

Fundamentals of Direct Service Connection

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Polling Question – Warm Up

How many Veterans began receiving **new** VA compensation benefits in FY2024?

- A. Less 250,000**
- B. Between 250,000 and 500,000**
- C. Between 500,000 and 1 million**
- D. Over 1 million**



Answer

B. Between 250,000 and 500,000

Estimated annual payments – new recipients

Benefit program	Number of recipients	Estimated annual total payments	Estimated annual average individual payment
Compensation	457,919	\$7.72 Billion	\$16,856

Source: VBA Annual Benefits Report Fiscal Year 2024.

Learning Objectives

Recognize the requirements for receiving service-connected benefits from VA.

- Identify the three basic elements required for service connection.
- Identify the characteristics of a current condition eligible for compensation.
- Identify in-service injuries, diseases, or events eligible (and not eligible) for compensation.
- Describe common ways that nexus can be established for a medical condition.

Elements of Service Connection

A “service-connected” condition requires three basic elements:

1. Current condition,
2. In-service disease, injury, or event,
3. Nexus (“connection”) between #1 and #2.

Elements of Service Connection

1. Current condition

- An injury or disease that happened in service is not compensable if it does not result in a present condition.
- Condition can be one that has been cured (ex. cancer), but the condition must have been present while the claim was pending.
- To be compensated, the current condition must be a "**disability.**"



Pain as a Current Condition

- Undiagnosed pain can be a disability.¹

“To establish a disability, the Veteran’s pain must amount to a functional impairment. To establish the presence of a disability, the Veteran will need to show that her pain reaches the level of a functional impairment in earning capacity.”¹

¹ *Saunders v. Wilkie*, 886 F.3d 1356,1367 (Fed. Cir. 2018)

Polling Question

Veteran Cynthia injured her shoulder in service. Now her shoulder periodically acts up if she over uses it or sleeps on it wrong. When this happens, she can't raise it above chest level for a day or so. Her doctor explained that she has cartilage debris in the joint, which is causing problems. However, Cynthia has a job where she works at a desk and it does not substantially interfere with her employment.

Does Cynthia have a present disability?

A. Yes

B. No



Answer

Yes

- Cynthia's shoulder is functionally impaired because it does not work as it would if she were completely healthy.
- It *does not matter* that it does not affect her *current* job.
- The determination of whether a condition is a disability does not depend on the circumstances of the individual Veteran.

Current Condition, cont.

- Not every current condition is a disability.
- Clinical findings that do not manifest in any symptoms are not compensable.
- Congenital or developmental defects are not compensable.
 - *But* a congenital disease can be compensated if service **aggravates** the condition.

Polling Question

Luis Martinez-Bodon is service connected for diabetes. His diabetes causes symptoms of anxiety. However, the psychiatric professionals who have examined him have all concluded that his symptoms do not qualify for a psychiatric diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

May he be awarded service connection for his undiagnosed anxiety?

A. Yes

B. No



Answer

No

- In *Martinez-Bodon v. Wilkie*, 32 Vet.App. 393 (2020), the CAVC held that VA has expressly limited compensation for psychiatric disabilities to disabilities with a DSM diagnosis by a qualified professional.
- This holding is specific to claims for psychiatric disabilities.
- Other undiagnosed symptoms may still be claimed for other disabilities.

Elements of Service Connection, cont.

Army officer gunning for 2nd Olympic bobsled medal

By Katie Lange, Defense Media Activity February 23, 2018



Source: army.mil

2. In-service disease, injury, or event:

- Veterans may be entitled to benefits “[f]or disability resulting from personal injury suffered or disease contracted in line of duty.” 38 U.S.C. § 1110, 1331.
- Virtually anything can qualify as an in-service injury or disease.

Polling Question

Veteran Jerry broke his wrist in service. He was in a cast for eight weeks. When he retired seven years later, he indicated on his exit physical that he was not having problems with any of his joints.

Can the broken wrist be the in-service injury for his claim if he later develops arthritis of the wrist?

A. Yes

B. No



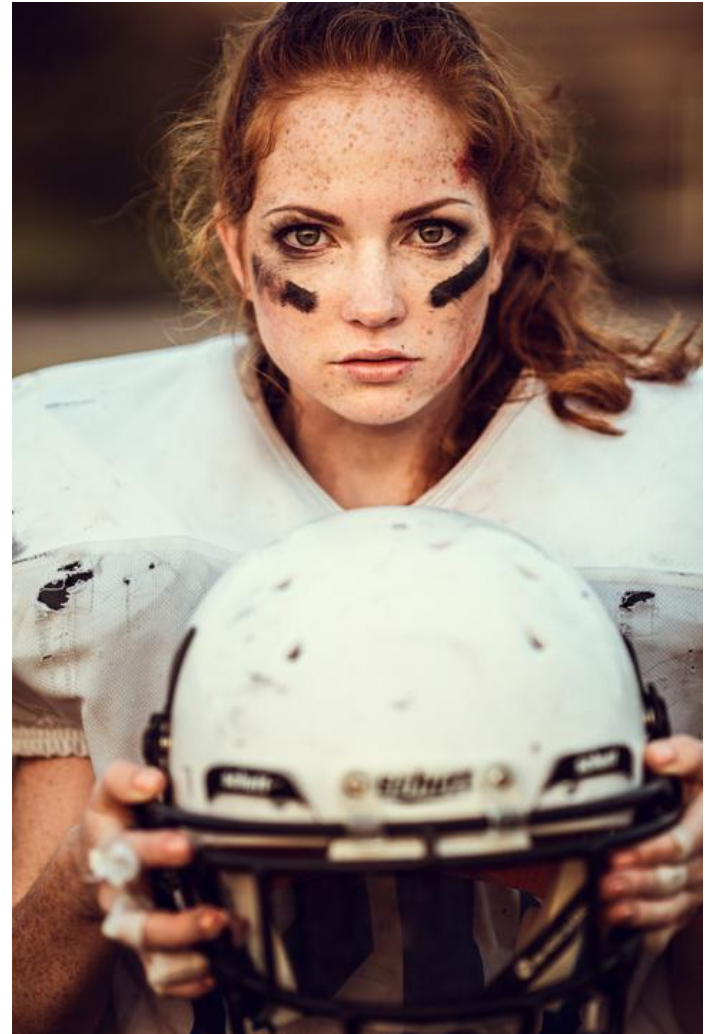
Answer

Yes

There is no requirement that an in-service injury result in a disability *in service*. If a disability manifests later in life it can be compensated if it is related to service.

In-Service Disease/Injury, cont.

- Injuries off-duty are **eligible** (ex. sports injuries).
- Willful misconduct is **excluded** (ex. driving under the influence).



Polling Question

Suppose a Veteran served in the Army for two years in the 1970s without any documented medical complaints. In 2003, he applies for service connection for a back condition based upon “extended marching with a 40-pound backpack, extended physical training, and hand-to-hand combat” training in service.

Could benefits be granted upon these in-service events?

A. Yes

B. No



Answer

Yes

These are the facts of a single-judge decision in *Harlston v. Shinseki*, No. 09-4379, 2011 WL 1534555 (Vet. App. Apr. 25, 2011). Although the medical examiner found that the present condition was not related to the events in service, there was no dispute that benefits could have been awarded had a nexus been found.

Conditions That Manifest in Service

- If a condition ***manifested*** in service, then it is service-connected.
- Symptoms that first manifest in service can later be diagnosed as the condition for which benefits are claimed.¹
- A diagnosis in service is ***not*** required.¹
- Documentation / treatment in service is ***not*** required.²

¹ *Perry v. Brown*, 9 Vet. App. 2 (1996).

² *Buchanan v. Nicholson*, 451 F.3d 1331 (Fed. Cir. 2006).

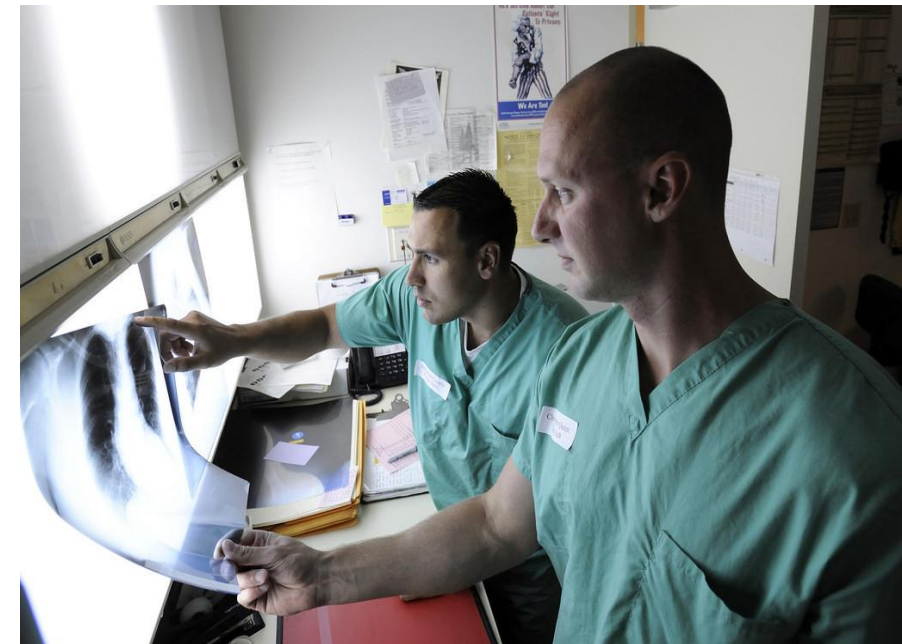


Photo: U.S. Govt. work

Elements of Service Connection, cont.

3. Nexus (“connection”) between elements #1 and #2:

- If a condition does not manifest in service, then an opinion from a qualified expert can establish a *nexus* between the current condition and service.
- A positive (or negative) opinion must be supported by adequate analysis.
- Nexus examinations (“C&P exam” or “DBQ”) are usually provided by VA.

Medical Opinions



A medical opinion must:

- Detail the facts of the case as the expert understands them and
- Give some justification for the opinion, such as commonly accepted medical principles, research, or experience with similar cases.

Polling Question

Veteran Cathy has tinnitus in her left ear. She has a medical examination through her health insurance from her job at an insurance company. The private audiologist attributes her tinnitus to her four years in the Navy working on the deck of an aircraft carrier given her young age and her lack of post-service noise exposure. At her request, the audiologist explains this in writing in a letter on his letterhead.

Is this opinion sufficient to establish a nexus to her service?

A. Yes

B. No



Answer

Yes

Veterans may submit evidence from a private medical professional.

Decades ago, VA had a regulation prohibiting VA from granting claims based upon evidence from a **non**-VA source. However, in 1994, Congress abolished this rule.

Veterans may have a private medical professional complete a DBQ. See 38 U.S.C. § 5125.

Smoking, Alcohol, and Drug Abuse

- No compensation can be awarded for diseases related to smoking or tobacco use.¹
- Primary alcoholism or drug use is ***not compensable***
- However, benefits for those conditions may be awarded on a ***secondary basis***.

¹ 38 U.S.C. § 1103.



Last Slide

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.