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Title 38, Part 4

Schedule for Rating Disabilities

Veterans Benefits Administration

Supplement No. 53

Covering period of *Federal Register* issues
through February 1, 2014

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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. 53

5 February 2014

Covering the period of Federal Register issues
through February 1, 2014

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,
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1. Always file your supplemental materials immediately upon receipt.
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FILING INSTRUCTIONS

**Book C, Supplement No. 53
February 5, 2014**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
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4.16-1 to 4.16-2	4.16-1 to 4.16-2	§4.16
4.24-1 to 4.25-1	4.24-1 to 4.25-1	§4.24
4.29-2 to 4.30-1	4.29-2 to 4.30-1	§4.29
4.104-7 to 4.104-8	4.104-7 to 4.104-8	§4.104
4.104-15 to 4.104-16	4.104-15 to 4.104-16	§4.104
4.117-3 to 4.117-4	4.117-3 to 4.117-4	§4.117
4.124a-22 to 4.124a-23	4.124a-22 to 4.124a-23	§4.124a

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HIGHLIGHTS

Book C, Supplement No. 53 February 5, 2014

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 13 January 2013, the VA published a final rule effective that same day, amending its regulations by making non-substantive changes to reflect new titles of certain VA offices.

Changes:

- In §4.16, revised paragraph (b),
- Revised §4.24,
- In §4.29, revised paragraph (g),
- In §4.104, revised code 7015,
- In §4.117, revised code 7714,
- In §4.124a, revised paragraph (4) under Epilepsy and Unemployability,



§4.16 Total disability ratings for compensation based on unemployability of the individual.

(a) Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: *Provided*, That, if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more. For the above purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability:

- (1) Disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable,
- (2) Disabilities resulting from common etiology or a single accident,
- (3) Disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric,
- (4) Multiple injuries incurred in action, or
- (5) Multiple disabilities incurred as a prisoner of war.

It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person. Marginal employment may also be held to exist, on a facts found basis (includes but is not limited to employment in a protected environment such as a family business or sheltered workshop), when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the employment and the reason for termination. (Authority: 38 U.S.C. 501(a))

(b) It is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. Therefore, rating boards should submit to the Director, Compensation Service, for extra-schedular consideration all cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the percentage standards set forth in paragraph (a) of this section. The rating board will include a full statement as to the veteran's service-connected disabilities, employment history, educational and vocational attainment and all other factors having a bearing on the issue.

4.16-2

§4.16—Total disability ratings for compensation based on
unemployability of the individual

4.16-2

[40 FR 42535, Sept. 15, 1975, as amended at 54 FR 4281, Jan. 30, 1989; 55 FR 31580, Aug. 3, 1990; 58 FR 39664, July 26, 1993; 61 FR 52700, Oct. 8, 1996]; 79 FR 2100, Jan. 13, 2014

Supplement *Highlights* references: 5(1), 19(1), 53(1).

§4.24 Correspondence.

All correspondence relative to the interpretation of the schedule for rating disabilities, requests for advisory opinions, questions regarding lack of clarity or application to individual cases involving unusual difficulties, will be addressed to the Director, Compensation Service. A clear statement will be made of the point or points upon which information is desired and the complete case file will be simultaneously forwarded to Central Office. Rating agencies will assure themselves that the recent report of physical examination presents an adequate picture of the claimant's condition. Claims in regard to which the schedule evaluations are considered inadequate or excessive, and errors in the schedule will be similarly brought to attention.

[41 FR 11292, Mar. 18, 1976; 79 FR 2100, Jan. 13, 2014]

Supplement *Highlights* Reference: 53(1)

§4.25 Combined ratings table.

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent.

(a) To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 65 percent, but the 65 percent must be converted to 70 percent to represent the final degree of disability. Similarly, with a disability of 40 percent, and another disability of 20 percent, the combined value is found to be 52 percent, but the 52 percent must be converted to the nearest degree divisible by 10, which is 50 percent. If there are more than two disabilities, the disabilities will also be arranged in the exact order of their severity and the combined value for the first two will be found as previously described for two disabilities. The combined value, exactly as found in table I, will be combined with the degree of the third disability (in order of severity). The combined value for the three disabilities will be found in the space where the column and row intersect, and if there are only three disabilities will be converted to the nearest degree divisible by 10, adjusting final 5's upward. Thus if there are three disabilities ratable at 60 percent, 40 percent, and 20 percent, respectively, the combined value for the first two will be found opposite 60 and under 40 and is 76 percent. This 76 will be combined with 20 and the combined value for the three is 81 percent. This combined value will be converted to the nearest degree divisible by 10 which is 80 percent. The same procedure will be employed when there are four or more disabilities. (See table I).

(b) Except as otherwise provided in this schedule, the disabilities arising from a single disease entity, e.g., arthritis, multiple sclerosis, cerebrovascular accident, etc., are to be rated separately as are all other disabling conditions, if any. All disabilities are then to be combined as described in paragraph (a) of this section. The conversion to the nearest degree divisible by 10 will be done only once per rating decision, will follow the combining of all disabilities, and will be the last procedure in determining the combined degree of disability. (Authority: 38 U.S.C. 1155)

Table I—Combined Ratings Table

[10 combined with 10 is 19]

(d) On these total ratings Department of Veterans Affairs regulations governing effective dates for increased benefits will control.

(e) The total hospital rating if convalescence is required may be continued for periods of 1, 2, or 3 months in addition to the period provided in paragraph (a) of this section.

(f) Extension of periods of 1, 2, or 3 months beyond the initial 3 months may be made upon approval of the Veterans Service Center Manager.

(g) Meritorious claims of veterans who are discharged from the hospital with less than the required number of days but need post-hospital care and a prolonged period of convalescence will be referred to the Director, Compensation Service, under §3.321(b)(1) of this chapter.

[29 FR 6718, May 22, 1964, as amended at 41 FR 11294, Mar. 18, 1976; 41 FR 34256, Aug. 13, 1976; 54 FR 4281, Jan. 30, 1989; 54 FR 34981, Aug. 23, 1989; 71 FR 28586, May 17, 2006; 79 FR 2100, Jan. 13, 2014]

Supplement *Highlights* Reference: 53(1).

§4.30 Convalescent ratings.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established by report at hospital discharge (regular discharge or release to non-bed care) or outpatient release that entitlement is warranted under paragraph (a)(1), (2), or (3) of this section effective the date of hospital admission or outpatient treatment and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge or outpatient release. The termination of these total ratings will not be subject to §3.105(e) of this chapter. Such total rating will be followed by appropriate schedular evaluations. When the evidence is inadequate to assign a schedular evaluation, a physical examination will be scheduled and considered prior to the termination of a total rating under this section.

(a) Total ratings will be assigned under this section if treatment of a service-connected disability resulted in:

(1) Surgery necessitating at least one month of convalescence (Effective as to outpatient surgery March 1, 1989.)

(2) Surgery with severe postoperative residuals such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for house confinement, or the necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited). (Effective as to outpatient surgery March 1, 1989.)

(3) Immobilization by cast, without surgery, of one major joint or more. (Effective as to outpatient treatment March 10, 1976.)

A reduction in the total rating will not be subject to §3.105(e) of this chapter. The total rating will be followed by an open rating reflecting the appropriate schedular evaluation; where the evidence is inadequate to assign the schedular evaluation, a physical examination will be scheduled prior to the end of the total rating period.

(b) A total rating under this section will require full justification on the rating sheet and may be extended as follows:

(1) Extensions of 1, 2, or 3 months beyond the initial 3 months may be made under paragraph (a)(1), (2), or (3) of this section.

(2) Extensions of 1 or more months up to 6 months beyond the initial 6 months period may be made under paragraph (a)(2) or (3) of this section upon approval of the Veterans Service Center Manager.

[41 FR 34256, Aug. 13, 1976, as amended at 54 FR 4281, Jan. 30, 1989; 71 FR 28586, May 17, 2006]

Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication or a pacemaker required10

Note: Unusual cases of arrhythmia such as atrioventricular block associated with a supraventricular arrhythmia or pathological bradycardia should be submitted to the Director, Compensation Service. Simple delayed P-R conduction time, in the absence of other evidence of cardiac disease, is not a disability.

7016 Heart valve replacement (prosthesis):

For indefinite period following date of hospital admission for valve replacement100

Thereafter:

Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent100

More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent60

Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray30

Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required10

Note: A rating of 100 percent shall be assigned as of the date of hospital admission for valve replacement. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

7017 Coronary bypass surgery:

For three months following hospital admission for surgery100

Thereafter:

Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent100

More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent60

Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray30

Workload greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required10

7018 Implantable cardiac pacemakers:

For two months following hospital admission for implantation or reimplantation100

Thereafter:

Evaluate as supraventricular arrhythmias (DC 7010), ventricular arrhythmias (DC 7011), or atrioventricular block (DC 7015).
Minimum10

Note: Evaluate implantable Cardioverter-Defibrillators (AICD’s) under DC 7011.

7019 Cardiac transplantation:

For an indefinite period from date of hospital admission for cardiac transplantation.....100

Thereafter:

Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent100

More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent.....60

Minimum30

Note: A rating of 100 percent shall be assigned as of the date of hospital admission for cardiac transplantation. One year following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

7122 Cold injury residuals:

With the following in affected parts:

Arthralgia or other pain, numbness, or cold sensitivity plus two or more of the following: tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, X-ray abnormalities (osteoporosis, subarticular punched out lesions, or osteoarthritis)30

Arthralgia or other pain, numbness, or cold sensitivity plus tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, or X-ray abnormalities (osteoporosis, subarticular punched out lesions, or osteoarthritis)20

Arthralgia or other pain, numbness, or cold sensitivity10

Note 1: Separately evaluate amputations of fingers or toes, and complications such as squamous cell carcinoma at the site of a cold injury scar or peripheral neuropathy, under other diagnostic codes. Separately evaluate other disabilities that have been diagnosed as the residual effects of cold injury, such as Raynaud’s phenomenon, muscle atrophy, etc., unless they are used to support an evaluation under diagnostic code 7122.

Note 2: Evaluate each affected part (e.g., hand, foot, ear, nose) separately and combine the ratings in accordance with §§4.25 and 4.26.

7123 Soft tissue sarcoma (of vascular origin).....100

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

(Authority: 38 U.S.C. 1155)

[29 FR 6718, May 22, 1964, as amended at 40 FR 42539, Sept. 15, 1975; 41 FR 11300, Mar. 18, 1976; 43 FR 45361, Oct. 2, 1978; 56 FR 51653, Oct. 15, 1991; 62 FR 65219, Dec. 11, 1997; 63 FR 37779, July 14, 1998; 71 FR 52460, Sept. 6, 2006; 79 FR 2100, Jan. 13, 2014]

Supplement *Highlights* references: 22(1), 24(1), 41(1), 53(1).

Next Section is §4.110

Reserved

7714 Sickle cell anemia:

- With repeated painful crises, occurring in skin, joints, bones or any major organs caused by hemolysis and sickling of red blood cells, with anemia, thrombosis and infarction, with symptoms precluding even light manual labor100
- With painful crises several times a year or with symptoms precluding other than light manual labor60
- Following repeated hemolytic sickling crises with continuing impairment of health30
- Asymptomatic, established case in remission, but with identifiable organ impairment10

Note: Sickle cell trait alone, without a history of directly attributable pathological findings, is not a ratable disability. Cases of symptomatic sickle cell trait will be forwarded to the Director, Compensation Service, for consideration under §3.321(b)(1) of this chapter.

7715 Non-Hodgkin’s lymphoma:

- With active disease or during a treatment phase100

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7716 Aplastic anemia:

- Requiring bone marrow transplant, or; requiring transfusion of platelets or red cells at least once every six weeks, or; infections recurring at least once every six weeks100
- Requiring transfusion of platelets or red cells at least once every three months, or; infections recurring at least once every three months60
- Requiring transfusion of platelets or red cells at least once per year but less than once every three months, or; infections recurring at least once per year but less than once every three months30
- Requiring continuous medication for control10

7717 AL amyloidosis (primary amyloidosis).....100

Note: The 100 percent rating for bone marrow transplant shall be assigned as of the date of hospital admission and shall continue with a mandatory VA examination six months following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.

(Authority: 38 U.S.C. 1155)

[29 FR 6718, May 22, 1964, as amended at 34 FR 5063, Mar. 11, 1969; 40 FR 42540, Sept. 15, 1975; 41 FR 11301, Mar. 18, 1976; 55 FR 43124, Oct. 26, 1990; 60 FR 49227, Sept. 22, 1995; 77 FR 6467, Feb. 8, 2012; 79 FR 2100, Jan. 13, 2014]

Supplement *Highlights* references: 14(1), 52(1), (53(1)).

unemployability is due to epilepsy and jurisdiction is not vested in that body by reason of schedular evaluations, the case should be submitted to the Director, Compensation Service or the Director, Pension and Fiduciary Service.

(Authority: 38 U.S.C. 1155)

[29 FR 6718, May 22, 1964, as amended at 40 FR 42540, Sept. 15, 1975; 41 FR 11302, Mar. 18, 1976; 43 FR 45362, Oct. 2, 1978; 54 FR 4282, Jan. 30, 1989; 54 FR 49755, Dec. 1, 1989; 55 FR 154, Jan. 3, 1990; 56 FR 51653, Oct. 15, 1991; 57 FR 24364, June 9, 1992; 70 FR 75399, Dec. 20, 2005; 73 FR 54705, Sept. 23, 2008; 73 FR 69554, Nov. 19, 2008; 76 FR 78824, Dec. 20, 2011; 79 FR 2100, Jan. 13, 2014]

Supplement *Highlights* references: 39(1), 45(1), 50(1), 53(1).

Next Section is §4.125

Reserved