

KENNETH S. BESKIN, ESQ.

Kenneth S. Beskin, Esq. is the partner managing the Veterans Department for the law firm of Sherman Federman Sambur & McIntyre, helping disabled veterans in obtaining disability compensation and pension benefits. He is a member of the National Organization of Veterans' Advocates, Inc. and has argued successfully before the United States Court of Appeals for veterans claims.

He has represented veterans in obtaining both Social Security and veterans benefits and, in that regard, received an award on June 7, 2008 from Veterans Quality of Life for going above and beyond the call for veterans.

He has also given his time to represent veterans on a pro bono basis on behalf of the New York City Bar Association and the Veterans Consortium Pro Bono Program.

FELICIA PASCULLI, ESQ.

Felicia Pasculli, Esq. concentrates her practice in the areas of Elder Law, Special Needs Law, and Veterans Benefits. She is nationally certified as a CELA (Certified Elder Law Attorney) by the National Elder Law Foundation. Ms. Pasculli is admitted to practice before the U.S. Court of Appeals for Veterans Claims and is a volunteer attorney for the Veterans Consortium Pro Bono Program. She was recently appointed to chair the newly created Veterans Benefits Committee of the Elder Law Section of the New York State Bar Association.

She has lectured and written articles ranging from veterans benefits for the elderly and disabled veteran to tax consequences of Medicaid-qualifying trusts for such organizations as the National Organization of Veterans' Advocates (NOVA), the National Academy of Elder Law Attorneys, the Elder Law section of the New York State Bar and the Nassau and Suffolk County Bars. She was awarded a grant from the Charles H. Revson Foundation for a study on homeless veterans in Nassau and Suffolk Counties.

Felicia is a sustaining member of NOVA, and a founder of the Family Council at the Northport VA Medical Center's nursing home. She is also a member of the National Academy of Elder Law Attorneys, the Suffolk County Bar Association, and the New York State Bar Association.



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**FACTS REGARDING
YOUR VETERANS
DISABILITY CLAIM**



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FACTS REGARDING VETERANS COMPENSATION BENEFITS & CLAIMS

VETERANS COMPENSATION BENEFITS

Veterans with disabilities resulting from a personal injury sustained or a disease contracted during active service are entitled to benefits for their service connected to the injury or disease.

In order to qualify for benefits from the Department of Veterans Affairs (“the VA”), a claimant or the party upon whose service the claimant bases the claim must be a “veteran.” A veteran is a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.

Once a disability has been found to be service-connected, the VA applies the criteria established in the diagnostic codes contained in the VA rating schedule to assign a disability rating.

ELEMENTS OF PROOF FOR A COMPENSATION CLAIM

A Claim for Service-Connected Benefits Has Three Basic Elements of Proof:

1. Proof of current disability.
2. Evidence of in-service occurrence or aggravation of injury or disease.
3. Medical evidence of a link between 1 & 2 which can be shown one of five ways:
 - A. By direct service connection, either delayed because of chronic condition, or because of continuous symptomatology
 - B. By aggravation of a pre-existing condition
 - C. Statutory presumptions — chronic diseases, tropical diseases, POWs, Persian Gulf, radiation, Agent Orange
 - D. Secondary or proximately related to a service-connected condition

- E. By negligent medical treatment (38 U.S.C. Sections 1151).

Two Other Essential Elements of a Claim:

1. The degree of disability, i.e. percentage
2. Effective date of disability

What Does the Claim Pay?

1. The rate a married veteran gets for 2009 is \$2,823 per month for a 100% rating.
2. Additional compensation, or special monthly compensation, is available above the 100% rate for those veterans who have suffered loss of use of extremities or senses, or who have been found to be entitled to housebound benefits or to regular aid and attendance.

OBTAINING BENEFITS

The Initial Claim

An initial claim for veterans benefits must be made by the veteran or their survivor. An attorney is usually not involved in the initial application.

1. Claim for benefits is filed at the Regional Office (“RO”). Prior to rating the claim, the RO will send informational letters asking for information and a formal Veterans Claims Assistance Act (“VCAA”) letter which is intended to inform the claimant what evidence is still necessary and who is supposed to produce it.
2. The RO issues a rating decision.



Appeals (When You Can Hire an Attorney)

If you obtain the full benefits that you applied for, the process is concluded. Medical and compensation benefits will be provided.

Unfortunately, a very high percentage of claims are denied or are only partially granted. At this time, an attorney can assist you in filing an appeal.

1. If the claim is denied, the veteran begins his appeal by filing, at the RO, a Notice of Disagreement (“NOD”).
2. The RO responds with the reason for the rating, the Statement of the Case (“SOC”).
3. At any time after the rating, the veteran can request a hearing or a review by a Decision Review Officer.
4. After the SOC, the veteran files with the RO, an appeal to the Board of Veterans’ Appeals (“BVA”) in Washington, D.C. The veteran has the option of a hearing in D.C., a video hearing, a traveling board hearing at the RO, or a decision on the record.
5. Following a denial or unfavorable decision from the BVA, the veteran may file an appeal to the Court of Appeals for Veterans Claims (“Court”) or a request for reconsideration to the BVA which is usually denied. Note that a remand by the BVA is not a final decision. It is therefore not appealable.
6. The Court may decide the claim or remand it (send it back to the lower level for further development). Unfortunately, many times a remand results in the VA’s so-called “hamster wheel” adjudication process, further prolonging a decision.

Proper representation is critical to the success of a claim and the submission of the appropriate evidence.