

GUN SHOT WOUNDS: EVALUATING TRAUMATIC INJURIES TO THE MUSCULOSKELETAL SYSTEM

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GENERAL RATING PRACTICE FOR RESIDUALS OF GUNSHOT WOUNDS NEEDED FOR ADEQUATE EXAM

- The primary diagnostic codes for the evaluation of **gunshot wounds** are 5301 to 5323
- Under diagnostic codes 5301 through 5323 –
 - disabilities resulting from muscle injuries shall be classified as **slight, moderate, moderately severe, or severe.**

38 C.F.R. § 4.56(d) GENERAL RATING PRACTICE FOR RESIDUALS OF GUNSHOT WOUNDS NEEDED FOR ADEQUATE EXAM

- Under this regulation -VA lists the following **qualifiers** to determine whether residuals of an injury to the muscles secondary to gunshot or shell fragment wounds are slight, moderate, moderately-severe, or severe:
 - Type of original injury;
 - History and complaint; and
 - Objective findings
- The **most important** of these qualifiers is:
 - The **type of original injury**

GENERAL RATING PRACTICE FOR RESIDUALS OF GUNSHOT WOUNDS NEEDED FOR ADEQUATE EXAM

- Knowing what happened at the time of the **original injury** is essential to correctly evaluating the **residuals of injury**
- Generally, the representative can review the claims file to obtain information on the type of original injury
- The most likely sources for obtaining this information are:
 - Service medical records detailing initial treatment; and
 - Early VA or private examination reports

GENERAL RATING PRACTICE FOR RESIDUALS OF GUNSHOT WOUNDS NEEDED FOR ADEQUATE EXAM

- If the early source information detailing the type of original injury is incomplete, the representative must request an adequate examination
- The requirements for an adequate examination include:
 1. Whether or not the wound was:
 - Through and through; or
 - Deep penetrating
(If the wound was through and through, the sites of entry and exit must be identified)
 2. What **individual muscles were damaged**

GENERAL RATING PRACTICE FOR RESIDUALS OF GUNSHOT WOUNDS NEEDED FOR ADEQUATE EXAM

- The requirements for an adequate examination include:
 3. Whether or not the bullet or shell fragment fractured any bones, and if so, the type of fracture – **open, comminuted, and shattering bone fractures** are generally indicative of **severe muscle injuries**
 4. Existence of any **nerve damage** causing:
 - **Impaired motor function; or**
 - **Sensory loss**

GENERAL RATING PRACTICE FOR RESIDUALS OF GUNSHOT WOUNDS NEEDED FOR ADEQUATE EXAM

5. The scars secondary to the wound should be described. Examination should note whether entrance or exit scars are:
 - **Unstable** or
 - **Painful**

GENERAL RATING PRACTICE FOR RESIDUALS OF GUNSHOT WOUNDS NEEDED FOR ADEQUATE EXAM

- If you have an examination detailing these factors, you can correctly evaluate the residuals of the gunshot or shell fragment wound
- Pertinent U.S. Court of Appeals for Veterans Claims decisions discussing adequate examinations -
 - *Green v. Derwinski*, 1 Vet. App. 121, 124 (1991)
 - *Voyles v. Derwinski*, 5 Vet. App. 451, 453 (1993)

EVALUATION OF MUSCLE DISABILITIES

- As noted, **residual muscle** disabilities resulting from gunshots or shell fragments are classified as:
 - Slight;
 - Moderate;
 - Moderately severe; or
 - Severe

EVALUATION OF MUSCLE DISABILITIES

- The proper evaluation of residuals of gunshot wounds causing muscle injuries is progressive.
- For example, if the wound has more damage than is listed under the information for a slight injury, you would then review the criteria for a moderate injury

EVALUATION OF MUSCLE DISABILITIES

- This progression is followed until you are able to place the wound under the proper classification.
- Again, having an **adequate examination** and **wound history** will greatly aid the proper classification of a gunshot wound.

SLIGHT DISABILITY OF MUSCLES

- Simple wound **without debridement or infection**
- Slight wound residuals will normally be rated as a scar.
- The appropriate diagnostic codes for rating **unstable or painful scars** are discussed below as follows:

DIAGNOSTIC CRITERIA FOR UNSTABLE OR PAINFUL SCARS

- 38 C.F.R. § 4.118, Diagnostic Code 7804
 - 30%: Five or more scars that are unstable or painful
 - 20%: Three or four scars that are unstable or painful
 - 10%: One or two scars that are unstable or painful

DIAGNOSTIC CRITERIA FOR UNSTABLE OR PAINFUL SCARS

- 38 C.F.R. § 4.118, Diagnostic Code 7804
 - Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar
 - Note (2): If one or more scars are both unstable and painful, add 10% to the evaluation that is based on the total number of unstable or painful scars

MODERATE DISABILITY OF MUSCLES

- For the evaluation of a moderate injury, the VA has two separate and distinct regulations for the purpose of evaluation, 38 C.F.R. § 4.56(b) and 38 C.F.R. § 4.56(d)(2)(1).
- The requirements must be met under either one or the other, but not both.
- As we will see, the requirements under 38 C.F.R. § 4.56(b) are simpler

MODERATE DISABILITY OF MUSCLES

- **First**, under 38 C.F.R. § 4.56(b) (formerly 38 C.F.R. § 4.72) the requirements are as follows:
 - A **through-and-through** injury with **muscle damage** shall be evaluated as no less than a moderate injury for each group involved

38 C.F.R. § 4.56(b)

MODERATE DISABILITY OF MUSCLES

- **Second**, under 38 C.F.R. § 4.56(d)(2)(i), VA has adopted even more specific requirements for the correct evaluation of **moderate muscle injuries**
 - **Through-and-through or deep penetrating** wound of short track from a single bullet, small shell or shrapnel fragment, without explosive effect of high velocity missile, residuals of debridement or prolonged infection

MODERATE DISABILITY OF MUSCLES

- 38 C.F.R. § 4.56(d)(2)(i) – under this regulation, the veteran has a **moderate wound** if he has either a:
 - **Through-and-through** wound; or
 - **Deep penetrating** wound
- Generally, a **through-and-through muscle injury** is an injury which:
 - Has an **entry and exit** wound; or
 - Which goes **through a muscle**

EVALUATION OF MUSCLE DISABILITIES

- There are two U.S. Court of Appeals for Veterans Claims decisions which support the correct evaluation of through-and-through gunshot wounds:
 - *Myler v. Derwinski*, 1 Vet.App. 571 (1991); and
 - *Beyrle v. Brown*, 9 Vet.App. 377, 386 (1996).

EVALUATION OF MUSCLE DISABILITIES

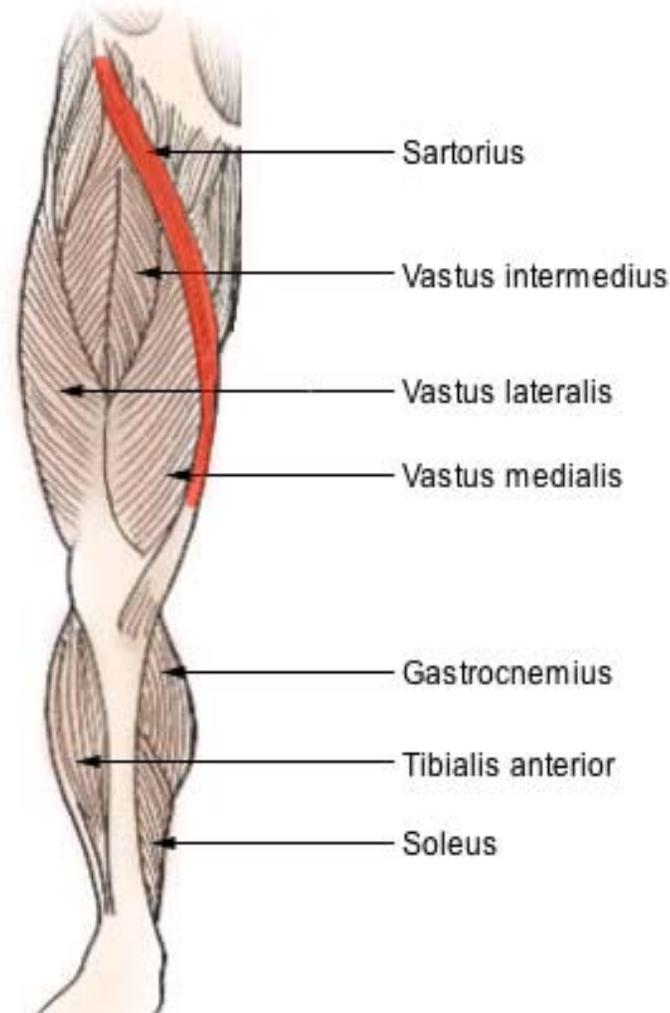
- The Court noted in *Beyrle* that:

[Section] 4.56(b) [now 4.56(d)(2)] as interpreted by *Myler* clearly does not require muscle damage if there is a through-and-through wound (that is, “a ‘through-and-through’ wound [to a muscle] by a ‘single bullet or small or shrapnel fragment’ [is] to be rated as of at least moderate degree of disability”, *Myler*, 1 Vet.App. at 574).

Beyrle v. Brown, 9 Vet.App. 377, 386 (1996)

EXAMPLE #1

- A veteran had a mid-thigh **through-and-through** wound with a bullet entering the **sartorius muscle** and exiting through the **vastus intermedius muscle**



EXAMPLE #1

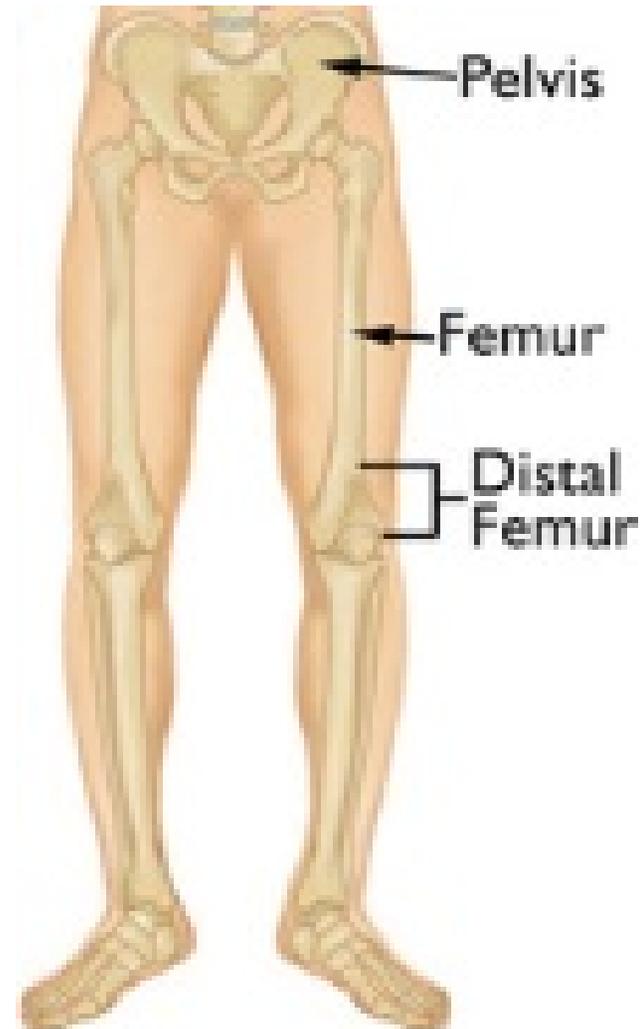
- In this wound there are **entry and exit wounds** and the two muscles involved are in the **anterior thigh group**, Muscle Group XIV, DC 5314
- Consistent with 38 C.F.R. § 4.56(d)(2)(i) and *Beyrle*, the through-and-through wound is a moderate muscle disability since there is “a ‘through-and-through’ wound [to a muscle] by a ‘single bullet’...”
- Under DC 5314, 10% is the rating for moderate injury

REMARKS – EXAMPLE 1

- Consistent with *Beryle* and 38 C.F.R. § 4.56(d)(2)(i), with a **through-and-through wound of muscle tissue**, the only possible rating is for moderate injury
- As you will note, the examination findings include what muscles are injured.
- Once you know the type of wound (**through-and-through**) and the **individual muscles injured**, the advocate must review the diagnostic codes to find which **muscle group** was injured.

EXAMPLE 2

- The vet sustained a gunshot of the thigh
- An x-ray indicated that metallic bullet fragments were embedded in the **distal portion of the femur**



EXAMPLE 2

- The vet had a scar in the anterior thigh from the bullet wound
- In this wound there is an **entry wound in the anterior thigh muscle group, Muscle Group XIV, DC 5314, with bullet fragments embedded in the femur**

EXAMPLE 2

- In this wound there is an **entry wound in the anterior thigh muscle group, Muscle Group XIV, DC 5314, with bullet fragments embedded in the femur**

EXAMPLE 2

- Consistent with 38 C.F.R. § 4.56(d)(2)(i) and *Beyrle*, the through-and-through wound is a moderate muscle disability since there is a “a ‘through-and-through’ wound [to a muscle] by a ‘single bullet’...”
- Under DC 5314, 10% is the rating for moderate injury
- This example points out that the bullet or fragment must pass through “a muscle”, not the entire leg

REMARKS – EXAMPLE 2

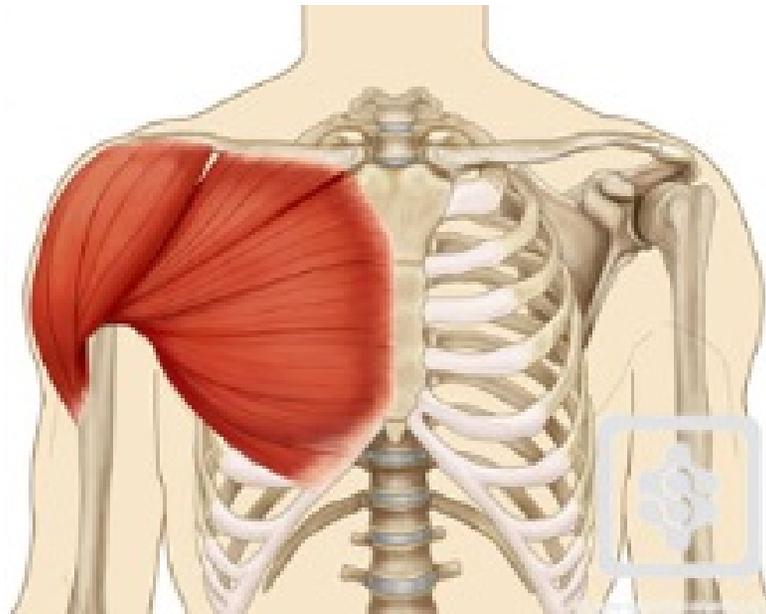
- Often a **through-and-through gunshot wound** is incorrectly rated as a scar
- If this is the case, the claim should be reviewed for clear and unmistakable error (CUE)
- In this case, it is not immediately obvious that the wound was through-and-through an individual muscle as the bullet stuck in the femur

EXAMPLE 3

- The vet has a **through-and-through** gunshot wound of muscle group XVII
- The vet has a moderate injury to muscle group XVII
- Under DC 5317, a **20%** rating is the rating for **moderate** injury

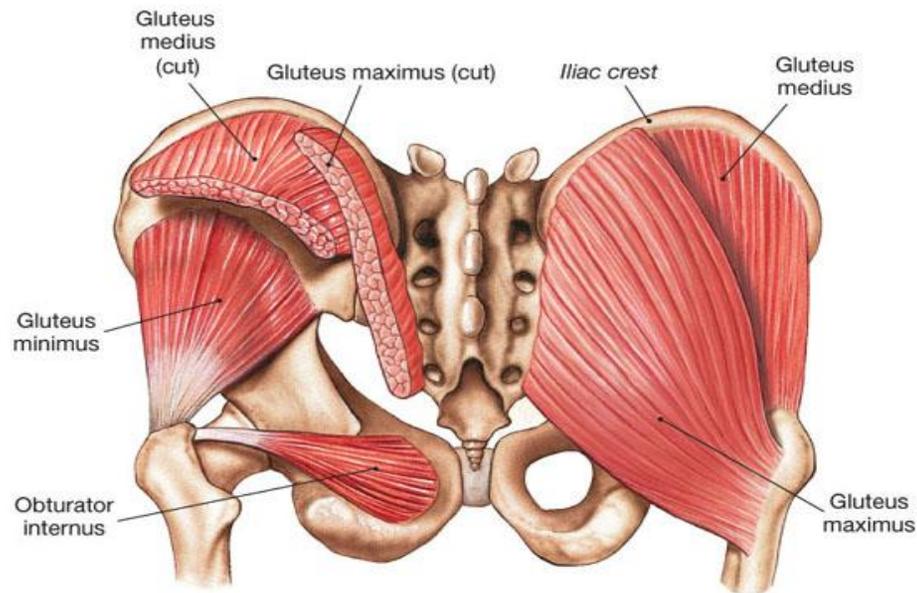
REMARKS – EXAMPLE 3

- The minimum rating for a moderate injury to the following muscle groups is 20%, not 10%;
 - Extrinsic muscles of the shoulder girdle, MG II, DC 5302;
 - Intrinsic muscles of the shoulder girdle, MG III, DC 5303;



REMARKS – EXAMPLE 3

- Pelvic girdle group, MG XVII, DC 5317; and

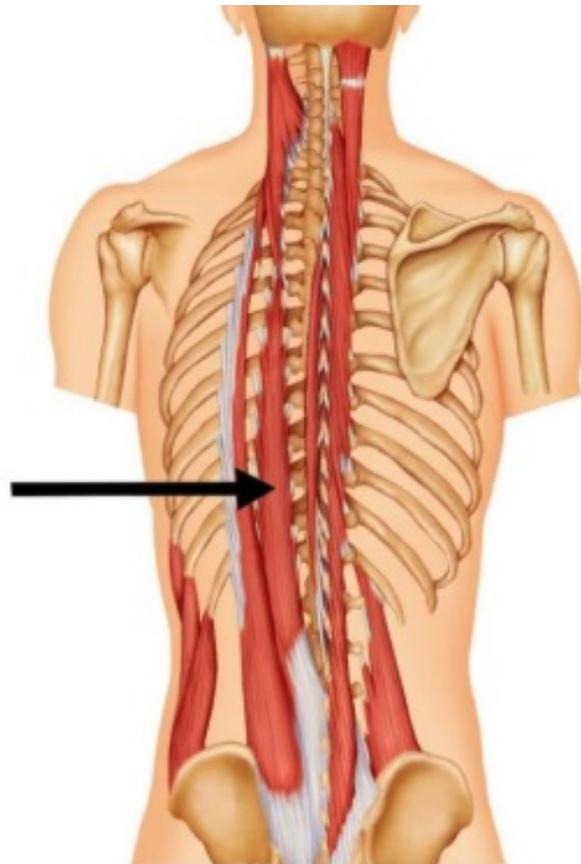


(c) Gluteal and lateral rotators, posterior view

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REMARKS – EXAMPLE 3

- Spinal Muscles, Lumbar region, MG XX, DC 5320



REMARKS – EXAMPLE 3

- The failure by the VA to rate these muscle groups at 20% will be considered clear and unmistakable error (CUE)

MODERATELY SEVERE DISABILITY OF MUSCLES

- Under 38 C.F.R. § 4.56(d)(3)(i), VA has provided specific criteria for the evaluation of a moderately severe muscle injury
 - Through-and-through or deep penetrating wound by small high velocity missile or large low-velocity missile, **with debridement, prolonged infection or sloughing of soft parts.**

MODERATELY SEVERE DISABILITY OF MUSCLES

- 38 C.F.R. § 4.56(d)(3)(i) – based on this regulation, the vet has a moderately severe injury if he has either a:

- **Through-and-through** wound; or
- **Deep penetrating** wound;

and additional evidence of:

- **Debridement**;
- **Prolonged infection**; or
- **Sloughing** of soft parts

SEVERE MUSCLE DISABILITIES

- For the evaluation of a severe injury, the VA has 2 separate and distinct regulations for the purpose of evaluation
 - 38 C.F.R. § 4.56(a)
 - 38 C.F.R. § 4.56(d)(4)(1)
- The requirements must be met under either one or the other, but not both.
- As we will see the requirements under 38 C.F.R. § 4.56(a) are simpler

SEVERE MUSCLE DISABILITIES

- **First**, VA has provided a regulation for the correct rating of a severe injury from gunshot or shell fragment under 38 C.F.R. § 4.56(a) (formerly 38 C.F.R. § 4.72)
 - An open comminuted fracture with muscle or tendon damage will be rated as a severe injury of the muscle group involved unless, for locations such as in the wrist or over the tibia, evidence establishes that the muscle damage is minimal.

38 C.F.R. § 4.56(a) (emphasis added)

SEVERE MUSCLE DISABILITIES

- **Second**, under 38 C.F.R. § 4.56(d)(4)(i), VA has provided an even more specific requirement for the correct evaluation of **severe muscle injuries**
 - **Through-and-through or deep penetrating wound** due to a high-velocity missile, or large or multiple low velocity missiles, or with **shattering bone fracture or open comminuted fracture** with extensive debridement, prolonged infection, or sloughing of soft parts, intermuscular binding and scarring.

SEVERE MUSCLE DISABILITIES

38 C.F.R. § 4.56(d)(4)(i) (emphasis added).

- An open fracture is:
 - One in which there is an **external wound leading to the break of the bone**; also called compound fracture

SEVERE MUSCLE DISABILITIES



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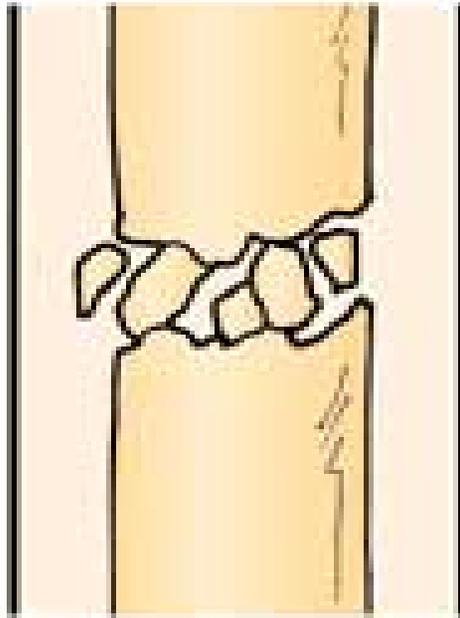
SEVERE MUSCLE DISABILITIES

38 C.F.R. § 4.56(d)(4)(i) (emphasis added).

- A comminuted fracture is:
 - One in which the bone is splintered or crushed.

DORLAND'S ILLUSTRATED MEDICAL
DICTIONARY, 662 (28th ed. 1994) (emphasis added).

SEVERE MUSCLE DISABILITIES



Comminuted

SEVERE MUSCLE DISABILITIES

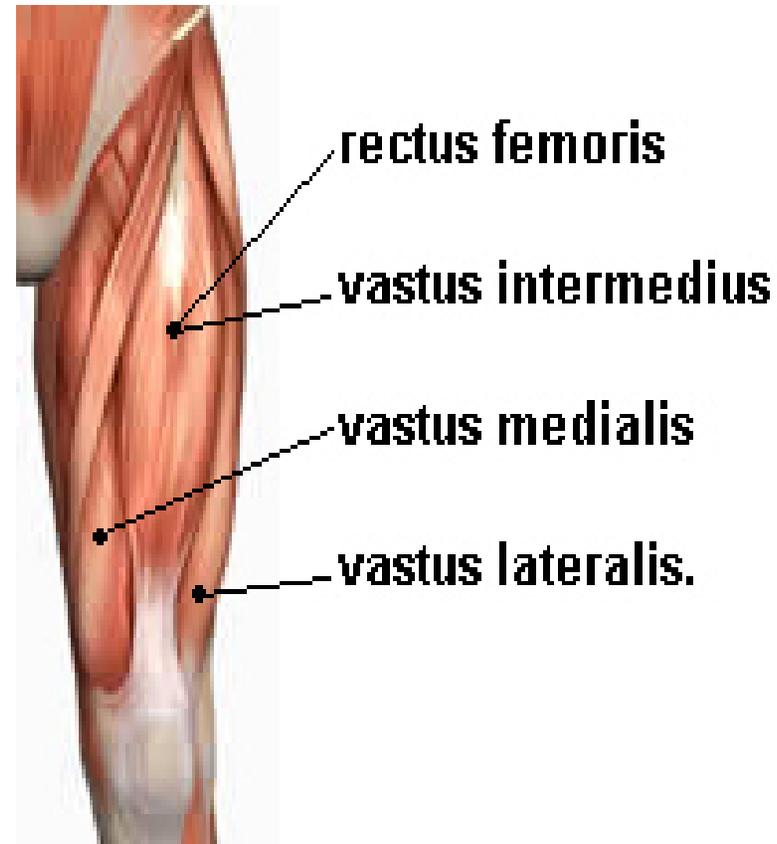
- From these regulations and definitions, the vet has a severe injury if he has either a:
 - **Through-and-through** wound; or
 - **Deep penetrating** wound;

and additionally:

- **A shattering bone fracture or open comminuted fracture with muscle or tendon damage**

EXAMPLE 4

- A vet had a mid-thigh through-and-through wound with a bullet entering at the vastus intermedius muscle and causing an open comminuted fracture of the femur.



EXAMPLE 4

- There was no exit wound. There was muscle damage
- In this wound there is an entry wound and the muscle involved is in the anterior thigh group, Muscle Group XIV, DC 5314.

EXAMPLE 4

- Additionally, there is an open comminuted fracture of the femur
- Consistent with 38 C.F.R. § 4.56(a) and 4.56(d)(4)(i), the wound meets the requirements for severe muscle injury.
- Under DC 5314, 40% is the correct rating for a severe injury.

REMARKS – EXAMPLE 4

- VA regulations provide that the injury may be rated as **not severe** in locations such as the wrist or over the tibia, if evidence establishes that the muscle damage is **minimal**.
- These are the only possibilities for not evaluating a **through-and-through muscle injury with open comminuted fracture as severe**

REMARKS – EXAMPLE 4

- Generally, when a through-and-through gunshot wound with an open comminuted fracture is not correctly rated, the rating agency will rate the injury as moderate or moderately severe
- If this is the case, the claim should be reviewed for **clear and unmistakable error (CUE)**

REMARKS – EXAMPLE 4

- In many cases, particularly on reports from WWII and the Korean Conflict, the examiner will use “T&T” to designate as through-and-through wound and “CCF” or “FCC” to designate a compound comminuted fracture

PRINCIPLES OF COMBINED RATINGS FOR MUSCLE INJURIES

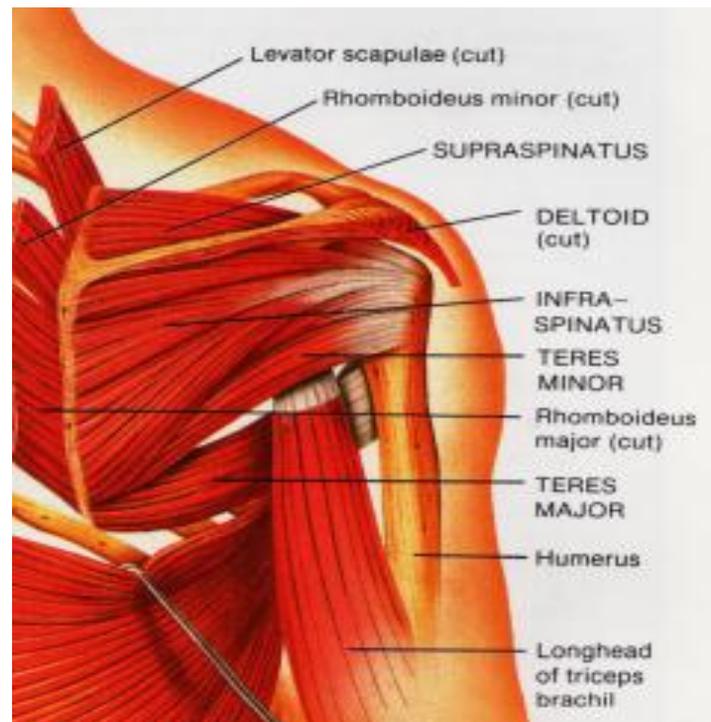
- 38 C.F.R. § 4.55 (effective June 3, 1997) provides the principles of combining residuals of injuries to multiple muscle groups
- We have reviewed the damage caused to one muscle group from a single gunshot wound or shell fragment and determined the classification of an injury to a **single muscle group**
- Now, we will determine the proper evaluation for gunshot and shell fragment wounds that affect **multiple muscle groups**

38 C.F.R. § 4.55(b) ANATOMICAL REGIONS OF THE SKELETAL MUSCLES [FORMERLY 38 C.F.R. § 4.54]

- For Rating Purposes VA divides the skeletal muscles into:
 - **23 groups; in**
 - **5 anatomical regions**

38 C.F.R. § 4.55(b) ANATOMICAL REGIONS OF THE SKELETAL MUSCLES [FORMERLY 38 C.F.R. § 4.54]

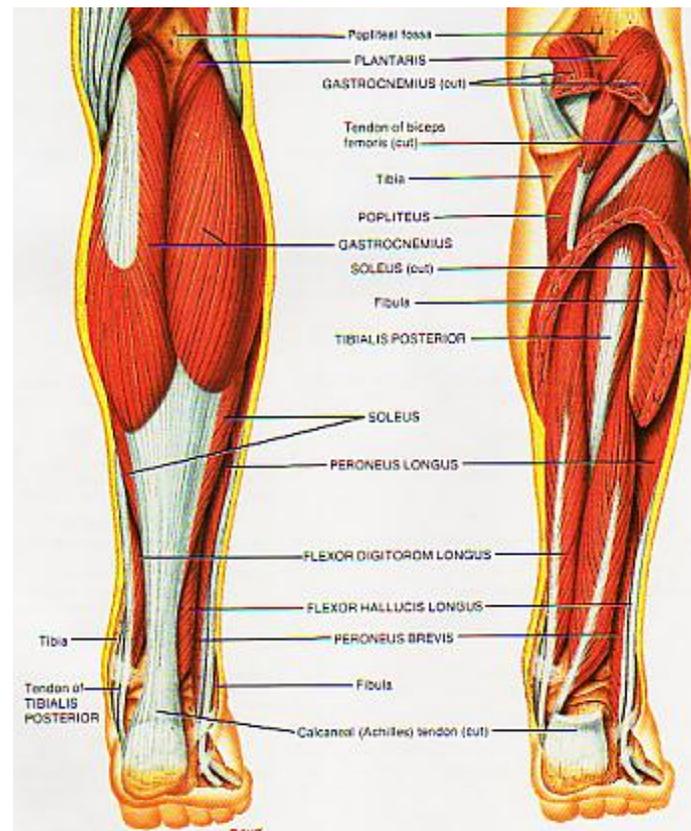
- **The Anatomical Regions and their Muscle Groups are:**
 - Shoulder Girdle and Arm – Muscle Group (6), DC 5301-5306



38 C.F.R. § 4.55(b) ANATOMICAL REGIONS OF THE SKELETAL MUSCLES [FORMERLY 38 C.F.R. § 4.54]

The **Anatomical Regions and their Muscle Groups** are:

- Foot and Leg – Muscle Groups (3), DC 5310-5312



38 C.F.R. § 4.55(b) ANATOMICAL REGIONS OF THE SKELETAL MUSCLES [FORMERLY 38 C.F.R. § 4.54]

The **Anatomical Regions and their Muscle Groups** are:

- Pelvic Girdle and Thigh – Muscle Groups (6), DC 5313-5318; and

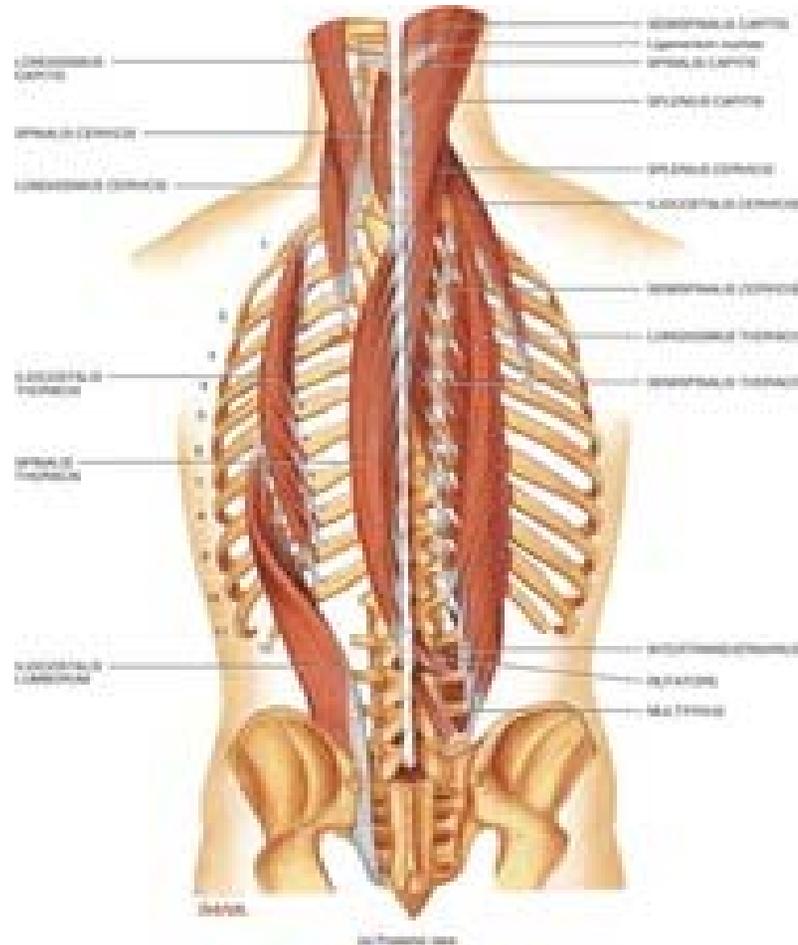
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38 C.F.R. § 4.55(b) ANATOMICAL REGIONS OF THE SKELETAL MUSCLES [FORMERLY 38 C.F.R. § 4.54]

- **The Anatomical Regions and their Muscle Groups are:**

- Torso and Neck – Muscle Group (5), DC 5319-5323



38 C.F.R. § 4.55(b) ANATOMICAL REGIONS OF THE SKELETAL MUSCLES [FORMERLY 38 C.F.R. § 4.54]

- Knowledge of the muscle groups in these anatomical regions is important
- When a gunshot or shell fragment damages **two or more muscle groups** in the same anatomical region, special rules for combining apply

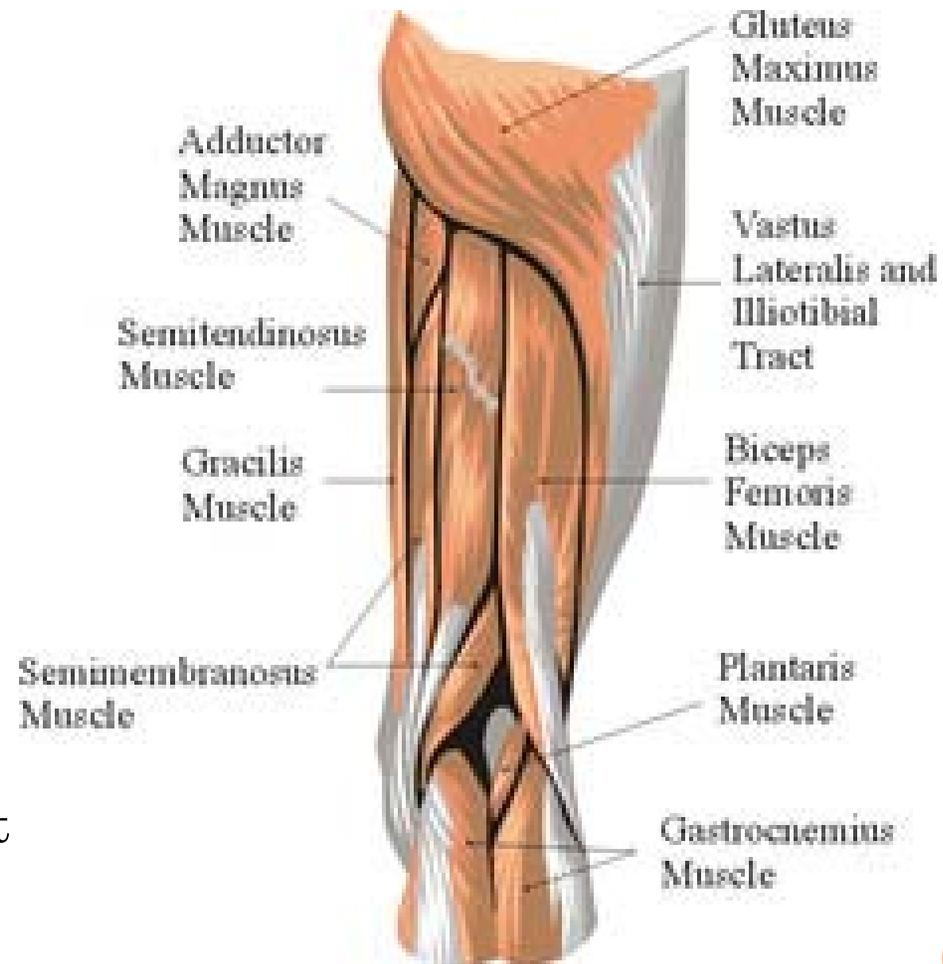
38 C.F.R. § 4.55(e) MUSCLE GROUPS NOT ACTING ON THE SAME JOINT [FORMERLY 38 C.F.R. § 4.55(a)]

- We will determine the proper evaluation for gunshot and shell fragment wounds that affect multiple muscle groups in the same anatomical region not acting on the same joint
- For compensable muscle group injuries which are in the same anatomical region, but do not act on the same joint, the evaluation for the most severely injured muscle group will be increased by one level and used as the combined evaluation for the affected muscle groups.

38 C.F.R. § 4.55(e) (effective June 3, 1997).

EXAMPLE # 5

- Vet had a **mid-thigh through-and-through wound** with a bullet entering the **vastus intermedius** and **exiting through the biceps femoris**
- There are entry and exit wounds



EXAMPLE # 5

- There are moderate injuries to muscles in the **anterior thigh group** (Muscle Group XIV, DC 5314) and the **posterior thigh group** (Muscle Group XIII, DC 5313)
- Both muscle groups **sustained through-and-through injuries** and are rated as moderate injuries

EXAMPLE # 5

- Each muscle injury is compensable
- Apply 38 C.F.R. § 4.55(e) – the rating for moderate injury of muscle group XIII, or XIV is **raised one level to moderately severe** and this yields the combined rating of **30%**

REMARKS – EXAMPLE #5

- In this case, neither muscle group is considered the more severely injured muscle group as the rating for moderately severe is the same for both
- In many cases the information necessary to rate a claim is provided by the **first treating physician**

EXAMPLE #6

- Examiner noted through-and-through wounds of muscle groups XIII and XIV on the left leg and through-and-through wounds of muscle groups XIII and XV on the right leg
- The wounds to each muscle group are considered moderate

EXAMPLE #6

- Applying 38 C.F.R. § 4.55(e) – the rating for the right leg should be 30% for moderately severe injury and the rating for the left leg should also be 30% for moderately severe injury.
- Using the bilateral factor, the combined rating is 60%

REMARKS – EXAMPLE #6

- In this example – if 3 muscle groups were damaged, the most severely injured would be raised one level
- Service connection would be in effect for all 3 muscle groups
- 2 or more moderate muscle injuries in the same anatomical region will be raised to the rating for moderately severe injury and 2 or more moderately severe muscle injuries will be raised to the rating of severe

38 C.F.R. § 4.55(d) MUSCLE GROUPS ACTING UPON A SINGLE UNANKYLOSED JOINT [FORMERLY 38 C.F.R. § 4.55(b)]

- We will determine the proper evaluation for gunshot and shell fragment wounds that affect **multiple muscle groups acting on a single joint**
 - The combined evaluation for muscle groups acting upon a single unankylosed joint must be lower than the evaluation for **unfavorable ankylosis of that joint**, except in the case of muscle group I and II acting upon the shoulder

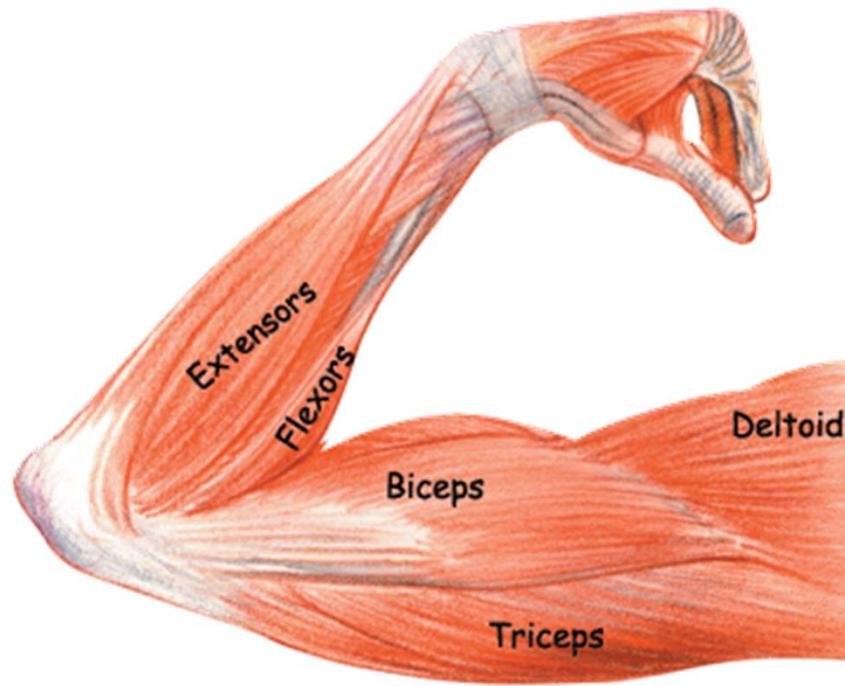
38 C.F.R. § 4.55(d) MUSCLE GROUPS ACTING UPON A SINGLE UNANKYLOSED JOINT [FORMERLY 38 C.F.R. § 4.55(b)]

38 C.F.R. § 4.55(d) (effective June 3, 1997)

- While the previous regulation reviewed applied to moderate and moderately severe injuries to 2 or more muscle groups in the same anatomical region, this regulation applies to evaluating 2 or more severe muscle injuries in the same anatomical region

EXAMPLE #7

- Vet sustained a through-and-through gunshot wound of mid arm above the elbow injuring the biceps and triceps muscles of the dominant right arm



EXAMPLE #7

- Additionally, vet sustained a compound (open) comminuted fracture of the humerus



EXAMPLE #7

- Muscle groups V and VI were involved and because of the open comminuted fracture of the humerus, each muscle group sustained a severe injury

EXAMPLE #7

- A severe injury to MG V (DC 5305) is rated 40%
- A severe injury to MG VI (DC 5306) is rated 40%
- Under the Combined Rating Table, the ratings combine to 64 and round down to 60%
- The muscle groups involved provide supination and flexion (DC 5305) and extension (DC 5306) of the elbow

EXAMPLE #7

- Under **DC 5205 (elbow, ankylosis of)** the rating for **unfavorable ankylosis is 60%**
- With consideration of the provisions of 38 C.F.R. § 4.55(d), the rating must be less
- The next lower rating is for **ankylosis at an intermediate angle**, 50% under DC 5205
- The maximum allowable rating is therefore 50%

REMARKS – EXAMPLE #7

- When 2 or more severe injuries affect muscles acting on a single joint, the combined evaluation must be lower than the rating for unfavorable ankylosis of that joint

REMARKS – EXAMPLE #7

- The diagnostic code and evaluations utilized under this principle are:
 - Elbow – DC 5205, Intermediate
 - Major – 50%, Minor - 40%
 - Wrist – DC 5214, Any other position
 - Major – 40%, Minor -30%

REMARKS – EXAMPLE #7

- The diagnostic code and evaluations utilized under this principle are:
 - Hip – DC 5250
 - Intermediate – 70%
 - Knee – DC 5256
 - In flexion between 20 and 45 degrees – 50%
 - Ankle – DC 5270
 - In plantar flexion – 30%

REMARKS – EXAMPLE #7

- There is one exception to the above rule
- Ratings for severe injuries to **muscle groups I and II** may be combined to equal the evaluation for **unfavorable ankylosis of the shoulder**
- We will review this exception next

38 C.F.R. § 4.55(c)(2) MUSCLE GROUPS ACTING UPON A SINGLE UNANKYLOSED JOINT [FORMERLY 38 C.F.R. § 4.55(b)]

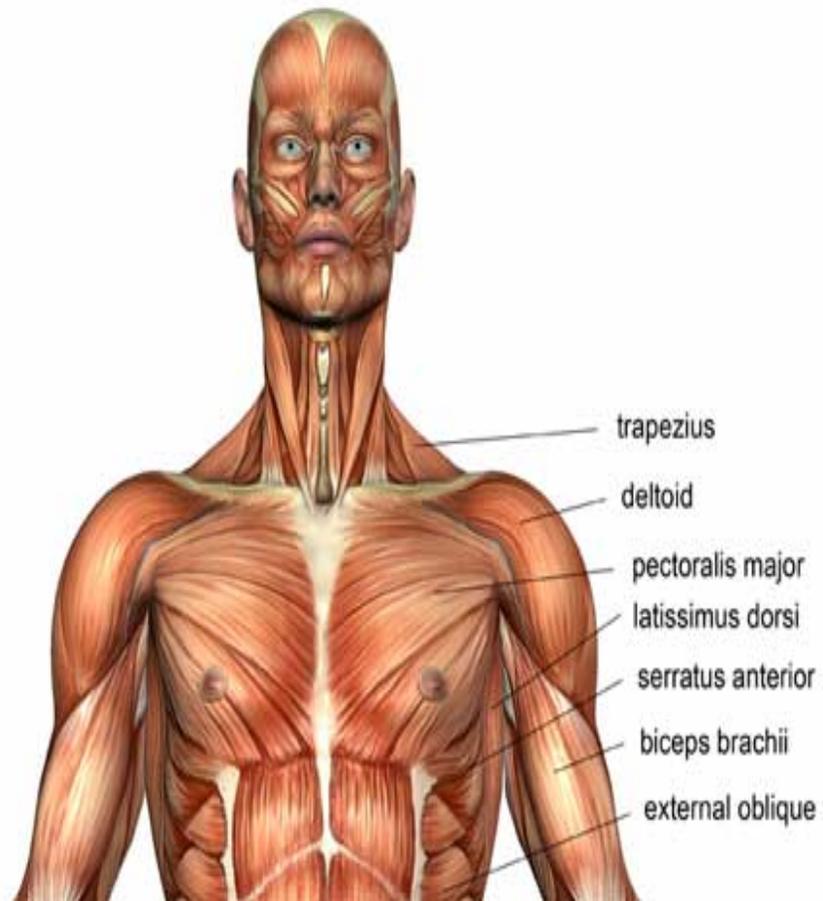
- We will now determine the proper evaluation for gunshot and shell fragment wounds that **affect multiple muscle groups acting on the shoulder**
 - In the case of **an ankylosed shoulder**, if Muscle Groups I and II are severely disabled, the evaluation of the shoulder joint under diagnostic code 5200 will be elevated to the **level for unfavorable ankylosis**, if not already assigned, but the muscle groups themselves will not be rated

38 C.F.R. § 4.55(c)(2) MUSCLE GROUPS ACTING UPON A SINGLE UNANKYLOSED JOINT [FORMERLY 38 C.F.R. § 4.55(b)]

- 38 C.F.R. § 4.55(c)(2) (effective June 3, 1997)
- While the previous regulation reviewed applied to severe rating of 2 or more muscle groups affecting the elbow, wrist, hip, knee, and ankle, this regulation applies to evaluating 2 or more **severe muscle injuries in the shoulder**

EXAMPLE #8

- Vet sustained a through-and-through gunshot wound of the shoulder, injuring the trapezius and pectoralis major of his dominant arm
- Additionally, the vet sustained a compound (open) comminuted fracture of the scapula



EXAMPLE #8

- Muscle groups I (trapezius) and II (pectoralis major) were involved

EXAMPLE #8

- A severe injury to MG I (DC 5301) is rated 40%
- A severe injury to MG II (DC 5302) is rated 40%
- Under the Combined Rating Table, the ratings combine to 64 and round down to 60%

EXAMPLE #8

- The muscle groups involved provide elevation (5301) and depression (5302) of the arm
- Under DC 5200 (scapulohumeral articulation, ankylosis of), the **rating for unfavorable ankylosis is 50%**
- With consideration of the provisions of 38 C.F.R. § 4.55(d), the **rating may equal 50%, but not more**
- **The maximum rating allowable is 50%**

REMARKS – EXAMPLE #8

- In rating severe injuries to multiple muscle groups affecting the shoulder, the combined rating for the muscle group injuries may not exceed the rating for **unfavorable ankylosis** of the affected joint
- DC 5200 is the code for rating ankylosis of the shoulder
- The rating for **unfavorable ankylosis** is: **Major – 50% and Minor -40%**

38 C.F.R. § 4.55(f) MUSCLE GROUP INJURIES IN DIFFERENT ANATOMICAL REGIONS

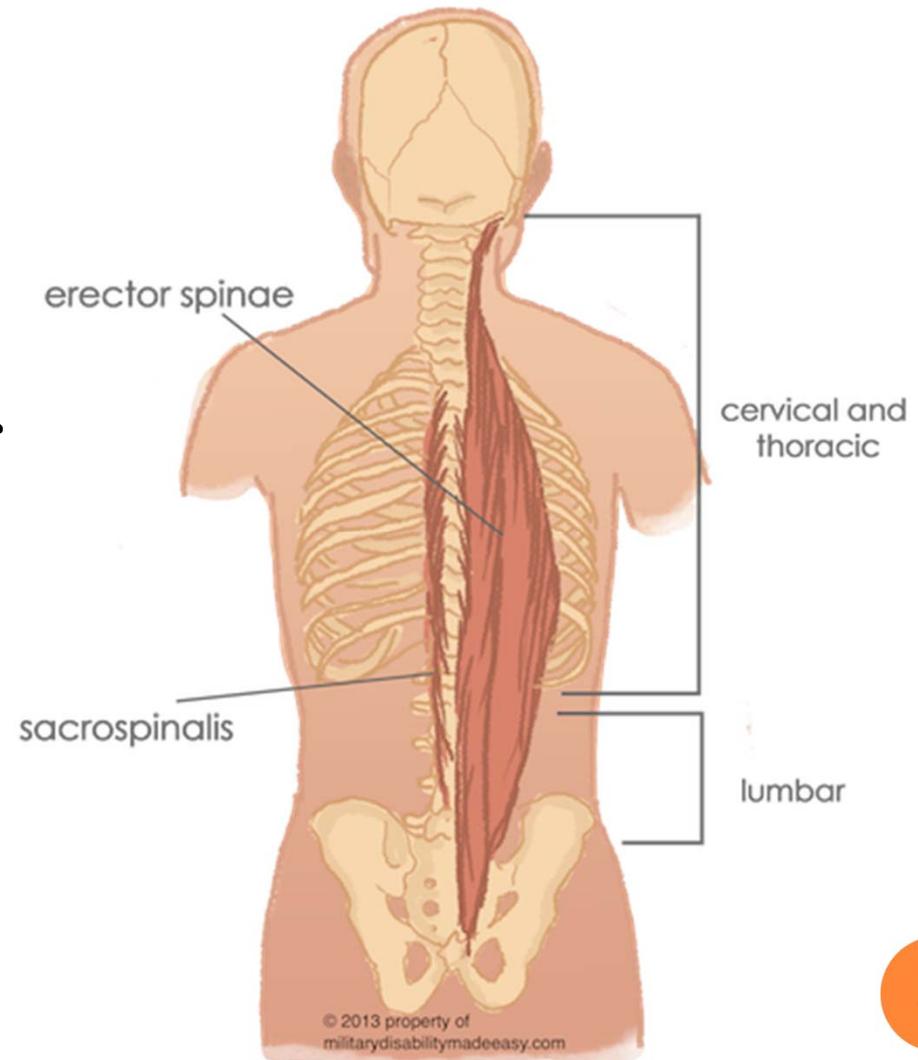
- We will now determine the proper evaluation for gunshot and shell fragment wounds that affect **multiple muscle groups in the different anatomical regions**
- For muscle group injuries in **different anatomical regions which do not act upon ankylosed joints**, each muscle group shall be **separately rated** and the ratings combined under the provisions of 38 C.F.R. § 4.25 (emphasis added)

38 C.F.R. § 4.55(f) MUSCLE GROUP INJURIES IN DIFFERENT ANATOMICAL REGIONS

- 38 C.F.R. § 4.55(f) (effective June 3, 1997)
 - This regulation is for use when the vet **has 2 or more moderate to severe muscle injuries in different anatomical regions**, caused by one or more gunshot or shell fragments

EXAMPLE #9

- The vet sustained a through-and-through gunshot wound which entered (anteriorly) the **pectoralis major** and exited (posteriorly) through the **sacrospinalis** (erector spinae) at approximately the level of the 11th dorsal vertebra



EXAMPLE #9

- The bullet also caused **open comminuted fractures of 3 ribs**
- Muscle Groups II and XX were involved

EXAMPLE #9

- A severe injury to MG II (DC 5302) is rated 40%
- A severe injury to MG XX, thoracic region (DC 5320) is rated 40%
- Under the Combined Rating Table, the ratings combine to 64 and round down to 60%

REMARKS –EXAMPLE #9

- Where there are **2 or more moderate to severe injuries affecting muscle groups in distinctly different anatomical regions**, even though caused by the same gunshot or shell fragment, each will be **separately rated** consistent with 38 C.F.R. § 4.55(f)

38 C.F.R. § 4.55(a) MUSCLE GROUP INJURIES AND PERIPHERAL NERVE INJURIES [FORMERLY 38 C.F.R. § 4.55(g)]

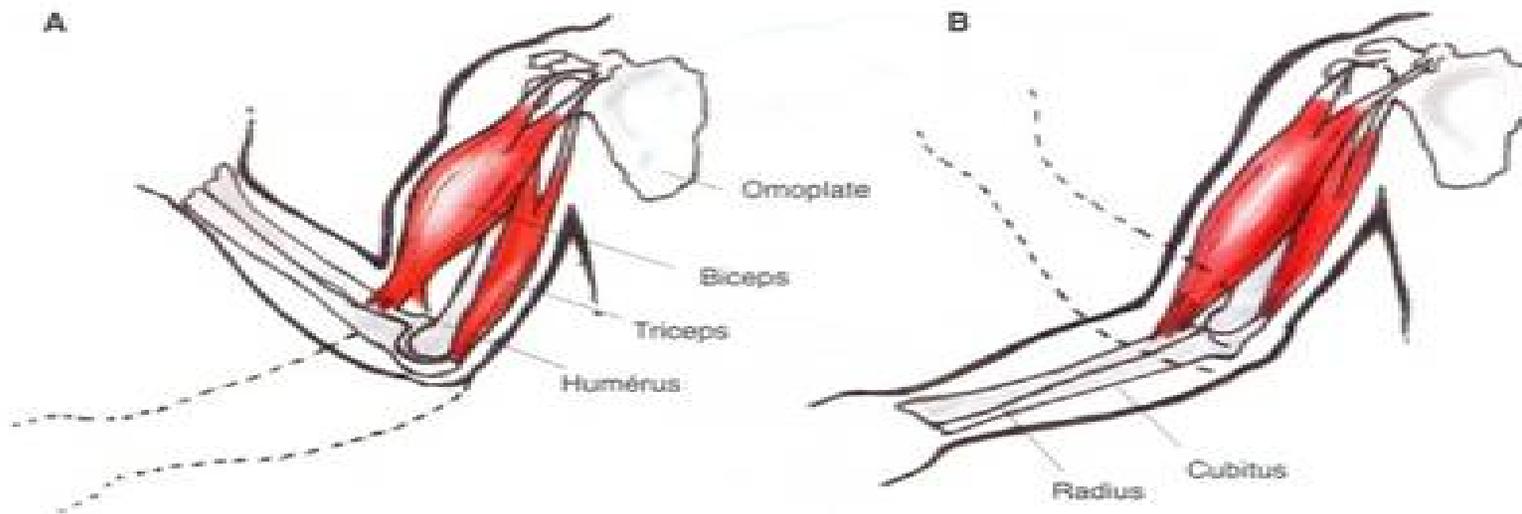
- We will now determine the proper evaluation for gunshot and shell fragment wounds that cause both muscle and nerve injury
 - A muscle injury rating will not be combined with a peripheral nerve paralysis rating of the same body part unless the injuries affect entirely different functions
- 38 C.F.R. § 4.55(a) (effective June 3, 1997)
 - This reg. is for use when the vet sustains, from the same gunshot or shell fragment, a muscle injury and a nerve injury, affecting **distinctly different functions**

38 C.F.R. § 4.55(a) MUSCLE GROUP INJURIES AND PERIPHERAL NERVE INJURIES [FORMERLY 38 C.F.R. § 4.55(g)]

- The Court noted in *Esteban* that:
 - “ [I]t is possible for a veteran to have separate and distinct manifestations from the same injury,” *Esteban v Brown*, 6 Vet.App. 259, 261 (1994) (citing *Fanning v. Brown*, 4 Vet.App. 225, 231 (1993)).

EXAMPLE #10

- The vet sustained a through-and-through gunshot wound of the **dominant upper extremity**
- The bullet entered the left upper arm through the **triceps**



EXAMPLE #10

- The bullet also caused an **open comminuted fracture of the humerus**
- The bullet also **partially severed the ulnar nerve**

EXAMPLE #10

- The muscle group affected was MG VI
- The function of MG VI is extension of the elbow
- **A severe rating under DC 5306 is 40%**

EXAMPLE #10

- The ulnar nerve had severe incomplete paralysis
- The functions of the ulnar nerve are flexion and extension of the ring and little fingers, adduction of the thumb and flexion of the wrist
- A rating for **severe incomplete paralysis of the ulnar nerve under DC 8516 is 40%**
- Under the Combined Rating Table, the ratings combine to 64, rounded down to 60%

REMARKS – EXAMPLE #10

- Both 38 C.F.R. § 4.55(a) and *Esteban* provide that separate and distinct manifestations affecting different functions may be separately rated, even if resulting from the same injury
- Generally, the diagnostic codes for the muscle groups and peripheral nerves will delineate their function

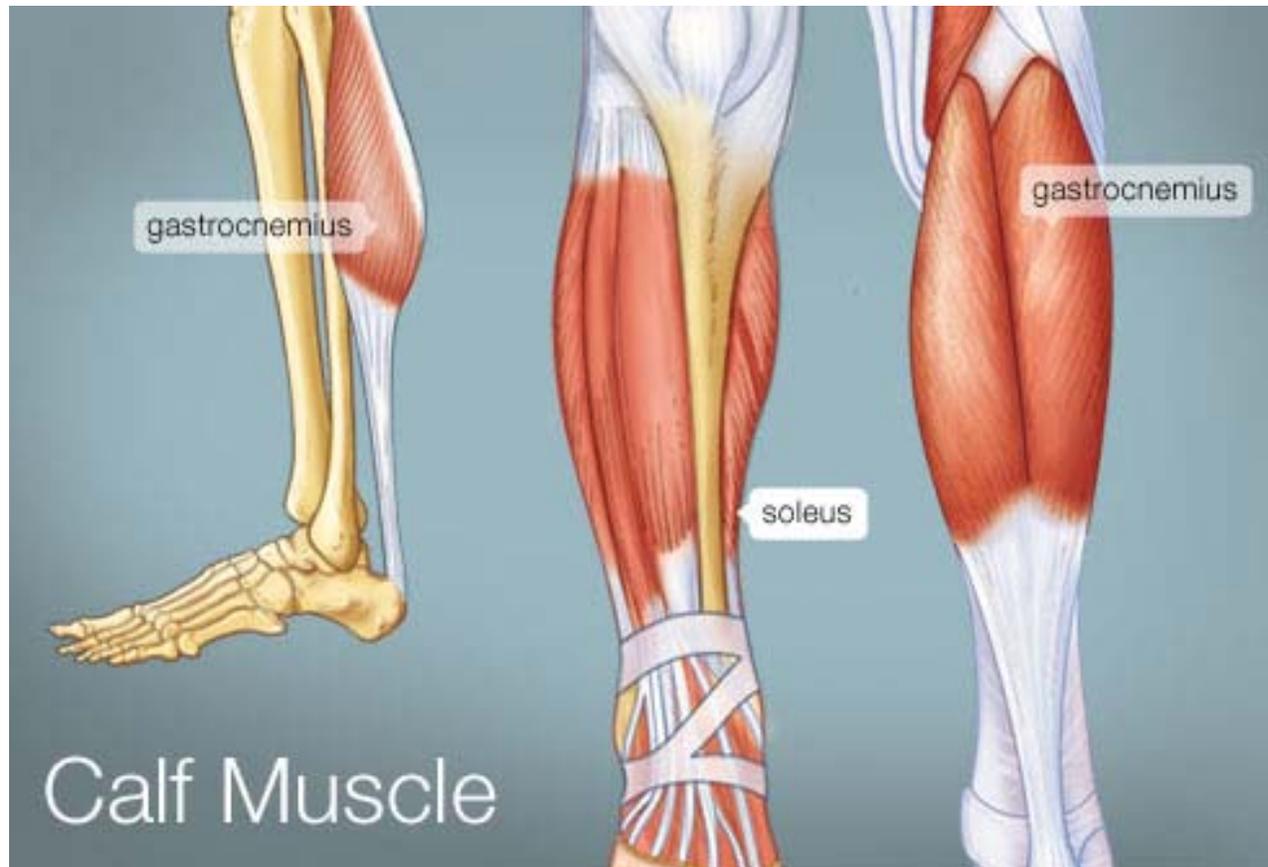
REMARKS – EXAMPLE #10

- Comparison of this information is necessary to determine the correct rating, and whether rating muscle injury and peripheral nerve injury separately is pyramiding.
- The next example involves review of the evaluation process when the residuals of a shell fragment wound affect two different joints

EXAMPLE #11

- Vet sustained a through-and-through muscle injury of the calf musculature, damaging the gastrocnemius and soleus muscles, muscle group XI
- A 10% rating under DC 5311 has been in effect since the 1940's

EXAMPLE #11



EXAMPLE #11

- Secondary to the injury to the calf, the vet developed **arthritis in the left knee** in 1990 and service connection was established for this secondary condition

- He has **pain on motion of the knee**

EXAMPLE # 11

- Functions of the knee include flexion and extension
- The function of the gastrocnemius and soleus muscles in muscle group XI includes propulsion and plantar flexion of the foot
- Because, the function of the injured muscles in muscle group XI is distinctly different from the function of the knee, a separate rating for muscle group XI and for the knee are in order

REMARKS EXAMPLE #11

- In this example VA failed to evaluate separate and distinct manifestations of the same injury consistent with *Esteban*
- Even though one manifestation (the arthritis of the knee) did not result until many years after the initial injury, a separate rating must be applied

CONCLUSION

- Always ensure that all manifestations of gunshot wounds are appropriately compensated
- For example, a vet with a gunshot wound involving the lung, with a retained foreign body, can be evaluated under Diagnostic Code 6843

CONCLUSION

- Under Note 3 to the General Rating Formula for Restrictive Lung Disease, provides:
 - Gunshot sounds of the pleural cavity with bullet or missile retained in lung, pain or discomfort on exertion, or with scattered rales or some limitation of excursion of diaphragm or of lower chest expansion shall be rated at least 20-percent disabling. Disabling injuries of shoulder girdle muscles (Groups I to IV) shall be separately rated and combined with ratings for respiratory involvement. Involvement of Muscle Groups XXI (DC 5321), however, will not be separately rated
- 38 C.F.R. § 4.97, Diagnostic Code 6843, Note 3 (2015).

EXAMPLE – LEGION CASE

○ Facts:

- Active duty from 10/1967- 10/1969
- Vet awarded Purple Heart Medal
- In service, vet suffered a gunshot wound to his right arm
- Vet files for SC for his arm

EXAMPLE- LEGION CASE

○ Facts:

- In 02/2008, RO denied an increased rating in excess of 30%
- Vet appealed in 08/2012 and RO granted max rating of 40% effective 08/23/2012 (**the increased rating does not apply prior to 08/23/2012**)
- Vet appeals case to the BVA

EXAMPLE- LEGION CASE

- In a November 8, 2013 BVA decision – the vet was denied for his claim of entitlement to a disability rating in excess of:
 - 30% prior to August 23, 2012 and
 - 40% thereafter for his service-connected residuals of a gunshot wound of his right arm
- With the representation of NVLSP, the vet appealed this decision to the CAVC

EXAMPLE- LEGION CASE

- The CAVC vacated and remanded the Board decision to the extent that it denied his claim for entitlement to a disability rating in excess of
 - 30% prior to August 23, 2012 and
 - 40% thereafter for his SC residuals of a gunshot wound of his right arm

EXAMPLE- LEGION CASE

- The Court found that Board failed in considering:
 1. an adequate statement of reason or bases for its decision
 2. whether entitlement to compensation for each muscle group affected – Muscle Group V (under which the vet was currently rated) as well as Muscle Group VI

The Board itself acknowledged that his most recent exam noted that this muscle group was affected

3. addressing the applicability of 38 C.F.R. § 4.55(d)

EXAMPLE- LEGION CASE

- Based on these reasons, the Court decided to remand the decision back to Board – where it must reconsider the vet’s claim
- The vet is free to submit any additional evidence and arguments that support his claim and the Board has to consider all new evidence

QUESTIONS?