Department of Veterans Affairs

§ 3.301 Line of duty and misconduct.

(a) Line of duty. Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty, and not the result of the veteran’s own willful misconduct or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs.

(b) Willful misconduct. Disability pension is not payable for any condition due to the veteran’s own willful misconduct.

(Authority: 38 U.S.C. 105)

(c) Specific applications; willful misconduct. For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in §§3.1 (m) and (n) of this part apply except as modified within paragraphs (c)(1) through (c)(3) of this section. The provisions of paragraphs (c)(2) and (c)(3) of this section are subject to the provisions of §3.302 of this part where applicable.

(Authority: 38 U.S.C. 501)

(1) Venereal disease. The residuals of venereal disease are not to be considered the result of willful misconduct. Consideration of service connection for residuals of venereal disease as having been incurred in service requires that the initial infection must have occurred during active service. Increase in service of manifestations of venereal disease will usually be held due to natural progress unless the facts of record indicate the increase in manifestations was precipitated by trauma or by the conditions of the veteran’s service, in which event service connection may be established by aggravation. Medical principles pertaining to the incubation period and its relation to the course of the disease; i.e., initial or acute manifestation, or period and course of secondary and late residuals manifested, will be considered when time of occurrence of venereal disease prior to or after entry into service is at issue. In the issue of service connection, whether the veteran complied with service regulations and directives for reporting the disease and undergoing treatment is immaterial after November 14, 1972, and the service department characterization of acquisition of the disease as willful misconduct or as not in line of duty will not govern.

(2) The simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results...
proximately and immediately in disabil-
ity or death, the disability or death will be con-
sidered the result of the per-
son's willful misconduct. Organic dis-
ases and disabilities which are a sec-
ondary result of the chronic use of al-
cohol as a beverage, whether out of
compulsion or otherwise, will not be
considered of willful misconduct ori-
gin. (See §§21.1043, 21.5041, and 21.7051
of this title regarding the disabling ef-
fects of chronic alcoholism for the pur-
pose of extending delimiting periods
under education or rehabilitation pro-
gams.)

(3) Drug usage. The isolated and infre-
quent use of drugs by itself will not be
considered willful misconduct; how-
ever, the progressive and frequent use
of drugs to the point of addiction will
be considered willful misconduct.
Where drugs are used to enjoy or expe-
rience their effects and the effects re-
sult proximately and immediately in
disability or death, such disability or
death will be considered the result of
the person's willful misconduct. Or-
ganic diseases and disabilities which
are a secondary result of the chronic
use of drugs and infections coinciding
with the injection of drugs will not be
considered willful misconduct.
Where drugs are used for thera-
petic purposes or where use of drugs
or addiction thereto, results from a
service-connected disability, it will not
be considered of misconduct origin.

(Authority: 38 U.S.C. 501)

(3) Drug usage. The isolated and infre-
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use of drugs and infections coinciding
with the injection of drugs will not be
considered willful misconduct ori-
gin. (See paragraphs (d) of this section
regarding service connection where dis-
ability or death is a result of abuse of

drugs.) Where drugs are used for thera-
petic purposes or where use of drugs
or addiction thereto, results from a
service-connected disability, it will not
be considered of misconduct origin.

(Authority: 38 U.S.C. 105, 1110, 1121, 1131, 1301,
and 1521(a))

(d) Line of duty; abuse of alcohol or
drugs. An injury or disease incurred
during active military, naval, or air
service shall not be deemed to have
been incurred in line of duty if such in-
jury or disease was a result of the
abuse of alcohol or drugs by the person
on whose service benefits are claimed.
For the purpose of this paragraph, al-
cohol abuse means 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; drug
abuse means the use of illegal drugs
(including prescription drugs that are
illegally or illicitly obtained), the in-
tentional use of prescription or non-

prescription drugs for a purpose other
than the medically intended use, or the
use of substances other than alcohol to
enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))

(Cross-References: In line of duty. See
§ 3.1(m). Willful misconduct. See § 3.1(n). Ex-
tended period of eligibility. See §§21.1043 and
(26 FR 1579, Feb. 24, 1961, as amended at 37
FR 24662, Nov. 18, 1972; 54 FR 31951, Aug. 3,
1989; 55 FR 13530, Apr. 11, 1990; 60 FR 27408-
27409, May 24, 1995)

§ 3.302 Service connection for mental
unsoundness in suicide.

(a) General. (1) In order for suicide to
constitute willful misconduct, the act
of self-destruction must be intentional.
(2) A person of unsound mind is in-
capable of forming an intent (mens rea,
or guilty mind, which is an essential
element of crime or willful mis-
conduct).
(3) It is a constant requirement for
favorable action that the precipitating
mental unsoundness be service con-

ected.

(b) Evidence of mental condition. (1)
Whether a person, at the time of sui-
cide, was so unsound mentally that he
or she did not realize the consequence
of such an act, or was unable to resist
such impulse is a question to be deter-
mimed in each individual case, based on
all available lay and medical evidence
pertaining to his or her mental condi-
tion at the time of suicide.
(2) The act of suicide or a bona fide
attempt is considered to be evidence of
mental unsoundness. Therefore, where
no reasonable adequate motive for sui-
cide is shown by the evidence, the act
will be considered to have resulted
from mental unsoundness.
(3) A reasonable adequate motive for
suicide may be established by affirma-
tive evidence showing circumstances
which could lead a rational person to
self-destruction.
(c) Evaluation of evidence. (1) Affirma-
tive evidence is necessary to justify re-
versal of service department findings of
mental unsoundness where Department
of Veterans Affairs criteria do not oth-

erwise warrant contrary findings.