Veterans Affairs Canada | Anciens Combattants Canada

Disability Resulting From a Non-Service Related Injury or Disease

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This policy replaces the policy entitled "Disability Resulting from a Non-Service-Related Injury or Disease" with the effective date of 23 February 2018.

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References

Purpose

The purpose of this policy is to provide guidance on factors to consider when determining whether a Veteran or member had a disability or disabling condition prior to his or her enrolment, or prior to a specific period of service. This policy also provides guidance on awarding a disability benefit for the impact that service-related factors have on a disability which has been caused by a non-service-related injury or disease.

Policy

Definitions

Disability: means "the loss or lessening of the power to will and to do any normal mental or physical act", (Section 3 of the *Pension Act*, Section 2(1) of the *Veterans Well-being Act*).

Partial Entitlement:

The department will award entitlement equal to four-fifths when it has been determined that a disability has been aggravated by factors related to service or is partially a consequence of a service-related condition (consequential). Consequential Disability Policy and Pain and Suffering Compensation Policy

Full Entitlement: The department will award entitlement equal to five-fifths when it has been determined that a disability has resulted from a service-related-injury or disease.

General

1. When a Veteran or member applies for a disability pension or pain and suffering compensation it must be determined whether the disability or disabling condition existed prior to his or her enrolment.
2. For the purposes of this policy:
    a. a disability or disabling condition is considered “obvious” at the time a Veteran or member became a member if it was apparent, or would have been apparent, to an unskilled observer on examination of the former member at enrolment, and
    b. a disability or disabling condition “recorded on a medical examination prior to the enrolment”, is defined as a written record, X-ray or photograph of the disability or disabling condition contained in the Veteran's or member’s:
        i. medical enrolment documentation
        ii. official documentation covering any former period of service
        iii. departmental files
        iv. compensation board or insurance company records
        v. records prepared by a medical practitioner or a clinic, hospital or other medical institute.
3. When a Veteran or member has uninterrupted service, the factors discussed in this policy in respect of “enrolment” also apply when determining whether or not a disability or disabling condition existed prior to a specific type of service (e.g. Special Duty service).

Full Entitlement for a Pre-enrolment Disability - Disability Pension (paragraph 21(1)(c) of the Pension Act)

4. Full disability pension entitlement will be awarded for a disability or disabling condition which existed prior to a Veteran's or member’s period of service, but which was not obvious or recorded on a medical examination prior to the enrolment, if the disabling condition first became apparent during service in:
    a. World War I or World War II, providing the member served in a Theatre of Actual War;
    b. Theatre of Operations during the Korean War; or,
        i. The disability must have become apparent between the time of the member’s departure from Canada or the continental USA and his return to same.
    c. Special Duty service.
5. A disability may be attributable to only one specific period of service, e.g., a member whose disabling condition became evident in a Theatre of War during World War II, could claim pension entitlement for the resulting disability as attributable to that service, but not to service in a Theatre of Operations during the Korean War.

Presumption of a Veteran’s or Member’s Fitness on Enrolment – Disability Pension and Pain and Suffering Compensation (subsections 21(9), and (10) of the Pension Act, and sections 51 and 52 of the Veterans Well-being Regulations)

6. The guidance provided in this section is not applicable to disability pension claims that meet the provisions of paragraph 21(1)(c) of the *Pension Act*. See section “Full Entitlement for a Pre-enrolment Disability – Disability Pension” for more information.
7. A Veteran or member is presumed to have been in the medical condition found on enrolment unless the disability or disabling condition is:

a. obvious at the time they became a member;
b. recorded on a medical examination prior to the enrolment;
c. diagnosed within three months after the enrolment, unless the medical evidence shows that the disability or disabling condition did not exist pre-enrolment; or
d. established beyond a reasonable doubt to have existed prior to the enrolment, based on medical evidence.

8. Information provided by a Veteran or member is not evidence that a disability or disabling condition existed prior to enrolment unless there is supporting medical evidence.

Partial Entitlement for the Aggravation of a Disability - Disability Pension and Pain and Suffering Compensation (paragraphs 21(1)(a) and (b), and 21(2)(a) and (b), and subsection 21(2.1) of the Pension Act, and subsections 2(1), 45(2), and 46(2) and paragraphs 45(1)(b) and 46(1)(b) of the Veterans Well-being Act (VWA).

9. A partial disability pension or pain and suffering compensation can be given for a disability that has been caused by a non-service-related injury or disease when that disability has been aggravated by factors related to service.
    a. When the aggravation occurs during Wartime service or Special Duty service, the aggravation is considered related to that service because it was incurred during that service. There is no need to determine a direct causal link between the service and the aggravation.
    b. When the aggravation occurs during other types of service such as Regular Force or Reserve Force there must be a direct causal link between the service and the aggravation.
10. While "aggravation" is not defined in the *Pension Act* or the *Veterans Well-being Act*, the accepted definition has been "the permanent worsening of a disability from disease or injury between enrolment and discharge". Any service-related aggravation that occurs while member is still serving is included in this definition.
    - The clinical signs and symptoms of an injury or disease will demonstrate whether the resulting disability has been permanently worsened.
    - An acute flare-up of an injury or disease that resolves without any permanent worsening of the already existing disability cannot be considered an aggravation.
11. Following the review of the available medical evidence, when it is determined that a disability caused by a non-service-related injury or disease has been aggravated by service related factors, partial entitlement is awarded for that portion of the disability that was aggravated by service. (A disability pension or pain and suffering compensation is paid in respect of the fraction of the disability that represents the extent to which the injury or disease was aggravated by service, [*Pension Act, ss. 21(2.1), Veterans Well-being Act, ss. 45(2)]*.)

References

Pension Act, subsections 5(3), 21(9), (10) and (12), and 21(2.1); paragraphs 21(1)(a), (b) and (c), and 21(2)(a) and (b)

Veterans Well-being Act subsections 2(1), 45(2), and 46(2); paragraphs 45(1)(b) and 46(1)(b)

Veterans Well-being Regulations sections 51 and 52

Benefit of Doubt Policy

Consequential Disability Policy

Pain and Suffering Compensation Policy