

Chapter 3

VA Exams and New Claims

Suicide Prevention:

If you, or someone you love is struggling with feelings of helplessness or thoughts of suicide, you are not alone, and help is available.

VCL: Dial 988 and then Press 1

Referral list of VA resources: go to va.gov and type “Suicide Prevention” in the search bar

Introduction:

This workbook is designed as the next step after you have submitted a claim to the VA and they have contacted you to schedule an **exam** of the disability(ies) you are claiming. As in previous chapters, sections of the required VA forms are included throughout the workbook.

This chapter will also take you through the steps in order to file a claim for a **new condition** that you need to claim service connection (the condition was not claimed previously).

This chapter will also instruct you how to make a **claim for increase**, which is appropriate if a service-connected condition has worsened. The steps to make this type of claim are almost identical to the steps taken in Episode 2, so print out the Workbook associated with Episode 2 and refer to Ep2 for specific advice on how to fill out the 526-EZ form. We

We strongly suggest you contact a Veteran Service Organization (VSO) if you need to make a claim for the other special circumstances discussed in Episode 3. These include: Temporary 100% Disability, Individual Unemployability, and 1151 claims (injury caused by VA providers).

Preparing for, and participating in VA exams for a claimed condition:

If you are being scheduled for a VA exam, that is usually a good thing. It means that the VA has seen the merits of your claim, and now they want to know how much the condition effects you and how severe the symptoms are.

You do not call to schedule your exam; the VA or its contractor will call you after they have determined through “development” that your claim is substantiated enough to warrant an exam. You will likely get a certified letter and an email telling you the date and time of your exam. If you can’t make the exam time, you can call and reschedule it but, unless it is a major emergency, **never call to reschedule within 24 hours** or it will be considered a no-show, which can negatively impact your claim! You can only reschedule your exam **once** and the new exam must be within five days of your original appointment. **Show up to all exams or your claim will automatically be denied!**

The VA will attempt to schedule you for an exam as close to your residence as possible (within 50 miles) but if you need a specialty exam or you live in a rural area, you might have to travel

farther. The VA will compensate you for mileage to and from the exam, and they will mail you a check a few weeks after appointment.

You can request a male or female examiner for one or all of your exams. This may be important to you if the condition being examined is a genital or urinary condition, psychological condition, or if it involves sexual trauma.

The medical opinion that the doctor writes after they see you is the nexus opinion which links your active duty service to your chronic condition. They are going to help write the VA award, so they need the info about how the condition started, how long it has been going on, and what the symptoms are.

Should I pay for an exam from one of these tele-health doctors that I see ads for, and who say (for a fee) they can guarantee a rating?

There are unscrupulous practitioners or referral services who offer exams for a fee, to produce DBQ forms for you to submit to the VA as evidence. We strongly caution you against paying for a service like this. The exam provided is **not** the same thing the VA provides, and it does not replace a VA exam. The VA will never charge you for any part of the claims process. If you are paying for a private examination, you should know that those exams are routinely dismissed by the VA rater. VA raters immediately recognize the source and types of reports these providers submit, know that these reports are often inflated or fraudulent. The information is not accurate, essentially writing the same opinion over and over for each customer. Their opinion is highly suspect, and this can bias a rater against your claim because it makes it look suspicious. Raters know the names of the doctors who routinely provide these exaggerated medical opinions. The probative value of the information from the VA examiner is weighted more heavily.

Paperwork to fill out before your exam:

The VA initiates the exam process by sending some pre-examination question forms for each specific exam that you will attend. You are expected to have the questions filled out before you meet the examiner. The answers on the questionnaires should not conflict with the information you submitted on/with your original claim. It is a good idea to have Item 16 info from your 526-EZ with you when you complete these questions. Keep copies of these questionnaires for your records.

The questionnaire forms you will need to fill out vary, and are based on the body part/system that you are going to have examined. For example, there is a different form for a wrist exam, a knee exam, diabetes, headaches, etc. There are a great number of similarities between the forms, so the general advice we give on filling them out should suffice. If, after following the advice below, you still have trouble knowing how to fill out the questionnaire forms, contact a Veteran Service Organization, such as your County VSO. Getting advice and help from them is absolutely free to you.

When answering questions or describing your condition, do not exaggerate, **but also do not minimize** (in both the questionnaires and in the exam). While in the service, many of us minimized our complaints in order to be cleared for deployment or to be declared “fit for service.” Your VA exam is a different scenario, and you need to be honest about how much your condition affects you, so that the VA can write the appropriate award.

Terms you will see on pre-exam questionnaires (alphabetical):

Ability to work: How does your condition effect your work? Did you have to change jobs? Did you have to modify your job activities, or work less hours as a result of your condition?

Activities of Daily Living (ADL’s): the basic things that a person needs to do every day to take care of themselves (*Examples: getting in and out of bed, brushing teeth, bathing, dressing, preparing food, driving, shopping for food, doing laundry*).

Alleviating Factors: things that make your condition better or more tolerable (*Examples: medications, rest, stretching, avoiding certain things*)

Assistive devices: Does your condition require certain medical equipment to assist or protect you? (*Examples: brace, cane, walker, orthopedic device, grab bars in the shower*)

Characteristics: What does it feel like? Use your own words to describe the condition (*Examples: burning, shooting, stabbing, dull ache, pressure, light headedness, seeing stars, etc*)

Chronicity: how long has the condition lasted? If you are making a claim to the VA for disability compensation, you must have had symptoms for longer than 6 months to qualify.

Course: How your condition has progressed over time (after it initially started)?

Dietary changes: Anything diet or food related that has changed as a result of your condition. (*Examples: foods you cannot eat because of your condition, specific food preparation due to your condition*)

Duration: How long have you had this condition or how long do symptoms last? Also, if speaking about a flare-up, how long does an average flare up last?

Extent of functional impairment/Functional loss: Are there things that you can no longer do as a result of your condition? (*Examples: can no longer run, can no longer sit for long time, have to stay near a bathroom, etc.*)

Flare-up: Are there times when your condition gets worse than its normal state? Describe what that looks/feels like.

Frequency: How often do you have a particular symptom or how often does your condition bother you? If you are speaking about flare-up’s, how often do you have a flare-up?

Guarding: Does your condition make you do certain things to avoid discomfort? (*Examples: gait changes, limping, avoiding using a certain hand, avoiding turning your head, protecting a shoulder, etc*)

Incapacitating symptoms: Does your condition cause you (at times or always) to have symptoms so severe that you cannot function as you should be able to?

Onset: When did this condition start? If you are making a claim to the VA for disability compensation, it should be that your condition is an in-service event for your claim to be accepted.

Precipitating Factors: What kinds of things cause your symptoms to come on or increase? (*Examples: bright lights, spicy foods, sustained standing, digging in your backyard, working at a computer for a long time, etc.*)

Regulation of activities: activities that have to be avoided or reduced due to your condition. (Examples: you can only work at your computer for 30 minutes without having to take a break, stop walking after 100 yards to catch your breath, avoiding going up stairs, etc.)

Repeated use: Do your symptoms get worse when you have to use the injured area in a repeated motion? (Examples: bending over multiple times, carrying multiple loads of groceries from the car, performing the same movement, etc.)

Repeated use over time: What happens when you have to do repetitive motions? (Examples: a progressive lack of endurance, fatiguability the longer you do an activity, incoordination after a certain amount of time, etc.)

Severity: How bad do you feel your condition is? This is often on a numeric scale of 0-10 where 0 is no problem or pain at all, and 10 is the worst pain you can imagine. This scale is only in relation to you, and pain you have felt, not other people.

VA videos:

If you want more information on what to expect in your exams, the VBA has a moderately helpful series of YouTube videos that go through each type of exam (ex: neuro, musculoskeletal, etc). The series is called "VA C&P Exams." You can find them on youtube.

It's important to know that these videos only contain general information and almost all the same information is described in each one. The videos tell you what you are supposed to do from the VA's perspective. The VA's goal is to get **enough** information from the examiner to rate your claim. We are explaining how you get **all the accurate** information to the VA so that you receive the rating decision and benefits which correctly matches your condition.

The exam:

Wear comfortable clothes to your exam, so you can move freely.

You can bring a loved one to your exam, but the provider may or may not allow them in the room with you. If you feel more comfortable with a chaperone in the room, the examiner's office may provide one or you may be allowed to provide your own.

When you get to your appointment, give the form you filled out to the examiner, along with any new medical documentation (including imaging) that you want considered. The examiner should have all the records from your submitted claim, but the exam is your last opportunity (if you are submitting as a fully developed claim) to provide additional evidence.

The examiner will then start the exam by asking a lot of questions about your condition and how it relates to your previous military service. They will ask about your medical history, your employment and how your condition effects your daily life. They might also ask for clarifying information based on the questionnaire you filled out.

The information that the doctor obtains through interviewing you, doing an exam and sometimes some testing such as x-rays or bloodwork, is entered out on a VA form called a "DBQ" (Disability Benefits Questionnaire). This form is standardized for each different exam

performed by the VA. There are different DBQ's for each body system and conditions have their own form. The completed DBQ form is the ONLY information that is used to determine the extent of your disability. Make sure the examiner gets correct information.

Even if you submit many additional private medical records, the rater at the VA will primarily use the information the examiner writes on the DBQ to rate the extent your disability affects you. This is why it is so important to give accurate information while you are in the room with your examiner.

As we mentioned, do not exaggerate, but also do not be stoic. This is the time to tell the VA exactly what is going on with your body. Minimizing your actual symptoms doesn't help you either. Be open and truthful with the examiner about your condition and how it affects your life.

It is important to explain/show all your symptoms. Mention when symptoms started and what they are like now. Tell them about how often you have symptoms and how severe they can be. Include descriptions of flare-ups or issues that arise (or get worse) with repeated use over time. Tell the examiner if you are being examined during a flare-up or after repeated use.

Tell the examiner about any instability in the joints of your arms or legs, separate from pain. (Ex: if a joint catches, pops, locks up, slips, or gives way)

Describe any radiating pain symptoms in your arms or legs (usually related to neck or low back problems). Help the examiner to understand the frequency and severity and what it feels like. Be sure to explain any symptoms of numbness, tingling or weakness. Also, be sure to share if you have symptoms that also relate to your low back condition (changes in bowel, bladder, or sexual functioning).

As a part of the exam, the examiner might order x-rays (usually to check for arthritis). Some conditions also might require bloodwork or other imaging. Hearing and eye exams are special exams.

During any C&P exam, the examiner will not explain what they observe to you, or their opinions. It is the examiner's job to only communicate with the VA. They will not provide you with a diagnosis nor provide advice or any treatment. The examiner won't explain what their opinion to the VA will be.

In regards to musculoskeletal exams, the examiner will use a tool to measure the degrees of movement. They will repeat that measurement at least three times and take an average of the three. It's ok if each one is slightly different; don't stress about making it exactly the same, just stop when it is painful.

"Normal" range of motion **does not** include pain. Stop when it becomes painful, even if you can make yourself go further, as soon as it hurts, that is no longer "normal" movement. Do not

move into additional pain. The examiner asking you to repeat the range of motion is not a challenge to go further. It is to see if the function decreases with repeated use.

After the exam:

If you feel like your examiner was combative or was dismissive of you during the exam, you should write that in a letter to the VA. Be as detailed as possible about your experience. You can submit your letter in the same method that you submitted your original claim (upload to va.gov, mail it in or provide it to your VSO) so that it can be considered when the VA sees the examiner's report.

Re-exams:

In general, once a condition is service connected, you will not need to be re-examined unless it has become consistently worse over time, and you are making a claim for increased compensation. There are certain legislative mandates for specific conditions (such as cancer), which require a re-examination after 6 months (to see if it is still active or in remission). The VA will contact you when it is time for a re-exam. This is a rare circumstance.

There are other uses of the 526 EZ form. In most cases you will complete the first sections in the same manner as described to file an original claim (Episode 2).

New Claims:

Sometimes, a chronic condition has not manifested when you make your original claim. For example, you might have hurt your back in the service, but when you made your original claim (being young and athletic), it wasn't bothering you, so you didn't think to claim it. But now, you notice that your back is hurting again in the same spot that you injured it during active duty, and the symptoms become chronic (last more than six months). This is a perfect example of a new claim that you should make to get the compensation you deserve for being injured in the service.

Another example of a new claim is a condition that became service connected after a legislative change. Maybe you just learned that a condition you have is covered because of exposure to Agent Orange, burn pits or other environmental hazards while in the service.

It is important to understand that not every healthcare concern that happened after you left active-duty service is claimable. It must relate to an injury/illness from active duty or be secondary to another service-connected disability.

Filing a claim for any condition that was not in your Original Claim follows the same process as before. You will use the same 526 EZ form that you used for your Original Claim.

When you get to item 16, where you describe the condition you are claiming, **ONLY** include the new condition you want to have evaluated. Do **NOT** list disabilities that are already service connected unless the symptoms have changed.

Claims for increase:

The VA understands that the symptoms related to your condition may increase over time. The VA anticipates age-related exacerbations of all illnesses and conditions. A disease or injury may get progressively worse. The VA expects this to happen, so a "claim for an increase", or a veteran requested re-examination, is common and expected. The VA will automatically order a re-examination, if requested for a service-connected condition.

From Page 4 of the 526EZ:

Increased Disability Compensation

If VA previously granted service connection for your disability and you are seeking an **increased evaluation** of your service-connected disability, we need medical or lay evidence to show a worsening or increase in severity and the effect that worsening or increase has on your ability to work.

The same procedure will be followed as when you were first service connected, the VA will examine the condition that you are claiming for re-evaluation. It is important to know that your compensation could either go up or **DOWN** based on the examination (it's rare for it to go down, but that is why clear communication is so important). During an exam for increase, refer

to the section above, and be sure to explain to the examiner how your condition differs from when it was initially service-connected or last examined.

Providing medical documentation which demonstrates that your condition has worsened is helpful. Submit those chart notes with your claim if they are from providers outside the VA. If you have received care from other providers and you want the VA to obtain the info, then be sure to fill out VA Form 21-4142.

When you are being examined for an increase of a service-connected disability, the following are examples of info to share with the examiner that can help them understand why you feel the condition has worsened over time:

- You are taking more medication than you were originally
- You are experiencing stronger symptoms, symptoms more often, or flare up's more often
- You are experiencing greater difficulty with activities of daily living
- You have to seek out care from your medical providers more often as a result of the worsening of your condition

You will use that same 526EZ form to make a claim for increase. Go back and listen to episode 2 and refer to chapter 2 of this workbook. It will walk you through the steps for filling out the form appropriately. When you get to item 16, where you describe the condition you are claiming, ONLY include the condition you want to have evaluated for increase. Do NOT list other service-connected disabilities that have not changed.

Special Monthly Compensation (SMC):

There are many categories of SMC based on the body systems effected and the severity of the condition. This is how the VA compensates veterans at more than the 100% rate if they have severe disabilities or injuries (another reason ratings cannot be compared between veterans). These veterans may be housebound or in need of aid and attendance. Aid and attendance for a spouse is also included in this category.

“Housebound” means that you are bedridden or confined to your home due to your service connected disabilities. “Statutorily Housebound” means you have one single disability that is service connected at 100%, AND additional disabilities rated at 60% or more.

“Aid and Attendance” means that you require the assistance of another person to perform the basic tasks of everyday living such as bathing, feeding, dressing yourself, going to the bathroom, adjusting prosthetics or protecting yourself from hazards.

In order to qualify for Aid and Attendance for a severely disabled **spouse**, the veteran must first be rated at 30% or more. The spouse must be legally blind, or they are a patient in a nursing home, or they require the assistance of another person to perform the basic tasks of everyday living described above.

SMC is additional monthly income, in addition to your normal disability compensation.

To fill out 526EZ for special monthly compensation, fill out the form as described in Episode 2.

In item 16, you will write in which service-connected disability requires special monthly compensation consideration. You must reference a service-connected disability rated at 100%, and that you either need the assistance of another person or are actually or statutorily housebound. There are additional forms you will need to fill out. Look for the additional forms on the website or on va.gov and contact your VSO. This is not something you should have to figure out on your own. You need extra support and VSO's are out there to help, free of charge.

The form for Housebound Status or Permanent Need for Regular Aid and Attendance is VA Form 21-2680.

The form to Request for Nursing Home Information in Connection with Claim for Aid and Attendance is VA Form 21-0779.

From page 6 of the 526EZ:

Special Monthly Compensation
In order to support a claim for increased benefits based on the need for aid and attendance , the evidence must show that, due to your service-connected disability or disabilities:
<ul style="list-style-type: none">• You require the aid of another person in order to perform personal functions required in everyday living, such as bathing, feeding, dressing yourself, attending to the wants of nature, adjusting prosthetic devices, or protecting yourself from the hazards

of your daily environment (38 Code of Federal Regulation 3.352(a)); **OR**

- You are bedridden, in that your disability or disabilities requires that you remain in bed apart from any prescribed course of convalescence or treatment (38 Code of Federal Regulation 3.352(a)).

In order to support a claim for **increased benefits based on an additional disability or being housebound**, the evidence must show:

- You have a single service-connected disability evaluated as 100 percent disabling **AND** an additional service-connected disability, or

disabilities, evaluated as 60 percent or more disabling; **OR**

- You have a single service-connected disability evaluated as 100 percent disabling **AND**, due solely to your service-connected disability or

disabilities, you are permanently and substantially confined to your immediate premises.

In order to support a claim for **increased benefits based on your spouse's need for aid and attendance**, per the provisions of 38 C.F.R. § 3.351(c), the evidence must show:

- Your spouse is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less; **OR**

- Your spouse is a patient in a nursing home because of mental or physical incapacity; **OR**

- Your spouse requires the aid of another person in order to perform personal functions required in everyday living, such as bathing, feeding, dressing, attending to the wants of nature, adjusting prosthetic devices, or protecting him or her from the hazards of his or her daily environment (See 38 C.F.R. § 3.352(a) for complete explanation).

IMPORTANT: For additional benefits to be payable for a spouse, the veteran must be entitled to compensation and evaluated as 30 percent or more disabling.

Temporary 100% (Total Disability):

If you need a major surgery which requires bedrest or convalescence due to a service-connected injury or illness, you may qualify for this temporary benefit. For example, if you have surgery on your service-connected knee for a knee replacement, you are allowed 2-3 months at the 100% compensation rate to convalesce. The VA assumes that you won't be able to work during that time.

Active cancer will also qualify you a temporary 100% disability rating. When you are awarded a temporary 100% rating, depending on your condition, you will be required to get a re-examination after 6 months to determine if the cancer is still active or in remission. If in remission, then the residual effects will be determined and a new permanent rating will be awarded. If the cancer remains active, or is under treatment, you will remain at the temporary 100% rate.

To fill out 526EZ for temporary 100%, fill out the form as described in Episode 2. At item 16, you will identify which service-connected disability necessitates the additional treatment or surgery and the convalescence afterwards.

From Page 5 of the 526EZ:

Temporary Total Disability Rating
<p>In order to support a claim for a temporary total disability rating due to hospitalization, the evidence must show:</p> <ul style="list-style-type: none">• You were treated for more than 21 days for a service-connected disability at a VA or other approved hospital; OR • You underwent hospital observation at VA expense for a service-connected disability for more than 21 days.
<p>In order to support a claim for a temporary total disability rating due to surgical or other treatment performed by a VA or other approved hospital or outpatient facility, the evidence must show:</p> <ul style="list-style-type: none">• The surgery or treatment was for a service-connected disability; AND• The surgery required convalescence of at least one month; OR• The surgery resulted in severe postoperative residuals, such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilizations, house confinement, or the required use of a wheelchair or crutches; OR • One major joint or more was immobilized by a cast without surgery.

Individual Unemployability:

We have talked a lot about employability and how the VA links your conditions to lost wages, in order to compensate you. In my opinion, you should stay away from the Individual Unemployability program offered by the VA, unless it is your only option to make up lost income.

A person who applies for this benefit is communicating that they are unable to work due to their service-connected disability, which means they are prevented from getting or keeping ANY substantially gainful employment. In order to qualify, the veteran needs to have one disability rated at least 60%, or multiple disabilities rated at 70% combined, with one of them being 40% or more.

If those two conditions are true and IU is granted, the VA will pay you at the 100% rate because they assume you will not be able to work, and they assume you will not be working. This is important because this is the **only** program that has income limits (based on the poverty level), and the VA will verify your annual income from your tax returns, and they will recoup overpayments.

VA disability compensation in general, is not impacted if you work despite having a disability rating (unless there was some type of fraud committed), but Individual Unemployability is not the same. In this program the VA is paying you at 100% because you indicated to examiners that you cannot work, and they will verify your low income with the IRS.

In order to file an Individual Unemployability claim, you will need to submit VA Form 21-8940. In the rare case that this is the appropriate avenue, be sure to have a VSO help you make this claim.

From Page 5 of the 526EZ:

Individual Unemployability
<p>In order to support a claim for a total disability rating based on individual unemployability, the evidence must show:</p> <ul style="list-style-type: none">• That your service-connected disability or disabilities are sufficient, without regard to other factors, to prevent you from performing the mental <p>and/or physical tasks required to get or keep substantially gainful employment; AND</p> <ul style="list-style-type: none">• Generally, you meet certain disability percentage requirements as specified in 38 Code of Federal Regulations 4.16 (i.e. one disability ratable at 60 percent or more, OR more than one disability with one disability ratable at 40 percent or more and a combined rating of 70 percent or more). <p>In order to support a claim for an extra-schedular evaluation based on exceptional circumstances, the evidence must show:</p> <ul style="list-style-type: none">• That your service-connected disability or disabilities present such an exceptional or unusual disability picture, due to such factors as marked interference with employment or frequent periods of hospitalization, that application of the regular schedular standards is impractical.

1151 Claims:

This is a rare type of compensation by the VA. It involves a claim for injury or harm directly caused by VA healthcare providers. If granted, the VA will compensate you for symptoms as if a condition were service connected, because it was caused or aggravated by VA treatment or negligence. While in military service you cannot sue the military, and you cannot sue the VA for malpractice. An 1151 claim is how these situations are handled.

If this type of a situation applies to you, talk to a VSO or a veteran expert lawyer to help you submit this type of claim. Having representation in these scenarios is important.

From Page 6 of the 526EZ:

Compensation Under 38 U.S.C. 1151
<p>In order to support a claim for compensation under 38 U.S.C. 1151, the evidence must show that, as a result of VA hospitalization, medical or surgical treatment, examination, or training, you have:</p> <ul style="list-style-type: none">• An additional disability or disabilities; OR• An aggravation of an existing injury or disease; AND• The disability was the direct result of VA fault such as carelessness, negligence, lack of proper skill, or error in judgment, or not a reasonably expected result or complication of the VA care or treatment; OR• The direct result of participation in a VA Veterans Readiness and Employment or compensated work therapy program.