Presumptive Conditions

Trainee Handout

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Objectives

* Understand presumptive service-connection
* Understand presumptive service-connection regulations
* Identify presumptive conditions
* Develop basic practices for handling presumptive service-connection claims

References

All M21-1and CFR references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).

* **[38 CFR 3.309 Disease Subject to presumptive service connection](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58" \l "se38.1.3_1309)**
* [**38 CFR 3.303 (d) Principles relating to service connection**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1303)
* [**38 CFR 3.307 Presumptive service connection for chronic, Tropical or prisoner-of-war related disease, or diseases associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1307)
* [**38 CFR 3.159 Department of Veterans Affairs assistance in developing claims**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1159)
* [**38 CFR 3.313 Claims Based on Service in Vietnam**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1313)
* [**38 CFR 3.316 Claims based on chronic effects of exposure to mustard gas and Lewisite**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1316)
* [**38 CFR 3.317 Compensation for certain disabilities occurring in Persian Gulf veterans**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1317)
* [**38 CFR 3.318 Presumptive service connection for amyotrophic lateral sclerosis**](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1318)
* [**M21-1 IV.ii.1.H Developing Claims for Service Connection Based on Herbicide Exposure**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014940/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-H-Developing-Claims-for-Service-Connection-SC-Based-on-Herbicide-Exposure)
* [**M21-1 IV.ii.2.B.2 Determining Service Connection, Presumptive Conditions**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014553/M21-1-Part-IV-Subpart-ii-Chapter-2-Section-B-Determining-Service-Connection-SC)
* [**M21-1 III.iv.5 Evaluating Evidence and Making a Decision**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/topic/554400000003097/Chapter-05-Evaluating-Evidence-and-Making-a-Decision)
* [**M21-1 III.iv.5.7.a When Development to Obtain Additional Evidence May Be Needed**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/topic/554400000003097/Chapter-05-Evaluating-Evidence-and-Making-a-Decision)
* [**M21-1 III.iv.6.B.5.a Other Issues to Consider When Evaluating Evidence**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/topic/554400000003098/Chapter-06-The-Rating-Decision)
* [**M21-1 III.iv.2.A.2 Considering VA’s Duty to Notify and Assist**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000015807/M21-1-Part-III-Subpart-iv-Chapter-2-Section-A-Preliminary-Review-of-Claims-by-the-Rating-Activity)
* [**M21-1 IV.ii.2.C Service Connection for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam**](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-Section-C-Service-Connection-SC-for-Disabilities-Resulting-From-Exposure-to-Environmental-Hazards-or-Service-in-the-Republic-of-Vietnam-RVN)
* [**M21-1 III.iv.4.F.1.f Scope of Diabetes Claims for Increase**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014199/M21-1-Part-III-Subpart-iv-Chapter-4-Section-F-Endocrine-Conditions)
* [**M21-1 III.iv.4.F.2.a Complications of Diabetes Mellitus**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014199/M21-1-Part-III-Subpart-iv-Chapter-4-Section-F-Endocrine-Conditions)
* [**M21-1 IV.ii.1.I Developing Claims for Service Connection Based on Other Types of Exposure Types**](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-Section-I-Developing-Claims-for-Service-Connection-SC-Based-on-Other-Exposure-Types)
* [**M21-MR III.iv.3.A Examination Requests**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000015809/M21-1-Part-III-Subpart-iv-Chapter-3-Section-A-Examination-Requests-Overview)
* [**M21-MR I.1.C.3. Assisting With Medical Opinion or Examination Requests**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014066/M21-1-Part-I-Chapter-1-Section-C-Requesting-Records)
* [**M21-1 III.iv.3.A.2.c Index of DBQ/Exams by Disability Tool**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000015809/M21-1-Part-III-Subpart-iv-Chapter-3-Section-A-Examination-Requests-Overview)
* [**M21-1 IV.ii.1.B Claims for Service Connection for Radiogenic Diseases Under 38 CFR 3.309(d)**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014904/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-B-Claims-for-Service-Connection-for-Radiogenic-Diseases-Under-38-CFR-3309d)
* [**M21-1 IV.ii.1.E Claims Based on Service in Southwest Asia**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317)
* [**M21-1 IV.ii.1.F Developing Claims for Service Connection for Disabilities Resulting From Exposure to Mustard Gas or Lewsite**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014322/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-F-Developing-Claims-for-Service-Connection-SC-for-Disabilities-Resulting-From-Exposure-to-Mustard-Gas-or-Lewisite)
* [**M21-1 IV.ii.1.G Claims Based on Former Prisoner f War Status**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014323/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-G-Claims-Based-on-Former-Prisoner-of-War-FPOW-Status)
* [**M21-4 Appendix C Section II, Corporate Flashes**](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/topic/554400000004588/Appendix-C-Index-of-Claim-Attributes)

Topic 1: Getting Started with Presumption

**Presumption Explained**

The purpose of this lesson is to help identify what presumptive service connection is and begin to understand the basis in which presumption can be established.

Presumptive conditions are conditions that are considered to have been incurred in or aggravated by service if manifested to compensable level within the time frame specified for that certain disease under the regulation, even if there is no evidence of such a disease during serviceSpecial Issue Claims need to be easily identified to assure they are adjudicated properly.

There are several reasons justifying the widespread use of presumptions in the adjudication of VA benefit claims. Presumptions simplify and streamline the adjudication process by eliminating the need to obtain evidence and decide complex issues. Presumptions also promote accuracy and consistency by requiring similar treatment in similar cases. Presumptions relieve claimants and VA of the necessity to produce direct evidence when it is impractical or unduly burdensome to do so.

To establish service connection for a VA disability compensation claim, a veteran must demonstrate the following:

* that a disability or symptoms of a disability currently exists
* that an event of disease or injury occurred or was aggravated in the military
* that a medical connection can be shown between the service event and the existing disability.

Presumptions lighten the burden of proof when patterns of circumstances impart veterans’ abilities to establish direct service connection. A presumption relieves the veteran of proving one or more of the requirements for direct service connection. The only difference between direct and presumptive service connection is the amount of proof required.

**Types of Presumption**

Presumptions usually link a condition to either a location or an exposure. Presumptions fall into two categories:

* administrative in nature
* medical health outcomes

Administative in nature refers to the following:

* Presumption of death: Presumption of death upon 7 years of unexplained absence (Seven-Year Absence Presumption of Death. 38 U.S.C. § 108[b])
* Presumption of sound condition: “Every veteran shall be taken to have been in sound condition when examined, accepted, and enrolled for service except as to defects, infirmities, or disorders noted at the time of the examination, acceptance, and enrollment, or where clear and unmistakable evidence demonstrates that the injury or disease existed before acceptance and enrollment and was not aggravated by such service.” (Presumption of Sound Condition. 38 U.S.C. § 1111)
* Presumption of service connection—Aggravation: “A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such [active] service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.” (Compensation for Service-Connected Disability or Death. Aggravation. 38 U.S.C. § 1153)
* Presumption of total disability: “A person shall be considered to be permanently and totally disabled if such person is … suffering from any disability which is sufficient to render it impossible for the average person to follow a substantially gainful occupation, but only if it is reasonably certain that such disability will continue throughout the life of the person.” (Veterans’ Benefits. Determination with Respect to Disability. 38 U.S.C. § 1502)

Medical Health Outcomes have been categorized into the following categories:

* Chronic Diseases
* Tropical Diseases
* Former Prisoner of War (POWS)
* Radiation
* Herbicide Agents
* Persian Gulf War
* Mustard Gas and Lewsite
* Amyotrophic Lateral Sclerosis

**Evidence Requirements**

**Service Requirement**

In respect to chronic and tropical presumptive conditions, a veteran must have served 90 days or more of active, continuous service during a wartime period or after December 31, 1946. The date of separation from service will be either the date of discharge during a war period or, if service continued after the war, the end of the war period.

Any period of service after December 31, 1946 is sufficient for establishing presumptive service connection of a specified disease under the conditions listed for POWs and herbicide exposure.

A Persian Gulf veteran means a veteran who had service on active military, naval, or air service in the Southwest Asia theater of operations. The Southwest Asia theater of operations refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

Presumption for Amyotrophic Lateral Sclerosis must show the veteran had 90 days or more of continuous active service.

Claims based on Radiation exposure must show a veteran who while serving on active duty, or an individual who while a member of a reserve component of the Armed Forces during a period of active duty for training or inactive duty training, participated in a radiation-risk activity.

Mustard Gas- the evidence must show the veteran served in the active military, naval, or air service and was discharged or released under conditions other than dishonorable

**Medical Requirement**

38 CFR 3.309 cover presumptive diseases for chronic, tropical, radiation, POW, and herbicide exposure. 38 CFR 3.317 covers disease associated with Persian Gulf veterans.

When reviewing medical evidence we are looking for a diagnosis of the claimed condition **or** symptoms or findings of the condition noted during the presumptive period. A confirmed diagnosis of the presumptive condition does not have to be made during the presumptive period itself.

Chronic Disease: The disease must have become manifest to a degree of 10 percent or more within 1 year (for Hansen's disease (leprosy) and tuberculosis, within 3 years; multiple sclerosis, within 7 years) from the date of separation from service.

Tropical Disease: The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service, or at a time when standard accepted treatises indicate that the incubation period commenced during such service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected.

Former Prisoner of War: The diseases listed in [§3.309(c)](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_309.htm#c) shall have become manifest to a degree of 10 percent or more at any time after discharge or release from active service.

Herbicide Exposure: The diseases listed at [§3.309(e)](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_309.htm#e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and early-onset peripheral neuropathy shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

Gulf War: Disabilities due to undiagnosed illness and medically unexplained chronic multi-symptom illnessesmust becamemanifest either during active military, naval, or air service in the Southwest Asia theater of operations, or to a degree of 10 percent or more not later than December 31, 2016

Amyotrophic lateral sclerosis – can have manifested at any time after discharge or release from active military, naval, or air service is sufficient to establish service connection for that disease.

Radiation/ionizing Radiation- the evidence must show the disease became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in 3.307 or 3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. The following exclusions apply:

* Bone cancer must become manifest within 30 years after exposure
* Leukemia may become manifest at anytime after exposure
* Posterior subcapsular cataracts must become manifest 6 months or more after exposure
* Other diseases specified in paragraph 38 CFR 3.311(b)(2) must have become manifest 5 years or more after exposure

Mustard Gas and lewsite: fall under Muskogee RO jurisdiction.

Topic 2: Into the Depths of Presumption

**Chronical and Tropical Diseases**

When deciding any claim for SC for a chronic or tropical disease, it is necessary to consider

* SC based on manifestation of the claimed disease during service, and
* SC based on a presumption that the disease, which was first manifested following discharge from service, is nevertheless related to service.

Once a substantially complete claim is of record, the following conditions apply

* the possibility of entitlement to presumptive SC exists when the Veteran alleges inception within the limiting periods contained in
	+ [38 U.S.C. 1112](http://www.law.cornell.edu/uscode/text/38/1112), or
	+ [38 U.S.C. 1133](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001133----000-.html), when appropriate
* the Veteran does not need to establish that the disease in question was definitely diagnosed within the presumptive period, and
* the evidence should show that manifestations of the condition, disabling to the degree of at least 10 percent, became apparent prior to the expiration of the presumptive period shown in [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1307&rgn=div8).

When the evidence shows a veteran was treated for a chronic or tropical disease complete the below actions:

If the veteran: files a substantially complete claim for the condition- refer case to the rating activitiy.

If the veteran: did not file a claim for the condition- solicit a claim

When considering presumption for Former Prisoners of War refer to 38 CFR 3.309(c).

**Former Prisoner of War**

A former prisoner of war (FPOW) is defined as a person who, while serving in the active military, naval, or air service, was forcibly detained or interned in the line of duty by an enemy or foreign government, the agents of either, or a hostile force.

Cases are often identified before ever reaching development. POW claims can be identified based on looking in BIRLS to see if a Corporate Flash exist. All Regional Offices have a POW Coordinator to assure these claims are expedited.

When determining a former prisoner of war(FPOW) eligibility to benefits, the VSR must obtain documentation that supports the FPOW status, if evidence is not already of record.

A development letter to the claimant/appellant must be sent requesting:

* the detaining power and circumstances of detention
* the dates and places of internment
* supporting statement(s) from former comrades, and
* any additional supporting documents that are not of record

Review the applicable report maintained on the Defense POW/MIA Accounting Agency

Additional actions may be needed if status can not be confirmed.

* Search Genealogy/personal History Prisoners of War
* Based on dates of service a request can be sent to the appropriate service departmentasking for verification. (Pies 050 or 025 or DPRIS)
* Request confirmation of status from the Benefits Assistance Service by emailing them.

***Note***: When developing for evidence that verifies FPOW status, associate all documentation that supports the Veterans’ Affairs (VA) findings in the Veteran’s claims folder

**Radiation**

Currently, there are 21 radiogenic diseases subject to presumptive SC in both live and death cases under [38 CFR 3.309(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=85bf12b768c222d2a3b78b9c85031c0b&node=se38.1.3_1309&rgn=div8).

*Public Law (PL) 100-321*, enacted May 1, 1988, initially established a presumption of  SC for 13 disabilities.  Eight additional disabilities were added following this original legislation.

Prior to August 14, 1991, the presumption of SC applied only to Veterans exposed to ionizing radiation while on active duty.

*PL 102-86*, enacted August 14, 1991, extended the presumption of SC to include persons exposed while on active duty for training or inactive duty for training.

In October 2006 VA centralized the processing of all claims based on exposure to radiation to the Jackson Regional Office.

A Veteran may be eligible for presumptive service connection (SC) under [38 CFR 3.309(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=85bf12b768c222d2a3b78b9c85031c0b&node=se38.1.3_1309&rgn=div8) ([38 U.S.C. 1112](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001112----000-.html)) only if he/she participated in one of the following radiation-risk activities

* internment as a former prisoner of war (FPOW) in Japan
* post-war occupation of Hiroshima or Nagasaki
* participation in atmospheric nuclear weapons testing
* participation in underground nuclear weapons testing at Amchitka Island, Alaska, or
* assignment to a gaseous diffusion plant at
	+ Paducah, Kentucky
	+ Portsmouth, Ohio, or
	+ area K25 at Oakridge, Tennessee.

Veterans are eligible based on participation in a radiation-risk activity while serving on

* active duty
* active duty for training, or
* inactive duty training.

For a claim to be identified as a Radiation claim the following criteria must be met prior to sending to the Jackson RO:

* The veteran must have identified one of the radiogenic disease listed in 38 CFR 3.309(d)(2) or submitted a verified medical opinion or competent scientific evidence showing that an unlisted condition is a radiogenic disease

**Herbicides**

To establish service connection under 38 CFR 3.307 or 3.309(e) service in the Republic of Vietnam must be shown.

There is no requirement for a specified length of service, duty, or visitation in the RVN under [38 CFR 3.307(a)(6)(iii)](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1307&rgn=div8).  Any length of time in the RVN during the Vietnam era may be sufficient to establish SC for subsequently-developed diseases based on a presumption of exposure to herbicides.

A veteran is considered to have been exposed if during the time frame in the Republic of Vietnam, inland waterways, offshore waters to include anchoring and docking if the duties involved visitation to Vietnam, the DMZ between April 1 , 1968 and August 31, 1971, or on at one of the Royal Thai Air Force Bases in Thailand and the duties would have put the claimant on the perimeter of the base.

Additional development may be needed in the following scenarios:

* If Agent Orange exposure is not shown
* If disability under 38 CFR 3.309(e) has been claimed but no proof of treatment.
* If no disability is claimed.
* If a veteran claims a disability not recognized under 38 CFR 3.309(e).

**Gulf War**

To consider presumption under 38CFR 3.317 the veteran does not have to identify a claimed disability as due to Gulf War service. VA must broadly consider applicable legal avenues that may be available based on the facts – even if not specifically pleaded by the claimant.

When a Veteran has sought treatment for claimed chronic signs and symptoms listed in [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=949d4bf40fb728850a1e6e1579ee234c&mc=true&node=se38.1.3_1317&rgn=div8), it is likely that the medical provider has rendered a diagnosis for those symptoms. However, the existence of a clinical diagnosis with specific etiology, which may weigh against [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=0995d33f9047781b71559a1428fccffd&mc=true&node=se38.1.3_1317&rgn=div8) entitlement, does not preclude the entitlement.

For the veterans condition to be considered under 38 CFR 3.317 either of the two must be shown:

Service in the Southwest Asia theater of operations which refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

Or under 38CFR 3.317(c) term qualifying period of service means a period of service meeting the requirements of paragraph (e) of this section or a period of active military, naval, or air service on or after September 19, 2001, in Afghanistan.

Hazards the veteran may have been exposed to include but are not limited to:

* large burn pits throughout Iraq, Afghanistan, and Djibouti on the Horn of Africa
* particulate matter in Iraq, Afghanistan, and Djibouti on the Horn of Africa
* a large sulfur fire at Mishraq State Sulphur Mine near Mosul, Iraq
* hexavalent chromium exposure at the Qarmat Ali Water Treatment Plant at Basrah, Iraq

Many Veterans suffering from illnesses such as those related to the respiratory, cardiopulmonary, neurological, autoimmune, and/or skin systems may not associate such illnesses with burn pit exposure or be aware of which toxins were released by burn pits. Actively review claims by recognizing potential exposure issues whenever they are reasonably raised by the record and then process those claims in accordance with these provisions.

Actions to take when a claim for exposure to environmental hazards in Gulf War is received:

* Update special issue flash in contentions
* If the Veteran claims exposure to environmental hazards during service, but does not claim SC for a specific disability, the claim is not substantially complete. Inform the Veteran that he/she must at least identify a symptom or cluster of symptoms, because exposure, in and of itself, is not a disability
* If the Veteran claims a disability and states in general due to environmental hazards, ask the claimant to provide at least some general information about the exposure event

**Mustard Gas**

[38 CFR 3.316](http://www.ecfr.gov/cgi-bin/text-idx?SID=21dfef01e95563792f4df209b1404fd0&mc=true&node=se38.1.3_1316&rgn=div8) authorizes service connection (SC) for certain diseases diagnosed in Veterans who underwent full body exposure to Mustard Gas or lewsite during military service.

Full body exposure means that the entire body was exposed to mustard agents or lewsite as opposed to placement drops of mustard agent to lewsite on one or more locations on the skin.

Claims for Mustard Gas on or after January 19, 2005 are centrally processed at the Muskogee Regional Office. All Mustard Gas claims are controlled with a standard EP and EP 688.

Veterans who are eligible for benefits based on exposure to Mustard Gas include:

* exposed during field or chamber testing
* exposed under battlefield conditions in World War I
* present at the German air raid on the harbor of Bari, Italy, in

World War II

* engaged in the manufacturing, handling, or destruction of

vesicant agents during military service, or

* some Operation Iraqi Freedom service members who

demolished or handled explosive ordinance

Conditions for which full body exposure to Mustard Gas may be awarded can be found under M21- 1 IV.ii.1.F.1.c and 3.316.

Before the file can be transferred to the Muskogee Regional Office the following is needed:

* Special issue flash in contentions screen
* A Specific disability needs to be claimed. If no disability

 is claimed the veteran needs notified that exposure in and

of itself is not a disability and ask the veteran to identify

 the disability that resulted from the exposure.

**Amyotrophic Lateral Sclerosis (ALS)**

A presumption of service connection was established under 38 CFR 3.318 for amyotrophic lateral sclerosis (ALS) for any veteran who develops the disease at any time after separation from service.

Service connection can be established under 38 CFR 3.318 if:

* The evidence shows 90 days or more of continuous active service.
* There is no affirmative evidence showing that the ALS was incurred during or aggravated by active military, naval, or air service.
* There is no evidence showing the ALS was due to the veteran’s own willful misconduct

Topic 3: Applying Concepts for Presumption

**Development Requirement**

Often, veterans will simply state, “I’d like to file a claim for \_\_\_\_ (insert disease/disability).” They do not specify what type of service connection they want (i.e, direct, presumptive, aggravated, etc.) because claimants are often not versed in our regulations. Therefore, under our VCAA and Duty to Assist regulations, VA must inform the veteran of all possible aspects of service connection for his or her disability.

The VA must provide the claimant a 5103 notice (if claim was not submitted on a VA Form 21-526ez). The VA must provide the claimant notice asking for any information and medical or lay evidence not previously provided that is necessary to substantiate the claim. The letter must also include any presumptive paragraphs that may help the veteran substantiate the claim where the evidence is not already of record.

No development is required when the following have been met:

* Presumptive issue has been claimed under 38 CFR 3.309, 3.313, 3.311, 3.316, 3.317, 3.318
* Exposure is shown based on the evidence of record
* Medical evidence has been provided showing the condition has been diagnosed
* Applicable time period for the presumptive condition is shown
* The presumption removes the need to prove a nexus between the current diagnosis and the in-service exposure. Therefore, when the evidence is sufficient for the presumption to arise, SC is established (assuming that generally applicable requirements such as Veteran status based on a qualifying discharge have been met) *unless* other evidence rebuts the presumsumption.

**Note:** Please assure trainees understand this is based on claims for original service connection.

**Examinations**

If the veteran is claiming an increase and provides medical evidence review the diagnostic code criteria in 38 CFR Part 4 and discuss with a rater to determine if an exam may be needed or if there is enough evidence to grant the benefit sought

A medical opinion or examination is necessary when there is not sufficient medical evidence of record to make a decision on the claim, and

* there is competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability
* the evidence establishes that the Veteran
	+ suffered an event, injury, or disease in service
	+ has a disease or symptoms of a disease listed under 38 CFR 3.309 or 38 CFR 3.313 manifesting during an applicable presumptive period
* The evidence indicated the claimed disability or symptoms may be associated with service

Always review the evidence of record prior to requesting an exam. There are different scenarios for each presumptive condition. One scenario that would not require additional development. If the veteran claims one of the cancers listed in 38 CFR 3.309(e), such as lung cancer, proof of Vietnam service is shown, there is *current* evidence showing active cancer and the type of treatment, a VA exam is not necessary. This is because the rating schedule dictates that active cancer is **evaluated** as 100% disabling.

**Elements of Exams**

**Element** 1: must be met before an examination is warranted is the presence of competent evidence of

* a current disability, ***or***
* persistent or recurrent symptoms of disability.

When reviewing the evidence to determine whether Element 1 has been satisfied.

* Competent lay *or* medical evidence of current symptoms may be sufficient to raise a medically answerable question that warrants the ordering of a VA examination.
	+ The evidence must be credible.
	+ There is no presumption of credibility for the purposes of determining whether Element 1 has been satisfied.
* If there is contradictory evidence as to whether the disability or symptoms are present consider the element met.
* Do not decline to order exam simply because there is no diagnosis.

Example of Element 1: Veteran claims diabetes states he feels dizzy, light-headed often, blurred vision sometimes, always feel thirsty. Consider Element 1 has been met.

**Element 2**: is met when one of the following is established:

* An event
* An injury
* A disease

Example of Element 2 being met on a presumptive level: Claim for diabetes, veteran served during Vietnam Era, Proof of in country service shown in personnel file. The event would be the exposure to Agent Orange.

**Element 3:** The third element that must be met to warrant an examination is an indication that the diagnosis or symptoms may be associated with the established event, injury or disease in service

This is where we say that presumption lightens the burden of proof. Element 3 is providing the nexus if the issue being claimed is diabetes and RVN is shown no nexus is needed as 38 CFR 3.309 is considered our nexus as it is a presumptive condition.

**Scenario for Developing for Presumption**

When a prescribed form is received and initial development is initiated it must be determined what conditions are being claimed. Since a claim for one benefit can also be a claim for other benefits, consider entitlement to other benefits, if applicable. As in cases where a veteran claims diabetes he/she may not say due to Agent Orange so even though a veteran doesn’t claim it that way it doesn’t mean we shouldn’t also consider it as a presumptive condition if the veteran’s service falls within the Vietnam Era.

There are two instances when a Veteran may be service-connected on a presumptive basis.

* Under 38 CFR 3.309(a), a Veteran may be service-connected for DM if there was a diagnosis within one year of discharge, as long as the Veteran meets at least the ten percent requirement.
* Under 38 CFR 3.309(e), a Veteran who was exposed to herbicides in service may be service-connected for DMII, if it is diagnosed at any time.

The initial step in reviewing conditions based on presumptive service connection is the VSR should add all special issue flashes to contentions and any corporate flashes that may be needed.

Second a review of the evidence of record is needed. When reviewing evidence both medical and non-medical evidence must be considered.

* Medical evidence provides us with information such as symptoms of the disability, diagnosis, if there are complications, etc.
* Non-medical evidence provides us with information such as exposure verification, veteran status, etc.

After review ask whether the following has been met:

* Is service verified?
* Is the condition being claimed found under 38 CFR 3.309?
* Has exposure been confirmed?
* Is there enough evidence to grant the benefit sought?

**Scenario**

If any of these answers are no additional development may be needed. Develop to the claimant by providing the claimant notice asking for any information, medical or lay evidence, not previously provided that is necessary to substantiate the claim. The letter must also include any presumptive paragraphs that may help the veteran substantiate the claim where the evidence is not already of record.

Third, after determining if additional development is needed and analyzing the evidence available, if it shows the condition manifested within the time requirement and other requirements are met, we need to determine if the evidence is adequate for rating purposes or if a VA examination is needed

The VSR can do the following to make this determination:

* Review diagnostic code criteria for the condition as sometimes the description of what is needed is provided in 38 CFR Part 4
* Review the evidence and determine if the veteran is on medication, on a restricted diet, etc
* Discuss with a RVSR when uncertainty exist.

Attachment A: Topic 3 Exercises

**Exercise 1**

Mr Smith submits an original claim for diabetes due to Agent Orange while stationed in Vietnam on a VA Form 21-526EZ. The veteran’s service is VADS verified; however no DD 214 is of record the service reflects in BIRLS as 03/15/1968 – 03/20/1971. What actions will you take?

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**Exercise 2**

The veteran files a claim for diabetes on a VA Form 21-526b. The veteran’s service is verified from 08/13/1967-09/01/1970. DD 214 in file reflects Vietnam service. Review of Capri shows the veteran has a diagnosis of diabetes and is on a restricted diet to help control the condition. What actions are needed? Explain.

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**Exercise 3**

The veteran submits a claim for increase in diabetes and is service connected for diabetes at 10%. Service is verified and Vietnam service is confirmed. The veteran states he continues treatment at the VAMC. After review of CAPRI we see the veteran’s treatment shows the veteran requires insulin. What actions are needed?

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**Exercise 4**

The veteran submits a claim on VA Form 21-526ez for diabetes he states he has unexplainable weight loss and he’s always hungry and thirsty. Service is verified in BIRLS, DD 214 reflects service as Navy veteran from 04/01/1967-04/01/1970 no proof clearly showing Vietnam service, review of personnel file available shows the veteran was assigned to the USS Current during his time in service. No proof of treatment shown by the evidence of record. What actions are needed?

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Practical Exercise

1. How can a Veteran be presumed to have been exposed to an herbicide agent?

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1. Name one example of an occupational specialty that may have put a Veteran along the perimeter in Thailand to concede herbicide exposure and a reference that gives these examples.

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1. Which regulation provides a list of presumptive conditions?

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1. Name two categories presumption falls into.

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1. What is the medical requirement for a chronic disease?

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1. Where can information be found for where to send a claim based on exposure to Mustard Gas?

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