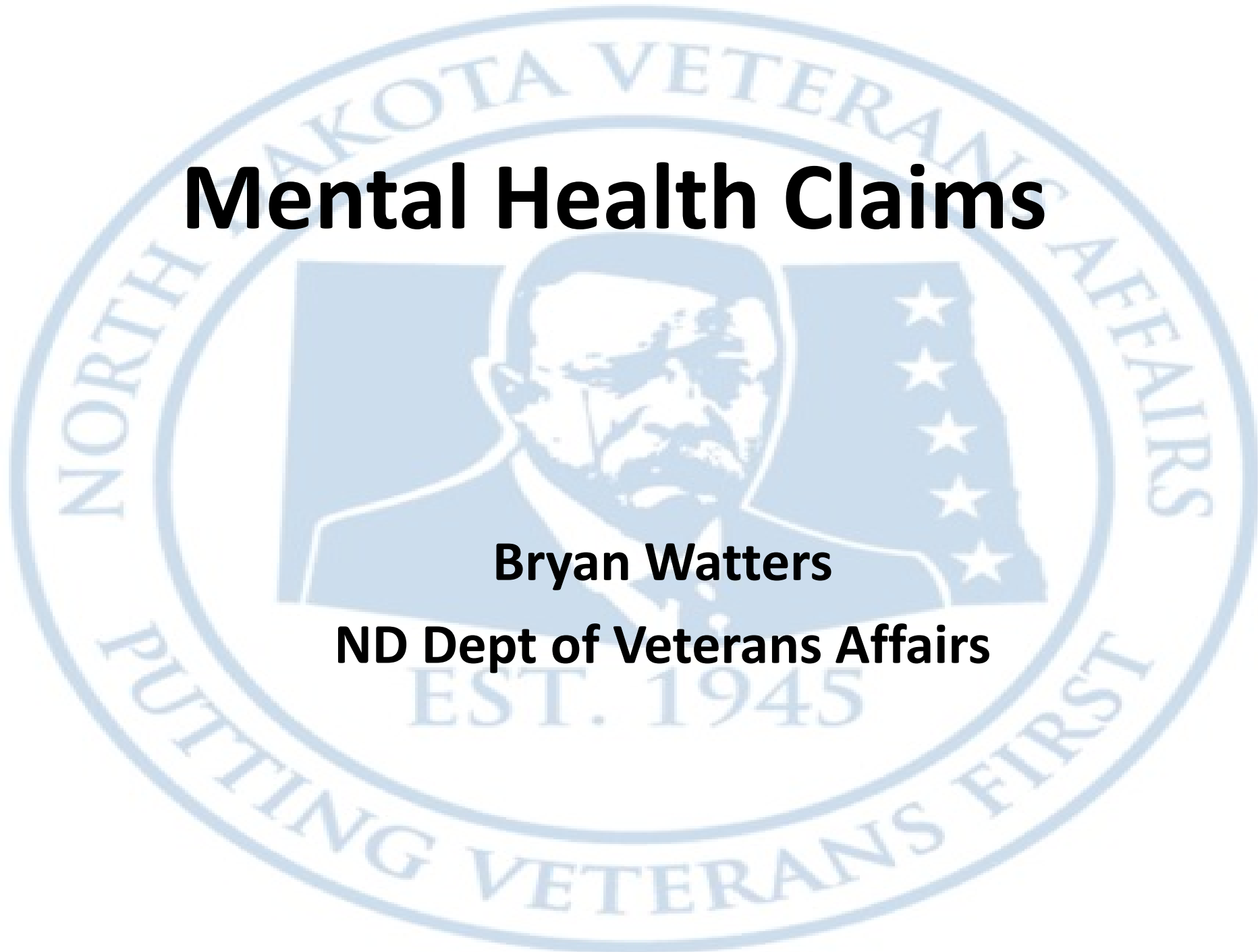


Mental Health Claims

Bryan Watters

ND Dept of Veterans Affairs



Mental Health Claims

- *Establishing Service Connection*
- *Disabilities Secondary to PTSD*
- *Mental Disorders and Drugs/Alcohol*
- *Rating Principles*
- *Suicidal Ideation*
- *PTSD and TDIU*
- *Advocacy*

Mental Health Claims

3 Elements for SC for mental disorders other than PTSD:

- Evidence of a current diagnosis**
- In-service event, injury, or disease**
- A link, established by medical evidence, between the current diagnosis and in-service event**

Mental Health Claims

3 Elements for SC for PTSD:

- **Evidence of a current diagnosis of PTSD**
- **Credible supporting evidence that a claimed in-service stressor occurred**
 - **Relaxed in some situations**
- **A link/nexus, established by medical evidence, between current symptoms and an in-service stressor**

Mental Health Claims

- **Combat Vets have lower evidentiary burden for proving stressor**
- **If evidence establishes Vet engaged in combat with the enemy and the claimed stressor is related to that combat, Vet's lay statement alone enough to prove stressor**
 - **Exception: clear and convincing evidence contradicts Vet's statements about stressor**
 - **[38 C.F.R. §3.304\(f\)\(2\)](#) and [38 C.F.R. §1154\(b\)](#)**

Mental Health Claims

Vet's lay statement alone may establish stressor, if:

- Stressor related to Vet's "fear of hostile military or terrorist activity"
- Stressor is consistent with the Vet's service
- There is no clear and convincing evidence to the contrary
- VA psychiatrist or psychologist confirms:
 - Dx of PTSD
 - Stressor is adequate to support dx, and
 - PTSD is related to stressor
- [38 C.F.R. §3.304\(f\)\(3\)](#)

Mental Health Claims

- **There are no evidentiary presumptions for in-service assaults or MST**
 - **Vets who allege an in-service assault or MST must still provide credible supporting evidence that the incident occurred**

Credible Supporting Evidence

- There must be some believable evidence that tends to support Vet's assertion
 - Vet's statement alone not enough
- VA considers
 - Plausibility
 - Consistency with other evidence in the case
 - Source

Credible Supporting Evidence

- VA may not treat the absence of documentation of the MST or in-service assault in service records as negative evidence
 - Because MST often goes unreported, it is not reasonable to expect that the event would be reported and/or recorded
 - VA may not find Vet's statements not credible simply because an injury was not recorded in service records
 - Exception: cases where it is reasonable to expect that the event would be recorded
 - [AZ v. Shinseki, 731 F.3d 1303 \(Fed. Cir. 2013\)](#)

Credible Supporting Evidence

- Because Vets face unique problems documenting their claimed stressor in personal assault cases, VA has provided for special evidentiary-development procedures in those cases.
 - Bradford v. Nicholson, 20 Vet. App. 200 (2006)
- Under [38 C.F.R. §3.304\(f\)\(5\)](#), evidence from sources other than Vet's service records may be used to corroborate the existence of an in-service personal assault stressor.

Markers

- Police records
- Medical records
- STD or pregnancy tests
- Statements from family members, friends, roommates, clergy
- Evidence of behavioral changes
 - Episodes of depression
 - Drug/alcohol use
 - Fights
 - Requests for transfer
 - Unexplained economic changes
 - Deterioration of work performance
 - [38 C.F.R. §3.304\(f\)\(5\)](#)

Characterization of Claim

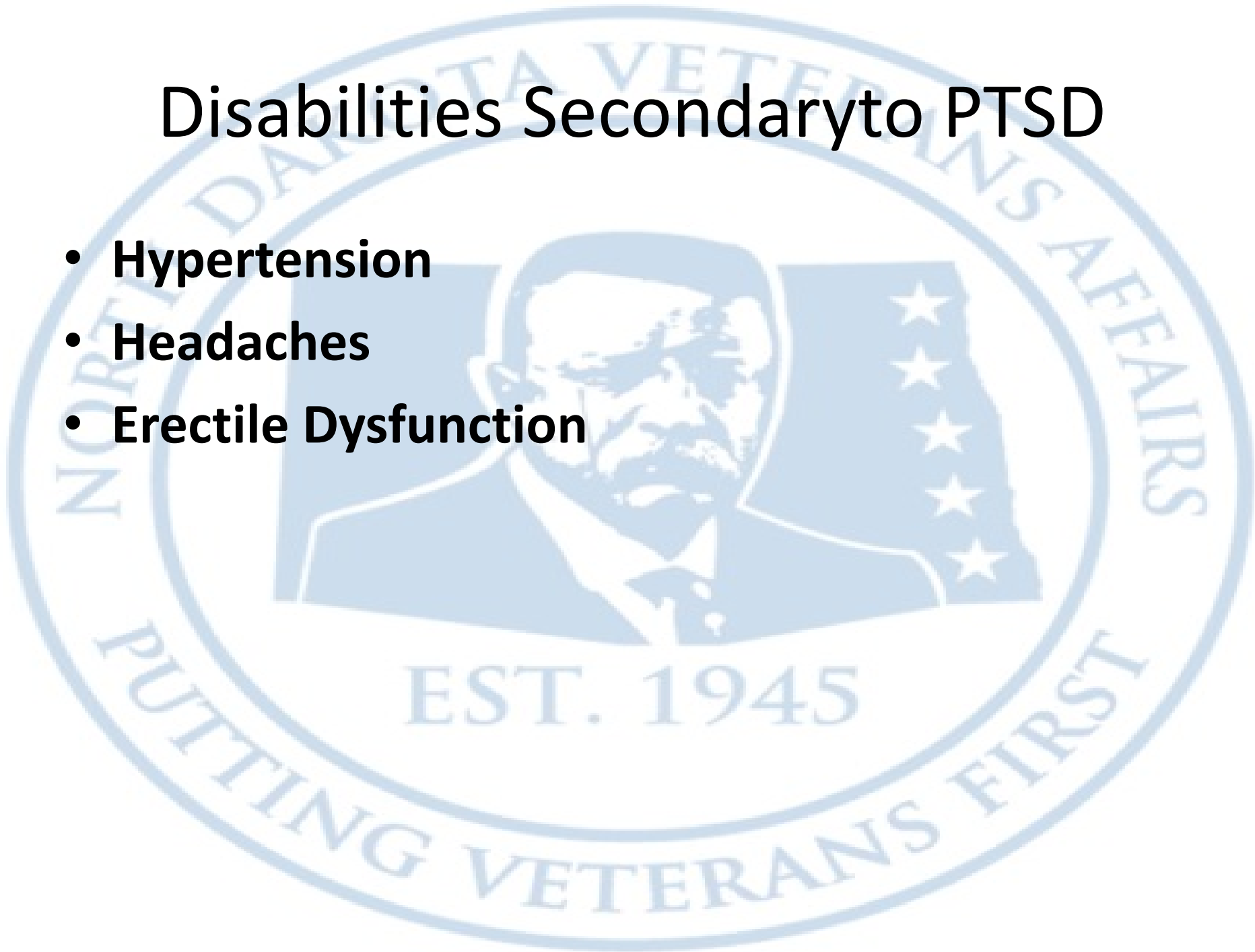
- Even though Vet claims SC for a one mental disorder, VA may need to consider SC for other mental disorders
- VA must consider:
 1. Claimant's description of claim
 2. Symptoms claimant describes
 3. Info claimant submits
 4. Info VA obtains
- [Clemons v. Shinseki, 23 Vet. App. 1 \(2009\)](#)

Characterization of Claim

- **Vets still should be careful in how they characterize claimed disability**
 - **Claim SC for “acquired psychiatric disorder”**
 - **But also list any disorders Vet has been diagnosed with (or might have)**
 - **Ex: “an acquired psychiatric disorder, to include PTSD and major depressive disorder”**

Disabilities Secondary to PTSD

- **Hypertension**
- **Headaches**
- **Erectile Dysfunction**



Hypertension and PTSD

- **Psychosocial factors, such as anger, anxiety, depression, hostility, type A behavior, and various measures of social support, have been associated with the occurrence or recurrence of CVD. In addition, measures of cardiovascular physiologic reactivity have been correlated with CVD outcomes.**
 - **Cecil Textbook of Medicine (22d Edition, 2004), p. 253.**

Hypertension and PTSD

- When VA established hypertensive vascular disease as a presumptive disease related to the POW experience, 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 increased incidence of hypertension and chronic heart disease among World War II veterans 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)

ADVOCACY ADVICE

- **Submit to VA articles/studies that show connection between PTSD and HTN/CVD.**
- **If the VA examiner does not discuss the studies, then argue the opinion is inadequate**
- **Submit private medical opinion that discusses these studies**

Headaches & PTSD

- **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.**

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).

Erectile Dysfunction & PTSD

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

PTSD and ED Studies

- **The VA Institutional Review Board found that the rate of ED was 85% in combat Vets with PTSD, and only 22% in those w/out PTSD.**
 - Daniel J. Cosgrove, Zachary Gordon, Jonathan E. Bernie, ShadhaHami, Daniel Montoya, Murray B. Stein, and ManojMonga, “Sexual Dysfunction in Combat Veterans with Post-Traumatic Stress Disorder”, UROLOGY60(5): 881-4 (Nov. 2002)
- **Iraq and Afghanistan Vets w/PTSD were more likely to have a sexual dysfunction diagnosis, be prescribed medications for sexual dysfunction, or both, compared with Vets having a mental diagnosis other than PTSD or no mental health diagnosis**
 - Benjamin N. Breyer, Beth E. Cohen, Daniel Bertenthal, Raymond C. Rosen, Thomas C. Neylan, and Karen H. Seal, “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”, JOURNALOFSEXMEDICINE, 11(1): 75-83 (Jan. 2014).

PTSD and ED

- **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, Janine D. Flory, Linda M. Bierer, Iouri Makotkine, Charles R. Marmar, and Rachel Yehuda, “Sexual Dysfunction and Neuroendocrine Correlates of Posttraumatic Stress Disorder in Combat Veterans: Preliminary Findings”, *PSYCHONEUROENDOCRINOLOGY* 63: 271-75 (Jan. 2016)

Mental Disorders and Drugs/Alcohol

- **Willful misconduct is an act involving conscious wrongdoing or known prohibited action that involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences**
- [38 C.F.R. §3.1\(n\)](#)

General Principles

- **Alcohol and drug abuse re 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**

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**

Alcohol or drug abuse disabilities that develop secondary to SC condition

- **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**

Disabilities that result from or are aggravated by the secondarily SC alcohol or drug abuse disability

- **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**
 - **If Vet uses alcohol or drugs to self medicate a SC mental condition, then the resulting disability should be SC**
 - **Make sure VA appropriately considers effects of alcohol and drug use when assigning disability rating.**

General Rating Principles

- Rating criteria in [38 C.F.R. §4.130](#) –General Rating Formula for Mental Disorders
- VA assigns the rating most closely reflecting the level of social and occupational impairment
- VA must consider work history & job difficulties

RATING PRINCIPLES

- **Vet doesn't need to have every symptom listed in schedule to get that rating**
- **BUT, Vet may only qualify for a given disability rating by:**
 - **demonstrating particular symptoms associated with that percentage, or**
 - **others of similar severity, frequency, and duration**

RATING PRINCIPLES

- “[S]ymptomatology should be the fact-finder’s primary focus when deciding entitlement to a given disability rating. However, in the context of a 70 percent rating, §4.130 requires not only the presence of certain symptoms but also that those symptoms have caused occupational and social impairment in most of the referenced areas.”

Special Consideration

- **38 C.F.R. §4.129**
 - When a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the veteran's release from active military service, the rating agency shall assign an evaluation of not less than 50 percent and schedule an examination within the six month period following the veteran's discharge to determine whether a change in evaluation is warranted.

Suicidal Ideation and Rating Mental Disorders

- **100%: Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes of communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.**

Suicidal Ideation and Rating Mental Disorders

- 70%: Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a work like setting); inability to establish and maintain effective relationships.

Suicidal Ideation

- **Passive Suicidal Ideation**
 - wishing you would go to sleep and not wake up
- **Active Suicidal Ideation**
 - thinking of killing self, thinking about specific ways to end one's life
- **There are no descriptors, modifiers, or indicators as to “suicidal ideation” in the 70% criteria.**

Suicidal Ideation

- **The language of the rating criteria indicates that the presence of suicidal ideation alone, that is, a Vet's thoughts of his or her own death or thoughts of engaging in suicide-related behavior, may cause occupational and social impairment with deficiencies in most areas.**

PTSD and TDIU

- **Current Practice: Both Mental and Physical Disabilities are required**
 - Not required by CFR or Case Law
- **If vet unable to work due to SC mental disorder, VA must assign schedular rating under §4.130 and consider entitlement to TDIU**

PTSD and TDIU

- Find out if Vet is working in a substantial & gainful job
- If not, find out whether a case can be made that Vet is unable to obtain or maintain substantial gainful occupation due to SC conditions
- Evidence linking unemployment to PTSD must be in the record

PTSD and TDIU

- Letter from a psychiatrist stating that PTSD symptoms prevent Vet from getting and keeping a job
- Statement from most recent employer that explains the reasons he was fired, and it is apparent those reasons are related to PTSD
- VA exam report stating Vet's PTSD would prevent him from working full-time

Clients and Mental Health Issues

- **Try not to trigger your client by talking about very sensitive information**
- **Find out if Vet feels uncomfortable talking about any particular topics.**
 - **Try to get needed info without talking about that topic**
- **Try not to make your client uncomfortable, be aware of their comfort zone**
 - **Pay close attention to Vet's behavior and what Vet says, and tailor your actions and words accordingly**

Clients and Mental Health Issues

- **Let them know that you are on their side and there to support them**
- **Be sensitive to any accommodations or needs they might have**
- **Try not to use words like “crazy,” “unstable,” or “sick”—they might use these words talking about themselves, but you should refrain**

Mental Health Claims

Q & A

