Making Sense of the Inscrutable: ACDUTRA/INACDUTRA, National Guard, and Reserve Service

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Reserve and Guard Mobilization Numbers

The total number currently on active duty from the Army National Guard and Army Reserve is 70,308; Navy Reserve, 4,657; Air National Guard and Air Force Reserve, 10,598; Marine Corps Reserve, 5,717, and the Coast Guard Reserve, 776. This brings the total National Guard and Reserve personnel who have been activated to 92,056, including both units and individual augmentees.

(October 19, 2011)
Service Overview
Acronyms and Terms

• Active duty for training
  – ACDUTRA
  – ADT
  – ADSW (Active Duty for Special Work)
  – AT (Annual Training)
  – SADT (Special Period of Active Duty for Training)
• Inactive duty for training
  – INACDUTRA
  – IDT
  – Weekend drill
<table>
<thead>
<tr>
<th>Practical Differences</th>
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<tbody>
<tr>
<td><strong>ACDUTRA</strong></td>
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<tr>
<td>• Generally, two weeks a year</td>
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<tr>
<td>• Reality?</td>
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<tr>
<td><strong>INACDUTRA</strong></td>
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<tr>
<td>• Generally, one weekend a month</td>
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<tr>
<td>• Reality?</td>
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Legal Ramifications

- Military is essentially redefining ACDUTRA and INACDUTRA
- Policy was set according to the typical time that each type of service took
- Hurts the veteran who applies for benefits
- Best for practitioner to argue that a veteran was performing ACDUTRA-type activities during a prolonged INACDUTRA period
Figuring Out Service Dates
Helpful(?) Documents

• DD Form 214
  – Active duty service
  – ACDUTRA service (90+ days)
• Pay stubs from DFAS
• Drilling schedule from unit
• Orders (ACDUTRA only)
• Others?
Points:
What are they and do they help the practitioner figure out service dates?
What happens when a service member is injured/sick on ACDUTRA/INACDUTRA?
Injuries and Illness

• Sick bay versus seeing a corpsman/medic
• Documentation process, if any
• Use of private hospitals/civilian doctors
• Association of documentation of injury/disease with record
• Varies with unit
Entrance & Separation Exams: Are they provided?
Legal Overview
Definitions

- It’s all about the Veteran!!

- “Active Military, Naval, or Air Service”
## Definitions

<table>
<thead>
<tr>
<th>Active Duty for Training (ACDUTRA)</th>
<th>Inactive Duty for Training (INACDUTRA)</th>
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<tbody>
<tr>
<td>Full-time duty performed by Reserves for training purposes.</td>
<td>Duty (other than full-time duty) prescribed for the Reserves.</td>
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Service Components

Regular Forces, National Guard, Reserve Forces, Individual Ready Reserve
Service Components

National Guard

To have basic eligibility for veterans benefits, a National Guardsman must have been ordered into Federal service by the President of the United States.
Record Migration

- Branch of service
- Discharge date
- Reserve obligation
Establishing a Claim
Establishing “Veteran” Status

General Rule:

To qualify for VA benefits, a claimant must be a “veteran.”
Who Is a “Veteran”?
Veteran

A person who served in the **active military, naval, or air service**, and who was discharged or released therefrom under conditions other than dishonorable. 38 U.S.C.A. § 101(2); 38 C.F.R. § 3.1(d).
Active Military, Naval, or Air Service

1. Active duty;
2. Any period of ACDUTRA during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in the line of duty;
3. Any period of INACDUTRA in which the individual was disabled or died from an injury incurred or aggravated in the line of duty or from acute myocardial infarction, cardiac arrest, or cerebrovascular accident occurring during such training.

38 U.S.C.A. § 101(24); 38 C.F.R. § 3.6(a)
How to Establish “Veteran” Status

1. Serve on active duty;
2. Serve on a period of ACDUTRA and incur or aggravate an injury or disease during that period of ACDUTRA;
3. Serve on a period of INACDUTRA and incur or aggravate an injury* during that period of INACDUTRA.

*injury includes cerebrovascular accident (stroke), cardiac arrest, and myocardial infarction.
“Veteran” Status Through Aggravation


Requires a preexisting injury or disease that
1. Increased in disability during period of service; and
2. Such increase was beyond the natural progress of the disorder/disease.
Veteran has the burden of establishing BOTH elements.
Establishing Service Connection

**ACDUTRA:**
Injury or disease incurred in or aggravated during a period of ACDUTRA.

**INACDUTRA:**
Injury incurred in or aggravated during a period of INACDUTRA.
Injury vs. Disease
“Injury”
Establishing Service Connection Through Presumptions
Presumption of Soundness

_Every veteran_ shall be taken to have been in sound condition _when examined, accepted and enrolled for service_, except as to defects, infirmities, or disorders noted at the time of examination, acceptance, and enrollment, or where clear and unmistakable evidence demonstrates that the injury or disease existed before acceptance and enrollment AND was not aggravated by such service.

Presumption of Soundness

• Applies to all who served on active duty for their period of active duty.

• Does not apply to claimant who only served on ACDUTRA and who is not otherwise a veteran.
Presumption of Soundness

If the claimant has achieved “veteran” status through a PRIOR PERIOD OF ACTIVE DUTY, then the presumption of soundness applies for a later period of ACDUTRA.
WHY?

38 U.S.C.A. § 1111 states

“every veteran.”

“Every veteran shall be taken to have been in sound condition when examined, accepted and enrolled for service...”
BUT!

38 U.S.C.A. § 1111 also states:

Every veteran shall be taken to have been in sound condition when examined, accepted and enrolled for service.

Thus, the veteran must have had an entrance examination prior to that period of ACDUTRA (the period where the claimant is claiming injury or disease).
Presumption of Aggravation

A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

Presumption of Aggravation

• Applies to all who served on active duty for that period of active duty.

• For a claimant who achieved “veteran” status for a PRIOR PERIOD of active duty, the presumption of aggravation DOES NOT APPLY for a later period of ACDUTRA or INACDUTRA.
WHY?

38 U.S.C.A. § 1153 specifically uses the term **active military, naval, or air service**:

1. Active duty;
2. Any period of ACDUTRA during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in the line of duty;
3. Any period of INACDUTRA in which the individual was disabled or died from an injury incurred or aggravated in the line of duty or from acute myocardial infarction, cardiac arrest, or cerebrovascular accident occurring during such training.

38 U.S.C.A. § 101(24)
WHY?

The presumption of aggravation requires *active military, naval, or air service*...

*Active military, naval, or air service* requires a disability from disease or injury incurred or *aggravated in the line of duty* during ACDUTRA (or injury during INACDUTRA)...

*Aggravation* requires that the claimant prove BOTH that a preexisting injury or disease increased in disability during period of service; and such increase was beyond the natural progress of the disorder/disease...

The presumption of aggravation removes one element that is specifically required by the definition of active military, naval, or air service...
Therefore...

The presumption of aggravation cannot apply to that later period of ACDUTRA or INACDUTRA.
WHY?

“active military, naval, or air service”

Requires actual aggravation during IN/ACDUTRA

Definition of aggravation requires that claimant prove 2 elements

Thus, PoA cannot apply to later period of IN/ACDUTRA.

Presumption of aggravation removes claimant’s burden of proving Element 2

Element 1: preexisting disability increased during service;
Element 2: increase was beyond natural progress of disease
Presumption of Service Connection
(Chronic Diseases)

Any veteran who served in the *active military, naval, or air service* after December 31, 1946, is entitled to presumption of service connection for a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service.

Presumption of Service Connection (Chronic Diseases)

• Applies to all who served on 90 days of continuous, active service for that period of active duty.

• For a claimant who achieved “veteran” status for a PRIOR PERIOD of active duty, the presumption of service connection NEVER APPLIES for a later period of ACDUTRA or INACDUTRA.
WHY?

38 U.S.C.A. § 1137 specifically uses the term *active military, naval, or air service*:

1. Active duty;
2. Any period of ACDUTRA during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in the line of duty;
3. Any period of INACDUTRA in which the individual was disabled or died from an injury incurred or aggravated in the line of duty or from acute myocardial infarction, cardiac arrest, or cerebrovascular accident occurring during such training.

38 U.S.C.A. § 101(24)
WHY?

The presumption of service connection requires *active military, naval, or air service*...

*Active military, naval, or air service* requires a disability from disease or injury *incurred* or aggravated *in the line of duty* during ACDUTRA...

The presumption of service connection applies where there is *no evidence* that disease occurred during service...

Cannot have both evidence that disease was incurred during ACDUTRA and no evidence that disease was incurred during ACDUTRA.
Therefore...

The presumption of service connection cannot apply to that later period of ACDUTRA.
WHY?

“active military, naval, or air service”  Requires actual incurrence of disability during IN/ACDUTRA.  Presumption of service connection only applies to claims where there is NO evidence of incurrence during service.

Thus, PoSC cannot apply to later period of IN/ACDUTRA.  Impossible to show BOTH evidence of incurrence and no evidence of incurrence.
Unanswered Question
Unanswered Question

If a claimant establishes “veteran” status for a period of ACDUTRA (or INACDUTRA) and applies for a different disability during that same period of ACDUTRA (or INACDUTRA), does the presumption of service connection and/or the presumption of aggravation apply to that claim?
Our Guess?
Questions?
Hypotheticals

Question 1

During a period of ACDUTRA in August 2003, Pvt. Malone breaks his ankle while on a hike. Can Pvt. Malone establish service connection for a resulting ankle disability?

*Probably, service connection can be awarded for injury incurred during ACDUTRA.*
Question 2

During the same period of ACDUTRA Pvt. Malone is first diagnosed with diabetes mellitus, can he establish service connection for this disability?

Possibly, service connection can be awarded for a disease incurred during ACDUTRA.
Question 3

If Pvt. Malone was on a weekend drill (INACDUTRA) when he is first diagnosed with diabetes mellitus, can he establish service connection for that disability?

No, service connection cannot be awarded for a disease that occurred during INACDUTRA.
Question 4

Assuming Pvt. Malone cannot establish service connection for any disability/disease previously listed, does the presumption of soundness apply to Pvt. Malone’s period of ACDUTRA? Why?

No. *The presumption of soundness only applies to a claimant who has “veteran” status.*
Question 5

Service connection is awarded for the ankle disability previously described. Two weeks after the period of ACDUTRA, Pvt. Malone is diagnosed with myocarditis (a chronic disease under section 3.309(a)), is this disability presumed to have been incurred during the period of ACDUTRA?

*The Court has not specifically addressed whether the presumption of service connection for a chronic disability could apply during a period of ACDUTRA if service connection has been awarded for another disability during that period of ACDUTRA.*
Question 6

A previous hip disability is noted at the time Pvt. Malone starts his period of ACDUTRA. He later files a claim for aggravation of that disability including a treatment record from a medic who indicates an increase in the hip disability during the period of ACDUTRA. Does VA have the burden to show that the increase in disability was due to the natural progress of the disease?

No. The Veteran must show that the worsening occurred during and was caused by the period of ACDUTRA as the presumption of aggravation is not applicable where a claim is based on a period of ACDUTRA.
Question 7

During a weekend drill (INACDUTRA) Pvt. Malone has a cerebrovascular accident while cleaning some equipment. Can Pvt. Malone establish service connection for the cerebrovascular accident?

*Probably. Acute myocardial infarction, cardiac arrest, and cerebrovascular accident are considered injuries.*
Consider if Pvt. Malone served on active duty in the Army prior to his reserve service.
Question 8

Does the presumption of soundness apply to Pvt. Malone’s period of ACDUTRA? Why?

*If Pvt. Malone had an entrance examination the presumption of soundness could attach as he is a “veteran” for VA purposes.*