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**This is supplemental material
for Book C of your set of
Federal Regulations**

Title 38, Part 4

Schedule for Rating Disabilities

Veterans Benefits Administration

Supplement No. 49

Covering period of *Federal Register* issues
through July 3, 2009

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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book C*

Code of Federal Regulations

Title 38, Part 4

Schedule for Rating Disabilities

Veterans Benefits Administration

Supplement No. 49

5 July 2009

Covering the period of Federal Register issues
through July 3, 2009

When **Book C** was originally prepared, it was current through final regulations published in the *Federal Register* of 24 March 1992. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page C-8 of *Book C, Schedule for Rating Disabilities*.

**To ensure accuracy and timeliness of your materials,
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page C-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page C-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page C-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book C, Supplement No. 49
July 5, 2009**

*Remove these
old pages*

*Add these
new pages*

*Section(s)
Affected*

**Do not file this supplement until you confirm that
all prior supplements have been filed**

4.17-1 to 4.18-1

4.17-1 to 4.18-1

§4.17

**Be sure to complete the
Supplement Filing Record (page C-8)
when you have finished filing this material.**

HIGHLIGHTS

Book C, Supplement No. 49 July 5, 2009

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book C (*Schedule for Rating Disabilities*) was originally supplemented four times a year, in February, May, August, and November. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 5 June 2009, the VA published a final rule, effective that same date, to amend VA regulations to add the Pension Management Center Manager as a person who, in addition to the Veterans Service Center Manager, is authorized to review decisions on benefit claims and authorized to approve permanent and total disability evaluations on an extraschedular basis for pension purposes. Changes in this Book C:

- In §4.17, revised paragraph (b).



§4.17 Total disability ratings for pension based on unemployability and age of the individual.

All veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reason of disabilities which are likely to be permanent shall be rated as permanently and totally disabled. For the purpose of pension, the permanence of the percentage requirements of §4.16 is a requisite. When the percentage requirements are met, and the disabilities involved are of a permanent nature, a rating of permanent and total disability will be assigned if the veteran is found to be unable to secure and follow substantially gainful employment by reason of such disability. Prior employment or unemployment status is immaterial if in the judgment of the rating board the veteran's disabilities render him or her unemployable. In making such determinations, the following guidelines will be used:

(a) Marginal employment, for example, as a self-employed farmer or other person, while employed in his or her own business, or at odd jobs or while employed at less than half the usual remuneration will not be considered incompatible with a determination of unemployability, if the restriction, as to securing or retaining better employment, is due to disability.

(b) Claims of all veterans who fail to meet the percentage standards but who meet the basic entitlement criteria and are unemployable, will be referred by the rating board to the Veterans Service Center Manager or the Pension Management Center Manager under §3.321(b)(2) of this chapter. (Authority: 38 U.S.C. 1502)

[43 FR 45348, Oct. 2, 1978; as amended at 56 FR 57985, Nov. 15, 1991; 71 FR 28586, May 17, 2006; 74 FR 26959, June 5, 2009]

Supplement *Highlights* reference: 87(2)

Next Section is 4.17a

§4.17a Misconduct etiology.

A permanent and total disability rating under the provisions of §§4.15, 4.16 and 4.17 will not be precluded by reason of the coexistence of misconduct disability when:

(a) A veteran, regardless of employment status, also has innocently acquired 100 percent disability, or

(b) Where unemployable, the veteran has other disabilities innocently acquired which meet the percentage requirements of §§4.16 and 4.17 and would render, in the judgment of the rating agency, the average person unable to secure or follow a substantially gainful occupation.

[40 FR 42536, Sept. 15 1975, as amended at 43 FR 45349, Oct. 2, 1978]

§4.18 Unemployability.

A veteran may be considered as unemployable upon termination of employment which was provided on account of disability, or in which special consideration was given on account of the same, when it is satisfactorily shown that he or she is unable to secure further employment. With amputations, sequelae of fractures and other residuals of traumatism shown to be of static character, a showing of continuous unemployability from date of incurrence, or the date the condition reached the stabilized level, is a general requirement in order to establish the fact that present unemployability is the result of the disability. However, consideration is to be given to the circumstances of employment in individual claims, and, if the employment was only occasional, intermittent, tryout or unsuccessful, or eventually terminated on account of the disability, present unemployability may be attributed to the static disability. Where unemployability for pension previously has been established on the basis of combined service-connected and nonservice-connected disabilities and the service-connected disability or disabilities have increased in severity, §4.16 is for consideration.

[40 FR 42536, Sept. 15, 1975, as amended at 43 FR 45349, Oct. 2, 1978]