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“Presumptions of Service Connection for Southwest Asia and Afghanistan Service”

QUESTIONS AND ANSWERS

September 28, 2010

1. What does this final rulemaking do?

This final regulation implements a decision by the Secretary of Veterans Affairs that there is a positive association between service in Southwest Asia beginning on August 2, 1990(including Iraq), or in Afghanistan on or after September 19, 2001, and the subsequent development of certain infectious diseases. The effect of this final regulation is to establish a presumption of service connection for these diseases for qualifying service during those periods.

Under VA regulations, the Southwest Asia theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

2. What types of claims for VA benefits does the final rulemaking affect?

The final rule affects compensation claims filed by Veterans with service during certain time periods in Southwest Asia or in Afghanistan, for Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), Malaria, Mycobacterium tuberculosis, Nontyphoid Salmonella, Shigella, Visceral leishmaniasis, and West Nile virus, that are pending before VA or received on or after the rule change takes effect. Pending claims include claims on appeal or that have not yet been finally decided.

3. Why is this final rulemaking necessary?

The Secretary, in accordance with The Persian Gulf War Veterans Act of 1998, has determined that there is a basis to establish a presumption of service connection at this time, based on service during certain time periods in Southwest Asia or in Afghanistan for certain time periods, for Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), Malaria, Mycobacterium tuberculosis, Nontyphoid Salmonella, Shigella, Visceral leishmaniasis, and West Nile virus as identified in the National Academy of Sciences (NAS) October 16, 2006 report, titled “Gulf War and Health Volume 5: Infectious Diseases.” In this regard, the Secretary of Veterans Affairs determined, based upon the NAS report, that there is a positive association between service in Southwest Asia or in Afghanistan, and the subsequent development of the listed infectious diseases.

4. How does this final rulemaking help veterans?

The final rule will expedite the processing of claims for service connection. A claimant will not be required to establish, with medical evidence, an actual **09/28/2010 Page 2 of 6**

connection between military service in Southwest Asia or Afghanistan and diagnosed Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), Malaria, Mycobacterium tuberculosis, Nontyphoid Salmonella, Shigella, Visceral leishmaniasis, and West Nile virus. Instead, a claimant who served during certain time periods in Southwest Asia or Afghanistan, will only have to show that he or she had one of the nine diseases within a certain time after service and has a current disability as a result of that disease.

What are the nine new presumptive diseases?

- **Brucellosis:** A bacterial disease with symptoms such as profuse sweating and joint and muscle pain. The illness may be chronic and persist for years. It must be at least 10% disabling within 1 year from the date of military separation.
- **Campylobacter Jejuni:** A disease with symptoms such as abdominal pain, diarrhea, and fever. It must be at least 10% disabling within 1 year from the date of military separation.
- **Coxiella Burnetii (Q Fever):** A bacterial disease with symptoms such as fever, severe headache, and gastrointestinal problems such as nausea and diarrhea. In chronic cases, the illness may cause inflammation of the heart. It must be at least 10% disabling within 1 year from the date of military separation.
- **Malaria:** An infectious disease caused by a parasite. Symptoms include chills, fever, and sweats. It must be at least 10% disabling within 1 year from the date of military separation or at a time when standard or accepted treatises indicate that the incubation period began during a qualifying period of military service.
- **Mycobacterium Tuberculosis:** An illness that primarily affects the lungs and causes symptoms such as chest pain, persistent cough (sometimes bloody), weight loss and fever.
- **Nontyphoid Salmonella:** A condition characterized by symptoms such as nausea, vomiting, and diarrhea. It must be at least 10% disabling within 1 year from the date of military separation.
- **Shigella:** A condition characterized by symptoms such as fever, nausea, vomiting, and diarrhea. It must be at least 10% disabling within 1 year from the date of military separation.
- **Visceral Leishmaniasis:** A parasitic disease characterized by symptoms such as fever, weight loss, enlargement of the spleen and liver, and anemia. The condition may be fatal if left untreated.
- **West Nile Virus** A disease spread by mosquitoes characterized by symptoms such as fever, headache, muscle pain or weakness, nausea, and vomiting. **09/28/2010 Page 3 of 6**

Symptoms may range from mild to severe. It must be at least 10% disabling within 1 year from the date of military separation.

The presumptive periods for each of the nine diseases have been determined on the basis of the NAS report and reflect the observation that six of the nine diseases ordinarily manifest within a short period of time following infection. The one-year period is also consistent with the existing presumption of service connection for tropical diseases found at 38 U.S.C. § 1112(a). The presumptive periods for the other three diseases are based on existing statutes and medical treatises.

6. What are the cost estimates for the nine new presumptives?

Benefit payments are estimated to be \$1.5 million during the first year, \$11.5 million for five years, and \$36.4 million to approximately 600 Veterans and survivors over ten years.

7. What caused VA to include these presumptions now and why did it take VA nearly 4 years from publication of the IOM report to create presumptions of service connection?

The nine illnesses covered by the new presumptions are all infectious diseases and are noted in the 2006 Institute of Medicine (IOM) report, *Gulf War and Health Volume 5: Infectious Diseases*, as endemic to the Middle East/Southwest Asia area. In some cases, infection with one of these agents may lead to some of the chronic multi-symptom illnesses suffered by some troops of the Gulf Wars. At this time, VA does not believe there is a single Gulf War Illness or Syndrome. The issue is far more complex and varies with each individual service member's environmental exposures during service in the early and ongoing Gulf Wars. However, VA has been treating and compensating Veterans for undiagnosed or chronic unexplained multi-symptom illnesses related to service in Southwest Asia and the Middle East for nearly two decades. The illnesses and diseases included under this umbrella are compiled by VA funded Gulf War research and verified by the Institutes of Medicine (IOM).

After the IOM published their report on October 16, 2006, then Secretary of Veterans R. James Nicholson appointed a task force that included Under Secretaries for Health and Benefits, Assistant Secretary for Policy and Planning, and the General Counsel to study the report and recommend what action he should take regarding the establishment of new presumptions. He was succeeded by Secretary James B. Peake in December 2007. The task force presented its report to Secretary Peake on January 10, 2008. After reviewing the task force report, he sent letters to Congressional leaders on January 14, 2008, informing them that he had determined that 9 infectious diseases were associated with Gulf War service and therefore presumptions of service connection were warranted. On April 2, 2009, VA published a notice in the Federal Register stating that VA was drafting regulations creating those presumptions, and that no other presumptions were warranted. On March 18, 2010, VA published a proposed rule (AN24) proposing to create those presumptions. **09/28/2010 Page 4 of 6**

We received 18 public comments which we responded to in the Final Rule published September 29, 2010.

8. How do Veterans know if they have any of these presumptive diseases?

The key to the new presumptions is the development of symptoms during or very shortly after service in the Middle East/Southwest Asia, usually within the same year of exposure. However, visceral leishmaniasis and Mycobacterium Tuberculosis have been granted unlimited presumption since they can develop much later. Many of the diseases share symptoms with the flu or common illnesses such as frequent fevers or skin rashes. Veterans who served in Southwest Asia or Afghanistan who suffer chronic illness since their service in the Gulf should seek treatment at a VA medical facility for diagnoses. Veterans can find their nearest medical facility at www.va.gov.

9. When will VA start processing claims for this new regulation?

VA will begin processing claims when the final rule is published on September 29, 2010.

10. Will these claims be processed under the planned automated system intended to be used for the Agent Orange presumptives?

No, because of the small number of anticipated claims, this change does not lend itself well to the special processes being explored for the potentially very large number of Agent Orange claims we anticipate.

11. If a veteran has multiple issues (such as heart issue, knee problem, back issue) does he/she submit all three at one time or submit for the presumption first and then submit the other issues?

Veterans should file claims for all issues they believe to have been incurred in or aggravated by service at one time. If evidence supporting the presumptive disease is sufficient, it may be processed before other issues.

12. If a veteran has been denied for an issue that is now a presumption does he/she have to resubmit a claim in order to be reconsidered? And if so, from what date would compensation be paid?

Yes, the veteran should resubmit his or her claim. If entitlement is established, service connection will be granted from the date of the publication of the final rule. For claims submitted more than one year after the publication of the final rule, VA may pay up to one year of retroactive benefits. Compensation, or additional compensation payable if the Veteran is already service connected for another disability, resulting from this rule will be payable from the first of the month following publication.

13. Does VA plan to do any special outreach to Southwest Asia and Afghanistan veterans, who either have or had a compensation claim related to the nine presumptives or are still on active duty?

VA will work closely with Veterans Service Organizations, the Department of Defense and stakeholders to ensure that potentially affected Veterans are made aware of the rule and the benefits and services available to them and their dependents.

Through the work of the GWVI-TF, VA developed a unique process to directly engage Gulf War Veterans for their ideas, questions, and concerns regarding the services and benefits they receive at the VA. The report recommends greater outreach to Veterans, and moves the outreach model from “pushing” information to Veterans towards a “pulling” model where VA “pulls” or reaches out to welcome them into the VA for health care, benefits and other services. VA will continue to strengthen its critical partnerships with Veterans Service Organizations, Non Governmental Organizations, and other Veteran advocates to help spread the word about health care and benefits for Gulf War Veterans.

14. What training did VA employees receive?

On February 4, 2010, VA issued a Training Letter to its benefits employees that provided guidance on the new process for developing and adjudicating disability claims of Gulf War Veterans based on their service. Additional information on broader environmental hazard exposure was included in a second Training Letter, issued April 26, 2010. VA also initiated new clinician training for treating Gulf War Veterans that was developed collaboratively by front-line providers, Compensation & Pension examiners, social workers, and policy experts. This training will improve the care provided to Gulf War Veterans to be more patient-centered and focused on their unique health concerns. VA has held well-attended environmental exposures seminars in Portland, Oregon, and Indianapolis, Indiana, and is scheduled to expand to other locations next year. VA’s War Related Illness and Injury Study Center program is fully operational with facilities operating in three locations: Washington, DC, East Orange, NJ, and Palo Alto, CA.

15. What is the Gulf War Task Force and what is its relationship to the nine new presumptives?

The decision to add the nine new presumptives predated the Gulf War Veteran Illness Task Force. The overarching responsibility of the Gulf War Veteran Illness Task Force (GWI-TF) is to regain Gulf War Veterans’ confidence in VA’s health care, benefits, and services and reconfirm VA is 100% committed to Veterans of all eras. The GWI-TF is not a static, one-time initiative but will continue to build on its work with annual reports issued every August. The focus centers on unanswered Gulf War Veterans’ health issues, improving access to benefits, ensuring cutting edge research into treatments, and to make sure Veterans’ concerns are heard and addressed. This includes continuing to solicit Veterans, experts, advocates and stakeholders to share their views to better inform the important work of the GWI-TF. 09/28/2010 Page 6 of 6

16. What organizations does VA partner with related to Gulf War issues?

VA has a long history of working with the Veteran Service Organizations and the Department of Defense (DoD). This is evidenced in many ways, including the development of the Disability Evaluation Pilot Programs, the MyHealthVet and eBenefits portals, and the Qarmat Ali medical surveillance program. DoD input for the GWVI-TF was solicited from working groups within its Health Executive Council, Office of the Surgeons General, and Office of the Assistant Secretary of Defense for Health Affairs. VA-funded research projects often involve collaborators who are located at affiliated universities, allowing VA researchers to utilize expertise that may not be available at VA. VA researchers also participate as researchers in DoD's Gulf War Illness Research Program administered by the Congressional Directed Medical Research Programs. These programs fund innovative research to identify effective treatments, improve definition and diagnosis, and better understand pathobiology and symptoms. The Center for Disease Control (CDC) has also been very receptive to working with VA and has agreed to increase VA participation in the development of future medical surveys.

17. What is Disability Compensation?

Disability compensation is a non-taxable monetary benefit paid to Veterans who are disabled as a result of an injury or illness that was incurred or aggravated during active military service. Presently, the basic monthly rate of compensation ranges from \$123 to \$2,673 for Veterans without any dependents.

Last year, VA received more than one million claims for disability compensation and pension. VA provides compensation and pension benefits to over 3.8 million Veterans and beneficiaries.

18. Where can I go to get more information about health care and benefits related to these new presumptives?

For information about health problems associated with military service during operations Desert Shield, Desert Storm, Iraqi Freedom, and Enduring Freedom, go to www.publichealth.va.gov/exposures/gulfwar/.

For information about how to apply for disability compensation, go to www.va.gov