

Military compensation claims – the Disability Pension due to permanent impairment

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The *Veterans' Entitlements Act 1986* (VEA) is one of three (3) pieces of legislation in place to support veterans and their families seeking military compensation. The VEA provides a range of benefits, including compensation for permanent impairment resulting from service-related injuries or diseases.

The assessment of permanent impairment is a critical component of the military compensation claims process, as it determines the level of compensation and support a veteran is entitled to receive. This article focuses on:

- the process of assessing permanent impairment;
- the principles which apply to the assessment; and
- the importance of ensuring fairness and accuracy in determining entitlements for injured defence force personnel.

For further information about all the benefits available to injured veterans, you can read our earlier blog, "A guide to the military compensation scheme for injured defence force personnel."

Understanding permanent impairment after an injury or disease

Permanent impairment refers to the long-term or irreversible loss of functional capacity or bodily function caused by a service-related injury or disease. Under the VEA, compensation for permanent impairment is provided through the Disability Pension scheme (administered by the Department of Veterans Affairs and not related to the Disability Support Pension administered by

Services Australia).

The Disability Pension is designed to acknowledge the impact of a service-related injury or disease on the veteran's quality of life and ability to work. The assessment of permanent impairment is not merely a medical evaluation; it also considers the broader impact of the impairment on the veteran's daily life, including their ability to perform tasks, engage in social activities, and maintain relationships.

Legal framework and guiding principles for veterans' permanent impairment claims

The assessment of permanent impairment under the VEA is governed by specific legislative provisions and guidelines. The key concepts which apply include:

The impairment must be directly related to the veteran's eligible service. This requires establishing a clear link between the injury or disease and the veteran's military service.

The impairment must be considered permanent, meaning it is unlikely to improve significantly over time, even with medical treatment.

The assessment must be consistent with the approved Guide to the Assessment of Rates of Veterans' Pensions (GARP). GARP provides standardised criteria for evaluating the degree of impairment and assigning an appropriate disability pension rate.

Fairness and transparency: The process must be fair, transparent, and evidence-based, ensuring that veterans receive the compensation they are entitled to.

The assessment process

The assessment of permanent impairment for military personnel involves several steps, each designed to ensure a thorough and accurate evaluation of the veteran's condition. The process typically includes the following stages.

Lodging a claim

The process begins when a veteran lodges a claim for compensation under the VEA. The claim must include detailed information about the injury or disease, its connection to military service, and the impact it has on the veteran's life. Supporting medical evidence, such as reports from treating doctors, specialists, and diagnostic tests, is also required.

Gathering medical evidence

Once the claim is lodged, the Department of Veterans Affairs (DVA) gathers relevant medical evidence to assess the extent of the impairment. This may involve obtaining medical records, arranging for the veteran to undergo independent medical examinations, and consulting with medical experts.

The evidence must clearly establish the nature of the impairment, its severity, and its connection to the veteran's service.

Applying the GARP guidelines

The GARP guidelines are the cornerstone of the assessment process. They provide a standardised framework for evaluating the degree of impairment and assigning a Disability Pension Rate (DPR). The guidelines cover a wide range of physical, psychological, and sensory impairments, with specific criteria for each condition. For example:

Physical impairments: These are assessed based on factors such as loss of limb function, range of motion, and pain levels.

Psychological impairments: Conditions such as post-traumatic stress disorder (PTSD) are evaluated based on the impact on the veteran's mental health, social functioning, and ability to work.

Sensory impairments: Hearing loss, vision impairment, and other sensory conditions are assessed using standardised tests and criteria.

The GARP guidelines use a system of impairment points to quantify the severity of the condition. The total number of impairment points determines the DPR, with higher points corresponding to higher levels of compensation.

Determining the degree of impairment

Once the medical evidence has been gathered and the GARP guidelines applied, the DVA determines the degree of impairment.

This involves assigning impairment points for each condition and calculating the overall level of impairment. The assessment takes into account the cumulative impact of multiple conditions, ensuring that veterans with multiple impairments receive appropriate compensation.

Calculating the Disability Pension Rate

The DPR is calculated based on the total number of impairment points and the veteran's personal circumstances. The VEA provides for DPR's depending on the severity of the impairment, with higher rates for veterans who are unable to work or require significant support. The pension is tax-free, paid fortnightly and is designed to provide financial stability for veterans and their families.

Appealing a Disability Pension assessment

Veterans who are dissatisfied with the outcome of their assessment have the right to request a review or appeal. The review process may involve a reconsideration of the medical evidence, a reassessment of the impairment points, or a hearing before the Veterans' Review Board (VRB).

If the veteran remains dissatisfied, they can appeal to the Administrative Review Tribunal (ART) for an independent review of the decision.

Get help from a military compensation lawyer

Whilst the assessment process for military compensation due to permanent impairment is designed to be fair and transparent, sometimes decision-makers make determinations that are not quite in keeping with the evidence before them. Sometimes, they simply overlook (inadvertently) important facts and/or medical opinion(s) that were critical in the decision-making process.

That is the very reason why there are 'checks and balances' in place, including the right to appeal an assessment to the VRB or the ART. If you are not satisfied with any decision made during your claim for military compensation or just need some help navigating the complex process, our experienced compensation lawyers can help

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