EVALUATION OF DISABILITY
ESTABLISHING APPROPRIATE % OF DISABILITY ONCE SC GRANTED

**Rating ("rating" has several different meanings)**

- VA Form (VAF) 21-6796 is a “rating” decision
- Vet’s SC disabilities are “rated” or evaluated to determine correct % of disability
- “Rating” may also refer to decision granting or denying claim for SC
- VA uses “evaluation” to mean the % of disability assigned
ESTABLISHING APPROPRIATE % OF DISABILITY ONCE SC GRANTED

**Combined Evaluation**
- “combined evaluation” contemplates more than one SC condition
- But it could also mean the total % of disability assigned by VA - even if there is only one SC condition

**Disability**
- “Disability” is used interchangeably with the term “condition”
Assign % Of Disability Once SC Granted

Establishing appropriate % of disability involves:

- Applying the VA “rating schedule” in 38 C.F.R. Part 4
- Part 4 called VA RATING SCHEDULE
- Determining symptoms vet is experiencing
Assign % Of Disability
Once SC Granted

- Comparing symptoms of SC condition against appropriate DC in VA Schedule for Rating Disabilities
- There are many, many diagnostic codes in Part 4
ESTABLISH APPROPRIATE % OF DISABILITY ONCE SC GRANTED

- % of disability reflects average impairment in earning capacity caused by disability
- multiple disabilities -- % not added arithmetically but combined via a table
- Ex: 30% & 20% combines to 40%
  - Here’s how it works – you start with 100%;
  - Minus 30% equals 70% remaining;
  - 20% of 70% equals 14%;
  - Adding 14% to 30%, equals 44%.
  - Round down = 40%. © NVLSP 2014
ESTABLISH APPROPRIATE % OF DISABILITY ONCE SC GRANTED

- %’s set in increments of 10, but may be 0%
- 0% called non-compensable
ESTABLISHING APPROPRIATE % OF DISABILITY ONCE SC GRANTED

- DC for musculoskeletal condition usually based on LOM caused by condition
- If so, functional loss due to pain & weakness must be separately considered & rated
ESTABLISHING APPROPRIATE % OF DISABILITY ONCE SC GRANTED

- Each DC lists several sets of symptoms – with each set matched to particular disability rating percentage
- Not all DCs go up to 100%
- Ex: DC 5167, loss of use of the foot, triggers at most 40% evaluation
Sometimes VA must Rate by Analogy

- Not all disabilities in existence are listed in the rating schedule.
- Examples of disabilities that are not listed:
  - Any/All undiagnosed illnesses
  - Chondromalacia
  - Peripheral neuropathy
  - Pilonidal cyst
Sometimes VA must Rate by Analogy

- Tonsillectomy (residuals)
- Genital herpes
- Jungle rot/tropical ulcer
- Hyperhidrosis of feet
- Loss of adrenal gland
Sometimes VA must Rate by Analogy (38 CFR 4.20)

“when an unlisted condition is encountered it is permissible to rate under a closely related disease or injury in which not only the functions affected, but the anatomical localization AND symptoms are closely analogous."
How to Rate by Analogy

- three factors are considered:
- **functions** affected by the conditions,
- **location** of the conditions, and
- whether **symptoms** are similar
How to “Build” a DC when Rating by Analogy

- Hyphenated DCs are used in the following situations:
  1) “unlisted” conditions
  2) Residual conditions
  3) Gulf War undiagnosed illnesses (these are “unlisted”—but there are special rules about how to “build” the DC)
How to “Build” a DC when Rating by Analogy

- “Unlisted” Conditions

- If vet’s disability not listed, rating activity assigns an analogous code, which is actually two codes hyphenated.

- 1st code has 2 digits that refer to body system followed by 99.

- 2nd code is the DC with the diagnostic criteria used to evaluate the disability.

- For example – rheumatoid arthritis rated as ankylosis of lumbar spine – coded 5002-5240.

- 38 C.F.R. § 4.27

How to “Build” a DC when Rating by Analogy

- Rating Residual Conditions (from M2-1-MR)
- Hyphenated codes do not necessarily denote analogous ratings. Two DCs may be used to identify proper evaluation of residual from disease
- Example: Ankylosis of wrist from rheumatoid arthritis
- Rated as 5002-5214 (one code identifies the original disease and the other identifies the residual disability)
How to “Build” a DC when Rating by Analogy

- for example, disability involving bronchial pulmonary system, which begins with DC numbers 66
- 1st four-digit number set would be 8866
- Assume vet has symptoms resembling bronchial asthma, DC 6602
- When two four-digit number sets are combined, hyphenated analogous DC is 8866-6602
Depending on the total combined percentage rating, level of payments is fixed by statute.
The following rates are effective as of December 1, 2013.

- 10% rating pays $130.94/month.
- 50% rating pays $822.15/month (without dependent).
- 100% rating pays $2,858.24/month (without dependent).
- Disability compensation not taxable and usually not subject to garnishment or attachment.
Increased Or Special Monthly Compensation

- Special Monthly Compensation, (SMC) compensates vets for loss of lifestyle
- SMC is an add-on to regular comp. (regular comp. paid based on average impairment in earning capacity)
- 100% disability eval = $2,858.24/mo.
- Compare: an award of the highest level of SMC can result in monthly payment over $8,000/mo.
Increased Or Special Monthly Compensation

- SMC also paid to vets who need A&A of another
- or to vets who are housebound
- or to vets who have lost use of one or more limbs
- or to vets who are blind or have other disabilities or combinations of disabilities
DEFINITION –

Total disability ratings may be assigned where schedular rating less than total when disabled vet is unable to get or keep a substantially gainful occupation (SGO) b/c of SC disabilities

This is called Total Disability based on Individual Unemployability (TDIU or IU)
TDIU-Vet Paid 100% Rate but SC Conditions Rated Less than 100%

- Vet cannot be engaged in & must be unable to engage SGO & needs
  - 1 SC disability rated 60% or more; or
  - 2 or more SC disabilities, 1 of which rated at least 40% & sufficient add’l SC disability to combine to 70% or more; or
  - VA can approve extra-schedular TDIU (if above % not met)
TDIU-Vet Paid 100% Rate but SC Conditions Rated Less than 100%

- VAOPGCPREC 75-91
- "unemployability" synonymous with inability to secure and follow SGO
- all vets, in light of their individual circumstances but without regard to age, who are unable to secure and follow SGO due to SC conditions will be rated totally disabled w/o regard to whether average person would be unemployable

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TDIU

- SGO is annual income over poverty threshold for 1 person, regardless of # of hours or days worked & regardless of past earnings (*Faust v. West*)

- The U.S. Census Bureau 2014 poverty threshold for single individual is $11,670
Education & occupational history must be discussed in context of how they relate to SC disabilities in determining whether vet unable to get or keep SGO

"Marginal employment" not considered SGO
  ◦ Marginal employment--vet’s earned annual income does not exceed poverty threshold for 1 person
  ◦ where vet employed in protected environment like family business
Extraschedular Evaluation

- VA’s Compensation Service may approve extraschedular evaluation where case presents exceptional or unusual disability picture
- with related factors such as
  - marked interference with employment or
  - frequent periods of hospitalization
  - that render regular schedular standards impractical
Extraschedular Evaluation

- Where BVA does not address whether case warrants extraschedular consideration
- CAVC cannot make its own determination as to whether exceptional factors exist
- CAVC must remand for Board to decide
Extraschedular Evaluation

- Whether extraschedular rating warranted requires 3-step inquiry:
  - VA must determine whether exceptional disability picture so that schedule inadequate;
  - VA must determine whether exceptional disability picture exhibits other related factors such as “marked interference with employment, etc . . . ; if so
  - case must be referred to Under Secretary to determine whether extraschedular rating required
VA May Reevaluate Severity Of SC Condition

- VA may choose to reevaluate SC condition, and if severity has changed, may increase or decrease evaluation
- If no change, VA will "confirm and continue" eval
- Before assigning different % of disability, VA will usually schedule exam
- Vet required to undergo this exam
Questions?