Prestabilization Ratings

Trainee Handout

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Objectives

RVSRwill be able to:

* Identify the references for the topic
* Determine when to prepare a prestabilization rating
* Determine when a 100% or a 50% is appropriate
* Correctly determine duration of the grant
* Identify SMC and Severance pay issues when preparing prestabilization grant

References

* [38 CFR 4.28, Prestabilization rating from date of discharge from service](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part4/4_28.htm)
* [M21-1, Part IV, subpart ii.2.J, Prestabilization Ratings Under 38 CFR 4.28](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)

**Introduction**

Prestabilization ratings (also referred to as “Paragraph 28” ratings, after the paragraph in the Rating Schedule that allows for them) were created to assure earliest payment to those Veterans most likely to be in need and least likely to be self-sufficient.

Topic 1: When to Prepare Prestabilization Rating

## When to Prepare a Prestabilization Rating

A prestabilization rating should be prepared without waiting for further development or examination if a Veteran has an unstable, significantly disabling service-connected (SC) disability at the time of separation that will continue for an indefinite period.

## Criteria for Assigning a Prestabilization Rating

The service treatment records (STRs) must show the existence of an unstabilized condition stemming from any disease or injury for which service connection may be awarded. A VA examination is not required in order to prepare a prestabilization rating. If the medical evidence shows the existence of an unstabilized condition for which SC can be granted, a prestabilization evaluation of 50% or 100% can be assigned.

Topic 2: Establishing the Rating, Evaluation & Duration

## When a 100 and 50 Percent Prestabilization Ratings Are Applicable

In determining the evaluation for prestabilization ratings, review the service treatment records for sufficient evidence showing disabling conditions that will continue for an indefinite period.

A 100% evaluation should be assigned when the evidence shows there is an unstabilized condition with severe disability and substantially gainful employment is either not feasible or advisable.

The 50% evaluation is applicable when there are unhealed or incompletely healed wounds or injuries and material impairment of employability is likely.

***Note: Remember a VA examination is not required in order to prepare a prestabilization rating.***

## When a 100 and 50 Percent Prestabilization Ratings Are Not Applicable

There are instances when a prestabilization rating is not applicable and warrants the assigning of an evaluation under the regular provisions of the rating schedule.

A 100% prestabilization evaluation should not be assigned when the evidence show a total evaluation could be immediately assigned under either the regular provisions of the schedule or on the basis of individual unemployability.

A 50% prestabilization evaluation should not be assigned in any case where an evaluation of 50% or higher could be immediately assigned under the regular provisions of the rating schedule.

## Duration of the Grant

Prestabilization ratings should be used in the immediate post-discharge period and is prepared under 38 CFR 4.28 as an “open rating.” They continue for a 12-month period following discharge or separation from active service.

A routine future exam (RFE) should be established covering all service-connected conditions between six and 12 months following service discharge. Once the examination report is received, reevaluation of the of the SC disability(ies) should be expedited.

A prestabilization rating can be changed to a regular schedular rating at any time if the regular rating results in an increased evaluation.

Subsequent reductions of prestabilization ratings cannot occur until after the expiration of 12 months from date of discharge or separation, and must follow the requirements of 38 CFR 3.105(e).

Topic 3: Additional Considerations (SMC, Severance Pay)

## When a Potential Eligibility for SMC Exists

Special monthly compensation (SMC) can be assigned in a prestabilization rating if supported by the medical evidence of record. If there is evidence of possible entitlement to SMC, but not sufficient to make a full determination, evaluate disabilities in a prestabilization rating at the loss level that is shown and request an “at once” examination to determine the full extent of the disability.

## When Severance Pay is Awarded

If disability severance pay has been awarded for any disability for which the prestabilization rating is granted, a separate evaluation must be assigned to it to permit Authorization to properly offset the award of compensation benefits.

## How to Prepare a Prestabilization Rating Decision

As in all ratings, the rating decision must address all disabilities claimed or noted. However, the issue of a prestabilization rating should not be deferred for development of other issues.

Preparing the rating code sheet is quite simple. Again, the prestabilzation rating is prepared under 38 CFR 4.28 as an “open rating.” The rating code sheet should list the diagnostic code for the most severe disability followed by all other unstable service-connected disabilities, but without their separate diagnostic codes. The assigned evaluation will be listed following the diagnostic code with the effective date of the decision and the citation of 38 CFR 4.28.

**Example (no severance pay):**

SUBJECT TO COMPENSATION (1. SC)

5255 Compound comminuted fracture of left femur due to gunshot wound (GSW) left thigh; GSW left arm; GSW chest; major depression

Service Connected, Gulf War, Incurred

Future Exam (date)

100% from (effective date) (38 CFR 4.28)

Review Exercise

**If** Veteran’s *total SC disability picture* reflects unhealed or incompletely healed wounds or injuries that would materially impair employment and that, if individually evaluated (exclusive of any SMC) ***would approach*** ***but not equal or exceed*** a 50% evaluation in combination, **then** prepare prestabilization rating at 50% with RFE in 6-12 months.

**If** Veteran’s *total SC disability* *picture* reflects unhealed or incompletely healed wounds or injuries that would materially impair employment and that, if individually evaluated (exclusive of any SMC) ***would equal or exceed*** a 50% evaluation in combination, but does not approach the requirements for a 100% prestabilization evaluation, **then** you *cannot* use a prestabilization rating. You must evaluate each disability separately.

**If** Veteran’s *total SC disability picture* reflects an unstabilized condition with severe disability that would render substantially gainful employment not feasible or inadvisable and that, if individually evaluated (exclusive of any SMC) ***would approach but not equal*** a 100% evaluation in combination or ***not warrant a total evaluation*** based on individual unemployability, **then** prepare a prestabilization rating at 100% with RFE in 6-12 months.

**If** Veteran’s *total S/C disability picture* reflects an unstabilized condition with severe disability that would render substantially gainful employment not feasible or inadvisable and that, if individually evaluated (exclusive of SMC) ***would equal*** a 100% evaluation in combination, or ***warrant a total evaluation***based on individual unemployability, **then** you *cannot* use a prestabilization rating. You must evaluate each disability separately.

Practical Exercise

**Directions**:

1. Veteran incurs multiple shell fragment wounds of the lower extremities, resulting in a below-knee amputation of left leg and residual soft-tissue injuries to the other, which have not yet healed and are still suppurating. Also present is PTSD of a moderate degree. Is a prestabilization rating in order in this case? If so, which level of disability would be assigned?

2. Same fact pattern as in Question #1, but without the PTSD. Is a prestabilization rating in order in this case? If so, which level of disability would be assigned?

3. You receive an original claim for rating decision. The only medical evidence presented with the case is service medical records. Does this fact preclude consideration for a prestabilization rating?

4. Veteran has several disabilities resulting from a mine explosion, some of which are not yet healed and still suppurating. If separately rated, they would combine to a 40% evaluation only because of the bilateral factor. Could a prestabilization rating be in order in this case?

5. Under what circumstances would more than one coded disability have to be shown in the coded conclusion of a prestabilization rating?

6. How would the coded conclusion appear using the fact pattern present in Question #1? (assume Gulf War service)

7. In order to be considered for a prestabilization rating, the disabilities must be due to combat or other trauma. True/False

8. Prestabilization ratings cannot be changed until after 12 months from discharge. True/False