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The 10 Most Challenging VA Disability Claims: Doctrinal, Evidentiary, and Procedural Barriers

By Bradley W. Hennings¹ and Robert Chisholm²

11.0—Veterans' claims.

Introduction

Although Congress designed the veterans benefits system to be “uniquely pro-claimant,” the adjudication of certain categories of VA disability claims remains exceptionally difficult. See *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). These cases typically involve heightened legal standards, complex evidentiary requirements, ambiguous or underdeveloped regulations, or procedural mechanisms that depart from ordinary claims adjudication. Even where entitlement is plausible, claims may fail absent precise legal framing, specialized

¹ BA 1997 George Washington University, MS 2001 Stevens Institute of Technology, JD 2006 Rutgers University School of Law. Mr. Hennings joined Chisholm Chisholm & Kilpatrick as an attorney in January 2018 and currently serves as a Partner in the firm. His practice focuses on the U.S. Department of Veterans Affairs (VA) and the U.S. Court of Appeals for Veterans Claims. Immediately prior to joining CCK Law, Mr. Hennings served as a Veterans Law Judge at the U.S. Department of Veterans Affairs, Board of Veterans’ Appeals (BVA). Mr. Hennings’ full biography may be found at cck-law.com/lawyers/bradley-w-hennings. To learn more about CCK Law, the largest and most respected veterans law firm in the U.S., visit cck-law.com.

² BA 1984 Boston College, JD 1988 Boston University School of Law. Mr. Chisholm is a Founding Partner of Chisholm Chisholm & Kilpatrick, the largest veterans law firm in the U.S. His law practice focuses on representing disabled veterans in the United States Court of Appeals for Veterans Claims and before the Department of Veterans Affairs. As a veterans lawyer, Mr. Chisholm has been representing disabled veterans since 1990. During his extensive career, he has successfully represented veterans before the Board of Veterans Appeals, Court of Appeals for Veterans Claims, and the United States Court of Appeals for the Federal Circuit. Mr. Chisholm is a founding member of the United States Court of Appeals for Veterans Claims Bar Association and served as President of that organization for the year 2002-2003. Mr. Chisholm served as the President of the National Organization of Veterans’ Advocates from 1999 to 2004. In 2016, the United States Court of Appeals for Veterans Claims (CAVC) awarded Mr. Chisholm the Hart T. Mankin Distinguished Service Award in recognition of his 25 years of outstanding service to the Court. Mr. Chisholm has served as appellant’s lead counsel in over 7,500 cases before the CAVC. His full biography may be found at cck-law.com/lawyers/robert-v-chisholm. To learn more about CCK Law, the largest and most respected veterans law firm in the U.S., visit cck-law.com.

medical or historical evidence, or familiarity with niche areas of veterans law.

This article surveys categories of VA claims that are consistently among the most difficult to win, explains the legal and practical reasons underlying those difficulties, and highlights recurring adjudicatory errors practitioners should anticipate.

I. Clear and Unmistakable Error Motions

Requests for revision based on clear and unmistakable error (CUE) are governed by 38 U.S.C. §§ 5109A (regional office decisions) and 7111 (Board decisions), with implementing regulations at 38 C.F.R. §§ 3.105(a), 20.1400–20.1411. A CUE motion is not a claim for benefits but a collateral attack on a final decision. *Cook v. Principi*, 318 F.3d 1334, 1339 (Fed. Cir. 2002) (en banc).

To prevail, the moving party must show an “undebatable” error of fact or law that would have manifestly changed the outcome, based solely on the record and the law as they existed at the time of the challenged decision. *Russell v. Principi*, 3 Vet. App. 310, 313–14 (1992) (en banc). A disagreement with how VA weighed or evaluated evidence can never constitute CUE. *Fugo v. Brown*, 6 Vet. App. 40, 44 (1993).

Common CUE theories include misapplication of statutes or regulations, reliance on incorrect facts contained in the contemporaneous record, or failure to apply mandatory presumptions such as soundness or aggravation. See, e.g., *Oppenheimer v. Derwinski*, 1 Vet. App. 370, 372 (1991). The precision required in pleading and the unforgiving standard of review explain why CUE motions are frequently denied, including on procedural grounds alone.

II. Claims Under 38 U.S.C. § 1151

Claims for compensation under 38 U.S.C. § 1151 and 38 C.F.R. § 3.361 require proof that a veteran sustained additional disability caused by VA hospital care, medical or surgical treatment, or examination, and that the proximate cause was either fault on the part of VA or an event not reasonably foreseeable.

Although § 1151 is remedial, adjudication often resembles medical malpractice litigation. Claimants must establish additional disability, causation, and proximate cause, typically through competent medical evidence. 38 C.F.R. § 3.361(c)–(d). VA frequently relies on internal medical opinions to conclude that an outcome was a “known risk” or unrelated to VA treatment, shifting the practical burden to veterans to obtain independent expert evidence. See *Roberson v. Shinseki*, 22 Vet. App. 358, 363–64 (2009).

III. Presumption of Soundness

The presumption of soundness, codified at 38 U.S.C. § 1111 and implemented by 38 C.F.R. § 3.304(b), provides that a veteran is presumed sound upon entry into service except as to conditions noted on the entrance examination. To rebut the presumption, VA must show by clear and unmistakable evidence both that the condition pre-existed service and that it was not aggravated by service. *Wagner v. Principi*, 370 F.3d 1089, 1096 (Fed. Cir. 2004).

Despite this demanding standard, misapplication is common. VA examiners may improperly shift the burden to the claimant or rely on conclusory statements regarding lack of aggravation. See *Horn v. Shinseki*, 25 Vet. App. 231, 235–36 (2012). Entrance examination ambiguities and post-hoc medical rationales frequently complicate these claims.

IV. Aggravation of Pre-Existing Conditions

Where a condition is noted on entry, service connection may still be established if the disability increased in severity during service, unless the increase is shown to be due to natural progression. 38 U.S.C. § 1153; 38 C.F.R. § 3.306(a). Temporary flare-ups are insufficient; there must be a permanent worsening. *Hunt v. Derwinski*, 1 Vet. App. 292, 297 (1991).

Aggravation claims often fail due to inadequate medical opinions that attribute worsening to natural progression without adequate explanation. Once an in-service increase is shown, the burden shifts to VA to rebut aggravation with clear and unmistakable evidence. *Joyce v. Nicholson*, 443 F.3d 845, 847 (Fed. Cir. 2006).

V. Radiation Exposure Claims

Claims involving ionizing radiation are governed by a specialized regulatory framework, including presumptive service connection under 38 C.F.R. § 3.309(d) and special development procedures under 38 C.F.R. § 3.311. Distinct evidentiary pathways apply depending on whether the veteran participated in atmospheric nuclear testing, occupied Hiroshima or Nagasaki, or was otherwise exposed through military duties.

Dose reconstruction and advisory medical opinions often prove dispositive. Veterans may challenge the adequacy of dose estimates or the probative value of generalized medical conclusions. See *Hilkert v. West*, 12 Vet. App. 145, 149–50 (1999) (en banc).

VI. Total Disability Based on Individual Unemployability and Protected Work Environments

Entitlement to total disability based on individual unemployability (TDIU) is governed by 38 C.F.R. § 4.16. While marginal employment may exist even where earnings exceed the poverty threshold if employment

occurs in a protected work environment, VA regulations provide no definition of that term.

In *Cantrell v. Shulkin*, 28 Vet. App. 382, 390–91 (2017), the Court acknowledged this regulatory gap and held that VA’s failure to define “protected environment” frustrated judicial review. In 2024, the Veterans Court also decided *LaBruzza/McBride v. McDonough*, 37 Vet.App. 111, further specifying that “employment in a protected environment” under 38 C.F.R. § 4.16(a) means a lower-income position that, due to a veteran's service-connected disability or disabilities, is shielded in some respect from competition in the employment market. However, these cases remain highly fact-specific and often hinge on employer statements, accommodation evidence, and vocational analysis.

VII. PTSD Stressor Verification

Service connection for post-traumatic stress disorder requires a diagnosis consistent with 38 C.F.R. § 4.125(a), a link between symptoms and an in-service stressor, and credible supporting evidence that the stressor occurred. 38 C.F.R. § 3.304(f). Combat veterans may establish stressors through lay testimony alone if consistent with service circumstances. 38 U.S.C. § 1154(b).

For non-combat stressors, including military sexual trauma, corroboration may come from alternative sources such as behavioral changes. 38 C.F.R. § 3.304(f)(5). Adjudicatory errors often arise when VA discounts competent lay evidence or relies on examiner misinterpretations of stressor sufficiency. See *Menegassi v. Shinseki*, 638 F.3d 1379, 1382 (Fed. Cir. 2011).

VIII. Non-Presumptive Toxic Exposure and Cancer Claims

Absent a statutory or regulatory presumption, exposure-based cancer claims require proof of actual exposure and a medical nexus. See *Combee v. Brown*, 34 F.3d 1039, 1043–44 (Fed. Cir. 1994). VA examiners frequently cite a lack of epidemiological consensus to deny nexus, placing heightened importance on independent expert opinions.

Such claims often involve incomplete service records and emerging science, increasing both evidentiary complexity and litigation costs.

IX. Caregiver Program Benefits

Benefits under the Program of Comprehensive Assistance for Family Caregivers are authorized by 38 U.S.C. § 1720G and implemented by 38 C.F.R. Part 71. Eligibility depends on functional limitations, including the need for assistance with activities of daily living or supervision for safety.

Denials commonly stem from subjective assessments during home visits or inconsistent application of criteria across facilities. Appeals require careful alignment of medical evidence with program-specific regulations, an area with limited precedential guidance. See *Beaudette v. McDonough*, 34 Vet. App. 95, 103–04 (2021).

X. Earlier-Effective-Date Claims Under 38 C.F.R. § 3.156(c)

Under 38 C.F.R. § 3.156(c), when relevant service department records that existed at the time of a prior decision are later associated with the claims file, VA must reconsider the original claim, potentially assigning an earlier effective date. This mechanism is distinct from “new and material evidence” reopening.

VA frequently misapplies the regulation, treating qualifying records as merely new evidence rather than triggering mandatory reconsideration. See *Blubaugh v. McDonald*, 773 F.3d 1310, 1313–14 (Fed. Cir. 2014). Minor factual distinctions regarding record existence or

relevance can have dramatic retroactive effects. VA also frequently argues that the regulation's § 3.156(c)(2) exception applies, in that records were not obtained because the claimant failed to provide sufficient information.

Conclusion

The claims discussed here are difficult not because they are anomalous, but because they expose the tension between VA's pro-claimant mandate and the system's most exacting legal standards. Elevated burdens of proof, complex medical questions, and procedural ambiguity combine to create substantial barriers even for meritorious claims. Effective advocacy in these areas requires meticulous legal framing, strategic evidence development, and sustained attention to recurring adjudicatory errors.

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