



Monthly Newsletter November 2012



DUSTIN C. BEARD, PARTNER
300 East Main St. Ste 150 Lexington, KY 40507
<http://kystateplanningattorney.com/>
dbeard@kylawpractice.com
(859) 904-2045

Volume 3, Issue 6

VA Service-Connected Disability Compensation

The Veterans Administration provides an important benefit program for veterans who have service-connected disability. The program is called "Compensation" and is different from the non-service-connected "Pension" program that elder law attorneys often discuss with wartime veteran clients or their surviving spouses. Like the pension program, VA compensation comes in the form of income-tax-free money payments to the veteran, who must have received a discharge other than dishonorable, or certain of their family members. The big difference from the pension program, however, is that VA compensation entirely flows from the linkage between the veteran's disability and his or her military service. <http://www.publichealth.va.gov/exposures/compensation.asp>

For most veterans, the key issues in accessing VA compensation benefits have been proving service connection for the disability, and then dealing with the disability level rating that the VA assessment system applies to the particular veteran's case. Often veterans who prove service connection are nonetheless frustrated by their disabilities being rated in seemingly unreasonably low percentages, such as 30% disabled rating, with the result that their compensation benefits may not be adequate to sustain them despite the actual disabling effects on their lives.

It is important to be aware that the surviving spouse of a compensation recipient may be eligible for a benefit called DIC, Dependency and Indemnity Compensation. DIC applies to the surviving spouse of a

veteran who died of his or her service-connected disability, or who received VA compensation for a period of 10 years prior to death not caused by the service-connected disability. For more information about DIC, see the VA website at

http://www.va.gov/opa/publications/benefits_book/benefits_chap12.asp.

The Presumptive Disease List

As Vietnam War veterans become "elders" in their 60s and 70s, it is increasingly important for professional advisors of all kinds to be aware of a special situation that applies to them. This special situation is the "presumptive disease list."

Three decades ago, litigation on behalf of disabled Vietnam veterans who had been exposed to Agent Orange established that certain diseases were associated with Agent Orange exposure. Although proving the Agent Orange causal relationship was a difficult legal battle, that battle has been won in regard to many diseases. There is now a lengthy list of Presumptive Diseases that have been proven to be caused by exposure to Agent Orange, and the list keeps growing as time passes. A veteran who can prove that he or she placed a "boot on the ground" in Vietnam during the war and has any disease on the list may be **rated 100% service-connected disabled**, without having to prove individually that his or her affliction was actually caused by service in Vietnam. There is now a legal presumption that Vietnam service caused the disease.

According to the VA website:

VA assumes that certain diseases can be related to a Veteran's qualifying military service. We call these "presumptive diseases."

VA has recognized certain cancers and other health problems as presumptive diseases associated with [exposure to Agent Orange or other herbicides](#) during military service. Veterans and their survivors may be eligible for [disability compensation](#) or [survivors' benefits](#) for these diseases.

At this time, fourteen categories of diseases are on the [presumptive disease list](#).

- [AL Amyloidosis](#) - A rare disease caused when an abnormal protein, amyloid, enters tissues or organs
- [Chronic B-cell Leukemias](#) - A type of cancer which affects white blood cells
- [Chloracne](#) (or similar acneform disease) - A skin condition that occurs soon after exposure to chemicals and looks like common forms of acne seen in teenagers. Under VA's rating regulations, it must be at least 10 percent disabling within one year of exposure to herbicides.
- [Diabetes Mellitus Type 2](#) - A disease characterized by high blood sugar levels resulting from the body's inability to respond properly to the hormone insulin
- [Hodgkin's Disease](#) - A malignant lymphoma (cancer) characterized by progressive enlargement of the lymph nodes, liver, and spleen, and by progressive anemia
- [Ischemic Heart Disease](#) - A disease characterized by a reduced supply of blood to the heart, that leads to chest pain
- [Multiple Myeloma](#) - A cancer of plasma cells, a type of white blood cell in bone marrow
- [Non-Hodgkin's Lymphoma](#) - A group of cancers that affect the lymph glands and other lymphatic tissue

- [Parkinson's Disease](#) - A progressive disorder of the nervous system that affects muscle movement
- [Peripheral Neuropathy, Acute and Subacute](#) - A nervous system condition that causes numbness, tingling, and motor weakness. Currently, it must be at least 10 percent disabling within one year of herbicide exposure and resolve within two years. VA proposed on Aug. 10, 2012, to replace "acute and subacute" with "early-onset" and eliminate the requirement that symptoms resolve within two years.
- [Porphyria Cutanea Tarda](#) - A disorder characterized by liver dysfunction and by thinning and blistering of the skin in sun-exposed areas. Under VA's rating regulations, it must be at least 10 percent disabling within one year of exposure to herbicides.
- [Prostate Cancer](#) - Cancer of the prostate; one of the most common cancers among men
- [Respiratory Cancers](#) (includes lung cancer) - Cancers of the lung, larynx, trachea, and bronchus
- [Soft Tissue Sarcomas](#) (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma) - A group of different types of cancers in body tissues such as muscle, fat, blood and lymph vessels, and connective tissues

Children with Birth Defects: VA presumes certain birth defects in children of Vietnam and Korea veterans are associated with veterans' qualifying military service.

Veterans with Lou Gehrig's Disease: VA presumes Lou Gehrig's Disease (amyotrophic lateral sclerosis or ALS) diagnosed in all veterans who had 90 or more days of continuous active military service is related to their service, although ALS is not related to Agent Orange exposure.

Some of these diseases -- such as type 2 diabetes, ischemic heart disease, Parkinson's disease, and prostate cancer -- are not extremely rare in the general population, so there is a very high likelihood that any professional financial or healthcare advisor will be able to help at least some, and maybe many, clients and other contacts by making them aware of the existence of the VA service-connected disability compensation program and the presumptive disease list.

Eligibility Based on Vietnam or Korea Service

For the purposes of disability compensation, VA presumes that veterans were exposed to Agent Orange or other herbicides if they served:

- [In Vietnam](#) anytime between January 9, 1962 and May 7, 1975 (includes brief visits ashore or service aboard a ship that operated on the inland waterways of Vietnam). Check VA's list of [U.S. Navy and Coast Guard ships that operated in Vietnam](#).
- [In or near the Korean demilitarized zone](#) anytime between April 1, 1968 and August 31, 1971

Veterans who served in Korea during certain Vietnam War years and now have diseases on the presumptive disease list may also be eligible for compensation.

Until 2011, veterans who served on ships in the waters off Vietnam during the war but never went ashore there were not treated similarly. However, this too has changed. Since 2011, veterans who served on certain ships in the waters off Vietnam during the war can also be rated as 100% service-connected disabled without having to prove that their disease on the presumptive list was actually caused by exposure to Agent Orange. See "[VA Posts Online List of Ships Associated with Presumptive Agent](#)

[Orange Exposure.](#)"

More thorough information about the level of documentation of service is provided on the VA website at <http://www.publichealth.va.gov/exposures/agentorange/disability-compensation.asp>.

Eligibility for Veterans Outside of Vietnam or Korea

Veterans who do not meet the criteria for presumed exposure to Agent Orange may be eligible for service-connection for related disabilities. This includes:

- [Blue Water veterans](#) who served on ships off the shore of Vietnam that did not operate on the inland waterways of Vietnam, or who did not set foot in Vietnam. Check VA's list of [U.S. Navy and Coast Guard ships that operated in Vietnam](#).
- Veterans who served on or near the perimeters of [military bases in Thailand](#) during the Vietnam Era
- " Veterans who served where herbicides were [tested and stored outside of Vietnam](#)
- " Veterans who were crew members on [C-123 planes flown after the Vietnam War](#)

These veterans must show that they were exposed to Agent Orange or other herbicides during military service to be eligible for service-connection for presumptive diseases.

Veterans who believe they have a disease caused by herbicide exposure, but it is not a presumptive disease, must show that:

1. They were exposed to herbicides during military service
2. There is an actual connection between the disease and herbicide exposure during military service

Exception: Blue Water veterans with non-Hodgkin's lymphoma may be granted service-connection without showing inland waterway service or that they set foot in Vietnam. This is because VA also recognizes non-Hodgkin's lymphoma as related to service in Vietnam or the waters offshore of Vietnam during the Vietnam Era.

Check [VA's Guide to Agent Orange Claims](#) to learn more about how to establish eligibility to disability compensation and how much VA pays.

How to Apply

You may [apply for disability compensation online](#).

Vietnam veterans with chronic b-cell leukemias, Parkinson's disease, or ischemic heart disease may apply for disability compensation for these diseases using [VA's Fast Track Claims Processing System](#).

After VA receives an application, they will send you a letter that explains what evidence they need in order to grant the claim. Attorneys can help clients get records to support their claim, including records of Vietnam service or exposure to Agent Orange or other herbicides during military service. Learn more about the [disability claims process](#).

Conclusion

The VA website is the best place to get information about the Compensation program and the presumptive disease list. It is a good idea for all advisors to check the VA website presumptive disease list at least annually in order to be aware of newly added diseases on the list. Just mentioning this program and the presumptive disease list to a Vietnam-era veteran, the surviving spouse or children of a Vietnam veteran can make a huge financial difference for them, as well as providing some peace of mind and answers to health questions that may otherwise plague them.

One elder law colleague recounts such a situation:

"I made a continuing education presentation to a group of CPAs in the summer of 2012 on key topics in elder law. When providing an introduction to VA benefits, I explained the difference between non-service-connected pension benefits and service-connected compensation, then spoke briefly about the presumptive disease list. At the next break, a CPA thanked me profusely for sharing the existence of the presumptive disease list with the audience. She told me that her husband was a Vietnam veteran and for the past three years had diabetes, a situation that completely stumped him because he had none of the common risk factors and his was the first known case of diabetes in his family. My mention of the presumptive disease list and specifically mentioning diabetes may have been the key to helping this family financially and providing a way to find answers. Since that time I make a point to mention the presumptive disease list whenever I encounter someone -- client, friend, or general public -- who is a Vietnam veteran or is related to one. At least one other Vietnam veteran I have told is in the process of obtaining VA compensation benefits."

This important information is surprisingly little known by large numbers of Vietnam-era veterans and their families. We are happy to help spread the word! If you have questions about anything in this newsletter, please feel free to contact us.

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.