

# Veterans Can Now Be Service-Connected for Obesity

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On August 26, 2021, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) delivered a landmark decision – *Larson v. McDonough*, 10 F.4th 1325 (Fed. Cir. 2021) – determining that obesity can be a service-connected disability if it results in functional impairment of earning capacity.

What Happened in *Larson v. McDonough*?



The veteran, Gary R. Larson, served on active duty for training the United States Navy Reserves in 1988 and on active duty in the Navy from 1989 to 1993. He gained a substantial amount of weight before, during, and after his active duty.

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*Gideon Miller, Esq.*

In 2009, Mr. Larson filed a claim for service connection for multiple conditions, including obesity and dysmetabolic syndrome (DMS). The VA denied these claims in 2010 and the Board of Veterans’ Appeals (Board) affirmed that denial in 2016, holding that neither DMS nor obesity was a disability because neither condition is ratable under the VA Schedule of Rating Disabilities (rating schedule).

Mr. Larson appealed to the U.S. Court of Appeals for Veterans Claims (Veterans Court), but the Veterans Court

affirmed the Board’s decision, holding that it lacked jurisdiction to review a Board determination of what constitutes a disability. The Veterans Court reasoned that such an inquiry amounted to a

review of the rating schedule, which is prohibited.

Relying on its prior decision in *Saunders v. Wilkie*, the Federal Circuit disagreed. In *Saunders*, the Federal Circuit specifically held that the Veterans Court can review what constitutes a disability. There, the Veterans Court affirmed a Board decision holding that a veteran's knee pain, "absent a specific diagnosis or otherwise identified disease or injury, cannot constitute a disability."

The Federal Circuit reversed, holding that the Veterans Court had applied the wrong legal standard in determining that, for an ailment to constitute a disability, it must be accompanied by a "diagnosis or identifiable condition." Instead, the Federal Circuit held that the legal definition governing the term "disability" was "the functional impairment of earning capacity, not the underlying cause of said disability." Consequently, *Saunders* articulated a definition of "disability" that is distinct from and not coextensive with disabilities listed on the rating schedule.

In *Larson*, the Federal Circuit found that the veteran's case was analogous to *Saunders*. The Federal Circuit explained that, while it is true that the Veterans Court is prohibited from reviewing the rating schedule, Mr. Larson did not ask the Veterans Court to invalidate or review any portion of the rating schedule. Rather, Mr. Larson, like the veteran in *Saunders*, sought only to establish service connection for DMS and obesity. Consequently, notwithstanding the fact that obesity and DMS do not appear as independent disabilities on the rating schedule, the Veterans Court can review if they are disabilities.

#### What Does This Mean?

Essentially, the Federal Circuit in *Larson* reiterated that a veteran's disability or disabilities do not have to be listed in the rating schedule to be service-connected. Rather, so long as the condition results in "functional impairment of earning capacity," it is a disability that can be service-connected. Therefore, veterans can now be service-connected for obesity, pain even in the absence of a diagnosis or identifiable cause, or other conditions not included in the rating schedule.

Of course, now that veterans can be service-connected for obesity, the broader implication is that they can use their obesity as a springboard to establish secondary service connection for a host of related conditions, such as depression, heart conditions, and diabetes. Consequently, the Federal Circuit's decision in *Larson* is simply momentous.

If you or a loved one suffers from obesity and feel that it may be related to your active duty service, or secondary to a service-connected disability, please do not hesitate to contact us at 888.878.9350 or [online](#).

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