

THE ROAD MAP TO  
**100% PAY**  
FOR UNEMPLOYABILITY  
(TDIU)



The Steps You Need to Qualify for Individual Unemployability,  
and the Evidence You Need to Win Your Appeal



# THE ROAD MAP TO 100% RATING UNDER TDIU



**If you have any questions regarding the specifics of any of the steps, you can reference these sections in the £-Book for more clarification:**

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# WHAT IS INDIVIDUAL UNEMPLOYABILITY?

Total Disability based on Individual Unemployability (TDIU) is a benefit provided by the Department of Veterans Affairs that allows disabled veterans who are unable to work due to a service-connected disability (or disabilities) to receive disability compensation that is payable at the 100% level.

## ARE YOU ELIGIBLE FOR TDIU?

Any veteran who is essentially honorably discharged (including a General Discharge) and who is unable to obtain or maintain a substantially gainful occupation due to a service-connected disability may qualify for Individual Unemployability benefits from the VA.

### **What Does it Mean to be Unable to Secure Substantially Gainful Employment?**

The phrase “unable to secure and follow a substantially gainful employment” has two components: **economic and noneconomic**.

The economic component refers to the veteran’s ability to earn more than the federal poverty threshold for a single person. Currently, the federal poverty threshold is **\$12,760**. It is increased slightly for any dependents.



The noneconomic component involves what the VA must assess in determining if a veteran can actually work. The VA must give attention to:

- Veteran's history and education, skills, and training;
- Whether the veteran has the physical ability to perform the type of activities required by the occupation at issue - including limitations on lifting, bending, sitting, standing, walking, etc., as well as auditory/visual limits; and
- Whether the veteran has the mental ability to perform activities required by the occupation at issue - including limitations on memory, concentration, ability to adapt to change, handle workplace stress, get along with coworkers, and demonstrate reliability and productivity.

Any service-connected mental or physical impairment or any combination of them can qualify a veteran for individual unemployability benefits.

# HOW DO YOU PROVE TDIU?

When the VA evaluates a claim for TDIU, it first looks at whether the veteran meets the regular schedular requirements for TDIU found in 38 CFR 4.16a:

- One Service-Connected Condition. That condition must be rated 60 percent or more.
- Two or More Service-Connected Conditions. At least one condition must be rated at 40 percent or more. The combined ratings of the disabilities must be at least equal to 70 percent.



For the purposes of TDIU, the VA considers the following combinations as a “**single disability**” (meaning if they total 60% together the veteran meets the schedular requirement of the one condition rated at 60 percent or higher):

- One involving one or both arms, or legs, including the bilateral factor;
- Disabilities resulting from a common problem or accident;
- Disabilities affecting a single body system (i.e. orthopedic, respiratory);
- Multiple injuries incurred in action; and/or;
- Multiple injuries incurred as a prisoner of war.

## EXAMPLES:

A veteran suffers from post-traumatic stress disorder. This is the only service-connected disability. Therefore, this disorder only needs to be rated at 60 percent or higher to qualify for TDIU.

A veteran has ratings of 40 percent for a knee condition, 30 percent for a heart condition, and 30 percent for their asthma. The VMs combined rating table results in an overall 70 percent rating. Since the veteran’s knee is rated at 40 percent and they have a 70 percent total rating, they qualify for TDIU.

A veteran suffers from several service-connected disabilities such as diabetes, diabetic retinopathy and neuropathy. All of these disabilities arise from a common cause (diabetes). This means these ratings need only add up to a 60 percent evaluation in order for the veteran to qualify for TDIU.



# IMPORTANT THINGS TO REMEMBER ABOUT THE SCHEDULAR REQUIREMENTS FOR TDIU:

- 1** When making a determination on TDIU, the VA can only consider disabilities that have been service-connected. If a veteran is service-connected for his diabetes and back, but cannot work because of his PTSD-related outbursts (which have not been service-connected), the VA will only consider the diabetes and the back when deciding the TDIU claim. Therefore, the veteran would have to prove that they cannot work due to their diabetes and back condition alone.
- 2** The VA cannot consider any non-service connected disabilities when making a determination for TDIU. Even if the veteran is receiving worker's compensation or Social Security Disability for an injury, if the injury is not service-connected the VA is unable to consider it. This also means the VA would not be able to use this information against the veteran.
- 3** The age of the veteran is not a factor when qualifying for TDIU. This means that the VA cannot state that because the veteran is a certain age he would not be able to work due to age alone.





# CAN YOU GET TDIU WITHOUT A 70 PERCENT RATING?

If a veteran does not meet the 60 percent single disability or 70 percent combined disabilities, the VA still allows for TDIU. **The VA recognizes that some veterans cannot work because of their service-connected disabilities even when they do not meet the schedular requirements.** This is referred to as extraschedular TDIU found in 38 CFR 41.6b.

## WHAT IS AN EXTRASCHEDULAR RATING?

An extraschedular VA disability rating is one that grants a veteran a higher rating than they would receive based on the standard rating schedule by the VA. Extraschedular ratings are assigned when the rating criteria for a veteran's disability does not accurately reflect their level of disability. In these instances, a veteran might be receiving Social Security Disability or has a statement from their doctor that they cannot maintain substantially gainful occupation due to their condition.

When the evidence suggests unemployability, the Regional Office submits the claim to the Director of the Compensation and Pension Service. The Regional Office must first prepare a statement regarding the veteran's disabilities, work, and all other factors bearing on the issue. The Director then reviews the claim for extraschedular consideration.

Receiving TDIU through extraschedular consideration can take a long time. However, it is very rare for the Regional Office to refer a claim for TDIU for extraschedular consideration.

# WHAT STANDARD DO YOU NEED TO MEET?

The standard for awarding TDIU on an extraschedular basis is that the case must present an exceptional or unusual disability picture. This includes factors such as marked interference with employment or frequent periods of hospitalization.

## HOW DO YOU APPLY FOR TDIU?

To apply for TDIU, veterans must complete VA Form 21-8940: Veterans Application Based on Unemployability and submit it to the VA. This submission can be done online, mailed, faxed, completed in person at a local Regional Office, or with the assistance of a VAaccredited representative.

## WHAT EVIDENCE IS NEEDED FOR TDIU?

To get TDIU benefits, the evidence must show that the veteran cannot work due to a service-connected disability. Evidence supporting the claim includes but is not limited to letters from the veteran {use VA Form 21-4138}, and co-workers {use VA Form 21-4138}, employers {use VA Form 21-4192}.

The VA must consider the veteran's educational and work history and must see how those disabilities could prevent them from working in the jobs for which they have been trained. Statements from the veteran are very helpful in this analysis. The statements should cover the veteran's educational history and work history, and how that limits them to a specific type of work. Co-worker statements should explain what the co-worker has seen with their own eyes that makes them think the veteran would be unable to perform that type of job.

If the veteran has participated in a VA vocational rehabilitation program, the VA must also consider this evidence.

The VA also has to assess the veteran's earning in order to assess if their income is above or below the poverty threshold. Proof of earnings can be shown through pay stubs, tax returns, or a Social Security Earnings Record. If the earnings are above the poverty threshold, the VA must consider if the veteran works in a "sheltered" environment.

A sheltered environment is where the veteran's job is protected or accommodations are made that would not be protected or made generally. Working for a family member is one example. If this is the case, the veteran will need supporting evidence to prove that the workplace is sheltered.

## LAY OR BUDDY STATEMENTS

Lay" or "buddy" statements are:

1. Oral statement made by the Veteran, family members, friends, neighbors, or service buddies during a hearing; **OR**
2. Any written declaration or written statement made by the same (Veteran, family members, etc.), regarding the Veteran's disability.

The "lay" or "buddy" are made by people who know the Veteran but aren't qualified to make a medical diagnosis or prove medical facts.

While a doctor may see you once a month, your friends, neighbors, relatives, and others see you every day. Lay observers can help you document the full picture of events affecting the Veteran, from the perspective of a person who is not a medical provider.

## VOCATIONAL EXPERTS

Some of the best evidence that can be used is a professional opinion from a vocational expert or competent medical doctor concerning the veteran's ability to secure or follow a substantially gainful occupation. A vocational expert is someone who is trained to assess the best work for individuals and determine whether they can work in any job.



They analyze medical records, work history, and education to determine someone's ability to work. The opinion should say it is "more likely than not" that the veteran is unable to work due to their service connected disabilities, along with a supporting rationale.

Further, the VA will often schedule a veteran for a Compensation & Pension (C&P) exam to get an opinion on TDIU. The exam report must include a rationale as to whether it is as likely as not that the service connected disabilities render the veteran unable to work. Additionally, the report must describe the functional impairment caused by a veteran's disability and how that impairment impacts all employment.

## WHAT IS THE MONTHLY BENEFIT FOR TDIU?

TDIU benefits are paid at a rate equivalent to a 100 percent disability rating, which is currently \$3,106.04 per month for a single veteran. Veterans may receive an additional amount for dependents.

## CAN YOU WORK WHILE ON TDIU?

TDIU benefits are reserved for veterans whose service-connected disabilities prevent them from obtaining and maintaining substantially gainful employment. However, there are two situations where a veteran may be employed and still qualify for TDIU:

- **Marginal Employment.** Veterans who are currently working but earn below the federal poverty threshold, may qualify for TDIU benefits (\$12,760 currently for a single person).
- **Protected or Sheltered Work Environment.** When special accommodations are made by an employer that allow a veteran to work with no reduction in pay or benefits, it is called a protected work environment. Veterans employed in a protected work environment may still qualify for TDIU from the VA.

# CAN YOU COLLECT TDIU AND SOCIAL SECURITY BENEFITS AT THE SAME TIME?

Veterans can collect both full Social Security Disability (SSDI) and TDIU benefits. SSDI is the Social Security Administration disability program for those who have worked over the last few years. For those that have not worked over the last few years, there is a program called Supplemental Security Income (SSI). Any money a veteran receives from TDIU is subject to offset of the SSI pay. A veteran can also collect SSA retirement benefits and TDIU.

## IS TDIU PERMANENT?

TDIU is not automatically permanent. The VA may send a veteran to periodic medical exams to evaluate whether TDIU is still warranted. However, the VA cannot just take TDIU away without justification. There are safeguards in place to prevent that.

If the VA determines a veteran is now employable, it must first issue a proposed notice of reduction. This notice gives a veteran 60 days to submit evidence to show that their condition has not improved. A veteran also has the option to request a pre-determination hearing within 30 days of the notice.

If a veteran submits evidence within the first 60-day notice timeframe, the VA may send the veteran for a re-examination. During this time, the VA will not reduce the rating until the outcome of the new examination.

The VA must review all of the new evidence, including the re-examination. The VA will then issue a final rating decision. This rating decision starts a new 60-day period. The reduction will go into effect on the last day of the month of the rating decision.





There are several regulations which protect against a proposed reduction. One of those protections is for 100 percent ratings when based on unemployability. The VA has the burden to show actual employability has been established by clear and convincing evidence. If the VA is unable to show this, then it cannot reduce or sever TDIU.

Even if the VA determines there is sustained improvement that would warrant severance of TDIU, the record must also reflect that the veteran is able to engage in substantially gainful employment. If not, TDIU should continue.

## **WHAT ARE PERMANENT AND TOTAL VA DISABILITY RATINGS?**

Permanent and total disability, or P&T, refers to veterans whose disabilities are total (rated 100 percent disabling by the VA) and permanent (zero or close to zero chance of improvement). P&T ratings are protected from being reduced and may entitle a veteran or their family to additional VA benefits.



# DOES TDIU MEAN BENEFITS

## ARE P&T?

Not necessarily. Receiving TDIU means a veteran is considered totally (100 percent) disabled, but TDIU can be permanent or temporary.

If TDIU benefits are permanent, the VA will indicate that in the Rating Decision in one of three ways:

1. a box will be checked indicating that the 100 percent disability is permanent;
2. language such as “eligibility to Dependents Chapter 35 DEA is established,” as these

benefits are reserved for dependents of veterans who are permanently and totally disabled;

3. if the Rating Decision says “no future exams are scheduled,” the rating is permanent.

# WHEN CAN THE VA REDUCE

## OR TAKE AWAY YOUR TDIU?

The VA may propose to terminate a veteran’s TDIU benefits for multiple reasons:

If Veterans who receive TDIU benefits are required to submit VA Form 21-4140 annually. If veterans do not submit this form, their benefits may be subject to reduction or termination.

If a veteran’s ability to maintain substantially gainful employment changes and they are able to work.

If a veteran’s service-connected condition(s) have improved, warranting a lower rating.

# CONTACT VETERANS HELP GROUP TODAY!

Veterans Help Group focuses on one thing: getting veterans the benefits they deserve. If you or a loved one served, and is unable to work we are here to help. Call Veterans Help Group at (800) 953-6224 or complete our free veterans benefits case evaluation form at [VeteransHelpGroup.com](http://VeteransHelpGroup.com)

