

Tips for Filing a VA Claim Related to K2

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For those of you who have not filed a claim with the VA, but intend to, here are a few tips. Please be aware that I filed a K2-related claim for prostate cancer in 2009 and it was approved in 2010. Although my circumstances were different than most of you folks, because of the timing of my diagnosis and the fact that I underwent detailed physicals immediately prior to and immediately after deploying, it was abundantly clear (so much so that even the VA could not ignore it) that my cancer was service-related.

- 1) If you're sitting on the fence about whether or not to file a claim, you need to file a claim. As aggravating as the claim process is, you want to go on record---as early as possible---that you believe your medical condition is related to your military service. Even if your claim is denied, you want your situation to be on record, particularly since you might be diagnosed with a more significant ailment years later. Moreover, in filing a claim, you are supporting your fellow K2 vets since an onslaught of claims will compel the VA to take notice.
- 2) I should emphasize the need to file a claim as early as possible, if you even remotely suspect your condition is service-related. Except in special circumstances, the VA will only backdate your claim to the date when you filed it. My case is a perfect example. I was diagnosed with cancer in 2003. I filed in 2009. The VA backdated my claim to 2009, even though I underwent surgery in 2003 and wasn't pronounced cancer-free (theoretically, at least, since it came back later) for approximately another year. Why is that significant? Because in most instances, when you undergo surgery or similar treatment (radiation, chemotherapy, etc.) the VA rates you at 100% disabled until you finally receive a clean bill of health. Be aware that if you are even considering filing a claim, and need time to get your paperwork and supporting materials together, you can file a VA 21-0966 (Intent to File a Claim for Compensation and/or Pension) which will "freeze" the clock in your favor, and grant you extra time to get your act together.
- 3) As with everything associated with the VA, expect a painful and lengthy ordeal. To reinforce that point, EXPECT A LENGTHY AND PAINFUL ORDEAL. Despite what they may repeatedly claim, the VA does not want to help you; they want you to go away and die quietly.
- 4) Although I did not do so, you should strongly consider seeking the assistance of a VSO to assist you with preparing your claim. Most of the various Veteran's organizations (VFW, American Legion, etc.) have excellent VSOs who offer their services for free. The services offered by most of these volunteer VSOs are on par with (or exceed) what you might receive if you retain an attorney specializing in veterans affairs.
- 5) When you write your claim, stick to the facts and diligently strive to keep your emotions out of it. If you're not a good writer, get someone to help you, and then find someone else to proofread what you've written before you submit it. If you submit a claim that looks like it was written by a third-grader, the VA will roll right over you. If you submit something is clear, concise, well-written and grounded in facts, then the VA knows that you're not someone who's likely to roll over and go away. Make sure that your claim specifically makes reference to any supporting documents that you are submitting, such as buddy statements, memorandums, etc. FYI, I think that the memo from our battalion S-2 (the one that stated that there were two environmental assessments for K2, and one of them was classified) contributed immensely to my claim's approval.

6) As I stated previously, dealing with the VA is an endurance contest. When you submit your claim, you can expect to receive follow-up form letters asking you to submit medical records and other supporting documents. You should expect that the VA will lose virtually everything that you send them, and they will ask for you to resubmit the same documents over and over and over. I am not kidding. I don't know if it's a delaying tactic or whether they're just incredibly inept, or a combination of both, but plan in advance for this to happen. You will receive form letters to submit to your physician(s) asking them to submit records to the VA. I recommend that when you hand-carry this form to your physician and ask for a duplicate set of the same records, since the VA is just going to ask for them again.

7) Record every conversation you have with any VA bureaucrats or medical professionals. Make sure that you inform them up front, so they are aware that they are being recorded.

8) Make sure that you block out adequate time when and if you call the VA. You will rarely, if ever, get a direct number and name to call; instead, you will almost call a 1-800 number where you can expect to remain on hold indefinitely. Whenever you finally speak with an actual human being (an incredible rarity with the VA) make a point to get their name and direct number, because it's a sure bet that you will be talking with them again, and having their name and number allows you to skip the 1-800 roulette game. You don't have to be ugly about this; just politely ask for their name and direct number so you can immediately call them back if you're disconnected. Likewise, if they transfer your call, ask for the name and number of the person that you're being transferred to, just in case the call is dropped. BTW, one thing that might be useful to this group would be to amass a directory of otherwise anonymous VA bureaucrats (maybe a spreadsheet of names, phone numbers, locations, titles) that can be shared. FYI, a similar technique proved essential in destroying terrorist networks in Iraq and elsewhere, so it might be useful in dealing with the VA, where VA bureaucrats obviously strive to be at least as invisible as terrorists.

9) Even though you may be seething with anger when you talk to VA reps, remember to be firm, professional and polite. Stick to the facts; leave emotion out of the conversation.

10) VA folks rarely answer their phones when they ring, so plan on leaving a lot of messages. Regardless of how angry you might be, take a deep breath before you leave a message, and leave one that is calm, professional, and to the point. If you do that, it's far more likely that you will get a call-back in a timely manner, if the VA rep has a choice between calling you or someone who left a threat-filled angry rant.

11) Eventually, you might be called in for an exam at a VA facility. Take some time to prepare for this event. Review your medical records so that you are familiar with the pertinent details of your case. Go on-line to determine common signs and symptoms associated with the condition that you are claiming; I don't recommend this so you can recite a list of symptoms to defraud the VA, but so you might identify things that you may already be experiencing but have not previously associated with your condition. As an example of this, although it's not associated with a VA claim, a friend of mine was eventually diagnosed with a nickel allergy (which is actually a very common condition) after speaking to a dermatologist about a chronic itching sensation on his upper arms and shoulders. Who would have known that?

12) When you undergo an exam, be honest and be thorough in reporting your condition. By in large, I have found VA medical personnel to be competent and caring, and most of them will help if you are cooperative. Don't report symptoms that you are not experiencing. Be thorough in reporting those that you are. Bear in mind that the nurse and/or physician can only record---by law---what you report to them. They may ask you questions, but they are not going to coach you through a diagnosis. Make sure that what you describe is exactly consistent with the medical records that your physicians have submitted.

13) If you're ever tempted to threaten a VA rep with legal action, don't bother. They clearly know that they can't be sued because of sovereign immunity. But if you want to get their undivided attention, make sure that they know you're aware of the Federal Torts Claim Act and Standard Form 95 (Claim for Damage, Injury or Death.) If you're not familiar with SF 95, Google it.

14) In closing, please know that you can file a claim against the VA and win. You cannot win if you don't jump into the fight. Granted, what you eventually receive may not be worth your time, energy and aggravation, but you will have it on record that your condition is service-related, which is critical if you suffer any other health effects later in life. Moreover, in submitting your claim related to service at K2, you are helping other K2 vets by getting this matter on record so that it can receive the attention that it merits. Best of luck, and much love to all.