

**EFFECTIVE DATES
STUDENT HANDOUT**

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OBJECTIVES

- Without the use of references, identify the information needed to determine effective dates, with 85% accuracy.
- Using the appropriate code of federal regulation (CFR), differentiate categories of claims, with 85% accuracy.
- Using the appropriate code of federal regulation (CFR), differentiate types of claims, with 85% accuracy.
- Using the appropriate code of federal regulation (CFR), determine effective dates, with 85% accuracy.

REFERENCES

- 38 USC
 - 5110 – Effective dates of awards
 - 5102 (c) - Application forms furnished upon request; notice to claimants of incomplete applications
 - 1151 – Benefits for persons disabled by treatment or vocational rehabilitation
- 38 CFR 3
 - 3.114(a) – Effective date of award, change of law or Department of Veterans Affairs issue
 - 3.151 – Claims for disability benefits
 - 3.152 – Death benefits
 - 3.153 – Claims filed with Social Security
 - 3.154 – Injury due to hospital treatment, etc.
 - 3.155 – Informal claims
 - 3.156 – New and material evidence
- 3.340 – Total and permanent total ratings and unemployability
- 3.400(b)(2) – Disability compensation, disability benefits
- 3.400(o)(2) – Increases, disability compensation
- 3.401 – Veterans
- 3.402 – Surviving spouse
- 3.816 – Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure
- 38 CFR 4 – Rating schedule
- M21-1, Part III, Subpart ii.2 –Benefit Programs and Types of Claims
- M21-1, Part IV, Subpart ii.2.C. – Payment under the Nehmer stipulation for disabilities
- RVSR Assistant (RVSR Effective Dates)
- Court cases
 - Brokowski v Shinseki, CAVC No. 07-0349
 - Criswell v. Nicholson, CAVC No. 03-0133
 - Ellington v. Nicholson, CAVC No. 04-0403
 - Ellington v. Peake, CAVC No.2008-7012
 - Fenderson v West, CAVC No. 96-947
 - Fleshman v Brown, CAVC No. 94-902
 - McCay v Brown, CAVC No. 94-881

- Nehmer v United States, CAVC No. 8606160
- Roper v. Nicholson, CAVC No. 04-0233
- Smith v Derwinski, CAVC No. 90-1351
- Waddell v Brown, CAVC No. 91-2034

TOPIC 1: EFFECTIVE DATES REVIEW

General Rule for Determining Effective Dates

The effective date is the date of receipt of the claim or date entitlement arose; whichever is later, unless otherwise provided.

Five Questions for Determining Effective Dates

The correct effective date can be determined by answering the following questions:

- What is the issue: service connection, entitlement to pension, or claim for increased evaluation?
- What is the date of receipt of the claim?
- What is the date basic entitlement arose?
- Is an Intent to File (VA Form 21-0966) associated with the claim? (or an informal claim if received prior to March 24, 2015)
- Do any liberalizing laws or other VA issues apply? For example: Agent Orange concerns, ALS, Parkinson's Disease, Traumatic Brain Injury

Issue Categories for Determining Effective Dates

- Service Connection: Original or Reopened
 - Original Claim: An initial formal application for benefits on a form prescribed by the Secretary
 - Reopen Claim: Any claim for service connection, received after a finally denied claim, which VA must reconsider because the evidence it presents is new and material. A finally denied claim means that at least one year has elapsed since the letter was sent notifying the claimant of the decision to deny the benefit sought.
- Pension: a tax-free supplemental income benefit paid to Veterans and/or their dependents
- Increase: A claim related to a case in which a running compensation or pension award is already in existence or a claim for resumption of payments that was previously discontinued

TOPIC 2: TYPES OF CLAIMS

- **Completed Claims:** Claim submitted on a VA Form 21-526 variant (EZ, b, c) or other VA-prescribed form from the beneficiary or his/her representative. The Veteran must submit the correct prescribed-VA form for the benefit sought and it must be filled out completely.

** Effective March 24, 2015: VA policies and procedures for the receipt of a claim have been revised. All claims must be received on a VA-prescribed form.

** Prior to March 24, 2015, an original claim was noted to be the submission of a VA Form 21-526EZ (Original) or VA Form 21-4138 (subsequent) or any other document submitted by the beneficiary or his/her authorized representative.

- **Intent to File:** Provides the claimant or his/her representative with the opportunity to establish an effective date placeholder for benefits provided a complete claim is received within one year of the date the intent to file is received.

An intent to file may be submitted in one of three ways:

- electronically via eBenefits or the Stakeholder Enterprise portal,
- over the phone with a VA National Call Center or other public contact representative or
- on the paper VA Form 21-0966, which may be mailed, faxed or delivered in person.

**Note: An intent to file date can be established electronically. When an online application is initiated and saved but not submitted, it establishes the intent to file date in the corporate record.

** Before the new rule, any communication or action which showed an intent to apply for VA benefits was taken as an informal claim. This remains unchanged for correspondence received before March 24, 2015.

** Effective March 24, 2015: VA policies and procedures for the receipt of an informal claim have been revised. All claims must be received on a VA-prescribed form.

Original Claims Not Filed on the Prescribed Form Before March 24, 2015: Consider an original claim not filed on the prescribed form before March 24, 2015 as an *informal claim*.

Claims Not Filed on the Prescribed Form On or After March 24, 2015: Consider a claim not filed on a prescribed form on or after March 24, 2015 as a *request for application*.

Examples of Intent to File:

- (1) A veteran submits a VA Form 21-0966 for compensation on June 1, 2015. He later submits a paper VA Form 21-526EZ on January 1, 2016. What is the Intent to File date? What is the date of claim? What is the effective date?

- (2) Veteran calls the National Call Center on June 1, 2015. During the conversation, the Veteran reports her/her intent to file a claim. The VA representative takes down this information and notes the Veteran's request. Later the Veteran begins an online application in eBenefits on November 1, 2015. On January 1, 2016, the Veteran submits a VA Form 21-526 EZ for a knee disability. It is also noted the Veteran submitted a 526 EZ online on February 1, 2016 for a back disability. What is the Intent to File date? What is the date of claim? What is the effective date?

- (3) A Veteran visits his local RO and submits an informal claim for original compensation benefits on March 1, 2015. He later submits an intent to file on May 6, 2015 through e-Benefits. The Veteran submits his complete claim for compensation benefits on a *paper* VA Form 526EZ on January 10, 2016. What is the potential effective date?

Answer: March 1, 2015. The "Standard Forms and Appeals Rule" does not become effective until March 24, 2015. Therefore, the informal claim received by the RO on March 1, 2015 must still be considered since a complete paper claim was received within one year of the receipt of the informal claim for original compensation benefits.

**Correspondence received after March 24, 2015 indicating the claimant wants to file an FDC claim (previously known as informal FDC) will be considered a Request for Application and information on how to obtain an EZ form will be provided. This does not preserve an effective date.

**The Intent to File process does not change interpretation of *Brokowski*. It will be applied as usual for informal claims received prior to 3/24/15. After 3/24/15, there are no informal claims, so *Brokowski* would apply only to incomplete *applications* when the completed application is filled out within a year.

Please note the *Brokowski* requirement is applicable to claims to reopen and for increased evaluation. However, in the context of an original disability compensation claim, if an informal claim only contains a general indication of seeking entitlement to compensation benefits and the claimant completes a formal application for benefits, which identifies the nature of the disability for which benefits are sought, within a year from the date that a formal application is sent to the claimant, the date of the informal claim with a general request for compensation benefits may be established as the effective date of entitlement in the event that compensation benefits are granted. See [38 U.S.C. 5102\(c\)](#).

Examples:

- (1) The veteran provides an informal claim stating his intent to obtain service connection. Upon receipt of his informal claim, we send him an “Informal claim Letter” letting him know that he has one year to finalize his claim. The Veteran sends in his 21-526 within in the year. What is the effective date?

- (2) The veteran provides an informal claim with notation of 2 generalized contention on January 7, 2015. Upon receipt of his informal claim, we send him an “Informal claim Letter” letting him know that he has one year to finalize his claim. The Veteran sends in his 21-526 within the year. Upon receipt of his 21-526, on May 21, 2015, it is noted that he has provided information about the two generalized conditions and one additional contention. Upon the decision to grant, do we only provide the effective date of the informal claim to the 2 conditions noted earlier or does it apply to all three conditions?

Types of Claims

Service Connection

- Direct service connection: The day after separation from service, or date entitlement arose, if the claim is received within one year of separation from service; otherwise, the general rule applies.
- Presumptive service connection: The date entitlement arose, if the claim is received within one year of separation from service; otherwise, the general rule applies.
- Secondary service connection: Noted to be disabilities that are proximately due to, or the result of, a SC condition, or the increase in severity of a nonservice-connected (NSC) disability that is attributable to aggravation by an SC disability, and not to the natural progress of the NSC disability. The date of factual entitlement if a claim is received within one year. Otherwise, the effective date is the date VA received the claim or the date of entitlement, whichever is later.
Aggravation: The day after separation from service, or date entitlement arose, if the claim is received within one year of separation from service; otherwise, the general rule applies.

Claim for benefits under 38 U.S.C. 1151:

The provisions are based on the date of injury or aggravation if the claim is received within one year of the incident; otherwise, the date of receipt of the claim.

Total Disability Claims

- **Total Disability based on Individual Unemployability**: Total disability based on individual unemployability is governed by increased rating procedures (earliest date as of which it is factually ascertainable that an increase in disability had occurred if claim is received within 1 year from such date otherwise, date of receipt of claim (**38 CFR 3.400(o)(2)**))

When determining the date of entitlement, the RVSR must consider the date the Veteran last worked, in addition to the date of the medical evidence showing disability eligibility.

- **Temporary Total Disability Rating:** The effective date for temporary total disability rating, if due to hospitalization, is generally the date of hospital admission.

The effective date for temporary total disability rating due to convalescence is generally:

- Date of the hospital discharge (if following a 4.29 rating)
- Date of hospital admission (if less than 21 days), or
- Date of outpatient surgery

Pension Claims

For pension claims filed after October 1984, the effective date is the date of receipt of claim.

In this example, the award may be effective from the date of receipt of the claim or the date entitlement arose, whichever is advantageous to the Veteran:

A Veteran claims retroactive benefits within one year of entitlement, and shows that a disability prevented him/her from filing a claim for at least the first 30 days after becoming incapacitated. The Veteran must specifically request retroactive benefits.

- **Aid and Attendance (Veterans):** Aid and Attendance claims are based on compensation (SMC). The effective date is the same as for increased rating decisions, except that benefits can be awarded on the basis of retroactive compensation benefits.
- When based on pension (SMP): generally, the effective date is the date of receipt of the claim or the date entitlement arose, whichever is later.

Note: Benefits can be awarded on the basis of retroactive pension benefits.

Death Claims

- **Death Benefits:** (38 CFR 3.152- 3.153) An application filed on a jointly prescribed form for Social Security Administration (SSA) death benefits will be considered a claim for VA death benefits. The date received by the SSA will be considered as the date of receipt for VA purposes.
 - Effective dates for service connection for death or dependency and indemnity compensation (DIC) are the first day of the month in which the Veteran died, if the claim is received within one year of the date of death ([§3.400\(c\)\(2\)](#)).
 - For claims after December 10, 2004, a year is allowed for submission of the claim to allow an effective date of the first day of the month in which the Veteran died. 38 CFR 3.400 (c)(3).

- **Dependency and Indemnity Compensation (DIC):**
 - Deaths prior to January 1, 1957 ([§3.702](#)). Date of receipt of election.
 - Child: First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.
 - Deaths on or after May 1, 1957 (in-service waiver cases) ([§§3.5\(b\)\(3\)](#) and [3.702](#)). Date of receipt of election. (See [§3.114\(a\)](#))
- **Death pension:** Effective date for non-service connect death after service which includes death pension is as follows:
 - For awards based on claims received prior to October 1, 1984, or on or after December 10, 2004, first day of the month in which the veteran's death occurred if claim is received within one year after the date of death; otherwise, date of receipt of claim.
 - For awards based on claims received between October 1, 1984, and December 9, 2004, first day of the month in which the veteran's death occurred if claim is received within 45 days after the date of death; otherwise, date of receipt of claim.
- **Surviving spouse Aid and Attendance:** The date of receipt of the claim or the date entitlement arose; whichever is later. However, aid and attendance or housebound shall be awarded for any part of the retroactive period for which entitlement is established. Housebound benefits may be awarded during hospitalization at Department of Veterans Affairs expense.

Subsequent Claims

- **Reopened Claims:** When received after the appeal period expired, the effective date is as follows: the date reopened claim was received, or the date entitlement arose, whichever is later. (38 CFR 3.400 (r))

*****New and Material Evidence : (38 CFR 3.156) When new evidence is received after a 12 month period following a rating decision, the effective date is the date of receipt of the application to reopen the claim, or the date entitlement arose, whichever is later.

If new evidence is received within an appeal period and service-connection is granted the date of the original claim (as though the prior rating decision never existed), is the effective date.
- **Clear and Unmistakable Error (CUE):** The date payable for a new decision is the same as the date of entitlement of the reversed decision. (38 CFR 3.400(k))
- **Claims for Increased Evaluation:**

The effective date of a claim for increase is noted to be the earliest date as of which it is factually ascertainable that an increase in a disability has occurred if the claim is received within 1 year from such date; otherwise, it will be the date of receipt of the claim.

38 CFR 3.400(o)(2).

Example 1: A Veteran claims increase evaluation for service-connected bilateral hearing loss on November 3, 2011. He did not identify any treatment reports/records. A VA examination was conducted on February 2, 2012 and showed increased hearing loss. What is the effective date?

Answer:

Example 2: A veteran claims increase evaluation for s-c bilateral hearing loss on November 3, 2011. He did not identify any treatment reports/records. A VA examination was conducted on February 2, 2012 and showed increased hearing loss. What is the effective date?

Answer:

Example 3: The veteran is service-connected for a low back disability which is evaluated as 10 percent disabling. VA receives a claim for an increased evaluation on November 12, 2013. The veteran submitted private treatment reports along with his claim for increase showing treatment for the claimed condition back in April 2013. You decide to grant a 20 percent evaluation based on a private treatment report dated April 14, 2013. What is the effective date?

Answer:

Example 4: The veteran is service-connected for atherosclerotic heart disease which is evaluated as 30 percent disabling. The VA receives a claim for an increased evaluation on April 7, 2012. The veteran also submits private treatment records from February 2011 with his claim. You decide to grant a 60 percent evaluation based on private treatment records dated February 18, 2011. What is the effective date?

Example 4 Answer:

Potential one-year retroactive effective date.

If you were reviewing a claim and found treatment records (VA or non-VA) dated on or after March 24, 2015 that indicate an increase in the severity of a service-connected disability, VA will only consider the receipt of the medical evidence (both private and federal records) for effective date purposes, if either one of the following are received within one year of the date of treatment:

- a claim on a prescribed form, or
- an intent to file that is followed by a complete claim within a year of the ITF.

To the extent the intent to file process and these special statutory effective dates intersect, the amount of retroactive benefits is always limited by the facts found—a claimant can never receive disability benefits for a period in which he or she was not, as a factual matter, disabled, or at a degree of disability higher than supported by the contemporaneous facts. This caveat is current, established law, unaltered by this rule

****Note:** You are required to review all available medical evidence from a VA or uniformed services hospital dated up to one year prior to a complete claim or intent to file (whichever is earlier) for a claim for increase whether or not the Veteran identified those records to us.

Example:

July 2015

- (1) A Veteran submits an intent to file for compensation in April 2016. Then, she submits the complete claim for increase for a service-connected disability in September 2016. All available private or federal treatment records should be reviewed dated from as early as April 2015, which is one year prior to the intent to file, in determining the effective date of the increase in disability. This includes reviewing any federal treatment records not identified by the Veteran but available to VA such as medical evidence from a VA hospital.

****Though 38 CFR 3.157 is being eliminated, the information about effective dates regarding claims for increase has been incorporated into 38 CFR 3.400(o)(2).**

- (2) A Veteran submits a VA Form 21-0966 for compensation, which is received on April 1, 2017. The Veteran later submits a claim for increase for a right knee condition which is received on a VA Form 526EZ on May 1, 2017 with attached treatment records from a local treating facility dated January 1, 2016. A review of the records reveals an increase in the severity of the service connected right knee condition. What is the intent to file date? What is the effective date?

Answer:

The *intent to file* date is April 1, 2017, the date the Veteran first communicated the intent to submit a claim for compensation benefits.

The earliest possible *effective date* is April 1, 2017. Since the Veteran completed the claim for compensation within one year of the submission of the intent to file form, we are able to assign the intent to file as the effective date for the knee condition as April 1, 2017.

****Note:** Submitted treatment records show an increase in the severity of the service-connected knee condition as early as January 1, 2016. However, the intent to file was not received within 1 year of the hospitalization, examination, or treatment. Therefore, we are unable to assign the earlier effective date of January 1, 2016.

TOPIC 3: ADDITIONAL AREAS OF CONSIDERATION

- **Additional Federal Records:** If additional Federal records are received that have not been reviewed at any time prior, the effective date for any rating action would be as follows:

The date of the receipt of records if within a one year period following grant or denial of the original decision.

Note: If additional **service department records** are received following the original rating decision, they will be reviewed. If new service department records are obtained and

granting is based on them, the effective date will be the same as would have been assigned if the records had been received at the time of the rating:

Example:

If the claim was received on 1/3/00, SC was denied on 4/2/00 and new STRs came in 5/1/08, the 1/3/00 date would be used to grant, assuming claimant had been discharged for more than one year. This includes declassified records, even if those records were classified at the time of the original claim. The effective date rules in 3.156(c) do NOT pertain to records that VA could not have obtained at the time it decided the claim because the records did not exist at the time. Additionally, records that VA could not obtain because the claimant failed to provide sufficient information for VA to obtain them, including records from the service department, the Joint Services Records Research Center (JSRRC), or from any other official source do not trigger the effective date rule in 3.156(c).

- **Reductions in evaluations:** When a reduction is warranted, a rating proposing the reduction and due process must be given to the Veteran. Following proper notification and due process, a rating with the final reduction should be prepared. When taking a final reduction on a disability, the effective date for rating and RBA2000 purposes in the first day of the month following 60 days from the date of the rating decision in which the final reduction is made.

Note: Due process is only required when the reduction would cause a payment change, otherwise due process is not required

For example: If a rating decision dated February 15, 2010 is taking the final reduction for a left ankle, the effective date entered into VBMS would be May 1, 2010.

- **Liberalizing law or VA issue:**

If VA initiates the review of a claim within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

Note: Agent Orange, ALS and Parkinson's disease are examples of issues that liberalizing laws have affected.

EFFECTIVE DATE TIMELINES

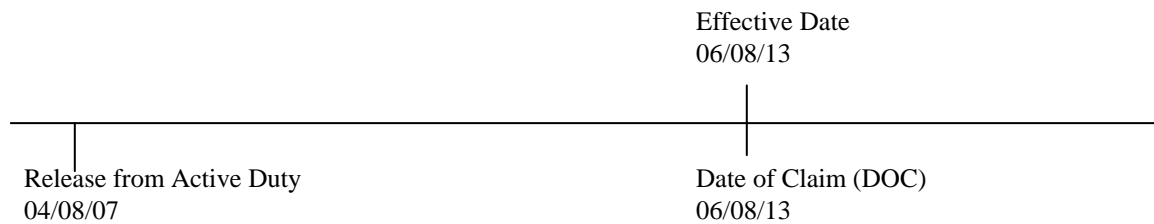
Direct Service Connection

Claim Received Within 1 Year of Release from Active Duty(RAD):

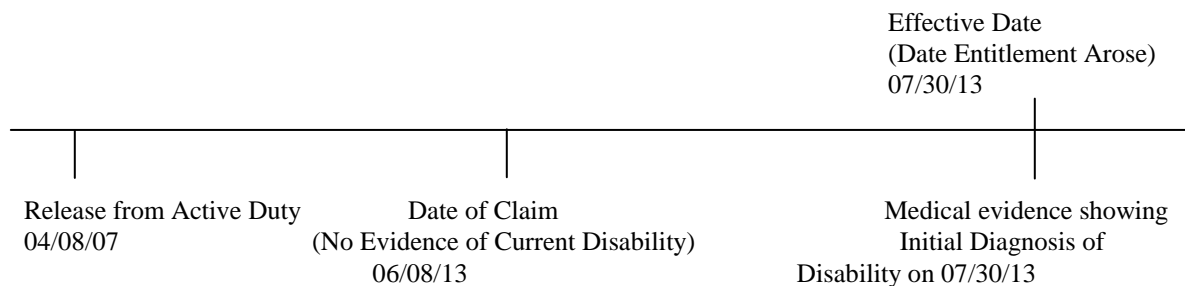


Claim Received After 1 Year of Release from Active Duty(RAD):

Evidence Meets Criteria to Establish Entitlement to Service Connection

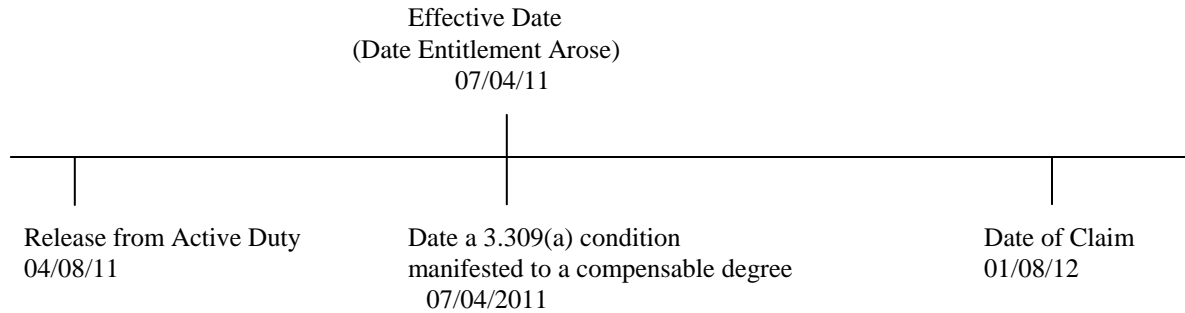


Evidence Does Not Meet Criteria to Establish Entitlement to Service Connection

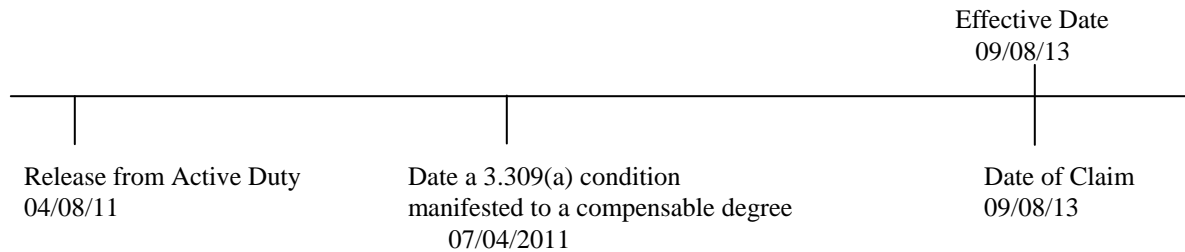


Presumptive Service Connection

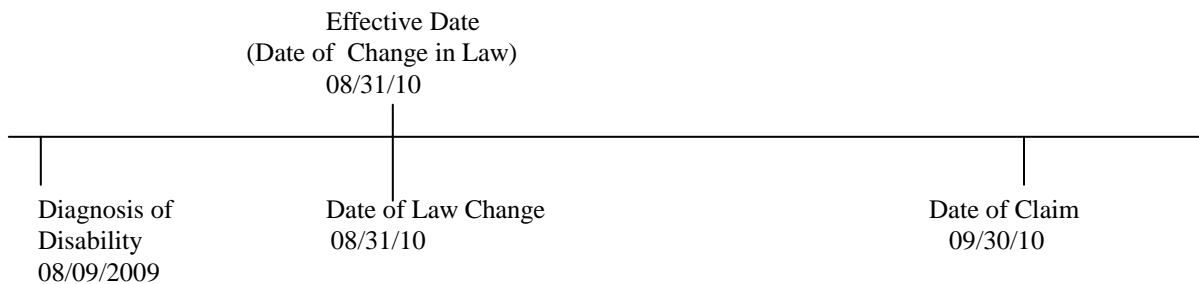
Claim Received Within 1 Year of Release from Active Duty(RAD):



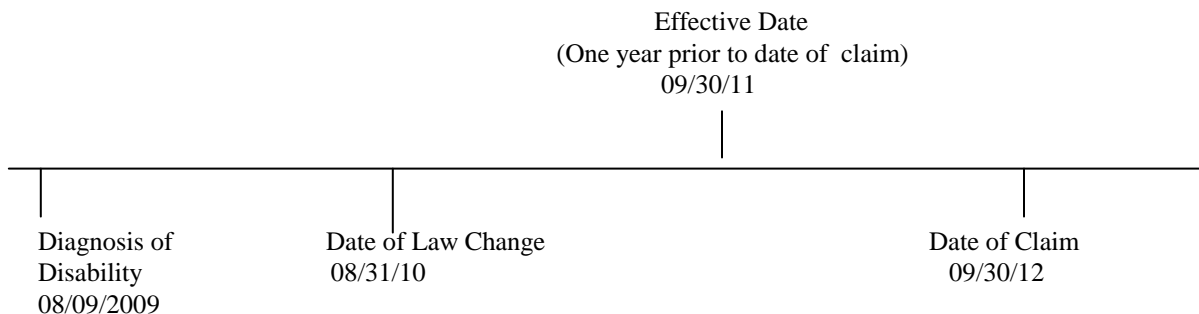
Claim Received After 1 Year of Release from Active Duty(RAD):



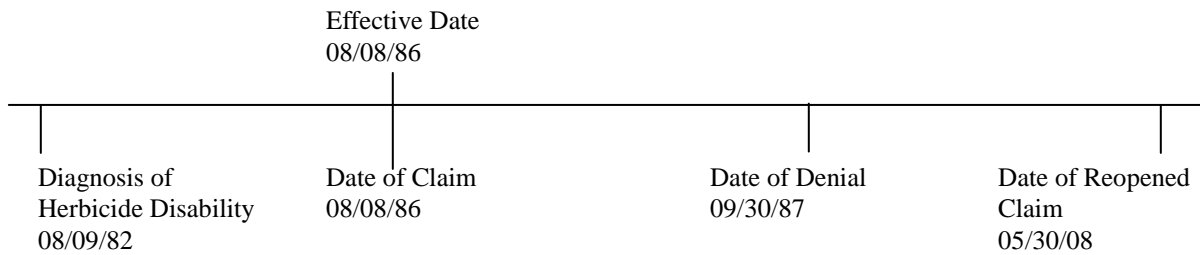
3.114 Claim Received Within 1 year of change in law:



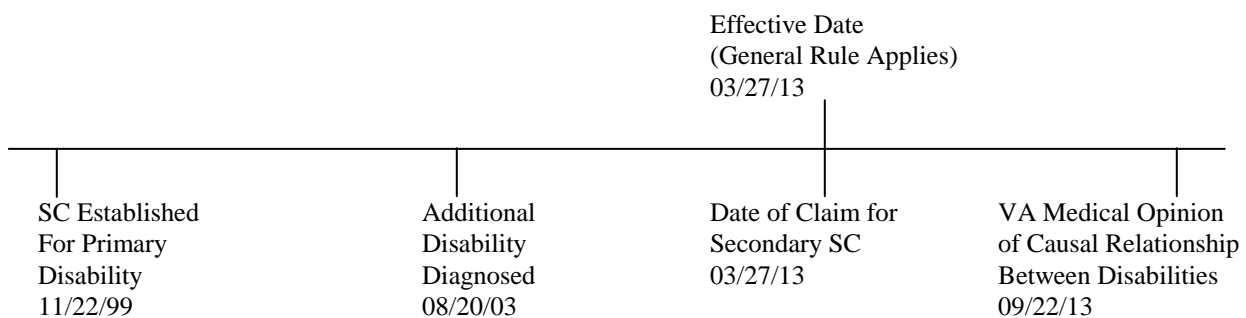
3.114 Claim Received After 1 year following change in law:



Nehmer Claim Based on Herbicide Disability Added to 38 CFR 3.309(e):

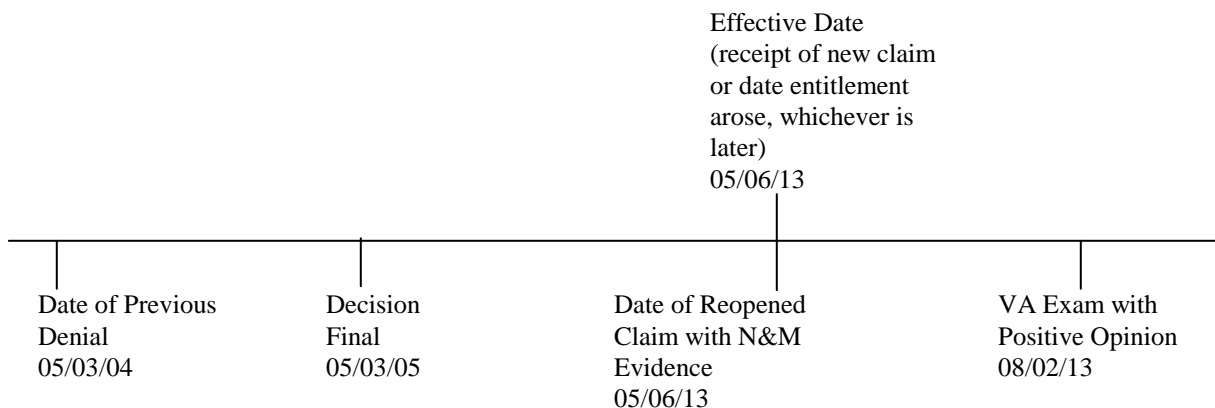


Secondary Service Connection



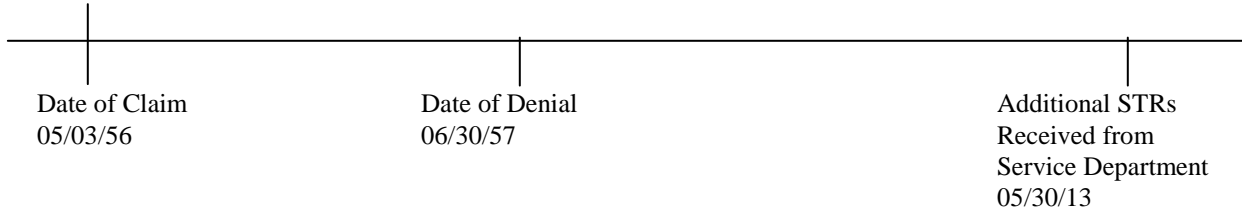
Reopened Claims Based on New and Material Evidence

Claim Received With N&M Evidence Other Than Service Department Records:



Claim Reopened Based on Additional Service Treatment Records:

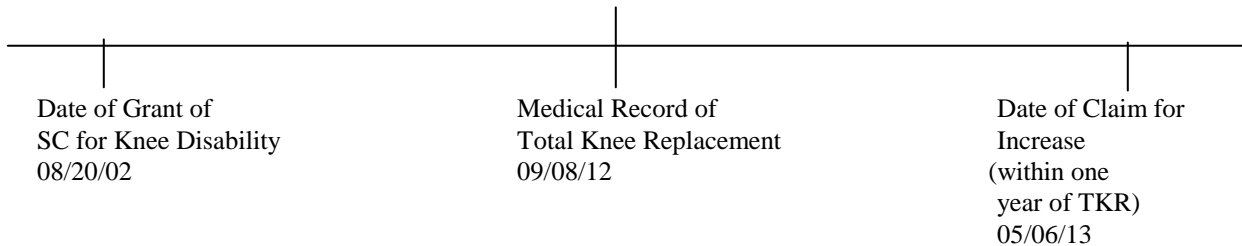
Effective Date
(based on original
claim)
05/03/56



Increased Compensation Benefits

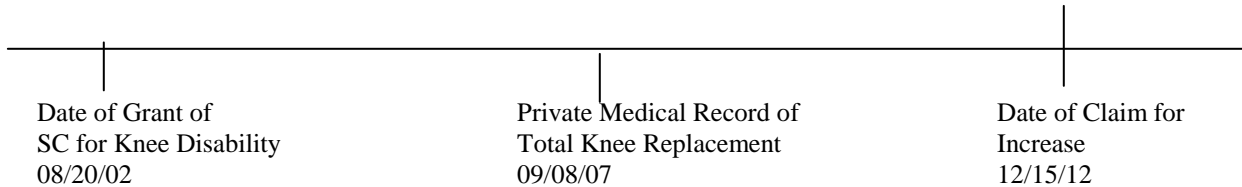
Claim For Increased Evaluation Received Within 1 Year of Increased Disability (Based on Private or VA Treatment Records):

Effective Date
(date it's factually
ascertainable that
disability increased)
09/08/12

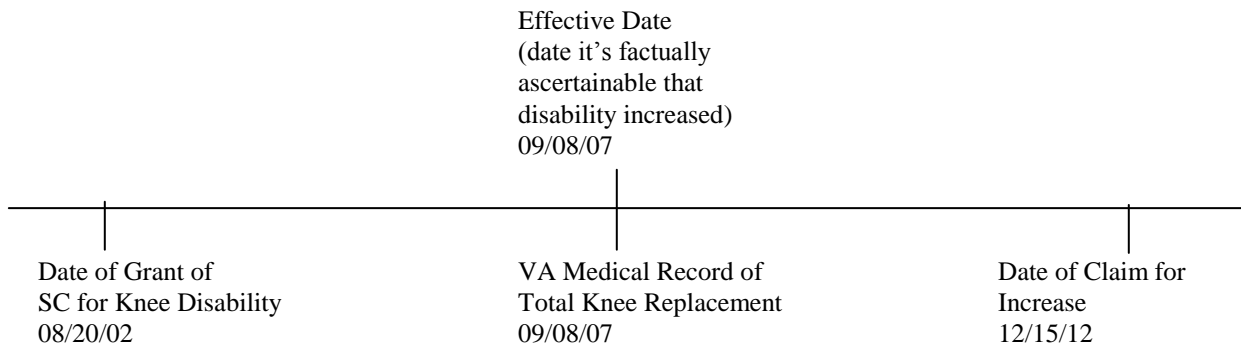


Claim For Increased Evaluation Received More Than 1 Year After Increased Disability, Based on Private Treatment Records:

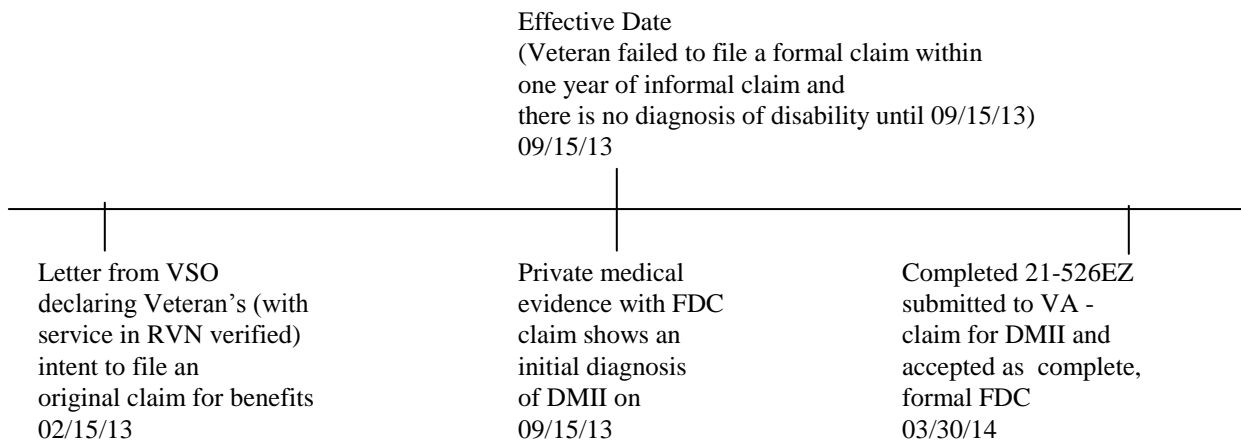
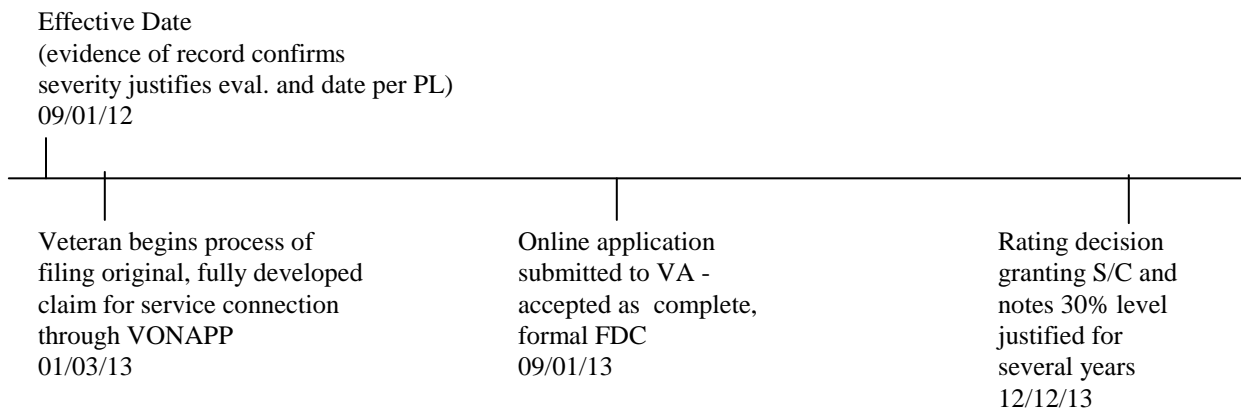
Effective Date
(date of claim
> 1 year)
12/15/12



Under historic 3.157 rules: Claim For Increased Evaluation Received More Than 1 Year After Increased Disability, Based on VA Treatment Records:



FDC Claim and Proper Application of the Provisions of Section 506 of PL 112-154:



PRACTICAL EXERCISE

Read the following scenarios and answer the questions.

Scenario 1:

The Veteran served 20 years in the Army, retiring on January 30, 2008. He suffered a massive coronary on October 29, 2008 and died. The Veteran's spouse submitted a claim for Dependency and Indemnity Compensation (DIC) in November 2008, and was denied for failure to prosecute. The spouse again submits a claim for DIC on September 2, 2009. She is granted DIC benefits.

What is the effective date of this award? What else is she entitled to, and from what date?

Scenario 2:

A service connected Veteran was being examined on May 3, 2009 for his left knee condition and made a statement to the doctor describing left hip pain when his knee condition was flaring and causing him to walk strangely. In the examination report, the physician noted the comment and provided that the left hip condition most likely was caused by his left knee condition. The rating board took their action on May 27, 2009 concerning the knee and ignored the comment from the physician.

On December 1, 2009, six months after receiving the rating decision, the Veteran claims service connection of the left hip as secondary to the left knee condition.

What type of claim is this? If this claim would be adjudicated, what is the effective date?

Scenario 3:

The Veteran claimed service connection for diabetes mellitus type 2 due to service in Vietnam. Vietnam service is verified. The Regional Office (RO) received his claim on May 1, 2005, with a report from his private physician noting he was a type 2 diabetic, with initial diagnosis of December 25, 2000. Service connection for the diabetes mellitus type 2 at 20% disabling with noncompensable peripheral neuropathy of the lower extremities is granted.

What is the effective date of the rating? Why?

Scenario 4:

The Veteran claimed service connection for amyotrophic lateral sclerosis in June 1986, with private treatment records indicating a diagnosis of amyotrophic lateral sclerosis in May 1986. He was denied service connection. He reopened his claim on November 1, 2008. Service connection was granted.

What is the effective date of the grant? Why?

Scenario 5:

The Veteran claims an increase in his 10% service connected right knee condition under DC 5257, with the claim received on January 22, 2001. He attached private medical evidence showing severe instability of the right knee as of July 14, 2000. VA examination, dated April 5, 2001, noted the right knee had gotten worse and confirmed severe instability. Rating decision, dated May 6, 2001, granted an increased evaluation of 30 percent, effective January 22, 2001.

Is this the correct effective date? Under what section of 38 CFR 3 would you find guidance?

Scenario 6:

A veteran claims increase evaluation for s-c bilateral hearing loss on November 3, 2011. He did not identify any treatment reports/records. A VA examination was conducted on February 2, 2012 and showed increased hearing loss. What is the date of claim?

Scenario 7:

Veteran calls the National Call Center on August 1, 2015. During the conversation, the Veteran reports her intent to file a claim. The VA representative takes down this information and notes the Veteran's request. Later the Veteran begins an online application in eBenefits on December 1, 2015. On January 1, 2016, the Veteran submits a VA Form 21-526 EZ for a left arm disability. It is also noted the Veteran submitted a 526 EZ online on February 1, 2016 for a right knee disability. What is the Intent to File date? What is the date of claim? What is the effective date?