



This document explains how VCF non-economic loss awards are calculated, and how WTC Health Program certified conditions are considered when calculating the award. ***Claimants should not seek additional certifications from the WTC Health Program in an attempt to increase their VCF award.*** Additional certifications are only appropriate when needed for treatment.

FACTS: Calculation of VCF Non-Economic Loss (“pain and suffering”) Awards

- **The amount of non-economic loss is not tied to the number of certified conditions.** It is possible that an individual with many relatively mild conditions would receive a non-economic award that is less than that of an individual who has only one condition that is severe.
- The non-economic loss portion of the award is **based on the severity of the certified condition(s)** and the effect of the condition(s) on the individual’s ability to maintain normal activities of daily living.
- **Severity is not evaluated based on additional certifications.** Although additional certifications may be an indicator of severity, **they should only be sought if needed for treatment.** Claimants may show severity for purposes of non-economic loss by providing recent medical records, a letter from a treating physician, test results, etc. See page 2 for additional details of the documentation the VCF accepts to support severity of the condition.
- **The non-economic loss award is not automatically tied to the degree of disability.** A claimant may be partially disabled from performing a certain occupation due to his/her eligible injury or condition, but the fact of an occupational disability alone will not warrant a non-economic award higher than the presumptive “base” value.
- **Non-economic loss awards range** from \$10,000-\$90,000 for non-cancers, up to \$250,000 for cancers, and in a small number of cases, up to \$340,000 for multiple cancers or cancer with multiple severe non-cancer conditions.
- **The VCF has established “baseline” awards for various conditions.** These “base” values are awarded **without** the need for medical records or other documentation.
- **Emphysema, Interstitial Lung Disease (including Asbestosis), and Sarcoidosis** have been determined by the VCF to be **presumptively severe** and debilitating and warranting the highest non-economic loss award allowed under the statute for a non-cancer condition (\$90,000). Claimants do **not** need to provide medical records or other documentation to support severity of these conditions if they are certified.
- **The Prostate cancer baseline award is \$200,000.** To demonstrate the severity required for a higher non-economic loss award, **claimants do not need to seek additional certifications related to their Prostate cancer unless they are needed for treatment purposes.** Complications from prostate cancer surgery and treatment, while relatively common, can be temporary. Because temporary complications should not result in higher awards, the **VCF requires medical records demonstrating permanent complications, recurrence, or metastasis** of prostate cancer to qualify for the higher \$250,000 award.
- **The Special Master has identified certain conditions (see table below) as presumptively less severe and debilitating and thus warranting lower awards, absent medical documentation of severity.** While some of these conditions can have severe impacts on individual patients, the VCF requires evidence of such severity before considering an increase in the award. **Additional conditions should not be certified to show severity for VCF purposes;** they should only be certified if needed for treatment.

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| • Asthma/RADS | • Chronic Obstructive Pulmonary Disease | • Obstructive Sleep Apnea |
| • Barrett’s Esophagus | • Chronic Rhinitis | • Pharyngitis |
| • Bronchiectasis | • Esophagitis | • Respiratory Conditions due to Fumes or Vapors |
| • Chronic Airway Obstruction | • Gastroesophageal Reflux | • Rhinosinusitis |
| • Chronic Bronchitis | • Laryngitis | • Sinusitis |
| • Chronic Cough | • Nasopharyngitis | • Traumatic Injury/Musculoskeletal Disorder |



Types of Documents accepted by the VCF to Demonstrate Severity of a Certified Condition

The VCF focuses on recent documentation, from within three years of the claim submission date, when evaluating severity for non-economic loss. The types of documents listed below can assist the VCF in evaluating the severity of the condition:

- **Recent medical documents that show the type and frequency of medical treatments** for the condition. Example: Documents that show hospitalization, surgery, emergency treatment, and/or treatment for side effects of the condition.
- **Recent test results and treatment prescribed that show the severity** of the condition. Example: Pulmonary function test results, including the physician’s interpretation of the tests. Other examples include computed tomography scans, x-rays, endoscopies, esophagogastroduodenoscopies, laryngoscopies, polysomnography or sleep studies, or other diagnostic and treatment procedures.
- **Recent documentation of the medications required to manage the condition and how often the medications are taken**, including the type of medication prescribed and the frequency of use of the medication.
- **A document from the treating provider summarizing the medical history of the condition and treatment.**
- **Letters or reports from specialists** who treated the eligible conditions that explain how the condition has limited activities, or an explanation of the effects of the condition.
- **Records of state and federal agency proceedings or private insurance records** that address the medical condition.
- **A personal statement from the claimant discussing the impact of the eligible conditions on their life, with corresponding medical records.** Such a statement is most helpful if it provides a timeline and details on the medical treatments the individual has experienced.

Examples

The examples below are for **illustrative purposes only** to show that additional certifications do **not** automatically lead to higher non-economic loss awards. The VCF reviews each claim individually and calculates the award based on the specifics of the individual claim.

Certified Condition	Medical Records Submitted?	Other certified Conditions?	Non-Economic Loss Award
Prostate Cancer	No	No	\$200,000 baseline for Prostate cancer
Prostate Cancer	No	Yes – for non-cancer condition that is <u>not</u> presumptively severe	\$200,000
Prostate Cancer	Yes – medical records support severity	No	\$250,000 (statutory cap)
Emphysema	No	No	\$90,000 for condition that is presumptively severe (statutory cap)
Emphysema	No	Yes – multiple <u>non-cancer</u> certifications	\$90,000 (statutory cap)

See page 3 for additional references.



References: The references listed below provide additional detail and are available on the www.vcf.gov website.

- **VCF Policies & Procedures:** General information about the calculation of non-economic loss, severity, and medical records – see Section 2.1.c: <https://www.vcf.gov/policy/calculation-loss#toc-c-documentation-of-non-economic-loss>
- **Notes from meeting with law firms – specific to Prostate Cancer awards and medical records:** See bottom of page 3 to top of page 4: <https://www.vcf.gov/sites/vcf/files/media/document/2020-03/LawFirmUpdateDec2019.pdf>
- **VCF Just the Facts:** <https://www.vcf.gov/general-information/just-facts> (excerpt below).

MYTH Each unique certified condition means I am eligible for a higher award.

FACT The amount of your award is not tied to the number of conditions certified by the WTC Health Program. The award amount varies by type, severity, and the impact of condition(s) on your life. In other words, receiving additional certifications from the WTC Health Program *will not necessarily mean a higher award*. The law governing the VCF sets limits on the amount the VCF can award for the non-economic loss portion of your award (also referred to as “pain and suffering”). This part of the award is capped at \$90,000 for a non-cancer condition and \$250,000 for a cancer condition. This means that, except in rare circumstances where a claimant is certified with multiple cancers or with a cancer and a severe non-cancer condition, the Special Master does not have discretion to make a non-economic loss award above \$250,000.

For detailed information on how non-economic loss is calculated, see Section 2.1 of the [VCF’s Policies and Procedures](#).

The WTC Health Program has received requests from people asking for appointments to get additional certifications because they have been told this will get them a higher VCF award. In most cases, this is not true – and in fact, it is placing a real burden on WTC Health Program providers. In addition, the WTC Health Program has received requests to change a certification from one condition to another condition for purposes of an individual’s VCF claim. If you believe your certification should be updated, you should discuss your concern with your Clinical Center of Excellence (CCE)/Nationwide Provider Network (NPN). The individual CCE/NPN is responsible for selecting the appropriate condition code based on their evaluation of your condition and their medical findings. The CCE’s/NPN’s selection of a specific condition (or category of condition) for certification is based on their medical expertise, not on which condition or category receives a higher award from the VCF.