TRAUMATIC BRAIN INJURY

Revised VA Rating Schedule for TBI
WHAT IS TRAUMATIC BRAIN INJURY OR TBI?

- TBI is an injury to the Brain from External Force
- Results in immediate effects such as
  - LOC
  - Amnesia
  - Neurological impairment
- Severity assessed by:
  - duration of loss of consciousness
  - post-traumatic amnesia
Incidence of TBI

- Historically 14-20% of surviving casualties of combat were diagnosed w/ TBI
- 65% of blast exposed patients from Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) have been dx w/ brain injury. House Veterans’ Affairs Committee, Press Release 7-18-07.
- TBI-signature disability of OEF/OIF veterans—WHY?
Types of Claims Likely to have TBI Issue

- OEF/OIF veterans (IEDs and other blast-related injuries)
- Motor vehicle accidents (MVAs)
- Injuries Training for Combat (head injuries now common)
- Accident/Fall in service
- Any veteran w/ head injury in service, seems to have residuals
Typical Problems Evaluating TBI

- Large **Variety** of Residual Dysfunctions Possible
- **Multiple** Residuals Possible
- Failure To Evaluate All Residuals
- Attribute Residuals to NSC Condition—i.e., Dr Says Alcohol Abuse aggrav. front lobe dysfunction but Alcohol Abuse NSC
- Differentiating Cause of Symptoms—PTSD or TBI
The **Old** Rating Schedule for TBI

- Neuro disabilities (seizures, facial nerve paralysis, etc.) rated under approp neuro DCs
- Subjective complaint (headache, dizziness, insomnia, etc.) rated 10% (no more) under DC 9304--Dementia due to head trauma
- That 10% not combined with any other rating for brain trauma
- Vet can’t get above 10% under DC 9304 unless vet dx w/ multi-infarct dementia assoc w/ brain trauma (vascular dementia from cumulative effect of multiple strokes)
New TBI Rating Schedule—3 Main Areas of Dysfunction

- Emotional/Behavioral
- Physical
- Cognitive
General Rules—Mental Problem as TBI Residual

- Each emotional/behavioral residual of TBI that is a diagnosed condition is rated under the appropriate mental disorder DC (other than 8045)

- If there is no diagnosed mental disorder, rate those symptoms under TABLE in DC 8045
General Rules--Physical Problem as TBI Residual

- Physical/neuro residual—if a diagnosed condition, rate under appropriate physical/neuro DC
- If physical/neuro symptoms but no Dx--rate symptoms under TABLE in DC 8045
- Rate physical/neuro symptoms w/ no Dx under “subjective symptoms” or “motor activity” or other appropriate facet in DC 8045
- Example of neuro residual: Motor & sensory dysfunction, incl pain, of extremities & face
General Rule--Cognitive Impairment as TBI Residual

- Any cognitive impairment symptom w/o Dx
- considered under the “Cognitive Impairment TABLE” in DC 8045

Definition of Cognitive Impairment:
- Decreased memory, concentration, attention & executive functions (Planning, Organizing, Prioritizing, etc…)
General Rule--Subjective Symptoms as TBI Residual

- Evaluate Subjective Symptoms under the CI TABLE in DC 8045
- Even if they are **not cognitive** symptoms

- BUT if the Subjective Symptom has a distinct diagnosis (migraine headache, etc...)
  - EVALUATE UNDER THAT DC (migraine), NOT UNDER THE TABLE in DC 8045
Cognitive Impairment Table

- Each symptom that is not accounted for by a diagnosed condition is categorized under one of the 10 facets in the TABLE and assigned a number.
- After each symptom has been categorized and assigned a number, take the highest number assigned to any one facet.
- The highest number correlates to a level of impairment.
<table>
<thead>
<tr>
<th>The 10 Facets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Memory, attention, concentration, executive functions</td>
</tr>
<tr>
<td>Judgment</td>
</tr>
<tr>
<td>Social Interaction</td>
</tr>
<tr>
<td>Orientation</td>
</tr>
<tr>
<td>Motor Activity (use if motor &amp; sensory system intact)</td>
</tr>
<tr>
<td>Visual spatial orientation</td>
</tr>
</tbody>
</table>
Cognitive Impairment Table
The 10 Facets (cont)

- 10 facets (cont)
  - Subjective Symptoms
  - Neurobehavioral Effects (irritability, impulsivity, unpredictability, lack of motivation, verbal aggression, physical aggression, apathy, lack of empathy, moodiness, lack of cooperation, etc)
  - Communication
  - Consciousness
### Cognitive Impairment Table

#### 5 Levels of Impairment

- Each of the 10 facets has (at most) five levels of impairment

<table>
<thead>
<tr>
<th>Level</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>1</td>
<td>10%</td>
</tr>
<tr>
<td>2</td>
<td>40%</td>
</tr>
<tr>
<td>3</td>
<td>70%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

- Some of the 10 facets have LESS THAN five levels (Example: Subjective Symptoms has 3)
The Way the TABLE Works

- VA should assign a 100% eval if any facet (or more than 1 facet) is totally disabling
- If no facet evaluated as total, assign the eval based on the highest-evaluated facet

EXAMPLE: Assign a 70% eval under DC 8045 if “3” is the highest level for any facet
The Way the TABLE Works

- If vet has a “3” under 5 different facets—will be assigned 70% eval under DC 8045

- If vet has a “2” for all 10 facets—will be assigned 40% eval under DC 8045

- If vet has a “2” for just 1 facet—will be assigned a 40% eval under DC 8045
General Rules
Eval of TBI & Residuals

- Eval each residual separately
  - same symptoms/manifestations can’t support more than 1 evaluation

- Eval under the TABLE is the eval for a single condition (TBI) and will be combined with other disability evals (for physical & emotional dysfunctions)

- Combine residuals/conditions under section 4.25 (combined rating table)
### Cognitive Impairment Table—Memory Facet

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0%= no c/o impairment</td>
</tr>
<tr>
<td>1</td>
<td>10%= c/o mild loss of memory, attention, etc. w/o objec evid on testing</td>
</tr>
<tr>
<td>2</td>
<td>40%= objec evid on testing of mild impair. of memory, attention, etc…, results in mild impairment</td>
</tr>
</tbody>
</table>
Cognitive Impairment TABLE
Memory Facet (cont)

| 3=70% Object evid on testing of moderate impair of memory, atten, etc…, results in moderate impair. |
| Total=100% Object Evid on testing of severe impair of memory, atten, etc…, result in severe funct. impair |
### Cognitive Impairment Table

#### Subjective Symptoms Facet

- **Non-inclusive list of Subjective Symptoms:**
  - Anxiety (but if dx of anxiety cond, rate under DC 9440)
  - Headaches (but if dx of migraine, rate under DC 8100)
  - Insomnia
  - Hypersensitive to light, sound
  - Dizziness, tinnitus
  - Fatigability (but if dx of CFS, rate under DC 6354)
  - Blurred/double vision
### Cognitive Impairment Table

#### Subjective Symptoms Facet

<table>
<thead>
<tr>
<th>0=0%</th>
<th>Symp do not interfere w/ work, IADLs, work, family or other relationships</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EX: mild or occas. headaches, mild anxiety</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1=10%</th>
<th>3 or more subj. symp that mildly interfere w/ work, IADLs, work, family, other relationships</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EX: intermittent dizziness, daily mild HAs, tinnitus, freq. insomnia</td>
</tr>
<tr>
<td>2=40%</td>
<td>3 or more symp that moderately interfere w/ work, IADLs, or work, family or other close relationships</td>
</tr>
<tr>
<td>-------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>EX: marked fatigability, blurred /double vision, HAs requiring rest periods most days</td>
</tr>
</tbody>
</table>
DC 8045—Note 1

- Overlap between TABLE symptoms and mental or physical symptoms:
  - If manifestations clearly separable, assign separate eval under separate DC
  - If manifestations not clearly separable, assign 1 eval under DC allowing best assess. of overall impaired function due to both conditions
DC 8045—Note 2

Symptoms listed as examples in TABLE are only examples. The listed examples **DO NOT HAVE TO BE PRESENT** to assign a particular evaluation.
DC 8045—Note 4

- Terms “mild” “moderate” “severe” TBI in medical records
- This refers to classification of TBI close to injury—NOT current level of functioning.
- Classification of “mild” “moderate” “severe” DOES NOT AFFECT RATING ASSIGNED UNDER DC 8045
DC 8045—Note 5

- Vet rated under old DC 8045 may REQUEST REVIEW under new DC 8045
  - Doesn’t need to claim worsening
  - Treated as claim for increase
  - In no case will eff date of any incr be prior to 10-23-08
Advocacy Advice—
TBI Exam Properly Conducted

- VA gives VA examiners guidance on how to conduct exams
- What tests to perform, questions to ask, etc…
- Called VA Clinician’s Guide
- Make sure TBI exam (VA or private) complies w/ VA guidelines
Advocacy Advice-Evaluation of TBI—Diagnosed Residuals

- Get a dx for every physical, emotional/behavioral and cognitive disability he/she suffers from due to TBI.
- Get highest eval possible for each diagnosed condition.
- **Usually best to get DX of Separate Mental Condition**
- If no dx for emotional/behavioral or cognitive, try to get highest possible eval under TABLE
Advocacy Advice
Manifestations not Clearly Separable

- Where manifestations/symptoms not clearly separable, compare DC 8045 w/ other appropriate DCs
- Figure out what DC will give higher eval
- Argue for that DC
Advocacy Advice
Manifestations Not Clearly Separable

- If vet has dx of PTSD & TBI
- Dr can’t clearly separate the symptoms . . .
- Note 1--assign single eval under DC that allows better assess. of overall functioning
  - Prob. higher eval under 38 CFR 4.130, DC 9411 (PTSD) than DC 8045
  - Compare Subj Symp in TABLE w/ mental disorder schedule, DC 9411 (PTSD)
Advocacy Advice—Lay Evidence

- Get as much lay evid from family, friends as possible re: subjective symptoms, frequency, severity, etc…
- Submit lay evidence to examiner & VA
- Try to have examiner mention all symptoms in report
  ***unclear whether VA will require that dr. mention/verify subj symptoms
- Argue that nothing more than vet’s statement needed re: Subj. Symp.
Advocacy Advice

Evaluation of TBI—Prestab Rating

- Prestab Rating under 38 CFR 4.28
- Not assigned where total assignable under schedule or b/c of TDIU
- 50% not used where 50% or more assignable under schedule
- 100=Unstabilized condition w/ severe disability; Substantially gainful employment not feasible/advisable
- 50=Unhealed/incompletely healed wounds/injuries; Material impair of employability likely
Advocacy Advice—
TBI Exam & Clinician’s Guide

- Clinician’s Guide lists who can perform
- Specialist Exams MAY BE needed
- Vets w/ TBI need prompting (Dr. must ask specifically about each sympt or area of symptoms)
- Dr. must assess cognitive impairment & other TBI residuals not otherwise classified
- Dr. must indicate where the veteran falls on the TABLE in DC 8045—for each symptom/facet
TBI & SMC

- Consider need for SMC if:
  - LOU of extremity
  - Certain sensory impairments (blindness in one eye, deafness, aphonia (loss of speech), etc.)
  - ED
  - Need for A&A
  - Meet Housebound criteria?
  - Etc…
Service Connection for Hearing Loss & Tinnitus

FACTS
Appeal of 2006 RO Decision

- Denied SC for bilateral hearing loss and tinnitus
- Vietnam: July 1968 - July 1969
- Light weapons infantryman in Vietnam
Vet When Entering Service

- Audio exam on entry- no hearing loss or tinnitus
- In service experienced significant noise exposure
- After Vietnam was posted to Fort Riley for remainder of service
- Whispered Voice hearing test 1970 - no hearing loss
Vet Upon Discharge

- Worked as parts salesman at Sears for 35 years
- No noise exposure through this job or other activities
Filed SC claim in 2005

- Claim for hearing loss and tinnitus
- In-service acoustic trauma from gunfire
- Submitted private audio exam dated in 2005
- Submitted Audiologist’s medical nexus opinion dated in 2005
VA Audiometric Testing in 2006

- Bilateral hearing loss
- In the right ear, hearing loss based on elevated puretone thresholds
- In the left ear, hearing impairment based on poor speech recognition scores
- Bilateral tinnitus of 3-4 yrs duration
VA Examiner Opinion in 2006

- Based on exam of vet & review of file
- Audio exam at discharge showed normal bilateral hearing
- Tinnitus did not occur until ~ 32 yrs after separation
- Therefore, disabilities NOT as likely as not to be due to service
Rating Decision in 2006

- No SC for hearing loss
  - Negative VA opinion that no hearing loss found in service
- No SC for tinnitus
  - Dr. opinion based on statement that tinnitus was 3-4 yr duration
NOD Filed in May 2006

Followed by timely appeal

Stated:
- Tinnitus began in service
- VA exam inaccurate concerning duration of tinnitus
- Parts salesman position required no noise exposure
Private Audio Exam in 2008

- Mild to severe sensorineural hearing loss-right ear
- Mild to moderate-to-severe sensorineural hearing loss-left ear
- Auditory thresholds:

<table>
<thead>
<tr>
<th></th>
<th>500 Hz</th>
<th>1000 Hz</th>
<th>2000 Hz</th>
<th>4000 Hz</th>
<th>8000 Hz</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right</td>
<td>30 dB</td>
<td>40 dB</td>
<td>45 dB</td>
<td>60 dB</td>
<td>70 dB</td>
</tr>
<tr>
<td>Left</td>
<td>30 dB</td>
<td>45 dB</td>
<td>55 dB</td>
<td>55 dB</td>
<td>60 dB</td>
</tr>
</tbody>
</table>
Private Audio Exam 2008 (cont)

- Revealed bilateral hearing loss and tinnitus
- Medical nexus opinion linking hearing loss & tinnitus to combat service
- Combat Service in Vietnam *more likely than not* caused hearing loss & tinnitus
Lay Statement of Wife

- Submitted in 2008
- Included her observations of vet through the years:
  - Difficulty hearing conversations
  - Playing TV/ radio more loudly
  - Tinnitus complaints shortly after service until present time (ringing in ears)
Evaluation of Mental Health Conditions
I. Introduction

• Many OEF/ OIF vets returning with mental disorders and PTSD

• Other vets continue to receive new PTSD diagnoses

• Evaluations of these disorders are inconsistent at best, inaccurate at worst
II. General Rating Principles for Mental Disorders

• 38 CFR 4.126- when evaluating consider frequency and severity of symptoms, vet’s overall capacity, and periods of remission

• Rating should not be totally upon social impairment
Mental Disorder Rating Schedule

- 100% - Total occupational & social impairment
- 70% - Occupational & social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood
- 50% - Occupational & social impairment with reduced reliability and productivity
Mental Disorder Rating Schedule

• 30%-Occup & social impairment w/ occas decrease in work efficiency & intermittent periods of inability to perform occup tasks
• 10%-Occup & social impair due to mild/transient symp (decrease work efficiency & ability to perform occup tasks in periods of significant stress OR controlled by continuous meds
• 0%- diagnosis but no interference w/ functioning
III. Deconstructing Schedule for Mental Disorders

• VA-assign rating most closely reflecting level of social & occup impairment

• *Mauerhan* – vet doesn’t need to have every symptom listed to get that rating

• *Bowling* – VA must consider work history & job difficulties
IV. GAF Scores

- GAF = clinician’s judgment of overall psych, social & occup functioning

- 1- lowest functioning

- 100- highest functioning

- Don’t directly correspond to disability ratings, but are important evidence of severity
GAF Scale

• **100-91**: Superior functioning

• **90-81**: Absent or minimal symptoms

• **80-71**: May be symptoms but transient & reactions to psychosocial stressors

• **70-61**: Some mild symptoms

• **60-51**: Moderate symptoms
• **50-41**: Serious symptoms

• **40-31**: Some impairment in reality testing or communication

• **30-21**: Behavior is considerably influenced by delusions or serious impairment in communication

• **20-11**: Some danger or hurting self or others

• **10-1**: Persistent danger of severely hurting
V. Special Rating Considerations: Released b/c of traumatic stress

• Should not receive an evaluation < 50% & should be examined w/in 6 mo of discharge

• 50% + rating must be maintained until VA exam provides a basis for reconsideration
VI. Other Considerations - TDIU

• 100% rating difficult to attain--if vet. unable to work, may still be able to function socially

• If vet unable to work, VA must assign schedular rating and consider vet’s entitlement to individual unemployability (TDIU)
VII. In-Service Mental Health Treatment Records

- Records contain info relevant to initial disability rating

- DoD—doesn’t maintain in-service mental health records—can get records from facility itself but destroyed w/in 5 yrs of tx.

- For VA to get tx records from civilian facility the vet must complete Consent form
VIII. Advocacy Advice

Proving Entitlement to a Rating

– Point out symptoms specifically mentioned in 38 CFR 4.130

– Reference GAF

– Review lay statements for evidence of occup & social impairment
Developing Supporting Evidence

– Refer to private psychiatrist
– sure all tx records w/ file?
– get lay statements & records

If rating doesn’t reflect actual impairment:
1. File specific claim for extraschedular rating?
2. If unable to be gainfully employed, file for TDIU
• GAF Score Issues
  – If GAF shows entitled to higher rating- encourage appeal
  – If GAF too low- argue exam report inadequate
  – If GAF too high- argue doesn’t reflect disability

• Discharge due to traumatic stress
  – Initial rating at least 50%
  – Ensure not improperly reduced
Hypo 1--Facts

• 1-06 VAE
  – vet gets dx of PTSD
  – linked to verified stressor
  – assigned GAF of 60
  – symptoms:
    • blunted affect
    • incr anxiety when VN mentioned (close to tears)
    • guilt
    • suicidal ideation w/ crying spells
Hypo 1—Facts (cont.)

• trouble concentrating
• intrusive thoughts
• nightmares,
• keeps to himself outside of family
• anxiety & depression,
• difficulty w/ marriage (married 4 times)

• Rating assigned - 10% (final decision)
Hypo 1--Answer

• File claim for increase.
• If vet not working file claim for TDIU.
• May file for at least 30% from date of claim based on CUE
Hypo 2--Facts

• VAE found severe memory impairment--recent memory & immediate memory
• was not *total* social and occupational impairment
• Dr.-- no deficiency in judgment but thinking deficiency (constant fear of dying and leaving family)
• Deficiency in family relations (limited intimacy)
• No deficiency in work (veteran retired but RO conceded occupational impairment)
• Deficiency in mood (bouts of sadness, guilt, dysphoria).
X. Hypothetical #2

- VA decision noted following:
  mood anxious
  unable to do serial 7s or spell word “world” backwards
  sleep disturbances and nightmares
  checks doors before going to sleep
  GAF 45
- decision did not mention all symptoms
- 50% rating assigned
Hypo 2--Answer

• File a Notice of Disagreement challenging the assigned rating