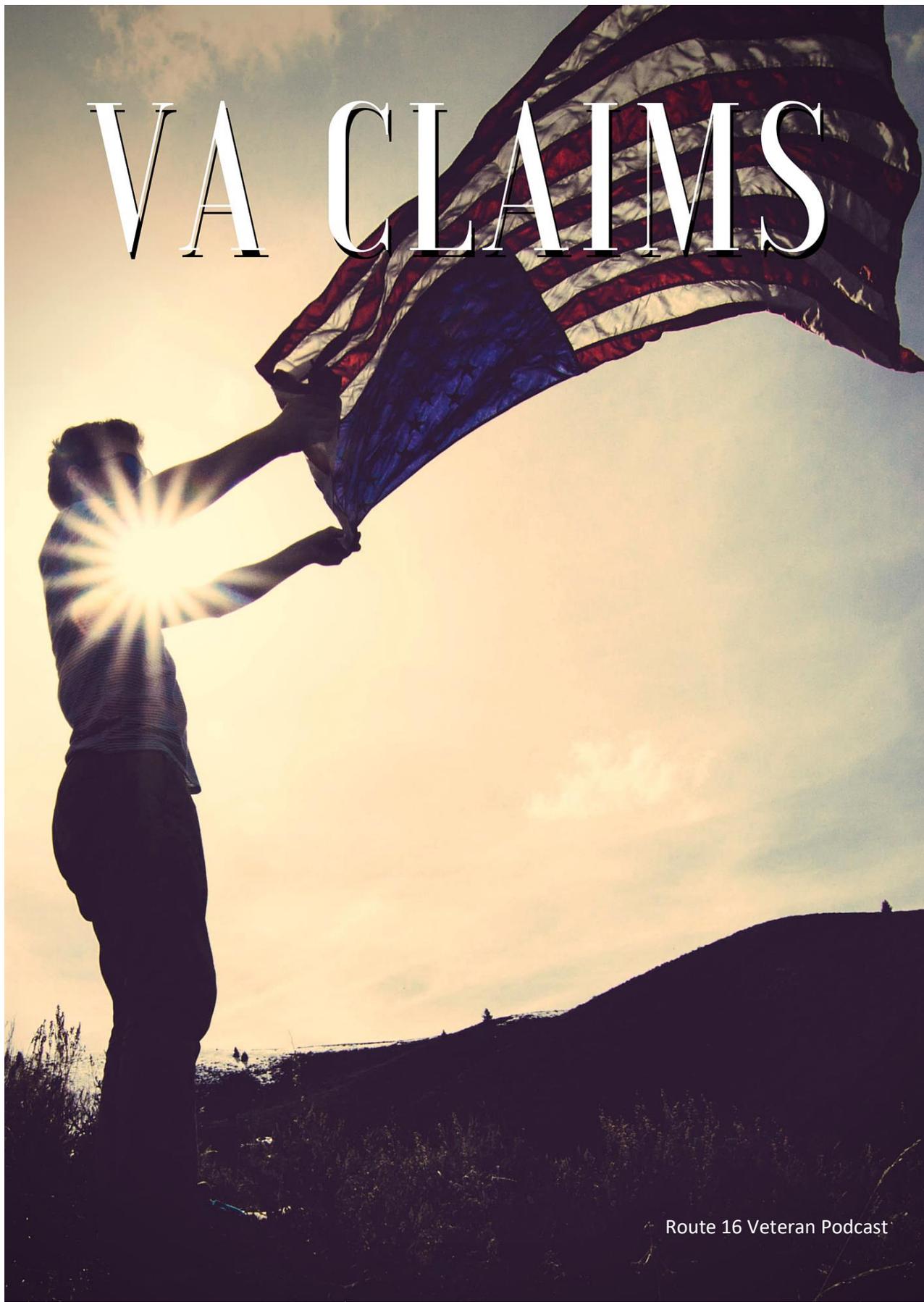


VA CLAIMS



Route 16 Veteran Podcast

INTRODUCTION

From time immemorial, war veterans have received compensation. Rightly so, these are citizens who have proudly and honourably served their country, who stood guard in defence of their nation's freedom, stood in harm's way, serving meritoriously. Throughout history, veterans have risen to answer the call of duty and fight for the nation. Perhaps, you are one who has had to endure pain, disability and trying to fit back into society. There are many benefits available to veterans. The Federal Government renders assistance to veterans with disabilities through a variety of programs. These programs can offer monthly income and access to additional benefits to veterans. One of such programs is the Compensation and Pension service which provides direct payments to veterans, their dependents and survivors as a result of the veteran's disability which is brought about by service or due to financial need. Disability Compensation is for veterans with conditions – disease or injury caused by, or aggravated by their service in the military. It is a monetary benefit. These conditions involve the full range of human physical and emotional experience. Injuries that happen in the military occur in numerous forms and fashions. You could have a physical or mental condition, an ankle you twisted at boot camp that has since bothered you, feelings of anxiety that has enveloped you ever since you went on patrol in hostile territory, ears that still ring since that one time you spent a year driving an armour tank in combat zone. As long as your current physical or mental condition is related to your service in the military, came about while you were on active duty and are not as a direct result of your misconduct, you can think of applying for Disability Compensation. Usually, after applying for disability compensation, you will be notified by the veterans' administration (VA) to undertake a Compensation and Pension (C&P) exam. This is

a routine request and those with several disabilities may even have to undertake several C&P exams. A Compensation and Pension (C&P) exam is a doctor's appointment where your disabilities as a veteran get evaluated. Such exams are conducted at a Veterans' Administration hospital or clinic after which the doctor writes a report, which is sent back to the VA Office where you initially submitted your application for benefits.

How then do you make your claims go through more efficiently? How do you improve your VA disability claim or appeal? What mistakes should you avoid? How do you prove your eligibility for disability compensation? If your claim for benefits is denied, what steps can you take to appeal the decision? Hence, this book which is written to serve as a guide and answer your teeming questions on veteran benefit claims specifically as it relates to Compensation and Pension (C&P) exams. With benefit claims, it is only best that you are prepared as this will go a long way in getting you what you are entitled to.

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SERVICE-CONNECTED INJURIES

Injuries that happen in the military come in numerous forms and fashions. There are life changing injuries that change everything right from the injury date forward; there are the hidden illnesses/injuries that many times the service member may not even realize that the illness was caused by their service until years, if not decades later. These are often heart conditions, diabetes, respiratory illnesses, PTSD and other diseases caused by the environments the service member was exposed to such as chemical agents, asbestos, service in Iraq/Afghanistan, and Vietnam.

The greatest mistake that a service member can have when they become injured in military service is to cover it up and work through the pain and refuse medical treatment. Covering up injuries means when you are out of service, there is no proof the injury occurred while you were serving and this invariably means you end up giving your benefits and entitlements a pass. Oftentimes, injured service members tell me they have been referred to as a malingerer. There is a culture of this way of thinking in the military. You're taught you're bigger, stronger, faster and tougher than anything. While I am well aware of the existence of this culture of silence, albeit secretly within the military, with most people not wanting to admit they are injured because other service members will talk about them being weak. I would also point out I have never seen a single service member who talked about injured members negatively pay for the injured veteran's bills! Let me cite an example, I once worked with a Gulf War combat veteran that was injured on an oil platform breaking his ankle, and was then called a malingerer for seeking medical attention after 3 weeks of being in sick bay over in the gulf. I, personally also served

with a guy who used to call me a malingerer for being hospitalized and on limited duty for 2 years because I had a back injury with herniated discs and nerve damage! Last time I checked; I never saw him since the day I left the service. He never called, never wrote, and has yet to take care of my family financially since I retired from the Navy! These examples lend credence to the fact that those who would give you a hard time because you can no longer physically run with the pack will not be there for you after you're handed your DD Form 214. As such, it is up to you to report injuries incurred during your service in the military to the appropriate boards. While many times injuries may be small or insignificant as at the time of occurrence, they are still worth getting checked out and documented in the event years later they persist. That service member who is talking negatively behind your back will not be the one to provide for you and your family once you are discharged from service! When you become injured with a life-changing injury, it is only wise you consider the medical board process.

I have had cause to speak to many service members who have injuries but refuse to have them treated or checked out because they fear their military careers will be over with. Oftentimes when the injuries are so severe, I point out they can either go up the mountain with an arm around them or with a foot up their behinds, but either way they are going. I tell them this because logically such injured service members will not be able to make it to the 20-year mark anyway with many injuries, they will more than likely get phased-out regardless, which is why it's better to have protection from a benefits standpoint rather than run themselves completely into the ground. It is similar to the cases of athletes who refuse to accept their injuries as well and then end up having more serious and life-changing situations because

of that singular decision. The relationship between a service man and the military is similar to a marriage. When two people decide to get married, such a decision is usually based on love and care for one another. Each party has decided they want to be with the other and marriage is a legal binding arrangement. Enlisting with the military is the same thing because the service member wants to be in the military and is basically joining the military family, and from the military's perspective you're the one they want because you're young, in shape, and deployable. Getting injured though can oftentimes cause the military to want a divorce, and once that party wants a divorce it immediately becomes a legal matter which is why divorces end up in court rooms with attorneys present on the last day of the marriage. My point is that many times one party wants to "work things out" which is why they tend to end up getting taken to the cleaners in their divorce settlement because they refuse to accept that their marriage is over with and later refuse to take the necessary steps to protect themselves legally. I honestly hate to be the dream crusher to a service member who thought they would be the one in a million who would continue serving after a major injury, but I try and get them to see that by not defending their positions they would end up regretting it for the rest of their lives.

I would like to stop and point out just because an injury happens while in service it's not automatic if you report it, you're going to be removed from service. There are certain parameters like limited duty, temporary and permanent profiles, etc. all of which are aimed at giving the service member tools and time to recover from the injury so they can return to work if possible. Looking at it from a cost standpoint, many times it's cheaper for the military to fix your injuries to retain an

employee that has plenty of experience rather than to start all over again with a fresh new employee that will take years to train. It's no different than when you get a flat tire you change or repair the tire rather than buying a new car.

Years ago while I was learning how to walk again, my physical therapist made a statement to me that made my world implode. He said: *'If you can no longer be on a ship, then you can no longer be in the Navy, and you can no longer be on a ship so you need to start preparing for that'* In that exact moment my world came crashing down but in retrospect I realize he was just trying to prepare me for what laid ahead. I, just like so many others thought I was going to be the guy to beat the odds and make it back. I can honestly say I have had this exact conversation with a few hundred other injured service members and it's never an easy conversation to have, but it's something that needs to be addressed when a service member becomes injured because it can cause a turning point in their lives which begins a new chapter, which is the next chapter in their life. It's the *'where-do-we-go-from-here'* chapter, which leads toward the Medical Board Process.

I have had opportunities to work with several injured service men and one of the main things I like to stress to their family members is to just go and be with their loved one, start a journal of everything, and collect copies of any and all records because they will need them down the road once the Medical Board process begins. Especially when it's a life-changing injury, and they need to make sure their service member does not try to play the tough guy and get it all properly documented so as to make a smooth sail through the claims process.

The very first piece of advice I like to give to injured service members that are getting ready to start the Medical Board process is: *'Pack a lunch because we are not going anywhere for a while!'* I say this because it's a long and tedious process and one which can't be rushed, because if you try and rush them it will not work out well.

When a service member becomes injured while serving, many of the decisions that are made which determine if you can continue serving or not are based off of 6 letters. They are "PULHES". These are extremely important to learn and understand because they basically tell the tale of which direction you're headed. PULHES stands for:

- P—Physical Capacity/Stamina
- U—Upper Extremities
- L—Lower Extremities
- H—Hearing/Ears
- E—Eyes
- S—Psychiatric

There are four numerical designations (1, 2, 3, or 4) for each factor in PULHES, which evaluates the individual's functional capacity in that particular area. Specifics follow for each medical factor:

P: Physical capacity or Stamina (First number in the profile series)

Organic defects, strength, stamina, agility, energy, muscular coordination, function, and similar factors.

1. Good muscular development with ability to perform maximum effort for indefinite periods.
2. Able to perform maximum effort over long periods.
3. Unable to perform full effort except for brief or moderate periods.
4. Functional level below the standards of "3."

U: Upper extremities (2nd number in the profile series)

Strength, range of motion, and general efficiency of upper arm, shoulder girdle, and upper back, including cervical and thoracic vertebrae.

1. No loss of digits or limitation of motion; no demonstrable abnormality; able to do hand to hand fighting.
2. Slightly limited mobility of joints, muscular weakness, or other musculoskeletal defects that do not prevent hand-to-hand fighting and do not disqualify for prolonged effort.
3. Defects or impairments that require significant restriction of use.
4. Functional level below the standards of "3."

L: Lower extremities (3rd number in the profile series)

Strength, range of movement, and efficiency of feet, legs, lower back and pelvic girdle.

1. No loss of digits or limitation of motion; no demonstrable abnormality; able to perform long marches stand over long periods, run.
2. Slightly limited mobility of joints, muscular weakness, or other musculoskeletal defects that do not prevent moderate marching, climbing, timed walking, or prolonged effort.

3. Defects or impairments that require significant restriction of use.
4. Functional level below the standards of "3."

H: Hearing and Ears (4th number in the profile series)

Auditory sensitivity and organic disease of the ears.

1. Audiometer average level for each ear not more than 25 dB at 500, 1000, 2000 Hz with no individual level greater than 30 dB, not over 45 dB at 4000 Hz.
2. Audiometer average level for each ear at 500, 1000, 2000 Hz, or not more than 30 dB, with no individual level greater than 35 dB at these frequencies, and level not more than 55 dB at 4000 Hz; or audiometer level 30 dB at 500 Hz, 25 dB at 1000 and 2000 Hz, and 35 dB at 4000 Hz in better ear. (Poorer ear may be deaf)
3. Speech reception threshold in best ear not greater than 30 dB HL, measured with or without hearing aid; or acute or chronic ear disease.
4. Functional level below the standards of "3."

E: Eyes - vision (5th number in the profile series)

Visual acuity and organic disease of the eyes and lids.

1. Uncorrected visual acuity 20/200 correctable to 20/ 20, in each eye.
2. Distant visual acuity correctable to not worse than 20/40 and 20/70, or 20/30 and 20/100, or 20/20 and 20/400.
3. Uncorrected distant visual acuity of any degree that is correctable not less than 20/40 in the better eye.
4. Visual acuity below the standards of "3."

S: Psychiatric (Last number in the profile series)

Type, severity, and duration of the psychiatric symptoms or disorder existing at the time the profile is determined. Amount, of external precipitating stress. Predisposition as determined by the basic personality makeup, intelligence, performance, and history of past psychiatric disorder impairment of functional capacity.

1. No psychiatric pathology. May, have history of a transient personality disorder.
2. May have history of recovery from an acute psychotic reaction due to external or toxic causes unrelated to alcohol or drug addiction.
3. Satisfactory remission from an acute psychotic or neurotic episode that permits utilization under specific conditions (assignment when outpatient psychiatric treatment is available or certain duties can be avoided).
4. Does not meet standards of "3" above.

A physical profile designation of "1" under all factors is considered a high level of medical fitness. A physical profile designation of "2" under any or all factors indicates that an individual possesses some medical condition or physical defect that may require some activity limitations. A physical profile containing one or more numerical designators of "3" signifies that the individual has one or more medical conditions or physical defects that may require significant limitations. For those applying for military service, this designation is usually a ground for disqualification. For individuals already in the service, the individual should receive assignments commensurate with his or her physical capability for military duty, such as limited duty/assignments. A physical profile containing one or more

numerical designators of “4” indicates that the individual has one or more medical conditions or physical defects of such severity that performance of military duty must be drastically limited. Definite disqualifier for entering the military and for continued military service, if already in the military.

When a service member has a life changing injury, often such are properly documented whether the injured service member likes it or not. This makes it far easier for disability compensation purposes. I say this because when a service member becomes wounded in combat, they wake up in a hospital bed days later in a state of confusion, wondering how they got there. In cases like this, there are incident reports, morning reports, medical treatment records, and plenty of documentation about what happened that day after they became injured. This becomes evidence in a case that can help to establish that a service member was injured and to what degree for the Medical Board.

Now, a service member isn't always guaranteed a Medical Board, as such it can become a really tricky situation when a service member becomes injured. After all, many times the military is just looking for the fastest and cheapest way out of this 'marriage' so they look to take advantage of the situation. For this reason, I like to recommend taking this position: *'Look if you want me to stay then I am happy to continue serving, which is why I joined in the first place. Now if you (the military) no longer feel that I can continue with my service because of my service connected medical conditions (a divorce), then you will see me in court (so provide me with a Medical Board) so that we can dissolve this marriage if I'm found unable to continue serving based on service-connected injuries.'* A Medical Evaluation Board (MEB) is

used to establish if the service member can or cannot maintain the military standards for continued service based on their service-connected medical conditions. If the evaluation board feels that you can no longer continue on with your military service then a Physical Evaluation Board (PEB) can ensue, which will rate your injuries that disqualify you from serving any further. When a service member has a potentially career-ending injury, the military will often look to separate the service member as quickly and cheaply as possible. Over the years I have seen the military administratively separate, punitively separate, and oftentimes just allow enlistments to just plain expire. Too many service members get out of service without a Medical Board once they become injured. Oftentimes, this happens because the chain of command just tells them to go over and deal with the VA instead of having to pay, house, feed, and Medical Board the person that can no longer do the job they enlisted to do because of their military related injuries! This in turn absolves the military of having to provide you with the additional benefits you may be entitled to by medically retiring you from service instead of just having you getting out. I have had several injured service members and their spouses inquiring how to get the military to initiate a Medical Board. While you cannot demand a Medical Evaluation Board, if you're under the care of a military doctor and said doctor is telling you that you no longer meet military standards so the military is going to be separating you, then tell the doctor that you would like a Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) so that they can officially decide if you are meeting military standards or not. This way you do not get swept under the rug.

A major reason for going through the medical board before leaving the military is for the Tricare benefits. Tricare benefits are worth a fortune all by themselves, and I would point out that having Tricare makes all the difference in the world, if and when you become worse off medically. For example, just over 2 years ago a woman I know was diagnosed with Stage 3 Breast Cancer, and having Tricare Prime afforded her the opportunity to have anything that she needed in a timely fashion by using private doctors. There is a huge difference between a VA rating and a Military Medical Board rating. Even if the VA rates you as 100% disabled, you're not entitled to Tricare benefits. Now on the other hand if you go through the Medical Board process and receive a 30% or higher rating from the Medical Board then you become a Medical Retiree and hence you can retain your Tricare eligibility because you're now considered a medical retiree just as a 20+ year retiree.

To clarify, the military Medical Board process and the VA disability ratings process are two entirely different systems. Although they both do very similar things, they are completely different entities. Now the reason I always suggest Medical Boarding if you become injured is because "IF" you receive a 30% or higher rating from the Medical Evaluation Board, then you will be placed on either the TDRL or the PDRL. This stands for Temporary/Permanent Disability retirement List. Retirement is the key word here because 20-year retirees can keep their Tricare benefits just as medical retirees that have a 30% or higher rating can. No doubt, the Medical Board process is extremely grueling process to put it mildly, but the long-term potential benefits far outweigh the short-term difficulties you experience.

THE MEDICAL BOARD PROCESS

Perhaps, you are now wondering, having documented my injuries appropriately, how can I make it through the medical board effectively? This chapter borders on that. Information is a vital key and when you give it up you're letting the opponent know your position which is called counterintelligence. This is what wars are won and lost on. When you tell the other side exactly what's going on in your head, you're exposing yourself just as you would on the battlefield by yelling out *'Hey guys! We are over here hiding from you!'* and gives away your position.

In similar vein, I have heard many injured service members give themselves away when going through the Medical Board process. *'I want to start school!'*, *'I have a job offer that I want to take!'*, *'I miss my mother's cooking so I want to get out of here!'*, *'I want to get on with my life!'*, *'I want to get married!'* are all things I have heard them say. These statements all have one thing in common *"I want..."* Now, getting through the medical board efficiently is not about what you *want* it's about what you need! You NEED Tricare insurance if you are injured! You NEED proper evaluations, documentation, and ratings. You NEED to go through the process so you receive the benefits you're entitled to! WANTING gets in the way, because when you go to your military doctors and tell them what you want, it doesn't make it get done faster, it just tells them that you're desperate and you will sign anything to get out of there, including a bad deal that can haunt you for the rest of your life! Over the years, I have seen many bad things happen during injured service members Medical Boards. I always say take the *"I am not going anywhere until it's done correctly"* stance. Complaining will not make the process go faster and constantly hammering on your *'wants'* will merely give the impression you're

willing to accept whatever rating they assign you once the paperwork is presented to you. This ultimately ends up taking you much more time when after 2 years you are offered a 10% rating for the loss of a limb, or 20% for the loss of an eye! Believe it or not, those are both scenarios that service members encounter, which ultimately, ends up leading to appealing the Board's findings.

The medical board process is not one to be rushed. Keep in mind when you say: *"Please just give me anything so I can sign it and get out of here"*, this doesn't make the process go faster, it just lets them know that more than likely no matter what they offer you, you will end up signing it, which can often cause them to low ball you getting you a lowered percentage.

It is vital to understand that when you decide to embark on the medical board process, you're going all in! This process will more than likely signal the final chapter of your military service if the board determines you can no longer physically or psychologically continue to serve based on your injuries. Therefore, it is extremely important to be upfront about your injuries and the extent to which they hinder you on a daily basis. Having proper documentation and extensive treatment records is paramount to receiving a rating that properly reflects the true severity of your injuries.

Once you have your treatment records, incident reports, and if possible statements from others who witnessed the injury occur, you would have to get your LOD's or Line of Duty reports. These reports would establish the fact your current injuries were in fact caused by your military service and happened in the Line of Duty. I have witnessed instances where a service member speaks with the medical

administrator and the administrator tells the service member what can and cannot be done. There have been cases where the administrator tells the service member *"There is absolutely no way this will get approved"* or *"It's impossible to get approved for that"* It is vital you bear in mind these naysayers are administrators and it's up to the doctor to say what gets approved or disapproved. Sometimes a little research on your part as the injured service member can go a long way in knowing for yourself what can and cannot be done. After all, it's your Medical Board and you have the right to request an LOD for any injury that happened to you in the line of duty. Remember that once it's over, it's over, and while a month from now the administrators may not remember who you are, you on the other hand will end up living with the deal you accept for the rest of your life. Ignore the naysayers. It's the duty of the military doctor and not the administrators to establish on paper if each injury happened in the "Line of Duty", when going through the Medical Board process.

The next step after getting your medical treatment records, incident reports, witness statements, and LOD's together is to get the "Commanders Statement". This is a statement from within your chain of command which can shed light onto the medical situation if it's written correctly. The main function of the Commander's Statement is primarily to see from your Commanders point of view if you are either "Fit" or "Unfit" to continue serving. At times, such statement can also be used as a way for your chain of command to stress the severity of your injuries and how it impacts your performance or inability to perform as you once did prior to your injuries. When it comes to "Commanders Statements", at times a common yet complex problem may arise. Sometimes, the Commander doesn't

know you personally well enough to make statements on your behalf, or the Commander isn't fully aware of the extent of your injuries. Due to either of these reasons, the Commanders Statement may not be very helpful or it may overlook certain important aspects of your injuries. With either situation, there is no cause for alarm and there is a possible solution that has worked in many instances. Before you request to speak with the Commander about the issue, take some initiative. Retype the DA Form 7652 while properly using pages 2 & 5 for comments. Then when you do speak with the Commander, do not complain it is missing vital pieces of information, instead tell him that you took the liberty of clarifying everything, and then ask the Commander to read the updated version, and if he agrees to just sign the updated version of the statement, it's done to your specifications.

When you decide to embark on the medical board process, ideally the goal is redundancy. How? You might wonder. When a service member becomes injured, they first and foremost need to receive medical treatment which brings about creation of medical records. Ideally the medical records, injury reports, and witness statements will all reflect the same thing, which is that the injury happened while serving. Then your PULHES scores get raised, which shows that your injuries preclude you from doing your military job, and that your injuries place serious restrictions on your ability to continue your military service. In adding to this, having LOD's on all of your injuries prove that each of the injuries happened within the Line of Duty, which now ensures a service connection exists. The Commanders Statement also gives your chain of command the ability to weigh in on your injuries and the impact the injuries have on your performance.

In 2007, a 29-paged commission report was released which brought about numerous changes to the way the Veterans' Administration does things. This report is the "Dole-Shalala Commission Report". One of the major changes that came out of this report is the way the Medical Board process can now be tied to the VA ratings process through the Integrated Disability Evaluation System (IDES or DES) pilot program which has been getting implemented at more and more bases. Prior to the Dole-Shalala Commission, each service member had to go through the Medical Board process, then get a rating, afterwards they would also have to go to the VA and start the entire process all over again with the VA. Former Senator Robert Dole and former Health and Human Services Secretary Mrs. Donna Shalala spearheaded this commission which led to this change which has helped to simplify the process for injured service members. The Dole-Shalala Commission found that the process was so outdated and broken that by allowing injured service members to use the DES program, it would literally take years off of the time it took to receive their ratings for both entities. The DES allows the injured service member to go through a single process of review to receive both their military Medical Board and VA benefits. Furthermore, by having them go through a single process while on active duty, there wouldn't be a giant gap in the time when they separate from service to the time they begin receiving their disability payments, a process which would take many years, even up to decades as in many instances.

A question I get is: *'How can the ratings be so different percentage wise?'* Bear in mind the military only has to compensate you for the loss of a military career whereas the VA has to compensate you not only for the loss of your military career, but also for the reduced earning capacity within the private sector as well. This is

where I use the example of a stenographer more commonly referred to as a court reporter. If that person were to have injured a pinky finger in service, the military would more than likely take the position that it's only a finger and it is not the end of the world if it were broken, therefore they would typically only compensate at maybe the 10% level during the Medical Board process. However, for the VA, they could easily make the case that with the absence of the pinky finger, they are completely incapable of working, hence has a complete reduction in earning capacity within the private sector until it's healed! The complete loss of use of the pinky finger typically isn't the end of the world, but for someone who types 300 words a minute, has a degree in stenography, makes over \$100,000 per year to do that job, and can no longer work at all until it heals, it is a big deal. Unless they are retrained, they would be unemployable until completely healed.

Some service members decide not to go through the medical board in a bid to save time, hoping to begin their new lives sooner without having to wait often 1-2 years while going through the Medical Board process. The downside of doing this is you give up potentially over a million dollars in benefits over the course of your lifetime by leaving your Tricare benefits on the table, as well as CRSC/CRDP, your ID card, base privileges, etc. Additionally, not going through the medical board also puts you in a bad position with your VA benefits because:

a. If the injuries weren't documented in service then they didn't happen, and they will not be regarded as service connected.

b. In the end, you would still have to wait that same 1-2 years dealing with the VA as a civilian. In many instances, injured service members are not even able to keep a roof over their head because they cannot work due to the severity of their

injuries. Additionally, all of this time, they're not getting paid while going through this process.

The established Integrated Disability Evaluation System makes it all easier. Going through the IDES program ensures that once it's over, it's over. When you leave service, your pay and benefits will have been negotiated ahead of time and your pay will kick in shortly thereafter and this no doubt greatly reduces the lag-time from years down to within a month or two. Also, assuming you received over a 30% rating from the military side, you now can enjoy Tricare benefits as well, which will provide you with faster access to quality healthcare that is vital for your injuries. While going through this process, the probable downside is you could be relegated to a menial job because you're injured and many times your fellow service members might be insensitive towards your situation. But what is this compared to the fact that you're keeping a roof over your head, food in your stomach and a steady paycheck coming in if you're on active duty throughout the process and that there were millions of dollars in potential benefits on the line?

I remember one afternoon late in the summer of 2011, I was watching the news when I first saw a report that by the end of 2011, we would have all our troops out of Iraq. My very first response was *"I can see a Reduction in Force RIF coming here shortly!"* I remember it vividly, because that was my first response. I mention this because one of the things often on my mind is the continually changing needs of the military. These changes often play a big part in determining who gets medically Boarded and when. With medical boarding, the rules for active duty service members vary from those of National Guard/Reserve members when it comes to

injuries. For those in the Guard/Reserves that are deployed and have sustained injuries from deployments, you can be seen at the VA, and also receive VA disability compensation (for the days that you're not drilling each month), while you continue to serve. The main issue however is that in many instances, due to the nature and severity of the injuries it may end up hurting your military career. The needs of the military are continually changing, and as they need less and less service members, this could cause the military to find you unfit to continue serving. For deployed National Guard members that are still serving with their injuries, the rules state you cannot receive VA disability pay for any days of the year you're currently serving in the military. So, what does that mean? Let's assume you make \$300.00 per month drilling, and then you receive a 50% rating from the VA which pays roughly \$1,000 per month, what happens is you will receive your \$300 each month for your drill days plus your pay for Annual Training as well. Then you will also receive your \$1,000 per month from the VA each month minus the 38 days of training you did for the military. That's one weekend a month or 2 days for 12 months which equals 24 days, plus your 2 weeks of Annual Training (14 days) because $24 + 14 = 38$ days each year in uniform. Therefore, the VA will give back those 38 days of pay, but that still leaves 10 months and 22 days of the year that you can be compensated at \$1,000 per month.

Having considered the basics of how the Medical Board process works, what happens once all of your paperwork has been submitted? Once all of your paperwork has been submitted, that is including your medical records, injury reports, witness statements, LOD's, and Commanders Statements, the next phase is a physical evaluation by the military (and VA if you're in the IDES Program) for

your injuries. Your records are sent to Pinellas Park, Florida to be assembled and reviewed and then the military will call you in for an evaluation which will basically be the equivalent of your very first Compensation & Pension exams to evaluate your injuries in person. There is need to put enough time and energy into getting all the paperwork correctly done prior to these exams. Once a Medical Board has been initiated, it is in your best interest to request a PEBLO or Physical Evaluation Board Liaison Officer as quickly as you can once the process begins. While I am the first to admit that these PEBLO's are overworked, similar to public defenders within the civilian court system, they can be helpful especially when it comes to providing paperwork, and being a line of communication between you (the injured service member) and the military.

When it comes to both medical evaluations for your Medical Evaluation Board or Compensation & Pension exams through the VA, there is usually a fatal flaw that often puts a hole in many injured veterans' cases. The military seeks out and employs a certain type of person, ideally a service member is a self-motivated, hard-working, non-complaining person, that will be a follower in the beginning but can be trained into a leader who eventually others will follow. While this may be the backbone of how things work in the military, it can present major problems when having your injuries evaluated because although each of these values are fantastic attributes to have, they also lead to a mentality where you would downplay your own injuries, because you would not want to make your physical problems become another person's problems, in this case the doctor's and so, many injured veterans downplay their injuries and inadvertently shoot themselves in the foot.

Once your medical board findings come back, you are given a copy of your results so you can see if you agree or disagree with the findings of the Medical board. The results are usually given in a Narrative Summary (NARSUM). When your Narrative Summary (NARSUM) comes back from the Medical Board, it is vital you go over it thoroughly and challenge anything that is incorrect in the NARSUM. Under the National Defense Authorization Act of 2008, you have the right to request an Impartial Provider Review (IPR) within 7 calendar days of receiving the NARSUM from your Physical Evaluation Board Liaison Officer (PEBLO). The IPR, in this case will go back over your file, evidence and other documents and review the findings in the NARSUM. In a situation where it is finished and no changes are made to the findings and decisions, then you can file your rebuttal to their findings within 7 days. Now if you need an extension beyond the 7 days, you can have your PEBLO request the extension so you can get your ducks in a row. Subsequent to the forwarding of the case from the Medical Evaluation Board to the Physical Evaluation Board (PEB), the PEB determines whether or not any and or all of the medical conditions make you as the service member unfit for continued military duty. In a case where the MEB does not identify a medical condition and find it to fail retention standards, the PEB usually will not find the condition to be unfitting, and the service member will not be compensated for that condition. Thus, it is important that the MEB findings accurately capture the injured service member's medical condition(s) otherwise there will be a need to appeal the board's decision to get the injury rated. Just remember not to sign anything until you're satisfied.

It is imperative you exercise caution before accepting the findings of your Medical Board. Once you accept their findings and sign on the dotted line that you accept it, there is no turning back in 99.9% of cases. While there have been class action suits against the military where tens of thousands of veterans banded together with lawyers to fight these previous decisions in Federal Court, it will take a massive amount of resources to overturn these decisions later on, with no guarantees you will be successful, because once you accept the findings and percentages, they are FINAL UPON DISPOSITION!

If you're going to go through the medical board process, you will need to give it your every effort to make sure you receive the proper rating percentages. There are no shortcuts, you should not give even an inch, and you should not leave until it's done correctly because the outcome will impact you for the rest of your life.

THE VA CLAIMS PROCESS

With the understanding that the Medical Board process and the VA claims process are two similar but different systems, how does the VA process work and how can you make your claims go through efficiently? Making VA claims go through more efficiently starts with undertaking certain steps even before you walk into your service officer's office.

The very first thing you will want to do is collect copies of your military records which are often referred to as your C-File. These are free of charge. If you served strictly in the Guard/Reserves and never did any call ups your records may end up being at the Adjutant General's Office for the state you served in, so you would want to contact them directly. Older veterans (especially those who served in Vietnam & Korea) often encounter a particular challenge. On July 12, 1973 there was a major 3-alarm fire at the National Personnel Records Center (NPRC) in St. Louis which destroyed 16-18 million records. Many times, the NPRC will automatically inform veterans that the fire affected their records, even those that were obviously not affected. I say this because I know of cases where the veteran's service ended AFTER July 12, 1973 yet the veterans were informed their records were destroyed in the fire. The records that were truly destroyed were only as follows:

For Army members who were discharged between November 12, 1912 and January 1, 1960; 80% of these records were destroyed.

For Air Force members discharged between September 25, 1947 and January 1, 1964 with names that started alphabetically after the name Hubbard, James E; 75% of these records were destroyed.

Once you have sent off your SF-180 to have both your military medical and personnel records sent to you, you would have to collect any medical treatment records you have generated by going to the VA for treatment. If you have lived in multiple places over the years, and been seen at multiple VA Medical Centers, you should send out a VA Form 10-5345 to each of the VA Medical facilities you have been seen at because oftentimes those records end up staying there. Without making sure you have ALL your VA medical records; this can cause massive delays and the VA cannot make the correct decision without all of your medical evidence!!! A few years ago, I spoke with a woman whose husband was a Vietnam veteran. Over the years he had been seen at numerous VA facilities yet every time he tried to file a claim for his disabilities, they would immediately deny them because they had very little treatment records for him. His spouse had sent VA Form 10-5345 to each VA medical facility he had been seen at which was close to 20 facilities across the U.S. Within a month or so, she received numerous packages having records from various VA facilities which now showed extensive treatment for each of his injuries/illnesses over the course of the last 40 years! Thus, it is vital to collect both your military and VA medical records before you file your VA disability compensation claims.

Many veterans also have private doctors they consult with. You could talk to your private hospital/doctor about collecting your records. This often will be done in a very short amount of time, however banking on the VA usually leads to loss of valuable time as it will often take the VA several months if at all they even can get them! Certain laws have been promulgated to guide the activities of the VA; one of

these is the VA's 'Duty to Assist' laws. Under USC Title 38 in CFR 21.33 in Section 2, it is stated that: *'The VA will NOT pay any fees a custodian of records may charge to provide the records VA requests'* This means that the VA cannot pay for medical records that both private doctors' offices and outside hospitals typically charge for. Hence under this rule, the VA effectively ties their hands behind their back. When they tell you *'Don't worry about it, we will collect them for you'*, they can't. Let's look at the "VA's Duty to Assist Law" as a great idea with bad intentions. I say this because it can be extremely helpful at times to veterans that have only been seen by VA facilities and in service, but the second you are seen at an outside facility, it becomes impossible for the VA to get those records and this adds several months or longer to the amount of time it takes to settle your claims. Oftentimes it takes the veteran several months to figure this out. I advise you collect your records before you even file as a little bit of time and energy on your part can save a whole lot of waiting.

Remember in the military during wars, guns, tanks, airplanes and ships are used. You would as well need to get ready for battle because this is paperwork war – and in it you will use pens, paperclips, highlighter pens and post it notes. I often suggest getting the supplies that you will need. A proper inventory list is as follows: Paper, printer ink, post it notes, multiple color highlighter markers, binders with color tabs, a Medical Dictionary, a backpack or briefcase preferably rolling and 2 flash drives. Setting up your paperwork correctly is vital. All too often, the veteran just walks into their service officer or county benefits coordinator's office and they say *"I am here to file a claim"*. They then go ahead to dump it into the laps of their service officer and then years later they question why it's taking so long? By

managing the variables, claims can be settled both faster and with less errors, hence the need to set paperwork up correctly. When setting up your paperwork especially if you have multiple medical issues it really helps to make a key code first, using different colored highlighter markers to point out each injury/illness. For example, high Blood Pressure in pink, back injury in yellow, and PTSD in orange. When you go through your records, you should point out the important things pertaining to each injury in that color. Doing this can make going through a thousand pages of medical files into a much easier process for the VA rater seeing as they may only need to find 10-15 pages of documentation with only a few colored lines on each page. As an example, you could point out your blood pressure readings within your records in pink and then type up a spreadsheet which shows how your blood pressure has steadily increased from 90/75 to 120/85 to 150/100 to ultimately 195/120 over the course of time. Once you have highlighted your records to point out your injuries and their severity, I have found it to be extremely helpful to then use post it notes to place over the points that you are trying to make. A simple note that states *"Please look underneath to see my blood pressure reading is elevated"* or *"Notice the increased blood pressure reading"* can go a long way in easing up the process for the VA rater. If you use the post it notes, you should then fold the tabs around the edge of the sheet of paper so that they can see the edges of the post it notes for quick reference. With doing this, you help the VA quickly realize which pages to thumb through. While the rater has the option to read each page of your file, they will quickly see that you are pointing out your case.

Organization is key to getting it right the very first time when it comes to arranging your medical records. Obviously, you will want to arrange it by C-File then VA

records, and then private medical records, then have it color-coded by injury. I would suggest having a medical dictionary handy if you are not in the medical field. These are things that can be major assets when helping to organize or understand your evidence. Furthermore, if there are clerical errors within your claims you will want to work at fixing these things as well. One of such errors is being given an improper discharge characterization which you did not realize when you got out, in which case we would need to file for a Discharge Review Board (DRB).

Once your paperwork is arranged properly using the color-coded system, with a typewritten page explaining your arguments, it should tell a convincing story of how your injuries started in service, or at least how you were exposed to the cause of your current illnesses in service. Sometimes especially with presumptive illnesses you merely have to show you were stationed in say Vietnam or Iraq which is where you were exposed to chemicals or environments which are now causing your current presumptive illnesses. When it comes to specific injuries, you will want to point out incident reports, treatment records, and witness statements as well if you have them.

Years ago a friend of mine made a statement I always remember. He said: *"If 2 people are standing in front of a car and one says its blue and the other says its green, well, maybe it's blue or maybe its green. As where if 10 people are standing in front of a car and they all say that it's blue, buddy the car is blue!"* This is where lay evidence comes into play, because there are several forms of lay evidence that can help the VA to better understand your injuries from the perspective of firsthand accounts. The first thing to do is to sit down and write out what happened to them

if possible. You should do this because often times they end up telling their story over and over again which in many cases can continually re-trigger the emotions. By having a copy of it, they can just have the doctors refer back to the lay statement. Additionally, this can be your opportunity to speak directly to the VA rater, as it can be submitted into your claims. They should be 3-5 pages long and very direct while ensuring to be very descriptive. Another form of lay evidence are the witness statements which are often referred to as buddy letters from others you served alongside who have direct knowledge of your injuries and how they happened. Now think about this in civilian terms of a scene of a car wreck. When a bystander witnesses the wreck happening the police often have them write up a witness statement so they can recount how things happened. A good witness statement has direct knowledge whether it be they saw you using Agent Orange or they saw you fall down a flight of stairs. Other things that can be helpful were if they took you to medical that day, if they were the MP that took the report that night, or at minimum if they remember everything surrounding your injuries. Remember they have to have direct knowledge and they will need to notarize the statement so the VA will know they wrote it. If you are going to go through the process of having a witness statement written and notarized, it really makes sense to use people who were either there when you were injured or exposed to chemicals and you can prove were actually there, or have direct knowledge of your injuries such as a family member that sees your struggles on a daily basis and can contribute factual information.

There are two main reasons as to why you should get actively involved in filing your claims.

1. Nobody knows your injuries better than you.
2. It reduces the burden on your VSO/County Benefits Coordinator.

Now at first glance I am sure you are thinking "Number 2 is not my problem" However, look at it this way – If the most time you will have with them when you file is 30 minutes to an hour, it really is in your best interest to have everything in order when you walk in the door. If you want to spend 59 of those minutes explaining everything to them that you are right, then you can rightly say it is not your concern. If you have everything nice, neat, and in order you can explain your case in roughly 5 minutes with all of your evidence at their fingertips, which leaves 55 minutes for them to perfect your paperwork.

BURDEN OF PROOF

When it comes to dealing with the VA for service-connected injuries, there is the burden of proof, which is the responsibility to prove it indeed happened in the military or is as a result of your military service. There are two important terms when it comes to veterans' claims':

1. "AS LIKELY AS NOT, IT WAS CAUSED BY YOUR MILITARY SERVICE"
2. "WAS AS LEAST AS LIKELY AS NOT, APPROXIMATELY DUE TO OR THE RESULT OF THE VERIFIED PERSONAL TRAUMA".

Now, please allow me to dissect these statements in layman's terms. Many times when dealing with VA doctors or C&P examiners they will often state to the veteran *"There is no way that I can be absolutely sure that this injury/illness was caused by your military service"*. ABSOLUTELY SURE are the keywords here. With VA doctors keep in mind you are not asking they be 100% sure, after all they weren't there with you when the incident took place, so how could they possibly be 100% sure? What you are after is for the VA to agree that AS LIKELY AS NOT, the injury or condition was caused by your military service. As likely as not is a 50.01% to 49.99% statement, not a 100% statement. Even the terms "AS LEAST AS LIKELY AS NOT, APPROXIMATELY DUE TO ..." would suffice. The words approximately indicate nearness or similarity to something. That's a far cry from 100% absolute sureness they would have you believe is needed.

To further support this, I would use a case most people are familiar with – OJ Simpson. Back in 1995, OJ Simpson was acquitted of 2 counts of murder, yet in 1997 he was found guilty in a civil court and ordered to pay \$33.5 Million to the Brown and Goldman families. Which brings up a reasonable question: WHY? The basic

reasoning is there are different burdens of proof in criminal versus civil courts. In the criminal court, the burden of proof is "*beyond a reasonable doubt*" key word being REASONABLE, which means if a jury of reasonable people comes to a consensus you in fact did this, then yes you will be found guilty of the crime. Now in civil court cases the burden is different in that "*More likely than not*". That statement would imply that 50.01% out of a 100% would be "*more likely than not*" because the pendulum has tilted ever so lightly to the yes side. Starting to make sense?

Perhaps you wonder – What is the importance of knowing exactly where the burden of proof is at, and how would this help specifically? Knowing exactly where the line in the sand is at is always helpful because then it's much easier to see if you're being veered off course! Oftentimes when I speak with disabled veterans that are embattled with the VA, they often feel like it's a David vs. Goliath scenario. After all they are fighting this \$140.3 BILLION dollar a year entity and they are just the average citizen going up against what feels like a giant machine. But then, every time I have ever read the story of David vs. Goliath, David wins! So, I find it ironic so many veterans can always relate to the fact the little guy has to go up against the giant, but remember although the VA may seem impenetrable at times, they are beatable. For this reason, it is extremely important to know exactly how to fight, what the rules are to win and to not get distracted or deterred when they attempt to make you feel you can't win because the burden of proof is too high with your claims. Remember it only takes 50.01% to be "AS LEAST AS LIKELY AS NOT!"

VA C&P Exams – WHAT TO EXPECT

The next step in the claims process is the Compensation and Pension (C&P) exams. Each year thousands of veterans are assisted in preparing for their C&P exams which is really the fundamental part of your disability claims. These exams are never any fun for any veteran, they are your best opportunity to state your case in person to a VA employee whose decision has huge impact on the outcome of your claims. Although they do not decide your claims personally, their assessment has a direct impact on how the rating decision team decides 'yes' or 'no', and if yes, at what percentage.

Prepare for C&P exams the examiner is not your friend. The C&P examiners like to make simple, friendly conversation with veterans that can later be taken out of context to impact negatively on their claims. While I never endorse being hostile or angry towards the examiners, there is need to pay close attention to what you say to them, because it can and will be used against you. Seemingly innocuous questions like *'How are you doing?'*, *'Did you catch the football game last evening?'* or *'did you have a good ride here this morning?'* are all examples of questions that can easily be misinterpreted once you answer them. On answering these questions favorably, the doctor could notate that the veteran is doing well; enjoying sporting events, is in a good mood and is pleasant.

When it comes to newer veterans, I like to point out when you were on base you felt one way but when you were deployed to Iraq or Afghanistan and went outside the wire, you immediately put up your guard and were ready for anything. This should be the case with the C&P exam as well. You should not let your guard down.

The C&P exam starts from the very moment you drive into the parking lot of the exam center. In Orlando, the VA's C&P exam center when you go inside there is a check in area and behind the secretary is a door on the left and one on the right. Once the examiner comes to get you, they take you through the door and down the hall. Now, I would like to point out that the hallway is approximately 25 yards long but then once you turn down the next hallway it's another 25 yards, then another turn and another 25 yards long which creates a giant horseshoe. During a conversation with a friend of mine, he told me his very first exam, the examiner had him walk to the end of the first hallway, and then he told him the exam room was just around the next turn. By the time he got about halfway down the next hallway; he could barely take another step and was completely out of breath leaning up against the wall. He looked back at him and said it's just around the next turn and they were almost there! He informed the examiner he needed to get a wheelchair; he protested and asked him to just continue. My friend informed the examiner they could have the exam in the hallway instead, and he sat down right there on the floor. He immediately went and got a wheelchair instead, once he finally wheeled him into the exam room, my friend realized he took him the longest route possible so he could document he could walk 75 yards. The exam room was the very first room next to the outer door. He took him the longest way instead of just walking through the other door to the very first exam room!

When it comes to C&P exams, the devil is often within the details. A great example of this would be how you dress for the examinations. There are two schools of thought when it comes to how you dress. One is to dress up for the occasion (which is not advisable), the other is to wear clothes that look pulled out of a dumpster

(which I don't buy into either) you should dress normal, but down a little. There is no reason to iron your clothes because you are not there to impress anyone. Wear basic clothes – nothing flashy, neutral colors, and no jewelry. Shower the night before. If you normally shave every 3 days, don't shave on account of the exam, but if you are normally clean shaven, this is not to say you should grow a long beard on account of this exam either. Do not wear cologne or perfume, but also do not go in smelling like booze or cigarettes either. Smells are important, because they help to set the tone.

Many times, during C&P exams, examiners utilize tricks to get a measured response from the veteran. Examiners have dropped pens on the floor trying to measure if you would flinch to bend over because of a bad back. I have heard examiners went so far as to document *"The veteran leaned forward, and had I not been here they would have as likely as not just picked it up off the floor."* Another example of these tricks would be when during Psychological appointments the examiners cut you off several times when you are answering questions just to try and get a reaction out of you, to see if you have anger issues associated with your PTSD or not.

When you prepare for C&P exams, *'do not lie but do not tell the truth either. What you want is god's honest truth. You know the truth that hurts to talk about. That painful truth you try to tuck away so nobody sees. That truth which keeps you up at night, and that truth you often hide from the outside world because you're worried of how others would perceive you if they knew exactly what's going on inside of you'.*

There is a lot of gamesmanship involved when it comes to C&P exams on the VA's part. For this reason, when you prepare for C&P exams you should know how to take away the VA's advantage. Because the VA gets to decide the time and place of your examination and the doctors you get to see. This alone provides them with a serious advantage because you don't get to pick exactly when and where you're going to be at your absolute worst, both physically and mentally. This is where coaching comes into play.

Let's assume you have a bad foot. Well someone who has had this issue knows the conditions that make it far worse than others. While at 9:00 AM your feet are not in very much pain, but by 5-6 PM they are shot, swollen and in pain and can barely stand. When the VA schedules you for a C&P exam at 9:00 AM, it can really help to factor in that in 8-9 hours ahead of time, your leg would be in that painful swollen condition. You could factor in that if you woke up at say midnight the night before— 8-9 hours before the scheduled exam and then had your normal day, by 9:00 AM your feet will be exactly where they normally would have been come 5-6 PM.

I want to shed light on Hearing tests which are carried out for Tinnitus and bilateral hearing loss. These are done in a quiet room (which is not indicative of the outside noise), and then the person administering the exam will tell you to push the button/raise your hand anytime that you *think* you hear a noise. Now, allow me to point out the word "THINK". Veterans are competitive by nature and so we always want to win. However, in this case, I simply ask you do it when you are sure you heard the noise, not when you think you heard it.

When you push the button without hearing a sound, you're giving a false reading, trying to win but indirectly failing the test. The second version of the VA's hearing

test uses words such as *'hammburrgaaa'* and *'basseballlll'*. I intentionally misspelled these words because this is what they sound like when you have hearing problems during the test. Now, obviously these are words you learned in 2nd or 3rd grade and they are extremely easy, which is why they are the ones they use during the hearing exam. In this test, the examiner will tell you to say whatever word you hear once the test starts, and being competitive your critical thinking skills will help you to formulate what words are being said, based largely on the number of syllables in the word, which letter you hear first to start the word, and common sense which helps to string it together. This implies if they used the words "High Fructose" or "Riboflavin" the majority of veterans would get those words wrong. If you're not sure, do not resort to guessing.

Sometimes examiners bring up topics that are not related to your injury or why you are being examined in the first place. This happened during one of my exams. During a C&P appointment the examiner asked me a very open ended question which had no bearing on why I was there. She then began asking dozens of questions strictly on that single topic and used up the entire appointment talking about this. One of the major keys to being successful in C&P exams is to not let the examiner sidetrack you. When you're seeking a service connection from the VA, it means you're seeking compensation for your injuries that are connected to your military service. Oftentimes however, they will try to talk about your childhood or things that have nothing to do with why you are there. In this case, it helps to retrain their line of questioning back to what caused your injuries and how it relates to your military service. For instance, the examiner asks, *'What was your childhood like?'* Your reply should be along the lines of *'My childhood was fine, but that's not*

my problem. My problem is the military had me kill "X" number of people, and I got blown up 5 times' When they ask you about any old football injuries? 'No, I never played football but I did hurt my back once when I fell 20 feet from a helicopter and landed on my back, then had to get seen in medical on June 23, 2005!'

There are resources that enable you prepare in advance for C&P exams. One of these is the Disability Benefits Questionnaire's (DBQ's). DBQs are forms doctors fill out to evaluate your injuries and the severity in which they impact you. These forms can be very useful when it comes to preparing for C&P exams because they provide you with somewhat of a blueprint of the types of questions you are likely to be asked during the C&P examination for that injury. Another beneficial tool is a personal journal. Personally, I keep a journal with notes in it I often refer to. Having a quick reference guide, I can refer back to has been extremely helpful over the years to remind me of specific dates, doctors' names, surgeries, hospitalizations and other bits of information. This way, when I am preparing for exams, I can go back over the important highlights ahead of time, to remind myself of everything that is relevant to that particular examination's injuries.

If you do not keep journals, I suggest going back through all your military and VA treatment records prior to your C&P appointments. You could as well have a family member in the C&P examination room with you as a second set of eyes and ears to help you remember everything in detail. Your case is better stated when you know the exact incident, treatment, surgery, and dates that are relevant to your claims. A C&P examiner insinuated a friend of mine they were lying, until they pulled out the exact medical records that proved beyond all doubts what they said was the

absolute truth! They knew exactly where to look because they had looked at those treatment records and knew exactly where they were inside of their briefcase. Pulling out the exact record they needed so quickly completely caught the examiner off guard.

When you leave your exams, it is vital you write everything down in a journal so you can remember everything in as much detail as possible, for future reference. I have personally experienced occasions, although not necessarily in C&P exams, where I specifically had said one thing, while another was documented. For example, on being asked what my pain level was on a scale of 1-10 with 1 being no pain at all and 10 being excruciating pain, I specifically said it was an (8), but the nurse documented it as (2). Later when I requested the records and went back and challenged it the same day after pulling out my journal with every question, answers, staff members' name, exact times that I was seen, a brief description of what each staff member looked like, and which witness I had present, they quickly changed it in their records.

During your exams there is always that moment just before your exam is finished where there is an awkward silence. I like to call that moment "The moment of Truth." It typically comes when the examiner looks at their computer and begins to type or they are getting ready to fill out some paperwork. I like to use that moment to ask a simple question: *"How long do I have to wait to file my VA Form 10-5345 to request copies of your examination notes?"* I like to ask this because it lets them know point blank you will be reading exactly what they write down. It also implies

you're going to be watching carefully, so any mistakes which are made will be challenged.

TOXIC EXPOSURE ISSUES

When a service member prepares for deployment overseas, there is an understanding they are going to a hostile territory, to engage a hostile enemy. They have no illusions as to if it will be dangerous or not and they continually prepare for battle against ambushes, fire fights, IED's, RPG's, landmines amongst others. These are all things that can cause a service member to become severely injured or even worse in a matter of seconds. When service members go off to war, they are worried about the obvious threats such as these, but they do not put any thought into all of the environmental hazards they could encounter along the way during their deployments.

Veterans that served in certain places, during certain time periods were exposed to certain environmental hazards such as Agent Orange, radiation, and burn pits. These toxic environments have numerous long-term health effects on many of the veterans that were exposed to these types of environments while serving. This brings me to the genre of service-connected illnesses that are referred to as presumptive illnesses. A "Presumptive Illness" is an illness the VA concedes was caused by your military service even if the illnesses symptoms begin after your military service has ended. When an illness is added to the presumptive illness list on the federal register, it means that such illness has been medically proven to be caused and associated to exposure to whichever hazard list it has been added to. Having an illness added to the presumptive list can take years if not decades to happen. This addition requires the assistance of Congress who approves the illness and then directs the Secretary of the VA to add the illness to the Federal Register which effectively changes the law on the day it's added to the register. From the

point of the addition forward, veterans can file for that illness with many of the barriers removed.

The fact a presumptive illness is listed on the federal register only wins half of the fight for a veteran. This is because, when it comes to disability claims, there are two basic parts.

- a) Proof a service connection exists
- b) Severity, which is the extent to which the injury/illness keeps you from working.

It is not just enough to prove a service connection exists because that can easily get a veteran 0% rating. There is a need to prove the illness/injury impacts your daily life in an adverse way, reduces your work efficiency and hinders your ability to become and stay gainfully employed. Presumptive illnesses are NOT the only way to get a claim approved through the VA. It just simplifies things in instances when veterans have certain illnesses that are on the presumptive illness lists.

- **AGENT ORANGE**

Over the years many veterans have been lost because of Agent Orange. Most were young men and women when they joined the military just out of high school. Many volunteered while others were drafted into service. These were the lucky ones that made it home after surviving the war, and many of them went to work and started families. These became our neighbors our best friends and in many cases our parents. They have been our aunts and uncles for our entire lives, and each day

many of them find themselves being added to "The Wall" as they pass away due to Agent Orange Exposure.

There are lists of presumptive illnesses for exposure to Agent Orange and also the places it was used or stored. This list continually grows as ships and locations are added to this list fairly frequently. Now, in a case where a veteran files a claim for an Agent Orange Presumptive Illness, assuming both the illness are on the list, and where they served matches up with the list as well, then a service connection will happen. This only establishes the service connection though and it still leaves the question of severity which must now be answered. This buttresses the fact that it's not just enough to establish a service connection but you also have to be able to show it hinders your ability to maintain gainful employment as well.

There are instances where groups of veterans are left off the Presumptive Illness Exposure list. This happens from time to time, such as with ships that served off of the coast of Vietnam, those that served in Okinawa, Panama, etc. The only way these veterans can get their exposures recognized is by getting it added to the Federal Register which will effectively change the law to recognize their exposures. Otherwise, they would remain in an uphill battle in trying to prove they were exposed.

- **VACCINATIONS**

Vaccinations for Yellow Fever, Typhoid, Cholera, Meningitis, Hepatitis B, Whooping Cough, Tetanus and Polio are standard vaccinations for service members going overseas to the Gulf – Afghanistan and Iraq. In many cases those vaccinations are

given to service members in anticipation for deployment. You may never go down range and suffer illness in having received them. Many service members receive Anthrax and Botulinum toxoid vaccines as well. I have known many veterans that have had long-term illnesses that are consequence of these vaccinations. While the VA is usually quick to point out there is NO definitive link between vaccinations and many different long-term illnesses, I would also point out there is a reason they call them "Medically Unexplained Illnesses" although science may not have made the medical link yet, it doesn't mean the medical illnesses many veterans have contracted from them are any less real. While vaccinations are the first major long-term health risks service members encounter before deployments to Afghanistan and Iraq, they are also usually sent into the field for intensive training that simulates the extreme conditions they will encounter overseas. I have known and served with many service members who were injured and extremely ill from these extreme conditions. While some had frost bite & hypothermia from the extreme cold at Fort Dix in the winter, others paralyzed, some with broken arms or legs from injuries that happened during their training in the field. These are just examples of some of the things that can happen while preparing for deployments.

- **OIL WELL FIRES**

When the first Gulf War began, the Iraqi army set oil fields on fire in hopes of obstructing our attack abilities from both land and by sky. This created giant clouds of toxic soot, black rain, and numerous respiratory issues that led to many veterans having respiratory issues and lung cancer at very young ages. Here in the United States, we have the Environmental Protection Agency, the EPA which regulates how materials are disposed of, recycled, and destroyed. In the United States we

recycle used tires into fuel, rubber and even the chips used on playgrounds. This is done to abate the long-term environmental issues that will be caused if tires are not properly disposed of, and the health hazards created by just throwing them into landfills or burning them. Over in Iraq and Afghanistan, there is no such environmental regulatory system, and many things such as tire burning (which here in the US are illegal because of the health and environmental hazards they pose) went almost completely unchecked throughout the entire war! Have you ever wondered why we have environmental laws in place? Now, how many pounds of waste do you think were burned per day in the Burn Pits at Joint Base Jalad in Iraq in 2007? Paint, chemicals, rubber, wood, Styrofoam, plastics, discarded food, lubricant products, petroleum, metal/aluminum cans, munitions and other unexploded ordnance, medical and human waste are all things that have been

Do you know that: In 2007, Joint Base Jalad burned an average of 400,000 pounds of waste per day in the burn pits? That's 146,000,000 pounds of human, medical, chemical, tire, ordnance, plastics and many other types of waste

burning in burn pits for the last decade in both Iraq and Afghanistan. In June of 2003 a giant sulfur mining plant near Mosul in Iraq caught fire. The sulfur fire took close to a month to contain and thousands of

service members especially from the 101st Airborne Division that served in the 52nd, 326 and the 887 Engineer Battalions fought the blazing sulfur fires. Since that time many of these veterans have experienced several major respiratory problems such as constrictive bronchiolitis and reactive airway dysfunction syndrome.

Over 10 years ago the war began with tanks, strikers, and billions of pounds of

heavy equipment rolling across the desert which we often call the sandbox. Even though calling it the sandbox makes it sound like a playground and seems to lessen the magnitude of events, it is quite ironic the sand plays an active role in causing many of these illnesses once veterans get home. A grain of sand on its own isn't deadly, but when it gets run over by heavy equipment all day long for a decade it becomes finer and finer over time. Then we have the burn pits which presents its own set of issues from burning both medical and human wastes, plastics, rubber, Styrofoam, lead, copper, and anything else you can imagine. Fire makes smoke, and smoke settles back on top of that sand which gets run over again by another tank, gets blown up with an IED which makes even smaller particles with even more toxic metals inside of each particle of dust. Then the sand storms pick it all up, and eventually it goes into the lungs of our service members. X-Rays and traditional testing doesn't show it, and only through biopsies can it be seen. What, you ask? Constrictive Bronchiolitis!

- **PESTICIDES**

Deployed service members are commonly exposed to many pesticides. One of these is diethyl toluamide ($C_{12}H_{17}NO$), commonly known as DEET. DEET is the active ingredient in "Deep Woods Off" which has 25% pure DEET in it and is used for keeping insects away. Anything over 30% pure DEET can have long-term side effects and for this reason it was not for sale in stores for many years here in the US and you had to purchase it online to get 99% pure DEET if you were an avid hunter or fisherman. Years ago, selling DEET became legal and it is possible to get 99% pure DEET which is not to be placed on the skin but instead on clothes. Which makes you wonder how many service members knew this when they sprayed it all over

themselves.

Lindane is another pesticide the military uses to treat deployed service members' uniforms to prevent lice. Although highly effective, it is now banned by the EPA because of its toxicity, ability to cause seizures, propensity to weaken the immune system, damage the nervous system, and possibly cause cancer and disrupt the hormone systems as well. Service members that served in the Gulf were also potentially exposed to Pyrethroid (Ermethrin) which primarily kills fleas and Organophosphorus which is primarily a pesticide but if used in high doses can have lasting medical effects through poisoning of the person spraying it.

- **DEPLETED URANIUM**

For more than twenty years, the military has widely used depleted uranium as both armor for tanks and for depleted uranium rounds that penetrate enemy vehicles on the battle field. This presents its own problems because once a depleted uranium round penetrates a vehicle, small pieces of the depleted uranium can become scattered and become embedded in the service member.

- **INFECTIOUS DISEASES**

While on deployments, Iraq and Afghanistan veterans were also exposed to infectious diseases and some came home with them. These diseases include Malaria, Brucellosis, *Campylobacter jejuni*, *Coxiella burnetti* (Q fever), Non-typhoid Salmonella, Shigella, and West Nile Virus. Each of these diseases has to be diagnosed within 1 year of military separation. Mycobacterium, Tuberculosis, and

Visceral Leishmaniasis are also infectious diseases veterans were exposed to but they do not have to be diagnosed within 1 year of separation.

Apart from the common exposures veterans who served in Iraq & Afghanistan faced while on deployments, there are also issues a smaller number of service members faced while serving in each of these places. One of these issues is cold injuries like frostbite, hypothermia and immersion foot (trench foot) which are all caused by prolonged exposure to freezing temperatures. This often applies to those deployed to Afghanistan, received training or were stationed in places like Alaska or Fort Dix in the wintertime. Long-term cold injuries can cause numerous problems such as:

- a. Skin cancer in the frostbite scars.
- b. Vascular injuries with Raynaud's phenomenon that has symptoms such as arms and legs becoming painful and white or discolored when they become cold.
- c. Changes in skin, muscles, ligaments, bones and nails.
- d. Neurological injuries with symptoms such as bouts of pain in arms and legs, hot and cold tingling sensations, and constant numbness.

Years ago, I was made aware of some serious environmental hazards that exist at Bagram Air Base in Afghanistan. Bagram was originally built back in 1976 by the Soviet Union's military during their war with Afghanistan. Back then it was common place to use things such as Asbestos, and to improperly dispose of hazardous materials which at times were just sealed into rooms within the facilities that are now occupied by service members and which at times can cause exposure to these

hazardous materials. Many times, in speaking with post deployed veterans, they tell me about the strange illnesses/symptoms they have had since returning from the war. After they list 2-3 illnesses, I often stop them and begin reading the list of illnesses that are presumptive, meaning that the VA presumes are linked to service in Iraq & Afghanistan. A prominent condition affecting Gulf War Veterans is a cluster of medically unexplained chronic symptoms that can include fatigue, headaches, joint pain, indigestion, insomnia, dizziness, respiratory disorders, and memory problems. The VA prefers not to use the term “Gulf War Syndrome” when referring to medically unexplained symptoms reported by Gulf War Veterans because the symptoms vary widely and therefore, do not meet the definition of a syndrome. A syndrome is a group of symptoms that usually occur together and characterize a certain disease or abnormal condition. For this reason, the VA uses the terms “medically unexplained chronic multi-symptom illnesses” and “undiagnosed illnesses” instead of “Gulf War Syndrome.”

VA presumes certain chronic, unexplained symptoms existing for 6 months or more are related to Gulf War service without regard to cause. These "presumptive" illnesses must have appeared during active duty in the Southwest Asia theater of military operations or by December 31, 2016 and be at least 10 percent disabling. Gulf War Veterans who meet the criteria below do not need to prove a connection between their military service and illnesses in order to receive VA disability compensation. These illnesses include:

- Chronic Fatigue Syndrome, a condition of long-term and severe fatigue that is not relieved by rest and is not directly caused by other conditions.

- Fibromyalgia, a condition characterized by widespread muscle pain. Other symptoms may include insomnia, morning stiffness, headache, and memory problems.
- Functional gastrointestinal disorders, a group of conditions marked by chronic or recurrent symptoms related to any part of the gastrointestinal tract. Functional disorder refers to an abnormal function of an organ, without a structural alteration in the tissues. Examples include irritable bowel syndrome (IBS), functional dyspepsia, and functional abdominal pain syndrome.
- Undiagnosed illnesses with symptoms that may include but are not limited to: abnormal weight loss, fatigue, cardiovascular disease, muscle and joint pain, headache, menstrual disorders, neurological and psychological problems, skin conditions, respiratory disorders, and sleep disturbances.

Sometimes with veterans that have mysterious illnesses, one of the first questions to ask is to list all the names of every military base they were ever at while in service. This is because many bases had different chemicals that were later found in the soil. When we have strange illnesses as veterans, sometimes we merely need to look at where we have been in the past to figure out how we became this way.

A friend of mine went to fire school some ages ago at the old Treasure Island Naval Base in San Francisco, CA. Years ago a veteran told me of the numerous chemicals that were in the soil and the US Navy spent millions to clean it up. There was silver in the ground underneath where the Dental Offices were, and there were PCB's in the ground which can cause a wide array of cancers and non-Hodgkin Lymphoma. Many of the PCB contamination in the soil were directly underneath on-base

housing! This veteran shared hundreds of pages of documentation that proved that this happened at Treasure Island.

There have been "Light bulb moments" with veterans, while talking together they realized that *"As likely as not their injuries were caused by their military service"* (to use a VA term). This often happens when a veteran states how they feel and then go down the list of PTSD symptoms, or if they say they have 1 or 2 illnesses that I know are presumptive to those who served within that certain area, then you begin going down the list and after reading it they mention that they had 4 or 5 illnesses that had just been listed. No matter where you served, you really need to look at all the possible illnesses that are associated with serving there and if you become ill, do a few Google searches using the illness name along with words such as Army, Navy, Vietnam, Iraq, Fort Lewis, and other keywords.

Many veterans end up getting into a game of semantics with the VA over their injuries. A common example is Ischemic heart disease. Most times, many medical professionals refrain from using the words "Ischemic Heart Disease" but use such terms as myocardial ischemia, hardening or narrowing of the arteries, coronary artery disease, atherosclerosis of the coronary arteries, angina, myocardial infarction, unstable angina, acute coronary syndrome, etc. The truth is when the words Ischemic Heart Disease is used, most veterans will automatically realize that it's associated with Agent Orange exposure but if it is called by another name then most veterans will not make the connection. This is why you should use a simple trick with veterans who think they could have been exposed to Agent Orange. If they mention they served in a place that used Agent Orange, if they mention a heart

problem by any name, do a Google search of the words they used plus the words Agent Orange. Often you find that whichever name the doctors gave them for the heart problem is usually connected to Ischemic Heart Disease which is presumptive for Agent Orange exposure. The same holds true for many other illnesses. Therefore, you might have to demand clarification from the doctors or make complaints to get the disease name changed so that the claims can go forward. At other times, veterans have had to submit a private doctor's statement that 'A' according to VA doctors is in fact B in order for their claims to go forward.

The words used to describe a disease or injuries are very important. The rating decision team comprises of administrative officers who are simply looking for the buzz words and are not in the medical profession, consequently they could fail to make the connections. So often, veterans that have an illness the VA recognizes but unless they know it's presumptive, the VA can easily get away with denying a service connection exists! It is vital to find the nexus between the illness a veteran has and the presumptive illnesses that the VA recognizes.

DECIDING TO APPEAL

When it comes to appeals, you can either:

- a) File a NOD or Notice of Disagreement.
- b) File for a De Novo Review with a Decision Review Officer (DRO) to take another look at your claims
- c) File a formal appeal to the Board of Veterans Appeals (BVA)

Before deciding which type of appeal to take, it really helps to try and figure out why your claims were denied in the first place because it often dictates which route to take. As part of the Veterans Claims Act of 2000, otherwise known as the VA's "Duty to Assist" law, the VA must now say in plain English not only why your claim was denied but also why your claims received the ratings percentage that you received and what constitutes a higher rating as well. Many times, it's extremely obvious that an error has occurred, what the error was, and what was completely overlooked in the evidence. In such cases, a Notice of Disagreement (NOD) is usually the fastest way to go. Of the three options, this is essentially the quickest, especially if it's a straightforward error that has occurred. When filing a Notice of Disagreement with the VA, it really helps to read over the denial letter with a fine-toothed comb first before deciding on taking that route in the first place. All an NOD does is that it gets the VA to go back over your claim again, with no new information, to make sure they made the correct decision. In many instances these are not always helpful because if the VA said "No" in the first place and then you use an NOD to ask them again without anything new or pertinent, then chances are it will be "No" again! Now on the other hand if for example, in the evidence section

of your denial letter, you notice they didn't list important information which could be helpful to your claims, or they omitted or overlooked evidence, then by filing an NOD pointing out what was overlooked it could get them to overturn their previous decision by simply using an NOD, which takes the least amount of time. Notices of Disagreement (NOD's) are invaluable especially when it is a "Clear Unmistakable Error" (CUE) – an error that is obvious and easy to point out to the employees at the regional office that has happened within the veteran's claim and brought about the denial. From the time that the VA sends you a denial letter for your disability compensation claims, you have 1 year to file a Notice of Disagreement (NOD). If that time period lapses then you would have to file a brand-new claim at that point, but most NOD's are typically filed within the first 30 days or so. It is possible for years to lapse before you file a brand-new claim.

Before filing a NOD, you should troubleshoot where the error happened within your claims to begin with. By reading your denial letter carefully the answer usually will present itself. If you notice errors or areas that were overlooked in your claims, you should note them and then type a letter that begins with:

I, (state your name, DOB, Social) do hereby submit this letter as my Notice of Disagreement based on A, B, C; with A, B, C being your reasons for disagreeing with the decision that has been made in your claims. If you have multiple injuries, you may wish to appeal some but not all the decisions the Regional Office made. In such case, you will need to state which decisions you're challenging and which ones you're not. Once completed, you should sign and date the NOD, and submit it through your VSO/County Benefits Coordinator and have them look it over, adjust

and to create a chain of custody for the NOD. When filing a Notice of Disagreement (NOD) with the Regional Office, there is need to be aware of what I call the “SOC hole.” The SOC hole is a situation where you get chased down a rabbit hole going back and forth with the Regional Office. You file NOD’s and they respond with a “Statement of the Case” (SOC), then you end up responding with another NOD, only to get another SOC again. This can turn into a ping pong game going back and forth with the Regional Office without yielding any results, only wasting time unnecessarily. For this reason, going for the appeal option might sometimes be a better idea.

The second option you have is to file for what is called a “De Novo Review” with a Decision Review Officer more commonly known as a (DRO). “De Novo” is the Latin expression for “From the beginning or anew” which to the VA means they will take another look at your claims which were denied with a fresh set of eyes using a Decision Review Officer that typically has more experience than the rater who denied your claims originally. Although this option does take longer than a NOD, it oftentimes can be a far more effective way of getting your decision overturned without having to go to the BVA which takes much longer.

While the Decision Review Officer (DRO) does have all your records in front of them, it really helps to request a De Novo hearing as part of the De Novo Review process. This allows you the opportunity to speak directly with the DRO at the Regional Office. This can oftentimes allow you the opportunity to clear up any questions the DRO may have and it can give you the opportunity to state your case as well to the person who will be making a decision on your claims. For instance, if

I was injured, seen and treated in medical for my condition, then after an extended hospital stay filled with physical therapy and under the care of Neurologist, I was medically boarded and eventually medically discharged for the same condition. Since that I have been seen 87 times over the course of 21 years and it has progressively worsened since it began which is well documented. Having a De Novo hearing stimulates you to study your records well and give you the opportunity to tell the Decision Review Officer how your condition impacts your daily life. You could bring up doctors' notes, and if you have any secondary conditions that stem from the original injury you can stress those as well. In other words, requesting a De Novo hearing allows you to point everything out to the DRO. Additionally, this can cause the DRO to order additional testing as well just as I have seen happen before.

When it comes to De Novo Review hearings with the DRO, it's all about preparation. Prepare for any type of hearing, whether it is with a VA or Social Security judge to do mock hearings in your head over and over again, and eventually with a loved one. I would try to find easier ways to explain the situation, and to put it into terms that anyone could understand. Your medical conditions may be rare and complex; your illnesses may not be common knowledge. Oftentimes, it takes having to sit down with the Decision Review Officer during the De Novo Review hearing to explain everything and connect the dots so they can understand how all of your illnesses and injuries are interconnected while at the same time service-connected. After undergoing a De Novo Review hearing, you would have to wait to hear from the Decision Review Officer (DRO). The DRO could request additional Compensation & Pension exams when your medically documented issues are in

conflict. Over the years I have seen numerous veterans request and receive additional C&P exams through the DRO to counteract previous examination results. If the Decision Review Officer (DRO) requests additional Compensation & Pension Exams (C&P) after your De Novo Review hearing, it can be a great opportunity to get back into the C&P examiner's office if you had a really bad C&P exam initially which contributed to the denial of your claims in the first place. Oftentimes when veterans first begin to file claims, they make numerous mistakes and errors. While I do understand that the raters and DRO's make the actual decisions on your claims, they weigh their decisions heavily on what the C&P examiners have said regarding your injuries. Having an additional round of C&P exams can often be helpful, especially when you have properly prepared for them seeing as you now know what to expect and you are in better position to avoid the mistakes earlier made.

On completion of the De Novo Review hearing and any possible C&P exams, it becomes a waiting game to see if you will either win or if you will receive another Supplemental Statement of the Case (SSOC). A Supplemental Statement of the Case (SSOC) as a response to your De Novo Review and will tell you why the VA Regional Office is continuing to deny your claims. If you receive an SSOC then it starts to become apparent that the VA Regional Office is unlikely to change their decision and your appeals are more than likely going to head to the Board of Veterans Appeal (BVA) in Washington DC.

The main reason why it can be beneficial to take your appeal to the Board of Veterans Appeals (BVA) is that it takes your appeal out of the hands of the Regional Office which to this point was decided by VA Raters and Decision Review Officers

who are administrative workers and it places your appeal in the hands of lawyers and judges who look at the law and how your conditions relate with the applicable laws. In 2012, 96.1% of all appeals to the Board of Veterans Appeals were for VA disability compensation. Each year on average over 95% of all appeals, are for compensation for service-connected medical conditions. The other 3.9% covers other areas such as Burial Benefits, Education Benefits, Insurance, Home Loan Guaranty Program, Medical, Pension, VR&E, BVA Original Jurisdiction, NCA Burial Benefits amongst others. The reason why 96.1% of appeals are over VA disability compensation is because most of the other veterans' benefits issues are cut and dried, predictable.

There are two major factors that it takes to win a disability compensation claim.

1) You must establish that a service connection exists, which at times can be very difficult for numerous reasons such as:

- a. The NPRC fire of 1973.
- b. Records were lost.
- c. The injury wasn't reported in service.
- d. The government hasn't accepted that your illness was caused by service.
- e. VA employees improperly document your injuries and their severity

2) You have to prove severity.

It's a difficult thing to try and put a number on any injury or illness. After all, you get to live with this injury each and every day. Therefore, when the VA puts a number on it, you might feel slighted because it's hard to properly reflect what you go through each day. Many times, veterans end up appealing because they feel that the percentage is too low.

To file an appeal to the Board of Veterans Appeals (BVA), you have to use a “VA Form 9”. When appealing to the BVA, you have the opportunity to have a hearing which can be vital in having your voice heard. While traveling to the BVA in Washington DC is not in the cards for most veterans because of travel costs, you can request a video conference hearing which is the easiest way to have the hearing or you can ask for a travel board hearing in which the BVA judge travels to the Regional Office which often takes considerably longer because they only travel to the Regional Offices every so often due to the costs the VA incurs.

The Board of Veterans Appeals (BVA) was established in 1933 as a way to take a veteran appeal out of the hands of the Regional Office and their administrators and

Question: How long do you think was the national average time in 2012 that it took to receive a “Statement of the Case” (SOC) from the time that you filed a “Notice of Disagreement” NOD?

put it into the hands of lawyers instead. While I do like the concept of doing this because many times cases need to be handled by lawyers that interpret how a veteran’s situation applies to the law, the

bad part is how long it takes.

Answer: The national average in 2012 for the amount of time that it took from the time that a veteran files an NOD to the time they receive a Statement of the Case was **270 days** on average. While this number may be a bit skewed because in places such as California, Texas and Florida it takes far longer, the important thing is the number because its 270 days which, is far lower than taking it to the BVA. On other hand, in 2012 the average wait time from when you filed a VA Form 9 to the time you received a decision was 1,040 days. That’s just shy of 3 years! This reinforces the fact it takes considerably longer to have an appeal heard at the Board of

Veterans Appeals (BVA). Even after filing a VA Form 9, it is still possible for it to get REMANDED back to the Regional Office for various reasons such as needing more work, more exams, incorrect paperwork, etc.

This remand adds an extra 445 days on the average on the appeal time, raising appeal time to about 1,485 days on average from the time you filed your VA Form 9 until the time the BVA makes a decision on your appeals – over 4 years!

Question: What percentage of appeals to the Board of Veterans Appeals (BVA) do you think get REMANDED back to the Regional Office each year?

Answer: Of all appeals in 2012, **45.8%** were remanded back to the VA Regional Offices for more work. 45.8% of appeals have an extra 445 days added onto their appeal time because they are done incorrectly. Therefore, the BVA refuses to hear and settle the case! When you factor in that there are only 4 possible options which are Approved/Denied/Remanded/Other, it means that close to half of all decisions end up just being to remand it back to the Regional Office for more work!

While some veterans are of the opinion that an attorney should be hired for their appeals, here is statistical data: In 2012, attorneys won 30.1% of appeals, a bit higher than the national average which was only 28.4%. Also, in 2012 there were 3 Veteran Service Organizations that had a higher winning percentage with each being free of charge to use. These would be MOPH at 34.4%, AMVETS at 32% and VFW at 30.7%. When it comes to being denied, attorneys did have the lowest percentage denied at 15.7% versus the national average which is 22.5%. Nonetheless, attorneys and agents have another category they win in the percentage battle as well. It's called REMANDED, in which attorneys have 51.6% of appeals remanded and agents have 52.8% of appeals remanded back to the

Regional Office which adds another 445 days onto your appeals time. The national average for remands is only 45.8% versus attorneys and agents' 51.6% and 52.8% respectively. Keep in mind attorneys and agents typically win a percentage of your back-pay so the longer the appeal takes, the more they stand to make. Criminal, civil, family, real estate, Social Security, estate planning, corporate, personal injury, automobile accident, insurance, constitutional, and the list goes on for the different types of lawyers there are. While there are literally hundreds of types of attorneys who practice in different areas of the law, most in fact do not specialize in VA appeals! Having a friend of the family take on your case because he handled grandpa's estate when he passed away, or your buddy's divorce attorney because *"he did a great job"* rarely ever gets it done! An attorney has to specialize in that area of law before you can entrust your claims appeal to him. After all, I may really like my primary doctor but I would never let him cut me open because he is not my surgeon. A list of accredited attorneys and VSO's is provided in the appendix.

In 2012 the average processing time from the time that you file a NOD to the time that you receive a SOC was 270 days through the Regional Office (RO). The average time from the time that the Regional Office sends the SOC to the time they receive the VA Form 9 was 40 days. The time from when they receive the VA Form 9 until the BVA's certification of appeal to the BVA was 692 days on the average. The time between when the appeal was physically received and docketed at the BVA to disposition – meaning cycle time when they work on and decide your appeal) was 251 days. The average remand time factor if more work is needed at the VA Regional Office was 445 days. Perhaps you are now wondering why it takes so long for an appeal to be heard by the Board of Veterans Appeals (BVA). In 2012, the BVA

had 510 full time employees, 25 employees less than in 2011 because of federal budget cuts. This is broken down into a Chairman, Vice Chairman, Principle Deputy Vice Chairman, 64 Veterans Law Judges (including 12 Veterans Law Judge managers), 12 Senior Counsels, a Medical Advisor, and more than 300 staff counsel, and other administrative and clerical staff. The Board of Veterans Appeals (BVA) is broken down into 4 decision teams, with each team consisting of a Deputy Vice Chairman, 2 Chief Veterans Law Judges, 13 Veterans Law Judges, 2 Senior Counsel, and approximately 75 staff counsel and administrative personnel. The staff counsel is used to review the record on appeal, to research the applicable laws, and then they prepare the comprehensive draft decisions (or the remand orders) for consideration by the Veterans Law Judge who then reviews the draft and issues either the final decision or the appropriate preliminary order to remand the appeal for further development back to the Regional Office.

As of September 30, 2012, the VA projected there were 22,328,000 U.S. veterans alive that could each in theory have claims and appeals. If you factor in children, spouses, widows and at times even parents that number becomes closer to 70 million that could file claims and appeals. As of January 2013, the entire U.S. population was 315.18 million people which means approximately 22.22% - close to one-quarter of our population could be entitled to at least one veteran's benefit, which could end up in an appeal. The United States is divided into 4 time zones as well. There are both more judges working in the 9th Judicial District of Florida with 81 judges than work for the Board of Veterans Appeals which has only 67 judges. Additionally, the 9th District has more employees than the 510 total full-time employees that the BVA had in 2012. Bearing in mind the legal system in Florida,

the BVA and its staff-strength in comparison to the number of people who could file claims and appeals can be likened to having a legal system that's been designed to handle a population the size of Central Florida which has been tasked with handling the entire Eastern Time-zone. This explains why the wait times are long.

Once your appeal has been docketed with the BVA there really aren't a lot of ways to speed up the 3-4 years wait that you're getting ready to endure while waiting to have your appeal heard in Washington DC. The BVA will only advance cases on the docket if you can show "convincing proof of exceptional circumstances". This would typically mean terminal illnesses, danger of bankruptcy or foreclosure, or that an error by the VA has caused substantial and significant delay in docketing the appeal. This only works a little less than 15% of the time because almost all appeals to the BVA have hardships associated with them. What you would need to do though is file a "Motion to Advance on the docket". Then mail it directly to the BVA in Washington DC via the address.

Board of Veterans' Appeals (014)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

To check the status of an appeal at the BVA, you can call the BVA directly on **(202)565-5436**. If you call the BVA directly ensure you have your claim/appeal number handy and make sure you're polite and non-confrontational with the person on the other end of the phone. Being polite and helpful often goes a long way in making a friend that can possibly help rather than an enemy that can harm your appeals.

What if an appeal gets denied? In this case, there are still 3 basic options left, which are:

- **Filing a Motion to Reconsider:** To do this you must show that the BVA made an “Obvious error of fact or law in its decision”. Meaning that you must show that the BVA made a mistake, and had that mistake not occurred, the BVA’s decision would have been different. To file a Motion to Reconsider; you will need to file it directly with the BVA in Washington, D.C.
- **Reopening you Appeal:** If your claim has “new and material evidence” that was not included in your claims folder when your case was decided, then the VA regional office may decide to reopen your appeal, and start the appeals process all over again. This reopening is conditional for the fact that it is the VA regional office that decides if the evidence is “new and material”. For instance, consider a situation where a veteran has gone through the entire appeals process to raise his disability rating because he lost partial use of both legs which was service-connected. His condition was bad when he originally filed claims, but in the 4-5 years that his claim was stuck in the appeals process, his condition worsened. Then just as his claim was being reviewed by the board, the doctors decided to amputate. His claim was too far along to stop the process, to add this “new and material evidence” into his claims file. The BVA not knowing this new material evidence which would more than likely affect the case’s outcome decided to deny his claim. This would more than likely qualify as grounds to reopen his appeal.
- **Appeal to the U.S. COURT OF APPEALS:** This would be your last resort. You must file a notice of appeal to the U.S. Court of Veterans’ Appeals. This is known as “The Court”. This is an independent Federal Court located in Washington D.C.

that is not part of the Department of Veterans Affairs. You will need a lawyer if you plan to take your appeal into Federal Court. You only have 120 days from the date that the BVA mails its decision to file “an original Notice of Appeal” with the court. If by chance you filed a motion to reconsider within the 120 days, but the motion was denied, your 120-day clock starts over from the day that the BVA mails you the letter denying your motion to reconsider. If you decide to file a Notice of Appeal with The Court, you can either fax it to (202) 501-5848 or you can mail it to the addresses below. You will only have 14 days to send in the filing fees, or submit a Declaration of Financial Hardship if you are unable to afford the fees, or mail your notice of appeal to:

**Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington D.C. 20004**

You should also file a copy of the Notice of Appeal with the VA General Counsel at:

**Office of the General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington D.C. 20420**

When filing a Notice of Appeal, it is vital to include your full name, phone number, current address, date of the BVA decision, and docket number. The only types of decisions not allowed to be appealed are decisions concerning the need for certain types of medical treatments, physicians’ decisions to either prescribe or not prescribe a drug. This would need to be taken up with the director of the VA medical center in question.

When going through the process, please make sure that you utilize every part of the process. Do not just skip straight to the BVA if your appeal could end up being won with either a NOD or through a De Novo review. My hope is that each person that takes the time to read this fully understands the importance of trying to resolve each issue before taking it to the next level, largely because of the amount of time involved in appealing it at each level.

APPENDIX

a) Form 5345 – Individual’s Request for a copy of their own health information

OMB Number: 2000-0260
Estimated Burden: 2 minutes

Department of Veterans Affairs		
INDIVIDUALS' REQUEST FOR A COPY OF THEIR OWN HEALTH INFORMATION		
PRIVACY ACT AND PAPERWORK REDUCTION ACT INFORMATION <small>The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Act. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 2 minutes. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. The purpose of this form is to provide an individual the means to make a written request for a copy of their information maintained by the Department of Veterans Affairs (VA) in accordance with 38 CFR 1.577. The information on this form is requested under Title 38, U.S.C. 501. Your disclosure of the information requested on this form is voluntary. However, if the information including Social Security Number (SSN) (the SSN will be used to locate records for release) is not furnished completely and accurately, VA will be unable to comply with the request. Failure to furnish the information will not have any effect on any other benefits to which you may be entitled.</small>		
VETERAN'S LAST NAME- FIRST NAME- MIDDLE INITIAL	SOCIAL SECURITY NO.	DATE OF BIRTH
DESCRIPTION OF INFORMATION REQUESTED <small>Check applicable box(es) and state the extent or nature of information to be copied/printed, giving the date or approximate dates covered by each.</small>		
FACILITY WHERE TREATED:	DATES OF TREATMENT:	
<input type="checkbox"/> COPY OF HOSPITAL SUMMARY <input type="checkbox"/> COPY OF OUTPATIENT TREATMENT NOTE(S) <input type="checkbox"/> OTHER (Specify)		

COPY OF HEALTH INFORMATION IS TO BE DELIVERED TO THE INDIVIDUAL		
<input type="checkbox"/> IN-PERSON	<input type="checkbox"/> BY MAIL, TO ADDRESS BELOW (include City, State & ZIP)	PHONE NO.

PATIENT SIGNATURE	DATE (mm/dd/yyyy)	

<small>NOTE: If signed by someone other than the patient, indicate the authority (e.g., guardianship or power of attorney) under which request is made.</small>		

VA FORM 10-5345a
MAY 2005

b) Form 9

Form Approved OMB No. 2900-0085
Expiration Date: July 31, 2010
Estimated Burden: 15 minutes

Department of Veterans Affairs		
APPEAL TO BOARD OF VETERANS' APPEALS		
<small>IMPORTANT: Read the attached instructions before you fill out this form. VA also encourages you to get assistance from your representative in filling out this form.</small>		
1. NAME OF VETERAN (Last Name, First Name, Middle Initial)	2. CLAIM FILE NO. (include prefix)	3. INSURANCE FILE NO. OR LOAN NO.
4. I AM BY: <input type="checkbox"/> VETERAN <input type="checkbox"/> VETERAN'S WIDOWER <input type="checkbox"/> VETERAN'S CHILD <input type="checkbox"/> VETERAN'S PARENT <input type="checkbox"/> OTHER (Specify)		
5. TELEPHONE NUMBER:		
A. HOME (include area code)	B. WORK (include area code)	
6. BY ADDRESS TO:		
A. HOME (include area code)		
B. WORK (include area code)		
7. IF I AM NOT THE VETERAN, MY NAME IS:		
(Last Name, First Name, Middle Initial)		
8. THESE ARE THE ISSUES I WANT TO APPEAL TO THE BOARD: (It is best to read the information about this block in paragraph 6 of the attached instructions.)		
A. <input type="checkbox"/> I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM ONLY APPEALING THESE ISSUES: (List below)		
B. <input type="checkbox"/> I WANT TO APPEAL ALL OF THE ISSUES LISTED ON THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE THAT MY LOCAL VA OFFICE SENT TO ME.		
9. HERE IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY: (It is best to read the information about this block in paragraph 6 of the attached instructions.)		

(Continue on the back or attach sheets of paper, if you need more space.)		
10. OPTIONAL BOARD HEARING		
<small>IMPORTANT: Read the information about this block in paragraph 6 of the attached instructions. This block is used to request an optional Board of Veterans' Appeals (Board) hearing. DO NOT USE THIS FORM TO REQUEST A RESIDENCY SERVICE OR A RESIDENCY OFFICE REASSIGNMENT. Check one (and only one) of the following boxes:</small>		
A. <input type="checkbox"/> I DO NOT WANT AN OPTIONAL BOARD HEARING. (Choosing this option often results in the Board issuing its decision more quickly. If you choose, you may write down the reasons you want no hearing and submit it directly to the Board.)		
B. <input type="checkbox"/> BY LIVE VIDEOCONFERENCE AT A LOCAL VA OFFICE. (Choosing this option will add delay to issuance of a Board decision.)		
C. <input type="checkbox"/> IN WASHINGTON, DC. (Choosing this option will add delay to issuance of a Board decision.)		
D. <input type="checkbox"/> AT A LOCAL VA OFFICE. (Choosing this option will add delay to issuance of a Board decision.)		
<small>This option is not available at the Washington, DC, or Baltimore, MD, Regional Offices.</small>		
11. SIGNATURE OF PERSON MAKING THIS APPEAL	12. DATE (mm/dd/yyyy)	13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY (Not required if person is applicant. See paragraph 6 of the instructions.)
_____	_____	_____

VA FORM 9
JUL 2010