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Disability Benefits in Respect of Peacetime Military Service - The Compensation Principle

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Purpose

The purpose of this policy is to provide direction on how to determine if a disability arose out of or was directly connected with military service under the *Pension Act* and the *Veterans Well-being Act*, commonly referred to as the Compensation Principle coverage related to peacetime military service under the *Pension Act* or the *Veterans Well-being Act*.

This policy also provides direction on adjudicating claims using the Evidence-Informed Decision Models and the information necessary to comply with evidentiary requirements.

Policy

General

1. Both the *Pension Act* and the *Veterans Well-being Act* state that disability benefits (Disability Pension, Disability Award, or Pain and Suffering Compensation) may be given for disabilities that arose out of or are directly connected with service.
2. When determining whether a disability arose out of or is directly connected with service, the Acts must be liberally construed and interpreted in order to recognize and fulfil the obligation of the people and Government of Canada to show just and due appreciation to Canadian Armed Forces personnel and Veterans for their service to Canada
3. Guidance on determining service relationship for consequential conditions can be found in the Consequential Disability policy.

Determining if an applicant's claimed condition is related to their service

4. To determine if an applicant's claimed condition is related to service under the Compensation Principle, the Department should answer the following questions:
    a. Did service factors play a significant role in causing or aggravating an injury or disease based on reasonable evidence?
    b. Did the service-related injury or disease result in or aggravate a permanent disability?
5. For causation (i.e., full entitlement), see Significant Cause Test section below.
6. For aggravation (i.e., partial entitlement), see the Disability Resulting From a Non-Service Related Injury or Disease policy.

The 'Significant Cause' Test

7. To establish a service relationship with full entitlement under the Compensation Principle, there must be a significant causal connection between the claimed condition and service, taking into account all of the individual circumstances of the case.
8. Service factors do not have to be the sole or primary cause of the claimed condition. This does not mean that any level or degree of causal connection would be sufficient; something more than a tenuous connection to service, or mere possibility, is needed to establish entitlement.
9. As an illustration, if it could be shown that service factors were only 1% responsible for causing the claimed condition, such a minor connection would not be sufficient.
10. Factors such as the following can be taken into account, but no single factor is determinative:
    a. The location of the events;
    b. The nature of the activity;
    c. The degree of control exercised by the military;
    d. Whether the member/Veteran was on duty at the time; and
    e. Any other relevant factors.

The Applicant Statement

11. The *Application for Disability Benefits* requires an applicant to complete section B – Applicant Statement. This section requires the applicant to provide a statement on how they relate their claimed condition(s) to:
    a. their military service;
    b. a specific service period;
    c. a previously entitled condition.
12. In the Applicant Statement, the applicant is asked to provide the date and circumstances of the injury or illness that resulted in the disability. If the claimed condition was caused by cumulative events, a listing of military (or RCMP) occupations (with codes), duties and time spent in each occupation may be provided to show the relationship between the claimed condition and service.
13. The Applicant's Statement in the application for disability benefits is key evidence in determining whether the injury or disease is connected to service. The Applicant's Statement should be considered credible and reliable as it is a sworn statement. An applicant who knowingly makes a false or misleading statement in an application is guilty of an offense.
14. The Department accepts that Canadian Armed Forces personnel may not report an incident or event and, therefore, the incident or event may not be captured in the Personnel records including the Service Health Records. Therefore, the lack of documented, objective evidence to show that military duties or factors caused or contributed to an injury or disease is not to be considered as evidence that the Applicant's Statement is not true.
15. The following should be considered when determining if a link exists between the claimed condition and service:

a. special hazards, circumstances, requirements and demands of military service;
b. the general military environment (e.g. military base, training camp, facility, ship, submarine, airplane);
c. the culture of the military environment; and
d. time and place.

16. An injury does not have to occur on a military base to be service-related. Similarly, every death, disease, injury or event that occurs on military property, or during service, is not service-related.

    It is important to distinguish between mandatory events which are service-connected and recreational events which are not, i.e. a mess dinner is generally a mandatory event (unless a member is excused by the Commanding Officer, Base/Wing Commander, or the Regimental Sergeant Major or Base/Wing Chief Warrant Officer), an unofficial dance at the mess, on the other hand, is a recreational event, with a member free to choose whether to attend.

17. Any credible, uncontradicted evidence that clearly establishes a medical condition may be service-related should be accepted and every reasonable inference in favour of the applicant should be made.
18. The extent of investigation and documentation required to determine a claim is discretionary.

Sexual Trauma

19. The following sections of this policy clarify how it will be applied by Veterans Affairs Canada when adjudicating applications for disability benefits involving claims of Sexual Trauma. Sexual Trauma includes incidents of sexual assault and/or sexual harassment.
20. When an application for disability benefits involves a condition (either physical or psychiatric) that is claimed to have been caused by Sexual Trauma, VAC will accept that the incident(s) of Sexual Trauma occurred as described in the applicant's credible statement, in the absence of contradictory evidence (see Benefit of Doubt Policy).
21. While VAC may accept that the incident(s) occurred as described by the applicant, the presence of a service relationship must also be established in order to grant entitlement.
22. All applications for disability benefits must include a diagnosis of the applicant's claimed condition, provided by a qualified health professional. For claims related to Sexual Trauma, the health professional's report must support the link between the incident(s) of Sexual Trauma, and the onset of the claimed condition.
23. For additional clarity: an incident(s) of Sexual Trauma may be service-related even where:
    a. the sexual assault or sexual harassment occurred away from the workplace, or at a non-mandatory event; or
    b. the aggressor was not in a position of power over the applicant.
24. Each decision as to whether or not an applicant's claimed condition is connected to their service will be made based on all factors relevant to the individual's case.

Treatment Injuries

25. The following sections of this policy provide direction with respect to disability benefit claims for injuries resulting from dental or medical care, or lack thereof, provided to serving Canadian Armed Forces (CAF) or Royal Canadian Mounted Police (RCMP) members. This replaces the former Medical/Dental Standard of Care policy.
26. Disclaimer: Veterans Affairs Canada is not a licensing body and does not have the mandate to investigate individual health care providers or institutions. This mandate lies with the College of Physicians and

Surgeons of each respective province or applicable regulatory body.

27. The Department's former standard of care approach was developed as a result of the I-25 Pension Review Board Interpretation Decision in 1978. That decision set out that a disability could be service related if it arose out of inadequate medical care or some other form of negligence. In 2021, the Veterans Review and Appeal Board issued its I-3 Interpretation Decision, which set aside the former approach. It found that each claim must be analyzed on a case-by-case basis to determine whether there is a significant relationship to service, without holding applicants to a requirement of establishing negligence.
28. A "treatment injury" is an injury that results from dental or medical care, or lack thereof, provided to serving CAF or RCMP members. However, not all treatment injuries are compensable under this policy.
29. Treatment injuries are subject to the same two-part test as all other types of injuries under the Compensation Principle, as set out in section 4 above. The Department must determine:
    a. whether service factors played a significant role in causing or aggravating the treatment injury; and
    b. whether the service-related treatment injury resulted in or aggravated a permanent disability.
30. Each treatment injury claim is to be analyzed on a holistic, case-by-case basis and no single factor is determinative.
31. An element of risk is involved in most medical treatments. A negative outcome resulting in or aggravating a permanent disability will only be entitled if it can be shown that service played a significant role in its development.
32. The fact that the treatment was provided or authorized by CAF/RCMP is not a sufficient link to service.
33. In determining whether the treatment injury is service related, there is no one factor that outweighs others. The specific circumstances of each case must be reviewed as a whole. Possible factors to consider include, but are not limited to:
    a. the location of the medical or dental treatment;
    b. the context of the medical or dental treatment;
    c. who provided the care;
    d. the degree of control exercised by the military or RCMP over the applicant over the course of the medical or dental treatment;
    e. whether service interfered with access to care or continuity of care;
    f. whether the claimed condition/disability was within the range of expected outcomes;
    g. the impact/influence of military ethos; and
    h. would the situation have been the same for someone not in service.
34. The applicant does not need to establish that the treatment involved negligence or a breach in the standard of care.
35. In a situation where a condition can be ruled on favourably either as a treatment injury (i.e., primary condition) or consequential to a previously entitled condition, it is preferable to provide a ruling on the treatment injury. However, if the only significant connection to service is that the member was originally seeking treatment for a service-related injury/disease, it should be ruled on as a consequential condition.

Determining if the relationship of the claimed condition to service is medically reasonable

36. The timeline for the onset of the medical condition is an important factor to be considered when determining whether or not a service relationship exists. The length of time from the injury to the onset of the claimed condition must be medically reasonable.
37. Consultation with medical advisory may be necessary when the evidence is insufficient to determine if it is medically reasonable for the claimed condition to be linked to service.
38. To determine if the service-connected disease or injury caused the claimed disability the following should be considered:

a. not every service-connected disease or injury results in a permanent disability, or the permanent worsening of a disability;
b. a disability may result partially from a service-related injury or disease and partially from non-service factors, and the key question is whether the service connection is significant;
c. medical evidence must reasonably confirm a link between the service-connected disease, injury or event and the death, disability or aggravation of a disability before benefit entitlement can be awarded;
d. medical evidence may indicate a service connected disease or injury could have caused the disability to develop earlier than it might otherwise have.

Evidence-Informed Decision Models

39. The etiology of certain medical conditions is often strongly linked to the physical and mental demands of military service and the environmental conditions under which members must operate. For claim types where the medical research supports a strong link to service, an Applicant's Statement linking the injury or disease to service along with evidence of a disability, may be enough to support an entitlement decision. Therefore, the adjudicator may not need to review the applicant's full Service Health Records to establish a connection to service.
40. The evidence to support the connection to service may not be specific to the applicant, but may include evidence such as expert opinion, historical, and statistical information. The evidence required can vary from one claim type to the next.
41. There are a number of claim types (such as hearing loss, tinnitus, Post-traumatic Stress Disorder, and musculo-skeletal conditions) where limited evidence may be sufficient for determining that the claimed condition is linked to service.

    For example, in the case of musculo-skeletal conditions, the following may be reasonable and sufficient evidence for adjudicating the claim:

    - the Applicant Statement;
    - an established diagnosis of the claimed condition (see Policy on Establishing the Existence of a Disability);
    - an enrolment medical;
    - a release medical (or a current medical report for still-serving members); and
    - a Member Personnel Record Resume (MPRR).

    The Adjudication Manual provides more guidance on the types of documents which contain the information necessary to comply with the evidentiary requirements.

42. Entitlement Eligibility Guidelines (EEGs) provide information that can help to establish when the relationship of a claimed condition to service is medically reasonable.
43. The decision maker should consult with a medical advisor for cases where the diagnosis needs clarification.

Eligibility - Qualifying Service

44. Qualifying service includes:
    a. Permanent Force: full-time service between World War I and World War II; September 1, 1921 to August 31, 1939 inclusive;

b. Non-Permanent Active Militia (NPAM): the NPAM during World War II; September 1, 1939 to April 1, 1947 inclusive;
c. Reserve Force: the part-time Militia/Reserve Army during World War II or peacetime;
d. Divisional Strength: Naval Reserve personnel awaiting assignment to a ship prior to being T.O.S. Active Force; September 1, 1939 to April 1, 1947 inclusive;
e. *National Resources Mobilization Act (*NRMA): the thirty day call-out training period under the *National Resources Mobilization Act* (1939), providing service did not continue without interruption beyond this training period. If service continued, refer to the policy entitled Disability Benefits in Respect of Wartime and Special Duty Service – The Insurance Principle;
f. Regular Force: former and still serving members of the fulltime peacetime force from April 2, 1947 to the present;
g. Royal Canadian Mounted Police: former and still serving members in accordance with the *Pension Act* as per section 32 of the *Royal Canadian Mounted Police Superannuation Act* and section 5 of the *Royal Canadian Mounted Police Pension Continuation Act*.
h. Travel to and from Special Duty Area (SDA): Travel to and from an SDA, prior to September 11, 2001, is considered to be normal peacetime service with claims subject to provisions of the compensation principle. As of September 11, 2001, such travel is covered under the insurance principle (see policy entitled Disability Benefits in Respect of Wartime and Special Duty Service – The Insurance Principle).

References

Veterans Well-being Act, section 45; subsection 2(1)

Veterans Well-being Act Regulations, section 50

Pension Act, subsections 21(2) and (3)

Royal Canadian Mounted Police Pension Continuation Act, section 5

Royal Canadian Mounted Police Superannuation Act, section 32

Disability Benefits in Respect of Wartime and Special Duty Service – The Insurance Principle

Establishing the Existence of a Disability

Pain and Suffering Compensation

Disability Resulting From a Non-Service Related Injury or Disease