

Chapter One

Basic Survival Skills

How to Use this Book

By Craig Kubey and Paul Sullivan

Life is unfair.
—*John F. Kennedy*

This book will help you survive in the world of the veteran. This world, like the world at large, is not a fair world. Your country asked you to take years out of your life and to risk life itself. But when you came back, it gave you some praise but little comfort. Instead, it gave you the VA.

Though there are other federal agencies that benefit the veteran, and though there are many state programs for veterans, the VA (formerly the Veterans Administration and now the Department of Veterans Affairs, but always called the VA) is more important to most vets than all the rest combined.

But the VA isn't what it should be. It's a bureaucracy. Full of programs that cover enough vets and programs that don't, full of people who care and people who don't, full of prompt responses and endless delays and full of rules, rules, rules.

This part of the book focuses on programs run by the VA. It also deals with programs administered by other federal agencies and the states. These programs—especially those of the VA—can save your life. VA medical care can repair your body. VA educational benefits can put you through school. VA disability compensation and pensions can pay many of your bills. VA loan guarantees can make it possible for you to buy a home.

But to get the most out of the VA, or the Small Business Administration or the veterans department in your home state, you have to know what you're doing. You have to know the benefits to which you're entitled, the problems you may face and how to solve them and where to go for help.

This book contains all of that. But we—the authors of this book—want you to know how to get the most out of it. We do not suggest that all veterans read every page of this book. For most veterans, that is not a good use of time. We suggest that you look through the table of contents and then carefully read each chapter that you know applies to you or that you think may apply to you. Once the index is available, we suggest you do the same with that. We further suggest that you skim every page of all the other chapters. For one thing, you may very well come across a benefit program or other information that—surprise—can help you. For another thing, you may find something that you will want to pass along to a friend who is a veteran.

Now we want to pass along some information, most of it very important, that applies to most or all the chapters in this book. That way, we won't have to bore you by repeating the same points chapter after chapter (except where critically important to do so).

Qualifying For Benefits

To get benefits from the VA or any other agency, you (or your dependents) must be both eligible and entitled. To be eligible for benefits, you must meet certain general requirements. These may have to do with how long you served, what kind of discharge you received, and whether any disability you have is connected to your military service. To be entitled to benefits, you personally must be approved to receive them.

Most of the time, but not always, if you are eligible, all you have to do to become entitled is to submit a form and wait for approval. But there are exceptions. For instance, *you* may know the facts of your case prove that you should be approved, but the VA may disagree. So you may have to appeal an adverse

decision or at least provide more information. Another example is that you may be eligible for care at a VA hospital, but the nearest hospital may say it doesn't have room for you, at least not right now.

Specific chapters in this part of the book explain how to qualify for specific benefits. But here are some general guidelines:

Type of Discharge

There are important exceptions, but the great majority of programs of the VA, other federal agencies and state veterans departments require that the veteran was separated under "conditions other than dishonorable." You and your dependents are therefore eligible for benefits if you received an honorable discharge, a general discharge or a lower discharge that has been upgraded to honorable or general. You are in almost all cases not eligible if you have a dishonorable discharge or a bad-conduct discharge issued by a general court-martial.

If you have a bad-conduct discharge not issued by a general court-martial or if you have a discharge called "under other than honorable conditions" or what was formerly called "undesirable," the VA (or other agency) may find you eligible (this is especially likely if you were discharged for homosexuality or for minor offenses). The VA (or other agency) will make a determination of "character of discharge," based on the facts of your case: it will decide if you were separated under "dishonorable conditions" or "other than dishonorable conditions."

See Chapter 15, "Upgrading Less-Than-Fully-Honorable Discharges," for a discussion of discharges and how to get a bad discharge upgraded as well as for a chart showing the type of discharge required for specific programs of the VA and other federal agencies.

Type of Service

To be eligible for federal and state veterans programs, you must in almost all cases have had "active service." Active service includes, but is not limited to:

"Active duty"—This includes full-time service in the Army, Navy, Marine Corps, Air Force or Coast Guard and certain other kinds of service.

"Active duty for training"—during which the individual was disabled or died from a disease or injury that occurred or was made worse in the line of

duty.” Active duty for training” includes certain members of the reserve, ROTC and national guard on full-time duty, for training purposes, in the armed forces and also includes those traveling to and from duty.

Service in Wartime

The VA pension program requires the veteran to have served during wartime. This does not mean the veteran must have engaged in combat or served in a combat zone (such as Iraq). The vet must only have served during a period officially designated as wartime. The wars in Iraq and Afghanistan have been designated as part of the period beginning on August 2, 1990, during the first Gulf War. So you qualify if you served anywhere—in Iraq, Germany, or Kansas—anytime on or after August 2, 1990. (The dates for the Vietnam Era were August 5, 1964 through May 7, 1975.)

Other Rules

The VA also has rules determining who qualifies as a spouse or child of a veteran. Check with a veterans service representative (also called a “veterans service officer”) who works for a veterans organization such as the American Legion, AMVETs, the Disabled American Veterans (DAV), the Veterans of Foreign Wars (VFW), or Vietnam Veterans of America (VVA), or who is employed by a county or state government, or phone a VA Regional Office (VARO) and ask to be connected to a veterans organization service representative.

An easy way to reach a VARO is to call (800) 827-1000; your call will automatically be routed to your nearest VARO (the routing system reflects the area code from which you are dialing). For those who are interested: yes, the VA has “caller ID,” so in most cases the agency will know the number from which you are calling.

Another alternative is to look in the “United States Government” listings near the front of your phone book, under “Veterans Affairs.” If your area is too small to have VA facilities, call directory assistance for the nearest large city.

A local phone book is also helpful in finding other government agencies, veterans organizations and most anybody else. For state agencies, look in the blue pages under the name of your state. Another place to look is the Internet.

You can also go to the VA Web site at www.va.gov. Click on “Find a Facility,” then click on the down arrow and then on “Benefits Office.” You can choose to get your five nearest regional offices (VAROs). Some list only their address; some also list a phone number. If a phone number is not listed, call directory assistance for the city in which the VARO is located. If your interest is not benefits but medical care, select not “Benefits Office” but “Medical Facilities.” (The group of relatively informal facilities known as Vet Centers are found under this heading. These centers are mostly for counseling on issues of psychological readjustment to civilian life.)

For certain VA programs, such as educational benefits, there are certain other requirements, such as length of service and a fully honorable discharge (a general discharge is not enough). Requirements you need to meet for educational benefits are found in chapter 7, “Educational Assistance and Vocational Rehabilitation.”

Whatever you need from the VA, ideally you will find not just a service rep, but a *good* service rep to assist you with your claim. Ask other veterans for referrals. Once you meet a service rep, ask about his or her general experience as well as experience in the specific areas that concern you. Once you begin working with a service rep, see if you get along. If you don't, consider switching to another one. Fees are not a problem: service reps do not charge.

Dealing with the VA and Other Agencies

Throughout this book we tell you what you can get and how to get it. We tell you what forms to use and sometimes even tell you how to fill them out. But there are some general rules we should include here:

To get forms, call, write or visit a VA Regional Office. Again, you can find a VARO by phoning (800) 827-1000. Forms relating to medical care can also be obtained from a VA medical facility. MOST veterans organizations and their service representatives also have forms. Return most forms to a VA Regional Office; return medical forms to the medical facility where you want to be examined or treated.

Although this book includes some VA forms, at some point they will go out-of-date. So don't print out the ones in this book. Get the latest, full-size copies available from the VA and fill them out with information relating specifically to your case.

To file an application online for most VA benefits, go to www.va.gov/onlineapps.htm. Once you have filed your application, the VA will send you a form in addition to the one online. If the VA doesn't send you another form, call the VA. (This is important particularly because the date from which you will be paid benefits is the date of your claim.) Again, you can reach the VA at (800) 827-1000. You can write or visit your local VA Regional Office. Forms relating to medical care can also be obtained from a VA Medical Center or VA Community-Based Outreach Clinic. Most veterans service organizations (VSOs) and their service representatives also have forms.

It is important to remember to return the form to the correct agency within the VA. Return benefit and claim forms to a VA Regional Office, and return medical forms to the VA medical facility where you want to get examined or treated. As explained in our chapter about the VA, the VA's hospitals and the VA's Regional Offices operate under two different bureaucracies that have a history of poor communication with each other. One is the Veterans Health Administration (VHA). The other is the Veterans Benefits Administration (VBA).

Rarely is a request for medical treatment considered a claim for benefits. Never assume otherwise. Some veterans have received medical care, thinking that doing so established a claim, only to learn that they still had to apply for benefits. To safeguard your benefits, file your claim at a VARO and have it date-stamped. If you're not near one or otherwise can't file at a VARO or online (see below regarding filing online) but are at a VA hospital (especially if you're near the end of the month, in which case you will lose a month's benefits if you are delayed in filing until the beginning of the next month), file the claim there with the assistance of a veterans service officer (also known as a service representative)—if one is available at the hospital. And be sure to have it date-stamped.

If possible, computer-print or type your information onto the forms. Computer-print or type any additional documents you send to the VA or to anybody else. If that isn't possible, print neatly. Computer-printing, typing and printing are easier to read than handwriting and may make it easier for the VA to process your claim. An added hint: put your claim number on every page so the VA doesn't mix up your claim with someone else's.

Another alternative is to go to the VA Web site at www.va.gov and click on "Apply Online."

If you do not apply online: Before you submit your forms and documents, make photocopies. Photocopy machines may be found in most libraries and

post offices as well as at photocopy shops. Staple the original forms to the copies of documents. Keep a copy of the forms and keep the original documents: **never submit original documents.**

If you apply online, the VA will send you one or more forms. If you have a document to submit, attach it to the appropriate form. To be sure you are submitting documents that help, not hurt, your claim, check with your service rep before submitting documents to the VA that the VA has not specifically requested. (For instance, you would not want to submit medical records that can be used against you as evidence of misconduct.) Unless the VA asks for a specific document, you are not obligated to submit all relevant documents. So you should submit only those that help your claim.

You need not personally deliver your forms and documents to the VA. It's fine to mail them. But if you do mail them, send them by certified mail, "return receipt requested." This is simple to do; any post office will help you. Your return receipt will let you know the VA got what you sent. And if you ever need to prove the VA got it, your receipt will be your proof. Keep it with your copies.

Keep the return receipt with your VA paperwork. Because hundreds of thousands of cases are processed each year, the VA loses documents. Keeping your originals and keeping a copy of VA forms often makes the difference between a fast, complete and correct VA decision and a lengthy wait for an incomplete or incorrect one.

In dealing with people at the VA or elsewhere, be confident and assert yourself. Avoid the extremes: don't be timid, but don't scream at people, either, even if they deserve it. (Yes, the VA does call the police and toss out veterans who swear at or threaten VA employees.) You should feel confident because—after reading this book—you will know your rights. You should feel assertive because you answered your country's call to military duty.

Getting Help

In many situations involving your rights as a veteran, you will do better if you get somebody to help you. This is often true if you're applying for benefits, and it's true particularly once you get involved in complicated matters, such as appealing a VA decision or applying for an upgrade of a discharge.

Over and over in this book we will suggest that you get help from a service representative. Who are service reps? They are people who work for veterans

service organizations or state or county governments. Some are called “service representatives”; some are called “service officers.” For information on which organizations provide service reps, see above. The best way to find service representatives is by contacting the organization for which they work. Use the Internet or the phone book. VAROs can also put you in touch with service reps, many of whom have offices at the VARO or a VA medical facility. (See above on how to find a VARO.) Vet Centers can often advise which service reps are the best.

Some service representatives are terrific. They’re bright, knowledgeable, caring and reliable. Some are jerks. This is also true of every other kind of person from whom you may seek help: lawyers, doctors, employees at VA Regional Offices and staff members at Vet Centers.

Don’t trust service reps just because they’re service reps. And don’t trust doctors just because they’re doctors. As advice columnist Ann Landers said, “Fifty percent of the doctors now practicing medicine graduated in the bottom half of their class.”

Evaluate the people with whom you deal. Do they have experience in the area that concerns you? Do they know what they’re talking about? (We may have made a few mistakes in this book, but if your service representative repeatedly tells you things that contradict this book, the service rep is a turkey.) Do they have experience with the type of application or problem you have? Do they have time for you and time to work on your case (and not just at the last minute)? Do they show up when and where they’re supposed to? Do they keep good records? Do they have the training, the books and the manuals necessary to do the best possible job? Are they courteous? Do they return your calls?

Shop around until you find somebody who seems well qualified and who seems like somebody with whom you can get along. If you later decide you don’t like the person who is helping you, find somebody else.

Most VSOs (veterans service organizations) have more than one service rep at the VA Regional Office, and most VAROs have more than one VSO. If you can’t conveniently get to a VARO, you can work with your county service rep. (He or she would usually pass your claim on to an employee of a state veterans agency or of a veterans service organization. An experienced county service officer would generally know who the best available service rep is at a state agency or veterans organization and would know who would present our case at the VARO.)

Many of the service reps may be overburdened because they are helping many more veterans than usual deal with the VA's current "backlog" of hundreds of thousands of unfinished claims already stacked up at VA Regional Offices. The backlog amounts to a crisis. Because of it, it is more important than ever to know how the VA works so you don't face endless delays getting the healthcare and disability payments you need and have earned. As often is the case, being patient and being practical come in handy when dealing with the VA. Nevertheless, in an emergency, a case sometimes can be moved up in line. If you think your case presents an emergency, ask your service rep if it qualifies for accelerated treatment.

Keep in regular contact with your service rep (or attorney), especially when the VA asks you for information or tells you there is a deadline. The VA often forgets to notify service reps (and attorneys), so you should do this so that important deadlines are not missed.

Most of the time, a service representative is the best person with whom to start. Sometimes, however, the best person is someone who works at one of the relatively informal facilities known as Vet Centers (see the section of Chapter 3 about Post-Traumatic Stress Disorder [PTSD]). As mentioned above, you can find one by going to www.va.gov, under "Medical Facilities. Or phone the main VA number, (800) 827-1000. Vet Center employees are often war veterans who can direct you to the appropriate agency within the VA for assistance. Vet Centers often have good listings of state and local services with which they are familiar, and they can point you in the right direction. You can call or go in person.

Or your best bet for help might be a doctor. Or, in some cases, someone in the local office ("district office") of your Member of Congress or one of the state offices of your U. S. Senator (especially if you need a politician to apply pressure on your behalf).

A member of the staff of the elected officials will open a "case" for you and write letters to Federal government agencies on your behalf. **But be sure the Member's or Senator's caseworker follows through rather than just making a routine inquiry.** Based on our colleagues' decades of lobbying experience in Washington, we know that elected officials like the spotlight when it comes showing they care for the military and veterans. So be sure to follow up with their offices when anything happens (or doesn't happen), so that they can take some of the credit or, as needed, keep pressure on the VA.

Or the best person to help you might be a reporter for a newspaper or TV station. You can call a reporter who has written articles about veterans and ask

him or her if he or she knows a good contact for help. If your problem dealing with VA is serious enough, the reporter may even want to write an article about you and how the VA dropped the ball. **Our colleagues' experience over thirty years shows that a well written news article about a veteran, VA hospital or VA Regional Office will prompt fast action from VA headquarters in Washington** or from elected officials who want to take public credit for solving a problem for a constituent.

Or the best person may even be—yes it's true—a lawyer.

Lawyers present problems for everybody, and they present special problems for vets. This isn't all the fault of the lawyers. Ever since the Civil War there has been a law limiting the amount a lawyer can charge a veteran for work relating to veterans benefits. At the end of the Civil War, the limit was \$5.

Later it became \$10. From 1989 to June 2007 a lawyer could not charge any fee until the veteran lost at the Board of Veterans' Appeals. This, of course, made no sense. But it was the law.

Congress passed a law in late 2006 allowing earlier access to an attorney for the VA claims process. This is explained in greater detail in chapter 3, "Compensation."

The change in the law was effective on June 20, 2007.

Now, fees must only be "reasonable." They can be in the form of a fixed fee, an hourly rate, a percentage of benefits recovered or a combination. Fees that do not exceed 20 percent of any past-due benefits are presumed to be reasonable. But attorneys may charge more than 20 percent.

Attorneys may charge fees for representation they provided after the claimant (the veteran) has filed, with the VARO, a notice of disagreement (NOD) with respect to the case, provided the NOD was filed on or after June 20, 2007.

The new law eliminates the 1989-2000 prohibition on charging fees before the Board of Veterans' Appeals makes its first "final" decision. The VA is in the process of issuing regulations that, among other things, will include determining which attorneys are eligible to represent veterans in their claims.

The VA can pay attorney fees out of past-due benefits owed to the veteran or the veteran can pay the attorney directly.

If you have low income, are out of work or are in the criminal justice system, you may qualify for free representation by an attorney who works for a legal aid or Legal Services office. You can always hire a lawyer in cases not directly relating to getting benefits, such as when seeking to upgrade your

discharge, seeking damages for VA medical malpractice, trying to correct military records or if the VA tries to get money from you due to an overpayment.

It is important to hire an attorney who has experience dealing with the VA. As with choosing a service representative, see if the attorney is qualified and if you get along with him or her.

If you need referral to a local lawyer with experience in veterans matters, contact your local bar association, the Court of Appeals for Veterans Claims Web site at www.vetapp.uscourts.gov/practitioners (lists of attorneys and others who practice there) or the Web site of National Organization of Veterans Advocates (NOVA) at www.vetadvocates.com. The National Veterans Legal Services Program, a non-profit law firm located in Washington, D. C. , handles cases only before the Court of Appeals for Veterans Claims; its Web site is www.NVLSP.org.

Lawyers often have skills that are helpful to the veteran in complex cases. But some lawyers are unscrupulous or incompetent. So you may very well run into a lawyer who tells you he or she can handle your case even if he or she has little or no idea how to do so, or a lawyer who says he or she has represented many veterans, even though this is not true.

Check into the attorney's reputation, background and experience. If you like a particular lawyer, consult with him or her briefly about your case and then ask for an estimate (preferably in writing) of your chances of success, what you will gain if you win, how much the lawyer will charge you in fees and expenses and when the lawyer expects to be paid. (In most veterans cases, lawyers will work for a contingency fee: they receive a percentage of your past-due benefits.) If you ask for a firm estimate, you risk making the lawyer angry. If this occurs, you may have to find another lawyer. Don't worry: there are more than a million of them.

In addition to getting help from service reps, the VA itself, veterans organizations and other specialized people and organizations, don't miss the more obvious sources of assistance. In addition to all the other options, your family (especially your spouse) and friends may be of great help to you. For example, they can listen. Also, if you are unable to do certain things (due to physical or psychological disability or for some other reason), family and friends may be able to take care of them for you.

You Can't Have Everything

This book is very complete. This book is very up-to-date. But it could be more complete: the *Veterans Benefits Manual*, written for lawyers and service representatives by the National Veterans Legal Service Program and published by Lexis, is 1,900 pages. (If you want to order a copy, go to www.lexisnexis.com/bookstore.) We wanted to cover all the key points and few of the obscure ones and we wanted to publish a book that was not so long that veterans wouldn't want to read it. So we have left out many details and many exceptions to rules. Some of these details and exceptions may apply to you. That's one reason that we say, over and over, to check with an expert.

Because we can update a Web-based book sooner than we could revise a traditional, printed book, this book will remain more up-to-date than most. Still, on matters critical to you, check with your service rep to ensure that information you have is up-to-date. Another way to stay abreast of veterans issues is to get on the newsletter mailing list at www.veteransforamerica.org. Near the top of the home page, enter your e-mail address under "SUBSCRIBE TO OUR NEWSLETTER."

Get Your Records

When you seek benefits from the VA, the agency usually is concerned mostly about what's in your military service records and what the military doctors who treated you wrote about you. So if you are still in the military, one of the best things you can do is to obtain a full set of your service and medical records for use later on. You can also request these records after you have been discharged. For details on requesting your records, see chapter 17, "Military Records, Research and Resources."

Be Patient, Be Practical

Dealing with the VA may try your patience even more than the military's infamous "hurry up and wait." Unfortunately, due to under-funding and understaffing, the VA now takes an average of six months to make an initial decision on a claim. And if you appeal a VA decision, the agency takes about two years more to decide the appeal. You may even have to go to the Court of Appeals for Veterans Claims. (At the court, in most cases free lawyers are available

through the Veterans Consortium Pro Bono program, whose Web site is www.vetsprobono.org.) So be realistic and don't expect fast results from the VA. Be practical and figure out how to get by financially until you receive payments from the VA.

Squeak

“The squeaky wheel gets the grease.” This is true of wheels and it is true of veterans. Except that squeaky veterans don't get grease. They get increased disability compensation, special devices for the handicapped, discharge upgrades, better medical care and so on and so on.

So squeak. After risking your life and maybe harming your life as a member of the American armed forces, you deserve benefits and other assistance from the VA and other federal and state agencies. If you are denied healthcare or benefits, ask again. If you need something else, ask for what you need, even if it's not standard. Ask again (again). Ask more persuasively. Get advice. Ask somebody higher up. Make phone calls, send e-mails, write letters, make personal visits. Do some research. Know your facts.

Get help from your service representative, or maybe a Vet Center or a doctor or a lawyer or a reporter or a member of Congress.

Be as tough as a military veteran. Hang in there as long as a marathon runner. And be as prepared as someone who has read *The American Veterans and Servicemembers Survival Guide*.

Remember: Sometimes—with appropriate advice from a service rep or lawyer—you can assist importantly in your own case. The more you know, the better the system will work for you. Your improved knowledge and your prompt actions will improve your chances of getting to see a VA doctor soon and they will ensure that your disability compensation covers all of your military service-related medical conditions.

Sound Off! After risking your life and returning home, you have earned and you deserve your government benefits. Ask for assistance, even if you are not sure what to ask for. When Vietnam War veterans flooded the VA with questions and concerns about health problems related to Agent Orange exposure, Congress and the VA were forced to act. It took a while, but now hundreds of thousands of veterans receive free medical care and disability compensation because they acted and the scientific evidence showed the veterans were correct. The same happened when Gulf War veterans complained

about chemical warfare agent exposure, experimental drugs and other poisonous exposure.

As you learn more about the benefits you have earned, we suggest you recommend *The American Veterans and Servicemembers Survival Guide* to your friends—those still in the military and those who are veterans—so that their transition from servicemember to veteran is smooth and so that as veterans they receive everything to which they are entitled. Remember, our goal is to reduce the number of veterans falling through the cracks because they don't know about their benefits.

Our legacy with our new book is a tip for the future: You'll get a lot out of your *Survival Guide* by sharing it with others who need to know the basics so that the next generation of veterans faces fewer challenges. (And if you are a civilian who is recalled to active duty, see chapter 24, "National Guard and Reserve Call-Up Issues.")

Next Step

As we have said: After you read this chapter, look in the table of contents and index for parts of this book that apply to your unique situation. Then go to those parts and carefully read them. And when a new subject comes up in a few months or a few years, check the table of contents and the index again. (Please note that we do not anticipate that the index will be available until all chapters are on the Web site.)

Craig Kubey is a lawyer-turned-writer. He attended the University of California, Berkeley and graduated from the University of California, Santa Cruz. After law school at the University of California, Davis, he worked as a legislative assistant to a Congressman in Washington, D. C. Next, he was a staff attorney at a major public interest group; there he co-founded the Equal Justice Foundation, a national public interest organization dedicated to expanding the access of "average" citizens to justice in courts and regulatory agencies.

Including this one, Kubey has published nine books, four of them national bestsellers and three called the best ever published on their subjects. This is his first Web-based book. Six of his books have been collaborations with experts or celebrities. This is his third collaboration on a book for veterans; the others were *The Viet Vet Survival Guide: How to Cut Through the Bureaucracy and Get What*

You Need—And Are Entitled To and *Veterans Benefits: The Complete Guide*. The subjects of his other books have included sports legends, self-treatment of back and neck pain and alternative dispute resolution.

Paul Sullivan serves as the executive director of Veterans for Common Sense, a non-profit organization focusing on national security, civil liberties and veterans' issues. Prior to that, Paul worked as project manager (GS-14) at the U. S. Department of Veterans Affairs, where he monitored Gulf War, Iraq War and Afghanistan War veterans' VA benefit use. He resigned in 2006 after being ordered to conceal the escalating impact of the Iraq and Afghanistan wars on the VA. Next, he was director of research and analysis at Veterans for America. Before working at the VA, Paul worked as the executive director of the National Gulf War Resource Center, where he successfully pressed for passage of the Persian Gulf Veterans Act of 1998, a law significantly expanding health-care and disability benefits for Gulf War veterans. Paul served as cavalry scout with the Army's 1st Armored Division during the invasion of Iraq and Kuwait in 1991. He received a bachelor's degree in political science from the University of West Georgia and a master's certificate in project management from George Washington University. He and his family live near Austin, Texas.