SECONDARY SERVICE CONNECTION

DISCUSS

• What is it?
• Types?
• Evidence needed!
• Special rules!
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What is it? 38 CFR 3.310

• A disability is the result of a SC disability.
  • Direct
  • By aggravation
  • By regulation
  • VA Manual
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DIRECT - Causal relationship - disease or injury

- Evidence needed
  - Diagnosis of secondary condition
  - Medical opinion
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DIRECT - Causal relationship - disease or injury

• EXAMPLES – SC condition
  • Diabetes
  • Knee condition
  • Back Condition
  • Impotence
  • Medication
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AGGRAVATION – worsens a non SC condition

• Evidence needed
  • Cannot be due to natural progression and
  • Medical evidence showing
    • baseline of NSC condition prior to aggravation and
    • Current condition
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EXAMPLES – NSC conditions

- Hypertension
- Heart Condition
- Medication
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REGULATION

- 38 CFR 3.310(c) Cardiovascular disease SC if
  - SC Amputation at or above knee of one lower extremity or,
  - SC amputation at or above ankles, both lower extremities.
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VA MANUAL – M21-1MR, III, iv, 4.F.22.e

- Grant SC for hypertension if diabetic nephropathy Dx before hypertension
- Deny SC for hypertension if diabetic nephropathy Dx after hypertension
- If not clear request medical opinion
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SPECIAL RULES

Paired organs & extremities CFR 3.383

- SC blind – one eye & NSC eye - blind
- SC loss/lose of use - one kidney & involvement of NSC kidney
- SC Hearing loss 10% or more & NSC ear - hearing loss meets requirements of 3.385
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Paired organs & extremities 38 CFR 3.383

- SC loss/loss of use – hand/foot & NSC loss/loss of use of other hand/foot
- SC lung 50% or greater & NSC lung disability
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Paired organs & extremities 38    CFR 3.383

Judgment/Settlement

• Monies rec’d for the NSC conditions subject to 100% recoupment
  • Exception - loss of use of hand/foot
  • Exception – Social Security & Workman’s Comp not recouped
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SIDEBAR

A vet with 20% ($255.00/month) for a back condition is working for the VA. He picks up a case of books and his back goes out and he is in pain. Files claim for increase and VA grants 40% ($569/month). He files for workmans’ comp under (OFWCP) Office of Workers' Compensation Programs and receives $500.00/month. What happens now?
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SPECIAL RULES Cont.

Alcohol & Drugs 38 CFR 3.1(m) & 3.301

- Alcohol drinking not willful misconduct
- Drug usage –isolated and infrequent use not willful misconduct
- Willful misconduct
  - Progressive & frequent use to addiction, or
  - Used to enjoy the effects and that causes death/disability
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Allen v. Principi 237 F3d 1368

- Vet claimed alcohol abuse disability should be considered in determining the severity of SC PTSD. Medical evidence showed alcoholism was due to his PTSD.
- Appealed to Federal Circuit Court
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Allan v. Princippi cont.

- Federal Circuit - OBRA changes to 38 U.S.C.S. 1110 created two mutually exclusive categories of disability:
  - disability contracted in LOD – compensation allowed
  - disability resulting from alcohol or drug abuse - willful misconduct – no compensation

- Federal Circuit - if vet’s alcohol abuse was the result of a disease contracted in LOD, PTSD, then it’s not a disability resulting from alcohol or drug abuse because the categories are mutually exclusive.
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Allan v. Principi Cont.

Can the disabilities caused by abuse be Service Connected?
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SPECIAL RULES Cont.

Tobacco use

- Is tobacco use defined as willful misconduct in 38 CFR 3.1(m)?
- Can SC be granted for a disability caused by tobacco use?
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SPECIAL RULES Cont.

38 USC 1103

- Disability or death due to or result of injury/disease attributable to use of tobacco products during service **will not be SC**!

- Above will not preclude SC of disability/death due to injury/disease incurred/aggravated in service or within presumptive period
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SPECIAL RULES Cont.

Example

If peacetime vet SC only for tobacco addiction now claims lung cancer due to tobacco use, or dies from that lung cancer, what will VA decide on any claims?
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SPECIAL RULES  Examples

• VN vet has lung cancer. Heavy smoker for the last 30+ years. MD says smoking caused cancer? What does the NSO do?

• Recently retired vet, heavy smoker since teens, dx with lung cancer during presumptive period. MD say smoking the cause. What does NSO do?
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SIDEBAR

Can VA deny SC for these conditions if there are other intervening causes?
Are the veterans required to submit the medical information concerning the MO concerning the cause of their cancer?
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SPECIAL RULES Cont.

Tobacco Use

- If a SC condition results in the vet being addicted to tobacco use, will it be SC?
- Will any disability from that addiction be SC?
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Tobacco use VAOPGCPREC 6-2003

1. Did the SC disability cause the use of tobacco after service; if yes

2. Did the use of tobacco as a result of the SC disability a substantial factor in causing a secondary disability; if yes

3. Would the secondary disability not have occurred but for the use of tobacco products caused by the SC. If yes.

4. SC will be granted -
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