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Physical Disability Evaluation

Richard R. Ottinger Jr.
Soliders' Medical Evaluation Board Counsel
Fort Bragg, NC
and
Marcelle C. Quist
Soliders' Medical Evaluation Board Counsel
Fort Bragg, NC

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Integrated Disability Evaluation System (IDES)

Presented by

Rick Ottinger & Marcelle Quist

Soldiers' IDES/MEB Counsel

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Roadmap

IDES

- What is IDES
- OSC Mission Statement
- Overview of the Process
- Appeals
- TIDBITS

Veteran's Affairs

- Benefits
- Types of Benefits
- Service Connected Disability
- Claims Process
- Awards
- Determinations
- Appeals





Authorities

AR 40-501

- Standards of Medical Fitness (14 Jun 2017)

AR 635-40

- Physical Evaluation for Retention, Retirement, or Separation (8 Feb 06)

DODI 1332.18

- Disability Evaluation System (5 Aug 14)

MEDCOM OPORD 12-31

- MEDCOM Implementation of the Integrated Disability System
- See Annex O

38 Code of Federal Regulations, Part 4

- VASRD Code – “VA Schedule for Rating Disabilities”

38 United States Code - Veterans’ Benefits

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What is IDES

- Integrated Disability Evaluation System
- IDES is the **joint** DoD-VA process by which DoD determines whether **wounded, ill, or injured** Service members are fit for continued military service and by which DoD **and** VA determine appropriate benefits for Service members who are separated or retired for a Service-connected disability.
- IDES features a **single** set of disability medical **examinations** appropriate for fitness determination by the Military Departments and a single set of **disability ratings** provided by VA for appropriate use by both departments.
- Although IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

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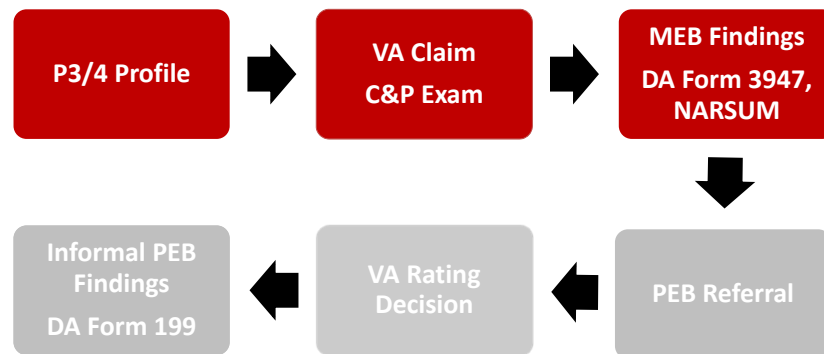
OSC Mission Statement

- The Office of Soldiers' Counsel (OSC) provides legal assistance to Soldiers undergoing the Army's Disability Evaluation System (DES) from the initiation of a Medical Evaluation Board (MEB) through final review by the Physical Evaluation Board (PEB) and separation or return to duty.
- OSC team members provide case-specific legal advice and advocacy designed to help Soldiers formulate and achieve their specific goals from the DES, whether that is to be found 'Fit for Duty' or separate with a fair and accurate disability determination.
- OSC has specialized Soldiers' MEB Counsel (SMEBC) and Soldiers' PEB Counsel (SPEBC) to assist Soldiers at each stage of the DES.

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Overview of MEB/IPEB Process



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Stages of IDES

- STAGE 1:
 - The Medical Evaluation Board (MEB) asks does your condition meet or fail retention standards IAW AR 40-501, Chapter 3.
- STAGE 2:
 - The Physical Evaluation Board (PEB) asks does your condition make you fit or unfit for continued military service taking your rank and MOS into consideration.
 - The PEB **only** makes the determination of fit, unfit, and combat related injuries.
 - The Veterans Administration (VA) does the rating percentages.

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Getting Into Stage 1

Standards for Retention/Separation/Retirement

- Army Regulation 40-501, Chapter 3
- Covers conditions which, individually or in combination:
 - Significantly limit/interfere with duty performance
 - Compromise/aggravate SM's health/well-being
 - Compromise health/well-being of other SMs
 - Prejudice the Government's interests if retained
- "Possession of one or more of the conditions listed in this chapter does not mean automatic retirement or separation from the Service"
- AR 40-501, para 3-4

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Retention Standards

General MEB Analysis:

In determining whether a condition fails retention standards, the MEB looks for:

- Formal Diagnosis
- Exhaustion of Conservative Treatment
- Deterioration/No Improvement + Impact on Duty Performance = **MRDP**

Conservative treatment includes:

- Physical therapy
- Medications
- Acupuncture
- Injections

RESULT:

- **PEB Referral**
 - NARSUM & DA Form 3947 issued
- **Return to Unit**



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MEB Appeals

Two Options -

Impartial Medical Review (IMR) – 5 calendar days

- Review of MEB findings by impartial provider **independent** of MEB
- Independent advice/counsel as to whether MEB findings “adequately reflect the complete spectrum of the Service member’s injuries and illnesses”

MEB Rebuttal – 7 calendar days

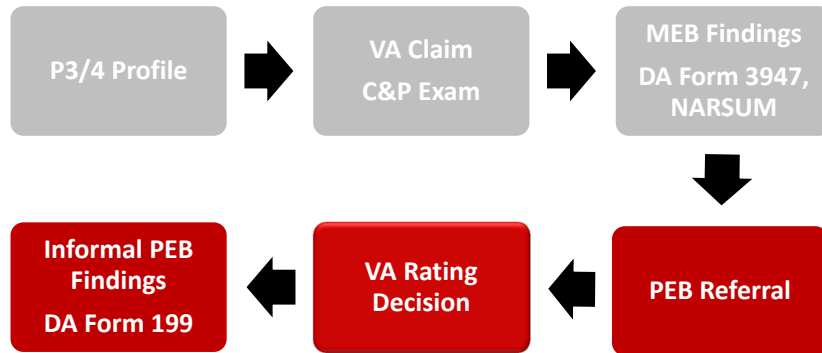
- Allows SM to challenge MEB findings
- Add/remove conditions
- Add/remove failing conditions
- Revise statements in the NARSUM
- Introduce evidence (outside records, statements)



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Overview of MEB/IPEB Process



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The Informal Physical Evaluation Board (IPEB)

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Informal Physical Evaluation Board (IPEB)

- The IPEB conducts a documentary review of the case file without the presence of the Soldier to make an initial decision on the Soldier's fitness for continued service.
- The composition must consist of at least two military or civilian members.
- 10 USC 12643, when the case under adjudication concerns a member of the USAR or ARNG, at least one member of the PEB must be a RC member.

SO WHAT DOES THIS MEAN?

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IPEB (cont'd)

- It's nothing more than a document review.
 - They look at the package, read what's in it, and then make a decision.
 - They can only come out with three decisions on fitness:
 - Unfit, Fit, or PFIT (presumed fit)
 - They will also determine if a combat, combat related, or combat location injury exists
- Outcome (if found Unfit)
- DA Form 199 and VA Proposed ratings

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PEB STAGE APPEALS

PEB Appeal

- Only time Soldier appears before a formal board
- Add new unfitting conditions
- Determine Combat, Combat Related or Combat Location Injuries
- Fit for Duty

Request Continuing on Active Duty (COAD)

- Defined criteria

VA Ratings Reconsideration (VARR)

- Change VA ratings only for Army Disqualifying Conditions

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Formal PEB (FPEB) Process

- 10 USC 1214 – No Soldier will be retired or separated for disability, without a full and fair hearing
- PEB President may direct a Formal hearing; if directed, Soldier is not required to appear or provide sworn testimony at hearing
- At least 10 days notification of formal hearing
- Unit must provide / pay for Travel
- Can be performed in person, through representative, or by VTC or teleconference when directed by the PEB president

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Some Other TIDBITS

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How to Lose it ALL

- Soldier pending UCMJ with punitive discharge are eligible for MEB, but not PEB (suspended) unless
 - Investigation ends
 - GCMCA dismisses charges
 - Allowed to resigns in lieu of or for the good of the service (no longer pending punitive discharge)
 - Case referred to summary court-martial
 - Conviction does not include confinement and punitive discharge
- Soldiers pending Admin Separation under certain chapters will be referred to GCMCA to determine which action proceeds - Admin Separation or Medical

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NEW in the Army Regulation

- Secretarial review for a Soldier on active duty with over 18 years, but less than 20 years of service, if separated with disability pay or separated without benefits (SWOB)
- Soldier may waive Secretarial review and proceed with disposition
- Secretary may direct retention and Soldier will be treated as 'Continuation on Active Duty' (COAD) and be retired once they attain 20 years

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The Department of Veterans Affairs (VA) Benefits

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Types of VA benefits

- **Medical Treatment (Benefits)**
 - Service Connected Conditions
 - Priority 1 medical treatment
 - 50% or greater VA disability award
- **Dollars per month (Compensation & Pension)**
 - “Disability Compensation is a tax free monetary benefit paid to Veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service”
 - Tax free
 - Supplemental payments to continue working
 - Based on any Veteran’s disabilities
 - Not related to actual or individual working ability

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Additional Types of VA benefits

- **Education**
 - GI Bill
 - Vocational Rehab
- **Programs and Entitlements**
 - Housing
 - Civil service preferences
 - Pension
- **Other potential benefits for Veterans**
 - DOD benefits (DOC 298182)
 - 100% VA = Military Base / Post privileges
 - State of Residency
 - Benefits and entitlements
 - Park membership
 - State and local tax property or vehicle benefits
 - Veteran’s Groups

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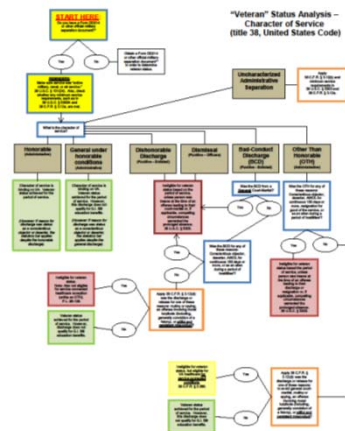


The Basic VA Standard "Service Connected Disability"

- Service Connected **[plus]** Disability requires:
 - Service Connected Condition - 38 U.S.C. Section 101(2)
 - The Veteran must have been separated or discharged under conditions greater than other than dishonorable.
 - See VA Flow chart
 - Have an injury or illness that was incurred or aggravated during active military service.
 - Diagnosis from medical provider (preference for doctors)
 - **PLUS** Disability
 - Must have a:
 - **VA disability** from the service connected injury or illness
 - Disability nexus to the Service Connected Condition
 - Compensated disability according to VA Schedule for Rating Disabilities – VASRD



Veteran Status Analysis



* An individual may be eligible for VA benefits based on a prior period of service even if they do not qualify based on their current period of service. See 38 USC 5612(c)(1)(B).
 ** For discharge status information, see 38 CFR 1.551, 1.552, 1.553, 1.554, 1.555, 1.556, 1.557, 1.558, 1.559, 1.560, 1.561, 1.562, 1.563, 1.564, 1.565, 1.566, 1.567, 1.568, 1.569, 1.570, 1.571, 1.572, 1.573, 1.574, 1.575, 1.576, 1.577, 1.578, 1.579, 1.580, 1.581, 1.582, 1.583, 1.584, 1.585, 1.586, 1.587, 1.588, 1.589, 1.590, 1.591, 1.592, 1.593, 1.594, 1.595, 1.596, 1.597, 1.598, 1.599, 1.600, 1.601, 1.602, 1.603, 1.604, 1.605, 1.606, 1.607, 1.608, 1.609, 1.610, 1.611, 1.612, 1.613, 1.614, 1.615, 1.616, 1.617, 1.618, 1.619, 1.620, 1.621, 1.622, 1.623, 1.624, 1.625, 1.626, 1.627, 1.628, 1.629, 1.630, 1.631, 1.632, 1.633, 1.634, 1.635, 1.636, 1.637, 1.638, 1.639, 1.640, 1.641, 1.642, 1.643, 1.644, 1.645, 1.646, 1.647, 1.648, 1.649, 1.650, 1.651, 1.652, 1.653, 1.654, 1.655, 1.656, 1.657, 1.658, 1.659, 1.660, 1.661, 1.662, 1.663, 1.664, 1.665, 1.666, 1.667, 1.668, 1.669, 1.670, 1.671, 1.672, 1.673, 1.674, 1.675, 1.676, 1.677, 1.678, 1.679, 1.680, 1.681, 1.682, 1.683, 1.684, 1.685, 1.686, 1.687, 1.688, 1.689, 1.690, 1.691, 1.692, 1.693, 1.694, 1.695, 1.696, 1.697, 1.698, 1.699, 1.700, 1.701, 1.702, 1.703, 1.704, 1.705, 1.706, 1.707, 1.708, 1.709, 1.710, 1.711, 1.712, 1.713, 1.714, 1.715, 1.716, 1.717, 1.718, 1.719, 1.720, 1.721, 1.722, 1.723, 1.724, 1.725, 1.726, 1.727, 1.728, 1.729, 1.730, 1.731, 1.732, 1.733, 1.734, 1.735, 1.736, 1.737, 1.738, 1.739, 1.740, 1.741, 1.742, 1.743, 1.744, 1.745, 1.746, 1.747, 1.748, 1.749, 1.750, 1.751, 1.752, 1.753, 1.754, 1.755, 1.756, 1.757, 1.758, 1.759, 1.760, 1.761, 1.762, 1.763, 1.764, 1.765, 1.766, 1.767, 1.768, 1.769, 1.770, 1.771, 1.772, 1.773, 1.774, 1.775, 1.776, 1.777, 1.778, 1.779, 1.780, 1.781, 1.782, 1.783, 1.784, 1.785, 1.786, 1.787, 1.788, 1.789, 1.790, 1.791, 1.792, 1.793, 1.794, 1.795, 1.796, 1.797, 1.798, 1.799, 1.800, 1.801, 1.802, 1.803, 1.804, 1.805, 1.806, 1.807, 1.808, 1.809, 1.810, 1.811, 1.812, 1.813, 1.814, 1.815, 1.816, 1.817, 1.818, 1.819, 1.820, 1.821, 1.822, 1.823, 1.824, 1.825, 1.826, 1.827, 1.828, 1.829, 1.830, 1.831, 1.832, 1.833, 1.834, 1.835, 1.836, 1.837, 1.838, 1.839, 1.840, 1.841, 1.842, 1.843, 1.844, 1.845, 1.846, 1.847, 1.848, 1.849, 1.850, 1.851, 1.852, 1.853, 1.854, 1.855, 1.856, 1.857, 1.858, 1.859, 1.860, 1.861, 1.862, 1.863, 1.864, 1.865, 1.866, 1.867, 1.868, 1.869, 1.870, 1.871, 1.872, 1.873, 1.874, 1.875, 1.876, 1.877, 1.878, 1.879, 1.880, 1.881, 1.882, 1.883, 1.884, 1.885, 1.886, 1.887, 1.888, 1.889, 1.890, 1.891, 1.892, 1.893, 1.894, 1.895, 1.896, 1.897, 1.898, 1.899, 1.900, 1.901, 1.902, 1.903, 1.904, 1.905, 1.906, 1.907, 1.908, 1.909, 1.910, 1.911, 1.912, 1.913, 1.914, 1.915, 1.916, 1.917, 1.918, 1.919, 1.920, 1.921, 1.922, 1.923, 1.924, 1.925, 1.926, 1.927, 1.928, 1.929, 1.930, 1.931, 1.932, 1.933, 1.934, 1.935, 1.936, 1.937, 1.938, 1.939, 1.940, 1.941, 1.942, 1.943, 1.944, 1.945, 1.946, 1.947, 1.948, 1.949, 1.950, 1.951, 1.952, 1.953, 1.954, 1.955, 1.956, 1.957, 1.958, 1.959, 1.960, 1.961, 1.962, 1.963, 1.964, 1.965, 1.966, 1.967, 1.968, 1.969, 1.970, 1.971, 1.972, 1.973, 1.974, 1.975, 1.976, 1.977, 1.978, 1.979, 1.980, 1.981, 1.982, 1.983, 1.984, 1.985, 1.986, 1.987, 1.988, 1.989, 1.990, 1.991, 1.992, 1.993, 1.994, 1.995, 1.996, 1.997, 1.998, 1.999, 2.000.



Basic Qualifications for VA disability benefits

- VA Disability Benefits are **not** based on:
 - Rank,
 - Years of service (possible exception less than two years)
 - Branch of service
 - Existence of service connected condition without disability
 - Status of termination from DOD (retirement or severance)
 - But must be honorable (see chart for details)
 - Combat injuries
 - Personal losses or restrictions
 - Financial status
 - Personal working abilities or limitations
 - Small exception for IU – “Individual Unemployability”
 - Personal causation (except “not in the line of duty”)

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The VA Disability Claims process

- Veteran claims VA benefits
- VA determines from veteran’s documentation:
 - Service Connection
 - Medically determined conditions,
 - AND then Disability
- VA Compensation and Pension exam - C & P exam
 - VA examiner exams the veteran according to the legal standard of the VASRD code only for “current service connected disability”
 - Not a medical exam to discover or evaluate medical conditions
 - System allows for future re exam upon request of veteran
- Determination by “VA Rater” for rating percent according to C & P exam plus “available” medical records and the VASRD rating code.
- Award to the Veteran for Service Connected disability
 - Not means based

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VA Claim Form 21-526 EZ

Department of Veterans Affairs

APPLICATION FOR DISABILITY COMPENSATION AND RELATED COMPENSATION BENEFITS

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MAY 3 2017

SECTION I: IDENTIFICATION AND CLAIM INFORMATION

1 VETERAN/SERVICE MEMBER NAME (First, Middle Initial, Last)

All conditions:

- Must be “Claimed” - VA cannot add find or add conditions at exam
- Payable if claimed within one year of termination of service OR at time of later claim
- Only compensable with doctor diagnosis and demonstrated disability

Claims do not require:

- Diagnostic names - Just identification information

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Determination of benefits – establishing proof

- Evidence
 - Based on Medical Diagnosis - doctors required
 - Personal statements have limited value
 - Focused on work based not personal limitations
 - VA assigns disability according VA Schedule of Rating Disabilities (VASRD) regulations
 - Not according to individual loss, limitations or restrictions
 - Medical records
 - Never assume the VA has the medical records!
 - Medical records establish service connection and define condition but:
 - Usually not critical for disability % determination
 - Disability determination is only according to VASRD and results of C & P exam

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What did the VA see?

EVIDENCE

- Service treatment and personnel records from July 2013 to April 2017 received on January 11, 2017 and April 18, 2017
- VA 21-0819 VA/DoD Joint Disability Evaluation Board Claim dated January 11, 2017
- DES/5103 Duty to Assist Notice dated January 12, 2017
- VA general medical examination dated January 26, 2017 received on February 1, 2017
- VA mental health examination dated January 30, 2017 received on February 1, 2017
- Commander's statement dated February 3, 2017 received on April 18, 2017
- Medical Evaluation Board Narrative Summary (with Behavioral Health Addendum dated February 2, 2017) dated February 3, 2017 received on April 18, 2017
- Physical Evaluation Board Findings dated April 17, 2017 received on April 18, 2017

The VA may not have:

- Updated medical records from personal providers
- Access to Army or sometimes even VA records

The VA often does not focus on medical issues of:

- Level of pain,
- Diagnostic reports,
- Former treatments,
- Most medications, or
- Future treatments or outcomes

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The VA award document: Always explains how to get more

3. Proposed entitlement to service connection of right hip femoral acetabular impingement syndrome with iliopsoas tendinitis and bursitis, limitation of flexion (claimed as right hip labral tear and tendon release right hip) for Department of Veterans Affairs (VA) benefits.

Service connection for right hip femoral acetabular impingement syndrome with iliopsoas tendinitis and bursitis, limitation of flexion (claimed as right hip labral tear and tendon release right hip) is proposed as directly related to military service.

We have assigned a 10 percent evaluation for your right hip femoral acetabular impingement syndrome with iliopsoas tendinitis and bursitis (claimed as right hip labral tear and tendon release right hip) based on:

- Flexion of the thigh limited to 31-45 degrees

Additional symptom(s) include:

- Painful Abduction
- Painful Adduction
- Painful Extension
- Painful External Rotation
- Painful Flexion
- Painful Internal Rotation

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in DeLuca v. Brown and Mitchell v. Shinecki, have been considered and are not warranted.

→ A higher evaluation of 20 percent is not warranted for limitation of flexion of the thigh unless the evidence shows:

- Flexion of the thigh limited to 21-30 degrees.

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Important VA determinations

5252 RIGHT HIP FEMORAL ACETABULAR IMPINGEMENT SYNDROME WITH
ILLIOPSOAS TENDINITIS AND BURSITIS, LIMITATION OF FLEXION
(CLAIMED AS RIGHT HIP LABRAL TEAR AND TENDON RELEASE RIGHT
HIP)
Proposed DES Service Connected, Gulf War, Incurred
10%

The VASRD Code – “VA Schedule for Rating Disabilities”
38 Code of Federal Regulations Part 4

<http://www.benefits.va.gov/warms/bookc.asp>

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Actual VA Law for “pain”?

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in *DeLuca v. Brown* and *Mitchell v. Shinseki*, have been considered and applied under 38 CFR §4.59.

- Limited to the minimum award for the condition
- Does not combine with any other rating criteria
- Must be doctor diagnosed - not Veteran proved

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Awards

- Final vs. Temporary
 - Temporary requires reevaluation
 - Reevaluation at future date under 38 USC 4.129
 - Generally 3 to 5 year review – most likely mental health
 - New MEDICAL evidence required
- VA Location of rating determination
 - Generally state of residence
- Payment dates
 - Within 1 year of service or later = “claim date”
 - First payment can take 3 to 6 months
- Limited VA family members benefits

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Awards, cont'd

- VA award Percent determined by “fuzzy math” 38 CFR 4.25
- Awards equals dollars per month
 - http://www.benefits.va.gov/compensation/resources_comp01.asp
- 100 % Ratings
 - Might equal “Total and Permanent disability”
 - 38 USC Chapter 35
- 0 % Ratings
 - Still establishes Service Connected for the VA medical treatment without disability payment
- “No Diagnosis” or “No Disability”
 - No service connection for compensation or payment
- Special Monthly Compensation – additional benefits for veterans
 - <https://www.benefits.va.gov/compensation/index.asp>
 - Erectile Dysfunction / Loss of Creative Organ
 - Loss of limbs / blindness / combined large ratings

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Basic disqualifications for VA benefits

- No honorable Periods of Service
- Discharge greater than “other than dishonorable discharge”
- No Service Connection
- No Service Aggravation of pre existing or inherited conditions
- Not related to your military service
- No diagnosis
- No disability
- Resolved

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No Diagnosed Condition

Your service treatment records and recent VA examination do not show evidence that you have been diagnosed with this condition. There was no pathology found on your recent examination to support a diagnosis.

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No Disability

A disability which began in service or was caused by some event in service must be considered "chronic" before service connection can be granted. Although there is a record of treatment in service for pharyngitis, no permanent residual or current disability subject to service connection is shown by the service treatment records or demonstrated by evidence from the VA examination. Therefore, service connection for pharyngitis is denied.

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Final notes from the VA

4.129 future

please solicit service member for a claim of migraine including migraine variants, bilateral shin splints and lumbosacral strain which were found on exam but not claimed

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Claims, Appeals and Modifications

- Notice of Disagreements
- Appeal
- Reconsiderations
- VA vs. private pay or assistance
 - VFW, Wounded Warrior Project

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CONTACT INFORMATION

(910) 643-1819

Marcelle Quist

marcelle.c.quist.civ@mail.mil

Rick Ottinger

richard.r.ottinger.civ@mail.mil

Office of Soldiers' IDES Counsel

Soldier Support Center Annex

Building 4-3539 1st Floor

Normandy Drive

Ft Bragg, NC 28310

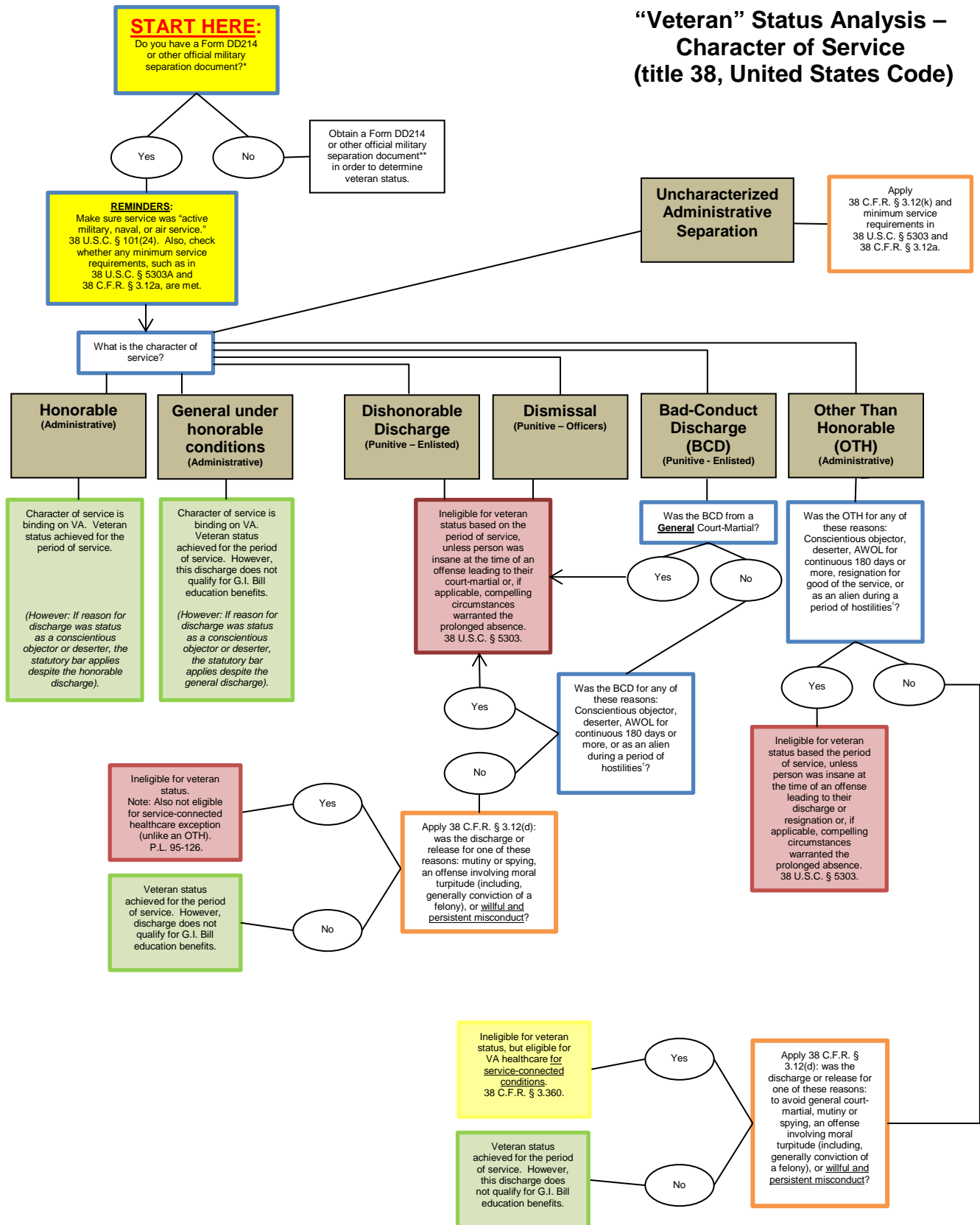
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Questions

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"Veteran" Status Analysis – Character of Service (title 38, United States Code)



* An individual may be eligible for VA benefits based on a prior period of service even if they do not qualify based on their current period of service. See VAOPGCPREC 61-91. If there is more than one period of service, then analyze each period separately. See 38 C.F.R. § 3.13 for information on what constitutes a period of service.

** For example, some reservists will only receive a discharge certificate (e.g., DD Form 256A).

† Regarding aliens, see the exceptions in 38 U.S.C. § 5303(c) and 38 C.F.R. § 3.12(c)(5).

DISCLAIMER: This document is a tool to facilitate a general understanding of the factors affecting a title 38 "Veteran" status determination and provides no rights or remedies to any individual or group.

