

FDVA-CVSO TRAINING

7 ways of Service Connection



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED



Principles of Service Connection



38 C.F.R. 3.303 Principles Relating to Service Connection

(a) General. Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein.

(b) Chronicity and continuity. With chronic disease shown as such in service (or within the presumptive period under § 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes... [C]ontinuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

(c) Preservice disabilities noted in service. There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorrhoidal tags or tabs, etc.) with no evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service.

(d) Postservice initial diagnosis of disease. Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. Presumptive periods are not intended to limit service connection to diseases so diagnosed when the evidence warrants direct service connection. The presumptive provisions of the statute and Department of Veterans Affairs regulations implementing them are intended as liberalizations applicable when the evidence would not warrant service connection without their aid.

Direct Service Connection

38 C.F.R. 3.304 Direct Service Connection

Requires 3 elements:

- Injury or disease that was incurred in service that is noted in service treatment records
- A current diagnosis
- A medical opinion (Nexus) linking the current diagnosis to military service

Aggravation of Preservice Disability

38 C.F.R. 3.306 A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

Aggravation of Preservice Disability

Clarification

Just because an injury or disease worsened during military service, does not mean that it should be service connected. *It has to show that the increase in disability was not due to the natural progression of the disease.*

Secondary Service- Connected Disabilities

38 CFR 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

- Have a Service Connected Disability
- Current Diagnosis (Condition)
- A medical opinion linking the current diagnosis to the service connected disability

Secondary Service-Connected Disabilities

38 CFR 3.310(c) *Cardiovascular disease.*

Ischemic heart disease or other cardiovascular disease developing in a veteran who has a *service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles*, shall be held to be the proximate result of the service-connected amputation or amputations.

Secondary Service-Connected Disabilities

38 CFR 3.310(d) (TBI) In a veteran who has a service-connected traumatic brain injury, the following shall be held to be the proximate result of the service-connected traumatic brain injury (TBI), in the absence of clear evidence to the contrary:

- Parkinsonism, including Parkinson's disease, following moderate or severe TBI;
- Unprovoked seizures following moderate or severe TBI;

Secondary Service-Connected Disabilities

38 CFR 3.310(d) (TBI) (continued)

- Dementias, if manifest within 15 years following moderate or severe TBI;
- Depression if manifest within 3 years of moderate or severe TBI, or within 12 months of mild TBI;
- Diseases of hormone deficiency that result from hypothalamo-pituitary changes if manifest within 12 months of moderate or severe TBI.

Presumptive Service Connection

The basic requirements and explanations for presumptive service connection can be found at 38 CFR 3.307. (Must Manifest to a COMPENSABLE Degree)

1. 38 CFR 3.309 is a List of Diseases

- Chronic Diseases (within 12 months)
- Tropical Diseases (within 12 months)
- Former POWs
- Radiation
- Herbicides
- Camp Lejeune

2. Claims based on exposure to ionizing radiation and diseases. 38 CFR 3.311
3. Non-Hodgkin's Lymphoma is a presumptive for Blue Water Navy. 38 CFR 3.313.
4. Claims based on chronic effects of exposure to mustard gas. 38 CFR 3.316
5. Compensation for certain disabilities occurring in Persian Gulf veterans. (Undiagnosed Illnesses and Infectious Diseases) 38 CFR 3.317
6. *Presumptive service connection for amyotrophic lateral sclerosis for all Veterans (ALS or Lou Gehrig's Disease). 38 CFR 3.318*

Presumptive Service Connection Basic Requirements:

1. Confirmed exposure to whatever presumptive that the veteran is filing exposure to:
 - VA will confirm the exposure through the veterans Service Personnel Records and through the Branch of Service.
2. Confirmed diagnosis of a presumptive condition that is on the presumptive list that specific exposure.

Paired organs and extremities

Compensation is payable for the combinations of service-connected and nonservice-connected disabilities, as if both disabilities were service-connected, provided the nonservice-connected disability is not the result of the veteran's own willful misconduct. 38 CFR 3.383

- Impairment of vision in one eye as a result of service-connected disability and impairment of vision in the other eye as a result of non-service-connected disability.

Paired organs and extremities Contd.

- Loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of nonservice-connected disability.
- Hearing impairment in one ear compensable to a degree of 10 percent or more, service-connected, and hearing impairment (NSC) in the other ear, that meets the provisions of § 3.385 in the other ear.

Paired organs and extremities Contd.

- Loss or loss of use of one hand or one foot as a result of service-connected disability and loss or loss of use of the other hand or foot as a result of nonservice-connected disability.
- Permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.

Disability Due to VA Hospital Care or VA Treatment (1151)

If it is determined that there is ***additional disability*** resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of hospitalization, medical or surgical treatment, or examination, compensation will be payable for such additional disability.
38 CFR 3.361

Disability Due to Training and Rehabilitation Services, or Compensated Work Therapy (CWT) program

To establish that the provision of training and rehabilitation services or a CWT program proximately caused a veteran's additional disability or death, it must be shown that the veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the disability or death. 38 CFR 3.361

Seven Ways to Service Connection Video

https://www.youtube.com/watch?v=XbcY_udL72Y&feature=youtu.be

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