

## Highlights of Benefits Recently Won with American Legion Representation

The American Legion Department of Indiana Veterans Service Office consists of a staff of seven full-time employees responsible for ensuring veterans receive their earned benefits. The following are a few examples of benefits won that veterans might not have otherwise received if not for our department service office staff.

### **Agent Orange Exposure for Service in Thailand**

For disability benefits purposes, VA will assume Agent Orange exposure for veterans who served in Vietnam, but other veterans must prove actual exposure. A veteran, who did not serve in Vietnam but did serve in Thailand, filed a claim for service connection of an Agent Orange related disability in April 2015. He had claimed Agent Orange exposure, but VA denied his claim.

While working the veteran's appeal, through research, Department Service Officer Bryce Hullett found a manual entitled, "Army Employment of Herbicides," dated December 1971. The manual gave guidelines for spraying Agents Blue, White, and Orange, and explained that it must not be sprayed any closer than 500 meters to avoid damage to desirable vegetation. During a Board of Veterans Appeals (BVA) video conference hearing, Bryce helped the veteran convince the BVA law judge that the veteran was within that 500 meter area when serving in Thailand.

This decision resulted in the veteran receiving \$46,488 in retroactive pay, a monthly benefit of \$3,518, and many other benefits associated with having a permanent 100% service-connected compensation rating.

Bryce had also previously helped this veteran win prior claims for a non-service connected pension and then service connection for a mental health condition and prior retroactive benefits of \$130,976 and \$84,488.

The veteran would have likely not have received most of these benefits without the help of a caring American Legion Service Officer.

### **Rating Decision Review Saves Benefits**

Upon review of a VA decision denying a veteran a 100% Individual Un-employability (IU) rating simply because the veteran failed to supply the proper form, Department Service Officer Bryce Hullett immediately contacted the Allen County Service officer for a copy of that IU application.

After hand carrying the form to the rating official and receiving no response, Bryce followed up by reporting his concern to the VA Service Center Manager's Office. On the same day, VA granted the veteran's 100% IU rating resulting in a \$5,902 retroactive benefit payment, a monthly payment of \$3,068 plus additional benefits associated with being 100% service connected disabled.

Without the help of a knowledgeable service officer, this veteran may have never received the 100% rating due to a simple error.

### **Service Officer's Patience Wins Big Benefits for Veteran**

Most, but not all, veterans are very cooperative, considerate of others, and would rather give more than they take. Not all though, including sometimes those who are suffering from a serious mental illness.

Department Service Officer Bryce Hullett represented one such veteran with his claim. This veteran was a routine caller to the office, and our office file recorded notes of rudeness and personal threats.

Bryce allowed for the veteran's mental illness, and talked with him on a weekly basis while the veteran would vent frustration towards the VA and Bryce himself. The veteran's appeal

had gone to the Board of Veterans Appeals and was remanded to the VA regional office for consideration of granting benefits on extra-schedular bases.

Bryce then participated in a lot of coordination with the Appeals Team, Decision Review Officers, VA Coaches, and the VA Service Center Manager resulting in a grant of a 100% rating retroactive from July 1, 2008, with a retroactive payment of \$267,840 and a continued monthly benefit of \$3,068.

Without the patience and understanding of a carrying service officer, this veteran would have likely never won his appeal.

### **Found Error Wins Veteran Additional VA Compensation Benefits plus Retroactive Entitlement to DOD Concurrent Receipt Pay**

We are often asked why The American Legion Veterans Service Office requires appointments. Walk-in service may appear convenient and to offer better service, but veterans deserve more than just a brief interview as the service officer may get to the next of several walk-in visitors waiting for his attention.

The American Legion Service Office sets aside an entire uninterrupted hour for each scheduled appointment. This gives veterans the time they need to discuss their claims and/or appeals, and provides service officers sufficient time to review all the evidence, discuss what is necessary to win benefits, complete the necessary forms, and often help apply for additional benefits. The following is an excellent example:

During the 2016 Department Convention, a veteran asked Department Service Officer Steve Hicks to review the veteran's VA claim file to make sure VA had made the correct decisions. The veteran was represented by another service organization, but we could accept the veteran's representation appointment since he did not have any current appeals or claims pending.

We then scheduled the veteran an office appointment. During the appointment, Steve discussed the veteran's benefits, and conducted a thorough review of the veteran's electronic claim file including past VA rating decisions. Steve detected a clear and unmistakable error (CUE) in a September 2013 VA decision that assigned only a 0% rating for the veteran's service-connected tinnitus retroactive from November 16, 2011.

Steve immediately filed the CUE claim. VA agreed, corrected the error, and established a 10% rating for the veteran's tinnitus retroactive from the original date in November 2011.

This action had "big" consequences! Before the error was corrected, the veteran's combined compensation rating was only 40%. The veteran is a military retiree. The law allows the government to withhold the amount of VA compensation paid from a military retiree's retirement pay if the VA compensation rating is less than 50%. Now this veteran will receive all his military retirement pay, with a combination of retirement and concurrent receipt pay, not only for future benefits, but retroactive from November 2011.

This veteran will see a \$265 increase in his monthly VA compensation benefits, a retroactive VA benefit over \$15,000, plus refund of all withholding from his military retirement pay retroactive from November 2011. He will also receive his future DoD military retirement benefits without the VA compensation benefit offset.

Without having time set aside for our knowledgeable service officers to thoroughly interview veterans and review their records, this veteran would have likely gone without his entitled benefits.

### **Independent Medical Evidence Can Win Claims**

A veteran had been rated 100% service connected for prostate cancer. Following the statutory end of the 6-month 100% compensation rating after a prostatectomy placing the cancer in remission, VA proposed reducing the veteran's compensation rating from 100% to

0%. The veteran requested a hearing and supplied additional evidence by having his private doctor complete a VA Disability Benefits Questionnaire (DBQ).

While preparing for the hearing, Department Service Officer John Hickey discussed the private medical evidence with the hearing officer. The DBQ showed the veteran must wear absorbent material and change that absorbent material more than 4 times a day due to leakage associated with the prostate removal. The hearing officer agreed this meets the requirement for a 60% compensation rating instead of the proposed 0%. The veteran also agreed to accept the 60% rating as a full grant of the issue on appeal without having to report for a hearing.

This veteran will therefore receive a \$1,165 monthly compensation benefit that he may not had obtained without knowing to supply private medical evidence and having qualified representation.

### **Service Officer Wins Veteran an Additional One Year Retroactive Benefit Based on VA Liberalization of Law Regulation**

The VA received a veteran's claim for service connection of a heart condition on September 16, 2016, and granted service connection at 30% effective from the date of claim. Normally this would have been the correct effective date, but Department Service Officer Steve Hicks knew that the law allowing VA to grant service connection for an ischemic heart disease (IHD) due to Agent Orange exposure became effective on August 31, 2010. He also found evidence in the veteran's records that he was diagnosed with the IHD in 2002 before the effective date of the law.

Steve then asked VA to properly apply VA Regulation 38 CFR 3.114 stating "If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request." VA agreed, changed the effective date to September 16, 2015, and paid the veteran an additional \$4,893 in retroactive compensation benefits.

### **Service Officer Reminds Distant VA Claims Rater to Grant Benefits from the Intent to File Notice Date**

The VA granted a veteran a 100% compensation rating effective from the date VA received his formal claim. Department Service Officer Steve Hicks, however, found that the veteran had filed an "Intent to File" notice 11 months before filing the formal claim. Even though VA's National Work Queue process caused a VA rater in Roanoke, Virginia to work this claim, Steve found a way to contact that rater and convince him to grant the effective date 11 months before the formal claim date. The 100% rating pays \$2,319.47 per month. Therefore, the earlier effective date brought the veteran a retroactive benefit of \$25,514.17.

The veteran would have most likely not have received this large retroactive benefit without the services of a well-qualified representative.