

Law Review 13134
October 2013

Returning to Active Duty with VA Disability Rating

By: 1stLt. K.N. Barrett, USMC¹

11.0—Veterans' claims

Q: I am a Reservist in the armed forces and I recently came off active duty orders. I want to apply to the United States Department of Veterans Affairs (VA) for disability benefits but I am concerned that if I receive a high disability rating I will become ineligible to return to active duty.

A: There is no regulation or rule of the VA or any of the armed services that states that a specific disability percentage rating makes a reservist ineligible to return to active duty. The various branches will take any medical status into consideration when determining your eligibility for active duty, so you should certainly keep that in mind when filing for your benefits and getting the medical evaluations done by the VA for disability percentage rating. However, there is no set percentage level that will automatically make you ineligible.

There are two other aspects that you may want to keep in mind while preparing to file for benefits. The first is the pay situation. As a federal employee you are not allowed to “double dip” in terms of compensation from the federal government. 10 U.S.C. 12316 and 38 U.S.C. 5304(c). If you file for VA disability compensation and are granted a monthly compensation check, your pay from your service branch will be deduced from your monthly check during your drill periods. You are not able to collect disability compensation and drill pay simultaneously so just keep in mind that if granted a certain disability percentage and pay amount, that will be lowered by how much you get paid for your activation during drill period. Following that line of thought, if you do get mobilized or return to active duty, you will also not be compensated by the VA during that time. Basically, you can only receive pay from one organization at a time, your military branch or the VA; however, payment from one will not exclude you for eligibility by the other.

The other thing to keep in mind is that the VA and your branch may not necessarily be talking to each other regarding your disability status and evaluation. Your concern may be that if you file for VA disability you will not be eligible to go on active duty again, especially if your disability rating is fairly high. This is not the case

¹ Title shown for purposes of identification only. The views expressed in this article are those of the author and should not be attributed to the United States Marine Corps, the Department of the Navy, the Department of Defense, or the United States Government. Kevin Barrett is a 2013 graduate of William & Mary School of Law and is an associate at the Service Members Law Center, until he reports to the Marine Corps for active duty as a judge advocate.

for multiple reasons. First, as I mentioned, there is no indication that the VA and your military branch are sharing information regarding your medical status. However, although that is not the case right now, there is nothing to say this may not be the case in the future. Your military service has the responsibility to evaluate you medically to determine your eligibility for active duty and for continued participation in the Reserve Component. Although right now they may not be taking VA disability status and rating into consideration, there is nothing stopping them from doing so if they should choose to. Second, even if your branch does discover your VA disability rating and status, that does not automatically preclude you from eligibility for Active Duty status, despite what your disability percentage may be. For example, if you look at the VA's Schedule of Ratings, which determines the percentage options that may be assigned for each disability, Sleep Apnea is a mandatory minimum 50% disability. This means that if you file for a Sleep Apnea disability and are granted service connection for it, you will automatically be given a 50% disability rating. That is a relatively high disability status, however, there is nothing about Sleep Apnea that automatically shows that you are so severely disabled that you are unable to serve on active duty with the armed forces. It is likely that even if your branch were to evaluate this disability they would determine that you are eligible for service or mobilization.

Overall, there is no black and white answer to this situation. Although there is nothing regarding a VA disability status precluding you from returning to Active Duty, it may be something that your particular branch ultimately takes into consideration and there is no way of knowing what weight they may give that consideration. However, there is no specific disability percentage rate that automatically precludes you from returning to active duty.