

# A VA DISABILITY PLAN OF ATTACK

## INTRODUCTION

I am a retired USAF NCO/Officer with 230% VA Disability (100% after “VA Math”) and 100% SSDI, and I would like to give you a few pointers for receiving your earned VA Disability. The following information is a blend of experience and opinion. Some of the information may be dated. Do your homework.

First, less than 0.4% of Americans have served in the United States Armed Forces. We entered whole, and honorably served our nation. VA Disability is imperfectly crafted and distributed in order *to compensate us for our losses during time served*. In most cases VA Disability is different from civilian Social Security Disability Insurance (SSDI) that *pays us when we are unable to work*. The thought processes for awarding benefits is completely different. VA Disability pays for physical and psychological losses. SSDI is an insurance plan that pays when you cannot work. To receive civilian SSDI we must prove inability to take a physical job, or a thinking job, or a communications job, or a supervisory job. Pursuing SSDI is actually more difficult than pursuing VA Disability, but having VA Disability speeds the process.

Many Vets have issues pursuing VA Disability when our injuries/losses are ‘insignificant’ compared to our brothers and sisters who have lost limbs and worse. Many of our warriors are treated very unfairly by ‘the system’. *We need to save this issue for a later day*. We need to pursue VA Disability urgently and with attention to detail. Now read this paragraph again.

The VA can and will ‘shaft us’ at every opportunity. They have been trained to do so and many medical investigators are jaded by Vets who have tried to cheat the system. For some, we are guilty until proven innocent. Never volunteer them an opportunity to deny your claim. Be brief, honest, and understand that a tie is required to go to the runner.

## THE VA DISABILITY PROCESS

**1. You should understand that the VA may award you a disability rating of 0%.** This is a good thing! Expect it and pursue it. When applying for disability we must apply for every documented illness or injury to a body part regardless of current pain levels or ability. A 0% rating means the VA has recognized the claim is legitimately associated with military service. If/When the issue worsens over your lifetime *it has already been approved*. The only thing that will need to be pursued is the percentage rating. *Pursue ALL illness and injuries*. If still Active Duty, ensure ALL illnesses and injuries are clearly documented with a primary injury event documented and dated in our medical records. E.g., “Foot Pain” is insufficient. “Foot pain following a 10 mile run” or “during unit PT,” with a date, is required. The VA requires us to

connect the illness or injury to a causal event. Better to do it while active duty than fight for documentation afterward.

**2. Identify all your injuries and illnesses that appear in your medical records.** This includes any Lab results that are out of standards. A problem is that our medical records, and our memories, are imperfect. We tend to miss a lot that should be pursued. A “Back Injury” is not a Back Injury. Is it C-Spine, T-Spine, L-Spine? Does it include Right and/or Left Sciatic pain? Does it involve the Right or Left Sacroiliac Joints? Do you have Right or Left Neuropathy? How would you know? Each of these can be awarded disability percentages; not just “Back pain.” A smart and kind investigator clued me into this one. I expected 10% for my C-Spine and 10% for my L-Spine but I was authorized a total of 80%. We don’t know what we don’t know. Learn from others. I submitted 23 different injuries and illnesses. I received percentages for most. I retired as a train wreck at age 55.

**3. Gather ALL your Medical Records, Lab Results, Performance Reports, Award Citations, Pre & Post Deployment Assessments...EVERYTHING with a signature on it.** Know that there is a folder with our names on it in the commander’s staff drawer. Get a copy! Compile a list of witnesses that were present at your injury(s). The VA accepts “Buddy Statements.”

**4. Have a medically trained person (MD, RN, Clinic NCO) review a COPY of your records with post-it notes and a highlighter.** They will almost certainly find things you will never think about. They will also ask you questions about missing information that you never thought about. Ensure a mental health specialist assists you with preparing a mental health claim.

**5. Review every VA Disability Benefits Questionnaire (DBQ), line by line.** The DBQ is the checklist that the VA bean counters will use. There is a DBQ (Questionnaire) for each and every body part. Make sure you have a copy of the correct DBQ and make sure you have *the best evidence* to meet the requirements. Bring copies of your specific DBQs to your medical appointments. Have your medical staff annotate your records to include the evidence on the checklists.

Your disability packet *will be reviewed by bean counters*. They look at a checklist item and determine if you have documentation or you don’t. Baffling them with a pile of records will hurt and not help you as the important stuff gets lost in the fluff. It is as simple as reading the DBQ checklist for the particular illness or injury and giving them the best evidence that you meet the requirement. Eagerness screams...give them more...pile it on...don’t do it! I compiled a separate package for each disability and tabbed my evidence to a cover sheet. I made it simple. In some cases I had multiple copies of the same evidence, each in its own disability packet. Make-it-simple... for you, and for them. Know the evidence. Have the evidence. Present the evidence.

➤ DBQ Checklists: [https://www.benefits.va.gov/compensation/dbq\\_publicdbqs.asp](https://www.benefits.va.gov/compensation/dbq_publicdbqs.asp)

**6. Review the VA Disability Rating narratives in Title 38 Part 4, Schedule for Ratings Disabilities (38 CFR).** These narratives clearly explain what evidence you need for a 10% - 100% rating. Treat it as a checklist as important as the DBQ. If you know you have the documentation for 30% but not 50%, you will KNOW exactly what your target is. Be reasonable. Be ethical. Know what you have coming to you and aggressively pursue it.

Title 38 Part 4, Schedule for Ratings Disabilities (38 CFR):

➤ <https://www.benefits.va.gov/warms/bookc.asp>

A few words about mental health disability: This was a hard one for me. I was keyed in on diagnosis...they don't care. They don't care if you have 10 psychiatrists that diagnose you with PTSD... or Anxiety Disorder...or TBI or anything else. *They simply don't care.* The VA bean counters are looking for *disability, not diagnosis.* If we are having Panic Attacks, 3 times a week, they don't care what our diagnosis is. They are focused on the disability. *Read your DBQ and 38 CFR.* Give them what they are looking for. Note that 50% is the maximum for any mental health claim unless you are severely disabled and unable to function personally, socially or professionally. It may not be fair but it is what it is.

Let's walk through the mental health portion of Title 38 Part 4, Schedule for Ratings Disabilities (38 CFR); §4.130. Pick your disability percentage based on the "General Rating Formula for Mental Disorders". Then ensure you have the evidence to back it up. Note the huge difference between 50% and the higher ratings.

General Rating Formula for Mental Disorders:

- Total occupational and social impairment, due to such symptoms as:
  - gross impairment in thought processes or communication;
  - persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name .....100
- Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships .....70

Occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships .....	50
Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events) .....	30
Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or; symptoms controlled by continuous medication .....	10
A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication .....	0

**7. If you are claiming a psychiatric issue you will be required to submit a Stressor Statement.** Be sure to include all the signs and symptoms you experience *that are on the DBQ Checklist and the 38 CFR*. The reader should be able to grab all the checklist information off the statement and then dig through your carefully annotated pile of medical records to find those exact signs and symptoms. Make it easy for them.

Also note: If you struggle with any form of anxiety disorder, to include PTSD, know that your symptoms ~~may~~/will become *much worse* during the application and interview process. This is both a bad and a good thing. You will have to write your narrative explaining how you were injured. You may rewrite, reread, and re-live it a thousand times...and in your sleep. I understand the pain. I also know that the psychiatrist that interviewed me for 2 full hours got me at my worst. My advice: Make your checklist from the DBQ and especially the 38 CFR. When writing your narrative, include *only* the required background and evidence for the bean counters...*one or two pages max*. Write it and forget it. You will get your opportunity to explain details in your psychiatrist interview. Don't obsess over the written narrative (like I did).

8. **A word about Pain;** they don't care. Pain will get you 10% on a body part. "But it's horrible pain." They don't care. "But you don't understand – it's really really bad pain." They don't care. Both the DBQ Checklist and the 38 CFR are the ONLY items they care about. Read them and document them. Now read this again and make sure you claim *Pain* if you have it.

9. **There are numerous VA appeals board decisions found online** that exactly mirror your particular issue. Read them! Understand why they found for the Vet or rejected the claim. Adjust accordingly.

10. **Do not settle for less than what the 38 CFR tells you is correct.** Immediately re-file. You will almost certainly receive rejections or lowballs your first time around. This is by design. By law they must tell you exactly why they did not award you more. Compile your evidence for *these exact deficiencies and resubmit immediately*. They are hoping you will go away until your appeals timeframe has expired.

11. **Understand that your Veteran Service Officer (VSO) is only a guide to the process.** He or she will not compile your evidence for you. Expect to spend at least a month (full time) putting your claim package together. If you do the work, the VA will honor your efforts...eventually. The rest of your life may be a long time and body parts wear out. It is far better to have a 0% disability rating on an old painless knee injury than no rating at all.

12. **You will be summoned to be examined on the basis of your claims.** Never lie! *Provide evidence of your worst day.* Bring a brief video taken by your medical provider on a bad day...the same video you submitted with your claims. I burned a disk and labeled it "Medical Evidence" and submitted it with the claims package. On a bad day I had handed my chiropractor my cell phone video camera. I had him meet me at the car and video me getting out and walking to his office. I brought my laptop with the video to my examiner and I watched the examiner very closely monitor *every second of it...*and received the correct percentage. Note that examiners will watch you get out of your car in the parking lot. They will ask you how you are doing...*if your daily life is not fine/good, NEVER SAY you are "fine/good."* A figure of speech will sink you with unscrupulous examiners.

13. **Adjust how we think of Pain.** We often think of "pain" as the time we were hit by a bus. Tense muscles may be considered painful. Inability to bend fully may be due to pain. If you have a chronic illness or injury, you probably live with a certain level of daily pain. *Do not lowball it.* Get back in touch with your body and explain it in the terms the examiner is looking for. For me, anything above a #5 on a scale of 1-10 means I can't sleep. #9 = curled up on the floor in agony. I live with a minimum of pain levels at #2 everyday; all day. So, for example, if you struggle with back pain and muscle spasm, your lowest number on a 1-10 scale may be #2. *Never Zero!* Example: Are you in pain? No. Are you in pain when you bend over? Oh yeah. Then you are in pain! Never lie ... reconnect with your body. And... make sure that every time you are in a medical setting you truthfully answer your pain levels. Mine is NEVER less than a #2.

14. **Bend and twist until you feel resistance.** You are not required to ‘man-up’ and ‘power through’. They are measuring your musculoskeletal limitations not your pain endurance. Slowly and gently go through the motions they require and **STOP** immediately *when you feel resistance*. It may be the difference between 0% and 20% for each musculoskeletal body part.

15. **For psychiatric issues such as Anxiety, PTSD or TBI, bring your spouse or close friend** or family member to the evaluation. They can provide valuable information on what it is like to live with a crazy person. Your call...

Finally, there is so much more. If you stick with the basics in this discussion you will know exactly what your disability rating is and how to get it. Your Veterans Service Officer (VSO) is a necessity and will help you with other options to pursue, to include “Permanent & Total Disability” if you qualify.

Semper Gumby! (Always Flexible)

A handwritten signature in blue ink that reads "Rob". The signature is stylized with a large, circular initial "R" and a cursive "ob".

Chaplain Rob Sugg, USAF (Retired)

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