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The New Agent Orange Disabilities

By: Rich Levesque

Chief Service Officer

I will begin this article with an apology to our readers. I held up the publication of the Bay State Vietnam Veteran hoping for some good positive news on the new Agent Orange regulations. That final rule hasn't been published in the Federal Register as of this writing, but I am anticipating that it will be soon. What's this all about??? Simply said, if you served in Vietnam and you have heart problems today you will be real interested in this article.

On October 13th, 2009 VA Secretary Eric Shinseki announced that the VA would add three new disabilities to 38 Code of Federal Regulations § 3.309(e) which lists the diseases that VA presumes were caused by exposure to herbicides. By herbicides, we mean exposure to what Vietnam Veterans refer to as "Agent Orange". That's that junky herbicide they sprayed on us in Vietnam and they applied it liberally in the millions of gallons between 1962 and 1975. So if you served on the ground or in the rivers in Vietnam (or one of the exceptions like Guam or Thailand or even Danang harbor) or even stateside in some instances, and you have one of those diseases outlined in § 3.309(e) you may apply for service connected benefits and VA has to presume your condition is caused by herbicide exposure and grant your claim so long as there is no evidence that the condition was definitely caused by something else other than Agent Orange.

The three new conditions that the VA announced are: (1) Hairy Cell Leukemia, (2) Parkinson's Disease, and (3) Ischemic Heart Disease. These conditions were found to be connected to exposure to Agent Orange, even in a suggestive or a limited way by the Institute of Medicine (IOM). These reviews are mandated by Congress every two years and IOM reviews conditions that are thought to have been caused by exposure to herbicides like Agent Orange and its evil cousins Agents Purple, Blue, White, Green....well, you get the point. The inclusion of the three new conditions would bring the number

of conditions to sixteen to include ALS in with the rest of the pile and the recent Diabetes Mellitus Type II addition.

So, what if I have a heart condition and I served in Vietnam??? We are strongly suggesting that if you have been diagnosed with any of the conditions listed in §3.309(e) to include ALS (Lou Gehrig's Disease) or the new ones that we're talking about above that you file your claim immediately either directly to VA or that you file through your Veterans Service Organization of choice. If you know of any Vietnam Veteran who has died of these conditions it is important that the Surviving Spouse file for Dependents and Indemnity Compensation (DIC) immediately as well. Let's say for instance that a Vietnam in-country veteran died in 2006 from a heart attack caused by a blocked artery (Coronary Artery Disease), that would now make the Surviving Spouse eligible for DIC benefits as soon as the final rule is published. Then VA will to implement these important changes. That is good news for widows of veterans exposed to herbicides who have been denied in the past as they have the opportunity to re-open their claims for benefits. Our strongest advice? Do it now!

Ischemic Heart Disease includes Coronary Artery Disease (CAD) and atherosclerotic conditions. Have you had CAD or other coronary problems? Had a stent put in or maybe by-pass surgery? Heart Attack??? You may be entitled under 38 CFR § 3.309(e). Not sure? Go on-line. Check out WEB MD or any other on-line medical source. Talk to your cardiologist. Even the IOM has a web site. Check that out too. Not computer literate?? Go to the library and pull down the books. I suggest Dollands Medical Dictionary or the Merck Manual. VA uses these like a bible. The best thing you can do is be informed. That's the best armor we can wear against a cold and adversarial system. Now these types of heart conditions should have been added to the list well before this. Is VA rectifying what they should have done years ago?? From what we hear from unofficial sources that seems to be the case especially given statements by Gen Eric Shinseki, Secretary of the VA. Better late than never.

So, when do we see these changes happening? Like I said

early in this article the final rule has not yet been published in the Federal Register. And the VA is late in getting that rule published. Several Veterans Service Organizations have filed suit in Federal Court to force publication and the United States Court of Appeals has ordered the Secretary to publish the rule by July 19th or respond to the court as to why they cannot comply. VA did respond to the Court on the 19th of July. We are presently awaiting the Court's response to that statement. For a good breakdown of this lawsuit go to www.vawatchdog.com. Larry Scott is keeping a close eye on this situation. Personally I see this happening in September/October 2010 and claims being rated right after that.

OK, now if you or any Vietnam Veteran has these conditions file your claim with VA right away. Even though VA is holding these claims until the rules are promulgated, your claim is in and the clock has started so yes, its retroactive to the date of filing. The best thing is to file that claim ASAP and whether you come to us or to another Veterans Service Organization makes no difference. Just get that claim in. If you have questions, please ask. The only stupid question is the one you don't ask. And the watchwords are always to "never go it alone".

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