COMMON SCHEDULAR RATINGS

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COMMON SCHEDULAR RATINGS

PURPOSE

- A tutorial in rating common disabilities
  - Hearing Loss/tinnitus
  - Scars
  - TDIU: total disability based on individual unemployability
- Use scenarios
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38 CFR § 4.1 General:

Ratings are based on average impairment in earning capacity

- Ratings range from 0% (noncompensable) to 100%
- Unless based solely on mental disability, Vet can possibly receive a 100% disability rating and still work.
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38 CFR § 4.3

- When determining degree of disability benefit of doubt is in Vet’s favor.

- *Tatum* Case
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HEARING LOSS

- For service connection:
- Must meet 38 CFR 3.385
- Pertinent thresholds are 500, 1000, 2000, 3000, 4000
- Decibel loss 40 or higher on any threshold
- Decibel loss 26 or greater at 3 thresholds OR
- Speech recognition < 94 percent
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HEARING LOSS

- Once service connection granted:
- Use 38 CFR 4.85, Tables VI, VIA, VII
- Pertinent thresholds are 1000, 2000, 3000, 4000
- Speech recognition scores
- Exceptional pattern HL: 38 CFR 4.86
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TINNITUS

- 38 CFR 4.87, Diagnostic Code 6260
- Highest rating possible 10%
- Mostly subjective
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HL Scenario 1

Vet served in combat during WWII. Separated from service with normal hearing. Current Audio exam shows:

Does the veteran have hearing loss for VA purposes?

<table>
<thead>
<tr>
<th>500</th>
<th>1000</th>
<th>2000</th>
<th>3000</th>
<th>4000</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>20</td>
<td>15</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>
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HL Scenario 2

Same facts as scenario
1. New audio exam reveals:
Does the veteran have hearing loss for VA purposes?

<table>
<thead>
<tr>
<th>Frequency (Hz)</th>
<th>500</th>
<th>1000</th>
<th>2000</th>
<th>3000</th>
<th>4000</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>25</td>
<td>15</td>
<td>20</td>
<td>25</td>
<td></td>
</tr>
</tbody>
</table>
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HL Scenario 3

Vet is service connected. What rating is warranted for audio shown and speech recognition at 90?

<table>
<thead>
<tr>
<th></th>
<th>1000</th>
<th>2000</th>
<th>3000</th>
<th>4000</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>45</td>
<td>75</td>
<td>80</td>
<td></td>
</tr>
</tbody>
</table>
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Tinnitus Scenario
Vet has intermittent bouts of ringing in his ears since service? Is his tinnitus a ratable current chronic condition under DC 6260?
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SCARS

- Use 38 CFR 4.118, DC 7800-7805
- Scars are a common residual of orthopedic disabilities and skin conditions.
- Minimum rating of 10% can be granted for painful scar.
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SCARS

- Scars are rated by size, adherence, tissue damage and disfigurement.
- Scars in different areas can be rated separately.
- Disfigurement can be rating separately than other disabling effects.
- A minimum rating of 10% can be granted for a painful scar.
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TDIU: 38 CFR 4.16
(Total Disability based on Individual Unemployability)

TDIU is applicable if Vet cannot work due to service-connected disabilities.

Criteria required:
One disability rated at 60% or
Two or more combined at 70% where at least one disability is rated at 40%.
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Tips on TDIU:

- NSO always check rating to see if TDIU is not applicable
- TDIU is always an inferred issue
- If percentage is lacking to meet criteria: check for common etiology
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- TDIU and SMC(S)
- Where applicable NSO can argue TDIU for 1 disability at 60% or common etiology and use other disabilities to make a combined 60% to achieve SMC (S).
- *Young v. Shinseki*
- Effective date is date SMC entitlement arose.
QUESTIONS?