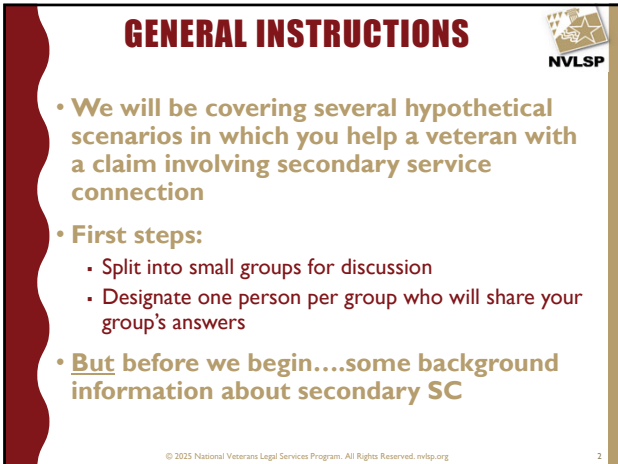



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38 C.F.R. § 3.310(a) 

- “Except as provided in § 3.300(c), disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered part of the original condition.”



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SECONDARY SC PRINCIPLES 

- Secondary disability = “any additional impairment of earning capacity resulting from an already service-connected condition, regardless of whether or not the additional impairment is itself a separate disease or injury.”

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SECONDARY SC 

- Secondary SC can be established:
 1. Where SC disability **CAUSES** (contributes to the creation of) a new disability, **OR**
 2. Where SC disability **AGGRAVATES** (worsens) a non-service-connected condition

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AGGRAVATION




- If SC condition **AGGRAVATES** a non-SC condition:
 - Vet can only be compensated for degree of disability over and above the degree of disability existing prior to aggravation
 - It doesn't matter when after service a secondary disability manifests, as long as there is sufficient medical evidence to establish that it is a result of the SC condition

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**38 C.F.R. § 3.310(b)
PROOF OF AGGRAVATION**



- VA will concede that secondary disability was *aggravated* by SC condition, only if baseline level of severity of the secondary condition is established by:
 - Medical evidence created before the onset of aggravation; or
 - The earliest medical evidence created at any time between onset of aggravation and receipt of medical evidence establishing the current level of severity of the non-SC disease or injury

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SC DISABILITY PREVENTS TREATMENT



Is secondary SC is available for a disability that can't be treated because of a SC disability?




What do
You think?

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Spicer v. McDonough
61 F.4TH 1360 (FED. CIR. 2023)




• **Facts:**

- **Vet SC for leukemia**
- **He was scheduled for knee replacement surgery, but it had to be canceled because his leukemia meds lowered his red blood cell levels too much**
- **He was expected to stay on the meds his entire life**
- **He sought SC for knee disability, but VA denied claim because inability to undergo knee surgery due to effects of leukemia meds wasn't w/in the meaning of secondary SC**

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Spicer v. McDonough



• **Vet argued that 38 U.S.C. § 1110 established entitlement to SC in his circumstances:**

- **§ 1110 provides compensation for Vets “[f]or disability resulting from personal injury suffered or disease contracted in line of duty”**
- **§ 1110 only required a worsening of functionality—whether through an inability to treat or a more direct, etiological cause**


• **Fed. Cir. agreed**



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Spicer v. McDonough



• **There was no textual or contextual indication dictating a narrow interpretation of “resulting from”**

- **The “but-for causation” standard not limited to a single cause/effect, but rather contemplates multi-causal links, including action or inaction**
- **The broad language of § 1110 applies to the natural progress of a condition not caused by a SC injury or disease, but that nonetheless would have been less severe were it not for the SC disability**
- **§ 1110 provides for compensation for a worsening of functionality—whether through an inability to treat or a more direct, etiological cause**

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ADVICE **ADVOCACY ADVICE** 

- Ask whether a service-connected disability
 - **CAUSED** (contributed to the creation of) a new disability,
 - **AGGRAVATED** a non-service-connected condition, or
 - **IMPEDED** the ability to treat a new condition
- Be mindful of such things as medication side-effects, as well as the inability to treat a non-SC condition

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**Recent CAVC Decision –
Secondary SC and Obesity**

Adams v. Collins
 Vet.App. No. 23-5064
 Decided: July 8, 2025

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Adams v. Collins 

- **Issue:**
 - Whether the VA correctly excluded obesity from those conditions that may be compensated as service-connected disabilities under 38 U.S.C. § 1110, including as a disability subject to secondary service connection?

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Adams v. Collins

• **Relevant Law**

- VA compensation is to be provided “[f]or disability resulting from personal **injury** suffered or **disease** contracted in line of duty”
 - 38 U.S.C. § 1110 (emphasis added)
- In the context of secondary service connection, 38 U.S.C. § 1110 requires compensation when a service-connected disease or injury is a but-for cause of a present day **disability**.”
 - *Spicer v. McDonough*, 61 F.4th 1360, 1364 (Fed. Cir. 2023)

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Adams v. Collins

• **Relevant Law**

- “[D]isability” in § 1110 refers to the functional impairment of earning capacity, not the underlying cause of said disability. Thus, pain can be compensated by VA in the absence of an underlying diagnosis if it results in functional impairment and there is a nexus between an in-service disease or injury and the current pain.
 - *Saunders v. McDonald*, 886 F.3d 1356 (Fed. Cir. 2018)
- Obesity is excluded from conditions compensated by VA. Obesity is not a “disability” or a “disease” for purposes of § 1110. Obesity is not generally considered a “disease,” but rather an excess accumulation of body fat, which does not usually result in impairment of earning capacity, but severe obesity impairs physical and social function.
 - VA Gen. Coun. Prec. Op. 1-2017 (Jan. 6, 2017)

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Adams v. Collins

• **Facts**

- Mr. Adams served in the U.S. Air Force from 10/1966 to 9/1970
- He filed a claim for SC for obesity as secondary to his SC PTSD in 3/2016, submitting a 2009 article that links cortisol, a hormone whose levels are said to increase with stress, with weight gain
- VA denied Vet’s claim in 4/2016
- Mr. Adams filed a supplemental claim for SC for obesity in 12/2019

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Adams v. Collins 

• Facts

- Records obtained in connection with Vet's 2019 claim included a 2016 VA treatment record, stating that he had "core weakness and postural changes due to obesity"
- RO found that no new and material evidence had been submitted. Mr. Adams appealed.
- BVA continued the denial, finding that obesity is not a disease or disability for VA purposes, and noted the G.C. opinion's conclusions. BVA also found that the record didn't show that obesity functionally impaired Vet's earning capacity.

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Adams v. Collins 

• CAVC Decision/Holdings

- Unlike BVA, the CAVC is not bound by GC precedent opinions. The weight the Court affords such opinions depends on their thoroughness, reasoning, and consistency with earlier and later pronouncements on the issue.
- VA GC did not correctly or persuasively interpret 38 U.S.C. § 1110 in its determination that obesity may not be considered a "disability."
 - Nothing in *Saunders* or any subsequent authority stands for the proposition that a condition is not a "disability" for purposes of § 1110 when only some, but not all, people with that condition are impaired by it.

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Adams v. Collins 

• CAVC Decision/Holdings (cont'd)

- "We hold that obesity may be a disability for purposes of section 1110 if it results in the functional impairment of earning capacity, . . . and that deciding whether a claimant's obesity causes functional impairment requires an 'individualized assessment' of the 'degree of impairment' caused by a claimant's obesity"

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Adams v. Collins 

• **CAVC Decision/Holdings (cont'd)**

- Although the Court found that obesity *may* be a “disability,” the Court further found no valid reason to invalidate the GC’s opinion that obesity is **not a “disease”** for purposes of § 1110
- Because direct service connection requires that a disability result from a “disease” or “injury” incurred in the line of duty, **VA can prohibit direct SC for obesity**

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Adams v. Collins 

• **CAVC Decision/Holdings (cont'd)**

- But, in the context of secondary SC, whether a disability such as obesity is itself a “disease” or “injury” incurred in the line of duty is irrelevant
- All that is required to establish secondary SC is evidence that a condition results in a “disability,” defined as functional impairment of earning capacity, and a “but-for” relationship between the disability and the SC disease or injury
- **G.C. opinion’s finding that obesity is not a disease for the purposes of secondary SC by aggravation is invalid**

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Takeaways 

- **Vets can be granted service connection for “obesity” under the theory of secondary SC (but not direct SC)!**
 - Obesity must be caused or aggravated by condition that is separately SC
 - Obesity must cause functional impairment of earning capacity
 - Present evidence of how obesity impairs Vet’s ability to work
 - Would be rated by analogy
 - Look at closely-related diseases or injuries that affect similar functions and have similar symptoms

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HYPO #1

SECONDARY SERVICE CONNECTION - SLEEP APNEA

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INITIAL MEETING WITH CLIENT

- Joe - Army Vet, was recently diagnosed with obstructive sleep apnea (OSA)
- He had a sleep study done in August 2025 that diagnosed OSA
- His physician blamed OSA on weight gain
 - Joe is 49 years old, and gained 30 pounds since his retirement from the Army in 2019
 - He is service-connected for multiple disabilities, including a right knee condition (he had a total knee replacement in 2022)
 - He also is service-connected for major depressive disorder with a 70% rating

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INITIAL MEETING WITH CLIENT

- Joe wants to know whether service connection can be established for OSA
- He wasn't sure whether SC can be granted for OSA, since he leads a sedentary lifestyle and "really should get back to the gym"
 - However, he admits that he's lacked the motivation to go back to the gym
 - He's also in a lot of pain due to his right knee disability – his right knee "isn't the same" since the surgery

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SMALL GROUP BREAKOUT 

- What should you do first?
- What questions do you need to ask Joe?
- What information (or records) do you need to see?
- Is service connection for **OSA** even possible, because Joe’s doctor connected it to his weight?


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DISCUSSION 

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OBESITY AS AN INTERMEDIATE STEP 

- Even before *Adams v. Collins*, VA recognized that “obesity,” may be an “intermediate step” between SC disability and a current disability that may be SC on a secondary basis under 38 C.F.R. § 3.310(a) and be subject to payment of compensation
 - VA G.C. Prec. Op. 1-2017; *Walsh v. Wilkie*, 32 Vet. App. 300 (2020); *Garner v. Tran*, 33 Vet. App. 241 (2021)

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3 QUESTIONS




1. Did SC disability cause the Vet to become obese, or aggravate the Vet's obesity (make it worse than it would be otherwise)? If yes...
2. Was the obesity a substantial factor in causing the non-SC disability, e.g., OSA? If yes...
3. Would the non-SC disability not have occurred but for the obesity? If yes...

- Then service connection can be granted for the disability caused by the obesity!

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CAUSES OF OBESITY




- Obesity might be caused by:
 - SC physical disability (back, knees, feet, etc.) that causes inability to exercise / stay active
 - SC mental disability that causes Vet to overeat
 - SC hypothyroidism, Cushing's syndrome, etc.
 - Meds (some anticonvulsants, corticosteroids, diabetes meds, HTN meds, etc.) used to treat SC conditions
 - Check side-effects

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CONDITIONS LINKED TO OBESITY




- Obesity might cause or aggravate conditions including:
 - Sleep Apnea – DC 6847
 - Hypertension – DC 7101
 - Heart Disease – DC 7000-7020
 - Diabetes Mellitus – DC 7913
 - Stroke – DC 8007-8009
 - Gout – DC 5017
 - Gallbladder Disease / Gallstones – DC 7318
 - Osteoarthritis – DC 5000
 - Asthma – DC 6602
 - Some cancers – Various DCs

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OBSTRUCTIVE SLEEP APNEA AND OBESITY




- OSA is the most common form of sleep apnea
- It occurs when the muscles in the back of the throat relax during sleep, narrowing or closing the airway. This causes the person to not get enough air and lowers the oxygen level in the blood, which causes the person to briefly awaken to reopen the airway.
- The primary risk factor for OSA is obesity, as fat deposits around the upper airway can obstruct breathing
- VA examiners often state that OSA is caused by obesity
 - See www.mayoclinic.org/diseases-conditions/sleep-apnea/symptoms-causes/syc-2037763

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ADVOCACY ADVICE





- Get medical opinion stating that it is “at least as likely as not” (50% or greater probability):
 - SC disability caused obesity or made obesity worse than it would be if Vet did have the SC disability, AND
 - Obesity was a substantial factor in causing the non-SC condition (e.g. OSA), AND
 - The non-SC condition (e.g. OSA) would not have occurred but for the obesity

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ADVOCACY ADVICE

- If medical expert can't provide that strong an opinion, get opinion that that it's at least as likely as not that:
 - SC disability caused, contributed to, or aggravated Vet's obesity

AND

 - Obesity caused or aggravated the non-SC condition
- Remember, if SC condition causes or aggravates obesity, which causes or aggravates another condition such as OSA, Vet can receive SC disability benefits for BOTH obesity and the condition caused or aggravated by the obesity

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HYPO #2

SECONDARY SERVICE CONNECTION - PRIMARY AND SECONDARY CONDITIONS

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INITIAL MEETING WITH CLIENT

- **Mary, an Air Force Vet, served on active duty from 9/2020 to 9/2024**
 - She had abnormal blood sugar readings during service, and was diagnosed with Type 2 Diabetes Mellitus on a routine physical in May 2025
 - She is currently on a restrictive diet and takes oral hypoglycemic medications (she is not on insulin)
 - She has been diagnosed with early-stage diabetic retinopathy
- **In 6/2025, before seeing you, she filed a claim for SC for her diabetes mellitus. She did not claim SC for any other disabilities.**

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SMALL GROUP BREAKOUT

- **Because Mary claimed SC benefits for only "diabetes mellitus," is VA required to consider whether Mary is entitled to benefits for conditions secondary to diabetes?**
- **Did Mary do the right thing by not claiming benefits for conditions secondary to diabetes?**
 - Should she wait until SC is granted for the underlying diabetes?
 - Or should she have listed her secondary eye condition on the claim form along with "diabetes mellitus"?

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DISCUSSION




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SCOPE OF CLAIMS



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- **Once VA receives a complete claim:**
 - **VA will consider all lay and medical evidence of record in order to adjudicate entitlement to benefits for the claimed condition as well as entitlement to any additional benefits for complications of the claimed condition, including those identified by the rating criteria for that condition in the VA Schedule for Rating Disabilities**
 - 38 C.F.R. § 3.155(d)(2)
 - **The ordinary meaning of “complications” in § 3.155(d)(2) encompasses disabilities caused or aggravated by treatment for a SC disability**
 - *Bailey v. Wilkie*, 33 Vet. App. 188, 200 (2021)

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SCOPE OF CLAIMS




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- **“VA is required to develop and adjudicate related claims for secondary service connection for disabilities that are reasonably raised during the adjudication of a formally initiated claim for the proper evaluation level for the primary service-connected disability.”**
 - *Bailey v. Wilkie*, 33 Vet. App. 188, 203 (2021)

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REASONABLY RAISED THEORIES OF SERVICE CONNECTION 

- VA has a duty to address all issues **reasonably raised** either by the claimant or by the contents of the claims file.
 - *Robinson v. Mansfield*, 21 Vet.App. 545 (2008)
- It is entirely possible that the c-file might 'indicate' a theory of entitlement, but that a claimant might not be sophisticated enough to recognize the theory
 - *Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009)

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REASONABLY RAISED THEORIES OF SERVICE CONNECTION 

- “[U]pon the filing of a claim for benefits, the Secretary must investigate the reasonably apparent and potential causes of the veteran’s condition and theories of service connection that are reasonably raised by the record or raised by a sympathetic reading of the claimant’s filing.”
 - *Delisio v. Shinseki*, 25 Vet.App. 45, 53 (2011)

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HYPO #3 

SECONDARY SERVICE CONNECTION – AGGRAVATION

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INITIAL MEETING WITH CLIENT 

- Mike served on active duty in the Army from 1/2002 to 1/2010
 - Mike injured his right knee when landing from a parachute jump during active service
 - He has been service-connected for his right knee disability, rated at 20%, for the past 15 years
 - He is now 43 years old
 - He was always active before and during service—for example, he was an expert skier
 - Since his knee injury, he has been unable to ski and has led a relatively sedentary life since service

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INITIAL MEETING WITH CLIENT 

- Last spring, Mike began experiencing severe chest pain
- Cardiac testing revealed a 98% blockage and he underwent triple bypass surgery
- Mike's doctor advised him that, due to his family history of heart disease, he would have likely required bypass surgery at some point during his lifetime, but he developed it sooner than he would have because of reduced activity caused by his knee disability
- Mike's doctor was frustrated with Mike's progress in cardiac rehab, because he could not perform a key aspect of his recommended treatment—brisk walking daily—because of his knee disability

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INITIAL MEETING WITH CLIENT 

- You found out about all of this when Mike stopped by your office to obtain some paperwork to renew his veterans license plate
- When you asked, "How've you been doing?," he told you about his recent health problems
- He then asked you whether service connection can be granted for his heart condition, even though heart disease runs in his family and he would have likely needed bypass surgery at some point in his life

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SMALL GROUP BREAKOUT 

- **Can Mike get SC disability benefits for the residuals of his bypass surgery?**
 - Does it matter that there was no direct cause-and-effect relationship between his military service and his heart problems?
 - What about the fact that heart disease runs in his family?
- **How would you approach Mike's case?**
 - Should you look the relationship between his knee condition and his lack of activity and whether it led to his heart condition?
 - Or should you look at the effects of the knee condition on his cardiac rehabilitation?
 - What evidence should you try to obtain to build the case?


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DISCUSSION 

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SMALL GROUP BREAKOUT 

- **What arguments should you raise in support of the claim?**
 - What legal support can you rely on?
 - Will VA really grant a claim like this? What if VA denies the claim?

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HYPO #4

SECONDARY SERVICE CONNECTION – SECONDARY MENTAL CONDITIONS




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INITIAL MEETING WITH CLIENT




- **Tim served on active duty in the Army from 5/2005 to 5/2009. He tells you:**
 - He sustained back and left knee injuries during combat service
 - He has been SC for back and left knee disabilities since 2019, both rated 20% disabling
 - He takes medication for his back and knee, but still experiences a lot of pain
 - He was previously very active. He was a well-paid TV stunt man for many years (wow!) and now has to serve as a prop-master and production assistant. He says, “work is work, but it’s not the same”
 - He has always been prone to depression, but between his chronic pain—and career disappointment—he has started seeing a therapist and is taking medication for the depression

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SMALL GROUP BREAKOUT 

- How do you approach Tim’s case?
- What questions would you want to ask Tim in building the case?
- What about the fact that he worked as a stunt man after military service?


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DISCUSSION 

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SECONDARY MENTAL CONDITIONS 

- Chronic physical medical conditions, including chronic pain caused by those conditions, often lead to secondary mental disabilities
- The most common mental conditions secondary to physical conditions are depression and anxiety
- Always consider whether a Vet may suffer from a mental disability secondary to a SC physical disability and file a VA claim accordingly

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Questions?

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