

**NVLSP**  
NATIONAL VETERANS LEGAL SERVICES PROGRAM

# THE POWER OF SECONDARY SERVICE CONNECTION

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# PRESENTER: ALEXIS IVORY





- Senior Staff Attorney  
NVLSP Training Dep't and  
Lawyers Serving Warriors
- Previously served as  
Counsel to BVA
- Helped develop NVLSP's VA  
Benefits Identifier App
- Veterans Benefits Manual  
author

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# TOPICS TO COVER

- Back to Basics
- Claims
- Medical Opinions
- Medication
- Obesity
- Mental Conditions
- Drugs/Alcohol

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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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## TIMING OF DX AND GRANT OF SC



What if a secondary condition is diagnosed BEFORE the primary condition is service connected?



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## TIMING OF DX AND GRANT OF SC



- 11/1972-9/1980: Vet served in the Army
- 2/1980: Vet was involved in train accident, injuring shoulder and leg
- Received 2 Article 15 punishments for fighting
- 11/1982: Vet in altercation that led to GSW to neck
- 10/1983: Treatment record noted that Vet displayed "a lot of psychological problems"

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## TIMING OF DX AND GRANT OF SC



- 6/2001: Vet filed claim for SC for PTSD due to in-svc train accident
- 6/2002 VA exam:
  - Examiner diagnosed PTSD and stated PTSD symptoms had persisted for 20 years (i.e., since 6/1982)
- 7/2002: VA grants SC for PTSD
- 12/2005: Vet filed claim for SC for GSW residuals secondary to PTSD
  - Argued he was suffering PTSD at time of 1982 GSW and he got into altercation because of PTSD

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## TIMING OF DX AND GRANT OF SC



- 4/2015 – BVA denied SC for GSW residuals:
  - Records of 1982 incident did not suggest or confirm Vet's assertions that behavior was due to PTSD
  - No evidence that the incident was caused by PTSD
  - First PTSD dx in 2002
  - Although 10/1983 tx record noted Vet had "a lot of psychological problems," there was no indication he had symptoms in 11/1982
  - PTSD could not reasonably be associated with the GSW
  - VA exam not warranted

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## TIMING OF DX AND GRANT OF SC



- At CAVC:
  - VA argued 38 C.F.R. § 3.310(a) would preclude Vet from secondary SC on causation basis, if primary condition not service connected, or even diagnosed, at the time the secondary condition was incurred

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## TIMING OF DX AND GRANT OF SC



### • CAVC held:

- § 3.310(a) is clear that for Vet to receive secondary SC on a causation basis, the primary disability need not be SC, or even diagnosed, at the time the secondary condition is incurred

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## TIMING OF DX AND GRANT OF SC



### • CAVC rationale:

- Vet may file for SC for a primary condition and not receive a final determination until much later
- Vet has no obligation to file a compensation claim as soon as Vet becomes aware of disability
- Vets may suffer symptoms of not-yet-diagnosed disability some time before they file claim and are granted SC

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## FROST V. SHULKIN, 29 VET. APP. 131 (2017)



- Secondary SC can be granted even if primary disability is **NOT SC** at time of first symptoms or diagnosis of secondary disability
- Secondary SC can be granted even if primary disability is **NOT DIAGNOSED** at time of first symptoms or diagnosis of secondary disability
- Get medical opinion stating secondary disability was caused or aggravated by (a) a later diagnosed SC disability, or (b) a later granted SC disability

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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?



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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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## 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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## SECONDARY SC CLAIMS



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# CLAIMS



▪ If filing a claim for a primary disability, you should also list on the claim form any disabilities that might be secondary to the primary condition

- Review Vet's medical records
- Ask Vet about possible secondary conditions
- Ask Vet about side effects of medication for claimed disabilities
- Think outside the box, for example:
  - Did knee disability cause fall that resulted in wrist injury?
  - Did meds for SC disability cause drowsiness that caused a car accident?

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# CLAIMS



- Note the theory on the claim form
  - Claim as "[secondary disability], caused or aggravated by [primary disability]"
  - Can also list other possible alternative theories, such as direct, presumptive, etc.
- DO NOT WAIT until primary disability is SC to file claims for secondary conditions!
  - File claims together or you might cost the Vet several month's of benefit

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# CLAIMS



▪ But, if you don't list all secondary conditions on the claim form, because you don't know about them (or incorrectly thought SC for the primary condition needed to be granted before filing the secondary claim), you should be protected if evidence of record shows that there are unclaimed conditions secondary to the claimed disability

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# SCOPE OF CLAIMS



- 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 service-connected disability
    - Bailey v. Wilkie*, 33 Vet. App. 188, 200 (2021)

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# SCOPE OF CLAIMS



- “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 SC



- 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 SC



- “[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



- Vet files claim for SC for a right knee condition. He asserts that it is directly the result of an injury he suffered during his military service.
- Vet submits a private treatment record in which doctor indicates that right knee condition is the result of his right hip condition, which is service-connected

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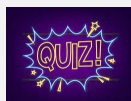
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## SURVEY #1



- Even though Vet never filed claim for secondary SC, does VA need to address secondary SC?

- A. Yes, it is reasonably raised
- B. Yes, VA must always address all SC theories
- C. No, Vet didn’t claim secondary SC



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ANSWER





Yes – it is reasonably raised

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EXCEPTION TO ALL THEORIES



- Distinction between claim for SC disability comp under 38 U.S.C. § 1110 and a claim for comp for disability caused by VA medical care, etc. under 38 U.S.C. § 1151
- Vet claimed SC for depression as directly due to military service
- Medical evidence indicated that depression was related to impotence, for which he was receiving comp under § 1151
- Vet first argued that he was entitled to VA benefits for depression as secondary to impotence at the CAVC
- CAVC would not decide the claim for secondary SC under § 1151, because it was distinct from a claim for VA benefits under § 1110 and had not been adjudicated by VA
- *Anderson v. Principi*, 18 Vet. App. 371 (2004)

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ADVOCACY ADVICE

- If VA issues a rating decision that fails to address a reasonably raised claim for SC for a condition as secondary to an expressly claimed disability (or fails to address an expressly raised secondary SC claim):
  - File request for HLR (or possibly a CAR) if evidence of record is strong
  - If additional evidence is needed to support claim, file a supplemental claim

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## ADVOCACY ADVICE

- With either review request, submit argument that:
  - The [date] rating decision was erroneous because it failed to award SC for [secondary disability].
  - The issue of secondary SC for [secondary disability] was within the scope of the claim for SC for [primary disability], because the medical evidence of record establishes that [secondary disability] is a complication of [primary disability]. See 38 C.F.R. § 3.155(d)(2).
  - Additionally, the issue of secondary SC was reasonably raised by the evidence of record. [Discuss supporting evidence and cite caselaw earlier in this section].

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## MEDICAL OPINIONS

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## MEDICAL OPINIONS

- Medical evidence is almost always needed to show that a condition is secondary to the SC disability
  - Usually an expert stating that claimed secondary condition was caused or aggravated by primary SC condition
  - If possible, Vet should get opinion from a private medical expert
    - Make sure expert:
      - Uses the correct standard
      - Gives a rationale for BOTH causation and aggravation, as needed
      - Cites medical literature – this can include literature they find, you find, or that any other medical opinion (especially negative) cites
      - Discusses any negative opinions and why he/she doesn't agree

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## MEDICAL OPINIONS



### • Burden of Proof

- Medical Evidence must show that it is at least “as likely as not” (50% or greater probability) that the primary SC condition, or its treatment, **CAUSED OR AGGRAVATED** the claimed disability
- VA examiners frequently fail to address both prongs (usually aggravation)

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## *EL-AMIN V. SHINSEKI*, 26 VET. APP. 136 (2013)



- Vet SC for PTSD at 70% during lifetime
- Vet suffered from alcoholism
- Vet died in 2006 due to hepatic cirrhosis
- Widow filed for DIC, arguing that Vet's PTSD aggravated his alcoholism, which led to the cirrhosis

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## *EL-AMIN V. SHINSEKI*



- VA obtained a medical opinion on the cause of death:

“there is no confirmatory or supportive evidence that the veteran's PTSD caused his alcohol abuse, and thus it is NOT at least as likely as not that the veteran's PTSD caused his alcohol abuse. Conversely, it is more likely than not that the veteran's alcohol abuse was related to factors other than the veteran's PTSD.”

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## EL-AMIN V. SHINSEKI



### • CAVC:

- VA opinion inadequate because examiner only clearly addressed causation, but not aggravation
- At best, examiner opined Vet's alcohol abuse was aggravated by ("related to") factors other than PTSD, which does not rule out the possibility that it was also aggravated to some degree by PTSD; the examiner only opined that the alcoholism was not "caused" by PTSD
- BVA's conclusion that the exam was adequate on the question of aggravation was erroneous

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## EL-AMIN V. SHINSEKI



- A VA examiner is not necessarily required to provide an opinion on aggravation in all cases
- However, if the issue of aggravation is reasonably raised by the Vet or the evidence of record, such an opinion is required

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## EL-AMIN V. SHINSEKI



- In nearly all cases involving secondary SC, ensure the Vet alleges the claimed condition "was caused by or is aggravated by" the primary SC condition
- That way, VA exam must address both theories or it will be considered inadequate

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## ADVOCACY ADVICE



- When filing a secondary SC claim (or at some point during the pendency of the claim), advocates should explicitly raise the issues of both causation and aggravation by submitting the following statement to VA:
  - The veteran alleges that their [secondary condition] has been **caused** or **aggravated** by their service-connected [primary condition].
- By doing so, it will require VA to obtain an exam addresses both theories, or it will be considered inadequate

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## ADVOCACY ADVICE



- If examiner provides opinion on causation and aggravation, make sure rationale supports both theories, not just causation
- If not, opinion is inadequate



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## ADVOCACY ADVICE



- When attempting to obtain a private medical opinion, be sure to ask the examiner to address both causation and aggravation where appropriate
- We will discuss numerous disabilities that are commonly secondary to other conditions, which can be a starting point for your analysis of whether a secondary SC claim is warranted

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# ADVOCACY ADVICE

Additional resources include reputable medical websites, such as:

- Mayoclinic.org
- www.nihlibrary.nih.gov
- www.medlineplus.gov
- www.webmd.com
- cdc.gov

But each case is unique and depends on what conditions treatment records and medical opinions reveal as being secondary to the primary condition

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# MEDICATION



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# MEDICATION

If Vet is taking medication for SC disability and that medication causes or aggravates a different disability, the different disability can be SC on a secondary basis.



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## MEDICATION

- **Example:**
  - In 1949, a World War II Vet was awarded SC for tuberculosis that he developed during service
  - Vet treated his tuberculosis with a medication that is known to cause tinnitus
  - Vet submitted several medical opinions that stated his tinnitus was a result of the tuberculosis meds
  - VA found that the Vet's tinnitus was the result of the treatment for his SC tuberculosis and awarded him SC for tinnitus
    - *Wanner v. Principi*, 17 Vet. App. 4 (2003)

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## HYPO

- Vet filed a claim for SC for GERD "due to the medication I was prescribed by the VAMC for my SC conditions"
- At VA exam, examiner:
  - Did not review c-file
  - Spoke with Vet
  - Listed past and current meds and the SC disabilities for which meds were prescribed
  - "My evaluation at present is GERD as per history. Normal GI series and normal CBC. No connection between vet's GI symptoms and service connected disorders."

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## HYPO

- VA denied SC and found "no evidence which suggests that the Veteran's meds for his SC disabilities have resulted in the development or worsening of GERD"
- VA relied on a lack of evidence indicating a connection between Vet's meds and GERD, and the VA examiner's conclusion that the Vet's GERD was not related to his SC disorders

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# SURVEY #2

• Was the VA medical opinion adequate?

A. Yes – it addressed the meds

B. No – opinion did not address SC due to meds

C. Not sure

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# HYPO

• VA medical opinion was too conclusory.

• It did not adequately discuss the disability, and did not specifically address whether it was caused by Vet's meds

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COMMON MEDICATION SIDE EFFECTS		
Service-Connected Condition	Medication for Primary SC Condition	Potential Secondary SC Condition
Mental Health Disabilities (DC 9201-9440)	Psychotropic Medications (5 classes)	<ul style="list-style-type: none"> <li>Erectile Dysfunction (DC 7522 - SMC)</li> <li>GI Conditions               <ul style="list-style-type: none"> <li>GERD (DC 7346)</li> <li>IBS (DC 7319)</li> <li>Acid Reflux (DC 7346)</li> </ul> </li> <li>Headaches (DC 8100)</li> <li>Vertigo (DC 6204)</li> <li>Seizures (DC 8910)               <ul style="list-style-type: none"> <li>Specifically Benzodiazepines for anxiety</li> </ul> </li> </ul>
Orthopedic Conditions (DC 5000-5298)	Opioids/Pain Medication	<ul style="list-style-type: none"> <li>Erectile Dysfunction (DC 7522 - SMC)</li> <li>Headaches (DC 8100)</li> <li>Vertigo (DC 6204)</li> </ul>

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COMMON MEDICATION SIDE EFFECTS		
Service-Connected Condition	Medication for Primary SC Condition	Potential Secondary SC Condition
Hypertension (DC 7101)	High Blood Pressure Medications	<ul style="list-style-type: none"> <li>Erectile Dysfunction (DC 7522 - SMC)</li> <li>GI Conditions               <ul style="list-style-type: none"> <li>GERD (DC 7346)</li> <li>IBS (DC 7319)</li> <li>Acid Reflux (DC 7346)</li> </ul> </li> <li>Headaches (DC 8100)</li> <li>Vertigo (DC 6204)</li> </ul>

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## ADVOCACY ADVICE

- Conduct research to see if meds Vet takes for SC disabilities might cause secondary disabilities
- If Vet has any of those disabilities, file claim for secondary SC and provide info about side-effects of meds
- Should trigger VA exam, but try to get private supporting medical opinion



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# SURVEY #3

• Can a Vet be service connected for obesity?

A. Yes

B. No

C. Not sure

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# ANSWER

• Vets can have obesity designated as a service-connected disability

• VA must find that the obesity constitutes a “disability” (i.e., it causes the Vet to have functional impairment of earning capacity)

• VA must find that it is caused or aggravated by an in-service event, disease, or injury, or another SC disability

• *Larson v. McDonough*, 10 F.4th 1325 (Fed. Cir. 2021)

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# SURVEY #4

• Can a Vet receive service-connected disability *compensation* for obesity?

A. Yes

B. No

C. Not sure

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ANSWER

- Although Vets can have obesity designated as SC, it is not an independent, ratable disability listed in the VA's rating schedule, so Vets can't receive compensation or a rating for obesity
- But, there are ancillary benefits to which a Vet with an un-ratable SC disability may be entitled, such as:
  - Priority access to VA health care
  - Preference in Federal hiring
- Larson v. McDonough*, 10 F.4th 1325 (Fed. Cir. 2021)

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OBESITY & MANUAL M21-1

- Manual M21-1 has not been updated since Fed. Cir. issued *Larson*, and still states that obesity *per se* is not a disease or injury for the purposes of 38 U.S.C § 1110 and 38 U.S.C. § 1131, and therefore may not be SC on a direct basis
- Manual M21-1 directs that if obesity resulting from an SC disease or injury is found to produce impairment beyond that contemplated by the applicable provisions of the rating schedule, consider an extra-schedular rating under 38 C.F.R. § 3.321(b)(1) for SC based on that impairment
- Manual M21-1,V.ii.3.C.3 (change date Nov. 8, 2021)

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OBESITY AS AN INTERMEDIATE STEP

- VA recognizes 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 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 that it would be otherwise)? **If yes...**
2. Was the obesity a substantial factor in causing the non-SC disability? **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 & 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-20377631](http://www.mayoclinic.org/diseases-conditions/sleep-apnea/symptoms-causes/syc-20377631)

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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



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# MENTAL CONDITIONS

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# SECONDARY MENTAL CONDITIONS

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

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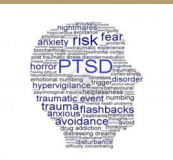
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# DISABILITIES THAT MAY BE SECONDARY TO PTSD

- Heart Disease – DC 7000-7020
- Hypertension – DC 7101
- Headaches – DC 8100
- Erectile Dysfunction – DC 7522 - SMC
- Female Sexual Arousal Disorder – DC 7632
- Sleep Apnea – DC 6847
- Gastrointestinal Disorders – DC 7319, DC 7436
- Chronic Pain – Various DCs; Joint DCs 5235- 5298



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## HEART DISEASE / HYPERTENSION AND PTSD



- Some studies have shown that PTSD might cause or aggravate hypertension
- A study of Vietnam-era vets indicated early-age heart disease may be an outcome after military service among PTSD positive vets
- A Prospective Study Of PTSD And Early-age Heart Disease Mortality Among Vietnam Veterans: Implications For Surveillance And Prevention by Boscarino JA (2008)

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## HEART DISEASE / HYPERTENSION AND PTSD



- When VA established hypertensive vascular disease as a presumptive disease in former POWs, VA relied on several studies finding that PTSD was a risk factor for hypertension
- VA cited a 2003 VA study that found a “statistically significant” increase in incidence of hypertension and chronic heart disease among World War II Vets with PTSD
- VA also cited a 1997 study finding that Vietnam Vets diagnosed with PTSD had a significantly increased risk of circulatory disease many years after service
- Presumptions of Service Connection for Diseases Associated With Service Involving Detention or Internment as a Prisoner of War, 69 Fed. Reg. 60,083, 60,087 (Oct. 7, 2004)

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## HEART DISEASE / HYPERTENSION AND PTSD



- A 2019 study found that PTSD, by itself, does NOT raise the risk of heart disease in Vets, but
- Vets with PTSD were 41% more likely to develop circulatory and heart disease than those without PTSD
- Vets with PTSD had significantly higher rates of smoking, depression, anxiety disorders, sleep disorders, type 2 diabetes, obesity, high blood pressure, and high cholesterol than those without PTSD
- A combination of physical disorders, psych disorders, and smoking, which are more common in patients with PTSD vs. without PTSD, appear to explain the association between PTSD and developing CVD

• Jeffrey Sherrer, et al., Comorbid Conditions Explain the Association Between Posttraumatic Stress Disorder and Incident Cardiovascular Disease, Journal of the American Heart Association (Feb. 13, 2019)

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## HEART DISEASE / HYPERTENSION AND PTSD



- This study can be used to support a link between PTSD and hypertension and heart disease, but with an added step. For example:
  - PTSD -> obesity -> HTN / heart disease
  - PTSD -> smoking (self medication) -> HTN / heart disease
  - PTSD -> sleep disorder -> HTN / heart disease
- This study and others don't show causation, just higher incidence of these diseases in Vets
- Still need medical nexus opinion, but studies may be used to support a favorable medical opinion

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## ADVOCACY ADVICE



- Submit to VA articles/studies that show connection between PTSD and HTN/heart disease
  - PTSD Research Quarterly Vol. 28/No. 1 2017, *Posttraumatic Stress Disorder and Cardiovascular Disease* – discusses different studies with excerpts
- If VA examiner does not discuss the studies, then argue the opinion is inadequate
- Submit private medical opinion that discusses these studies

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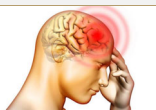
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## HEADACHES & PTSD



- Vet applied for SC for headaches secondary to PTSD
- A VA examiner opined that the headaches were a symptom of PTSD and not a separate disability
- BVA denied SC, stating that headaches are a symptom of PTSD and not a separate and distinct organic disability
- CAVC found that this was NOT an adequate reason to deny SC
  - “Organic disability” is not required!

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## ADVOCACY ADVICE



- For a secondary SC claim, you do not need to prove there is a separately diagnosed disease
- You must prove there is a separate “disability” which causes additional impairment in earning capacity
- Multiple studies link PTSD and headaches. Submit them to VA so VA examiners and VA must discuss them

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## ARTICLES ABOUT HEADACHES AND PTSD



- Headaches were one of the “common medical disorders and physical health-related complaints” in Vietnam Vets with PTSD
  - Brett T. Litz, Terence M. Keane, Lisa Fisher, Brian Marx, and Valerie Monaco, “Physical Health Complaints in Combat-Related Post-Traumatic Stress Disorder: A Preliminary Report”, Journal of Traumatic Stress, 5(1): 131-41 (Jan. 1992)
- Headaches are the second most common pain complaints in patients with PTSD
  - Carrie-Ann Gibson, “Review of Posttraumatic Stress Disorder and Chronic Pain: The Path to Integrated Care”, Journal of Rehabilitation Research & Development, 49(5): 753-76 (2012)

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## ERECTILE DYSFUNCTION & PTSD



- Vet applies for SC for ED secondary to PTSD
- BVA denied claim because it is a “physiological manifestation of the Veteran’s psychological stress produced by PTSD and not an organic disease”
- This is not an acceptable reason to deny SC, because an organic disease is not required to establish secondary SC

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## ADVOCACY ADVICE



- Look to see if a side effect of any psychiatric medication is ED
- Multiple studies link PTSD and ED. Submit some so that VA examiners and adjudicators must discuss them



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## PTSD AND ED STUDIES



- VA Institutional Review Board found the rate of ED was 85% in combat Vets w/ PTSD, and only 22% in those w/out PTSD
  - Daniel J. Cosgrove, et al., "Sexual Dysfunction in Combat Veterans with Post-Traumatic Stress Disorder", *UROLOGY* 60(5): 881-4 (Nov. 2002)
- Iraq and Afghanistan Vets w/ PTSD were more likely to have a sexual dysfunction diagnosis, be prescribed meds for sexual dysfunction, or both, compared with Vets having a mental diagnosis other than PTSD or no mental health diagnosis
  - Benjamin N. Breyer, et al., "Sexual Dysfunction in Male Iraq and Afghanistan War Veterans: Association with Posttraumatic Stress Disorder and Other Combat-Related Mental Health Disorders: A Population-Based Cohort Study", *Journal of Sex Medicine*, 11(1): 75-83 (Jan. 2014)

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## PTSD AND ED STUDIES



- Data from four Institutional Review Board-approved studies involving Vets confirmed that both PTSD status and symptom severity were positively associated with sexual disorders such as ED
  - Amy Lehrner, et al., "Sexual Dysfunction and Neuroendocrine Correlates of Posttraumatic Stress Disorder in Combat Veterans: Preliminary Findings", *PSYCHONEUROENDOCRINOLOGY* 63: 271-75 (Jan. 2016)

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## PTSD AND ED STUDIES



- Studies going back decades have shown prevalence of intimacy problems, particularly ED and other sexual disorders, in Vets with PTSD
- Over 70% of Vietnam Vets and their partners reported clinically significant levels of relationship distress compared to only about 30% of the non-PTSD couples
- David S. Riggs, et al., "The Quality of the Intimate Relationships of Male Vietnam Veterans: Problems Associated with Posttraumatic Stress Disorder," *Journal of Traumatic Stress*, 11(1): 87-101 (1998)

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## PTSD & FEMALE SEXUAL AROUSAL DISORDER



- This is can also be true for women
- A study indicates PTSD symptoms may be a predisposing or perpetuating contributor to low sexual desire, and low sexual desire and PTSD may be related through an alteration in stress adaptability
- O'Loughlin JI, Brotto LA. "Women's Sexual Desire, Trauma Exposure, and Posttraumatic Stress Disorder." *J Trauma Stress*. 2020 Jun;33(3):238-247. doi: 10.1002/jts.22485. Epub 2020 Mar 26. PMID: 32216146

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## PTSD & FEMALE SEXUAL AROUSAL DISORDER



- The presence of a PTSD diagnosis or higher PTSD severity is associated with higher overall sexual dysfunction in female service members/Vets
- PTSD may lead to arousal and lubrication dysfunction by contributing to higher depression severity and strained romantic relationships
- Blais RK, Bird E, Sartin-Tarm A, Campbell SB, Lorenz T. "Mechanisms of the association between PTSD and sexual arousal and lubrication functioning among trauma-exposed female service members/veterans." *J Affect Disord*. 2022 Mar 15;301:352-359. doi: 10.1016/j.jad.2021.12.106. Epub 2021 Dec 26. PMID: 34965403

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## PTSD AND SLEEP APNEA HYPO



- Vet applied for SC for sleep apnea secondary to PTSD
- VA examiner stated there was no evidence PTSD resulted in upper airway resistance leading to current sleep disorder
- VSO submitted three articles on possible link



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## PTSD AND SLEEP APNEA HYPO



- BVA denied SC, noting the medical literature, but stating there was no competent evidence for secondary SC in this case
- BVA found the VA opinions more probative than the literature, because the examiners have expertise, reviewed the claims file, and provided reasoning for the expressed opinions that were specific to the Vet's case
- VA later argued VA examiners are "presumed competent and qualified, and thus presumed to be up to date on the relevant medical literature"

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## PTSD AND SLEEP APNEA HYPO



- BVA should have obtained a new medical opinion that adequately considered the articles
- While VA examiners are presumed competent, that presumption goes to their qualifications to render an opinion, rather than the adequacy of the opinion itself

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## PTSD & SLEEP APNEA STUDIES



- A 2015 study found that OEF/OIF/OND Vets with PTSD have a higher risk for OSA
  - Peter J. Colvonen, PhD; et al., "Obstructive Sleep Apnea and Posttraumatic Stress Disorder among OEF/OIF/OND Veterans," Journal of Clinical Sleep Medicine, 2015 Apr. 15; 11(5):513-8
- A 2010 study found a higher prevalence of sleep disorders, including OSA, among service members who suffer from combat-related PTSD
  - Darrel W. Dodson, MD, et al., "Sleep-Disordered Breathing in Combat Veterans With PTSD," The Journal of the American College of Chest Physicians, Oct. 2010, Volume 138, Issue 4, Supplement, Page 616

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## ADVOCACY ADVICE



- While studies do not show causation, they do show that Vets with PTSD are more likely to have OSA
- Do research and submit studies so that VA is forced to obtain an opinion on causation/aggravation
- Get a private medical opinion that discusses causation/aggravation and specifically discusses studies

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## PTSD & GASTROINTESTINAL DISORDERS



- A study of patients at a VAMC OEF/OIF/OND clinic revealed that 73.4% of patients who reported GI symptoms also had a positive screen for PTSD, which is indicative of a significant relationship
- A positive PTSD screening or depression screening was significantly associated with:
  - Diarrhea
  - GERD
  - Abdominal pain
  - Constipation
  - IBS (PTSD only, not depression)
- Menon, Laila MD; Kelly, Leighann Litcher PhD; Brand, Douglas MD, FACC; Shaw, Robert MD, FACC. "PTSD, Depression, and Gastrointestinal Symptoms in Veterans of the Afghanistan and Iraq Conflicts: What's the Relation?": 1888. American Journal of Gastroenterology 108():p 5571, Oct. 2013

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## PTSD & GI DISORDERS



- Possible mechanisms through which the association between PTSD and GI disorders is proposed to occur include changes in autonomic nervous system function that impact the gut, hypothalamic-pituitary-adrenal axis dysregulation and accompanying changes in cortisol levels, and behavior risk factors such as smoking, alcohol use and medications
- Gradus JL, Farkas DK, Svensson E, Ehrenstein V, Lash TL, Toft Sørensen H. "Posttraumatic Stress Disorder and Gastrointestinal Disorders in the Danish Population. Epidemiology". 2017 May;28(3):354-360. doi: 10.1097/EDE.0000000000000622. PMID: 28099266; PMCID: PMC5523445

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## PTSD & IBS STUDIES



- Among a sample of Vets with PTSD, rates of IBS and abdominal/belly pain are greater than the general population
- Although levels of constipation and bloating/gas are lower than the general US population, increased severity of PTSD was associated with increased GI symptoms
- Kearney, David J. MD; Kamp, Kendra J. PhD; Storms, Meghan MSW; Simpson, Tracy L. PhD. "Prevalence of Gastrointestinal Symptoms and Irritable Bowel Syndrome Among Individuals With Symptomatic Posttraumatic Stress Disorder." Journal of Clinical Gastroenterology 56(7):p 592-596, Aug. 2022. | DOI: 10.1097/MCG.0000000000001670

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## PTSD & CHRONIC PAIN



- 25% to 80% of Vets with PTSD experience chronic pain
- Jennifer L. Murphy, PhD, "Posttraumatic Stress Disorder and Chronic Pain" PTSD Research Quarterly, Vol. 33, No.2
- Pain alone without an underlying diagnosis is a "disability" if it causes functional impairment
- *Saunders v. Wilkie*, 886 F.3d 1356, 1363-64 (Fed. Cir. 2018)

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RESEARCH

- One place to do research is VA's National Center for PTSD, which publishes the PTSD Research Quarterly
- [https://ptsd.va.gov/publications/ptsd\\_rq.asp](https://ptsd.va.gov/publications/ptsd_rq.asp)
- You can also subscribe and receive information monthly and quarterly

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ADVOCACY ADVICE

- Get a private medical opinion that discusses causation/aggravation and specifically discusses studies
- Submit studies to VA so that it is forced to obtain an opinion on causation/aggravation, particularly if you are unable to obtain a private opinion

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DRUGS/ALCOHOL

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## GENERAL PRINCIPLES



- Alcohol and drug abuse are willful misconduct
- Alcohol abuse is the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user
- If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results proximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct

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## GENERAL PRINCIPLES



- Drug abuse is:
  - Use of an illegal drug
  - Use of a prescription drug illegally or illicitly obtained
  - Intentional use of a prescription or non-prescription drug for a purpose other than the medically intended use
  - Use of a substance other than alcohol to enjoy its intoxicating effect



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## GENERAL PRINCIPLES



- Isolated and occasional use of drugs is not willful misconduct
- If Vet used drugs to enjoy or experience their effects and the effects result in disability or death, such disability or death will be considered the result of willful misconduct
- Progressive and frequent use of drugs to the point of addiction is willful misconduct

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## DISABILITIES INVOLVING ALCOHOL AND DRUG ABUSE



1. Primary alcohol or drug abuse disabilities that develop during service
  - SC NOT permitted (see 38 U.S.C. § 1110)
2. Alcohol or drug abuse disabilities that develop secondary to SC condition
  - SC permitted
3. Disabilities that result from or are aggravated by the secondarily SC alcohol or drug abuse disability
  - SC permitted

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## CATEGORY 2



- Alcohol or drug abuse disabilities are often caused or aggravated by SC mental disorder
  - Ex: Vet self-medicates SC PTSD with alcohol or drugs
- Cannot get separate rating for alcohol or drug abuse, but effects would be considered with mental disorder rating
  - *Allen v. Principi*, 273 F.3d 1368 (Fed. Cir. 2001)

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## CATEGORY 3



- If alcohol and drug use are SC, Vet entitled to SC for disabilities secondary to alcohol and drug use
  - Ex: If Vet who abuses alcohol secondary to SC PTSD develops cirrhosis of the liver due to alcohol abuse, Vet entitled to SC for cirrhosis
    - *El-Amin v. Shinseki*, 26 Vet. App. 136, 138-39 (2013)

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# HYPO



- Vet claims SC for hepatitis directly due to his MOS as a combat medic
- At a 2014 PTSD VA exam, the examiner noted that Vet self-medicated with alcohol and illicit drugs for a number of years
- VA treatment records documented ongoing treatment for PTSD and substance abuse associated with PTSD symptoms
- Vet granted SC for PTSD, but drug use not listed as symptom

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# HYPO



- 2021 VA exam: Examiner noted risk factors of:
  1. Drug abuse, including marijuana, heroin, opium, hashish, cocaine-nasal, before and after Vietnam; currently smokes marijuana
  2. Alcohol abuse, drinking anything he could, seldom drinks currently
  3. Mental health issues, PTSD, depression
  4. Occupation, worked as medic in Army, did not wear protective equipment
  5. Tattoo, in Michigan 20 years ago

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# HYPO



- In a 2024 addendum opinion, VA examiner opined that the primary causes of Vet's hepatitis were drug abuse and indiscriminate social behavior

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# HYPO

- VA denied SC for hepatitis:
  - Acknowledged Vet's assertion that hepatitis was related to exposure to blood and bodily fluids as a combat medic
  - Denied SC because the service records established a history of in-service drug abuse
  - Relied on negative VA nexus opinion about in-service incurrence

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# SURVEY #5

- Should the veteran seek review?
  - A. No, only direct SC was at issue
  - B. No, disease cannot be granted SC if due to drug abuse
  - C. Yes, VA did not discuss if drug abuse that likely caused Hep C was secondary to PTSD

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# ANSWER



VA erred by not addressing whether the drug abuse that likely caused Hep C was secondary to PTSD

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## ADVOCACY ADVICE



- If Vet uses alcohol or drugs to self medicate a SC disability—mental or physical (chronic pain etc.)—then the resulting disability should be SC
- Make sure VA appropriately considers effects of alcohol and drug use when assigning disability rating

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## QUESTIONS



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