

# VA Certification Training



# Overview

- Representation before VA
- Basic eligibility for VA benefits
- Disability compensation
- Pension
- DIC/survivors' benefits
- Claims procedures
- Right to appeal

# Department of Veterans' Affairs (VA)

- Cabinet level Agency that provides healthcare, benefits, and compensation to veterans and their dependents
- Secretary, Denis McDonough
- Three components:
  - Veterans' Health Administration (VHA)
  - **Veterans' Benefits Administration (VBA)**
  - National Cemetery Administration (NCA)

# VHA

The Veterans Health Administration is America's largest integrated health care system, providing care at 1,321 health care facilities, including 172 medical centers and 1,138 outpatient sites



# VBA

- The Veterans Benefits Administration provides financial and other forms of assistance to veterans and their dependents

# Benefits administered by VBA

- Veterans' benefits
  - Compensation
  - Pension
  - Education
  - Adaptive Equipment
  - Vocational Rehabilitation
  - VA Home Loans
  - VA Life Insurance
  - Survivors' benefits

## Total Recipients

Compensation – Number of service-connected compensation and DIC benefit recipients at the end of fiscal year 2022	5,894,585
Pension – Number of non-service-connected disability Veteran and survivor pension recipients at the end of fiscal year 2022	299,709
Fiduciary – Number of beneficiaries who received services from VA's fiduciary program during fiscal year 2022	108,073
Education – Number of beneficiaries participating in education programs during fiscal year 2022	834,460
Insurance – Number of lives insured at the end of fiscal year 2022	5,586,174
Home Loan Guaranty – Number of loans guaranteed during fiscal year 2022	746,091
Veteran Readiness and Employment – Number of participants during fiscal year 2022	124,437

# Agency Level

## Regional Offices

- 56 VA Regional Offices within the United States, Puerto Rico, and the Philippines
- Handles claims adjudication
- Undersecretary of Benefits, Joshua Jacobs

## Board of Veterans' Appeals

- Located in Washington, D.C.
- Directed by Chairman, Jaime Areizaga-Soto
- Veterans Law Judges





# Appellate Review

- Court of Appeals for Veterans' Claims (CAVC)
  - Article 1 Court
  - Washington, D.C., but authorized to sit anywhere in the U.S.
  - Exclusive jurisdiction over decisions by BVA
  - Authorized 7 permanent active Judges and two additional judges as part of a temporary expansion provision.
    - Term of 15 years with option to agree to be available for recall as Senior Judge



# Representation at the Agency

- **Accreditation is required** by both attorneys and non-attorneys
  - Cannot charge for filing of initial claim
  - Must be **accredited**, even if pro bono
  - Non-attorneys must pass an examination in addition to completing application
- Accreditation must be renewed annually and includes CLE requirements
- Application form for Accreditation – VA Form 21a
  - <https://www.va.gov/vaforms/va/pdf/VA21a.pdf>



# Representation at the Agency

- Once accredited, you may represent a Veteran at the agency
- Submit VA form 21-22a
- If you are representing a Veteran for a fee and want the VA to withhold your “reasonable fee”- you will also need to file your fee agreement with the Office of General Counsel (OGC)



# Attorney Representation for Fee

- Withholding fee agreement: VA withholds attorney fee from retroactive award and pays the attorney fee directly to the attorney. Must be filed with the agency of original jurisdiction (the Regional Office) within 30 days of the agreement being signed
  - Withholding fee agreements have to be for 20% of retro award or less to be valid
- Non-withholding fee agreement: the full amount of a retroactive award is released to the veteran and the veteran pays the attorney the fee. Must be filed with the Office of General Counsel (OGC) within 30 days of the agreement being signed



# Accreditation Issues

- Watch out for unaccredited claims consultants
- VA OGC website to confirm someone is accredited
  - <https://www.va.gov/ogc/apps/accreditation/index.asp>
- What should Veteran do if harmed by unaccredited rep/consultant?
  - File complaint with OGC
  - File complaint with FTC
  - Reach out to congressional representative

# Representation at Court

- Admission to Court of Appeals for Veteran's Claims
  - Application for Admission
  - Certificate of Good Standing
  - Application available online at [http://www.uscourts.cavc.gov/documents/Form46A\\_02-12\\_.pdf](http://www.uscourts.cavc.gov/documents/Form46A_02-12_.pdf)

## Overview – Compensation



### New compensation recipients and estimated annual payments – during FY 2022

Benefit program	Number of recipients	Estimated average individual amount paid annually	Estimated total amount paid annually
Veterans Compensation	322,908	\$15,244	\$4.92 Billion
Survivors DIC <sup>2</sup>	38,027	\$18,571	\$706.2 Million
<b>Total:</b>	<b>360,935</b>	<b>\$15,594</b>	<b>\$5.63 Billion</b>

### All compensation recipients and payments – end of FY 2022

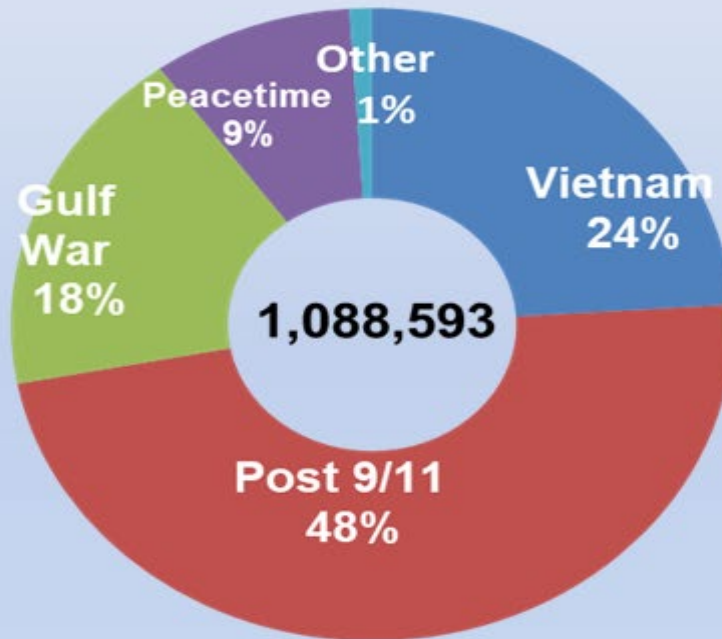
Benefit program	Number of recipients	Estimated average individual amount paid annually	Estimated total amount paid annually
Veterans Compensation	5,417,012	\$20,686	\$112.06 Billion
Survivors DIC	477,573	\$18,196	\$8.69 Billion
<b>Total:</b>	<b>5,894,585</b>	<b>\$20,484</b>	<b>\$120.75 Billion</b>

Veteran's Benefits Administration, Annual Benefits Report, FY 2022, p. 9.

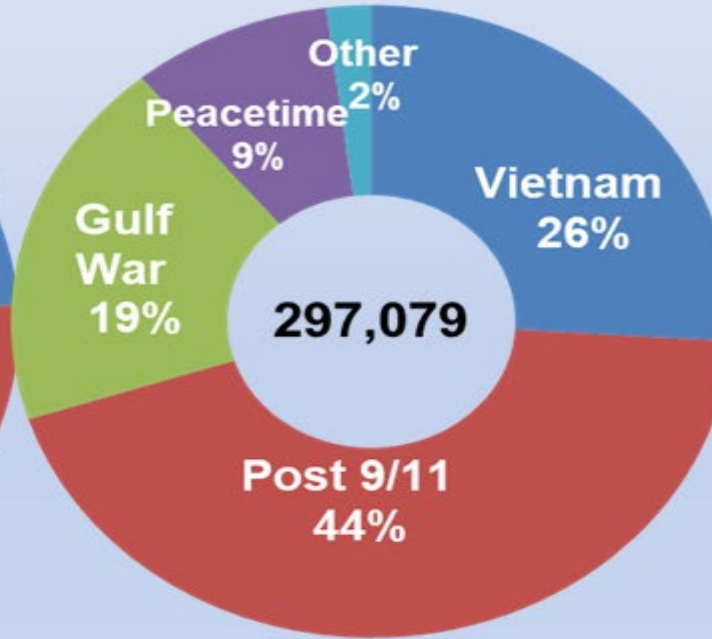


# Characteristics of Claims

**Total Pending Claims**



**Total Backlogged Claims**



Data as of: 09/23/23

Backlog: Claims pending longer than 125 days



# Service-connected disability compensation

The term “service-connected” means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, air, or space service.

38 U.S.C. § 101 (16).



# What's the benefit?

Compensation is a monthly tax-free benefit payment to Veterans who got sick, were injured while serving in the military, or whose service made an existing condition worse. Disabilities may be physical or mental. There is no requirement that disabilities develop *during* service.

<https://www.va.gov/disability/>



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# Other Benefits

- SC can also provide increased access to healthcare
- Potential death benefits for surviving spouse or children
- Special Home Adaptation (SHA)/Specially Adapted Housing (SAH)
- Dependents Educational Assistance (DEA)
- Special Monthly Compensation (SMC)
- Recognition



# Basic Entitlement

For disability resulting from **personal injury suffered** or **disease** contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, air, or space service, during a period of war, the United States will pay to any veteran thus disabled and who was **discharged or released under conditions other than dishonorable** from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but **no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.**

38 U.S.C. § 1110.



# Basic entitlement

- Veteran status - 38 U.S.C. § 101 (2)
  - a person who served in the active military, naval, or air services,
  - who was discharged or released under conditions other than dishonorable.

# Active Service Requirements

VA defines “active duty” as any period of active duty for training during which the individual concerned was disabled from a disease or injury incurred or aggravated in line of duty.” 38 C.F.R. § 3.6 (a).

- Examples of “active duty” include full-time duty in the Armed Forces; attendance at preparatory schools of the U.S. Air Force, Military, or Naval Academy; authorized travel to and from such duty or service; etc. 38 C.F.R. § 3.6 (b).
- An example of “active duty for training” includes full time duty in the Armed Forces performed by Reserves for training purposes. 38 C.F.R. § 3.6 (c).
  - Special rules for National Guard and reservists – <https://cck-law.com/blog/va-benefits-for-national-guard-and-reserve-members/#active-guard-reserve-members>



# Character of Discharge

Discharge “under conditions other than dishonorable” for VA purposes.

Types:

- Honorable discharge (HD)
- Discharge under honorable conditions (UHC) or general discharge (GD)
- Discharge under other than honorable conditions (OTH) or undesirable discharge (UD)
- Bad conduct discharge (BCD)
- Dishonorable discharge (DD)

NOTE: Bad discharge from one period does not necessarily preclude benefits for a disability stemming from a period of service with a good discharge.



# Line of Duty

- This phrase means that an injury or disease was incurred in or aggravated during a period of active service, unless the injury or disease is the result of a veteran's own willful misconduct or abuse of alcohol or drugs. 38 C.F.R. § 3.1 (m).
- If the service department finds that the injury or disease occurred in the line of duty, then that finding is binding on the VA, "unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs." 38 C.F.R. § 3.1 (m)

38 C.F.R. § 3.301 (a).





# Line of Duty

Example:



Photo Credit: An Air Force special tactics operator executes a military free fall jump near Alcantarilla Air Base, Spain, July 26, 2022.

<https://www.defense.gov/Multimedia/Photos/igphoto/2003049927/>

# Line of Duty

But  
also...



Photo Credit: Airmen and soldiers play soccer with residents of Chabelley Village in Djibouti, June 9, 2022.  
<https://www.defense.gov/Multimedia/Photos/igphoto/2003019553/>

# Willful Misconduct

- An act involving conscious wrongdoing or known prohibited action.
- Most common examples are alcohol and drug abuse.
- A finding by a service department that an injury disease or death was not due to willful misconduct will be binding on the VA “unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs.”

38 C.F.R. § 3.1 (n); see also 38 C.F.R. § 3.301 (c).



# Direct Service Connection

## Elements:

- Current disability
- Medical or, in certain circumstances, lay evidence of incurrence or aggravation of a disease or injury in service
- Nexus between the in-service injury or disease and the current disability

38 U.S.C. § 1110; 38 C.F.R. § 3.1(k); *Hickson v. West*, 12 Vet.App. 247 (1999).



# Medical evidence of a current disability

- “[D]isability’ in § 1110 refers to the functional impairment of earning capacity, not the underlying cause of said disability.”
- “[P]ain is an impairment because it diminishes the body’s ability to function, and that pain need not be diagnosed as connected to a current underlying condition to function as an impairment.”

*Saunders v. Wilkie*, 866 F.3d 1356, 1363-64 (Fed. Cir. 2018).



# Are all disabilities fair game?

- No. Developmental or congenital defects cannot be service connected. See 38 C.F.R. § 3.303 (c). “Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency...” *Id.*
- **BUT** congenital or developmental disease capable of getting worse may be service connected. *Quirin v. Shinseki*, 22 Vet.App. 390, 394 (2009).

*O'Bryan v. McDonald*, 771 F.3d 1376, 1379 (Fed. Cir. 2014).





# Medical evidence of a current disability

- A disability is “current” if it manifested at any time during the pendency of the claim, but if it resolved prior to submitting a claim it is not current. *McClain v. Nicholson*, 21 Vet.App. 319 (2007).
- A Veteran does not necessarily have to have evidence of the claimed condition diagnosed during service. See 38 C.F.R. § 3.303(d); see also *Cosman v. Principi*, 3 Vet.App. 503 (1992).



# Medical evidence of a current disability

Evidence of a disability or diagnosis can be shown by:

- Service medical records
- VAMC treatment records or VA examinations
- Private treatment records





# Evidence of incurrence or aggravation of a disease or injury **in service**

- Must not be during a period of service which is dishonorable.
- Must not be due to one's own misconduct such as during commission of a crime or substance use.
- May be on duty or off duty, but "in line of duty."
- Evidence of an injury or disease in service can be shown by
  - Service medical records
  - Service personnel records
  - Private (non-military) treatment records
  - "Verified" stressor (See 38 C.F.R. § 3.304(f))
    - Behavioral issues



# Presumption of Soundness

- No preexisting defects or disabilities noted on enlistment exam, “the government must show clear and unmistakable evidence of **both** a preexisting condition and a lack of in-service aggravation to overcome the presumption of soundness...” *Wagner v. Principi*, 370 F.3d 1089 (Fed. Cir. 2004).
- If a preexisting condition is noted on enlistment exam, the burden is on the veteran to establish that the condition worsened during service. But, if the veteran shows it got worse in service, the burden shifts to the government to show the increase in disability severity was due to the natural progression of the disease. 38 C.F.R. § 3.306.
- 38 U.S.C. § 1111; 38 C.F.R. § 3.304(b) .



# Aggravation

When a condition is *noted upon entry*, a preexisting injury or disease will be considered to have been aggravated by active military, naval, air, or space service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease. 38 U.S.C. § 1153.



# Special Rule for Combat Veterans

- “Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation.” 38 C.F.R. § 3.304(d); 38 U.S.C. § 1154(b).

# Direct Service Connection

## Medical evidence of a nexus

- Standard of proof is “at least as likely as not.”
- Nexus will usually be established by a VA examination or a private medical opinion.
- Lay evidence may be able to establish a nexus depending largely on the disability and the Veteran’s combat status. *Davidson v. Shinseki*, 581 F.3d 1313, 1316 (Fed. Cir. 2009).
- “Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation.” 38 C.F.R. § 3.304(d).



# Secondary Service Connection

A "...disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition." 38 C.F.R. § 3.310

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# Aggravation by Service-Connected Condition

- Any increase in severity of a nonservice-connected disease or injury [i.e., aggravation] that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected. 38 C.F.R. § 3.310(b); *Allen v. Brown*, 7 Vet.App. 439, 448 (1995).
  - VA will not concede that a nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice-connected disease or injury. 38 C.F.R. § 3.310 (b).



# Secondary Service Connection

- Even if a condition cannot be service-connected itself such as primary alcohol or drug use and \*obesity, it may be used to establish service connection as an intermediate step if it results from a service-connected condition.
- \* See *Marcelino v. Shulkin*, 29 Vet.App. 155 (2018) but see *Larson v. McDonough*, 10 F.4th 1325 (Fed. Cir. 2021).





# Presumptive Service Connection

## Relevant regulations

- 38 C.F.R. § 3.307 - chronic, tropical, or prisoner-of-war related disease, exposure to certain herbicide agents, or exposure to contaminants in the water supply at Camp Lejeune
- 38 C.F.R. § 3.317 – Persian Gulf
- 38 C.F.R. § 3.309 – diseases subject to presumptive service connection
- Other regulations include § 3.311 (ionizing radiation), § 3.316 (mustard gas and Lewisite), § 3.318 (amyotrophic lateral sclerosis), § 3.320 (fine particulate matter)



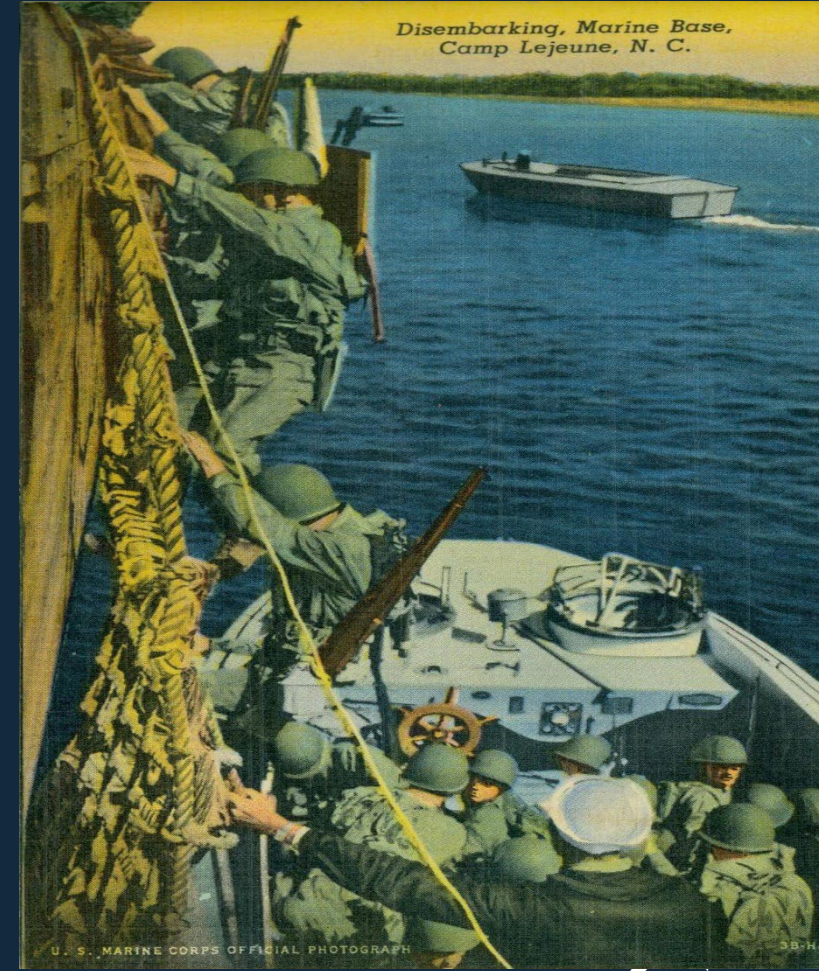
# Presumptive Service Connection Chronic Diseases

- 38 C.F.R. § 3.309(a) - Specifically listed disease manifests to a degree of 10% or more within 1 year from the date of separation
  - Examples: arthritis, diabetes mellitus, leukemia, myasthenia gravis, organic disease of the nervous system, etc.
- 38 C.F.R. § 3.307 (a)(3).
  - Hansen's disease (leprosy) and tuberculosis must manifest to a degree of 10% or more within 3 years from the date of separation.
  - Multiple sclerosis must manifest to a degree of 10% or more within 7 years from the date of separation.



# Presumptive Service Connection Camp Lejeune

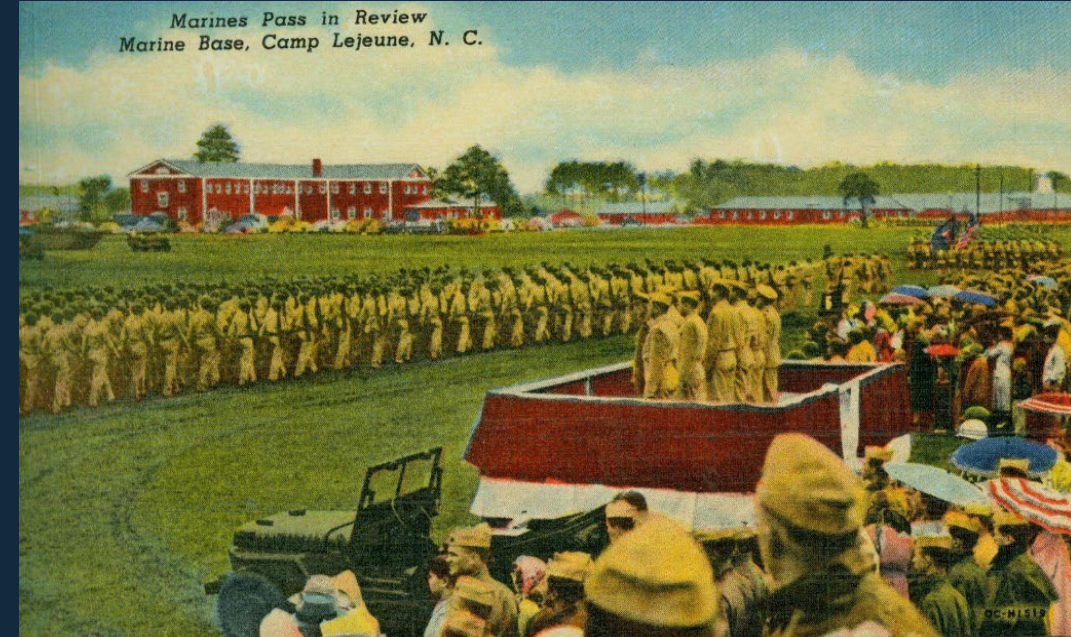
- Due to contaminants in the water on base, Veterans, former Reservists, and former National Guard members, who served at Camp Lejeune for no less than 30 days (consecutive or non-consecutive), from August 1, 1953 through December 31, 1987, may be eligible for service connection of certain conditions on a presumptive basis
- Effective March 14, 2017





# Presumptive Service Connection Camp Lejeune

- Veterans who served at Camp Lejeune for at least 30 days (consecutive or nonconsecutive) between August 1, 1953 and December 31, 1987 are presumed to be exposed to contaminated water.
- Service connection will be granted on a presumptive basis when a Veteran who meets the above criteria is also diagnosed with one of the diseases listed under 38 C.F.R. § 3.309(f).



# Presumptive Service Connection Camp Lejeune

## Presumptive Disabilities for Camp Lejeune - 38 C.F.R §3.309(f)

- (1) Kidney cancer
- (2) Liver cancer
- (3) Non-Hodgkin's lymphoma
- (4) Adult leukemia
- (5) Multiple myeloma
- (6) Parkinson's disease
- (7) Aplastic anemia and other myelodysplastic syndromes
- (8) Bladder cancer

The Presumption was established effective 3/14/17, and VA will only grant service connection on a presumptive basis from 3/14/17. Prior to that date, the presumption does not apply, but a Veteran may still qualify for benefits on an alternate basis.



# Presumptive Service Connection Persian Gulf

- Those who served in the Southwest Asia theater of operations during the Persian Gulf War (90s and 2000-10s)
- The Southwest Asia theater of operations refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.
- Note: PACT Act expands PGW definition to include Afghanistan, Israel, Egypt, Turkey, Syria, Jordan



# Presumptive Service Connection Persian Gulf

- Disabilities under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317
  - - Undiagnosed Illnesses
  - - Medically unexplained chronic multisymptom illnesses (MUCMI)

\* This training will not cover infectious diseases, but they are contained in 38 C.F.R. § 3.317(c)(2)



# Presumptive Service Connection Persian Gulf – Undiagnosed Illness

## Elements:

- Objective manifestations
- Signs and symptoms
- Chronic
- Cannot be attributed to a known clinical diagnosis by history, physical examination, and laboratory tests
- Began during service in Southwest Asia or manifested to 10 percent or more under the rating schedule within presumptive period
- NOTE: PACT Act says “manifests to any degree at any time”





# Presumptive Service Connection Persian Gulf - MUCMI

## Elements:

- Medically diagnosed
- Without conclusive pathophysiology and conclusive etiology
- Overlapping signs and symptoms
- Began in Southwest Asia or manifested to 10 percent or more under rating schedule within presumptive period



# Presumptive Service Connection Persian Gulf

Some diseases specifically included in the regulation:

- Chronic Fatigue Syndrome
- Fibromyalgia
- Irritable Bowel Syndrome
- Functional gastrointestinal disorders (FGIDs)

# Presumptive Service Connection Persian Gulf – Particulate Matter



Service members assigned to the Combined Joint Task Force-Horn brace for a wall of dirt and rocks created by the prop wash from a Marine Corps CH-53E helicopter as it takes off from a dry lake bed during a search and rescue exercise, Grand Bara, Djibouti, April 23, 2009.

<https://www.defense.gov/Multimedia/Photos/igphoto/2001996743/>

- Chronic asthma, rhinitis, or sinusitis that manifested within 10 years of a qualifying period of military service.
- Service in the Southwest Asia theater of operations between August 2, 1990 and the present.
- Service in Afghanistan, Uzbekistan, Syria, or Djibouti between September 19, 2001 and the present.

# Presumptive Service Connection Herbicide Agents

VA presumes that specified conditions are linked to exposure to herbicides including Agent Orange in service:

- in the Republic of Vietnam between January 9, 1962 and May 7, 1975
- on or near the Korean demilitarized zone (DMZ) between September 1, 1967 and August 31, 1971
- Active duty and reservist personnel who had regular contact with C-123 aircraft between 1969 and 1986



# Presumptive Service Connection Herbicide Agents (prior to PACT Act)

AL Amyloidosis	Non-Hodgkin's Lymphoma
Chronic B-cell leukemias	Parkinson's Disease
Chloracne	Peripheral Neuropathy, Early-Onset
Diabetes Mellitus Type 2	Porphyria Cutanea Tarda
Hodgkin's Disease	Prostate Cancer
Ischemic Heart Disease	Respiratory Cancers
Multiple Myeloma	Soft Tissue Sarcomas
<b>Parkinsonism</b>	<b>Bladder Cancer</b>
<b>Hypothyroidism</b>	



# Blue Water Navy Vietnam Veterans Act of 2019

- Extended the presumption of service connection to veterans who served offshore within twelve nautical miles seaward of the demarcation line of Vietnam between 1962 and 1975.



# PACT Act

The PACT Act was signed into law on August 10, 2022. The legislation provides improved benefits and health care to veterans suffering from disease associated with various toxic exposure, including Agent Orange in Thailand and burn pits throughout Southwest Asia, as well as expand exposure-related research, resources, and training. VA began processing PACT Act claims at-large in January 2023.



# PACT Act

- The bill defines **toxic exposed veterans** as those who participated in a toxic exposure risk activity while serving active duty, active duty for training, or inactive duty training.
- Expands presumptions related to **Agent Orange exposure** to include **Thailand, Cambodia, Laos, Guam, American Samoa, and Johnston Atoll** as locations where **in VA will concede Agent Orange exposure**.
- Adds **23 burn pit and toxic exposure-related conditions** to VA's list of service presumptions.
- Possible retroactive benefits for DIC claimants related to these conditions.





# The PACT Act Also

- Expands presumptions for radiation-exposed veterans at certain locations/during certain years.
- Creates a federal cause of action for service members and their families who served/lived at Camp Lejeune during the recognized period of water contamination.
- Expands VA health care eligibility to post-9/11 combat veterans, which is estimated to include more than 5 million toxic-exposed veterans.
- Creates a framework for the establishment of future presumptions of service connection related to toxic exposure.



# VA Reported PACT Statistics

- Since August 10, 2022
  - Veterans and survivors have filed more than 2,437,674 total VA claims.
  - VA received more than 952,426 PACT Act specific claims.
  - VA has completed more than 524,030 PACT Act related claims.
- On December 12, 2022, VBA began granting benefits for terminally ill veterans under PACT ACT. VA has completed 8,782 such claims and granted 5,605 of them.
- 157,896 PACT Act related claims are in backlog status.

\*All PACT Act data through August 21, 2023



# Expanded diseases associated with herbicide exposure under PACT

- Monoclonal gammopathy of undetermined significance
- Hypertension
  - Note: VA will award retroactive effective dates for hypertension and monoclonal gammopathy of undetermined significance *only* to claimants for DIC.
  - The text of the PACT Act specifically exempts these conditions from existing court orders, precluding *Nehmer* reconsideration.

# Additional Locations for Presumed Herbicide Exposure under PACT

- Thailand at any United States or Royal Thai base beginning on Jan. 9, 1962, and ending on June 30, 1976, without regard to where on the base the veteran was located or what military job specialty the veteran performed.
  - Note: This is a LONGER period of time than Veterans who were “boots on the ground” in Vietnam by over a year (that period ends on 5/7/75)
- **Laos** from Dec. 1, 1965, to Sept. 30, 1969
- **Cambodia** at Mimot or Krek, Kampong Cham Province during the period beginning on Apr. 16, 1969, and ending on Apr. 30, 1969
- **Guam** or **American Samoa**, or in the territorial waters thereof, during the period beginning on Jan. 9, 1962, and ending on Jul. 31, 1980.
- Served on **Johnston Atoll** or on a ship that called at Johnston Atoll during the period beginning on Jan. 1, 1972, and ending on Sept. 30, 1977.



# Presumption of Toxic Exposure

- VA will presume that any 'covered veteran' was exposed to the substances, chemicals, and airborne hazards identified in the statute.
- The Secretary must establish and maintain a list of chemicals/hazards that the Secretary and DoD deem appropriate.
- Sub-regulatory guidance indicates that BPOT (Burn Pit and other Toxins) sources include:
  - Dust storms and other wind-borne suspension of organic and inorganic particles,
  - Diesel engine emissions from generators and military vehicles,
  - Burn pit emissions, and
  - Industrial pollutants.



# Burn Pit Exposure: Covered Veterans under PACT

A veteran who on or after August 2, 1990, performed active military, naval, air, or space service, while assigned to a duty station, including the airspace above:

- Bahrain
- Iraq
- Kuwait
- Oman
- Qatar
- Saudi Arabia
- Somalia
- United Arab Emirates; or



# Covered Veterans

A veteran who, on or after September 11, 2001, performed active military, naval, air, or space service, while assigned to a duty station, including the airspace above:

- Afghanistan
- Djibouti
- Egypt
- Jordan
- Lebanon
- Syria
- Yemen
- Uzbekistan



# PACT Act

The following conditions have been added to the presumptive list for “covered veterans,” effective August 10, 2022.

Asthma	Kidney cancer	Granulomatous disease
Head cancer (of any type)	Brain Cancer	Interstitial lung disease
Neck cancer (of any type)	Melanoma	pleuritis
Respiratory cancer (of any type)	Pancreatic cancer	Pulmonary fibrosis
Gastrointestinal cancer (of any type)	Chronic bronchitis	Sarcoidosis
Reproductive cancer (of any type)	COPD	Chronic sinusitis
Lymphoma cancer (of any type)	Constrictive bronchiolitis or obliterative bronchiolitis	Chronic rhinitis
Lymphomatic cancer (of any type)	Emphysema	Glioblastoma





# Presumptions for PGW Veterans

The term “Persian Gulf veteran,” as used in 38 C.F.R. § 3.317 for presumptions related to undiagnosed illnesses and MUCMLs, now includes veterans who served on active duty during the PGW in:

- Afghanistan
- Israel
- Egypt
- Turkey
- Syria
- Jordan

The bill also amends 38 U.S.C. § 1117 to remove the requirement that a qualifying chronic disability claimed due to PGW service becomes manifest to a compensable degree during the presumptive PGW period, and now only requires that it became manifest to any degree at any time.



# Presumptions for Radiation-Exposed Veterans

Under 38 U.S.C. § 1112, the term “radiation-exposed veteran” means a veteran who participated in a **radiation-risk activity** while on active duty or during a period of active duty for training or inactive duty training.







# Radiation-Risk Activity

- Cleanup of Enewetak Atoll during the period beginning on January 1, 1977, and ending on December 31, 1980.” 38 U.S.C. § 1112 (c)(3)(B)(v).
- Onsite participation in the response effort following the collision of a United States Air Force B-52 bomber and refueling plane that caused the release of four thermonuclear weapons in the vicinity of Palomares, Spain, during the period beginning January 17, 1966, and ending March 31, 1967. § 1112 (c)(3)(B)(vi).
- Onsite participation in the response effort following the on-board fire and crash of a United States Air Force B-52 bomber that caused the release of four thermonuclear weapons in the vicinity of Thule Air Force Base, Greenland, during the period beginning January 21, 1968, and ending September 25, 1968. § 1112 (c)(3)(B)(vii).



# Presumptive Service Connection Categories

Presumptions for Service Connection Related to Toxic Exposures		Relevant Code Sections
	Burn Pits and other Toxins (BPOT)	38 U.S.C. § 1119 Presumptions of Toxic Exposure  38 U.S.C. § 1120 Presumption of Service Connection for Certain Diseases Associated with Exposure to BPOT
	Persian Gulf War Veterans	38 U.S.C. § 1117 Compensation for Disabilities Occurring in Persian Gulf War Veterans
	Herbicide Agent Exposure	38 U.S.C. § 1116 Presumptions of Service Connection for Diseases Associated with Exposure to Certain Herbicide Agents
	Ionizing Radiation Exposure	38 U.S.C. § 1112(c)

# Toxic Exposure Risk Activity (TERA) procedures for non-presumptive claims

- Under U.S.C. § 1168, a VA examination and medical nexus opinion **must** be provided in TERA cases when evidence is not sufficient to establish service connection, unless an exception applies, before VA may deny the PACT-related claim.
- What does this mean?: VA will likely need to order examinations in cases where they would not have done so previously.

# 38 U.S.C. § 1151 - Benefits for persons disabled by treatment or vocational rehabilitation

A disability or death can be compensated as if it were a service-connected disability or death if

- Disability or death was caused by hospital care, medical or surgical treatment, or examination in “facilities over which the Secretary has direct jurisdiction.” 38 U.S.C. § 1701 (3)(A).
  - carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault
  - event not reasonably foreseeable
- Disability or death was proximately caused by the provision of training and rehabilitation services by the Secretary (including Chapter 31 VR&E), or by participation in a program (known as a “compensated work therapy program”) under 38 U.S.C. §1718.

Note: there is an offset if awarded settlement/compromise in a civil suit.



# Service Connection is granted – now what?

## “Downstream” Elements

- Disability rating (38 U.S.C. §§ 1114, 1155; 38 C.F.R., Part 4)
- Effective date (38 U.S.C. § 5110; 38 C.F.R. § 3.400)
- Extraschedular rating (38 C.F.R. § 3.321)
- TDIU (38 C.F.R. § 4.16)



# Non-Service Connected (NSC) Pension

Needs-based program based on wartime service, NSC disability or age, and low net worth. 38 CFR § 3.3(a). The Veteran must meet one of the following criteria:

- Age 65 or older, or
- Have a permanent and total non-service connected disability, that is not the result of his willful misconduct, that will continue throughout the Veteran's lifetime, and prevents the Veteran from sustaining employment, or
- Reside in a nursing home, or
- Receive Social Security Disability benefits.





# Non-Service Connected (NSC) Pension

The Veteran must also meet certain service criteria:

- The Veteran must not have been dishonorably discharged; and
- If on active duty before September 8, 1980, must have served at least 90 days of active duty, with 1 active duty day during a period of wartime; or
- If on active duty as an enlisted person after September 7, 1980, must have served at least 24 months or the full period for which you were called or ordered to active duty, with at least 1 day during wartime, or
- If an officer and started on active duty after October 16, 1981, and didn't previously serve on active duty for at least 24 months.



# Non-Service Connected (NSC) Pension

The Veteran must also meet income/net worth requirements:

- Currently, the net worth limit (assets and annual income) for eligibility is \$150,538. 38 U.S.C. § 3.275
- If eligible, pension amount will be the difference between countable income and Maximum Annual Pension Rate (MAPR)
- Countable income - is how much the Veteran earns, including salary, investment, and retirement payments, and some income from dependents.
- MAPR – is maximum amount of pension payable to the Veteran based on base amount plus any additional allowances for dependents, Aid and Attendance, or Housebound benefits. 38 U.S.C. § 3.271



# Non-Service Connected (NSC) Pension

- Current pension rates can be found at <https://www.va.gov/pension/veterans-pension-rates/>
- Additional Allowances:
  - Dependent Children
  - Aid and Attendance – If the Veteran has a disability and needs help with regular daily activities (like eating, bathing, or dressing), they may be entitled to an additional monthly amount
  - Housebound – If the Veteran cannot leave their house due to a disability, they may be eligible for an additional amount



# Non-Service Connected (NSC) Pension

How to Apply –

- VA Form 21P-527EZ



# DIC/Survivors' Benefits

- Available to eligible survivors of legally-defined Veterans
- Eligibility determined by Veteran's service-connected disability status and/or the financial status of the survivor



# Dependency and Indemnity Compensation (DIC)

Tax-free monthly benefit paid to eligible survivors of Veterans who:

- died while on active duty, active duty training, or inactive duty training; or
- died due to (or, at least in part, due to) a service-connected condition; or
- were entitled to receive VA disability compensation for a totally disabling condition at the time of death.



# DIC – Death from a Service-Connected Disability

Service-connected disability was either the principal or a contributory cause of death - 38 C.F.R. § 3.312(a)

- Principal cause – when the SC disability "singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related thereto." - 38 C.F.R. § 3.312(b)
- Contributory cause – SC disability must have "contributed substantially or materially" to death, "combined to cause death," or "aided or lent assistance to the production of death." 38 C.F.R. § 3.312(c)(1)
- Noticeably absent from the regulations is a requirement that the SC disability be on the death certificate



# DIC – Veterans Rated Totally Disabled

38 C.F.R. § 3.22 – If a veteran dies of non-service-connected causes, VA will pay DIC benefits to the eligible survivor if:

- Death was not the result of the veteran's willful misconduct, and
- At the time of death, the veteran was receiving, or was entitled to receive, compensation for service-connected disability that was:
  - Rated by VA as totally disabling for a continuous period of at least 10 years immediately preceding death;
  - Rated by VA as totally disabling continuously since the veteran's release from active duty and for at least 5 years immediately preceding death; or
  - Rated by VA as totally disabling for a continuous period of not less than one year immediately preceding death, if the veteran was a former prisoner of war.
- 38 C.F.R. § 3.22(c) - "rated by VA as totally disabling" includes total disability ratings based on unemployability





# DIC – Qualifying Surviving Spouses

38 C.F.R. § 3.50 defines “spouse” and “surviving spouse”

- (a) *Spouse*. “Spouse” means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j) (valid under the law of the place the parties resided at the time marriage or when the right to benefits accrued).
- (b) *Surviving spouse*. Except as provided in § 3.52 (marriages “deemed valid), “surviving spouse” means a person of the opposite sex whose marriage to meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran’s death and:
  - (1) Who lived with the veteran continuously from the date of marriage to the date of the veteran’s death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and
  - (2) Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.



# DIC – Same-Sex Spouses

- VBA Letter 20–15–16 - recognized that same-sex marriages will be accepted in benefit determinations without regard to a Veteran's state of residence. This guidance remains in effect.
- Instruction 01-22, “Instruction of the Secretary and General Policy Statement on the Administration of Benefits for Particular Same-Sex Surviving Spouses”



# DIC – Continuous Cohabitation

- 38 C.F.R. § 3.53
- The continuous cohabitation requirement from the date of marriage to the date of death of the veteran will be considered as having been met when the evidence shows that any separation was due to the misconduct of, or procured by, the veteran without the fault of the surviving spouse.
- Temporary separations, including those caused for the time being through fault of either party, will not break the continuity of the cohabitation.
- The statement of the surviving spouse as to the reason for the separation will be accepted in the absence of contradictory information.
- Separation by mutual consent for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the surviving spouse to desert the veteran, will not be considered as breaking continuous cohabitation



# DIC – Remarriage

- 38 C.F.R. § 3.50 – To qualify as a surviving spouse, a person must remain unmarried, unless:
- The remarriage ended in death, divorce, or annulment.
- The surviving spouse remarries on or after attaining age 57, and on or after December 16, 2003
- The surviving spouse remarries on or after attaining age 55, and on or after January 5, 2021



# DIC – Qualifying Surviving Spouses

Also, the surviving spouse must have:

- Married the veteran before January 1, 1957, or
- Married the Veteran or service member within 15 years of their discharge from the period of military service during which the qualifying illness or injury started or got worse, or
- Were married to the Veteran or service member for at least 1 year, or
- Had a child with the Veteran or service member, aren't currently remarried, and either lived with the Veteran or service member without a break until their death or, if separated, weren't at fault for the separation
- 38 C.F.R. § 3.54



# DIC – Compensation Rates for Surviving Spouses

- Available at <https://www.va.gov/disability/survivor-dic-rates/>. For 2023, the fixed monthly DIC rate is \$1,562.73.
- Additional Allowances:
  - Dependent Children - \$387.15 each
  - Transitional Benefit – The surviving spouse has 1 or more children who are under 18, additional \$332 for the first 2 years after the Veteran's death
  - 8x8 Rule - If the veteran was rated totally disabled for 8 continuous years immediately before death, and the spouse was married to the veteran for those 8 years, the spouse is entitled to an additional \$331.84
  - Aid and Attendance – If the surviving spouse has a disability and needs help with regular daily activities (like eating, bathing, or dressing), they may be entitled to an additional \$387.15
  - Housebound – If the surviving spouse cannot leave their house due to a disability, they may be eligible for an additional \$181.37
- 38 C.F.R. § 3.10



# DIC – Additional Benefits for Surviving Spouses

- Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). 38 C.F.R. § 17.271
- Dependents Educational Assistance (DEA). 38 C.F.R. § 3.807
- Burial Benefits. 38 C.F.R. § 3.1703



# DIC – Surviving Children

Surviving children may qualify if:

- Not married, and
- Aren't included in the surviving spouse's compensation, and
- Are under 18 (or 23, if attending school at an approved educational institution)
  - “Helpless Child” exception:
    - 18 or older
    - diagnosed with a mental/physical disability before the age of 18 that leaves them with a permanent incapacity for self-support
- 38 U.S.C. §§ 1313, 1314





# DIC – Surviving Parent

A natural, adoptive, or foster parent may qualify for DIC benefits if:

- Income falls below a certain amount, see <https://www.va.gov/disability/parent-dic-rates/>
- The service member died from an injury or illness while on active duty or in the line of duty while on active duty for training, or
- The service member died from an injury or certain illnesses in the line of duty while on inactive training, or
- The Veteran died from a service-connected illness or injury
- 38 U.S.C. § 1315



# Survivor's Pension

38 U.S.C. § 3.3(b) - Also known as the “death pension,” it is a tax-free benefit for low-income, un-remarried surviving spouse (or unmarried children) of a deceased veteran *with* wartime service. See <https://www.va.gov/pension/eligibility/>

- For service on or before September 7, 1980, the veteran served at least 90 days of active military service, with at least one day during a wartime period; or
- For service after September 7, 1980, the veteran served at least 24 months or the full period for which called or ordered to active duty, with at least one day during a wartime period; and
- Discharged from service under other than dishonorable conditions.



# Survivor's Pension

- Surviving spouse's yearly family income and net worth meet certain limits set by Congress.
- Currently, the net worth limit (assets and annual income) for eligibility is \$150,538. 38 U.S.C. § 3.275
- If eligible, pension amount will be the difference between countable income and Maximum Annual Pension Rate (MAPR)
- Countable income - is how much the survivor earns, including salary, investment, and retirement payments, and any income from dependents.
- MAPR – is maximum amount of pension payable to the survivor based on base amount plus any additional allowances for dependents, Aid and Attendance, or Housebound benefits. 38 U.S.C. § 3.271



# Survivors' Benefits – How to Apply

- VA Form 21P-534EZ – surviving spouses and children.
- VA Form 21P-535



# Accrued Benefits

Accrued benefits are benefits that were due to the Veteran prior to death but that were not paid prior to death. Potential entitlement for a survivor generally arises when:

- A claim for benefits was pending at the time of death.
- A decision on the claim was made prior to the Veteran's death, but the appeal period had not expired at the time of the Veteran's death
- A claim for a recurring benefit had been allowed, but the beneficiary died before the award was made
- 38 U.S.C. § 3.1000



# Accrued Benefits

## Substitution -

- If a claimant dies during a pending claim or appeal, someone eligible to receive accrued benefits can act as substitute to complete the claim.
- VA must receive a substitution claim within one year of the original claimant's death. If the substitute dies, the next substitute has one year from the original substitute's death to file a claim.
- Eligible substitutes are surviving spouses, children, and dependent parents (generally the same eligibility requirements for receiving DIC/survivors' pension)
- VA Form 21P-534EZ/21P-535 - Also covers claims for accrued benefits

