

Veterans Benefits Administration
Department of Veterans Affairs
Washington, D.C. 20420

Circular 21-90-11
October 23, 1990

RECENT COMPENSATION & PENSION REGULATORY CHANGES

1. PURPOSE. This circular contains information concerning a number of recent changes in VA regulations and, where necessary, provides instructions for implementation.

2. SERVICE CONNECTION FOR NON-HODGKIN'S LYMPHOMA BASED ON VIETNAM SERVICE

a. 38 CFR 3.313, Claims Based on Service in Vietnam, was added to indicate that service in Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma (NHL) at any time subsequent to such service is sufficient to establish service connection for that disease.

b. The term "service in Vietnam" includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam. There is no requirement for a specified length of service, duty or visitation in Vietnam under 38 CFR 3.313. Even a few hours of service in Vietnam during the Vietnam era is sufficient to service connect subsequently developed non-Hodgkin's lymphoma.

c. 38 CFR 4.117 of the Schedule for Rating Disabilities was amended by adding diagnostic code 7715 for non-Hodgkin's lymphoma with the indication that it is to be rated as for lymphogranulomatosis - Hodgkin's disease (diagnostic code 7709). NHL is a heterogeneous group of malignant diseases involving neoplasms of B or T lymphocytic lineage. It includes any diagnosis that includes the word "lymphoma," mycosis fungoides, and old terms such as lymphosarcoma, reticulum cell sarcoma and Sternberg's sarcoma.

d. On April 11, 1990, the Deputy Chief Benefits Director for Field Operations sent each regional office a list of cases to be reviewed which may have involved denial of service connection for NHL. The cases were to be controlled for reconsideration following publication of the NHL regulations. Now that the regulations have been published, regional offices are to proceed with the review of their identified cases. EP 680 is to be taken when a rating decision is made in such cases.

e. If the claimant alleges Vietnam service, review the veteran's DD214, Certificate of Release or Discharge from Active Duty, or other evidence in file to confirm such service. If necessary, develop with the service department and ask the claimant to submit evidence to show Vietnam service or to obtain confirming buddy statements. Do not deny a claim

LOCAL REPRODUCTION AUTHORIZED

[55] 93124 Oct 26, 1990
38 U.S.C. 501

based on a lack of verification of Vietnam service until the claimant has had 60 days to respond to the request.

f. This amendment to 38 CFR, part 3, is effective retroactive to August 5, 1964, the beginning date of the Vietnam Era. A previously denied claim for service connection for NHL, may now be granted from the original date of claim for that condition, if otherwise in order. Adjudicate these claims as if the new 38 CFR 3.313 were in effect when the claim was filed. No grant of service connection based on this amendment can be made for any period prior to August 5, 1964. Examples of applicable effective dates follow:

(1) If, on 9/20/90, an original claim for service connection for NHL was received from a Vietnam veteran, the effective date of service connection for the NHL would be 9/20/90, with compensation paid from 10/1/90 under 38 CFR 3.31.

(2) On 9/20/90, a reopened claim for service connection for NHL was received from a Vietnam veteran. He previously filed a claim for the same condition on 10/3/86, which was denied in January 1987. The effective date of service connection would be 10/3/86, with compensation paid from 11/1/86.

(3) On 9/20/90, a reopened claim for service connection for NHL was received from a Vietnam veteran. He previously filed a claim for the same condition on 10/3/81 (prior to 38 CFR 3.31), which was denied in January 1982. The effective date of service connection would be 10/3/81, with compensation also paid from 10/3/81.

(4) On 9/20/90, a claim for service connection for NHL was received from a Vietnam veteran. He previously filed a claim for pension on 10/3/86, which was denied in January 1987. Since, under 38 CFR 3.151(a) a claim for pension may be considered to be a claim for compensation, providing the evidence establishes he had NHL when he filed his pension claim, the effective date of service connection would be 10/3/86, with compensation paid from 11/1/86.

(5) On 9/20/90, a reopened claim for DIC was received from a surviving spouse. Her Vietnam veteran husband died 1/4/85 due to NHL. On 1/4/87 she filed a claim for DIC which was denied in April 1987. The effective date of payment for her DIC would be 2/1/87.

(6) On 9/20/90, a claim for DIC and accrued benefits was received from a surviving spouse. Her Vietnam veteran husband had filed a claim for service connection for NHL on 10/3/86.

His claim was denied in November 1986. The veteran died on 1/4/90 as the result of NHL. DIC is effective 1/1/90, the first day of the month of death, as the claim was filed within one year of the date of death. Payment should be made effective 2/1/90 under 38 CFR 3.31 unless the veteran's compensation rate for the month of death would have been greater than the DIC rate, in which case the veteran's rate should be paid to the surviving spouse for the month of January under 38 CFR 3.20. She would also be entitled to accrued benefits to cover the period 1/1/89 through 12/31/89. Payment of accrued benefits is limited to a one-year retroactive period by 38 CFR 3.1000(a).

3. COMPUTATION OF TIME LIMIT

a. Claimants are often confronted with specified time limits for taking certain actions. For example, requested evidence usually must be received in VA within one year of the date of request to result in payment of benefits from the earliest possible date.

b. In computing the time limit for any action required of a claimant, 38 CFR 3.110 (as amended) excludes the first day of the specified period and includes the last day. That regulation now specifies that the "first day of the specified period" shall be the date of mailing of notification to the claimant or beneficiary of the action required and of the applicable time limit. The regulation further states that the date of that letter will be considered the date of mailing.

c. Among the changes to 38 CFR 3.109(b) was the removal of the provision which said that failing to furnish notice of the time limit for the submission of evidence did not extend the period allowed for this action. With the removal of that provision and the addition of the requirement in 38 CFR 3.110 that computation of the time limit does not begin until the claimant is notified of that time limit, it is essential that all communications requesting evidence include notice of the time limit. The revisions to 38 CFR 3.109(b) and 3.110 are effective May 11, 1990, and are not retroactive. (i.e., the requirement that computation of the time limit does not begin until after the claimant is notified of the time limit applies only to notifications on or after May 11, 1990.)

d. Adjudication Officers should assure that pattern letter libraries are reviewed to provide that development letters include notice of the applicable time limit. In addition, they shall remind employees to include the time limit notice in dictated letters.