

A stethoscope is placed on a clipboard with a white sheet of paper. The background is dark, and the stethoscope's tubing and chest piece are visible. A yellow semi-transparent box is overlaid on the image, containing the title and subtitle.

HOLDING MEDICAL EXPERTS ACCOUNTABLE

Challenging VA Compensation & Pension Exams

BETHANIE SPANGENBERG, MS, PA-C

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DISCLOSURES

Opinions expressed during the presentation are my own. My opinions are based on my work experience inside The Department of Veterans Affairs as the sole C&P examiner for the department, training by The Department of Veterans Affairs, my experience in medical practice as a physician assistant since 2009, my training and practice as an accredited VA Agent, and dedicated work, study, and advocacy through Valor 4 Vet.

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TOPICS



Fundamental Requirements



DBQ Exams



Nexus



Ortho Cases



Mental Health Disorders



Traumatic Brain Injury



Migraine Headaches



Sleep Apnea



Recommendations

3

FUNDAMENTAL REQUIREMENTS

4

FUNDAMENTAL REQUIREMENTS



38 U.S.C. § 1110; 38 C.F.R. § 3.1(k)

A veteran seeking a service-connected disability must satisfy three fundamental requirements before the VA will grant compensation benefits:



CURRENT DISABILITY

Evidence of a current disability



IN-SERVICE INJURY or DISEASE

Evidence of in-service injury or disease (or) evidence of aggravation of an injury or disease

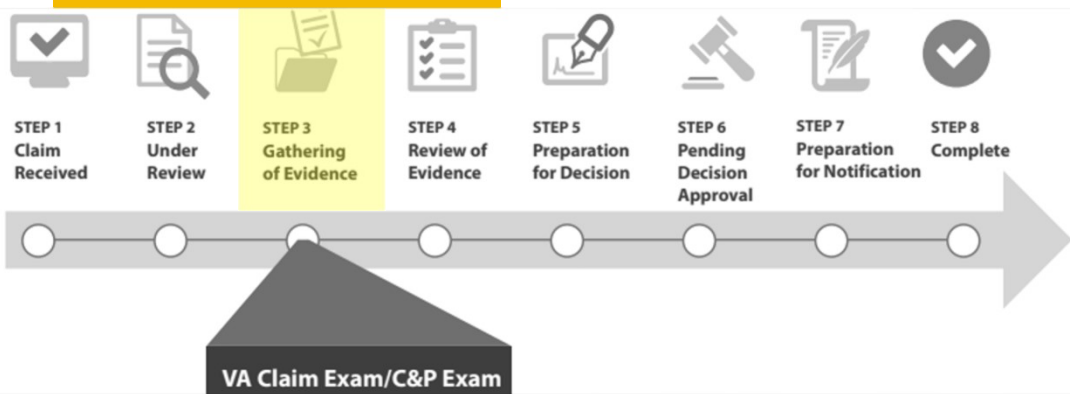


NEXUS

Evidence of a link, or nexus, between the in-service occurrence or aggravation of disease and the current disability

5

The VA Claim Process



6

Legal Exam

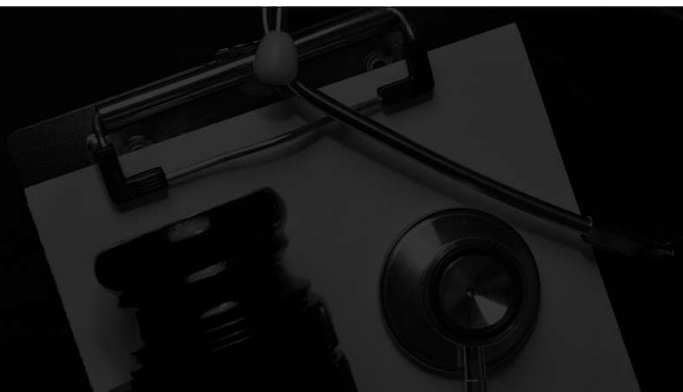
Gathers evidence of a diagnosis

Medical Treatment

Provides a diagnosis



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DBQ EXAMS

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DISABILITY BENEFITS QUESTIONNAIRE



%

Confirms the current disability.

Provides history of the in-service injury or disease.

Provides information in the questionnaire to determine a disability rating.

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TYPES OF DBQ EXAMS

In Person

- ✓ Requires a physical exam
- ✓ Gives the claim a face

Telehealth

- ✓ Video exams
- ✓ Mainly for mental health

ACE

- ✓ Acceptable Clinical Evidence
- ✓ Exam is not required
- ✓ Phone call or no phone call
- ✓ At the discretion of the examiner, unless specified in the 2507

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NEXUS



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NEXUS



Confirms injury or event in service.

Reference the current disability.

Provides an opinion and explanation of how the condition is or is not related to service.

Establishes a service connection.

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NEXUS



"Exam Request" – Labeled in VBMS

"Exam Scheduling Request" – PDF Label

"2507" – Old Yellow Forms

Examiner is limited to the examination request.

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TYPE OF MEDICAL OPINION REQUESTED: Direct service connection

Does the Veteran have a diagnosis of (a) degenerative arthritis of the spine to include intervertebral disc syndrome (previously addressed as low back condition)(also claimed as back condition) that is at least as likely as not (50 percent or greater probability) incurred in or caused by (the) Job Duties as a Mortarman & Low Back Injury during service?

Rationale must be provided in the appropriate section.

Please review the Veteran's electronic folder(s) and state that it was reviewed in your report.

Clinician: If using the ACE process to complete the Medical Examination, please explain the basis for the decision not to examine the Veteran, and identify the specific materials reviewed to complete the Medical Examination.

The Veteran does not need to report for all examinations for the following Contention:

- degenerative arthritis of the spine to include intervertebral disc syndrome (previously addressed as low back condition)(also claimed as back condition)

Examination request.

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NEXUS



The VA is supposed to adjudicate all reasonably raised theories of entitlement, including all benefits allowable by law such as ancillary SMC.

38 CFR 3.155(d)(2)

The board is required to consider theories of entitlement to benefits that are either raised by the claimant or reasonable raised by the record.

Robinson v. Peake, 21 Vet.App. 545,552 (2008)

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NEXUS



Recommendation:

Include in the application:

"Please consider all theories of service connection for this veteran's _____ condition including direct, secondary, secondary to obesity, and aggravation."

Recommendation:

Check the 2507/Examination Request

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CAUSAL RELATIONSHIPS

When diseases occur because of the behaviors of another disease.

STATISTICAL ASSOCIATIONS

The scientific data that shows an association to another disease. i.e. Risk factors.

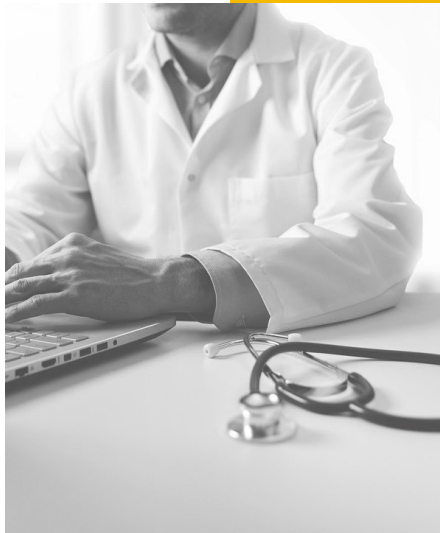
Presumptives are primarily established from statistical associations.

CURRENT RESEARCH

What the current medical literature and research have found.



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Nexus Development

Examiner is to draw conclusions from causal relationships, statistical associations, current research, and that particular veteran's medical history.

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Your VA examiner noted, "The conditions of sleep apnea and post-traumatic stress disorder (PTSD, to include sleep disturbance) and bruxism are not medically related. The sleep apnea is a separate entity from the post-traumatic stress disorder (PTSD, to include sleep disturbance) and bruxism and unrelated to it. According to Mayo Clinic, "This occurs when the muscles in the back of your throat relax. These muscles support the soft palate, the triangular piece of tissue hanging from the soft palate (uvula), the tonsils, the side walls of the throat and the tongue. When the muscles relax, your airway narrows or closes as you breathe in. You can't get enough air, which can lower the oxygen level in your blood. Your brain senses your inability to breathe and briefly rouses you from sleep so that you can reopen your airway". Sleep apnea is a risk factor for sleep apnea but is not causative. A thorough review of medical literature failed to demonstrate a causal relationship. A nexus has not been established."

An example of inaccurate application of nexus development.

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s, part
, con-
inter-
, from
1937;
N.Y.S.;



it went out of use. W. W. Buckland, *A Text Book of Roman Law from Augustus to Justinian* 429-30 (Peter Stein ed., 3d ed. 1963).

nexus, n. (17c) 1. A connection or link, often a causal one <cigarette packages must inform consumers of the nexus between smoking and lung cancer>. Pl. **nexuses**; **nexus. 2. Roman law. (ital.)** In very early times, a debtor given in bondage to creditors until the debts have been paid. Pl. **nexi**. See NEXUM.

**BLACK'S LAW
DICTIONARY**

What is Nexus?

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FUNDAMENTAL REQUIREMENTS



38 U.S.C. § 1110; 38 C.F.R. § 3.1(k)

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~~CURRENT DISABILITY~~

Evidence of a ~~current~~ disability



IN-SERVICE INJURY or DISEASE

Evidence of in-service injury or disease (or) evidence of aggravation of an injury or disease



NEXUS

Evidence of a link, or nexus, between the in-service occurrence or aggravation of disease and the current disability

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SECTION I - DIAGNOSIS			
<p>Note: These are condition(s) for which an evaluation has been requested on an exam request form (Internal VA) or for which the Veteran has requested medical evidence be provided for submission to VA.</p>			
<p>1A. List the claimed condition(s) that pertain to this questionnaire:</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>			
<p>Note: These are the diagnoses determined during this current evaluation of the claimed condition(s) listed above. If there is no diagnosis, if the diagnosis is different from a previous diagnosis for this condition, or if there is a diagnosis of a complication due to the claimed condition, explain your findings and reasons in the remarks section. Date of diagnosis can be the date of the evaluation if the clinician is making the initial diagnosis or an approximate date determined through record review or reported history.</p>			
<p>1B. Select diagnoses associated with the claimed condition(s) (check all that apply):</p>			
<p><input type="checkbox"/> The Veteran does not have a current diagnosis associated with any claimed conditions listed above. (Explain your findings and reasons in the remarks section)</p>			
<input type="checkbox"/> Ankylosing spondylitis	ICD Code: <input type="text"/>	Date of diagnosis: <input type="text"/>	
<input type="checkbox"/> Degenerative arthritis	ICD Code: <input type="text"/>	Date of diagnosis: <input type="text"/>	
<input type="checkbox"/> Degenerative disc disease other than intervertebral disc syndrome (IVDS)	ICD Code: <input type="text"/>	Date of diagnosis: <input type="text"/>	
<input type="checkbox"/> Lumbosacral strain	ICD Code: <input type="text"/>	Date of diagnosis: <input type="text"/>	

NO CURRENT DIAGNOSIS

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Please review the Veteran's electronic folder(s) and state that it was reviewed in your report.

Clinician: If using the ACE process to complete the Medical Examination, please explain the basis for the decision not to examine the Veteran, and identify the specific materials reviewed to complete the Medical Examination.

The Veteran does not need to report for all examinations for the following Contention:

- degenerative arthritis of the spine to include intervertebral disc syndrome (previously addressed as low back condition)(also claimed as back condition)

The examination request did not prevent the examiner from performing an ACE exam.


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NEXUS

**Recommendation:**


Include in the application for orthopedic conditions:
"The veteran requests to be seen in person for the exam."

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**38 U.S.C. § 1110;
38 C.F.R. § 3.1(k)**

A veteran seeking a service-connected disability must satisfy three fundamental requirements before the VA will grant compensation benefits:




CURRENT ~~DISABILITY~~

Evidence of a current disability



IN-SERVICE ~~INJURY~~ or DISEASE

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NEXUS

Evidence of a link, or nexus, between the in-service occurrence or aggravation of disease and the current disability

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Examiner Disconnect



Examiner does not appropriately develop a nexus

- > Not appropriately trained on what "nexus" means and how to properly develop one.

Examiner does not believe the veteran's testimony.


"If the veteran sat down in the clinic and wanted to be treated for the condition, is the history consistent with findings?"

Examiner's clinical skills get lost.

- > Tunnel vision trying to "prove" a disease's etiology and forget the analytical part of their work.

Examiners overuse "speculation."

- > Examiner lacks the experience to answer the question or, less often, there is not enough medical documentation



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MENTAL HEALTH DISORDERS

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MENTAL HEALTH DISORDERS



Disorders that affect one's mood, thinking, behavior.

Most popular DBQs requested from the VA.

Telehealth exam.

Diagnosis from DSM-5.

Biggest bang for your buck.

PTSD, Depression, Anxiety – common MH claims

Somatic Symptom Disorder – becoming more popular

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MENTAL HEALTH DISORDERS



Insomnia is most commonly included into a mental health rating.

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MENTAL HEALTH DISORDERS



Psychosis presumed to be related to service if the veteran served 90 days or more and the psychosis manifested to a compensable degree within 1 year of the date of discharge (§ 3.307 & § 3.309).

Psychosis includes conditions under the definition in the DSM-5 (§ 3.384):

- > Brief psychotic disorder
- > Delusional disorder
- > Psychotic disorder due to another medical condition
- > Schizoaffective disorder
- > Schizophrenia
- > Schizophreniform disorder
- > Substance/medication-induced psychotic disorder

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MENTAL HEALTH DISORDERS



Mental Health Compensable Degree at 10%:

Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by continuous medication.

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ALBERT

Seeking benefits related to a mental health condition of schizophrenia.

FEB 1988 - HONORABLE DISCHARGE

1995 - GRANTED SS BENEFITS FOR SMI

2008 – FILED FOR VA DISABILITY BENEFITS

2008 – DENIED VA BENEFITS

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ALBERT

Seeking benefits related to a mental health condition of schizophrenia.

2018 – REQUESTED HELP FROM VALOR 4 VET

STRs SILENT FOR TREATMENT AND RED FLAGS

BROTHER WAS INTERVIEWED
BUT DID NOT PROVIDE A STATEMENT

NEWSPAPER ARTICLE WAS FOUND

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December 24, 1988

SAN JOSE MAN STILL MISSING AFTER 12 DAYS

Author: *Mercury News Staff Report*

Article Text:

A 26-year-old San Jose laborer has been missing 12 days and police are asking for the public's help to find him.

██████████ was last seen Dec. 12 at 5:30 p.m., when he rode away on a bicycle from the home he shares with his grandmother

Police are concerned about the disappearance because ██████████ was depressed, according to Sgt. ██████████

██████████ is 6 feet, 2 inches tall and weighs 195 pounds. He has blond hair and hazel eyes. When he left home, he was wearing a bulky black jacket, white sweat shirt, black sweat pants and white tennis shoes. His bike is a man's 26-inch New Citi model.

Anyone who might have seen ██████████ is asked to call the police missing person's detail

GRANTED SERVICE CONNECTION

Psychosis developed to a compensable degree within 1 year of the date of discharge.

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MENTAL HEALTH



A **personality disorder** is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, has negative influence and is inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment. (DSM-5)

10 different types of personality disorders

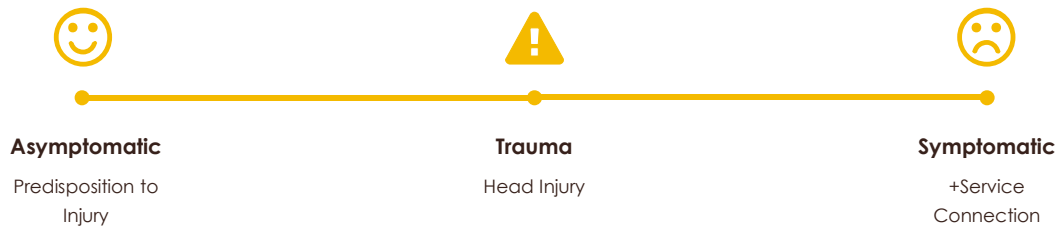
Appears in the record as "Personality Disorder."

35

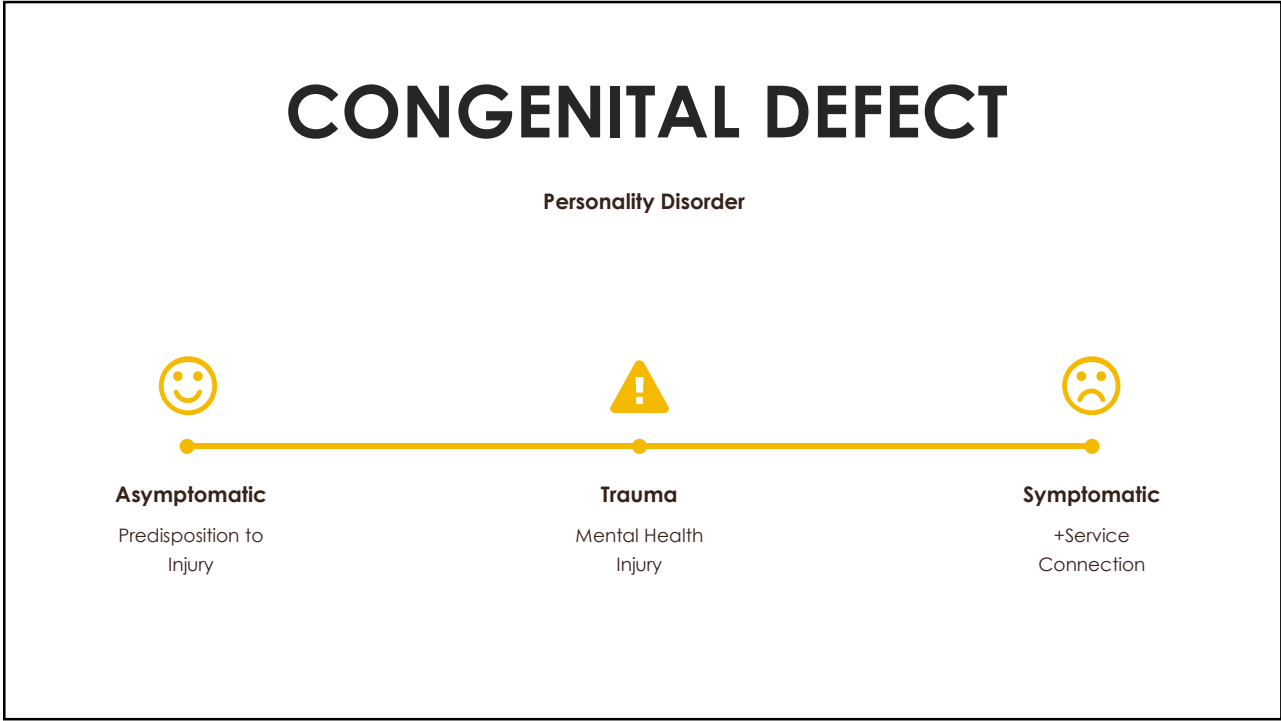
CONGENITAL DEFECT

Chiari Malformation

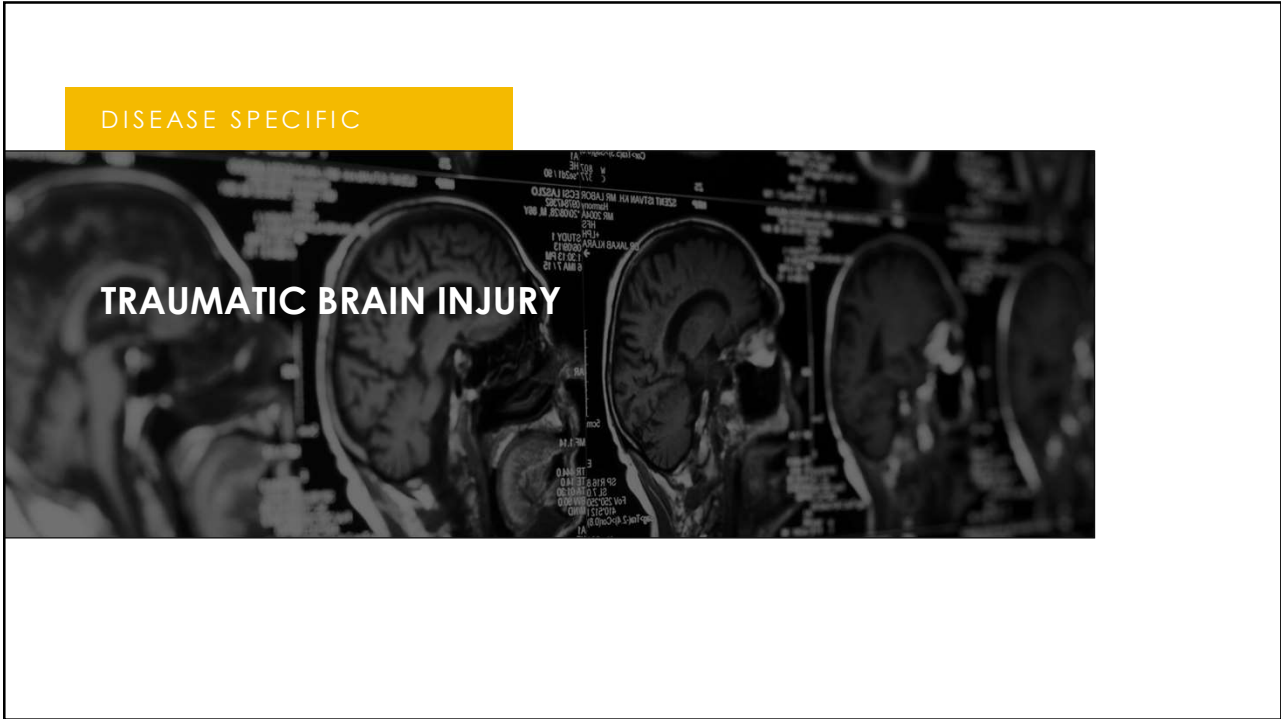
A structural defect in the brain where part of the brain extends into the spinal canal.



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1992 – RAPPELLING ACCIDENT DURING TRAINING



BRENDA

Seeking benefits related to traumatic brain injury.

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TRAUMATIC BRAIN INJURY



Was rappelling from helicopter
 and accidentally hit ground faster than
 planned as above. Patient thinks she "blocked out".
 but reports hearing voices within seconds and
 recovery full vision and alertness within seconds
 later. noticed (L) side of face felt numb transiently
 where impact. Rappelling was from 90 feet. was delayed before
 hitting but rope stretched so pt. struck ground before stopping.
 of Alert Well w/ H & Q in C-collar on backboard
 HENT - EOM, PRC
 Ecthrusis (L) super orbital rim
 & nasal crepitation
 this side
 lung - clear
 C - RLL rd 5/152
 Abd - benign
 Rectum - NT, hence (L)
 Neuro - CN II - III rd all motor 5/5 + 6/6
 sensory intact & proprio drift (L) lower leg rd gait
 xray

EXS IN PIKE URINE Dip
 (L) For Blood
 (L) LEUK-

Witnesses
 noticed
 pt.
 moving
 immediately
 P. Int.

APTT = 12.1 / 12.3 / 13.0 / 37.7 (26.7) 263

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BRENDA

Seeking benefits related to traumatic brain injury.



2020 – APPLIED FOR SERVICE CONNECTION FOR TRAUMATIC BRAIN INJURY

2020 – DENIED SERVICE CONNECTION. ESTABLISHED DIAGNOSIS BUT NO DIAGNOSIS IN SERVICE

2021 – NEXUS LETTER WAS COMPILED OUTLINED CURRENT DIAGNOSIS AND THE INJURY IN SERVICE

2022 – GRANTED SERVICE CONNECTION

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BRENDA

Seeking benefits related to traumatic brain injury.

SERVICE CONNECTION FOR TBI @0%

MIGRAINE HEADACHES AS SUBJECTIVE SYMPTOM @ 30%

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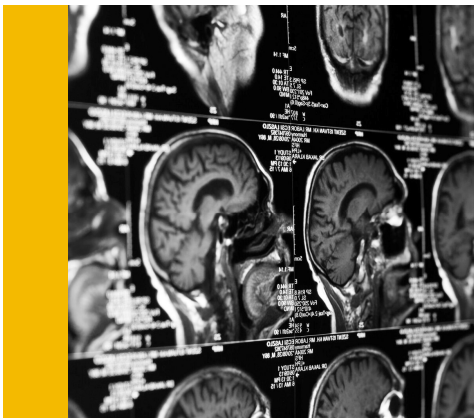
TRAUMATIC BRAIN INJURY



A traumatic brain injury (TBI) is a **trauma induced injury and/or physiological disruption of brain function** as a result of an external force and is indicated by new onset or worsening of **at least one of the following** clinical signs immediately following the event:

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TRAUMATIC BRAIN INJURY



> **Any period of loss of or a decreased level of consciousness**

> Any loss of memory for events immediately before or after the injury (posttraumatic amnesia)

> Any alteration in mental state at the time of the injury (e.g., confusion, disorientation, slowed thinking, alteration of consciousness/mental state)

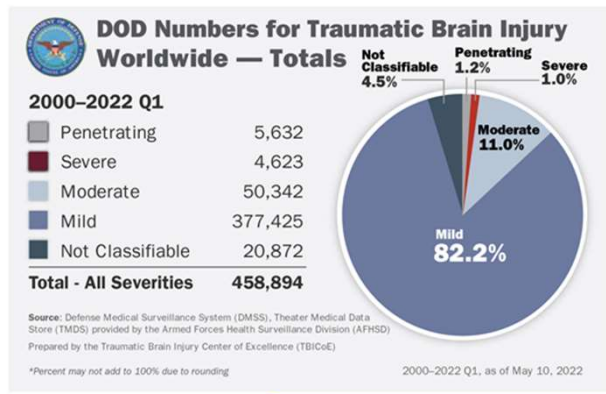
> Neurological deficits (e.g., weakness, loss of balance, change in vision, praxis, paresis/plegia, sensory loss, aphasia) that may or may not be transient

> Intracranial lesion (example: brain bleed)

VA/DoD Clinical Practice Guideline for the Management Of Concussion-Mild Traumatic Brain Injury

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TRAUMATIC BRAIN INJURY



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TRAUMATIC BRAIN INJURY

Glasgow Coma Scale (GCS)

	Score
Eye opening	
Spontaneous	4
Response to verbal command	3
Response to pain	2
No eye opening	1
Best verbal response	
Oriented	5
Confused	4
Inappropriate words	3
Incomprehensible sounds	2
No verbal response	1
Best motor response	
Obeys commands	6
Localizing response to pain	5
Withdrawal response to pain	4
Flexion to pain	3
Extension to pain	2
No motor response	1
Total	

Mild TBI: 13+

Moderate TBI: 9-12

Severe TBI: 8 or less

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TRAUMATIC BRAIN INJURY

Disability Rating Based on Points System	Mild TBI	Neuro Cognitive Testing
Memory, attention, concentration, executive functions	0-1	*
Judgement	0-1	*
Social interaction	0-1	
Orientation	0	*
Motor activity	0	
Visual spatial orientation	0-1	*
Subjective symptoms	0-2	*
Neurobehavioral effects	0	*
Communication	0	*
Consciousness	0	

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TRAUMATIC BRAIN INJURY

7. Subjective symptoms

- 0 ☐ No subjective symptoms
- 1 ☐ Subjective symptoms that do not interfere with work; instrumental activities of daily living; or work, family or other close relationships. Examples are: mild or occasional headaches, mild anxiety
- 2 ☒ Three or more subjective symptoms that mildly interfere with work; instrumental activities of daily living; or work, family or other close relationships. Examples of findings that might be seen at this level of impairment are: intermittent dizziness, daily mild to moderate headaches, linnitus, frequent insomnia, hypersensitivity to sound, hypersensitivity to light
- 3 ☐ Three or more subjective symptoms that moderately interfere with work; instrumental activities of daily living; or work, family or other close relationships. Examples of findings that might be seen at this level of impairment are: marked fatigability, blurred or double vision, headaches requiring rest periods during most days

3. Social interaction

- 0 ☐ Social interaction is routinely appropriate
- 1 ☒ Social interaction is occasionally inappropriate
- 2 ☐ Social interaction is frequently inappropriate
- 3 ☐ Social interaction is inappropriate most or all of the time

1 + 2 = 3

SCALE	RATING
0	0%
1	10%
2	40%
3	70%
Total	100%

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TRAUMATIC BRAIN INJURY



In person exam

Recommendations:

Neurocognitive testing for veterans with a TBI that is more than "mild" through the VA.

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DISEASE SPECIFIC

MIGRAINES

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Update 9/26/2022:

As a follow up to the presentation on 09/22/2022, I repeated the current course for C&P examiners, titled "DMA Nerve/Neurology Compensation & Pension Examination."

There was one mention of the term "prostrating" and the slide is depicted below.


It appears the training has not been updated since 2018.

Menu Conduct the Examination Page 33 of 56 (59%)

Diagnosing Headaches

In view of the lack of physical findings between attacks and because diagnostic tests are not routinely done, the history will usually be the basis of a headache diagnosis. In examining for headaches, including migraine, you will need to inquire about:

- Onset and course
- Frequency and severity of headaches, including how often they are **prostrating**
- Duration of headaches
- Type of pain (throbbing, stabbing, boring, burning, etc.)
- Location of pain
- Accompanying symptoms
- Whether headaches are worsened with physical activity
- Treatment
- Effects on work functioning



Help Resources Select Next to continue. Back Next

03_011.htm - Reviewed/Updated: 05/26/2018 20:39:26

As of 9/26/2022, the headaches DBQ does not define "prostrating."

You can find the current headaches DBQ [here](#).

The M21-1 does define the term "prostrating" and is depicted below.

**b. DC 8100
Terminology:
Prostrating and
Completely
Prostrating**

Prostrating, as used in [38 CFR 4.124a, DC 8100](#), means "causing extreme exhaustion, powerlessness, debilitation or incapacitation with substantial inability to engage in ordinary activities."

Completely prostrating as used in [38 CFR 4.124a, DC 8100](#), means extreme exhaustion or powerlessness with *essentially total* inability to engage in ordinary activities.

MIGRAINES



Disorder with episodic headaches and is generally associated with nausea and/or light and sound sensitivity.

ACE exam

DBQ: Subjective data gathering. 

Pathophysiology: Theory of thresholds triggered by electrophysical changes.

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Baseline

No Migraine Headache.

Migraine Headache

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MIGRAINES

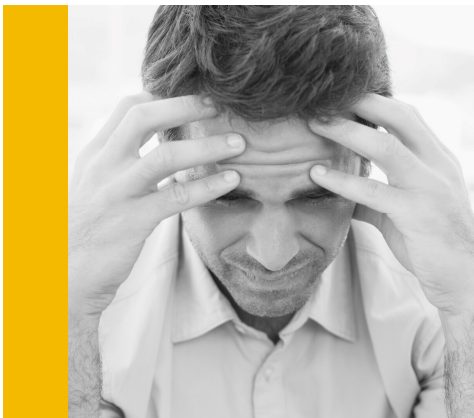


In a retrospective study of 1750 patients with migraine, approximately 75% reported at least one trigger of acute migraine attacks. In order of frequency these included:

- > emotional stress (80%)
- > hormones in females (65%)
- > not eating (57%)
- > weather (53%)
- > sleep disturbances (50%)
- > odors (44%)
- > neck pain (38%)
- > lights (38%)
- > alcohol (38%)

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MIGRAINES



10% prostrating migraine attacks that average 1 migraine every 2 months.

30% prostrating migraine attacks that average 1 migraine every 1 month.

50% prostrating migraine attacks that are very frequent, completely prostrating and prolonged **capable of producing severe economic inadaptability.**



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MIGRAINES



Can sometimes be a symptom and sometimes a disease.
> see a neurologist

Fun fact: prostrate is not a common word in clinical medicine

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CHARLIE

Seeking benefits related to
migraine headaches.

2021 – REQUESTED A NEXUS FROM VALOR 4 VET

480 PAGES PROVIDED FOR REVIEW

MEDICAL HISTORY

Dry eyes
Pes planus
Hyperlipidemia
Major depressive disorder
Migraine headaches

STATEMENT IN SUPPORT OF CLAIM



SERVICE CONNECTIONS

Major depressive disorder @50%

+Nexus:

Migraines as secondary to SC major depressive disorder

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DAVID

Seeking benefits related to migraine headaches.

2021 – REQUESTED A NEXUS FROM VALOR 4 VET

171 PAGES PROVIDED FOR REVIEW

MEDICAL HISTORY

- Vitamin D Deficiency
- Erectile dysfunction
- Tobacco use disorder

STATEMENT IN SUPPORT OF CLAIM

SERVICE CONNECTIONS

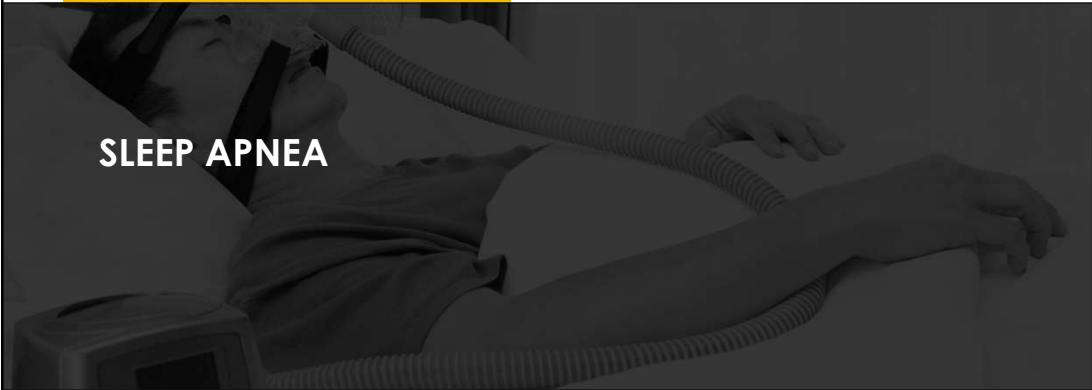
- Right shoulder @20%
- Right carpal tunnel @10%
- Left carpal tunnel @10%
- Sleep apnea @50%
- Left hip @10%
- PTSD @70%

+Nexus:

Migraines as secondary to PTSD

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DISEASE SPECIFIC



SLEEP APNEA

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SLEEP APNEA



A disorder that is characterized by obstructive apneas and hyponeas due to repetitive collapse of the upper airway during sleep.

Central apneas – brain

Obstructive apneas – upper and lower airway

Mixed apneas – brain + upper and lower airway

Apneas are added together, then divided by time slept, and reported as the AHI or RDI.

(Apnea Hyponea Index or Respiratory Disturbance Index)

Mild (5-14)

Moderate (15-30)

Severe (31+)

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SLEEP APNEA



Sleep studies

Home sleep studies

Acceptable for treatment

In lab sleep studies

More comprehensive

Show brain wave activity

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SLEEP APNEA



Sleep apnea is often written as "less likely than not" from VA examiners due to obesity. 

Look at the opinion to see if the examiner, who reported that OSA was due to obesity, applied factors for **obesity as an intermediate step**.

1. Did the veteran's SC conditions cause the veteran to become obese?
2. Is obesity a substantial factor in the development of this veteran's claimed condition?
3. Would the veteran have developed the claimed condition if the veteran was not obese?


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SLEEP APNEA



Example:


The veteran's service connected Left Knee, Left Ankle, and Major Depression caused the veteran to become obese. Obesity is a substantial factor in the development of this veteran's Obstructive Sleep Apnea. The veteran would not have developed Obstructive Sleep Apnea if the veteran was not obese.

If the examiner did not answer the three questions but states that the condition was due to obesity, appeal the decision stating the examiner did not appropriately consider **obesity as an intermediate step**. 

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SLEEP APNEA



Sleep apnea is linked to mental health conditions. 

The Department of Veterans Affairs has published articles discussing "Sleep Problems in Veterans with PTSD"

Medical literature:

Dysfunction in REM sleep is connected with several forms of emotion-based disorders. **Notably, altered REM sleep function has been described as the 'hallmark' of PTSD.** In addition, sleep in PTSD has been associated with marked REM interruption.

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SLEEP APNEA



Mental health conditions that are service connected at 30% or higher typically include "chronic sleep impairment" becomes a risk factor for sleep apnea.

ACE exam



Can be challenging as a direct service connection:

> Sleep Apnea testing prior to circa 2013 was not common.

Recommendation:

If veteran has a confirmed diagnosis of sleep apnea more than 5 years after active service, try to push for a secondary service connection.

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EDWARD

Seeking benefits related to sleep apnea.

2022 – REQUESTED A NEXUS FROM VALOR 4 VET

706 PAGES PROVIDED FOR REVIEW

MEDICAL HISTORY



- Increased liver function
- Hypertension
- Back pain
- Irritable bowel syndrome
- Insomnia
- PTSD

STATEMENT IN SUPPORT OF CLAIM

SERVICE CONNECTIONS

PTSD @50%

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EDWARD

Seeking benefits related to sleep apnea.



2016 - SLEEP STUDY WITH AN AHI OF 4.6
*abnormally elevated AHI during REM sleep

2019 – SLEEP STUDY WITH AN AHI OF 18.6

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SECTION IV – MEDICAL OPINION FOR SECONDARY SERVICE CONNECTION	
Choose the statement that most closely approximates the etiology of this claimed condition.	
<input type="checkbox"/>	4a. The claimed condition is at least as likely as not (50 percent or greater probability) proximately due to or the result of the Veteran's service connected condition.
<input checked="" type="checkbox"/>	4b. The claimed condition is less likely than not (less than 50 percent probability) proximately due to or the result of Veteran's service connected condition.
4c. Provide rationale:	
<p>Claimed Secondary Condition: obstructive sleep apnea</p> <p>Service-connected Condition: mental disorder</p> <p>The conditions of obstructive sleep apnea and mental disorder are not medically related. The obstructive sleep apnea is a separate entity entirely from the mental disorder and unrelated to it. A thorough review of medical literature failed to demonstrate a causal relationship. Obstructive sleep apnea occurs when the tissues in the back of the throat fall down over the opening of the upper airways when sleeping which impedes the flow of air into the trachea which means the air is obstructed even before it enters the airways. This blockage of air into the lungs can cause the commonly associated symptoms of obstructive sleep apnea. No mental health condition is able to affects the anatomy of the upper airways and therefore cannot cause sleep apnea. A nexus has not been established.</p>	

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	<p>+Nexus: Sleep apnea as secondary to PTSD</p>
	
<p>EDWARD</p> <p>Seeking benefits related to sleep apnea.</p>	

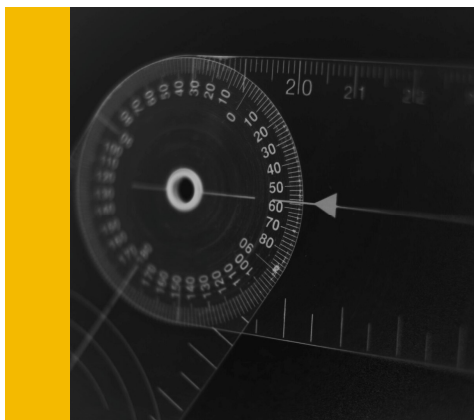
70

DISEASE SPECIFIC

ORTHO CASES

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ORTHO CASES



Injuries or diseases that affect the musculoskeletal system.

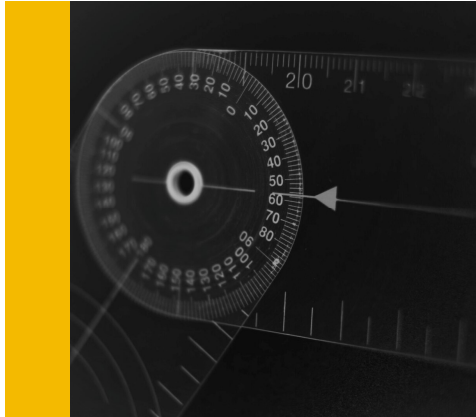
Ratings vary based on joint or muscle condition

In person exam. Video exams are not appropriate.

The severity of orthopedic conditions do not equate to the amount of compensation. Typically, orthopedic conditions have a greater occupational, social, and emotional impact on a veteran when compared to other disability ratings.

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ORTHO CASES

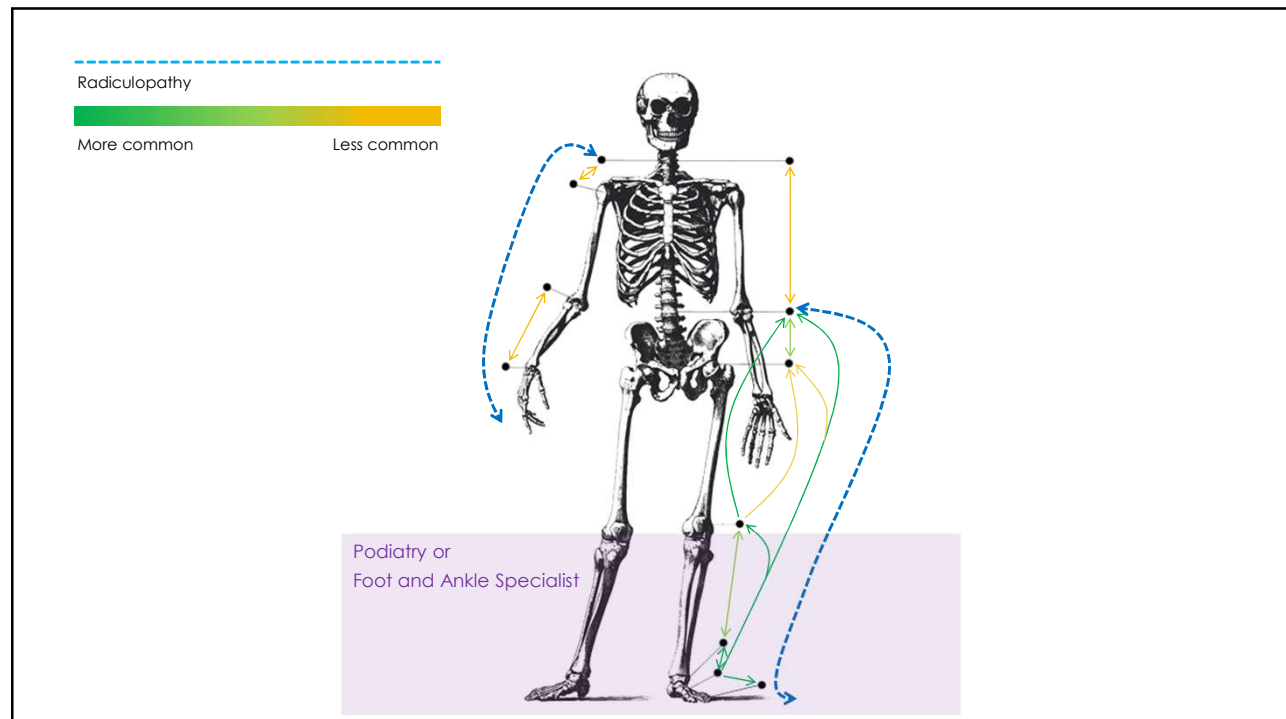


Limitations in the VA system for a veteran to see an orthopedic specialist that are not present in civilian system.

Gather information for what the veteran looks like on a bad day.

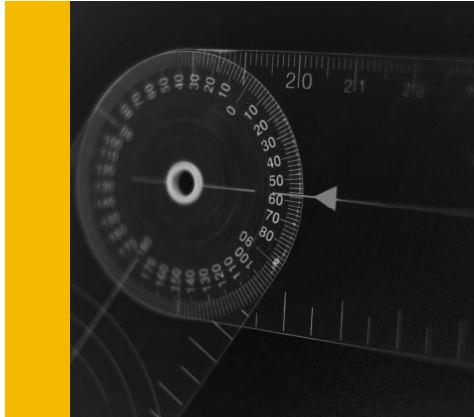
Sharp v. Shulkin, 29 Vet.App. 26 (2017):
if a flare-up event is not directly observed during the examination, **the examiner is requested to provide an estimate** on the frequency, duration, and severity of decreased range of motion in degrees during flare-ups in the exam report

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ORTHO CASES



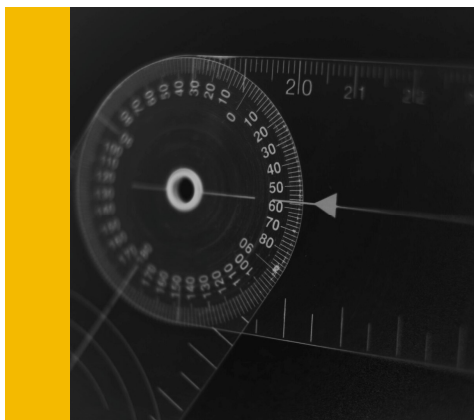
Medications that do not cause withdrawal symptoms that are often used for treatment of anti-inflammatory conditions:

- > Tylenol (Acetaminophen)
- > Advil (Ibuprofen)
- > Naproxen (Naprosyn)
- > Diclofenac
- > Voltaren Gel
- > Lidocaine Gel

Any medication labeled "PRN" or "as needed" can be held.

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ORTHO CASES



Recommendation:

If gardening causes a flare up of the ortho condition for the veteran, the veteran should plant cucumbers a day or two before the C&P examination.

Recommendation:

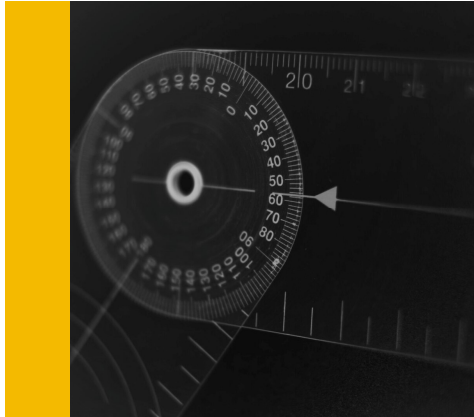
Verbalize the pain during a C&P examination.

Recommendation:

Take a list of all the medications or supplements the veteran is prescribed

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ORTHO CASES



Recommendation:

Include a list of alternative treatments such as joint injections, acupuncture, chiropractic care, etc.

Recommendation:

Know what triggers a "flare up" of the condition.

Recommendation:

Wear appropriate clothing for the exam

Recommendation:

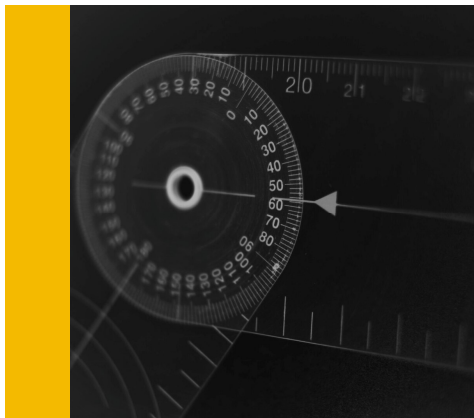
Wear braces or supports that are recommended.



PDF Available on Valor 4 Vet Website for the Veteran.



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ORTHO CASES



Arthritis presumed to be related to service if the veteran served 90 days or more and the arthritis manifested to a compensable degree within 1 year of date of discharge (§ 3.307 & § 3.309)

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HEATHER

Seeking an increase in benefits related to her service connected lumbar spine condition.

2018 – FILED FOR INCREASE IN BENEFITS

2019 – DENIED INCREASE

2019 – APPEALED DECISION WITH NEW EVIDENCE

2019 – DENIED INCREASE

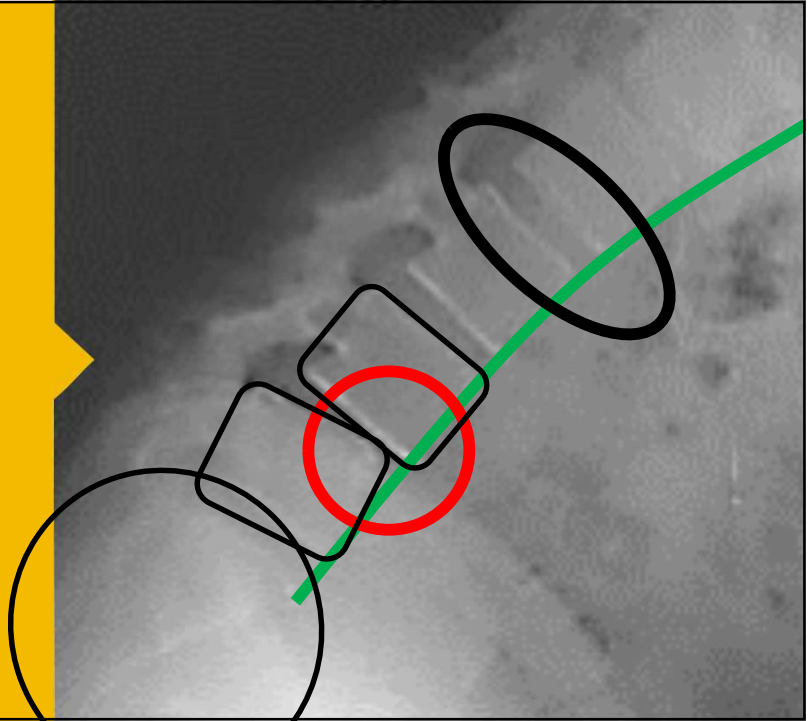
79

**NORMAL
LUMBAR
SPINE
XRAY**



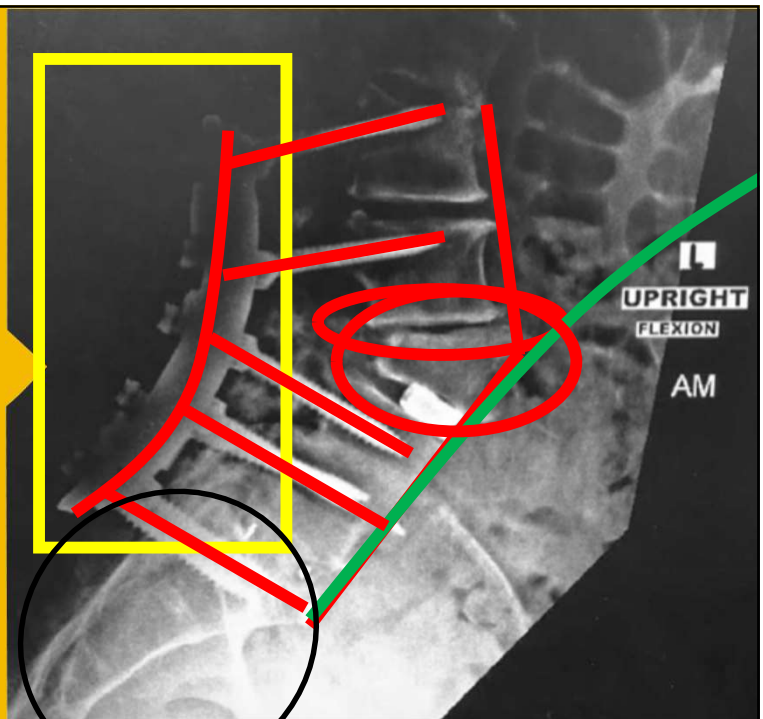
80

LUMBAR SPINE FLEXION XRAY



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FAITH'S LUMBAR SPINE FLEXION XRAY



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HEATHER

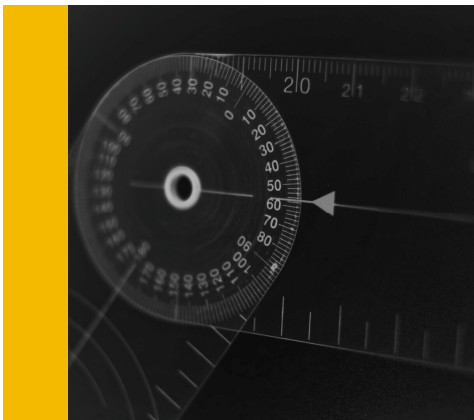
Seeking an increase in
benefits related to her service
connected lumbar spine
condition.

**2020 – CASE WAS TRANSFERRED TO AN
ATTORNEY**

**2021 – APPROVED FOR INCREASE AND
AWARDED INDIVIDUAL
UNEMPLOYABILITY**

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ORTHO CASES





Recommendation:

Take 1-2 images of xrays printed from home.

Do NOT take the CD of images. 

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FRANK

Seeking benefits related to lumbar spine, knees, and ankles.

1985 – PARACHUTING ACCIDENT AT LANDING
STRS SILENT FOR TREATMENT



2016 – FILES FOR SERVICE CONNECTION OF LUMBAR SPINE, KNEES, AND ANKLE CONDITIONS

2017 – DENIED VA BENEFITS. APPEALS THE DECISION

2019 – HIRES AN ATTORNEY

2020 – ATTORNEY HIRES VALOR 4 VET

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FRANK

Seeking benefits related to lumbar spine, knees, and ankles.

2020 – CASE REVIEWED. VALOR 4 VET DETERMINES A NEXUS EXISTS

2021 – DENIED VA BENEFITS. APPEALS THE DECISION

2021 – BOARD HEARING IN TEXAS 

2022 – GETS SENT FOR C&P EXAMS

2022 – GRANTED AT 10% FOR EACH CONDITION

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RECOMMENDATIONS

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RECOMMENDATIONS

Statement in Support of Claim



One
statement
for each claim



Discuss
details of
accident or
injury



Discuss
treatment
therapies



Discuss
occupational
and
social impact



Send
statements
separate from
other
evidence

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13E. If any test results are other than normal, indicate relationship of abnormal findings to diagnosed conditions:

SECTION XIV - FUNCTIONAL IMPACT

Note: Provide the impact of only the diagnosed condition(s), without consideration of the impact of other medical conditions or factors, such as age.

14A. Regardless of the Veteran's current employment status, do the conditions listed in the diagnosis section impact his/her ability to perform any type of occupational task (such as standing, walking, lifting, sitting, etc.)? ☐ Yes ☐ No If yes, describe the functional impact of each condition, providing one or more examples:

SECTION XV - REMARKS

15A. Remarks (if any – please identify the section to which the remark pertains when appropriate).

FUNCTIONAL IMPACT

Include the functional impact in a Statement of the Claim from the veteran.

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RECOMMENDATIONS

Representative

Current diagnosis

Medical records are in the claims file

Statement in support of Claim

Bookmark important evidence in VBMS

List secondary conditions in 21-526

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MICHAEL

Seeking an increase in benefits related to his service connected throat cancer.

2011 – FILED FOR AN INCREASE FOR THROAT CANCER

2012 – VA REQUESTED AN ENT EXAMINATION FOR THE C&P EXAMINER

2012 – EXAM REVEALED THE NEED FOR ADDITIONAL EXAMINATIONS:

- > Skin Exam
- > Shoulders Exam
- > Cervical Spine Exam
- > Esophageal Exam
- > Hematologic and Lymphatic Conditions, Including Leukemia

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SECTION IV: CLAIM INFORMATION		
16. LIST THE CURRENT DISABILITY(IES) OR SYMPTOMS THAT YOU CLAIM ARE RELATED TO YOUR DISABILITY (If applicable, identify whether a disability is due to a service-connected disability; confinement as a result of military service; or Gulf War environmental hazards; or a disability for which compensation is payable under 38 U.S.C. 5621a). NOTE: List your claimed conditions below. See the following three examples for guidance on how to complete this section.		
EXAMPLES OF DISABILITY(IES)	EXAMPLES OF EXPOSURE TYPE	
Example 1. HEARING LOSS	NOISE	HE
Example 2. DIABETES	AGENT ORANGE	SE
Example 3. LEFT KNEE, SECONDARY TO RIGHT KNEE		INJ RIC
CURRENT DISABILITY(IES)	IF DUE TO EXPOSURE, EVENT, OR INJURY, PLEASE SPECIFY (e.g., Agent Orange, radiation)	
1. Increase for throat cancer to include 2-6		
2. skin disorder	SC throat cancer	
3. cervical spine, limitation in ROM	SC throat cancer	
4. bilateral shoulders, limitation in ROM	SC throat cancer	
5. difficulties swallowing	SC throat cancer	
6. anemia	SC throat cancer	
7.		

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