Asbestos Related Disability Claims

Trainee Handout

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Objectives

TheVSRwill be able to:

* Identify and understand the characteristics of asbestos and health effects associated with exposure
* Identify occupations at a high risk for asbestos exposure
* Develop claims for disabilities caused by asbestos exposure

References

* [**CFR 4.97, Schedule of ratings—respiratory system**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.4&rgn=div5#se38.1.4_197)
* [**M21-1 Part IV, Subpart ii, 1.I.3, Developing Claims for SC for Asbestos-Related Diseases**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#agent/portal/554400000001034/article/554400000033326/M21-1-Part-IV-Subpart-ii-Chapter-1-S)
* [**M21-1 Part IV, Subpart ii, 2.C.2, SC for Disabilities Resulting From Exposure to Asbestos**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014556/M21-1-Part-IV-Subpart-ii-Chapter-2-S)

Topic 1: Asbestos Overview

**Asbestos Description**

***Asbestos*** is a fibrous form of a silicate mineral of varied chemical composition and physical configuration, derived from serpentine and amphibole ore bodies. The asbestos fibers are obtained from these minerals after the rocks have been crushed. When materials containing asbestos are disturbed or damaged, the asbestos fibers and particles are released into the air. Breathing asbestos fibers can lead to an increased risk of lung disease.

The six types of asbestos are:

* Crocidolite and Amosite – Were distributed in large quantities from Africa for products manufactured in the United States.
* Chrysotile – The most commonly encountered form in the United States.
* Tremolite, Actinolite, and Anthrophyllite – Less common but still found in construction and insulation materials.

**Asbestos Use**

Due to concerns about the safety of asbestos, the use of materials containing asbestos has declined in the United States since the 1970s.

Common materials that may contain asbestos include:

* Steam pipes for heating units and boilers
* Ceiling tiles
* Roofing shingles
* Wallboard
* Fire-proofing materials
* Thermal insulation

**Asbestos Exposure**

Asbestos fiber masses have a tendency to break easily into tiny dust particles that can float in the air, stick to clothes, and may be inhaled or swallowed.

The biological actions of the various fibers differ depending upon the size and type of asbestos fibers, which are either chrysotile or crocidolite and amosite.

Some of the major occupations for exposure to asbestos include:

* Mining
* Milling
* Work in shipyards
* Insulation work
* Demolition of old buildings
* Carpentry and construction
* Manufacture and servicing of friction products, such as:
	+ Clutch facings
	+ Brake linings
* Manufacture and installation of products, such as:
	+ Roofing and flooring materials
	+ Asbestos cement sheet and pipe products
	+ Military equipment

Exposure to any simple type of asbestos is unusual except in mines and mills where the raw materials are produced.

High exposure to asbestos and a high prevalence of disease have been noted in insulation and shipyard workers from the World War II (WWII) era.

During WWII, several million people employed in U.S. shipyards and U.S. Navy Veterans were exposed to asbestos products used extensively in military ship construction.

Many of these people have only recently sought medical attention because of the potentially long latent period between first exposure and development of disease.

Disease-causing exposure to asbestos may be:

* Brief, and/or
* Indirect

The latent period for development of disease due to exposure to asbestos ranges from 10 to 45 or more years between first exposure and development of disease.

**Health Effects of Asbestos Exposure**

A clinical diagnosis of asbestosis requires:

* A history of exposure
* Radiographic evidence of parenchyma lung disease

General effects of inhalation of asbestos fibers can produce:

* Fibrosis, the most commonly occurring of which is interstitial pulmonary fibrosis, or asbestosis
* Tumors
* Pleural effusions and fibrosis
* Pleural plaques (scars of the lining that surround the lungs)
* Mesotheliomas of pleura and peritoneum
* Cancers of the:
	+ Lung
	+ Bronchus
	+ Gastrointestinal tract
	+ Larynx
	+ Pharynx
	+ Urogenital system, except the prostate

Signs and symptoms of asbestosis include:

* Dyspnea on exertion
* End-respiratory rales over the lower lobes
* Compensatory emphysema
* Clubbing of the fingers at late stages
* Pulmonary function impairment and cor pulmonale that can be demonstrated by instrumental methods

Chrysotile asbestos:

* Initially affects the small airways of the lung
* Causes asbestosis (scaring of the lung tissue) more slowly
* Results in lung cancer more often

Crocidolite and Amosite asbestos:

* Initially effects the small blood vessels of the lung, alveolar walls, and pleura
* Results more often in mesothelioma

Specific effects of exposure to asbestos include the following cancers:

* Lung that:
	+ Originates in the lung parenchyma rather than the bronchi
	+ Eventually develops in about 50% of persons with asbestosis
* Gastrointestinal that develops in 10% of persons with asbestosis
* Urogenital that develops in 10% of persons with asbestosis
* Mesothelioma that develops in 17% of persons with asbestosis

All persons with significant asbestosis develop:

* Cor pulmonale (enlargement of the right ventricle of the heart)
* Heart disease secondary to disease of the lung or its blood vessels

Those who do not die from cancer often die from heart failure secondary to cor pulmonale.

Topic 2: Asbestos Related Disability Claims Development

Asbestos Exposure, No Claimed Condition

If a Veteran alleges exposure to asbestos during service, but does not claim service connection for a specific disability, the claim may not be substantially complete.

If asbestos exposure is the only issue listed on the application:

* Change the EP to a 400
* Use the ***Incomplete Application Letter*** template under the IPC drop down in Letter Creator
	+ Add the following paragraph between the first and second paragraphs of the letter template\*:
		- *Specifically, you did not list a specific disease that resulted from asbestos exposure. Tell us why you believe the disability was caused by asbestos and provide some evidence, such as a medical opinion, of this relationship.*
* Once the letter is uploaded and sent, clear the 400 EP

**\*The beginning of your edited letter should look like this:**

*We received VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits on September 6, 2016. We are returning this application form to you because it was incomplete. We cannot process your claim until the highlighted part of the form is completed.*

*Specifically, you did not list a specific disease that resulted from asbestos exposure. Tell us why you believe the disability was caused by asbestos and provide some evidence, such as a medical opinion, of this relationship.*

*If we receive your completed application within one year from the date we received your incomplete application, we will consider your claim filed as of the date of receipt of your incomplete application. If we receive your completed application more than one year from the date we received your incomplete application, we will consider your claim filed as of the date of receipt of the completed application.*

**DO NOT**:

* Process the claim as a denial
* Establish EP control for the incomplete claim

If there are other issues listed on the application:

* Attempt to contact the Veteran by phone and identify the disability that resulted from exposure to asbestos during service
	+ If successful, process the claim as normal
* If unsuccessful, send the Veteran a development letter requesting this information
* Inform the Veteran that no further action will be taken on this issue unless the Veteran identifies a medical condition related to asbestos exposure

**DO NOT:**

* Deny the exposure issue
* Clear the pending EP

**Asbestos Development**

Develop for a claim for disabilities related to asbestos exposure the same as you would for any claim for compensation. This includes requests for:

* STRs
* Private medical records
* Service Verification
* VA Medical Center records
* Vet Center records

The only additional development needed for claims for disabilities related to asbestos exposure is:

* Personnel records (PIES O50 or DPRIS)
* Develop to the Veteran for the cicumstances surrounding exposure
* Medical evicence regarding any asbestos related disabilities (only if the claim was not submitted on a VA Form 21-526EZ)

*\*\*Even if the Veteran submits his claim on a VA Form 21-526EZ, we would need to complete development specific to asbestos exposure. This development will not exclude the Veteran from the Fully Developed Claim program.\*\**

*\*\*If the evidence is already of record, do not develop to the Veteran or a third party\*\**

After gathering all evidence, if it appears an examination may be warranted, annotate any evidence received and route the file to the RVSR for an exam review. It it appears an examination is not warranted, annotate any evidence received and route the file to the RVSR for a decision.

**Asbestos Related Disability Claims - Practical Exercise**

**Scenario 1**

Joseph “Joe” Ashford spent his formative years on the family farm in northern California. He planned to follow in the footsteps of his father as a farmer. However, World War II changed his vocation as he proved to be pretty adept at applying asbestos to pipes. His military occupation specialty (MOS) was as a pipe-fitter on Naval vessels at the Long Beach Naval Shipyard. The Los Angeles Regional Office recently received a formal claim from Joe on a VA Form 21-526 stating that he was suffering from a latent form of lung cancer. He believes that his MOS caused this disease. A review of his efolder reveals that all of his service personnel and service medical records are of record.

1. Does the Veteran have a possible asbestos related disease? If yes, what type of asbestos related disease does he have?
2. What actions need to be performed and/or evidence needs to be gathered? Please list the evidence and indicate how you would request it.

**Scenario 2**

Rusty Scupper served with the Army from 1953 to 1955 at Fort Benning, Georgia, as a cook. Before and after service, Rusty worked as a boilermaker and as a construction worker who specialized in renovating old structures in New York. Rusty completed and submitted a claim for compensation benefits claiming he was just diagnosed with cancer of the larynx. He wrote that his tour with the Army caused his cancer. Additionally, he noted that he had been treated at the Brooklyn VA Outpatient Clinic for the last several months.

1. Does the Veteran have a possible asbestos related disease? If yes, what type of asbestos related disease does he have?
2. What actions need to be performed and/or evidence needs to be gathered? Please list the evidence and indicate how you would request it.

**Scenario 3**

Tank Baumgarten submits a VA Form 21-526EZ claim that his current and very persistent gastroesophageal reflux disease (GERD) was caused by his duty in the Air Force. A review of the claim reveals that he was discharged six months ago and had submitted all service and private medical records which were in his possession. He claims that whenever it rained, he had to walk through the water runoff from the roof of his barracks. Somehow, the water always seemed to get into his mouth. He believes the water was tainted with asbestos because it touched the roofing material. Tank submits a claim for GERD problems secondary to tainted water runoff. Tank recently saw a public broadcasting show on asbestos in the military and noted that some gastrointestinal problems can be linked to asbestos.

1. Does the Veteran have a possible asbestos related disease? If yes, what type of asbestos related disease does he have?
2. What actions need to be performed and/or evidence needs to be gathered? Please list the evidence and indicate how you would request it.