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DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

Jean Mager Stellman
Professor Emerita & Special Lecturer
Mailman School of Public Health
Department of Health Policy & Management
600 west 168th Street, 6th Floor
New York, NY 10032

Dear Dr. Stellman:

I am responding on behalf of Allison A. Hickey, the Department of Veterans Affairs (VA) Undersecretary for Benefits. Thank you for the letter expressing your views, and those of your colleagues, on the important matter of Agent Orange herbicide exposure and its relationship to Veterans who served stateside aboard C-123 aircraft previously used for aerial spraying of Agent Orange over Vietnam.

It appears you question the scientific analysis on this issue provided by the VA Office of Public Health and believe disability compensation should be based on evidence of dried dioxin residuals present on the interior surface of a C-123 aircraft. We appreciate your interest in this group of Veterans and the information you have provided. It will be considered as a source of evidence when adjudicating claims from this group of Veterans. However, we must also consider the evidence described below and must follow the laws that govern disability claims based on Agent Orange exposure. All claims are evaluated on a case-by-case basis.

Disability compensation provided by VA must be based on establishing service connection. This requires evidence of a current disability, evidence of an injury, disease, or event in service, and evidence of a medical nexus or link between the two. When Agent Orange exposure is claimed as the basis for the current disability, there are two routes to service connection. If the Veteran's service falls under the Agent Orange Act of 1991, which establishes a presumption of herbicide exposure for service in Vietnam, then the Veteran is eligible for service connection of diseases associated with such exposure by VA without the need for a medical nexus. Service aboard post-Vietnam C-123 aircraft does not meet the requirement for Vietnam service and so there is no presumption of exposure for these Veterans. Therefore, the alternative route to service connection is required which involves evidence of direct exposure on a facts-found basis.

Dr. Stellman

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The evidence associated with service on post-Vietnam C-123 aircraft shows that some of these aircraft contained dried residual traces of the Agent Orange herbicide contaminant dioxin, which could only be obtained and measured by rubbing the interior metal surface with the solvent hexane. You have stated that the dioxin obtained by this process is sufficient to establish that the crewmembers were “exposed.” However, the scientists and medical doctors of the VA Office of Public Health have documented with scientific literature that residual trace amounts of dioxin on metal surfaces is not biologically available for skin absorption or inhalation because it is not water or sweat soluble and does not give off airborne particles. As a result, they have concluded that the likelihood of dioxin exposure was minimal. Your view of potential exposure must be weighed against their view when VA evaluates a disability claim.

In addition to the issue of potential exposure, there is the issue of establishing a medical nexus or link between the in-service event of flying on a post-Vietnam C-123 aircraft and development of a current Agent Orange exposure-related disease. VA laws and policies related to Agent Orange exposure, whether presumptive or based on facts-found evidence, address exposure contact that occurs during the actual spraying or handling of the dioxin-containing liquid herbicide. There are no provisions for secondary or remote exposure, as is the case with dried dioxin residuals on metal surfaces found many years after the liquid state. The scientific evidence available to establish a medical nexus in these cases is limited and the VA Office of Public Health has provided a medical opinion that it is insufficient to establish the required nexus. While your letter focuses on the issue of potential dioxin exposure, it does not offer an opinion on the medical nexus issue nor does it address the potential for long-term health effects or disabilities resulting from service on the post-Vietnam C-123 aircraft.

Another issue you raised is the wording of the Agent Orange Act of 1991, which establishes a presumption of exposure to “herbicide agents” used in Vietnam that includes chemicals other than dioxin. You state that consideration should be given to these other chemicals when considering disability compensation based on exposure because they may have been present in the post-Vietnam C-123 aircraft. However, since there is no presumption of exposure to any herbicide agents without Vietnam service, this legislation is not applicable. Additionally, the National Academy of Sciences’ Institute of Medicine, which is named in this legislation as a major source of scientific information related to herbicide agent exposure and its adverse health effects, has determined that dioxin is the primary “chemical of interest” associated with adverse health effects. If a disability claim were based on exposure to other herbicide agents, the same evidence of direct facts-found exposure and a medical nexus would be required for service connection.

Dr. Stellman

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We appreciate your input and the evidence you have provided on the issue of disability compensation for Veterans who served aboard post-Vietnam C-123 aircraft. When VA receives claims from Veterans based on this service, they will be evaluated based on the totality of the evidence, as described above, and determinations will be made on a case-by-case basis.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Murphy', with a long horizontal flourish extending to the right.

Thomas J. Murphy
Director
Compensation Service