

When a Veteran Is Injured by the VA: The Federal Torts Claims Act.

When you are injured by a VA doctor or other employee of the Department of Veterans Affairs (VA), you have two legal remedies available to you. You can file a claim with the VA for disability compensation (commonly referred to as a Section 1151 claim), and/or you can seek money damages under the Federal Torts Claims Act (FTCA). The purpose of this article is to explain your rights under the FTCA.

Federal Torts Claims Act vs. Section 1151

You can file a lawsuit under the Federal Torts Claims Act (FTCA) when any employee of the VA acts negligently and causes you an injury. In contrast, Section 1151 is limited to claims of injury resulting from a VA hospital, outpatient clinic, medical examination or surgery. Under the FTCA, a negligent act by any agent of the VA (for example, even a janitor leaving a wet floor on which you slip and get hurt) can be the basis of a medical malpractice lawsuit. This means that the FTCA covers many more negligent acts than Section 1151 benefits do.

It's usually less complicated to get benefits under a Section 1151 claim than under an FTCA claim. The paperwork is easier to file, and the evidence required in a Section 1151 disability compensation claim is typically less than that required in an FTCA claim.

FTCA Damages

Unlike the VA rating system for service-connected disabilities, money damages under the FTCA are not based on an evaluation of how your disability impacts your ability to earn a living. Instead, the money damages you could win are calculated based on your suffering and the economic loss that has resulted from your injury. And unlike disability compensation, which is paid monthly over a number of years, you receive payment in one lump sum if you win an FTCA lawsuit.

It is important to remember, however, that these cases are difficult to win and can go on for many years.

How to File an FTCA Claim

First, it is critical to have an attorney file an FTCA claim. These claims are not easy to win and you will need expert assistance. Use our lawyer directory to find a personal injury lawyer (rather than a disability lawyer) to help you.

Administrative FTCA Claim

The first step is to file an administrative FTCA claim with the VA. This is done using Standard Form 95, Claim for Damage, Injury or Death. The statute of limitations for filing this claim is two years from the time of injury. Unlike most other VA claims, you do not file

this application with your VA regional office. Instead, you file it with the VA Regional Counsel that is responsible for the region where your injury took place.

Your claim should state your injury, the negligence that you believe caused the injury, and a definite sum of damages you would like to receive. A federal court can't award you any more damages than you ask for in your administrative claim, so it is critical to get expert assistance in determining the amount of damages to claim.

The types of evidence VA will require to you submit may include:

- itemized bills for medical expenses
- information about future expected medical expenses
- a statement from your treating physician
- a VA medical exam report (mental and/or physical), and
- a statement from your employer about your time away from work.

Federal Court FTCA Claim

If the VA denies your administrative VA claim, you have six months from the date of that denial to file your FTCA lawsuit.

If the VA did not make a decision on your administrative claim after six months, it is called a "constructive denial," meaning that your claim has been denied. You have six months from the date of a constructive denial to file an FTCA lawsuit. If you do not file your lawsuit within this time frame, you may lose your right to get money damages in the federal courts.

You'll need a disability lawyer or personal injury lawyer to file your FTCA lawsuit.

Offset of Section 1151 Benefits

If you get an FTCA settlement and are awarded Section 1151 benefits (disability compensation), the VA won't pay you the disability compensation benefits until the total amount of the settlement is "offset." What this means is that no VA benefits will be paid to you for your injury until the total amount of benefits withheld by the VA equals the total amount of your FTCA settlement. This is to prevent you from being compensated twice for the same injury.

How to Avoid the Offset

Your attorney can structure your written FTCA settlement to avoid the offset, or at least to reduce it. Also, any offset will not occur until after the FTCA settlement or court judgment of your lawsuit becomes final. While the VA is appealing a court decision in your FTCA case, for example, you are entitled to your full Section 1151

benefits. For this reason, it can be beneficial to file for Section 1151 disability compensation as early as possible after injury.

When the Offset Doesn't Apply

If your injury occurred while you were receiving treatment for a service-connected disability, and the injury caused a worsening of the service-connected disability or a new disability, any compensation you receive under Section 1151 will not be offset by an FTCA settlement. You will be entitled to receive the full amount of increased disability compensation and FTCA damages without any reduction in your benefits.

Attorneys' Fees

Attorneys are limited in how much they may charge you for helping with your FTCA claim. For helping you win an administrative



, an attorney can charge you no more than 20% of the monetary award the VA gives you. For representing you in a lawsuit, an attorney can charge you no more than 25% of the damages you are ultimately awarded. You only have to pay the fee if you win your case, and most attorneys will front any costs that need to be paid in order to file the lawsuit.

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