

COMPENSATION AND PENSION EXAMS

An Agent Orange Widow's Opinion

In general, in order to qualify for VA benefits, a Veteran has to show three things. 1 - they have to show that something happened to them during military service. 2 - they have to show that something is bothering them **now** - a medical condition/diagnosis. 3 - the VA or a doctor has to agree that there is a connection between what happened to the Veteran in during military service and what is going on with the Veteran right now. That connection is sometimes referred to as a nexus (connection), so the letter a doctor might write for a Veteran is often called a nexus letter.

An Integral part of determining whether or not there is a connection between military service and a Veteran's current condition is the compensation and pension exam or C&P exam. This is the exam that the VA arranges (and pays for) with a qualified doctor or specialist who is familiar with the function of the body part that is bothering the Veteran now.

The medical opinion of the C&P examiner is critical in determining whether or not a veteran will receive the compensation that he/she earned. So it is vital to go to a compensation and pension exam well prepared. During our last Veterans, Friends & Family (VFF) meeting, we discussed the ins and outs of compensation and pension exams. These are the guidelines that we came up with:

1. Keep your original appointment if it is at all possible. Missing an appointment can significantly delay your claim process. The VA is facing a loss of 80,000 employees so it is likely that there will already be additional delays in the process.
2. Be polite. Assume the examiner wants to help you. Ask them to explain anything you don't understand. Take notes with you if you need them. **But**, if for some reason, you feel that the examiner is prejudiced against you, not listening to you, or not sympathetic to your situation, complete the interview anyway. But when you're done, ask to speak to the supervisor and have your negative experience documented.
3. Bring **favorable, relevant, medical opinions** with you. I know the appointment letter says not to bring any medical records, but my experience is that in about 1/3 of the time the examiner won't have your records.
4. If your primary/specialty doctor has written a letter, describing your condition and relating it to military service, be sure and bring that. Remember, your doctor only has to say that it is 50-50, or "as likely as not" "that your medical condition and your military experience are connected. If it is a 50-50 call, the benefit goes to the Veteran. It is also my opinion, that an examiner is less likely to contradict the written opinion of another doctor. Even if you have to pay out of pocket, it can be worth it to get a doctor's favorable opinion.
5. Bring another person with you. Often, the examiner will let your guest add additional facts, observations and opinions after they have finished examining and talking to you. You can also bring a VA Witness Statement (VA form 21-10240) or VA Statement in Support of Claim (VA form 21-4138).

6. Be sure to say a few words about your military occupational specialty or MOS. Your examiner may not have had any military experience at all. They may not have any idea what the conditions that you served under were like or what environmental exposures you had. Explain how your military service affected you.
7. Resist the urge to minimize your symptoms and pain/discomfort. This is not the time to be John or Jane Wayne. Tell it like it really is!
8. When talking about your pain/discomfort, it's important to keep in mind the words: frequency, duration, intensity, and effect.
 - Frequency - how often do you have this pain/condition? Hourly? Daily? Weekly?
 - Intensity - on a scale of 1-10, how bad is the pain/condition at its worst?
 - Duration - how often does the pain/condition last? All the time? Only at night? Multiple times during the day? Hours at a time?
 - Effect** - how does this condition interfere with your life? Can you still exercise? Can you still drive and take care of your home? Are you still comfortable going out and interacting with people? Do you hate to go to work, go out or do some activities because of the pain/discomfort/fear/hyper-vigilance? Do you feel angry all the time? How does your condition affect your spouse and family members? This is important - **the examiner needs to know how your condition interferes with your ability to work AND enjoy life?** Have lots of examples. This is how they determine your disability percentage.
9. Be sure and mention any secondary injuries. For example, if your right knee is bothering you due to a military injury, how is your left knee doing? Is it compensating for the pain in the right knee? How are your hips and your ankles feeling? You can get compensation for secondary conditions.

Finally, when you get your decision letter, be sure and read it carefully. The VA has to explain exactly how they made their decision and what evidence they looked at. Sometimes they get it wrong. I have seen situations where they described a right knee injury when it was really a left knee injury. I have seen situations where it's clear that they did not believe the Veteran was in Vietnam. I have seen situations where the Veteran sent in documentation and the VA claims never to have received it. I have seen situations where the VA did not look at the veterans service treatment records. You have 365 days to gather new evidence (or resend old information) and send in your appeal. If you are not happy with the rating or how the VA made their decision, **appeal it**. All of the above Veterans ended up getting disability or a higher VA rating.

In addition, the decision letter will let you know if you can add dependents to your claim (30% or higher rating) and when you can seek a higher rating. Remember, a 0% rating is good. You met the VA's 3 criteria (and the VA will treat you for this condition), but you have not demonstrated that the condition is interfering with your life to a compensable degree. Gather more information and **appeal**.