



NORTH DAKOTA VETERANS AFFAIRS

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Secondary Claims for Service Connection

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Three Main Types of VA Claims

- Direct Service Connection (38 CFR 3.304)
- Secondary Service Connection (38 CFR 3.310)
- Aggravation (38 CFR 3.306)



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Secondary Claims

- § 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.
- (a)General. 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 a part of the original condition.
- (b)Aggravation of nonservice-connected disabilities. Any increase in severity of a nonservice-connected disease or injury that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected. However, VA will not concede that a nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice-connected disease or injury. The rating activity will determine the baseline and current levels of severity under the Schedule for Rating Disabilities (38 CFR part 4) and determine the extent of aggravation by deducting the baseline level of severity, as well as any increase in severity due to the natural progress of the disease, from the current level.



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Examples of Secondary Claims?



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Common Examples of Secondary Claims

- Mental Health secondary to Chronic Pain
- Lower Limb Radiculopathy secondary to lower back degeneration
- Sciatica secondary to lower back degeneration
- Upper Limb Radiculopathy secondary to cervical spine/neck degeneration
- ED secondary/residual of Prostate Cancer



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Non-Traditional Examples of Secondary Claims

- TMJ secondary to PTSD/Mental Health
- Female sexual arousal disorder secondary to PTSD/MST
- Migraines secondary to Tinnitus
- Migraines secondary to Mental Health
- Acid Reflux/Gerd secondary to Mental Health
- IBS secondary to Mental Health
- Neck/Musculoskeletal Condition secondary to Mental Health
- Joint Overcompensation to service connected joint
- Mental Health secondary to Tinnitus/Hearing Loss
- Falls/injuries related to service connected joints.
- Sleep Apnea secondary to Mental Health
- Sleep Apnea secondary to weight gain caused by mobility limiting service connected conditions



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CVSO Examples of Non-Traditional Secondary Claims?



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Benefits of Filing Secondary Claims

- Increased service connected percentages
- Potential for better VHA Priority Group
- Potential for benefits such as Property Tax Relief, Dependent Education Benefits, IU Eligibility.
- Potential for SMC-K
- TMJ-Dental Coverage Eligibility
- Ensures health care coverage for additional health concerns



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Examples of Successful Secondary Claims

7. Service connection for Migraine including migraine variants as secondary to the service-connected disability of tinnitus.

Service connection for Migraine including migraine variants has been established as related to the service-connected disability of tinnitus. (38 CFR 3.310)

An evaluation of 50 percent is assigned from September 14, 2018, the date VA received your Intent to File Claim. (38 CFR 3.400, 38 CFR 3.155)

We have assigned a 50 percent evaluation for your Migraine including migraine variants based on:

- Very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability

This is the highest schedular evaluation allowed under the law for migraine. (38 CFR 4.120, 38 CFR 4.124a)



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Examples of Successful Secondary Claims

Service connection for depression with mixed features(claimed as mental health condition secondary to service connected conditions) as secondary to the service-connected disability of hearing loss, bilateral (previously under DC 6297).

Service connection for depression with mixed features(claimed as mental health condition secondary to service connected conditions) has been established as related to the service-connected disability of hearing loss, bilateral (previously under DC 6297).

An evaluation of 30 percent is assigned from October 27, 2016, which is the date we received your intent to file claim.



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Examples of Successful Secondary Claims

1. Service connection for tibial plateau fracture, right (impairment) (claimed as right knee fracture secondary to ptsd night terror) as secondary to the service-connected disability of posttraumatic stress disorder.

Service connection for tibial plateau fracture, right (impairment) has been established as related to the service-connected disability of posttraumatic stress disorder. (38 CFR 3.310)

An evaluation of 10 percent is assigned from May 7, 2019, effective the date on which we received your intent to file a claim for compensation as a completed application was received within one year of this date. (38 CFR 3.400, 38 CFR 3.155)

We have assigned a 10 percent evaluation for your knee fracture, right based on:

- Slight instability



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Examples of Successful Secondary Claims

3. Service connection for female sexual arousal disorder/sexual dysfunction as secondary to the service-connected disability of posttraumatic stress disorder (PTSD).

Service connection for female sexual arousal disorder/sexual dysfunction has been established as related to the service-connected disability of posttraumatic stress disorder (PTSD).

A noncompensable evaluation is assigned from September 12, 2018, the date we received your claim.

We have assigned a noncompensable evaluation for your female sexual arousal disorder/sexual dysfunction based on:

- Confirmed diagnosis of Female Sexual Arousal Disorder



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Examples of Successful Secondary Claims

2. Service connection for Depression Due to Another Medical Condition as secondary to the service-connected disability of patellofemoral pain syndrome, right knee.

Service connection for Depression Due to Another Medical Condition has been established as related to the service-connected disability of patellofemoral pain syndrome, right knee.

An evaluation of 70 percent is assigned from February 7, 2017, the date we received your VA Form 21-0966, Intent to File, as you formalized your claim with submission of a properly completed VA Form 21-526EZ, within one year of that date.

3. Service connection for right rotator cuff tear, claimed as right shoulder condition as secondary to the service-connected disability of patellofemoral pain syndrome, right knee.

Service connection for right rotator cuff tear, claimed as right shoulder condition has been established as related to the service-connected disability of patellofemoral pain syndrome, right knee.

An evaluation of 20 percent is assigned from February 7, 2017, the date we received your VA



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How to file Secondary Claims

- File an Intent to File
- Gather supporting medical evidence
 - Private medical records
 - Records from Chiropractic care, massage, etc.
 - Chronicity of care is still important for secondary claims
- Assist the veteran in providing statements in support of claim
 - Statements from veterans themselves
 - Statements from family members for friends
- Obtain a Nexus letter/Medical Opinion if possible, linking the secondary condition to the service connected condition.
 - This is often key for non-traditional issues such as Sleep Apnea claims, TMJ, overcompensation of joints.
 - **Secondary claims for Mental Health, ED, Female Sexual Arousal Disorder are often successful without nexus letters, but must have supportive evidence in the form of statements.

Questions?



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Feel free to contact our Department or any other NSO/VSO with any questions.

Thank you!

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