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# Agent Orange and Your VA Claim

*By Raymond Gustavson*

*After I retired from the VA as a rating specialist (RVSR) in October 2003, I began reading dozens of complaints on the Internet from veterans who had had their Agent Orange claims denied. I also made note of their criticisms about the VA's foot dragging in getting new disabilities approved. I'm not here to defend the VA or to apologize for its shortcomings. What I want to do is help you understand the VA claims process by explaining it in plain English. So, let's get started.*

If you served in Vietnam between 1962 and 1971, as I did, there is a pretty good chance that you were exposed to Agent Orange. The VA acknowledges that some 20 million gallons of herbicides were sprayed across South Vietnam in an attempt to destroy foliage used to conceal enemy forces and supply lines. Spraying was also intended to deny access to agricultural crops used by the enemy. Recently, I tried to determine exactly where all this spraying occurred. I had always thought it was in the north along the DMZ or along the Laos-Cambodian borders. I was wrong. Dead wrong. The chart I found looked like one of those modern artworks where the painter takes his bucket and throws it at the canvas. It was a map of Vietnam with long streaks covering the entire country from top to bottom.

## **Agent-Orange related conditions.**

The VA has determined that a positive association exists between exposure to herbicides and the subsequent development of 11 conditions.

- Chloracne
- Non-Hodgkin's lymphoma
- Soft tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)
- Hodgkin's disease
- Porphyria cutanea tarda (PCT)
- Multiple myeloma
- Acute and subacute peripheral neuropathy
- Prostate cancer
- Respiratory cancers (cancers of the lung, bronchus, larynx and trachea)
- Type 2 **diabetes** (also known as Type II **diabetes** mellitus or adult-onset **diabetes**)
- Chronic lymphocytic leukemia (CLL)

## **Non Agent-Orange related conditions**

Of note, there are numerous conditions that are not associated with Agent Orange. Service connection for them must, by law, be denied.

- Hepatobiliary cancers
- Nasal and nasopharyngeal cancer
- Bone cancers
- Breast cancer
- Cancers of the female reproductive system
- Urinary bladder cancer
- Renal cancer
- Testicular cancer
- Leukemia (other than chronic lymphocytic leukemia)
- Reproductive effects (abnormal sperm parameters and infertility)
- Parkinson's disease
- Chronic persistent peripheral neuropathy
- Lipid and lipoprotein disorders
- Gastrointestinal and digestive disease (other than **diabetes** mellitus)
- Immune-system disorders
- Circulatory disorders
- Respiratory disorders (other than certain respiratory cancers)
- Skin cancer
- Cognitive and neuropsychiatric effects
- Gastrointestinal tract tumors
- Brain tumors
- Amyloidosis

## **What to do if your condition is listed as not Agent-Orange related.**

If you have one of these orphaned conditions you can apply for service connection secondary to Agent Orange



exposure; however, your claim will be denied. What should you do?

My advice would be to apply anyway, and let the VA deny the claim. Then appeal the decision. A timely appeal keeps your claim in the mill. Also, keep in mind that somewhere down the road some or all of these conditions might be approved. By having a denial on record, you stand a chance of having it approved retroactively. Additionally, the medical evidence you submitted will always be in your VA claims file. However, if you wait several years to file a claim, you should keep in mind that physicians don't keep their records forever. So get your claim submitted before your records wind up in the trash bin or shredder.

One additional cautionary word: exposure to Agent Orange, in and of itself, is not a disability. That is, you can receive service connection only for the 11 disabilities listed here.

#### **Getting started with your claim.**

So, what do you need to get your Agent Orange claim approved by the VA? There are three basic requirements and all of them must be met:

- A medical diagnosis of a disease with the VA recognizes as being associated with Agent Orange. (See list on this page.)
- Evidence of service in Vietnam.
- Medical evidence that the disease began within the deadline (if any).

#### **Proving you actually served in Vietnam**

To determine if you had service in Vietnam, the rating specialist looks at your DD214 to see if there is a statement showing dates of in-country service. If nothing is found on your DD214, the next source will be your military 201 Claims File which shows records of duty assignments, etc. A further resort will be your service medical records (SMR's). Sick-call entries or hospital reports often list the name of a dispensary or hospital and, sometimes, its location in Vietnam. Unfortunately, many such entries list the facility, but not its location. If such a record is found indicating the facility was in Vietnam, however, proof of service in RVN is conceded. The main point is that you must have had your feet on the ground in Vietnam (fly-overs don't count). However, a recent court decision has opened the way to those vets who served off the coast of Vietnam.

You will note that the Vietnam Service Medal is not among those decorations considered conclusive proof of service in RVN. This is because the medal was awarded to anyone who served in Vietnam, the waters offshore, or the airspace above. It was also awarded for service in Thailand, Laos, or Cambodia.

Very few claims are granted based on direct exposure to Agent Orange. On the contrary, the majority of claims granted are based on presumption. Technically speaking, this means the condition did not happen in military service, nor was it aggravated or caused by service, or manifested to a compensable degree within the one-year presumptive period after service. Simply put, if you were in Vietnam it is acknowledged, or presumed, that you were exposed to Agent Orange.

#### **Present specific details of your disability**

Once it has been determined that you served in Vietnam, the VA will send you a Chemical Defoliant development letter, asking about specific details concerning your disability. Answer the questions to the best of your ability, as this information is necessary to gather evidence and process your claim.

After you have responded to the development letter, the VA will obtain any pertinent medical records, and then schedule you for a VA examination to determine the severity of your condition(s). At the examination, the physician will review your claims file and ask you specific questions about your disability. When he is finished he will write a summary of his findings. The rating specialist in the regional office will transfer these findings to what is called a Rating Decision, and assign a percentage evaluation for each disability granted. You will then be notified in writing as to the decision.

The rating decision, if done properly, will consider service connection for **diabetes**, for example, on a direct basis, and then again on a presumptive basis. That is, the rating specialist will peruse your service medical records to see if you had a diagnosis of **diabetes** while on active duty. Most likely, there was none. Then, the rating specialist will consider a grant of **diabetes** secondary to Agent Orange exposure.

Ratings for **diabetes**, prostate cancer, and non-Hodgkin's lymphoma seemed to be the most prevalent conditions among Vietnam veterans, though this is not meant to downplay the significance of the other eight disabilities. They are all serious conditions for anyone who has them.

#### **Specifics of compensation**

A grant of service connection for **diabetes** associated with herbicide exposure is usually a straightforward grant of benefits based on a medical doctor's diagnosis of that condition. Usually, a 20% evaluation is given when the veteran is on a restricted diet and taking insulin or using an oral medication such as Metformin or Glucotrol.

A word of caution: Even though a veteran served in Vietnam and has a diagnosis of **diabetes**, service connection could still be denied. Your doctor must state that you have Type 2 **diabetes** in order for benefits to be granted. Having

Type 1 **diabetes** will result in a denial because it is not one of the disabilities associated with herbicide exposure, as stated above.

Common complications of **diabetes** may be found in medical journals and treatises, such as the *Merck Manual* and the *Physician's Desk Reference*. Such conditions are rated separately from the grant of **diabetes**.

For example, if the veteran complains of partial paralysis, pain, or numbness below the knee, an evaluation of 10% might be granted for left leg peripheral neuropathy. If the same condition is present in the other leg, a separate 10% evaluation might be given for that condition. Other conditions arising from the **diabetes** might include nephropathy with hypertension, and hypertensive retinopathy.

Renal insufficiency secondary to **diabetes**, in particular, is another example of an extremely serious condition resulting from **diabetes**. It is diagnosed from laboratory tests showing elevated blood urea nitrogen (BUN) and/or other such tests. A VA rating of 30% or 60% for service connection would not be uncommon, depending on the severity of symptoms.

Amputation of a lower extremity is another serious side effect of **diabetes**. For example, a veteran might have diabetic ulcers on his feet which could conceivably turn into gangrene. A subsequent amputation of both feet might result in a bilateral grant of service connection for the feet, rated 40% each, with the additional benefit of Special Monthly Compensation (SMC) being paid for the loss of both feet.

Prostate cancer, another of the presumptive conditions associated with Agent Orange exposure, is a very serious, and life-threatening, condition. This condition is usually first diagnosed when there is evidence of an enlarged prostate or a rise in your Prostate Specific Antigen (PSA). Treatment with radiation and chemotherapy is standard. Treatment with surgery is another alternative. This procedure is called a radical prostatectomy, and such cases qualify for what is called Special Monthly Compensation K for loss of a creative organ (in this case for impotency resulting from the surgery).

While undergoing treatment for prostate cancer, a temporary 100% evaluation is granted. Six months following cessation of treatment a mandatory VA examination is required to determine any residuals. This means that your claim will be rated on residuals of voiding dysfunction or renal dysfunction, whichever is predominant. Usually, this means the 100% evaluation will be terminated and replaced with another evaluation, 30% for example. However, this reduction from 100% to 30% will not take place until 60 days has elapsed.

Another serious condition which arises as a result of Agent Orange exposure is non-Hodgkin's Lymphoma. The same procedure is followed as stated above: while undergoing treatment a temporary 100% evaluation is granted. Six months after treatment ends, a mandatory VA examination will be given to determine any residuals.

### **Agent Orange exposure outside Vietnam**

In regard to Agent Orange exposure in Korea, most claims are denied. A Veterans Health Administration Directive (2000-027 dated 9-5-2000) indicated that some 21,000 gallons of Agent Orange were sprayed in Korea between 1968 and 1969 in an area from the Civilian Control Line to the southern boundary of the Demilitarized Zone. Only Republic of Korea troops were involved in the actual spraying. However, elements of the American 2nd and 7th Infantry divisions were deployed on four-month rotations up to the DMZ from April, 1968 to July, 1969. A rating specialist will need to obtain your military 201 Claims File to determine if you were in the affected areas. If no record is found in the 201 Claims File, the rating specialist will attempt to obtain Unit Histories and/or Morning Reports. If no verification is found, the claim will be denied.

### **Can you prove your case with evidence from the Internet?**

Sometimes veterans deluge the rating specialist with pages of Internet evidence that was used to obtain approval for another veteran's claim. These decisions are considered general in nature and specific only to that particular veteran's case. They are also not precedent-setting for any other veteran's claim, and will result in a denial of your claim.

On the other hand, such Internet sites may prove helpful in locating witnesses. For example, your claim may be strengthened by the statement of a veteran who was on the ground in Vietnam, and can testify that you were there, too. Check out these sites, and don't be afraid to post to them if you are looking for military buddies.

### **Effects of Agent Orange on children**

Claims for spina bifida in children of veterans who served in Vietnam is another area of paramount importance. Spina bifida is a serious birth defect. These claims are handled only by the VA Regional Office in Denver, Colorado. If your son or daughter is affected with spina bifida, you can apply for benefits at any regional office, and your claim will then be transferred to the Denver office.

### **Claim denied or delayed? Don't give up.**

If your claim for Agent Orange residuals is denied, do not lose hope! First of all, read the letter the VA sent you, and look specifically at the reasons why your claim was denied. Next, send a one-sentence letter to the VA stating you disagree with the decision. This protects your appeal rights; but your letter must be received within one year of the VA denial letter. In your letter, you can submit any additional evidence you feel is relevant to your claim, or any information the VA requested but you failed to send.

Since the VA appeals process is a precise yet often difficult process to understand, I would strongly advise

contacting a local service organization for help. One of their service representatives will explain exactly why your claim was denied, and will help you process your appeal. Sometimes, it's as simple as not sending in that one piece of information you thought was a waste of time. So don't lose hope.

The grant of an Agent Orange disability is often a satisfying conclusion to a long, drawn-out struggle. The grant is satisfying to you, the veteran, but it is equally satisfying to the rating specialist. It always gave me great pleasure to prepare a rating granting this benefit.

In essence, it helps fulfill the legacy of Abraham Lincoln, when he said, "To bind up the wounds; to care for him who shall have borne the battle, and for his widow, and his orphan – to do all which may achieve and cherish a just and lasting peace, among ourselves, and with all nations."

**Ray Gustavson served with the U.S. Army in Vietnam, and is a retired VA Rating Specialist. He is currently working on a novel about the Civil War, and also is writing a self-help book for veterans who want to better understand the complexities of the VA claims process.**