case has been rejected by other law firms, please don't hesitate to call my office. If you have a hard case that has merit, we will give it serious consideration.

Reason #8: I'm Not Afraid to Appeal When I Lose. VA adjudication officers often make mistakes. When I lose at one level and think I can win on appeal, I'll appeal your claim.

Reason #9: Dedicated to Education. I have dedicated my law practice to helping veterans with disabilities understand their options and make informed, intelligent decisions. That's why I offer helpful educational materials, like this veteran's guide.

Reason #10: I Take Cases After the VA has issued a Decision on your Claim. It doesn't matter whether your claim has been denied at the regional office. If you have received an initial decision, call me before you proceed any further with your appeal. I can help you avoid the costly mistakes most veterans make so you don't face repeated rejections.

Reason #11: I Understand Your Disabilities. Veterans' disability claims involve issues of medical causation, as well as functional impairment. I am experienced in reading medical records and understanding the nature of complex diseases and injuries. I know what information I need to get from your doctors. I can help the VA understand these issues and help you "tell your story."

Reason #12: Legwork. I will help you with the routine matters associated with your claim, such as filing your appeals in a timely manner and completing standard form questionnaires. I will obtain your doctors' records, as well as reports and opinions. While these things may seem burdensome to you, we perform these tasks every day. In addition, I know how to keep your claim running smoothly. I'll be happy to answer your questions quickly in everyday English, not legalese. While hiring an attorney will not speed up the bureaucracy, I will keep your case on track to make sure it is being processed in the shortest possible time.

Reason #13: No Win, No Lawyer's Fee. I do not collect an attorney's fee unless I win a remand or reversal for you. Even then, in cases before the Court of Appeals for Veterans Claims, the government pays my fee under the Equal Access to Justice Act. In cases before the Board or regional office, I do not collect an attorney's fee unless I win for you. If I lose your case, I get no attorney's fee at all.

Reason #14: Client Services Commitment. Every veteran receives a printed copy of my Client Services Commitment, in which I commit to the quality of service you will receive.

Reason #15: Clients Are Family Members. One reason I get excellent results for my clients is because everyone at my firm works as hard for you as they would for a member of their own family.

Reason #16: 30-Day, No-Questions-Asked Commitment. I commit that if you are not delighted with my services during the first 30 days, I will gladly give you your file—at no cost—containing all the work I've done to date, so you can hire another lawyer or law firm.

Reason #17: Free Consultation. I will gladly talk with you about your injury or disability and answer your questions without charge.

Eric A. Gang's 11-Part Client Services Commitment

When you hire our services, I promise you will receive...

1. **Close Personal Attention.** Either I or my staff will answer all your questions and do everything possible to treat you the way I like to be treated when I'm the client.

2. **Immediate Access.** We commit to making sure that we make ourselves available to assist you in all aspects of your case. If we are out of the office or with clients when you call, someone will return your call as soon as possible.

3. **Prompt Return Calls.** We commit that we will make every effort to return your phone calls promptly. If we are away from the office for any reason or otherwise unavailable, my staff will make sure they respond to your concerns or set a time when we can speak.

4. **Quick Response to Your Requests.** Whenever you need something from my office, please don't hesitate to call. I promise that my staff will respond as quickly as possible.

5. **Confidential Service.** I promise when you hire me, everything I do for you is confidential. No one outside of my office will know anything about your case, except those people with whom I'm working to resolve your claim.

6. **Contingency Fee.** On cases I accept, I receive a fee out of the past benefits I recover for you. If I do not recover any past benefits, I don't get paid. I will never ask you for a retainer or deposit. I will never ask you to pay me by the hour even though you have that option.

7. **Current Knowledge.** I work hard to maintain the highest level of knowledge in the areas in which I practice. I eagerly listen to continuing seminars, workshops, and lectures to stay up to date on the newest laws and latest VA and appeals Court decisions. I also teach veterans' law as a faculty member at Lawline and The National Business Institute.

8. **Competent Services.** The continuing education lectures and classes I attend allow me to provide you with the latest information, most effective techniques, and most efficient methods so you receive the full legal protection the law allows.

9. **Aggressive Representation.** I have an in-depth legal background with a wide range of experience. This includes extensive experience in building and developing evidence in complex cases. I will gladly review your case and give you an honest evaluation of whether I think it's a winning case. Then I'll suggest how we should proceed. If I think I can win your case, then I'll offer to represent you before the VA or the Court of Appeals for Veterans Claims. Wherever your case goes, I'll be with you every step of the way.

10. **Value in Every Respect.** My goal is to make sure you feel the value you receive from me is always greater than my fee. So, while I can't guarantee my fee will always be low, I can guarantee it will always be fair. I want you to receive more value from me than you'd receive anywhere else. And I'll work hard to make sure you do.

11. **More Than You Expect.** If you think of a way I can provide you with better service, or better meet your needs, please tell me how. If you have something troubling you—or if you have a concern or a problem—please discuss it with me. If I can help you, I will. If I can't help you, I may know someone who can. A good lawyer-client relationship deals with all types of problems, not just legal problems. So, if something crosses your mind and you want my input, I'll be happy to help.

CHAPTER 8

Read What Veterans Say About Eric A. Gang, Esq.

Over the years, I have secured over a hundred million dollars in benefits for disabled veterans and their families. Here is a sample of what these satisfied clients have to say about the work I did for them with my team.

"You got me 100% Disability Rating and that changed my life."

"I was fighting the VA since 1992. The most frustrating part was the long time it takes to get the case won. It is better to have someone represent you before the VA to win your case than handling your appeal on your own. Gang & Associates was able to get a winning result for me, they won my Individual Unemployability case…What I liked most about them is the expert service you get. You got me 100% Disability Rating and that changed my life! I recommend Gang & Associates to veterans who want to win their cases."

J. Fox ♦ Beallsville, Ohio

"The awards I received have allowed me to take care of myself and my family."

"I was fighting the VA since 1996. It was constant denial after denial before I met Mr. Gang. The first conversation I had with him, I felt he was different from the other three attorneys who represented me. He explained things to me using common words and made sure I understood what he was saying, he didn't talk over my head. His staff made me feel like I was important and always made me feel better at the end of our calls.

"Mr. Gang fights for the veteran as a person. He understood how I was feeling and struggling with my disabilities and his caring showed when he wrote his arguments to the VA. He didn't stop fighting for me until I was awarded everything I earned by serving, including back pay from the VA. The awards I received have allowed me to take care of myself and my family.

"Mr. Gang was not just my lawyer, he "is" my brother. Any veteran who submits a claim, just wait for your denial (it's automatic) and hire Gang & Associates!"

E. Magee

"In just one year, Eric accomplished what I've been trying to do for 18 years."

"Eric Gang is a very efficient, hard-working attorney. He cared enough about me to take my case, even when he didn't know me from Adam. In just one year, Eric accomplished what I've been trying to do for 18 years. I have already referred some of my service buddies to Eric and will continue to send more. Eric is always there for me, even though my case has been over for a year. Eric's a very nice man. I appreciate that he had enough faith in me to believe me."

Bob Ritchie ♦ Tustin, California

"Eric accomplished more in one year that I have in 55 years of trying."

"Dear Mr. Gang, How do I begin to thank you as my attorney. In less than one year you have accomplished more than I have in 55 years of trying —nine of those years with legal representation. You have had my medical record finally reviewed by a qualified orthopedic surgeon. You have always kept me informed regarding my claim. I will always listen and follow your advice and be very grateful for it. May God bless you and your loved ones."

Martin Fleishman ♦ Forest Hills, New York

"I picked Eric because veterans disability is all he does."

"Eric is the greatest lawyer I ever used. He really helped me. Eric did what he said he would do. He won my claim. For five years, the VA led me in circles. I don't know how they get by with that. When Eric and

I hooked up, it was not long before Eric had me at 100%. I don't know why VA wouldn't approve it. I have referred other veterans to Eric and will continue to send them to him. Eric's a good guy and I like him. He talks to you in terms you can understand. He kept me up to date and informed. I really like that. I picked Eric because veterans' disability is all he does. I am a Viet Nam vet, and I left the service in 1970. I would recommend Eric to anybody, and I have. A friend in California referred me to Eric. I'm glad he did."

Bobby Humphries ♦ Spartanburg, South Carolina

"Eric knew what to say and what to write. He got the rating."

"Eric is the best lawyer I've ever run across. I filed my first appeal in 1994, and I've been fighting the VA ever since. When Eric took my case, he got results in about one year. He's a great guy and I recommend him to anyone. I went to three or 4 attorneys before I chose Eric. When Eric came on board, he knew what to say and what to write. He got the rating. My brother had the same problems, and other people I know. They went through the same thing. Eric is a good attorney."

Frank Meredith ♦ Norfolk, Virginia

"I got PTSD in Viet Nam. It was traumatic and there were many like me. Eric is wonderful."

"I had open heart surgery not long ago. I couldn't get enough air. I needed another body. Eric is a wonderful attorney. He's very concerned when he speaks with veterans. He doesn't evade people, he explains things well. Eric's a wonderful human being and a very good attorney. He takes care of business and does the job to the best of his ability. The best part is his humanity. I was very impressed with him. I have recommended him to other vets and friends from the hospital. Eric is a down to earth person. He's meticulous. He sent me all the paperwork. I was in Viet Nam in 1965. They said I would see MOS, but first they saw you as a soldier and you had to serve in combat first. I got PTSD. What the VA does is a real injustice. 20 years later in a meeting with a psychiatrist, I talked about this experience. It was very traumatic and there were many like me in Viet Nam."

Ralph Artze ♦ Miami, Florida

"I highly recommend Mr. Gang."

"I was consistently told that I had no findings of PTSD. This went on for about 13 years. I had filed an

appeal after another, but I was unable to get anyone to listen to me. Finally, the VA Appeals Court made its final finding of no Service-Connected Disability. I was ready to give up, but I did file an Appeal with the U.S. District Court for Veterans Appeals. It was at that time that I made contact with Eric Gang, Esq. There was something about him that gave me a sense of security that my case would be handled as if it was Mr. Gang's own case. He succeeded in securing a Remand and had great success with the VA review of my case. Mr. Gang was very impressive in the knowledge and expert application of the Case Law as well as the various statutes pertaining to this matter. After a great deal of legal maneuvering by Mr. Gang and the several psychological exams by impartial experts in the field of PTSD and employability, I was successful in a matter that I had just about given up on. Mr. Gang was a God Send to my wife and myself. I know that all of the success was the work of Mr. Gang. If you get into a situation like mine, or if fact any VA Matter, I highly recommend Mr. Gang and you would be foolish not to rely on Mr. Gang's expertise."

Phil Elias ♦ Owasso, Oklahoma

"Your kindness and expertise made for smooth going."

"I must admit that I was skeptical at first, about my ability to receive compensation for my hearing disability resulting from my military service. I assumed the road to apply for this benefit would be tedious and time-consuming. But here we are today, with a successful result because of your efforts. I want to thank you so much for the time you spent with me and my wife, Gail. Your dealings with me were kind and took into account the vision and hearing issues that I have. With anyone else, this could have been a very frustrating experience. But your kindness and expertise made for smooth going. At a time when many of our institutions are being challenged, it is truly wonderful to meet someone with a respect for those of us that served our country and came home with a disability we will have to live with for the rest of our lives. You are a true patriot."

Chet Sesko ♦ Rockaway, New Jersey

"If I had to do it all over with a case of this magnitude, I would have hired Gang & Associates in 2012 when I initially filed my claim."

"I filed my initial claim for service connection in 2012. After three years of submitting documents and denials, along with mounting medical bills, I was advised by a fellow Marine to see legal help. I researched lawyers familiar with veteran's law and the VA process. In 2015, I contacted Eric Gang & Associates. After an initial interview with Eric, we decided to work together and pursue my claims. Having Gang & Associates on

my side was a huge relief when dealing with the VA. They knew the laws as it pertains to veterans and don't take "NO" for an answer. They stayed on top of the situation for 8 years and had the expertise on their side to prove my case. They kept me updated on the process as the case dragged on. Finally, after denials and appeals Gang & Associates achieved winning results. What I liked most about Gang & Associates was the upfront and aggressive approach they took in achieving a positive outcome. I was in for the long haul and Gang & Associates was there the entire time. Do not hesitate to hire Gang & Associates. Get a team of knowledgeable attorneys to fight the system in your favor. If I had to do it all over with a case of this magnitude. I would have hired Gang & Associates in 2012 when I initially filed my claim."

M. Rawlings ♦ Crosby, MN

"The service and personal attention we received from Eric A. Gang was exceptional."

"It gives me immense pleasure to write a testimonial letter for Eric A. Gang, LLC and his law firm. The service and personal attention we received from Eric A. Gang was exceptional! Mr. Gang and his law firm helped my husband win his appeal to receive his VA benefits. With the help of Mr. Gang and his law firm, my husband will finally receive 100 percent of his PTSD VA benefits, after trying to receive those benefits for the past 8 years. While working with Mr. Gang and his law firm we found him to be very diligent and knowledgeable in helping us win this case. At all times I have found Mr. Gang and his law firm to be dependable, reliable, hard-working, conscientious, honest, and Courteous. We highly recommend his law firm to any veteran who is trying to receive benefits. If we may provide you with any further information in your consideration of Mr. Gang and his law firm, please feel free to contact us…"

Mary Gibbs ♦ Swann Quarter, North Carolina

"Mr. Gang won me almost $250,000 in back pay."

"I was fighting VA for more than a decade. They denied my claim more times than I can remember. Mr. Gang won me almost $250,000 in back pay. I cannot thank him enough for helping me win my long battle with VA. I am extremely pleased with his representation, and I would recommend him and his firm to any veteran who has serious disabilities. Thank you, Mr. Gang, for everything and for helping me get my life back and secure my future."

Pat Paccione ♦ Tuxedo, New York

"Service connected after 56 years of trying."

"First, I want to thank you very much for all your help, to get service connection for my right knee. I have been trying to get service connection since June 20, 1956. To this day it has been 56 years trying. If I didn't have your help and hard work that you put into my case, I would still be trying for service connection. Whenever I see a vet that needs help, I will tell them about you. I want to thank you again."

Henry Alfredson ♦ St. James, New York

"You won a case that others said was not winnable."

"I am writing to express my sincere appreciation and thanks to you for winning my VA case for service connection. As you know, my condition demands isolation and difficulties in everyday life in ways that most people would not understand or be able to imagine. As a result of your insight and brilliant legal work, you won a case that others said was not winnable. This will change my life profoundly, and for this I am deeply grateful. Before I hired you to represent me, I contacted well over two dozen lawyers who had no interest in my case because of its complexities and low probability of winning. My previous lawyer and other legal advisors told me I would never be able to win my case without a change in the law. You proved them all wrong through your diligence, knowledge of veterans law, and interest in helping veterans with chemical injury. You prevailed at what seemed to me, and countless other legal advisors, an unwinnable case. I knew from the first time that I spoke with you that you were knowledgeable, compassionate, and interested in helping veterans. Through the case, you demonstrated knowledge and insight into the inner workings of the VA that others had not demonstrated to me. As a result, you won a benchmark case that will have far-reaching benefits to thousands of veterans who have health issues due to chemical exposure. Again, your winning my case will have profound influence on my life, and I am sincerely grateful that you had the courage to take on this case. Your knowledge and hard work have paid off for me and will do so for others with similar chemical injuries. Thank you for all your insightful work."

James Gabbard ♦ Corvallis, Oregon

"I searched about five lawyers who had some reason not to accept my case. So when I found Mr. Gang I was pleased. He had several appeals but kept right on plugging."

"This letter is to the veterans searching for a VA lawyer to represent them to obtain benefits. I would highly

recommend Mr. Gang. It has been a long battle, but he never gave up. I had a difficult case as my hearing was impaired having served in WWII in the antiaircraft when you were not given any protection for your ears. My search for a lawyer to represent me goes back many years. I searched about five lawyers who had some reason not to accept my case. So when I found Mr. Gang, I was pleased. He had several appeals but kept right on plugging. Finally, after never giving up I am now service-connected and the money is now going into a bank of my choosing. During this time Mr. Gang always accepted my phone calls himself, was Courteous, and kept me updated through his letters."

Jerry Cotignola, 211th AAA Gun Bn, 3rd Army General Patton, WWII ♦ Delray Beach, Florida

"This whole process has been life-changing and I am forever grateful."

"I have been fighting the VA since 2002 and the most frustrating part of this is fighting for benefits. I have disabilities clearly listed in my service medical record, but was denied over and over again. My past experiences with the VA, I have used veterans service organizations such as the DAV. But nobody has fought harder for me than You. This whole process has been life-changing and I am forever grateful. I personally have recommended several veterans and I have shared my experiences with them. I appreciate you helping me file all the paperwork, and not asking for money until the claims are done. Your team has been great as I have asked several questions over and over again and they have all been very patient with me. Thank you so much."

M. Orozco ♦ El Paso, Texas

"After 38 years, I got my 100% disability rating for PTSD thanks to Mr. Gang."

"I did not wait to get drafted into the Vietnam War. In 1970, I joined the Marines and went on temporary duty to Vietnam to assist in the evacuation of Saigon. On the first day they gave us a briefing and I got guard duty the first night. 4 hours on and 4 hours off. We took mortar rounds the first night. I was never in mortar fire before. The enemy shot mortars at the airstrip and I had to fire back trying to hit the mortars before they hit the aircraft. It was the worst thing I ever saw. Some people were killed. I came back to the States after 30 days, first to California, then to Hawaii where I ended my tour. I went from job to job, never staying more than six months. I found it harder and harder to hold a job. In 1975, in the summer, things got really bad. I had dreams of the Viet Cong coming after me, I could hear mortar fire. I never forgot the mortar fire. I went back and forth to the VA hospital, taking more and more drugs. I was in the hospital 8

or 9 times. Nothing seemed to help. They called my stress PTSD. I fought the VA by myself until Mr. Gang came along. Eric has integrity. That's why I asked him to represent me. We got back pay for 13 years, and we're still fighting for back pay for another 10 years. I've been fighting the VA for 38 years, every day since I was discharged from the Marines. I'll be 60 next year. It makes me sad to think about all the things I wanted to do, all the places I wanted to go. I've spent my entire life fighting either the VC or the VA. I give Eric my highest recommendation because he went up against the VA and won!"

Lamar Johnson ♦ Atlanta, Georgia

"I express my most sincere appreciation to you and your legal firm."

"It is with deep gratitude and a humble heart that I express my most sincere appreciation to you and your legal Firm for fighting and winning my VA Appeal. It certainly brings inspirational joy and enlightenment to me and my family each passing day of our lives, life in comfort and peace of mind! It was a very, long, painful struggle and journey-which ended with "sweet success." Yes, I would highly recommend your law firm to other veterans utilizing your legal services. I am deeply impressed with the manner in which your legal team and staff represents ALL Clients with dignity, honor, respect, loving care and deep concern. It is extremely very, very difficult to attempt to handle your VA appeal on your own! Please always seek legal help and counsel, veterans! May God bless you for your kindness and thoughtfulness."

Maria Morgan ♦ Huntsville, AL

"Nobody will represent you better than Mr. Gang and his staff."

"Few are the chances that a disabled veteran gets to thank and recommend someone, to other fellow veterans, for their outstanding work. I would like to take this moment and thank, from the bottom of my heart, Mr. Eric Gang and his staff and also recommend him with no reserves. This is an attorney that really cares about making a difference in disabled veterans' lives. Mr. Gang and his staff always took all of my calls and handled them very professionally and with utmost care. This experience was an eye opener for me since I live in Puerto Rico and I've never had the pleasure to meet Mr. Gang personally. However, he used all the tools at his disposal to make this process as easy as possible. After 4 years of waiting, he managed to get a 100% service connection for my PTSD, which I developed in Iraq. Now not only am I getting the treatment

that I need, I'm financially stable. I've already recommended Mr. Gang to other fellow veterans in my area but if this way I can get the message to a wider audience, then I will gladly write 100 more of these letters. Fellow veteran, nobody will represent you better than Mr. Gang and his staff. Mr. Gang and staff keep up the outstanding work and never back down from the fight!!"

Robert Delgado ♦ Anasco, PR

"Mr. Gang really cares and understands veteran issues."

"My name is Kenneth M. Hodge former U.S. Navy Radioman. I served in 1985 and was injured in a car accident in 1989. Then sent on a six-month deployment without proper medical care. I put in a claim for benefits with the VA and I have been fighting for a proper rating for decades. The most frustrating aspect of dealing with the VA appeals process is them being fair. The VA will overlook important evidence, try to intimidate you from pursuing your claim and make you wait a lifetime. Years will pass by before action is taken on your care. It will be a long hard battle but worth the wait. I didn't ask to be hurt while on the job serving my country. It was unthinkable for me to handle my own case, I needed a great lawyer who could handle my own case and fight to the end with me. I choose Gang and Associates, which the results of my case changed right away. Gang and Associates had my back. Mr. Gang won me a six-figure payout. He improved my quality of life. What I loved the most about dealing with Gang and Associates was communication, leadership, and guidance in handling my issues. Since winning this case, my family and I have a stable quality of life. I would recommend Gang and Associates to any veteran because Mr. Gang really cares and understands veteran's issues. Gang and Associates will fight to the end until you win."

Kenneth M. Hodge ♦ Buffalo, NY

"Eric was a wonderful attorney!"

"I was fighting in the VA for about five years. The most frustrating aspect of the VA appeals process was waiting for needed information. I started on my own, but then they refused my claim. Your law firm is awesome! I was very happy to hear that I'm 80% but being paid for 100%. I purchased a 2009 Hummer. Thank you very much. I love you guys. Everyone in the firm is very knowledgeable about military law. And tell me what's going on in the case. It's nice to have the extra money. I am thinking of purchasing a home in

Puerto Rico. I absolutely would recommend you to other veterans. I told another veteran about you and told her that Eric was a wonderful attorney."

Anthony Ruiz ♦ Central Islip, NY

"Mr. Gang goes above and beyond to help veterans."

"I have been fighting for my VA benefits for over 8 years. In the beginning, I had very little help and done most everything on my own with no luck. I spoke to a few about helping, but had no luck. I would have to say that the most frustrating thing about filing for my benefits was the time it took. I think the VA system needs more help in going through decisions for benefits. Maybe that would cut some of the time in the process. When trying to handle my appeal on my own, I was lost and didn't really know where to begin. I had spoken to a service representative from the American Legion, but he was not of any help. If anything, he delayed the process. Mr. Gang's law firm did win my VA benefits. After picking from a list of attorneys, I decided on Mr. Gang's law firm. It was the best decision I could have made. He and his assistants were very helpful and treated me with respect. What I liked most about Mr. Gang's services was that whenever I needed to speak with him, he was always there or returned my phone calls in a very timely manner. Whenever Mr. Gang received information, he always passed it along to me. I would say that Mr. Gang and all of his assistants worked very hard for me. It has been a long wait, and sometimes very tough. But once I chose Mr. Gang's firm it didn't take long at all. I am very thankful to Mr. Gang and his firm. I would definitely recommend Mr. Gang's law firm to another veteran who is having a hard time obtaining their VA benefits. Mr. Gang goes above and beyond to help veterans. Mr. Gang treated me with respect and always kept in touch with me. Even when he had no news at all, he would just call to tell me he hadn't forgotten about me."

Keith P. Roberts ♦ Oneida, TN

"I have found not only do I have a wonderful lawyer in Eric Gang, but I have grown to consider him my friend."

"To My Military Brothers and Sisters: I am writing this letter of thanks and appreciation to my lawyer Eric Gang and his staff for the wonderful job he accomplished with my Veterans Disability Benefits case. My name is Mark Hagan and about 15 years ago, I was a homeless veteran living in a shelter. While serving in the military, I severely hurt my knee in an accident and had to have knee surgery. I spent over a year of my military service in rehabilitation. After the military I worked several manual labor jobs which resulted in me having to have four

more surgeries. My last job was over 10 years ago working for Goodwill Industries as a handicapped employee. I was unable to continue in that employment because of the physical pain and the deterioration of my knee. At that point, I applied for disability from Social Security and it was awarded to me. I retained a lawyer from VA Services to help me get a VA disability on my knee. I was turned down at first and my VA lawyer tried to make light of my disability, by sarcastically saying "How much do you think that knee is worth?" All I knew was that I could not hold a job and my social security benefits were not enough to provide a living for me and my two girls. I began to be frustrated, depressed and disappointed. I felt very humiliated to find myself in such a position. At this point I turned to a new lawyer, Eric Gang, and retained him as my lawyer. He felt my case was strong and urged me to appeal the decision. For the past seven years, he has handled my case for VA unemployability. He has always stood behind me and has always assured me I was deserving of unemployability benefit. It has been a long stressful process with a lot of disappointment, let downs, and several appeals, but my lawyer never quit on me and continued to encourage me all the way through the process. Many decisions were made in my case. I was first awarded 30% disability, then he fought for 60% and received it. Then it was dropped to 30% by the VA, but through it all he consistently assured me I was worthy of a 100% disability. I have finally received my 100% unemployability benefits from the VA. Now my life has completely changed. Instead of worrying about how I am going to pay my bills, I now have my own home. I don't have to worry about how I'm going to meet my financial obligations, and I can even put money in my savings every month. Thanks only to the persistence of my lawyer, Eric Gang. I have two teenage daughters who are receiving compensation due to my veteran's disability. Their medical needs are also met and when they attend college, they should be able to attend free of charge! Thanks to my lawyer Eric Gang. One of the greatest benefits of this ordeal for me as a father is to be able to provide for my children. I started out with a lawyer who felt I should be happy with just my Social Security Benefits, but I ended up with a lawyer who related to my situation and fought for me every step of the way. Eric Gang and his staff never failed to keep me up to date on my case and any time I had a question or concern he always had the time and patience to explain things to me in such a way as to put my mind at ease. This is a great quality to have in a lawyer in this day and time when lawyers feel that time is money! It has been a long struggle with a lot of disappointments and let downs but through it all, I have found not only do I have a wonderful lawyer in Eric Gang, but I have grown to consider him my friend. Mr. Gang cares about the common man and I highly recommend his services to anyone who has a VA disability case. He will get the job done and stand by you through it all. Please feel free to contact me…if you would like more information about my case or to give you a reference for Gang & Associates!"

Mark Hagan ♦ Your Brother in Arms, KY

"Eric helped me obtain 100% plus special monthly compensation. My doctor: "I've never seen anything like it."

"My name is Kennedy Sanders. I served in the Army between 1982 and 1992. I was in the 73rd Ordinance Battalion, 269th Ordinance Brigade. You don't know me, but I want to share something with you today... from one disabled veteran to another.

I want to talk to you about my lawyer, Eric Gang. He sent you a letter recently after hearing about your appeal to the Court. Eric won me a remand at the Court almost 10 years ago, and since then he has valiantly fought VA to help me obtain a 100 percent rating plus special monthly compensation. He never gave up in all these years. There are two things you need to know about Eric. First, Eric is a perfectionist to a fault. Matter of fact, I was talking to my doctor the other day. He's one of the top neurologists in Iowa. We hired him to create an expert medical report outside the VA. He has never met Eric or talked to him before. Their relationship is purely through e-mail and letters. He said this to me: "I don't know who your attorney is, Mr. Sanders. I've done a lot of these cases and he is the most thorough guy. He told me exactly what he wanted, how it should be written, how my medical opinion should be presented according to the VA guidelines. I've never seen anything like it. " Secondly, Eric LISTENS. Let me just say this. When I got his letter in the mail, I wasn't impressed by it. It seemed like the other law firms had fancier brochures and made bigger promises. Also, I had just called seven other lawyers, and I ended up in frustration with all of them. I always got a condescending and arrogant attorney, a "mouthpiece" if you will, who didn't seem to care about my case. Filled with hopelessness and despair, Eric was going to be the last lawyer I called before I gave up. Imagine my surprise when he actually spoke to me himself, most times you will get a legal secretary with the promises of a call back. We started talking and I was instantly impressed... I'm 52 years old. I've seen some things. I can spot a slick car salesman a mile away. From the moment I spoke to Eric, I never got any disingenuousness from him. Here's the thing with Eric. When you're in front of him, you're his whole world. If he's talking to you, and I'm on the other line, he won't take my call! He knows I'm just as important as you are, but he's talking to you right now. He will make sure you understand what's going on first, before he talks to me. That's the kind of guy you want to work with. Yeah, I know he works FOR me... but to me, I work WITH him. He's a partner. Eric knows more about my pain, frustrations, and my medication... more than my wife does. Let me put it this way... If I get called back up, if I was reinstated... there are two people I know (for sure), I would want with me. One is my older brother. The other guy is Eric Gang. That's what I think of the guy. I would make sure I buddied up with him to watch his back. I know he would be watching mine. I

am proud to have Eric as my attorney. I am proud to have him as a partner. I will personally make a trip out to New York to meet him and his family. That's what I think of him."

Kennedy Sanders ♦ Des Moines, IA

"Your compassion for wounded Veterans is unmatchable."

"Mere words will never be enough to properly and accurately express the gratitude for Mr. Gang and his staff of professionals he used to obtain my 100% disability rating from the Dept. of Veteran Affairs. I have never before in my sixty-six years of life been witness to such a high degree of use of strategies and expertise at precisely the time in which they were required. Mr. Gang you made what all others said would be impossible, a reality. Your compassion for the wounded veterans is unmatchable. God bless you Mr. Gang."

Jim & Mary F ♦ LeRoy, NY

"They are truly the best and are equipped to help others navigate the complexities of the Veteran Affairs appeal process."

"Since March 2013, I have been tirelessly fighting with Veteran Affairs to secure the benefits rightfully owed to my late husband. The process has been incredibly frustrating, marked by continuous returns to Court and repeated denials. Initially attempting to navigate the appeal process alone proved daunting and disheartening, with a lack of guidance and unanswered questions exacerbating the situation. However, the assistance of Gang and Associates law firm proved invaluable. Their dedication and expertise ultimately led to a victorious outcome, securing a 100% disability payment that brings much-needed peace of mind and ensures the ability to maintain our home. Gang and Associates not only achieved success but also provided compassionate support and thorough guidance throughout the arduous process. They are truly the best and are equipped to help others navigate the complexities of the Veteran Affairs appeal process."

P. Naughton ♦ East Sandwich, MA

Meet Eric A. Gang, Esq.

Law Practice

Eric has been in private practice of law since 1998. As founding partner at Gang & Associates, Eric Gang's service-focused approach and strategic vision have produced the nation's premier firm for veterans' disability law, serving veterans and their families across the country. Having practiced law for over 25 years, Eric has litigated more than 1,000 appeals at the U.S. Court of Appeals for Veterans Claims, winning some of the largest VA awards on record.

Eric is renowned for his calculated representation of veterans with complex VA claims and appeals involving PTSD, traumatic brain injury, and other psychiatric illnesses. His high-level advocacy results from a deep understanding of the interrelationship between psychological and physical illness in veterans. With a noted wealth of medical acumen, Eric's ability to apply the interrelationship between body systems in the legal setting has allowed him to develop strategic pathways to victory in cases that VA has repeatedly denied for decades. Simply put, Eric's team wins cases others deem impossible. He maintains offices in New Jersey, Texas, Puerto Rico, Tennessee, and Washington, D.C.

Highlights

Author/Lecturer

Eric lectures widely in the area of veterans' benefits law for such prestigious organizations as Lawline, Rossdale, and the National Business Institute. He has also lectured for the New Jersey State Bar Association's Institute for Continuing Legal Education. He has co-authored two publications for The National Business Institute on appealing the denial of VA benefits, which were published in 2013 and 2014. His work has also been published in industry publications such as *The Federal Lawyer* and he has been a commentator on veterans' issues for WRNJ radio. Eric's work has also been mentioned in media outlets across the country, including the Dallas Morning News, the Charlotte Observer, the Miami Herald, and the Cincinnati Enquirer.

Recent Lectures & Speaking Engagements

Panelist: ***Veterans and Mental Health***, NJ Reentry Corporation, Annual Convention, Jersey City, NJ – March 28, 2024

Representing Disabled Veterans, Cornell Law School Veterans Practicum, Ithaca, NY – March 19, 2024

Veterans Benefits Seminar, American Legion, San Juan, PR – February 26, 2024

Veterans Benefits Seminar, American Legion, Cabo Rojo, PR – February 27, 2024

Keynote: ***The Psychological & Biological Impact of War on Veterans***, American Mensa Annual Convention, Baltimore, MD – July 6, 2023

Client Relation Skills for Representing Disabled Veterans, New York, NY – November 10, 2022

Proving Service Connection in Toxic Exposure Cases, New York, NY – November 18, 2021

Proving Service Connection for Camp Lejeune Veterans, NJ State Bar Association, New Brunswick, NJ – November 11, 2021

The Strategic Use of Experts in VA Disability Cases, New York, NY – November 12, 2020

Keynote: ***The State of Affairs for American Veterans***, American Mensa Annual Convention, Phoenix, AZ – July 4, 2019

Keynote: ***Betrayal of Valor***, American Mensa Annual Convention, Hollywood, FL – July 6, 2017

The Problem with VA, Vietnam Veterans of America, Vernon, NJ – September 25, 2016

Obtaining Veterans Benefits, Sheraton, Four Points, Plainview, NY – October 29, 2015

Obtaining Disability Benefits for Disabled Military Veterans, New York, NY – October 26, 2015

Appealing the Denial of VA Benefits, New York, NY – October 26, 2015

U.S. Veterans: Issues and Perspectives Impacting Diversity, Princeton University – HERC Conference - October 21, 2014

Co-presenter***: Niche Practices Parts I & II***, NJ State Bar Association's ICLE Webinar – August 7 & 14, 2014

The VA Healthcare Scandal, WRNJ Radio – July 17, 2014

Appealing the Denial of VA Benefits, Plainview, NY – March 24, 2014

Mastering Veterans Benefits, Claims and Appeals, Rossdale CLE Webinar - February 6, 2014

Appealing the Denial of VA Benefits, New York, NY – March 27, 2013

Veterans' Issues and How They May Impact Your Practice, New York, NY – February 24, 2013

Appealing the Denial of VA Benefits, Plainview, NY – February 11, 2013

Current Issues in Veterans' Benefits, American Legion – September 17, 2012

Obtaining Disability Compensation Benefits for Disabled Military Veterans, New York, NY – January 17, 2012

Memberships and Associations

Eric's current or past memberships include the National Organization of Veterans Advocates, the CAVC Bar Association, the Veterans and Military section of the Federal Bar Association, the Veterans and Military section of the New Jersey State Bar Association, and the New York County Lawyers Association. Eric is also currently serving in a leadership capacity at the Disabled Veterans Resource Center, a nonprofit veterans' advocacy group.

Awards

- Superb Avvo ranking
- 2015 Avvo Clients' Choice Award
- Top Attorneys of North America 2017
- Avvo Client Choice Award – 10/10 Rating
- 2021 National Law Journal Litigation Trailblazer Award
- Lawyer of the Year 2002 – ELPDG, Inc.
- Elite Boutique Trailblazer Award – The National Law Journal, 2022
- 500 Leading Lawyers in America – Law Dragon 2022
- The National Association of Distinguished Counsel's Top 1 Percent Award 2023
- New Jersey Law Journal Innovator of the Year honoree 2023

- National Association of Distinguished Counsel's Top 1 Percent Award 2024
- American Bar Association Solo and Small Firm Project Award 2024

Bar Admissions

- U.S. Court of Appeals for Veterans Claims
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Armed Forces
- U.S. District Court, District of New Jersey
- New Jersey
- New York (intentionally inactive)
- Department of Veterans Affairs, Accreditation No. 10299

Education

Juris Doctor, 1998
Seton Hall University School of Law
Newark, NJ

Community Participation/Affiliation

Eric is currently serving as executive director of the Disabled Veteran's Resource Center, Inc., a nonprofit veterans' advocacy group. The DVRC's mission is to educate veterans with the information they need to successfully fight VA and win their disability benefits. Eric also speaks to veterans' groups, community groups, and academic institutions on veterans' issues.

Personal

Eric is a native of the New York City metropolitan area. He is the father of four children. When he's not in his law office, he spends his time on a farm in rural New Jersey.

Call Toll Free at 1-888-878-9350 or
send your email to **info@veteransdisabilityinfo.com**

Check us out on the web and social media at
www.veteransdisabilityinfo.com

The Charlotte Observer

The Buffalo News

The Sacramento Bee

Stars and Stripes

The Dallas Morning News

boston.com

Miami Herald

FOX NATION

CBS 46

FOX BUSINESS

CHAPTER 9

Read How Eric Gang Helped These Veterans with Their Disabilities, Which May Be like Your Own

Below are 20 case studies of effective advocacy where our team helped veterans secure benefits and service connection for a wide variety of disabilities.

Case #1: **Veteran severely disabled due to Major Depression.**

Result: **100 percent rating and back pay of over $270,000.**

This veteran served on active duty in the Army in the early 1970s, during the Vietnam era. While in the service, he was mistreated by other members of the service and began developing mental problems. The medical corps said he had a personality disorder, and he was eventually kicked out of the service with a discharge under other than honorable conditions. In the early 1990s, he filed a claim for his depression. His claim was eventually denied on the grounds that the character of his discharge – under other than honorable conditions – barred him from receiving VA benefits. He hired two different attorneys, and the VA continued to deny his claim.

The case eventually made its way to the Board where it was again denied. The veteran hired us to appeal his case to the U.S. Court of Appeals for Veterans Claims. Although the character of his discharge was under conditions other than honorable, we were aware of exceptions to this bar. One

exception involves proving that the veteran was "insane" at the time he committed the offenses that led to his other-than-honorable discharge.

On reviewing his file, we discovered that the Board had overlooked several key letters from treating psychiatrists that indicated that the veteran had a mental disability at the time of his service. The Board had ignored this evidence. We argued successfully that the Board had made a mistake. As a result, we were able to get his case remanded back to the Board.

Once the case was back at the Board, we gathered an additional expert report from a psychologist who concluded that the veteran did not have a personality disorder—which VA does not consider a disability—but was exhibiting the early symptoms of Major Depression. We submitted an additional argument together with additional expert evidence. The Board decided in this veteran's favor.

The result: After 13 years on appeal, we finally obtained service connection for this veteran. We achieved a 100 percent rating for Major Depression and the veteran received a back paycheck in excess of $270,000.

Case #2: This Veteran is service connected for numerous physical disabilities.

Result: 100 percent rating and back pay of over $280,000.

This veteran filed a claim in the mid-1990s for increased ratings for his service-connected disabilities as well as for schizophrenia. Eventually, the Board denied all his claims. The veteran hired us to appeal his case to the U.S. Court of Appeals for Veterans Claims. Upon review of his file, we discovered that the Board had ignored evidence that the veteran suffered additional limitations due to the pain his service-connected disabilities caused him.

The Board also denied the psychiatric claim on the grounds that there was no evidence that the schizophrenia was related to service. However, we discovered that the veteran's psychiatric records showed that he was preoccupied with his physical pain, and the records suggested that he had some mental problems due to the constant pain. As a result, we successfully argued that the Board had

failed to consider a claim for secondary service connection—that is, it failed to consider whether the veteran had a mental disability that was caused by the chronic pain from his service-connected physical disabilities. We got his case remanded back to the Board.

Once back at the Board, we developed additional evidence for this veteran. We scheduled him for an evaluation with a private forensic psychologist. We obtained his x-rays and MRIs and had an expert radiologist review them and write a report. We also scheduled the veteran for an evaluation by a vocational expert.

The Board issued a decision, but instead of granting the claims, it remanded the case back to the regional office for another VA exam. After more than an additional year of waiting, the regional office finally made a decision. They granted service connection for the veteran's mental disability as secondary to his service-connected physical disabilities.

The result: 100 percent service connection for Major Depression with almost 13 years back pay, which amounted to more than $280,000.

Case #3: **This Veteran was service connected for PTSD but rated at only 50 percent.**

Result: **70 percent rating plus TDIU and a past-due benefit award of $120,000.**

This veteran had not worked a regular job since returning from Vietnam around 1970. He supported himself on and off with various activities but mostly driving a cab. The PTSD began to affect his judgment and his ability to run his cab business. He eventually lost any income he had from driving a cab. For a number of years, the veteran tried to live on about $700 per month. This was extremely difficult, and the financial problems worsened his PTSD.

Finally, the veteran hired us to represent him at the Court of Appeals for Veterans Claims. We discovered that his file showed that although he was only rated at 50 percent for his PTSD, he was unable to work and had difficulty getting along with people. The veteran also had low GAF scores.

We found that the Board had failed to adequately consider the evidence that he was unable to work due to his PTSD, and we also found that the Board failed to adequately consider the significance of his low GAF scores. We successfully argued for a remand.

When the case was returned to the Board, we obtained the report of an expert psychologist who discovered that the evidence in the record confirmed the veteran's PTSD made him unable to maintain a gainful occupation. We filed additional arguments with the Board and submitted the additional expert report. Also, we argued that the case raised an informal claim for TDIU (Total Disability Individual Unemployability).

The result: The Board increased the PTSD rating to 70 percent and then awarded TDIU. The result was a past-due benefit award of $120,000.

Case #4: **This Veteran was sexually assaulted in the service.**

Result: **Service connection for PTSD resulting from in-service sexual assault.**

Due to the sensitive nature of the trauma, this veteran never said anything about the incident. He was eventually discharged from the service in the late 1960s. The veteran tried to deal with the situation by himself, never telling anyone about it. His difficulties resulted in a failed marriage and many difficulties with co-workers on the job. Eventually, the problem became too severe, and he began seeking help at the VA.

Most of the VA treating psychologists recognized his symptoms as being consistent with someone who had sustained military sexual trauma. Nevertheless, the VA denied his claim on the grounds that there was no proof that the sexual trauma had happened. All he had was his word, and the statements from friends and family who testified that they had noticed an immediate change in his behavior upon returning from the service.

The veteran hired us to represent him before the U.S. Court of Appeals for Veterans Claims. We discovered that the Board had considered the statements of all his friends and family except for his wife. His wife had provided a statement to support her husband's claim. The Board had overlooked

this statement. We capitalized on this mistake and successfully got the case remanded back to the Board.

On remand to the Board, we were able to obtain a letter from the veteran's treating social worker at the VA. The social worker concluded that the veteran's symptoms were consistent with someone who had experienced sexual trauma. We filed additional arguments and submitted additional evidence. The result: The Board granted service connection for PTSD because of the in-service sexual assault.

Case #5: Vietnam Veteran with multiple disabilities.

Result: Back pay from PTSD increase and TDIU award exceeding $100,000

As a result of Agent Orange exposure, this veteran developed type II diabetes. He was service connected for diabetes and PTSD. He was rated at 50 percent for the PTSD and 20 percent for diabetes. He filed to increase his PTSD and diabetes ratings. The Board and regional office denied him an increase. He hired us to handle his appeal to the U.S. Court of Appeals for Veterans Claims.

In terms of background, the veteran's PTSD symptoms made it impossible for him to be around people. As a result, the veteran could not work a regular job. He tried to earn a little extra money by fixing cars from his garage at home. If he was lucky, he was able to earn a few hundred dollars a month. However, the PTSD symptoms aggravated his physical pain from a non-service-connected back disability, as well as his diabetes. As a result, he eventually had to give up doing auto repairs. His only income was his VA check for his combined rating of 60 percent. Needless to say, money was very tight for this veteran.

On review of his file, we discovered that the severity of his PTSD had fluctuated during various time periods. The Board had failed to consider higher ratings for the different time periods when the condition was worse. We successfully argued that the Board had failed to consider what are called "staged ratings." As a result, we successfully obtained a remand of his case.

Once the case was back at the Board, we developed more evidence in his case. We had the case reviewed by an expert forensic psychologist with whom we often work. She was able to determine

that the veteran´s PTSD symptoms were much more severe than the 50 percent rating. She also noted the research that indicates a clear relationship between psychiatric problems and physical pain. She gave the opinion that due to the PTSD symptoms, the veteran had lost all his income and was not able to work or otherwise earn a living. In addition, we argued that he was entitled to TDIU.

The Board issued a decision in the case and increased his rating for PTSD to 70 percent, but remanded his claim for TDIU back to the regional office. The Board wanted to schedule the veteran for a compensation and pension (C&P) exam. Once the case was back at the regional office, the VA scheduled the veteran for the C&P exam. We helped prepare him for the exam. Once the exam was over, we made a Freedom of Information Act request to obtain a copy of the C&P exam report. We wanted to see what the VA examiner said. The C&P exam report was largely favorable. In the meantime, we had also contacted a vocational expert who evaluated the veteran and determined that his PTSD made him unable to maintain gainful employment. We submitted additional arguments along with the vocational expert's report.

The result: The veteran was awarded TDIU. His back pay—from the PTSD increase and TDIU award—exceeded $100,000.

Case #6: **This Veteran served in the Navy during the Korean Conflict era and later developed asbestosis.**

Result: **100 percent service connection for mesothelioma and back pay over $80,000.**

This veteran's occupational specialty exposed him to asbestos. Decades later, he developed asbestosis. He filed a service connection claim, which the VA eventually granted. The VA awarded 0 percent. He filed an appeal. During his appeal, his medical problems continued to increase. Chest x-rays began showing pleural effusion, and he was eventually diagnosed with mesothelioma—a terminal lung cancer associated with asbestos exposure. Because his pulmonary function test results were not high enough for a 10 percent rating under the diagnostic code for asbestosis, the Board denied his claim.

This veteran hired us to handle his appeal to the U.S. Court of Appeals for Veterans Claims. Upon review of his file, we discovered that his pulmonary function test results were high enough for a compensable rating—meaning greater than 0 percent—if the VA had used the diagnostic codes for pleural effusion, which this veteran had. We were able to successfully get his case remanded back to the Board.

At first, the veteran thought he could handle the case at the Board on his own. But he eventually enlisted our help. We got to work in obtaining reports and records from his private pulmonologist and oncologist. His oncologist gave the opinion that the veteran had mesothelioma linked to his Navy service. Further, we hired a private medical expert to also review the file and write an expert opinion. We filed additional arguments and evidence directly to the regional office. Despite the veteran's age, the regional office sat on the case for a very long time. The veteran continued to call us wondering about the status of the case. We contacted the VA but received the usual runaround. Eventually, the regional office made a decision and awarded 100 percent service connection for the mesothelioma. The veteran received a back paycheck in excess of $80,000.

Case #7: WWII Veteran with hearing loss from his service in World War II.

Result: Service connection granted after he was well over 90 years old.

This veteran participated in and survived the June 1944 D-Day invasion at Normandy and received numerous awards and decorations, including a letter from General Patton. He returned from Europe in 1945. Like a lot of veterans, he was eager to get out of the service and get home. He was not about to complain about any medical problems at the time of his separation physical. He had been faithfully writing letters from Europe to his girlfriend all during the war. Upon returning, they got married. The veteran went to work in a service station where he worked for about the next 50 years.

All throughout the years after returning from combat in Europe, his girlfriend—who became his wife—noticed that the TV was always turned up loud. The couple eventually had children and when they got a little older, they also noticed that they always had to talk really loud for their father to hear them. The years passed. The veteran's children grew up and moved away. But the hearing problem persisted and continued to grow worse. Finally, the veteran's wife couldn't take it

any longer. She insisted that he go to the doctor, which he did—53 years after getting out of service. He never complained or sought treatment for anything for 53 years after service.

His doctors diagnosed him with hearing loss. He filed a claim with VA. Naturally, the VA denied the claim. Making matters worse was the fact that his records from the service were destroyed and unavailable. Luckily, his wife had saved all the love letters that he had sent her during the war. In those letters, the veteran described what he was doing and, most importantly, how loud everything was.

The VA eventually admitted that the veteran was exposed to loud noises in service. But they kept denying the claim saying there was no evidence that the hearing loss was related to service. The VA used the 53-year gap between separation and the first medical treatment to deny the veteran´s claim.

The veteran eventually appealed to the U.S. Court of Appeals for Veterans Claims. He hired us to help him. Upon review of his file, we discovered that his wife had given testimony that over the years they noticed his hearing loss. The Board had failed to discuss his wife's testimony. As a result, we were able to get the case remanded back to the Board.

On remand back at the Board, we obtained several additional medical opinions from his private physician. We submitted these reports along with additional statements from his wife and children. The Board re-decided the case and again denied the claim. We did not give up. We filed another appeal to the U.S. Court of Appeals for Veterans Claims. We again were able to successfully get the matter remanded.

This time on remand, we hired a top medical expert who was able to determine that the veteran's hearing loss was, indeed, caused by military service. The case went to the Board where we again submitted more arguments and new expert evidence. The Board finally decided the case and this time granted service connection. By this time, the veteran was well over 90 years of age.

Case #8: **Multiple chemical sensitivity syndrome, organic brain syndrome, and chronic fatigue syndrome:**

Result: **Service connection granted and back pay awarded in excess of $300,000.**

The veteran worked with lead and other toxic chemicals during service. He began to experience some seizures and other difficulties during service, but the medical corps could not find anything wrong with him. His separation exam was "normal." About 20 years after service, he developed severe chemical sensitivity to the point that he could not be around any synthetic substances. He became virtually confined to his home. All synthetic items had to be removed from his home.

He began filing for benefits and VA denied him repeatedly. The VA rejected the idea that anything was wrong with him. They believed it was all "in his head" and there was no connection to service. In particular, the VA could not accept a 20-year gap between discharge from service and when the symptoms began. The veteran appealed his denials through the regional office and several times to the Board. The matter was remanded several times, and he was given multiple VA compensation and pension exams. All the VA examiners consistently found ways to say his injuries either did not exist or there was no way they could be connected to service.

After his last Board denial, the veteran retained our law firm to represent him on appeal to the U.S. Court of Appeals for Veterans Claims. We successfully argued that the Board had failed to expand the scope of his claim to include other theories or disabilities that were suggested by the evidence. We got the case overturned on appeal and remanded back to the BVA.

Due to the complexity of the medical issues, we retained one of the world's leading experts in neuropsychiatry and organic brain issues. This expert was one of only 9 experts in the world with his level of qualifications. We submitted over 100 pages of additional medical expert materials, establishing that there were scientific studies and laboratory test results that supported a delay in the onset of symptoms associated with chemical exposure. The Board found yet another reason, however, to remand the case back to the regional office.

Once the case was back at the regional office, we obtained additional medical expert opinions from the veteran's treating physician and submitted more arguments to support the claim. We also began aggressively pushing the VA to make a decision on the claim. Finally, after 17 years of appeals, the regional office granted service connection and awarded 100 percent disability with a back pay award that exceeded $300,000.

Case #9: This Veteran developed eczema during his long military career that spanned from the Vietnam era through peacetime.

Result: Granted TDIU

While in the service, this veteran was involved in food services. He was trained as a chef. During service, he developed a skin condition, which the doctors diagnosed as eczema. He eventually obtained service connection for the condition. However, the VA did not give him a high enough rating. He filed to increase his rating. He kept getting denied and he eventually appealed to the U.S. Court of Appeals for Veterans Claims. He hired us to help him.

When we began to review his file, we noticed that his skin condition really interfered with his ability to work as a chef. He had flaking and cracking skin, which made it impossible to work around food. We discovered that the Board had failed to address whether to refer his case for extraschedular consideration. We obtained a remand of his case.

On remand back at the Board, we continued to develop evidence to support a claim for TDIU. We believed that the veteran's situation warranted a total disability rating. His skin condition was rated at 60 percent by itself, and it was clear to us that he was unable to work. We obtained an expert report from a medical expert who agreed. The expert gave the opinion that the veteran was unable to work in his vocation. We submitted additional arguments and evidence to the Board. The Board re-decided the case and granted TDIU.

Case #10: Veteran is severely disabled due to PTSD and a psychotic disorder.

Result: 100 percent service connection awarded with back pay in excess of $375,000

The veteran served on active duty in the Marine Corps in the early 1970s—during the Vietnam War. He had TDY in Vietnam. Unfortunately, his DD-214 did not reflect his time in Vietnam. Prior to his discharge, the veteran began experiencing some psychiatric symptoms, but these complaints were not documented anywhere in his service treatment records. Within a year of his discharge from the Marine Corps, the veteran found himself hospitalized in the psychiatric ward of a private hospital. He was initially diagnosed with a psychotic disorder. The records from the private hospitalization were no longer available.

By the mid-1970s, the veteran could no longer work. He survived as best he could, but it was not easy. Somebody finally suggested that he go to the VA and seek benefits. He went to VA. Not surprisingly, the VA denied him. By 1989, the VA had already denied the veteran twice. He had begun to give up hope, and so he waited another 10 years before filing again for a psychiatric disability. But the VA denied him again. He appealed to the Board and was denied. This process of repeated denials and appeals continued for almost another 10 years.

Finally, the veteran retained our law firm to represent him in his appeal. We successfully appealed his case to the U.S. Court of Appeals for Veterans Claims. We were able to obtain a remand of his claim. When the case went back to the Board, we began to acquire the evidence we needed to win his claim. We had his matter reviewed by a physician who gave the opinion that the veteran's psychiatric condition was due to his service in Vietnam.

The Board, however, was not interested in granting the claim so easily. The Board remanded the case back to the regional office for another VA examination. Normally, the Board will remand for another VA exam if it is unwilling to accept a favorable report from a private doctor. The VA examiner was sufficiently persuaded by our private doctor that she wrote a report that was somewhat helpful—although not entirely favorable. Accordingly, we obtained another expert evaluation from

a former VA psychologist. Our second expert gave the opinion that the military experiences in Vietnam aggravated a pre-existing condition.

But the VA continued the denial of the claim. So, we filed additional arguments to the point that the VA sent the veteran for yet another exam. We suspected that VA was trying to develop evidence to support another denial. We filed an argument against this tactic. We also discovered that VA was going to be sending the veteran to QTC, which is a private medical examination company. The VA usually uses QTC when they want to obtain evidence against a claim. Nevertheless, we found the identity of the doctor at QTC, and we sent her all the private expert reports and provided a detailed explanation as to why service connection was appropriate. Because of our proactive efforts, we were able to influence the QTC examiner to write a favorable opinion.

As a result, the VA issued a rating decision awarding 100 percent service connection and more than 13 years back pay, which amounted to more than $375,000. The veteran had not worked since the mid-1970s, and this award represented more money than he had ever seen in his entire life.

Case #11: **This Veteran injured his back while serving in the Navy during the Vietnam era.**

Result: **Service connection was awarded**

This veteran injured his back while serving in the Navy. His service treatment records showed some treatment for his back, but it was limited, and nothing was diagnosed at separation. The veteran continued having problems with his back in the years after service. He tried his best to get by and did not see many doctors about the problem. Like a lot of veterans, he just tried to live with the problem as best he could. However, it got to the point where he could no longer tolerate the pain, so he filed a claim. Not surprisingly, the VA denied the claim on the grounds that there was no evidence that he had been diagnosed with a back problem at separation. The VA also said there was no credible evidence that he had had an ongoing problem with his back after discharge. The Board denied the Veteran's claim. He hired us to work on his appeal to the U.S. Court of Appeals for Veterans Claims. We successfully got a remand of his claim. But the Board denied him again. The veteran did not hire us to help him after the case was remanded.

The veteran re-hired us to assist him again with another appeal to the U.S. Court of Appeals for Veterans Claims. Upon reviewing his file, we noticed that there was a favorable C&P exam report as well as favorable private medical reports that documented that the veteran had a back problem in the early years following discharge from service. We read the Board decision and discovered that the Board had rejected even its own C&P examiner. The Board bent over backwards to concoct ways to deny the claim. After negotiations with the attorney for the VA, we were able to settle the case with an agreement that service connection would be awarded.

Case #12: Navy Veteran suffered a Fall in service in the 1950s.

Result: Service connection was awarded when the Veteran was nearly 80 years of age

During boot camp at Great Lakes, this veteran fell from a rope during training exercises. He fell on the right side of his lower back. He complained of some muscle pain in the area of the right flank. He saw a corpsman who essentially said it was muscle strain, but the problem did not go away. It continued to plague the veteran during his career in the Navy.

Not wanting to be known as a complainer, the veteran tried to deal with the pain without saying anything. As a result, his service treatment records contained very little reference to any problems. The records showed muscle strain after boxing. After getting out of the service in the mid-1950s, the veteran continued to have problems. He began filing claims with the VA. The VA denied his claims. Years passed. He filed more claims, which were denied. By the 1960s, he went to the hospital with blood in his urine. They examined him and said he had the congenital absence of a right kidney. By the early 1990s, ultrasound had been invented, and an ultrasound revealed a non-functioning right kidney with an enlarged left kidney.

His fall at the age of 17 injured his right kidney and damaged it. The kidney eventually stopped functioning. But now, he had the daunting task of trying to prove that this was related to service when there was no documentation in the service medical records of a problem with the kidney. The service records, at best, showed muscle strain following a boxing match. The veteran again filed his claim in the 1990s. This time, the VA provided him with a C&P exam. The VA examiner actually

sided with the veteran. The VA doctor concluded that the enlargement of the left kidney indicated that he suffered trauma to the right kidney during his teen years.

Even though the C&P examiner said the condition was service connected, the Board denied the claim again. The Board reasoned that there was no proof that anything had happened in the service. This time, the veteran appealed to the U.S. Court of Appeals for Veterans Claims and hired us to help him.

We were able to get the case overturned on appeal and sent back to the Board. We hired a top medical expert to review the file. He concluded that the pain in the area of the right flank corresponded to the anatomical position of the right kidney. He also explained that the enlargement of the left kidney indicated that the injury occurred no later than the late teen years. The doctor pointed out that the pain in the area of the right kidney was documented in the service. The Board re-decided the case but remanded it back to the regional office to obtain another C&P exam.

We became concerned that the VA examiner would give an unfavorable opinion, which the VA would then rely on to deny the claim. So, we hired a second medical expert who reached the same conclusion as our first medical expert. We filed numerous additional arguments. The VA scheduled the veteran for a C&P exam. We obtained a copy of the C&P exam report, and it was favorable. We filed our final arguments with the regional office. We waited for almost 2 years until finally, the VA granted service connection. The veteran was now almost 80 years old. He had finally been recognized for an injury that had happened when he was 17 years old, for which he had suffered his entire adult life.

Case #13: **The Veteran developed kidney disease after serving in the Army during the Korean Conflict era.**

Result: **Nearly 12 years of back pay awarded for accrued benefits, and service-connection for the cause of death. Back pay awarded in excess of $190,000**

This veteran was scheduled to be discharged from Camp Kilmer, New Jersey. The veteran notified his father and a friend that he was getting out, and they planned to go to New Jersey to meet him.

The veteran had his separation physical, which included a urine test. The doctor in the medical corps told him that there was protein in his urine and that he needed to stay over and come back the next day for another urine test. The veteran advised his father and friend that he would be delayed in getting out due to protein in his urine. The next day his urine test was negative. The medical corps recorded a negative urine test result and made no record of the initial positive test result.

The Veteran got out of the service and went on with his life. His life went on as normal for many decades. He married and had a family. However, in the 1990s he began having some trouble with his kidneys. It was found that he had high blood pressure, which the doctors said was a factor in the onset of his kidney disease.

The kidney disease progressed to the point that he needed dialysis. He eventually got on the list for a kidney transplant. But before he could get the transplant, he had to have heart surgery to address some heart issues. Thankfully, the veteran received a kidney transplant and did fairly well under the circumstances.

He then remembered his discharge exam from the Army in the early 1950s. He remembered that the doctor told him he had protein in his urine. After some research, he learned that protein in the urine could be a sign of early kidney disease. But there was no record of the positive urine test. The veteran looked up his old friend who had met him at Camp Kilmer almost 5 decades earlier. He remembered the veteran advising him that he had to be held over due to protein in the urine. The veteran got a statement from his friend and filed a claim.

Naturally, the VA denied him on the grounds that there was no proof anything happened with his kidneys in service. The Board also denied the veteran. He then appealed to the U.S. Court of Appeals for Veterans Claims. He hired us to represent him.

We discovered that the Board did not adequately consider the statements of the veteran's friend. We were able to successfully argue for a remand.

When the case was remanded, we discovered that the veteran's separation exam report contained several clues. First, the negative urine test result was marked as a "re-check." We reasoned that there would not have been a "re-check" unless there was an initial positive test result. We also noticed that he had a systolic blood pressure of 135. We suspected that this might have been borderline hypertension in service. We hired a top medical expert.

Our medical expert reviewed the case and found that it would not have been standard practice to do a re-check of a urine test unless the first test was positive. This allowed us to prove that the veteran was telling the truth. The medical expert also found that the veteran had the beginnings of hypertension during service. Hypertension then led to kidney disease. Based on this, the medical expert concluded that it was at least as likely as not that the veteran's kidney disease was related to service.

The Board had the veteran go to a C&P exam. The C&P examiner partially agreed with our medical expert. The case went back to the Board where service connection was granted. The case then returned to the regional office to be implemented. However, 6 weeks after the favorable award – and after our veteran client had been appealing for more than a decade—he died of complications of his kidney disease. His death came as a shock to his surviving wife. He had not even received the money from VA for his back pay.

We immediately filed to substitute his wife on all his pending claims, including accrued benefits. We also filed to obtain service connection for the cause of death.

We submitted additional arguments to the regional office and obtained and submitted an additional medical expert report regarding the cause of the veteran's death. The result: almost 12 years back pay awarded for accrued benefits, and service connection for the cause of death.

Case #14: Veteran is totally disabled due to PTSD from a military sexual assault.

Result: 100 percent service connection and back pay of $145,000

The veteran served active duty in the early 1960s. An older service member sexually assaulted the

veteran during his time in the service. Understandably, the veteran never told anyone about this tragic event. The veteran was honorably discharged.

Following service, the veteran did the best he could to go on with his life. He did relatively well for a while. But as the years passed, the trauma from the assault began to create more and more problems. The veteran eventually went to the VA and was diagnosed with PTSD. He filed a claim for service connection.

Because the incident was not documented in his service records and so many years had passed since discharge, the VA did not believe him. They denied the claim repeatedly. This prompted numerous levels of appeal. The veteran eventually appealed to the U.S. Court of Appeals for Veterans Claims. At this point, the veteran contacted our office. The Court of Appeals eventually remanded the claim back to the regional office. Fortunately, the VA granted service connection, but did not award a sufficient rating. Even though the veteran had been unable to work for at least 5 years, the VA only awarded a 50 percent rating.

Just prior to making its decision, the VA sent the veteran to a VA examination. The VA doctor gave an inaccurate report, which suggested that the veteran's symptoms were not that severe. Naturally, we appealed the decision and argued that the VA should have assigned a 100 percent rating. However, the file contained a very unfavorable VA examination. Strategically, we had to counteract the VA examiner's report.

Therefore, we determined that the veteran needed to be examined by one of the leading experts in sexual assault. We ended up flying the veteran to the West Coast to be examined by this leading expert. We obtained a favorable report and submitted additional arguments to the VA. But we did not stop there. We retained another notable psychologist who specializes in veterans' cases. He also gave an opinion favorable to the veteran's claim. We submitted additional arguments and then waited for the VA's response.

Finally, the VA issued a decision granting the veteran 100 percent for his PTSD.

Case #15: Veteran totally disabled after a brain injury in service.

Result: Service connection granted for an acquired psychiatric disorder rated at 100 percent with approximately $250,000 in back pay awarded

The veteran served during the Vietnam era but was injured during training in upstate New York. The veteran suffered a severe blow to the head and right hand. The hand injury eventually resulted in the partial amputation of several fingers. His immediate medical care during the service focused on the hand injury as it was more critical.

However, shortly after discharge, the effects of the head injury caused the veteran to be hospitalized for severe psychiatric complaints. He spent many years in and out of a psychiatric hospital. His friends and family noticed immediately that he was not the same person he was before his service. As a result of his hand and psychiatric injuries, the veteran was not able to sustain significant gainful employment much past the 1970s.

His problems not only prevented him from pursuing an occupation, but they resulted in his divorce. Before the accident in service, he was considered normal. He did well in high school and had no other difficulties. After the accident, the veteran had difficulty remembering things, and, at times, had difficulty carrying on a normal conversation. He suffered frequent nightmares of the accident, and he was largely dependent on his elderly parents for survival.

He began filing claims for VA benefits. The VA granted him service connection for the hand injury because the service medical records clearly documented it. However, the rating for finger amputation was minimal. As a result, the money was not sufficient to sustain him.

The VA, however, denied the brain/psychiatric claims. The VA did not believe the veteran had suffered a head or brain injury during service. They refused to believe his story. Basically, the VA did not see any service medical records for treatment of any brain or psychiatric complaints. The VA repeatedly denied the claim, and the veteran continued to re-file his claims—but to no avail. The only medical records concerning the brain were after service, and the VA thought that any

brain or psychiatric disability was due to something that happened after service.

Finally, the veteran hired our law firm to represent him on appeal at the U.S. Court of Appeals for Veterans Claims. He was trying again to reopen his claim for a psychiatric disorder. We filed a brief with the Court and were able to get the case remanded back to the Board. Once the case was returned to the Board, we arranged to have the veteran examined by a well-known forensic psychologist. The psychologist diagnosed the veteran with PTSD, as a result of the documented in-service hand injury.

Our strategy was that if we could show that the veteran had PTSD caused by a documented in-service stressor, then we could prevail. Our forensic psychologist provided us with medical evidence to support our theory.

The Board did not initially accept our private medical evidence. Instead, the Board remanded the case back to the regional office for another VA exam. While we were waiting for the VA exam, we obtained additional medical reports from another private psychologist and several of the veteran's treating VA doctors. All the doctors concurred with our theory of the case. We submitted these additional reports. Finally, the VA scheduled the veteran for a compensation and pension exam. By this time, the file contained numerous favorable medical opinions. Undoubtedly, this evidence helped to influence the VA examiner who wrote a favorable opinion.

We continued to submit additional arguments and medical reports for almost another three years before VA made a decision. We continued to call VA to determine the status. We were advised that the VA had made a decision, but we waited almost 8 months for them to mail us the decision. The result: 100 percent service connection for an acquired psychiatric disorder with an award of almost $250,000 in back pay.

Case #16: Veteran totally disabled as a result of prostate cancer and PTSD.
Result: Service connection for prostate cancer and PTSD

The veteran served in Vietnam where he was exposed to combat situations as well as other horrifying

events. In the years following service, he tried to deal with the anxiety and stress associated with his Vietnam experiences. Eventually he turned to alcohol and drugs to cope with his feelings. The problems ultimately cost him his marriage, and his life began to fall apart. He was later diagnosed with PTSD.

As if his psychiatric problems were not bad enough, the veteran was then diagnosed with prostate cancer. As a result, he filed claims for his prostate cancer and PTSD.

The VA denied both claims. With respect to the prostate cancer, the VA's denial of the claim was even more bizarre. After all, he had been in Vietnam and was presumed to have been exposed to Agent Orange. Prostate cancer is associated with Agent Orange exposure. As for the PTSD, the VA kept denying that he had PTSD.

After many years of appealing and being denied, the veteran finally contacted our office. We successfully obtained a remand of his claims at the U.S. Court of Appeals for Veterans Claims. The case then went back to the Board.

We got to work on developing his claim. We sent the veteran to a psychologist who specialized in forensic psychology. The psychologist determined that the veteran had PTSD due to his Vietnam experiences. However, there was no evidence in the file to corroborate a specific PTSD stressor. We noticed his service medical records documented depression or nervousness symptoms in service. Based on this, the psychologist was able to determine that the veteran's PTSD began during service. We also submitted evidence confirming that the veteran, in fact, had prostate cancer.

The Board then made a decision granting service connection for prostate cancer and PTSD. The case was returned to the regional office where a 100 percent rating was assigned.

Case #17: Veteran disabled as a result of a spine disability.

Result: Service connection granted

The veteran served in the U.S. Army during the Cold War era of the mid- to late-1980s. During his time in the service, he was attacked and beaten with a baseball bat. He suffered, among other

things, a back injury. The symptoms continued to bother him for approximately the next 2 years. At separation, he was diagnosed with chronic back pain.

After he got out of the service, the veteran did not complain of or treat a back problem. Approximately 15 years after service, the problem became too severe, and he could no longer deal with it on his own. On several occasions, he ended up in the emergency room. Some of the emergency room doctors recorded that his back problem had begun only recently—even though it had really begun during service.

The veteran filed a claim, but VA denied the claim based on what the emergency room doctors wrote in the records. In other words, the VA twisted the evidence to make it look like the veteran's back disability problem had begun only recently. He filed an appeal and wrote extensive explanations as to why he had the problem ever since service, but that it only became disabling a few years ago. The Board denied the claim and the veteran appealed to the U.S. Court of Appeals for Veterans Claims. He hired our law firm to assist him.

We argued that the Board and the VA examiner had wrongly considered only the negative statements concerning the veteran's medical history. The VA attorneys did not agree, and they defended the claim. We filed a brief with the Court and the VA attorney filed an opposition brief. Eventually, the judge ruled in the veteran's favor. The Court remanded the case back to the regional office.

After the case was returned to the regional office, we obtained another private medical expert who said that the veteran's spine disability had begun during service. We submitted an additional argument with the expert report. The Board finally made a decision on the claim and service connection was granted after almost 10 years of fighting VA.

Case #18: Veteran disabled due to PTSD.

Result: Service connection granted, and back pay awarded in excess of $311,000 after 16 years of fighting VA

The veteran served in the U.S. Air Force during the Vietnam era. During service, he witnessed a plane crash wherein several of his friends died. He developed PTSD because of this incident.

The veteran filed a claim for PTSD, but the VA denied the claim. The VA sent the veteran to its own doctors who kept saying the veteran did not have PTSD. As a result, the VA repeatedly denied the veteran's claim. In fact, on one occasion, a VA doctor diagnosed the veteran with PTSD, but later changed his mind and wrote another letter saying the veteran did not have PTSD.

In addition, the VA denied the veteran because he could not prove that the plane crash had taken place. In other words, the VA said there was no proof of a stressor in service. Through several more layers of appeal, the evidence was finally discovered, proving this plane crash had actually taken place. That did not change VA's determination to deny the veteran's claim. For 16 years, the VA continued to deny the claim. The veteran was examined by numerous VA doctors, and they continued to change his diagnosis repeatedly.

The veteran finally hired our law firm to handle his appeal. We arranged for an evaluation with one of the leading PTSD experts and a professor at a major university. The doctor examined the veteran for several days and produced a favorable—and extensive—evaluation that proved the veteran had PTSD due to the plane crash in service.

We submitted our additional argument and expert evidence to the Board. The Board, however, was unwilling to grant the claim. Instead, it remanded the claim back to the regional office for yet another VA exam. We instructed our client to take the private expert's report to the examination. The private evaluation was persuasive, and we were able to secure a favorable report from the VA examiner.

As a result, the VA finally granted service connection for PTSD after 16 years of fighting VA.

Case #19: **DIC Benefits for widow of deceased veteran.**

Result: **Recognition as surviving spouse and retroactive pay of almost $100,000**

The veteran died of lung cancer for which he was service connected because of Agent Orange exposure. His widow made a claim for DIC benefits. The VA denied her claim on the grounds that

she was not his surviving spouse. The VA relied on documents showing that she and the veteran had divorced decades before his death.

The VA denied her claim repeatedly. She appealed to the Board, which also denied her claim. She then appealed to the U.S. Court of Appeals for Veterans Claims. She hired our law firm to assist her in her appeal.

The Board's decision relied on the evidence of divorce between the parties. Indeed, the file contained a judgment of divorce, and the two parties were not living together at the time of his death.

However, the widow submitted numerous statements indicating that she and the veteran continued to reside together after the divorce and held themselves out to the public as still being married. The Board ignored her statements regarding the continued cohabitation.

We were able to get the Board's decision overturned on appeal because of the Board's failure to consider crucial pieces of evidence indicating the existence of a common law marriage. The widow and the veteran resided in a state that allowed common law marriage. The evidence in the file included the widow's statements, and bank statements and credit card statements showing joint accounts. We successfully got the case overturned and sent back to the Board.

On remand, we submitted additional statements from family and friends testifying as to the common law relationship between the parties. We also highlighted the joint financial accounts and other evidence. The Board issued another decision, which granted the benefits and awarded the widow almost $100,000 in back pay.

Case #20: Service connection for the cause of death for a widow of a deceased veteran.

Result: Benefits granted and back pay of $150,000 awarded

The veteran served during the Korean Conflict, and because of the stress of combat, he developed an ulcer. He obtained service connection for the ulcer.

With the help of his doctors, the veteran was able to manage his ulcer for many years. In the mid-1990s the ulcer progressively worsened, which resulted in the overall deterioration of his health.

Unfortunately, the veteran also developed prostate cancer in the late 1990s. His prostate cancer was unrelated to his time in service. The doctors attempted to treat the prostate cancer, but it continued to progress. To prevent the cancer from metastasizing, the doctor put the veteran on some very strong chemotherapy drugs. Unfortunately, the chemo drugs caused the veteran's service-connected ulcer to bleed and cause him anemia and further deterioration in his health. As a result, the doctors were forced to stop the use of the most potent chemo drugs.

Without the strong chemo drugs, the prostate cancer eventually spread to the veteran's brain, and he died.

His widow filed a claim with the VA for service connection for the cause of her husband's death. The VA denied the claim, and she appealed to the U.S. Court of Appeals for Veterans Claims. The Court remanded her claim back to the Board, which again denied it. By this time, the widow retained our law firm. We again appealed her case back to the U.S. Court of Appeals for Veterans Claims where we successfully obtained a remand of the case.

Upon remand, we obtained another medical expert who found that it was the service-connected ulcer that caused the need to stop the aggressive chemotherapy. Without the chemo drugs, the cancer spread to the veteran's brain, and he died. The VA, however, was initially unwilling to accept our private medical expert, and the Board obtained a medical opinion from its own expert. The VA's expert, not surprisingly, gave the opinion that the ulcer had nothing to do with the veteran's prostate cancer.

We responded by obtaining an opinion from a medical school professor who was board-certified in oncology and hematology. He gave the opinion that under the unique facts of this case, the ulcer did prevent the use of the more aggressive chemotherapy drugs, thus allowing the cancer to spread to the brain. The result was death.

The Board again decided the case, but this time it was forced to concede that our client's position was correct. The widow's benefits were granted, and she was awarded $150,000 in back pay.

Recent Results

- $940,419 for service connection for pension and PTSD
- $854,602 for service connection autoimmune disease; TDIU, SMC, housing and auto, DIC DEA
- $654,169 for DIC/Service connection for heart secondary to PTSD
- $591,914 for service connection for PTSD going back to 1989, EED granted
- $515,000 for service connection for bipolar disorder with an other-than-honorable discharge
- $481,164 for service connection for PTSD; OSA; dependents
- $455, 716 for service connection for major depression with psychotic issues, EED for the same
- $452,779 for service connection for PTSD; increased rating for PTSD; DEA
- $443,029 for earlier effective date for TDIU
- $443, 000 for service connection for depression and spine disability
- $422,822 for service connection for PTSD
- $389,229 for service connection for bilateral hearing loss, tinnitus, SMC and DEA
- $375,000 for service connection for PTSD
- $336,350 for service connection for DIC claim – Meniere's Disease
- $311,000 for service connection for PTSD
- $310,000 for service connection for multiple chemical sensitivity syndrome

- $308,000 for service connection for major depression and a spine disorder
- $305,000 for service connection for PTSD with other-than-honorable discharge
- $277,000 for service connection for depression
- $274,000 for TDIU on an extraschedular basis
- $249,000 for service connection for depression and TDIU
- $247,000 for service connection for organic brain syndrome and PTSD
- $241,000 for increased rating for PTSD
- $230,000 for organic brain disease due to chemical exposure
- $225,900 for accrued benefits for kidney failure and DIC
- $220,000 for service connection for Delusional Disorder
- $219,000 for service connection for major depression, migraines, and TDIU
- $219,000 for earlier effective date for TDIU
- $205,000 for service connection for Meniere's Disease
- $182,000 for a psychiatric disorder due to military sexual assault
- $178,000 for service connection for PTSD
- $177,000 for accrued benefits for non-Hodgkins lymphoma
- $167,000 for service connection for depression due to frostbite
- $163,000 for TDIU
- $156,000 for increased rating for PTSD and TDIU
- $150,000 for DIC
- $143,000 for service connection for military sexual trauma

- $141,000 for service connection for PTSD
- $139,000 for service connection for PTSD and depression due to military sexual assault
- $134,000 for service connection for organic brain injury with psychosis
- $132,000 for DIC
- $131,000 for earlier effective date for TDIU
- $126,000 for service connection for sleep apnea, PTSD, and increased rating for heart disease
- $126,000 for PTSD due to military sexual trauma
- $124,000 DIC benefits for pancreatic cancer due to Agent Orange
- $117,133 for increased rating for PTSD and TDIU
- $117,000 for TDIU
- $116,000 for DIC
- $111,000 for increased rating for PTSD and TDIU

You're Invited to Call or Email.

"If you have a service-connected disability that makes it hard or impossible for you to work, please don't hesitate to call. I'll do everything I can to help you!" — *Eric Gang*

Call Us Toll Free at 1-888-878-9350 or
send your email to **info@veteransdisabilityinfo.com** for a Free, Honest Evaluation of Your Claim, at No Cost or Obligation.

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