§ 3.359 Determination of service connection for former members of the Armed Forces of Czechoslovakia or Poland.

Rating boards will determine whether or not the condition for which treatment is claimed by former members of the Armed Forces of Czechoslovakia or Poland under 38 U.S.C. 109(c) is service connected. This determination will be made using the same criteria that applies to determinations of service connection based on service in the Armed Forces of the United States.

[43 FR 4424, Feb. 2, 1978]

§ 3.360 Service-connected health-care eligibility of certain persons administratively discharged under other than honorable condition.

(a) General. The health-care and related benefits authorized by chapter 17 of title 38 U.S.C. shall be provided to certain former service persons with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval, or air service in line of duty.

(b) Discharge categorization. With certain exceptions such benefits shall be furnished for any disability incurred or aggravated during a period of service terminated by a discharge under other than honorable conditions. Specifically, they may not be furnished for any disability incurred or aggravated during a period of service terminated by a bad conduct discharge or when one of the bars listed in § 3.12(c) applies.

(c) Primary lesions. Healed primary type tuberculosis shown at the time of entrance into active service will not be taken as evidence to rebut direct or presumptive service connection for active reinfection type pulmonary tuberculosis.


§ 3.370 Pulmonary tuberculosis shown by X-ray in active service.

(a) Active disease. X-ray evidence alone may be adequate for grant of direct service connection for pulmonary tuberculosis. When under consideration, all available service department films and subsequent films will be secured and read by specialists at designated stations who should have a current examination report and X-ray. Resulting interpretations of service films will be accorded the same consideration for service-connection purposes as if clinically established, however, a compensable rating will not be assigned prior to establishment of an active condition by approved methods.

(b) Inactive disease. Where the veteran was examined at time of entrance into active service but X-ray was not made, or if made, is not available and there was no notation or other evidence of active or inactive reinfection type pulmonary tuberculosis existing prior to such entrance, it will be assumed that the condition occurred during service and direct service connection will be in order for inactive pulmonary tuberculosis shown by X-ray evidence during service in the manner prescribed in paragraph (a) of this section, unless lesions are first shown so soon after entry on active service as to compel the conclusion, on the basis of sound medical principles, that they existed prior to entry on active service.

(c) Primary lesions. Healed primary type tuberculosis shown at the time of entrance into active service will not be taken as evidence to rebut direct or presumptive service connection for active reinfection type pulmonary tuberculosis.


§ 3.371 Presumptive service connection for tuberculous disease; wartime and service on or after January 1, 1947.

(a) Pulmonary tuberculosis. (1) Evidence of activity on comparative study of X-ray films showing pulmonary tuberculosis within the 3-year presumptive period provided by § 3.307(a)(3) will
§ 3.372 Initial grant following inactivity of tuberculosis.

When service connection is granted initially on an original or reopened claim for pulmonary or nonpulmonary tuberculosis and there is satisfactory evidence that the condition was active previously but is now inactive (arrested), it will be presumed that the disease continued to be active for 1 year after the last date of established activity, provided there is no evidence to establish activity or inactivity in the intervening period. For a veteran entitled to receive compensation on August 19, 1968, the beginning date of graduated ratings will commence at the end of the 1-year period. For a veteran who was not receiving or entitled to receive compensation on August 19, 1968, ratings will be assigned in accordance with the Schedule for Rating Disabilities (part 4 of this chapter). This section is not applicable to running award cases.

[33 FR 16275, Nov. 6, 1968]

§ 3.373 [Reserved]

§ 3.374 Effect of diagnosis of active tuberculosis.

(a) Service diagnosis. Service department diagnosis of active pulmonary tuberculosis will be accepted unless a board of medical examiners, Clinic Director or Chief, Outpatient Service certifies, after considering all the evidence, including the favoring or opposing tuberculosis and activity, that such diagnosis was incorrect. Doubtful cases may be referred to the Chief Medical Director in Central Office.

(b) Department of Veterans Affairs diagnosis. Diagnosis of active pulmonary tuberculosis by the medical authorities of the Department of Veterans Affairs as the result of examination, observation, or treatment will be accepted for rating purposes. Reference to the Clinic Director or Chief, Outpatient Service, will be in order in questionable cases and, if necessary, to the Chief Medical Director in Central Office.

(c) Private physician’s diagnosis. Diagnosis of active pulmonary tuberculosis by private physicians on the basis of their examination, observation or treatment will not be accepted to show the disease was initially manifested after discharge from active service unless confirmed by acceptable clinical, X-ray or laboratory studies, or by findings of active tuberculosis based upon acceptable hospital observation or treatment.


§ 3.375 Determination of inactivity (complete arrest) in tuberculosis.

(a) Pulmonary tuberculosis. A veteran shown to have had pulmonary tuberculosis will be held to have reached a
Condition of "complete arrest" when a diagnosis of inactive is made.

(b) Nonpulmonary disease. Determination of complete arrest of nonpulmonary tuberculosis requires absence of evidence of activity for 6 months. If there are two or more foci of such tuberculosis, one of which is active, the condition will not be considered to be inactive until the tuberculous process has reached arrest in its entirety.

(c) Arrest following surgery. Where there has been surgical excision of the lesion or organ, the date of complete arrest will be the date of discharge from the hospital, or 6 months from the date of excision, whichever is later.

§ 3.378 Changes from activity in pulmonary tuberculosis pension cases.

A permanent and total disability rating in effect during hospitalization will not be discontinued before hospital discharge on the basis of a change in classification from active. At hospital discharge, the permanent and total rating will be discontinued unless (a) the medical evidence does not support a finding of complete arrest (§ 3.375), or (b) where complete arrest is shown but the medical authorities recommend that employment not be resumed or be resumed only for short hours (not more than 4 hours a day for a 5-day week). If either of the two aforementioned conditions is met, discontinuance will be deferred pending examination in 6 months. Although complete arrest may be established upon that examination, the permanent and total rating may be extended for a further period of 6 months provided the veteran's employment is limited to short hours as recommended by the medical authorities. Similar extensions may be granted under the same conditions at the end of 12 and 18 months periods. At the expiration of 24 months after hospitalization, the case will be considered under § 3.321(b) if continued short hours of employment is recommended or if other evidence warrants submission.

§ 3.379 Anterior poliomyelitis.

If the first manifestations of acute anterior poliomyelitis present themselves in a veteran within 35 days of termination of active military service, it is probable that the infection occurred during service. If they first appear after this period, it is probable that the infection was incurred after service.

§ 3.380 Diseases of allergic etiology.

Diseases of allergic etiology, including bronchial asthma and urticaria, may not be disposed of routinely for compensation purposes as constitutional or developmental abnormalities. Service connection must be determined on the evidence as to existence prior to enlistment and, if so existent, a comparative study must be made of its severity at enlistment and subsequently. Increase in the degree of disability during service may not be disposed of routinely as natural progress nor as due to the inherent nature of the disease. Seasonal and other acute allergic manifestations subsiding on the absence of or removal of the allergen are generally to be regarded as acute diseases, healing without residuals. The determination as to service incurrence or aggravation must be on the whole evidentiary showing.

§ 3.381 Service connection of dental conditions for treatment purposes.

(a) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease will be considered service-connected solely for the purpose of establishing eligibility for outpatient dental treatment as provided in § 17.161 of this chapter.

(b) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service. When applicable, the rating activity will determine whether the condition is due to combat or other in-service trauma, or whether the veteran was interned as a prisoner of war.
§ 3.382

(c) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.

(d) The following principles apply to dental conditions noted at entry and treated during service:

(1) Teeth noted as normal at entry will be service-connected if they were filled or extracted after 180 days or more of active service.

(2) Teeth noted as filled at entry will be service-connected if they were extracted, or if the existing filling was replaced, after 180 days or more of active service.

(3) Teeth noted as carious but restorable at entry will not be service-connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service-connected.

(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service-connected if extraction was required after 180 days or more of active service.

(5) Teeth noted at entry as non-restorable will not be service-connected, regardless of treatment during service.

(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.

(e) The following will not be considered service-connected for treatment purposes:

(1) Calculus;

(2) Acute periodontal disease;

(3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and

(4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.

(f) Teeth extracted because of chronic periodontal disease will be service-connected only if they were extracted after 180 days or more of active service.

(Authority: 38 U.S.C. 1712)

[64 FR 30393, June 8, 1999]

§ 3.382 [Reserved]

§ 3.383 Special consideration for paired organs and extremities.

(a) Entitlement criteria. Compensation is payable for the combinations of service-connected and nonservice-connected disabilities specified in paragraphs (a)(1) through (a)(5) of this section as if both disabilities were service-connected, provided the nonservice-connected disability is not the result of the veteran’s own willful misconduct.

(1) Blindness in one eye as a result of service-connected disability and blindness in the other eye as a result of nonservice-connected disability.

(2) Loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of nonservice-connected disability.

(3) Total deafness in one ear as a result of service-connected disability and total deafness in the other ear as a result of nonservice-connected disability.

(4) Loss or loss of use of one hand or one foot as a result of service-connected disability and loss or loss of use of the other hand or foot as a result of nonservice-connected disability.

(5) Permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.

(b) Effect of judgment or settlement. (1) If a veteran receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the nonservice-connected disability which established entitlement under this section, the increased compensation payable by reason of this section shall not be paid for any month following the month in which any such money or property is received until such time as the total amount of such increased compensation that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any
such property received. The provisions of this paragraph do not apply, however, to any portion of such increased compensation payable for any period preceding the end of the month in which such money or property of value was received.

(2) With respect to the disability combinations specified in paragraphs (a)(1), (a)(2), (a)(3) and (a)(5) of this section, the provisions of this paragraph apply only to awards of increased compensation made on or after October 28, 1986.

(c) Social security and workers' compensation. Benefits received under social security or workers' compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) Veteran's duty to report. Any person entitled to increased compensation under this section shall promptly report to VA the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the non-service-connected loss or loss of use of the impaired extremity upon which entitlement under this section is based. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorneys' fees, may not be deducted from the amount to be reported.

(Authority: 38 U.S.C. 5110(a))

§ 3.385 Disability due to impaired hearing.

For the purposes of applying the laws administered by VA, impaired hearing will be considered to be a disability when the auditory threshold in any of the frequencies 500, 1000, 2000, 3000, 4000 Hertz is 40 decibels or greater; or when the auditory thresholds for at least three of the frequencies 500, 1000, 2000, 3000, or 4000 Hertz are 26 decibels or greater; or when speech recognition scores using the Maryland CNC Test are less than 94 percent.

[59 FR 60560, Nov. 25, 1994]

EFFECTIVE DATES

§ 3.400 General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later.

(Authority: 38 U.S.C. 5110(a))

(a) Unless specifically provided. On basis of facts found.

(b) Disability benefits—(1) Disability pension (§ 3.3). An award of disability pension may not be effective prior to the date entitlement arose.

(i) Claims received prior to October 1, 1984. Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within one year from such date, whichever is to the advantage of the veteran.

(ii) Claims received on or after October 1, 1984. (A) Except as provided in paragraph (b)(1)(ii)(B) of this section, date of receipt of claim.

(B) If, within one year from the date on which the veteran became permanently and totally disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability, which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board judgment must be applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. For the purposes of