Update: Gulf War Claims
Service Connection--Gulf War Veterans

- Basic Information
  - Gulf War veterans may obtain disability compensation for disabilities under same rules as other veterans
  - However, there are additional special rules that apply to Gulf War veterans
SC—Special Rule for Gulf War Veterans

- Special Rules for Gulf War veterans:
  - Vets with “qualifying chronic disability”
    - Undiagnosed illnesses
    - Medically unexplained chronic multisymptom illnesses
  - Vets with listed infectious diseases (listed in § 1117)
  - Other diseases that become presumptive in future as result of ongoing studies (required by § 1118)
Basic Requirements of Special Gulf War Rules

Basic Requirements under § 1117

- claimant must be:
  1) A “Gulf War veteran”
  2) With a “qualifying chronic disability” or a listed “infectious disease”
  3) condition must become at least 10% disabling w/in presumptive period
Basic Requirements of Special Gulf War Rules

- presumptive rules rebutted if:
  - affirmative evidence establishes:
  - disease not incurred during service,
  - was caused by intervening event, or
  - was result of vet’s willful misconduct or abuse of alcohol or drugs
Definition of Gulf War Veteran

- Definition of Gulf War vet
  - served on active duty in Southwest Asia theater of operations
  - This includes Iraq, Kuwait, Saudi Arabia, Neutral zone, Bahrain, Qatar, UAE, Oman, Gulf of Aden, Gulf of Oman, Waters of Persian Gulf, Arabian Sea & Red Sea
  - OR served in Airspace above these locations
  - After August 2, 1990, and before ending date set by Congress
  - Includes OIF and Operation New Dawn
Definition of Gulf War Veteran

- **Note:** vets with active service in Afghanistan on or after 9/19/2001 (OEF vets) are entitled to presumptive SC for presumptive infectious diseases (even though they never served in Southwest Asia)

- **Fast Letter 10-01 confusion**
What is a Qualifying Chronic Disability?

- Qualifying Chronic Disability:
  - Must last at least 6 months, OR
  - show intermittent periods of improvement and worsening over at least 6 months
Kinds of Qualifying Chronic Disabilities

- Qualifying Chronic Disability can be:
  - An Undiagnosed Illness, OR
  - A Medically unexplained chronic multi-symptom illness, OR
  - A disease that becomes presumptive for GW veterans in the future
Qualifying Chronic Disability: Undiagnosed Illness (UI)

- Undiagnosed Illness - “by history, physical examination & laboratory tests cannot be attributed to any known clinical diagnosis.”
- Does not require “objective medical evidence”
UI—Undiagnosed Illness

• Can be shown by objective evidence perceptible to an examining physician OR

• nonmedical signs that can be independently verified or observed
  ◆ lay statements may be decisive
  ◆ Manual M21-1 lists other relevant non-medical evidence
M21-1MR—nonmedical indicators

- events such as time lost from work OR
- evidence vet sought medical treatment for symptoms OR
- Lay (or medical) evidence affirming changes in vet’s appearance, physical abilities, mental or emotional attitude
Undiagnosed Illness (cont.)

- 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
Undiagnosed Illness (cont.)

- Signs or symptoms of undiagnosed illness must first appear:
  - while vet served in Gulf OR
  - become at least 10% disabling during applicable presumptive period
  - presumptive period has been extended to 12-31-2016
Undiagnosed Illness (cont.)

- VA must rate an SC undiagnosed illness by analogy—38 CFR § 4.20

- This means that VA will rate the UI under a diagnostic code (DC) in which the functions affected, the location, or the symptoms are similar to the UI condition
Medically Unexplained Chronic Multi-Symptom Illness

- Chronic Multi-symptom illness
  - defined by a “cluster” of signs or symptoms
  - diagnosed illness w/out conclusive etiology
  - characterized by overlapping symptoms and signs
  - has features such as fatigue, pain, disability out of proportion to physical findings
Medically Unexplained Chronic Multi-Symptom Illness

- Inconsistent demonstrations of lab abnormalities
- If etiology is “partially” understood, (DM or MS) this disability will not be considered medically unexplained

- Advocates: look out for chronic multi-symptom illnesses in Gulf War veterans!
- Vet can get SC for this if they meet the requirements (even if condition is not one of the three listed in § 3.317)
Medically Unexplained Chronic Multi-Symptom Illness

- Advocates: Remember that a chronic multi-symptom illness in a Gulf War vet does not need to be listed—just needs to meet the requirements
  - Medically unexplained (no cause identified)
  - Cluster of symptoms
  - Inconsistent lab results
Medically Unexplained Chronic Multi-Symptom Illness

• Currently listed:
  ◆ Chronic fatigue syndrome
  ◆ Fibromyalgia
  ◆ Functional Gastrointestinal Disorders

(Remember, vet not limited to these three—can claim any diagnosed disability as a chronic multisymptom illness, as long as it meets the requirements—see VA Training Letter 10-01)
Functional gastrointestinal disorders:
excludes structural gastrointestinal
diseases

Group of conditions with chronic or
recurrent symptoms unexplained by
structural, endoscopic, lab or other
objective signs of injury or disease
Functional Gastrointestinal Disorders

- FGS usually require symptom onset of at least 6 mos. prior to dx & presence of symptoms sufficient to diagnose the disorder at least 3 mos. prior to diagnosis
- May be related to any part of gastrointestinal tract
What is gastrointestinal tract?
FGDs include but not limited to:

- IBS,
- functional dyspepsia (indigestion),
- functional vomiting,
- functional constipation,
- functional bloating,
- functional abdominal pain syndrome and
- functional dysphagia (difficulty swallowing)
Functional Gastrointestinal Disorders--Symptoms

- abdominal pain,
- substernal burning or pain,
- nausea,
- vomiting,
- altered bowel habits-diarrhea/constipation
- indigestion,
- bloating,
- postprandial fullness,
- painful or difficult swallowing
Presumptive Infectious Diseases

- Effective 10/10
- 9 infectious diseases recognized
- Brucellosis
- Campylobacter jejuni
- Coxiella burnetti (Q fever)
- Malaria
- Mycobacterium tuberculosis
- Nontyphoid salmonella
- Shigella
- Visceral leishmaniasis
- West Nile virus
Presumptive Infectious Diseases

- must manifest to degree of 10% w/in 1 yr from separation from service except:
  - Malaria: w/in 1 yr from separation or standard med. treatises show incubation period began during service
  - Visceral leishmaniasis & mycobacterium tuberculosis: any time after service (no time limit)
Long-Term Health Effects of Presumptive Infectious 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 examine vets who are presumptively SC for a listed infectious disease & who develop a listed long-term effect
Long-Term Health Effects of Presumptive Infectious Diseases

**West Nile virus** --
Variable physical, functional, or cognitive disability

**Mycobacterium tuberculosis**
Active tuberculosis. Long-term adverse health outcomes due to irreversible tissue damage from severe forms of pulmonary and extrapulmonary tuberculosis and active tuberculosis.
Long-Term Health Effects of Presumptive Infectious Diseases

Coxiella burnetii (Q fever)
Resources that can help win Cases

- CAVC Cases
- VA General Counsel Precedent Opinions
- VA Training Letters
- Arguments
Good Cases on UI Conditions

- 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
Good Cases on UI Conditions

- *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.
August 1998 VA General Counsel precedent opinion:

- If signs or symptoms of vet could conceivably be attributed to a known clinical diagnosis, but haven’t been, that does not preclude vet being awarded SC for the UI
Says RO personnel must be aware that a variety of disabilities may affect vets with Southwest Asia service. A thorough review of medical evid assoc. w/ these claims is necessary to identify any signs & symptoms potentially associated w/ Southwest Asia service that are not directly claimed.
The TL explains that standard for Gulf War vet to get an exam for Gulf War illness is very low:

- minimum needed is
  - Vet’s lay description of symptoms plus
  - Verified service in Southwest Asia

That is it! (TL 10-01, p. 7)
VA Training Letter

VA Training Letter 10-01

• Directs examiners to consider any chronic disability pattern & explain whether vet has:
  - A UI
  - A diagnosable but medically unexplained chronic multi-symptom illness of unknown etiology
VA Training Letter

- If after exam the vet is determined to have
  - A diagnosable chronic multi-symptom illness with a partially explained etiology or
  - A disease w/ clear & specific etiology/diagnosis

- Then SC cannot be granted under Gulf War/Southwest Asia rules

- But vet may be able to establish SC on a direct basis (not under presumptive rules)
Arguments

• Once a condition gets a diagnosis, the UI rule no longer applies (vet can then try to obtain SC for the diagnosed condition on a direct basis)

• Or vet can rebut diagnosis with a medical opinion that explains why diagnosis is not appropriate & that symptoms should be considered an undiagnosed illness
Arguments

- Examples of some chronic multisymptom illnesses—if medically unexplained, may get presumptive SC under GW rules (3.317)
  - Multiple chemical sensitivity disorder??
  - Other ideas?
Best Arguments

- Best arguments for UI
- Best arguments for medically unexplained chronic multisymptom illnesses
- Best arguments for infectious diseases
- Best arguments for direct SC if presumptions don’t work/don’t apply