

**SECONDARY
SERVICE
CONNECTION**

DEFINITION

Service connection (SC) is available for almost any disability that is a result of another SC condition

Example:

You are service-connected for your right knee and because of favoring your SC left knee you now have arthritis in your left knee. Your left knee can be service-connected as secondary to your service-connected right knee disability.

SECONDARY SC

Secondary service-connection can be established:

1. Where an SC condition causes (contributes to the creation of) a new disability, OR
2. Where an SC disability aggravates (worsens) a non-service-connected condition.

SECONDARY SC

If a service-connected condition aggravates a non-service-connected condition:

- **The vet can only be compensated for that degree of disability that is over and above the degree of disability existing prior to the aggravation.**
- **It doesn't matter when after service a secondary disability manifests itself, as long as there is sufficient medical evidence to establish that it is a result of the SC condition**

38 C.F.R. § 3.310

38 C.F.R. § 3.310(a):

- **“Except as provided in § 3.300(c), disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered part of the original condition.”**

38 C.F.R. § 3.310(b) – PROOF OF AGGRAVATION

- VA will concede that a secondary disability was aggravated by the SC condition only if the baseline level of severity of the secondary condition is established by:
 - Medical evidence created before the onset of aggravation; or
 - The earliest medical evidence created at any time between onset of aggravation and receipt of medical evidence establishing the current level of severity of the non-service-connected disease or injury

Allen Aggravation

- The Veteran is entitled to benefits if a service-connected condition makes a nonservice-connected condition worse *
- It is common for VA examiners to overlook *Allen* aggravation when providing opinions on service connection and aggravation
- Veteran is paid only for the difference between the current level of disability and the disability level that existed prior to the aggravation

Any aggravation opinion should be checked against *Allen*

* *Allen v. Brown*, 7 Vet. App. 439 (1995) (en banc)

MEDICAL EVIDENCE

- In most cases, medical evidence will be required to determine that a particular condition is secondary to the SC disability
- In nearly every case, SC cannot be resolved without an expert opinion that addresses whether the claimed secondary condition was caused or aggravated by a service-connected condition.

MEDICAL EVIDENCE

- An argument that a condition is secondary to a service-connected disability will NOT likely succeed where the claim is unsupported by competent (usually medical) evidence.
 - If possible, the vet should get an opinion from a private medical expert

MEDICAL EVIDENCE

- **Burden of Proof**
 - **Medical Evidence must show that it is at least “as likely as not” that the SC condition or its treatment caused or aggravated the claimed disability**
 - **Initial burden of proof is on the claimant**


MEDICAL EVIDENCE

Examiners frequently fail to address both of these prongs (in most cases, aggravation is the prong they do not address).


EL-AMIN V. SHINSEKI,
26 VET. APP. 136 (2013)

- Vet was SC for PTSD at 70% during his lifetime
- Vet suffered from alcoholism
- Vet died in 2006 due to hepatic cirrhosis
- Widow filed for DIC, arguing that the Vet's PTSD aggravated his alcoholism, which led to the cirrhosis

EL-AMIN V. SHINSEKI

- **VA obtained a medical opinion on the cause of death:
It is this examiner's conclusion that there is no confirmatory or supportive evidence that the veteran's PTSD caused his alcohol abuse, and thus it is NOT at least as likely as not that the veteran's PTSD caused his alcohol abuse. Conversely, it is more likely than not that the veteran's alcohol abuse was related to factors other than the veteran's PTSD.**
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EL-AMIN V. SHINSEKI

- **The Court found that the VA opinion was inadequate because the examiner only clearly addressed causation, but not aggravation.**
 - **At best, it might be said that the examiner opined that the Vet's alcohol abuse was aggravated by (that is, "was related to") "factors other than" PTSD. This does not rule out the possibility that it was also aggravated to some degree by his PTSD; the examiner only opined that the alcoholism was not "caused" by PTSD.**
 - **Accordingly, on the question of aggravation, the Board's conclusion that the examination was adequate was erroneous, and therefore the Board erred in finding that VA satisfied its duty to assist.**
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EL-AMIN V. SHINSEKI

- **Take-aways:**
 - **It is unclear if a VA examiner is automatically required to provide an opinion on aggravation in all cases.**
 - **However, if the issue of aggravation is reasonably raised by the veteran or the evidence of record, such an opinion is required.**

EL-AMIN V. SHINSEKI

- **Take-Aways (cont.):**
 - **In nearly all cases involving secondary service connection, ensure that the veteran alleges the claimed condition “was caused by or is aggravated by” the primary service-connected condition.**
 - **That way, any VA exams must address both theories or they will be considered inadequate.**

EXAMPLE 1

- **Issue: SC for peripheral neuropathy of the right and left lower extremities, to include as secondary to SC meniscus tear of the right knee and early degenerative joint disease.**
- **Veteran has never said his peripheral neuropathy was aggravated by his knee condition nor does any of the evidence of record indicate that the SC right knee disability has worsened the peripheral neuropathy of the lower extremities.**

EXAMPLE 1

- **VA Exam: The examiner found clinical evidence of peripheral neuropathy in the bilateral lower extremities, most likely caused by diabetes mellitus, rather than the right knee disability.**

EXAMPLE 1

Presuming the examiner provides rationale for this opinion, is it adequate for secondary service connection?



YES

EXAMPLE 1

Why is the VA opinion adequate?

Because the veteran did not allege that the SC knee condition aggravated his peripheral neuropathy and the evidence of record did not raise the issue of aggravation.

EXAMPLE 2

- **Issue:** Entitlement to SC for sleep apnea, to include as secondary to SC PTSD.
- The veteran alleged in a Statement in Support of Claim that his sleep apnea was aggravated by his PTSD.
- **VAMedical Opinion:** Anxiety and PTSD, while co-morbid with sleep apnea, are not causal for sleep apnea, and the claimed condition is less likely than not proximately due to or the result of the vet's SC PTSD.

EXAMPLE 2

Is this VAX opinion adequate for secondary service connection?

No!




EXAMPLE 2

Why is the VA opinion not adequate?

The issue of aggravation was explicitly raised by the Vet's statements, but the VA examiner only discusses causation.

EXAMPLE 3

- The Vet files a claim for SC for a right knee condition. He asserts that it is directly due to an injury he suffered during his military service.
 - The Vet submits a private treatment record in which his doctor states that his right knee condition is the result of his right hip condition, which is already service-connected.
 - Even though the Vet never filed a claim for secondary SC does the VA need to address that theory of entitlement?
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EXAMPLE 3

Y.E.S!

ALL THEORIES

- The VA has a duty to address all issues reasonably raised either by the claimant or by the contents of the claims file.
 - See *Robinson v. Mansfield*, 21 Vet.App. 545 (2008)
- It is entirely possible that the claims file might ‘indicate’ a theory of entitlement, but that a claimant might not be sophisticated enough to recognize the theory.
 - See *Robinson v. Shinseki*, 557 F.3d 1355 (Fed.Cir.2009)

ALL THEORIES

- “[U]pon the filing of a claim for benefits, the Secretary must investigate the reasonably apparent and potential causes of the veteran's condition and theories of service connection that are reasonably raised by the record or raised by a sympathetic reading of the claimant's filing.”
 - *Delisio v. Shinseki*, 25 Vet. App. 45, 53 (2011)

EXCEPTION TO ALL THEORIES

- There is a legal distinction between filing a claim for SC for a disability under 38 U.S.C. § 1110 and a claim for compensation for disability caused by VA medical care, etc. under 38 U.S.C. § 1151.
 - Ex: Vet claimed SC for depression as directly due to his military service.
 - Medical evidence indicated that depression was related to his impotence, for which he was receiving compensation under § 1151.
 - Vet first argued that he was entitled to VA benefits for depression as secondary to impotence at the CAVC.
 - CAVC would not decide the claim for secondary SC under § 1151, because it was distinct from a claim for VA benefits under § 1110 and had not been adjudicated by VA.
 - *Anderson v. Principi*, 18 Vet. App. 371 (2004)

MEDICATION

If the Vet is taking medication for a service-connected disability and that medication causes or aggravates a different disability, the different disability can be service-connected on a secondary basis.



MEDICATION

- **Example:**
 - **In 1949, a World War II Vet was awarded service connection for tuberculosis that he developed during service**
 - **The Vet treated his tuberculosis with a medication that is known to cause tinnitus**

MEDICATION

- **Example (cont.):**
 - **The Vet submitted several medical opinions that stated his tinnitus was a result of the tuberculosis medication**
 - **In 1985, the BVA found that the Vet's tinnitus was the result of the treatment for his SC tuberculosis and awarded him SC for tinnitus**

SECONDARY MENTAL CONDITIONS

- **Chronic medical conditions, to include chronic pain caused by those conditions, often lead to secondary mental disorders.**
- **The most common secondary mental disorders are depression and anxiety.**
- **Always consider whether a Vet may suffer from a mental disorder secondary to a service-connected physical disability and file a VAclaim accordingly.**

