What you should know about

DISABILITY BENEFITS FOR VETERANS-
TAX FREE

How to get all the compensation you deserve, even if the VA shortchanges you (via outdated rates) or denies your benefits altogether!
WHY YOU MAY NEED LEGAL ASSISTANCE TO FIGHT THE SYSTEM

An Overview

This Special Report includes a summary of the federal government's program—administered by the Department of Veterans Affairs (VA)—that was set up to provide cash and other benefits to veterans who suffered disabilities or serious, continuing illnesses as a result of their military service. The program has a massive staff (the equivalent of 366,500 full-time employees) and an annual budget of more than $182 billion. But, unfortunately, the system is far from perfect—for several reasons...

- It's too complex for many veterans to understand and deal with successfully by themselves.
- It's difficult or impossible for many veterans to prove, to the VA's satisfaction, that their disability or illness was caused by, or worsened by, their military service. Therefore, their claims are often denied.
- The application process and the appeals process are very strict and can each take up to six months or even a year. They require evidence that may be impossible to obtain—especially if it is years after the event—often resulting in denial of all benefits or less than the full benefits the veteran deserves.
- The VA's compensation system is based on how severe the physical or mental disability is, as it pertains to current or future civilian employment. Severity is rated in percentages from 10% to 100%, in 10% increments. The higher the rating, the higher the compensation and the differences can be dramatic. For example, a veteran with no dependents and a disability rating of 10% currently receives $136.24 a month...$1,634.88 a year. But if the rating is 40%, the compensation is $600.90 a month...$7,210.80 a year. That's a difference of $464.66 a month or $5,575.92 a year, and points out why it's so important to get the highest rating you deserve and to appeal if you don't get it on your initial application.
- The rating system is woefully outdated. It's still based, in large part, on physical disabilities that were first addressed during the Revolutionary War, with a few updates in the first half of the 20th Century. It's out of touch with today's occupational requirements and mental disabilities such as Post-Traumatic Stress Disorder (PTSD). This shortchanges many veterans by paying benefits that are far too low—especially in regard to certain disabilities that can negatively affect their civilian employment.

So if your disability involves one or more conditions that are difficult to substantiate, or are not obviously work-related, you may need legal experts—as well as independent medical experts—to prove it, in order to more quickly claim all your rightful benefits.

That's why this Report also includes helpful advice on how to deal with these inherent problems successfully, in a minimum amount of time—perhaps with one-on-one assistance by a legal team with the know-how and hands-on experience needed to deal successfully with the VA's disability program.
WHAT TO DO BEFORE YOU APPLY FOR BENEFITS
So you won't be wasting your time and effort

FIRST
Obviously, you'll need to find out if you're really eligible for VA disability benefits.

NEXT
If you believe you're eligible, you'll need to obtain all the documents and other evidence the VA requires in order to prove it.

THEN
If you have everything that's required, you can apply for benefits all by yourself (not a good idea when your disability is not clear-cut and you're up against a VA staff of 366,500 dedicated to keeping costs down!). OR you can apply with the assistance of a qualified representative - such as an attorney who is capable of doing everything fully and correctly the first time. As it is, the application process is complex and time-consuming (as noted earlier), and any errors or omissions on your part will lengthen the process and possibly result in an unfair denial of benefits.

This Report provides the information you'll need to get started—including details on the new DBQs—or to fight the system if you've already applied but were turned down.

WHO MAY BE ENTITLED TO VA DISABILITY BENEFITS
Including some that may surprise you

According to VA regulations, disability compensation is paid to veterans who have injuries or illnesses that occurred while on active duty, active duty for training, or inactive duty training, or whose injuries or illnesses were made worse by active military service. Benefits are also paid to certain veterans disabled due to VA health care. Veterans with a dishonorable discharge are not eligible for benefits.

"Active duty for training" also applies to members of the National Guard or the Reserve Corps who were called up for full-time duty in the Armed Forces. If they were not called up, their membership does not qualify them for veterans benefits.

"Veterans" is defined as men and women who performed active service in a uniformed branch of the U.S. military—in the Army, Navy, Marine Corps, Air Force, Coast Guard, Women's Army Auxiliary Corps (WAAC), or Woman's Air Service Pilots (WASP).

It's a little-known fact that VA disability benefits may also be given to those who served full time in the Public Health Service's Commissioned Officer Corps or in the National Oceanic and Atmospheric Administration (NOAA; formerly the Coast and Geodetic Survey). In some cases, those who served full time, during wartime, in the Merchant Marine or the Flying Tigers may also be eligible.

"Wartime" (with official dates) is defined as:

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HOW TO APPLY FOR VA DISABILITY BENEFITS

And what you must be able to prove

You'll need to fill out VA Form #21-526: Veterans Application for Compensation and/or Pension. This six-page, 8.5"x11" form is used to claim disability benefits, a military pension, or both.

In regard to disability, its headings or questions include the following:

• Nature and History of Service-Related Disability(ies) • List Disability(ies) • Date Began
• Place of Treatment • Dates of Treatment/Care • Name & Address of VA Medical Facility
• Have You Ever Been a Prisoner of War? • If So, Name of Country • Dates of Confinement
• Are You Claiming a Disability Related to: Agent Orange or Other Herbicide Exposure?
• Asbestos? • Mustard Gas? • Ionizing Radiation Exposure?
• Environmental Hazard Exposure During the Gulf War? • Active Duty Service Information
• Reserve and National Guard Service Information • Military Retired/Severance Pay
• Marital and Dependency Information

IN ADDITION - AND MOST IMPORTANTLY

You'll need to prove that your disability was caused by, or worsened by, your military service. If it wasn't, then you're not entitled to any VA disability benefits.

And now there's a new, easier way to submit medical evidence...

Disability Benefits Questionnaires (DBQs), recently introduced by the VA (decades too late to make things easier for countless veterans), are downloadable forms you can use, if you choose to, when you submit medical evidence from a private provider, together with your application for benefits.

According to the VA, "DBQs allow Veterans and Service members to have more control over their disability claims process, by giving them the option of completing an examination with their own healthcare provider, instead of at a VA facility." However, unless the VA specifically requests it, you—not the VA—must pay for the exam, any tests, a doctor's letter and/or any travel expenses.

"The streamlined forms," the VA explains, "use check boxes and standardized language, so that the disability rating can be made accurately and quickly." And, hopefully, made uniformly throughout the country, instead of having different VA clerks assign different ratings for the same severity. Even so, it's vitally important to see if the disability rating you receive is too low, and to contest it if it is.

There are some 70 DBQs to cover nearly a full range of medical conditions. Some are specific to a single condition (e.g., hypertension; scars and disfigurement; infectious intestinal disorders), but most of the forms can be used for several related conditions (e.g., intestinal conditions; hand and finger conditions; heart conditions; kidney conditions). By using check boxes instead of long narrative summaries, the VA hopes to significantly shorten the time it takes to process claims.

However, DBQs are not available (for private providers) for the following medical examinations:
Why not? Because DBQs are intended only for medical evidence submitted by a private provider, and the VA has determined that examinations for the above conditions are better handled at a VA facility, and without cost to the veteran.

**What about mental disorders?**

There are DBQs for those, too. But to conduct an initial examination for mental disorders, the private examiner must meet one of the following criteria:

1. Board-certified or board-eligible psychiatrist
2. Licensed doctorate-level psychologist
3. Doctorate-level mental health provider under the close supervision of 1 or 2
4. Psychiatry resident under the close supervision of 1 or 2
5. Clinical or counseling psychologist completing a one-year internship or residency (to obtain a doctorate-level degree) under the close supervision of 1 or 2.

To conduct a review examination for mental disorders, the examiner must meet one of the above criteria OR be a licensed clinical social worker (LCSW), a nurse practitioner, a clinical nurse specialist, or a physician assistant, under the close supervision of #1 or #2 above.

**What about PTSD?**

There are two separate DBQs. If you have not already been told by the VA that you have service-connected PTSD, then a DBQ for the initial diagnosis of it (VA Form #21-0960P4) must be completed by a VA mental health provider, not by a private provider. However, if you have been told by the VA that you have service-connected PTSD, then a private mental health provider—meeting the criteria above—can complete a Review PTSD DBQ (VA Form 21-0960P3) to rate its current severity, which determines your compensation rating.

No matter how you submit medical evidence, it must help you prove, to the satisfaction of a VA clerk (who may have little or no medical training), that you did not have the disabling medical condition before your military service...that you have it now...and that your service caused it or worsened it.

**WHAT YOU NEED TO SEND ALONG WITH YOUR CLAIM**

And how to obtain it if you don't have it

Whatever claim(s) you make on your initial application, you’ll be asked to prove it within 60 days. If you’re unable to find or obtain any of the required data, the VA might be able to help you (depending on what it is). But don't count on them 100%.

The Veterans Claims Assistance Act (VCAA) of 2000 was enacted to require the VA to examine all incoming claims, explain to the claimants what additional evidence (if any) is needed, and help provide it. This may include service treatment records, service personnel records, VA and private treatment records, Social Security Administration records, and a medical exam or medical opinion if required.

However, don't expect the VA to devote much time or effort to handling your particular claim or request for assistance. It is reported that claims have been steadily increasing over the past five years to more than 1,300,000 claim filings, along with countless requests for general and specific information. Obviously, they aren't able to spend much time on each claim or request, or tolerate careless errors or omissions by those applying for benefits.
That's another reason why many veterans seek one-on-one assistance from private attorneys who handle disability claims. Unlike VA staffers who work on a quota system, spending no more than an hour (or perhaps much less) on each claim, private attorneys can (within reason) devote as much time and effort as needed to obtain the required proof. And they usually work on a contingency basis—no fee unless you win—not by the hour. Their fees are regulated by the VA.

Along with your application, you'll need to provide the following:

- Current medical evidence—doctor and hospital reports—that relate to your disability.
- Your discharge or separation papers: #DD214 or equivalent.
- Your dependency records—marriage certificate; children's birth certificates; information on your living parents—if you are applying for their benefits, too.

It's important to keep a photocopy of each document you submit so you can refer to it later, or perhaps submit it if you also apply for some other federal (SSD or SSI) or state benefits program.

As noted above, the VA may be able to help you obtain data from their own files or from those of other federal or state agencies. But that may take too much time. Or what they obtain for you may not help you when fighting for a higher compensation rating. So it may be wise to conduct your own search first—in your home or your parents' home, in a safety deposit box, online, or at former employers. Look for copies of tax returns, pay stubs, bank statements, etc. For example...

If, prior to military service, you engaged in a well-paying occupation, but now your disability makes it difficult or impossible to do that type of work, proof of your former income-earning ability might help you obtain a higher-than-average compensation rating. You may want to ask the Social Security Administration and/or the Internal Revenue Service (expect to pay a fee for copies of old tax returns) to search their files for data on your earnings or specific years before entering the service, and then submit this data to the VA with your application or appeal.

You might also try the National Archives and Records Administration (NARA), with facilities in Washington, DC, College Park, MD; Atlanta, GA; and other locations. They store military service records, unit reports and rosters, certain medical and health records, and other data that might help you prove your case.

THE TYPES OF EVIDENCE THE VA LOOKS FOR

And why some types are better than others

It's worth repeating: The medical evidence you submit must help you prove, to the satisfaction of one or more VA clerks (who may have little or no medical training), that:

1. You did not have the disabling medical condition before your military service
2. You have it NOW
3. Your military service caused it to occur or aggravated a non-disabling condition into a disabling condition
To help prove your case, you should have copies of the same records the VA will refer to when they look at your claim, to guard against any unpleasant surprises that may contradict what you say. To obtain them, you may need to use the Freedom of Information Act and, to speed the response, ask your U.S. senator or congressional representative to submit your request for you.

You should submit a brief written statement—typed, notarized and in narrative form—that tells about your disability, why you claim it’s service-related, and how it has kept you from earning a decent, steady income via a job or self-employment. This sworn statement should be from you, a close relative or a current friend.

If relevant and possible, also submit sworn statements from former employers (stating that you were able to do certain types of work before your military service, but cannot do so now) and/or former comrades (“buddy letters”). If the current addresses of former comrades are not known to you, you may be able to locate them via the Internet, notices in military periodicals, veterans’ organizations, etc. Their statements can help substantiate your claim that your disability was due to your military service.

Although it’s an expense, and depending on your disability, it’s wise to have a private physician—a specialist in your medical condition not affiliated with the VA—review your service medical records, examine you, and write a consultation statement. Do this before you go for any exam required by the VA and perhaps conducted by a second-level medical professional. Then if the VA’s report contradicts your specialist’s report, ask him or her to write a rebuttal letter to the VA, to overturn their decision.

Of course, some types of evidence are better than others. The better ones include recent reports from relevant medical specialists and detailed statements from former comrades who witnessed your injury.

**HOW THE DISABILITY RATING SYSTEM CAN SHORTCHANGE YOU**

And what to know about TDIU

TDIU stands for Total Disability due to Individual Unemployability. But don’t assume that the term "unemployability" is the same as "unemployed" or "unemployable." You might be unemployed or unemployable for a variety of reasons (e.g., location; attitude) other than your disability.

To be entitled to VA compensation for 100% disability, you must be considered to have 100% unemployability "by reason of service-connected (SC) disability" and meet certain other criteria. You will need to submit your own sworn statement, expert medical proof, vocation-related proof, and a sworn statement from a former employer (if any) or from a prospective employer who rejected your employment application due to your service-connected disability. Also, if you have one, submit a copy of your Social Security award letter granting you Supplemental Security Income (SSI) benefits based on your service-connected disabling medical condition.

Of course, most veterans receiving VA compensation are rated lower than 100%—often far lower. The more severe your disability is, the higher your rating should be. And the higher your rating, the higher your monthly compensation will be. As noted in the Overview of this Report, the rating system is supposed to relate each type of disability to the veteran’s ability to obtain and carry out substantial gainful employment. But since the system is outdated, and more concerned with physical abilities than mental, it’s quite possible—depending on your occupation—that the initial rating you’ll receive will be unfair. So it’s important to get the highest rating you deserve, as soon as you can, and to appeal the rating decision if you don’t.

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HOW TO FIND OUT THE BENEFIT AMOUNT YOUR RATING ENTITLES YOU TO

Then fight to increase it if it's not high enough

As mentioned earlier, the amount of your disability compensation, paid monthly, is based on your disability rating, which ranges from 10% to 100% in 10% increments. You may be paid additional amounts if you have a very severe disability (e.g., loss of limbs, sight or hearing) or you require an aide to assist you with eating, bathing or certain other activities of daily living.

The amounts paid are subject to change annually—usually a modest increase. Currently, for a veteran without dependents, they range from a minimum of $136.24 a month ($1,634.88 a year) for a 10% disability to a maximum of $3,527.22 a month ($42,326.64 a year) for a 100% disability.

If your disability is 30% or more, you may be paid additional amounts if you have dependents: a spouse, one or more eligible children, one or two parents, or a seriously disabled spouse.

For example: If you are a veteran with a 40% disability rating and two parents as dependents, your current monthly compensation would be $706.90 ($8,482.80 a year).

IF YOUR RATING IS TOO LOW OR YOUR CLAIM IS DENIED

Here's how to contest it, even if the VA says they can't help you

If your application for disability compensation is denied by a VA regional center or medical center, or the compensation rate you're given is less than you deserve, you have the right to appeal the decision if you do so within one year. (Of course, the sooner you appeal, the better.) Here's what to do:

1. File a written Notice of Disagreement with the VA regional center or medical center that denied you the compensation. For your case number and other data, refer to the denial notice or the disability rating document the VA sent you.

2. When, in response, you receive a Statement of the Case, study it to see what facts, laws, regulations, etc., were relied on in making the decision. Save the envelope so you have proof of the mailing date.

3. If you still disagree with the denial, file a Substantive Appeal within 60 days of when the Statement of the Case was mailed, or within one year from the date the VA mailed its denial, whichever is later. (Again, the sooner you do so, the better.)

4. You and/or an attorney representing you can appeal your case in person to a member of the Board of Veterans Appeals at a hearing in Washington, DC, or at a VA regional office, or by video conference.

5. If the Board decides against you, you can make an appeal to the U.S. Court of Appeals for Veterans Claims. This in an independent federal court not connected with the VA. If you decide to take this action, you must do so within 120 days of the date when the Board mailed its decision to you. This court does not hear any new evidence or hold trials; they only review the same case documents that were considered by the Board of Veterans Appeals.

6. If the U.S. Court of Appeals for Veterans Claims decides against you, then you can appeal again—to the U.S. Court of Appeals for the Federal Circuit or (in rare instances) to the U.S. Supreme Court. To do so, you would need to be represented by a qualified attorney approved by the court.
Don't be surprised if, early in the process or later on, the VA says they can't help you. More often than not, they probably could help you—by obtaining medical evidence, providing addresses of former comrades, reversing unfair decisions, etc. But due to their immense workload, daily or weekly quotas, time constraints, the need to deter fraud, having examiners with insufficient knowledge, etc., it’s faster and easier to deny a claim or award a low rating, than it is to treat each claimant fairly and accurately. That's why you can't just fill out an application and expect the VA to do the rest. They won't.

OTHER VA DISABILITY BENEFITS YOU MAY BE ENTITLED TO
But not even know about

In addition to the general disability compensation detailed above, the VA offers other benefits to disabled veterans who meet eligibility requirements. These programs include:

**Concurrent Retirement and Disability Payments (CRDP)** - These restore retired pay on a graduated 10-year schedule for military service retirees with a VA-rated disability of 50% to 90%. Veterans rated 100% disabled are entitled to full CRDP without being phased in. To be eligible, veterans must also: 1. Have 20 or more years of active duty, or full-time National Guard duty, or satisfactory service as a reservist AND 2. Be in a retired status AND 3. Be receiving retired pay (offset by VA payments).

**Combat-Related Special Compensation (CRSC)** - These are tax-free monthly payments to eligible retired veterans with combat-related injuries. With CRSC, veterans can receive both their full military retirement pay and their VA disability compensation. To be eligible, veterans must: 1. Have 20 or more years of creditable service or be medically retired AND 2. Be receiving military retired pay AND 3. Have a VA-rated injury of 10% or greater. Also: Veterans must provide documentary evidence that their injuries resulted from: training that simulates war OR hazardous duty OR an instrument of war (combat vehicles; weapons) OR armed conflict (gunshot wounds; Purple Heart). Disabilities related to in-service exposure to hazards (Agent Orange, Gulf War illnesses, radiation exposure, etc.) are considered combat-related for CRSC if the VA awards compensation for them. Certain chronic or tropical diseases may also determine eligibility.

**Prisoners of War** - For former POWs who were imprisoned for any length of time, certain disabilities are presumed to be service-connected if they are rated 10% or more disabling after military service. For former POWs who were imprisoned for 30 days or more, certain other conditions may determine eligibility.

**Veterans Exposed to Agent Orange, Other Herbicides or Radiation** - The resulting disabilities are usually considered to be service-related for disability rating purposes, as are certain other illnesses, depending on the amount/duration of radiation exposure, sensitivity of exposed tissue, etc.

**Gulf War Veterans with Chronic Disabilities Lasting 6 Months or Longer** - They may receive disability compensation for undiagnosed illnesses or medically unexplained chronic multi-symptom illnesses defined by a cluster of signs or symptoms that occur within a specific period of time.

**Vocational Rehabilitation and Employment** - There are several programs for veterans with a service-connected disability rated at either 10% or 20%, at a minimum.

**Specially Adapted Housing Grants** - Certain service members and veterans with service-connected disabilities may be eligible for this VA grant (of up to $81,080 in 2018) to help build a specially adapted house, to adapt a home they already own, or to buy a house and modify it to meet their disability related requirements.
Temporary Residence Adaptation (TRA) - Eligible service members and veterans who are temporarily living in a home owned by a family member may receive a TRA grant to help adapt the home to meet their special needs.

Automobile Allowance - Service members and veterans may be eligible for a one-time payment of up to $20,235.20 for the purchase of a vehicle if they have a service-related loss of one or both hands or feet, or permanent impairment of vision of both eyes (to a certain degree.)

Annual Clothing Allowance - For veterans with a service-connected disability who use a prosthetic or orthopedic appliance, or whose service-connected skin condition requires prescribed medication that severely damages outer garments. Annual maximum: $777.29.

Allowance for Aid and Attendance (A/A) or Housebound Veterans - This additional disability compensation is available to veterans in need of the regular aid and attendance of another person, or to veterans who are permanently housebound. Veterans with a disability of 30% or more are entitled to an additional payment for a spouse in need of A/A.

5 FREQUENTLY ASKED QUESTIONS AND ANSWERS
Regarding veterans disability benefits

Q. Can I get back-compensation payments?
A. In general, the effective date for receiving benefit payments is the date your claim was received by the VA or the date entitlement arose, whichever is later. However, there are exceptions to this general rule. For example, your extensive hospitalization will usually qualify as sufficiently incapacitating to have prevented the filing of a claim. But the judgment of the rating board must be applied to the facts and circumstances of each case.

Q. Can my dependents receive benefit payments based on my disability?
A. Yes—if you have a disability rating of 30% or more, as shown on the VA’s Compensation Rate Chart. Additional amounts are also paid for severe disabilities: e.g., the loss of use of a limb or an organ.

Q. Once I’m approved for compensation benefits, how are they paid to me?
A. To deter those who steal benefit checks intended for disabled veterans, the VA is switching over to electronic payments, effective March 1, 2013, but available before then. Each month, your funds will be deposited directly into your account at a bank, S&L, credit union or other designated financial institution. Or, if you prefer, funds will be deposited into a pre-paid Direct Express debit card, for use at ATMs and wherever debit cards are accepted: in person, over the phone or via the Internet.

Q. Will we have to pay income taxes on the compensation benefits we receive?
A. No. The benefits are not subject to federal or state income tax.

Q. What is the difference between VA disability compensation and VA pension?
A. Simply stated: VA disability compensation is a benefit paid on the basis of the kind and severity of a disability that happened as a result of your active duty in military service. VA pension is a benefit paid on the basis of a disability that was not a result of active service in the military, or is related to age. It’s also based on income. There are other criteria that may apply to deciding eligibility.
WHERE TO OBTAIN ONE-ON-ONE ASSISTANCE
FROM A TEAM OF EXPERTS

And why you should

We already mentioned some valid reasons for having a knowledgeable law firm help you apply for VA disability benefits or appeal a denial of benefits. Among them:

• The requirements for obtaining VA benefits are complex, strict and subject to misunderstanding.

• Without legal assistance, you may have difficulty in quickly obtaining the military records, medical evidence and other documents required when applying for benefits or contesting a denial.

• Many (if not most) veterans who apply without assistance make common errors or omissions that result in costly delays or denials. Also, they may feel intimidated by the VA if acting alone.

• You can miss out on VA benefits you don’t know about or think you’re not eligible for.

• Attorneys with VA experience know exactly what to do, how to do it, and when it must be done.

• The sooner you apply for VA benefits, the sooner you can start receiving them. Working with an experienced attorney can help you avoid procrastination and give you the confidence to apply.

• Most attorneys handling VA cases work on a contingency basis—no fee unless you win.

• Most general practice attorneys know little or nothing about handling VA cases effectively.

• If you’re appealing a denial in federal court, a court-approved attorney must represent you.

• If you’re contesting a disability rating that’s too low, a qualified attorney knows exactly what to do.

• An attorney can inform you about other federal or state benefits programs you may be eligible for.

For more answers to your questions about Veterans Disability Benefits, please go to:

DISABILITY ADVISOR
www.DisabilityAdvisor.com