

VETERANS LAW

VA Adjudication



“To fulfill President Lincoln's promise to care for those who have served in our nation's military and for their families, caregivers, and survivors.”



NVLSP

The VA

Secretary of the Department of Veterans Affairs

- Veterans Health Administration (VHA)
- **Veterans Benefits Administration (VBA)**
 - **Acting Undersecretary Devlin**
- National Cemetery Administration (NCA)
- Board of Veterans Appeals (BVA)



Margarita Devlin



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VBA

- **Veterans Benefits Administration (VBA)**
 - Disability and Compensation
 - 56 Regional Offices + Special Processing Centers
 - Pension and Fiduciary
 - Home Loan Guarantees
 - Life Insurance
 - Education Benefits
 - Veteran Readiness & Employment (VR&E)



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FY24 Claims



Disability and Compensation in FY24

- Processed 2.51M new claims
 - 458K new disability compensation recipients
 - Average new award: \$17,199 annually
 - 6.95 disabilities rated per average new recipient
-
- Total number of disability compensation recipients: 5.99M
 - Total compensation paid: \$163B
 - Average award: \$25,446 annually



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FY24-25 Claims

Most Common Conditions Claimed

1. Tinnitus
2. Knees
3. Back
4. Arm
5. Hearing
6. Scars
7. Paralysis of the sciatic nerve
8. Migraine
9. Ankle
10. PTSD

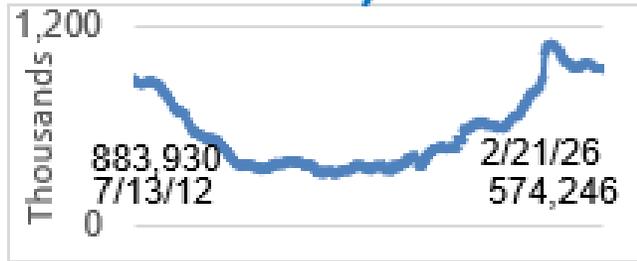




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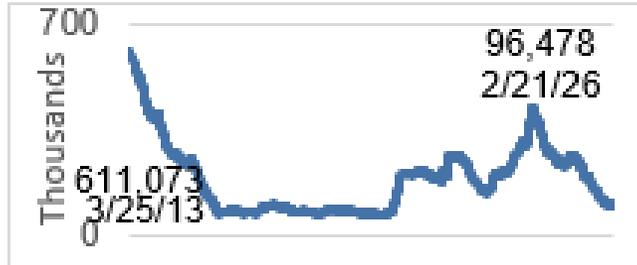
Current VBA Workload “Monday Morning Report”

Total number of pending claims
574,246



DATA AS OF 2/21/26

Rating-related claims backlogged
96,478



DATA AS OF 2/21/26

Average Days To Complete



FDC ADC

89.2



Non-FDC ADC

80.5

DATA AS OF 2/21/26



“Veterans Friendly” System

- Built to be navigable by non-lawyers
- VA is both paternalistic and gatekeeper
- Pro Veteran:
 - VA Duties
 - Intent to File preserves effective dates
 - Effective dates = retroactive benefits \$\$
 - Multiple avenues to appeal (1 year SOL) – *de novo* review
 - Benefit of the Doubt Rule
 - Non-adversarial process



Filing Claims

- Filed by the Veteran or Representative:
 - In person at any VA Regional Office
 - By mail: Claims Intake Center PO Box 4444. Janesville, WI 53547
 - By fax: 844-531-7818
 - Electronically:
 - VONAPP: <https://www.va.gov/disability/file-disability-claim-form-21-526ez/introduction>
 - Commercial Claims Filing Software
 - Tyler Veterans Benefits
 - VetPro





Claims Rating Process

- Claim Received
 - Assigned via the National Work Queue
- Initial Review
- Evidence Gathering
 - C&P Exams Ordered
- Evidence Evaluation
- Rating Using VASRD
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Rating VSR

- Mostly Veterans
- Not doctors or lawyers
- High turnover rates
 - Very heavy workload
 - Mandatory overtime
 - Lower pay (GS-9 to GS-12)
- High error rate



**Nashville
Regional
Office**



Veterans Claims Assistance Act (2000)

- Passed in reaction to the CAVC decision in *Morton v West* (1999), which held that the **Veteran has the burden** to submit evidence sufficient to show the claim was “well grounded”
- VA had no duty to assist until the Veteran met this burden
- Policy:
 - Veteran friendly system
 - Non-adversarial system
 - Most / many file disability compensation claims *pro se*
 - Veterans not overly sophisticated
- VA duties come from VCAA (38 USC § 5103A), regulation, and judicial precedent



VA Duties

- Duty to Assist
- Duty to Provide a Medical Examination
- Duty to Obtain Records
- Duty to Notify
- Duty to Consider All Legal Theories
- Duty to Consider All Issues Raised by the Claimant & Evidence of Record
- Duty to Develop Fully & Sympathetically (*Pro Se* Veteran)
- Duty to Give the Benefit of the Doubt



Duty to Assist

- Found at 38 USC § 5103A, 38 CFR § 3.159
 - “Reasonable efforts” to assist obtaining evidence necessary to substantiate a claim
 - Not required when there is “no reasonable possibility” the evidence would aid in substantiating a claim
 - Claimant is **ineligible** (no active service / dishonorable service)
 - Claim in “**inherently incredible**” / lacks merit / frivolous
 - Claimant not entitled to benefits as a **matter of law**
 - Duty to assist applies until there is a decision on a claim or supplemental claim
 - Does not apply on appeal under the AMA



Duty to Assist

- Two specific duties:
 - Duty to Obtain Records; and
 - Duty to Provide a Medical Exam or Medical Opinion



Duty to Assist Obtaining Records

- Two Types of Records:
 - Records in Custody of the Government; and
 - Private Records
- **Records in Custody of the Government**
 - VA will make as many requests as necessary to obtain relevant government records
 - Veteran must provide enough information / reasonable timeframe to locate records (not limited to 60-day window)
 - VA can end effort to locate when it would be “futile”
 - Agency advises they don’t have the records or the don’t exist
 - See *Gagne v. McDonald* (CAVC 2015)



Duty to Assist Obtaining Records

Records in Custody of the Government

- 38 CFR § 3.159 (c)(3) identifies four categories of records VA will provide assistance in obtaining. *Sullivan v. McDonald* (Fed Cir 2016)
 1. Relevant STRs;
 2. Relevant Service Records;
 3. VA Medical Records; and
 4. Other relevant federal records



Duty to Assist Obtaining Records

Private Records

- VA must make “reasonable efforts” to obtain private [non-federal government] records the claimant adequately identifies
 - Private medical records, employment records, state tax records
- Claimant must authorize release of records on form acceptable to records custodian
- VA will not pay search/copy fees for private records
- VA will make no less than two requests for the records
- VA will notify the veteran if they are unable to obtain the records



Duty to Assist Providing Medical Exam

- VA must provide a medical examination or a medical opinion when it is “**necessary**” to make a decision on a claim
- When “necessary:”
 - Record contains competent evidence that the veteran has a **current disability or persistent or recurrent symptoms** of a disability; **and**
 - Disability or symptom **may** be associated with the veteran’s active military service; **and**
 - VA **does not have enough medical evidence** to make a decision on the claim



Duty to Assist Providing Medical Exam

- VSR orders a compensation and pension examination – 93% contracted out in FY24
- Process:
 - VA sends order to contract provider
 - Contractor makes the appointment and notifies the veteran in writing (next available within 40 miles)
 - Not for the purposes of medical treatment
 - Contractor given access to relevant medical records
 - Veteran completes exam (travel reimbursement)
 - Provider sends results to VA (not accessible to veteran)



Duty to Assist Providing Medical Exam

- Many C&P Contractors:
 - Vet Evaluation Service
 - Optum Serve Health Solutions
 - QTC
 - LHI
 - Loyal Source Government Services
- Paid between \$100-\$400 depending on the complexity of the exam
- Inadequate medical exam rate is high – Lou covers on Friday



Duty to Assist Providing Medical Exam

38 CFR § 3.655 – Failure to report to a VA Exam

- Veteran must report to the VA exam unless there is a showing of “good cause” (illness, hospitalization, family death)
- Failure to report without good cause:
 - Original claim – rated based on evidence of record
 - Supplemental claim / increase – “shall be denied”
 - Reduction / Severance – 60 days to indicate willingness to submit to exam
 - Failure to do so – Reduce / Sever



Duty to Notify

38 USC § 5103

- VA must provide claimant and claimant's representative, by most effective means available (including electronic), notice of what evidence is needed to substantiate a claim





Duty to Notify

38 CFR § 3.159 (b)

- When VA receives a **complete or substantially completed claim**, it has a duty to notify the claimant of:
 1. Any information, medical evidence, or lay evidence necessary to substantiate a claim;
 2. Which information claimant is to provide VA; and
 3. Which information VA will attempt to obtain on its own
- Info must be provided within 1 year, but VA can render a decision before and reopen via supplemental claim if needed
- VA not required to “pre-adjudicate” the evidence to determine what would make the case stronger. *Locklear v. Nicholson* (CAVC 2006)



Duty to Notify

38 CFR § 3.159 (b)

- When VA receives an **incomplete application for benefits**, it has a duty to notify the claimant of what additional information is needed to complete the claim
- Duty to notify does not apply to appeals under the AMA



Duty to Consider All Legal Theories of Service Connection

38 CFR § 3.101

- Must consider all legal theories raised by the veteran or the evidence in the veteran's record
- Not limited to veteran's arguments
 - But VA is not required to "invent and reject every conceivable argument." *Schroeder v. West* (Fed Cir 2000)



Duty to Consider All Legal Theories of Service Connection

Example:

Veteran files claim alleging presumptive service connection for bladder cancer from his service in the Philippines (no such presumption exists). Record reflects veteran was a cook and had a 25-day TDY to Camp LeJeune in 1985. VA should consider direct service connection.





Duty to Consider All Claims Raised by Evidence of Record

- VA is obligated to evaluate any potential claims that are not expressly stated by the veteran but are nonetheless “reasonably raised” by the record. *Brokowski v. Shinseki* (CAVC 2009)
- *Example: Shea v. Wilkie* (Fed Cir 2019)
 - Veteran did not specify a diagnosis, but identified a specific medical record containing a diagnosis and stated she wanted to apply for service connection
 - Court held claim was in the record



Duty to Consider All Claims Raised by Evidence of Record

Example:

- Veteran files claim for s/c of chronic sinusitis. The record shows two instances of sinusitis over a 20+ year career. The VA denies the claim
- The record, however, includes a diagnosis of chronic Rhinitis and dozens of entries for treatment of Rhinitis. The VA recommends the veteran file for Rhinitis instead
- VA should have rated for Rhinitis since the evidence was in the record – breach of duty
- **Strongest when veteran is *pro se*...**



Duty to Develop Fully & Sympathetically

- Not a statutory duty
- Judicially created because:
 - Non adversarial system;
 - Many/most veterans file claims *pro se*; and
 - Generally needed because pro se claimants are not expected to know the law and regulations. *Ingram v. Nicholson* (CAVC 2007)



Duty to Develop Fully & Sympathetically

- *Roberson v. Principi* (Fed Cir 2001)
 - VA has a duty to fully develop any filing made by a *pro se* veteran by determining all potential claims raised by the evidence
- *Szemraj v. Principi* (Fed Cir 2004)
 - VA must “generously construe” a *pro se* veteran’s filing to discern all possible claims raised by the evidence
- *Moody v. Principi* (Fed Cir 2004)
 - Ambiguity in *pro se* filing could be construed as a claim



Duty to Develop Fully & Sympathetically

- *Harris v. Shinseki* (Fed Cir 2013)
 - 1985 - *pro se* Vietnam Veteran files an “Application for Medical Benefits” and complains about skin rashes
 - 2002 – files a claim for skin rash / approved with a 2002 ED
 - BVA and CAVC upheld ED because veteran never filed claim before 2002
 - Fed Circuit vacated and remanded
 - VA has a duty to “sympathetically develop the veteran’s claim to its optimum” before deciding it on the merits and failed to do so



Duty to Develop Fully & Sympathetically

- Duty is focused on *pro se* veteran
- When veteran is represented by counsel, VA does not need to play such a paternalistic role. See *Andrews v. Nicholson* (Fed Cir 2005)



Duty to Provide the Benefit of the Doubt

38 USC § 5107 (b)

The Secretary **shall** consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an **approximate balance of positive and negative evidence** regarding any issue material to the determination of a matter, the Secretary shall give the **benefit of the doubt to the claimant**.

- Tie goes to the runner – *Gilbert v. Derwinski* (CAVC 1990)
- Applies to VA, but not the CAVC – *Bufkin v. Collins* (SCOTUS 2025)



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Claims Rating Process

- Claim Received
 - Assigned via the National Work Queue
- Initial Review
- Evidence Gathering
 - C&P Exams Ordered
- Evidence Evaluation
- Rating Using VASRD
 - Rating Veteran Service Representative (RVSR)
- Final Decision Letter
- Final Review





Claims Rating Process

- Claim Received
 - Assigned via the National Work Queue
- Initial Review
- Evidence Gathering / Development
 - Duty to Assist – Obtain Records / Exams
- Evidence Evaluation
 - Duty to assist fulfilled?
 - More development needed to rate?
- Rating Using VASRD
 - Rating Veteran Service Representative (RVSR)





Claims Rating Process

- Claim Received
 - Assigned via the National Work Queue
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Rating the Claim

- Before a rating can occur, two things must be established:
 1. Eligibility
 2. Service Connection
 - Current disability
 - In-Service Event
 - Nexus
 - Direct service connection
 - Secondary service connection
 - Presumptive service connection
 - Aggravation
 - VA Negligence (1151 claims)



Rating the Claim

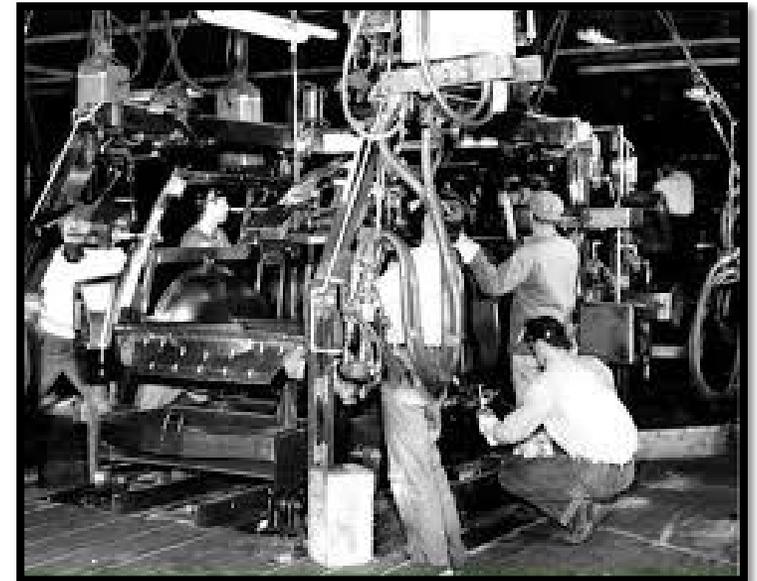
- Once service connection is granted for a disability, the VA will then be required to address the “downstream” elements of the claim –
 - Evaluation of the disability
 - Assignment of a “rating”
 - Assignment of the effective date (discussed later)
 - Decision Letter and Appeals Notice



Rating the Claim

38 USC § 1155 and 38 CFR § 4.1

- VA given the authority from Congress set up rating schedule
- Ratings are based on the **average impairment to earning capacity** from such injuries in civil occupations
 - **Based on 1945 occupations**
- Ratings are based on the severity of the disability from 0% to 100% in 10% increments
- VA shall adjust the rating schedule from time to time





VA Schedule for Rating Disabilities

- 38 CFR Part 4
- VASRD is “a guide”
- 700 Diagnostic Codes (out of 68K recognized by WHO)
- Body is divided into 15 sections
- Ratings are based on the severity of the disability from 0% to 100% in 10% increments
 - Each increment has different listed criteria
- Individual ratings are combined to give an overall disability rating



Impact of Age on Service Connection

38 CFR § 4.19

- Age may **not** be considered as a factor in evaluating **service-connected disability**; and unemployability, in service-connected claims, associated with advancing age or intercurrent disability, may not be used as a basis for a total disability rating. Age, as such, is a factor only in evaluations of disability not resulting from service, *i.e.*, for the purposes of pension.



Using the VASRD

- 38 CFR Part 4
- VASRD is “a guide”
- 700 Diagnostic Codes (out of 68K recognized by WHO)
- Body is divided into 15 sections
- Ratings are based on the severity of the disability from 0% to 100% in 10% increments
 - Each increment has different listed criteria
- Individual ratings are combined to give an overall disability rating



The Rating Schedule

1. Musculoskeletal System
2. Organs of Special Sense
3. Impairment of Auditory Acuity
4. Infectious Disease, Immune Disorders, & Nutritional Deficiencies
5. Respiratory System
6. Cardiovascular System
7. Digestive System
8. Genitourinary System
9. Gynecological Conditions and Disorders of the Breast
10. Hemic & Lymphatic Systems
11. Skin
12. Endocrine System
13. Neurological Condition & Convulsive Disorders
14. Mental Disorders
15. Dental & Oral Conditions

| Sinusitis Example | | |
|--|--|----|
| 6510 Sinusitis, pansinusitis, chronic. | | |
| 6511 Sinusitis, ethmoid, chronic. | | |
| 6512 Sinusitis, frontal, chronic. | | |
| 6513 Sinusitis, maxillary, chronic. | | |
| 6514 Sinusitis, sphenoid, chronic. | | |
| General Rating Formula for Sinusitis (DC's 6510 through 6514): | | |
| | Following radical surgery with chronic osteomyelitis, or; near constant sinusitis characterized by headaches, pain and tenderness of affected sinus, and purulent discharge or crusting after repeated surgeries | 50 |
| | Three or more incapacitating episodes per year of sinusitis requiring prolonged (lasting four to six weeks) antibiotic treatment, or; more than six non-incapacitating episodes per year of sinusitis characterized by headaches, pain, and purulent discharge or crusting | 30 |
| | One or two incapacitating episodes per year of sinusitis requiring prolonged (lasting four to six weeks) antibiotic treatment, or; three to six non-incapacitating episodes per year of sinusitis characterized by headaches, pain, and purulent discharge or crusting | 10 |
| | Detected by X-ray only | 0 |
| Note: An incapacitating episode of sinusitis means one that requires bed rest and treatment by a physician. | | |

Musculoskeletal: Knee

Rating

5256 Knee, ankylosis of:

Extremely unfavorable, in flexion at an angle of 45° or more

In flexion between 20° and 45°

In flexion between 10° and 20°

Favorable angle in full extension, or in slight flexion between 0° and 10°

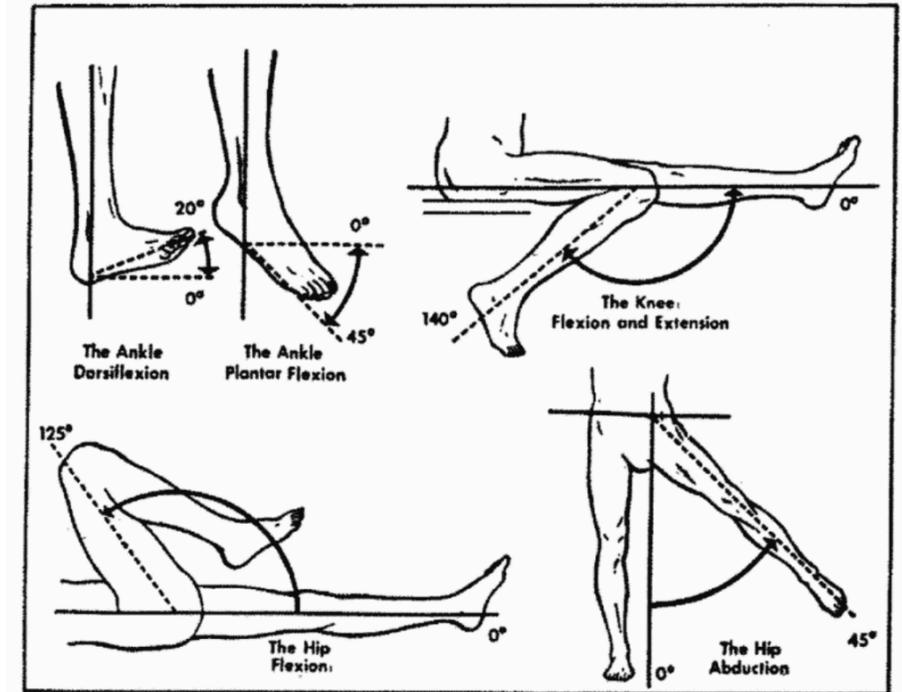
5257 Knee, other impairment of:

60

50

40

30





Functional Loss

38 CFR § 4.40 - Functional loss

Disability of the musculoskeletal system is primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance. It is essential that the examination on which ratings are based adequately portray the anatomical damage, and **the functional loss**, with respect to all these elements. The functional loss may be due to absence of part, or all, of the necessary bones, joints and muscles, or associated structures, or to deformity, adhesions, defective innervation, or other pathology, or **it may be due to pain**, supported by adequate pathology and **evidenced by the visible behavior of the claimant undertaking the motion. Weakness is as important as limitation of motion**, and a part which becomes painful on use must be regarded as seriously disabled. A little used part of the musculoskeletal system may be expected to show evidence of disuse, either through atrophy, the condition of the skin, absence of normal callosity or the like.



Functional Loss

Deluca v Brown (CAVC 1995)

- VA must consider functional loss due to pain, weakness, fatigue, lack of coordination
- Pain can limit an otherwise normal range of motion
- Must be evaluated at its worst – “flare-ups”



PTSD Rating Example

Hypo:

- Combat veteran receiving regular medication and VA treatment (including Vet Center counseling) for PTSD
- Medical records show exaggerated startle reflex and several road-range incidents in the past year
- Veteran is working for long-term employer but has experienced problems at work
 - Had conflicts with his supervisor, and veteran threatened supervisor when he was threatened with a performance plan at work. Since then, performance plan was not raised again
 - At home, prefers solitary activities like hunting and walking in woods alone



PTSD Rating Example

- During the winter, he expressed to his therapist that he might as well “hang it up,” and began stockpiling sleeping pills. Since then, he has thrown out the pills and recently told his therapist that while he has “occasional” suicidal thoughts, he would never act on them, due to his family and religion
- VA examiner in C&P exam finds that the Veteran has occupational and social impairment with “occasional” decrease in work efficiency and intermittent periods of an inability to perform occupational tasks – consistent with the 30 percent rating criteria
- VA rating decision – assigns a 30 percent rating
- **Your thoughts? What’s the appropriate rating?**

General Rating Formula for Mental Disorders

| | Rating |
|---|--------|
| Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name. | 100 |
| Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation ; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence) ; spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships . | 70 |
| Occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment ; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships . | 50 |
| Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily , with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events). | 30 |
| Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by continuous medication. | 10 |
| A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication. | 0 |



Analogous Ratings

38 CFR 4.20

- Rated under a closely related disease or injury in which not only similar functions are affected, but also the anatomical location and symptomatology are closely analogous
- Example: GERD was rated as Hiatal Hernia
- Not all disabilities are included in the VASRED
- Analogous ratings are used only for **unlisted** diagnoses



Analogous Ratings

Common Errors in Analogous Ratings

- To identify errors, you must be familiar with the Rating Schedule of Diagnostic Codes
- Error #1 – VA failed to choose the analogous DC that will result in the highest possible evaluation for veteran
- Error #2 – VA required all objective criteria of the analogous condition
- Error #3 – After choosing an analogous rating, VA fails to use it
- Error #4: VA rated a “Listed Condition” by Analogy



Other Rules Used by VA Raters

38 CFR § 4.14 - Rule Against Pyramiding

- VA cannot rate same disability under different diagnostic codes
- But VA should rate separately disabling manifestations of disability – e.g., knee instability, knee flexion, knee extension.
- *Esteban v. Brown* (CAVC 1994)
 - WWII veteran / car accident in Okinawa / fractured facial bones/scars
 - VA must rate facial scars, painful scars, muscle damage



Other Rules Used by VA Raters

38 CFR § 4.26 - Bilateral Factor

- When a Veteran has compensable SC disability in both arms, both legs, or paired skeletal muscles (i.e., bilaterally), the individual disability ratings for the bilateral disabilities are combined as usual, and then 10% of the value of the combined rating is added to that combined rating
- This additional 10% is called the “bilateral factor”
 - It’s a “kicker” that can give Veterans with disabilities in paired extremities a higher combined rating than if they were only disabled on one side



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Other Rules Used by VA Raters

- The terms “arms” and “legs” are not intended to distinguish between the arm, forearm and hand, or the thigh, leg, and foot, but relate to the upper extremities and lower extremities as a whole
 - For example, if Veteran has SC left knee arthritis and SC right foot pes planus (both rated at least 10% disabling), the bilateral factor applies
 - However, if Veteran has just SC left knee arthritis and SC right wrist arthritis, the bilateral factor does NOT apply
 - **Must be “paired” extremities**



Other Rules Used by VA Raters

Example:

- Vet is SC for:
 - Left knee at 30%
 - Right knee at 30%
- The 30% and 30% combine to 51% using the Combined Rating Table
- Then, take 10% of the combined rating = 5.1%
- Add 5.1 to 51 = 56.1
 - Thanks to bilateral factor, this Veteran gets a 60% rating, as opposed to 50%



Extraschedular Consideration under 38 CFR § 3.321(b)

- To accord justice to exceptional cases where schedular evaluations are found to be inadequate a single service-connected disability, the Director of Compensation Services (or designee) is authorized to approve
- “The governing norm in these **exceptional cases** is a finding by the Director of Compensation Service or delegate that application of the regular schedular standards is impractical because the disability is so exceptional or unusual due to such related factors as **marked interference with employment** or **frequent periods of hospitalization**.”



Extraschedular Consideration under 38 CFR § 3.321(b)

Thun v. Peake (CAVC 2008)

- Sets out a three-part test:
 1. Evidence before the VA presents an “exceptional disability picture” that schedular evaluations are inadequate; and
 2. The VA determines that the veteran’s “exceptional disability picture” exhibits factors such as those in the regulation – marked interference with employment or frequent hospitalizations
 - Not limited to unemployment
 3. Justice requires the assignment of an extraschedular rating



Extraschedular Consideration under 38 CFR § 3.321(b)

- Despite VA's disagreement, BVA must review decisions concerning extraschedular ratings because, per 38 USC § 7104(a), BVA is the final agency authority on all benefit decisions
- **BVA has the authority to assign extraschedular ratings**





Combined Ratings

38 CFR § 4.25 Combined Ratings Table

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected **first by the most disabling condition, then by the less disabling condition**, then by other less disabling conditions, if any, **in the order of severity**.

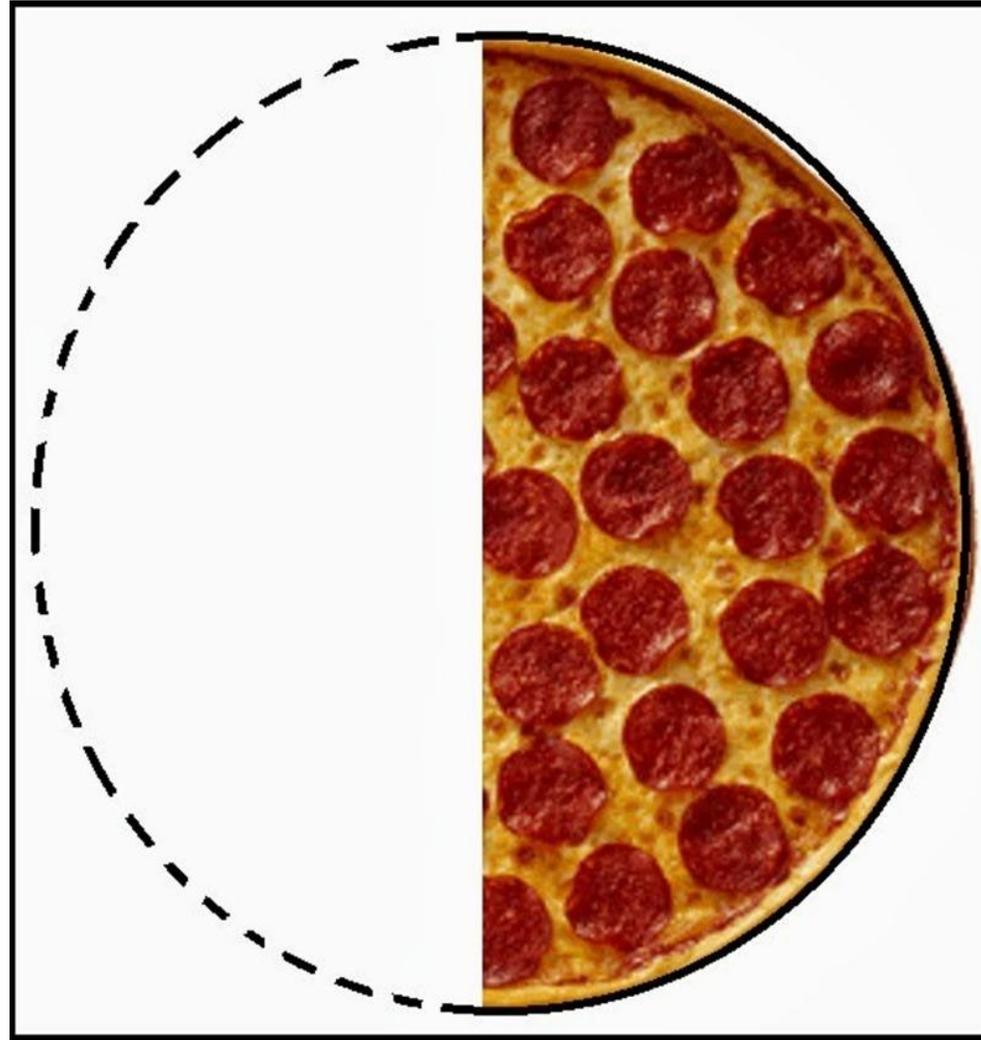
- A person having a 60 percent disability is considered 40 percent efficient.
- Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether.
- The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent.

Combined Ratings





Combined Ratings





Combined Ratings

- Ratings are then rounded up or down, as appropriate
- Example:
 - 72% disabled is rated at 70%
 - 75% disabled is rated at 80%
- Rating Calculators:
 - <https://www.hillandpontton.com/va-disability-calculator/>
 - <https://www.dav.org/disability-calculator/>



VA Rating Decision

- Per 38 CFR § 3.103 (f), VA must provide written notification of decisions, which includes all of the following:
 - (1) Identification of the issues adjudicated;
 - (2) A summary of the evidence considered;
 - (3) A summary of the laws and regulations applicable to the claim;
 - (4) A listing of any findings made by the adjudicator that are favorable to the claimant under § 3.104(c);
 - (5) For denied claims, identification of the element(s) required to grant the claim(s) that were not met;



VA Rating Decision

- **38 CFR § 3.103 (f), cont.**
 - (6) If applicable, identification of the criteria required to grant service connection or the next higher-level of compensation;
 - (7) An explanation of how to obtain or access evidence used in making the decision; and
 - (8) A summary of the applicable review options under § 3.2500 available for the claimant to seek further review of the decision.



VA Ratings

- After several months of development and adjudication, the VA has now rated your veteran
 - Benefits of a successful rating
 - Compensation
 - Healthcare and Pharmacy
 - 0%-40% - for S/C disability
 - 50% and greater – all healthcare and pharmacy at no cost
 - 70% - includes long term care
 - State Benefits – Tax Abatement / Education / Hiring Preference
 - Appeals Options – discussed later





Compensation



| Rating | Monthly Pay | Annual Pay |
|--------|-------------|-------------|
| 10% | \$175.51 | \$2,106.12 |
| 20% | \$346.95 | \$4,163.40 |
| 30% | \$537.42 | \$6,449.04 |
| 40% | \$774.16 | \$9,289.92 |
| 50% | \$1,102.04 | \$13,224.48 |
| 60% | \$1,395.93 | \$16,751.16 |
| 70% | \$1,759.19 | \$21,110.28 |
| 80% | \$2,044.89 | \$24,538.68 |
| 90% | \$2,297.96 | \$27,575.52 |
| 100% | \$3,831.30 | \$45,975.60 |



Other Benefits

| Rating | Derivative |
|--------|--|
| 0% | <ul style="list-style-type: none"> • Medical Care & Prescription Medicine for S/C Disability (Income Dependent) • 10 Point Veteran Preference in Federal Hiring • Commissary and Exchange and MWR Privileges |
| 10% | <ul style="list-style-type: none"> • Medical Care & Prescription Medicine for S/C Disability (No Income Requirements and Other Healthcare and Prescription w/ Co-Pay) • Waiver of VA Funding Fee for VA Home Loans • Burial & Plot Allowance • Vocational Rehabilitation & Employment (w/ Serious Employment Handicap) |
| 20% | <ul style="list-style-type: none"> • Vocational Rehabilitation & Employment |
| 30-40% | <ul style="list-style-type: none"> • No Cost Healthcare (Prescription Medications for S/C Disabilities) • Federal Employee Direct Hire Authority • Additional Compensation for Spouse & Dependents |
| 50% | <ul style="list-style-type: none"> • Concurrent Receipt of Disability & Military Retirement Pay • No Cost Healthcare and Prescription Medications |
| 60-90% | <ul style="list-style-type: none"> • Potential for Individual Unemployability (TDIU)(Dependents Educational Assistance, CHAMPVA Civilian Health and Medical Program, Dental Care) |
| 100% | <ul style="list-style-type: none"> • Dependents Educational Assistance • CHAMPVA Civilian Health and Medical Program • Uniform Services ID Card |



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Temporary Total Ratings

38 CFR § 4.29 Ratings for Service-Connected Disabilities Requiring Hospital Treatment or Observation

A total disability rating (100 %) will be assigned without regard to other provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Department of Veterans Affairs or an approved hospital **for a period in excess of 21 days** or hospital observation at Department of Veterans Affairs expense for a service-connected disability **for a period in excess of 21 days**.

Note: this is referred to as a “Paragraph 29 rating.”



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Temporary Total Ratings

38 CFR § 4.30 Convalescent Ratings - “Paragraph 30 rating”

A total disability rating (100 %) will be assigned without regard to other provisions of the rating schedule when it is established by report at hospital discharge (regular discharge or release to non-bed care) or outpatient release that entitlement is warranted under paragraph (a) (1), (2) or (3) of this section **effective the date of hospital admission or outpatient treatment and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge or outpatient release.** The termination of these total ratings will not be subject to § 3.105(e) of this chapter. Such total rating will be followed by appropriate schedular evaluations. When the evidence is inadequate to assign a schedular evaluation, a physical examination will be scheduled and considered prior to the termination of a total rating under this section.



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Temporary Total Ratings

- Be mindful of the schedular rating following hospitalization or treatment since the condition may have worsened
- Other disabilities have 100 percent disability ratings built in –
 - **Prosthetic replacement** of a joint under DCs 5051-5056 (e.g., knee replacement) – 100% for 4 months following implantation of prosthesis (DC 5055), ankle joint replacement – 100% for 1 year following implantation (DC 5056)
 - **Prostate cancer** (DC 7528) – “Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months.”



NVLSP

Now that I'm finally rated, can my rating be **increased or **reduced** or my service connection **severed** altogether?**



NVLSP

Now that I'm finally rated, can my rating be increased or reduced or my service connection severed altogether?

YES!

