DMA Aggravation Opinions

Note:

This document has been created as a print version of the VA EES web-based *DMA Aggravation Opinions Examination* course. For digital accessibility by users of assistive technology, the document has a dynamic table of contents, electronic form fields and buttons in the knowledge checks and exercises and links in the knowledge check and exercise feedback. Public-facing URLs are hyperlinked as well, but VA intranet links **are not** active as they will not work outside of VA's network. No other interactivity exists in this document, even when referenced in the text.

Introduction

Welcome

This course is a joint presentation of the Veterans Health Administration (VHA) Office of Disability and Medical Assessment (DMA) and the Employee Education System. This program will focus on developing compensation and pension (C&P) opinions addressing whether a medical or mental health condition that existed prior to entrance into service was aggravated as a result of service, or whether a disability related to service caused or aggravated a condition that developed after service. Practicing individuals from the Board of Veterans' Appeals (BVA), the Veterans Benefits Administration (VBA), and VHA contributed to this course.

Course Purpose

The purpose of this Web-based training course is to provide you with an overview of the requirements for providing medical opinions that address aggravation. This includes aggravation of conditions that existed prior to entrance into service, as well as aggravation of conditions that arose after service as a result of a disability incurred in service.

Course Audience

This course is for all VA C&P examiners seeking information about considerations related to aggravation medical opinions for service connection.

Prerequisite Courses

DMA General Certification Overview
DMA Medical Opinions

More about This Course

Course Length

This course will take you approximately an hour to complete. If you must exit the course before completion, your place will be bookmarked so you can continue where you left off. However, in order for the bookmark to work, you must use the course Exit (x) button and not the browser's close button.

Please complete the lessons in the order presented so you can build on knowledge from one lesson to the next. Each lesson includes knowledge checks or exercises designed to help you apply the knowledge you gain along the way.

Assessments

Knowledge check questions and exercises throughout the course will assess your understanding of the material. When you complete the entire course, you will have access to the Final Assessment. A score of 80 percent or higher on the Final Assessment is required for accreditation purposes. The final page of this course contains instructions for accessing a certificate of completion.

IMPORTANT NOTE

Case study examples used in this course are fictitious and are not intended to resemble any Servicemember or Veteran, living or deceased.

Course Objectives

Terminal Learning Objective

The disability examiner who completes this course should be able to identify requirements for developing aggravation medical opinions.

Enabling Learning Objectives

To help you accomplish this objective, there are five enabling learning objectives:

1. Identify the legal requirements for addressing aggravation of a preexisting condition noted on entrance to service.
2. Identify the legal requirements for addressing aggravation of preexisting condition not noted on entrance to service.
3. Identify the legal requirements for addressing secondary (Allen) aggravation.
4. List elements and processes needed for developing aggravation opinions.
5. Recognize complex legal considerations that affect the development of medical opinions for aggravation.

The standards for this course are found in relevant sections of the United States Code (U.S.C.), the Code of Federal Regulations (CFR), VA directives, in manuals from VBA, and in guidance from DMA.

Aggravation in the Context of Veterans Benefits

One type of aggravation for disability purposes is defined in the U.S.C. in this manner: “A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.” (38 U.S.C. 1153). This kind of aggravation, known as aggravation of a preexisting condition, is present when there is permanent increase in the severity of a condition during or as a result of military service and the increase is not due to the condition’s natural progression.

Another type of aggravation is present when there is permanent increase in the severity of a nonservice-connected condition due to an already service-connected condition, and the increase is not due to the condition’s natural progression. This is known as aggravation of a nonservice-connected condition by a service-connected condition, or secondary (Allen) aggravation.

Three Types of Aggravation Opinions

There are three types of medical opinions to address aggravation. We will discuss each type in detail in this course.

1. With a Noted Condition

This type of aggravation opinion addresses aggravation of a condition that existed before service, a preexisting condition, that is noted or documented, based on objective findings, on the service entrance examination report.

2. Without a Noted Condition

This type of aggravation opinion addresses aggravation of a preexisting condition that is not noted, or documented, on the service entrance examination report.

To determine if a preexisting condition is noted or not, you should check the claimant's service entrance examination.

3. Secondary (Allen)

This type of aggravation opinion addresses the possibility that a nonservice-connected condition is aggravated beyond its natural progression by a service-connected condition.

IMPORTANT NOTE

VA assumes that all Servicemembers with active-duty service had an entrance examination. However, an entrance examination is frequently not provided for shorter periods of service, such as periods of Inactive Duty Training (INACDUTRA) and Active Duty Training (ACDUTRA). This does not mean that an examination is never provided for INACDUTRA/ACDUTRA.

Aggravation of a Noted Preexisting Condition

Learning Objective

Sometimes you will be asked to provide an opinion as to whether or not a preexisting condition that was noted on the service entrance examination was aggravated by military service. Since you will be asked whether a permanent worsening is due to the natural progression of a condition, natural progression will also be covered.

Upon completion of this lesson, you should be able to identify the legal requirements for addressing aggravation of a preexisting condition noted on entrance to service.

Aggravation of a Noted Condition

Disability benefits can be granted to a Veteran or Servicemember for aggravation of a preexisting condition, that is, a condition that existed before the commencement of military service. This lesson will cover preexisting conditions that were noted. Only conditions recorded by a clinician in an entrance examination report can be considered as noted. This is to say that the legal term "noted" only applies to documentation on the service entrance examination. A subjective report from a Veteran or Servicemember that a condition existed prior to service is not sufficient to be considered as noted.

However, you should not ignore a Veteran's or Servicemember's report to you that an unnoted condition existed prior to service while you are conducting a C&P examination. You can suggest the claimant forward any medical records or other proof to VBA for processing.

How It Works

For example, a Veteran entered service with flat feet and this condition was noted on the entrance examination. An opinion may be needed to answer questions like these two:

1. Was there an increase in severity of the noted condition?
2. Was there clear and unmistakable evidence that a permanent increase in severity was not due to natural progression of the condition?

Multiple Entrance and Exit Examinations

Sometimes a Veteran or Servicemember's records will have multiple service entrance and service exit examinations because he or she has been called up several times. In determining whether a condition preexisted entrance into each period of service, you'll want to look at the entrance and examination reports for each period of service. Here is an example:

Simon Marcus, an Army photographer, served in the U.S. Army from June 1981 to June 1985, and then served as an Army reservist. He was called back to active duty a few times, for Desert Storm, February 1991–March 1992; Iraq 2007–2008; and Afghanistan 2011–2012.

Pertinent Service History

Entry on Duty (EOD): June 17, 1981
Released from Active Duty (RAD): June 16, 1985

Mr. Marcus had additional service in the Army Reserves as follows:

EOD: 02-12-91 RAD: 03-11-92
EOD: 04-17-07 RAD: 04-16-08
EOD: 08-28-11 RAD: 02-07-13

If Mr. Marcus claimed aggravation of a preexisting condition while he was on active duty in July 2007, you would look at the entrance examination for the period of service beginning in April 2007 to see whether that report recorded any objective abnormalities found on examination. If any abnormalities were recorded, they would be considered "noted" conditions.

Evidence for Aggravation of a Preexisting Condition

When we discuss aggravation of a preexisting condition we generally mean aggravation of a preexisting condition as a result of military service. Significantly, however, your search for evidence is not restricted to a Veteran's or Servicemember's time in service. Once the existence of a preexisting condition has been established, you should consider evidence of record during and after service to determine if the condition was aggravated by military service. This requirement is spelled out in a Federal Circuit Court opinion quoted here.

> The court held, and we agree, that evidence of a prolonged period without medical complaint can be considered, along with other factors concerning the veteran's health and medical treatment during and after military service, as evidence of whether a pre-existing condition was aggravated by military service. (*Maxson v. Gober*, 2000).

This legal opinion cited 38 CFR 3.306(b), which states, "Aggravation may not be conceded where the disability underwent no increase in severity on the basis of all the evidence of record pertaining to the manifestations of the disability prior to, during and subsequent to service."

Examples in this lesson will provide you with basic information found in the evidence of record, the opinion requested on the examination request (VA Form 21-2507 or Veterans Examination Request Information System (VERIS) form), and a sample medical opinion with a rationale that explains how evidence was considered for the opinion.

Natural Progression

Sometimes a preexisting condition worsens during service, but the worsening is due to the natural progression of the condition, and not due to anything that happened in service. In order to make such a finding, however, there must be clear and unmistakable evidence that the worsening is due to the natural progress of the condition. This is a very high standard of proof.

The natural history or the natural progression of any condition is part of core knowledge in medical science and it enables clinicians to anticipate the prognosis of a condition, and helps to identify factors that may alter its normal course. The natural progression of any condition is usually developed by completing research studies over an extended period of time and it is mostly used to understand epidemiology of diseases. Knowledge of natural progression is used to anticipate and prevent complications associated with the disease process.

Natural Progression and Disability Examinations

Natural progression of a condition can be described as the usual course of the uninterrupted progression of a disease in an individual from the onset of the condition until recovery or death. You can consult peer-reviewed medical literature to determine the expected natural course of any given condition and then the situation can be compared with a given Veteran's or Servicemember's condition, when you examine him or her at any given time. Since external factors or comorbid diseases can affect the natural course of a disease or condition, if you find that a Veteran's condition has taken a different course than one would expect normally, you can conclude that other factors have affected the progress of the condition in some way.

Steps to assess for natural progression:

1. Since the natural course of a condition is commonly established in medical literature, when you recognize an alteration to this normal course, you should investigate all external factors or comorbid conditions that are present that could have an effect on this condition.
2. You need to determine how much, if any, of the alteration in the natural course of the condition is caused by external factors, as noted in the following example.

For example, a Veteran entered service with mild pes planus and with no limitation of function. On examination at separation from service, his pes planus was noted to be moderate in degree. As it normally takes approximately ten years to progress from mild pes planus to moderate pes planus, and this Veteran's progression occurred in only two years, we can presume that external factors during service such as ill-fitting shoes, long marches, prolonged periods of standing, physical strain, etc., altered the natural course of progression of this condition.

Determining Aggravation

If you are asked to examine evidence and provide an opinion regarding aggravation of a condition that was noted on examination at entrance into service, your review of evidence is not limited to preservice records or to evidence from the claimant's time in service in order to determine if aggravation took place during service. You'll need to examine all of the evidence of record and draw upon your knowledge of the etiology and natural progression of a condition for these determinations:

1. Whether or not the current condition is related to the preexisting condition.
2. The levels of severity of the condition before service, during service, after service, and currently.
3. To what extent any increase in severity is due to natural progression.

Baseline Level of Severity

If you determine that aggravation has taken place, as part of your opinion, you'll need to provide a clear description of the baseline level of severity for a condition. For a preexisting condition, the baseline level of severity is determined by the findings noted on the service entrance examination. From an examiner's perspective, in order to identify the findings that were noted on entrance, it's very important to thoroughly review (1) the examination request to see if VBA has already identified noted conditions, (2) the service entrance examination, and (3) all available records, as far back as you can go, to find the earliest documentation that shows where symptoms or diagnoses were recorded.

Read below as Tina from VBA, Ratna and Greg from VHA, and Paul from BVA discuss where to find the evidence for determining the baseline level of severity.

NARRATOR: Tina from VBA, Paul from BVA, and Greg and Ratna from VHA tell you how to determine the baseline level of severity for a noted condition.

TINA: For a preexisting condition, the baseline level of severity is determined by the noted findings on the service entrance examination.

GREG: I would like to point out the importance of understanding what constitutes a noted condition.

PAUL: Yes, a noted finding is one recorded on the service entrance exam. This examination report should provide sufficient findings to permit a determination of the degree of severity.

RATNA: From an examiner's perspective, In order to identify the noted findings, it's very important for examiners to thoroughly review the service entrance examination. And they should also look into the 2507 request to see if VBA has already identified noted conditions.

NARRATOR: Ratna expands on finding evidence for this determination.

RATNA: We may have to go back through all available medical records, including records before service and service treatment records, as well as lay statements, and then continue reviewing through time to the present. This can be difficult and time consuming because we have to really dig out the details. The information gathered is then used to establish the medical baseline of the severity.

Evidence: A Noted Preexisting Condition Is Aggravated by Service

The claimant is a 64-year-old Vietnam Veteran, John Stedman, who recently filed a claim for aggravation of his preservice flat feet (bilateral pes planus) during service.

Examination Request

Veteran claims aggravation of his bilateral pes planus, which existed prior to service. Was Veteran's bilateral pes planus permanently aggravated beyond the natural progression by his active military service? If you determine that the pes planus was aggravated, then please also state the baseline of the condition before onset of aggravation.

C-file

Service Personnel Records

Service Dates: 08/06/1968 to 09/30/1970
Deployment: Vietnam
Job in service: Clerk

Service Treatment Records (STRs)

Service entrance examination: The Veteran's flatfoot condition was "noted" in his entrance examination to military service and was documented to be "mild bilateral flexible pes planus, normal variant, no functional limitations."

In-service medical records: The Veteran complained of pain in both feet after long marches and training exercises. While he was deployed, the Veteran was put on temporary profile once due to bilateral foot pain and sent to light duty at a desk job for two weeks.

Service separation examination: The Veteran was slightly overweight with BMI of 29 and he was advised to lose weight. The documented diagnosis was moderate bilateral pes planus, mild pronation bilaterally and positive for pain in both feet on weight bearing and walking. Veteran was referred to orthopedics and physical therapy and given orthotic shoe inserts.

Other Records

Medical history after separation from service: Veteran has been followed by podiatrist off and on for his bilateral pes planus since the time of his discharge from military service. His C-file contained several records of visits to a private podiatrist and an orthopedist for the management of the same condition.

1972: Private podiatrist visit. Veteran was seen for moderate pes planus and the physician prescribed orthotic inserts for his shoes. The podiatrist noted, "Veteran complained of bilateral foot pain, increased with walking, prolonged standing. He denied any history of swelling of feet. On examination low arch of foot noted bilaterally with pronation, alignment of tendo-achilis was maintained. There was minimal pain elicited by manipulation of feet during physical exam. He was prescribed aspirin as needed for pain, orthotics were ordered and he was referred to physical therapy."

1974: Private podiatrist visit. Veteran returned to the same podiatrist. Notes read like this, "Known patient of mine with bilateral pes planus returns to clinic today with worsening of bilateral foot pain. He states that he has to limit his walking and standing due to increased pain and swelling in bilateral feet. On physical exam, he has bilateral loss of arches with moderate pronation of both feet, inward bowing of both tendo-achilis, moderate pain with manipulation of both feet."

Current C&P Examination Findings

P/E findings: Loss of longitudinal arch of feet bilaterally, moderate pronation of feet bilaterally with bowing of tendo-achilis, mild pain bilaterally with manipulation of feet during physical exam. Calluses noted under heels and metatarsal heads bilaterally. Bilaterally palpable pedal pulses. X ray shows positive DJD of first metatarsal joints, Hallux valgus bilaterally and Loss of longitudinal arch of feet bilaterally.

History interview: The Veteran worked in construction for a few years, but for 30 years prior to retirement, he sold insurance. Veteran said that he had to change his occupation from construction worker to insurance agent because his flatfoot condition made prolonged standing and walking impossible. He was 25 years old at that time.

Example Opinion: A Noted Preexisting Condition Is Aggravated by Service

Requested Opinion

Was Veteran's bilateral pes planus permanently aggravated beyond the natural progression by his active military service?

Medical Opinion

Opinion: This Veteran's pre-existing bilateral pes planus was aggravated due to his active military service, beyond the natural progression of the condition.

Rationale: The above opinion is based on thorough C-file review, review of all available medical records and current peer-reviewed medical literature. Veteran's flatfoot condition was "noted" in his entrance examination to military service and was documented to be "mild bilateral flexible pes planus, normal variant, no functional limitations." It was documented several times in his STRs that the Veteran complained of pain in both feet after long marches and training exercises. He was put on temporary profile once due to bilateral foot pain and was sent to light duty at a desk job for two weeks while he was in Vietnam. His discharge physical examination showed "moderate bilateral pes planus, mild pronation bilaterally and positive for pain in both feet on weight bearing and walking." He was referred to orthopedics and physical therapy, where he was given orthotic shoe inserts. Veteran was slightly overweight with BMI of 29 and he was also advised to lose weight. Veteran has been followed by podiatrist off and on for his bilateral pes planus since the time of his discharge from military service. Veteran said that he had to change his occupation from construction worker to insurance agent because his flatfoot condition made prolonged standing and walking impossible. He was 25 years old at that time. Peer-reviewed medical literature indicates that the Veteran's mild pes planus, that was without any functional limitation on entrance to service, progressed more rapidly than the expected natural progression of the disease to a stage of moderate pes planus with significant functional limitation by the time of discharge. This progression occurred within the short period of two years and at a very young age.

Therefore, it can be concluded that this Veteran's bilateral pes planus was aggravated by his active military service.

The baseline for this condition would be at the time of entrance to military service with mild flexible bilateral pes planus with no functional limitation.

Evidence: A Noted Condition Is Not Aggravated by Service

Sometimes your considered medical opinion will be that a noted preexisting condition was not aggravated by service. An example on this page provides you with basic information found in the evidence of record, the opinion requested on the examination request, and a sample medical opinion with a rationale that explains how evidence was considered for the opinion.

Note: The baseline level of severity will not be needed for an opinion if aggravation is not found.

Background

The claimant is a 68-year-old Vietnam Veteran, Dale Willow, who recently filed a claim for aggravation of his preservice flat feet (bilateral pes planus) during service. This Veteran was a clerk in the U.S. Army from 1968-1970 with a deployment to Vietnam. After service, he worked in construction but he's since retired. You'll notice that his flatfoot condition was noted on the entrance and the exit examinations.

Examination Request

Veteran claims aggravation of his bilateral pes planus, which existed prior to service. Please determine whether or not Veteran's bilateral pes planus increased to any degree during service. If so, was any increase in service beyond the natural progression of the condition? If you determine that the pes planus was aggravated, then please also state the baseline of the condition before onset of aggravation.

C-file

Service Personnel Records

Service Dates: 08/06/1968 to 09/30/1970
Deployment: Vietnam
Job in service: Clerk

STRs

Service entrance examination: Noted mild pes planus. Veteran self-reported that he always had "flat feet."
In-service medical records: STRs are silent for foot complaints
Service separation examination: Diagnosis of mild pes planus

Other Treatment Records

Private Podiatrist Records 2013: Private medical records from a podiatrist indicate that during a visit in November 2013, Mr. Willow has had increasing foot pain and was recently prescribed orthotics for worsening bilateral pes planus.

Current C&P Examination Findings

History: Mr. Willow reported increasing pain in his feet during the medical history interview. Veteran's flat feet symptoms have increased in severity over the last ten years.
Weight: overweight to obese
Diagnosis: Moderate bilateral pes planus

Example Opinion: A Noted Condition Is Not Aggravated by Service

Requested Opinion

Please determine whether or not Veteran's bilateral pes planus increased to any degree during service. If so, was any increase in service beyond the natural progression of the condition? If you determine that the pes planus was aggravated, then please also state the baseline of the condition before onset of aggravation.

Medical Opinion

Opinion: The Veteran's preexisting bilateral pes planus did not worsen during service.

Rationale: Entire C-file was reviewed, particularly STRs and private medical records. At time of induction, Veteran self-reported that he always had "flat feet." This was confirmed on both the enlistment and separation exams and reported as "mild bilateral flexible pes planus, normal variant, no functional limitations." There was no evidence of increase in the degree of pes planus between entrance and exit exams, STRs are silent for foot complaints, Veteran has only recently sought medical treatment for his feet (decades after leaving service), he has excess weight, and he worked in construction. The Veteran's preexisting bilateral pes planus was not aggravated by events in service, but rather it progressed due to age, occupation, and body habitus. In the recent past, he has had increasing foot pain and was recently prescribed orthotics for worsening bilateral pes planus. Peer-reviewed medical literature reports that exacerbation of flat feet is associated with an increase in age, obesity, occupations requiring standing or walking for extended periods of time, or carrying heavy loads (http://www.mayoclinic.org/diseases-conditions/flatfeet/basics/risk-factors/con-20023429.)

Lesson Summary

This lesson explained considerations for an opinion regarding whether or not a preexisting condition was aggravated by military service including whether or not the condition was noted on the service entrance examination and whether or not external factors have interfered with the natural progression of a condition. Even though the determination of aggravation of a preexisting condition focuses on whether or not a condition was impacted during military service, you should also examine evidence from outside this time frame, so this was explained.

Now that you've finished this lesson, you should be able to identify the legal requirements for addressing aggravation of a preexisting condition noted on entrance to service. The next lesson will cover additional concepts that apply to aggravation of a condition not noted on the entrance examination.

Aggravation of an Unnoted Preexisting Condition

Learning Objective

You may be asked to provide an opinion for a claim where a condition was not noted on the entrance examination and yet there is evidence that the condition may have preexisted service. For example, a Veteran who enters service with residuals of a childhood injury that are not reported or noted on entrance to service. Since the Veteran or Servicemember had no condition noted on entrance, VA must consider a legal concept, presumption of soundness, and it's up to VA to provide a very high standard of proof that the presumption of soundness does not apply. This determination must be made as part of determining whether or not an unnoted condition existed before service and was aggravated during service.

Upon completion of this lesson, you should be able to identify the legal requirements for addressing aggravation of a preexisting condition not noted on entrance to service.

Aggravation of an Unnoted Preexisting Condition

You may recall from an earlier discussion in this course that an unnoted condition is one that was not recorded, based on objective evidence, on a service entrance examination report. The person who enlists for active service may have a disease or injury already, but he or she may think the condition does not have current significance or that the condition has been resolved. Thus, even though he or she filled out the self-report of previous disease or injury, they may not be prompted to report a condition. In addition, when a service entrance examination report for active-duty service is not available, a claimant is presumed sound on entrance into service.

In the absence of a noted condition on the service entrance examination, a concept known as the presumption of soundness is applied. Presumption of soundness is explained next.

Presumption of Soundness Defined

Presumption of soundness is core to all disability claims. Presumption of soundness is a legal assumption made for policy reasons that VA employs for the benefit of the Veteran, whereby VA will consider a Veteran to have been in sound condition, i.e., good health, when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service 38 U.S.C. 1111 and 38 CFR 3.304(b).

How Presumption of Soundness Works for the Veteran

The presumption of soundness shields the Veteran from a finding that the disease or injury preexisted (and therefore was not incurred in) service by requiring VA to prove by clear and unmistakable evidence that a disease or injury manifesting in service both preexisted service and was not aggravated by service.

What if the claimant was examined upon entering active duty service, but the report of examination is missing or lost? In this case, VA will presume the Veteran or Servicemember to have been sound at entrance. However, if there is no report of examination on entrance to all other types of service, for example, inactive duty training (INACDUTRA), VA will not presume the claimant to have been sound at entrance.

How Presumption of Soundness May Affect a Disability Claim

Generally, VBA considers presumption of soundness for a claim before requesting an examination and/or a medical opinion from you. If a condition such as pes planus manifests during service, a claimant may be considered for direct service connection if all evidence shows that the claimant was sound upon entering the service. If the claimant was noted to have pes planus and accepted for service, and available evidence indicates a permanent worsening of the condition during service, VBA would consider aggravation of a preexisting condition.

As an examiner, you may be asked to apply your clinical knowledge to help determine if a condition existed before service. For example, if pes planus was not noted on the service entrance examination but the claimant reports that this condition existed before service and provides medical evidence, you may be asked by an adjudicator to determine if the pes planus existed before service and was not aggravated by such service.

Select presumption of soundness for a more detailed discussion.

Presumption of Soundness

In providing an opinion, especially regarding aggravation of a condition that preexisted the Veteran's entrance into active service, you may need to take into account whether the Veteran was "sound," or may be "presumed" to have been sound, at the time of his entry into service. Notably, you need only make such a determination when VBA or the Board asks in the opinion request that you address whether a condition existed prior to service.

The basic principles relating to the presumption of soundness are found in 38 U.S.C. 1111 and 38 CFR 3.304(b). These sections state that a Veteran or Servicemember will be considered to have been in sound condition when examined, accepted and enrolled for service except, as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service. Only such conditions as are recorded in examination reports are to be considered as noted.

A determination as to the Veteran's soundness at the time of his or her entrance into service is significant. When no preexisting condition is noted at entrance into service, the burden falls on the VA to rebut the presumption of soundness by clear and unmistakable evidence showing that the disease or injury:

1. existed prior to service, **and**
2. was not aggravated by service.

The presumption of soundness applies only when the Veteran underwent a physical examination at the time of entry into active service, and only the conditions that are recorded in the examination report are to be considered as noted. In other words, when no preexisting medical condition is noted upon entry into service, a Veteran is presumed to have been in sound condition upon entry (38 U.S.C. 1111; *Wagner v. Principi*,2004). This is a very onerous standard, as will be discussed next.

Clear and Unmistakable Standard

In order to rebut the presumption of soundness, there must be clear and unmistakable evidence (obvious, manifest, or undebatable) that the Veteran's condition both preexisted his or her entrance into service **and** was not aggravated by service (*Wagner*, 2004 and VA OGC Prec. Op. No. 3-2003, 2003). This determination, made by an adjudicator, almost always requires input from a clinician.

It is important to note that in providing an opinion when the presumption of soundness is called into question by VBA or BVA, the Clear and Unmistakable Evidence standard is required for both parts of the medical opinion: The examiner must use the “clear and unmistakable evidence standard” for both parts of the question – that is, that the disability preexisted service AND was not aggravated by service. This is a legal, evidentiary standard.

Put another way, if an examiner believes the condition existed prior to service, but the evidence does not clearly and unmistakably show that the condition existed prior to service, the examiner must address whether the disorder manifested in service. Significantly, there is a difference between the examiner’s clinical judgment about something existing prior to service, even if it is clear and unmistakable to them, clinically, and the evidentiary requirements for VA to rebut the presumption of soundness.

A medical opinion for aggravation of a condition that clearly and unmistakably existed prior to service must be phrased to say that the claimed condition “was” or “was not” aggravated beyond its natural progression by an in-service injury, event, or illness. If the opinion is equivocal , it will be considered to be insufficient. Examples of unacceptable phrases include these:

1. “there are signs which indicate” that a condition existed prior to service;
2. it was “probable, but not absolutely certain,” that a condition existed prior to service;
3. “it is impossible to say”;
4. “could have accelerated”;
5. “most likely”;
6. “more likely”; and
7. “not significantly aggravated.”

The reason the distinction of whether a condition preexisted service is so important is because the legal standards for granting the claim are different: If the presumption of soundness applies, then the Veteran’s claim becomes one for direct service connection, not one for aggravation. Your opinion will allow the adjudicator to know which legal standard applies. This is why you may encounter a request asking you to provide multiple opinions.

Rebutting the Presumption of Soundness

In order to rebut the presumption of soundness, the following must be proven true by VA adjudicators:

1. There is clear and unmistakable (undebatable or obvious) evidence that the defect, infirmity, or disorder existed before entrance and acceptance into service. (Preexistence)
2. There is clear and unmistakable (undebatable or obvious) evidence that a preexisting defect, infirmity, or disorder was not aggravated by service. (Aggravation)

This means that you, the examiner, may be asked by an adjudicator for an opinion to help determine whether a condition clearly and unmistakably existed prior to service. If you find that it did (Step 1), you then need to consider aggravation (Step 2). If it did not (Step 1), there is no need to consider aggravation (Step 2). Instead, you would consider providing a nexus opinion for relationship of the condition to an event, injury, or illness in service (direct service connection), after a discussion with the regional office (RO).

Note to Step 1: Remember, you should not ignore a Veteran’s report to you that an unnoted condition existed prior to service while you are conducting a C&P examination. You can suggest the Veteran or Servicemember forward any medical records or other proof to VBA for processing.

Next in this lesson, we’ll discuss an important concept, the clear and unmistakable standard of proof.

Clear and Unmistakable Standard of Proof

The high standard of providing clear and unmistakable evidence to demonstrate that a condition preexisted service comes from 38 CFR 3.304(b) which discusses presumption of soundness:

> (b) Presumption of soundness. The Veteran will be considered to have been in sound condition when examined, accepted and enrolled for service except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service. Only such conditions as are recorded in examination reports are to be considered as noted.

As an examiner, when you are asked to provide an opinion about whether or not a condition preexisted service, you will need to develop a rationale supported by evidence of record that clearly explains for the adjudicator how the evidence shows that a condition was or was not present before service. In addition, the adjudicator will most likely use the term, clearly and unmistakably, on the examination request when requesting an opinion to help determine if a preexisting condition was aggravated by military service.

Read below to hear from a moderator, Tina Skelly of VBA, and Paul Sorisio of BVA about the clear and unmistakable standard of evidence.

[Moderator] So Tina, how would you define clear and unmistakable evidence?

TINA: Maybe the term “clear and unmistakable” needs to be clarified, because what the examiner believes medically may not meet the legal threshold of “clear and unmistakable.” It’s evidence that can’t be misinterpreted.

PAUL: That’s right, Tina. The courts also use the term “undebatable.” And here’s another factor to consider: The medical evidence is just one piece of the puzzle and the adjudicator must look at it with all the other evidence of record. For example, there could be lay evidence of observable symptoms during and after service.

Putting It All Together

The two transcripts on the next couple of pages show a discussion between a moderator, VBA (Tina), VHA (Greg and Ratna), and BVA (Paul) that discusses how the presumption of soundness is considered by VBA and what this concept means to the examiner.

Moderator: The office of Disability and Medical Assessment, also known as DMA, has convened this panel of experts to discuss the concept of presumption of soundness as it pertains to aggravation in the compensation and pension examination process. Let me introduce them. Tina Skelly is a Management and Policy Analyst at VBA Central Office. Gregory Normandin, MD is the Chief of C&P for the VA in Montana. Doctor Normandin provides oversight, training, and examinations for C&P in Big Sky Country, Montana. He has been actively involved in C&P for the past seven years. Doctor Ratnabali Ranjan is the Chief of C&P at the Roseburg VA Medical Center in Oregon. Ratna has been managing C&P departments for the last six years. She oversees general operation of the C&P department, and is actively involved in training new examiners and quality review of C&P exam reports. Paul Sorisio, an attorney, is the Chief for the Office of Quality Review with the Board of Veteran’s Appeals in Washington, D.C. He has been with the board in various roles for almost nine years. As Chief, he reviews a random sample of BVA decisions, and assesses them for legal errors. Additionally, he scrutinizes decisions from the Court of Appeals for Veteran’s claims, looking for the reasons why BVA decisions are affirmed or vacated, and deciphering trends in the process. All of our panelists have previously provided subject matter expertise to DMA programs, and we value their participation. Welcome, and thank you for joining us, panelists. Presumption of soundness can be a confusing topic for examiners. Tina, what does the examiner need to know about presumption of soundness?

Tina: I think the first thing an examiner needs to know about the presumption of soundness is that it is a legal definition, and it is something that the adjudicator will determine. However, it's still important that the examiner understands the concept. Rebutting the presumption of soundness is also something that the adjudicator will determine, but often requires medical expertise from an examiner.

Moderator: What does presumption of soundness mean? Since presumption of soundness is a legal concept; Paul, would you explain this for examiners?

Paul: Of course! The presumption of soundness only applies when a service entrance examination was conducted. Unless a condition or disability is noted on the service entrance examination, the Veteran is presumed sound to all infirmities or defects. This is an advantage for the Veteran because it presumes that the Veteran entered service with a clean bill of health, and puts the burden of proof on the VA to prove otherwise.

Moderator: OK. Are there times when a service entrance examination is performed, but health issues arise that may or may not have preexisted the Veteran's entrance into service?

Paul: Yes. There are situations where health issues come to light that were not noted on the entrance exam, and that is where the presumption of soundness can come into play. The adjudicator may need additional medical information to determine whether a condition preexisted service, and if yes, was that preexisting condition aggravated or not by such service.

Moderator: Tina, does VBA's procedural manual address this?

Tina: Yes. Here's what is says in VBA's procedural manual, which essentially mirrors the statute in regulation. Presumption of soundness means that the Veteran will be considered to have been in sound condition when examined, accepted, and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service. It further explains that the presumption of soundness applies only when the Veteran underwent a physical examination at the time of entry into service on which the claim is based, and only the conditions that are recorded in the examination report are to be considered as noted. And then finally, it says: When no preexisting condition is noted at entrance into service, the burden falls on the VA to rebut the presumption of soundness by clear and unmistakable evidence showing that the disease or injury existed before service, and was not aggravated by service.

Moderator: So Tina, how would you define "clear and unmistakable evidence?"

Tina: Maybe the term: "clear and unmistakable" needs to be clarified, because what the examiner believes medically may not meet the legal threshold of clear and unmistakable. It's evidence that can't be misinterpreted.

Paul: That's right, Tina. The courts also use the term: "undebatable," and here's another factor to consider. The medical evidence is just one piece of the puzzle. An adjudicator must look at it with all other evidence of record. For example, there could be lay evidence of observable symptoms during and after service.

Transcript 2

[Panel discussion consisting of a Moderator; Tina Skelly, Management and Policy Analyst; Ratnabali Ranjan, MD, Chief C&P; Gregory Normandin, MD, Chief C&P; and Paul Sorisio, Chief of the Office of Quality Review]

Moderator: Ratna, you and Greg are experienced examiners. Based on your experience of training new examiners, do you think this explanation for presumption of soundness will make sense?

Ratna: Yes. It provides a point from which to start. Another way to look at it is to consider this example. Say that the Veteran puts in a claim for heart murmur that was not noted during entrance exam, but did show up several months later during service. Private medical records indicate that he had rheumatic fever and associated heart murmur as a child. The problem is that the heart murmur was not detected on entrance into service, and therefore was not noted. Under these circumstances, VBA may ask if the heart murmur found during the Veteran's service is the same as the one that existed before service, or is it a new murmur.

Moderator: So Ratna, how do you resolve this issue?

Ratna: As long as the current physical exam and imaging studies are consistent with previous rheumatic heart disease, and no intervening cardiac events or infections occurred while in service, then the heart valve condition causing the murmur was present prior to service and went undetected at the time of entrance. In this instance, the Veteran was presumed to be sound at entrance into service, but actually had an unidentified, preexisting condition that was detected while in service. Greg, do you have anything to add?

Greg: Yes. On the other hand, if the heart condition detected during active service was not consistent with the previous history of rheumatic heart disease according to accepted medical authorities, then that would indicate a separate medical issue that arose during service.

Tina: And since this is a separate medical issue that was first identified during service, then it would be dealt with on the basis of direct service connection.

Paul: So if the evidence clearly and unmistakably establishes that the heart condition preexisted service, then the next question is whether it was not aggravated by service. We can show that it was not aggravated by service by undebatable evidence. Either: (1), that there was no increase in the severity of the condition during service, or (2), that any increase in severity of the condition was due to the natural progression of the condition. Examiners have to be very comprehensive when explaining the medical details because of the complex nature of the presumption of soundness.

Greg: I agree. Every medical condition has a natural course or progression over time. We would have to compare the Veteran's prior and current status of the heart condition in order to determine if it was aggravated beyond its natural course.

Ratna: It's important that we review all of the evidence of record to explain how the evidence supports the opinion so that the adjudicator can understand it. That evidence has to be unmistakable to lead to that decision. It's not just clear language, but clear evidence.

Paul: That's an excellent distinction to make; that we're talking about evidence. To summarize, the presumption of soundness is a legal concept. The examiner does not determine the presumption of soundness, but does play a significant part in that determination.

Moderator: Panelists, thank you very much.

Establishing That a Condition Preexisted Service

When VBA develops a claim, evidence may come to light that a condition preexisted service, even if it was not noted on the service entrance examination report. For example, there may be medical records preceding service that document a condition. However, your review of evidence is not limited to preservice records to establish that a claimed condition existed before service.

Once you have established that a condition preexisted service, you will need to provide as clear a picture as possible of the baseline level of severity of the condition before aggravation occurred. You will also need to examine all of evidence of record in order to determine the baseline level of severity, which includes establishing the level of severity before, during, and after service. In addition, you will also need to take into account what the natural progression of the condition would be.

A narrative on the next page provides you with basic background information found in the evidence of record, the opinion requested on the examination request, and peer-reviewed medical literature that would support the explanation that a condition preexisted service.

An Opinion in Development: An Unnoted Condition Was Aggravated

Here is a narrative example of a case where an unnoted condition may be determined to have preexisted service and was aggravated during service.

The Veteran, Jason Weller, had normal service entrance examination at the age of 23. Specifically, no heart murmur was noted.

About two months after entrance to service, he became increasingly short of breath after exercise and experienced a significant increase in fatigue. Examination at that time revealed typical auscultatory findings of mitral stenosis, and echocardiography confirmed that he had an enlarged left atrium and other signs of mitral stenosis. Upon questioning, he denied any history of rheumatic fever, but said he had multiple strep throats during childhood. He was never told of any heart problems and had no cardiac symptoms before service.

While developing the opinion, the examiner considers that the Veteran’s mitral stenosis most likely resulted from undetected rheumatic fever following one or more childhood strep infections. The time of onset of symptoms (with a latent period of 5-10 years or longer after rheumatic fever before symptoms develop) is typical. Based on the findings in service and the known natural history of mitral stenosis, his valvular heart disease clearly preexisted service, but was asymptomatic until the physical demands of service resulted in symptoms. Adults often have no symptoms until between the ages of 20 and 50, and the symptoms may be worsened by exercise, pregnancy, stress, or other activity that raises the heart rate and further decreases blood flow through the already narrowed mitral valve. Although no murmur was heard on entrance, the mitral stenosis findings on auscultation can be subtle, and the absence of a murmur at entrance does not exclude the preexistence of mitral stenosis.

In this case, the baseline for a favorable opinion for aggravation of a preexisting condition not noted at entrance would be the Veteran’s service entrance examination.

The examiner has been reviewing medical literature about the natural progression of mitral stenosis, and has selected three articles that can be cited for the benefit of the adjudicator:

Dima, C. (2015). *Mitral Stenosis*. Topic: Mitral stenosis is a progressive disease consisting of a slow, stable course in the early years followed by an accelerated course later in life. Typically, there is a latent period of 20-40 years from the occurrence of rheumatic fever to the onset of symptoms. The onset of symptoms usually occurs between the third and fourth decade of life. This article can be viewed at this public website: http://emedicine.medscape.com/article/155724-overview#a0199

WebMD.(2015). *Mitral Valve Stenosis-Symptoms*. Topic: Although mitral valve stenosis is a lifelong disease, symptoms usually take 10 to 20 years to develop and can take as long as 40 years. This article can be viewed at this public website:

http://www.webmd.com/heart-disease/tc/mitral-valve-stenosis-symptoms

Collier, P., Phelan, D., and Griffin, B.P. (2015) *Mitral Valve Disease: Stenosis and Regurgitation*. Topic: Previously asymptomatic or stable patients may decompensate acutely during exercise, emotional stress, pregnancy, infection, or with uncontrolled atrial fibrillation. This article can be viewed at this public website:

http://www.clevelandclinicmeded.com/medicalpubs/diseasemanagement/cardiology/mitral-valve-disease/

Next, we'll review an aggravation opinion where the worsening of a condition is determined by the examiner to be a result of the natural progression of the condition.

When Natural Progression Is the Main Cause for a Permanent Worsening

Sometimes a preexisting condition is worsened during service but the increase in severity is clearly and unmistakably due to natural progression and not the result of injury or disease in service. You may recall from an earlier lesson that your familiarity with the scientifically established natural progression of a condition can help you determine when external factors or comorbid conditions may have affected the progress of the disease or injury. Then you need to determine particular external factors or comorbid diseases that may have impacted the progress. At the same time, your familiarity with the natural progression of a condition may result in your determination that natural progression was the principle cause for the worsening of a condition.

If this is the case, remember that the adjudicator must have clear and unmistakable proof for this determination. Your rationale must explain very clearly how the evidence supports natural progression as the cause of permanent worsening. Citing peer-reviewed medical literature in your rationale can add probative value to your explanation and help the adjudicator understand how the evidence supports natural progression.

An example on the next two pages about a different heart condition, aortic stenosis, will provide you with information found in the evidence of record, the opinion requested on the examination request, and a sample medical opinion with a rationale that cites the evidence.

Evidence: Worsening of an Unnoted Condition Is Due to Natural Progression

John Smith entered service in 2004. He said in his claim that he was found to have a murmur during a routine physical examination in 2002 and had an echocardiogram. He denied any cardiac symptoms on his service entrance examination. After service, Mr. Smith underwent aortic valve replacement in 2013. He filed a claim in 2014 for service connection of his aortic valve replacement and aortic stenosis.

Examination Request

Veteran filed a claim for service connection of his aortic valve replacement and aortic stenosis because he had similar symptoms one time during active service. Was Veteran’s aortic stenosis with aortic valve replacement caused by or aggravated beyond normal progression by events in service?

C-file

Service Personnel Records

Service Dates: 6/7/2004 to 4/6/2005
Deployment: None

STRs

Service entrance examination: Normal physical examination including cardiopulmonary examination, no murmurs.

In-service medical records: Veteran felt dyspnea and light-headed one time after a long walk on hot sand during active service. Was seen in medical clinic, had normal physical examination. He got better with rest and oral fluids.

Service separation examination: Normal physical examination during discharge and no murmurs were heard.

Private Treatment Records

February 2002: Annual physical performed by a primary care physician. Findings included an echocardiogram that showed mild aortic stenosis, normal wall thickness and wall motion of left ventricle, and normal systolic and diastolic function. The aortic valve area was noted as 1.9 square centimeters, and the diagnosis was mild aortic stenosis. His primary care provider recommended he have cardiac follow up if he became symptomatic.

June, 2013: His current primary care physician evaluated Mr. Smith’s heart condition. Aortic valve area was shown to be 1.4 square centimeters, and diagnosis was moderate aortic stenosis. This physician referred Mr. Smith for aortic valve replacement.

August 2013: Veteran underwent aortic valve replacement.

Example Opinion: Worsening of an Unnoted Condition Is Due to Natural Progression

Current C&P Examination Findings

Medical History Interview

In 2013, Veteran had a syncopal episode after a long run with friends on a hot summer day over a weekend. He said he had been feeling tired after moderate exercise and felt near syncope during recent exercise workouts. This prompted additional medical evaluation, with the end result being aortic valve replacement in August 2013.

Requested Opinion

Was Veteran's aortic stenosis with aortic valve replacement caused by or aggravated beyond normal progression by events in service?

Medical Opinion

Opinion: It is opined that this Veteran's moderate aortic stenosis and subsequent aortic valve replacement was not aggravated beyond natural progression by events in service.

Rationale: Veteran's medical records showed that he was diagnosed with mild aortic stenosis before entering into active military service. He was recommended to have follow-up if he became symptomatic. Veteran was asymptomatic at entrance into service. His physical examination was WNL and after a single episode of being lightheaded while in service, which was more likely than not due to dehydration, since he responded to rest and oral fluids and less likely than not due to significant progression of his AS and his discharge exam was normal limits and he did not have any cardiopulmonary symptoms at discharge. He remained asymptomatic for next 9 years after service and after this he developed symptoms of syncope, only after moderate exercise. His echocardiogram showed a decrease of aortic valve area to 1.4 square centimeters and he was diagnosed as having moderate aortic stenosis. Because of the onset of symptoms, surgery was recommended and he had aortic valve replacement in 2013. It has been documented in mainstream peer-reviewed medical literature that patients with aortic stenosis may not experience any significant symptoms for a number of years after diagnosis. However, patients inevitably develop life-threatening symptoms such as chest pain, shortness of breath, or syncope as their aortic stenosis progresses with time. Although the evidence of record reflects that the Veteran's aortic stenosis first became symptomatic during his service in the military, there is no evidence demonstrating that his aortic stenosis was aggravated beyond the natural progression of the disease during his service. In fact, there is a specific medical finding of record that any increase in severity (progression from mild to moderate with 1.4 sq. cm. surface area of aortic valve in 10 years) of the disability was due to the expected progression of the disease. Typically, the valve area decreases by approximately 0.1 square centimeter per year. With this in mind, the Veteran's in-service complaints merely represented the natural progression of his aortic stenosis with a temporary flare-up of symptoms with strenuous activity. The course of time over which the Veteran's aortic stenosis progressed was entirely consistent with the natural progression of aortic stenosis per peer-reviewed medical literature (Brener S.J., Duffy C.I., Thomas J.D., Stewart W.J.(2014). Progression of aortic stenosis in 394 patients: relation to changes in myocardial and mitral valve dysfunction. J Am Coll Cardiol, http://www.ncbi.nlm.nih.gov/pubmed/7829781) Therefore, it was not likely that the Veteran's pre-existing cardiovascular disease was aggravated or permanently worsened as a result of his active service.

When Should Aggravation Be Considered for an Unnoted Condition?

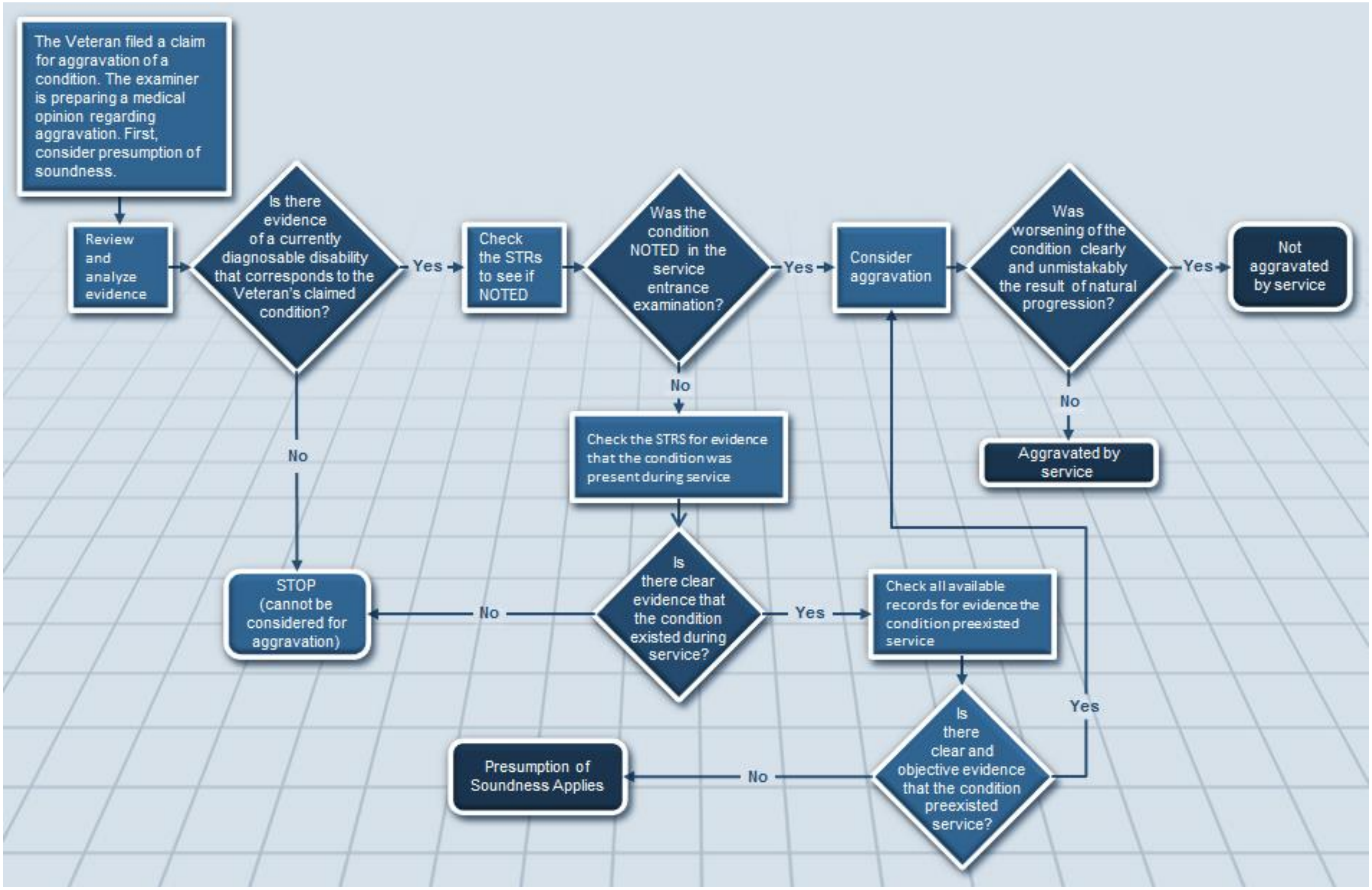
Under which circumstances should aggravation of a preexisting condition be considered when a condition is not noted? How do findings of presumption of soundness or natural progression affect the process?

The image on the next page displays a flowchart that demonstrates how presumption of soundness affects any consideration of aggravation of a preexisting condition.

Lesson Summary

We covered considerations for an aggravation opinion to address if a condition not noted on entry into service was aggravated by military service. The concept of presumption of soundness was explained since this is a critical consideration for adjudicators when considering service connection of a condition. Two example opinions based on this context were provided to show how evidence might be gathered and used to write a sufficient opinion for adjudication purposes.

Now that you have completed this lesson, you should be able to identify the legal requirements for addressing aggravation of a preexisting condition not noted on entrance to service. The next lesson will cover aggravation of a nonservice-connected condition by a service-connected condition, or secondary (Allen) aggravation opinions.



The Veteran filed a claim for aggravation of a condition. The examiner is preparing a medical opinion regarding aggravation. First, consider presumption of soundness.
Review and analyze evidence
Is there evidence of a currently diagnosable disability that corresponds to the Veteran's claimed condition?
Yes
No
Check the STRs to see if NOTED
Was the condition NOTED in the service entrance examination?
Yes
No
Consider aggravation
Was worsening of the condition clearly and unmistakably the result of natural progression?
Yes
No
Not aggravated by service
Aggravated by service
Check the STRS for evidence that the condition was present during service
STOP (cannot be considered for aggravation)
No
Is there clear evidence that the condition existed during service?
Yes
Check all available records for evidence the condition preexisted service
Is there clear and objective evidence that the condition preexisted service?
Yes
No
Presumption of Soundness Applies

Secondary (Allen) Aggravation

Learning Objective

This lesson will cover VA regulations and legal decisions that provide guidance for secondary (Allen) aggravation opinions to address whether an NSC condition was permanently worsened, or aggravated, by an SC condition. Two example opinions, one favorable and one not favorable, will show how secondary (Allen) aggravation opinions might be written based on the evidence of record.

When you've completed this lesson, you should be able to identify the legal requirements for addressing secondary (Allen) aggravation.

Case Law: Allen v. Brown

Secondary (Allen) aggravation refers to aggravation of a nonservice-connected condition by a service-connected condition. Secondary service connection by aggravation resulted from a case that spans nearly thirty years and several court decisions, *Allen v. Brown* (1995), and is often called Allen aggravation for that reason. The Allen case clarified that secondary service connection encompasses both of these conditions:

1. A condition caused by a service-connected (SC) condition (secondary service connection)
2. The aggravation of a nonservice-connected (NSC) condition by an SC condition (secondary (Allen) aggravation)

This means that if, in your opinion, a claimed condition is not caused by an already service-connected disability, then you must address secondary (Allen) aggravation.

Secondary (Allen) Aggravation

Secondary (Allen) aggravation claims are based on aggravation of an NSC disability by an SC disability, such as a Veteran who is service connected for rheumatic valvular heart disease who now has severe arteriosclerotic heart disease and is awaiting a heart transplant.

The *Allen v. Brown* case stated that any increase in severity of an NSC disease or injury due to aggravation by an SC disease or injury, and not due to the natural progress of the NSC disease, will be service connected.

For the secondary (Allen) aggravation claim, the Veteran is asked to support the claim with medical evidence of the baseline level of severity of an NSC condition which can be compared to the current level of severity to establish the extent of aggravation and therefore the level of compensation to which the Veteran is entitled. This medical evidence can be from any time between the onset of the aggravation and the receipt of medical evidence establishing the current level of severity. Without a baseline level of severity, you cannot determine whether or not there was aggravation.

To summarize, there are significant differences to keep in mind for secondary (Allen) aggravation compared to aggravation of a preexisting condition:

1. As opposed to aggravation of a preexisting condition, which must take place during service, aggravation of an NSC condition occurs after service.

2. A direct causal relationship between the SC disability and the NSC condition is not required. It is only necessary to identify that the claimed condition was aggravated (permanently worsened) beyond natural progression by the SC condition.
3. The Veteran has the burden of providing medical evidence for the baseline severity of the NSC condition.

The CFR provides guidelines for secondary (Allen) aggravation in 38 CFR 3.310(b).

What Does the Adjudicator Need?

What does the adjudicator need from the examiner? Select Play to hear an adjudicator discuss what information is needed from you when you provide an opinion for secondary service connection or secondary (Allen) aggravation.

This page features an informative discussion comparing the processes of establishing a baseline of severity for different opinion needs.

[Panel discussion consisting of a Moderator; Tina Skelly, Management and Policy Analyst; Ratnabali Ranjan, MD, Chief C&P; Gregory Normandin, MD, Chief C&P; and Paul Sorisio, Chief of the Office of Quality Review]

Moderator: Let's discuss [The text appears: "Matuschka Lindo, Moderator"] after VBA receives an examination report. Tina, would you like to tell the examiners what an adjudicator is looking for in a report.

Tina: Sure, [The text appears: "Tina Skelly; Management and Policy Analyst; Veterans Benefits Administration (VBA), Washington, D.C."] When adjudicators read the examination report and opinion, they are looking for certain details. The examiner's report must separately address all of the following medical issues in order to be considered adequate for rating a claim for secondary service connection. First, the current level of severity of the nonservice-connected disease or injury. Next, an opinion as to whether a service-connected disability proximately caused the nonservice-connected disability. If the answer to that is no, then was the nonservice-connected disability aggravated beyond natural progression by the service-connected disability. This is known as Allen Aggravation. And finally, the medical considerations supporting this opinion.

Moderator: [Moderator speaks] Thank for clearing that up.

Tina: [Tina Skelly speaks] Thank you.

[Scene fades]

Baseline Level of Severity: A Comparison

This page will compare processes for determining the baseline level of severity depending on whether the baseline will be used for an opinion addressing aggravation of a preexisting condition or an opinion regarding secondary (Allen) aggravation. Tina from VBA explains how VBA uses this measure when an adjudicator applies this measure for rating a claim for secondary (Allen) aggravation.

Next, you'll have opportunities to review unfavorable and favorable opinions for secondary (Allen) aggravation. Examples on the pages that follow will provide you with evidence gathered by an examiner from the evidence of record, the opinions requested on the examination request, and sample medical opinions with rationales that clearly explain how evidence supports each opinion.

[Panel discussion consisting of a Moderator;Tina Skelly, Management and Policy Analyst; Ratnabali Ranjan, MD, Chief C&P; Gregory Normandin, MD, Chief C&P; and Paul Sorisio, Chief of the Office of Quality Review]

Moderator: [Moderator speaks] We're back again with our panel of experts to discuss the concept of establishing baseline severity of a condition as it pertains to aggravation in the compensation and pension examination process. [The text appears: "Matuschka Lindo, Moderator"] Tina, let's begin with you. Where does the process start for determining the baseline severity of a condition?

Tina: For a preexisting condition, the baseline level of severity is determined by the noted findings on the service entrance examination.

Greg: [Greg Normandin speaks] I would like to point out the importance of understanding what constitutes a noted condition, especially since this was mentioned on a previous panel discussion.

Paul: [Paul Sorisio speaks] Yes. A noted finding is one recorded on the service entrance exam. This examination report should provide sufficient findings to permit a determination of the degree of severity.

Ratna: [Ratna Ranjan speaks] From an examiner's perspective, in order to identify the noted findings, it is very important for examiners to totally review the service entrance examination. And they should also look into the 2507 request to see if VBA has already identified noted conditions.

Tina: [Tina Skelly speaks] That's right for noted conditions, but determining the baseline level of severity for Allen Aggravation can be more difficult. If VBA does not already have the necessary information, we first ask the Veteran to furnish medical evidence to help us determine the baseline.

Moderator: [Moderator speaks] Since these are the more difficult cases, let's concentrate on Allen Aggravation type cases in detail. Paul, why don't you tell us more about Allen Aggravation.

Paul: Based on the case of Allen vs. Brown, [The text appears: "Paul Sorisio, JD; Chief, Office of Quality Review; Board of Veteran' Appeals, Washington, D.C."] the court interpreted the applicable regulation authorizing VA to grant service connection for the portion of the nonservice-connected condition attributable to aggravation by a service-connected condition. Thus, an adjudicator needs to know it's current level of severity of the nonservice-connected condition. Plus, we need to know its level of severity before it was aggravated by the service-connected condition or as soon as possible after the nonservice-connected condition was aggravated.

Moderator: [Moderator speaks] Tina, how does VBA use this information?

Tina: Once we have this information, [The text appears: “Tina Skelly; Management and Policy Analyst; Veterans Benefits Administration (VBA), Washington, D.C.”] we can request a VA C&P examination. The examiner would review the claims folder in order to establish whether increased manifestations of the nonservice-connected condition are proximately due to the service-connected condition.

Moderator: [Moderator speaks] Ratna, once you’ve received the request for examination and medical evidence from the adjudicator, how do you use the evidence to help VBA determine the baseline severity of the condition?

Ratna: There is a multi-step process. [The text appears:“Ratnabali Ranjan, MD; Chief C&P; VA, Roseburg, Oregon”] Using the available medical records, the examiner should review the records as far as he or she can go, and find the documentation that shows where the symptoms or diagnoses regarding the nonservice-connected condition were first recorded. Next, look for the evidence that shows when the condition was first aggravated. Once we have determined those two factors, the next step is to determine the association with the service-connected condition, and expand on the cause and effect.

Moderator: [Moderator speaks] What would you tell examiners about establishing the baseline, Greg?

Greg: The first place to look is the 2507. [The text appears: “Gregory Normandin, MD; Chief C&P; VA, Montana”] Ideally, VBA may have already pointed to the evidence for the baseline severity, but the adjudicator may need the C&P examiner to add their medical perspective and expertise. This requires the C&P examiner to interpret the provided evidence in such a way that the adjudicator can apply it to the rating schedule.

Moderator: [Moderator speaks] Ratna, do you have anything else to add?

Ratna: We may have to go back through all available medical records, including records before service, and service treatment records, as well as lay statements, and then continue reviewing through time to the present. This can be difficult and time-consuming, because we have to really dig out the details. The information gathered is then used to establish the medical baseline of the severity.

Greg: [Greg Normandin speaks] Also, it’s very important to note that once the examiner establishes the medical baseline for the nonservice-connected condition, the next step is to determine if the condition was permanently worsened, and then work out how much of the worsening was due to natural progression, versus how much was due to aggravation during service.

Moderator: [Moderator speaks] Tina, after the examiner reports to VBA what the baseline of severity for a condition was, how does VBA use it?

Tina: Well, once the examiner reports the medical baseline and current level of severity of the nonservice-connected condition, [Text shown as a formula: “Percentage of extent of aggravation equals current level of severity minus baseline level of severity plus any increase due to natural progression.”] we look at the evaluation criteria in the rating schedule for the specific condition, and then determine the extent of aggravation by deducting the baseline level of severity as well as any increase in severity due to the natural progression of the condition from the current level, and then a percentage is assigned.

Evidence: Secondary (Allen) Aggravation (Unfavorable)

This scenario is based on the most common circumstance for providing an opinion regarding secondary aggravation (Allen). In the requested opinion, the examiner is asked to determine if a claimed condition was due to or aggravated by his SC condition.

The claimant is a 68-year-old Vietnam Veteran, Dale Willow, who was service-connected for cervical strain. Veteran was a clerk in the U.S. Army from 1968-1970 with a deployment to Vietnam. After service, he worked in construction but he's since retired. Mr. Willow recently filed a secondary service-connection claim for lower back pain.

Examination Request

Veteran contends that his lower back pain condition is due to, or a result of, his service-connected cervical strain. Please determine whether it is at least as likely as not that the current low back pain is proximately due to, or caused by the SC cervical strain. If the current low back pain is not due to the SC cervical strain, was it aggravated beyond natural progression by the SC cervical strain?

C-file

Service Personnel Records

Service Dates: 08/06/1968 to 09/30/1970
Deployment: Vietnam
Job in service: Clerk

STRs

Service entrance examination: Pes planus noted.
In-service medical records: Mr. Willow was seen by a medic in service with a complaint of neck pain after Veteran was riding in a truck that stopped suddenly. X-rays were negative for neck fracture, but limited range of motion was documented by the medic.
Service separation examination: Pes planus and cervical strain were documented.

Private Medical Treatment Records

Nov 1988, June 1995, Sept 1995, April 1999-Dec 2000: Multiple complaints of neck pain, neck muscle spasm, and recurrent headaches during his private primary care provider office visits. Veteran was diagnosed with cervical strain with muscle spasms and tension headaches. Had some decreased range of motion of neck with increase in pain on turning neck to either side. Chiropractor visits note tenderness and spasm over bilateral paraspinal muscles in neck with improvement after adjustments during each visit. His pain and tenderness was moderate over the upper neck and mild over the lower neck. In April of 1999 Veteran had physical therapy for six weeks with some improvement in neck pain.

Chiropractic records in April and May 2011: Low back pain for several years. On examination, has mild tenderness over lower lumbar spine, with pain at extremes of motion. Mildly limited motion. X-rays show degenerative joint disease at L5-S1 with disc space narrowing and minor osteophytes of other lumbar vertebrae. Diagnosis: Lumbar spondylosis with facet joint dysfunction. Treatment: Spinal adjustments x5, with moderate relief noted.

Other Electronic Medical Records

VA Treatment Records 2007-2009

Veteran established care in VA in 2007, and new evaluation notes show a past history of neck pain, stiffness, and headaches for many years since he was discharged from the military. He was taking OTC pain meds regularly for control of headaches and neck pain but was also prescribed hydrocodone/ APAP and cyclobenzaprine during acute episodes of neck pain. On March 3, 2008, Dale Willow was found to have mild tenderness over entire cervical spine and bilateral paraspinal muscles during a visit while Veteran was experiencing a flare-up of neck pain. At that visit Veteran also complained of frequent headaches.

He was referred to physical therapy for stiffness and pain in neck in 2009. In December 2009, he was referred to a neurologist for evaluation of chronic headache and was diagnosed with cervicogenic headache.

VA Treatment Records 2012

VAOPC 2012: Seen for severe neck pain and stiffness for past 5 days. Is SC for cervical strain, but has had only occasional mild pain and stiffness since the early 70s. Today has marked LOM (limitation of motion) of cervical spine, especially on lateral rotation, with diffuse spasm and some tenderness of cervical muscles. No recent injury. Dx: cervical strain. Treatment: Hot packs, cyclobenzaprine, and ibuprofen (600 mg qid for 10 days).

Current C&P Examination Findings

SC Cervical Condition

Medical history: SC for cervical strain following minor truck accident in 1969. After service, he worked in construction for 30 years and was active in sports. He is now retired. Has had no additional neck injuries since the 1969 incident. States that he has limited ability to turn his head from side to side. Was seen at VA outpatient clinic for acute neck pain in 2012, and has had constant mild pain and moderate stiffness since. Veteran says that stiffness is worse during flare-ups, which he has 2 to 3 times a year, mainly in the winter months. During flare-ups, which last an average of 4-7 days each, he has only minimal motion of his neck, with severe pain. He uses local heat, OTC pain medication, and a prescribed muscle relaxant for relief. Between flare-ups he mainly uses NSAIDS as needed, and feels that his neck problem is worsening in the past few years.

Physical examination: Veteran is overweight. He is 5 feet nine inches tall and weighs 230 pounds; his BMI is 34. BP is 138/80. P is 78. Diffuse cervical muscle spasm and tenderness is noted. ROM examination of cervical spine shows moderate to severe restriction of motion with findings of: forward flexion 0 to 40 degrees, extension 0 to 35 degrees, left lateral flexion 0 to 35 degrees, right lateral flexion 0 to 35 degrees, left lateral rotation 0 to 30 degrees, right lateral rotation 0 to 35 degrees. All motions are accompanied by pain, most marked at extremes of motion. There is no change in pain or limited motion on repetitive use. Neurologic examination is normal. Cervical spine X-rays continue to show no evidence of arthritis.

Diagnosis: Cervical strain

Low Back Pain

Medical history: Is claiming that his SC cervical strain has worsened his low back condition. States that he has had more or less steady low back pain, with gradual worsening, over the past 12 years. The pain is worse after heavy lifting or with other back exertion. Pain does not radiate. He feels that his SC cervical condition is related to his low back pain and makes it worse. His first medical visit for low back pain was to a chiropractor in 2011. He received several spinal adjustments, resulting in some relief of pain. However, the low back pain did continue and is now worse than it has ever been. His back pain increases during damp weather, usually lasting no more than a day or two, but has not required any specific treatment other than an occasional OTC NSAID. He has no leg pain.

Physical examination: Has pain on the extremes of flexion, extension, and rotation of thoracolumbar spine, which worsens slightly on repetitive use. ROM examination shows forward flexion of 0 to 80, extension of 0 to 20, left lateral flexion 0 to 30, right lateral flexion 0 to 30, left lateral rotation 0 to 20, and right lateral rotation of 0 to 20. After three repetitions of ROM, all of the ranges of motion are about 5 degrees less. There is no tenderness or spasm of the thoracolumbar area. Straight leg raising and reflexes are normal.

X-rays: Thoracolumbar spine X-rays show small osteophytes of the lower thoracic vertebrae and all of the lumbar vertebrae with mild narrowing of the L5-S1 disc space.

Diagnosis: DJD (degenerative joint disease) of the lumbar spine.

Example Opinion: Secondary (Allen) Aggravation (Unfavorable)

Requested Opinion

The Veteran is claiming service connection for low back pain. Please determine whether it is at least as likely as not that the current low back pain is proximately due to, or caused by the SC cervical strain. If the current low back pain is not due to the SC cervical strain, was it aggravated beyond natural progression by the SC cervical strain?

Medical Opinion

Opinion: It is less likely than not that this Veteran’s DJD of the lumbar spine was related to, caused by, or aggravated (worsened beyond the natural progression) by his SC cervical strain.

Rationale: DJD of the lumbar spine is a chronic condition that tends to progressively worsen over time with the natural aging process and/or due to repetitive injury. VA medical records indicate that his cervical strain is stable, and previous and more recent cervical spine X-rays have not changed and do not show evidence of arthritic changes. The cervical spine is in a distinctly separate anatomical location from the lumbar spine, and this examiner was unable to locate peer-reviewed studies that support the concept that a cervical strain would aggravate DJD in the lumbar spine. This Veteran’s lumbar spine DJD is more likely than not caused by age, obesity, and occupational history of construction work, all of which predispose to developing lumbar spine DJD http://www.mayoclinic.org/diseases-conditions/osteoarthritis/basics/risk-factors/con-20014749).

Evidence: Secondary (Allen) Aggravation (Favorable)

Jean Palmer is a 54-year-old Air Force Veteran with blood pressure well controlled before diabetes. She has been taking Maxzide 37.5/25 for eight years prior to her diagnosis of diabetes in 1997. She developed diabetes and was placed on metformin BID in 1995. Ms. Palmer developed chronic kidney disease in 2010 after the diagnosis of diabetes.

Examination Request

Veteran is service-connected for diabetes mellitus type 2 (2005) as an agent orange presumptive.

C-file

Service Personnel Records

Service Dates: April 1978–May 1979

Deployment: None

Private Medical Records

1997:Annual physical at PCP office visit showed Dx of Essential Hypertension, prescribed Triamterene and Hydrochlorothiazide 37.5/25 po daily. Normal PE.

1998–2004: Normal PE annual physical exams, BP well controlled on above medication.

2005: Annual physical at PCP office visit showed Dx of DMII. Was placed on Metformin 500 mg. po daily. Normal PE.

2007: PCP office notes show frequent headaches. BP 178/110. UA showed Glucose, 1+, Protein 1+, BUN/ Cr = 27/1.9, GFR = 37. Added another antihypertensive medication (Lisinopril 10mg. bid) and increased dose of Metformin to 500mg. BID.

2009: Office visit notes show that BP has been uncontrolled. Was diagnosed with mild kidney disease. Medications were changed to Procardia XL 90mgs po daily, Lisinopril 20mg. po bid, Hydrochlorthiazide 25mgs. Po daily. Metformin 1000 mg. po daily.

2010: PCP notes show: BP in better control. Diagnosis of chronic kidney disease (CKD).

Current C&P Examination Findings

Labs: mild anemia, creatinin: 2.4, UA: shows proteinuria, hematuria, GFR = 27 mL/min/1.73 m^2.

Example Opinion: Secondary (Allen) Aggravation (Favorable)

Requested Opinion

Please provide a medical opinion if this Veteran’s hypertension which clearly and unmistakably pre-existed her service-connected diabetes, was permanently aggravated beyond natural progression by her SC type 2 diabetes mellitus resulting in her secondary condition of chronic kidney disease.

Medical Opinion

Opinion: Ms. Palmer's hypertension clearly and unmistakably preexisted her service-connected diabetes mellitus; it was permanently aggravated by her diabetes, resulting in her secondary condition of chronic kidney disease.

Rationale:

1. Prior to the onset of diabetes, this Veteran's laboratory results showed no evidence of chronic kidney disease.
2. After onset of diabetes, this Veteran's laboratory results demonstrated onset and progression of chronic kidney disease and diabetes. The increased association between hypertension and diabetes can be explained in part by the presence of a maladaptive interaction of factors such as excessive caloric intake, decreased activity, and associated insulin resistance, chronic activation of the renin angiotensin aldosterone system, the sympathetic nervous system and abnormalities of the innate immunity, inflammation, and oxidative stress. The epidemic of obesity and sedentary lifestyle, and the aging population worldwide have contributed to the current high prevalence of diabetes and hypertension (Reference: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3648858/ from *Hypertension* May 2013; 61(5): 943-947)
3. Hypertension is related to diabetes in the presence of chronic kidney disease due to the interaction of all three systems as noted above.
4. Although this Veteran did have hypertension prior to diagnosis of diabetes, this condition was aggravated beyond the baseline which was present and stable prior to diagnosis.
5. She had been stable on the same medication for 10 years.
6. After onset of diabetes two additional antihypertensive medications were added without adequate response.

The baseline for hypertension is considered to be as well-controlled BP with one medication and normal physical exam as she was found with during her visit to a private physician's office in 2005 at the onset of her service-connected type 2 diabetes mellitus.

Lesson Summary

Policy based on legal decisions in the *Allen v. Brown* case requires you to consider secondary (Allen) aggravation if, in your opinion, a claimant's condition is not due to or caused by an SC condition. This lesson covered legal considerations and guidance for secondary (Allen) aggravation opinions to address whether an NSC condition was permanently worsened, or aggravated, by an SC condition. Two example opinions, one favorable and one not favorable, were provided to demonstrate how secondary (Allen) aggravation opinions might be written based on pertinent evidence. The ability to establish a baseline of severity for the NSC condition using medical evidence supplied by the Veteran is required before this kind of opinion can be developed.

You've finished this lesson, so you should be able to identify the legal requirements for addressing secondary (Allen) aggravation. The next lesson will provide you with suggestions for developing aggravation opinions.

Roadmap for Developing an Aggravation Opinion

Learning Objective

Developing an aggravation opinion entails gathering and using evidence to determine the current level of severity of a condition, and whether or not aggravation related to military service took place. Questions to answer are presented, along with suggestions for the types and locations of evidence that can provide answers. Differences in considerations for developing secondary (Allen) aggravation opinions compared to preexisting conditions opinions are covered.

When you've finished this lesson, you should be able to list elements and processes needed for developing aggravation opinions.

Permanent Worsening or Flare-Ups

A flare-up (exacerbation) is generally regarded as any temporary or recurring significant increase in signs or symptoms associated with a condition. For C&P purposes, aggravation is a permanent worsening of a condition, rather than an intermittent flare-up, so you'll need to determine whether evidence supports that a condition was permanently worsened.

For example, a Veteran or Servicemember claims aggravation of asymptomatic congenital pes planus. Pes planus is a frequently noted preexisting condition that does not usually require a waiver to be accepted as fit for duty. Current entrance and exit physical examination forms address bilateral arch status and ask if this is asymptomatic, or symptomatic (mild, moderate or severe). Depending on the evidence, your determination may be that worsening was due to flare-ups or was permanent.

Flare-Up

If the entrance and exit physical examinations do not indicate any change in the congenital pes planus but claimant was seen numerous times while on active duty not requiring treatment (especially following a more active period such as during basic training or deployment) and the claimant currently remains asymptomatic; this would indicate a flare-up.

Permanent Aggravation

If the entrance examination shows asymptomatic congenital pes planus and the exit physical shows symptomatic (mild, moderate or severe) pes planus requiring orthotic inserts and the claimant continues to be symptomatic requiring orthotic inserts; this would indicate a permanent aggravation.

Lay Evidence

Failure to address lay evidence is one of the most common reasons for returned medical opinions, including aggravation opinions. Lay evidence is defined as any evidence or statements by a person without specialized education, training, or experience. In other words, this is a statement provided by someone who does not have a medical background or training, e.g., is not a clinician. Generally, this evidence is provided by a person who has knowledge of the facts or circumstances and conveys matters that can be observed through the senses or via firsthand knowledge. Statements from the claimant are generally considered as lay evidence and may address, for example, the severity, duration, or intensity of a rash.

In addition, a layperson other than the claimant is competent to comment on what he or she has observed the claimant to experience (i.e., first-hand knowledge), but would not be competent to describe the precise discomfort the claimant experiences. For example, a layperson other than the claimant would be competent to observe that a claimant scratched a rash or how long the claimant had a rash, but the same layperson would not be competent to describe what the rash felt like.

When lay statements from the claimant or family members are in the record, you must address whether or not you agree with the statements. If you disagree, provide clinical data to substantiate your view. Sometimes the claimant will give you different information than what you've found in previous records, and you must reconcile the conflicting information in the rationale for the aggravation opinion.

Conflicting Evidence

You may discover conflicting evidence when you review the evidence of record for developing an aggravation opinion. Discrepancies might include a change in the claimant's diagnosis or reported symptoms that are not supported by objective evidence. There may even be a reported diagnosis that is not supported by objective evidence. Here are suggestions for addressing conflicting evidence in your rationale.

Change in Diagnosis

If your diagnosis for a claimant's condition differs from a previous one, document the new diagnosis and provide a well-reasoned rationale for the difference, including any pertinent examination or test results. It's also helpful to use statements from the Veteran or Servicemember, if available, to ensure the condition is accurately documented.

If the current diagnosis is a progression of the claimed condition, explain the relationship, e.g., a fracture has resulted in degenerative disc syndrome. If the current diagnosis is not related to a previous diagnosis, explain how they are not related and attribute the symptoms related to each condition. For example, the symptomatology of lumbar strain will be musculoskeletal in nature while degenerative disc disease will have symptomatology that may be both musculoskeletal and neurologic. However, if it is not possible to separate the symptomatology, you should state so.

Unsupported Reports

If you feel that reported symptoms are not supported by physical examination findings, test results, or observations, include a statement similar to this one in your examination report: "No objective findings to support a diagnosis of the claimed cervical or back condition" or state that the findings do not support the level of severity suggested by the complaints.

Another example may be found in the evidence of record. For example, the STRs include a medic's remark that while in service, claimant mentioned an old high school football injury. This evidence potentially rebuts the presumption of soundness. If the claimant denies this report and no other evidence of record supports it, then you should state so in the rationale.

Developing an Aggravation Opinion

The following pages are focused on the process of developing aggravation opinions. The process for gathering evidence and developing aggravation opinions is based on several determinations, presented as questions you need to answer. The process does not happen in a straight line, but some answers you'll need are dependent on how other questions were answered.

When you gather and organize evidence that answers the questions posed in this lesson, you are well on your way to developing an aggravation opinion that will meet adjudicator's needs.

Five Questions to Answer for Aggravation of a Preexisting Condition

What Is the Current Level of Severity of the Preexisting Condition?

The current level of severity is generally the starting place when looking for aggravation. Once you establish the current diagnosis and current level of severity, you can then work backwards. You'll find that determining the current level of severity of a condition that preexisted service is not as simple as looking at objective evidence from the most recent reports. In addition to STRs, there are additional records to review.

Evidence to Look For

Review suggestions for evidence to look for in the following table.

Evidence	What to Look For
Levels of severity	The level of severity at entrance and time of separation, and records from before and after service.
Complaints, treatments, lay statements	Check the frequency of the times complaints related to the condition were noted in STR's or medical records, and take into consideration lay statements regarding symptoms, self-medication, and use of over-the-counter medications to account for the chronicity of the condition.
Clinician's descriptions	Review the descriptions of conditions in STRs and/or medical records at the times the claimant was seen.

What Was the Baseline Level of Severity of the Condition at the Time of Entrance into Service?

What was the baseline severity of the condition at the time of entrance into service, i.e., the status of the preexisting condition?

The evidence you gather may differ for a noted condition or an unnoted condition.

For a Noted Condition

Review the objective evidence recorded on the service entrance examination for the noted condition. There is usually something in the entry file for a noted condition, such as pes planus, a fracture of a bone, or an ankle fracture that has healed with or without residual.

Evidence to Look For
Review suggestions for evidence to look for in the following table.

Evidence	Examples
Test Results	X-ray reports, other laboratory reports
Letters of Notes	Notes from private health care providers regarding the effect of a condition on the claimant's ability to function

Tip

Was a waiver granted for this condition to allow the claimant to become an active-duty Servicemember?

For an Unnoted Condition

There are many reasons why a preexisting condition may not be noted on the entrance examination. Some claimants did not know they had a condition. Other claimants knew they had a condition but they did not think to mention it or tell the examiner, and still others knew they had a condition it was no longer causing them trouble, so they thought it wasn't a problem anymore.

To gather evidence about an unnoted condition, you still should review the objective evidence documented on the service entrance examination. Also check the self-reporting questionnaire included in the service entrance examination.

Evidence to Look For

Review the following table to determine if you can find evidence for these intervals in the C-file.

Interval	Questions to answer
Before Service	• When did the condition present prior to military service? • Was it diagnosed? • Was it undiagnosed? • Were there treatments? • Was there a time prior to service when condition required no treatment? • How long was this interval?
During Service	• Was the claimant symptomatic at entry? • When did symptoms present in military service? • What was the condition? • Was there treatment?

What Was the Level of Severity of the Preexisting Condition at Separation from Service?

The best way to determine the level of severity at separation is to review the service separation examination.

Evidence to Look For

You should also review any medical treatment records close to the service separation examination, either before or after separation from service.

How Much, If Any, of the Worsening of the Pre-existing Condition during Service Was Due to Natural Progression?

As we pointed out in an earlier lesson, you'll draw upon your knowledge and experience, as well as knowledge in the medical community at large, regarding a condition's natural progress to answer this question. The same lesson discussed two steps to assess for natural progression:

1. First, since the natural course of a condition is commonly established in medical literature, when you recognize an alteration to this normal course, you should investigate all external factors that are present that could have an effect on this condition.
2. Second, you need to determine how much, if any, of the alteration in the natural course of the condition is caused by external factors or comorbid diseases.

Was the Preexisting Condition Permanently Aggravated?

To determine if a preexisting condition had one or more episodes of flare-ups during service or was permanently aggravated, you'll need to be able to ascertain the severity of symptoms caused by the condition at the time of entry into the service (entrance examination), any symptoms, complaints and response to treatment during active duty (STRs), and the severity of symptoms at time of discharge from active duty (exit examination). You also need to ascertain the current severity of the condition (current treatment records) to determine flare-ups versus permanent aggravation.

Here are some questions to answer, using the earlier example of a Veteran or Servicemember claiming aggravation of a pes planus condition:

1. What was the baseline of severity for the pes planus? Look at the severity of the condition when the claimant started active duty to establish baseline of the condition.
2. What is documented on exit examination? For example, is there a diagnosis of asymptomatic or symptomatic (mild, moderate or severe) congenital pes planus?
3. Do the STRs indicate any complaints of bilateral foot pain, especially during very active periods such as basic training, requiring treatment during deployment etc.? This documentation could indicate a flare-up.
4. What is the current level of severity of the claimed condition? Is the current diagnosis asymptomatic versus symptomatic (mild, moderate or severe) congenital pes planus?
5. Was the preexisting congenital pes planus permanently aggravated, or did it flare up and resolve while the claimant was on active duty?

Aggravation of a Preexisting Condition: Using the Evidence

Once you've gathered evidence, you'll want to address these considerations before you provide an opinion:

1. Objective evidence should support a permanent worsening of a condition rather than one or multiple flare-ups.
2. Use your training and experience to determine how the effects of natural progression would look over the time covered in the evidence of record.
3. Determine any worsening effects resulting from external factors that may include events, injuries, etc., during military service.

If you've determined that aggravation of a preexisting condition took place, you'll need to state your opinion using VBA-recommended language. Your rationale should explain these important considerations for the adjudicator:

1. Describe as clearly as possible the baseline level of severity for the condition.
2. Describe as clearly as possible the level of severity after the condition was aggravated.
3. Explain the evidence that provides these measures.

VBA will apply your descriptions to the Schedule for Rating Disabilities (38 CFR 4) to determine benefits.

Developing an Opinion for Secondary (Allen) Aggravation

When answering the question of whether an NSC condition was aggravated by an SC condition, you'll need to gather much of the same evidence you would need to answer the question of whether a preexisting noted disability was aggravated as a result of service. You'll need to determine a baseline of severity, the current level of severity, how much of the increase is due to natural progression. However, there are some differences:

1. In order to be considered for secondary service connection or secondary (Allen) aggravation, the claimant must have a service-connected condition that is aggravated in or after service.
2. The opinion request will usually ask you if the claimant's non-service-connected (NSC) condition was caused by or a result of the service-connected (SC) condition, or if the NSC condition was aggravated by the SC condition. In other words, VBA needs to consider whether secondary service connection or secondary (Allen) aggravation can be determined.
3. The claimant is expected to provide documentation to help VBA determine the baseline level of severity of the NSC condition before it was potentially impacted by the service-connected SC condition. VBA may still need your clinical interpretation of the documentation provided.
4. For purposes of service connection, the potential external factors that may alter the natural progression of the NSC condition may include the effects of the SC condition.

Baseline Level of Severity for the NSC Condition

The baseline for an NSC condition generally is not found in STRs. Medical evidence may come from VA electronic medical records if the Veteran goes to VA for healthcare, or the evidence may come from private medical records. Per 38 CFR 3.310(b), there can be no finding for aggravation of an NSC condition by a SC condition without medical evidence to establish the baseline.

> Aggravation of nonservice-connected disabilities. Any increase in severity of a nonservice-connected disease or injury that is proximately due to or the result of a service- connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected. However, VA will not concede that a nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice-connected disease or injury. The rating activity will determine the baseline and current levels of severity under the Schedule

> for Rating Disabilities (38 CFR part 4) and determine the extent of aggravation by deducting the baseline level of severity, as well as any increase in severity due to the natural progress of the disease, from the current level. (38 CFR 3.310(b))

You can access more detailed information about this regulation by viewing this extract from the Federal Register.

Extract from the Federal Register

Claims Based on Aggravation of a Nonservice-Connected Disability

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

> We have, however, reconsidered the requirement of “medical evidence extant before the aggravation” to establish the baseline level of severity when computing the degree of aggravation. It could be difficult for some claimants to identify the date of onset of the aggravation and then to locate medical evidence created before that date to establish the baseline. Thus, limiting the medical evidence for baseline calculation to that which existed prior to the onset of aggravation could likely result in unfavorable decisions in several claims. Obviously, if such records were available, they would establish the lowest baseline level of severity and, hence, the greatest degree of aggravation when compared to the current level of severity. However, since aggravation is generally an ongoing process, medical evidence establishing the aggravation could be created at any time between the onset of aggravation and the date of the current claim. VA’s acceptance of medical evidence created at any time between the onset of aggravation and the date of the current claim for purposes of establishing the baseline level of severity would be more favorable to claimants, although claims granted in this regard would likely result in findings of smaller degrees of aggravation and less compensation. We are, therefore, amending the proposed rule to allow the acceptance, for baseline purposes, of medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity. The earlier medical evidence will establish the baseline level of severity for comparison with the current level of severity to determine the degree of aggravation that may be service-connected and compensated. For example, if the onset of aggravation was sometime in 1996, but the veteran can only produce medical evidence from 1999, the 1999 medical evidence would be accepted for purposes of establishing the baseline level of severity. The rule will also state that VA will also accept, for baseline purposes, medical evidence created before the onset of aggravation. (71 Fed. Reg. 52744)

Source: Claims Based on Aggravation of a Nonservice-Connected Disability; Department of Veterans Affairs Summary of Final Rule for 38 CFR Part 3, 71 Fed. Reg. 52744 (September 7, 2006).

Lesson Summary

This lesson focused on the processes for developing aggravation opinions. We included suggestions for gathering evidence and using evidence to answer several important questions. Differences in the context for secondary (Allen) aggravation opinions compared to the context for aggravation opinions regarding preexisting conditions were also covered.

Now that you’ve finished this lesson, you should be able to describe the process of developing aggravation opinions. The next lesson will cover guidance from VA for complex aggravation topics.

Complex Aggravation Topics

Learning Objective

Legal considerations that affect all medical opinions also affect aggravation opinions. One example, the presumption of soundness, was discussed in another lesson. This lesson will discuss VA guidance for two particular legal considerations that you may need to apply:

1. The importance of lay evidence for determining aggravation when an event or injury likely occurred in a combat situation
2. Preexisting conditions that are congenital or familial diseases

Example opinions are provided to demonstrate how both of these considerations might be addressed. When you've completed this lesson, you should be able to recognize complex legal considerations that may affect the development of a medical opinion for aggravation.

Lay Evidence for Combat Veterans or Former Prisoners of War

VBA will accept satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat if the evidence is consistent with the circumstances, conditions, or hardships of such service even though there is no official record of such incurrence or aggravation.

In order for evidence submitted by the Veteran to support a factual presumption that the claimed disease or injury was incurred or aggravated in service, the evidence must:

- be satisfactory when considered in the absence of an official record,
- be consistent with the circumstances, condition or hardships of such service, and
- not be refuted by clear and convincing evidence to the contrary.

38 CFR 3.306(b)(2) says this:

> (2) Due regard will be given the places, types, and circumstances of service and particular consideration will be accorded combat duty and other hardships of service. The development of symptomatic manifestations of a preexisting disease or injury during or proximately following action with the enemy or following a status as a prisoner of war will establish aggravation of a disability. (Authority: 38 U.S.C. 1154)

The purpose of this regulation is to relax the standard of proof necessary to establish that an injury or disease was incurred or aggravated during combat to overcome the adverse effect of a lack of official record of treatment thereof. Therefore, the relaxed standard of proof applies only to injury or disease alleged to have been incurred or aggravated during combat.

IMPORTANT NOTE

Lay evidence can be accepted but aggravation can still be rebutted and you may be asked for an opinion to establish whether aggravation took place.

An example on the next pages will provide you with details found in the evidence of record, the opinion requested on the examination request, and a sample medical opinion with a rationale that explains how evidence was considered for the opinion. A C&P examiner will consider lay evidence for a medical opinion to establish whether or not aggravation took place.

Evidence: A Combat-Related Claim for Aggravation

For a combat-related claim, the Veteran's lay evidence of service aggravation of an injury or disease is sufficient for adjudication purposes if it is consistent with the circumstances, conditions, or hardships of such service, in the absence of contrary evidence. However, you may be asked to validate whether lay evidence for a combat-related claim are consistent with the circumstances of service and/or medical evidence for the claim. In this example, Marvin Duck, a National Guard Veteran from OEF/OIF/OND, claims his preexisting left knee condition was aggravated by an injury while on active duty.

On the Examination Request

Marvin Duck, a National Guard Veteran from OEF/OIF/OND (EOD: 2/1/2011, RAD: 2/3/2012) claims his preexisting left knee condition was aggravated by an injury while on active duty. Please review all available records and opine as to whether Veteran's preexisting left knee condition, as noted on the service entrance examination was aggravated beyond the natural progression of the condition. Please provide a rationale.

C-file

Service Personnel Records

Service Dates: 2/1/2011 to 2/3/2012
Deployments: Iraq and Afghanistan

STRs

- Service entrance examination: (1/29/2011) contains remarks of left knee injury during high school with slight decrease in left knee flexion compared to right. Flexion: left knee 110 degrees, right knee 140 degrees. No pain with passive or active motion. Veteran was accepted as fit for duty.
- Service separation examination: Notes document swelling with limited moderate LOM of the left knee compared with normal right knee.
- Other STRs: No service treatment records (STRs)

Other Medical Evidence

Private treatment records dated 5/3/2013: including normal left knee x-ray, MRI (magnetic resonance imaging) showing partial ACL (anterior cruciate ligament) tear and soft tissue swelling. Available records do not indicate any competing etiologies.

Lay Evidence

Statement of Claim: Veteran's written statement describing left knee injury on 8/2/2011, during his tour of duty in Afghanistan. Happened while on combat patrol, stepping over rubble and "knee giving out." Veteran's statement mentioned treatment with knee brace, ice, elevation, and Motrin, and said no radiological services were available at the forward medic station.

Buddy Statement: A buddy statement described Veteran's left knee injury while on combat patrol, including Veteran wearing a knee brace until after Christmas in 2011, and said Veteran complained of pain and swelling until the end of their tour of duty.

Spouse Statement: A statement from Veteran’s wife gave a description of Veteran’s left knee complaints following his tour of duty and noted his inability for over a year to take time off work in order to see an orthopedic surgeon for this condition.

Current C&P Examination Findings

The examiner documented these findings:
Left knee: mild effusion, ROM: 0-100 degrees, pain beginning at 60 degrees. No laxity, right knee Full ROM 0-140 degrees.

Example Opinion: Lay Evidence for a Combat-Related Claim

Requested Opinion

Please review all available records and opine as to whether Veteran’s preexisting left knee condition, as noted on the service entrance examination was aggravated beyond the natural progression of the condition. Please provide rationale.

Medical Opinion

Opinion and Rationale: Entire claims file reviewed. Entrance examination indicated an old left knee injury with slight decrease in flexion; right knee flexion was within standards for acceptance into service and was accepted as fit for duty. No STRs available for Veteran’s active duty service. Veteran’s lay statement and buddy statement support a left knee injury while on active duty during combat. Veteran was not seen for over a year after his active duty service. However, lay statements from Veteran’s wife indicate Veteran had consistent complaints of pain and swelling and he was unable to schedule an appointment due to his employment. Private treatment records are consistent with Veteran’s statements and lay statements. Available records do not indicate any competing etiologies. Therefore, Veteran’s left knee condition, which existed prior to service with decreased flexion compared to right knee but still within acceptable range for acceptance into service, was clearly and unmistakably aggravated beyond its natural progression by an in-service injury, event, or illness. Left knee flexion decreased from 110 at time of entrance to 100 degrees at time of separation with intervening knee injury related by Veteran and lay statements which most likely than not occurred while in combat.

The baseline for this condition: No pain residual; no symptoms; but did have slightly decreased range of motion on the service entrance examination

Congenital or Developmental Defects and Congenital, Developmental, Hereditary, or Familial Diseases

This topic will cover congenital or developmental defects and congenital, developmental, hereditary, or familial diseases. The categories of “congenital or developmental defects” and “congenital, developmental, hereditary, or familial diseases” may on the surface seem similar but VA makes a clear distinction between them for purposes of disability compensation.

Congenital or Developmental Defects

Under VA regulations, congenital or developmental defects, which include such conditions as absent, displaced or supernumerary parts, refractive error of the eye, personality disorders, and mental deficiency are not considered to be diseases or injuries that can be service-connected. A few other examples of conditions that fall into this category are spondylolysis, incomplete sacralization, congenital hernia of the diaphragm, and congenital diastasis of the rectus abdominus.

The Code of Federal Regulations provides guidance in 38 CFR 4.9. However, although congenital and developmental defects may not be service connected, acquired conditions superimposed upon them may be subject to service connection. An example is spondylolisthesis that develops in service after trauma and is superimposed on congenital spondylolysis. The spondylolisthesis, but not the spondylolysis, may be service connected. As an examiner, you may be asked for an opinion about how much of a disability is due to a congenital defect and how much is due to a superimposed condition. This may or may not be easy to determine. As with any opinion, you would need to provide a clear rationale for your opinion, including in situations where you feel unable to make such a determination.

Congenital, Developmental, Hereditary, or Familial Diseases

Multiple opinions from VA's Office of the General Counsel have addressed the category of congenital, developmental, hereditary, or familial diseases. (Op.G.C. 1-85 (3-5-85), Op.G.C. 8-88 (11-7-88), and VAOPGCPREC 1-90 (3-16-90). In essence, they state that these are diseases that are capable of improvement or deterioration. This is in contrast to congenital defects, which are structural or inherent abnormalities that are incapable of improvement or deterioration. In other words, they are generally static. Examples of congenital, developmental, hereditary, or familial diseases are retinitis pigmentosa, polycystic kidney disease, sickle cell disease, and Huntington's chorea. These diseases may be service connected if they first become manifest in service.

VBA's adjudication manual (M21-1MR) states that even if the individual is almost certain to eventually develop a disease, a genetic or other familial predisposition does not constitute having the disease and that only when actual symptomatology or signs of pathology are manifest may he or she be said to have developed the disease.

The conclusions of the General Counsel opinions, which are binding on all VA employees 38 CFR 14.507(b), are that diseases of congenital, developmental or familial (hereditary) origin are subject to:

- direct service connection, aggravation during service, if they progress at an abnormally high rate during service, and
- service connection by presumption, if they develop during the applicable presumptive period following discharge from service.

An example on the next pages will provide you with details found in the evidence of record, the opinion requested on the examination request, and a sample medical opinion with a rationale that explains how evidence was considered for the opinion.

Evidence: A Congenital Condition Is Not Aggravated by Service

Everett Kardia, a Veteran, filed for service connection based on aggravation of his heart condition by military service.

On the Examination Request

Veteran has filed for service connection due to aggravation of his heart condition by military service. He reported a childhood heart murmur during the Service Entrance Examination. Was this Veteran's current heart condition caused by or aggravated beyond normal progression by events in service?

C-file

Service Personnel Records

Service Dates: 06/15/1991 to 06/14/1995

STRs

Service entrance examination: Entrance Examination SF 88 dated 01/12/1991
Pertinent Findings: normal heart, lung and chest examination, vascular system, lower extremities
Section 42 "Notes and Significant or Interval History": told he had a heart murmur in past, no heart murmur appreciated on examination today. Section 43 "Summary of Defects and Diagnosis" no diagnosis of a cardiac condition at time of entry into service.
Self-report, "…told I had a heart murmur when I was younger"

Service separation examination: Separation Examination SF 88 dated 06/05/1995 Findings: Abnormal heart examination, otherwise normal lung and chest, vascular examination, lower extremities, no cardiac symptoms reported. Section 42 "Notes and Significant or Interval History": mild ejection click at left lower sternal border, non-radiating

Other Records

VA medical records dated 1996–Present
Pertinent Positives: Chief Complaint: feels weak and tired at times, lightheaded when walking at brisk pace, no syncope

Current C&P Examination

PE: IV/VI SEM (systolic ejection murmur) loudest at second right intercostal space, radiates to carotids, jugular venous pressure at 7 cm, no organomegaly, no clubbing cyanosis edema (CCE) in lower extremities
ECHO: bi-cuspid aortic valve with severe aortic stenosis

Example Opinion: A Congenital Condition Is Not Aggravated by Service

Requested Opinion

Was Veteran's current heart condition caused by or aggravated beyond normal progression by events in service?

Medical Opinion

Opinion: Veteran's current cardiac condition, namely severe aortic stenosis (AS), was not due to or aggravated beyond normal progression by events in service.

Rationale: Decades after leaving service he developed AS and concomitant symptoms. The echocardiogram identified severe aortic stenosis along with a bicuspid aortic valve (BAV). BAV is a congenital condition which, by definition, is inherited, and not acquired, and present since birth. On entrance examination it is noted that he was told he had a heart murmur prior to entrance to service, which more likely than not was due to his BAV. Therefore his BAV was a pre-existing condition which pre-dates entrance into service. STRs are silent for symptoms or events related to any cardiac condition. Patients with BAV can either be asymptomatic or develop symptoms due to impaired valve function over time. Patients with BAV have a significantly higher risk of developing AS compared to the general population. Since the BAV was present prior to entry into service and no intervening events occurred while in service and per mainstream peer-reviewed medical literature, AS is a common complication due to BAV as part of its natural progression, Veteran's AS is not caused by or aggravated beyond normal progression by events in military service.

Lesson Summary

This lesson covered two additional legal concepts that may impact a medical opinion regarding aggravation. In addition to presumption of soundness as discussed early in this course, VA has specific guidance based on the Code of Federal Regulations for weighing lay evidence in combat-related claims and for congenital conditions or familial diseases. Example opinions were provided to demonstrate how these concepts are used in developing aggravation opinions.

You've completed this lesson, so you should be able to recognize complex legal considerations that may affect the development of a medical opinion for aggravation. If you've completed all lessons in this course, you will be able to access the Course Summary on the next page, and the Final Assessment that follows.

Course Summary and Final Assessment

Course Summary

Lesson 1: Aggravation of a Noted Preexisting Condition

This lesson explained considerations for an opinion regarding whether or not a preexisting condition which was noted on the service entrance examination was aggravated by military service. Guidance was provided for addressing multiple entrance examinations or no service entrance examinations. Even though the determination focuses on whether or not a condition was impacted during military service, evidence from outside this time frame should be examined, so this was explained. In addition, the concept of natural progression was covered both in general and in the context of disability examinations.

Lesson 2: Aggravation of an Unnoted Preexisting Condition

The second lesson covered considerations for an aggravation opinion to address whether or not a condition not noted on entry into service was aggravated by military service. The concept of presumption of soundness was explained since this is a critical consideration. Two example opinions based on this context were provided to show how evidence might be gathered and used to write a sufficient opinion for adjudication purposes. This lesson included a summary flow chart that shows development of an aggravation opinion while considering presumption of soundness, natural progression, and whether a condition was noted or not on the service entrance examination.

Lesson 3: Secondary (Allen) Aggravation

The third lesson covered legal considerations and guidance for secondary (Allen) aggravation opinions to address whether an NSC condition was permanently worsened, or aggravated, by an SC condition. The ability to establish a baseline of severity for the NSC condition using medical evidence supplied by the Veteran is required before this kind of opinion can be developed. Two example opinions, one favorable and one not favorable, were provided to demonstrate how secondary (Allen) aggravation opinions might be written based on pertinent evidence.

Lesson 4: Roadmap for Developing Aggravation Opinions

This lesson focused on the processes for developing aggravation opinions and included suggestions for gathering evidence and using evidence to answer several important questions. Differences in the context for secondary (Allen) aggravation opinions compared to the context for aggravation opinions regarding preexisting conditions were also covered.

Lesson 5: Complex Aggravation Topics

The last lesson covered two additional legal concepts that may impact a medical opinion regarding aggravation. In addition to presumption of soundness, VA has specific guidance based on the Code of Federal Regulations for weighing lay evidence in combat or former prisoner of war-related claims and for congenital conditions or familial diseases. Example opinions were provided to demonstrate how each concept might be applied in developing aggravation opinions.

Resources

References

Code of Federal Regulations

38 CFR 14.507

Opinions, 38 CFR 14.507 (2014).

38 CFR 3.304(b)

Direct service connection; wartime and peacetime, 38 CFR 3.304(b) (2014).

38 CFR 3.306(b)

Wartime service; peacetime service after December 31, 1946, 38 CFR 3.306(b) (2014).

38 CFR 3.310(b)

Disabilities that are proximately due to, or aggravated by, service-connected disease or injury, 38 CFR 3.310 (b). This regulation can be viewed at this Government Printing Office website: http://www.gpo.gov/fdsys/pkg/CFR-2009-title38-vol1/xml/CFR-2009-title38-vol1-sec3-310.xml

38 CFR 4.9

Congenital or developmental defects, 38 CFR 4.9 (2014).

Legal Decisions

Allen v. Brown, 7 Vet. App. 439 (1995)

Allen v. Brown, 7 Vet. App. 439 (1995).

DeLuca v. Brown,(1995)

DeLuca v. Brown, 8 Vet. App. 202 (1995).

Horn v. Shinseki, (2010)

Horn v. Shinseki, 25 Vet. App. 231, 236 (2010).

Maxson v. Gober, (2000)

Maxson v. Gober, 230 F.3d 1330, 1333 (Fed. Cir. 2000).

Mitchell v. Shinseki, (2011)

Mitchell v. Shinseki, 25 Vet. App. 32 (2011).

Quirin v. Shinseki, (2009)

Quirin v. Shinseki, 22 Vet. App. 390, 396 (2009).

Viegas v. Shinseki, (2013)

Viegas v. Shinseki, 705 F.3d 1374, 1378 (Fed. Cir. 2013).

United States Code

38 U.S.C. 1111

Presumption of sound condition, 38 U.S.C. 1111 (2014).

38 U.S.C. 1153

Aggravation, 38 U.S.C. 1153 (2014).

Glossary

A

ACDUTRA

This abbreviation refers to active duty for training.

Adjudicate

Adjudicate means to decide judicially. For the Veterans Benefits Administration (VBA), adjudication is the process of weighing all evidence for a claim and determining the outcome. VA adjudicative staff include Rating Veterans Service Representatives (RVSRs) and Decision Review Officers (DROs), and if the claim is appealed, attorneys and judges.

Aggravation

Based on 38 CFR 3.306 and 38 U.S.C. 1153, aggravation is defined as permanent worsening of a) a pre-service condition during service or b) a nonservice-connected condition at any time by a service-connected condition. In either situation, the permanent worsening of the condition is not due to the natural progression of the condition.

B

BVA

The Board of Veterans' Appeals (BVA) is charged with making final decisions on behalf of the VA Secretary on appeals of benefit claims determinations made by local VA offices. The Veterans Law Judges who issue these decisions are attorneys experienced in veterans law and in reviewing benefit claims. Staff attorneys, also trained in veterans law, review the facts of each appeal, and prepare a draft decision for signature by a Veterans Law Judge.

Baseline Level of Severity

The baseline level of severity for a condition is the value representing a normal background level or an initial level of a measurable quantity and used for comparison with values representing response to an environmental stimulus or intervention.
Dorland's Medical Dictionary for Health Consumers.

C

C&P

Compensation is a monthly tax-free monetary benefit paid to Veterans disabled by injury or illness incurred in or aggravated during active military service. Disability compensation amounts vary with the degree of disability and the number of the Veteran's dependents. Pension benefits are tax-free monetary payments, specified by law, provided to wartime Veterans with limited or no income who are either aged 65 or older or who are permanently and totally disabled due to a nonservice connected cause. Seriously disabled or housebound Veterans receiving Pension may also qualify for an additional Aid and Attendance or Housebound benefit.

Compensation and pension (C&P) also refers to the VHA entity that provides disability evaluations, examinations, or opinions for Veterans and Servicemembers as part of the adjudication of a claim for VA disability benefits, if an evaluation, examination, or opinion is necessary to decide the claim. A disability evaluation is an assessment of the medical evidence, which may involve conducting an examination, providing an opinion, or both. A disability examination is a medical professional's personal observation and evaluation of a claimant. It can be conducted in person or by means of telehealth technologies. An opinion refers to a medical professional's statement of findings and views, which may be based on review of the claimant's medical records or personal examination of the claimant, or both.

C-file

Claims file, property of VBA, includes the legal records for a Veteran's claim(s). The C-file can be paper, electronic, or both.

CAVC

United States Court of Appeals for Veterans Claims (CAVC). The CAVC is an independent federal court, not part of the Department of Veterans Affairs.

CFR

Code of Federal Regulations

Clear and Unmistakable

"Clear and unmistakable" evidence means that the evidence "cannot be misinterpreted and misunderstood, i.e., it is undebatable." *Quirin v. Shinseki,* (2009)

D

DMA

The Office of Disability and Medical Assessment (DMA) is a VA national office that facilitates the disability examination process to support field compensation and pension (C&P) clinics and the Integrated Disability Evaluation System (IDES). DMA also provides advisory medical opinions for Veterans Benefits Administration and expert medical opinions for the Board of Veterans' Appeals in coordination with subject matter experts throughout the enterprise.

Documentation Protocol

A documentation protocol is a form used to gather data during a C&P examination for reporting purposes. A documentation protocol can be a Disability Benefits Questionnaire (DBQ) or an examination worksheet. Electronic documentation protocols are becoming more prevalent. Most documentation protocols can also be accessed and used as a paper document.

E

Evidence of Record

Evidence of record is documented evidence already in the Veteran’s or Servicemember’s C-file or in other electronic VA databases.

F

FOB

A forward operating base is a secure military position used to support tactical operations. Generally the FOB is supported by a main (permanent) base.

Flare-Up

A flare-up is any temporary or recurring significant increase in signs or symptoms associated with a condition.

H

Hawkins Test

The Hawkins test is used to identify possible subacromial impingement. Results are positive if the patient experiences pain with internal rotation. (This test is also known as the Hawkins-Kennedy test.)

I

INACDUTRA

This abbreviation refers to inactive-duty training.

L

Lachman Test

The Lachman test is to identify integrity of the anterior cruciate ligament (ACL). Results are positive for damaged ACL if excessive movement or the lack of a firm end-feel.

N

NSC

Nonservice-connected, usually describing a condition: NSC condition

Natural Progression

Natural history or natural progression of any condition is part of core knowledge in medical science and it enables clinicians to anticipate prognosis of a condition, and helps to identify factors that may alter its normal course.

Neer Test

The Neer test is used to identify possible subacromial impingement. Results are positive if pain is reported in the anterior–lateral aspect of the shoulder.

Noted

The legal term, noted, refers to a preexisting condition that was documented based on objective evidence by a clinician on a service entrance examination.

P

Permanent Profile

In certain cases, when a Servicemember has a condition that permanently prevents him or her from performing some tasks, a permanent profile may be issued for him or her. Two physicians must sign a permanent profile form.

Preexisting Condition

Preexisting condition refers to a condition that preexisted service. Either the condition was noted on an entrance examination by the examiner, or there is clear and undebatable proof that a condition preexisted service.

Presumption of Soundness

Presumption of soundness is a legal assumption made for policy reasons that VA employs for the benefit of the Veteran, whereby VA will consider a Veteran to have been in sound condition, i.e., good health, when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service.

If a condition is not noted on the claimant’s entrance examination report, then the claimant is presumed to have been in sound condition (in good health) when accepted into service. Presumption of soundness is only an issue if a condition manifests in service and it was not noted on the service entrance examination report.

Proximately due to

As used in the Code of Federal Regulations, proximately due to means a condition is caused by or etiologically related to another for purposes of service connection.

R

RVSR

Rating Veterans Service Representatives (RVSRs) serve as decision makers for claims involving rating decisions. RVSRs are responsible for analyzing claims, applying VA's Schedule for Rating Disabilities (Rating Schedule) and other regulations, and preparing rating decisions. These employees inform the Veterans Service Representatives (VSR) and/or claimant of the decision and the basis and reasons for the decision.

Remand

If the Board of Veterans' Appeals has made a determination that it needs additional evidence in order to fully or fairly adjudicate an appeal, the Board will issue a remand. A remanded appeal is an appeal that has been returned by BVA to VBA for the development of additional evidence, due process, or reconsideration of issues. The Request for Examination for a remanded examination will contain instructions from BVA for the examiner that must be followed, even if needed data goes beyond what is asked on a documentation protocol.

S

SC

Service-connected, usually describing a condition: SC condition

STRs

VBA defines Service Treatment Records (STRs) as the military health records for each Veteran. The STRs typically include information such as:

- Physical examinations, including entrance and discharge physical examinations, as needed
- The Veteran's medical history
- All dental examinations and records
- Clinical record cover sheets and summaries
- Entries from outpatient medical and dental treatments
- Physical profiles
- Medical board proceedings
- Prescriptions for eyeglasses and orthopedic footwear

Secondary (Allen) Aggravation

Secondary (Allen) aggravation is present when a nonservice-connected (NSC) condition is considered to be **permanently** made worse by a service-connected condition and there is no finding to indicate that the worsening of the NSC condition is due to its natural progression. Remember, temporary or intermittent flare-ups do not constitute permanent aggravation.

U

U.S.C.

United States Code

Unnoted

The legal term, unnoted, refers to a preexisting condition that was not documented based on objective evidence by a clinician on a service entrance examination report.

V

VA

United States Department of Veterans Affairs

VBA

The Veterans Benefits Administration (VBA) is responsible for providing a wide variety of benefits and services to Veterans and Service Members through Regional Offices. Major benefits provided by VBA and authorized by Congress include service connected disability compensation, non-service connected disability pension, burial assistance, survivors' benefits, rehabilitation and employment assistance, education and training assistance, home loan guarantees, and life insurance coverage.

VHA

The Veterans Health Administration (VHA) governs the medical treatment facilities within the Department of Veterans Affairs. With nationwide medical centers (VAMCs), VHA provides health care for Veterans. VHA manages one of the largest health care systems in the United States. VAMCs within a Veterans Integrated Service Network (VISN) work together to provide efficient, accessible health care to Veterans in their areas.

VSR

Veterans Service Representatives (VSRs) counsel claimants on eligibility for Veteran's benefits, process claim and non-claim actions, and control and process incoming and "at once" mail. VSRs prepare administrative decisions and process rating and non-rating decisions.