



Individual Unemployability

Compensation and Pension Service
Veterans Benefits Administration



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Overview

- Individual Unemployability. Individual Unemployability is a part of VA's disability compensation program that allows VA to pay certain Veterans disability compensation at the **100% rate**, even though VA has not rated their service-connected disabilities at the total level.



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Individual Unemployability

- **Am I eligible for disability benefits from VA?**
- You may be eligible for disability benefits if you meet both of the requirements listed below.
- **Both of these must be true:**
- You have at least 1 service-connected disability rated at 60% or more disabling, or 2 or more service-connected disabilities—with at least 1 rated at 40% or more disabling and a combined rating of 70% or more—**and**
- You can't hold down a steady job that supports you financially (known as substantially gainful employment) because of your service-connected disability. Odd jobs (marginal employment) don't count.
- **Note:** In certain cases—for example, if you need to be in the hospital often—you may qualify at a lower disability rating.
- **Who's covered?**
- Veterans



What kind of benefits can I get?

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- Health care
- Compensation (payments)



How do I get these benefits?

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- A Veteran's Application for Increased Compensation Based on Unemployability (VA Form 21-8940)
[Download VA Form 21-8940 \(PDF\)](#)
and
- A Request for Employment Information in Connection with Claim for Disability Benefits (VA Form 21-4192)
[Download VA Form 21-4192 \(PDF\)](#)

Rating requirements



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- You have at least 1 service-connected disability rated at 60% or more disabling, or 2 or more service-connected disabilities—with at least 1 rated at 40% or more disabling and a combined rating of 70% or more



Gainful Employment

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- The Court held that substantially gainful employment is that which is ordinarily followed by the nondisabled to earn their livelihood with earnings common to the particular occupation in the community where the veteran resides. Substantially gainful employment suggests a living wage.
- The Court held that the ability to work only a few hours a day or only sporadically is not the ability to engage in substantially gainful employment and that the mere theoretical ability to engage in substantial gainful employment is not a sufficient basis to deny benefits. Also, the Court indicated that the test of whether a person is unable to pursue substantially gainful employment is whether a particular job is realistically within the physical and mental capabilities of the claimant.

Gainful Employment



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- **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.
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- Substantially gainful employment is
- competitive (not protected) employment, and with
- earnings exceeding the amount established by the U.S. Department of Commerce, U.S. Census Bureau, as the poverty threshold for one person.



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Extra-Schedular Consideration

It is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. Therefore, rating boards should submit to the Director, Compensation Service, for extra-schedular consideration all cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the percentage standards set forth in paragraph (a) of this section. The rating board will include a full statement as to the veteran's service-connected disabilities, employment history, educational and vocational attainment and all other factors having a bearing on the issue.

Evaluating

On the VA Form 21-8940- it asks what service connected condition prevents you from maintaining gainful employment; all disabilities listed there will be examined, if an examination has not been done recently.

The examiner will be asked to provide an opinion as to your ability to maintain gainful employment



Questions ?