

*Persian Gulf War Claims and New
Presumptive Diseases*

Service Connection as a Gulf War Veteran

■ Basic Information

- Persian Gulf War veterans may obtain disability compensation for diagnosed illnesses under same rules as other veterans
- Persian Gulf War veterans also have 2 special provisions:
 - 1) 38 U.S.C. § 1117: allows veteran to obtain disability compensation for “qualifying chronic disability”
 - 2) 38 U.S.C. § 1118: presumptively service connects certain diseases to service

Service Connection as a Gulf War Veteran

- Basic Requirements to compensation under 38 U.S.C. § 1117
 - Under 38 U.S.C. § 1117, claimant must be:
 - 1) “Persian Gulf War veteran,”
 - 2) have “qualifying chronic disability,” **AND**
 - 3) condition becomes at least 10% disabling within assigned presumptive period

Definition of Persian Gulf War Veteran

- Persian Gulf War veteran is one who has served on active duty in Southwest Asia theater of operations
 - After August 2, 1990, and before ending date set by Congress
 - Veterans who served period of active military, naval, or air service on or after September 19, 2001, in Afghanistan

Service Connection as a Gulf War Veteran

- Qualifying Chronic Disability defined as disability lasting at least 6 months, or condition that shows intermittent periods of improvement and worsening over at least 6 months
- 3 categories of Qualifying Chronic Disabilities:
 - Undiagnosed Illness
 - Medically unexplained chronic multi-symptom illness
 - Presumptive diseases

Qualifying Chronic Disabilities – Undiagnosed Illness

- Undiagnosed Illness - “by history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.”
 - Does not require “objective medical evidence”
 - Under §1117 only competent evidence required - includes signs in medical sense as well as nonmedical indicators
 - Thus, lay statements hold much power
 - Manual M21-1 lists other relevant non-medical evidence

Qualifying Chronic Disabilities – Undiagnosed Illness (cont.)

- 38 C.F.R. § 3.317 non-exhaustive list of signs or symptoms:
 - Fatigue
 - Signs or symptoms involving skin
 - Headache
 - Muscle pain
 - Joint pain
 - Neurological signs or symptoms
 - Neuropsychological signs or symptoms
 - Signs or symptoms involving the respiratory system
 - Sleep disturbances
 - Gastrointestinal signs or symptoms
 - Cardiovascular signs or symptoms
 - Abnormal weight loss
 - Menstrual disorders

Qualifying Chronic Disabilities – Undiagnosed Illness (cont.)

- Signs or symptoms of undiagnosed chronic disability must first appear while veteran served in Persian Gulf War **OR** become at least 10% disabling during any applicable presumptive period

Qualifying Chronic Disabilities – Undiagnosed Illness (cont.)

- VA must evaluate undiagnosed condition under rating schedule criteria for disease or injury in which the functions affected, anatomical localization, or similar symptomatology

Qualifying Chronic Disabilities – Undiagnosed Illness (cont.)

- *Stankevich v. Nicholson*: BVA erred in failing to analyze and explain decision to assign particular diagnostic code as one most analogous to veteran's undiagnosed illness

Qualifying Chronic Disabilities – Undiagnosed Illness (cont.)

- August 1998 VA General Counsel precedent opinion:
 - VA clarified meaning of undiagnosed illness requirement
 - But once a diagnosis is attached to a particular condition, 38 C.F.R. § 3.317 no longer applicable
 - Veteran can rebut the diagnosis with another medical opinion

Qualifying Chronic Disabilities – Undiagnosed Illness (cont.)

- NO medical nexus requirement
 - *Gutierrez v. Principi* - CAVC concluded that BVA erred by imposing nexus evidence requirement
 - Also BVA precluded from using delay in complaint of treatment of condition post discharge against claimant

Qualifying Chronic Disabilities – Medically Unexplained Chronic Multi-symptom Illness

- Chronic Multi-symptom illness
 - Currently ONLY
 - Chronic fatigue syndrome
 - Fibromyalgia
 - Irritable bowel syndrome
 - VA may recognize other diseases in future

Qualifying Chronic Disabilities – Presumptive Diseases

- Presumptive Diseases - 38 U.S.C. § 1118 and New 38 C.F.R. § 3.317(c)
 - As of October 2010, 9 diseases recognized (see 38 C.F.R. § 3.317(c))
- Diseases are:
 - Brucellosis
 - Campylobacter jejuni
 - Coxiella burnetti (Q fever)
 - Malaria
 - Mycobacterium tuberculosis
 - Nontyphoid salmonella
 - Shigella
 - Visceral leishmaniasis
 - West Nile virus

Qualifying Chronic Disabilities – Presumptive Diseases (cont.)

- Disease must manifest to degree of 10% within 1 year from date of separation from qualifying period of service except:
 - Malaria: within 1 year or at time when standard or accepted treatises indicate that incubation period commenced during qualifying period of service
 - Visceral leishmaniasis: no time period specified
 - Mycobacterium tuberculosis: no time period specified

Qualifying Chronic Disabilities – Presumptive Diseases (cont.)

- Presumption is rebuttable
 - If affirmative evidence establishes disease not incurred during qualifying service, was caused by intervening condition, or condition result of veteran's own willful misconduct or abuse of alcohol or drugs, veteran will not be granted service connection

Associated Conditions of Presumptive Diseases

- VA recognizes long-term health effects potentially associated with these infectious diseases
- Potential long term conditions are listed in 38 C.F.R. § 3.317
 - VA will provide VAE for all veterans suffering from one of 9 identified infectious diseases who develop long term condition listed in § 3.317 within specified time period (some have no time limit)

Persian Gulf War Health Registry and Exams

- Registry Exams should determine the degree of disability and whether diagnosis is possible
 - VA maintains Persian Gulf War Veterans Health Registry to track health problems of Persian Gulf War veterans and help researchers learn more about health problems related to Persian Gulf War service
 - Veterans included in registry if they apply for VA services; file disability claim based on Persian Gulf War service; survivor files DIC claim based on Persian Gulf War service; receive exam from DOD and request be included in registry; or request registry exam from VA
 - Exam is free and veteran doesn't need have to show noticeable health problems

Persian Gulf War Health Registry and Exams (cont.)

- VA Training Letter 10-01
 - Explains concepts of undiagnosed illnesses and medically unexplained chronic multi-symptom illnesses to examiners
 - Directs examiners to consider any chronic disability pattern, and explain whether veteran's disability pattern is:
 - (1) undiagnosed illness
 - (2) diagnosable but medically unexplained chronic multi-symptom illness of unknown etiology
 - (3) diagnosable chronic multi-symptom illness with a partially explained etiology
 - (4) disease with clear and specific etiology/diagnosis