



# Veterans Affairs: Basic Eligibility for Disability Benefit Programs

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## Summary

A broad range of benefits is offered to American veterans and to certain members of their families by the United States Department of Veterans Affairs (VA). Among these benefits are various types of financial benefits and assistance, including two disability programs: disability compensation and pensions which pay monthly cash benefits to disabled veterans. *Disability compensation* provides a monthly benefit to veterans who are disabled as a direct result of their military service. *Disability pension* is paid to wartime veterans who have limited income, are no longer able to work, or are aged 65 or older. Additional basic criteria must be met in order to be eligible to receive either of these benefits.

This report examines the eligibility criteria and the fundamentals of the VA-administered disability benefit programs and related issues. It supplements and condenses the relevant materials that are available from the VA and its website. It also provides specific citations for further information and more in-depth analysis of information contained herein.

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## Introduction

The United States Department of Veterans Affairs (VA) offers a broad range of benefits to American veterans and to certain members of their families.<sup>1</sup> Among the benefits extended to veterans are health care and related services, such as nursing homes, clinics, and medical centers; education, vocational training, and related career assistance; home financing; life insurance; burial benefits; benefits for certain family survivors and financial benefits, including disability compensation and pensions.<sup>2</sup> This report focuses upon the basic eligibility/entitlement requirements for disability benefits, which the VA administers through two programs, disability compensation and disability pension.<sup>3</sup>

Both of these programs pay monthly cash benefits to disabled veterans. *Disability compensation* provides a monthly benefit to veterans who are at least 10% disabled as a result of their military service.<sup>4</sup> *Disability pension* is paid to wartime veterans with limited income, who are no longer able to work, or who are aged 65 or older. The pension is not related to a service-connected injury or medical condition, and takes into consideration the material needs of the veteran (i.e., it is a “needs-based” pension).<sup>5</sup> A veteran cannot simultaneously receive both disability compensation and a disability pension.

The VA uses a two-step process to evaluate disability claims, as well as to determine eligibility for other VA benefits. First, the claimant must demonstrate that he or she is *eligible* for the VA

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<sup>1</sup> The VA was established as an executive department by the Department of Veterans Affairs Act (P.L. 100-527, 102 Stat. 2635 [October 25, 1988]). The predecessor of the Department, the Veterans Administration, had been established as an independent agency under the President by Executive Order No. 5398 of July 21, 1930, in accordance with the act of July 3, 1930 (46 Stat. 1016), which authorized the President to consolidate and coordinate the U.S. Veterans Bureau, the Bureau of Pensions, and the National Home for Volunteer Soldiers. See <http://www.va.gov>. Within the VA, the Veterans Benefits Administration (VBA) administers nonmedical benefits programs for veterans and their dependents and survivors. These benefits include veterans’ compensation and pensions, survivors’ benefits, education and rehabilitation assistance, home loan benefits, certain burial benefits, and insurance coverage. See <http://www.vba.gov>. See generally *Federal Benefits for Veterans and Dependents*, published by the Department of Veterans Affairs (2009 edition) (cited to afterward as “Federal Benefits”). See [http://www1.va.gov/opa/vadocs/current\\_benefits.asp](http://www1.va.gov/opa/vadocs/current_benefits.asp) for the publication online.

CRS has available on its website a number of reports analyzing specific constituent areas of interest. See, e.g., CRS Report R40737, *Veterans Medical Care: FY2010 Appropriations*, by Sidath Viranga Panangala; and CRS Report RL34370, *Veterans Affairs: Health Care and Benefits for Veterans Exposed to Agent Orange*, by Sidath Viranga Panangala and Douglas Reid Weimer.

<sup>2</sup> See CRS Report RL33993, *Veterans’ Health Care Issues*, by Sidath Viranga Panangala; CRS Report RS20533, *VA-Home Loan Guaranty Program: An Overview*, by Bruce E. Foote; CRS Report RS21545, *Military Funeral Honors and Military Cemeteries: Frequently Asked Questions*, by Mari-Jana “M-J” Oboroceanu; and CRS Report RL32769, *Military Death Benefits: Status and Proposals*, by David F. Burrelli and Jennifer R. Corwell.

<sup>3</sup> See CRS Report RL34626, *Veterans’ Benefits: Benefits Available for Disabled Veterans*, by Christine Scott and Carol D. Davis, for an overview of the broad range of benefits available to disabled veterans, including rehabilitation and employment programs, automobile and special adaptive equipment grants, clothing allowances, housing grants, and other benefits.

<sup>4</sup> The VA evaluates the severity of a veteran’s disability and determines what percentage of employment capacity is impaired. For example, a 10% disability (physical or psychological) is a relatively minor disability, whereas an 80% disability determination represents a significant impairment. For a more comprehensive explanation of how benefits are awarded through a rating system, see CRS Report RL33323, *Veterans Affairs: Benefits for Service-Connected Disabilities*, by Douglas Reid Weimer.

<sup>5</sup> Federal Benefits at 29. See CRS Report RS22804, *Veterans’ Benefits: Pension Benefit Programs*, by Christine Scott and Carol D. Davis.

benefit. That is, the claimant must prove that he or she is a bona fide veteran and verify certain related matters. In this sense, the eligibility relates to the veteran's general qualification(s) for the benefit(s). Second, the veteran must prove *entitlement* to the particular benefit being sought.<sup>6</sup> There is no deadline or time limit for applying for disability benefits.

## Step One: Eligibility Criteria

### Definition of "Veteran"

In order to be eligible for most VA benefits, the claimant must be a veteran or, in some circumstances, the survivor or the dependent of a veteran. By statute, a "veteran" is defined as a "person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."<sup>7</sup>

In evaluating the evidence to determine whether the applicant is a "veteran" for the purposes of VA benefits, the VA relies substantially upon military department service records. The VA is bound by information that the service documents contain.<sup>8</sup> Generally speaking, the VA findings will be in accord with the information contained in the applicant's service records.<sup>9</sup>

Such records may include an original service department record; a copy issued by the service department with the certification that it is a true document; or a copy submitted by an accredited agent, attorney, or service representative with special training, who certifies that it is a copy of an original service document or a copy of a copy of such a document.<sup>10</sup> In addition to meeting these criteria, the document must contain data regarding the length, time, and character of the service, and the VA must believe that the document is genuine and accurate.<sup>11</sup> If the claimant does not provide the requisite documentation or other evidence, or the submitted documentation does not meet the requirements, the VA must seek to verify service directly from the appropriate military service department.<sup>12</sup>

### Discharge Criteria

The statutory definition of "veteran" requires that the individual has been discharged or released from military service "under conditions other than dishonorable."<sup>13</sup> There are currently five types

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<sup>6</sup> For example, in order to be entitled to receive the disability compensation, a veteran must provide sufficient evidence of certain elements (e.g., current diagnosis, medical evidence of an in-service occurrence, and link between the in-service occurrence and the current disability) in order to be entitled to receive the disability compensation. See CRS Report RL33323, *Veterans Affairs: Benefits for Service-Connected Disabilities*, by Douglas Reid Weimer, under "Requirements for Disability Compensation," for a more detailed discussion of the process.

<sup>7</sup> 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).

<sup>8</sup> *Venturella v. Gober*, 10 Vet. App. 340, 341-342 (1977); *Duro v. Derwinski*, 2 Vet. App. 530, 532 (1992).

<sup>9</sup> 38 C.F.R. § 3.203.

<sup>10</sup> 38 C.F.R. § 3.203(a)(1). See CRS Report RS21282, *Military Service Records and Unit Histories: A Guide to Locating Sources*, by Julissa Gomez-Granger and Kim Walker Klarman.

<sup>11</sup> 38 C.F.R. § 3.203(a)(2), (3).

<sup>12</sup> *Duro*, 2 Vet. App. at 532.

<sup>13</sup> 38 U.S.C. § 101(2); 38 C.F.R. § 3.12(a).

of discharges issued by the military services: (1) honorable discharge (HD); (2) discharge under honorable conditions (UHC), or general discharge (GD); (3) discharge under other than honorable conditions (UOTHC), or undesirable discharge (UD); (4) bad conduct discharge (BCD); and (5) dishonorable discharge (DD).<sup>14</sup>

The language of the statute does not precisely match the current categories of the discharges, and the VA often determines on a case-by-case basis whether the claimant's discharge satisfies any of the criteria and which category of discharge applies. In most cases, the VA considers honorable discharges and discharges under honorable conditions to fall within the "conditions other than dishonorable" category, and will usually qualify the claimant as a veteran under the first step of the eligibility test.<sup>15</sup> Usually, honorable and general discharges qualify a veteran for most benefits.<sup>16</sup>

A bad conduct discharge from a special court-martial and other discharges made under other than honorable conditions may or may not disqualify the claimant from being considered a veteran for purposes of benefits eligibility.<sup>17</sup> In the case of such a discharge, the VA will make a special "character of service determination," based on the particular facts in the claimant's case. On this basis, the VA will determine whether the veteran was separated from service under "dishonorable conditions" or under "other than dishonorable conditions." The VA will review of the entire period of the claimant's enlistment(s) to assess the quality of the service and to determine whether it is sufficient to deserve the award of veterans' benefits.<sup>18</sup> If a claimant has served more than one period of enlistment, he or she may have two or more different discharge categories.

The VA Federal Benefits guide offers the following on discharges:

Dishonorable and bad conduct discharges issued by general courts-martial may bar VA benefits. Veterans in prison and parolees may be eligible for certain VA benefits. VA regional offices can clarify the eligibility of prisoners, parolees and individuals with multiple discharges issued under differing conditions. VA benefits will not be provided to any veteran or dependent wanted for an outstanding felony warrant.<sup>19</sup>

Certain exceptions permit the award of VA benefits, even if the character of the discharge would ordinarily bar VA benefits. For example, if it is determined that the claimant was insane at the time of the offense leading up to the discharge, the claimant may be granted VA benefits. There does not need to be a direct connection between the insanity and the misconduct.<sup>20</sup>

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<sup>14</sup> Barton F. Stichman et al., *Veterans Benefits Manual*, at § 2.2.1 (Cited to afterward as "Veterans Benefits Manual").

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Federal Benefits at vii.

<sup>20</sup> 38 U.S.C. § 5303(b).

## The Requirement of Active Service

An applicant must have “active military, naval, or air service” in order to be considered a veteran for VA benefits.<sup>21</sup> However, not all types of service are considered active military service for this purpose.<sup>22</sup>

The VA Federal Benefits guide states the following on the active service requirement:

Eligibility for most VA benefits is based upon discharge from active military service under other than dishonorable conditions. Active service means full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or as a commissioned officer of the Public Health Service, the Environmental Science Services Administration or the National Oceanic and Atmospheric Administration, or its predecessor organization, the Coast and Geodetic [sic] Survey. Men and women veterans with similar service are entitled to the same VA benefits.<sup>23</sup>

Active service includes (1) active duty;<sup>24</sup> (2) a period of active duty for training during which the person was disabled or died from an injury or disease incurred or aggravated in the line of duty;<sup>25</sup> and (3) any period of inactive duty for training during which the person was disabled or died from an injury incurred or aggravated in the line of duty or from certain health conditions incurred during the training.<sup>26</sup>

Additional circumstances of service, and whether they are deemed to be active military service, are set out in VA statutes.<sup>27</sup> For example: if on authorized travel to and from the performance of

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<sup>21</sup> See footnote 13.

<sup>22</sup> For example, National Guard and Reserve duty are not considered active service unless an individual performing this duty was disabled or died from a disease or injury incurred or aggravated in the line of duty. (38 U.S.C. § 101(24); 38 C.F.R. § 3.6(a)).

<sup>23</sup> Federal Benefits at vii.

<sup>24</sup> Active duty is considered to include (1) Full-time service in the Army, Navy, Marine Corps, Air Force, or Coast Guard, other than active duty for training (38 U.S.C. § 101(21)(A); 38 C.F.R. § 3.6(b)(1)); (2) Full-time service as a commissioned officer in the Public Health Service (38 U.S.C. § 101(21)(B); 38 C.F.R. § 3.6(b)(2)); (3) Full-time service as a commissioned officer at the Coast and Geodetic Survey, Environmental Services Administration, or National Oceanic and Atmospheric Administration (38 U.S.C. § 101(21)(C); 38 C.F.R. § 3.6(b)(3)); (4) Service as a cadet at a military academy (38 U.S.C. § 101(21)(D); 38 C.F.R. § 3.6(b)(4)); (5) Attendance by active-duty members at certain prep schools associated with military academies (38 C.F.R. § 3.6(b)(5)); and (6) Authorized travel to or from such duty or service (38 U.S.C. § 101(21)(E); 38 C.F.R. § 3.6(b)(6)).

<sup>25</sup> Active duty for training is a tour of active duty that is used for training members of reserve and other components to fill the Armed Forces during time of war or national emergency. Active duty for training has been determined to mean (1) full-time duty for training performed by Reservists (38 U.S.C. § 101(22)(A); 38 C.F.R. § 3.6(c)(1)); (2) full-time duty for training purposes as a commissioned officer in the Reserved Corps of the Public Health Service (38 U.S.C. § 101(22)(B); 38 C.F.R. § 3.6(c)(2)); (3) full-time training duty by members of the Air or Army National Guard of any state (38 U.S.C. § 101(22)(C); 38 C.F.R. § 3.6(c)(3)); (4) duty by members of the Senior ROTC program on field training or a practice cruise (38 U.S.C. § 101(22)(D); 38 C.F.R. § 3.6(c)(4)); and (5) authorized travel to and from duty for training (38 U.S.C. § 101(22)(E); 38 C.F.R. § 3.6(c)(6)).

<sup>26</sup> 38 U.S.C. § 101(24). Inactive duty for training has been defined to mean (1) duty, other than full-time duty, for Reservists (38 U.S.C. § 101(23)(A); 38 C.F.R. § 3.6(d)(1)); (2) other duties authorized for Reservists performed on a voluntary basis (38 U.S.C. § 101(23)(B); 38 C.F.R. § 3.6(d)(2)); (3) training (other than active duty for training) by a member of, or applicant for membership in, Senior ROTC (38 U.S.C. § 101(23)(C); 38 C.F.R. § 3.6(d)(3)); and (4) for the members of the Air or Army National Guard of any state, such training means duty other than full-time duty (38 U.S.C. § 101(23); 38 C.F.R. § 3.6(d)(4)).

<sup>27</sup> 38 U.S.C. §§ 101, 106. See Federal Benefits at vii-viii.

active duty training or inactive duty for training, the person is disabled or dies while proceeding directly to or returning from such duty, the duty will be considered to be active duty for training or inactive duty for training.<sup>28</sup>

The determination of whether a claimant has met the “active service” requirement may not be a simple process. It is possible that the claimant and the VA may have to scrutinize the claimant’s service record(s) to determine whether the claimant’s service fits into one of the many categories of active service, or whether an exception has been made for his/her service, so that it is considered to be active service for the purposes of veterans’ benefits. In addition, a claimant may have more than one period of service, which may further complicate the determination.

## **Whether the Military Service Was During Time of War<sup>29</sup>**

Whether or not a veteran has served during time of war may impact his/her potential VA benefits. All military service is classified as either wartime or peacetime service. Certain benefits are extended only to veterans with wartime service.<sup>30</sup>

Congress has set out the periods of “wartime” for the purposes of veterans’ pensions and other benefits.<sup>31</sup> To be considered to have “served during wartime” by the VA, a veteran does not have to have served in an actual combat zone, but during the specified periods of war set out below. Those time periods not designated by Congress as “wartime” are considered to be “peacetime.” If a veteran served his/her duty part during wartime and part during peacetime, the veteran would meet the “wartime” criteria if he or she served 90 consecutive days, at least one day of which occurred during a period designated as wartime.

Following is a list of those periods of “wartime” designated by Congress:<sup>32</sup>

- *Indian Wars*—January 1, 1817, through December 31, 1898.<sup>33</sup>
- *Spanish-American War*—April 21, 1898, through July 4, 1902.<sup>34</sup>
- *Mexican Border War*—May 19, 1916, though April 5, 1917.<sup>35</sup>
- *World War I*—April 6, 1917, through November 11, 1918; extended to April 1, 1920; by regulation extended to July 1, 1921, under certain specific conditions.<sup>36</sup>
- *World War II*—December 7, 1941, through December 31, 1946, extended to July 25, 1947.<sup>37</sup>

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<sup>28</sup> 38 U.S.C. § 106(d); 38 C.F.R. § 3.6(e).

<sup>29</sup> See CRS Report RS21405, *U.S. Periods of War*, by Barbara Salazar Torreon.

<sup>30</sup> For instance, only veterans having wartime service are eligible for non-service connected disability pension benefits (38 U.S.C. § 1521(j)).

<sup>31</sup> 38 U.S.C. § 101 (6)-(11); 38 C.F.R. § 3.2.

<sup>32</sup> See Federal Benefits at 2.

<sup>33</sup> See 38 C.F.R. § 3.2(a).

<sup>34</sup> 38 U.S.C. § 101(6); 38 C.F.R. § 3.2(b).

<sup>35</sup> 38 U.S.C. § 101(30); 38 C.F.R. § 3.2(h).

<sup>36</sup> 38 U.S.C. § 101(7); 38 C.F.R. § 3.2(c).

<sup>37</sup> 38 U.S.C. § 101(8); 38 C.F.R. § 3.2(d).



- *Korean Conflict*—June 27, 1950, through January 31, 1955.<sup>38</sup>
- *Vietnam Era*—August 5, 1964, through May 7, 1975.<sup>39</sup>
- *Persian Gulf War*—August 2, 1990, through a date to be prescribed by Presidential proclamation or law.<sup>40</sup>

## **Service Requirements: Length of Duty**

Prior to September 8, 1980, there was no minimum length of service necessary to vest most VA benefits. However, for an individual who enlisted after September 8, 1980, there are now certain minimum length of service requirements. The general requirement is either 24 months of continuous active duty or the “full period” for which the service person was called or ordered to active duty.<sup>41</sup>

Several significant exceptions exist to this general rule. For example, service-connected compensation benefits are exempt from the minimum active duty requirements. Thus, a veteran with a disease or injury incurred during active service should almost always be able to receive service-connected compensation for his/her condition or disability.<sup>42</sup> Other significant exceptions to the minimum service requirements include claims for VA insurance benefits,<sup>43</sup> hardship discharges,<sup>44</sup> and persons retired or separated from service because of a service-related disability.<sup>45</sup>

If the former service member does not fall within one of the two eligible categories (24 months of active duty or the “full period” of active duty), or falls within one of the statutory exceptions, then the veteran has not completed a minimum period of active duty and is “not eligible for any benefit under Title 38, United States Code or under any law administered by the Department of Veterans Affairs based on that period of active service.”<sup>46</sup>

## **Impediments to VA Benefits: Willful Misconduct**

If the VA determines that an injury or disease resulted from “willful misconduct” on the part of the claimant, such misconduct may serve as a bar for any disability benefits. Regulations define willful misconduct as “deliberate or intentional wrongdoing with knowledge of or wanton or

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<sup>38</sup> 38 U.S.C. § 101(9); 38 C.F.R. § 3.2(e).

<sup>39</sup> 38 U.S.C. § 101(29); 38 C.F.R. § 3.2(f).

<sup>40</sup> 38 U.S.C. §§ 101(33), 1501(4); 38 C.F.R. §§ 3.2(I), 3.3(a)(3), 3.17, 3.54(a)(3)(viii). At the present time, no termination date has been established.

<sup>41</sup> 38 U.S.C. § 5303A(b); 38 C.F.R. § 3.12a(a)(1).

<sup>42</sup> 38 U.S.C. § 5303A(b)(3)(C); 38 C.F.R. § 3.12a(d)(4).

<sup>43</sup> 38 U.S.C. § 5303A(b)(3)(E); 38 C.F.R. § 3.12a(d)(5).

<sup>44</sup> 38 U.S.C. § 5303A(b)(3)(A); 38 C.F.R. § 3.12a(d)(1).

<sup>45</sup> 38 U.S.C. § 5303A(b)(3)(B); 38 C.F.R. § 3.12a(d)(2).

<sup>46</sup> 38 U.S.C. § 5303A(b)(1); 38 C.F.R. § 3.12a(b).

reckless disregard of its probable consequences.”<sup>47</sup> Such willful misconduct is an act that involves conscious wrongdoing or a known prohibited action.<sup>48</sup>

Veterans whose health conditions or disabilities resulted from willful misconduct may not receive compensation from either the non-service-connected pension plan<sup>49</sup> or the service-connected disability compensation program.<sup>50</sup> Likewise, vocational rehabilitation benefits and certain other benefits will be denied, as such benefits are based on a service-connected condition.<sup>51</sup> Customarily, the VA reviews all of the circumstances of each claimant’s case to determine whether there was willful misconduct on the part of the claimant.

## **Alcohol Abuse**

For the purpose of VA benefits, alcohol abuse has been defined as “the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user.”<sup>52</sup> Alcohol abuse is deemed to be “willful misconduct,” even though the “simple drinking of alcoholic beverage is not of itself willful misconduct.”<sup>53</sup>

## **Drug Abuse**

The VA has defined drug abuse rather broadly. For the purposes of VA benefits, drug abuse has been defined as the use of an illegal drug, the use of a prescription drug illegally or illicitly obtained, the use of a drug for a purpose other than that for which it was medically intended, or the use of a drug (any substance other than alcohol) to enjoy its intoxicating effect.<sup>54</sup> Should the claimant’s use of a drug coincide with any portion of this definition, then the claimant’s use is considered drug abuse. Any resultant death or disability is then not considered to have occurred in the line of duty.<sup>55</sup>

The VA considers it not to be a case of willful misconduct, however, when a drug is used for medical purposes or when during the use of drugs for medical purposes, addiction or habituation to drugs results from a service-connected disability.<sup>56</sup> Accordingly, if a claimant develops a medical problem because of the use of prescribed medications used as prescribed to respond to a service-connected problem, the resultant problem could be considered to be service-connected and not willful misconduct.

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<sup>47</sup> 38 C.F.R. § 3.1(n)(1).

<sup>48</sup> *Id.*

<sup>49</sup> 38 U.S.C. § 1521(a); 38 C.F.R. § 3.301(b).

<sup>50</sup> 38 U.S.C. § 105(a); 38 C.F.R. § 3.301(a).

<sup>51</sup> 38 U.S.C. § 3102.

<sup>52</sup> 38 C.F.R. § 3.301(d).

<sup>53</sup> 38 C.F.R. § 3.301(c)(2).

<sup>54</sup> *Id.* § 3.301(d).

<sup>55</sup> *Id.*

<sup>56</sup> 38 C.F.R. § 3.301(c)(3).

## Venereal Disease

Under certain circumstances, the VA will consider the effects of venereal disease not to be the result of willful misconduct. Thus, disabilities that result from venereal disease contracted during a period of military service may be compensable.<sup>57</sup> However, such compensation may be withheld if it is determined that the venereal disease predated military service and that the medical problems were a result of the progress of the disease.<sup>58</sup>

## Step Two: Entitlement to Disability Benefits

### Disability Benefit Programs

Once it has been determined that the claimant is *eligible* for veterans' benefits, then it must be determined whether the claimant is *entitled* to certain benefits. Again, there are two basic disability benefit programs for veterans: the disability compensation program and the pension program. The disability compensation program is service-connected, and the pension program is non-service-connected.

### Requirements for the Award of Service-Connected Disability Compensation<sup>59</sup>

The award of service-connected disability compensation has several requirements. First, the fundamental eligibility requirements discussed above—service and discharge requirements—must be met. In addition, the veteran must prove three elements: (1) a medical diagnosis of the current disability; (2) medical evidence, and in some instances lay evidence, of the in-service occurrence or worsening of an injury or disease; and (3) a link between the in-service-incident or the worsening of a disease or injury and the current disability.<sup>60</sup> If the VA is satisfied that these three elements are proved, then the VA determines the severity of the disability.<sup>61</sup> The VA assigns a percentage evaluation from 0% to 100% for the amount of disability that the VA determines that the veteran has sustained.<sup>62</sup>

After the VA determines the percentage of disability, the VA sets an effective date for the award of the disability compensation and payments begin to the veteran.<sup>63</sup> Should the VA deny disability

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<sup>57</sup> 38 C.F.R. § 3.301(c)(1).

<sup>58</sup> *Id.*

<sup>59</sup> See CRS Report RL33323, *Veterans Affairs: Benefits for Service-Connected Disabilities*, by Douglas Reid Weimer. The report details the preparation and evaluation of veterans' claims, including the VA rating system. Current legislation is also discussed in the report.

<sup>60</sup> Veterans Benefits Manual at § 3.1.5.

<sup>61</sup> *Id.*

<sup>62</sup> 38 U.S.C. § 1155; 38 C.F.R. pt. 4. See CRS Report RL33991, *Disability Evaluation of Military Servicemembers*, by Christine Scott et al.

<sup>63</sup> Rates of disability compensation are set by statute. See 38 U.S.C. § 1114 for the rates of wartime disability compensation.

benefits, or should the veteran disagree about the percentage determination, the veteran may appeal the decision(s) through a VA appeals process.

## **Requirements for the Award of a Non-Service-Connected Pension**

Like the service-connected disability compensation, the fundamental eligibility requirements of discharge and active wartime service must be met prior to the award of a non-service-connected pension. Then, several additional criteria must be met. First, the veteran must have a limited income,<sup>64</sup> and the VA must ascertain that the veteran's net worth does not provide sufficient income to meet his/her needs, known as the "needs test."<sup>65</sup> Second, the veteran must be permanently and totally disabled or aged 65 at the time of filing the pension application.<sup>66</sup> Finally, the disability of the veteran must not be attributable to the willful misconduct of the veteran.<sup>67</sup>

Procedurally, a veteran's application for pension benefits is reviewed by the VA regional office adjudicators. They will first determine the basic eligibility of the applicant for pension benefits. After this fundamental eligibility is established, the adjudicators will look at the claimant's income and net worth. If the claimant's income or net worth is a bar to the pension benefits, the claim will be denied without a determination of the claimed disability. If the income or net worth does not seem to serve as a bar to pension benefits, the pension claim is sent to the rating board for a disability determination.<sup>68</sup>

The disability determination is undertaken on a case-by-case basis. Congress has provided some guidance in this process. Specifically, a veteran is considered permanently and totally disabled if the veteran is in *any* of the following circumstances: (1) nursing home patient for long term care because of a disability; (2) disabled, as determined by the Commissioner of Social Security for the payment of Social Security benefits; (3) unemployable because of a disability which is reasonably certain to continue through the claimant's life; or (4) suffering from (a) a disability adequate to render it impossible for the average person to be gainfully employed, if the disability is expected to continue for the life of the person; or (b) a disease or disorder determined by the Secretary of Veterans Affairs to *per se* result in permanent and total disability.<sup>69</sup> Veterans who are aged 65 or older and apply for a pension are presumed to be permanently and totally disabled for pension purposes. Hence, a disability determination is not required for a veteran aged 65 or older to be granted pension entitlement.<sup>70</sup>

After the disability status is determined,<sup>71</sup> pension benefits are paid to the claimant on a monthly basis.

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<sup>64</sup> 38 U.S.C. § 1521; 38 C.F.R. §§ 3.271-273.

<sup>65</sup> 38 U.S.C. § 1522; 38 U.S.C. § 3.274.

<sup>66</sup> 38 U.S.C. § 1521(a); 38 C.F.R. § 4.17.

<sup>67</sup> See discussion above under "Impediments to VA Benefits: Willful Misconduct."

<sup>68</sup> Veterans Benefits Manual at § 6.1.2.

<sup>69</sup> 38 U.S.C. § 1502.

<sup>70</sup> 38 U.S.C. § 1513.

<sup>71</sup> The monthly benefit is offset by any other income that the veteran may have. See 38 C.F.R. § 3.275(b).

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