### Section B. Determining Service Connection (SC)

#### Overview

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| In This Section | This section contains the following topics: |

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| Topic | Topic Name |
| 1 | Determining Direct SC |
| 2 | Determining Presumptive SC |
| 3 | Determining Service Incurrence of an Injury |
| 4 | Determining In-Service Aggravation of Pre-Service Disability |
| 5 | Determining Secondary SC, Including by Aggravation |
| 6 | Determining SC for Congenital, Developmental, or Hereditary Disorders |

#### 1. Determining Direct SC

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| Introduction | This topic contains information on determining direct SC, including* overview of direct SC
* establishing direct SC based on chronicity
* establishing SC based on continuity of symptoms
* establishing direct SC under 38 CFR 3.303(a)
* establishing direct SC under 38 CFR 3.303(d)
* definition of presumption of soundness
* service requirements for presumption of soundness
* considering the presumption of soundness at entry into service
* definition of active continuous service
* applying the presumption of soundness for active duty for training, and
* requirements for inactive duty training to be considered active service.
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| Change Date | January 20, 2016 |

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| a. Overview of Direct SC | ***Direct service connection*** (SC) means that a particular disease or injury was incurred in service. This is accomplished by affirmatively showing inception during service. There are three components to proving direct SC. These are* a current disability
* an event, injury, or disease in service, and
* a link or nexus establishing that the current disability had its onset or inception in service.

All pertinent or relevant medical and lay evidence must be considered, including the service records (which may show the places, types, and circumstances of service and the official history of the organization in which the Veteran served). ***References***: For more information on * principles relating to SC, see [38 CFR 3.303](http://www.ecfr.gov/cgi-bin/text-idx?SID=a88986ca8f9a29e8af73cdffa7bc08f9&node=se38.1.3_1303&rgn=div8)
* guidance on the current disability requirement, see M21-1, Part IV, Subpart ii, 2.B.1.b
* evaluating evidence, see M21-1, Part III, Subpart iv, 5
* requesting evidence from the claimant, see M21-1, Part III, Subpart iii, 1.B.1, and
* the benefit of the doubt rule, see
* [38 CFR 4.3](http://www.ecfr.gov/cgi-bin/text-idx?SID=baf3045b398058206e4817ad6ca59430&mc=true&node=se38.1.4_13&rgn=div8), and
* M21-1, Part III, Subpart iv, 5.1.k.
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| b. Establishing Direct SC Based on Chronicity | Chronicity is a key concept for establishing direct SC. Department of Veterans Affairs (VA) disability compensation is based on current chronic (ongoing, lasting) disability. Direct SC requires that the current disability must have begun during active duty service either by manifestation of the disease entity or by the occurrence of an injury or traumatic event during service resulting in the current, chronic, ongoing disability. To establish SC under [38 CFR 3.303(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a88986ca8f9a29e8af73cdffa7bc08f9&node=se38.1.3_1303&rgn=div8) based on the chronicity of a disease shown in service, the evidence must include* manifestations sufficient to identify the disease entity
* onset of the condition and/or evidence of injury or trauma during active duty service, and
* evidence sufficient to establish chronicity from merely isolated findings or a diagnosis that includes the word “chronic,” so long as the evidence does not show a superseding post-service disability.

When a chronic disease listed under [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a88986ca8f9a29e8af73cdffa7bc08f9&node=se38.1.3_1309&rgn=div8) is shown in service, consider all subsequent manifestations of the same chronic disease as service-connected (SC), unless they are clearly shown to be due to inter-current causes.***Notes***: * A careful review of the evidence may reveal that chronic disability from a condition had its onset during active duty service and has chronically persisted from active service to the present, even when service medical providers did not conclude that there were residuals or continuation of a disease or injury.
* Application of the chronicity provisions of [38 CFR 3.303(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a88986ca8f9a29e8af73cdffa7bc08f9&node=se38.1.3_1303&rgn=div8) is limited to the chronic diseases listed under [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_1309&rgn=div8). For any disability not listed under [38 CFR 3.309(a),](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_1309&rgn=div8) SC must be established under [38 CFR 3.303(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a88986ca8f9a29e8af73cdffa7bc08f9&node=se38.1.3_1303&rgn=div8) by associating a current disability to service by a nexus consisting of evidence of continuous symptoms or a medical opinion.
* The requirement for a current disability is met if a disability exists when a Veteran files a claim or while the claim is pending, even though the disability resolves before VA decides the claim.
* Evidence that is reasonably contemporaneous with the filing of a claim, even if it predates the claim, must be evaluated and addressed in determining whether a disability exists when the claim is received. Evidence that a diagnosis falls outside of the claim period, is not, as a matter of law, incapable of proving a current disability.

***References***: For more information on* chronicity, see
* [38 CFR 3.303(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_1303&rgn=div8), and
* [*Walker v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmw), 708 F.3d 1331 (Fed. Cir. 2013), and
* current disability, see
* [*McClain v. McDonald*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm), 21 Vet.App. 319 (2007), and
* [*Romanowsky v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmr), 26 Vet.App 289 (2013).
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| c. Establishing SC Based on Continuity of Symptoms | SC may be established based on continuity of symptoms when a disease or condition * listed under [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_1309&rgn=div8) is noted in service
* is not shown to be chronic in service, or
* a diagnosis of chronicity is questionable.

***Note***: When evidence shows that symptoms that began during service have continued after discharge, a medical opinion is generally not required to establish a link between the claimed disability and the Veteran’s service. ***Reference***: For more information on continuity of symptoms, see* [38 CFR 3.303(b),](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_1303&rgn=div8) and
* [*Walker v. Shinseki,*](http://www.ecfr.gov/cgi-bin/text-idx?SID=8ec647cd0edc2cb1040f28a2c9933deb&mc=true&node=se38.1.3_1304&rgn=div8) 708 F.3d 1331 (Fed. Cir. 2013).
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| **d. Establishing Direct SC Under 38 CFR 3.303(a)** | Direct SC may be established under [38 CFR 3.303(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_1303&rgn=div8) when* the evidence or a medical opinion shows a nexus between a current disability and an injury, disease, or event in service, or
* competent medical evidence demonstrates continuous symptoms that are sufficient to constitute a nexus between a current disability and an injury, disease, or event in service.

***Notes***: * Continuous symptoms are demonstrated when the medical evidence shows symptoms continuing without stopping, or recurring regularly, with minimal interruptions, from service.
* When the evidence shows isolated instances of symptoms between service and a current disability which do not demonstrate continuity, an examination with medical opinion requested in accordance with [38 CFR 3.159(c)(4)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_1159&rgn=div8) may provide the required nexus.
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| e. Establishing Direct SC Under 38 CFR 3.303(d) | Consider whether direct SC may be established under [38 CFR 3.303(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_1303&rgn=div8), even if SC is claimed for a disease diagnosed *after* service has ended. SC may be awarded for a disease diagnosed after discharge when all the evidence establishes that the disease was incurred in service. |

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| f. Definition: Presumption of Soundness | The ***presumption of soundness*** means that a Veteran will be considered to have been in sound condition (the claimed disability did not exist) when examined, accepted, and enrolled for service.***Exceptions***: The presumption of soundness does *not* apply when the evidence shows* defects, infirmities, or disorders noted at entrance into service (such as conditions noted on the entrance examination), or
* the injury or disease clearly and unmistakably existed prior to service and was not aggravated by service.

***Notes***: * The presumption of soundness applies only when the Veteran underwent a physical examination at the time of entry into service on which the claim is based.
* Only the conditions that are recorded in the enlistment examination report are to be considered as noted. A history of pre-service conditions recorded at the time of the entrance examination is not a notation of the condition. It is just one factor that must be considered on the question of presumption of soundness.
* The presumption of soundness is also applicable when the Veteran underwent a physical examination upon entrance into service, but the report of examination is unavailable. In such a situation, the presumption of soundness will stand. Once the presumption of soundness arises it is only overcome when the record contains clear and unmistakable evidence showing that the disease or injury existed prior to service ***and*** was not aggravated by service.

***Reference***: For more information on the presumption of soundness and aggravation, see* M21-1, Part IV, Subpart ii, 2.B.4.a
* [38 CFR 3.304(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=8ec647cd0edc2cb1040f28a2c9933deb&mc=true&node=se38.1.3_1304&rgn=div8)
* [38 U.S.C. 1111](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001111----000-.html)
* [VAOPGCPREC 3-2003](http://www.va.gov/ogc/opinions/2003precedentopinions.asp)
* [*Wagner v. Principi*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmw)*,* 370 F.3d 1089, 1096 (Fed. Cir. 2004)
* [*Horn v Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh), 25 Vet.App. 231 (2012), and
* [*Gilbert v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmg), 26 Vet.App. 48 (2012).
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| g. Service Requirements for Presumption of Soundness | Use the table below to determine the service requirements the Veteran must meet before VA can apply the presumption of soundness. |

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| If the Veteran served during … | Then the Veteran must … |
| peacetime before January 1, 1947 | have had active continuous service of six months or more, per [38 CFR 3.305(b).](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1305&rgn=div8) |
| * peacetime on or after January 1, 1947, or
* wartime
 | meet *no* minimum service requirements, per [38 CFR 3.304(b).](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1304&rgn=div8) |

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| h. Considering the Presumption of Soundness at Entry Into Service  | Under [38 U.S.C. 1111](http://www.law.cornell.edu/uscode/38/1111.html), when no pre-existing condition is noted at entrance into service, then the presumption of soundness establishes that the claimed disability did *not* exist before service unless there is clear and unmistakable (undebatable) evidence showing that the disease or injury which manifested in service* existed prior to service, and
* was not aggravated by service.

***Notes***: * Personality disorders are not considered diseases or injuries under [38 U.S.C. 1110](https://www.law.cornell.edu/uscode/text/38/1110); therefore presumption of soundness under [38 U.S.C. 1111](https://www.law.cornell.edu/uscode/text/38/1111) pertaining to personality disorders does *not* apply.
* The presumption of soundness still requires evidence of a nexus between a current disability and the in-service disease or injury.

***Reference***: For more information on the presumption of soundness, see* [38 CFR 3.304(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1304&rgn=div8)
* M21-1, Part IV, Subpart ii, 2.B.1.f
* [38 U.S.C. 1111](http://www.law.cornell.edu/uscode/38/1111.html)
* [*Wagner v. Principi*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmw), 370 F.3d 1089 (Fed. Cir. 2004)
* [*Horn v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh)*,* 25 Vet.App. 231 (2012)
* [*Gilbert v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmg)*,* 26 Vet.App. 48 (2012), and
* [*Morris v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm)*,* 678 F.3d 1346 (Fed. Cir. 2012).
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| i. Definition: Active Continuous Service | ***Active continuous service*** may exclude lengthy periods of extended absence from duty, such as unauthorized absence or other extended non-pay status.A determination of whether a period of unauthorized absence is considered a break in service should be undertaken on a case-by-case basis with consideration of the facts of the individual’s case, including the extent to which the circumstances, nature, and duration of the claimant’s absence affected his or her performance of continuous duty. ***Examples***: The following facts and findings are set forth in General Counsel (GC) Opinions* In GC Advisory Opinion [Op. G.C. 4-80](file:///%5C%5Cogccosql3%5Cnetworkshared%5CVALAW%5COfficial%20Opinions%5C1980%5Cimages%5Copgc4-80.pdf), the service member was absent from duty for 1,344 days before returning to military control. The Veteran received an honorable discharge nine days later and developed a chronic disease within one year of discharge. Since the Veteran was without active, continuous service for all but nine days of the 3-3/4 years preceding separation, the continuous service requirement of [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=1ba2dc62c9cc48ce1633df264ff44dae&mc=true&node=se38.1.3_1307&rgn=div8) was not met.
* In Precedent Opinion [VAOPGCPREC 11-93](http://www.va.gov/OGC/docs/1993/PRC11-93.DOC), the service member voluntarily returned to his unit after 13 days of unauthorized absence. Although the 13 days of unauthorized absence was not creditable for pay or time-in-service purposes, it did not constitute a break in service for purpose of the “active, continuous service” requirement under [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=8ec647cd0edc2cb1040f28a2c9933deb&mc=true&node=se38.1.3_1307&rgn=div8).
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| **j. Applying the Presumption of Soundness for Active Duty for Training** | In claims based on a period of active duty for training, apply the presumption of soundness only when the Veteran underwent a physical examination at the time of entry into the period of active duty for training on which the claim is based. If an examination was performed, consider the Veteran to have been in sound condition when entering active duty for training except as to defects, infirmities, or disorders noted on the examination report.***Important***: The presumption of soundness is only triggered for a period of active duty for training when an examination has been conducted if the claimant has previously established Veteran status, which is defined as having prior active military service, and was discharged under conditions other than dishonorable. Neither the presumption of soundness nor aggravation may be applied if the claimant does not have Veterans status. ***Reference***: For more information on the presumption of soundness in claims based on active duty for training, see [*Smith (Valerie Y.) v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bms), 24 Vet.App. 40, 44 (2010). |

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| **k.** **Requirements for Inactive Duty Training to Be Considered Active Service** | Inactive duty training is *not* considered active service unless SC is awarded for disability or death resulting from* an injury directly incurred during the period of inactive duty training, or
* an injury or one of the following events if the injury or event occurred during inactive duty training or while an individual was proceeding directly to, or returning directly from, a period of such training
* an acute myocardial infarction
* a cardiac arrest, or
* a cerebrovascular accident.

***Notes***:* If evidence establishes that an individual suffers from a disabling condition as a result of the administration of an anthrax vaccine during inactive duty training, the individual may be considered disabled by an “injury” incurred during such training.
* An individual who suffers from posttraumatic stress disorder (PTSD) as a result of military sexual trauma (MST) that occurred during a period of inactive duty for training may be considered disabled by an injury for purposes of [38 U.S.C. 101(2) and (24).](https://www.law.cornell.edu/uscode/text/38/101)

***References***: For more information on * determining duty periods, see [38 CFR 3.6](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_16&rgn=div8)
* injuries that occurred
* while an individual was proceeding directly to, or returning directly from, a period of inactive duty training, see [38 CFR 3.6(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6e1e12aa28ee0f0d123f83385d671f2f&node=se38.1.3_16&rgn=div8), and
* as a result of administration of an anthrax vaccine during inactive duty training, see [VAOPGCPREC 4-2002](http://www.va.gov/ogc/docs/2002/PREC_4-2002.doc), and
* PTSD that results from MST during inactive duty for training, see [VAOPGCPREC 8-2001](http://www.va.gov/ogc/docs/2001/prc08-2001.doc).
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**2. Determining Presumptive SC**

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| **Introduction** | This topic contains information on determining presumptive SC, including* overview of presumptive SC
* definition of other organic diseases of the nervous system
* establishing presumptive SC for chronic and tropical diseases, and
* establishing presumptive SC for radiogenic diseases under 38 CFR 3.309(d).
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| **Change Date** | July 8, 2015 |

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| **a. Overview of Presumptive SC** | Diseases or conditions entitled to consideration for presumptive SC will be considered to have been incurred in or aggravated by service if manifested to a compensable level within the time frame specified for that certain disease under the regulation, even if there is no evidence of such disease during service.  |

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| Type of Disease or Condition | Regulation for Presumption of SC |
| chronic disease | [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8) |
| disease associated with service of the following categories * tropical
* former prisoner of war (FPOW)
* exposure to ionizing radiation, or
* exposure to certain herbicide agents.
 | [38 CFR 3.309(b)-(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8) |
| diseases based on full-body exposure to mustard gas or Lewisite.  | [38 CFR 3.316](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1316&rgn=div8) |
| diseases associated with service in the Southwest Asia theater of operations including * undiagnosed illnesses
* medically unexplained chronic multi-symptom illnesses, and
* certain infectious diseases.
 | [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1317&rgn=div8) |
| amyotrophic lateral sclerosis (ALS) with at least 90 days of continuous active service. | [38 CFR 3.318](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1318&rgn=div8) |

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| ***References***:For more information on* principles related to presumptive SC, see [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1307&rgn=div8)
* diseases subject to presumptive SC, see [38 CFR 3.309](http://www.ecfr.gov/cgi-bin/text-idx?SID=87c37f0c4b0051b77aa7ecbe0cf8a2a0&mc=true&node=se38.1.3_1309&rgn=div8), and
* SC for qualifying disabilities associated with service in Southwest Asia, see M21-1, Part IV, Subpart ii, 2.D.
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| **b. Definition: Other Organic Diseases of the Nervous System** | ***Other organic diseases of the nervous system*** under [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8)  include any commonly recognized neurological disease (such as may be found in a valid, contemporary medical treatise), which is not otherwise specifically listed under [38 CFR 3.309(a](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8)) subject to the rebuttable presumption provisions under [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=ba16a375eb4f3516424c821c60dd8349&mc=true&node=se38.1.3_1307&rgn=div8). This would include any disease of the central nervous system, as well as cranial and peripheral nerve conditions. Compensation Service has determined that certain diseases constitute an organic disease of the nervous system (however, this does not represent an exclusive list). They include* carpal tunnel syndrome
* peripheral neuropathy
* migraine headaches
* sensorineural hearing loss, and
* glaucoma.

***Important***: The Court of Appeals for Veterans Claims (CAVC) held in [*Fountain v.* *McDonald*](http://www.uscourts.cavc.gov/documents/Fountain13-0540.pdf)*,* 27 Vet.App. 258 (2015), that organic diseases of the nervous system includes tinnitus, if there is evidence of acoustic trauma.***Note***: In the event there is uncertainty as to whether or not a disability for which a Veteran seeks compensation constitutes an organic disease of the nervous system, the case should be sent to Compensation Service’s Advisory Review Staff (211B) for guidance. ***Reference***: For more information on requesting CS guidance, see M21-1, Part III, Subpart vi, 1.A.  |

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| c. Establishing Presumptive SC for Chronic and Tropical Diseases  | Use the table below to determine the service requirements the Veteran must meet before VA may establish presumptive SC for chronic and tropical diseases. |

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| If the Veteran served during … | And the disease is a … | Then … |
| peacetime before January 1, 1947 | chronic disease listed in [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8) | there is no provision for presumptive SC under [38 CFR 3.308(a).](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1308&rgn=div8) |
| tropical disease listed in [38 CFR 3.309(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8) | the Veteran must have had active continuous service for six months or more under [38 CFR 3.308(b).](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1308&rgn=div8) |
| * peacetime on or after January 1, 1947, or
* wartime
 | * chronic disease listed in [38 CFR 3.309(a),](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8) or
* tropical disease listed in [38 CFR 3.309(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8)
 | the Veteran must have had active, continuous service of 90 days or more under [38 CFR 3.307.](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1307&rgn=div8) |

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| ***Note***: In claims based on a period of active duty for training, there is no presumption of SC for chronic diseases under [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8) or tropical diseases under [38 CFR 3.309(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8) (see [*Smith (Valerie Y.) v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bms)*,* 24 Vet.App. 40, 44 (2010)). |

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| d. Establishing Presumptive SC for Radiogenic Diseases Under 38 CFR 3.309(d) | In order to be eligible for presumptive SC for radiogenic diseases under [38 CFR 3.309(d)(3)(i)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1309&rgn=div8), a Veteran must have participated in radiation-risk activities during a period of * active duty
* active duty for training, or
* inactive duty training.

***Note***: SC may not be awarded under the provisions of [38 CFR 3.309(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3ac2de2d7bd2c505d336775f53e4099c&mc=true&node=se38.1.3_1309&rgn=div8) or [38 CFR 3.311](http://www.ecfr.gov/cgi-bin/text-idx?SID=858589d98ad42870d3d4316fd54cdee3&mc=true&node=se38.1.3_1311&rgn=div8) for a listed cancer if it is a metastasis of a primary cancer that has not been SC on the basis of exposure to ionizing radiation under either of those regulations.  |

#### 3. Determining Service Incurrence of an Injury

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| Introduction | This topic contains information on determining service incurrence of an injury, including* substantiating the circumstances of injuries
* evaluating evidence of scars
* processing examination reports of scars
* considering evidence for combat-related disabilities, and
* definition of satisfactory evidence.
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| a. Substantiating the Circumstances of Injuries | The development activity and/or rating activity must review the evidence of record, to include personnel records and service treatment records (STRs), to ensure the injury occurred during service and in the line of duty (LOD).***Rationale***: The results of injuries, including gunshot wounds acquired before or after service, are frequently encountered and would not be granted SC as they are not injuries that occurred during service or in the LOD.  ***References***: For more information on * establishing SC under [38 CFR 3.303(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a88986ca8f9a29e8af73cdffa7bc08f9&node=se38.1.3_1303&rgn=div8), see M21-1, Part IV, Subpart ii, 2.B.1.d
* establishing SC under [38 CFR 3.303(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a88986ca8f9a29e8af73cdffa7bc08f9&node=se38.1.3_1303&rgn=div8), see M21-1, Part IV, Subpart ii, 2.B.1.e
* considering evidence of combat disabilities, see M21-1, Part IV, Subpart ii, 2.B.3.d
* requesting evidence from the claimant, see M21-1, Part III, Subpart iii, 1.B.1
* determining Veteran status and eligibility for benefits, see M21-1, Part III, Subpart ii, 6, and
* willful misconduct and LOD determinations, see M21-1, Part III, Subpart v, 1.D.
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| b. Evaluating Evidence of Scars | When evaluating evidence of scars, keep in mind that a claimant may have * been accepted into service with a notation of one or more scars existing at the time of entrance
* sustained a wound, with a resulting scar, during service, or
* received an injury following separation from service resulting in a scar that would be present at subsequent physical examinations.

Because the Veteran could have incurred a scar before or after service, exercise caution in characterizing a scar as the residual of a wound or injury incurred in service. If there is any doubt as to whether the scar is a residual of a wound or injury incurred in service, simply describe the scar, without ascribing it to a specific injury such as a “gunshot wound” or “shrapnelwound.” |

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| c. Processing Examination Reports of Scars | If the presence of a scar or scars is recorded in a physical examination report related to a claim for scarring, review official records to ensure the scar or scars are in fact a residual of wounds in service. If there is reasonable doubt as to whether the scar(s) are related to service, that is, an approximate balance of evidence for and against the claim, award SC for the claimed scar(s). ***Reference***:For more information on the definition and application of reasonable doubt, see [38 CFR 3.102](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1102&rgn=div8).  |

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| d. Considering Evidence for Combat-Related Disabilities  | Accept satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat if the evidence is consistent with the circumstances, conditions, or hardships of such service even though there is no official record of such incurrence or aggravation.In order for evidence submitted by the Veteran to support a factual presumption that the claimed disease or injury was incurred or aggravated in service, the evidence must* be satisfactory when considered alone
* be consistent with the circumstances, conditions, or hardships of such service, and
* not be refuted by clear and convincing evidence to the contrary.

***Notes***: * [38 CFR 3.304(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1304&rgn=div8) is derived from [38 U.S.C. 1154(b)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001154----000-.html), and lightens the evidentiary burden with respect to disabilities alleged to be the result of combat service.
* Even when an event or injury in service is established under the cited combat provisions, for SC to be established there must still be evidence of a current disability and a nexus between the current disability and the combat event or injury in service.

***References***: For more information on * a definition of satisfactory evidence, see M21-1, Part IV, Subpart ii, 2.B.3.e, and
* satisfactory proof of combat-related disability, see
* [38 CFR 3.304(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=4f75aeb98778645c99bc9f855f060a18&node=se38.1.3_1304&rgn=div8)
* [38 U.S.C. 1154(b)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001154----000-.html)
* [*Caluza v Brown*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmc)*,* 7 Vet.App. 508 (1995), and
* [*Collette v. Brown*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmc), 82F.3d.389 (Fed. Cir. 1996).
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| e. Definition: Satisfactory Evidence | ***Satisfactory evidence*** generally means evidence that is credible.It is proper to * consider internal consistency and plausibility in determining whether evidence is credible, and
* regard statements that contradict other evidence of record as unsatisfactory.

***Reference***: For more information on determining whether evidence is credible, see* M21-1, Part III, Subpart iv, 5.2.b, and
* [*Caluza v. Brown*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmc)*,* 7 Vet.App. 508 (1995).
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#### 4. Determining In-Service Aggravation of Pre-Service Disability

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| Introduction | This topic contains information on determining in-service aggravation of pre-service disability, including* considering aggravation with the presumption of soundness at entry into service
* evidence establishing pre-existence when there is a presumption of soundness
* the role of medical evaluation board (MEB) and physical evaluation board (PEB) findings
* considering lay evidence and the presumption of soundness
* aggravation determinations when there is a presumption of soundness
* determining whether a pre-existing disability was aggravated by service
* the records needed to determine baseline level of disability
* evaluating disabilities SC by aggravation under 38 U.S.C. 1153
* distinguishing between presumption of soundness and presumption of aggravation
* considering flare-ups of pre-existing injury or disease
* considering the usual effects of medical or surgical treatment
* additional considerations under *Splane v. West*
* aggravation of pre-existing disability under combat conditions, and
* additional considerations under *Maxson v. Gober*.
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| a. Considering Aggravation With the Presumption of Soundness at Entry Into Service  | Proper analysis of the evidence for presumption of soundness is very important to making a determination of aggravation. Carefully analyze the evidence for aggravation of a claimed disability when * under [38 U.S.C. 1153](http://www.law.cornell.edu/uscode/38/1153.html), a condition for which the Veteran is seeking SC was noted at entry, or
* under [38 U.S.C. 1111](http://www.law.cornell.edu/uscode/38/1111.html), a condition for which the Veteran is seeking SC was not noted at entry but evidence proves that the condition pre-existed service.

***Reference***: For more information on the presumption of soundness, see* [38 CFR 3.304(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1304&rgn=div8)
* M21-1, Part IV, Subpart ii, 2.B.1.f
* M21-1, Part IV, Subpart ii, 2.B.1.h
* [38 U.S.C. 1111](http://www.law.cornell.edu/uscode/38/1111.html)
* [*Wagner v. Principi*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmw), 370 F.3d 1089 (Fed. Cir. 2004)
* [*Horn v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh)*,* 25 Vet.App. 231 (2012)
* [*Gilbert v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmg)*,* 26 Vet.App. 48 (2012), and
* [*Morris v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm)*,* 678 F.3d 1346 (Fed. Cir. 2012).
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| b. Evidence Establishing Pre-Existence When There Is a Presumption of Soundness | When a claimed disorder was not noted on the entrance examination and the presumption of soundness applies, only evidence showing the disorder clearly and unmistakably existed prior to enlistment may establish pre-existence of the claimed condition.Any acceptable evidence pertinent to onset or inception of the condition should be evaluated carefully. Determine credibility and appropriate weight of evidence which may include* medical records from before, during, or after service, and
* lay evidence such as history from the claimant.

***Important***: [38 CFR 3.304(b)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1304&rgn=div8), and [38 CFR 3.304(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1304&rgn=div8) emphasize that, in conducting the analysis, the decision maker should ***not*** rely on a speculative medical conclusion. There should be a complete medical analysis taking into consideration history, data, and generally-accepted medical principles including knowledge about the nature and course of the disorder at issue. The decision maker, in turn, must conduct a critical analysis of the evidence. ***References***: For more information on* evaluating evidence (including credibility and weight of evidence), see M21-1, Part III, Subpart iv, 5, and
* rebutting the presumption of soundness, see
* [38 CFR 3.304(b)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1304&rgn=div8)
* [*Harris v. West*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh), 203 F.3d 1347 (Fed. Cir. 2000)
* [*Horn v. Shinsek*i](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh), 25 Vet.App. 231 (2012), and
* [*Gilbert v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmg)*,* 26 Vet.App. 48 (2012).
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| **c. The Role of MEB and PEB Findings** | The rating activity must afford Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) reports due weight when considering the evidence of record regarding a condition which may have pre-existed service.***Important***: Do *not* deny a claim based solely upon the conclusion of an MEB or PEB report that a condition pre-existed service and was not aggravated by service if the report does not also contain a supporting analysis or medical explanation for the conclusion. The MEB or PEB report alone is not sufficient to constitute clear and unmistakable evidence to rebut the presumption of soundness without a supporting analysis or medical explanation. ***Reference***: For more information on the role of MEB and PEB findings, see [*Horn v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh)*,* 25 Vet.App. 231 (2012).  |

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| **d. Considering Lay Evidence and the Presumption of Soundness** | Although contemporaneous pre-service clinical evidence or recorded history may satisfy the burden of evidence clearly and unmistakably showing pre-existence of a claimed condition when the same condition was not noted on entry into service, there is no absolute requirement that such evidence be present before the presumption of soundness can be rebutted. A later medical opinion based on statements made by the Veteran about pre-service history of the disorder may rebut the presumption by providing evidence which clearly and unmistakably establishes the claimed condition existed prior to service.[38 CFR 3.304(b)(3)](http://www.ecfr.gov/cgi-bin/text-idx?SID=69c365ab21c7b275e37cfbfa5c158d06&mc=true&node=se38.1.3_1304&rgn=div8) provides that signed statements made by the Veteran during service about the onset or incurrence of disease which are against the claimant’s interest cannot be used if there is no other evidence establishing pre-existence of the claimed condition. In such a case, the other evidence will be considered as though the Veteran’s statement against his/her own interest did not exist. However, the courts have held that other voluntary admissions of a pre-service disability or condition can be considered with appropriate application of weight and credibility assigned as described in M21-1, Part III, Subpart iv, Chapter 5. ***Reference***: For more information on lay evidence and the presumption of soundness, see [*Harris v. West*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh), 203 F.3d 1347 (Fed. Cir. 2000). |

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| e. Aggravation Determinations When There Is a Presumption of Soundness  | When a claimed disorder was not noted on the entrance examination and the presumption of soundness applies, but evidence shows pre-existence of the claimed disability, the presumption of soundness still applies *unless* clear and unmistakable evidence further proves the condition was not aggravated by service because the evidence shows* there was no increase in disability during service, or
* any increase in disability was due to the natural progression of the pre-existing condition.

Consider the entire evidentiary record when making the determination. The record may or may not include evidence showing* an identified injury or other event in service, or
* pre-service and/or post-service treatment.

***Important***: Avoid making unsupported conclusions that the evidentiary standard is not met based on the fact that the service records do not show a specific injury or causative event or that there are no post-service treatment records. * These facts may be irrelevant. The relevance depends on medical evidence of the nature and expected course of the disability at issue.
* Drawing an unsupported conclusion based on lack of post-service treatment records or service records not showing a specific injury or causative event impermissibly shifts the burden of proof onto the Veteran to prove aggravation.

***References***: For more information on * presumption of soundness, see [38 U.S.C. 1111](http://www.law.cornell.edu/uscode/38/1111.html)
* presumption of aggravation, see [38 U.S.C. 1153](http://www.law.cornell.edu/uscode/38/1153.html)
* distinguishing between presumption of soundness and presumption of aggravation, see M21-1, Part IV, Subpart ii, 2.B.4.i
* establishing lack of aggravation when the presumption of soundness applies, see [*Horn v. Shinsek*i](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh), 25 Vet.App. 231 (2012), and
* evaluating and weighing evidence, see M21-1, Part III, Subpart iv, 5.
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| **f. Determining Whether a Pre-Existing Disability Was Aggravated by Service**  | Under [38 U.S.C. 1153](http://www.law.cornell.edu/uscode/38/1153.html) and [38 CFR 3.306](http://www.ecfr.gov/cgi-bin/text-idx?SID=eaca62b2084bc7e0e9d9de457178d5d1&node=se38.1.3_1306&rgn=div8), when there is a claim for SC for aggravation and a pre-service injury or disease was noted on enlistment, the claimant initially bears the burden of proving that the pre-existing condition worsened in service. When an increase in disability is proven, consider a pre-existing injury or disease to have been aggravated by active military service when there is an increase in disability during active military service, ***unless*** the evidence clearly and unmistakably shows the increase in disability is due to the natural progress of the injury or disease. ***Exception***: In claims based on active duty for training, direct evidence demonstrating the pre-existing disability permanently worsened during active duty for training and the worsening was not the result of natural progression of the disability is required to establish aggravation (see [*Smith (Valerie Y.) v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bms)*,* 24 Vet.App. 40, 44 (2010)). The provisions of [38 CFR 3.306](http://www.ecfr.gov/cgi-bin/text-idx?SID=da0697d476fee2b9d02cbe978ce6f500&mc=true&node=se38.1.3_1306&rgn=div8) do *not* apply. ***Notes***: * Always address the issue of aggravation when SC for a pre-existing disability is claimed.
* If SC is *not* established, include an explanation of the relevant findings from the medical records before, during, and after service that demonstrate the condition existed prior to service and did not increase in severity in the *Narrative* of the rating decision.
* Ensure that determinations are based on independent medical evidence and not on speculation.

***References***: For more information on * the presumption of aggravation and the standard for rebutting the presumption, see
* [38 U.S.C. 1153](https://www.law.cornell.edu/uscode/text/38/1153), and
* [*Horn v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh), 25 Vet.App. 231 (2012)
* considering negative evidence to rebut the presumption of aggravation, see
* M21-1, Part IV, Subpart ii, 2.B.4.m
* M21-1, Part III, Subpart iv, 5.2.g, and
* [*Maxson v. West*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm), 12 Vet.App. 453, *aff’d sub nom* [*Maxson v. Gober*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm), 230 F.3d 1330 (Fed. Cir. 2000)
* the presumption of aggravation and soundness for claims based on active duty for training, see
* [*Smith (Valerie Y.) v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bms), 24 Vet.App. 40 (2010), and
* [*Donnellan v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmd), 24 Vet.App. 167 (2010), and
* evaluating disabilities aggravated by service, see
* [38 CFR 3.322(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=dd28828f7a9a6fcbc03014e8368f6f3a&node=se38.1.3_1322&rgn=div8), and
* [38 CFR 4.22](http://www.ecfr.gov/cgi-bin/text-idx?SID=dd28828f7a9a6fcbc03014e8368f6f3a&node=se38.1.4_122&rgn=div8).
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| g. Records Needed to Determine Baseline Level of Disability | The baseline for determining whether a pre-existing disability was aggravated by service is in *all* of a Veteran's medical records for that condition, not just those covering the period of enlistment and entry on active duty.  |

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| h. Evaluating Disabilities SC by Aggravation Under 38 U.S.C. 1153 | The degree of disability evaluation existing at the time of entrance into active service must be considered when evaluating the disabilities connected to service on the basis of aggravation under [38 U.S.C. 1153](https://www.law.cornell.edu/uscode/text/38/1153). Use the table below to determine whether to deduct the degree of disability existing at entrance from the current disability evaluation. |

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| If the disability evaluation existing at the time of entrance into active service ... | Then ... |
| is ascertainable | deduct the entrance disability evaluation from the present disability evaluation |
| is not ascertainable | do ***not*** deduct an entrance disability evaluation from the present disability evaluation |

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| ***Note***: Do not make a deduction if the disability has a total (100 percent) evaluation. |

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| **i. Distinguishing Between Presumption of Soundness and Presumption of Aggravation** | The presumption of soundness, under [38 U.S.C. 1111](https://www.law.cornell.edu/uscode/text/38/1111), and the presumption of aggravation, under [38 U.S.C. 1153](https://www.law.cornell.edu/uscode/text/38/1153), are two distinctly different statutes with differing burdens of proof required. The table below describes the fact patterns that must be applied to each respective statute. |

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| Fact Pattern | Statute | Burden of Proof for Presumption of Soundness |
| no evidence of disability upon entrance examination | presumption of soundness under [38 U.S.C. 1111](https://www.law.cornell.edu/uscode/text/38/1111) | Presume soundness *unless* the evidence clearly and unmistakably shows* the disorder existed prior to service, *and*
* was not aggravated by service.
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| evidence of disability upon entrance examination | presumption of aggravation under [38 U.S.C. 1153](https://www.law.cornell.edu/uscode/text/38/1153) | If a review of the evidence reveals worsening of the condition in service, the evidence *must also* show the worsening of the condition was beyond the natural progression of the disease.***Note***: VA may only rebut presumption of aggravation if the evidence clearly and unmistakably shows the worsening of the condition was due to natural progression.  |

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| j. Considering Flare-Ups of Pre-Existing Injury or Disease | Temporary or intermittent flare-ups of a pre-existing injury or disease are not sufficient to be considered aggravation in service unless the underlying condition, as contrasted to symptoms, has worsened.Do *not* concede aggravation merely because a Veteran’s condition was in remission at the time of entry on active duty.***Reference***: For more information on the difference between increase in the underlying disability and temporary flare-ups of symptoms, see* [38 CFR 3.306(b),](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1306&rgn=div8) and
* [*Hunt v. Derwinski*,](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh) 1 Vet.App. 292 (1991).
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| k. Considering the Usual Effects of Medical or Surgical Treatment | As required under [38 CFR 3.306(b)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1306&rgn=div8), unless a disease or injury that was incurred prior to service is otherwise aggravated by service, do *not* establish SC for the usual effects of medical or surgical treatment in service to correct or improve the condition, such as post-operative scars and/or absent or poorly functioning parts or organs. |

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| l. Additional Considerations Under Splane v. West | In [*Splane v. West*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bms), 216 F.3d 1058 (Fed. Cir. 2000), the U.S. Court of Appeals for the Federal Circuit held that [38 U.S.C. 1112(a)](http://www.law.cornell.edu/uscode/38/1112.html) establishes a presumption of aggravation for chronic diseases that existed prior to service but first manifested to a degree of disability of 10 percent or more within the presumptive period after service.Under [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1307&rgn=div8), this presumption may be rebutted by affirmative evidence to the contrary or evidence to establish that such disability is due to an intercurrent disease or injury suffered after separation from service. |

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| m. Aggravation of Pre-existing Disability Under Combat Conditions | [38 U.S.C. 1154(b)](https://www.law.cornell.edu/uscode/text/38/1154) provides that for combat Veterans, VA must accept satisfactory lay or other evidence of service aggravation despite the lack of official records if the lay or other evidence is consistent with the circumstances, conditions or hardships of the combat service. Unless there is clear and convincing evidence to the contrary, grant SC ***if*** there is* satisfactory evidence of aggravation consistent with the combat service
* competent evidence of a nexus between the in-service aggravation and a current disability, and
* evidence of current disability.

[38 CFR 3.306(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=7cd5cbecbbf69d27330d720e49ccb8b3&mc=true&node=se38.1.3_1306&rgn=div8) directs that due regard will be given to the places, types, and circumstances of service and particular consideration will be accorded to combat duty and other hardships of service. ***Important***: * A pre-existing disease or injury’s temporary or intermittent flare-up of symptoms does not trigger the presumption of aggravation unless there is an increase in the underlying disability.
* *However*, [38 CFR 3.306(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=7cd5cbecbbf69d27330d720e49ccb8b3&mc=true&node=se38.1.3_1306&rgn=div8) provides that development of symptomatic manifestations of a preexisting injury or disease during or proximately following action with the enemy (or following status as a prisoner of war) will establish aggravation *unless* there is clear and convincing evidence of
* no increase in the preexisting condition, or
* the increase was the result of natural progression.

***References***: For more information on* aggravation of a pre-existing disability during combat conditions, see [*Jensen v. Brown*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmj), 19 F.3d 1413 (Fed. Cir. 1994), and
* requirement of a nexus between current disability and injury or disease incurred or aggravated by combat service, see M21-1, Part IV, Subpart ii, 2.B.3.d.
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| **n. Additional Considerations under Maxson v. Gober** | [*Maxson v. Gober*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm), 230 F.3d 1330 (Fed. Cir. 2000) held that VA, in deciding whether the presumption of aggravation of a condition during combat has been rebutted, must consider a Veteran’s entire medical history, to include any lengthy period without medical complaint during *and* after service. VA must consider all relevant factors, to include* availability of medical records
* nature and course of the disease or disability, and
* amount of time that elapsed since military service.

***Important***: Do not merely dismiss the presence of disability because there is an absence of accompanying medical treatment records. The absence of treatment records does not necessarily mean the absence of disability. Moreover the absence of medical records during combat conditions does not necessarily establish the absence of disability.***Reference***: For more information on aggravation of a pre-existing disability during combat conditions, see* [38 CFR 3.306(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=7cd5cbecbbf69d27330d720e49ccb8b3&mc=true&node=se38.1.3_1306&rgn=div8)
* [*Maxson v. Gober*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm), 230 F.3d 1330 (Fed. Cir. 2000), and
* [*Jensen v. Brown*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmj), 19 F.3d 1413 (Fed. Cir. 1994).
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#### 5. Determining Secondary SC, Including by Aggravation

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| Introduction | This topic contains information on determining secondary SC, including by aggravation, including* provisions for SC under 38 CFR 3.310(a) and (b)
* medical evidence required to show a non-service-connected (NSC) disability was aggravated by an SC disability
* developing claims based on aggravation of an NSC disability by an SC disability
* information that must be included in the examiner’s report for secondary SC based on aggravation, and
* determining the extent to which an NSC disability was aggravated by an SC disability.
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| Change Date | January 20, 2016 |

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| a. Provisions for SC Under 38 CFR 3.310(a) and (b) | Award SC for the following under the provisions of [38 CFR 3.310(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=b37422caf145c28ee1ed9cdc3eeb4cba&mc=true&node=se38.1.3_1310&rgn=div8) and [38 CFR 3.310(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=b37422caf145c28ee1ed9cdc3eeb4cba&mc=true&node=se38.1.3_1310&rgn=div8). * disabilities that are proximately due to, or the result of, an SC condition, or
* the increase in severity of a non-service-connected (NSC) disability that is attributable to aggravation by an SC disability, and not to the natural progression of the NSC disability.

***Reference***: For more information on SC for aggravation of NSC disabilities by SC disabilities, see* [38 CFR 3.310(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1310&rgn=div8), and
* [*Allen v. Brown*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bma), 7 Vet.App. 439 (1995).
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| b. Medical Evidence Required to Show an NSC Disability Was Aggravated by an SC Disability | Do not concede an NSC disability is aggravated by an SC disability unless the baseline level of severity of the NSC disease or injury is established by* medical evidence created before the onset of aggravation, or
* the earliest medical evidence created between the
* onset of aggravation, and
* receipt of medical evidence establishing the current level of severity of the NSC disability.
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| c. Developing Claims Based on Aggravation of an NSC Disability by an SC Disability | When developing a claim for secondary SC based on aggravation of an NSC disability by an SC disability, ask the Veteran to furnish medical evidence showing the * current level of severity of the NSC disability, and
* its level of severity
* before aggravation by the SC disability, or
* as soon as possible after aggravation.

***Important***: Enclose *VA Form 21-4142, Authorization to Disclose Information to the Department of Veterans Affairs*, and *VA Form 21-4142a, General Release for Medical Provider Information to the Department of Veterans Affairs*, in the request letter.Upon receipt of this evidence, request a medical examination and opinion, to include a review of the claims folder by the examiner, to establish whether increased manifestations of the NSC disability are proximately due to an SC disability.***Notes***: * Do not request an examination if the Veteran has failed to furnish medical evidence establishing a baseline level of the severity of the NSC disability.
* The examiner must have all available evidence for review when providing an opinion on the issue of aggravation.
* Identify the evidence of particular relevance in the claims folder for the examiner.
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| d. Information That Must Be Included in the Examiner’s Report for Secondary SC Based on Aggravation | The examiner’s report must separately address all of the following medical issues in order to be considered adequate for rating a claim for secondary SC based on aggravation * the current level of severity of the NSC disease or injury
* an opinion as to whether an SC disability proximately caused the NSC disability to increase in severity, and
* an adequate analysis with medical considerations supporting the opinion.
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| e. Determining the Extent to Which an NSC Disability Was Aggravated by an SC Disability  | To determine the extent to which, if any, an NSC disability was aggravated by an SC disability* determine the baseline and current levels of severity of the NSC disability under [38 CFR Part 4](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.5&idno=38), *Schedule for Rating Disabilities*, and
* deduct the baseline level of severity of the NSC disability, as well as any increase of the disability due to natural progression, from the current level.

***Note***: This policy applies even when the current level of severity of the NSC disability is 100 percent.***Important***: Whenever there is competent and credible evidence of an increase in severity of the disability from the baseline, satisfying the guidance in this topic, but the current and baseline disability would be assigned the same level of evaluation under [38 CFR Part 4](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.5&idno=38), *Schedule for Rating Disabilities*, grant SC and assign a noncompensable evaluation. To justify SC, the degree of disability after aggravation does not have to be at least one level of evaluation higher than the baseline. ***Example***: The medical examiner clearly states that the NSC disability was aggravated by the SC disability. The medical evidence shows that the baseline level of disability corresponds to 0 percent and the current level of severity after aggravation corresponds to 0 percent under [38 CFR Part 4](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.5&idno=38), *Schedule for Rating Disabilities*. It is appropriate to find that there was aggravation. Grant SC and assign a noncompensable evaluation.  |

#### 6. Determining SC for Congenital, Developmental, or Hereditary Disorders

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| Introduction | This topic contains information on determining SC for congenital, developmental, or hereditary disorders, including* the definition of congenital or developmental defects
* establishing SC for congenital, developmental, or hereditary disorders
* considering the development of symptoms of hereditary disease in service, and
* considering the aggravation of a hereditary disease in service.
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| Change Date | July 8, 2015 |

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| a. Definition: Congenital or Developmental Defects | ***Congenital*** or ***developmental defects*** refer to normally static, structural or inherent body abnormalities which are typically present at birth and are generally incapable of improvement or deterioration. These include vertebral anomalies such as block (fused) vertebrae, atrial septal defect, pectus excavatum, and undescended testicles.***Note***: A developmental or hereditary *disease*, such as retinitis pigmentosa, polycystic kidney disease, sickle cell disease, or Huntington’s chorea, may appear in adulthood and are capable of improvement or deterioration.  |

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| b. Establishing SC for Congenital, Developmental, or Hereditary Disorders  | Congenital or developmental *defects*, refractive error of the eye, personality disorders and mental deficiency are not considered diseases or injuries under [38 CFR 3.303(c).](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1303&rgn=div8)However, establish SC, if warranted, for* diseases of congenital, developmental, or familial, hereditary origin that
* first manifest themselves during service, or
* pre-exist service and progress at an abnormally high rate during service
* a hereditary or familial disease that first became manifest to a compensable degree within the presumptive period following discharge from service pursuant to [38 CFR 3.309(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=a9336bb654ab856b00ab0aece4b20a7c&node=se38.1.3_1309&rgn=div8), provided the rebuttable presumption provisions of [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=301bf5a742dd1f7c491ed77360f20253&mc=true&node=se38.1.3_1307&rgn=div8) are satisfied, and
* disabilities resulting from an overlying injury or disease of a congenital defect.

***Note***: [VAOPGCPREC 11-99](http://www.va.gov/ogc/docs/1999/prc11-99.doc) held that M21-1 provisions created in 1964 did not preclude awarding SC for in-service aggravation of pre-existing retinitis pigmentosa. Therefore, subsequent VA GC Precedent Opinions and M21-1 changes cannot be considered liberalizing changes. ***Reference***: For more information on claims for SC involving congenital and developmental defects and diseases of familial or hereditary origin, see* [VAOPGCPREC 1-90](http://www.va.gov/ogc/docs/1990/PREC_1-90.doc)
* [VAOPGCPREC 67-90](http://www.va.gov/ogc/docs/1990/PREC_67-90.doc), and
* [VAOPGCPREC 82-90](http://www.va.gov/ogc/docs/1990/PREC_82-90.doc).
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| c. Considering the Development of Symptoms of Hereditary Disease in Service | Consider diseases of hereditary origin to be incurred in service if the pathological signs or symptoms developed after entry into active service.Even if the Veteran is almost certain to eventually develop a disease, a genetic or other familial predisposition does not constitute having the disease. Only when the evidence shows actual manifestation of symptoms or signs of pathology followed by a diagnosis, may he/she be said to have developed the disease.***Note***: At what point the Veteran starts to manifest signs or symptoms is a factual, medical determination that *must* be based upon* the medical evidence of record in each case, and
* sound medical judgment.
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| d. Considering the Aggravation of a Hereditary Disease in Service | A hereditary disease that manifests some symptoms before entry into active service may be found to have been aggravated during service if it progresses during service at a rate greater than normally expected according to accepted medical authority.***Note***: This is a factual, medical determination that must be based upon the evidence of record and sound medical judgment. |