Assigning a Compensation Level

Once all the requirements of a service connection have been met, the U.S. Department of Veterans Affairs (VA) will assign a degree of compensation based upon a ratings schedule using information taken from the record assembled, including medical exams. The degree of compensation is determined through the use of a ratings schedule, or a “Schedule for Ratings Disabilities.” Once a rating has been decided, a compensation rating will be applied according to one of several tables.

The goal of the ratings decision is to assign a level of impairment of earning capacity to a disabled Veteran. The ratings schedules range in degrees of impairment from 0 to 100 percent disabled, and increase in increments of 10, with 10 percent disabled being the lowest rating possible for a Veteran to receive compensation. A 0% rating is not necessarily a bad thing. While 0% means that compensation will not be granted, it means that the VA has found that the three criteria of a disability claim was made: the VA recognized a service connection for a present disability supported with medical evidence. As with staged ratings, if the condition worsens over time, the difficult requirements of receiving benefits have mostly been met. In addition, assuming that flexion and extension use opposing muscle groups, they may qualify for the bilateral rule (discussed below), granting a 10% disability rating.

The VA will allow for a “staging of ratings.” The VA is charged with assigning an effective date and rating based on the facts found. As conditions are not static, the VA can “stage” the ratings as appropriate if there are distinct time periods where service-connected disabilities require a different rating. Simply put, when the facts of the case indicate that separate periods of time merit separate and distinct ratings, the VA will award different amounts of compensation for the different time periods.

Not every possible service-connected disability has an official VA rating schedule. To give a rating, the VA will look for an “analogous rating” schedule to assign a disability level. This means that the VA will try to find a disability on the rating schedule that is comparable to the one a Veteran suffers from to apply a rating. The Court of Veterans Appeals has held that there are three factors that the VA can consider in determining if a disability is closely related to a rating on a schedule: 1) the functions affected by the conditions; 2) the location of the conditions; and 3) whether the symptoms are similar. An argument should be made using one of these factors for the
ratings schedule that will result in the highest possible disability rating, depending upon the nature of the condition. The VA will assign the higher rating if the disability in question more closely matches the criteria for the higher-rated schedule.

The Combined Ratings Table

When evaluating multiple disabilities, the VA uses a Combined Ratings Table.\textsuperscript{viii} The VA does not add together the individual ratings of multiple disabilities, but does a calculation to determine the incremental disability caused. The Combined Ratings Table is read by matching the first rating on the top row with the second rating on the left row. If a Veteran receives two ratings of 40% and 30%, the VA will not add them together to get 70%, but will combine them to a combined score or 58%, which would round up to the nearest 10%, for a final rating of 60%.\textsuperscript{ix} Multiple ratings can be combined in this way.

The VA’s Philosophy in Determining a Rating

The VA has certain duties and obligations in making a rating decision. The VA evaluates claims based on how the disability impacts the claimant’s ability to find gainful employment.\textsuperscript{x} The impairment especially relates to the inability of the affected area to contribute to self-support. The Veteran’s ability to live at home is, for the VA’s purposes, unrelated to their capacity to engage in gainful employment as a result of their disability.\textsuperscript{xi} The VA may further change the ratings of a disability, but must do so based on an actual change in diagnosis of the disability and not just a change in the thoroughness of the review of the record of the terms used to describe the disability, though erroneous ratings can be corrected.\textsuperscript{xii}

Doctrine of the Benefit of the Doubt

The VA is required to give the benefit of the doubt in determining an issue with the ratings schedule.\textsuperscript{xiii} If the evidence is equally balanced between two different ratings within a rating schedule, the VA is required, by law, to grant the higher rating. This applies not just to the determination of the initial rating, but to analogous ratings and any staged ratings that might be present. This doctrine also requires that a higher of two evaluations be given if there is a question as to which rating should be assigned. The VA’s failure to follow this statutory command constitutes error.

Veterans Claims Assistance Act of 2000

The Veterans Claims Assistance Act (VCAA) imposes several duties on the VA.\textsuperscript{xiv} The VA, upon receipt of an application \textit{must} notify the Veteran or the Veteran’s representative of any information and evidence that is necessary to substantiate the claim. The VA is further required to obtain some information needed to complete the application, and will notify the claimant of which information the claimant must obtain themselves.\textsuperscript{xv} The VA’s “duty to assist claimants” requires that the VA make “reasonable efforts” to obtain evidence “necessary to substantiate the claimants claim for a benefit.”\textsuperscript{xvi} The VA is not required to take unreasonable measures, or assist when there is no “reasonable possibility” that assistance would actually help with the claim.\textsuperscript{xvii} This applies whether the claim is original, reopened, or for increased benefits.\textsuperscript{xviii} In addition to requiring the
VA to assist in obtaining information for a claim, the VCAA requires the VA to look at a disability in its entirety, in recognition that the severity of a condition may change over time, whether or not the medical evidence submitted pre-dates the timeframe of the claim.

**Special Rules for Determining a Disability Rating**

**The Anti-Pyramiding Rule**

The VA’s rating system will rate all diseases separately according to the ratings schedules of 38 C.F.R. § 4. However, 38 C.F.R. § 4.14 requires that the VA not award multiple disability ratings for the same disability shown under different diagnosis. This can be very confusing when an injury can cause multiple disabling conditions. In attempting to avoid these anti-pyramiding regulations, the Veteran needs to argue that there are separate disabilities with separate symptoms, regardless of the overlapping symptomatology.

**The Amputation Rule**

This particular rule simply states that “the combined rating for disabilities of an extremity shall not exceed the rating for the amputation at the elective level, were amputation to be performed.” Table II of 38 C.F.R. § 4.71a includes a table of all ratings granted for an amputation of a given limb.

**The Bilateral Factor**

The bilateral factor is defined by statute as existing when “a partial disability results from disease or injury of both arms, or of both legs, or of paired skeletal muscles, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (i.e., not combined) before proceeding with further combinations.” This does not apply for certain conditions, such as tinnitus.

**Non-Service Connected Effects on Service-Connected Disabilities**

Non-service connected occurrences make it difficult to discern the actual level of service-connected disability. While the VA is required to give the benefit of the doubt to a Veteran, they face a competing mandate to separate out the determinable effects of non-service connected disabilities. When such effects are inseparable, however, the benefit of the doubt rule requires that the VA attribute those effects to the service connection.

**Specificity of the Ratings Schedule**

The ratings schedule uses fairly specific language. An issue with this language, however, is that medical professionals most likely do not use the specific language that the VA ratings schedule uses. A doctor might not necessarily record the exact angles of flexion or extension as a matter of routine. This becomes apparent in codes such as rating code 5270, where the rating can be extremely specific in the language used to extremely vague. The claimant would best be served seeking out a medical exam that uses the language of the most appropriate ratings schedule for the injury to ensure an accurate ratings decision.
Special Total Disability Ratings

Outside of achieving a 100% disability rating based on many disabilities or a 100% disability rating, there are two ways a claimant can achieve a rating of 100%. The first is temporary 100 percent disability rating for convalescence (TDCC). A temporary rating of 100% will be assigned when a service-connected disability is treated. Subsequent medical exams will then be conducted to determine when the temporary rating should be terminated to determine a new, appropriate rating. These ratings are dependent upon convalescence being required after surgery or an injury. The initial entitlement to a 100% rating is 1, 2, or 3 months following surgery, with extensions granted up to a year after the granting of the rating.

The other common special rating is total disability due to individual unemployability (TDIU). TDIU will allow for a 100% rating when the claimant is “unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities.” There are several requirements to achieve this 100% rating. If the claimant has one, and only one, disability, it must be rated at 60% or higher. For a claimant with two or more injuries, they must have a single disability at 40% or higher, and a total disability rating of 70% or higher. Actual employability is not a barrier to recovery. Marginal employment is not considered gainful employment when the claimant’s earned annual income does not exceed the poverty threshold for one person. On a case-by-case basis, the claimant may exceed the poverty level in certain rare circumstances, such as working in a protected environment such as a family business or a sheltered workshop.

Endnotes:

i All of the VA disability ratings schedules are available under 38 CFR 4.
iii 38 U.S.C.S. § 1155.
vi 38 C.F.R. § 4.20.
vii 38 C.F.R. § 4.25 (2009)
ix The math behind this calculation follows: The Veteran starts 40% disabled, or has 60% of the earning capacity. This 60% is then diminished by multiplying 30% by 60, resulting in an 18% higher disability rating for a total of 58%.
x 38 C.F.R. 4.10, stating “[t]he basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment.”
xi Id.
xii 38 C.F.R. 4.13.
xiii 38 U.S.C.S. § 5107, stating “[w]hen there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the… (VA) shall give the benefit of the doubt to the claimant. “
This information is provided by the Lewis B. Puller, Jr. Veterans Benefits Clinic at William & Mary Law School. This paper is for information purposes only and is not legal advice.

Types of Claims