MODULE #4 SERVICE CONNECTION; DISABILITY COMPENSATION				
DATE STARTED:		**LOCATION:**		
SERVICE OFFICER/TRAINEE SIGNATURE:				
TRAINER SIGNATURE:				
DATE COMPLETED				
I. Please rate the effectiveness of this training module.				
Objective		**Acceptable**	**Marginal**	**Unacceptable**
Four ways to est. S/C compensation & types of Comp.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Ability to calculate S/C rates & use of SMC codes.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Knowledge of Compensation under Section 1151.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Individual Un-employability & Temporary 100% for convalescence.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Knowledge of recoupments.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Knowledge of Compensation during confinement.	Objective achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
	Objective achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			

MODULE #___4_ CONTINUED

Objective		Acceptable	Marginal	Unacceptable
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			
Objective				
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			
Objective				
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			

SUBJECTIVE EVALUATION

		Good	Fair	Poor
1. Please rate the extent to which you met your personal objective for this module				
2. Rate the information provided in the Training Manual & other reference materials				
3. Please evaluate the physical environment where the training was held.				

4. Is there anything that we could have done to make this training better for you? (Please comment)

Training Module 4

SERVICE CONNECTION DISABILITY COMPENSATION

Objective: To learn how to assist a veteran with a claim for service-connected disability or other compensation, and to become familiar with the references used in these types of cases.

References:

Title 38, U.S. Code, Chapter 11
38 Code of Federal Regulations
Adjudication Manual 21-1MR Part 3, Subpart IV
M21-1MR Part 3, Subpart V, Ch. 4, Section B
M21-1MR Part 4, Subpart II, Ch. 1 and 2
VA Pamphlet, Federal Benefits for Veterans and Survivors

Instructions: Study the assigned reference materials to learn how service connection may be established for various conditions and what the bases for payment of disability compensation are. Although the program is called "Compensation and Pension," be careful not to confuse the different types of benefits. Pay very careful attention to the information given in the initial application for compensation, as that will be the basis for development of the claim.

Summary:

1. Service Connection:

Service connection is the relationship of a particular disabling condition to the veteran's service. This is accomplished by showing that the condition began during service (incurrence), or that a pre-existing condition was made permanently worse than it would have otherwise been (aggravation), or by the application of certain statutory presumptions. The following paragraphs details the four ways to accomplish service connection for a disabling condition(s).

A. Direct:

An incurred disability may have been directly caused by service (e.g., a combat wound), or it may be the remote result of some incident of service (e.g., cancer due to asbestos exposure), or it may have simply begun coincident with service (e.g., diabetes). It is not required that the condition be shown in the service records, only that the evidence taken as a whole shows that the condition must have begun during service, or was the result of service or some incident thereof.

B. Aggravation:

A pre-existing disability, which becomes permanently worse during service, will be held to have been aggravated by service unless there is a specific finding that the increased severity is the result of the condition's natural progress. The veteran is presumed to be in sound condition at the time of entry into service except for conditions noted on the entrance examination. This presumption may be rebutted by clear and convincing evidence that a condition existed before the veteran entered service.

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C. Presumption:

Certain chronic and tropical diseases will be presumed to have begun during service if they become manifest to a compensable degree within a specified time (generally, one year). In addition, specified diseases are presumed to be the result of certain incidents of service (prisoner of war, participation in "radiation-risk" activities, herbicide exposure) if they become compensable at any time after service. Other presumptive periods are set out for undiagnosed illnesses associated with service in the Persian Gulf area, and for certain other of the diseases associated with herbicide exposure. These presumptions are intended to be a liberalizing feature, to allow service connection when the evidence would not otherwise support it. The diseases to which presumptions may be applied are listed in 38 CFR § 3.309 (§ 3.317 for Gulf War undiagnosed illnesses). ONLY DISEASES SPECIFICALLY LISTED, AND NO OTHERS, are subject to presumptions of service connection. These presumptions may be rebutted by affirmative evidence showing that the disease claimed was either due to inter-current causes or could not have had its inception within the specified time frame(s).

D. Secondary:

Secondary service connection may be established for a new condition, which is directly and proximately caused by an established service-connected condition. Under certain circumstances, secondary service connection may be established for a non-service-connected condition that is aggravated beyond its normal progression by a service-connected condition.

There are special rules for establishing service connection for a hearing loss. Notwithstanding that no hearing loss is shown on entrance examination, and that while on active duty the veteran is diagnosed as having a hearing loss, service connection still may not be established for that hearing loss unless and until it meets the minimum levels set out in 38 CFR § 3.385, which establishes the ten percent rating. (See Court Decision No. 91-903, Ledford v. Derwinski.)

Service connection may not be established for transitory illnesses or superficial injuries, which heal or resolve with no permanent or chronic residuals, or for congenital, or developmental defects such as a personality disorder, or simple refractive error of the eye. Aggravation may not be established if the pre-existing condition does not become permanently worse during service. Remedial treatment for a pre-existing condition will not establish service connection unless the treatment is unsuccessful or otherwise aggravates the condition. Service connection may not be established for any disease or injury which is not incurred or aggravated in line of duty, or which is either the direct or remote result of the veteran's own willful misconduct.

There is no minimum length of service required to establish direct service connection by incurrence or aggravation. Presumptive service connection for a chronic or tropical disease requires that the veteran have at least 90 consecutive days of active service during a wartime period or after January 31, 1946. Presumptions of service connection for diseases and disabilities of former POW's are dependent on the specific disability or disease. Some disabilities or diseases require that the former POW was held a minimum of 30 days in captivity. Some disabilities or diseases do not require a minimum incarceration period.

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2. Compensation:

Disability compensation is the monthly monetary benefit payable for service-connected disabilities. Compensation rates are not income-based, but are determined by the level of impairment in accordance with the Schedule for Rating Disabilities (38 CFR, 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. The veteran's age is not considered in this determination.

If there is more than one service-connected condition, the percentages are not added together to determine the overall degree of disability. Rather, they are combined in accordance with the combined ratings table set out in 38 CFR § 4.25. If the combined evaluation is 30% or greater, additional rates of compensation may be payable for the veteran's dependents.

If a veteran has multiple compensable (10% or more) service-connected conditions involving both arms or legs, or paired skeletal muscles, the combined evaluation for only those conditions is first found, before considering any other condition(s); 10% 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. This is the "bilateral factor." The bilateral factor is not for application if the veteran is otherwise ratable at 100%; however, it may be used to reach an overall combined 100% rating. Also, if a 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 (see below).

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

If service connection by aggravation is established for a pre-existing condition, 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.

Additional amounts of special monthly compensation are payable for the anatomical loss or the loss of use of one or both hands, feet, eyes, or other specified parts. (See special monthly compensation chart in Module 21 for detailed explanation). 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 in need of regular aid and attendance. Veterans whose combined evaluations are less than 100% may still be rated totally disabled and paid at the 100% rate, if they are unable to follow substantially gainful employment (individual unemployability) because of their service-connected disabilities. Marginal employment, defined as earned annual income less than the poverty threshold for one person, is not "substantially gainful employment," and does not preclude a finding of individual unemployability. The various rates of compensation and special monthly compensation are set out in Adjudication Manual M21-1, Appendix B.

Usually, only service-connected disabilities are considered in determining the levels of disability compensation. There are two exceptions: If a veteran has loss or loss of use of paired extremities (arms, legs) or paired organs (eyes, ears, kidneys, lungs), and one extremity or organ is service-connected but the other extremity or organ is not service-connected (and not the result of willful misconduct), disability compensation is paid as though both were service-connected. Since these disabilities are at least in part service-connected, the veteran is entitled to all ancillary benefits flowing there from. However, if the veteran receives any payment from a judicial award, settlement, or compromise based on the loss or loss of use of the paired (non-service-connected) extremity or organ, the additional portion of compensation based on that loss must be withheld to recover the amount of the award, settlement, or compromise. This does not apply to Social Security or Workman's Compensation benefits, even if they were awarded by judicial proceedings.

The second exception is disability compensation under 38 U.S. Code, Section 1151: If a non-service-connected disabling condition is caused by, or aggravated by, VA examination, hospitalization, medical or surgical treatment, or Vocational Rehabilitation, compensation is payable for that condition as though the condition was service-connected. Remember, however, that even though compensation is being paid, the condition is in fact NOT SERVICE-CONNECTED and should not be called such. Except for compensation, eligibility for necessary treatment, and in certain cases clothing allowance; no other benefits are available as a result of such disability. Compensation for disabilities under Section 1151 may be combined with compensation for any service-connected conditions the veteran may also have. If the veteran is awarded any amount from a judicial judgment, settlement, or compromise for the same condition(s) for which compensation under Section 1151 has been (or will be) authorized, the compensation payable for such condition(s) must be withheld until the full amount of the judgment, settlement, or compromise has been recovered.

Under 38 CFR § 3.951 (b) a disability which has been continuously rated at or above any evaluation of disability for 20 or more years for compensation purposes under laws administered by the Department of Veterans Affairs will not be reduced to less than such evaluation except upon a showing that such rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes which has been in force for 20 or more years will not be reduced except upon a showing that rating was based on fraud. The 20-year period will be computed from the effective date of the evaluation to the effective date of reduction of evaluation. Accordingly 38 CFR § 3.957 specifies service connection for any disability or death granted or continued under title 38, which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Department of Veterans Affairs finding of service connection to the effective date of the rating decision severing service connection, after compliance with §3.105(d). The protection afforded in this section extends to claims for dependency and indemnity compensation or death compensation.

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38 CFR Section 4.16 Total disability ratings for compensation based on unemployability of the individual.

(**A**) Total disability ratings for compensation may be assigned, where the scheduler rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: *Provided*, That, if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more. For the above purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability:

(1) Disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable,

(2) Disabilities resulting from common etiology or a single accident,

(3) Disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric,

(4) Multiple injuries incurred in action, or

(5) Multiple disabilities incurred as a prisoner of war.

It is provided further that the existence or degree of non-service-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the U.S. Department of Commerce or Bureau of the Census as the poverty threshold for one person. Marginal employment may also be held to exist, on a facts found basis (includes but is not limited to employment in a protected environment such as a family business or sheltered workshop), when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the employment and the reason for termination, (Authority: 38 U.S.C. 501(a)) history, educational and vocational attainment and all other factors having a bearing on the issue.

(**B**) It is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. Therefore, rating boards should submit to the Director, Compensation and Pension Service, for extra-scheduler consideration all cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the percentage standards set forth in paragraph (a) of this section. The rating board will include a full statement as to the veteran's service-connected disabilities, employment history, educational and vocational attainment and all other factors having a bearing on the issue.

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§4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.

A total disability rating (100 percent) 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.

(A) Subject to the provisions of paragraphs (D), (E), and (F) of this section, this increased rating will be effective the first day of continuous hospitalization and will be terminated effective the last day of the month of hospital discharge (regular discharge or release to non-bed care) or effective the last day of the month of termination of treatment or observation for the service-connected disability. A temporary release, which is approved by an attending Department of Veterans Affairs physician as part of the treatment plan, will not be considered an absence.

(1) An authorized absence in excess of 4 days, which begins during the first 21 days of hospitalization, will be regarded as the equivalent of hospital discharge effective the first day of such authorized absence. An authorized absence of 4 days or less which results in a total of more than 8 days of authorized absence during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the ninth day of authorized absence.

(2) Following a period of hospitalization in excess of 21 days, an authorized absence in excess of 14 days or a third consecutive authorized absence of 14 days will be regarded as the equivalent of hospital discharge and will interrupt hospitalization effective on the last day of the month in which either the authorized absence in excess of 14 days or the third 14 day period begins, except where there is a finding that convalescence is required as provided by paragraph (e) or (f) of this section. The termination of these total ratings will not be subject to §3.105(e) of this chapter.

(B) Notwithstanding that hospital admission was for disability not connected with service, if during such hospitalization, hospital treatment for a service-connected disability is instituted and continued for a period in excess of 21 days, the increase to a total rating will be granted from the first day of such treatment. If service connection for the disability under treatment is granted after hospital admission, the rating will be from the first day of hospitalization if otherwise in order.

(C) The assignment of a total disability rating on the basis of hospital treatment or observation will not preclude the assignment of a total disability rating otherwise in order under other provisions of the rating schedule, and consideration will be given to the propriety of such a rating in all instances and to the propriety of its continuance after discharge. Particular attention, with a view to proper rating under the rating schedule, is to be given to the claims of veterans discharged from hospital, regardless of length of hospitalization, with indications on the final summary of expected confinement to bed or house, or to inability to work with requirement of frequent care of physician or nurse at home.

(D) On these total ratings Department of Veterans Affairs regulations governing effective dates for increased benefits will control.

(E) The total hospital rating if convalescence is required may be continued for periods of 1, 2, or 3 months in addition to the period provided in paragraph (A) of this section.

(F) Extension of periods of 1, 2, or 3 months beyond the initial 3 months may be made upon approval of the Adjudication Officer.

(G) Meritorious claims of veterans who are discharged from the hospital with less than the required number of days but need post-hospital care and a prolonged period of convalescence will be referred to the Director, Compensation and Pension Service, under §3.321(b)(1) of this chapter.

§4.30 Convalescent ratings.

A total disability rating (100 percent) 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 scheduler evaluations. When the evidence is inadequate to assign a scheduler evaluation, a physical examination will be scheduled and considered prior to the termination of a total rating under this section.

(A) Total ratings will be assigned under this section if treatment of a service-connected disability resulted in:

(1) Surgery necessitating at least one month of convalescence (Effective as to outpatient surgery March 1, 1989.)

(2) Surgery with severe postoperative residuals such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for house confinement, or the necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited). (Effective as to outpatient surgery March 1, 1989.)

(3) Immobilization by cast, without surgery, of one major joint or more. (Effective as to outpatient treatment March 10, 1976.)

A reduction in the total rating will not be subject to §3.105(e) of this chapter. The total rating will be followed by an open rating reflecting the appropriate scheduler evaluation; where the evidence is inadequate to assign the scheduler evaluation, a physical examination will be scheduled prior to the end of the total rating period.

(B) A total rating under this section will require full justification on the rating sheet and may be extended as follows:

(1) Extensions of 1, 2, or 3 months beyond the initial 3 months may be made under paragraph (a)(1), (2), or (3) of this section.

(2) Extensions of 1 or more months up to 6 months beyond the initial 6 months period may be made under paragraph (a) (2) or (3) of this section upon approval of the Adjudication Officer.

M21-1, PART IV

SECTIONS 20.39-20.39.1

20.39 SEVERANCE PAY (10 U.S.C. 3786) NOT SUBJECT TO RECOUPMENT

Severance pay awarded under 10 U.S.C. 3786 (Pub. L. 86-155) is a lump-sum payment to members of the Regular establishment who are separated usually due to their failure to qualify for promotion. There is no provision in the law requiring refund of severance pay awarded under this section. This provision of Title 10 was repealed by Public Law 96-513, effective September 15, 1981. Any individual separated after that date who would have been entitled to severance pay under 10 U.S.C. 3786 will receive separation pay, subject to recoupment, under 10 U.S.C. 1174. See paragraph 20.31a (3).

20.39.1 VOLUNTARY SEPARATION INCENTIVE (VSI) AND SPECIAL SEPARATION BENEFIT (SSB)

(A) General. To facilitate the downsizing of the armed forces, Public Law 102-190, enacted December 5, 1991, added Sections 1174a and 1175 to Title 10 of the United States Code. The purpose of these sections is to encourage service members who would otherwise face possible involuntary separation or denial of reenlistment to separate voluntarily. Service members have the option to receive payment under one of two incentive programs: Special Separation Benefit (SSB) or Voluntary Separation Incentive (VSI). To qualify for either of these exit bonuses, the service person must have served on active duty for more than six (6) years but fewer than twenty (20) years as of December 5, 1991; served at least five (5) years of continuous active duty immediately before separation; and agree to serve in the Ready Reserve. Service persons approved for separation under SSB or VSI must separate on or before September 30, 1995.

(B) Lump Sum SSB Payment vs. VSI Installment Payments. A service person that is approved for separation under the SSB program shall be paid a lump sum payment equal to 15 percent of his/her annual basic pay multiplied by years of active service. A service person that is approved for VSI shall be paid annual installments equal to 2.5 percent of his/her basic pay multiplied by years of service. VSI installments commence upon discharge and are paid by the Department of Defense (DoD) on each anniversary date thereafter. Generally, the total number of payments equals twice the number of years of active service, provided the member continues to serve in a reserve component for the duration of the payments.

(C) Offset or Recoupment. Regardless of which program the service person selected, if he/she is entitled to receive VA compensation for the same period of service, either the VA compensation or the DoD, VSI benefit must be offset to prevent concurrent receipt of benefits. SSB shall be recouped from VA disability compensation. Refer to paragraph 20.33b. If a veteran elected to receive annual VSI annuity payments under 10 U.S.C. 1175 and subsequently qualifies for VA compensation, DoD shall deduct from the annual VSI an amount equal to the amount of VA compensation payable. No deduction will be made from

VSI payments, however, for disability compensation which is based on an earlier period of service than that for which the VSI is payable. No special procedures need be implemented when processing VSI/compensation cases. The Defense Accounting & Finance Service (DFAS) in Cleveland will administer all VSI payments, regardless of the branch of service. The Cleveland DFAS will offset VSI payments based upon data received from VA on cyclical and quarterly tapes sent to the military finance center.

(D) Identification. To identify service members who elected SSB or VSI, the Department of Defense created several new separation codes and narrative reasons for use on the DD Form 214. Although service departments have not used these codes and narrative reasons consistently, the following information is furnished to aid in the identification of such cases.

(1) Block #18-REMARKS: The Remarks section of the DD Form 214 should be annotated to indicate the VSI amount and number of years payment is to continue or the lump sum amount provided for SSB. For example:

SSB-$25,700-Paid lump sum
VSI-$4,310.00 annually for 12 years

(2) Block #26-SEPARATION CODE AND Block #28-NARRATIVE REASON FOR SEPARATION. The following separation codes and narrative reason codes should be shown as appropriate:

(a) Separation Reason: CA-Early Release Program-VSI

<u>Officers</u>
FCA-Voluntary Resignation, Other, For Early Release Program-VSI

<u>Officers and Enlisted</u>
KCA-Voluntary Discharge for Early Release Program-VSI
MCA-Voluntary Release/Transfer to Another Service Component for Early Release Program-VSI

(b) Separation Reason: CB-Early Release Program-SSB

<u>Officers</u>
FCB-Voluntary Resignation for Early Release Program-SSB

<u>Officers and Enlisted</u>
KCB-Voluntary Discharge for Early Release Program-SSB
MCB-Voluntary Release/Transfer to Another Service Component for Early Release Program-SSB

(E) VADS Record and Subsequent 401 Screen. When the Austin DPC enters data for a recently discharged veteran from a DD Form 214 and a VADS record is created, any SSB payment indicated will be entered as LUMPSUM READJUSTMENT PAY. If a pending issue

file is subsequently established, the 401 screen will display 100 percent of that amount in the SEPARATION PAY field. VSI information will not be entered into a VADS record since any offset will be accomplished by the DoD.

DISABILITY DISCHARGE REVIEW & MEDICAL RETIREMENT

There are several means by which injured military personnel may obtain compensation, including disability discharge and retirement programs administered by the service branches and compensation programs administered by the U.S. Department of Veterans Affairs (VA). But since injured personnel (or their families, in some instances) will be compelled at a time of great anxiety in their lives to make decisions on matters that have significant long-term consequences, it is very important for injured personnel to understand that waiving certain rights in order to obtain some immediate benefit, such as release from active duty, may not serve their best interests in the long run. There is no need for disabled reservists or National Guard members to rush back to their civilian jobs, which may pay more, since their position is protected by the Veterans Reemployment Rights Act. If necessary, they can keep their options open by requesting excess leave without pay.

Note: *For the sake of editorial consistency, the word "service member" and the masculine pronouns "he" and "his" have been used throughout this article; it should be understood that these words are meant to refer to both servicemen and servicewomen.*

Disability Discharge Process

The military disability discharge process is very complicated, and problems that already exist with this process will surely be exacerbated when the service departments have to deal with large numbers of combat-related disabilities. However, the options available to injured and disabled military personnel are clearly set in place.

Provided that their injuries are not the result of their own intentional misconduct or willful neglect (for which disabled service members are promptly discharged without benefits of any kind), military personnel who are disabled while on active duty can be:

(A) treated and returned to duty, if and when they are fit for duty;

(B) discharged as medically unfit, with disability severance pay, if the degree of disability is less than 30 percent, according to the VA rating schedule (38 C.F.R. Part 4, also used by the service departments);

(C) placed on the Temporary Disability Retired List (TDRL) with a temporary rating, to be evaluated later for permanency; or

(D) medically retired (disability retirement) with a percentage rating, giving them many of the same benefits awarded to regular military retirees (most desirable if the individual has been seriously and permanently injured).

Each of these options is discussed in detail, below:

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Return to Active Duty

If the service member is injured but recovers sufficiently to return to active duty, he should be sure that he or his family obtains complete copies of the medical records of his injury and how it was treated. Though the injury will be noted in his service record, many of the details of his injury may not appear there. If he should experience any delayed effects of the injury after later release from service, the records he obtains from the hospital or the doctor who treated him will be valuable evidence when he applies for VA disability benefits. Without such records in his file, the service member may even find it difficult to document his injury for the VA. Generally, it is helpful in every case of injury for the service member to obtain copies of these records.

Discharge with Disability Severance Pay

A service member who has less than 20 years of service and a disability evaluation of less than 30 percent may be discharged as not fit for duty with severance pay, which is paid at separation in a lump sum, based on the basic pay of the service member's current active duty grade. If the service member's disability was caused by armed conflict or extra-hazardous service, his severance pay does not count as taxable income. Although the service member may be eligible for VA compensation benefits for the same disability for which he received his severance pay, the VA will not be able to pay any compensation benefits for this disability until the total amount of the compensation benefits, which would have been paid, is equal to the amount of the severance pay. An exception to total recoupment of VA compensation is the veteran receives an increase in compensation for same disability at a later date, the VA will only recoup at the original rating. For example: A veteran has an original rating of 10% and later receives an increase to 20%, the VA will only recoup at the 10% rate and the veteran will receive compensation for the difference. **Also, do not recoup severance pay while a non-severance disability is rated 100 percent disabling.** (M21-1, Part IV, Para. 20-28)

Separation with severance pay is tempting to many service members because it gives them an opportunity to leave the service immediately, even if they suspect that their injuries are more than 30 percent disabling. However, severance pay is a one time, lump-sum payment. Disability retirement provides monthly benefits and may yield higher benefits in the long run. In addition, a higher disability percentage at discharge may improve the service member's chances of obtaining higher VA service-connected compensation. Thus, it may be wise for the service member to challenge his disability rating if he thinks it is too low, even though this will mean staying in the military for a longer period of time.

Medical Retirement

A service member who is medically retired (disability retirement) with a disability rating of 30 percent or more will be paid between 30 and 75 percent of his basic pay for the rest of his life. Since he is viewed as a retired service member, he is also entitled to all of the retirement benefits, such as PX privileges and health care, to which other retired military personnel are entitled, plus income tax exclusion. Disability retirement pay is calculated in one of two ways, based on the service member's basic pay and either length of service or percentage of disability. He can choose the method of computation that will give him the highest benefits. In such cases, though the VA is not required to accept the disability evaluation of the service department, the VA does review these decisions after the service member has been retired and accords them some weight.

Personnel are permanently retired on disability if their disabilities are permanent, but when it is not clear whether the disability is permanent, they are placed on the Temporary Disability Retired List (TDRL), with pay based on the degree of disability, and re-evaluated every 18 months. Final decisions are made in such cases after five years. As noted above, permanent disability retirement is usually most desirable if the service member has suffered a serious injury.

PAYMENT OF COMPENSATION DURING CONFINEMENT IN PENAL INSTITUTIONS (38 U.S.C. 5313 and 38 CFR §3.665)

(A) Compensation may not be paid in excess of certain amounts for any person incarcerated in a Federal, State or local penal institution for conviction of a felony for any period beginning on the 61st day of incarceration. The person's dependents may have the right to an apportionment while the beneficiary is incarcerated.

(B) This restriction in payments applies to persons incarcerated due to conviction of a felony committed after October 7, 1980, or, regardless of when the felony was committed, if the person was incarcerated on October 1, 1980, and if an award of compensation is approved after September 30, 1980.

(C) Veterans rated 20 percent or more disabled in receipt of compensation are limited to the rate of 10 percent disability, Veterans rated less than 20 percent (10 percent, special monthly compensation (k) or (q) are limited to one-half of the 10 percent rate.

(D) Any apportionments will be discontinued and full benefits restored to the beneficiary upon release from incarceration or upon participation in a work release or halfway house program.

APPLICATION PROCESS FOR COMPENSATION

(A) An original claim can be made formally by completing and submitting to any office of VA, the VA Form 21-526, Veterans' Application for Compensation or Pension, or informally by communicating to VA a definite intent to apply. (See ***"Informal Claims"*** Page 4-13)

(B) Once a VA Form 21-526 has been completed and submitted, it is generally not necessary to resubmit this form to obtain further claims action. Any time after submission of a formal claim, the veteran can request reconsideration based on the existence of new and material evidence. Medical evidence should be submitted to indicate a change in the severity of a service-connected disability. Other pertinent evidence might take the form of statements (VA Form 21-4138, Statement in Support of Claim), additional history of medical treatment, or record of ability to perform on the job. A request can also be made for consideration for service-connection of disabilities not previously claimed.

(C) In requesting consideration of a total disability rating based on unemployability, VA Form 21-8940, Veteran's application for Increased Compensation Based on Unemployability, may be used.

(D) If a claim for disability compensation is made within 1 year after release from active duty, the effective date of the award will be the date following such release. Claims made after 1 year from the date of release from active service are generally effective from the date of receipt of the claim by VA.

(E) Compensation may also be paid when injury, either directly or by aggravation, results from submitting to an examination, medical or surgical treatment, hospitalization, or the pursuit of a course of vocational rehabilitation (38 U.S.C. Ch. 31) under any law administered by VA. (1151 claim).

INFORMAL CLAIMS

The Budget Reconciliation Act of 1982 (Public Law 97-253) allows for the informal claim procedure now in use by the North Carolina Division of Veterans Affairs. The informal claim procedure is designed to protect the effective date of claim, when the formal claim would not be date-stamped in the VA Regional Office (VARO) until after the First of the following month.

38 CFR §3.155 is the governing regulation for informal claims. Part (b) states; "A communication received from a service organization, an attorney, or agent may not be accepted as an informal claim if a power of attorney was not executed at the time the communication was written."

Informal claims may be submitted anytime. All informal claims must be relayed to the NCDVA District Service Office and received in the NCDVA State Service Office in the Winston-Salem VARO no later than 3:00 PM. All informal claims originating in the County Veterans Service Office must be relayed to the District Service Office with sufficient time for processing.

Claimants' have one year from the date of the Informal Claim (per VA Date Stamp) to provide the formal application, thereby protecting the effective date of their claim. Also the VA Form 21-22 must dated and signed **on or before** the date of the informal claim.

As Veteran Service Officers it is our responsibility to utilize the informal claim process to insure that our claimants receive the maximum benefits entitled.

Suggestions for Submitting an Informal Claim:

1. Provide Veteran's Full Name
2. Provide Claimant's Full Name & Address
3. Provide VA Claim Number
4. If VA File Number is unknown, provide as much identifying information as possible; i.e.
    - Social Security Number
    - Service Serial Number
    - Branch of Service
    - Veteran's Date of Birth
5. Specify category of benefit sought:
    - Service Connected Compensation (be issue specific)
    - DIC
    - Parents DIC
    - NSC Pension
    - Widow's/Widower's Pension
    - Housebound or Aid & Attendance

Training Module 4

Review Questions: Service Connection Disability Compensation

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

1. Define the term Service Connected Disability: 4-1

2. Define the term compensation: 4-3

3. List the different ways to establish service connection for a disability: 4-1, 4-2

4. What is the presumptive period for lung cancer for a Vietnam Veteran? 4-2

   a. Within one year from military discharge.
   b. 10 years from last discharge
   c. No time limit from last exposed in country.
   d. 30 years from last exposure in country.

5. What is the minimum combined evaluation for which additional compensation for dependents may be paid? _____% 4-3

   a. 10
   b. 20
   c. 30
   d. 50

6. While attending college under V.A. Vocational Rehabilitation, a veteran chronically injures her knee during a physical education class. Is there a way to file service connection for compensation reasons? If so, reason the requested benefit: 4-4

7. A veteran is rated 30% for a heart condition, 20% for a knee condition, and 10% for hearing loss. His combined evaluation is: _____% 4-3 (Ratings Table 38 CFR Part 4.25)

8. Define the term Individual Unemployability: 4-5

9. Compensation rates are obtained from: 4-3

   a. Percent of functional limitations of a disability(s)
   b. Relation to type of medical condition
   c. Net worth and income limitations
   d. The rating scale in 38 CFR Part 4.25