



Department of

**Veterans Services**

# Total Disability Due To Individual Unemployability (TDIU / IU)

# Introduction

What is Total Disability due to Individual Unemployability (TDIU)?

The VA has a longstanding and well-established policy of granting total disability ratings to Veterans who, due to service-connected disability(ies), are unable to secure and maintain substantially gainful employment even if a Veteran's combined disability evaluation does not result in a total schedular evaluation.

These benefits pay at the same level as a veteran who has received a 100% disability rating.

M21-1 IV.ii.2.F.1.a

# Course Objectives

Upon successful completion of this course the participant will be able to:

- Define “Individual Unemployability”
- Discuss “General Requirements”
- Discuss “Reasonably Raised Individual Unemployability Claims”
- Discuss “How Individual Unemployability Claims are Developed”
- Discuss “How Individual Unemployability is monitored”
- Discuss “Benefits”

# References

- Total Disability based on Individual Unemployability (TDIU or IU)
  - 38 U.S.C. 501
  - [38 C.F.R. 4.15 - 19](#)
  - [M21-1, Part IV, Subpart ii, Chapter 2, Section F](#)
  - [U.S. Census Bureau Historical Poverty Thresholds](#)

# TDIU – Common Myths (Poll #1)

- The simple fact that a veteran may be over 65 is sufficient justifications to deny entitlement to TDIU.
- A. True
- B False

# TDIU – Common Myths (Poll #1)

- The simple fact that a veteran may be over 65 is sufficient justifications to deny entitlement to TDIU.
- A. True
- **B False**
- **§4.19** Age may not be considered as a factor in evaluating service-connected disability; and unemployability, in service-connected claims, associated with advancing age or intercurrent disability, may not be used as a basis for a total disability rating.

# TDIU Definitions

To establish entitlement to a *total disability rating* for compensation based on individual Unemployability (TDIU), the Veteran must be unemployable in fact (unable to secure or follow substantially gainful employment) by reason of service-connected (SC) disability *and either*;

- Meet the schedular requirements of [38 CFR 4.16\(a\)](#), or
- Have an extra-schedular individual Unemployability (IU) evaluation, under the provisions of [38 CFR 4.16\(b\)](#), approved by Compensation Service (211B).

**M21-1 IV.ii.2.F.1.a**

# General IU Requirements 38 CFR 4.16 (a)

Veteran's combined disability evaluation is not total (100%), BUT Veteran has:

- 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.
- Evidence shows Veteran is unable to secure or follow a substantially gainful occupation solely due to service connected disabilities.

**38 CFR 4.16**



# General Requirements 38 CFR 4.16 (a)

As stated in [38 CFR 4.16\(a\)](#), for the purpose of meeting the requirement of having one 60 percent or one 40 percent disability, the following will be considered as one disability:

- Disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable
- Disabilities resulting from common etiology or a single accident
- Disabilities affecting a single body system
- Multiple disabilities incurred in combat, or
- Multiple disabilities incurred as a former Prisoner of War (FPOW).

M21-1 IV.ii.2.F.4.i  
M21-1, III.iv.6.B.4.c.

# General Requirements 38 CFR 4.16 (b)

- The rater can submit any claim to Central Office (CO) for extra-schedular IU consideration if the schedular requirements of [38 CFR 4.16\(a\)](#) are not met but the evidence of record supports a finding that the Veteran is unemployable by reason of SC disability.
- The rater will then prepare the memorandum and transmit claims to CO for review as outlined in M21-1 III.iv.6.B.4.d.

# TDIU Definitions

Substantially gainful employment is defined as employment at which non-disabled individuals earn their livelihood with earnings comparable to the particular occupation in the community where the Veteran resides. It suggests a living wage.

Substantially gainful employment is:

- competitive (not protected) employment, AND
- earnings exceeding the amount established by the U.S. Department of Commerce, [U.S. Census Bureau, as the poverty threshold for one person.](#)

# TDIU Definitions

## Marginal employment :

- Is by definition not substantially gainful employment.
- Do not consider amounts received from participation in the Veterans Health Administration's (VHA's) Compensated Work Therapy (CWT) Program as income for IU purposes.

**M21-1 IV.ii.2.F.1.f**

# TDIU Definitions

## Marginal employment exists:

- When a Veteran's earned annual income does not exceed the amount established by the [U.S. Department of Commerce](#), [U.S. Census Bureau](#), as the poverty threshold for one person, *OR*
- On a facts-found basis, and 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.

**M21-1 IV.ii.2.F.1.f**

# TDIU Definitions

Poverty Thresholds for 2020 by Size of Family and Number of Related Children Under 18 Years									
Size of family unit	Related children under 18 years								
	None	One	Two	Three	Four	Five	Six	Seven	Eight or more
One person (unrelated individual):									
Under age 65.....	13,465								
Aged 65 and older.....	12,413								
Two people:									
Householder under age 65.....	17,331	17,839							
Householder aged 65 and older.....	15,644	17,771							
Three people.....	20,244	20,832	20,852						
Four people.....	26,695	27,131	26,246	26,338					
Five people.....	32,193	32,661	31,661	30,887	30,414				
Six people.....	37,027	37,174	36,408	35,674	34,582	33,935			
Seven people.....	42,605	42,871	41,954	41,314	40,124	38,734	37,210		
Eight people.....	47,650	48,071	47,205	46,447	45,371	44,006	42,585	42,224	
Nine people or more.....	57,319	57,597	56,831	56,188	55,132	53,679	52,366	52,040	50,035

Source: U.S. Census Bureau.

# Consideration Employment, Educational and Occupational History

- A Veteran's employment, educational, and training history are relevant to determining the types of employment the Veteran would be qualified to secure and follow. In determining whether a Veteran has the ability to secure and follow a substantially gainful occupation, attention must be given to a Veteran's
- Employment history, such as
  - type of work
  - length of employment
  - skills required in this type of employment
  - time since last employed, and/or
  - intervening history of injuries since last employment

# Consideration Employment, Educational and Occupational History

- education
  - level of educational achievement
  - nature of education (area of educational focus), and/or
  - applicability of past education in the current job market
- skill, such as
  - vocational skills acquired through past work, education, or training, and/or
  - recreational or other skills relevant to current or future employment, and
- training, such as
  - formal training courses or experiences, and/or
  - on-the-job training
- **Note:** The example elements listed are not meant to be an all-inclusive list.



# Consideration Employment, Educational and Occupational History

- The VA must consider the veteran's educational and occupational history when it is determining whether the veteran's service-connected disabilities preclude securing or following substantially gainful employment. The VA may not "merely allude to educational and occupational history, [without] attempt[ing] ... to relate these factors to the disabilities of the [veteran]"

# Consideration Employment, Educational and Occupational History

- Although VA is charged with relating educational and occupational history to the veteran's disability, *Pederson v. McDonald* underscores the importance of submitting evidence, lay and otherwise, and explaining how the veteran's education and occupational history, when viewed with the particular disability, would preclude substantially gainful employment.

# Consideration Employment, Educational and Occupational History

- Almost all requests for TDIU would benefit from professional opinion from a vocational expert. A vocational expert determines whether a veteran is qualified in education and experience for the type of job that he or she is medically fit to perform. While the duty to assist does not require that such an examination is always warranted in evaluating TDIU, one still may be “necessary to substantiate” the veteran’s claim.

# Consideration Employment, Educational and Occupational History

## \*\*\*Advocacy Tip\*\*\*

- Because the VA often fails to obtain a professional opinion from a vocational expert as part of its duty to assist the veteran in substantiating entitlement to TDIU, lay evidence should be submitted outlining education and occupational limitations relevant to types of jobs for which the veteran would be qualified. Thereafter, a VA vocational opinion should be requested and, if at all possible, a private vocational opinion should be sought.

# Limitations of Ability

In determining whether a Veteran has the ability to secure and follow a substantially gainful occupation, attention must be given to whether the Veteran has the ability to perform the types of activities required by the occupation at issue.

Physical ability includes functions that are

- exertional, and/or
- non-exertional

The type of activities required by the occupation at issue may be

- sedentary
- light
- medium
- heavy, or
- very heavy.

# Limitations of Ability

- Factors that are relevant include
- physical impairment for functions such as
  - lifting
  - bending
  - sitting
  - standing
  - walking
  - climbing
  - grasping
  - typing
  - reaching
  - seeing, and/or
  - hearing, and

# Limitations of Ability

- mental limitations concerning
  - memory
  - concentration, and/or
  - ability to
    - adapt to change
    - handle work-place stress
    - get along with co-workers, and/or
    - demonstrate reliability and productivity.
- The examples are not all-inclusive. Consider any factor that results in impairment of the Veteran's ability to perform work-related activities

# TDIU – Common Myths (Poll #2)

- A Veteran might be unemployed from one job due to an SC disability, but still be capable of securing or following another substantially gainful occupation.
- A. True
- B. False



# TDIU – Common Myths (Poll #2)

- A Veteran might be unemployed from one job due to an SC disability, but still be capable of securing or following another substantially gainful occupation.
- A. True
- B. False
- M21-1 IV.ii.2.F.1.b. Unemployable Vs. Unemployed

# Special Development

To establish the degree to which a SC disability has impaired self-employment the VA will also request that the Veteran furnish a statement regarding the:

- Types of work performed
- Number of hours worked per week, and
- Amount of time lost in the previous 12 months due to SC disabilities.

**M21-1 IV.ii.2.F.3.a.**

# Special Development

If a Veteran is currently serving in the National Guard or Reserves, the reviewer should

- Determine if a medical examiner has indicated that a Veteran is unable to perform his/her military duties due to SC disability (ies), and
- Make sure that the latest Service Treatment Records (STRS) are of record. Such records may aid in determining if the disability is preventing the Veteran from performing his/her current Guard or Reserve duties.
  - If the evidence of record is not sufficient to award increased compensation based on IU, the rater will request that the unit commander complete and return [VA Form 21-4192](#).

# Expressly Raised IU Claims

A TDIU claim, whether claimed expressly or reasonably raised by the record, may be part of a service connected original claim for disability compensation or a claim for increased compensation.

- **Expressly claimed** --Veteran has informed VA that he/she is not working due to SC conditions. This claim must be accompanied by a VA Form 21-8940.
  - After 3/24/2015 a VA Form 4138 or VA Form 0820 can no longer be accepted as a complete claim for IU. The VA will send a VA Form 21-8940 for completion.

# Reasonably Raised IU Claims

- Reasonably Raised
  - The Veteran's SC rating meets the minimum schedular criteria found in 38 CFR 4.16(a), AND
  - There is current evidence of unemployability due to an SC disability(ies) in the Veteran's claims folder or under VA control.

If evidence reasonably raises the issue of TDIU, the Rating Veterans Services Representative (RVSR) will infer and defer the issue on the rating decision.

**M21-1 IV.ii.2.F.2.m**

# Reasonably Raised IU Claims

When a reasonably raised claim of IU is identified, and additional evidence is needed the rater will:

- rate all other claimed issues that can be decided
- show the issue of potential IU entitlement as deferred in the rating decision
- develop the reasonably raised IU issue under the *existing* end product (EP), which will remain pending until a merits determination of IU entitlement is made, and
- send the Veteran the section 5103 notice, enclosing [VA Form 21-8940](#) for completion.

M21-1 IV.ii.2F.2.n

# Reasonably Raised IU Claims Cont.

- A Veteran that is just “unemployed” does not automatically meet “reasonably raised”
- And just meeting 4.16 doesn’t “reasonably raise” the issue of IU
- A VA Disability Benefits Questionnaire (DBQ) statement that the veteran has some level of functional loss does not automatically mean that you have a “reasonably raised” claim.

# DBQ Functional Impairment

## SECTION VI - FUNCTIONAL IMPACT

6. DOES THE VETERAN'S RESPIRATORY CONDITION IMPACT HIS OR HER ABILITY TO WORK?

YES  NO (If "Yes," describe impact of each of the veteran's respiratory conditions, providing one or more examples):

- The functional impact question can be found in almost every DBQ.
- The only time the issue of IU should be inferred based on the response to this question is when IU is not specifically claimed, but the examiner indicates the condition either prevents or severely impairs occupational functioning
- Remember: If the VA infers IU as a reasonably raised claim after 3/24/2015 it is an incomplete claim until they receive the VA Form 8940.



# Request TDIU

- **How to request for TDIU?**
- To receive TDIU benefits, the veteran must apply for disability compensation VA Form 21-526EZ and fill out two additional forms:
- Veteran's Application for Increased Compensation Based on Unemployability ([Form 21-8940](#))
- Request for Employment Information in Connection with Claim for Disability Benefits ([Form 21-4192](#))
- You have to provide medical evidence in support of your disability benefits application. That evidence may include doctor's notes, medical test results, and other documentation. The VA will also review your work and educational background. This evidence is used to determine whether you are able to hold down any sort of gainful employment.

# How is a TDIU Claim Developed?

## VA Form 21-8940:

- A substantially complete [VA Form 21-8940](#) is required to establish entitlement to IU, and meets the requirement for a claim submitted on a prescribed form
- A [VA Form 21-8940](#) must be signed by the Veteran and not a third party source such as a power of attorney (POA).
- Failure to return the VA Form 21-8940 will result in an administrative denial completed by the rater on the rating decision.

M21-1 IV.ii.2.F.2.c

# How is a TDIU Claim Developed? Cont.

VA Form 21-8940 requires the Veteran to furnish an employment history for the last five years that he or she worked.

- If the Veteran fails to provide employment history, the evaluation of the underlying issues claimed to cause unemployability must still be adjudicated even though the claim for IU may result in denial

**M21-1 IV.ii.2.F.2.g**

# How is a TDIU Claim Developed? Cont.

The minimum required work history must cover the year preceding the date the Veteran claims to have become too disabled to work.

**Without this minimum required work history on the VA Form 8940**

- The VA will make a reasonable efforts to obtain this information from the Veteran by telephone and letter.
- If there is no response, the issue will be forwarded to rating board.
- This is why its important to have up to date information, express to the veteran that he or she need to be vigilant and respond to any correspondences, whether it be by mail or phone.

**M21-1IV.ii.2.F.2.h**

# How is a TDIU Claim Developed?

## VA Form 21-4192:

- VA will request VA Form 21-4192 for the Veteran's last year of employment even if the Veteran has not worked for five years or more.
- *Exception:* VA will *not* send the VA Form 21-4192 to the Veteran's last employer when the evidence of record clearly warrants a grant of entitlement to IU, veteran states that the employer is no longer in business or other evidence indicates the business is closed or when the Veteran reports self employment.

M21-1 IV.11.2.F.2.i

# How is a TDIU Claim Developed?

## VA Form 21-4192:

- If the information on [VA Form 21-4192](#) only states that the Veteran retired, they will request additional information as to whether the Veteran's retirement was by reason of disability. If so, ask the employer to identify the nature of the disability for which the Veteran was retired.
- (Rater) Do not deny an IU claim solely because an employer failed to return a completed *VA Form 21-4192*.

M21-1 IV.ii.2.F.2.i

# How is a TDIU Claim Developed?

SSA Records –VA will obtain and consider complete copies of the Social Security Administration (SSA) *disability* decision (awards and denials) and any supporting medical records when:

- Evidence of record is insufficient to award IU, AND
- The Veteran's claims folder shows that the Veteran has been examined or awarded *disability* benefits by SSA.
  - **Regional offices (ROs) are not required to request SSA records when a Veteran fails to return the [VA Form 21-8940](#).**

M21-1 IV.ii.2.F.2.k.

# How is a TDIU Claim Developed?

## VR&E Records

When the evidence of record indicates that the Veteran was seen by the Vocational Rehabilitation and Employment Service (VR&E) and evidence of record is insufficient to award IU, obtain and evaluate any records related to this contact.

### **The VR&E records may:**

- document the Veteran's participation in a training program, **or**
- show that training was not feasible or was unsuccessful.

M21-1 IV.ii.2.F.2.I



# How is a TDIU Claim Developed? Cont.

## VR&E Records

The entire Counseling/Evaluation/Rehabilitation (CER) folder is not necessary to adjudicate IU claims that are processed at the RO. If the RO is adjudicating a claim for IU, and the Veteran has an existing VR&E record, (Rater) request that VR&E provide a completed *VA Form 28-1902b, Counseling Record – Narrative Report*, in lieu of the entire CER folder. *VA Form 28-1902b* contains the necessary information concerning the impact of the Veteran's SC and NSC conditions on employability.

**M21-1 IV.ii.2.F.2.I**

# Examinations

VA is not required to provide a general medical exam in connection with every TDIU claim

- VA is required to provide an examination to a claimant: “if the information and evidence of records does not contain sufficient competent medical evidence to decide the claim.”
- Request DBQs specific for the issues alleged to cause IU
- Do not order examinations for disabilities not alleged to cause or contribute to Unemployability, even if the Veteran has received a previous award of SC for the disabilities.

**IV.ii.2.F.2.f.**

# Medical Opinions

**The rater does not** ask the examiner to opine as to whether or not the Veteran is “unemployable” due to his or her SC disabilities. A determination that a Veteran is unemployable is a legal determination that rests solely with the rating activity.

**Instead**, the rater will request that the examiner comment on the functional impairment caused solely by the SC disabilities. It is acceptable for an examiner to comment regarding what kind of work tasks or work environments (if any), to include employment that is sedentary in nature and employment requiring physical labor, the Veteran could perform despite his/her SC disability(ies).

M21-1 IV.ii.2.F.2.f.

# Effective Dates for IU

- If Veteran appeals the decision for IU and the previous claim is still considered open (within a year of the notice letter), the VA will apply the effective date rule that would have been applied in the previous claim.
- If IU was reasonably raised and inferred in a rating decision, and they receive the VA Form 21-8940 within a year of the notification letter, they apply the effective date rule that would have been applied in the previous claim.

# Monitoring Changes in Employability Status

- Changes in the employability of Veterans for whom IU is established are monitored through a yearly SSA wage data match.
- A Veteran who is identified as having verified earned income over the poverty line and is also in receipt of IU will be sent a due process letter and [\*\*VA Form 21-4140, Employment Questionnaire\*\*](#), with an accompanying [\*\*VA Form 21-4138, Statement in Support of Claim\*\*](#).
- The Veteran will be required to identify and explain his/her earned income via return of [\*\*VA Form 21-4140\*\*](#).

M21-1 IV.ii.2.F.6.a.

# Discontinuance of Monitoring Changes

- Monitoring changes in employability status is not required when the Veteran
- has *not* been identified in the SSA data match as having verified earned income above the poverty line
- has an IU rating that has been in effect for 20 or more continuous years, or
- has had an IU rating replaced with a 100-percent schedular evaluation.

**M21-1 IV.ii.2.F.6.b.**

# Is TDIU Permanent?

- **IS TDIU PERMANENT?**

- TDIU benefits are normally permanent, but is not necessarily, permanent. If the VA decides your TDIU benefits will be permanent, this will be indicated in your rating decision. It may be done in one of several ways:
- There may be a “Permanent and Total” (P&T) box on your form that is checked
- The form may state “no further exams are scheduled”
- The letter may indicate you are eligible for Chapter 35 DEA or CHAMPVA benefits
- Alternatively, **TDIU** benefits are **permanent** if the Veteran is at least 70 and has received **TDIU** benefits for at least 20 years.

# Reduce or Terminate

- **CAN THE VA REDUCE OR TERMINATE MY TDIU BENEFITS?**
- The VA can terminate your TDIU benefits if it determines that your condition has improved to the point that you are able to maintain substantially gainful employment.
- Your TDIU rating may also be reduced if you are able to maintain substantially gainful employment for 12 consecutive months.
- However, this rule does not apply to veterans who are working in what is known as a protected work environment. This designation usually applies to a situation where some special accommodation is made for the veteran.



# Benefits

- Benefits include:
  - At 100% TDIU you have restrictions as to income.
  - Full healthcare with no copays at 50% or more.
  - Travel pay at 30% or more.
  - VR&E at 10% or more.
  - Base IDs (Exchange/Commissary/MWR) for Veteran and dependents unless you are retired military.
  - VA dental or with VR&E or SC mouth or jaw injuries.
  - Possible SSDI (Time Limited!)
  - S-DVI waiver of \$10,000 life insurance at 100% IU or SSDI (Time Limited!)
  - CHAMPVA (dependent's medical) if you are permanent (P&T) unless you have TriCare.
  - DEA (dependent's education) if you are permanent (P&T).
  - Federal student loan forgiveness or with SSDI.
  - VADIP (VA Dental Insurance Program) for Veterans enrolled in VA healthcare
  - VADIP (VA Dental Insurance Program) for dependent's if CHAMPVA eligible
  - Space-A Flights (Cat VI) - Veteran only
  - Non-VA ER if you are permanent (P&T)
  - 3 free non-VA Urgent Care visits per calendar year at 50% and above
  - Hearing aids and eye exams and glasses are included with VA Healthcare.
  - Here is a link to all the federal benefits.

Not inclusive

# Poll Question

- Monitoring changes in employability status is not required when the Veteran:
  - a. has not been identified in the SSA data match as having verified earned income above the poverty line.
  - b. has an IU rating that has been in effect for 20 or more continuous years
  - c. has had an IU rating replaced with a 100-percent schedular evaluation.
  - d. All of the Above
- M21-1 IV.ii.2.F.6.b.

# Poll Question #3

- Monitoring changes in employability status is not required when the Veteran:
  - a. has not been identified in the SSA data match as having verified earned income above the poverty line.
  - b. has an IU rating that has been in effect for 20 or more continuous years
  - c. has had an IU rating replaced with a 100-percent schedular evaluation.
  - d. All of the Above
- M21-1 IV.ii.2.F.6.b.

# Summary

While it may seem like a complex process to achieving a total disability rating, the key thing to remember is:

Documentation, Documentation, Documentation

# Review Course Objectives

We will now be able to:

- Define “Individual Unemployability”
- Discuss “General Requirements”
- Discuss “Reasonably Raised Individual Unemployability Claims”
- Discuss “How Individual Unemployability Claims are Developed”
- Discuss “How Individual Unemployability is monitored”
- Discuss “Benefits”

# Questions



# Next Lunch and Learn

Mandatory Q1 FY21 Training S: February 26, 2021

PsychArmor: Three Presentations, 48 Minutes Total

1. S.A.V.E
2. Advanced De-escalation Technique for Volunteers
3. Communication Skills with Veterans

**Check Junk and SPAM Folders**

Next Monthly Lunch and Learn:

March 10, 2021 @ 11:30 CST or 12:30 EST