

VA Disability



VA Disability

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Disability Overview

- ▶ Monthly, tax-free monetary benefit
- ▶ Physical or mental health conditions covered
- ▶ Payable to veteran only and only for full month
- ▶ If $\geq 50\%$ service-connected, can collect both disability & military retirement
- ▶ Cannot collect both VA disability and VA pension – VA will pay higher benefit if qualified for both
- ▶ If veteran is rated 30% or higher and has dependents, can receive higher amount
- ▶ Depending on disability, may be entitled to special benefit allowances
 - ▶ Automobile – one time payment to buy a specially equipped vehicle if SCD prevents veteran from driving
 - ▶ Clothing – once or once a year allowance to replace clothing damaged by medicine or prosthetic or orthopedic device related to SCD



Eligibility

You may be eligible for VA disability benefits or compensation if you meet both of these requirements.

Both of these must be true:

- ▶ Have a current illness or injury that affects your mind or body, and
- ▶ Served on active duty, active duty for training, or inactive duty training

And at least one of these must be true:

- ▶ Current illness or injury that started while serving in the military (in-service disability), or
- ▶ Military service made existing condition worse (pre-service disability), or
- ▶ Illness incurred after service from exposure during military service (post-service disability)



What is a “nexus”?

- ▶ **Medical evidence** that shows connection between **your current disability** and the **in-service injury, event, or illness**
- ▶ Do not have to prove nexus for presumptive conditions due to exposure



Presumptive Exposure – Agent Orange

- ▶ Between 1/9/62 – 5/7/75, you served for any length of time in:
 - ▶ Vietnam
 - ▶ Aboard a U.S. military vessel in the inland waterways of Vietnam
 - ▶ On a vessel operating not more than 12 nautical miles seaward from the demarcation line of the waters of Vietnam and Cambodia (Blue Water Navy)

New presumptive locations from PACT Act 2022, effective October 1, 2022:

- ▶ Any U.S. or Royal Thai military base in Thailand from 1/9/62 through 6/30/76
- ▶ Laos from 12/1/65 through 9/30/69
- ▶ Cambodia at Mimot or Krek, Kampong Cham Province from 4/16/69 through 4/30/69
- ▶ Guam or American Samoa or in the territorial waters off Guam or American Samoa from 1/9/62 through 7/31/80
- ▶ Johnston Atoll or on a ship that called at Johnston Atoll from 1/1/72 through 9/30/77



Presumptive Exposure – Agent Orange

- ▶ You served in or near the Korean DMZ for any length of time between 9/1/67 and 8/31/71
- ▶ You served on active duty in a regular Air Force unit location where a C-123 aircraft with traces of Agent Orange was assigned, and had repeated contact with this aircraft due to your flight, ground, or medical duties
- ▶ You were involved in transporting, testing, storing, or other uses of Agent Orange during your military service
- ▶ You were assigned as a Reservist to certain flight, ground, or medical crew duties at one of the locations listed here
 - ▶ Lockbourne/Rickenbacker Air Force Base in Ohio, 1969 to 1986 (906th and 907th Tactical Air Groups or 355th and 356th Tactical Airlift Squadrons)
 - ▶ Westover Air Force Base in Massachusetts, 1972 to 1982 (731st Tactical Air Squadron and 74th Aeromedical Evacuation Squadron, or 901st Organizational Maintenance Squadron)
 - ▶ Pittsburgh International Airport in Pennsylvania, 1972 to 1982 (758th Airlift Squadron)



Presumptive Exposure – Agent Orange

Cancers:

- ▶ Bladder cancer
- ▶ Chronic B-cell leukemia
- ▶ Hodgkin's disease
- ▶ Multiple myeloma
- ▶ Non-Hodgkin's lymphoma
- ▶ Prostate cancer
- ▶ Respiratory cancers
(lung, larynx, trachea, bronchus)
- ▶ Some soft tissue sarcomas
(NOT osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

Other illnesses:

- ▶ AL amyloidosis
- ▶ Diabetes mellitus Type 2
- ▶ Hypertension (high blood pressure)
- ▶ Hypothyroidism
- ▶ Ischemic heart disease (aka CAD)
- ▶ Monoclonal gammopathy of undetermined significance (MGUS)
- ▶ Parkinson's disease
- ▶ Parkinsonism
- ▶ Peripheral neuropathy *
- ▶ Porphyria cutanea tarda *
- ▶ Chloracne *

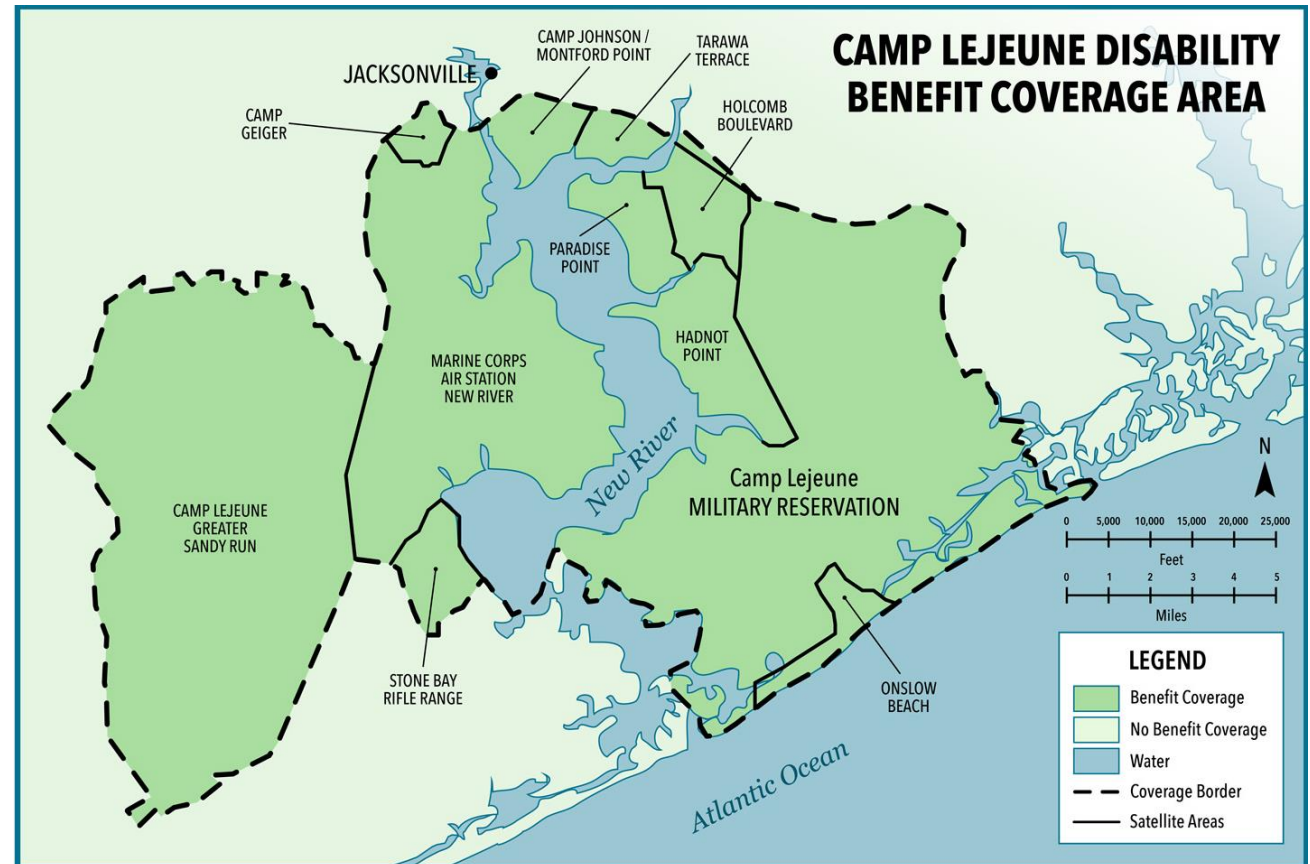


Presumptive Exposure - Camp Lejeune

30+ cumulative days between August 1953 and December 1987

Includes Camp Geiger, Camp Johnson, & MCAS New River

- ▶ Adult leukemia
- ▶ Aplastic anemia and other myelodysplastic syndromes
- ▶ Bladder cancer
- ▶ Kidney cancer
- ▶ Liver cancer
- ▶ Multiple myeloma
- ▶ Non-Hodgkin's lymphoma
- ▶ Parkinson's disease



Presumptive Exposure - **Camp Lejeune**

Family members who lived with the service member in base housing may be paid for out-of-pocket costs related to:

- ▶ Bladder cancer
- ▶ Breast cancer
- ▶ Esophageal cancer
- ▶ Female infertility
- ▶ Hepatic steatosis
- ▶ Kidney cancer
- ▶ Leukemia
- ▶ Lung cancer
- ▶ Miscarriage
- ▶ Multiple myeloma
- ▶ Myelodysplastic syndromes
- ▶ Neurobehavioral effects
- ▶ Non-Hodgkin's lymphoma
- ▶ Renal toxicity
- ▶ Scleroderma



Presumptive Exposure – **Burn Pits**

- ▶ PACT Act of 2022 established the following as presumptive locations for toxic exposure to burn pits:

On or after 8/2/1990:

- ▶ Bahrain
- ▶ Iraq
- ▶ Kuwait
- ▶ Oman
- ▶ Qatar
- ▶ Saudi Arabia
- ▶ Somalia
- ▶ The United Arab Emirates (UAE)
- ▶ The airspace above any of these locations

On or after 9/11/2001:

- ▶ Afghanistan
- ▶ Djibouti
- ▶ Egypt
- ▶ Jordan
- ▶ Lebanon
- ▶ Syria
- ▶ Uzbekistan
- ▶ Yemen
- ▶ The airspace above any of these locations



Presumptive Exposure – Burn Pits

- ▶ PACT Act of 2022 established the following as presumptive conditions

Cancers:

- ▶ Brain cancer
- ▶ Gastrointestinal cancer of any type
- ▶ Glioblastoma
- ▶ Head cancer on any type
- ▶ Kidney cancer
- ▶ Lymphatic cancer of any type
- ▶ Melanoma
- ▶ Neck cancer of any type
- ▶ Pancreatic cancer
- ▶ Reproductive cancer of any type
- ▶ Respiratory cancer of any type

Other illnesses:

- ▶ Asthma diagnosed after service
- ▶ Chronic bronchitis
- ▶ COPD
- ▶ Chronic rhinitis
- ▶ Chronis sinusitis
- ▶ Constrictive bronchiolitis or obliterative bronchiolitis
- ▶ Emphysema
- ▶ Granulomatous disease
- ▶ Interstitial lung disease
- ▶ Pleuritis
- ▶ Pulmonary fibrosis
- ▶ Sarcoidosis



Intent to File

- ▶ VA Form 21-0966
- ▶ Must choose which benefit you intend to file for: compensation, pension, or DIC benefits
- ▶ Protects your filing date if complete application received within one year
 - ▶ Any appeals must also be filed by deadlines to protect date
- ▶ Use when you need additional time to gather supporting documents for your claim
- ▶ Only good for the first application received after this form is filed



Application Process

- ▶ Submit VA Form 21-526EZ with all supporting documents
- ▶ Attend all C&P exams that are scheduled
- ▶ Respond to any correspondence from the VA regarding your claim

- ▶ VA's 5 steps after claim is submitted
 1. VA acknowledges that claim has been received – either on screen or by mail
 2. VA reviews your claim to determine if additional evidence is needed
 3. VA gathers and reviews evidence and makes a decision – this may include asking you to provide additional evidence
 4. Prepares paperwork for notification of decision – granted, denied, or deferred
 5. Mails packet with details of decision (allow 7-10 days for mailing)
 - ✓ You may receive deposit prior to receiving notification



Standard vs. Fully Developed Claim

Standard claim:

- ▶ VA takes more responsibility for gathering evidence to make decision
- ▶ You let the VA know about related records not held by a federal agency and give permission to VA to obtain records
 - ▶ It is your responsibility to make sure VA receives all requested records
- ▶ Slower process than FDC

Fully Developed Claim:

- ▶ You provide all evidence to support your claim along with the claim form
 - ▶ Private medical records
 - ▶ Layperson statements
- ▶ Faster process than Standard
- ▶ If additional evidence submitted after FDC, it will be processed as Standard claim



Combined Ratings using “VA Math”

▶ If veteran has multiple disabilities, ratings are NOT additive

Using VA Math:

$$60 + 20 \neq 80$$

$$60 + 20 = 70$$

Rating #		Ratings	Calculation	Disabled	Non-disabled	Add'l disabled portion	Combined rating % Rounded to nearest 10%
0	Non-disabled veteran		N/A	0	100	N/A	
1	Rating	60%		60		60% of 100	60
	Non-disabled				40		
2	Next Highest Rating	20%	60.0	60	40	20% of 40.0	70
	Non-disabled		8.0	68.0			
3	Next Highest Rating	20%	68.0	68	32	20% of 32.0	70
	Non-disabled		6.4	74.4			
4	Next Highest Rating	10%	74.4	74	26	10% of 25.6	80
	Non-disabled		2.6	77.0			
5	Next Highest Rating	10%	77.0	77.0	23	10% of 23.0	80
	Non-disabled		2.3	79.3			
	Additive Total	120%					

Ratings Schedules

- ▶ Disabilities have specific rating percentages as defined in 38 CFR Book C, Schedule for Rating Disabilities

Diabetes Mellitus	
Requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated	100
Requiring one or more daily injection of insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated	60
Requiring one or more daily injection of insulin, restricted diet, and regulation of activities	40
Requiring one or more daily injection of insulin and restricted diet, or oral hypoglycemic agent and restricted diet	20
Manageable by restricted diet only	10

TINNITUS	
Tinnitus, recurrent	10



Increase in Existing Ratings

- ▶ Check to see if you are already getting the maximum rating for the specific condition
- ▶ Submit VA Form 21-526EZ, but specify that you are requesting an increase for a specific disability in the “Claim information” section
- ▶ Submit all relevant medical evidence that supports the increase or notify the VA which of the VA facility where the records are located
- ▶ Can also submit layperson statements from friends, family, coworkers, clergy, or law enforcement personnel with knowledge about how your disability happened or got worse
- ▶ Attend any C&P exams you are scheduled for
- ▶ Be mindful that an increase in a rating may not increase your overall rating (remember VA Math)



Secondary Disabilities

- ▶ New disability that is linked to an already service-connected disability
- ▶ Examples:
 - ▶ Develop arthritis that's caused by a service-connected knee injury you got while on active duty
 - ▶ Develop heart disease that's caused by the high blood pressure you were diagnosed with while on active duty and that VA previously concluded was connected to your service
- ▶ File same as a regular disability but indicate that it is a secondary condition to a specific disability



Special Monthly Compensation

- ▶ Higher rate of compensation paid to veterans with certain needs or disabilities, including:
 - ▶ The amputation of one or more limbs or extremities
 - ▶ The loss of use of one or more limbs or extremities (meaning you have no effective function remaining)
 - ▶ The physical loss of one or both eyes
 - ▶ The loss of sight or total blindness in one or both eyes
 - ▶ Being permanently bedridden (unable to get out of bed)
 - ▶ Needing daily help with basic needs (like eating, dressing, and bathing), also called “Aid and Attendance”
 - ▶ Loss of use of creative organ
 - ▶ Deafness of both ears



Disability – Individual Unemployability (IU)

- ▶ Pays veteran at 100% service-connected rate
- ▶ Veteran entitled to all benefits as true 100% SCD

Eligibility:

- ▶ One disability rated 60% to 90%
- ▶ Combined disability rating of 70% to 90%, with at least one disability rated at 40%
- ▶ Veteran is unable to maintain substantial gainful employment due to service-connected disability(ies)
- ▶ File a VA Form 21-8940 (Application for Increased Compensation Based on Unemployability) and VA Form 21-4192 (Request for Employment Information in Connection with Claim for Disability Benefits)



Appeals Modernization Act

▶ Effective 2/19/2019

▶ 3 lanes to choose from:

1. Supplemental Review: you have new and relevant evidence that VA didn't have when your case was previously reviewed. One year filing deadline protects original filing date, but can be submitted later than one year (changes filing date). (VA Form 20-0995)

2. Higher Level Review: a more senior reviewer looks at the same evidence that was previously submitted and will determine if an error or difference of opinion changes decision. No additional evidence allowed. You have the option to have an informal conference with reviewer or you can submit a written statement to tell VA about errors you've identified. Must be filed within one year from date of decision.



Appeals Modernization Act

▶ Effective 2/19/2019

▶ 3 lanes to choose from:

3. Board Appeal: appeal to Veterans Law Judge in DC. Must be filed within one year from decision date. Choose between 3 options:

1) Direct review: Judge reviews evidence submitted and no hearing is held

2) Submit new evidence: You submit new evidence for review within 90 days from date of request for board appeal.

3) Hearing: You can submit new evidence and have a hearing either virtually from your home, videoconference from a VA office, or in person in DC (you pay travel costs)



Fiduciary

- ▶ Established to protect veterans who, due to injury, disease, or age, are unable to manage their own finances
- ▶ Determined by medical evidence or court of competent jurisdiction
- ▶ Fiduciary must undergo investigation to determine suitability, including criminal background check, credit report check, personal interview, and character references
- ▶ If no family or friends can serve, VA will look for qualified individual or organization to serve
- ▶ Fiduciary must complete accounting submissions for review (FAST program available online)



NPRC St. Louis Fire

- ▶ Fire at the National Personnel Records Center in 1973
- ▶ Destroyed records for veterans from
 - ▶ Army: 80% of records of Army veterans discharged between 11/1/1912 – 1/1/1960. Did not involve records of retirees and reservists who were alive on 7/12/1973.
 - ▶ Air Force: 75% of records of Air Force veterans discharged between 9/25/1947 and 1/1/1964 with the surnames of Hubbard through the end of the alphabet.
- ▶ NPRC reconstructs records by reviewing documents from alternate sources, such as unit records, morning reports, and hospital admission reports



Resources

- ▶ Disability: va.gov/disability
- ▶ After you file: www.va.gov/disability/after-you-file-claim/
- ▶ Exposures: www.va.gov/disability/eligibility/hazardous-materials-exposure/
- ▶ Ratings: www.benefits.va.gov/WARMS/bookc.asp
- ▶ Disability rating calculator: www.va.gov/disability/about-disability-ratings/
- ▶ VA Math: www.benefits.va.gov/compensation/rates-index.asp
- ▶ 38 CFR Book C, Schedule of Disability Ratings:
www.benefits.va.gov/WARMS/bookc.asp
- ▶ Individual Unemployability:
www.va.gov/disability/eligibility/special-claims/unemployability/
- ▶ Fiduciary Services: www.benefits.va.gov/fiduciary/index.asp

