

CHAPTER 6

STUDY PLAN

SERVICE-CONNECTED DISABILITY COMPENSATION RATINGS SYSTEM

OBJECTIVE

To become familiar with VA rules pertaining to service-connected ratings.

REFERENCES

- Title 38, U.S. Code, Part II, Chapter 11, *Compensation for Service-Connected Disability or Death*
- Title 38, U.S. Code, Part IV, Chapter 51, *Claims, Effective Dates and Payments*
- 38 Code of Federal Regulations Part 3 and Part 4
- Adjudication Manual M21-1MR (Manual Rewrite), Part III and Part IV
- *Federal Benefits for Veterans, Dependents and Survivors*, 2014 edition
- Veterans Benefits Manual, Chapter 5, "Setting a Veteran's Service-Connected Disability Rating"
- VA Forms:
 - 21-526EZ, *Application for Disability Compensation and Related Compensation Benefits*
 - 21-8940 *Application for Increased Compensation Based on Unemployability*
- DD Form 2860, *Application for Combat-Related Special Compensation (CRSC)*

DISABILITY COMPENSATION

Disability compensation is the monthly monetary benefit payable for service-connected disabilities. Compensation rates are not income-based—they are determined by the level of impairment as set forth in accordance with the *Schedule for Rating Disabilities*. (38 C.F.R., Part 4.) There are eleven possible levels of disability assignable for any condition, from 0% to 100%, in 10% increments.

Each listed degree of severity is based on the *average* impairment of earning capacity for a person with that condition at that level of symptomatology. (38 C.F.R. § 4.1.) The veteran's age is not considered in this determination. (38 C.F.R. § 4.19.)



ELIGIBLE TO ADD DEPENDENTS

If the combined evaluation is 30% or greater, additional compensation may be payable for the veteran's dependents (38 C.F.R. § 3.4(b) (2)):

1. Additional benefits may be payable for a dependent spouse, including additional allowance if the spouse is rated by the VA as disabled and in need of aid and attendance. (38 U.S.C.A. § 1115(1) (E).)
2. Additional benefits are also payable for the dependent children—veteran's child or children up to age 18, or between 18-23 (if the child is attending an approved school), or for a child who became disabled and permanently incapable of self-support (helpless) before age 18. (38 U.S.C.A. § 1115(1) (F).)
3. Additional amounts may also be payable *if* the veteran's parents are dependent on the veteran for support. (38 U.S.C.A. § 1115(1) (D).)

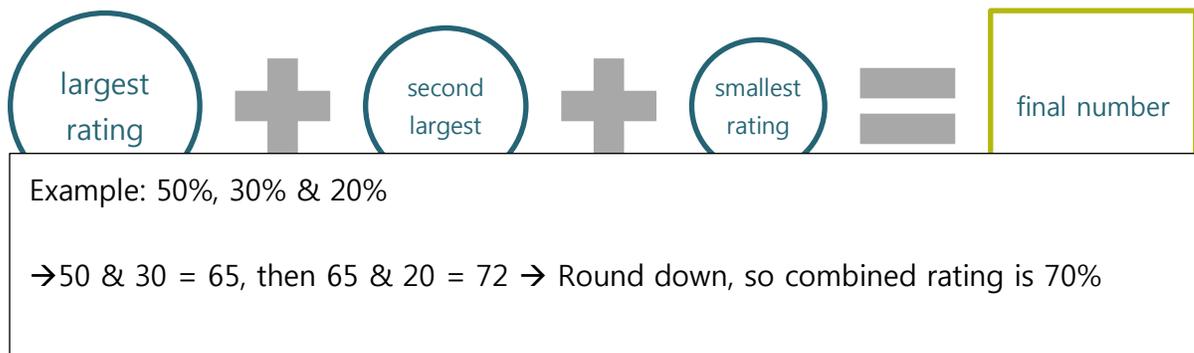
The VA currently recognizes same-sex spouses as dependents if the veteran and his or her spouse were married in a state that recognizes same-sex marriage or lived in a state that recognizes same-sex marriage at the time of the application for dependent's benefits. (VA Memorandum VAOPGCPREC 4-2014.)

For more information on evidence requirements for dependents, please see 38 CFR § 3.204 to § 3.217.

COMBINED RATINGS

When there are two or more service-connected disabilities, the combined rating is not the result of adding the percentage, but of a more complicated formula. 38 C.F.R. § 4.25 explains the formula and **provides a table for combining ratings** (*see a copy of the table at the end of this chapter*). To use the Combined Ratings table, one should find the largest

rating on the left-most column of the table then move right column by column for the second rating. If there's a third rating, go back to the left-most column and find the combined number from the first and second, then move column by column again for the third rating. The final number is **rounded up** if it ends in a number between 5 and 9, and **rounded down** if it ends in a number between 1 and 4.



DOCTRINE OF BENEFIT OF THE DOUBT

38 U.S.C. § 5107 requires that, when there is an approximate balance of positive and negative evidence regarding the merits of an issue with a firm rationale the benefit of the doubt will go to the claimant.

DISABILITY BENEFITS QUESTIONNAIRES (DBQs)

DBQs are forms that are meant to streamline the collection of medical information that can then be reviewed easily by the RVSR. There are more than 70 DBQs covering different medical conditions. Compensation and pension examiners complete the forms during compensation and pension (C & P)

examinations. Veterans can also bring DBQs to private doctors to be filled out and returned to the VA to assist with claims adjudication. DBQs do not address the question of nexus—



ADVOCACY TIP

This 50/50 balance means that if a doctor is issuing his or her opinion about the link between a current disability and an in-service injury, the opinion must provide at minimum that it is **“as likely as not”** that there is a nexus. The benefit of the doubt there would go to the veteran.

that is, whether the current condition is related to an in-service injury or aggravation—so it is important to include sufficient evidence of nexus when assisting veterans who utilize DBQs as part of their disability compensation claims. The DBQs are available online at benefits.va.gov/COMPENSATION/dbq_ListByDBQFormName.asp.

ANALOGOUS RATINGS

Not all disabilities are listed in the rating schedule. When a claimant applies for an unlisted condition, the condition should be rated under a closely related injury or disease, preferably affecting similar functions in the same part of the body. (38 C.F.R § 4.20.)

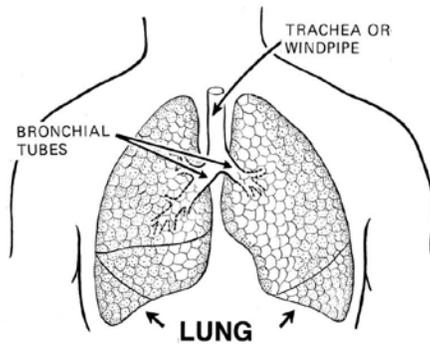
BILATERAL FACTOR



If a veteran has multiple compensable (10% or more) service-connected conditions involving both arms or both legs or paired skeletal muscles, the combined evaluation for *only* those conditions is first found, before considering any other condition(s); 10% of that combined value is then *added* (not combined) to that combined evaluation, and any other remaining service-connected conditions are then combined with that total in the usual manner. The additional 10% of the combined amount is the “bilateral factor”. (38 C.F.R. § 4.26.) The bilateral factor is not usually applied if the veteran is otherwise ratable at 100%. However, it may be used to reach an overall combined 100% rating. Also, if the veteran has multiple service-connected conditions with one single condition rated 100% plus other, separate, compensable conditions involving paired extremities or paired skeletal muscles, the bilateral factor may be used to reach an independent combined rating of 60% for entitlement to special monthly compensation (housebound). (38 USCS 1114(s) & 38 C.F.R. § 3.350 (i).)

PAIRED EXTREMITIES/PAIRED ORGANS

If a veteran has anatomical loss or loss of use of paired extremities (arms, legs), or has loss of use or specified levels of impairment of paired organs (eyes, ears, kidneys, lungs), and



one extremity or organ is service-connected but the impairment or loss in the other extremity or organ is not the result of a service-connected event or injury (and not the result of willful misconduct), disability compensation (including special monthly compensation) is paid as though **both** extremities or organs were service-connected. (38 U.S.C. § 1160, 38 C.F.R. § 3.383.)

MULTIPLE 0% RATINGS

If a veteran has two or more service-connected conditions which are each individually rated as non-disabling (0%), but which taken together **clearly interfere** with normal employability, compensation may be authorized at the 10% rate, but not in combination with any other rating. (38 C.F.R. § 3.324.)

RATING FOR A CONDITION THAT IS AGGRAVATED

If service connection is established by aggravation, the degree of severity of the condition at the time the veteran entered service must be determined, if possible. That evaluation is then deducted from the current evaluation, and the resulting difference is the degree of aggravation. If the pre-service degree of severity cannot be determined, no deduction is made. Also, if the condition is currently evaluated as 100% disabling, no deduction is made. (38 C.F.R. §§ 3.322, 4.22.)

SEPARATING THE EFFECTS OF SERVICE-CONNECTED DISABILITY FROM NON SERVICE-CONNECTED

In some cases, the effects of a non-service-connected disability are difficult to distinguish from the effects of a service-connected disability. The VA must attempt to separate out the effects and if they cannot do so, it must give the benefit of the doubt to the veteran and attribute all inseparable effects to the service-connected disability. (*Howell v. Nicholson*, 19 Vet. App. 535 (2006).)

TEMPORARY 100%



If a veteran is discharged from service while still convalescing from unhealed or incompletely healed wounds or injuries, a temporary 100% or 50% “**pre-stabilization**” rating, depending on the severity of the overall disability, may be immediately assigned without regard to other provisions of the *Schedule for Rating Disabilities*. This rating will remain in effect for a minimum of twelve months following discharge from service; a comprehensive VA examination *must* be accomplished not earlier than six months nor later than twelve months following discharge, which examination will then be the basis for a permanent rating. (38 C.F.R. § 4.28.)

If a veteran is *hospitalized for more than 21 consecutive days* for observation or treatment of a service-connected condition, a temporary 100% rating may be assigned for that condition without regard to other provisions of the *Schedule for Rating Disabilities*, from the date of hospital admission to the last day of the month of hospital discharge. Under certain circumstances, a period of post-hospital **convalescence** of one, two, or three months may also be assigned. (38 C.F.R. § 4.29.)

If a veteran undergoes **surgical treatment** for a service-connected condition, whether as an inpatient or as an outpatient, or has therapeutic immobilization by cast of one or more joints for a service-connected condition, and such treatment or immobilization requires a period of convalescence of one month or more, a temporary 100% rating may be assigned for that condition without regard to other provisions of the *Schedule for Rating Disabilities*, beginning the date of hospital admission or the date the outpatient treatment commenced and extending for a period of convalescence of one, two, or three months, as appropriate. In certain instances, the period of convalescence may be extended, up to a maximum of twelve months. (38 C.F.R. § 4.30.)

SPECIAL MONTHLY COMPENSATION

Additional rates of special monthly compensation are payable for the anatomical loss or loss of use of one or both hands, one or both feet, one or both eyes, or other specified organs

or parts. This special monthly compensation is paid in addition to, or in some cases in lieu of, the regular rates of compensation otherwise payable. Special monthly compensation is also payable if the veteran has one single service-connected condition rated 100% disabling plus other, separate, service-connected condition(s) independently ratable at 60% or more in combination, or if the veteran is permanently **housebound**, or is in need of regular **aid and attendance**. (38 C.F.R. § 3.350.)

The various rates of compensation for special monthly compensation are set out in Adjudication Manual M21-1, Part I, Appendix B.

INDIVIDUAL UNEMPLOYABILITY

Veterans whose combined evaluations are less than 100% may still be rated as totally disabled and paid at the 100% rate, if they are unable to obtain and maintain substantially gainful employment because of their service-connected disabilities. The **basic scheduler requirements** are that the veteran must either have one single service-connected disability which is rated at 60% or more, or have multiple disabilities which combine to 70% or more, with at least one disability rated at 40% or more. (38 C.F.R. § 4.16(a).)

For the purpose of establishing the single 60% or the single 40% disability, certain specified combinations of disabilities will count as a "single disability," such as:

- Multiple disabilities involving paired extremities (including the bilateral factor, where appropriate);
- Multiple disabilities involving a single body system (e.g., orthopedic, neuropsychiatric, etc.);
- Multiple disabilities arising from a common etiology or a single accident;
- Multiple injuries received in combat; or
- Multiple disabilities related to having been a prisoner of war.

Marginal employment is defined as earned annual income that is less than the poverty threshold for one person. It is not "substantially gainful employment," and does not preclude a finding of individual unemployability, if it would otherwise be appropriate. (38

C.F.R. § 4.16(a).) To claim this additional benefit, a completed VA Form 21-8940, *Veteran's Application for Increased Compensation Based on Unemployability*, must be submitted.

SEVERING SERVICE CONNECTION

When service connection has been established for a condition such service connection may not be removed (severed) unless evidence clearly shows that the establishment of service connection was clearly and unmistakably erroneous, and that the continuation of service connection cannot be maintained or supported under any reasonable theory, with the burden of proof being on the government. (38 C.F.R. § 3.105(d).)

When service connection on any basis for any condition has been in effect for *ten years*, it becomes protected and may not be severed for any reason whatsoever, except upon a showing that it was based on fraud, or a showing that the veteran did not have the requisite service or character of discharge. (38 C.F.R. § 3.957.)

PROPOSED RATING REDUCTION

VA schedules re-examinations of veterans' disabilities in most cases every five years unless the disability is permanent and not likely to improve, the symptoms have persisted without material improvement for five or more years, or the veteran is over 55 years old. (38 C.F.R. § 3.327(b) (2).)

Re-examination may result in a determination that the veteran's disability has decreased in severity, leading the VA to propose a reduction in rating. Any exam that is less complete than the exam on which payments were based may not be used as a basis of reduction. It is essential that the entire record of examinations and the medical-industrial history be reviewed to ascertain whether the recent examination is full and complete. (38 C.F.R. § 3.344(a).)



ADVOCACY TIP

Receiving a notice of proposed rating reduction can cause great anxiety for some veterans. It is important to take the time to thoroughly explain all relevant rules to the veteran, and advocate on the veteran's behalf if the proposed reduction is inappropriate.

When a disability has been evaluated at or above any given level for *twenty years or more*, the evaluation is *protected* and may not be reduced below that level for any reason other than a showing that it was based upon fraud. (38 C.F.R. § 3.951.)

When a condition is rated at *100%*, the VA must find **material improvement** to reduce the rating. To make that determination, the VA must compare the evidence it relied upon in awarding 100% with the evidence it is relying upon to consider reducing the rating. (38 C.F.R. § 3.343(a).)



In ordinary cases where there is no special protection against reduction, the VA must still demonstrate the reduction is based upon review of the entire history of the veteran, there must be an actual change in the disability, any improvement must reflect an improvement in the veteran's ability to function under the ordinary conditions of life and work, and examinations upon which a reduction is based must be thorough.

COMPENSATION AND RETIRED PAY

In general, Federal law prohibits dual compensation (payment from two or more Federal sources) based upon the same service and/or the same disability. (38 U.S.C. § 5304.) For example, a veteran who is employed by the Federal government as a civilian and who is also receiving military retired pay must waive the retired pay to have that military service included in civil service computations of longevity and seniority. In the past, a veteran receiving military retired pay, whether for length of service or for disability, had to waive an amount of retired pay equal to the rate of VA disability compensation payable (the "compensation offset") in order to be paid the VA compensation. (38 C.F.R. § 3.750.) If the VA compensation rate is greater than the veteran's retired pay, then the retired pay must be waived in its entirety for the full amount of compensation to be paid.

There are two exceptions to these rules:

CONCURRENT RETIREMENT AND DISABILITY PAY (CRDP) (10 U.S.C. § 1414)

- 20 years or more qualifying service and 50% service-connected
- Defense Finance and Accounting Service (DFAS) implements
- CRDP is taxable and subject to collections (e.g. alimony, child support, etc.)
- Veteran need not apply, it is automatic for those who qualify

COMBAT-RELATED SPECIAL COMPENSATION (10 U.S.C. § 1413(a))

- 20 years or more of qualifying service or 30% rating by the Physical Evaluation Board (PEB), and one or more compensable VA combat-related disabilities
- The military departments make the determination whether an injury is combat-related
- Disabilities which are related to Agent Orange, radiation exposure, poison gas exposure, or Gulf War illnesses are presumed to be combat-related
- PTSD will require documentation of combat origin
- CRSC is not taxable
- If otherwise appropriate, CRSC payments based on longevity may be made effective retroactively to June 1, 2003 and CRSC payments based on medical retirement may be effective retroactively to January 1, 2008
- Application made on DD Form 2860, *Application for Combat-Related*
 - *Special Compensation (CRSC)*

TABLE I—COMBINED RATINGS TABLE

[10 combined with 10 is 19]

	10	20	30	40	50	60	70	80	90
19	27	35	43	51	60	68	76	84	92
20	28	36	44	52	60	68	76	84	92
21	29	37	45	53	61	68	76	84	92
22	30	38	45	53	61	69	77	84	92
23	31	38	46	54	62	69	77	85	92
24	32	39	47	54	62	70	77	85	92
25	33	40	48	55	63	70	78	85	93
26	33	41	48	56	63	70	78	85	93
27	34	42	49	56	64	71	78	85	93
28	35	42	50	57	64	71	78	86	93
29	36	43	50	57	65	72	79	86	93
30	37	44	51	58	65	72	79	86	93
31	38	45	52	59	66	72	79	86	93
32	39	46	52	59	66	73	80	86	93
33	40	46	53	60	67	73	80	87	93
34	41	47	54	60	67	74	80	87	93
35	42	48	55	61	68	74	81	87	94
36	42	49	55	62	68	74	81	87	94
37	43	50	56	62	69	75	81	87	94
38	44	50	57	63	69	75	81	88	94
39	45	51	57	63	70	76	82	88	94
40	46	52	58	64	70	76	82	88	94
41	47	53	59	65	71	76	82	88	94
42	48	54	59	65	71	77	83	88	94
43	49	54	60	66	72	77	83	89	94
44	50	55	61	66	72	78	83	89	94
45	51	56	62	67	73	78	84	89	95
46	51	57	62	68	73	78	84	89	95
47	52	58	63	68	74	79	84	89	95
48	53	58	64	69	74	79	84	90	95
49	54	59	64	69	75	80	85	90	95
50	55	60	65	70	75	80	85	90	95
51	56	61	66	71	76	80	85	90	95
52	57	62	66	71	76	81	86	90	95
53	58	62	67	72	77	81	86	91	95
54	59	63	68	72	77	82	86	91	95
55	60	64	69	73	78	82	87	91	96
56	60	65	69	74	78	82	87	91	96
57	61	66	70	74	79	83	87	91	96

Table I-Combined Ratings Table (cont.)

	10	20	30	40	50	60	70	80	90
58	62	66	71	75	79	83	87	92	96
59	63	67	71	75	80	84	88	92	96
60	64	68	72	76	80	84	88	92	96
61	65	69	73	77	81	84	88	92	96
62	66	70	73	77	81	85	89	92	96
63	67	70	74	78	82	85	89	93	96
64	68	71	75	78	82	86	89	93	96
65	69	72	76	79	83	86	90	93	97
66	69	73	76	80	83	86	90	93	97
67	70	74	77	80	84	87	90	93	97
68	71	74	78	81	84	87	90	94	97
69	72	75	78	81	85	88	91	94	97
70	73	76	79	82	85	88	91	94	97
71	74	77	80	83	86	88	91	94	97
72	75	78	80	83	86	89	92	94	97
73	76	78	81	84	87	89	92	95	97
74	77	79	82	84	87	90	92	95	97
75	78	80	83	85	88	90	93	95	98
76	78	81	83	86	88	90	93	95	98
77	79	82	84	86	89	91	93	95	98
78	80	82	85	87	89	91	93	96	98
79	81	83	85	87	90	92	94	96	98
80	82	84	86	88	90	92	94	96	98
81	83	85	87	89	91	92	94	96	98
82	84	86	87	89	91	93	95	96	98
83	85	86	88	90	92	93	95	97	98
84	86	87	89	90	92	94	95	97	98
85	87	88	90	91	93	94	96	97	99
86	87	89	90	92	93	94	96	97	99
87	88	90	91	92	94	95	96	97	99
88	89	90	92	93	94	95	96	98	99
89	90	91	92	93	95	96	97	98	99
90	91	92	93	94	95	96	97	98	99
91	92	93	94	95	96	96	97	98	99
92	93	94	94	95	96	97	98	98	99
93	94	94	95	96	97	97	98	99	99
94	95	95	96	96	97	98	98	99	99

(Authority: 38 U.S.C. § 1155)



STUDY QUESTIONS

Using the assigned references and reading materials, answer the following questions:

1. A veteran has multiple disabilities resulting from an IED blast in Iraq which are rated 30%, 30%, 20%, 10%. She is unable to work due to her injuries. Does she meet the scheduler requirements for individual unemployability?

38 C.F.R. § 4.16.

2. What is the minimum combined evaluation for which additional compensation for dependents may be paid?

38 C.F.R. § 3.4(b) (2)

3. What is the term used when a particular condition is not listed in the Rating Schedule and therefore the VA uses the rating criteria for another condition that affects the same body system and has similar symptomatology?

38 C.F.R. § 4.20

4. When service connection by aggravation is established for a pre-existing condition, the pre-service severity of the condition, if ascertainable, must be deducted from the current severity to determine the level of compensation payable. (T/F)

38 C.F.R. §§ 3.322, 4.22

5. When a veteran suffers from service-connected and non-service-connected disabilities with overlapping symptoms, what must the VA do in assigning a rating?

Separate out the service-connected symptoms from the non-service-connected and assign a rating. If it cannot do so, it must give the benefit of the doubt to the veteran.

Howell v. Nicholson, 19 Vet. App. 535 (2006)

6. A veteran has service-connected ratings of 50%, 30%, and 10%. What is his or her total rating?

38 C.F.R. § 4.25

7. A veteran suffers from a service-connected disability that disables both her arms; each assigned a rating of 30%. What is the total rating?

38 C.F.R. §§ 4.25, 4.26

8. A veteran suffers from a service-connected disease that disables both feet; each assigned a rating of 20%. The veteran has other service-connected disabilities rated 40%, 20%, and 10%. What is the total combined rating?

38 C.F.R. §§ 4.25, 4.26

9. A veteran has an elbow disability that is rated 30%. His doctors recommend surgery, which he has. What is his rating immediately following surgery?

38 C.F.R. § 4.30

How long will the temporary rating last?

38 C.F.R. § 4.30

10. A veteran is rated 70% with individual unemployability for one disability and has other disabilities that when combined total 60%. What benefit is he or she entitled to?

38 C.F.R. § 3.350(i) (1)

11. A veteran is rated 30% for a heart condition, 20% for a knee condition, and 10% for hearing loss. His combined evaluation is:

38 C.F.R. § 4.25

12. When service connection by aggravation is established for a pre-existing condition, the pre-service severity of the condition must be deducted from the current severity to determine the level of compensation payable. (T/F)

38 C.F.R. § 3.322, 4.22