CHAPTER 7
STUDY PLAN

SPECIAL ISSUES IN SERVICE-CONNECTED DISABILITY COMPENSATION:
PTSD, PERSIAN GULF WAR PRESUMPTION,
AGENT ORANGE PRESUMPTION, CAMP LEJEUNE WATER CONTAMINATION
PRESUMPTION, TBI

OBJECTIVE
To learn about claims for service-connected compensation based on post-traumatic stress disorder, Agent Orange exposure, Camp Lejeune Water Contamination Exposure, Persian Gulf War service, and traumatic brain injury.

REFERENCES
- Title 38, U.S. Code, Part II, Chapter 11, Compensation for Service-connected Disability or Death; 38 U.S.C. §§ 1116, 1117, 1118, 1154(b), 5107(b)
- VA Training Letter 10-03, Environmental Hazards in Iraq, Afghanistan, and Other Military Installations (Apr. 26, 2010)
- VA Forms:
  - 21-0781, Statement in Support of Claim for Post-Traumatic Stress Disorder
SPECIAL ISSUE: POST-TRAUMATIC STRESS DISORDER

Post-traumatic stress has been characterized as a disorder involving the development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death, actual or threatened serious injury, or actual or threatened sexual violence, by direct exposure, witnessing, indirectly by learning that a close relative or friend was exposed to trauma, or by repeated or extreme indirect exposure often during the course of professional duties (e.g. first responders, social workers repeatedly exposed to details of child abuse). (American Psychiatric Association (2013), *DSM – V*, p. 271.)

Characteristic symptoms of PTSD include but are not limited to feeling emotionally numb, guilt about surviving, depression, nightmares, flashbacks or re-experiencing, difficulty sleeping, difficulty getting close to people, trouble concentrating, and use of alcohol or drugs to self-medicate.

CURRENT DISABILITY

In order to obtain service-connected compensation for PTSD, the three requirements must be met: in-service incident, current disability, and nexus between the two. Current disability can be proven by diagnosis of PTSD from an expert who is competent to diagnose the disorder: typically an M.D., PhD, or PsyD.
The following are individual medals/decorations that may serve as evidence that the veteran engaged in combat:

- Air Force Cross
- Combat Action Ribbon
- Combat Action Badge
- Combat Aircrew Insignia
- Combat Infantryman Badge
- Combat Medical Badge
- Distinguished Flying Cross
- Distinguished Service Cross
- Navy Cross
- Purple Heart
- Medal of Honor
- Silver Star
- Joint Service Commendation Medal w/ "V" Device
- Navy Commendation Medal w/ "V" Device
- Air Medal w/ "V" Device
- Army Commendation Medal w/ "V" Device
- Bronze Star Medal w/ "V" Device

**Note:** The last five (5) medals must include the "V" Device, for VALOR. If there is no indication of the "V" Device, then the veteran should complete and submit a VA Form 21-0781 with his claim.

**IN-SERVICE INCIDENT**

In order to corroborate the in-service incident, VA requires a stressor statement be submitted by the veteran on VA Form 21-0781, *Statement in Support of Claim for PTSD*, or VA Form 21-0781a, *Statement in Support of Claim for PTSD based on Personal Assault*.

The only time the stressor statement is not required is when the applicant is seeking compensation for a combat-related stressor and s/he received a combat-related award; only needs to state “See DD214 verifying combat-related award and as a result of being in combat, I was in constant fear for my life.”

Usually, a veteran’s statement about the traumatic incident must be supported by credible evidence. However, in the case of a combat veteran, that veteran’s own testimony is sufficient to establish the occurrence of the in-service stressor unless the stressor is not consistent with the circumstances, conditions, or hardships of the veteran’s service or there is clear and convincing evidence that the alleged stressor did not occur. Reasonable doubt must be resolved in favor of the veteran. (38 U.S.C. § 1154(b).)

These same rules apply to prisoners-of-war. (38 C.F.R. § 3.304(f)(3).)
The VA interprets “engaged in combat” in this context to mean that the veteran participated in events constituting an actual fight or encounter with a military enemy.

To establish that the veteran’s stressor actually occurred during combat, VA may look to the veteran’s service records for evidence. A combat military occupational specialty (MOS) or receipt of certain military awards are accepted forms of evidence (e.g. Combat Action Badge, Purple Heart, Combat Infantryman Badge, or Combat Medic Badge). Evidence that a veteran was stationed at a base during an enemy attack is considered supportive evidence of combat. (Dizoglio v. Brown, 9 Vet. App. 163, 166 (1996).)

Similar to cases involving combat, those cases in which PTSD was diagnosed during service may be proven solely through the veteran’s own testimony. (38 C.F.R. § 3.304(f)(1).)

In the case of a stressor that involves fear of hostile military or terrorist activity, if a VA psychiatrist or psychologist confirms that the claimed stressor is adequate to support a diagnosis of PTSD and that the veteran’s symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places and circumstances of the veteran’s service, then the veteran’s own testimony may establish the occurrence of a stressor. (38 C.F.R. § 3.304(f)(3).)

Medical Evidence of a Nexus Between the Current PTSD and the Stressor
It is typical for a doctor who has diagnosed PTSD to relate the diagnosis to a particular underlying stressor. As a result, a veteran who is able to meet the first requirement for a PTSD claim, by showing a current diagnosis of PTSD, usually will not have a problem meeting the third requirement of a medical link between the PTSD and the stressor.

Special Issue: PTSD Secondary to Personal Assault
Where the stressor does not involve combat or fear of hostile forces, the stressor requires corroboration in the form of credible supporting evidence. Buddy statements and other lay statements may count as such. In these cases, a VA psychologist or psychiatrist cannot on his or her own determine whether a veteran has PTSD, but will rely on the veteran’s testimony and supporting evidence.

Advocacy Tip
As an advocate, you are responsible for helping veterans gather credible supporting evidence—often in the form of witness and buddy statements. This will be discussed in detail later in the chapter.
own establish the occurrence of a stressful incident, although his or her statement may be helpful for corroboration.

Veterans who have experienced in-service personal assault (i.e. sexual harassment, sexual threats, and/or sexual assault) face particular hurdles in trying to obtain service-connected compensation for the resulting PTSD. The VA has acknowledged that because personal trauma “is an extremely personal and sensitive issue, many incidents of personal assault are not officially reported, and victims of this type of in-service trauma may find it difficult to produce evidence to support the occurrence of the stressor.” (Manual M21-1MR, Subpart ii, 1.D.17.g.) There are many reasons why servicemembers may not report sexual assaults while in service. Many times the perpetrators are the very people to whom the servicemember is supposed to report the crime. If reports are made publicly, the servicemember may be subject to harassment from fellow servicemembers and punishment from superior officers. Further, very few reports actually lead to punishment or prosecution of the perpetrator.

Because of the frequency in which service medical records are devoid of evidence of in-service assaults, the VA has recognized that alternative evidence can establish an in-service incident. The VA has a special obligation to assist in cases where the veteran claims a personal assault. (38 C.F.R. § 3.304(f)(4).) The regulation describes alternative forms of evidence, to include:

- law enforcement records,
- rape crisis centers,
- mental health counseling centers,
- pregnancy tests or tests for STDs,
- statements from family members, roommates, fellow servicemembers, or clergy.
Evidence of behavior changes that may constitute credible evidence of the stressor include:

- a request for transfer to another assignment,
- deterioration in work performance,
- substance abuse,
- episodes of depression, panic attacks, or anxiety without an identifiable cause, or
- other unexplained economic or social behavior changes. (38 C.F.R. § 3.304(f)(4).)

The manual M21-1MR lists the following as additional examples or evidence of behavior changes resulting from personal assault:

- lay statements indicating increased use or abuse of leave without apparent reason,
- lay statements describing episodes of depression, panic attacks, or anxiety,
- sudden requests that the veteran’s military occupational specialty or duty assignment be changed without other justification,
- changes in performance,
- increased or decreased use of prescription or over-the-counter medications,
- evidence of substance abuse,
- increased disregard for military or civilian authority,
- obsessive behavior such as over or under eating,
- treatment for physical injuries around the time of the claimed trauma, and,
- the breakup of a primary relationship.

(Manual M21-1MR, Part III, Subpart iv, 4.H.30.c.)

In practice, to assist a veteran to corroborate a stressor from personal assault, the VSR should have the veteran write a detailed stressor statement describing what occurred, how he or she reacted afterwards, and how the incident has affected her or his life ever since. The VSR should encourage the veteran to seek assistance from s/he's treating mental health professional to assist them in writing the stressor statement. Often VSR's are not equipped to handle the psychological ramifications that occur when veterans are asked to write about past incidents. Letters from family members can be critical evidence, particularly if the veteran disclosed what occurred at the time of the incident. If not, family members can still
provide statements about changes they have observed in the veteran since the incident occurred.

**RATING PTSD AND OTHER MENTAL DISORDERS**

The degree of disability caused by PTSD or other mental disorders is evaluated under "General Rating Formula for Mental Disorders" found at 38 C.F.R. § 4.130, which applies a formula based on the degree of impairment. A 100% rating requires a total occupational and social impairment; 70% requires occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood; 50% requires occupational and social impairment with reduced reliability and productivity. Possible symptoms are listed but the veteran does NOT have to exhibit all of the symptoms, but must have some that are similar in severity, frequency, and duration.

The Disability Benefits Questionnaire has questions that parallel the language in 38 C.F.R. § 4.130 for the different rating percentages and the C&P doctor’s checkmark is very likely to determine the assigned rating.

Not infrequently, servicemembers with serious PTSD end up committing misconduct due to disobeying authority, 

**ADVOCACY TIP**

A detailed evaluation by a psychiatrist or psychologist is important evidence. It is not required if the veteran served in a Combat AOR or it has been asserted they are a survivor of military sexual trauma. In these circumstances a C&P exam will be requested. It is recommended however as it can be argued that a detailed report provided by a treating practitioner who has spent more than one session with their patient should be granted more weight than a C&P exam report.

**ADVOCACY TIP**

If the veteran believes his rating should be higher for PTSD, review the C&P report. If the C&P examiner checked a box for occupational and social impairment that is too low of a rating for your veteran, Thoroughly review medical records to find evidence of more severe symptoms. Advise the veteran to obtain a statement from his regular psychiatrist or psychologist, supporting the more severe symptoms, and submit that to the VA.
using alcohol or drugs to self-medicate, not showing up for work on time due to depression or other mental health reasons, etc. Some of these servicemembers will end up being discharged with other than honorable or bad conduct discharges, making them ineligible for VA benefits. Information on how to assist these veterans is available in Chapter 19.

Another problem that arises among veterans with PTSD is that in service some were misdiagnosed with personality disorder, adjustment disorder, or other mental health conditions that are not compensable by the VA. As long as they can still prove a stressor exists and they have a current PTSD diagnosis, this should not be a problem for establishing service-connection for PTSD.

**SPECIAL ISSUE: AGENT ORANGE**

The requirements for disability compensation based on Agent Orange:

1. The veteran served in Vietnam between January 9, 1962 to May 7, 1975 or along the Korean DMZ between April 1, 1968 to August 31, 1971

2. The veteran currently has one of the diseases recognized as being caused by Agent Orange.

Congress and the VA have recognized that exposure to the herbicide Agent Orange may result in a number of diseases, cancers, and other negative health consequences. Because proving actual exposure to Agent Orange might be difficult if not impossible, the government has created a presumption for veterans who served in Vietnam. Those veterans who served in the Republic of Vietnam, including in its “in-land” waterways (‘brown water navy’), are presumed to have been exposed to Agent Orange. Any veteran who served in Vietnam and later develops one of the listed conditions associated with Agent Orange may be service-connected for the condition.
Some diseases are only recognized if they manifested within a certain time period from the last day of exposure to Agent Orange (usually the last day in Vietnam).

Vietnam service includes **setting foot** in country a single time, such as during a layover of a Navy ship. Navy ships that served in Vietnam waters but did not dock in a Vietnam port (“blue water veterans”) do not receive the presumption, nor do those who flew over in an aircraft without landing. [Although not subject to the presumption for Agent Orange, blue water veterans are entitled to presumptive service-connection for certain lymphomas. 38 C.F.R. § 3.313(b).]

The VA keeps a database of naval ships that operated on the inland waterways or docked in Vietnam at [www.publichealth.va.gov/exposures/agentorange/shiplist/list.asp](http://www.publichealth.va.gov/exposures/agentorange/shiplist/list.asp). The list is continually updated with new ships and dates. If the ship on which a veteran served is not on the VA’s list, but the veteran alleges that the ship docked in Vietnam, the VA must request verification from the U.S. Army and Joint Services Records Research Center (JSRRC). The veteran must identify a 60-day time frame when the docking occurred.

In Korea, a zone that was 151 miles long and 350 yards wide, along the south edge of the demilitarized zone (DMZ), was sprayed with Agent Orange and other herbicides between April 1968 and July 1969. The VA extended an Agent Orange presumption to veterans who served between April 1, 1968 and August 31, 1971. The Veterans Benefits Manual (VBM) section 3.8.1.1.2 lists military units that have been identified as serving in the Korean DMZ during that time period.

Table 3-1 of Section 3.8.1.2 of the VBM lists diseases associated with Agent Orange and their time requirements (See also to 38 CFR 3.307(a)(6)(ii)). Conditions such as non-Hodgkin’s lymphoma and chronic lymphocytic leukemia have had different names and so it is important for an advocate to check with a medical professional if s/he is uncertain whether
the disease may be on the list. Some of the most common conditions are prostate cancer, type II diabetes, and ischemic heart disease. Most of the conditions have no time requirement but chloracne, porphyria cutanea tarda and early-onset peripheral neuropathy have a one year limit following the last day of exposure to Agent Orange.

The VA added ischemic heart disease, Parkinson’s disease, and chronic B-cell leukemias on August 31, 2010 to the list of presumptive conditions as a result of a lawsuit known as *Nehmer v. U.S. Veterans Administration* 494 F.3d 846 (9th Circuit 2007). *Nehmer* required the VA go back and look for all denied claims that were submitted between September 25, 1985 and August 31, 2010 and that involved these three diseases, in order to re-adjudicate them. The effective dates of the original claims were assigned (VBM Section 8.7 contains a detailed explanation of effective dates in Agent Orange claims). The VA undoubtedly failed to catch all of the claims. Veterans should reapply if previously denied compensation for an Agent Orange disease.

38 CFR 3.309 (also VBM section 3.8.5) lists diseases that VA may recognize in the future for association with Agent Orange. M21-2, Part IV, Subpart ii, Ch 1, section H-Developing claims for SC based on herbicide exposure lists the different locations and specified times that are recognized for exposure to Agent Orange, including on the fenced perimeters of military installations in Thailand, Stateside US bases & C-123 Aircraft.

Type II diabetes has a number of associated secondary conditions including nephropathy, neuropathy, arteriosclerosis and cataracts, which can also be service-connected if diabetes is service-connected and a doctor confirms that the condition is secondary to diabetes..
SPECIAL ISSUE: CONTAMINATED WATER SUPPLY CAMP LEJEUNE

As part of the Department of Veterans Affairs’ (VA) ongoing commitment to provide care to veterans and their families, the VA amended its regulations effective March 14, 2017, to establish presumption of service connection for eight conditions associated with exposure to contaminants in the water supply at Camp Lejeune. From 1953 to 1987, water sources at the Marine Corps Base Camp Lejeune, North Carolina were contaminated with industrial solvents that are correlated with certain health conditions. The eligible population are those veterans who served on active duty to include, Reserve and National Guard personnel who have a record of service at Camp Lejeune between August 1, 1953 and December 31, 1987 and served at Camp Lejeune for at least 30 days (consecutive or cumulative) during that period.

Presumption Regulations: Title 38 CFR §§ 3.307(a)(7) & 3.309(f) diseases associated with exposure to contaminants in the water supply at Camp Lejeune.

(See also the M21-1, Part IV.ii.2.C.6.a)

In order to qualify for presumptive service connection under these provisions, there must be evidence of

- a diagnosis of a condition listed in 38 CFR § 3.309(f), if manifest to a degree of 10 percent or more at any time after service, and
- service of at least 30 days (consecutive or nonconsecutive) at Camp Lejeune during the period beginning on August 1, 1953, and ending on December 31, 1987

Important: Qualifying service must be established by military orders or other official service department records.

Service at Camp Lejeune means any service within the borders of the entirety of the United States Marine Corps Base Camp Lejeune and Marine Corps Air Station New
River, North Carolina, the borders of Camp Lejeune base include, but are not limited to, all of the following areas

- MSCA New River
- Camp Geiger
- Camp Johnson
- Naval Hospital Camp Lejeune
- Camp Knox
- Montford Point
- Stone Bay Rifle Range
- Holcomb Boulevard, and
- Hadnot

**Exception:** Camp Lejeune service does not include service at MCAS Cherry Point

Under 38 CFR § 3.309(f), VA acknowledges the following disabilities to have a relationship with exposure to contaminants in the Camp Lejeune water supply during the period beginning on August 1, 1953 and ending on December 31, 1987

- Kidney cancer
- Liver cancer
- Non-Hodgkin’s lymphoma
- Adult leukemia
- Multiple myeloma
• Parkinson’s disease
• Aplastic anemia and other myelodysplastic syndromes (bone marrow failure), and
• Bladder cancer

Veterans filing claims for presumptive service connection should specifically state “filing as a result of exposure to water contaminants while stationed at Camp Lejeune”. Recommend to those Veterans who have been previously denied for the now recognized presumptive conditions to reopen their claims.

**Note:** A presumption of Service connection based on exposure to contaminants in the water supply at Camp Lejeune is not warranted for any other condition, but may be established on a direct basis, if warranted by the facts of the case. Direct basis does not apply to National Guard or reserve unit while on active duty or inactive duty for training.

File service connection on a direct basis for any other diseases not listed in 38 CFR § 3.309(f) that is alleged by the veteran to have been caused by contaminants in the water supply at Camp Lejeune only if there is

• Evidence of a current disease or disability
• Evidence of exposure to the contaminated water at Camp Lejeune while on active duty, and
• A medical nexus between the two, supported by a sufficient scientific explanation
SPECIAL ISSUE: DISABILITY COMPENSATION FOR VETERANS OF THE PERSIAN GULF WAR, OPERATION ENDURING FREEDOM, AND OPERATION IRAQI FREEDOM

THREE REQUIREMENTS FOR PRESumptIVE SERVICE CONNECTION UNDER 38 U.S.C. § 1117:

1. Qualifying service as a Persian Gulf War veteran;
2. A qualifying chronic disability; and
3. The qualifying disability became manifest during service in Southwest Asia or to a degree of 10 percent during the presumptive period.

Unlike the normal rules for service-connection, these Persian Gulf War veterans with undiagnosed chronic disability need not prove an in-service injury or event or a nexus to service.

QUALIFYING SERVICE IN PERSIAN GULF OR SOUTHWEST ASIA
Service must include at least one day after August 2, 1990 and any time up to the present.

A CHRONIC UNDIAGNOSED DISABILITY OR UNEXPLAINED MULTISYMPTOM DISABILITY OR NAMED INFECTIOUS DISEASE
The veteran must have an undiagnosed illness, or medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome), or one of nine named infectious diseases. Undiagnosed illness or chronic multisymptom illness is defined by a cluster of “signs or symptoms” such as headache, muscle pain, joint pain, unexplained rashes, fatigue, respiratory system symptoms, neurological symptoms, gastrointestinal symptoms, cardiovascular symptoms, abnormal weight loss, or menstrual disorders. “Signs” are considered objective evidence perceptible to a doctor. Symptoms may be subjective and observable by lay people. The presence of symptoms may be attested to by family and friends of the veteran. The signs or symptoms must be chronic, meaning they have existed for six months or more, and cannot be diagnosed.
If a doctor can assign a diagnosis, the VA will only consider it under the regular service-connected rules. In such a case, the veteran can try to rebut the diagnosis with another medical opinion stating that the symptoms cannot be linked to a specific diagnosis, or argue that they are linked to an unexplained chronic multisymptom illness.

The third type of illness that can lead to service-connection under 38 U.S.C. § 1117 is one of nine infectious diseases listed at 38 C.F.R. § 3.317(c)(2).

VA presumes the following infectious diseases are related to military service in the Southwest Asia theater of operations during the Gulf War August 2, 1990 to present and in Afghanistan on or after September 19, 2001. Veterans must have the diseases within the time frames shown below and have a current disability as a result of that disease in order to receive disability compensation.

1. Malaria - An infectious disease caused by a parasite transmitted by mosquitoes. Symptoms include chills, fever, and sweats. It must be at least 10 percent disabling within one year from the date of military separation or at a time when standard or accepted treatises indicate that the incubation period began during a qualifying period of military service.

2. Brucellosis - A bacterial disease with symptoms such as profuse sweating and joint and muscle pain. The illness may be chronic and persist for years. It must be at least 10 percent disabling within one year from the date of military separation.

3. Campylobacter Jejuni - A disease with symptoms such as abdominal pain, diarrhea, and fever. It must be at least 10 percent disabling within one year from the date of military separation.

4. Coxiella Burnetii (Q Fever) - A bacterial disease with symptoms such as fever, severe headache, and gastrointestinal problems such as nausea and diarrhea. In chronic
cases, the illness may cause inflammation of the heart. It must be at least 10 percent disabling within one year of the date of military separation.

5. Mycobacterium Tuberculosis - An illness that primarily affects the lungs and causes symptoms such as chest pain, persistent cough (sometimes bloody), weight loss and fever.

6. Nontyphoid Salmonella - A condition characterized by symptoms such as nausea, vomiting, and diarrhea. It must be at least 10 percent disabling within one year of the date of military separation.

7. Shigella - A condition characterized by symptoms such as fever, nausea, vomiting, and diarrhea. It must be at least 10 percent disabling within one year of the date of military separation.

8. Visceral Leishmaniasis - A parasitic disease characterized by symptoms such as fever, weight loss, enlargement of the spleen and liver, and anemia. The condition may be fatal if left untreated.

9. West Nile Virus - A disease spread by mosquitoes characterized by symptoms such as fever, headache, muscle pain or weakness, nausea, and vomiting. Symptoms may range from mild to severe. It must be at least 10 percent disabling within one year from the date of military separation.

VA benefits Gulf War Veterans may be eligible for a variety of VA benefits, including a Gulf War Registry health exam, the Airborne Hazards and Open Burn Pit Registry, health care, and disability compensation for diseases related to military service. Their dependents and survivors also may be eligible for benefits.

**MANIFESTATION OF THE DISABILITY DURING THE PRESUMPTIVE PERIOD**

The presumptive period for undiagnosed or multisymptom illnesses has been currently extended through December 31, 2016. The presumptive period for infectious diseases varies depending on the disease; six of the nine must have manifested to a degree of 10% within one year of service.
BURN PIT EXPOSURE

Many veterans who served during OEF and OIF were exposed to toxic substances released from massive burn piles used to dispose of all manner of waste. The most well-known pit was at Joint Base Balad, 42 miles north of Baghdad, Iraq. In VA Training Letter 10-03, the VA has acknowledged that troops were exposed to releases from burn pits, and that exposure has been linked to respiratory, cardiopulmonary, neurological, autoimmune, and/or skin disorders. The VA accepts veteran lay statements describing exposure as evidence of that exposure if the veteran served in Iraq, Afghanistan, or Djibouti. (VA Training Letter 10-03 (April 26, 2010).)

SPECIAL ISSUE: TRAUMATIC BRAIN INJURY

Under the rating schedule for TBI (38 C.F.R. §4.124a, Diagnostic Code 8045), veterans may be compensated for TBI residuals if they can prove 1) current injury, 2) in-service event such as loss of consciousness, and 3) a nexus between the two. The current injury must fall in the categories of: 1) emotional/behavioral residuals, 2) physical (neurologic dysfunction, 3) subjective symptoms, and 4) cognitive impairment. (38 C.F.R. § 4.124a.)

1. EVALUATING EMOTIONAL/BEHAVIORAL RESIDUALS OF TBI

Co-morbid mental disorders are common with TBI. The rating schedule requires that those mental disorders be evaluated independently under 38 C.F.R. § 4.130 (Schedule of ratings—mental disorders), rather than under the TBI schedule (38 C.F.R. § 4.124a.). Emotional/behavioral residuals that do not reach the level of a mental disorder would be evaluated according to the TBI schedule. Veterans will receive a higher rating if emotional/behavioral residuals are rated under mental disorders § 4.130.

2. EVALUATING PHYSICAL (NEUROLOGIC) RESIDUALS OF TBI

Each physical or neurological residual condition is rated under the appropriate physical or neurological diagnostic code rather than the TBI schedule. If there are such symptoms but
no diagnosis, the symptoms would be evaluated under the TBI schedule. A non-exhaustive list of common physical residuals of TBI include: motor and sensory dysfunction, including pain of the extremities and face; visual impairment; hearing loss and tinnitus; loss of senses of smell and taste; seizures (DC 8910, 8914); gait, coordination and balance problems; speech difficulties including aphasia and related disorders; neurogenic bladder; neurogenic bowel; cranial nerve dysfunctions; autonomic nerve dysfunctions; and endocrine dysfunctions.

3. Evaluating Subjective Symptoms Due to TBI
Each subjective symptom is to be evaluated under the TBI schedule unless the symptom has a distinct diagnosis, e.g. migraine headaches, that symptom should be separately evaluated under the appropriate DC. The VA’s non-exhaustive list of subjective symptoms include anxiety; headaches; insomnia, hypersensitivity to light or sound; fatigability; blurred or double vision.

2. Evaluating Cognitive Residuals of TBI
VA defines cognitive impairment as decreased memory, concentration, attention and executive functions of the brain. Executive functions are goal setting, speed of information processing, planning, organizing, prioritizing, self-monitoring, problem solving, judgment, decision making, spontaneity, and flexibility.

All cognitive impairment is evaluated under the TBI schedule (DC 8045) whether it is has an independent diagnosis or not.

The TBI schedule has a table entitled “Evaluation of Cognitive Impairment & Other Residuals of TBI Not Otherwise Classified” which lists 10 facets of brain function: memory, attention, concentration, executive functions, judgment, social interaction, orientation, motor activity,
visual spatial orientation, subjective symptoms, neurobehavioral effects, communication, and consciousness. VA raters are to evaluate each of the 10 facets of cognitive impairment on the following scale: “0”, “1”, “3”, “total” (except subjective symptoms go only from “0” to “2”, and consciousness only consists of “total”).

For example, under the facet of judgment, “0” equals no symptoms and “1” equals “mildly impaired judgment”: [f]or complex or unfamiliar decisions, occasionally unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision.” “Total” means “severely impaired judgment”: [f]or even routine and familiar decisions, usually unable to identify, understand and weigh the alternatives, understand the consequences of choices, and make a reasonable decision.”

The numbers of the scale are associated with a degree of severity (e.g. mild impairment or severe impairment) and each number of the scale represents a certain disability rating: $0 = 0\%, 1 = 10\%, 2 = 40\%, 3 = 70\%, \text{total} = 100\%$. Each symptom is identified and classified in a facet, and then assigned a number. To determine the rating, the VA takes the single highest number assigned to any of the facets, assigns the rating for that number and that is the overall rating for TBI under DC 8045.
STUDY QUESTIONS

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

1. When a combat veteran asserts exposure to a stressor that is consistent with the circumstances of his or her service, the VA must accept the stressor as true in the absence of evidence that is:
   
   38 U.S.C. § 1154(b)

2. A veteran who received the Army Commendation Medal need not submit VA Form 21-0871 with his or her PTSD claim. (T/F )
   
   M21-1MR, Part III, Subpart iv, 4.H.29.c

3. List three examples of behavior changes that may be used as circumstantial evidence to prove an in-service personal assault.
   
   M21-1MR, Part 3, Subpart iv, 4.H.30.c

4. A member of the Air Force that flew multiple flights over Vietnam during the war but never landed there is eligible for the presumption of Agent Orange. (T / F )
   

5. Name three symptoms that are typically observed in veterans with chronic multi-symptom illnesses.
   
   38 U.S.C. § 1117(g)

6. A C & P examiner assigns a level of impairment number “2” for visual spatial orientation. No other facets have impairment ratings more than 1. What rating will the VA assign for TBI?
   
   38 C.F.R. § 4.124a, DC 8045
7. A veteran who served in Iraq was exposed to multiple IED blasts which knocked him temporarily unconscious more than once. He now suffers epilepsy seizures that are linked to traumatic brain injury. Under what diagnostic code(s) would he be rated?

38 C.F.R. § 4.124a


38 C.F.R. § 3.317
CHAPTER 7.1

STUDY PLAN

WRITING EFFECTIVE STATEMENTS

OBJECTIVE

Learn how to write veteran stressor statements and witness statements from family and friends.

INTRODUCTION

A stressor statement is required for veterans submitting a PTSD claim due to Military Sexual Trauma, Personal Trauma or Combat trauma for veterans not having designated combat awards, it is not a requirement for those veterans who earned certain designated awards such as the Combat Action Ribbon and Purple Heart. Stressor statements are submitted with VA Form 21-0781, Statement in Support of Claim for Service-Connection for Post-Traumatic Stress Disorder, or VA Form 21-0781a, Statement in Support of Claim for Service-Connection for Post-Traumatic Stress Disorder Secondary to Personal Assault. A narrative can be written directly on the form, or written on separate paper submitted with the form.

Even where the stressor statement is not required, it is a good practice to submit one for its persuasive value. Besides simply providing the basic facts of when and where incidents occurred, a well-written statement can influence the rater, make him or her feel more personally invested in the case, and increase his or her level of compassion for the veteran.

There are two main methods for completing an effective statement. First, the veteran can write his or her own statement with guidance and editing from the VSR. Second, in many cases, the veteran may be uncomfortable writing and have no idea where to begin or what to include in the statement. For veterans with PTSD, TBI, or other mental impairments, writing may be too stressful or overwhelming. Some veterans may be pre-literate and therefore unable to write. In such cases, the VSR can write up the statement himself or herself by interviewing the veteran about the stressor.
The VSR takes detailed notes and uses them to write the facts using the veteran’s own words and phrases.

Writing a stressor statement can itself be stressful for the veteran, in that it asks him or her to recall and record events that he or she would likely rather forget. This is true not only for veterans who served in a combat zone, but also for veterans who suffered military sexual trauma. It is preferable for the veteran, before starting the process of applying for PTSD compensation, to seek out treatment or support from a counselor, a therapist, or at least a friend—someone the vet can talk with if he or she finds himself or herself overwhelmed by troubling memories and emotions. Encourage the veteran to set up an appointment with his or her support person for shortly after working on the statement so that he or she will not be alone with disturbing memories and thoughts. While interviewing the veteran about his or her traumatic experiences, the VSR is likely to observe him or her becoming emotional, upset, and/or agitated. Allow the veteran to take breaks or move at his or her own pace and show compassion for the veteran’s experience.

If military records are available, they may be a source for pinning down dates, times, and places. Service personnel and medical records are only one possible source of information for the stressor statement. If letters were written home, now is the time to retrieve them, if possible. Is there a trail of e-mails or text messages that would be helpful? Are there postings on Facebook or other social media? Did he or she ever keep a journal or diary? The veteran should gather these materials before beginning to write the statement.

**WRITING THE STATEMENT**

At the top of each page, type or print the veteran’s full name, Social Security Number or VA file number, and the page number. The statement should be in chronological order and focused around each traumatic experience. Try to avoid a
rambling statement but instead stay focused on the stressors and the impact of the stressors on the veteran’s life. If he or she is unable to tell the story chronologically, the VSR can re-organize the statement later.

Try to use the veteran’s own words as much as possible. If the veteran does not know where to start or how to tell the story, he or she can be led along through the VSR’s questioning.

Be sure to tell the veteran that s/he will be asked to swear to the truth of the statement, and it is necessary to tell the truth. There is no need to exaggerate or embellish; the facts are powerful enough to speak for themselves. Start the statement by introducing the veteran to the reader. You will be writing in the first person.

FOR EXAMPLE: “I joined the [branch of service] on [date], and received an [honorable, general, etc.] discharge on [date]. From [date] to [date], I was stationed in [location] with the [name of unit]. My job was [specify].”

Encourage the veteran to tell his or her story in chronological order. For each traumatic event, give the date and place it occurred, and the name of the unit to which he or she was attached. Tell what happened in as much detail as possible. If the veteran skips over something or does not provide specifics, ask about it. Ask the veteran how he or she felt about what happened. Was s/he angry? Fearful? Sad? Numb? Are there specific sights, sounds, or smells s/he can’t forget? If so, write about them. Many veterans have experienced horrific things that no human being should experience. If the veteran is able to relate it, put it in the statement and do not soften it for the reader. (For example, it is harder to deny someone a high rating when you know he witnessed his best friend be decapitated by an IED in Afghanistan.)
If the veteran does not remember precisely when something happened, try to get an approximate timeframe. The VA will need it if it becomes necessary to verify the story by researching military records. You may be able to peg the event to another life event such as a birthday, anniversary, holiday or death of a loved one.

Once the stressful events are described, discuss how they have affected the veteran. A PTSD stressor statement tells a story about change. Begin with a brief summary of his or her life before entering the military. The veteran was one person before the stressful events occurred, and in some respects a different person afterward. How well did s/he get along with family members? Did s/he have friends? A girlfriend or boyfriend? Did s/he go to school? Take part in school activities? Did s/he have a job? How well did s/he do it? Was religion important to him or her? If so, how? Did s/he play sports? Enjoy hobbies?

Next, tell what changed as a result of military service. After s/he returned to civilian life, did parents and friends have trouble understanding the veteran? Did s/he have trouble on the job? Did s/he lose interest in sports? In religion? Did his or her partner see changes in the veteran? Did his or her children? Has s/he noticed changes in his or her own outlook on life?

Continue the statement by describing current symptoms. If s/he has been in treatment for PTSD, s/he may have learned some of the terms that psychologists use to describe the classic symptoms—hypervigilance, startle reaction, irritability, avoidance, and so on. But when symptoms are described in a written statement, specific examples are more helpful than technical terms. Remember, the task is to help the reader understand what has happened to you. “Startle reaction” is a dry and abstract term, but “I jumped six inches out of my chair” tells a story.

The VSR should not be concerned about the symptoms the veteran does not have; instead, describe the ones s/he does have, and tell how they continue to affect him or her—at home, on the job, and in the community. The VSR should have the DSM-V
or another list of PTSD symptoms available so that s/he can ask the veteran about each of the symptoms. Also, consider if there are other conditions secondary to PTSD such as depression or substance abuse.

If the veteran has a history of drug or alcohol abuse, be candid with the reader. When did s/he begin to use drugs or alcohol? Did his or her use increase after experiencing the stressful events that were described earlier in the statement? Has the veteran been in treatment? Currently in treatment? If so, where? If still using drugs or alcohol, how often? Explain why s/he uses them. Is the veteran now clean and sober? If so, for how long? Next, tell the reader about present state of mind. Is the veteran feeling hopeful? Angry? Discouraged? Depressed? Suicidal?

After interviewing the client, the VSR should take time to develop notes into an organized statement. If the veteran has written his or her own statement, the VSR should review it to see if it is in chronological order and has covered all the topics discussed above. No two stressor statements are alike. There’s no set length, and no mandatory format. The veteran should do what is needed to tell his story as fully and honestly as possible.

Conclude the statement with this declaration: I certify under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief. This means the veteran is swearing under oath to the truth of the contents of the statement.

Family and Friends’ Statements

Family and friends can provide important information to the VA as observers of the veteran. In some cases, they may be able to back up the veracity of the veteran’s descriptions of events, for example, if the veteran spoke to the family member or friend about the stressor incidents around the time of the incident, they can provide support for the veteran’s story. Family members and friends that knew the veteran before and after service can testify to how the stressor incident affected and changed
the veteran. Those close to the veteran can also describe the veteran’s current emotional state.

When interviewing the veteran, it is important to identify family or friends that may contribute positively to the claim. The value of their letters are not limited to PTSD claims. Friends and family members may also be in a position to verify that a physical injury occurred in service, and describe its severity. While they cannot draw medical conclusions, observers can describe symptoms they witnessed, and when they witnessed them. This is known as lay evidence and can be a crucial source of support for the claim.

Once the VSR learns of individuals that may be helpful to the claim, it is best for the VSR to speak to them himself or herself, to explain exactly what information is needed from them. Sometimes it is impractical to speak to them personally, in which case the VSR should instruct the veteran on what to tell their friend or family member to put in a letter. As with stressor statements, the events should be described in chronological order and symptoms should be described in detail.

Family and friends should begin by stating what their relationship to the veteran is, and how long they have known her or him. The letter should then go on to relate anything that the veteran said to them about the stressful incident or the injury, especially those statements that were made around the time the incident occurred.

In a case involving PTSD, the veteran’s PTSD symptoms should be described in detail, giving specific examples. Does the veteran panic when a helicopter flies overhead or a firecracker goes off? Is the veteran constantly on guard, checking to make certain that all the doors and windows in the family home are locked? At a restaurant, does the veteran insist on taking a seat facing the exit, to make sure there’s an escape route? Does the veteran often wake up from nightmares, shaking and crying out in terror?
Instruct the friend or family member to write clearly, and to stick to the topic. The VSR should review a draft of the statement before it is finalized and recommend any changes that are necessary.

Like the veteran statements, these should conclude with: I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

**WRITING STATEMENTS IN SUPPORT OF CLAIM**

**INTRODUCTION**

The statement should begin with an introduction that states what benefit the veteran is applying for. The introduction to a service-connected claim should also state what percentage rating is sought if known. It should also refer to any new evidence that is being submitted with the SISC which will be discussed in more detail later in the statement.

**STATEMENT OF FACTS**

Next, the VSR should present a statement of the facts. This is a descriptive account of the facts that are relevant to the issues in the case. In the case of a service-connected claim, the statement of facts would include a description of the events that led to the in service injury, facts relating the present disability, and facts that go to the nexus between the in service injury and the present disability. There is no obligation for a VSR to submit facts that tend not to support the veteran’s case, but if the VA already knows about the negative facts, they should be included in the statement.
The facts should be written persuasively, in a way that best advocates for the veteran. The presentation of facts should allow the rater to view the veteran’s claim through the most sympathetic lens. For example, suppose the VA has proposed to reduce a veteran’s rating for a knee injury. Facts might include: “Mr. Veteran attended a C & P exam on 5/1/2015 and the doctor concluded that the veteran had a greater range of motion than in the past.” Here, you could include additional facts that are favorable to the veteran: “But Mr. Veteran had just come from physical therapy for his knee before the C & P exam, and his knee was unusually flexible. (See Mr. Veteran’s attached statement.)” Further discussion on this issue would be warranted in the next section.

**DISCUSSION**

Next, the writer states the rules that apply to the case and provides the proper citation for the rule. For example, in the case of a service-connected claim, the writer would state the three basic requirements: “to win a grant of service-connected compensation, Mr. Veteran must demonstrate that 1) he suffered an in-service injury or event, 2) he has a current disability, and 3) a nexus exists between 1) and 2). 38 C.F.R. § 3.303.” For a non-service-connected pension claim there are other requirements to be stated: the minimum required length of service, service during a period of wartime, and totally and permanently disabled. It is always a good idea to provide the citation for the law or rule that is under discussion.

After stating the rule, explain how the veteran fulfills the requirements, for example. “Ms. Veteran served two full years of service during a wartime period: January 1, 1973 to January 1, 1975. Medical evidence demonstrates that she is totally and permanently disabled. For example, a medical record attached to this statement documents a physical examination conducted on February 1, 2015 in which the doctor diagnosed Unfavorable Ankylosis of the entire spine, a condition that warrants a 100% rating in the diagnostic code. Other evidence includes…”
The discussion is the writer's opportunity to explain why evidence that might be considered ambiguous or even potentially harmful, should be viewed in the veteran's favor. For example: “While the Global Assessment of Functioning score of 60 assigned by the C & P examiner may seem high for a grant of a 100% rating, it does not accurately convey Mr. Veteran’s day-to-day functional capacity. Mr. Veteran’s regular doctor who knows him well and has met with him more than a dozen times, has assigned him a GAF score of only 40. Mr. Veteran’s GAF score of 60 at the C & P exam demonstrates that he finds it difficult to reveal how severely his symptoms negatively affect his life.”

CONCLUSION

The statement should have a conclusion that restates what you want the rater to do: “For the above reasons, the VA should find that the veteran's knee injury has not improved sufficiently to warrant a reduction in rating. Therefore, the VA's proposed rating reduction should be denied.” It is worth reminding the rater in the conclusion of the VA's golden rule, which applies to all factual findings: **reasonable doubt must be resolved in favor of the veteran.** 38 C.F.R. § 4.3.
**ATTACHMENTS**

Any medical records or other evidence that has been mentioned in the statement should be attached to it and placed in the order in which it is mentioned. If there are a number of attachments, label them with numbers or letters, so that the rater can easily reference the record when reading your statement in support of claim. If the above format and rules are followed, and the style is kept clear and direct, the writer will have written a strong brief that could have the power to persuade an undecided rater to decide in favor of the veteran.

**ADVOCACY TIP**

Circle or otherwise mark the sections of the records that you reference in your statement and attach as evidence. Previously, advocates would highlight those records, but now that the VA scans all documents, the highlighting may not appear on the scan.