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DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, DC 20420

June 14, 2010

Director (00/21)
All VA Regional Offices

In Reply Refer To: 211A
Training Letter 10-04

SUBJ: Training Guide for the readjudication of Claims for Ischemic Heart Disease (IHD), Parkinson's Disease (PD), Hairy Cell Leukemia (HCL) and other Chronic B-cell Leukemias, and other Diseases Under *Nehmer*

BACKGROUND INFORMATION

On October 13th, 2009, Secretary Shinseki announced his intent to establish presumptive service connection for IHD, PD, and HCL for Veterans who served in the Republic of Vietnam. This decision was based on the Institute of Medicine's seventh biennial update, "*Veterans and Agent Orange: Committee to Review the Health Effects in Vietnam Veterans and Exposure to Herbicides.*" Under the court order of the U.S. District Court for the Northern District of California (the "Court") in *Nehmer v. U.S. Department of Veterans Affairs*, 712 F. Supp. 1404, 1409 (N.D. Cal. 1989), VA must readjudicate previously denied claims for IHD, PD, or HCL filed by *Nehmer* class members (Vietnam Veterans and their survivors) and provide retroactive benefits pursuant to 38 C.F.R. § 3.816. This requirement involves claims filed or denied from September 25, 1985, to the effective date of VA's final regulation establishing a presumption of service connection for the disease claimed. Such claims may not be finally adjudicated until VA's regulation change at 38 C.F.R. § 3.309(e) is final, which will add these three diseases to the list of diseases associated with herbicide exposure.

ACCOUNTABILITY

Resource Centers, who are responsible for the readjudication of *Nehmer* claims, must strictly comply with the instructions set forth in this letter and the attached Training Guide. It is critical that *Nehmer* claims be handled expeditiously and correctly. The processing of *Nehmer* claims requires VA to operate under court-imposed deadlines. Failure to comply with instructions could result in court-ordered sanctions against VA and/or VA officials.

Regulatory Guidance

A proposed regulation was recently published in the Federal Register Vol. 75, 14391 (March 25, 2010) that would amend 38 C.F.R. § 3.309(e) by adding IHD, PD, and HCL to the list of diseases presumptively associated with exposure to herbicides in Vietnam. Publication of the final rule is expected in the near future.

Whom to Contact for Help

If you have questions or need additional information, e-mail your inquiry to the Q&A mailbox at VAVBAWAS/CO/NEHMER.

/S/

Bradley G. Mayes

Director

Compensation and Pension Service

Enclosures:

Nehmer Training Guide

DEPARTMENT OF VETERANS AFFAIRS

Veterans Benefits Administration (VBA)



***Nehmer* Training Guide**

June 14, 2010
Revised

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PURPOSE AND OBJECTIVES

The purpose of this training guide is to provide users with the information necessary to review, develop, rate, and authorize *Nehmer* claims for the three new presumptive conditions – hairy cell leukemia and other chronic B-cell leukemias (HCL), Parkinson’s disease (PD), ischemic heart disease (IHD), and any other presumptive conditions involving **in-country** Vietnam service.

This guide will enable you to:

1. Review the claims folder and readjudicate all claims that previously denied a class member’s claim for service connection for a new presumptive disease
2. Identify the eligibility requirements that qualify a Veteran or survivor for retroactive awards of benefits under *Nehmer*
3. Identify what constitutes a prior claim of benefits for conditions presumptively related to herbicide exposure under *Nehmer*
4. Identify the three new and current presumptive conditions associated with herbicide exposure
5. Identify and correctly apply effective date rules for a *Nehmer* claim
6. Determine what type of development, if any, is needed for rating or authorization
7. Determine requirements for authorization of awards pursuant to *Nehmer*
8. Identify the requirements of the decision notice letter.

BACKGROUND

The *Nehmer* court case originated in 1986 as a class-action lawsuit against the Department of Veterans Affairs (VA) by Vietnam Veterans and their survivors, who alleged that VA had improperly denied their claims for service-connected compensation for disabilities allegedly caused by exposure to the herbicide Agent Orange in service. In 1989, the United States District Court for the Northern District of California (Court) ruled that VA's regulation was invalid because the causation standard that it used was inconsistent with the intent of Congress. The Court invalidated VA's regulation and voided all benefit denials made under that regulation.

In May 1991, the *Nehmer* parties entered into a "Final Stipulation and Order" (Final Stipulation) outlining the actions to be taken in response to the Court's decision. Among other things, the Final Stipulation provided: (1) that VA would issue new regulations in accordance with the Agent Orange Act of 1991; (2) that, after issuing such regulations, VA would readjudicate the claims where a prior denial was voided by the Court's 1989 order and would initially adjudicate all similar claims filed subsequent to the Court's order; and (3) that, if benefits were awarded upon such readjudication or adjudication, the effective date of the award

would be the later of the date the claim was filed or the date the disability arose. Ordinarily, if a claim is granted on the basis of a new regulation, the law states that the effective date of the award may not be any earlier than the date on which the regulation went into effect.

In a February 1999 decision, the Court clarified the scope of its 1989 decision. It voided all VA decisions that were issued while the invalid regulation was in effect and which denied service connection for a Vietnam Veteran's disease that was later found to be associated with herbicide exposure under new regulations. In December 2000, the Court provided further clarification when it concluded that VA must pay the full retroactive benefit to the estates of deceased class members.

On October 13, 2009, the VA announced Secretary Shinseki's decision to establish presumptive service connection for three additional illnesses associated with exposure to herbicides used in Vietnam based on an independent study conducted by the Institute of Medicine. The illnesses affected by the recent decision are B-cell leukemias (such as hairy cell leukemia), Parkinson's disease, and ischemic heart disease. A proposed rule adding these three conditions to VA's list of presumptive diseases was published in the Federal Register on March 25, 2010, 75 Fed. Reg. 14,391.

Approximately 94,000 Vietnam Veterans and survivors were previously denied service-connection (between September 1985 and end of month April 2010). An additional number of new claims have been received since the Secretary announced his intention to add three new conditions to the presumptive list. All of these claims must be adjudicated/readjudicated in order to comply with the Final *Nehmer* Stipulation.

REFERENCES

The following references are useful in the review and adjudication of *Nehmer* claims:

- 38 U.S.C. § 503 – Administrative Error; Equitable Relief
- 38 U.S.C. § 5101 – Claims and Forms
- 38 U.S.C. § 5103 – Notice to Claimants of Required Information and Evidence
- 38 U.S.C. § 5110 – Effective Dates of Awards
- 38 U.S.C. § 5125 – Acceptance of Reports of Private Physician Examinations
- 38 C.F.R. § 3.114 – Change of Law or Department of Veterans Affairs Issue
- 38 C.F.R. § 3.150 – Forms to be Furnished
- 38 C.F.R. § 3.151 – Claims for Disability Benefits

- 38 C.F.R. § 3.155 – Informal Claims
- 38 C.F.R. § 3.303 – Principles Relating to Service Connection
- 38 C.F.R. § 3.304 – Direct Service Connection; Wartime and Peacetime
- 38 C.F.R. § 3.307 – Presumptive Service Connection for Chronic, Tropical or Prisoner-of-War Related Disease, or Disease Associated with Exposure to Certain Herbicide Agents; Wartime and Service on or after January 1, 1947
- 38 C.F.R. § 3.309(e) – Diseases Subject to Presumptive Service Connection
- 38 C.F.R. § 3.312 – Cause of Death
- 38 C.F.R. § 3.350 Special Monthly Compensation Ratings
- 38 C.F.R. § 3.400 – General Effective Dates
- 38 C.F.R. § 3.816 – Awards under the *Nehmer* Court Orders for Disability or Death Caused by a Condition Presumptively Associated with Herbicide Exposure
- 38 C.F.R. § 3.951 – Preservation of Disability Ratings
- 38 C.F.R. § 4.100 – The Cardiovascular System Prior to January 12, 1998
- M21-1MR III.ii.2.C.14.b – Applications for Death Benefits
- M21-1MR III.iii.5 – Relationship and Dependency
- M21-1MR III.iii.5.C.14.a – Recognition of Common Law Marriages by State
- M21-1MR, IV.iii.3.F.23 – General Information on the Effect of a Surviving Spouse's Remarriage
- M21-1MR IV.ii.1.H.28 – Developing Claims Based on Herbicide Exposure in the Republic of Vietnam (RVN)
- M21-1MR IV.ii.2.C.10 – Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN)
- M21-1 Part I, Appendix C – BDN Tables and Codes
- Fast Letter 10-XXXX – XXXXXXXXXXXXX (to be released at a later date)

***NEHMER* VS. TRADITIONAL CLAIMS PROCESSING**

Comparison Chart

The comparison chart notes differences between the *Nehmer* claims workflow process and traditional claims processing.

Nehmer vs. Traditional Claims Comparison		
	Traditional Claims	Nehmer
Definition	All other claimants and all periods of service for benefits.	<i>Nehmer</i> class members are Vietnam Veterans who served in-country and have a covered herbicide disease, or the surviving spouse, child, or parent of a Vietnam Veteran who died from a covered herbicide disease.
Effective Dates	The date the claim resulting in award was filed or date entitlement arose, whichever is later, but in no event prior to the effective date or the regulatory presumption of service connection.	The date the original claim was filed or arose, whichever is later, even if it was before the effective date of applicable regulatory presumption, and without regard to finality of prior denial(s) (Contrary to 38 U.S.C. § 5110(g), 38 C.F.R. § 3.400). Effective dates can go back as far as the date of claim that was pending on September 25, 1985 (The date the rules implementing "Veterans' Dioxin and Radiation Exposure Compensation Standards Act," Pub. L. 98-542 (Oct. 24, 1984) were effective in the Code of Federal Regulations).
Need to File Claim	The claimant must file original claim. If claimant alleges earlier effective date, claimant must demonstrate that he or she made an earlier claim that did not become final.	The claimant need not file a new claim or a claim for earlier effective date when new presumptive condition is added. VA must search its records to find eligible claimants and award benefits, without action on the claimant's part. Medical records noting the existence of a condition later made presumptively service-connected can in some instances, result in an award without a formal claim ever being filed

Nehmer vs. Traditional Claims Comparison		
	Traditional Claims	Nehmer
Eligible Payees	<p>Veteran or surviving spouse, children or dependent parents of the Veteran can get accrued or owed benefits.</p> <p>Benefits never go to the estate because the right to benefits ends with death of the entitled individual.</p> <p>The one who bore the last expenses can claim reimbursement from benefits owed.</p>	<p>Veterans, surviving spouse, children, parents; or to the surviving spouse, children, parents, or estate of class members.</p> <p>The right to benefits survives entitled member. (Contrary to 38 U.S.C. § 5121). Concepts relating to accrued benefits are not applicable in <i>Nehmer</i> cases</p> <p>No right to reimbursement for the one who bore the last expenses.</p>
Payee Identification	<p>Payee information is generally in the Veteran's claims folder.</p>	<p>Payee may not be identified in Veteran's claims folder because the claim survives the Veteran and his spouse; requires further documentation for proof of entitlement (e.g., marriage certificate, birth certificate). VA must request those documents needed to establish eligibility.</p>
Unable to Identify Payee	<p>N/A</p>	<p>VA must notify class counsel if unable to identify payee. Class counsel utilizes a search firm that locates potential payees and class counsel provides the VA with information to contact those persons and establish eligibility. (See Payee Identification).</p>
Payment of Compensation/ Priority of Adjudication	<p>Payment is made when the benefit is granted in agency's course of business.</p> <p>Priorities are decided nationally and locally based on Department's policies.</p>	<p>The timing of payments is governed by court order. Payment is required to be received within twenty-one days of receipt of information confirming entitlement (the twenty-one day period begins once the whereabouts of a class member is known).</p> <p><i>Nehmer</i> claims must be handled as a first priority, under court-ordered deadlines.</p>
Notice of Calculation of Compensation	<p>The VA provides notice of amounts payable under 38 U.S.C. § 1114.</p>	<p>The VA notice letter must include an explanation of how the amount was calculated.</p>

<i>Nehmer</i> vs. Traditional Claims Comparison		
	Traditional Claims	<i>Nehmer</i>
Proof of Payment	N/A	A copy of Treasury Inquiry screens indicating proof of payment may be provided to class counsel upon request.
Time Limit	If the applicant fails to provide requested information within one year, a decision is made on the available evidence. This decision is considered final.	There is no time limit imposed for submission of evidence by a claimant.
Retired Pay / SBP Offset Issues	Retired pay/SBP offset is determined by computer at DFAS in the normal course of business.	Because benefits may be owed from over 20 years ago, offset amount must be retrieved from DFAS database.
Court Supervision	The VA is subject to normal oversight by OIG and Congress.	Deadlines are court imposed, and class counsel oversees VA compliance. When the timeline is not met, VA must provide a declaration signed under oath by the persons with knowledge setting forth the steps taken to meet the deadline, an explanation of the delay, and the date by which VA will provide payment/notice.
EAJA Fees	EAJA fees may be awarded in certain appeals of denied claims.	VA compensates class counsel for all its work on <i>Nehmer</i> claims.
Processing	Processing occurs within normal VA channels.	Virtually all <i>Nehmer</i> claims require special handling.

***Nehmer* vs. 38 C.F.R. § 3.114(a)**

By definition, if a case falls under *Nehmer*, it means that the first claim of service connection for the condition at issue was received BEFORE the condition was added to the list of Agent Orange-related disabilities and the effective date for the grant of service connection will also be BEFORE the condition was added to the list of Agent Orange-related disabilities. As a result, if a claim was received before the condition was added to 38 C.F.R. § 3.309(e), the case is a potential *Nehmer* case. On the other hand if the claim was received after the disease was added to the presumptive list, it is not a *Nehmer* case. In those cases 38 C.F.R. § 3.114(a) applies and the earliest effective date that can be granted under 38 C.F.R. § 3.114(a) is the date on which the liberalizing legislation was effective (i.e. the date on which the condition was added to 38 C.F.R. § 3.309(e) or one-year prior to date of claim, whichever is later).

Remember that in all cases, the condition must have been present on the date we grant service connection. Occasionally, we receive a claim BEFORE the

condition is actually present, and neither *Nehmer* nor 38 C.F.R. § 3.114(a) allows for a grant of service connection prior to a confirmed diagnosis.

The *Nehmer* claims workflow process differs from the traditional claims processing that the reviewer normally sees. Appendix 5 shows an overview of the “Workflow for Processing *Nehmer* Claims.”

NEW PRESUMPTIVE CONDITIONS

The three new presumptive conditions are:

1. Ischemic heart disease
2. Chronic B-cell leukemias, such as hairy cell leukemia
3. Parkinson’s disease

Definition of Ischemic Heart Disease

According to Harrison’s Principles of Internal Medicine (Harrison’s Online, Chapter 237, Ischemic Heart Disease, 2008), ischemic heart disease is a condition in which there is an inadequate supply of blood and oxygen to a portion of the myocardium; it typically occurs when there is an imbalance between myocardial oxygen supply and demand. Therefore, for purposes of this regulation, the term “ischemic heart disease” includes, but is not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable, and Prinzmetal’s angina. Since the term refers only to heart disease, it does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke.

The cardiovascular section of the rating schedule was revised effective January 12, 1998 (See the Rating section for further information).

Definition of Chronic B-Cell Leukemia

B-cell leukemia describes several different types of lymphoid leukemias and includes the following types:

- B-cell chronic lymphocytic leukemia/small lymphocytic lymphoma
- Acute lymphoblastic leukemia, mature B-cell type
- B-cell prolymphocytic leukemia
- Precursor B lymphoblastic leukemia
- Hairy cell leukemia

There are fourteen kinds of lymphomas involving B-cells.

- Diffuse large B-cell lymphoma
- Follicular lymphoma
- Mucosa-associated lymphatic tissue lymphoma (MALT)
- Small cell lymphocytic lymphoma (overlaps with the chronic lymphocytic leukemia)
- Mantle cell lymphoma (MCL)
- Burkitt lymphoma
- Mediastinal large B-cell lymphoma
- Waldenström macroglobulinemia
- Nodal marginal zone B-cell lymphoma (NMZL)
- Splenic marginal zone lymphoma (SMZL)
- Extranodal marginal zone B-cell lymphoma
- Intravascular large B-cell lymphoma
- Primary effusion lymphoma
- Lymphomatoid granulomatosis

Definition of Parkinson's Disease

Parkinson's disease (PD) belongs to a group of conditions called motor system disorders, which are the result of the loss of dopamine-producing brain cells. The four primary symptoms of PD are tremor, or trembling in hands, arms, legs, jaw, and face; rigidity, or stiffness of the limbs and trunk; bradykinesia, or slowness of movement; and postural instability, or impaired balance and coordination. As these symptoms become more pronounced, patients may have difficulty walking, talking, or completing other simple tasks. PD usually affects people over the age of 50. Early symptoms of PD are subtle and occur gradually. In some people the disease progresses more quickly than in others. As the disease progresses, the shaking, or tremor, which affects the majority of PD patients may begin to interfere with daily activities. Other symptoms may include depression and other emotional changes; difficulty in swallowing, chewing, and speaking; urinary problems or constipation; skin problems; and sleep disruptions. There are currently no blood or laboratory tests that have been proven to help in diagnosing sporadic PD. Therefore the diagnosis is based on medical history and a neurological examination. The disease can be difficult to diagnose accurately. Doctors may sometimes request brain scans or laboratory tests in order to rule out other diseases.

NOTE: See Appendix 1 for the complete list of presumptive conditions associated with herbicide exposure.

READJUDICATION REQUIREMENTS UNDER THE *NEHMER* COURT ORDER

The *Nehmer* Court has held that the stipulation requires VA to readjudicate all cases in which VA previously denied a class member's claim of service connection for a new presumptive disease. A prior denial based on lack of diagnosis rather than lack of nexus falls within the scope of the stipulation's requirement for readjudication. This differs from claims in which there was no prior claim or class member status (*i.e.*, no in-country Vietnam service, no "Veteran" status, etc).

CLASS MEMBERS UNDER THE *NEHMER* COURT ORDER

38 C.F.R. § 3.816 (b)(1) defines the class members as: (i) a Vietnam Veteran who has a covered herbicide disease; or (ii) a surviving spouse, child, or parent of a deceased Vietnam Veteran who died from a covered herbicide disease.

38 C.F.R. § 3.816 (f)(1) states that if a *Nehmer* class member entitled to retroactive benefits . . . dies prior to receiving payment of any such benefits, VA shall pay such unpaid retroactive benefits to the first individual or entity listed below that is in existence at the time of payment:

- (i) The class member's spouse, regardless of current marital status
 - A spouse is the person who was legally married to the class member at the time of the class member's death
- (ii) The class member's child(ren), regardless of age or marital status
 - If more than one child exists, payment of the retroactive benefits owed shall be divided into equal shares, and accompanied by an explanation of the division; this includes all children, regardless of age or marital status
- (iii) The class member's parent(s), regardless of dependency
 - If both parents are alive, half the retroactive benefits owed shall be paid to each parent, and accompanied by an explanation of the division
- (iii) The class member's estate

ELIGIBILITY REQUIREMENTS FOR RETROACTIVE PAYMENT PURPOSES

If a *Nehmer* class member is entitled to disability compensation for a covered herbicide disease, eligibility requirements must be met. The eligibility requirements are:

- The Veteran served in the Republic of Vietnam; **and**
- They have applied, were denied, or a claim was inferred (by class member or VA) for benefits for one of the three new presumptive conditions

- between September 25, 1985, or a date prior to September 25, 1985, if the claim was pending or on appeal on September 25, 1985, and the date the regulations for these conditions become effective; **and**
- They are diagnosed with one of the presumptive diseases, or a disease that reasonably may be construed as a covered herbicide disease.

EFFECTIVE DATES FOR RATING PURPOSES

The effective date for retroactive claims must be one of the following dates:

- The later of the following:
 - The date VA received the claim, or a date prior to September 25, 1985, if the claim was pending or on appeal on September 25, 1985, or
 - The date the disability arose
- The day following the date of the class member's separation from active service, if filed within one year from the date of separation

The effective date for Dependency and Indemnity Compensation (DIC) claims must be one of the following dates:

- The date VA received the claim, or
- The first day of the month of the Veteran's death, if filed within one year from the date of the Veteran's death

NOTE: If the class member's claim for DIC for the death was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered herbicide disease that caused death, the effective date of the award will be the later of the date such claim was received by VA or the death occurred (38 C.F.R. § 3.816(d)(2)).

NOTE: 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114(a) **do not apply** to *Nehmer* claims.

SERVICE IN THE REPUBLIC OF VIETNAM

Veterans can establish proof of service in the Republic of Vietnam (RVN) if they were:

- On land in the RVN, **or**
- In the inland waterways of RVN, **or**
- In vessels docked at the ports of RVN, **or***

- In waters offshore of RVN, **if** the conditions of service involved duty, **or** visitation on the ground in RVN, **or**
- Other locations, **if** the conditions of service involved duty or visitation on the ground in RVN

* For a list of vessels confirmed to have docked on the RVN shore or traveled on inland waterways, see Appendix 2.

There is no requirement for a specified length of service, duty, or visitation in RVN. See 38 C.F.R. § 3.307(a)(6)(iii) for more information.

The following sources may be used to verify service in RVN If they served in RVN during the period beginning January 9, 1962, and ending on May 7, 1975:

- DD Form 214, *Certificate of Release or Discharge From Active Duty*
- DA Form 20, *Enlisted Qualification Record*
- VA Form 21-3101, *Request for Information*
- Service Treatment Records (STR)
 - Dental records found in STRs
- Military Personnel Records
- Army Post Office (APO) Numbers (See Appendix 4)
- Temporary Duty (TDY) Orders
- Shore leave granted in writing
- Other documented evidence that shows the Veteran physically set foot in RVN
- Personnel Information Exchange System (PIES) verifying in-country service
- Development to the Veteran (See Development section for details)

For a list of APOs that are verified by the Military Postal Service Agency as used for delivery to RVN, see Appendix 4.

CLAIMS FOR BENEFITS

Veterans must have applied for or have been denied benefits for one of the three new presumptive conditions between September 25, 1985, (or a date prior to September 25, 1985, if the claim was pending or on appeal on September 25, 1985) and the date the regulation for these conditions becomes effective.

A claim meeting the eligibility requirements of *Nehmer* can be any of the following:

- A claim for Service Connection (SC)
- An informal claim

- A pension claim
- An inferred claim for SC
- A claim inferred by Veteran or VA during review
- Notice of Death
- A claim for burial benefits
- A claim for DIC, death pension or accrued benefits
- Social Security Administration - VA Form 21-4182, *Application for Dependency and Indemnity Compensation or Death Pension*
- VA Form 21-601, *Application for Accrued Amounts Due A Deceased Beneficiary*

Additional factors:

- A claim need not reference herbicide exposure (See Example 1)
 - In its February 11, 1999, *Nehmer* order, the Court held that a *Nehmer* class member's compensation claim need only have requested service connection for the presumptive condition in order to qualify as a *Nehmer* claim. It is not necessary that the class member assert the condition was caused by herbicide exposure
- An initial claim may lack specific details, which were clarified by later submissions (See Example 2)
- A prior claim must have involved one or more of the three new presumptive conditions, or one that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded (See Examples 3 and 4)
- Live pension claims must be treated as SC claims (See Example 5)
 - Under 38 C.F.R. § 3.15 (a), "a claim by a Veteran for pension may be considered to be a claim for compensation." VA is not required by law to treat a Veteran's claim for pension as a claim for compensation, see *Stewart v. Brown*, 10 Vet. App. 15, 18 (1997), but may do so in appropriate circumstances. *Nehmer* is an appropriate circumstance
- Death pension claims must be treated as DIC claims (See Example 6)
- A claim of SC burial benefits must be treated as an informal DIC claim in certain circumstances. For more information, see the Rating section, subsection Claims for Service-Connected Death and for scenarios see Examples 7, 8 and 9 below.
 - An open claim:
 - An instance where VA failed to provide a decision notice letter to the claimant
 - An instance where VA failed to address a claim, such as an inferred or an informal claim (or failed to address an appeal)
 - An instance where VA failed to provide an application for benefits to a claimant

Examples of Claims

Example 1: A Veteran who served in the Republic of Vietnam filed a claim in 1994, alleging that his IHD, PD, or HCL began while on active duty *following his service in Vietnam*. VA denied the claim in 1995. The Veteran reopens the claim in 2010, and service connection is granted based on VA's amended herbicide regulations. On these facts, the effective date must relate back to the 1994 claim, even though the Veteran alleged a different basis for service connection.

Example 2: In January 1987, a Veteran claimed compensation for lymphoma. In developing that claim, VA obtained medical records indicating that the Veteran was diagnosed with HCL in February 1987. Based on these facts, it would be reasonable to treat the January 1987 claim as a claim for service connection for HCL. Under *Nehmer*, benefits may be paid retroactive to the date of that claim or the date the disability arose, whichever is later, as determined by the facts of the case.

Example 3: In April 1995, a Veteran claimed compensation for anemia/leukemia. Medical records obtained by VA indicate the Veteran did not have leukemia. The claim was denied in 1995. In 2001, the Veteran claimed compensation for HCL, submitting evidence that HCL was diagnosed in January 1996. The Veteran did not file an appeal based on the 1995 decision and there was no activity from the Veteran until 2001. Based on these facts, the 1995 claim and evidence submitted did not show a diagnosis of HCL or the presence of any type leukemia. The 2001 submission of evidence was accepted as a reopened claim with a confirmed diagnosis. Under these facts, the effective date would be 2001, as that is when VA received evidence documenting the diagnosed disability.

Below are slightly different modifications of the above scenario that would change the outcome.

For example, if the records diagnosing HCL existed during the pending 1995 claim, and the Veteran, in any manner, communicated to VA the existence of those records and VA failed to obtain them (possibly because VA assumed they would be of no help to the claim since there was no presumption at the time), then the effective date would be April 1995 because VA failed in their duty to obtain records identified by the claimant.

Another slight variation would exist if the Veteran actually submitted the records diagnosing HCL in 1996 to VA following such diagnosis. The 1995 claim was properly disposed of in 1995, and VA received the 1996 records in 1997, but received no accompanying information from the Veteran regarding any intent to file a claim, then the proper effective date under the *Nehmer* review would be when VA received the records in 1997 rather than 2001. Because the *Nehmer* review requires VA to readjudicate these claims "as if" the presumption existed in 1985, then submission of records confirming a diagnosis of the presumptive

condition must serve as a valid claim, despite VA's failure to act on such records and notwithstanding that no presumption existed when VA actually received the records.

Example 4: A Veteran filed a formal claim for service connection for IHD, PD, or HCL in November 1979 and VA denied the claim in January 1980. In May 1986, the Veteran submitted a letter stating, "please consider service connection for IHD, PD, or HCL," along with documentation showing a diagnosis for one of these conditions. On these facts, the May 1986 letter is an acceptable formal claim to reopen, and benefits must be paid retroactive to May 1986 under *Nehmer*.

Example 5: In 1994, a Veteran filed a claim for nonservice-connected (NSC) pension. After VA denied the claim, the Veteran filed a statement in 1995 stating, "I disagree with your decision denying pension." I also should be paid compensation for IHD, PD, or HCL." VA did not forward the claimant an application form and did not adjudicate any claim for service connection for IHD, PD, or HCL. On these facts, both the 1994 pension claim and the 1995 statement must be accepted as a claim for IHD, PD, or HCL.

Example 6: A Veteran died of IHD, PD, or HCL. In 1988, the surviving spouse filed a VA Form 21-534, *Application for DIC or Death Pension or Accrued Benefits by a Surviving Spouse or Child*, and marked "no" in response to the question "are you claiming that the cause of death was due to service?" Accordingly, VA adjudicated a claim for pension only. In 2009, the surviving spouse applies for DIC, which is granted. Under these circumstances, the award must be made retroactive to the 1988 application, because it must be treated as a DIC claim.

DIC claimants generally are not required to identify specific diseases in their applications. The absence of specific reference to IHD, PD, or HCL in a prior DIC application will not preclude assignment of a retroactive effective date under *Nehmer*, provided the evidence establishes that IHD, PD, or HCL caused or contributed to the Veteran's death.

Example 7: In 1995, a surviving spouse filed an application for burial benefits (VA Form 21-530, *Application for Burial Benefits*) and marked "yes" in response to the question "are you claiming that the cause of death was due to service?" VA forwarded the claimant an application for DIC (VA Form 21-534). The claimant returned the completed DIC application within one year. Based on these facts, the date of the 1995 application for burial benefits may be accepted as the date of the DIC claim for purposes of *Nehmer*.

Example 8: In 1995, a surviving spouse filed an application for burial benefits (VA Form 21-530) and marked "yes" in response to the question "are you claiming that the cause of death was due to service?" VA forwarded the claimant an application for DIC (VA Form 21-534), but the claimant failed to return the

completed DIC application. Based on these facts, the 1995 application for burial benefits should not be considered a claim for DIC.

Example 9: In 1995, a surviving spouse filed an application for burial benefits (VA Form 21-530) and marked “yes” in response to the question “are you claiming that the cause of death was due to service?” VA did not forward an application for DIC. Based on these facts, DIC must be paid retroactive to the 1995 application for burial benefits, if otherwise in order. The one-year period for filing a completed DIC application did not begin due to VA’s failure to provide the application form.

DIAGNOSIS OF PRESUMPTIVE DISABILITIES

The evidence must show a diagnosis of one of the presumptive conditions and the date of the diagnosis. A prior denial of a claim for a presumptive disability based on lack of a diagnosis falls within the scope for readjudication, however the effective date for any disability cannot precede the diagnosis.

Example 1:

The Veteran submitted a claim for service connection for ischemic heart disease due to herbicide exposure on May 2, 1995. He served in Vietnam; therefore, herbicide exposure is conceded. Testing confirmed hypertensive vascular disease on April 5, 1995, but not ischemic heart disease, so a decision letter was sent to the Veteran denying service connection for ischemic heart disease. On March 3, 2010, VA administratively reviewed the claims file due to ongoing *Nehmer* litigation. The evidence on file showed VAMC treatment records with a diagnosis of ischemic heart disease on April 19, 1997. The medical records did not have a date stamp or any other annotation showing when VA received them. The medical records were accepted as a reopened claim and resulted in a denial of service connection by rating dated May 15, 1998. Based on these facts, the Veteran was granted service connection from April 19, 1997. Although, the Veteran filed a claim on May 2, 1995, a diagnosis was not shown until April 19, 1997. In addition, 38 C.F.R. § 3.816(c)(1) states that the effective date of the award will be the later of the date VA received the claim on which the prior denial was based or the date the disability arose.

Example 2:

A review of the claims folder shows that an original claim was filed on April 5, 1995, for service connection for *heart disease* (not IHD) and high cholesterol. The medical evidence for the period March 1993 and April 1995 showed a diagnosis of high cholesterol and a *history* of heart disease. Development action(s) was not undertaken and the SC claim was denied in June 1996. Based on these facts, VA failed to confirm a diagnosis and the *Nehmer* stipulation requires that we readjudicate claims for new presumptive conditions that were previously denied.

Example 3:

A review of the claims folder shows that an original claim was filed on June 5, 1996, for service connection for IHD and high cholesterol. The veteran served in-country Vietnam from 1969 to 1971. The medical evidence of record for the period March 1993 and April 1996 showed a diagnosis of high cholesterol and a history of heart disease. A VA examination dated September 7, 1996, showed a diagnosis of high cholesterol and IHD. Based on these facts, the claim was denied SC June 1997. The *Nehmer* stipulation requires that we readjudicate claims for new presumptive conditions that were previously denied.

NEHMER DATABASE

The *Nehmer* Re adjudication Database (also known as the *Nehmer* database) facilitates the claims folder review by providing the user with questions that are necessary to process a *Nehmer* claim. The information gathered not only enables the claims folder review process, but also provides a data collection mechanism that is used for reporting data to VBA, the Secretary of Veterans Affairs, the Office of General Counsel (OGC), the Department of Justice, and, if necessary, the Court.

It is imperative that the database is utilized and all information is saved in the database during the claims folder review. In previous *Nehmer* readjudications, inaccurate reporting and failure to adequately track and document work resulted in the Court issuing "Show Cause" orders regarding why VA and VBA supervisors should not be held in contempt.

Upon completion of the readjudication of the file in the database, the reviewer will be responsible for incorporating a printout of the completed worksheet into the claims folder.

END PRODUCT CONTROL

The date of claim and end product (EP) 687 will be established in the *Nehmer* database. If a *Nehmer* claim is NOT in the database, notify Southern Area Office immediately. Do NOT attempt to establish an EP until notified of the database modification and the correct date of claim. ONLY then proceed to establish the EP and the correct date for date of claim.

The e-mail address for Southern Area Office can be found in Appendix 6.

CLAIMS FOLDER REVIEW

A systematic review of the **entire** claims folder is required to determine if the individual is a *Nehmer* class member and if the eligibility requirements for retroactive payments under *Nehmer* are met.

If the individual is a *Nehmer* class member, the reviewer must ensure the following actions are taken:

- Prepare rating if SC is granted and assign an effective date
- Prepare award action(s)
- Prepare notification letter with appellate rights, and
- Update the database

If the individual is not a *Nehmer* class member, forward to the RVSR for a Memorandum for the Record. For more information regarding Memorandums for the Record, see the Rating section.

Check the claims folder for medical evidence required for a rating decision. If a VA Examination (VAE) is necessary, proceed with scheduling the examination immediately.

For cases involving death, be sure to check for proof of death and proof of dependency. If burial was also involved, check to see if an itemized funeral bill and a paid-in-full receipt showing who paid the funeral bill are of record.

During the screening process, if medical evidence is sufficient to grant partial benefits, send to the RVSR. Proceed with development if necessary information is not of record.

NOTE: If no additional development is required, send the MAP-D Notification/Development Paragraphs for *Nehmer* to the class member (See Appendix 12).

IMPORTANT: Detailed, but concise notes should be added in Modern Awards Processing – Development (MAP-D) throughout the claims review. After completion of review, the data must be entered into the *Nehmer* database to track all actions associated with the claim.

DEVELOPMENT

Development may be required following the claims folder review. This may include development for medical evidence, service, dependency, payee, military pay, and/or burial information. Use MAP-D to generate the development letters. See Appendix 12 for the appropriate paragraphs to use in development letters.

Be sure to use considerate language when developing these claims, especially in death cases. Most cases identified as *Nehmer* claims have been denied many years ago.

Medical Evidence

Due to the inherent nature of *Nehmer* cases, it may be difficult to obtain a complete medical history of the Veteran. The development of evidence in connection with claims for service connection will be accomplished when deemed necessary, but it should not be undertaken when evidence present is sufficient for this determination (38 C.F.R. § 3.304(c)). When the evidence of record is sufficient to grant benefits, but a current assessment of the medical condition(s) is necessary, VAE may be appropriate. Consult with the RVSR to determine if medical records are sufficient for rating.

Example

IHD with multiple heart attacks since denial ten years ago, and evidence in file would have warranted a 60 percent evaluation.

Medical evidence, lay evidence, or both may establish the factual basis for a decision. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the Veteran's disability observed within such period, not merely conclusions based upon opinion. See 38 C.F.R. § 3.307(b).

In order to pay DIC and burial benefits, a death certificate or other proof of death is required showing the date of death and the cause(s) of death. See 38 C.F.R. § 3.211 for additional sources of proof of death.

Service

If unavailable in the Veteran's records, verification of service may be obtained by performing a Defense Personnel Records Information Retrieval System (DPRIS) request.

Verification of the Veteran's pay grade is required if the Veteran died prior to December 31, 1992. Check the Veteran's DD Form 214 for pay grade. If the evidence of record cannot determine the pay grade, request service records from the service department through DPRIS.

For more information on using DPRIS for service verification, please see the respective User Guides.

Dependency

Use the following table to determine what information is required to establish dependency. Please note that this is not an all-inclusive list.

Evidence Requirements for Dependency	
Dependent	Evidence Required
Spouse	<ul style="list-style-type: none"> • Date of marriage to Veteran • Number of prior marriage(s) • Name(s) of prior spouse(s) • Date(s) and place(s) of termination of prior marriage(s) for both the Veteran and spouse • Social Security Number (SSN) • Continuous cohabitation • Remarriage after death of the Veteran
Biological Child	<ul style="list-style-type: none"> • Date of birth • SSN
Stepchild	<ul style="list-style-type: none"> • Date of birth • Birth Certificate • SSN • Date child was in the household of the Veteran
Adopted Child	<ul style="list-style-type: none"> • Date of birth • SSN • Adoption paperwork or revised birth certificate
Parent	<ul style="list-style-type: none"> • Birth certificate of the Veteran • SSN • Parent's financial information

Children between ages 18 and 23 who are attending school at an approved institution may receive DIC benefits. Before the claim can be processed, it may be necessary to gather information regarding school attendance dates and other information. Additionally, information on Dependents' Educational Assistance (DEA) should be checked to prevent concurrent receipt of benefits.

Development of dependency information may be made over the telephone, through facsimile, or by letter.

For more information on developing for dependency see M21-1MR, Part III, Subpart iii, Chapter 5 (M21-1MR III.iii.5).

The right to benefits survives entitled member (contrary to 38 U.S.C. § 5121).

Continuous Cohabitation

The requirement that there must be continuous cohabitation 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.

Common Law Marriage

To view a list of states that recognize common law marriage, please refer to "Recognition of Common Law Marriages by State" in M21-1MR III.iii.5.C.14.a.

Payee

As these are potentially old cases, it may be necessary to develop for payees for the retroactive benefits. Send letters to all dependents of record requesting the names, addresses, and telephone numbers of all known survivors.

Additionally, proof of dependency is required before retroactive benefits may be paid. Develop for birth certificates, marriage certificates, and other proof of dependency if necessary.

If payees cannot be identified, VA must make such reasonable inquiry as the information on file permits. For example, if the claims folder identifies an authorized representative or a relative, it would be reasonable to contact such person to request information concerning the existence of a surviving spouse, child(ren), parent(s), or the executor/administrator of the class member's estate.

If any such payee cannot be identified or located:

- Complete VA Form 21-0820, *Report of General Information*, for the folder stating the reasons why the payment of retroactive *Nehmer* benefits was not payable to a beneficiary
- Notify *Nehmer* Project Manager by e-mail that no payee could be identified, including the claimant's name and file number in the message

NOTE: Refer to the Eligibility Requirements section for a list of eligible payees and order of entitlement.

Military Pay

38 U.S.C. § 5305 prohibits, in some cases, Veterans from receiving full military retirement pay and VA compensation benefits at the same time. In order to properly withhold benefits and prevent overpayments, DFAS has provided a

database listing retired pay, severance and separation pay, and Survivor Benefit Plan (SBP) amounts and effective dates.

NOTE: Before developing, verify the Veteran waived his or her military pay in lieu of compensation. This can be found on VA Form 21-526, *Veteran's Application for Compensation and/or Pension*, or VA Form 21-651, *Election of Comp in Lieu of Retired Pay or Waiver of Retired Pay to Secure Comp from VA*.

NOTE: A waiver may not be included on some versions of VA Form 21-526. A copy of Form 21-651 must be of record or obtained from the class member.

Burial

The following information may need to be requested from the survivor, funeral home or cemetery:

- Proof of death
- Receipt showing the total cost of the funeral and who made payment
- Itemized list of funeral expenses
- Place of burial

NOTE: Contacting the funeral home or cemetery for this information over the telephone may expedite the process.

IMPORTANT REMINDER: Detailed notes should be entered into MAP-D.

After completion of Development, the *Nehmer* Database should be updated to track all actions associated with the individual's claim.

RATING

Memorandum for the Record

A memorandum for the record is used **only** when the individual is not a *Nehmer* class member (*i.e.*, no prior claim, no "Veteran" status, etc). If it is determined the individual is not a *Nehmer* class member, then a Memorandum for the Record is required. A notice letter is not sent to the individual.

A detailed explanation regarding why the individual is not a class member is required. The explanation must be sufficient in detail for the reviewer to undertake a clear analysis as to why the case does not qualify for *Nehmer* readjudication. See Appendix 7 for sample Memorandums for the Record.

NOTE: The example Memorandums for the Record that appear in Appendix 7 are modifications of an actual form used in previous *Nehmer* readjudications. For

the purposes of this *Nehmer* review, use the memorandums as shown with no form number. In no instance, when using these forms, should there be any reference made to rating.

Some examples where VA may not, under any circumstance, dispose of a case using a memorandum for the record include:

1. A Veteran filed a claim expressly for one of the new presumptive diseases
2. A Veteran filed a claim for a disease that may be reasonably construed as a covered herbicide disease
3. A Veteran filed a claim that did not directly address a covered herbicide disease but that did raise an issue potentially intertwined with a covered disease, such as hypertensive heart disease, but VA failed to fully develop that claim in order to rule out or confirm the diagnosis of hypertensive heart disease, or any other potential covered disease
4. Any case where VA reviews a claims folder and discovers evidence *in the file* of a covered herbicide-related disease

Examples of Memorandums for the Record:

Example 1:

In 1993, the individual filed a claim for service connection for HCL. The medical evidence did not show a diagnosis of HCL. The individual served from 1969 to 1974 (one consecutive period of service) and received a bad conduct discharge. The claim was denied in 1994 based on no diagnosis. Based on these facts, the individual is not a *Nehmer* class member, as he did not have "Veteran" status. A memorandum for the record is in order.

Example 2:

In 1987, the Veteran filed a claim for service connection for lupus. The medical evidence of record shows a diagnosis of lupus. The individual served from 1969 to 1978. The claim was denied in 1989. The rating disposed of the SC claim for lupus, and the incorrect rating disability code (8004-currently used for PD) was used. The notification letter and rating decision only addressed lupus and did not reference PD. Based on these facts, the individual is not a *Nehmer* class member, as he did not have a prior claim for service connection for a new presumptive disease, or a diagnosis. A memorandum for the record is in order.

Example 3:

In 1995, the Veteran filed a claim for heart disease. The medical evidence submitted with the claim confirmed the diagnosis. The evidence shows the Veteran served in the Air Force from 1965 to 1975 and has verified in-country Vietnam service from 1970-1972. A VA examination was not ordered and no additional development for any medical records was undertaken. The claim for

service connection was denied in 1997. The review raised doubt as to whether or not the heart disease could be considered a claim for the new presumptive disease. Based on these facts, it is reasonable to construe the 1995 claim as claim for the new presumptive disease and a readjudication of the claim is required.

Example 4:

The Veteran filed a claim for hypertension and the medical evidence of record indicated treatment for a heart condition with medication. The claim was denied for hypertension only. In this situation, there is an indication that the Veteran had a heart condition. Based on these facts, the Veteran would be considered a *Nehmer* class member and readjudication of the claim is required.

A slightly different variation to the above scenario would change the outcome. The Veteran claimed hypertension, and the evidence showed a diagnosis of hypertension. Service connection for hypertension was denied. Based on these facts, we do not have a claim nor do we have a diagnosis of a new presumptive disease. In this situation, a memorandum for the record is in order.

WARNING

If there is any doubt about whether or not an individual is a *Nehmer* class member, readjudicate the claim. Do not prepare a Memorandum for the Record.

NOTE: It is anticipated that Memorandums for the Record will not be frequently used and the least likely used will be “no prior claim,” because of the liberal interpretation of a claim. Additionally, because the *Nehmer* stipulation requires VA to readjudicate all claims that were previously denied, it is also unlikely that “no diagnosis” will be frequently used.

Confirmed and Continued Rating

If classified as a *Nehmer* class member and eligibility requirements for *Nehmer* claims are met, but there is no change to the decision in the previous claim, you should issue a confirmed and continued rating.

If a prior claim for compensation or DIC for disability or death due to IHD, PD, or HCL was denied for some reason other than a lack of service connection, and there is no basis for awarding an earlier effective date under *Nehmer*, contact C&P Service. Please refer to Appendix 6 for contact information.

Examples

- If the prior claim was denied because there was no evidence that the Veteran had IHD, PD, or HCL, and VA confirms no diagnosis during readjudication, retroactive benefits would not be in order
- If the prior claim was abandoned or withdrawn, there would not be a basis for retroactive payments under *Nehmer*

Coded Ratings

If classified as a *Nehmer* class member and eligibility requirements for *Nehmer* claims are met, and the claim is ready-to-rate, the following sections pertain to rating claims for service connection, service-connected death benefits, and claims involving service connection combined with service-connected death benefits.

Total Disability Based on Individual Unemployability (TDIU)

The RVSR is strongly encouraged to consider entitlement to TDIU when pension was previously awarded.

1. Ensure that when considering TDIU, the presumptive condition is the primary reason for the Veteran being unemployable.
2. If the RVSR has further questions, please e-mail VAVBAWAS/CO/NEHMER.

Example

The Veteran was granted entitlement to pension at 60 percent for IHD under disability code 7005. Under *Nehmer* review, VA determined that the Veteran is service-connected for IHD. Because IHD is the primary condition causing the Veteran to be unable to obtain or maintain gainful employment, award TDIU. Do not send VA Form 21-8940 because the evidence that VA would obtain from this form is already of record due to the pension claim.

NOTE: Prior to September 21, 1992, RVSRs were required to code all claims and noted claims (See Footnote 1 in Appendix 15).

NOTE: If a *Nehmer* claim involves multiple issues, only one rating decision is produced.

Claims for Service Connection

Claims for service connection may arise from:

- Informal claims
- Inferred claims
- Claims reasonably raised by VA
- For purposes of *Nehmer* review, a live pension claim is a claim for compensation

Issue(s)

Clearly state all issues of entitlement identified by the claimant or inferred based on the facts or circumstances of the claim. List the disability/disabilities and the current assigned evaluation(s). Also, specify any complications or other recognized herbicide-related conditions and the current assigned evaluation(s). See M21-1MR, Part III, iv.6.B.2.

Evidence and Evidentiary Basis

The Evidence section must be a clear and concise inventory of all evidence considered in arriving at the decision.

The evidence will include but is not limited to:

- Applicable dates, such as dates covered by service treatment records (STRs), identifying at least the month and year
- Private treatment reports
- Private hospitalization reports
- Information sources, such as the names of Department of Veterans Affairs (VA) and private medical facilities, private physicians, and other information sources,
- DD Form 214
- VA Form 21-526
- VA Form 21-534
- VA Form 21-530
- VA Form 21-601
- VA Form 21-4182, *Application for Dependency and Indemnity Compensation or Death Pension*, a supplemental attachment to Social Security application forms
- VA Examinations
- Social Security Administration Records
- Prior rating decision that denied service connection for the presumptive disability, unless this is an open claim
- Death Certificate/Autopsy Report
- All other information pertinent and related to the presumptive condition(s)

Decision

Clearly and concisely state the decision made on each issue or inferred issue. See M21-1MR, Part III, iv.6.C.9

Reasons for Decision

The rating decision must concisely cite and evaluate all evidence that is relevant and necessary to the determination. Clearly explain why the evidence is found to be persuasive or unpersuasive, and address all pertinent evidence relating to the presumptive condition(s).

NOTE: *Nehmer* decisions will be stand-alone documents as they will be reviewed without the claims folder by others as well as class counsel. Class counsel will **not** have the claims folder during their review, therefore, it is crucial all evidence pertinent to the presumptive condition(s) is listed and properly discussed in the decision.

Coding and Assigning a Percentage

The Cardiovascular System in the Rating Schedule was revised effective January 12, 1998. A grant of IHD prior to January 12, 1998, will require application of the Rating Schedule that was applicable on January 12, 1998. These evaluations are protected if there is no change in the condition AND the new regulation would result in a lower evaluation. However, if the new criteria provides for a higher evaluation, grant the entitlement effective the change in regulation. 38 U.S.C. § 1155; 38 C.F.R. § 3.114(a).

Special Monthly Compensation

Special monthly compensation entitlement must be considered as appropriate. Many times (S)1 (schedular housebound - single 100 percent and additional service connected conditions which combine to 60 percent), is in order when we grant an additional 100 percent under *Nehmer* (38 U.S.C. 1114(s) and 38 C.F.R. 3.350(i)).

Effective Date

The effective date of claims for service connection is the later of the date VA received the claim on which the prior denial was based or the date the disability arose.

For purposes of *Nehmer* IHD, PD, or HCL claims, the date a disability arose is the date VA had sufficient evidence or information to identify the existence of such a disease or, the evidence or information available was sufficient to “code” IHD, PD, or HCL as a disability pursuant to guidance regarding coding contained in the Veterans Benefits Adjudication Manual M21-1MR, and/or prior versions of such manual.

NOTE: 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.114 **do not apply** to *Nehmer* claims.

Claims for Service-Connected Death

VA Form 21-534 must be considered for DIC if:

- Only death pension (NSC) was claimed **or**
- No distinction was made between death pension and DIC

VA Form 21-530, *Application for Burial Benefits*, must be considered for DIC if:

- SC was indicated on VA Form 21-530 and VA Form 21-534 was received within one year¹
- VA's failure to provide VA Form 21-534 after receipt of VA Form 21-530 with SC indicated²
- In each instance, the effective date for the DIC benefits is the date the VA Form 21-530 was received³
- Receipt of attachment to Social Security Application, VA Form 21-4182, *Application for Dependency and Indemnity Compensation or Death Pension*, may establish the date of claim

38 C.F.R. § 3.150(b), Forms to be Furnished, receipt of notice of death must be considered if appropriate application form was not forwarded for execution by or on behalf of any dependent who has apparent entitlement to pension, compensation or DIC.

Evidence

For purposes of a *Nehmer* review, the standards for the evidence section of a rating decision for service-connected death do not differ from those of a rating decision for service connection. The evidence must show all the evidence pertaining to the claim identified for *Nehmer* review. Refer to the Evidence subsection of the Claims for Service Connection section for details on the requirements for Evidence.

Issue(s), Decision(s), and Reasons for Decision

For purposes of a *Nehmer* review, the standards for these elements (Issue, Decision, and Reasons for Decision) of a rating decision for service-connected death do not differ from those of a rating decision for service connection. Please refer to the subsection in the Claims for Service Connection section for guidance.

NOTE: A grant of DIC is appropriate when the presumptive condition is:

- Primary cause of death
- Secondary cause of death
- Contributory cause of death

Effective Date

The effective date for DIC claims must be one of the following dates:

- The date VA received the claim, or
- The first of the month of the Veteran's death, if filed within one year from the date of the Veteran's death.

¹ 38 C.F.R. § 3.152 (b)(1); Mitscher v. West, 13 Vet. App. 123, 128 (1999)

² 38 C.F.R. § 3.155(a).

³ 38 C.F.R. § 3.152 (b)(1); Mitscher v. West, 13 Vet. App. 123, 128 (1999)

Dependents Educational Assistance (DEA) - Chapter 35

A new period of DEA eligibility may accrue when the Veteran dies. As such, the issue of DEA eligibility may be considered twice in a single rating, once on the basis of retroactive entitlement when the Veteran was alive, and a second time for death benefits purposes.

See Appendix 7 for Rating Templates for DIC.

Claims for Service Connection and Service-Connected Death

Note that *Nehmer* claims may contain multiple issues, but that these issues are addressed in a single rating decision. All *Nehmer* claims involving claims for service connection and service-connected death must be addressed in one rating decision.

Coding Considerations

In order to generate live coding for a death case, you MUST use the “accrued” indicator in RBA2000. It is on the “Profile” screen (the screen on which you enter the jurisdiction and date of claim) on the left side, about halfway down. It will be accessible only for a death case. If you don’t use the “accrued” indicator, the Master Record will allow you to enter all the historical live coding data, but will print only the death data.

Issue(s), Decision(s), and Reasons for Decision

For purposes of a *Nehmer* review, the standards for these elements (Issue, Decision, and Reasons for Decision) of a rating decision for service-connected death do not differ from those of a rating decision for service connection. Please refer to the subsection in the Claims for Service Connection section for guidance.

NOTE: After completion of the Rating, the Database should be updated to track all actions associated with a class member’s claim.

AUTHORIZATION

The VSR and SVSR are responsible for assuring that the rating decision, award action(s), and notice of decision with appeal rights are accurate and properly prepared for all benefits. This includes live compensation claims, DIC claims, burial claims, and other retroactive benefits.

This section involves award processing for the following types of claims:

- 1) Live Veterans Claims
- 2) DIC Claims
- 3) Burial Claims

Prior to award input, the *Nehmer* database must be utilized to ensure previous actions associated with a class member's claim were completed. This will include **re-verifying in-country RVN service and the initial document used to support the effective date shown in the rating decision**. If any discrepancy is found, it will be brought to the attention of the RVSR that rated the claim for possible corrective action or concurrence.

A notification letter is **not** required if a memorandum for the record is prepared by the RVSR. Clear the pending EP. Update the *Nehmer* Database.

Live Veterans Claims

Prepare the award under the appropriate EP as instructed by the *Nehmer* Project Manager (Southern Area Office).

In situations where payment is not necessary, clear the EP and do not prepare an award. Examples of such instances include confirmed and continued rating decisions.

The following sections provide additional information on dependents, previous cost of living adjustments (COLAs), and withholding for military pay.

Dependents

If the Veteran's new combined evaluation for compensation is 30 percent or above, additional compensation is payable based on qualified dependents (to include Helpless Child).

If development for dependency was not completed prior to the rating decision, request the required evidence after processing the rating decision. Clear the EP in these situations.

Kicker / Public Law 101-508

Veterans that were in receipt of compensation benefits on December 1, 1990, did not receive a COLA until January 1, 1991. Public Law 101-508 reinstated the December 1, 1990, COLA. This was payable on March 1, 1992. This one-time payment was known as the "kicker." VETSNET must be manually adjusted to account for the kicker.

Liesegang, et al v. Secretary of Veterans Affairs

On December 10, 2002, the US Court of Appeals for the Federal Circuit issued a decision in the case of *Liesegang, et al v. Secretary of Veteran Affairs*. The Court held that the correct effective date for our regulation adding Type 2 diabetes to the list of presumptive disabilities related to herbicide exposure is May 08, 2001, instead of July 9, 2001.

As a result of that decision, VA issued an automatic one-time adjustment to 9,340 Veterans granting an earlier payment date of June 1, 2001. The one time payment was made on August 4, 2003. In each adjusted case a notice was issued to the Veteran, POA, and RO. An additional 4,680 cases were manually reviewed. When reviewing the current *Nehmer* cases that may have previously involved Type 2 diabetes you must assure that this adjustment was actually made. This may require a thorough review of the claims folder. It is important that the Veteran gets paid correctly when entering the information into the prior payment field in VETSNET for retroactive awards.

Withholding for Military Pay

In claims that involve military retired pay, the authorization activity must ensure that all proper adjustments are made correctly. Verify the Veteran waived his or her military pay in lieu of compensation. This can be found on VA Form 21-526 or VA Form 21-651, *Election of Comp in Lieu of Retired Pay or Waiver of Retired Pay to Secure Comp from VA*.

NOTE: Prior to 1978, a signature block was not included on VA Form 21-526. A copy of Form 21-651 must be of record.

In some instances, the Veteran may have received separation, severance pay, or drill pay that must be adjusted. In these instances the authorization activity must assure that all adjustments are made properly.

NOTE: In some circumstances Veterans may receive full military retirement pay and VA compensation benefit payments.

NOTE: Retired pay rates will be obtained from DFAS database.

DIC Claims

The authorization activity must check all dependency information prior to awarding benefits. Only the proper claimant(s) can be paid.

Prepare the award under an appropriate EP as instructed by the *Nehmer* Project Manager (Southern Area Office). Be sure the payee number for the EP is appropriate for the claimant. For more information on payee codes, see M21-1 Part I, Appendix C.

Additional Allowances

When preparing the award, be sure to include any additional allowances that the surviving spouse may be entitled. For example, an additional allowance for:

- Dependents
- Total disability rating for a continuous period of eight years or more preceding death and the spouse married to the Veteran during the same time period

Death Prior to December 31, 1992

If the Veteran died prior to January 1, 1993, DIC is paid to a surviving spouse based on whichever of the following provisions provides the greater benefit:

- 38 U.S.C. § 1311a(3), which is based on the Veteran's pay grade, or
- 38 U.S.C. § 1311a(1) and 38 U.S.C. § 1311a(2), which is based on the basic rate of DIC and any additional allowance payable because the Veteran was rated as totally disabled for at least eight continuous years and married to the surviving spouse for the same period of time

The pay grade for all Veterans who died prior to December 31, 1992, must be verified. Pay grade may be found on the DD Form 214 or other service documents.

A verified pay grade code is not required on:

- Awards of DIC to children or parents, or
- Awards based on a Veteran's death after December 31, 1992

Withholding for SBP Payments

In claims that involve SBP, the authorization activity must assure that all proper adjustments are made correctly. Under a recent Federal Circuit decision, DFAS cannot deduct DIC payments from monthly SBP annuities, if the annuitant is entitled to both DIC and SBP benefits, and has remarried after age 57.

NOTE: SBP payments may be obtained from DFAS database.

Remarriage of the Surviving Spouse

The Surviving Spouse may have remarried after the death of the Veteran. Please review M21-1MR, IV.III.3.F.23, General Information on the Effect of a Surviving Spouse's Remarriage, for additional guidance.

Month of Death Payment

Before awarding the month of death payment, verify that the surviving spouse has not received this payment by using the Payment History Inquiry Screen in Corporate and a review of the claims folder.

Consideration of VA Form 21-4182, *Application for Dependency and Indemnity Compensation or Death Pension*, must be recognized as a claim for VA death benefits (See M21-1MR IV.iii.3.A.4 and 38 C.F.R. § 3.153).

VA Form 21-4182 constitutes an initial claim for any or all of the death benefits:

- DIC
- Death pension, and/or
- Accrued benefits.

Additional information may be found M21-1MR III.ii.2.C.14.b.

Burial Claims

Before awarding monetary burial benefits the authorization activity must verify all evidence is of record.

Prepare the award under an appropriate EP as instructed by the *Nehmer* Project Manager (Southern Area Office).

The following sections provide additional information on dependents, previous cost of living adjustments, and withholding for military pay.

Burial Claims Prior to the Current December 1, 2001, Rate

Please be aware that service connected burial payments were less than \$2000 prior to December 1, 2001. See the table below for a list of prior rates and their effective dates.

Burial Amounts			
Date	SC Amount	NSC Burial Amount	NSC Plot Amount
06-18-73	\$800	\$250	\$150
10-01-78	1100	300	150
04-01-88	1500	300	150
09-11-01*	2000	300	300
12-01-01	*2000	300	300

* The SC burial amount was increased on December 1, 2001, and is effective for deaths that occurred on or after September 11, 2001.

Prior Payments of NSC Burial

Check the claims folder for any prior payments of NSC burial. This amount must be deducted from the total amount for service connected benefits payable.

Retroactive Benefits

Prepare the award under an appropriate EP as instructed by the *Nehmer* Project Manager (Southern Area Office). Ensure that the correct rates and total retroactive amounts have been calculated correctly. If multiple payees exist, prepare awards using different payee codes, dividing the total amount equally.

Award Annotation

The VSR must annotate the award with “*Nehmer* Retroactive payment based on [the name of new presumptive condition]” in the remarks section of the award printout.

Notification Letter

Use PCGL to generate the notification letters. Be sure to suppress the BDN-generated letters as only locally generated letters may be issued. Examples of the notification letters for live cases and death cases can be found in Appendix 10.

For burial claims, use the standard burial letter found in PCGL to generate the notification letters. This letter should be merged with the death letter, when there was a claim for DIC.

Verify the letter contains a calculation of the retroactive amount and be sure to include all ancillary benefits that the Veteran or his/her dependents may be entitled. Award and denial letters must include:

- The decision made
- The monthly VA rates
- The applicable effective dates
- Any benefits being withheld and the reason for withholding benefits
- Estimated retroactive benefit
- Appellate rights of the claimant
- Information about any additional benefits or entitlements the claimant may be due

After award authorization, the letters must be scanned into Virtual VA. For more information on using Virtual VA, see the Virtual VA User Guide.

Sending Documents to OGC

In accordance with the court order, a copy of the Payment History Inquiry Screen in Corporate must be submitted when requested by OGC. Please refer to Appendix 6 for contact information.

APPENDICES

Appendix 1 – List of Presumptive Conditions in 38 C.F.R. § 3.816

The following is a list of conditions presumptively associated with herbicide exposure and the dates the regulations governing the presumptions became effective, as found in 38 C.F.R. § 3.816 (b)(2):

Soft-tissue Sarcoma	October 15, 1991
Hodgkin's disease	February 3, 1994
Non-Hodgkin's lymphoma	May 19, 1993
Porphyria cutanea tarda	February 3, 1994
Lung cancer	June 9, 1994
Bronchus cancer	June 9, 1994
Larynx cancer	June 9, 1994
Trachea cancer	June 9, 1994
Multiple myeloma	June 9, 1994
Acute and Subacute peripheral neuropathy	November 7, 1996
Prostate cancer	November 7, 1996
Type 2 Diabetes	May 8, 2001
Chronic lymphocytic leukemia (CLL)	October 16, 2003
AL Amyloidosis (ALA)	May 7, 2009
Ischemic heart disease	[Pending Regulation]
Parkinson's disease	[Pending Regulation]
B-cell leukemia	[Pending Regulation]

Appendix 2 – Information on Vietnam Naval Operations

C&P Service has initiated a program to collect data on Vietnam naval operations for the purpose of providing regional offices with information to assist with development in *Haas* related disability claims based on herbicide exposure from Navy Veterans. To date, we have received verification from various sources showing that a number of offshore “blue water” naval vessels conducted operations on the inland “brown water” rivers and delta areas of Vietnam. We have also identified certain vessel types that operated primarily or exclusively on the inland waterways. The ships and dates of inland waterway service are listed below. If a Veteran’s service aboard one of these ships can be confirmed through military records during the time frames specified, then exposure to herbicide agents can be presumed without further development.

All vessels of Inshore Fire Support [IFS] Division 93 during their entire Vietnam tour

- USS Carronade (IFS 1)
- USS Clarion River (LSMR 409) [Landing Ship, Medium, Rocket]
- USS Francis River (LSMR 525)
- USS White River (LSMR 536)

All vessels with the designation LST [Landing Ship, Tank] during their entire tour [WWII ships converted to transport supplies on rivers and serve as barracks for brown water Mobile Riverine Forces]

All vessels with the designation LCVP [Landing Craft, Vehicle, Personnel] during their entire tour

All vessels with the designation PCF [Patrol Craft, Fast] during their entire tour [Also called Swift Boats, operating for enemy interdiction on close coastal waters]

All vessels with the designation PBR [Patrol Boat, River] during their entire tour [Also called River Patrol Boats as part of the Mobile Riverine Forces operating on inland waterways and featured in the Vietnam film “Apocalypse Now”]

- USS Mansfield (DD-728) [Destroyer] [Operated on Saigon River August 8-19, 1967, and December 21-24, 1968]
- USS Richard E. Kraus (DD-849) [Destroyer] [Operated on coastal inlet north of Da Nang, June 2-5, 1966, protecting Marines holding a bridge]
- USS Basilone (DD-824) [Destroyer] [Operated on Saigon River, May 24-25, 1966]
- USS Hamner (DD-718) [Destroyer] [Operated on Song Lon Tao and Long Song Tao Rivers, August 15-September 1, 1966]

- USS Conway (DD-507) [Destroyer] [Operated on Saigon River, early August 1966]
- USS Fiske (DD-842) [Destroyer] [Operated on Mekong River, June 16-21, 1966]
- USS Black (DD-666) [Destroyer] [Operated on Saigon River, July 13-19, 1966]
- USS Providence (CLG-6) [Cruiser, Light, Guided Missile] [Operated on Saigon River 3 days during January 1964]
- USS Mahan (DLG-11) [Guided Missile Frigate] [Operated on Saigon River October 24-28, 1964]
- USS Okanogan (APA-220) [Attack Transport] [Operated on Saigon River July 22-23, 29-30, 1968, and August 5-6, 1968]
- USS Niagara Falls (AFS-3) [Combat Stores Ship] [Unloaded supplies on Saigon River and Cam Rahn Bay, April 22-25, 1968]

Exposure Aboard the USS Ingersoll

The National Archives and Records Administration (NARA) has confirmed that the Navy destroyer USS Ingersoll (DD 652) traveled into the inland waterways of RVN on October 24 and 25, 1965. Concede exposure to herbicides for crewmembers that served aboard the USS Ingersoll on these dates.

If a Veteran alleges herbicide exposure based on duty aboard the USS Ingersoll, request Navy personnel records via DPRIS (request code O19).

If personnel records are unavailable, or do not confirm a specific shipboard assignment during this timeframe, send a request for a review of NARA records to C&P Service via e-mail at VAVBAWAS/CO/211/AGENTORANGE. This request should include the Veteran's:

- Name
- Date of birth
- VA claim number
- Social Security number (SSN), and
- Service number, if different than SSN

Claims Based on Service Aboard Ships Offshore the RVN

When a Veteran claims exposure to herbicides during service aboard a Navy or Coast Guard ship that operated on the offshore waters of the RVN, establish exposure on a presumptive basis if:

- Evidence shows the ship
 - Docked on the shores of the RVN, or
 - Operated temporarily on the RVN inland waterways
- Evidence places the Veteran onboard the ship at the time the ship docked on the shore or operated in inland waterways, and
- If the Veteran claims the ship docked on the shore, the Veteran has stated that he/she went ashore after the ship docked

IMPORTANT: In all cases where a Veteran claims exposure to herbicides during service aboard a ship in offshore waters, regional offices should place a copy of the U.S. Army and Joint Services Records Research Center's (JSRRC's) memorandum shown in Appendix 3 in the Veteran's claim folder. This document will:

- Substitute for individual inquiries to the Compensation and Pension Service's Agent Orange mailbox and to the JSRRC, and
- Establish that the JSRRC has no evidence to support a claim of herbicide exposure during shipboard service

NOTE:

- Service aboard a ship that *anchored* in an open deep-water harbor, such as Da Nang, Vung Tau, or Cam Ranh Bay, along the RVN coast does not constitute inland waterway service or qualify as docking to the shore and is not sufficient to establish presumptive exposure to herbicides. Evidence of shore docking is required in order to concede the possibility that the Veteran's service involved duty or visitation in the RVN
- Veterans who served aboard large ocean-going ships that operated on the offshore waters of the RVN are often referred to as "blue water" Veterans because of the blue color of the deep offshore waters. They are distinguished from "brown water" Veterans who served aboard smaller river patrol and swift boats that operated on the brown-colored rivers, canals, estuaries, and delta areas making up the inland waterways of the RVN
- Brown water Navy and Coast Guard Veterans receive the same presumption of herbicide exposure as Veterans who served on the ground in the RVN

Appendix 3 – Naval and Coast Guard Development

The current development and due process requirements for Navy and Coast Guard claims include sending a request for research to both the C&P Service Agent Orange Mailbox and JSRRC for verification exposure. In order to expedite the resolution of these claims, JSRRC provided a document for inclusion in the Veteran's file.

This document substitutes as a response from the C&P Service Agent Orange Mailbox as well JSRRC and explains that there is no available evidence to support a claim of herbicide exposure aboard a Navy or Coast Guard ship during Vietnam. It will serve as a final JSRRC response in claims where the Veteran alleges exposure based on: (1) loading herbicide agents aboard a naval ship for transportation to Vietnam, (2) serving aboard a ship that transported, stored, used, or tested herbicide agents, and (3) working on shipboard aircraft that flew over Vietnam or equipment that was used in Vietnam.

JSRRC Memorandum

**DEPARTMENT OF THE ARMY
U.S. ARMY & JOINT SERVICES RECORDS RESEARCH CENTER
7701 TELEGRAPH ROAD
KINGMAN BUILDING, ROOM 2C08
ALEXANDRIA, VA 22315-3828**

AAHS-RDC 01 May 09

MEMORANDUM FOR RECORD

SUBJECT: Joint Services Records Research Center Statement on Research Findings Regarding Navy and Coast Guard Ships During the Vietnam Era

1. In the course of its research efforts, the JSRRC has reviewed numerous official military documents, ships histories, deck logs, and other sources of information related to Navy and Coast Guard ships and the use of tactical herbicide agents, such as Agent Orange, during the Vietnam Era.
2. To date, the JSRRC has found no evidence that indicates Navy or Coast Guard ships transported tactical herbicides from the United States to the Republic of Vietnam or that ships operating off the coast of Vietnam used, stored, tested, or transported tactical herbicides. Additionally, the JSRRC cannot document or verify that a shipboard veteran was exposed to tactical herbicides based on contact with aircraft that flew over Vietnam or equipment that was used

in Vietnam.

3. Therefore, the JSRRC can provide no evidence to support a veteran's claim of exposure to tactical herbicide agents while serving aboard a Navy or Coast Guard ship during the Vietnam Era.

/s/

Domenic A. Baldini
Director

Appendix 4 – List of APOs for Verification of RVN Service

For a complete list of the FPO-APO addresses, visit:

<http://vbaw.vba.va.gov/bl/21/rating/stressor/general/GENERAL%201942-2002%20APO-FPO%20Files.pdf>

or do the following:

- From the C&P Service Intranet Home Page, click on “Stressor Verification Site” which is located under the Rating Job Aids section
- On the “Stressor Verification - General Information” page, click on “General 1942-2002 APO-FPO Files”
- After clicking on the link, the PDF will load all of the FPO-APO files.
- The Vietnam FPO-APO addresses begin on page 4999

The following APO’s have been verified by the Military Postal Service Agency (MPSA) as having been used for delivery to Vietnam.

15	27	38	40	91	95	96	97
137	143	157	158	299	300	307	96495
96496	96499	96208	96214	96215	96216	96217	96219
96221	96222	96223	96225	96226	96227	96228	96230
96234	96236	96238	96240	96243	96250	96256	96257
96258	96260	96262	96265	96266	96268	96269	96278
96279	96289	96291	96294	96295	96296	96297	96307
96308	96309	96312	96314	96316	96317	96318	96320
96321	96322	96325	96326	96327	96332	96337	96345
96347	96348	96349	96350	96353	96355	96357	96359
96361	96362	96363	96368	96370	96371	96372	96373
96374	96375	96376	96377	96379	96381	96383	96384
96385	96388	96393	96392	96395	96398	96494	96399
96402	96477	96485	96490	96491	96492	96493	

A hospital or medical treatment report with one of the approved APO codes indicates that the Veteran was seen or treated in an RVN.

Appendix 6 – Contact Information for Processing *Nehmer* Claims

Compensation and Pension Service	
Method	Contact Information
E-mail	VAVBAWAS/CO/NEHMER
Mailing Address	Department of Veterans Affairs Compensation & Pension Service (211A) Attn: <i>Nehmer</i> Working Group 810 Vermont Ave NW Washington, DC 20420

Southern Area Office	
Method	Contact Information
E-mail	VAVBANAS/SAREA/NEHMER
Telephone	615-695-4070
Mailing Address	Department of Veterans Affairs Southern Area Office 3322 West End, Suite 408 Nashville, TN 37203

Defense Finance and Accounting Service – SBP ONLY	
Method	Contact Information
Telephone - SBP ONLY	216-522-6393
Separation, severance and retired pay contact information will be provided at a later date.	

Appendix 7 – Example Rating Decisions

The following pages provide example *Nehmer* rating decisions for your reference.

Example Rating Decision for Live Compensation with No Prior Grant

INTRODUCTION

Mr./Ms. [enter full name], your records reflect that you are a Veteran who served in the [enter military branch] from [enter date] to [enter date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA records indicate that you previously filed a claim for [insert name of new presumptive condition] and were subsequently denied. A special review of your claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in your case.

DECISION

1. Service connection for [insert new presumptive condition here] associated with herbicide exposure is granted with a [percentage] percent evaluation, effective [insert date of receipt of the Veteran's initial claim for service connection for this condition].

EVIDENCE

- DD Form 214
- VA Form 21-526, Veteran's Application for Compensation or Pension, received on [insert date]
- Other information that creates a claim (informal, inferred, footnote 1)
- VA examination dated [insert date of exam]
- Other Medical Evidence (private, SSA, treatment reports)
- Service Treatment Records
- Rating decision dated [insert date of rating here], denying service connection for [insert new presumptive condition here]
- Include all information pertinent and related to the presumptive condition(s).

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to

herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection is granted for [insert presumptive diagnosis], for purposes of entitlement to retroactive benefits.

VA has confirmed that you had in-country service in the Republic of Vietnam based on [insert evidence here].

Medical evidence from [hospital, doctor, laboratory results] in the record indicates a diagnosis of [diagnosis] on [date]. [Reason for effective date].

You claimed service connection for [diagnosis] on [insert date of claim]. Service connection for [diagnosis] was denied by a rating decision dated, [insert date of decision] because [diagnosis] was not incurred or aggravated during military service, nor was it present to a degree of 10 percent within one year of your discharge from active duty.

Subsequently, [diagnosis] was added recently to the list of disabilities recognized as being related to herbicide exposure. As such, service connection for [diagnosis] is now granted because it is presumptively related to your military service. The effective date of service connection for [diagnosis] is [insert date of receipt of claim], the date your original claim for service connection for [diagnosis] was received.

[Insert paragraph for rating of the new presumptive condition and include an explanation of the percentage assigned for the condition, as well as the requirements for achieving the next higher percentage level.]

[Include a thorough discussion of relevant medical evidence used to assign the rating, including any secondary conditions.]

Example Rating Decision for Live Compensation with Prior Grant

INTRODUCTION

Mr./Ms. [enter full name], your records reflect that you are a Veteran who served in the [enter military branch] from [enter date] to [enter date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA records indicate that service connection was previously granted for [insert issue/diagnosis] and [insert type of benefits] benefits were paid.

VA records indicate that you previously filed a claim for [insert name of new presumptive condition(s)] and were subsequently denied. A special review of your claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in your case.

DECISION

1. Service connection for [insert presumptive disability] associated with herbicide exposure is granted with a [percentage] percent evaluation, effective [insert date].

EVIDENCE

- DD Form 214
- VA Form 21-526, Veteran's Application for Compensation or Pension, received on [date]
- VA Form XX-XXXX
- Other information that creates a claim (informal, inferred, footnote 1)
- VA examination dated [insert date of exam]
- Other Medical Evidence (private, SSA, treatment reports)
- Service Treatment Records
- Rating decision dated [insert date of rating here], denied service connection for [insert new presumptive condition here]
- Include all information pertinent and related to the presumptive disability(s)

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have

a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in Republic of Vietnam.

1. Service connection for [insert presumptive disability], for purposes of entitlement to retroactive benefits.

VA has confirmed that you had in-country service in the Republic of Vietnam based on [insert evidence here].

Medical evidence from [hospital, doctor, laboratory results] in the record indicates a diagnosis of [insert presumptive disability] on [date].

You claimed service connection for [insert disability] on [insert date of claim]. Service connection for [disability] was established by a rating decision dated, [insert date of decision] because [insert basis for grant].

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to herbicide exposure. As such, service connection is now granted because it is presumptively related to your military service. The effective date of service connection for [insert presumptive disability] is [insert date of receipt of claim], the date your original claim for service connection for [insert presumptive disability] was received.

[Insert paragraph for rating of the new presumptive condition and include an explanation of the percentage assigned for the condition, as well as the requirements for achieving the next higher percentage level.]

Example Rating Decision for Live Compensation Denial

INTRODUCTION

Mr./Ms. [full name], your records reflect that you are a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA records indicate that you previously filed a claim for [insert name of new presumptive condition] and were subsequently denied. A special review of your claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in your case.

DECISION

1. Service connection for [insert presumptive disability], for purposes of entitlement to retroactive benefits is not granted.

EVIDENCE

- DD Form 214
- VA Form 21-526, Veteran's Application for Compensation or Pension, received on [insert date received]
- Other information that creates a claim (informal, inferred, footnote 1)
- VA examination dated [insert date of exam]
- Other Medical Evidence (private, SSA, treatment reports)
- Service Treatment Records
- Rating decision dated [insert date of rating here], denying service connection for [insert new presumptive condition here]

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea,

Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for [insert presumptive disability], for purposes of entitlement to retroactive benefits.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

Medical evidence from [hospital, doctor, laboratory results] in the record indicates a diagnosis of [insert presumptive disability] on [date]. You claimed service connection for [insert presumptive disability] on [insert date of claim]. Service connection for [enter presumptive disability] was denied by a rating decision dated, [insert date of decision] because [insert reason(s) for denial].

The denial of your claim for service connection for [insert presumptive disability] is confirmed, because [insert reason(s) for confirming denial].

[Include an explanation for the denial here]

Example Rating Decision for Service-Connected Death Grant with No Prior Grant

INTRODUCTION

VA's records reflect that [full name] was a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that you previously filed a claim for your [DIC claimant's relationship]'s death as a result of [insert presumptive disability] and were subsequently denied. A special review of the Veteran's claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. Service connection for the cause of death is granted.
2. Basic eligibility to Dependents' Educational Assistance is established effective [insert date].

EVIDENCE

- DD Form 214
- VA Form 21-534, *Application for Dependency and Indemnity Compensation*, received on [date]
- Death certificate
- Medical Evidence [Medical Evidence may include, but is not limited to 1) diagnosis; 2) date of diagnosis; 3) date of death; 4) cause of death; and autopsy report.]

***Note to RVSR:** Always verify that the Veteran filed no claim during his/her lifetime. Also verify whether a 21-530, Application for Burial Benefits has been submitted.

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has

determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for the cause of the Veteran's death, for purposes of entitlement to retroactive benefits.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

During the lifetime of the Veteran, [he/she] did not submit a claim for benefits based on [insert presumptive disability].

On [date] a claim for service connected death benefits as a result of the Veteran's death was received. On [date], this claim was denied because, at that time, [insert presumptive disability] was not found to have been incurred or aggravated during military service, nor was it present to a degree of 10 percent within one year of the Veteran's discharge from active duty.

On [date] the Veteran died and the cause of death was recorded as [cause of death, including contributory causes, if relevant].

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to Agent Orange exposure. As such, service connection for the cause of the Veteran's death is now granted, effective from [date]. [Reason for effective date]

NOTE: [Insert only if a VAF 21-530 is not in file-Please send VA Form 21-530, Application for Burial Benefits to surviving spouse.]

2. Eligibility for Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a Veteran who has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the Veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Basic eligibility to Dependents' Education Assistance is granted

and is effective from [insert date], because the Veteran's death is presumptively related to military service.

[Insert the reasons for the effective date here]

Example Rating Decision for Service-Connected Death Grant with Prior Grant (claim received within one year of Veteran's death)

INTRODUCTION

VA's records reflect that [full name] was a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that you previously filed a claim for your [DIC claimant's relationship]'s death as a result of [insert name of new presumptive condition]. A special review of the Veteran's claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. An earlier effective date is granted for the service-connected cause of death.
2. An earlier effective date for eligibility to Dependents' Educational Assistance is established.

EVIDENCE

- DD Form 214
- VA Form 21-530, Application for Burial Benefits, received on [insert date 530 received]
- VA Form 21-534, Application for Dependency and Indemnity Compensation (DIC), received on [insert date 534 received]
- Death certificate
- Medical Evidence [Medical Evidence may include, but is not limited to 1) diagnosis; 2) date of diagnosis; 3) date of death; 4) cause of death; and autopsy report.]
- Rating decision dated [insert date of rating for 530 claim] granting burial benefits, effective [insert effective date]
- Decision dated [insert date of decision for 534] for service connection for the cause of death, effective [insert effective date]

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to

herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. An earlier effective date is granted for the service-connected cause of death.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

On [insert date of diagnosis], medical evidence in the record indicates your [insert claimant's relationship] was diagnosed with [insert presumptive disability]. On [date] your [insert claimant's relationship] died and the cause of death was recorded as [cause of death, including contributory causes, if relevant].

On [date of award and notice letter], we granted benefits for your DIC claim, with an effective date of [insert effective date for 534], the date your DIC claim was received.

Subsequently, [insert presumptive diagnosis] was added to the list of disabilities recognized as being related to Agent Orange exposure. As such, an earlier effective date for DIC benefits as a result of your [insert claimant's relationship]'s death is now granted. The effective date is [insert earlier effective date] [Reason for earlier effective date].

2. An earlier effective date for Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a Veteran who has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the Veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Basic eligibility to Dependents' Education Assistance is granted and is effective from [date].

Example Rating Decision for Service-Connected Death Grant with Prior Pension Grant

INTRODUCTION

VA's records reflect that [full name] was a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that there was a claim previously filed for your [DIC claimant's relationship]'s death as a result of [insert name of new presumptive condition]. A special review of the Veteran's claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. Service connection for the cause of death is granted.
2. Basic eligibility to Dependents' Educational Assistance is established.

EVIDENCE

- DD Form 214
- VA Form 21-534, Application for Dependency and Indemnity Compensation (DIC), received on [insert date 534 received]
- Death certificate
- Medical Evidence [Medical Evidence may include, but is not limited to 1) diagnosis; 2) date of diagnosis; 3) date of death; 4) cause of death; and autopsy report.]

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea,

Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for the cause of the Veteran's death, for purposes of entitlement to retroactive benefits.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

On [insert date VA Form 21-534 received] you filed a claim for non service-connected pension benefits. Medical evidence in the record indicates a diagnosis of [insert presumptive disability] on [insert date of diagnosis]. On [date] the Veteran died and the cause of death was recorded as [cause of death, including contributory causes, if relevant].

On [date], we granted non service-connected pension benefits, effective [insert effective date].

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to Agent Orange exposure. As such, service connection for cause of death is now granted. The effective date is [date VA Form 21-534 claim was received], the date your claim for non service-connected benefits was submitted.

2. Eligibility for Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a Veteran who has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the Veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Basic eligibility to Dependents' Education Assistance is granted and is effective from [date].

Example Rating Decision for Service-Connected Death Confirmed and Continued

INTRODUCTION

VA's records reflect that [full name] was a Veteran who served in the [military branch] from [date] to [date]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that you previously filed a claim for your [DIC claimant's relationship]'s death as a result of [insert name of new presumptive condition] and were subsequently denied. A special review of the Veteran's claims file was mandated by federal court order in *Nehmer v. Department of Veterans Affairs*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. The prior decision regarding service connection for cause of death is confirmed and no change is warranted for that prior denial under the provisions of the court's orders in *Nehmer*.

EVIDENCE

- DD Form 214
- VA Form 21-534, Application for Dependency and Indemnity Compensation, received on [date]
- VA Form 21-530, Application for Burial Benefits was received on [insert date]
- Death certificate
- Medical Evidence [Medical Evidence may include, but is not limited to 1) diagnosis; 2) date of diagnosis; 3) date of death; 4) cause of death; and autopsy report.]
- Decision dated [insert date of decision] denied service connection for cause of death

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has

determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for the cause of the Veteran's death, for purposes of entitlement to retroactive benefits.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

During the lifetime of your [DIC claimant's relationship-husband, son, spouse, father, etc], [he/she] did not submit a claim for benefits based on [insert disability shown as cause of death].

On [date] a claim for service connected death benefits as a result of his/her death was received. The date of death is [insert date] and the cause of death was recorded as [cause of death, including contributory causes, if relevant]. A rating dated [insert date], denied your DIC claim.

The denial of your claim for service-connected death is confirmed and no change is warranted under the provisions of the court's orders in *Nehmer*.

Example Rating Decision for Service-Connected Death Grant and Retroactive Compensation

INTRODUCTION

VA's records reflect that [insert full name of Veteran] was a Veteran who served in the [insert name of military branch in which Veteran served] from [insert date service began] to [insert date of discharge]. The Secretary of the Department of Veterans Affairs (VA) has established that Ischemic Heart Disease, Parkinson's Disease, Hairy Cell Leukemia and other Chronic B-cell Leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions.

VA's records indicate that your [insert DIC claimant's relationship, i.e.- husband, father, etc] previously filed a claim for [insert name of new presumptive disability] and was subsequently denied. A special review of your [survivor's relationship]'s claims file was mandated by federal court order in *Nehmer v. Department of Veterans Administration*. Based on our review of the evidence listed below, we have made the following decision(s) in this case.

DECISION

1. Service connection for [insert presumptive disability] associated with herbicide exposure is granted with a [insert percentage] percent evaluation, effective [insert date of receipt of the Veteran's initial claim for service connection for this condition].
2. Service connection for the cause of death is granted.
3. Basic eligibility to Dependents' Educational Assistance is established.

EVIDENCE

- DD Form 214
- VA Form 21-526, Veteran's Application for Compensation or Pension, received on [insert date of receipt of the Veteran's original claim for service connection for this condition].
- Other information that creates a claim (informal, inferred, implied or a potential claim)
- VA examination dated [insert date of exam]
- Other Medical Evidence (private, SSA, treatment reports)
- Service Treatment Records
- Decision dated [insert date of decision], denied service connection for [insert presumptive disability]
- VA Form 21-534, Application for Dependency and Indemnity Compensation, received on [insert date claim received]
- Death certificate

- VA Form 21-530, Application for Burial Benefits received on [insert date claim received]
- Decision dated [insert date of rating], denied service connected death for [insert presumptive disability]

REASONS FOR DECISION

Pursuant to the authority granted by the Agent Orange Act of 1991, VA may determine that a presumption of service connection based on exposure to herbicides used in Vietnam is warranted for conditions that VA has found to have a statistically significant association with such exposure. As such, VA has determined that a statistically significant association exists between exposure to herbicides and subsequent development of the following conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea tarda (PCT), multiple myeloma, acute and subacute peripheral neuropathy, prostate cancer, cancers of the lung, bronchus, larynx, trachea, Type II (adult-onset) diabetes mellitus, chronic lymphocytic leukemia, AL amyloidosis, Parkinson's disease, ischemic heart disease, and B-cell leukemias, such as hairy cell leukemia.

For purposes of this review, Vietnam Veterans had in-country service in the Republic of Vietnam.

1. Service connection for [insert presumptive disability], for purposes of entitlement to retroactive benefits.

VA has confirmed that the Veteran had in-country service in the Republic of Vietnam based on [insert evidence here].

Medical evidence in the record indicates a diagnosis of [insert presumptive disability] on [date]. The Veteran claimed service connection for [insert presumptive disability] on [insert date of claim]. Service connection for [insert presumptive disability] was denied by a rating decision dated, [insert date of decision] because [insert presumptive disability] was not incurred or aggravated during military service, nor was it present to a degree of 10 percent within one year of the Veteran's discharge from active duty.

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to herbicide exposure. As such, service connection for [insert presumptive disability] is now granted because it is presumptively related to the Veteran's military service. The effective date of service connection for [insert presumptive disability] is [insert date of receipt of claim], the date the Veteran's original claim for service connection for [insert presumptive disability] was received.

[Insert paragraph for rating of the new presumptive condition and include an explanation of the percentage assigned for the condition, as well as the requirements for achieving the next higher percentage level.]

2. Service connection for the cause of the Veteran's death, for purposes of entitlement to retroactive benefits.

On [date] the Veteran died and the cause of death was recorded as [cause of death, including contributory causes, if relevant]. On [date] a claim for service connected death benefits as a result of the Veteran's death was filed. On [date], this claim was denied because, as was found in the previous denial of the Veteran's claim, [insert presumptive disability] was not found to have been incurred or aggravated during military service, nor was it present to a degree of 10 percent within one year of the Veteran's discharge from active duty.

Subsequently, [insert presumptive disability] was added recently to the list of disabilities recognized as being related to herbicide exposure. As such, service connection for the cause of the Veteran's death is now granted, because it is presumptively related to the Veteran's military service. The effective date of service connection for the Veteran's death is [insert date of receipt of DIC claim], the date your original claim for service connection for your [survivor's relationship] death was received.

3. Eligibility for Dependents' Educational Assistance under 38 U.S.C. Chapter 35.

Eligibility to Dependents' Educational Assistance is derived from a Veteran who has a permanent and total service-connected disability; or a permanent and total disability was in existence at the time of death; or the Veteran died as a result of a service-connected disability. Also, eligibility exists for a serviceperson who died in service. Basic eligibility to Dependents' Education Assistance is granted and is effective from [date].

Example Memorandum for the Record for No Vietnam Service

NEHMER
MEMORANDUM FOR THE RECORD

Department of Veterans Affairs	POA	Date of Memorandum	
Veteran's Name	Resource Center	VA Employee Name	VA File Number

ISSUE: No Vietnam Service

A systematic review of the Veteran's claims folder has been conducted in accordance with *Nehmer v. U.S. Department of Veterans Affairs*, which requires the payment of retroactive benefits to certain *Nehmer* class members. This case was identified as a potential *Nehmer*-class case based on the addition of Ischemic Heart Disease, Parkinson's Disease, and B-cell/Hairy cell leukemias to the list of diseases presumptively associated with exposure to certain herbicide agents. Entitlement to potential retroactive benefits applies to all cases wherein VA received a claim for benefits, or wherein VA denied benefits, on or after September 25, 1985, and before the date VA publishes the final regulation adding the new disabilities to the list of diseases presumptively associated with herbicide exposure in Vietnam.

VA has confirmed that the Veteran did not have service in the Republic of Vietnam as defined by law. In the absence of any conclusive evidence that the Veteran served in the Republic of Vietnam, or was otherwise exposed to herbicides used in the Republic of Vietnam during military service, further review under *Nehmer* is not required. If VA receives any documentation that confirms that the Veteran did perform duty in the Republic of Vietnam, then entitlement to benefits under the *Nehmer* court order will be reconsidered.

[User Input - A detailed explanation regarding why the individual is not a class member is required. The explanation must be sufficient in detail for the reviewer to undertake a clear analysis as to why the case does not qualify for *Nehmer* readjudication.]

Name (Rating Specialist/DRO)

Name (Rating Specialist/DRO)

Example Memorandum for the Record for No Diagnosis

NEHMER
MEMORANDUM FOR THE RECORD

Department of Veterans Affairs	POA	Date of Memorandum	
Veteran's Name	Resource Center	VA Employee Name	VA File Number

ISSUE: No Diagnosis

A systematic review of the Veteran's claims folder has been conducted in accordance with *Nehmer v. U.S. Department of Veterans Affairs*, which requires the payment of retroactive benefits to certain *Nehmer* class members. This case was identified as a potential *Nehmer*-class case based on the addition of Ischemic Heart Disease, Parkinson's Disease, and B-cell/Hairy cell leukemias to the list of diseases presumptively associated with exposure to certain herbicide agents. Entitlement to potential retroactive benefits applies to all cases wherein VA received a claim for benefits, or wherein VA denied benefits, on or after September 25, 1985, and before the date VA publishes the final regulation adding the new disabilities to the list of diseases presumptively associated with herbicide exposure in Vietnam.

VA has confirmed that the Veteran was not diagnosed with one of the *Nehmer*-related disabilities and that no evidence indicating the existence of such disability is present in the Veteran's VA claim file between September 25, 1985, and the date VA published the final regulation adding the new disabilities to the list of diseases presumptively associated with herbicide exposure in Vietnam. In the absence of such evidence, further review under *Nehmer* is not required. If VA receives any documentation that confirms that the Veteran was diagnosed with a *Nehmer*-related disability, then entitlement to benefits under the *Nehmer* court order will be reconsidered.

[User Input - A detailed explanation regarding why the individual is not a class member is required. The explanation must be sufficient in detail for the reviewer to undertake a clear analysis as to why the case does not qualify for *Nehmer* readjudication.]

Name (Rating Specialist/DRO)

Name (Rating Specialist/DRO)

Example Memorandum for the Record for No Claim

NEHMER
MEMORANDUM FOR THE RECORD

Department of Veterans Affairs	POA	Date of Memorandum	
Veteran's Name	Resource Center	VA Employee Name	VA File Number

ISSUE: No Prior Claim

A systematic review of the Veteran's claims folder has been conducted in accordance with *Nehmer v. U.S. Department of Veterans Affairs*, which requires the payment of retroactive benefits to certain *Nehmer* class members. This case was identified as a potential *Nehmer*-class case based on the addition of Ischemic Heart Disease, Parkinson's Disease, and B-cell/Hairy cell leukemias to the list of diseases presumptively associated with exposure to certain herbicide agents. Entitlement to potential retroactive benefits applies to all cases wherein VA received a claim for benefits, or wherein VA denied benefits, on or after September 25, 1985, and before the date VA publishes the final regulation adding the new disabilities to the list of diseases presumptively associated with herbicide exposure in Vietnam.

VA has confirmed that the Veteran/Widow did not file a claim for benefits nor was denied a claim for benefits, as defined under *Nehmer* between September 25, 1985, and the date VA published the final regulation adding the new disabilities to the list of diseases presumptively associated with herbicide exposure in Vietnam. In the absence of such evidence, further review under *Nehmer* is not required.

[User Input - A detailed explanation regarding why the individual is not a class member is required. The explanation must be sufficient in detail for the reviewer to undertake a clear analysis as to why the case does not qualify for *Nehmer* readjudication.]

Name (Rating Specialist/DRO)

Name (Rating Specialist/DRO)

Appendix 8 – VA Examination Templates

The following pages provide approved and abbreviated VA Examination (VAE) worksheets for your use.

Ischemic Heart Disease VAE Template



Ischemic Heart Disease (IHD) Disability Benefits Questionnaire

The patient/Veteran has applied to the U. S. Department of Veterans Affairs for disability benefits. Please complete this Questionnaire, which we need for review of the application.

1. Diagnosis: Does the Veteran have ischemic heart disease (IHD)? Yes No

(If no, please skip to the signature section.)

Diagnosis: _____ Date of diagnosis: _____

NOTE: IHD includes but is not limited to acute, sub-acute and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease, including coronary spasm and coronary bypass surgery; and stable, unstable and Prinzmetal's angina. IHD does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke.

2. Medical History:

Does the Veteran's treatment plan include taking continuous medication for the diagnosed condition? Yes No List medications: _____

Is there a history of:

Myocardial infarction	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Treatment facility/date: _____
Coronary bypass surgery	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Treatment facility/date: _____
Heart transplant	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Treatment facility/date: _____
Implanted cardiac pacemaker	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Treatment facility/date: _____

3. Congestive Heart Failure (CHF):

Does the Veteran have chronic CHF? Yes No

More than one episode of acute CHF in the past year? Yes No

Treatment facility/date of most recent episode of CHF: _____

4. Cardiac Functional Assessment:

a. Level of METs the Veteran can perform as shown by diagnostic exercise testing: _____

b. If METs testing was not completed because it is not required as part of Veteran's treatment plan, complete the following METs test based on the Veteran's responses:

Lowest level of activity at which the Veteran reports symptoms (check all symptoms that apply)

- dyspnea fatigue angina dizziness syncope
- (1-3 METs) This METs level has been found to be consistent with activities such as eating, dressing, taking a shower, slow walking (2 mph) for 1-2 blocks
- (>3-5 METs) This METs level has been found to be consistent with activities such as light yard work (weeding), mowing lawn (power mower), brisk walking (4 mph)
- (>5-7 METs) This METs level has been found to be consistent with activities such as golfing (without cart), mowing lawn (push mower), heavy yard work (digging)
- (>7-10 METs) This METs level has been found to be consistent with activities such as climbing stairs quickly, moderate bicycling, sawing wood, jogging (6 mph)
- The Veteran denies experiencing above symptoms with any level of physical activity

5. Diagnostic Testing:

Evidence of cardiac hypertrophy? Yes No

Evidence of cardiac dilation? Yes No

Based on: Physical exam Echocardiogram EKG CXR

Left ventricular ejection fraction (LVEF), if known: _____

If LVEF testing is not of record, but available medical information sufficiently reflects the severity of the Veteran's cardiovascular condition, LVEF testing is not required.

6. Remarks (including impact of IHD condition on ability to work): _____

Physician signature: _____ Date: _____

Physician printed name: _____ Phone: _____

Medical license #: _____ Physician address: _____

NOTE: VA may request additional medical information, including additional examinations if necessary to complete VA's review of the Veteran's application.

FOR INTERNAL VA USE ONLY



Parkinson's Disease Disability Benefits Questionnaire

Name of patient/Veteran: _____ SSN: _____

The patient/Veteran has applied to the U. S. Department of Veterans Affairs for disability benefits. Please complete this Questionnaire, which we need for review of the application.

1. Diagnosis: Does the Veteran now have or has he/she ever been diagnosed with Parkinson's disease? Yes No Date of diagnosis: _____
(If no, please skip to the signature section.)

2. Motor manifestations due to Parkinson's or its treatment: (check all that apply)

- Stooped Posture
 None Mild Moderate Severe
- Balance impairment
 None Mild Moderate Severe
- Tremor (characteristic hand shaking, "pill-rolling")
 None Mild Moderate Severe
- Bradykinesia or slowed motion (difficulty initiating movement, "freezing," short shuffling steps)
 None Mild Moderate Severe
- Loss of automatic movements (such as blinking, leading to fixed gaze; typical Parkinson's facies)
 None Mild Moderate Severe
- Speech changes (monotone, slurring words, soft or rapid speech)
 None Mild Moderate Severe
- Muscle rigidity and stiffness
 None Mild Moderate Severe
- Extremities functionally affected by Parkinson's disease:
 Right upper Left upper Right lower Left lower

3. Mental manifestations due to Parkinson's or its treatment:

- Depression
 None Mild Moderate Severe
- Cognitive impairment or dementia
 None Mild Moderate Severe

4. Additional manifestations/complications due to Parkinson's or its treatment:

- Loss of sense of smell
 None Partial Complete
- Sleep disturbance (insomnia or daytime "sleep attacks")
 None Mild Moderate Severe
- Difficulty chewing/swallowing
 None Mild Moderate Severe
- Urinary problems (incontinence or urinary retention)
 None Or, if absorbent material required due to incontinence, specify pads/day:
 0 1 2-4 > 4 Or, if applicable, use of appliance
- Constipation (due to slowing of GI tract or secondary to Parkinson's medications)
 None Mild Moderate Severe
- Sexual dysfunction
 None Mild Moderate Severe (Erectile dysfunction precludes intercourse)

Other manifestations/complications: _____

5. Financial responsibility: In your judgment, is the Veteran able to manage his/her benefit payments in his/her own best interest, or able to direct someone else to do so? Yes No

6. Remarks (including impact of Parkinson's on ability to work): _____

Physician signature: _____ Date: _____

Physician printed name: _____ Phone: _____

Medical license #: _____ Physician address: _____

NOTE: VA may request additional medical information, including additional examinations if necessary to complete VA's review of the Veteran's application.

FOR INTERNAL VA USE ONLY

B-cell Leukemia VAE Template



Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire

Name of patient/Veteran: _____ SSN: _____

The patient/Veteran has applied to the U. S. Department of Veterans Affairs for disability benefits. Please complete this Questionnaire, which we need for our review of the application.

1. Diagnosis: Does the Veteran now have or has he/she ever been diagnosed with hairy cell leukemia or any other B-cell leukemia? Yes No
(If no, please skip to the signature section.)

Diagnosis (type of leukemia): _____ Date of diagnosis: _____

2. Status of disease: Active
 Remission

3. Treatment: The Veteran is currently undergoing treatment for this leukemia with surgical, radiation, immunotherapy, antineoplastic chemotherapy and/or other therapeutic procedures.
 The Veteran has completed treatment for this leukemia.
Date of discontinuance of treatment: _____

4. Residual complications:

If six months or more have passed since discontinuance of leukemia treatment, does the Veteran currently have any residual complications? Yes No

(If yes, please complete area below)

Residual complications requiring transfusion of platelets or red cells:

- At least once every 6 weeks
- At least once every 3 months
- At least once per year but less than once every 3 months

Residual complications causing infections recurring:

- At least once every 6 weeks
- At least once every 3 months
- At least once per year but less than once every 3 months

Residual complications related to anemia:

- Bone marrow transplant due to aplastic anemia
- Asymptomatic anemia
- Symptomatic anemia (check signs and symptoms that apply)
 - weakness
 - easy fatigability
 - headaches
 - lightheadedness
 - shortness of breath
 - dyspnea on mild exertion
 - cardiomegaly
 - tachycardia
 - syncope
 - high output congestive heart failure
 - dyspnea at rest

Other signs and/or symptoms: _____

Requires continuous medication for control of anemia: Yes No

If anemia is present, provide most recent hemoglobin level (gm/100ml): _____ Date: _____

If any other residual complications are present, please specify: _____

5. Remarks (including impact of leukemia on ability to work): _____

Physician signature: _____ Date: _____

Physician printed name: _____ Phone: _____

Medical license #: _____ Physician address: _____

NOTE: VA may request additional medical information, including additional examinations if necessary to complete VA's review of the Veteran's application.

FOR INTERNAL VA USE ONLY

Appendix 9 – Rating Schedule

For a complete discussion of the cardiovascular evaluation criteria in effect prior to January 12, 1998, as well as a discussion of the old and new side-by-side comparison go directly to:

http://vbaw.vba.va.gov/bl/21/Publicat/Regs/Part4/TUTORIAL/Cv_indx.htm.

Appendix 10 – Example Notification Letters

The following pages provide example *Nehmer* notification letters for your reference.

Example Letter for Live Veteran Service-Connected Grant

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
CSS XXX XX XXXX
XXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veterans Affairs (VA) recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate that you previously filed a claim for *[insert name of new presumptive condition]*.

We have conducted a special review of your claims file mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*.

This letter tells you about your award amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about additional benefits, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Estimated Retroactive Amount

The estimated amount of retroactive benefits is \$*[amount]*. These retroactive benefits are a result of the United States District Court's order in *Nehmer v. U.S. Department of Veterans Affairs*. Please see *Your Award Amount and Payment Start Date*.

Your Award Amount and Payment Start Date

[Use standard PCGL paragraphs and tables. Be sure to include dependency information. Insert all dependent's names.]

You Can Expect Payment

[Use standard PCGL paragraphs]

We Have Withheld Benefits

[Use standard PCGL paragraphs, if applicable]

What We Decided

We granted service connection for *[insert name of new presumptive here]* for the purposes of entitlement to retroactive benefits, effective *[date]*.
[Use standard PCGL paragraphs, if applicable]

Do You Have Dependents?

[Use standard PCGL paragraphs – include VA Form 21-686c and 21-674 for students in attachments]

How Do You Start Direct Deposit?

[Use appropriate PCGL paragraph]

Are You Entitled to Additional Benefits?

[Use standard Additional Benefits PCGL paragraphs, if applicable. Additional benefit paragraphs include insurance, medical care, vocational rehabilitation and employment benefits, commissary, etc.]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraph]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXX

XXXXX

[Title]

Enclosure(s): Rating Decision

[Include all Enclosures necessary]

VA Form 4107

Example Letter for Live Veteran Service-Connected Denial

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
CSS XXX XX XXXX
XXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veterans Affairs (VA) recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate that you previously filed a claim for *[insert name of new presumptive condition]*.

We have conducted a special review of your claims file mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*.

This letter tells you what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

What We Decided

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXX

XXXXX

[Title]

Enclosure(s): Rating Decision

[Appropriate attachments]

Example Letter for DIC Grant

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
XSS XXX XX XXXX
XXXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veterans Affairs (VA) recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate that [Name of Veteran] previously filed a claim for *[insert name of new presumptive condition]*.

We have conducted a special review of your *[DIC claimant's relationship]*'s claims file mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*.

This letter tells you about your award amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about additional benefits, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Estimated Retroactive Amount

The estimated amount of retroactive benefits based on *[Veteran's name]*'s claim for service connected compensation is *[\$[amount]]*. The estimated amount of DIC retroactive benefits is *[\$[amount]]*. *[Make necessary adjustments to the paragraph to address the benefit payment]*.

These retroactive benefits are a result of the United States District Court's order in *Nehmer v. Nehmer v. U.S. Department of Veterans Affairs*. Please see *Your Award Amount and Payment Start Date*.

Your Award Amount and Payment Start Date

[Use standard PCGL paragraphs and tables. Insert name(s) for additional dependents. Be sure to include dependency information.]

You Can Expect Payment

[Use standard PCGL paragraphs]

We Have Withheld Benefits

[Use standard PCGL paragraphs]

What We Decided

We granted service connection for [insert name of new presumptive here] for the purposes of entitlement to retroactive benefits, effective [date] until [date of death].

[Use all other necessary standard PCGL paragraphs]

How Do You Start Direct Deposit?

[Use standard PCGL paragraphs]

What Additional Information or Evidence Do We Still Need From You?

[Use standard PCGL paragraphs]

When and Where to Send the Information or Evidence

[Use standard PCGL paragraphs]

Are You Entitled to Additional Benefits?

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXX

XXXXX

[Title]

Enclosure(s): Rating Decision
[All Necessary Enclosures]

Example Letter for DIC Denial

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
XSS XXX XX XXXX
XXXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veterans Affairs (VA) recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. *[If the Veteran filed a claim insert.]* Our records indicate that *[Name of Veteran]* previously filed a claim for *[insert name of new presumptive condition]*.

Our records indicate that you applied for dependency and indemnity compensation (DIC) benefits on *[date]*.

We have conducted a special review of your *[DIC claimant's relationship]*'s claims file mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*.

Every effort was made in considering your claim. This notification tells you what we decided, how we made our decision and what evidence we used to make our decision. We have also included information on what to do if you disagree with our decision and who to contact if you have questions or need assistance.

What We Decided

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXX

XXXXX

[Title]

Enclosure(s): Rating Decision
VA Form 4107

Example Letter for Estate Grant

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
XSS XXX XX XXXX
XXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veteran Affairs (VA) has recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate that *[Name of Veteran]* previously filed a claim for *[insert name of new presumptive condition]* during his lifetime.

We have conducted a special review of the Veteran's claim file as mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*. We have determined that the Veteran's Estate is entitled to retroactive compensation based on being a recognized class member as outlined in the above court order.

This letter tells you about the award amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information of what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Estimated Retroactive Amount

The estimated amount of retroactive benefits is $\$[amount]$. This estimated payment was calculated using the new monthly entitlement amount minus any prior payments that were made along with any prior withholdings (if applicable) from the effective date(s) shown in the table below. These retroactive benefits are a result of the United States District Court's order in *Nehmer v. U.S. Department of Veterans Affairs*. Please see the *Award Amount and Payment Start Date*.

Award Amount and Payment Start Date

[Use standard PCGL paragraphs and tables.]

This retroactive payment is being made to the Estate of the Veteran based on being a recognized class member.

You Can Expect Payment

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXX

XXXXX

[Title]

Enclosure(s): Rating Decision

[Enclosures vary]

VA Form 4107

Example Letter for Child or Parent Grant

XXXX XXXX XXXXX
XXXX XXXXXXXX XX
XXXXXXX, XX XXXXX

In Reply Refer To: XXXXXXXXX
XSS XXX XX XXXX
XXXXX, Xxxx Xxxx

Dear XXXXXXXX:

The Secretary of the Department of Veteran Affairs has recently established that ischemic heart disease, Parkinson's disease, and hairy cell and other chronic B-cell leukemias warrant presumptive service connection based on the association between exposure to herbicides used in the Republic of Vietnam and the subsequent development of these conditions. Our records indicate *[Name of Veteran]* previously filed a claim for *[insert name of new presumptive condition]* during his lifetime.

We have conducted a special review of the Veteran's claim file as mandated by the United States District Court's orders in *Nehmer v. U.S. Department of Veterans Affairs*. We have determined that you are entitled to retroactive compensation based on being a recognized class member as outlined in the above court order.

This letter tells you about your award amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information of what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

Your Estimated Retroactive Amount

The estimated amount of your retroactive benefits is \$[amount]. This estimated payment was calculated using the new monthly entitlement amount minus any prior payments that were made along with any prior withholdings (if applicable) from the effective date(s) shown in the table below. These retroactive benefits are a result of the United States District Court's order in *Nehmer v. U.S. Department of Veterans Affairs*. Please see *Your Award Amount and Payment Start Date*.

Your Award Amount and Payment Start Date

[Use standard PCGL paragraphs and tables] [Modify for one time only payment]

We're paying you as a recognized class member of the above named Veteran.

You Can Expect Payment

[Use standard PCGL paragraphs]

What You Should Do If You Disagree With Our Decision

[Use standard PCGL paragraphs]

If You Have Questions or Need Assistance

[Use standard PCGL paragraphs]

[POA - Use standard PCGL paragraphs]

Sincerely yours,

XXXXX

XXXXX

[Title]

Enclosure(s): Rating Decision

[Enclosures vary]

VA Form 4107

Appendix 11 – The Cardiovascular System in 38 C.F.R § 4.100 (Prior to January 12, 1998)

Sec. 4.100 Necessity for complete diagnosis.

The common types of disease of the heart are those of rheumatic, syphilitic, arteriosclerotic, hypertensive, or hyperthyroid etiology. Determinations of relationship to service and evaluation, in the case of disability due to disease of the heart, require accurate identification of the disease, as an active or residual condition, with the complete required classification of etiology, structural lesions, manifestations, and capacity for work. Many common diagnoses following the first World War do not represent disease entities. "Chronic myocarditis," for example, except as a continuing inflammation following an identified acute myocarditis due to rheumatic fever or other infectious agent, is not a satisfactory diagnosis; there should be further identification of the etiological agent and structural lesions, prior to rating action. The very common diagnosis "mitral insufficiency" is likewise unsatisfactory as reflecting organic valvular disease in the absence of associated mitral stenosis, definite cardiac enlargement without other causes, or history of rheumatic manifestations. An acceptable diagnosis cannot be based upon the presence of systolic murmurs alone. Tachycardia and bradycardia, the various arrhythmias, and cardiac hypertrophy or dilatation, do not represent generally acceptable diagnoses, and elevation or depression of the systolic or diastolic pressure is usually a manifestation of disease, rather than a clinical entity.

Sec. 4.101 Rheumatic heart disease.

Rheumatic fever is an acute infectious disease, affecting the structures about the joints (though without permanent bone damage) and, frequently, the endocardium. Children are as a rule affected, usually before the age of 20 years. Seldom is the initial attack after 25 years. The disease tends to recur, and serious heart trouble may follow the first or a subsequent attack. With acute rheumatic fever in service, perhaps without manifest damage to the heart, a subsequent recurrence of the infection, should be accepted as service connected. With even a few days service, service connection may be given for an acute rheumatic fever and any cardiac residuals. On the other hand, a mitral insufficiency without a history of rheumatic fever, chorea, or tonsillitis, or definite complication in service, must be considered as functional. Aortic insufficiency with a history of rheumatic fever and manifestation within approximately 15 years from the date of syphilitic infection, if any, should generally be considered rheumatic and always so when there is associated mitral or aortic stenosis. With a history of rheumatic fever in service, an aortic insufficiency manifest some years later without other cause shown may be service connected. The subsequent progress of rheumatic heart disease, and the effect of superimposed arteriosclerotic or hypertensive changes cannot usually be satisfactorily disassociated or separated so as to permit differential service connection. It is for

this reason, in part, that great insistence is placed upon ascertainment of the service-connected disease as a true pathological entity. A subsequent change of diagnosis from one of an organic condition to one reflecting the effect of psychic or nervous factors casts doubt on the original diagnosis, but unless the correction is promptly made continuance of the service connection and of the evaluation under the new diagnosis is required. Such a change does not reflect an improvement of the physical condition.

Sec. 4.102 Varicose veins and phlebitis.

With severe varicose veins, tests to determine impairment of deep return circulation are essential, as the superficial varicosities may be caused by the impairment of deep return circulation, or there may be phlebitis as a complication of varicose ulcers. With phlebitis, or impairment of deep return circulation, the appropriate higher rating should be applied.

Sec. 4.103 [Reserved]

Sec. 4.104 Schedule of ratings--cardiovascular system.

Diseases of the Heart	Rating
7000 Rheumatic heart disease:	
As active disease and, with ascertainable cardiac manifestation, for a period of 6 months.....	100
Inactive:	
Definite enlargement of the heart confirmed by roentgenogram and clinically; dyspnea on slight exertion; rales, pretibial pitting at end of day or other definite signs of beginning congestive failure; more than sedentary employment is precluded.....	100
The heart definitely enlarged; severe dyspnea on exertion, elevation of systolic blood pressure, or such arrhythmias as paroxysmal auricular fibrillation or flutter or paroxysmal tachycardia; more than light manual labor is precluded.....	60
From the termination of an established service episode of rheumatic fever, or its subsequent recurrence, with cardiac manifestations, during the episode or recurrence, for 3 years, or diastolic murmur with characteristic EKG manifestations or definitely enlarged heart.....	30
With identifiable valvular lesion, slight, if any dyspnea, the heart not enlarged; following established active rheumatic heart disease.....	10
7001 Endocarditis, bacterial, subacute.	
7002 Pericarditis, bacterial or rheumatic, acute.	

Rate as rheumatic heart disease.	
7003 Adhesions, pericardial:	
Extensive, obliterating the sac, with congestive heart failure	100
Rate lesser conditions as rheumatic heart disease, inactive.	
7004 Syphilitic heart disease:	
Rate as rheumatic heart disease, inactive.	
7005 Arteriosclerotic heart disease:	
During and for 6 months following acute illness from coronary occlusion or thrombosis, with circulatory shock, etc.....	100
After 6 months, with chronic residual findings of congestive heart failure or angina on moderate exertion or more than sedentary employment precluded.....	100
Following typical history of acute coronary occlusion or thrombosis as above, or with history of substantiated repeated anginal attacks, more than light manual labor not feasible.....	60
Following typical coronary occlusion or thrombosis, or with history of substantiated anginal attack, ordinary manual labor feasible.....	30
7006 Myocardium, infarction of, due to thrombosis or embolism.	
Rate as arteriosclerotic heart disease.	
7007 Hypertensive heart disease:	
With definite signs of congestive failure, more than sedentary employment precluded.....	100
With marked enlargement of the heart, confirmed by roentgenogram, or the apex beat beyond midclavicular line, sustained diastolic hypertension, diastolic 120 or more, which may later have been reduced, dyspnea on exertion, more than light manual labor is precluded.....	60
With definite enlargement of the heart, sustained diastolic hypertension of 100 or more, moderate dyspnea on exertion.....	30
7008 Hyperthyroid heart disease:	
With signs of congestive failure.....	100
With permanent or paroxysmal auricular fibrillation.....	60
Note: The ratings under Code 7008 are not to be combined with ratings for hyperthyroidism. Rate lesser conditions as hyperthyroidism.	
Cardiac neurosis.	
Refer to psychiatric schedule.	
Note: The following Codes 7010 through 7015 reflecting arrhythmias and conduction abnormalities are occasionally encountered. Standing alone they represent incomplete diagnoses. Ratings are not to be combined with those for other heart or psychiatric conditions.	
7010 Auricular flutter, paroxysmal.	
Rate as paroxysmal tachycardia.	

7011 Auricular fibrillation, paroxysmal. Rate as paroxysmal tachycardia.	
7012 Auricular fibrillation, permanent.....	10
7013 Tachycardia, paroxysmal:	
Severe, frequent attacks.....	30
Infrequent attacks.....	10
7014 Sinus tachycardia:	
Persistently 100 or more in recumbent position.....	10
7015 Auriculoventricular block:	
Complete; with attacks of syncope necessitating the insertion of a permanent internal pacemaker, and for 1 year, after which period the rating will be on residuals as below.....	100
Complete: with Stokes-Adams attacks several times a year despite the use of medication or management of the heart block by pacemaker.....	60
Complete; without syncope or minimum rating when pacemaker has been inserted.....	30
Incomplete; without syncope but occasionally symptomatic.....	10
Incomplete; asymptomatic, without syncope or need for medicinal control after more than 1 year.....	0
Note 1: Atrioventricular block, partial or complete, may be present associated with and related to the supraventricular tachycardias or pathological bradycardia. Cases with Mobitz Type II block may be encountered, as well as Wenckebach's phenomenon, Mobitz Type I block, and varying degrees of A-V block associated with tachyarrhythmias or other severe disturbances in rate or rhythm. Such unusual cases should be submitted to the Director, Compensation and Pension Service. On the other hand, simple delayed P-R conduction time, in the absence of other evidence of cardiac disease, is not a disability.	
Note 2: The 100 percent rating for 1 year following implantation of permanent pacemaker will commence after initial grant of the 1 month total rating assigned under Sec. 4.30 following hospital discharge.	
7016 Heart valve replacement (prosthesis):	
For 1 year following implantation of prosthetic valve.....	100
Thereafter; rate as rheumatic heart disease; minimum rating.....	30
Note: The 100 percent rating for 1 year following implantation of prosthetic valve will commence after initial grant of the 1 month total rating assigned under Sec. 4.30 following hospital discharge.	
7017 Coronary artery bypass:	
For 1 year following bypass surgery.....	100
Thereafter, rate as arteriosclerotic heart disease. Minimum rating.....	30

Note: Authentic myocardial insufficiency with arteriosclerosis may be substituted for occlusion.

Note: The 100 pct rating for 1 year following bypass surgery will commence after the initial grant of the 1-month total rating assigned under Sec. 4.30 following hospital discharge.

Diseases of the Arteries and Veins

Rating

7100 Arteriosclerosis, general:	
With slight weakening of bodily vigor.....	20
Without symptoms or renal, cardiac, or cerebral complications.	0
Note: Rate the arteriosclerotic complications, such as renal, cardiac, or cerebral, under the appropriate schedule.	
7101 Hypertensive vascular disease (essential arterial hypertension):	
Diastolic pressure predominantly 130 or more and severe symptoms.....	60
Diastolic pressure predominantly 120 or more and moderately severe symptoms.....	40
Diastolic pressure predominantly 110 or more with definite symptoms.....	20
Diastolic pressure predominantly 100 or more.....	10
Note 1: For the 40 percent and 60 percent ratings under code 7101, there should be careful attention to diagnosis and repeated blood pressure readings.	
Note 2: When continuous medication is shown necessary for control of hypertension with a history of diastolic blood pressure predominantly 100 or more, a minimum rating of 10 percent will be assigned.	
7110 Aneurysm, aortic, fusiform, sacular, dissection and/or with stenosis:	
After establishment of diagnosis with markedly disabling symptoms; and for 1 year after surgical correction (with any type graft).....	100
If exertion and exercise is precluded.....	60
Thereafter, rate residual of graft insertion according to findings and symptoms under most appropriate analogy.	
Minimum rating.....	20
Note: The 100 percent rating for 1 year following surgical correction will commence after initial grant of the 1-month total rating under Sec. 4.30 assigned following hospital	

discharge.

7111 Artery, any large artery, aneurysm of:
 In lower extremities, symptomatic.....60
 In upper extremities, symptomatic.....40
 Note: Rate post-operative residuals with graft insertion under most appropriate analogy, e.g., 7116, etc., minimum rating 20 percent.

7112 Artery, small, aneurysmal dilatation of.....10

7113 Arteriovenous aneurysm, traumatic:
 With cardiac involvement, minimum rating.....60
 Without cardiac involvement with marked vascular symptoms.
 Lower extremity.....50
 Upper extremity.....40
 With definite vascular symptoms.
 Lower extremity.....30
 Upper extremity.....20

7114 Arteriosclerosis obliterans.

7115 Thromboangiitis obliterans (Buerger's disease).

7116 Claudication, intermittent:
 Severe form with marked circulatory changes such as to produce total incapacity or to require house or bed confinement.....100
 Persistent coldness of extremity with claudication on minimal walking.....60
 Well-established cases, with intermittent claudication or recurrent episodes of superficial phlebitis.....40
 Minimal circulatory impairment, with paresthesias, temperature changes or occasional claudication.....20
 Note: The 100 percent rating will not be applied under a diagnosis of intermittent claudication.

7117 Raynaud's disease:
 Severe form with marked circulatory changes such as to produce total incapacity or to require house or bed confinement.....100
 Multiple painful, ulcerated areas.....60
 Frequent vasomotor disturbances characterized by blanching, rubor and cyanosis.....40
 Occasional attacks of blanching or flushing.....20

Note: The schedular evaluations in excess of 20 percent under Diagnostic Codes 7114, 7115, 7116, and 7117 are for application to unilateral involvements. With bilateral involvements, separately meeting the requirements for evaluation in excess of 20 percent, 10 percent will be added to the evaluation for the more severely affected extremity only, except where the disease has resulted in an amputation. The resultant amputation rating will be combined with the schedular rating for the other extremity, including the

bilateral factor, if applicable. The 20 percent evaluations are for application to unilateral or bilateral involvement of both upper and lower extremities.

7118 Angioneurotic edema:

- Severe; frequent attacks with severe manifestations and prolonged duration.....40
- Moderate; frequent attacks of moderate extent and duration.....20
- Mild; infrequent attacks of slight extent and duration.....10

7119 Erythromelalgia:

- Severe.....40
- Moderate.....20
- Mild.....10

7120 Varicose veins.

Pronounced; unilateral or bilateral, the findings of the severe condition with secondary involvement of the deep circulation, as demonstrated by Trendelenburg's and Perthe's tests, with ulceration and pigmentation:

- Bilateral.....60
- Unilateral.....50

Severe; involving superficial veins above and below the knee, with involvement of the long saphenous, ranging over 2 cm. in diameter, marked distortion and sacculation, with edema and episodes of ulceration; no involvement of the deep circulation:

- Bilateral.....50
- Unilateral.....40

Moderately severe; involving superficial veins above and below the knee, with varicosities of the long saphenous, ranging in size from 1 to 2 cm. in diameter, with symptoms of pain or cramping on exertion; no involvement of the deep circulation:

- Bilateral.....30
- Unilateral.....20

Moderate; varicosities of superficial veins below the knees, with symptoms of pain or cramping on exertion:

- Bilateral or unilateral.....10
- Mild; or with no symptoms.....0

Note: Severe varicosities below the knee, with ulceration, scarring, or discoloration and painful symptoms will be rated as moderately severe.

7121 Phlebitis or thrombophlebitis, unilateral, with obliteration of deep return circulation, including traumatic conditions:

- Massive board-like swelling, with severe and constant pain at rest.....100

Persistent swelling, subsiding only very slightly and incompletely with recumbency elevation with pigmentation

cyanosis, eczema or ulceration.....	60
Persistent swelling of leg or thigh, increased on standing or walking 1 or 2 hours, readily relieved by recumbency; moderate discoloration, pigmentation and cyanosis or persistent swelling of arm or forearm, increased in the dependent position; moderate discoloration, pigmentation or cyanosis.....	30
Persistent moderate swelling of leg not markedly increased on standing or walking or persistent swelling of arm or forearm not increased in the dependent position.....	10
Note: When phlebitis is present in both lower extremities or both upper extremities, apply bilateral factor.	
7122 Frozen feet, residuals of (immersion foot).	
With loss of toes, or parts, and persistent severe symptoms:	
Bilateral.....	50
Unilateral.....	30
With persistent moderate swelling, tenderness, redness, etc:	
Bilateral.....	30
Unilateral.....	20
With mild symptoms, chilblains:	
Bilateral.....	10
Unilateral.....	10
Note: With extensive losses higher ratings may be found warranted by reference to amputation ratings for toes and combination of toes; in the most severe cases, ratings for amputation or loss of use of one or both feet should be considered. There is no requirement of loss of toes or parts for the persistent moderate or mild under this diagnostic code.	
7123 Soft-tissue sarcoma (of vascular origin).....	100
Note: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.	
[29 FR 6718, May 22, 1964, as amended at 40 FR 42539, Sept. 15, 1975; 41 FR 11300, Mar. 18, 1976; 43 FR 45361, Oct. 2, 1978; 56 FR 51653, Oct. 15, 1991]	

Appendix 12 – MAP-D Notification/Development Paragraphs for *Nehmer*

Introductory Paragraph – Development Letter Issued Prior To Final Regulation

We are conducting a special review of [Veteran's name/your] claims folder in accordance with *Nehmer v. U.S. Department of Veterans Affairs* (VA), which requires the payment of retroactive benefits to certain *Nehmer* class members. Your case was identified as a potential *Nehmer* class-member case based on the addition of Ischemic Heart Disease, Parkinson's Disease, and B-cell/Hairy cell leukemias to the list of diseases presumptively associated with exposure to certain herbicide agents used in Vietnam. Entitlement to potential retroactive benefits applies to all cases wherein VA received a claim, or a claim for benefits was pending, or wherein VA denied benefits, on or after September 25, 1985, and before the date VA publishes the final regulation adding the new disabilities to the list of diseases presumptively associated with herbicide exposure in Vietnam.

Your case qualifies for this special review based on a prior VA benefits claim for [insert the newly added presumptive disease]. However, this disease has not yet been added to VA regulations governing disabilities presumptively associated with herbicide exposure. In order to add this disease, we must follow a series of legal requirements, including publishing a notice in the Federal Register. We have begun this process, but in the meantime we are requesting evidence necessary for this review so that we may expedite your decision once the regulation becomes final.

IMPORTANT NOTE TO VSRs: If no additional development is required, edit the last sentence in the second paragraph, "We have begun this process ..." before sending the notification letter to the class member.

Introductory Paragraph – Development Letter Issued After Final Regulation

We are conducting a special review of [Veteran's name/your] claims folder in accordance with *Nehmer v. U.S. Department of Veterans Affairs* (VA), which requires the payment of retroactive benefits to certain *Nehmer* class members. Your case was identified as a potential *Nehmer* class-member case based on the addition of Ischemic Heart Disease, Parkinson's Disease, and B-cell/Hairy Cell Leukemia to the list of diseases presumptively associated with exposure to certain herbicide agents used in Vietnam. [Entitlement to potential retroactive benefits applies to all cases wherein VA received a claim, or a claim for benefits was pending, or wherein VA denied benefits, on or after September 25, 1985, and before the date VA publishes the final regulation adding the new disabilities to the list of diseases presumptively associated with herbicide exposure in

Vietnam.] Your case qualifies for this special review based on a prior VA benefits claim for [insert the newly added presumptive disease].

VAE Paragraph

You may be able to help us expedite your case if you can have your VA or private physician complete the enclosed VA Examination Worksheet. Submitting this worksheet may eliminate the need for VA to schedule a Compensation and Pension examination to obtain current rating criteria on your case. This may help us make a decision faster. Have the physician complete all portions of the worksheet and ensure that he or she signs and dates the worksheet. In order to fully assist VA in expediting your case, please submit the examination worksheet within 30 days. If you cannot provide this information, your physician refuses to assist, or we otherwise have not received it within 30 days, we may proceed with scheduling an examination for you.

Soliciting Other Evidence Paragraph

If you have any additional information that you may consider helpful in the review of your claim, please provide us a copy of such information as soon as possible. Examples of additional information include, but are not limited to marriage certificates, birth certificates, Social Security numbers, and medical reports. Historical medical reports are especially important if your claim(s) was denied long ago and you have subsequent medical treatment records from the time the claim was filed to the present, including any period in between.

Appendix 13 – Nehmer Rejudication Review Worksheet

Static Fields:

CLAIM#: _____ NAME of VETERAN _____ ROJ: _____
VHA FACILITY# _____ RC: _____
REVIEWER: [User Enter Name]
DATE RECEIVED IN RC: _____
Claims file received: [User will select from drop box containing: 319 – Columbia; 317 – St. Petersburg; 314 – Roanoke; 315 – Huntington; 402 – Togus; 310 – Philadelphia; 334 – Lincoln; 331; St. Louis; 351 – Muskogee; 349 – Waco; 345 – Phoenix; 377 – San Diego; 346 – Seattle; Other - free text up to 25 characters]

NEHMER READJUDICATION

Eligibility Requirements

1. Does the claims file contain verified evidence of in-country Vietnam service? [User will select Y/N] [If User selects Y, proceed to 1a]

1a. Please state where the verified evidence was found in the claims file. [User free text up to 50 characters]

2. Identify the earliest prior claim [that serves as the basis of readjudication] filed or denied between 9/25/85 and [Automatic insert date pending final regulation] for Ischemic heart disease (IHD), Parkinson's, and HCL and B-cell leukemias [User will select one option]:

- SC claim
- SC and pension claim
- Live pension claim
- Informal claim
- Inferred claim for SC, or a claim reasonably raised by VA, or an instance where VA failed to address a claim, or VA failed to provide a decision notice letter to the class member
- N/A [If N/A, skip to item 7]

2a. What are the disability(ies) claimed or inferred? [User selects-multiple selections apply]

- Ischemic heart disease
- Parkinson's disease
- B-cell chronic lymphocytic leukemia/small lymphocytic
- Acute lymphoblastic leukemia-mature B-cell type
- B-cell polymphocytic leukemia

- Precursor B lymphoblastic leukemia
- Hairy cell leukemia
- N/A [If N/A, skip to item 7]

2b. What is the date of receipt of each of the prior claim(s) from item 2? [Auto list of claims from item 2] [User will enter date of receipt of each claim]

3. What is the type of medical evidence used to verify the disability for: [Auto list of diseases from 2a] [User selects-multiple selections apply for type medical evidence (VHA; Private Treatment or Other (SSA, etc) used for each disability identified]

Example:

Disability	VHA	Private Treatment	Other (SSA, etc)
Parkinson's	Y	N	N
Ischemic Heart	N	Y	Y

4. What is the rating date that disposed of the issue(s) from items 2/2b? [User will enter date of rating that disposed of the claim(s) identified in item 2-Auto list of claims will be generated] [If N/A is checked continue to item 5]

5. What was the disposition of the claim(s) from item 4? [Auto list of the claims identified in item 2 and drop-down choices are grant (enter effective date benefits granted), denial or outstanding] [If grant is checked, skip item 7 and go to item 8]

6. Is there a subsequent grant of the previous denial or deferral of benefits, and if so, insert the effective date for benefits that were previously granted based on the oldest prior claim from item 2. [User will enter the effective date benefits were previously granted]

7. Does the Veteran meet all three eligibility requirements? [User will select Y/N] [If "YES" go to item 8] [If "NO", identify the eligibility requirement(s) not met and skip to item 32 check boxes-multiple selections permitted for deficiencies; a selection is required]

- No in-country VN service [If this is chosen, proceed to 7a]
- No prior claim filed or denied between 9/25/85 and [automatic insert date-date pending of final regulation-unknown at this time]
- No diagnosis of claimed disability(ies)

7a. Is development required? [User will select Y/N] [If YES proceed to 8; If NO skip to 32]

8. Does a rating decision correctly deny SC for [Auto list of disabilities identified in item 2a]? [User will select Y/N]

Other Herbicide-Related Disabilities

9. Was a SC claim filed for any other based upon exposure to herbicides used in Vietnam disability? [User will select Y/N]

[If “YES”, User must select disability(ies) from the drop box and proceed to items 10-12]

[If “NO” is checked, Auto skip of this area and proceed to the area entitled “Death Claims”]

[User selects-multiple selections permitted]

- Type 2 diabetes also known as type II diabetes mellitus or adult-onset diabetes
- Hodgkin’s disease
- Multiple myeloma
- Non-Hodgkin’s lymphoma
- Acute and Subacute peripheral neuropathy
- Porphyria cutanea tarda
- Prostate cancer
- Lung cancer
- Bronchus cancer
- Larynx cancer
- Trachea cancer
- Chronic lymphocytic Leukemia (CLL)
- AL Amyloidosis (ALA)
- Soft tissue sarcoma

10. What is the type medical evidence used to verify the diagnosis(es) for [Auto list of all disabilities identified in item 9]? [User entry required]

[Multiple selections are allowed for the type medical evidence used for each disability identified]

Example:

Disability	VHA	Private Treatment	Other (SSA, etc)
Type 2 diabetes	Y	N	N
Hodgkin’s disease	N	Y	Y
Multiple myeloma	N	Y	Y

11. Does a rating decision grant SC for [Auto list named disabilities in item 9]? [Y/N-User entry required]

12. Does a rating decision assign the correct effective date for [Auto list named disabilities identified in item 9]? [Y/N-User entry required]

Death Claim [If the Veteran is living-skip this entire area go to items under “Review Summary”]

13. Was there a claim for death benefits-to include burial filed or denied between 9/25/85 and [Auto date based on disability claimed]? [Y/N-User entry]

[If Yes, proceed to Q14]

[If No, Allow only Q15 and skip to Q19]

14. What is the date of receipt of death claims? [User will enter date-required entry]

15. What is the date of death? [User will enter date-required entry]

16. What is the Veteran's primary, secondary or contributory cause of death caused by [Auto list of disabilities identified in items 2a and 9-Allow for multiple selections of disabilities and for each disability, allow for the following drop-down choices: primary, secondary, contributory, N/A. Allow for one choice only].

Disability	Primary	Secondary	Contributory	N/A
Parkinson's	<u>Check mark</u>	Grayed-out	Grayed-out	Grayed-out
Ischemic Heart	Grayed-out	<u>Check mark</u>	Grayed-out	Grayed-out

17. What is the date that disposes of the death claim? [User will enter data field]

18. What was the disposition of the claim from item 13? [User will select from drop-down choices]

- grant [User will enter date of rating]
- denial
- deferral

[Stop and Save]

Initial Screening Summary

19. Is the Nehmer claim ready-to-rate? [Y/N-User entry]

[If “NO”, proceed to item 20 and do not allow an entry in the below drop box]

[If “YES”, drop-down choices. User entry required]

- Grant with medical development [If a grant with medical development is indicated proceed to 21]
- Full grant with no additional medical development [If a full grant is indicated skip to item 31]
- Denial [If Denial is indicated, skip to item 32]
- Memorandum for the record [If a memo is indicated skip to item 32 44]
- Confirmed and continued (C&C) [If a C&C id indicated skip to item 32]

20. Is development action(s) required before a rating can be prepared? [Y/N-User entry]

[If 'YES', proceed to Rating Development Action(s) Required and do not allow an entry in items identified under Ready-to-Rate section (Q32-34)]

[If "NO", proceed to Rating Development Action(s) Required and allow for entry in the Ready-to-Rate section (Q32-34)]

[Stop and Save]

Rating Development Action(s)

21. Specify the medical development action(s) required to rate claim: [User will select from drop box-multiple choices allowed]

- Service Treatment Records
- Uniformed Services Hospital records
- VAE
- VAMC Treatment Records
- A statement/letter from most recent treating physician
- Private treatment records
- SSA Records
- Autopsy/summary medical report
- Death certificate
- Other

Non-Medical Development Action(s)

22. Are additional development actions required? [Y/N-User entry] [Add drop box and allow multiple selections and a write-in if "Other" is checked] [If NO, skip to the Q28]

22a. If so, what type of evidence? [User entry, select from list]

- birth certificate(s)
- marriage certificate
- divorce decree
- service verification/PIES/DPRIS

- other (free text – 5 sub-choices, up to 50 characters)

23. Is development required for a valid address? [Y/N-User entry]

24. Is development required to identify class member(s)? [Y/N-User entry]

25. Is development required for paid-in-full receipts? [Y/N-User entry]

[If “YES”, User will select from list]

[If “NO”, go to Q26]

- funeral home/mortuary
- cemetery
- individual receipts

26. Is development required for [User will select from list]

- retired pay
- SBP
- separation pay
- N/A

27. What avenue of communication is being used to request required evidence identified in items 22-26?

[User enters input date field and then check-boxes]

- telephone
- electronic mail
- written communication

[Stop and Save]

Receipt of Requested Evidence

28. Was all requested evidence received? [Y/N-User entry]

[If “YES”, go to Q28a]

[If “NO”, go to Q29]

28a. Enter the date the requested evidence was received [User will insert date-required entry] and proceed to “RVSR Decision” section.

29 Was the (request for evidence) mail returned undeliverable? [Y/N-User entry]

[If “YES” an entry is required in item 29a]

[If “NO”, go to Q30]

29a. If the (request for evidence) mail was returned undeliverable, is the requested evidence required in order to rate the claim? [Y/N-User entry]
[If “NO” proceed to item 32]
[If “YES” is selected go to “Decision Notice Area”]

30. Is additional evidence needed in order to rate? [Y/N-User entry]
[If “NO” go to “Ready-to-Rate section”]
[If “YES”, repeat Q21 – Q29. Label as Q30a – Q30j]

31. Is additional evidence needed to prepare award action(s)?
[If “NO” go to “Ready-to-Rate” section]
If “YES”, repeat Q22 – Q27. Label as Q31a – 31f]

[Stop and Save]

RVSR Decision

32. Does Nehmer apply in this claim? [Y/N-User entry]
[If “NO” User entry is required in item 33]
[If “YES” skip item 33 and proceed to “Ready to Prepare Award Actions.”]

33. Is C.F.R. § 3.114a applicable? [Y/N-User entry]

34. What is the disposition of the Nehmer claim(s)? [User insert date--Required Entry and then check box with multiple entries]

- SC [Grant (includes any additional medical development)/Denial(includes C&C and memorandum)]
- DIC [Grant (includes any additional medical development)]
- Burial [Grant (includes any additional medical development)/Denial (includes C&C and memorandum)]

34a. Name of RVSR that prepared decision or memorandum? [User enters name]

[Stop and Save]

Award Action [an entry is required in all items]

35. Did you prepare award action(s) for all claimed benefits? [Y/N-User entry]
[If Yes, go to Q36.]
[If No, go to Q40.]

36. Are there multiple class members? [Y/N-User entry]

37. Are retroactive benefits payable? [Y/N-User entry]

[If "NO", go to Q39]

[If "YES", go to 37a]

37a. Is the SC retroactive benefit payable based on: select [User entry-drop-down choices]

- New Herbicide-Related Presumptives [User entry-amount required]
- Other Herbicide-Related disabilities only [User entry-amount required]
- New Herbicide-Related Presumptives and other AO disabilities [User entry-amount required]
- No SC Retro

37b. Is the DIC retroactive benefit payable based on select: select [User entry-select from drop-down choices]

- New Herbicide-Related Presumptives [User entry-amount required]
- Other Herbicide-Related disabilities only [User entry-amount required]
- New Herbicide-Related Presumptives and other Herbicide-Related disabilities [User entry-amount required]
- No DIC Retro

37c. Is the retroactive SC burial benefit payable based on, select [User entry-select from drop-down choices]

- New Herbicide-Related Presumptives [User entry-amount required]
- Other Herbicide-Related disabilities only [User entry-amount required]
- New Herbicide-Related Presumptives and other Herbicide-Related disabilities [User entry-amount required]
- No Burial Retro

38. Did you appropriately withhold for retired pay, SBP, etc? [Y/N]

39. Did you award SC burial? [Y/N]

Decision Notice letter

40. Did you prepare a decision notice letter(s)? [Y/N-User entry]

[If "YES", go to 40a.]

[If "NO", go to go to Q41].

40a. Check all attachments that apply [User entry-check boxes of appropriate attachments and paragraph-education benefits]

- appeal rights-VAF 4107

- rating decision, VAF 21-8760
- VAF 22-5490
- VA Pamphlet 22-73-3
- VAF 28-8890
- VAF 28-1900
- CH31
- CHAMPVA
- Commissary and Exchange privileges
- Life Insurance
- POA paragraph
- other appropriate paragraphs or attachments (free text)

41. Enter the date the rating decision, memorandum, and/or decision notice letter were sent to SVSR for authorization of award [User entry-date field]

[Stop and Save]

Quality Review

42. Did SVSR approve the decision notice letter and rating decision?

[If “Yes”, User must input date and go to Q42a. Do not allow date entered in 42 to be earlier than date shown in Q41]

[If “No”, User must select type of correction from drop box list]

- Rating deficiency
- Letter deficiency
- Effective date correction (Date of claim not accurately identified or described)
- Dependency
- Issues not addressed (SC burial, etc)
- DFAS – Retired pay/SBP
- Other development actions
- Finance – large check amount
- Footnote 1 applicable (VA placed at issue/VA failed to address)
- Other corrections
- N/A

42a. Name of SVSR [User must enter name of SVSR]

[Stop and Save]

42b. Did SME review the *Nehmer* claim for quality? [Y/N-User entry]

[If Y, User must input date of review. Do not allow date entered in 42b to be earlier than date shown in Q42. Continue to Q42c]

[If N, Skip to Q43]

42c. Did SME identify any deficiencies? [Y/N-User entry]

[If “No”, go to Q42d]

[If “Yes”, User must select type of deficiency from drop box list and continue to 42d]

- Rating deficiency
- Letter deficiency
- Effective date correction
- Dependency
- Issues not addresses (SC burial, etc)
- DFAS – Retired pay/SBP
- Other development actions
- Finance – large check amount
- Footnote 1 applicable (VA placed at issue/VA failed to address)
- Other corrections
- N/A

42d. Name of SME [User must enter name of SME]

[Stop and Save]

43. Enter the date the decision notice letter and rating decision was released to class member(s): [User-input date field-optional]

Miscellaneous Issues

44. Are there any outstanding deferred issues, unrelated to Nehmer, that require action by the ROJ? [Y/N-User entry-optional]

45. Was decision notice letter returned undeliverable? [Y/N-User entry-optional]

46. Enter date claims file was returned to RO of jurisdiction: [User entry date field-optional]

46a. Select the appropriate ROJ [User entry drop down list]:

- | | | | |
|-----|----------------|-----|---------------|
| 301 | Boston | 318 | Winston-Salem |
| 304 | Providence | 319 | Columbia |
| 306 | New York | 320 | Nashville |
| 307 | Buffalo | 321 | New Orleans |
| 308 | Hartford | 322 | Montgomery |
| 309 | Newark | 323 | Jackson |
| 310 | Philadelphia | 325 | Cleveland |
| 311 | Pittsburgh | 326 | Indianapolis |
| 313 | Baltimore | 327 | Louisville |
| 314 | Roanoke | 328 | Chicago |
| 315 | Huntington | 329 | Detroit |
| 316 | Atlanta | 330 | Milwaukee |
| 317 | St. Petersburg | 331 | St. Louis |

333	Des Moines	355	San Juan
334	Lincoln	358	Manila
335	St. Paul	362	Houston
339	Denver	372	Washington
340	Albuquerque	373	Manchester
341	Salt Lake City	377	San Diego
343	Oakland	402	Togus
344	Los Angeles	405	White River Jct.
345	Phoenix	436	Ft. Harrison
346	Seattle	437	Fargo
347	Boise	438	Sioux Falls
348	Portland	442	Cheyenne
349	Waco	452	Wichita
350	Little Rock	459	Honolulu
351	Muskogee	460	Wilmington
354	Reno	463	Anchorage

For Information Purpose Only (Static Fields):

LIST of ALL PRESUMPTIVE HERBICIDE CONDITIONS UNDER THE NEHMER COURT ORDER:

Soft-tissue Sarcoma	October 15, 1991
Hodgkin's disease	February 3, 1994
Non-Hodgkin's lymphoma	May 19, 1993
Porphyria cutanea tarda	February 3, 1994
Lung cancer	June 9, 1994
Bronchus cancer	June 9, 1994
Larynx cancer	June 9, 1994
Trachea cancer	June 9, 1994
Multiple myeloma	June 9, 1994
Acute and Subacute peripheral neuropathy	November 7, 1996
Prostate cancer	November 7, 1996
Type 2 Diabetes	May 8, 2001
Chronic lymphocytic Leukemia (CLL)	October 16, 2003
AL Amyloidosis (ALA)	May 7, 2009
Ischemic heart disease	[Pending Regulation]
Parkinson's disease	[Pending Regulation]
B-cell chronic lymphocytic leukemia/small lymphocytic	[Pending Regulation]
Acute lymphoblastic leukemia-mature B-cell type	[Pending Regulation]
B-cell prolymphocytic leukemia	[Pending Regulation]
Precursor B lymphoblastic leukemia	[Pending Regulation]
Hairy cell leukemia	[Pending Regulation]

Appendix 14 – *Nehmer* Data Collection for New AO Presumptions Database

1. Date RC received the claims file: [Date and RC # will be captured from static fields]
2. Identify the disability: [Data will be captured from Q2A, Q9]
 - a. Parkinson's disease
 - b. Ischemic heart disease
 - c. HCL and other B-cell Leukemias
 - d. Other Herbicide-related disabilities
 - e. Non-Nehmer issues/disabilities
3. Was VHA medical evidence used to rate? [Data will be captured from Q10]
4. What additional evidence is needed? [Data will be captured from Q21, Q22, Q22a Q23, Q24, Q25, Q26]
5. Date development initiated: [Data will be captured from Q27]
6. Date requested evidence is received and claim is ready to rate: [Data will be captured from Q28a]
7. Development Mail returned undeliverable? [Data will be captured from Q29]
8. Date of initial *Nehmer* rating decision: [Data will be captured from Q34]
9. Disposition of claims: [Data will be captured from Q34]
 - a. SC
 - b. DIC
 - c. SC Burial
10. Retroactive benefit amount: [Data will be captured from Q37a, 37b, 37c]
 - a. SC
 - b. DIC
 - c. SC Burial
11. Date initial rating and decision notice sent to SVSR for review: [Data will be captured from Q41]
12. Type of correction(s) identified based on SVSR review: [Data will be captured from Q42]

13. Date SVSR approved decision letter and rating for release: [Data will be captured from Q42]
14. Date of SME review: [Data will be captured from Q42b]
15. Type of deficiencies based on SME review: [Data will be captured from Q42c]
16. Date decision letter and rating sent to class member and OGC: [Data will be captured from Q43]
17. Claims file returned to the RO of jurisdiction: [Data will be captured from Q46]

Appendix 15 – Footnote 1: Need for Amendment to 38 C.F.R. § 3.816 Regarding *Nehmer* Claims

The case of *Nehmer v. United States Veterans' Administration* originated in 1986 as a class-action lawsuit against VA by Vietnam veterans and their survivors who alleged that VA had improperly denied their claims for service connection for disability or death allegedly caused by exposure to the herbicide Agent Orange in service.

In a May 3, 1989, decision, the United States District Court for the Northern District of California ruled in the *Nehmer* case that a VA regulation, issued in 1985, which implemented legislation directing the establishment of standards and criteria for adjudication of claims by Vietnam veterans allegedly suffering from herbicide-related disabilities, was invalid because the "cause and effect" standard used in the regulation was inconsistent with the intent of Congress. The court concluded that Congress intended VA to apply a more lenient standard requiring only a "significant statistical association" between herbicide exposure and the occurrence of a disease in exposed persons. The court invalidated VA's regulation and voided all benefit denials under that regulation.

In May 1991, the *Nehmer* parties entered into a "Final Stipulation and Order" (Final Stipulation) outlining the actions to be taken in response to the court's decision. Among other things, the Final Stipulation provided, in general: (1) that VA would issue new regulations in accordance with the Agent Orange Act of 1991; (2) that, after issuing such regulations, VA would readjudicate those claims where a prior denial had been voided by the court's 1989 order and would initially adjudicate all similar claims filed subsequent to the court's order; and (3) that, if benefits were awarded upon such readjudication or adjudication, the effective date of the award would be the date the claim was filed.

In a February 11, 1999, decision, the district court explained and clarified the scope of its 1989 decision. The court stated that its 1989 decision had voided all VA decisions that were rendered while the invalid regulation was in effect and which denied service connection for a Vietnam veteran's disease that was later found to be associated with herbicide exposure under the regulations issued under the Agent Orange Act of 1991. The court explained that it was irrelevant whether the claimant or VA had referenced herbicide exposure or the invalid regulation in connection with the prior claim. Pursuant to that decision, the effective date of service connection granted under the 1994 regulations establishing presumptions of service connection for certain diseases may relate back to the date of an earlier claim for service connection of the same disease, regardless of whether the earlier claim was expressly based on herbicide exposure.

Last year, VA promulgated 38 C.F.R. § 3.816, which codified the procedures for adjudicating claims under the Final Stipulation. On January 21, 2004, class

counsel asserted in a letter to the Department of Justice (DOJ) that footnote 1 in paragraph 5 of the Final Stipulation establishes a substantive rule that VA failed to address in section 3.816. Paragraph 5 states, in relevant part, as follows:

For any of the [presumptive diseases], as to any denials of claims which were voided as a result of the Court's May 3, 1969 Order, the effective date for disability compensation or dependency and indemnity compensation ... , if the claim is allowed upon readjudication ... , will be the date the claim giving rise to the voided decision was filed ..., assuming the basis upon which compensation is granted after readjudication is the same basis upon which the original claim was filed,¹ or the date the claimant became disabled or death occurred, whichever is later. In the event the basis upon which a claim for compensation benefits is granted after readjudication is different than the basis for the original claim giving rise to the voided decision,² the effective date ... will be the date on which the claim asserting the basis upon which the claim is granted was filed, or the date the claimant became disabled or death occurred, whichever is later.

(emphasis added). Footnote 1 provides: "The basis upon which the original claim was filed refers to the disease[s] or condition[s] which Chapter 46 of VA Manual M21-1, paragraph 46.02 required to be coded in the ratings decision contained in the claimant's claim file, which ratings decision was voided by the Court's May 3, 1989 Order." (emphasis added).

At the time that the parties entered the Final Stipulation, paragraph 46.02 of VA Adjudication Procedure Manual M21-1 (1965) provided:

a. Compensation Ratings. All disabilities claimed will be given consideration as to service connection and be coded as a disability rating on VA Form 21-6796. Any additional disabilities noted will be coded, except:

- (1) Acute transitory conditions that leave no residuals.
- (2) Noncompensable residuals of venereal disease.
- (3) Disabilities noted only on the induction examination, or conditions recorded by history only.
- (4) Disabilities found by authorization to have not been incurred "in line of duty".

b. Pension Ratings. Code all claimed or noted disabilities on VA Form 21-6796 and show the

percent of disablement for each unless the disabilities have been held to be due to the claimant's own willful misconduct by Administrative Decision.

(cross references omitted). The Final Stipulation defined "the basis upon which the original claim was filed" with reference to paragraph 46.02 of the manual, which established the requirement that additional noted disabilities be "coded," unless a listed exception applied. Among other things, the manual provision excepted from the coding requirement "conditions recorded by history only." Thus, noted disabilities that have been diagnosed were required to be coded in a rating decision even though the claimant may not have raised any issue concerning those disabilities in the claim being adjudicated. The provision is clear that the term "code" refers to rating codes, not diagnostic codes. Accordingly, a condition that the paragraph 46.02 language "required to be coded," is one that the provision required to be rated in a decision.

Class counsel asserts that the paragraph 46.02 language, which footnote 1 incorporated in the Final Stipulation, established "objective criteria ... for determining whether a rating decision denied compensation for a particular disease." Class counsel further contends that a claim falls within the effective-date provisions of paragraph 5 of the Final Stipulation "if paragraph 46.02 of M21-1 required the covered Agent Orange-related disease to be 'coded' in the rating decision on the claim." In our view, this is a reasonable interpretation of the Final Stipulation because it is consistent with the court's and the parties' intent to provide a remedy for the *Nehmer* class. In other words, in the context of this litigation, it is reasonable to assume that, in 1991, the court and the parties intended to provide a remedy for persons with diagnosed herbicide-related conditions who either received a rating decision denying an express claim for service connection for that condition; received a rating decision that addressed (coded as non-service-connected) an unclaimed herbicide-related condition; or received a rating decision that failed to address a noted condition (failed to code the condition). Each of these types of "decisions" could be viewed as being voided by the court's May 1989 order. However, section 3.816 currently covers only the first type of decision.

A second reasonable but less pro-veteran interpretation of the footnote is that it merely prescribes how to determine the correct effective date for adjudications conducted under paragraph 3 and 4 of the Final Stipulation. Paragraph 3 provides that as soon as VA issues a final rule service-connecting any disease under the Agent Orange Act of 1991, it "shall promptly thereafter readjudicate all claims for any such disease which were voided by the Court's Order of May 3, 1989." Paragraph 4 provides that VA shall rely upon its Special Issue Rating System (SIRS) or notice from an individual claimant to identify claimants who received qualifying denials. Identified claimants may then be awarded an earlier effective date using the paragraph 5 criteria. Class counsel essentially argues that paragraph 5, rather than paragraphs 3 and 4, identifies the claim denials that

the district court voided in its May 1989 decision. That argument is arguably incorrect because it reads paragraph 5 out of context and ignores the paragraph 4 provision that requires VA to use SIRS to identify eligible claimants. SIRS does not contain information concerning unclaimed disabilities that paragraph 46.02 of Manual M21-1 required to be coded.

Class counsel intends to bring this matter to the district court's attention if we refuse to amend section 3.816. As stated above, the Final Stipulation is subject to two reasonable interpretations, only one of which could be viewed as expanding the remedy available to the *Nehmer* classmembers. Clearly, the district court has every reason to select the interpretation proposed by class counsel, as it is a reasonable, pro-veteran interpretation that is consistent with the purpose of the Final Stipulation. In addition, the court could conclude that application of the alternative interpretation would lead to an absurd result. For example, a veteran who, in 1986, filed a claim for service connection for respiratory cancer and received a rating decision denying that claim would be entitled to retroactive benefits under *Nehmer*. However, another veteran, who was also diagnosed with a respiratory cancer and who deliberately limited his 1986 claim to a back condition, knowing that VA could not service-connect his cancer in the absence of a presumption, would not be entitled to retroactive benefits under *Nehmer*.

The pro-veteran interpretation would require a minor amendment to section 3.816(c)(1), which governs effective dates for decisions voided by the district court's May 3, 1989, order. Footnote 1 does not apply where the decision on a claim was made after May 3, 1989.

Amendment of 3.816(c)(1) would affect very few claims. Less than one percent of all claims identified for further adjudication by the *Nehmer* plaintiffs' review of claims files in discovery involved unclaimed conditions that were required to be coded under paragraph 46.02 of Manual M21-1. Further, plaintiffs' file review has covered all herbicide-related presumptive conditions, except type 2 diabetes, which VA service-connected effective July 9, 2001 (the U.S. Court of Appeals for the Federal Circuit later changed the effective date of the regulation service-connecting type 2 diabetes to May 8, 2001, in *Liesegang v. Secretary of Veterans Affairs*, 312 F.3d 1368 (Fed. Cir. 2002)).

With respect to type 2 diabetes, amendment of section 3.816 might require readjudication of some claims. However, VA has already agreed to readjudicate all identifiable type 2 diabetes claims. As stated above, paragraph 4 of the Final Stipulation requires VA to use its SIRS database to identify claimants entitled to readjudication under *Nehmer*. Although SIRS no longer exists, VA searched its VITALS database for type 2 diabetes claimants that filed claims prior to 1999. That search identified 2,777 claimants with potential eligibility under *Nehmer*. VA issued a *Nehmer* readjudication notice (required by paragraph 4 of the Final Stipulation) to 1,756 of those claimants and, in Fast letter 02-33, instructed the

regional offices to readjudicate their claims. VA has not provided a readjudication notice to the remaining claimants and has not initiated readjudication of their claims. On December 7, 2000, VA issued Fast Letter 00-91, instructing the regional offices to establish "685 diary" with a July 1, 2001, suspense date for any claim seeking service connection for type 2 diabetes based upon herbicide exposure in Vietnam. On June 14, 2001, VA issued Fast Letter 01-51, which instructed the regional offices to use July 9, 2001, as the effective date for benefits awarded for type 2 diabetes. Because VA believed that *Nehmer* might require readjudication of those claims, the regional offices were instructed to use the "685 diary" for tracking decisions. On October 19, 2001, VA issued Fast letter 01-94, which instructed the regional offices to begin applying *Nehmer* to type 2 diabetes claims. VA later entered into a stipulation in which it agreed to readjudicate all of the type 2 diabetes claims controlled under the "685 diary" (13,318 claims). Although VA readjudicated those claims, a decision was recently made to conduct a full second review.

As part of its compliance with the Federal Circuit's *Liesegang* decision, VA identified 9,340 claimants that filed claims for type 2 diabetes, had Vietnam service, and received a compensation award effective between May 7, 2001, and August 2, 2001.

The 9,340 "*Liesegang* claimants" are probably also listed among the 13,318 "685 diary claimants." Accordingly, except for the 1,756 claims that have already been readjudicated under Fast letter 02-33, we conclude that it would be prudent for VA's upcoming readjudication of 14,339 type 2 diabetes claims (13,318 controlled by the "685 diary" and the 1,021 claims identified from VITALS that remain unadjudicated) to apply the proposed amendment to all identifiable claims that are outside the scope of the district court's discovery orders.

VA's recent decision to conduct a second review of the 13,318 type 2 diabetes claims was prompted in part by quality concerns. Class counsel has demanded that VA produce its quality review data and has threatened to raise the issue before the district court. DOJ refused that request based upon VA's decision to conduct a second review of all 13,318 claims. Amending section 3.816 would provide another basis for conducting the second review and might tend to neutralize class counsel's argument that he is entitled to the quality review data.

Appendix 16 – VSR and SVSR Responsibilities

VSR Responsibilities:

- Inputting the award data into the appropriate awards system. Most awards should be processed in VETSNET.
- Assuring that all prior payments are put into BDN or VETSNET if already in receipt of benefits. RVSR backfills award. Manual adjustments may be required.
- Generating an award document.
- Preparing a notification letter.
- Annotating the award with the presumptive condition.
- Signing the award

SVSR Responsibilities:

- Reviewing the award and notification letter for accuracy.
- Co-signing the award.
- Assuring that a third level review is performed prior to award authorization, in cases involving retroactive payments greater than \$25,000.
- Sending the file for review by the *Nehmer* Subject Matter Expert (SME) when selected for quality review.
- Submitting copies of the memorandum for the record and the Payment History Inquiry Screen upon request by OGC.
- Incorporating a copy of the database into the file

TRAINING CASE SCENARIOS

VSR Scenario 1

You receive a file for review. The DD Form 214 shows the Veteran served in the Navy from June 1, 1962, to August 30, 1973. The file also includes a DPRIS request response showing the Veteran served in-country in the Republic of Vietnam from August 10, 1970, to November 30, 1972.

The Veteran filed an original claim for service connection for IHD on April 3, 1998. Medical evidence was submitted showing a diagnosis of IHD. The Veteran was denied service connection and notified of the decision on August 17, 1998.

On December 23, 1998, the Veteran then filed a claim for Pension benefits. The Veteran listed IHD under conditions that contributed to his unemployability. Medical evidence dated December 20, 1998, was submitted with a Pension claim showing chronic congestive heart failure. Pension was granted effective December 23, 1998, with diagnostic code 7005.

The Veteran passed away on January 27, 1999, with the secondary cause of death listed as Ischemic heart disease (IHD).

September 20, 2007, the surviving spouse of the Veteran filed a claim for DIC and was denied and notified on February 19, 2008, due to lack of evidence showing that IHD was caused by service.

VSR has confirmed that the surviving spouse is living and has not remarried since the death of the Veteran. Evidence of record shows they were married from 1990 until the date of death. No children are of record.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there any retroactive benefits payable?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) What is the effective date for DIC, if applicable?
- 5) Is any additional development necessary? If so, what development is required? If not, what is the next action?

VSR Scenario 2

A case arrives at your desk for review. The BIRLS VID screen shows that the Veteran is currently alive.

A review of the record shows that the Veteran served in-country in the Republic of Vietnam and has a combined rating of 30 percent without dependents. The Veteran's current rating code sheet shows that she is rated 10 percent for type II diabetes mellitus (Agent Orange) and 20 percent for a left knee condition. Both conditions were granted effective May 17, 2002, the date the Veteran claimed these conditions.

The Veteran filed a claim for hairy cell leukemia (HCL) on January 10, 1985. The Veteran's claim was denied and notified on September 12, 1985, because the condition was not incurred nor aggravated by service and the condition was not caused by herbicide exposure. Diagnostic code 7700 was used to prepare the rating. Evidence received on January 10, 1985, shows the Veteran was diagnosed with inactive HCL with original diagnosis on November 12, 1984.

Questions

- 1) Is this a *Nehmer* case?
- 2) Is the Veteran entitled to retroactive compensation?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is any additional development necessary? If so, what development is required? If not, what is the next action?

VSR Scenario 3

You receive a file for review. A DD Form 214 in the file shows the Veteran served in the Navy from February 2, 1960, to May 31, 1981, and that the Veteran received a Vietnam Service Medal. The dates of service were verified using a DPRIS request; however, in-country service was not verified.

The Veteran filed an original claim for service connection for PD on March 29, 2005. Medical evidence was submitted showing a diagnosis of PD. The Veteran was denied service connection on July 10, 2005, under diagnostic code 8002.

A review of the file shows that the Veteran passed away on October 8, 2006, with the contributory cause of death listed as Parkinson's disease (PD). The Veteran was not in receipt of benefits and did not have a claim pending at time of death.

A claim for burial benefits was submitted on October 15, 2006, from Jane Doe. The application indicated that she was not filing a claim for service-connected death. Jane also listed herself as the surviving spouse on the application. Evidence of record shows that Jane was the surviving spouse since 1979 and has not remarried since the date of death. No children are of record. VA did not send VA Form 21-534, Application for DIC, Death Pension & Accrued Benefits by Surviving Spouse or Child.

The claim for burial benefits was denied as the Veteran was not in receipt of compensation or pension benefits. The death certificate shows the address of the deceased to be the same as that of the surviving spouse.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there retroactive benefits?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is Jane Doe entitled to service connected burial benefits?
- 5) What is the effective date for DIC, if applicable?
- 6) Is any additional development necessary? If so, what development is required? If not, what is the next action?

VSR Scenario 4

A case arrives at your desk for review. The BIRLS VID screen shows that the Veteran is currently alive. A review of the record shows that the Veteran served in-country in the Republic of Vietnam.

The Veteran previously filed a claim for Pension benefits on May 10, 2009. On the Veteran's VA Form 21-526 the Veteran noted she was applying for Pension benefits only. The Veteran stated in the remarks section that her ischemic heart disease, which is due to service, is keeping her from working. A rating decision dated September 19, 2009, granted pension benefits using diagnostic code 7007 as the medical evidence showed the Veteran had a left ventricular dysfunction with an ejection fraction of 20 percent.

Questions

- 1) Is this a *Nehmer* case?
- 2) Is the Veteran entitled to retroactive compensation?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is any additional development necessary? If so, what development is required? If not, what is the next action?

VSR Scenario 5

A review of the record shows that the Veteran served in-country in the Republic of Vietnam.

The Veteran filed a claim for type II diabetes mellitus and hypertensive vascular disease in April 7, 1994. The Veteran was denied service connection for both conditions on September 21, 1994, using diagnostic codes 7913 and 7101. The evidence of record showed that the Veteran had a diagnosis of both conditions. Evidence showed that the Veteran was hospitalized 2 times for diabetes mellitus in 1993 for hypoglycemia. The Veteran was also on daily injections of insulin and on a restricted diet. The records also showed that the Veteran's blood pressure was 210/115 mmHg.

The Veteran filed a claim to reopen his type II diabetes claim and filed a new claim for ischemic heart disease on August 28, 1996. The claim was again denied on February 15, 1997. The evidence showed that the Veteran required 2 daily injections of insulin and now required daily dialysis due to chronic renal failure. Additionally, the evidence showed that a workload of 2 Metabolic Equivalent (METs) resulted in dyspnea, fatigue, and dizziness and the Veteran's diastolic pressure was predominantly measured at 132 mmHg.

A review of the file shows that the Veteran passed away on October 8, 1998, with the primary cause of death listed as end-stage renal disease, with contributing cause of death as diabetes mellitus. The surviving spouse filed a claim for death pension benefits on December 8, 1998. The surviving spouse was granted death pension and is still receiving benefits. The evidence of record shows that the spouse was married continuously to the Veteran from May 8, 1981, until the Veteran's death. The record also shows that they never had children. The spouse has not remarried.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there retroactive benefits?
- 3) What effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is surviving spouse entitled to additional death benefits? If so, what is the benefit and what is the effective date?
- 5) Is any additional development necessary? If so, what development is required? If not, what is the next action?

RVSR Scenario 1

Rater Joe receives a file that is marked ready for decision. The DD Form 214 shows the Veteran served in the Navy from June 1, 1962, to August 30, 1973. The file also includes a DPRIS request response showing dates of service in the Republic of Vietnam from August 10, 1970, to November 30, 1972.

The Veteran filed an original claim for service connection for IHD on April 3, 1998. Medical evidence was submitted showing a diagnosis of IHD. Evidence shows that, at the time of the claim, continuous medication was required and a workload of 8 Metabolic Equivalents (METs) resulted in dyspnea, fatigue, and dizziness. The Veteran was denied service connection and notified of the decision on August 17, 1998.

On December 23, 1998, the Veteran then filed a claim for Pension benefits. The Veteran listed IHD under conditions that contributed to his unemployability. Medical evidence dated December 20, 1998, was submitted with a Pension claim showing chronic congestive heart failure. Pension was granted effective December 23, 1998, with diagnostic code 7005.

The Veteran passed away on January 27, 1999, with the secondary cause of death listed as ischemic heart disease (IHD).

On, September 20, 2007, the surviving spouse of the Veteran filed a claim for Dependency and Indemnity Compensation (DIC) and was denied and notified on February 19, 2008, due to lack of evidence showing that IHD was caused by service.

VSR has confirmed that the surviving spouse is living and has not remarried since the death of the Veteran. Evidence of record shows they were married from 1990 until the date of death. No children are of record.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there any retroactive benefits payable?
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) What is the effective date for DIC, if applicable?
- 5) What is the next action?

RVSR Scenario 2

A case arrives at your desk for a rating decision. The BIRLS VID screen shows that the Veteran is currently alive.

A review of the record shows that the Veteran served in-country in the Republic of Vietnam and has a combined rating of 30 percent without dependents. The Veteran's current rating code sheet shows that she is rated 10 percent for type II diabetes mellitus (Agent Orange) and 20 percent for a left knee condition. Both conditions were granted effective May 17, 2002, the date the Veteran claimed these conditions.

The Veteran filed a claim for hairy cell leukemia (HCL) on January 10, 1985. The Veteran's claim was denied and notified on September 12, 1985, because the condition was not incurred nor aggravated by service and the condition was not caused by herbicide exposure. Diagnostic code 7700 was used to prepare the rating. Evidence received on January 10, 1985, shows the Veteran was diagnosed with inactive HCL with original diagnosis on November 12, 1984.

Questions

- 1) Is this a *Nehmer* case?
- 2) Is the Veteran entitled to retroactive compensation?
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) What is the next action?

RVSR Scenario 3

You receive a file identified as ready to rate. A DD Form 214 in the file shows the Veteran served in the Navy from February 2, 1960, to May 31, 1981, and that the Veteran received a Vietnam Service Medal. The dates of service were verified using a DPRIS request; however, in-country service was not verified.

The Veteran filed an original claim for service connection for PD on March 29, 2005. Medical evidence was submitted showing a diagnosis of PD. The Veteran was denied service connection on July 10, 2005, using diagnostic code 8002.

A review of the file shows that the Veteran passed away on October 8, 2006, with the contributory cause of death listed as Parkinson's disease (PD). The Veteran was not in receipt of benefits and did not have a claim pending at time of death.

A claim for burial benefits was submitted on October 15, 2006, from Jane Doe. The form indicated that she was not filing a claim for service-connected death. Jane also listed herself as the surviving spouse on the application. Evidence of record shows that Jane was the surviving spouse since 1979 and has not remarried since the date of death. No children are of record.

The claim for burial benefits was denied on February 20, 2006, as the Veteran was not in receipt of compensation or pension benefits and the location of death was noted as the decedent's residence. VA sent Jane VA Form 21-534 and the form was not returned.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there retroactive benefits?
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is Jane Doe entitled to burial benefits?
- 5) What is the effective date for DIC, if applicable?
- 6) What is the next action?

RVSR Scenario 4

A case arrives at your desk for a rating decision. The BIRLS VID screen shows that the Veteran is currently alive. A review of the record shows that the Veteran served in-country in the Republic of Vietnam.

The Veteran previously filed a claim for Pension benefits on May 10, 2009. On the Veteran's VA Form 21-526 the Veteran noted she was applying for Pension benefits only. The Veteran stated in the remarks section that her ischemic heart disease, which is due to service, is keeping her from working. A rating decision dated September 19, 2009, granted pension benefits using diagnostic code 7007 as the medical evidence showed the Veteran had a left ventricular dysfunction with an ejection fraction of 20 percent.

Questions

- 1) Is this a *Nehmer* case?
- 2) Is the Veteran entitled to retroactive compensation? Yes, a claim for pension is a claim for compensation. .
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) What is the next action?

RVSR Scenario 5

You receive a file for a rating decision. A review of the record shows that the Veteran served in-country in the Republic of Vietnam.

The Veteran filed a claim for type II diabetes mellitus and hypertensive vascular disease in April 7, 1994. The Veteran was denied service connection for both conditions on September 21, 1994, using diagnostic codes 7913 and 7101. The evidence of record showed that the Veteran had a diagnosis of both conditions. Evidence showed that the Veteran was hospitalized 2 times for diabetes mellitus in 1993 for hypoglycemia. The Veteran was also on daily injections of insulin and on a restricted diet. The records also showed that the Veteran's blood pressure was 210/115 mmHg.

The Veteran filed a claim to reopen his type II diabetes claim and filed a new claim showing a diagnosis of ischemic heart disease on August 28, 1996. The claim was again denied on February 15, 1997. The evidence showed that the Veteran required 2 daily injections of insulin and now required daily dialysis due to chronic renal failure. Additionally, the evidence showed that a workload of 2 Metabolic Equivalent (METs) resulted in dyspnea, fatigue, and dizziness and the Veteran's diastolic pressure was predominantly measured at 132 mmHg.

A review of the file shows that the Veteran passed away on October 8, 1998, with the primary cause of death listed as end-stage renal disease, with contributing cause of death as diabetes mellitus. The surviving spouse filed a claim for death pension benefits on December 8, 1998. The surviving spouse was granted death pension and is still receiving benefits. The evidence of record shows that the spouse was married continuously to the Veteran from May 8, 1981, until the Veteran's death. The record also shows that they never had children. The spouse has not remarried.

Questions

- 1) Is this a *Nehmer* case?
- 2) Are there retroactive benefits?
- 3) What percentage(s) and effective date(s) should be assigned for retroactive compensation, if applicable?
- 4) Is surviving spouse entitled to additional death benefits? If so, what is the benefit?
- 5) What is the next action? Prepare rating and send to Authorization for award.