

### § 3.357

that could be considered as major factors. Employment which was only casual, intermittent, tryout, unsuccessful, or terminated after a short period by reason of disability, should not be considered as rebutting permanent incapability of self-support otherwise established.

(3) It should be borne in mind that employment of a child prior or subsequent to the delimiting age may or may not be a normal situation, depending on the educational progress of the child, the economic situation of the family, indulgent attitude of parents, and the like. In those cases where the extent and nature of disability raises some doubt as to whether they would render the average person incapable of self-support, factors other than employment are for consideration. In such cases there should be considered whether the daily activities of the child in the home and community are equivalent to the activities of employment of any nature within the physical or mental capacity of the child which would provide sufficient income for reasonable support. Lack of employment of the child either prior to the delimiting age or thereafter should not be considered as a major factor in the determination to be made, unless it is shown that it was due to physical or mental defect and not to mere disinclination to work or indulgence of relatives or friends.

(4) The capacity of a child for self-support is not determinable upon employment afforded solely upon sympathetic or charitable considerations and which involved no actual or substantial rendition of services.

CROSS REFERENCE: Basic pension and eligibility determinations. See § 3.314.

[26 FR 1590, Feb. 24, 1961, as amended at 38 FR 871, Jan. 5, 1973]

### § 3.357 Civil service preference ratings.

For the purpose of certifying civil service disability preference only, a service-connected disability may be assigned an evaluation of "less than ten percent." Any directly or presumptively service-connected disease or injury which exhibits some extent of actual impairment may be held to exist at the level of less than ten percent.

### 38 CFR Ch. I (7-1-08 Edition)

For disabilities incurred in combat, however, no actual impairment is required.

[58 FR 52018, Oct. 6, 1993]

### § 3.358 Compensation for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

(a) *General.* This section applies to claims received by VA before October 1, 1997. If it is determined that there is additional disability resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training, compensation will be payable for such additional disability. For claims received by VA on or after October 1, 1997, see § 3.361.

(b) *Additional disability.* In determining that additional disability exists, the following considerations will govern:

(1) The veteran's physical condition immediately prior to the disease or injury on which the claim for compensation is based will be compared with the subsequent physical condition resulting from the disease or injury, each body part involved being considered separately.

(i) As applied to examinations, the physical condition prior to the disease or injury will be the condition at time of beginning the physical examination as a result of which the disease or injury was sustained.

(ii) As applied to medical or surgical treatment, the physical condition prior to the disease or injury will be the condition which the specific medical or surgical treatment was designed to relieve.

(2) Compensation will not be payable under this section for the continuance or natural progress of a disease or injury for which the hospitalization, medical or surgical treatment, or examination was furnished, unless VA's failure to exercise reasonable skill and care in the diagnosis or treatment of the disease or injury caused additional disability or death that probably would have been prevented by proper diagnosis or treatment. Compensation will