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Agent Orange Review

Vol. 7, NO. 3

Information for Veterans Who Served in Vietnam

August 1990

Derwinski Approves Compensation for Soft Tissue Sarcomas; Secretary Acts in Response to Advisory Group Finding

On May 18, 1990, Secretary of Veterans Affairs Edward J. Derwinski announced his decision to have VA recognize, as service-connected, soft tissue sarcomas based on exposure to dioxin-containing herbicides. Agent Orange is the dioxin-containing herbicide most used in Vietnam.



Edward J. Derwinski

The term "soft tissue sarcoma" describes a group of approximately 25 different types of malignant tumors which arise from body tissues such as muscle, fat, lymph and blood vessels and connective tissues (distinct from hard tissue such as bone or cartilage). These tumors are relatively rare and are sometimes difficult to diagnose.

Announcing the decision, Secretary Derwinski declared, "I believe this is another step forward in resolving a most difficult and emotional issue. We intend to proceed as quickly as possible to award compensation to these veterans who are so deserving of our care and concern."

Publication of a final regulation implementing the Secretary's decision is expected in early Fall. An estimated 1,100 veterans or survivors may receive compensation this year under the regulation, with an additional 50 claims annually thereafter. Payments, some of which will be retroactive, are projected to cost \$8 million yearly.

Advisory Committee Recommendation

Secretary Derwinski's action was prompted by a recommendation of the Veterans' Advisory Committee on Environmental Hazards. This statutory group met in VA Central Office in Washington, DC, on May 16-17, 1990, to review scientific literature relating to whether there is a significant statistical association between exposure to a dioxin-containing herbicide and subsequent development of soft tissue sarcomas.

After considering more than 80 articles, the Advisory Committee concluded that it was at least as likely as not that such an association existed. Committee members noted that work done in Sweden was strongly compelling for an association while studies done elsewhere not showing an association were also very strong. Committee members observed that the "positive" studies tended to be confined to one geographic area of the world and the studies involving Vietnam veterans did not find such an association.

Nevertheless, in keeping with the requirement that reasonable doubt be decided in favor of an association when the evidence is in approximate balance, the Committee recommended to Secretary Derwinski that there was a significant statistical association between exposure to a dioxin-containing herbicide and soft tissue sarcomas. Several Committee members noted, however, that they did not believe that the scientific evidence demonstrated a causal association.

Secretary Derwinski's Prompt Response

The recommendation was prepared the afternoon of May 17, 1990. The following morning, Secretary Derwinski announced his decision to grant service-connected compensation to veterans (or their survivors) based on exposure to a dioxin-containing herbicide.

This prompt and decisive action by the Secretary is consistent with his earlier initiatives on this controversial issue. (His prior actions are described in detail in the October 1989 and May 1990 issues of the "Agent Orange Review.")

Perhaps most noteworthy of Secretary Derwinski's earlier actions on this issue was (1) his prompt decision in May 1989 not to appeal a U.S. District Court ruling which invalidated a portion of VA regulations which governs the payment of compensation for specific diseases relating to exposure to Agent Orange, and (2) his approval in March 1990 of compensation for non-Hodgkin's lymphoma (NHL) victims (or their survivors) based on military service in Vietnam. The NHL decision was announced the day after Secretary Derwinski was briefed on the results of the Centers for Disease Control's Selected Cancers Study, which provided evidence that Vietnam veterans are at increased risk of developing NHL.

Links to Other Conditions to be Considered

Additional meetings of the Veterans' Advisory Committee on Environmental Hazards are being planned for later this year to allow for review of scientific literature relating to whether there is a significant statistical association between exposure to



dioxin-containing herbicides and the subsequent development of other illnesses.

About the "Review"..

This issue of the "Agent Orange Review" was prepared by VA's Environmental Medicine Office. (Last year, responsibility for the newsletter was transferred to this office from VA's Office of Public Affairs, which prepared all previous issues, except the October 1989 and May 1990 editions.) The "Review" is published periodically to provide information on Agent Orange and related matters to Vietnam veterans, their families, and others with concerns about herbicides used in Vietnam. The most recent issue of the "Review" was published in May 1990.

Comments or questions about the content of the "Review" are encouraged. Suggestions and ideas for future issues of the newsletter should be sent to Donald J. Rosenblum, Writer/Editor, Agent Orange Review, Environmental Medicine Office (10B/AO), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. His telephone number is (202) 2334117.

Requests for additional copies of this issue, should also be directed to Mr. Rosenblum. Please specify the number of copies you are requesting. Copies of the October 1989 and May 1990 issues are also available. VA facilities should order additional copies from the VA Supply Depot.

VA updates the "Review" mailing address listing annually. If you have not been filing Federal income tax annually and have moved to another residence, we may not have the best address for you and may not be able to send you future issues of the "Review." Therefore, if this is your situation, we ask you to send your old and new addresses and your Social Security number to the Department of Veterans Affairs, Data Processing Center (200/397), 1615 East Woodward Street, Austin, Texas 78772.

If you have had an Agent Orange Registry examination and have questions about the examination or your results, contact the Environmental Physician or Agent Orange Coordinator at the VA medical center where you had the examination.

If you have questions about VA benefits, contact a veterans benefits counselor at the VA facility nearest you. The telephone number can be found in your telephone book under "U.S. Government" listings.

White House Establishes Agent Orange Coordination Group

On March 27, 1990, Attorney General Dick Thornburgh acting in his capacity as Chairman Pro Tempore, Domestic Policy Council (DPC), announced the formation of an Agent Orange Task Force under the DPC Working Group on Health Policy.

The Task Force was directed to "ensure that all appropriate coordination and consultation is accomplished

between agencies engaged in the design, conduct, monitoring or evaluation of Agent Orange-exposure studies." Specifically, the Task Force is charged to "(1) conduct interagency review of Agent Orange studies, as appropriate, and (2) forward as necessary, for consideration by the DPC Health Policy Working Group, any policy concerns that require interagency resolution or decision."

The Task Force is chaired by James O. Mason, M.D., Assistant Secretary for Health, Department of Health and Human Services. The Department of Veterans Affairs representative on the Task Force is General Counsel Raoul L. Carroll. High level officials from the White House, Office of Management and Budget, Department of Defense, and Department of Justice also serve on the Task Force.

The Science Panel, a subgroup of the Task Force, consists of top Federal scientists involved in Agent Orange research efforts. The Science Panel is chaired by Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, Centers for Disease Control. The VA scientists on this panel are Lawrence B. Hobson, M.D., Ph.D., Director, Environmental Medicine Office at VA Central Office, and Han K. Kang, Dr. P.H., Director, Office of Environmental Epidemiology, VA Medical Center, Washington, DC.

Similar coordination groups were established by the Carter Administration in 1979 and by the Reagan Administration in 1981.

Veterans' Agent Orange Task Force Releases Literature Review

On May 1, 1990, members of the Vietnam-era congressional caucus released a literature review on the health effects of herbicides which declared that VA should provide disability compensation for at least eight health problems.

The report was prepared by the "Agent Orange Scientific Task Force" working with the American Legion, Vietnam Veterans of America, and the National Veterans Legal Services Project. The Task Force concluded that there is a significant statistical association between exposure to Agent Orange and non-Hodgkin's lymphoma, soft tissue sarcoma, skin disorders/chloracne, subclinical hepatotoxic effects, and porphyria cutanea tarda.

In addition, the report indicated that the scientific evidence of a significant statistical association with exposure to Agent Orange is at least as strong as the evidence of a lack of the association for the following effects: Hodgkin's disease, neurologic effects, and reproductive and developmental effects.

The Task Force also found that there is sound scientific evidence of an association with exposure to Agent Orange, but the evidence does not reach the level of formal statistical significance, for the following effects: leukemias, cancer of the kidney, cancer of the testis, cancer of the stomach, cancer of the prostate, cancer of the colon, cancer of the hepatobiliary tract, cancer of the brain, psychosocial effects, immunological abnormalities, gastrointestinal ulcer, and altered lipid metabolism.

Seven scientists served on the Task Force: Richard W. Clapp, M.P.H., Sc.D., JSI Research & Training Institute, Inc.,

Boston, Massachusetts; Barry Commoner, Ph.D., Queens College, CUNY, Flushing, New York; John D. Constable, M.D., Harvard Medical School, Boston, Massachusetts; Samuel S. Epstein, M.D., University of Illinois, Chicago, Illinois; Peter C. Kahn, Ph.D., Rutgers University, New Brunswick, New Jersey; James R. Olson, Ph.D., University of Buffalo, Buffalo, New York; and David M. Ozonoff, M.D., M.P.H., Boston University School of Public Health, Boston, Massachusetts.

The Agent Orange Scientific Task Force report is titled "Human Health Effects Associated with Exposure to Herbicides and/or Their Associated Contaminants - Chlorinated Dioxins -- Agent Orange and the Vietnam Veteran - A Review of the Scientific Literature."

Inquiries regarding this document may be referred to Mr. John Minnick, Public Relations Division, The American Legion, 1608 K Street, NW, Washington, DC 20006. The telephone number is (202) 681-2790.

VA scientists who analyzed the literature review concluded that it does not present any new information relative to the use and/or effects of herbicides and their associated dioxin contaminants. Information was heavily weighed to present evidence supporting an association between exposure and certain illnesses. Research or literature in opposition to this theory was noticeably ignored.

Other Federal scientists and members of the Veterans' Advisory Committee on Environmental Hazards expressed similar criticisms of the report.

Deputy Secretary Principi Speaks Out for Veterans at Agent Orange Hearing

"VA remains committed to its search for truth in this area," declared VA Deputy Secretary Anthony J. Principi testifying May 2, 1990 before a congressional panel considering Agent Orange compensation legislation.

The proposed legislation, H.R. 3004, the "Veterans Agent Orange Exposure and Vietnam Service benefits Act of 1989," would, among other things, establish a presumption of service connection between service in Vietnam and four diseases: non-Hodgkin's lymphoma, soft tissue sarcoma, and melanoma and basal cell carcinoma. The bill would also establish a mechanism, wholly separate from VA, to evaluate evidence and make recommendations concerning the association, if any, between exposure to herbicides used in Vietnam and diseases.

Deputy Secretary Principi, a Vietnam veteran, told the House Veterans' Affairs Subcommittee on Compensation, Pension and Insurance that the Veterans' Advisory Committee on Environmental Hazards would be meeting later in the month (May 16-17) to consider numerous studies concerning the relationship between exposure to dioxin and disease. The second-ranking VA official explained that this is part of an

ongoing process which VA hopes will lead to the adoption of final regulations governing dioxin-exposure claims by October. Deputy Secretary Principi noted that Secretary Derwinski had recently made a determination that there is a relationship between Vietnam service and non-Hodgkin's lymphoma (NHL).

The Deputy Secretary told the subcommittee that VA will shortly be publishing regulations to provide that development of NHL following Vietnam service during the Vietnam era is sufficient to establish service-connection for compensation. He reported that "it is the Secretary's hope that this action will help to mend the divisiveness that has surrounded this issue for so many years."

In view of the ongoing effort within VA to resolve the issue, Deputy Secretary Principi urged Congress to hold the legislation in "abeyance" until VA has had the opportunity to complete its rulemaking process. (Sixteen days after the congressional hearing, Secretary Derwinski announced his decision on soft tissue sarcomas. See article on front page of the "Review.")

There were a number of other witnesses, including representatives of several major veterans service organizations, at the May 2 hearing. Most speakers voiced their support for the bill.

However, the Paralyzed Veterans of America opposed the legislation, and the Disabled American Veterans while generally supportive of the bill did not support the granting of service-connection, on a presumptive basis, for soft tissue sarcoma or melanoma and basal cell carcinoma.

When this issue of the "Review" went to press, the House Committee on Veterans' Affairs had not taken further action on this bill. Similar legislation passed the Senate last year. Additional information regarding legislative developments will be included in future issues of this newsletter.

Final Regulation Change for NHL Victims to be Published

On June 21, 1990, VA published in the Federal Register an amendment to adjudication regulations which would establish criteria to be followed in considering claims for service-connection for non-Hodgkin's lymphoma (NHL). The publication invited interested persons to submit written comments, suggestions, or objections on the proposed change to Secretary Derwinski by July 23, 1990. (This issue of the "Review" was finalized before this closing date.)

Based on a careful review of all the comments received, VA will soon make any necessary or desirable changes in the proposed regulations. It is anticipated that the final regulations will be published in the Federal Register in September or October 1990.

Under the proposal, 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. Service in Vietnam during the Vietnam Era together with the development of NHL after such service would be sufficient, under the proposed regulations, to establish service-connection for that disease. The proposed change would be effective



Anthony J. Principi

retroactively to August 5, 1964.

The amendment was prompted by the release of the results of the Centers for Disease Control (CDC) Selected Cancers Study which indicated that Vietnam veterans are at increased risk of NHL. On March 29, 1990, the day the CDC study results were released, Secretary Derwinski announced his decision, which he called a "policy determination," that VA would service-connect NHL. (A lengthy article about the study and the Secretary's decision is contained in the May 1990 issue of the "Review.")

Zumwalt Report Suggests Link with 27 Diseases/Disorders

On May 5, 1990, retired Navy Admiral Elmo R. Zumwalt, Jr., filed a report with Secretary of Veterans Affairs Edward J. Derwinski regarding the available medical and scientific materials on human exposures to dioxin contaminants found in Agent Orange. Admiral Zumwalt concluded that the body of studied literature indicates that a significant number of adverse health effects suffered by Vietnam veterans are more likely than not service-connected.

Admiral Zumwalt, who has served as senior advisor to Secretary Derwinski and was recently appointed to the Veterans' Advisory Committee on Environmental Hazards, declared that 27 health problems are sufficiently associated with contaminants found in Agent Orange to justify service-connected compensation.

The health effects that he linked to Agent Orange are non-Hodgkin's disease, soft tissue sarcoma, chloracne and other skin disorders, including skin cancer, liver disorders, porphyria cutanea tarda, Hodgkin's disease, neurologic defects, birth defects, leukemia, kidney cancer, testicular cancer, pancreatic cancer, stomach cancer, prostate cancer, colon cancer, liver cancer, brain cancer, psychosocial effects, autoimmune diseases/disorders, gastrointestinal diseases, multiple myeloma, lip cancer, bone cancer, lung cancer, hematopoietic diseases, nasal/pharyngeal/esophageal cancer, and malignant melanoma.



A recent Agent Orange exhibit at VA Central Office

Many of the problems cited by Admiral Zumwalt were also cited in the Agent Orange Scientific Task Force report. (See article regarding that report elsewhere in this issue.)

For many years, the Department of Veterans Affairs and scientists throughout the world have recognized that chloracne, a skin disorder, is caused by the dioxin produced during the manufacture of one of the ingredients of Agent Orange. In March 1990, Secretary Derwinski announced that VA would service-connect non-Hodgkin's lymphoma based on Vietnam service. In May 1990, the Secretary indicated that VA would service-connect soft tissue sarcomas based on exposure to dioxin-containing herbicides. (See article on front page.)

Class Action Lawsuit Referral Information

The Department of Veterans Affairs (VA) has received a large number of inquiries regarding the status of claims for compensation from the Agent Orange Settlement Fund, established as a result of the settlement of a class action lawsuit ("Agent Orange" Product Liability Litigation) brought by Vietnam veterans and their families against the manufacturers of Agent Orange.

Neither VA nor any other Federal department or agency is directly involved in the distribution of the settlement funds. Information on this matter can be obtained by calling, toll-free 1-800-225-4712, or writing to the Agent Orange Veteran Payment Program, P.O. Box 110, Hartford, Connecticut 06104.

Registry Used to Notify NHL and STS Victims About Compensation

Shortly following Secretary Derwinski's announcements regarding compensation for non-Hodgkin's lymphoma (NHL) and soft tissue sarcomas (STS), the Environmental Medicine Office sent letters to several hundred Vietnam veterans identified in the VA Agent Orange Registry as possible NHL or STS victims urging them to file claims for disability compensation.

These veterans were advised that while VA has not yet issued regulations implementing the Secretary's decisions, prompt filing of claims may increase the amount of money they would receive if found to be entitled to benefits. The letter encouraged veterans to contact a veterans benefits counselor at the nearest VA regional office. Questions concerning the status of previously filed claims also should be directed to the nearest regional office.

Agent Orange Registry

In mid-1978, VA set up a register of Vietnam veterans who were worried that they may have been exposed to herbicides which might be causing a variety of ill effects and who took an extensive medical examination offered at all VA health care facilities. The Agent Orange Registry is a computerized index of those examinations.

One important benefit of the Registry is that it allows VA to contact a veteran or group of veterans in the event that the results of continuing research efforts or policy decisions make this action advisable. A number of the NHL and STS sufferers had not filed a claim with VA for disability compensation.

Vietnam veterans interested in receiving the Agent Orange Registry examination or seeking information on this program should contact the Agent Orange Coordinator at the nearest VA medical facility.

LEGAL NOTICE

IMPORTANT INFORMATION FOR THOSE INTERESTED IN AGENT ORANGE DISABILITY COMPENSATION OR DEPENDENCY AND INDEMNITY COMPENSATION (DIC)

The Court's decision in the lawsuit of *Nehmer v. U.S. Veterans' Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989) ("*Nehmer lawsuit*") may affect your entitlement to disability compensation or dependency and indemnity compensation (DIC) benefits from the Department of Veterans Affairs, formerly known as the Veterans Administration ("VA"). The *Nehmer lawsuit* was brought on behalf of all current or former members of the U.S. Armed Forces, or their next of kin, who have had a claim denied by VA, or have a claim pending, or are or will become eligible to file a claim for service-connected disability or death benefits arising from exposure during military service during the Vietnam war to herbicides containing dioxin. Dioxin is a chemical that was contained in the herbicide "Agent Orange" that was sprayed in Southeast Asia during the Vietnam war.

On May 3, 1989, U.S. District Judge Thelton Henderson overturned a portion of VA's regulations covering disability and death claims based on Agent Orange/dioxin exposure and all benefit denials made under those regulations.

As a result of the Court's decision, VA has begun to create regulations to cover Agent Orange-related claims. You and other members of the public may participate in this process (referred to as rulemaking proceeding).

Once VA publishes its new regulations, VA will provide written notice both to those of you denied benefits under the previous regulation (all claimants who submitted dioxin benefit claims that were denied by VA after September 25, 1985) and to those of you who have pending claims based on Agent Orange, and allow you a reasonable and specified time to present additional evidence and reasons why your claim should be granted under the new regulations. If you don't present any additional evidence, VA will examine your claim on the basis of the information already before it.

If you have not filed a claim, you have a right to do so to seek compensation for any disability or death that you believe is connected with exposure to Agent Orange during military service. Any claim you now file will be decided under the rules VA ultimately adopts in the new rulemaking proceeding. If your claim is approved by VA, under the new regulations the amount of money you will receive may depend upon the date VA receives your claim. *The earlier VA receives your claim, the more money you may receive if your claim is approved.*

Claims forms (VA Form 21-526 for service-connected disability claims and VA Form 21-534 for service-connected death claims) are available at any VA Regional Office.

If you already have filed a claim for compensation for a disability or death that you believe was connected with exposure to Agent Orange and that claim was finally denied (after all appeals, if any) by VA before September 26, 1985, the decision in the *Nehmer lawsuit* does not require VA to reopen your claim. However, you may now file a new claim. Any new claim you now file will be decided under the rules that VA ultimately adopts in the new rulemaking proceeding.

Questions about this notice and your rights can be answered by a benefits counselor at a VA Regional Office who can be reached by calling the local or "800" number listed under "United States Government" or "Veterans Administration" in your local telephone book. You can also contact the lawyers who represent the veterans or their next of kin who are class members in the *Nehmer lawsuit*. The address of these lawyers is:

Counsel for Plaintiff's Class
National Veterans Legal Services Project
Attention: *Nehmer* Class Member Information
2001 S. Street, N.W.
Suite 610
Washington, DC 20009

...What Does It Mean

On or about March 1, 1990, this legal notice was sent to hundreds of thousands of Vietnam veterans and their families throughout the Nation. Unfortunately, many veterans were confused or unduly alarmed by the notice. The information below is designed to clarify this matter. (The notice and this explanation were also included in the May 1990 issue of the "Review.")

If you have filed a claim for VA disability compensation or VA dependency and indemnity compensation based on Agent Orange or dioxin exposure and VA has not yet made a decision, you need not take any action. When the new regulations are issued, VA will notify you that your claim is being reevaluated and that you may submit additional evidence to support your claim.

If you have filed a claim for VA disability compensation or VA dependency and indemnity compensation based on Agent Orange or dioxin exposure and VA denied your claim after September 25, 1985, you do not have to take any action. When the new regulations are issued, VA will notify you that your claim is being reevaluated and that you may submit additional evidence to support your claim.

If you have not yet filed a claim (or if you wish to file a new claim) for compensation for any disability or death that you think is related to exposure to Agent Orange exposure in military service, you should do so without delay. It is important to remember that **the earlier VA receives your claim, the more money you may receive if your claim is approved**. Claim forms are available at all VA regional offices.

Veterans benefits counselors at VA medical centers also should have these forms. The telephone numbers can be found in your telephone book under "U.S. Government." VA personnel will be happy to assist you in any way possible. Do not contact the VA Data Processing Center, which mailed the legal notice, except to provide address update information.

Please understand that the VA compensation program is

completely separate and totally unrelated to the **Agent Orange Veteran Payment Program**, established as a result of the settlement of the class action lawsuit brought by Vietnam veterans and their families against the manufacturers of Agent Orange. Unfortunately, many veterans have confused these two programs.

Office of Environmental Epidemiology Conducts VA Research Projects

The VA Office of Environmental Epidemiology (OEE) conducts or manages most VA Agent Orange-related and Vietnam experience-related research efforts. OEE projects that have been completed and published to date include two soft tissue sarcoma studies, a large scale Vietnam veterans mortality study, and a suicide study.



Dr. Han K. Kang

Other OEE research efforts that have been completed and accepted for publication by medical or scientific journals include a dioxins and furans in adipose tissue study, a report on mortality and morbidity among Army Chemical Corps Vietnam

veterans, a proportionate mortality study of Army Vietnam veterans who served in I Corps, and a follow-up proportional mortality study of Army and Marine Vietnam veterans. Each of these efforts are expected to be published late this year or early next year. Several other initiatives are nearing completion, and a number of projects are ongoing or planned.

Dr. Han K. Kang has led this research group since March 1983. He previously served as a senior epidemiologist with the Occupational Safety and Health Administration in the Department of Labor. Dr. Kang heads a staff of ten. OEE is part of the VA Medical Center in Washington, DC, but receives program direction from the Environmental Medicine Office, formerly known as the Agent Orange Projects Office, at VA Central Office.

Agent Orange Review

**Information for Veterans
Who Served in Vietnam**
August 1990



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