



WSSFC 2025

Substantive Track – Session 6

Validating Veterans Benefits: A Legal Overview of Benefit Programs for Those Who Served

Presenters:

Shana M. Dunn, West & Dunn, Waunakee

Travis J. West, West & Dunn, Waunakee

About the Presenters...

Shana Dunn is a founding partner of West & Dunn, Waunakee, a law firm dedicated to providing high-quality legal services to individuals and businesses, with a particular focus on assisting U.S. Armed Forces veterans. Before earning her law degree, she worked as a rating specialist for the U.S. Department of Veterans Affairs (DVA). She graduated from Marquette Law School in 2009, where she was an articles editor for *Marquette Elder's Advisor*. In 2010, she was admitted to practice before the DVA. Since then, she has practiced exclusively in the area of veterans' law. She has contributed to the *Wisconsin Lawyer*, authoring an article on representing veterans, and regularly presents on issues relating to veterans' law.

Travis James West is a founding partner of West & Dunn, where he assists veterans with claims for service-connected disability benefits pending before the Department of Veterans Affairs, Court of Appeals for Veterans Claims, and US Circuit Court of Appeals for the Federal Circuit. In addition, he currently serves on the boards of directors for the US Army Ranger Association, Three Rangers Foundation, and National Ranger Memorial Foundation, and is a member of the Litigation and Amicus Committee for the National Organization of Veterans Advocates. When not working, Travis can often be found sailing the waters of the upper Midwest or exploring the trails of Wisconsin.

Outline: Understanding Veterans' Benefits

Shana M. Dunn
Travis James West
West & Dunn
www.westdunn.com
608-535-6420

Most Common Federal VA Benefits

- Disability Compensation
- Pension
- Health Care
- Education
- Home Loan Guaranty
- Burial & Memorial

Accreditation

- VA Accreditation is Required
 - 38 C.F.R. § 14.629-36
 - CLE requirement to obtain accreditation and to maintain accreditation
- Strict Fee Regulations –
 - Cannot charge a fee until VA has already denied a particular claim.
 - Fees must be reasonable (20 percent presumed reasonable, greater than 33 1/3 presumed unreasonable)

Resources for VA Help

- Veterans Service Office (CVSO or State)
- Accredited Attorney or Claims Agent
- Unaccredited Advisors, Consultants, or Coaches

VA Disability Benefits and Pensions

- Compensation
 - “Service Connection.” Monthly payments to compensate for occupational impairment resulting from disabilities caused by service.
 - Sources of Law
 - 38 USC Chapter 11
 - 38 CFR Chapters 3, 4, and 20
 - M21 – Veteran’s Adjudication Manual
 - Case Law – Court of Appeals for Veterans Claims, Federal Circuit
- Pension
 - Means tested benefit for veterans with wartime service. Capped at the maximum annual pension rate (MAPR). Pension payments are reduced dollar for dollar by income, income is offset by medical expenses.
 - Sources of Law
 - 38 U.S.C. Chapter 15.
 - 38 C.F.R. § 3.3 (eligibility)
 - 38 C.F.R. §§ 3.271 – 3.279 (income rules)
 - 38 C.F.R. §§ 3.351 – Special Monthly Pension

VA Disability Compensation

- Eligibility
 - Must be a veteran. Defined as a person who had active service in the US armed forces and was discharged under conditions other than dishonorable. 38 C.F.R. § 3.1(d)
 - National Guard/Reserve service members have different rules. In order to be considered a veteran, they must have suffered an injury during a period of active duty for training or inactive duty for training. 38 C.F.R. § 3.6
- Filing an Initial Claim
 - Claim definition: "Written or electronic communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs submitted on an application form prescribed by the Secretary." 38 CFR § 3.1(p).
 - Issue based - an application for service connection for hearing loss, tinnitus, and a back condition contains three separate claims, each of which could develop its own procedural history.
 - First claim for service connection for a particular issue:
 - File VA Form 21-526EZ, "Application for Disability Compensation and Related Benefits," online, by mail, or in person at a VA regional office. 38 CFR § 3.155.
 - Claim for increase: Also filed on VA Form 21-526EZ.
 - A claim for increase is a claim for a higher evaluation for an already service-connected condition.
 - If claimant is disagreeing with an evaluation assigned by a rating decision less than one year prior, then a supplemental claim on VA Form 20-0995 is appropriate.

- Increase means the condition has worsened since the time that the claim was first granted. Supplemental claim regarding the proper evaluation means that VA assigned an incorrect evaluation in a recent decision.
- Appealing an Adverse Decision
- Elements of Service Connection
 - To establish service connection, a veteran must prove:
 - A current, diagnosed disability.
 - An in-service event, injury, or illness.
 - A medical nexus linking the current disability to the inservice event.
 - 38 CFR § 3.303, *Caluza v. Brown*, 7 Vet.App. 498 (1995)
- Legal Concepts to Keep in Mind
 - Non-Adversarial Process – Throughout the administrative process, VA's job is to help the veteran support their claim.
 - Duty to Assist – VA is responsible for assisting the veteran with obtaining evidence to support their claims, and to provide a VA medical exam and opinion (assuming there is some evidence of an in-service injury and some evidence of a current condition). 38 C.F.R. 3.102
 - Reasonable Doubt – If there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the benefit of the doubt shall be given to the claimant. 38 C.F.R. § 3.102
 - These doctrines apply at the VA Regional Office and Board of Veterans Appeals.
- Court of Appeals for Veterans Claims
 - Exclusive jurisdiction over VA appeals
 - 38 U.S.C. Chapter 72
 - Modified version of Federal Rules of Appellate Procedure.

- Mandatory mediation process under Rule 33
- Eligibility for fees under Equal Access to Justice Act
 - If veteran is prevailing party, VA will pay attorney's hourly fees.
 - Hourly rates determined the base rate and inflation adjustment.

Pension

- Eligibility and criteria 38 C.F.R. § 3.3
 - 90 days of wartime service,
 - Meets net worth requirements, and
 - Is 65 or over, or
 - Permanently and totally disabled from non-service-connected disability
- Current maximum annual pension rate for a veteran with no dependents, \$16,965.
- VA also considers net worth. Base rate at 38 C.F.R. § 3.274, subject to cost of living adjustments
 - Current net worth limitation is \$159,240
- Countable income is reduced by qualifying medical expenses.
- 3 year look back for asset determination – assets transferred for less than fair market value in the three years prior to claim could result in five years of ineligibility for benefits.
- Veterans in need of assistance with the activities of daily living may qualify for a higher rate.

VA Health Care

- Overview of services
 - VA operates 170 hospitals
 - Over 1,000 outpatient clinics
- Eligibility
 - If service connected – VA will treat you for service connected conditions
 - If service connected at 50 percent or more, VA will provide medical care for all conditions.
 - POW
 - Medal of Honor or Purple Heart recipient
 - Discharged due to disability caused by service
 - Served in combat after 1998 (eligibility for 10 years post discharge)
 - Served at Camp Lejeune between 1953 and 1987 (eligibility related to toxic exposure).
 - Meet income and asset requirement for enrollment based on financial need.
- Priority Groups
 - Group 1: Veterans with service-connected disabilities rated 50% or more, or unable to work due to service-connected conditions, and veterans awarded the Medal of Honor.
 - Group 2: Veterans with service-connected disabilities rated 30–40%.
 - Group 3: POWs, Purple Heart recipients, or discharged due to disability, service connected disability rated at 10 or 20 percent, receiving benefits under 38 U.S.C. § 1151.
 - Group 4: Veterans receiving Aid & Attendance or Housebound benefits, or catastrophically disabled.

- Group 5: Veterans with limited income (receiving VA pension benefits or Medicaid)
- Group 6: Certain special groups (e.g., combat veterans within 10 years of discharge, toxic exposures like Agent Orange, Gulf War, Camp Lejeune).
- Group 7: Income below certain income limits (copays required, enrollment limited if funding restricted).
- Group 8: Veterans with income above VA thresholds (lowest enrollment priority, may be restricted).
 - 38 U.S.C. Chapter 17
 - 38 C.F.R. §§ 17.36-40
- VA Medical Negligence
 - Administrative Claims under - 38 U.S.C. §1151
 - Disability caused by VA medical treatment will be treated as if service connected where: “the proximate cause of the disability or death was (a) carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination; or (b) an event not reasonably foreseeable.
 - Benefits are paid in the same way as service-connected disability compensation, monthly payment, amount determined by applying rating schedule to disabilities.
 - Claim is filed like any other claim for service connection.
 - Judicial Claims under Federal Tort Claims Act (FTCA) - 28 U.S.C. Chapter 171
 - Begins as an administrative claim. Process:
 - Must file SF-95 with a VA Office of General Counsel.
 - Must be filed within two years of the date the claim accrues.

- The SF 95 asks for damages claimed. Claimant will be limited to this amount of damages unless additional evidence that was not discoverable at the time of the filing of the SF 95 is discovered.
- VA will then review the claim and either settle the claim, deny the claim, or take no action.
 - If VA takes no action, the claim is deemed denied and the claimant can file suit in Federal Court.
- Federal Suit –
 - Claimant has six months from the date of denial of the administrative claim to file in District Court.
 - File in district in which claimant resides, or the district where the injury occurred.
 - State law applies when determining damages.
 - Attorney fees capped at 25 percent.

Education Benefits

- Post-9/11 GI Bill – 38 U.S.C. Chapter 33
 - Covers tuition, housing, and books for veterans who served after 9/10/2001.
- Montgomery GI bill – 38 U.S.C. Chapter 30
 - Monthly stipend for active duty and some reserve service members.
- Veteran Readiness & Employment – 38 U.S.C. Chapter 31
 - Vocational rehabilitation, including:
 - Career counseling
 - Education and training
 - Employment services
- Chapter 35 Dependents Education Assistance – 38 U.S.C. Chapter 35

- Benefits for dependents and survivors of veterans who are permanently (no future exam scheduled) and totally (100% service connected) disabled.
- Transferable Benefits – In certain circumstances, unused education benefits can be transferred to spouses or dependents.

VA Home Loans

- Home Loan Guaranty – 38 U.S.C. Chapter 38
 - No down payment
 - No private mortgage insurance (PMI)
 - Competitive interest rates because the loan is backed by VA
 - Benefit can be reused.
 - Assumable, in some cases. A qualified non-veteran buyer can assume the loan when buying the home. 38 U.S.C. § 3714.

VA Burial Benefits – 38 U.S.C. Chapter 23

- Flags
- Headstone
- Burial in National Cemetery
 - Veterans may be buried in a VA national cemetery at no cost, including grave site, opening/closing, and care.
- Burial benefits when death is not service connected:
 - Available when –
 - Death occurs in a VA facility (hospital, nursing home, domiciliary)
 - An institution where the vet was receiving treatment at VA expense.
 - Benefit is payment for the cost of a burial plot, up to \$700.

- Burial benefits when death is caused by service connected disability.
 - VA will pay up to \$2000 for burial and funeral expenses.

State VA Benefits

- State Veterans Homes
- Tuition & Education Benefits
- Property Tax Exemptions
- State Veterans Cemeteries
- Employment Preference
- Vehicle & ID Benefits
- State Veteran Services Offices

Questions?

Understanding Veterans' Benefits

A Legal Overview of the Benefit
Programs for Those Who Served



1



Shana M. Dunn
sdunn@westdunn.com

Travis James West
twest@westdunn.com



(608) 535-6420
www.westdunn.com

2

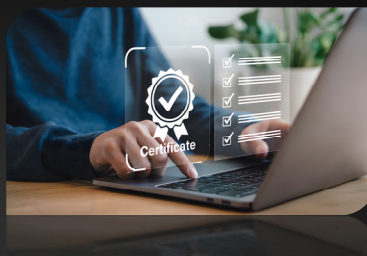
Most Common Federal VA Benefits

- Disability Compensation
- Pension
- Health Care
- Education
- Home Loan Guaranty
- Burial & Memorial



3

Accreditation



VA Accreditation is Required*

No individual may assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by VA for such purpose. 38 C.F.R. § 14.629(b)(1)

* Subject to current litigation and legislative debate at federal and state levels

Strict Fee Regulations

Attorneys cannot charge a fee for filing an initial claim or for work performed before the VA issues its first decision on a matter. 38 C.F.R. § 14.636(c)

All fees must be reasonable and require a signed written agreement. 38 C.F.R. § 14.636(e), (g)

Continuing Legal Education (CLE)

To maintain accreditation, attorneys must complete 3 hours of VA-related CLE within the first 12 months of accreditation, and 3 additional credits every 24 months thereafter. 38 C.F.R. § 14.629(b)

4

Resources for VA Help

Veterans Service Office

- County (CVSO or Commission) or State
- Big Six (VFW, DAV, American Legion, AMVETS, PVA, VVA).
- Always free
- Knowledgeable about the broadest range of benefits

Accredited Attorney or Claims Agent

- Verified through VA Website
- Primarily help with disability or pension benefits
- Typically cannot/will not assist with filing an initial claim
- Cost is typically a percentage of the back-pay awarded

Unaccredited Advisors, Consultants, or Coaches

- Not recognized by VA
- Will typically assist with filing an initial claim
- Primarily help with disability benefits
- Cost is typically a factor of the amount of increase

5

VA Disability Benefits and Pensions

6

VA Disability Compensation v. Pension

COMPENSATION

- Requires service connection
- Disability must be related to service
- Payment determined by rating schedule

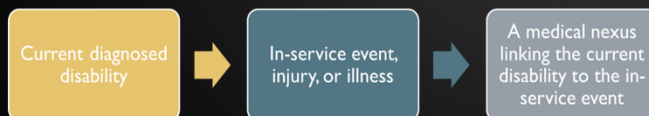
PENSION

- Means-tested benefit for wartime vets
- Disability does not need to be related to service
- Maximum Annual Pension Rate (MAPR)

7

VA Disability Compensation

- **Eligibility:** Must be a veteran* that has 1) a current disability; 2) an in-service event, injury, or illness; and 3) a nexus between the two.



- **Payment amounts:** Based on disability rating (0%-100%) and family status.
- **Additional support:** Special Monthly Compensation (SMC), clothing allowance, automobile grants, and adaptive housing

* a person who had active service in the armed forces and was discharged under conditions other than dishonorable



8

VA Disability Compensation

Filing An Initial Claim

- An initial claim for disability must be filed on VA Form 21-526. This form may also be used to seek an increase in rating level.



Supplemental Claim

Appealing An Adverse Decision By VA

- Request for Higher Level Review – VA Form 20-0996
- Supplemental Claim – VA Form 20-0995
- Appeal to Board of Veterans Appeals - VA Form 10182 (Notice of Disagreement)



Higher Level Review



Notice of Disagreement

9

Elements of Service Connection

In-service injury, event, disease, exposure:

- Injury – broken bone, TBI, car accident residuals, etc.
- Event – Traumatic event leading to PTSD – combat, military sexual trauma, etc.
- Disease – Chronic disease first diagnosed in service, symptoms first manifested in service.
- Exposure – Toxic exposure – presumptive (Agent Orange, PACT Act, etc), non-presumptive (occupational exposures related to MOS – fuel, solvents, PFAS, etc.)

Current Diagnosis

- Medical records reflecting a diagnosis or evidence of symptoms that indicate a diagnosis.
- Must be a chronic condition, not an acute illness.

Nexus

- Medical opinion finding that it is at least as likely as not that the in-service injury, event, disease or exposure caused the current disability.

10

VA Disability Compensation

Non-Adversarial Process

Congress has designed and fully intends to maintain a beneficial non-adversarial system of veterans benefits. This is particularly true of service-connected disability compensation where the element of cause and effect has been totally by-passed in favor of a simple temporal relationship between the incurrence of the disability and the period of active duty. Implicit in such a beneficial system has been an evolution of a completely ex-parte system of adjudication in which congress expects [the Department of Veterans Affairs] to fully and sympathetically develop the veteran's claim to its optimum before deciding it on its merits. Even then, [the Department] is expected to resolve all issues by giving the claimant the benefit of any reasonable doubt. In such a beneficial structure, there is no room for such adversarial concepts as cross examination, best evidence rule, hearsay evidence exclusion, or strict adherence to burden of proof."

H.R. Rep. No. 100-963, at 13 (1998).

11

VA Disability Compensation

Duty To Assist

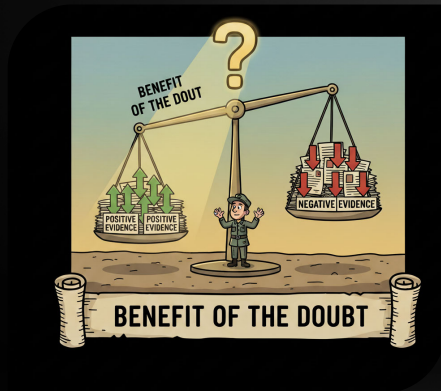
The Duty to Assist defines the responsibilities of the veteran and VA with regard to obtaining evidence to support a claim. The goal is to assist the veteran in procuring as much of the available evidence so that VA can produce the most favorable decision possible.

38 C.F.R. § 3.159



12

VA Disability Compensation



Reasonable Doubt

If there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the benefit of the doubt shall be given to the claimant.

38 C.F.R. § 3.102

13

Court of Appeals for Veterans Claims



- Exclusive jurisdiction over VA appeals
- Modified version of Federal Rules of Appellate Procedure
- Mandatory mediation process under Rule 33
- Eligibility for fees under Equal Access to Justice Act
- Decisions can be appealed to Federal Circuit

14

Pension

- Needs-based benefit for wartime veterans who are age 65+, permanently disabled, or in a nursing home.
- Must have low income and limited assets, below VA-established thresholds.
- Wartime service required: At least 90 days of active duty (with at least one day during a wartime period).
- May include additional monthly payments through Aid & Attendance or Housebound allowances for those needing daily care or confined to their home



15

VA Health Care

16

Health Care

Comprehensive medical care provided at VA medical centers and clinics.

- **Includes:** Primary care, mental health, specialty care, substance abuse treatment.
- **Eligibility:** Based on active-duty service history, service-connected conditions, or income level.
- **Priority groups:** Used to determine enrollment and copay responsibility,



17

Health Care - Eligibility

- Have a service-connected disability (0% or higher).
- Were prisoners of war (POWs).
- Received a Purple Heart or Medal of Honor.
- Were discharged due to a disability caused by or aggravated during service.
- Served in a theater of combat operations after November 11, 1998 (eligible for 10 years of VA health care after discharge).
- Served at Camp Lejeune between 1953–1987 (special toxic exposure eligibility).
- Meet the income and asset requirements for financial need-based enrollment.



18

Health Care - Priority Groups

- Groups 1-4:** Highest priority for veterans with service-connected disabilities, serious injuries, or special recognitions (e.g., Purple Heart, Medal of Honor, former POWs).
- Group 5:** Covers low-income veterans and those receiving VA pension or rated 0% service-connected.
- Groups 6-8:** Includes veterans with toxic exposure, combat service, or higher incomes (subject to copays and enrollment limits).



19

VA Medical Negligence

Administrative Claims for Disabilities Resulting from Medical Negligence

- 38 U.S.C. §1151 - Veteran files a disability claim directly with VA; benefits may be awarded if VA care caused additional disability or death due to negligence, lack of skill, or unforeseeable event—processed like a service-connection claim, with no need to file in federal court.
- Provides VA disability compensation (monthly benefits, DIC for survivors, and related ancillary benefits) as if the condition were service-connected.

Judicial Claims for Medical Negligence - Federal Tort Claims Act

- Provides money damages for negligence (depending on state law, potentially to include pain and suffering, lost wages, medical costs).



20

Medical Negligence Claims under the FTCA

- Must exhaust administrative remedies first by filing an SF-95
- Strict Deadlines:
 - SF-95 must be filed within two years of the date the claim accrues
 - Once VA administratively denies the claim, the veteran must file suit within 6 months
- Liability is governed by state law, procedure is governed by federal law



21

Education Benefits

22

Education

- **Post-9/11 GI Bill:** Covers tuition, housing, and books for veterans who served after 9/10/2001; includes the Yellow Ribbon Program for private/out-of-state schools.
- **Montgomery GI Bill:** Offers monthly education stipends for eligible active duty and selected reserve service members.
- **Veteran Readiness & Employment (VR&E):** Supports disabled veterans with training, education, and job placement services.
- **Transferable Benefits:** Eligible veterans can transfer unused education benefits to spouses or dependents under certain conditions.



23

Education

- **Chapter 35 Dependents Education Assistance:** Education benefits for dependents and survivors of certain veterans who are permanently and totally disabled due to service-connected conditions, or who died in service or from service-connected causes. Provides funding for college, vocational training, apprenticeships, and some certification programs.



24

VA Home Loans

25

Home Loan Guaranty

- No down payment required on most home purchases, making homeownership more accessible.
- No private mortgage insurance (PMI), lowering monthly costs compared to conventional loans.
- Competitive interest rates (sometimes) and limited closing costs, backed by VA's loan guaranty.
- Includes options for refinancing (IRRRL), adapted housing grants, and Native American Direct Loans.



26

VA Burial Benefits

27

Burial and Memorial

- Burial in a VA national cemetery with no cost for the gravesite, opening/closing, or perpetual care.
- Headstone, marker, or medallion provided for eligible veterans, even if buried in a private cemetery.
- Presidential Memorial Certificate issued to next of kin or loved ones.
- Burial allowances may be reimbursed to cover funeral and interment expenses for eligible veterans.



28

Burial Allowance Eligibility

- Died as a result of a service-connected disability, or
- Was receiving VA compensation or pension at time of death, or
- Was entitled to receive benefits but not receiving them (due to waiver or withheld payments), or
- Died in a VA medical facility, or while traveling under VA authorization, and
- The benefit must be claimed within 2 years of the veteran's burial.



29

State VA Benefits

30

Common State VA Benefits

-  **State Veterans Homes:** Long-term care facilities for eligible veterans (and sometimes spouses)
-  **Tuition & Education Benefits:** Free or reduced tuition at public colleges
-  **Property Tax Exemptions:** Reduced or waived property taxes for disabled or low-income vets
-  **State Veterans Cemeteries:** Burial options similar to national cemeteries, often at no cost
-  **Employment Preference:** Extra points or priority for state jobs and training programs
-  **Vehicle & ID Benefits:** Free/discounted registration, license plates, and ID cards
-  **State Veteran Services Offices**

31



QUESTIONS?

WD
West & Dunn
— Attorneys at Law —

32



Shana M. Dunn
sdunn@westdunn.com



Travis James West
twest@westdunn.com



(608) 535-6420
www.westdunn.com