

# MythBusters!

Veterans' Services —  
Myth Or Reality??

# Myth Or Reality?

Individuals who served in only the following branches can qualify under federal law as a Veteran: Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force.

# Myth!

Individuals who served in any of the following branches can qualify as a Veteran: Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Oceanic & Atmospheric Administration, and Public Health Service.

38 U.S.C. §101(2); 38 U.S.C. §101(21)

# Myth Or Reality?

Veterans can receive disability compensation from the United States Department of Veterans Affairs only if their income falls within a threshold set by the United States Congress.

# Myth!

Disability compensation is available to ANY Veteran with a current disabling condition that was “at least as likely as not” caused by, or worsened by, their military service.

There is no income cap to qualify!

38 U.S.C. §1110

# Myth Or Reality?

The United States Department of Veterans Affairs is required to presume that a Veteran's pre-existing medical condition got worse during that Veteran's military service.

# Reality!

Under the “presumption of aggravation,” the Department of Veterans Affairs must presume that a Veteran’s pre-existing medical condition got worse during their military service - unless the Department of Veterans Affairs can provide clear and unmistakable evidence to the contrary.

38 C.F.R. §3.306

# Myth Or Reality?

Veterans who are incarcerated cannot receive VA disability compensation benefits for the duration of their incarceration.

# Myth!

Veterans can receive disability compensation even while incarcerated.

\*\* Payment reduced to 10% rate on 61st day of incarceration for a felony.

Additionally, a Veteran can file an apportionment claim while incarcerated to send their disability compensation benefits to their family members who are “on the outside.”

38 C.F.R. §3.665; 38 C.F.R. §3.452;

# Myth Or Reality?

It is possible for a Veteran to receive Total Disability based on Individual Unemployability (TDIU) even if that Veteran is still employed.

# Reality!

A Veteran can receive TDIU even if they are still employed, if they are making a salary below the federal poverty guidelines or if they are employed in a protected work environment.

38 C.F.R. §4.16

# Myth Or Reality?

A Veteran who cannot find a copy of their DD214 (or other proof of military discharge) but decides to file a claim for VA benefits anyway can still win that claim.

# Reality!

Federal law requires the VA to assist claimants in certain fundamental ways. Part of this “duty to assist” is a duty to track down federal records that can help the claimant’s chances of success.

**A DD214 (or any other form of military discharge document) is a federal record!**

38 U.S.C. §5103A

# Myth Or Reality?

A Veteran who served from 1989 through 1991 without ever leaving the continental United States qualifies as a “wartime Veteran.”

# Reality!

A “wartime Veteran” is a Veteran who served during a period when the United States was deemed by Congress to be “at war.”

Wartime status DOES NOT require combat service.

*For instance:* Gulf War Era began August 2, 1990, and continues through the present day. Service on active duty for at least one day during that era qualifies the Veteran as a “wartime Veteran.”

38 C.F.R. §3.2

# Myth Or Reality?

A Veteran who served during wartime can own three vehicles and a primary residence valued at \$500,000, and still fall within the asset cap for non-service-connected pension from the VA.

# Reality!

Federal law prevents the VA from calculating the value of the Veteran's primary residence and the value of all vehicles necessary for household use when determining if the Veteran falls within the "personal asset cap" for pension eligibility.

38 C.F.R. §3.275(b)

# Myth Or Reality?

A Veteran with an Other Than Honorable (OTH) discharge may have their access to New York State Veterans' benefits restored even without the United States Department of Defense granting a discharge upgrade.

# Reality!

New York State's **Restoration of Honor Act** provides a pathway to restoration to more than fifty New York State Veterans' benefits/programs/services.

The Restoration of Honor Act is available for Veterans who received a General or Other Than Honorable discharge due to any of the following: PTSD, TBI, MST, Sexual Orientation, or Gender Identity or Expression.

N.Y. Veterans Services Law §1 *et al.*

# Myth Or Reality?

A Veteran owns two homes: one in Albany, New York, and the other in Myrtle Beach, South Carolina. The Veteran spends eight months of the year in Myrtle Beach and four months of the year in Albany. The Veteran is eligible to receive a partial real property tax exemption on the home that the Veteran owns in Albany.

# Myth!

Under New York State's Real Property Tax Law, a Veteran can receive a partial real property tax exemption only if their primary residence is located in New York State

N.Y. Real Property Tax Law §458; N.Y. Real Property Tax Law §458-a; N.Y. Real Property Tax Law §458-b.

# Myth Or Reality?

A Veteran served from 2006 to 2010. After discharge, the Veteran never filed for any VA benefits, but did receive a property tax exemption on their primary residence in New York State. In 2011, the Veteran re-enlisted in the military. Sadly, the Veteran rapidly contracted a disease while on active-duty service and passed away later that year.

The Veteran's surviving spouse is now eligible to receive an increase in the property tax exemption on this residence.

# Reality!

When a Veteran dies from a service-related condition, the surviving spouse receives the property tax exemption as if the Veteran had a disability rated by the VA at 100% -- even if the Veteran never received a 100% rating (or any VA rating!) during their lifetime.

N.Y. Real Property Tax Law §458-a (2)(c)

# Myth Or Reality?

An individual who served in the National Guard can become eligible for a VA Home Loan only if that individual were mobilized under Title 10 orders from the federal government.

# Myth!

National Guard members who served at least 90 days of full-time National Guard duty under Title 32, with at least one stint of 30 days or more, can qualify for a VA Home Loan.

38 U.S.C. §3701(b); 10 U.S.C. §101

# Myth Or Reality?

A New York State court cannot foreclose on a home owned by any individual within New York who is currently serving on active duty or who is currently serving in the National Guard or Reserves.

# Myth!

A New York State court cannot foreclose on any property owned by a person who is presently serving in the military *if* that individual's ability to meet their mortgage obligation is "materially affected" by their military service.

N.Y. Military Law §312

# Myth Or Reality?

A landlord in New York State cannot refuse to rent to a Veteran because that Veteran wants to pay their rent using a HUD-VASH voucher.

# Reality!

Discrimination by landlords based on a prospective tenant's lawful source of income is illegal in New York State.

N.Y. Executive Law §292(36); N.Y. Executive Law §296(2-a)

# Myth Or Reality?

A Veteran who has already used their Post-9/11 G.I. Bill benefits is ineligible to receive the Veterans Tuition Award from New York State's Higher Education Services Corporation.

# Myth!

Even if a Veteran has already used their G.I. Bill benefits (or transferred their G.I. Bill benefits to a dependent), that Veteran can still receive New York State's Veterans Tuition Award (VTA) if they meet the criteria for this State benefit.

Combat Veteran + NY resident = VTA eligibility

N.Y. Education Law §669-a

# Myth Or Reality?

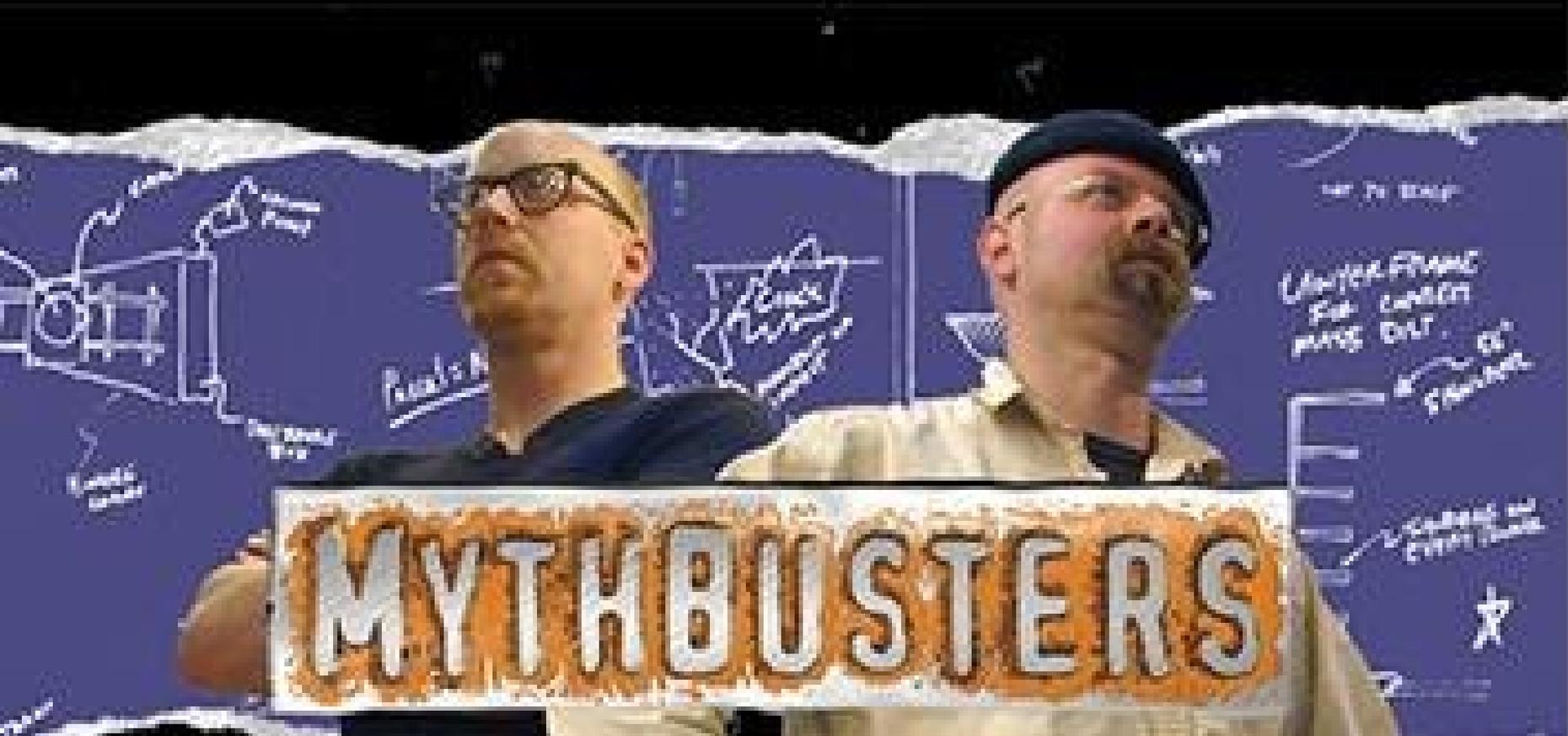
A Veteran in New York State can receive extra credits on a New York State Civil Service Exam only if that Veteran served during a wartime period.

# Myth!

Thanks to a change in the law in November 2021, there is no more wartime service requirement for Veterans to get extra points on a New York State Civil Service Exam.

Veterans of all eras of service are now eligible to receive extra points on a New York State Civil Service Exam.

N.Y. Civil Service Law §85



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Questions???