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Preventable Denials: Procedural Traps and Filing Errors in Reserve Component VA Disability Claims[1]

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11.0—Veterans' claims.

Abstract

Reserve component veterans are approved for Department of Veterans Affairs (VA) disability compensation at distinctly lower rates than veterans who served in an active component. The Government Accountability Office (GAO) has documented the gap and attributed much of it to documentation and guidance failures rather than to differences in the severity of the disabilities claimed.[4] This article addresses which features of the law convert those documentation gaps into

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[4]U.S. Gov't Accountability Off., GAO-24-105400, *VA Disability Benefits: Actions Needed to Address Challenges Reserve Component Members Face Accessing Compensation* (Oct. 2023),

denials, and which filing errors are most avoidable. We examine the period-specific nature of veteran status, the disease-injury asymmetry between training categories, the unavailability of statutory and regulatory presumptions for claims resting on training service, the narrow but underused exception that restores those presumptions, and the effective-date mechanics that determine the value of a successful claim. We conclude with practice recommendations for advisors serving reserve component members.

I. Introduction

A prior article in this series examined the empirical disparity in claim outcomes between reserve and active component veterans and the structural causes the Government Accountability Office identified.[5] The disparity is real. Across initial disability compensation claims submitted from 2012 through 2021, VA approved 66 percent of claims from service members who served only in a reserve component, compared with 82 percent of claims from members who served in an active component at some point — a difference of 16 percentage points. The annual gap persisted in every year of the study period, ranging from 20 percentage points in 2014 to 11 percentage points in 2020.[6] Among those who did establish service connection, the disabilities were of comparable severity: an average combined rating of 58 percent for reserve component veterans against 60 percent for active component veterans.[7] What differed was not the injury profile but the proof.

This article takes up the question that follows for the practitioner. If the disabilities are comparable but the outcomes are not, the divergence arises from the interaction between how reserve service is documented and how the governing law defines qualifying service. That interaction produces several traps that are technical rather than evidentiary, and that a well-advised claimant can anticipate.

II. Veteran Status Is Period-Specific, Not Career-Wide

Eligibility for VA disability compensation requires that the claimant be a veteran, defined as a person who served in the active military, naval, air, or space service and was discharged under conditions other than dishonorable.[8] For a member who served exclusively in a reserve component, that status derives from discrete periods of qualifying duty, and only where the member became disabled during such a

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https://www.gao.gov/products/gao-24-105400. The review was directed by the Identifying Barriers and Best Practices Study Act, Pub. L. No. 116-187, § 2(a), 134 Stat. 903, 903–04 (2020).

[5]Bradley W. Hennings & Robert Chisholm, *Unequal Burdens: Administrative and Evidentiary Barriers to VA Disability Compensation for Reserve Component Veterans*, ROA Law Review 25022 (June 2025), www.roa.org/lawcenter.

[6]GAO-24-105400, *supra* note 4, at 10–11.

[7]GAO-24-105400, *supra* note 4, at 19–21 & tbl.2, fig.12 (reporting average combined ratings of 58 percent for reserve component and 60 percent for active component veterans, and that 16 percent of reserve component members compared with 39 percent of active component members had a VA-determined service-connected disability).

[8]38 U.S.C. § 101(2), (24); 38 C.F.R. §§ 3.1(d), 3.6(a).

period. Service in the National Guard or Reserves, standing alone, does not confer veteran status.[9] The threshold inquiry is therefore not whether the claimant served, but whether the specific period in which the disability arose was a qualifying period.

The claimant bears the burden on that question. It is worth noting, because it is frequently overlooked in the briefing, that the benefit-of-the-doubt standard applies to it: where the evidence for and against a qualifying period stands in approximate balance, the question is resolved in the claimant's favor.[10] A record that is thin rather than adverse is not automatically a losing record.

A. The Disease-Injury Asymmetry

The governing regulation treats the two principal training categories differently, and the distinction is often decisive. Active duty for training (ACDUTRA) qualifies where the member was disabled or died from a *disease or an injury* incurred or aggravated in the line of duty. Inactive duty for training (INACDUTRA) qualifies only where the member was disabled or died from an *injury* incurred or aggravated in the line of duty, or from an acute myocardial infarction, cardiac arrest, or cerebrovascular accident occurring during that training.[11] A disease first manifesting during a monthly drill period therefore does not, without more, establish a qualifying period, while an orthopedic injury sustained during the same drill period does.

B. Duty Status: Title 32 and State Active Duty

Characterization of duty status is not a formality. Full-time National Guard duty performed under the enumerated provisions of Title 32 is treated as ACDUTRA, while duty other than full-time under those same provisions is treated as INACDUTRA.[12] The label on the orders does not resolve the question; the nature and duration of the duty does. Advisors should resist the assumption that Title 32 service categorically falls outside qualifying service, which is inaccurate, and should instead establish which subsection governed the period at issue.

A related distinction is easier to miss and more often fatal. A National Guard member called to duty by a state governor under state authority — commonly called state active duty — serves as a state employee rather than in a federal duty status. Duty in that status is neither ACDUTRA nor INACDUTRA, and a

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[9] *Donnellan v. Shinseki*, 24 Vet. App. 167, 172 (2010); *see also Paulson v. Brown*, 7 Vet. App. 466, 470 (1995). The claimant bears the burden of establishing veteran status for a period of active duty for training. *Donnellan*, 24 Vet. App. at 171–75.

[10] *Donnellan*, 24 Vet. App. at 175 (holding that the benefit-of-the-doubt standard applies to the question of veteran status); *see* 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102.

[11] 38 C.F.R. § 3.6(a); *see also* 38 U.S.C. § 101(24); *Acciola v. Peake*, 22 Vet. App. 320, 323–24 (2008).

[12] 38 C.F.R. § 3.6(c)(3), (d)(4) (treating full-time National Guard duty under 32 U.S.C. §§ 316, 502–505 as active duty for training, and duty other than full-time under the same provisions as inactive duty for training).

disability arising during it will not support a claim for VA disability compensation.[13] Because Guard members are routinely activated for hurricanes, floods, civil disturbances, and border support missions, and because the work performed in state status can be indistinguishable from the work performed the following month under federal authority, this is among the most common duty-status traps in practice. The first document to obtain is the order, not the medical record.

C. The Travel-Status Provision

An underused provision extends coverage to travel. A member who, when authorized or required by competent authority, assumes an obligation to perform training duty, and who is disabled by an injury or a covered disease incurred while proceeding directly to or returning directly from that duty, is deemed to have been on the corresponding duty status.[14] Covered diseases are limited to acute myocardial infarction, cardiac arrest, and cerebrovascular accident. The claimant bears the burden of proof, and the regulation directs consideration of the hour of departure, the hour of scheduled arrival or release, the method and manner of travel, the itinerary, and the immediate cause of the disability. For members injured while commuting to drill, this provision is often the only available path.

III. The Presumption Gap

The most consequential feature of this area is that the presumptions carrying many active-duty claims are unavailable to claims predicated solely on training service. Presumptive service connection under 38 C.F.R. §§ 3.307 and 3.309, the presumption of soundness, and the presumption of aggravation do not apply to claims based on ACDUTRA or INACDUTRA unless the claimant has already established veteran status through a qualifying period.[15] A claimant whose only qualifying service is training service must therefore prove incurrence or aggravation directly. The claimant must also show that the disability itself manifested during the training period; a condition incurred during a qualifying period that does not become disabling until afterward will generally not support the claim.[16]

One of the authors served as a Veterans Law Judge at the Board of Veterans' Appeals before entering private practice. In that role, appeals arising from reserve component service frequently turned not on whether the claimed condition existed or whether something had happened during a drill period, but on

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[13]GAO-24-105400, *supra* note 4, at 28 & fig.16 (noting that National Guard members activated by a governor for state active duty serve as state employees and are not eligible for VA disability compensation for disabilities resulting from health conditions that develop during that duty); *see* 38 C.F.R. § 3.6(c), (d) (defining qualifying training duty by reference to federal authorities).

[14]38 C.F.R. § 3.6(e); *see* 38 U.S.C. § 106(d). The burden of proof rests on the claimant. 38 C.F.R. § 3.6(e).

[15]*Biggins v. Derwinski*, 1 Vet. App. 474, 477–78 (1991); *Smith v. Shinseki*, 24 Vet. App. 40, 45–46 (2010); *see* 38 C.F.R. §§ 3.304(b), 3.306, 3.307, 3.309.

[16]*Bowers v. Shinseki*, 26 Vet. App. 201, 207 (2013), *aff'd*, 748 F.3d 1351 (Fed. Cir. 2014); *see also Hansen-Sorensen v. Wilkie*, 909 F.3d 1379, 1382 (Fed. Cir. 2018); 38 U.S.C. § 101(24)(B), (C).

whether the record could establish that the period in question was a qualifying one at all — a question the evidence often could not answer in either direction.

Two implications of the presumption gap are easy to miss. First, a chronic disease with delayed onset is poorly served by the reserve-only fact pattern, because the presumptions that ordinarily bridge the gap between service and later manifestation are unavailable. Second, claims framed as aggravation of a preexisting condition carry a heavier burden: the claimant must show worsening beyond natural progression and that the training caused the worsening.[17] Advisors should also note that the Gulf War presumption for undiagnosed illness and medically unexplained chronic multisymptom illness requires qualifying service in the theater and requires the disability to become manifest to a degree of 10 percent or more within the presumptive period, currently set at December 31, 2026.[18] Mobilized members serving on federal active duty may reach that presumption; members whose only service is drill generally cannot. With the current period closing at the end of this year, any member with unexplained chronic symptoms and qualifying theater service should be advised to file now rather than to wait for a diagnosis.

A. Establishing Veteran Status Once Can Restore the Presumptions

The gap is not always permanent, and the exception is underused. In *Hill v. McDonald*, the Court held that a claimant who is service connected for one disability incurred during a period of ACDUTRA has established veteran status for that period, and that the status carries to additional claims arising from the same period. The Court further held that the presumption of aggravation is then available for additional preexisting conditions, and that the presumption does not require an entrance examination — the Secretary having conceded that members performing training duty are not routinely given the examinations that active component members receive.[19] The practical consequence is substantial. A single granted condition arising from a two-week annual training period can convert every other claim arising from that same period from a direct-proof case into a presumption case. An advisor reviewing a file that already contains one grant should identify the period of service underlying it before framing anything else.

IV. Avoidable Filing Errors

A. Delay Without Preserving the Effective Date

The most costly error is the most easily corrected. Claimants routinely defer filing while assembling records, not recognizing that the effective date, rather than the date of the decision, governs retroactive

[17] *Smith*, 24 Vet. App. at 48 (requiring, for aggravation during a training period, that the condition worsened beyond its natural progression and that the worsening was caused by the training).
[18] 38 C.F.R. § 3.317(a)(1)(i). The presumptive period was extended from December 31, 2021 to December 31, 2026. 87 Fed. Reg. 6038 (Feb. 3, 2022); 86 Fed. Reg. 51000 (Sept. 14, 2021).
[19] *Hill v. McDonald*, 28 Vet. App. 243, 253, 255 (2016).

entitlement. Three mechanisms preserve an earlier date, and they operate independently of one another.

An intent to file holds a place. If VA receives a complete application within one year of the intent to file, the complete claim is treated as filed on the date the intent to file was received.[20] The one-year period does not extend, and an expired intent to file confers nothing.

A claim received within one year of discharge or release reaches back rather than merely holding a place: the effective date is the day following separation, without regard to when VA decides the claim.[21] For a member demobilizing from a period of federal active duty, this rule is worth considerably more than the intent-to-file rule. Its application to release from a discrete period of ACDUTRA, as distinct from separation from an active-duty tour, is less settled and should be confirmed before it is relied upon.

Once a claim is filed, continuous pursuit preserves the original date. Where the claimant files a higher-level review request or a supplemental claim within one year of each adverse decision, the date of application continues to be treated as the date of the original application. A supplemental claim filed more than one year after the decision does not reach back; its effective date is no earlier than the date it was received.[22] For a separating or demobilizing member, filing an intent to file should be a transition task rather than a post-transition one, and members mobilized on federal orders should ask whether they qualify to initiate a claim before separation under VA's pre-discharge programs.

B. Contemporaneous Documentation and Line of Duty Determinations

The Government Accountability Office found that reserve component members frequently do not appreciate the importance of documenting a health condition when it occurs, and that agency guidance does not close that gap.[23] Because the governing law requires the disability to arise during an identified qualifying period, a contemporaneous record is not merely helpful; it is often the only evidence capable of situating the condition within that period.

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[20] 38 C.F.R. § 3.155(b). An intent to file may be submitted through a saved electronic application, on the form prescribed by the Secretary, or by oral statement to designated VA personnel recorded in writing. *Id.* § 3.155(b)(1). VA will not recognize concurrent intents to file for the same benefit. *Id.* § 3.155(b)(6). The intent-to-file provision does not apply to supplemental claims. *Id.* § 3.155.

[21] 38 U.S.C. § 5110(b)(1); 38 C.F.R. § 3.400(b)(2)(i).

[22] 38 U.S.C. § 5110(a)(2) (treating the date of application as the date of the initial application where the claim is continuously pursued by a timely higher-level review request or supplemental claim); *id.* § 5110(a)(3) (supplemental claims received more than one year after a decision take an effective date no earlier than the date of receipt); *see* 38 C.F.R. § 3.2500.

[23] GAO-24-105400, *supra* note 4, at 34–35, 36–39 & tbl.4 (finding that reserve component members do not consistently understand the importance of contemporaneous documentation, and that Department of Defense and VA guidance does not address the gap).

A favorable line of duty determination does more than corroborate. A service department finding that an injury or disease was incurred in the line of duty is binding on VA unless it is patently inconsistent with the requirements of the laws VA administers.[24] Securing one during service therefore removes the central factual dispute from the case before the case exists. The reverse is not symmetrical: where the service department makes no determination, or makes a negative one, VA will conduct its own line of duty investigation.[25] In appeals reviewed at the Board, the presence or absence of a single document — an order, a line of duty determination, or a treatment note bearing a date — frequently determined whether a reserve component claim could be resolved on the record or had to be remanded for further development.

The recordkeeping picture has improved, though not retroactively. Reserve component members historically did not receive a single consolidated record of service; documentation was distributed across any DD Form 214 issued for a qualifying activation, the NGB Form 22, and individual duty orders. Responding in part to a requirement enacted in the National Defense Authorization Act for Fiscal Year 2020, the Department of Defense created DD Form 214-1, a reserve component addendum consolidating periods of active and inactive service together with retirement points, and the reserve components completed implementation during 2025.[26] The form materially eases proof of qualifying periods for members separating now. It does nothing for the member who separated in 2011 and files in 2026, for whom matching a condition to a qualifying period remains the substance of the case rather than a preliminary step.

C. Under-Scoped Claims

Claimants commonly file for the most salient condition and omit secondary conditions that the record would support, and they commonly misapprehend how ratings combine. Combined ratings are not additive. VA applies the most disabling condition first and measures each additional condition against remaining efficiency, then converts the combined value to the nearest degree divisible by 10, adjusting values ending in five upward.[27] Two conditions rated 50 percent each combine to 75 percent, which

[24]38 C.F.R. § 3.1(m) ("A service department finding that injury, disease or death occurred in line of duty will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs."). The same provision excludes injury or disease resulting from willful misconduct and, for claims filed after October 31, 1990, from abuse of alcohol or drugs.

[25]GAO-24-105400, *supra* note 4, at 29–30 & fig.17.

[26]National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, §§ 569–570, 133 Stat. 1198 (2019); Dep't of Def. Instruction 1336.01, *Certificate of Uniformed Service (DD Form 214/215 Series)* (Feb. 17, 2022).

[27]38 C.F.R. § 4.25. Combined values are converted to the nearest degree divisible by 10, and values ending in five are adjusted upward. *Id.*

converts to 80 percent, not 100 percent. Where a decision has issued, a supplemental claim requires new and relevant evidence.[28]

The scale of what under-scoping forgoes is measurable. As of September 30, 2025, VA paid compensation to 6,338,253 veterans for 46,496,235 service-connected disabilities, an average of 7.34 per recipient, and an average of 6.15 among those newly added to the rolls that year.[29] Two qualifications are necessary. The figure is a ratio rather than a distribution, so it describes the average recipient and not a typical one, and a significant percentage of those rated disabilities carry a zero percent evaluation.[30] (A noncompensable rating is nonetheless worth pursuing. It establishes service connection, which fixes the predicate for a later increase, and two or more separate permanent noncompensable disabilities that clearly interfere with normal employability may support a 10 percent rating, though only where no compensable rating has been assigned.[31] A condition may also deteriorate over time, and an approved rating can facilitate later increased-rating claims.)

The report does not disaggregate by component, so it cannot serve as a benchmark for what a reserve-only claimant should expect.[32] Its use here is narrower. Multi-condition awards are the norm across the compensation population, which makes a single-condition initial claim an outlier. For a reserve component member the point carries additional weight: each omitted condition is one whose connection to a specific qualifying training period becomes harder to establish as the record ages.

VI. Conclusion

The approval gap documented by the Government Accountability Office is not solely a function of recordkeeping. It reflects a body of law that conditions eligibility on discrete periods of qualifying duty, withholds the presumptions that ordinarily ease proof, and distinguishes disease from injury in a manner that disadvantages the part-time service member. The Government Accountability Office directed fourteen recommendations at the Department of Defense and VA, and both agencies largely

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[28] 38 C.F.R. § 3.2501(a)(1) (defining new evidence and relevant evidence); *see* 38 C.F.R. § 3.2500 (review options).

[29] Veterans Benefits Admin., U.S. Dep't of Veterans Affairs, *Annual Benefits Report Fiscal Year 2025: Compensation* 72–75 (reporting 46,496,235 service-connected disabilities among 6,338,253 compensation recipients, and 2,933,013 among the 476,802 veterans newly added to the rolls), https://www.benefits.va.gov/REPORTS/abr/. Data are current as of September 30, 2025.

[30] *Id.* at 102 tbl.4 (reporting 13,371,067 rated disabilities evaluated at zero percent, or 28.8 percent of all rated service-connected disabilities).

[31] 38 C.F.R. § 3.324. The provision is predicated on the existence solely of noncompensable disabilities and does not apply in combination with any other rating; once a compensable rating is assigned, it ceases to apply.

[32] The report tabulates recipients by wartime period of service rather than by component and therefore does not disaggregate reserve component from active component claimants. *Annual Benefits Report*, *supra* note 29, at 74–75.

concurred.[33] One of those reforms has now been delivered: reserve component members separating today receive a consolidated record of service that their predecessors did not. The remainder of the burden still falls on members and their advisors.

Four measures carry disproportionate value. Document conditions when they occur, and secure a line of duty determination during service, because a favorable determination binds VA. Identify and preserve the specific duty status of the period at issue, and confirm that the duty was performed in a federal status. File an intent to file before beginning to assemble evidence, and file the complete claim within one year of release from any qualifying period of active duty. Where one condition from a training period has already been granted, treat that period as established and frame every remaining claim against it. Each measure is available to every member, and each addresses a failure mode that the governing law makes predictable.

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[33]GAO-24-105400, *supra* note 4, at 60 (fourteen recommendations; the Department of Defense concurred and VA concurred or concurred in principle).

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