



Lesson 13

Service Connection: Joint Conditions

The American Legion DSO School

March 2022

Lesson 13 Learning Objectives

Learn about issues that arise involving claims for service connection for joint conditions.

- Review the basic elements of service connection.
- Learn how to establish a current disability.
- Learn about different theories of service connection for joint conditions.

Basic Elements of Service Connection

- To review, the three basic elements of service connection are:
 1. A present disability.
 2. An in-service incident or accident.
 3. A nexus (connection) between the two.

Requirement for a Present Disability

- Until 2018, VA required a diagnosed joint condition before VA would consider granting service connection.
- Joint pain alone, **without an underlying diagnosed condition**, can now be service connected if the pain causes functional impairment.
- *Saunders v. Wilkie*, 886 F.3d 1356 (Fed. Cir. 2018).



Loss of Earning Capacity

- The Veteran's disability, manifested by pain or any other symptom, must reach the level of a functional impairment in earning capacity before VA grants service connection.
- VA must make an individualized assessment of the Veteran's symptoms, which includes a preliminary evaluation of the degree of impairment. *Wait v. Wilkie*, 33 Vet.App. 8 (2020).
- In other words, the Veteran's symptoms must somehow affect their ability to work.



Establishing Functional Impairment



- For joint conditions, functional impairment usually involves pain or weakness during use of joint.
- This can include pain or weakness that occur only after repetitive use, or during flares, if they cause a loss of earning capacity.
- Use VA Form 21-4138 for Veteran to describe how their current symptoms impair their use of the joint.

What is Arthritis?

- Arthritis (inflammation) is a disability of the joints.
- Other symptoms can include pain, swelling, redness, and heat.
- For VA service connection, arthritis must be confirmed by x-ray.
- The most common arthritis that affects Veterans is osteoarthritis (“wear and tear”), rated under DC 5003. 38 C.F.R. § 4.71a.
- Arthritis can be caused by other underlying conditions as well.



Presumptive Service Connection

- “Arthritis” is a chronic condition under 38 C.F.R. § 3.309(a).
- Arthritis is presumed service-connected if:
 - It manifested to 10% disabling within 1 year of exit from service, or
 - Symptoms have been continuous since service, or
 - Diagnosed in service, resolves, and reappears after service.

Direct Service Connection



Photo: U.S. Army

- Established through in-service manifestation of disability, or
- Established through nexus opinion linking present disability to an in-service incident or activity.
 - In-service event or symptoms do not need to be documented in service medical records (although that helps).
 - In-service event does not need to be an acute injury – can be the rigors of service.

Quiz

Click the **Quiz** button to edit this object

Veteran Jerry is seeking service connection for a back condition. On his VA Form 21-526EZ he said that his back started to hurt him in service, but he didn't seek any medical treatment while on active duty.

Jerry attended a VA examination, and the examiner said, "After full review of the claims file and service medical records I see no evidence of any back injury while in service and it is my medical opinion that it is not likely that the veteran's present back problems are related to his military service."

Is this VA examiner's opinion adequate?

- No
- Yes

Quiz Answer

No

This comes from the case *Dalton v. Nicholson*, 21 Vet.App. 23 (2007). In that case the Court held, “The medical examiner cannot rely on the absence of medical records corroborating that injury to conclude there is no relationship between appellant’s current disability and his military service.”

VA claim examiners cannot ignore Veteran’s lay statements describing symptoms during service.

Secondary Service Connection

- One musculoskeletal condition can lead to another condition, such as:
 - Knee injury can place increased load on ankles or hips,
 - Fractured or dislocated vertebrae in the neck and back can result in nerve damage (radiculopathy or “pinched nerve”) that results in pain, weakness, and other symptoms of the shoulders, arms, legs, and feet (neuropathy).
- Secondary conditions should be rated ***separately*** from the primary condition.
- See 38 C.F.R. § 3.310.



Obesity



- Under current policy, VA does not consider obesity to be a disability that can be service-connected.
- Obesity can be an “intermediate step” to establish secondary service connection.
- If a Veteran’s service-connected disability causes or contributes to weight gain, then any resulting medical complication may be secondarily service-connected.

Quiz

Click the **Quiz** button to edit this object

Veteran Elizabeth is service connected for disabilities in both knees since shortly after her separation from service in 1978. In the years since service, she has now developed hypertension. Elizabeth is claiming service connection because the pain from her service-connected knee disabilities limits her mobility, which has cause her to gain weight, which in turn caused her hypertension.

Elizabeth was provided with a VA examination. The examiner said that her hypertension was not caused by her service-connected knee disabilities because there was no evidence that her weight gain was caused by her knee disabilities.

Is this VA examiner's opinion adequate?

- Yes, because the examiner addressed whether her service-connected knee disabilities caused her obesity.
- No, because the examiner did not address whether her service-connected knee disabilities aggravated her obesity.

Quiz Answer 2

No, because the VA claim examiner did not address whether her service-connected knee disabilities aggravated her obesity.

These facts are from *Walsh v. Wilkie*, 32 Vet.App. 300 (2020). In that case, the Court held that the VA examiner's opinion was inadequate because it did not address whether the Veteran's service-connected knee disability aggravated her obesity.

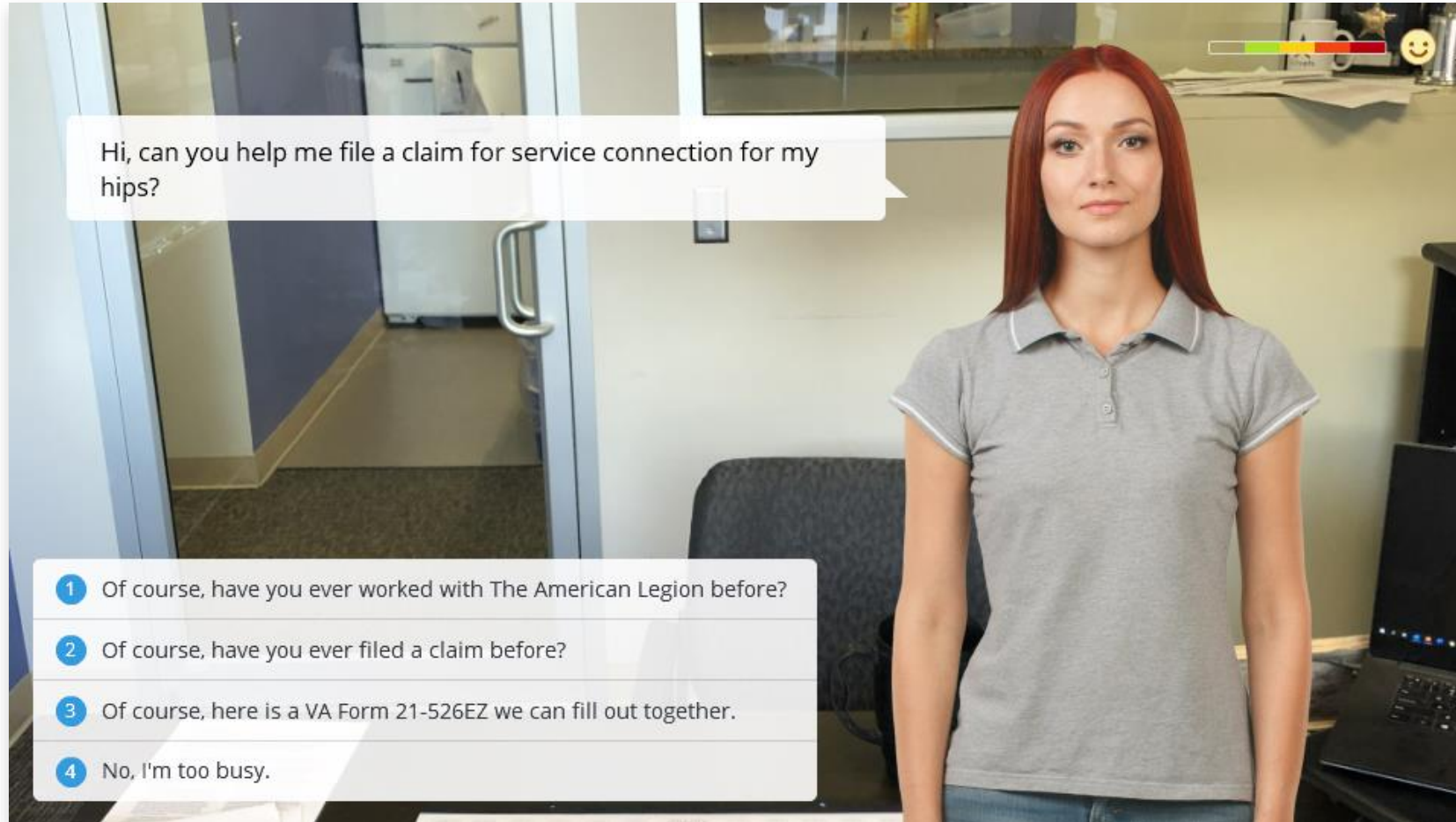
Remember: VA examiners commonly overlook *Allen* aggravation when providing medical opinions.

Exercise Overview

- In the next slide, you will interview a Veteran who comes into your office seeking help in applying for service connection for a joint condition.
- Don't forget that after you reach the end you can restart the interview if you want to try different answers.
- During the interview, think about what forms the Veteran will need to complete to win their claim.
- Then when you are finished with the interview we will go over some take-aways together.

Simulation

Click the **Simulation** button to edit this object



What Theories of Service Connection?

- What theories of service connection can the Veteran raise?
 1. Direct Service Connection
 2. Secondary Service Connection
 3. Presumptive Service Connection

Advocacy Tip: Veterans and advocates can raise multiple theories for service connection in the same claim.

Direct Service Connection

- What about the fact that she had no specific injury in service, and no documented treatment?
- The rigors of service, including marching, can be enough to establish an in-service event.
- Lack of medical treatment in service does not mean that service connection can never be granted.

Advocacy Tip: Lay statements from the Veteran and her husband, VA Form 21-4138, can describe that her hip symptoms began during service.

Secondary Service Connection

- The Veteran said that during service her right hip hurt, but over years now both hips hurt.
- Pain can cause limping, which can put additional strain on a paired joint.
- Therefore, if she cannot establish direct service connection for her left hip, she can argue that hip is secondary to her right hip.

Advocacy Tip. Lay statements from the Veteran and her husband could also show that she developed left hip pain after her military service.

Presumptive Service Connection

- The Veteran is now diagnosed with arthritis in both hips from an x-ray.
- Arthritis can be presumptively service-connected as a “chronic” condition if:
 - It manifested to 10% disabling within 1 year of exit from service, or
 - Symptoms have been continuous since service, or
 - Diagnosed in service, resolves, and reappears after service.

Advocacy Tip: Lay statements from the Veteran and her husband could establish that her arthritis symptoms started during service.

What Forms Does the Veteran Need?



- VA Form 21-22, "POA"
- Optional: Could start with VA Form 21-0966 Intent to File
- VA Form 21-526EZ Application for Benefits
- VA Form 21-4142 Private Medical Release
- VA Form 21-4138 Statement in Support of Claim

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.