

# WV DEPARTMENT OF VETERANS ASSISTANCE



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2016 Training

# CODE OF FEDERAL REGULATIONS

- ▶ Under Franklin D. Roosevelt's New Deal in the 1930s, Congress began delegating more responsibility to federal agencies to create legislation. At the time, there was no centralized system to communicate up-to-date legislation from the executive department or the agencies of the federal government to the public. The Federal Register Act (1935) and the Administrative Procedure Act (1946) paved the way for the Federal Register System to issue and publish government laws.
- ▶ **Federal Register System**
- ▶ The Federal Register System's two major publications are the Federal Register and the Code of Federal Regulations (CFR). The Federal Register is published and issued every federal working day. Legislation is published first as a proposed rule followed by a comment period. The comment period is a time the public can give their input on the proposed rule. Once the rule is finalized, it becomes a legal document a minimum of 30 days after publication in the Federal Register. These final rules are then codified and published annually in the CFR. The Federal Register and the CFR must be used together to determine an up-to-date stipulation of a ruling.

- ▶ 3.37 - Individuals and Groups Considered to have performed active military, naval, or air service.

## ▶ Who is a Veteran???

38 CFR 3.7

# 38 CFR PART 3 ADJUDICATION.

Administrative practice and procedure

Claims

Disability benefits

Health care

Pensions

Presumptive Service Connections



# 38 CFR PART 3 ADJUDICATION.

38 CFR 3.3 Pension

3.3 (3) Improved pension


3.3 (4) Improved death pension

3.5 Dependency and Indemnity Compensation

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# **38 CFR Part 4 - Schedule for rating disabilities.**

## **SUBPART B – DISABILITY RATINGS**

- ▶ **How does the VA Rate specific conditions??????**
  - ▶ **How do we know what percentage a veteran is going to get??????**
  - ▶ **How do we use Part 4 to our benefit???????**
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# HOW DOES THE VA RATE SPECIFIC CONDITIONS??????

## ▶ 1<sup>st</sup> .....Must be Service Related

- ▶ Incurred in Service
- ▶ Aggravated by Service
- ▶ A result stemming from service  
(Presumptions 3.309)

## APPENDIX B TO PART 4 – NUMERICAL INDEX OF DISABILITIES.

- Find Diagnostic Code.



- USE DIAGNOSED CONDITIONS



## ► How are specific Diagnostic Codes Rated?

4.130-3

§4.130—Scheduling of ratings—mental disorders

4.130-3

### General Rating Formula for Mental Disorders:

- Total occupational and social impairment, due to such symptoms as:  
gross impairment in thought processes or communication;  
persistent delusions or hallucinations; grossly inappropriate  
behavior; persistent danger of hurting self or others; intermittent  
inability to perform activities of daily living (including maintenance  
of minimal personal hygiene); disorientation to time or place; memory  
loss for names of close relatives, own occupation, or own name ..... 100
- Occupational and social impairment, with deficiencies in most areas,  
such as work, school, family relations, judgment, thinking, or mood,  
due to such symptoms as: suicidal ideation; obsessional rituals  
which interfere with routine activities; speech intermittently illogical,  
obscure, or irrelevant; near-continuous panic or depression affecting  
the ability to function independently, appropriately and effectively;  
impaired impulse control (such as unprovoked irritability with periods  
of violence); spatial disorientation; neglect of personal appearance and  
hygiene; difficulty in adapting to stressful circumstances (including  
work or a worklike setting); inability to establish and maintain  
effective relationships ..... 70
- Occupational and social impairment with reduced reliability and  
productivity due to such symptoms as: flattened affect; circumstantial,  
circumlocutory, or stereotyped speech; panic attacks more than once  
a week; difficulty in understanding complex commands; impairment  
of short- and long-term memory (e.g., retention of only highly learned  
material, forgetting to complete tasks); impaired judgment; impaired  
abstract thinking; disturbances of motivation and mood; difficulty in  
establishing and maintaining effective work and social relationships ..... 50
- Occupational and social impairment with occasional decrease in work  
efficiency and intermittent periods of inability to perform occupational  
tasks (although generally functioning satisfactorily, with routine  
behavior, self-care, and conversation normal), due to such symptoms  
as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or  
less often), chronic sleep impairment, mild memory loss (such as  
forgetting names, directions, recent events) ..... 30
- Occupational and social impairment due to mild or transient symptoms  
which decrease work efficiency and ability to perform occupational  
tasks only during periods of significant stress, or; symptoms controlled  
by continuous medication ..... 10

## THE SPINE

Rating

### General Rating Formula for Diseases and Injuries of the Spine

(For diagnostic codes 5235 to 5243 unless 5243 is evaluated under the Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes):


With or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease


Unfavorable ankylosis of the entire spine.....	100
Unfavorable ankylosis of the entire thoracolumbar spine .....	50
Unfavorable ankylosis of the entire cervical spine; or, forward flexion of the thoracolumbar spine 30 degrees or less; or, favorable ankylosis of the entire thoracolumbar spine .....	40
Forward flexion of the cervical spine 15 degrees or less; or, favorable ankylosis of the entire cervical spine.....	30
Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees; or, forward flexion of the cervical spine greater than 15 degrees but not greater than 30 degrees; or, the combined range of motion of the thoracolumbar spine not greater than 120 degrees; or, the combined range of motion of the cervical spine not greater than 170 degrees; or, muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis.....	20
Forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees; or, forward flexion of the cervical spine greater than 30 degrees but not greater than 40 degrees; or, combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees; or, combined range of motion of the cervical spine greater than 170 degrees but not greater than 335 degrees; or, muscle spasm, guarding, or localized tenderness not resulting in abnormal gait or abnormal spinal contour; or, vertebral body fracture with loss of 50 percent or more of the height .....	10

**Note (1):** Evaluate any associated objective neurologic abnormalities, including, but not limited to, bowel or bladder impairment, separately, under an appropriate diagnostic code.


**Note (2):** (See also Plate V.) For VA compensation purposes, normal forward flexion of the cervical spine is zero to 45 degrees, extension is zero to 45 degrees, left and right lateral flexion are zero to 45 degrees, and left and right lateral rotation are zero to 80 degrees. Normal forward flexion of the thoracolumbar spine is zero to 90 degrees, extension is zero to 30 degrees, left and right lateral flexion are zero to 30 degrees, and left and right lateral rotation are zero to 30

# MEDICAL REPORTS/ DOCTORS ORDERS

- ▶ **Medical evidence is the key to any veterans claim.**
  - ▶ **Diagnosis**
  - ▶ **Medical opinions**
  - ▶ **Doctors orders**
  - ▶ **Use the C.F.R. to cross reference what percentage you expect to get on an award letter.**
    - ▶ **Be Honest with the Veteran. Not every condition can be rated at 100%.**
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- ▶ **How do we use Part 4 to our benefit???????**
  - ▶ **Obtain Service Medical Records.**
    - ▶ **VA FORM SF-180**
  - ▶ **Review SMR's with the Veteran.**
  - ▶ **Look for Presumptive Conditions that the veteran may qualify for.**
    - ▶ **Presumptive Conditions don't need to be directly service related.**
- 

## 3.301 – LINE OF DUTY AND MISCONDUCT

- ▶ Willful misconduct. Disability pension is not payable for any condition due to the veteran's own willful misconduct.
  - ▶ Venereal disease – The residuals of venereal disease are not to be considered the result of willful misconduct.
  - ▶ The simple drinking of alcoholic beverage is not of itself willful misconduct.
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- ▶ AGE IN SERVICE –CONNECTED CLAIMS
- ▶ Age may not be considered as a factor in evaluating service-connected disability; and unemployability, in service-connected claims, associated with advancing age or intercurrent disability, may not be used as a basis for a total disability rating. Age, as such, is a factor only in evaluations of disability not resulting from service, i.e., for the purposes of pension.

38 CFR 4.19

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# ▶ VA MATH

- ▶ COMBINED RATINGS TABLE
- ▶ HOW TO USE THE TABLE
- ▶ 50% + 50% does not equal 100%

38 CFR 4.25

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# ▶ BILATERAL FACTOR AND HOW TO APPLY IT TO RATINGS

38 CFR 4.26



## ► Special Monthly Compensation

Dependent Status	N 1/2	O/P	R.1	R.2/T	S
Veteran Alone	\$4,808.00	\$5,075.60	\$7,252.63	\$8,318.95	\$3,253.67
Veteran with Spouse	\$4,970.07	\$5,237.67	\$7,414.70	\$8,481.02	\$3,415.74
Veteran with Spouse and One Parent	\$5,100.13	\$5,367.73	\$7,544.76	\$8,611.08	\$3,545.80
Veteran with Spouse and Two Parents	\$5,230.19	\$5,497.79	\$7,674.82	\$8,741.14	\$3,675.86
Veteran with One Parent	\$4,938.06	\$5,205.66	\$7,382.69	\$8,449.01	\$3,383.73
Veteran with Two Parents	\$5,068.12	\$5,335.72	\$7,512.75	\$8,579.07	\$3,513.79
Additional A/A spouse. See footnote <a href="#">(b)</a>	\$148.64	\$148.64	\$148.64	\$148.64	\$148.64

- ▶ **3.20 – SURVIVING SPOUSE’S BENEFIT FOR MONTH OF VETERAN’S DEATH.**
- ▶ **3.53 – CONTINUOUS COHABITATION**
  - ▶ (a) General. ????????

**3.102 – REASONABLE DOUBT**

**3.353 – DETERMINATIONS OF INCOMPETENCY AND COMPETENCY.**

**38 CFR**

- ▶ Re-Education Program
- ▶ Operation Recognition
- ▶ War Orphan Program
- ▶ Governors Flag Program
- ▶ Bonus Program
- ▶ Veterans Home
- ▶ Cemetery
- ▶ Nursing Facility
- ▶ 17 Field Offices located in WV.

## WVDVA STATE BENEFITS

- ▶ General information on filing a disability claim.
- ▶ Evidence needed and how to obtain that evidence.

WVDVA STATE BENEFITS

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▶ 1. Understand what you are filing

▶ **COMMUNICATE!!!**

GENERAL INFORMATION ON  
FILING A QUALITY CLAIM

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- ▶ Explain to the person filing the claim the importance of what you are asking for.
- ▶ If the veteran is unable to obtain medical opinions or information needed to file a good solid claim, his chances are less likely to get a good result.

## GENERAL INFORMATION ON FILING A QUALITY CLAIM

▶ C & P exams

▶ Vs.

▶ Private Medical Opinions

GENERAL INFORMATION ON  
FILING A QUALITY CLAIM

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▶ **Be Honest  
and Upfront!!!**

GENERAL INFORMATION ON  
FILING A QUALITY CLAIM



- ▶ The procedures and information needed to file a good solid claim is all listed in 38 C.F.R.

# **AVOID RUMORS ABOUT THE VA!!!**

GENERAL INFORMATION ON  
FILING A QUALITY CLAIM

- ▶ DO NOT FEED INTO STORIES ABOUT THE VETERAN DOWN THE ROAD.
- ▶ Explain the process and try to help the veteran that you are speaking with understand how the entire process works.

GENERAL INFORMATION ON  
FILING A QUALITY CLAIM

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- ▶ Initial Filing of the Claim
  - ▶ Explain each form that you are filling out.
    - ▶ 21-526EZ – Claim Form
    - ▶ 21-22 - Accreditation Form
    - ▶ 21-4142 – Private Doctor Records
  - ▶ Length of wait time expected
    - ▶ Don't let this slide or it will come back to bite you!!!

# GENERAL INFORMATION ON FILING A QUALITY CLAIM



- ▶ Approximately in 60 Days the claimant will receive a DTA letter from the VARO handling their case.
  - ▶ Explain to the veteran what to do when they receive this letter
    - ▶ Help them understand the consequences of not acting on the DTA letter.

## GENERAL INFORMATION ON FILING A QUALITY CLAIM

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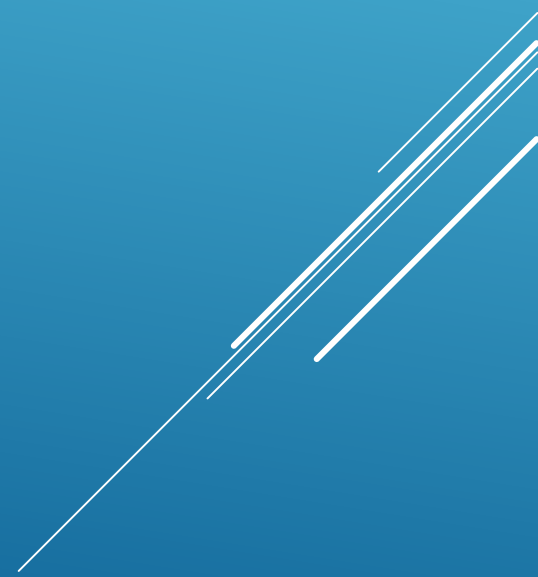
- ▶ Decision Letter!!!
  - ▶ Advise the veteran to call you when they receive any correspondence from the VA.
  - ▶ Explain the Decision letter and Rating Decision in detail.
    - ▶ Go over the ratings to see if they are correct

GENERAL INFORMATION ON  
FILING A QUALITY CLAIM

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# ▶ **USE YOUR 38 CFR**

GENERAL INFORMATION ON  
FILING A QUALITY CLAIM



- ▶ Give your opinion to the veteran and let them know their rights to appeal
  - ▶ Traditional Review
  - ▶ DRO Review

GENERAL INFORMATION ON  
FILING A QUALITY CLAIM

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