

Winning A VA Claim for a Pre-existing Condition

Whenever you see that the VA has denied your claim for a condition that pre-existed prior to service, you should see a red flag. Often, this decision signals that the VA has made an error in deciding your claim by misapplying the law.

Sometimes, if a veteran's condition is preexisting and was not aggravated by the veteran's time in service, the VA is well within the letter of the law to deny that claim. However, the law is written in favor of granting the benefits and denying for preexisting conditions is not an easy case for the VA to make.

What Does the VA Consider a Pre-Existing Condition?

A pre-existing condition is any injury, illness, or medical condition you had before entering military service. It doesn't matter whether it was formally diagnosed or not. A condition noted at your entry medical exam is clearly pre-existing. However, if you had symptoms or treatment for a condition but it wasn't noted on your entry exam, the VA will still investigate whether your condition pre-existed your service. The VA is perfectly within its rights to deny service connection if a disease or disability actually did exist prior to entry into the military (sometimes this is noted in the file as EPTE—existing prior to entrance) and was not worsened by the veteran's service. But this isn't something that can be done lightly. The law is written to favor the veteran.

To start with, veterans are entitled to a presumption of soundness. This means that unless the veteran's entrance examination into the military specifically notes that there is a pre-existing condition, VA must presume that the veteran did not have a pre-existing condition. If the veteran then develops a disability or disease during service, VA must

presume that the condition is service-connected unless VA can show evidence that it is not. It's important to know that in this situation, where there is no notation of a pre-existing condition on entrance but the veteran develops one during service, the veteran is not required to prove the origins of that disability.

Once the presumption of soundness attaches to a case, the burden is not on the veteran to prove he or she was in sound condition when entering service, the burden is on the VA to prove that he or she was NOT in sound condition. And unlike the standard for evidence supplied by the veteran, where the veteran only has to show that something is 50/50 or "as likely as not," the VA has to provide evidence that is "clear and unmistakable," about which there can be no debate.

In other words, if there is evidence to support a finding that the condition pre-existed service, along with other evidence that shows that the condition did NOT pre-exist service, the VA's evidence is not undebatable and cannot be used to rebut the presumption of soundness. The VA can only overturn the presumption of soundness by providing clear and unmistakable evidence that the condition pre-existed service and was not aggravated or worsened by service. There are exceptions: conditions which, by their nature, can be deemed to have pre-existed service. If a service member is diagnosed with a congenital defect in service (assuming that the diagnosis is correct), one which is known to be something that a person is born with, the VA may bypass the presumption of soundness.

When Can Veterans Receive VA Disability for a Pre-Existing Condition?

Veterans may still receive VA disability benefits even if their medical conditions existed before service. The key factor is proving that military service aggravated (made worse) these pre-existing conditions. Two legal presumptions help veterans establish claims for aggravated conditions:

Presumption of Soundness — If your condition wasn't documented during your entry medical exam, the VA must assume you entered the service healthy. The VA would then have to prove that your condition existed before your service began.

Presumption of Aggravation — If your condition existed before you joined and it worsened during service; the VA must assume military service aggravated it. The VA then has the responsibility to prove the condition was not made worse by your military service.

Eligibility requires meeting specific criteria. To receive VA disability benefits for pre-existing conditions, veterans must:

- **Demonstrate their condition worsened during service.**
- **Provide medical evidence clearly connecting military service to the aggravation.**
- **Prove the condition's aggravation resulted in current disability symptoms or limitations.**



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