



# SERVING THOSE WHO SERVED REPRESENTING VETERANS AT THE VA

BY BRIAN K. WALKER

Few attorneys have ever taken a role in the claims adjudication process at the U.S. Department of Veterans Affairs (VA). Although some of the limitations that historically prevented attorneys from representing veterans before the VA have been lifted, there might never be a large number of lawyers representing veterans before the VA. VA practice is not particularly lucrative, veterans' law is complex, and the claims process can be lengthy. However, for lawyers who are willing to do the job, representing those who have served our country can be a very rewarding experience.

## VA BENEFITS AVAILABLE TO VETERANS

Many types of VA benefits are available to qualifying veterans.<sup>1</sup> Among the more important benefits are health care, education assistance, burial and spousal assistance, certain types of need-based pension benefits, and numerous types of life insur-

ance benefits. In addition, certain health care VA benefits are designed specifically for elderly veterans who need home health care or nursing home assistance, called "Aid and Assistance." However, the benefit most people associate with the VA is compensation for veterans with service-connected disabilities, commonly referred to as "VA disability," "compensation," or "service-connected disability."

Veterans who suffer from certain service-connected disabilities can, in some instances, be entitled to disability benefit payments. Service-connected disability benefits are typically paid through monthly benefits checks<sup>2</sup> and are exempt from state and federal income taxes. Unlike VA need-based disability pensions, these benefits are awarded regardless of the veteran's employability. These benefits are, in essence, personal injury awards created by Congress to reward the veteran for the physical sacrifice he or she made in service to our nation. For this reason, an individual



can potentially receive 100 percent service-connected disability compensation from the VA, while also collecting 100 percent disability compensation from the Social Security Administration.

Three basic elements are necessary for a veteran to be entitled to VA disability benefits. First, the veteran must suffer from a current recognizable disability. Second, the veteran must have suffered from an injury or disease that was *incurred* or was *aggravated* during a period of active duty service. Third, there must be a *nexus* connecting the current disability to the event that took place while the veteran was serving in an active duty capacity. Any injury that caused a disability during the time a veteran was in active service can be service-connected, regardless of whether the injury was caused by something related to military service. Surprisingly, veterans who were injured while doing non-military activities, like playing basketball, can be — and often are — entitled to benefits, as long as they were engaged in these activities during their active duty service commitment.

## THE HISTORY OF ATTORNEY INVOLVEMENT WITH VA CLAIMS

For years, many lawyers were apprehensive about representing veterans before the VA because federal policy discouraged lawyers from getting involved in the process. For decades, it was illegal for an attorney to charge more than \$10 to represent a veteran with his or her veteran's benefits claim.<sup>3</sup> In some instances, it could have been a criminal offense for an attorney to represent a veteran in his or her veteran's claim. From the early 1980s to the mid-1990s, federal policy slowly evolved to allow attorneys to become involved in the VA claims process, but only at the higher courts of appellate review. However, within the last several years, federal legislation has enhanced opportunities for lawyers to participate in the VA claims process.

Under the law today, VA-accredited attorneys<sup>4</sup> can assist veterans on a pro bono basis at all phases in the VA claims process. On June 20, 2007, Congress passed legislation making it legal for attorneys to represent veteran claimants in the disability claims process on a *paid* basis, as long as the veteran claimant has applied for benefits, been denied those benefits, and has filed a notice of disagreement with the VA.<sup>5</sup> Even though it is now legal for attorneys to handle VA benefits cases under the above circumstances, other hurdles may discourage some lawyers from becoming involved.

The complexities of VA claims law can be daunting to lawyers who are not seasoned in veterans' law. The length of time the adjudication process typically takes may make some attorneys reluctant to participate; it usually takes three to five years for most VA claims to reach resolution. Although veterans' law currently allows attorneys to charge a reasonable fee, VA policy dictates that a contingency fee of only 20 percent or less will be presumed to be reasonable in veterans' benefits cases.<sup>6</sup> Finally, in order to represent a veteran on a claim before the VA, an attorney must first become accredited by the VA.<sup>7</sup>

VA claims practice has come a long way in the last several years. After all, just four years ago it would have been illegal for

an attorney to be retained on a VA claim at the early stages of the process. This is a big step toward creating a system that favors, rather than hampers, the veteran's ability to obtain the benefits he or she deserves. Accredited attorneys who are willing to undertake the task can play a pivotal role in ensuring that those who have served our country are fairly compensated and receive the benefits they deserve.

## AN OVERVIEW OF THE VA

VA claims are initiated when a veteran files a claim at his or her local VA Regional Office (VARO), where the claim is processed by an individual claims adjudicator.<sup>8</sup> If the veteran is not successful after the claims adjudicator initially reviews the veteran's claim, the claim can be reviewed by another employee — called a Decision Review Officer (DRO) — at the VARO. In general, if the claim is denied at the VARO, the veteran has the right to appeal his or her claim to the Board of Veterans Appeals (BVA) in Washington, D.C.<sup>9</sup> If the claim is not successful at the BVA, the veteran can then appeal to the Court of Appeals for Veterans Claims (CAVC), also in Washington, D.C.

Unlike traditional legal practices, VA claims can be remanded to the VARO numerous times. It is not uncommon for a VA claim to make its way to the BVA and then be remanded to the VARO two or three times in the life of a VA claim. It is also



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possible for a previously denied claim to be resubmitted and reopened by the VA several times. *Res judicata* does not have the same effect on VA claims as it does in traditional civil law. There are few limitations to the veteran's right to re-file a previously denied claim. In fact, this happens on a regular basis several years after a previous VA denial.

## CONCLUSION

Although VA claims law is somewhat complex, and various factors have traditionally deterred attorney involvement, this area of practice can be very rewarding. The day-to-day work involved in representing veterans before the VA can be intellectually challenging, as well as satisfying. The ultimate reward is representing the men and women who have served our country.

## NOTES

1. The official VA website has an extensive list of veterans' benefits at [www.va.gov](http://www.va.gov).
2. Veterans have their disability rated by the VA on a scale from 10 percent to 100 percent, and the monetary amounts of their benefits vary depending on their individual rating. The pay scale is created using an unusual formula that is very counterintuitive to most practitioners. For example, an individual who receives a 50 percent rating is currently entitled to monthly benefit checks at around \$900, but someone who is considered 100 percent disabled is entitled to monthly benefit checks at almost \$3,000 per month.
3. See 38 U.S.C.S. §3405 (now codified, as amended by the VJRA, in 38 U.S.C.S. §5905 (Penalty for Certain Acts)).
4. See 38 C.F.R. § 14.629 (2009).
5. See Pub. L. No. 109-461, 120 Stat. 3403 (2006).
6. See *Lewis v. Brown*, 5 Vet. App. 151, 154 (1993).
7. See 38 C.F.R. §14.629(b)(2) (2009). Generally for an attorney to become accredited by the VA, he or she must be in good standing with a state bar, send in an application to the VA Office of General Counsel, pass a character and fitness determination, and complete a certain amount of hours of continuing legal education in veterans' law to maintain his or her accreditation.
8. The VAROs in Texas are in Waco and Houston. A VA representative can determine which VARO has jurisdiction over the veteran's claim.
9. Although the Board of Veterans Appeals (BVA) is located in Washington, D.C. and will hold hearings at its D.C. facilities, a veteran who desires BVA review of his or her claim has the right to request a travel board hearing or a video teleconference hearing held at his or her local VARO.



### BRIAN K. WALKER

is a partner in Walker & Walker in Burleson. He handles VA claims throughout the United States and serves as a judge advocate in the U.S. Air Force Reserve. He is chair-elect of the Tarrant County Bar Association's Texas Lawyers for Texas Veterans Committee.

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# VA ATTORNEY ACCREDITATION

Attorneys who want to assist with claims for U.S. Department of Veterans' Affairs (VA) benefits before the Board of Veterans' Appeals or VA Regional Offices must be accredited by the VA. According to the U.S. Department of Veterans Affairs website ([www.va.gov](http://www.va.gov)):

Accreditation means authority is granted by the VA to assist claimants in the preparation, presentation, and prosecution of claims for benefits. 38 C.F.R. §14.627(a). Unaccredited individuals may provide other services to veterans so long as they do not assist in the preparation, presentation, and prosecution of claims for benefits.

## INITIAL ATTORNEY ACCREDITATION REQUIREMENTS

An attorney should submit an application (VA Form 21a) to the VA Office of General Counsel, certify he or she is a member of good standing with a state bar, and receive an affirmative definition of character and fitness by the VA (presumed by VA based on state bar membership in good standing).

Once accredited, the attorney must complete three hours of continuing legal education during the first 12 months following the date of initial VA accreditation, and then show completion of the CLE in writing to the VA Office of General Counsel. TexasBarCLE ([www.texasbarcle.com](http://www.texasbarcle.com)) offers a three-hour Veterans Benefits Law course, which qualifies for the accreditation requirement.

## VA WEBSITE LINKS REGARDING THE ACCREDITATION PROCESS

### General Information

<http://www4.va.gov/ogc/accreditation.asp>

### FAQ

[http://www4.va.gov/ogc/accred\\_faqs.asp](http://www4.va.gov/ogc/accred_faqs.asp)

### VA Accreditation Form 21a

<http://www4.va.gov/OGC/docs/Accred/VA21a.pdf>

