

History of Presumptions of Service Connection

I. Chronic Diseases (Currently 38 U.S.C. §§ 1101(3) and 1112(a))

- **Act of August 9, 1921, ch. 57, 42 Stat. 147** -- Presumption of service connection for active pulmonary tuberculosis and neuropsychiatric disease manifest to a degree of disability of ten percent or more within two years after separation. (Purpose: high prevalence of these diseases among veterans; difficulty in carrying burden of showing time of onset; medical principles as to time of onset)
- **Veterans' Bureau Regulation No. 11 (Nov. 12, 1921)** -- Established a presumption of service connection for "chronic constitutional diseases" becoming manifest to a degree of disability of ten percent or more within one year after separation from service. Although the regulation did not define "chronic constitutional disease," it appears that the Bureau circulated a memorandum listing numerous qualifying diseases. The list was later added to VA's rating schedule in 1925.
- **World War Veterans Act, 1924, ch. 320, 43 Stat. 607** -- Added presumptions of service connection for paralysis agitans, encephalitis lethargica, and amoebic dysentery if manifest to a ten-percent degree prior to January 1, 1925 (roughly six years after cessation of hostilities in WWI). Spinal meningitis was added by a 1926 amendment.
- **Executive Orders (aka Veterans Regulations)** -- The Economy Act of 1933 repealed all prior laws relating to compensation for service-connected disability, but authorized the President to issue executive orders governing veterans benefits. Executive Order 6089, Vet. Reg. No. 1 (March 31, 1933) provided presumption of service connection for chronic diseases manifest to a degree of ten percent within one year of separation from service. VA issued a list of chronic diseases, which was different in some respects from the prior list in the 1925 rating schedule.
- **Act of June 24, 1948, ch. 612, 62 Stat. 581** -- Amended Vet. Reg. No. 1(a) to include a list of chronic and tropical diseases presumed service connected if manifest within one year of separation and authorized VA to add diseases to the list.
- **Extensions of Presumptive Periods** -- Several statutes in the 1950's and 1960's extended the presumptive periods for certain diseases. These were based primarily on medical principles regarding intervals between onset and definite diagnosis of the diseases.

- **Pub. L. No. 85-857 (1958)** -- Codified chronic disease presumptions in essentially their current form.

II. Tropical Diseases (currently 38 U.S.C. § 1112(a)(2))

- **1946-47 VA Memos** -- VA issued internal bulletins in 1946 and 1947 stating that if a veteran served in a tropical region and developed certain tropical diseases (e.g., malaria, dysentery) within one year after separation from service, service connection could be presumed. (Purpose: reflect medical principles as to the incubation periods of such diseases)
- **Act of June 24, 1948, ch. 612, 62 Stat. 581** -- Amended Vet. Reg. No. 1(a) to include a list of chronic and tropical diseases presumed service connected if manifest within one year of separation and authorized VA to add diseases to the list.
- **Pub. L. No. 85-857 (1958)** -- Codified tropical disease presumptions in essentially their current form; permits presumption if manifest within one year of service or within recognized incubation period.

III. Prisoners of War (38 U.S.C. § 1112(b))

- **Pub. L. No. 91-376 (1970)** -- Established presumptions for 17 diseases becoming manifest at any time after service by a former POW. The statute required 30 days or more of confinement to qualify. (Purpose: Overcome difficulties of proof due to lack of contemporaneous medical treatment and records and lack of repatriation physical and mental examinations; codify medical principles based on known hardships; accord benefit of the doubt where medical science cannot conclusively determine linkage of disease to POW experience)
- **Pub. L. No. 108-183 (2003)** -- Removed 30-day period for some diseases (i.e., those relating to physical or mental trauma), but retained as to others (i.e., those involving malnutrition, vitamin deficiency, etc.)
- **2004 rulemaking** -- In October 2004, VA issued regulations amending 38 C.F.R. § 3.309(c) to add atherosclerotic heart disease, hypertensive vascular disease, and stroke to the list of presumptive POW diseases. This was based on recommendations of an internal VA working group that there was an apparent association between such diseases and circumstances of POW service. The regulations also established standards that VA would apply in the future to determine whether a presumption association is warranted for other diseases. States as policy

that VA will establish presumptions when necessary to prevent denials of benefits in significant numbers of meritorious claims.

IV. Radiation (38 U.S.C. § 1112(c))

- **Pub. L. No. 100-321** -- Added 38 U.S.C. § 1112(c) establishing presumptions of service connection for veterans who participated in radiation-risk activity. (Purpose: overcome problems establishing exposure levels and causation; permit greater number of awards)
- **2002 VA Regulations** -- VA amended 38 C.F.R. § 3.309(d) to add five new presumptive diseases. This was considered necessary to ensure equal treatment with civilians who were entitled to compensation for those diseases under the Radiation Exposure Compensation Act as revised by Congress in 2000. In 2004, Congress amended 38 U.S.C. § 1112(c) to include those diseases.
- **38 C.F.R. § 3.311** -- In addition to the presumptions, VA has a special regulatory scheme for developing evidence and adjudicating claims based on ionizing radiation exposure in cases where the presumptions are inapplicable.

IV. Herbicides (38 U.S.C. § 1116)

- **Pub. L. No. 102-4 (Agent Orange Act of 1991)** -- Established 38 U.S.C. § 1116, providing service connection for three diseases in veterans who were exposed to herbicides during service. Also established presumption of exposure for veterans who served in the Republic of Vietnam during the Vietnam era. Further, established mechanism for biennial literature review by National Academy of Sciences. Upon receipt of each NAS report, VA must decide whether a presumption of service connection is warranted for each disease discussed in the report. A presumption is warranted if there is a “positive association between herbicide exposure and the disease -- meaning that the credible evidence for an association is equal to or outweighs the credible evidence against an association. (Purpose: overcome scientific uncertainty to maximum extent feasible; overcome factual problems establishing exposure; ensure greater number of awards)
- **38 C.F.R. §§ 3.307(a)(6) and 3.309(e)** -- VA has added eight other diseases to the list of presumptive herbicide conditions in 38 C.F.R. § 3.309(e). VA has authority to establish conditions for the presumptions, such as time periods within which the disease must become manifest. Currently three of the eleven diseases have a one-year presumptive period; the rest are presumed service connected if they arise at any time

after service. (Congress later revised 38 U.S.C. § 1116 to include some, but not all, of the diseases added by VA regulation.)

V. Gulf War (38 U.S.C. §§ 1117 and 1118)

- **Pub. L. 103-446 (1994)** -- Established 38 U.S.C. § 1117 to establish presumptive service connection for “undiagnosed illness” characterized by a cluster of symptoms that became manifest to a degree of 10 percent or more within a presumptive period prescribed by the Secretary. (Purpose: Respond to public concern over widespread reports of common symptomatology without definite diagnosis. Conceived as interim measure until medical science could identify the nature of the illness(es) and their possible relation to Gulf War service.)
- **Pub. L. 105-277 (1998)/Pub. L. 105-368 (1998)** -- Two substantially similar statutes that instructed VA to contract with NAS for biennial studies of literature on health effects of hazards associated with Gulf War service and prescribed procedures for consideration of presumptions based on such information. However, the statutes differed significantly on how to establish such presumptions. Pub. L. 105-277 established 38 U.S.C. § 1118, which is substantially similar to § 1116 (Agent Orange) in requiring VA to determine whether there is a “positive association” between a hazard and a disease and to establish presumptions if such an association is found. Pub. L. 105-368, in contrast, required VA to prepare a report and recommendations for Congress as to whether any presumptions are warranted.

VI. Other VA Regulations

- **38 C.F.R. § 3.310(b); Amputations and cardiovascular disease** -- In 1979, VA issued this regulation to provide that if a veteran had a service connected amputation on one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankle, subsequent cardiovascular disease would be presumed service connected. This was based on medical studies showing an association between such amputations and cardiovascular disease.
- **38 C.F.R. § 3.313; Non-Hodgkin’s Lymphoma in Vietnam veterans** -- In 1990, VA issued this regulation establishing a presumption of service connection for Non-Hodgkin’s lymphoma in Vietnam veterans. This was based on a Centers for Disease Control Study showing a significantly increased incidence of NHL among Vietnam veterans.

- **38 C.F.R. § 3.316; Mustard gas** -- In 1996, VA issued regulations establishing presumptions of service connection for certain diseases manifest in veterans who incurred full-body exposure to mustard gas or related agents during service. This was based on medical studies and a report by the National Academy of Sciences reflecting such associations.