

PAIN AS A DISABILITY

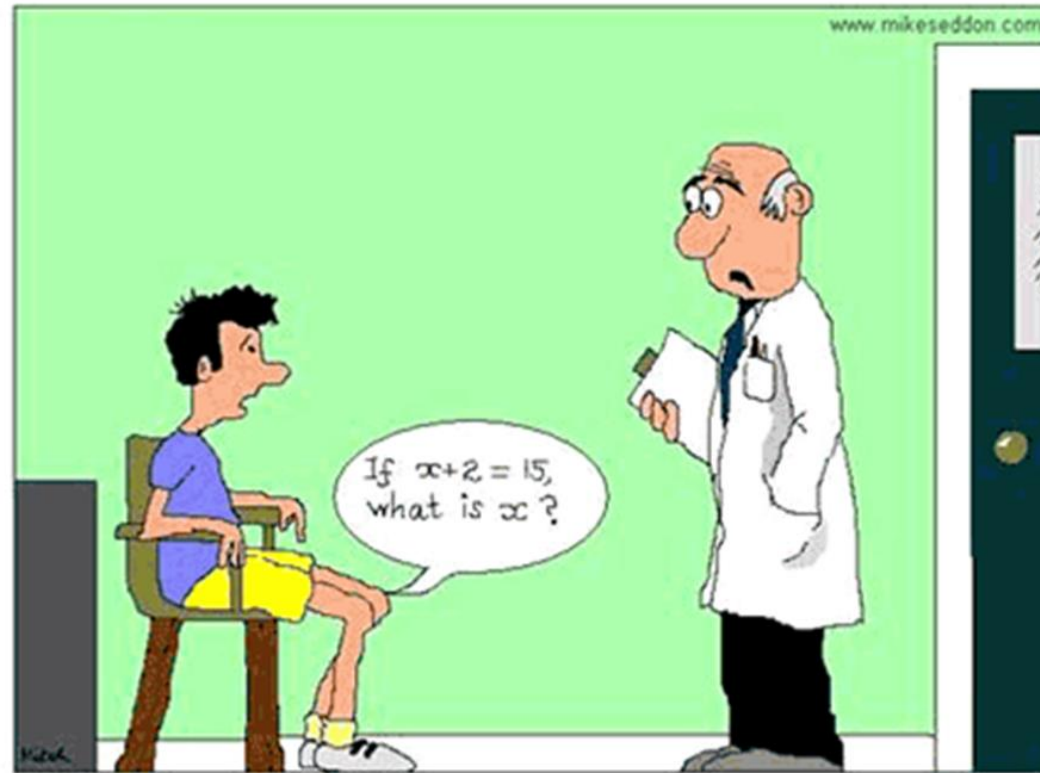
PAIN AS A DISABILITY

1. CHRONIC PAIN
2. SAUNDERS v. WILKIE
3. POST SAUNDERS

CHRONIC PAIN

Vertical Streaming

By Mike Seddon



" It's my knee, Doctor. It's still giving me problems."

CHRONIC PAIN

Chronic pain means pain lasting longer than 6 months

CHRONIC PAIN AFFECTS SERVICE MEMBERS AND VETERANS MORE THAN CIVILIANS

A 2011 report by the Institute of Medicine (IOM) states approximately 100 million people in the United States suffer from **chronic pain**, and that it “**disproportionally affects**” soldiers who are currently serving in the military or are veterans of the Iraq and Afghanistan wars.

CHRONIC PAIN AFFECTS SERVICE MEMBERS AND VETERANS MORE THAN CIVILIANS

The Journal of the American Medical Association found that there was an **“alarmingly high rate” of chronic pain** in service members deployed for combat —approximately 44%— as compared to 26 percent in civilians.

SAUNDERS v. WILKIE

Background: Melba Saunders had sore knees and claimed disability compensation based on **PAIN** from a bilateral knee disorder.

Issue: Whether pain can constitute a disability under 38 USC § 1110

Federal Circuit Court Held: pain alone can serve as functional impairment and therefore qualify as disability – even without an underlying diagnosis.

SAUNDERS v. WILKIE

Melba served on AD in the Army from 1987 – 1994

No knee issues prior to service

Diagnosed during AD with patellofemoral pain syndrome (PFPS)

Exit exam noted the veteran complained of knee pain / swelling

SAUNDERS v. WILKIE

- 1994 Melba filed claim for knees, hips and feet
RO denied due to NO-SHOW at C&P exam
no appeal
- 2008 Melba filed claim for knees and feet
RO denied
noted PFPS in service but no current medical
evidence of knee condition



SAUNDERS v. WILKIE

- 2009 NOD cited in-service diagnosis of PFPS and continuity of symptoms
- 2010 RO continued denial for lack of evidence of current treatment for a knee condition

(syndrome describes group of symptoms – not a diagnosis)

PATELLOFEMORAL PAIN SYNDROME



SAUNDERS v. WILKIE

2011 VA exam

Melba reported pain performing activities such as running, squatting, bending and climbing stairs

the VA examiner found no anatomic abnormality, weakness or reduced range of motion BUT

noted functional limitations on walking, unable to stand for more than a few minutes and sometimes required use of a cane or brace

SAUNDERS v. WILKIE

The examiner diagnosed Melba with subjective knee pain and opined this pain lead to MISSED WORK and impacted Melba's ability to complete DAILY ACTIVITIES.

RO denied for failure to demonstrate a currently diagnosed knee condition linked to military service.

SAUNDERS v. WILKIE

BOARD OF VETERANS APPEALS

Melba argued PAIN in service and after with nexus should be sufficient for service connection

BVA denied for lack of a present disability citing Sanchez-Benitez v. West (pain alone is not a disability for purpose of VA disability compensation)

SAUNDERS v. WILKIE

CAVC - Single Judge Decision

Affirmed the BVA decision denying Saunders' claim

CAVC - Panel Review

Adopted CAVC single judge decision

SAUNDERS v. WILKIE

Issues on appeal to Fed Cir:

- (1) Whether Fed Cir has jurisdiction
- (2) Whether pain alone without underlying pathology, disease or injury can constitute a “disability” under 38 USC § 1110**
- (3) Proper remedy

SAUNDERS v. WILKIE

38 USC § 1110 Basic entitlement

For **disability** resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

3 PRONGS OF SERVICE-CONNECTION

- (1) Current disabling condition;**
- (2) In-service incurrence or aggravation of disease or injury;**
and
- (3) Causal relationship between the current disability and the in-service disease or injury**

SAUNDERS v. WILKIE

FINDING:

“Disability” in § 1110 refers to **functional impairment of earning capacity**
– not the underlying cause of the impairment

To establish the presence of a disability, a veteran will need to show that her **pain reaches the level of a functional impairment of earning capacity.**

POST SAUNDERS CASES

WAIT v. WILKIE, Vet.App. Aug. 26, 2020.

To demonstrate functional impairment of earning capacity due to pain, evidence should show **severity, frequency and duration** of manifestation and resulting impact on ability to function under ordinary conditions of daily life

MARTINEZ-BODON v. WILKIE, Vet.App. Aug 11, 2020.

Mental health disabilities still require DSM-5 diagnosis