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Direct Exposure to Agent Orange

July 29, 2011/in General /by Matthew Hill

Direct Exposure to Agent Orange Subic Bay Philippines

The VA has admitted that exposure to Agent Orange can be very harmful to one's health, and the exposure can lead to the development of several serious diseases. In most Agent Orange cases, the VA concedes that the veteran has been exposed to Agent Orange due to a presumption of exposure. The VA has granted broad presumptive exposures to veterans who served on the ground in Vietnam. The VA also has extended presumptive exposure to veterans who served in the DMZ in Korea in the late 1960s and early 1970s. Recently, the VA has additionally conceded that Agent Orange was used in Thailand and has started granting the presumption of exposure to veterans that served there as well. Essentially, if a veteran served in one of these areas, the VA presumes that that the veteran was exposed to Agent Orange. But what about veterans that served outside the presumptive areas and were still exposed to Agent Orange?

Those veterans have to prove to the VA that they came into direct contact with Agent Orange. These cases are difficult for several reasons. First, the VA is not likely to help the veteran with his case. Even though the VA has a duty to assist veterans in developing evidence to prove their cases, when it comes to cases involving exposure to Agent Orange outside of the presumptive areas, the VA will not help veterans get records. Furthermore, the Department of Defense has stated that Agent Orange was made in Gulfport, Mississippi and shipped directly to Vietnam. It is extremely difficult to find service records documenting the storage or use of Agent Orange outside of Vietnam.

Recently, Hill & Ponton won a case where the veteran never set foot in Vietnam. The veteran was stationed in Subic Bay Philippines. He was responsible for guarding an ammo depot. He testified that merchant ships would bring in barrels of Agent Orange and that he would have to guard the barrels at the dock. The VA Regional Office denied the case stating that there was never any Agent Orange sent to Subic Bay from Gulfport, Mississippi. We found evidence that the Agent Orange was actually produced in New Zealand and sent directly to Subic Bay Philippines. Through the New Zealand evidence, buddy statements from men who served with the veteran, and the veteran's testimony that he had the liquid from the barrels leak onto his shoes, we were able to convince a judge at the Board of Veterans' Appeals that this veteran did have direct exposure to Agent Orange.

Once you prove that a veteran was exposed to Agent Orange—presumptively or directly—then the veteran is entitled to service connected compensation for any disability on the VA's presumptive list. So, in our Subic Bay case, the veteran has diabetes mellitus. Now that we have shown that he had a direct exposure to Agent Orange, he is entitled to compensation for the diabetes because that disease is on the VA's presumptive Agent Orange diseases list.

As you can see, cases involving direct exposure to Agent Orange are much more difficult than presumptive exposure cases. Direct exposure cases require the veteran to go the extra mile to find supporting documents and witnesses to verify the veteran's statements. The important lesson to take away, though, is that just because it is difficult does not mean it is impossible. If you believe that you were exposed to Agent Orange outside a presumptive area—on a Naval ship or a place like Subic Bay Philippines where it was stored—do not give up when the VA denies your claim. Instead, realize that you are going to have to find the evidence without the VA's help.