**LINE OF DUTY – WILLFUL MISCONDUCT INSTRUCTOR LESSON PLAN**

**TIME REQUIRED: 3 HOURS**

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| Lesson Description | |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. | |
| **TMS #** | 61859 |
| **PREREQUISITES** | Prior to this lesson, the Veteran Service Representative (VSRs) should have 24 months of VSR experience. Trainees should also have completed Claims Processing Prerequisite Training Program and Pre- Determination lesson. |
| **TARGET AUDIENCE** | The target audience for Line of Duty – Willful Misconduct is the Veterans Service Representative (VSR)**.**  Although this lesson is targeted to teach the VSR employee, it may be taught to other VA personnel as mandatory or refresher type training. |
| **TIME REQUIRED** | 3 hours |
| **MATERIALS/ TRAINING AIDS** | Lesson materials:   * Line of Duty – Willful Misconduct PowerPoint Presentation * Line of Duty – Willful Misconduct Trainee Handout Packet * Line of Duty – Willful Misconduct Answer Key |
| **TRAINING AREA/TOOLS** | The following are required to ensure the trainees are able to meet the lesson objectives:   * Classroom or private area suitable for participatory discussions * Seating, writing materials, and writing surfaces for trainee note taking and participation * Handouts, which include a practical exercise * Large writing surface (easel pad, chalkboard, dry erase board, overhead projector, etc.) with appropriate writing materials * Computer with PowerPoint software to present the lesson material   Trainees require access to the following tools:   * VA TMS to complete the assessment |

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| **PRE-PLANNING** | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session. * Become familiar with the content of the trainee handouts and their association to the Lesson Plan. * Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the trainee handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson. * Ensure that there are copies of all handouts before the training session. * When required, reserve the training room. * Arrange for equipment such as flip charts, an overhead projector, and any other equipment (as needed). * Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson. * This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins. |
| **TRAINING DAY** | * Arrive as early as possible to ensure access to the facility and computers. * Become familiar with the location of restrooms and other facilities that the trainees will require. * Test the computer and projector to ensure they are working properly. * Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly. * Make sure that a whiteboard or flip chart and the associated markers are available. * Provide a sign in sheet, and at the conclusion of the session, ensure that all trainees sign in. |

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| Introduction to Line of Duty – Willful Misconduct | |
| **INSTRUCTOR INTRODUCTION** | Complete the following:   * Introduce yourself * Orient trainees to the facilities * Ensure that all trainees have the required handouts * Explain the relationship between the prerequisites and lesson objectives |
| **TIME REQUIRED** | 0.25 hours |
| **PURPOSE OF LESSON**  *Explain the following:* | This lesson is intended to provide information on the concept of line of duty and willful misconduct, and when formal decisions relating to those findings are required in claims processing. This lesson will contain discussions and exercises that will allow better understanding of:   * Line of Duty Determination * Willful Misconduct * Willful Misconduct Determinations and Alcohol Consumption * Willful Misconduct Determinations and Vehicular Accidents * Willful Misconduct Determinations and Substance Abuse |

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| **LESSON OBJECTIVES**  *Discuss the following: Slide 2*  *Handout 2* | In order to accomplish the purpose of this lesson, the VSR will be required to accomplish the following lesson objectives.  The VSR will be able to:   * Identify requirements for line of duty disability or death claim * Identify the key components of “willful misconduct” * Determine when to make a willful misconduct determination * Restate considerations when making willful misconduct determinations based on alcohol consumption * Restate considerations when making willful misconduct determinations based on substance abuse * Restate considerations when making willful misconduct determinations based on vehicular accidents |
| *Explain the following* | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed. |
| **MOTIVATION** | VA regulations require that a disabling condition for which service connection is established must have been incurred or aggravated in line of duty and not the result of the Veteran's misconduct. A Veteran's entitlement to benefits can be erroneously established if a disability or death was not in line of duty or was due to willful misconduct and that fact or finding was overlooked or ignored.  This lesson is designed to give the VSR information to understand the definitions of line of duty and willful misconduct, and when to make or not make determinations. |
| **STAR ERROR CODE(S)** | The Systematic Technical Accuracy Review (STAR) Program reviews cases and considers them either “accurate” or “in error” for the purpose of measuring technical accuracy.  Common errors will include whether   * the issue of Line of Duty and/or willful misconduct was addressed * all necessary development was completed * the final determination listed and discussed pertinent evidence, the basis of the determination was explained, and required signatures acquired * the notification of the determination was correct, sent, and included all necessary information and the appellate rights.   The STAR code errors are as follows:  A2, B2, C1, E1, E2, FI, F2, F3, F4, and G1 |

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| **REFERENCES**  *Slide 3*  *Handout 2* | Explain where these references are located.   [38 CFR 3.1(m) Definition of In line of duty](http://www.ecfr.gov/cgi-bin/text-idx?SID=f9955e7f2918936af513718c73999631&mc=true&node=se38.1.3_11&rgn=div8)   * [38 CFR 3.1(n) Definition of willful misconduct](http://www.ecfr.gov/cgi-bin/text-idx?SID=f9955e7f2918936af513718c73999631&mc=true&node=se38.1.3_11&rgn=div8)    [38 CFR 3.301 Line of duty and misconduct](http://www.ecfr.gov/cgi-bin/text-idx?SID=f9955e7f2918936af513718c73999631&mc=true&node=se38.1.3_1301&rgn=div8)   [38 CFR 3.302 Service connection for mental unsoundness in suicide](http://www.ecfr.gov/cgi-bin/text-idx?SID=f9955e7f2918936af513718c73999631&mc=true&node=se38.1.3_1302&rgn=div8)   [M21-1, Part-III, Subpart v, 1.D, Willful-Misconduct-and-Line-of-Duty](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014222/M21-1-Part-III-Subpart-v-Chapter-1-Section-D-Willful-Misconduct-and-Line-of-Duty) |

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| Topic 1: Line of Duty Determination | |
| **INTRODUCTION** | This topic will allow the trainee to understand basic information for the identification of line of duty determinations. |
| **TIME REQUIRED** | 0.5 hours |
| **OBJECTIVES/ TEACHING POINTS**  *Discuss the following:* | Topic objectives:   * Identify the requirements for a line of duty claimed disability or death.   The following topic teaching points support the topic objectives:   * In Line of Duty Definition * Line of Duty Requirements Not Met * Responsibility for Line of Duty Determination * Formal VA Line of Duty Determination |
| **NOTE(S)** | Emphasize the word "requirements" in the “service depart finding” bullet below. There is a subtle difference in the wording for willful misconduct service department finding that may alter determinations. This is explained further in the willful misconduct determinations topic. |
| **In Line of Duty Definition**  *Slide 4*  *Handout 2* | According to 38 CFR 3.1(m), “in line of duty” means an injury or disease incurred or aggravated during a period of active military, naval, or air service, with the following exceptions:   * The injury or disease was the result of the Veteran's own willful misconduct. * The claim was filed after October 31, 1990 and was a result of Veteran's abuse of alcohol or drugs. * A service department finding that injury, disease, or death occurred in line of duty will be binding on the Department of Veterans Affairs (VA) unless it is patently inconsistent with the requirements of laws administered by the VA. |

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| **Line of Duty Requirements Not Met**  *Slide 5*  *Handout 3* | According to 38 CFR 3.1(m), requirements for in line of duty are not met if at the time the injury was suffered or disease contracted the Veteran was:   * Avoiding duty by desertion, or was absent without leave (AWOL), which materially interfered with the performance of military duty * Confined under a sentence of court-martial involving an unremitted dishonorable discharge * Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the person was convicted by such court |
| **Responsibility for Line of Duty Determination**  *Slide 6*  *Handout 3*  *Explain the following:* | Normally, the authorization activity is responsible for line of duty administrative determinations. However, the rating activity has jurisdiction over determinations involving:   * Disease * Suicide attempts * Death by suicide   *The rating activity determines the issue, and includes the determination in the formal rating decision.* |
| **NOTE(S)** | Explain to trainees that the responsibility for line of duty determinations also applies to willful misconduct determinations. |
| **Line of Duty Determination Not Required**  *Slide 7*  *Handout 3* | A line of duty determination is ***not*** required in the following cases:   * A service department makes a formal or informal determination that a disability or death was incurred in the line of duty * Service records show that death occurred while flying in a military aircraft while on duty * Service records show the injury was incurred accidentally or under circumstances which obviously indicate accidental incurrence, especially if incurred in a combat zone, except when specific information citing circumstances of unauthorized leave or willful misconduct exists * Cases involving vehicular accidents are involved, except when there is positive evidence of record showing potential willful misconduct, such as:   + Medical records   + Police reports showing intoxication of the Veteran at the time of the accident |

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| **Formal VA Line of Duty Determination**  *Slide 8*  *Handout 3* | The VA will prepare a formal VA determination, whether favorable or unfavorable, as to line of duty if the service department:   * Did not make such finding, AND the injury or death was incurred under circumstances which raise a legitimate issue of willful misconduct * Holds the disability or death not in line of duty * Holds the disability or death to be in the line of duty, but its finding may be properly questioned |
| **Death Occurred On or After January 1, 1957**  *Explain the following: Handout 4* | If death occurred on or after January 1, 1957, the service departments are ***not***required by law to make a formal line of duty finding. However, the service departments have agreed to continue making investigations and furnishing reports to VA when requested.  Do not assume that an investigation was made in every case. In the request for a report, state briefly what is required, either in the form of a:   * Question * Request for a record that is known to exist * Request for a record that may reasonably be expected to exist |
| **Development**  *Handout 5* | Accept service department findings as conclusive for VA purposes unless a preponderance of evidence indicates willful misconduct.  According 38 CFR 3.301, 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 * Abuse of alcohol or drugs   VSR must look to the facts to determine level of impairment and causation for line of duty claims involving alcohol or substance abuse.  ***It is important that VSR not apply his or her own personal standard or bias.*** |

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| **Check comprehension** | Ask the trainees the following questions:   1. What is the definition of "In Line of Duty"?   **Response:** An injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the Veteran's own willful misconduct or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs.  Service department finding of "in line of duty" is binding on the VA unless it is patently inconsistent with the requirements of laws administered by the VA.   1. When are the requirements of in line of duty NOT met at the time the injury was suffered or disease contracted by the Veteran?   **Response:** Requirements for in line of duty are not met when:   * + Avoiding duty by desertion, or was absent without leave (AWOL) which materially interfered with the performance of military duty.   + Confined under a sentence of court-martial involving an unremitted dishonorable discharge.   + Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the person was convicted by such court.  1. A person on active duty is AWOL from his/her post because of being confined in a civilian jail for grand theft. While in jail, the service person develops a severe infection, which results in a permanent residual disability. Was the infection incurred in line of duty? Why or why not?   **Response:** No it was not incurred in line of duty. The person was both AWOL and confined, which are two of the three criteria in which line of duty is not met at the time of injury. |
| **EXERCISE** | Allow the trainees 5 minutes to complete the exercise located in Attachment A of the trainee handout packet page 13.  Discuss the correct responses. |

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| Topic 2: Willful Misconduct | |
| **INTRODUCTION** | This topic will allow the trainee to understand the concept of willful misconduct and its determinations. |
| **TIME REQUIRED** | 0.5 hours |
| **OBJECTIVES/ TEACHING POINTS**  *Discuss the following:* | Topic objectives:   * Identify the key components of "willful misconduct.” * Determine when to make a willful misconduct determination   The following topic teaching points support the topic objectives:   * Willful Misconduct Definition * Willful Misconduct Determinations |
| **Willful Misconduct Definition**  *Slide 9*  *Handout 5* | According to 38 CFR 3.1(n), willful misconduct is defined as:   * An act involving conscious wrongdoing or known prohibited action.   A service department finding that injury, disease, or death was not due to misconduct will be binding on VA unless it is patently inconsistent with the facts and the requirements of laws administered by VA. |
| **Key Components**  *Discuss the following:*  *Handout 5* | The definition of willful misconduct includes the following key components:   * Willful misconduct involves deliberate or intentional wrongdoing with knowledge of, or wanton and reckless disregard of, its probable consequences. * A wrongful act is either inherently wrong in itself, or forbidden by law. * Mere technical violation of police regulations or ordinances does not necessarily constitute willful misconduct. * Willful misconduct will not be determinative unless it is the proximate cause of injury, disease, or death. |

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| **Willful Misconduct Determinations**  *Discuss the following:*  *Slide 10*  *Handout 5* | When considering determination of willful misconduct, note the subtle differences in the wording of the two laws:   * Line of duty - “The service department’s finding of in line of duty is binding on VA unless patently inconsistent with the requirements of VA law.” * Willful misconduct - “The service department’s finding of not willful misconduct is binding on VA unless patently inconsistent with the facts and the requirements of VA law.”   *The addition of "the facts" grants VA more leeway in determining the presence or absence of willful misconduct.* |
| **When to Make a Willful Misconduct Determination**  *Slide 11*  *Handout 5* | Make a willful misconduct determination if a death or disability that affects entitlement occurred under questionable circumstances.  Willful misconduct is not determinative unless it is the proximate, or direct, cause of injury, disease, or death. |
| **Proximate Cause**  *Handout 5* | Injury cannot be held due to willful misconduct on the basis of an act "*malum in se*" (inherently wrong in itself; immoral) or "*malum prohibitum*" (forbidden by positive law), unless the wrongful act was, in and of itself, the proximate or direct cause of the resulting injury. |
| **When Not to Make a Willful Misconduct Determination**  *Slide 12*  *Handout 6* | In general, accept service department findings of no misconduct as conclusive unless there is a preponderance of evidence to the contrary.  The principles stated in [M21-1, Part III, subpart v, 1.D.6.c](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014222/M21-1-Part-III-Subpart-v-Chapter-1-Section-D-Willful-Misconduct-and-Line-of-Duty) regarding circumstances in which line of duty should not routinely be questioned apply to willful misconduct. |
| **Death Pension Entitlement in Willful Misconduct Cases**  *Explain the following:*  *Handout 6* | Death pension benefits may be payable if death:   * Was not in the line of duty OR * Was due to willful misconduct AND * Occurs in service |

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| **Development**  *Handout 6* | When developing a claim involving willful misconduct:   * The VSR should not “witch-hunt” or over-develop cases of accidental injury or death. * If there is no unfavorable evidence of record and no specific indication of its existence, then the service department’s finding should be accepted without question and no development is needed. * If the fact pattern in the particular case is inconsistent or would lead a reasonable person to question the circumstances surrounding the event, injury, or death, then development is in order. |
| **Willful Misconduct Exceptions**  *Explain the following: Slide 13*  *Handout 6* | There are exceptions to the application of willful misconduct in determining entitlement for benefits involving venereal disease and suicide.  According to 38 CFR 3.301(c)(1), residuals of venereal disease:   * Are not to be considered the result of willful misconduct. * Service connection for residuals of venereal disease requires that the initial infection must have occurred during active service.   Under 38 CFR 3.302, for suicide to constitute willful misconduct the act of self-destruction must be intentional. The VA will not consider the suicide willful misconduct if the:   * Person is mentally unsound, because he/she cannot form the required "intent" that's required for willful misconduct. * Mental unsoundness is related to military service. If it is, the Veteran's family is eligible for VA benefits. |

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| **Comprehension check** | Ask the trainees the following questions:   1. What are the key components that contribute to the definition of "willful misconduct"?   **Response:**   * + An act involving conscious wrongdoing or known prohibited action.   + Service department finding of misconduct will be binding on the VA unless it is patently inconsistent with the facts and the requirements of laws administered by VA.   + A wrongful act is either inherently wrong in itself, or forbidden by law.   + Involves deliberate or intentional wrongdoing with knowledge of, or wanton and reckless disregard of, its probable consequences.   + Mere technical violation of police regulations or ordinances does not necessarily constitute willful misconduct.  1. A person on active duty while on authorized leave is under the influence of alcohol and injured in a traffic accident. Are the injuries considered to be re result of that person's own willful misconduct even if the person was not at fault in causing the accident?   **Response:** No, it is not considered willful misconduct. The accident did not involve a deliberate or intentional wrongdoing on the person's part and the mere technical violation of a police regulation or ordinance (being under the influence of alcohol) does not constitute willful misconduct. |

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| Topic 3: Willful Misconduct Determinations & Alcohol Consumption | |
| **INTRODUCTION** | This topic will allow the trainee to understand the role of alcohol consumption in determinations of willful misconduct. |
| **TIME REQUIRED** | 0.5 hours |
| **OBJECTIVES/ TEACHING POINTS**  *Discuss the following:* | Topic objective:   * Restate considerations when making willful misconduct determinations based on alcohol consumption * The following topic teaching points support the topic objective: * Willful Misconduct and Alcohol Consumption * Willful Misconduct Involving Alcohol Determinations |
| **Willful Misconduct and Alcohol Consumption**  *Handout 7* | According to 38 CFR 3.301(c)(2):   * Simple drinking of alcoholic beverage is not of itself willful misconduct. * 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 disability or death, the disability or death will be considered the result of the person’s willful misconduct. * Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin. |
| **Intoxication Standards Set by National Safety Council (NSC)**  *Explain the following:*  *Slide 14*  *Handout 7* | The National Safety Council (NSC) defines Blood Alcohol Concentration (BAC) as:  • Grams of alcohol per 100 milliliters of blood, or  • Grams of alcohol per 210 liters of breath.  Under 23 U.S.C. 163, BAC of .08 is the legal level of intoxication   |  |  | | --- | --- | | **Blood Alcohol Concentration** | **Level of Intoxication** | | .00 - .05 | Presumed not intoxicated/impaired. | | .05 - .08 | No presumption that the person was or was not intoxicated/impaired.  Such BAC may be considered with other competent evidence in determining if the person was under the intoxicating influence of alcohol. | | .08 or more | Presumption established that the person was intoxicated/impaired. | |
| **Proximate and Immediate Effects**  *Explain the following:*  *Slide 15*  *Handout 7* | A person is held responsible for disabling injuries or death that resulted directly and immediately from indulgence in alcohol on an individual occasion.  Willful misconduct in cases involving alcohol consumption for proximate and immediate effects, involves the willingness to achieve a drunken state and, while in this condition, to undertake tasks for which the person is unqualified, physically and mentally, because of the resulting intoxication. |
| **Development for Secondary Diseases**  *Explain the following:*  *Slide 16*  *Handout 8* | The following guidelines apply to claims for compensation based on organic diseases that are secondary to chronic use of alcohol.   |  |  | | --- | --- | | **For claims filed…** | **VA considers…** | | Prior to November 5, 1990 | Such disabling diseases were incurred in the line of duty and therefore could qualify for compensation. | | On or after November 5, 1990 | Such disabling diseases were not incurred in the line of duty and cannot qualify for compensation, because 38 U.S.C. 1110 prohibits payment of compensation for a disability that is a result of a Veteran’s abuse of alcohol. | |
| **Willful Misconduct Involving Alcohol Determinations**  *Slide 17*  *Handout 8* | When making determinations involving alcohol, consider the following:   * Determinations in such instances depend on the facts found. * Exercise care to guard against findings of willful misconduct on the basis of inconclusive evidence. * An adverse determination requires that there must be excessive indulgence as the proximate cause of the disability or death in question. * In determining willful misconduct, consider laboratory tests bearing on the issue of alcoholic intoxication together with all other facts and circumstances. |
| **DISCUSSION** | Explain to the trainees, that determination is not resolved in the claimants favor if blood alcohol is less than the legal level of intoxication.  **Rationale:** Because, the question is whether the individual was *impaired* by ingestion of alcohol and that impairment proximately caused the injury or death. Impairment can be shown by errors in judgment by the claimant; errors which he/she would not normally make. |
| **Comprehension check** | Ask the trainees the following questions:   1. What is considered willful misconduct when involving alcohol consumption?   **Response:** Drinking a beverage to enjoy its intoxicating effects and the intoxication results proximately and immediately in disability or death.   1. What is not considered willful misconduct involving alcohol?   **Response:** Simple drinking of alcoholic beverages and organic diseases and disabilities secondary to chronic use of alcohol.   1. When can a person be held responsible for disabling injuries or death resulting from use of alcohol on an individual occasion?   **Response:** When the case involves a willingness to achieve a drunken state and, while in this condition, to undertake tasks for which the person is unqualified, physically and mentally, because of the resulting intoxication.   1. What Blood Alcohol Concentration level may be considered with other competent evidence in determining if the person was under the intoxicating influence of alcohol?   **Response:** .05 to .08   1. What Blood Alcohol Concentration level establishes presumption that a person was intoxicated and/or impaired?   **Response:** .08 or more |

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| Topic 4: Willful Misconduct Determinations & Substance Abuse | |
| **INTRODUCTION** | This topic will allow the trainee to understand the role of substance abuse in determinations of willful misconduct for claims filed after October 31, 1990. |
| **TIME REQUIRED** | 0.25 hours |
| **OBJECTIVES/ TEACHING POINTS**  *Discuss the following:* | Topic objective:   * Identify considerations when making willful misconduct determinations based on substance abuse.   The following topic teaching points support the topic objective:   * Alcohol and Drug Abuse Definitions * Willful Misconduct and Substance Abuse * Accidental or Careless Use of Drugs * Service Connection for Secondary Conditions Considerations |
| **Alcohol and Drug Abuse Definitions**  *Explain the following:*  *Slide 18*  *Handout 9* | For the purpose of VA benefits, substance abuse includes both alcohol and drugs.  Alcohol abuse is the drinking of alcoholic beverages in an amount, over any period of time, sufficient to cause a disability.  Drug abuse includes the use of:   * Illegal drugs, including prescription drugs that are illegally or illicitly obtained * Prescribed or non-prescribed drugs for a purpose other than the medically intended purpose * Other agents, such as glue or paint, to enjoy their intoxicating effects |
| **Willful Misconduct and Substance Abuse**  *Slide 19*  *Handout 9* | According to 38 CFR 3.301(c)(2), substance abuse is not considered willful misconduct when use involves:   * + Isolated and infrequent use of drugs by itself   + Organic diseases and disabilities which are a secondary result of the chronic use of drugs and infections coinciding with the injection of drugs   + Drugs used for therapeutic purposes or where use of drugs or addiction thereto, results from a service-connected disability   Substance abuse is considered willful misconduct when:   * + Progressive and frequent use of drugs reach the point of addiction   + Drugs are used to enjoy or experience their effects and the effects result proximately and immediately in disability or death |
| **Accidental or Careless Use of Drugs**  *Slide 20*  *Handout 9* | Do not consider the accidental or careless use of prescription or non- prescription drugs, or other agents, to be drug abuse unless the accident or carelessness is the result of:   * Intoxication from alcohol or illegal drugs * Veteran’s willful misconduct |
| **Service Connection for Secondary Conditions Considerations**  *Slide 20*  *Handout 10* | |  |  | | --- | --- | | **Service Connection for Secondary Conditions Involving Substance Abuse** | | | **If ...** | **Then ...** | | The diseases and disabilities are a secondary result of alcohol or drug abuse | Effective November 1, 1990, SC cannot be granted for these diseases and disabilities. | | A Veteran’s alcohol or drug abuse is determined to be part of, or secondary to, an SC condition | Any disease or disability resulting from the alcohol or drug abuse should still be SC under 38 CFR 3.310(a).  Reference: For more information on service connection under 38 CFR 3.310(a) for disease or disability resulting from alcohol or drug abuse, see Allen v.  Principi (Docket 99-7199, U. S. Court of Appeals for the Federal Circuit). | |

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| **NOTE:** | Should question arise on this, November 1, 1990 is **not** a typo. Earlier slide 16 discussed the November 5, 1990 date related to organic diseases secondary to chronic alcohol use as seen in M21-1 III.v.1.D.2.d. The November 1, 1990 citation comes from III.v.1.D.4.g and III.v.1D.4.h. These are discussing DIC entitlement and secondary conditions. |

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| **Comprehension check** | Ask the trainees the following questions:   1. At what point is substance abuse considered willful misconduct?   **Response:** When the progressive and frequent use of drugs reaches the point of addiction or when drugs are used to enjoy or experience their effects and the effects result in proximate and immediate disability or death.   1. Under what circumstances is substance abuse not considered willful misconduct?   **Response:**   * + When use is isolated and infrequent   + Organic disease or disability is a secondary result to chronic use of drugs   + Drugs are used for therapeutic purposes or when use of drugs or addiction results from service-connected disability |

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| Topic 5: Willful Misconduct Determinations & Vehicular Accidents | |
| **INTRODUCTION** | This topic will allow the trainee to understand the role of vehicular accidents in determinations of willful misconduct. |
| **TIME REQUIRED** | 0.25 hours |
| **OBJECTIVES/ TEACHING POINTS**  *Discuss the following:* | Topic objective:   * Identify considerations when making willful misconduct determinations based on vehicular accidents.   The following topic teaching points support the topic objective:   * Importance of Physical Evidence * Considerations * Willful Misconduct and Vehicular Accidents Determination * Weight of Service Department Findings |
| **Importance of Physical Evidence**  *Explain the following: Slide 21*  *Handout 11* | In vehicular accidents, there is frequently no direct testimony or such testimony in itself presents an incomplete picture. Therefore, the physical evidence assumes added importance and is entitled to greater weight. Such facts speak for themselves and are not subject to the variations of observation or self-interest often found in direct testimony.  Some examples of physical evidence that may be considered are:   * Skid marks * Damage to vehicles * Position of vehicles after the accident in relation to the point of impact * Debris and scattered parts |

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| **Considerations**  *Slide 22*  *Handout 11* | In vehicular accident cases, a decision maker should consider all factors including, but not limited to:   * Excessive speed * Diversion of attention to companions * Use of intoxicants or illegal substances   Although a single factor may not be sufficient evidence, it is possible that a combination of factors may be sufficient evidence that the Veteran’s manner of operation of a vehicle was so unreasonable and dangerous as to constitute a wanton and reckless disregard of the probable consequences.  It is reasonable for the decision maker to conclude that an accident proximately resulted from such combined factors in the absence of any intervening cause, including, but not limited to:   * Mechanical defect in the vehicle * A defect in the road * Actions by some other person |
| **Willful Misconduct and Vehicular Accidents Determination**  *Slide 23*  *Handout 11* | Willful misconduct may be determined if the Veteran’s disability or death resulted from a vehicular accident, and it is established that the Veteran:   * Was the operator of the vehicle, or * Contributed in some way to the cause of the accident, for example, interfering with the operator.   A preponderance of evidence establishing that there was a wanton and reckless disregard of the probable consequences in a vehicular accident is generally the decisive factor in a willful misconduct determination. |
| **Development**  *Slide 24*  *Handout 12* | When developing claims involving vehicle accidents, consider the following:   * Do not routinely develop for a misconduct determination in automobile accident cases without positive evidence of potential misconduct. * To make a determination, obtain and carefully consider all evidence available, including police reports. * Give service department findings, including “no misconduct” determinations, due consideration. |

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| **Weight of Service Department Findings**  *Slide 24*  *Handout 12* | The decision of Department of Veterans Affairs (VA) must rest on principles developed under VA laws, with special reference to wanton and reckless disregard of the probable consequences, as evidence of willful misconduct. |
| **Comprehension check** | Ask the trainees the following questions:   1. What is considered willful misconduct when involving a Veteran's disability or death resulting from a vehicular accident?   **Response:** The Veteran was the operator of the vehicle or contributed in some way to cause the accident. Preponderance of the evidence establishes that there was a wanton and reckless disregard of the probable consequences in the accident.   1. What are factors to consider in development of vehicular accident cases involving willful misconduct?   **Response:**   * + Excessive speed   + Diversion of attention to companions   + Use of intoxicants or illegal substances   + Mechanical defect in the vehicle   + Defect in the road   + Actions by some other person |
| **EXERCISE** | Allow the trainees 5 minutes to complete the exercise located in Attachment B of the trainee handout packet page 14.  Discuss the correct responses. |

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| Practical Exercise | |
| **TIME REQUIRED** | 0.25 hours |
| **EXERCISE** | The trainees should work individually on the exercise Attachment C of trainee handout, pages 15 - 16.  Allow the trainees 10 minutes to answer the questions. Review the correct responses.  Ask if there are any questions about the information presented in the exercise, and then proceed to the Review. |

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| Lesson Review, Assessment, and Wrap-Up | |
| **INTRODUCTION**  *Discuss the following:* | The Line of Duty – Willful Misconduct lesson is complete.  Review each lesson objective and ask the trainees for any questions or comments. |
| **TIME REQUIRED** | 0.5 hours |
| **LESSON OBJECTIVES**  *Review the following:* | You have completed the Line of Duty – Willful Misconduct lesson.  The trainee should be able to:   * Identify requirements for a line of duty disability or death claim * Identify the key components of “willful misconduct” * Determine when to make a willful misconduct determination * Restate considerations when making willful misconduct determinations based on alcohol consumption * Restate considerations when making willful misconduct determinations based on substance abuse * Restate considerations when making willful misconduct determinations based on vehicular accidents |
| **ASSESSMENT** | The assessment will allow the participants to demonstrate their understanding of the information presented in this lesson.  Remind the trainees that they will not receive credit for this lesson until the assessment has been completed in the TMS. |