The American Legion

For God and Country

bulletin

National Veterans Affairs and Rehabilitation Commission
1608 K Street, N.W. • Washington, D.C. 20006
K. Robert Lewis, Chairman - Connecticut
Peter S. Gaytan, Director - Maryland

28-08 September 26, 2008

Evaluation of Traumatic Brain Injury (TBI)

On September 23, 2008, the Department of Veterans Affairs (VA) published a final rule in the Federal Register amending the Schedule for rating Disabilities by revising the portion of the Schedule that addresses neurological conditions and convulsive disorders in order to provide detailed and updated criteria for evaluating the residuals of TBI. The effective date of this amendment is October 23, 2008, and applies to all applications for benefits received by VA on or after the effective date. The old rating criteria will apply to all claims received by VA before the October 23, 2008, effective date. However, a veteran whose residuals of TBI were rated under a prior version of 38 C.F.R. § 4.124a, diagnostic code 8035, will be permitted to request review under the new criteria even if his or her condition has not worsened since the last review. Submission of additional evidence is not necessary for this review. The effective date of any increase in disability compensation or award of benefits based solely on the new criteria would be no earlier than the effective date of the new criteria (October 23, 2008) and will be assigned under the current regulations governing effective dates. An existing rating will not be reduced based solely on the new criteria.

Again, reviews under the new criteria, for those whose claims were adjudicated or filed prior to the effective date of the new rating criteria, must be specifically requested. Although VA will publish information regarding this change in TBI

ratings in its OIF/OEF Reviews and other publications, accredited American Legion representatives are encouraged do their own outreach as well as review their files of prior TBI claims and take action as appropriate.

The final regulation can be downloaded from the Federal Register web site at:

http://edocket.access.gpo.gov/2008/E8-22083.htm

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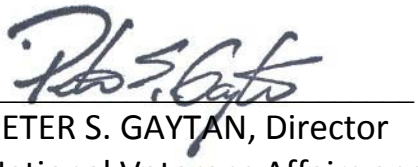

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