Development Based on Gulf War Veterans with Southwest Asia Service

Trainee Handout

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Objectives

Given all available resources to include the live manual, development activity personnel will be required to accomplish the following lesson objectives.

* Determine if the Veteran meets Southwest Asia Service Eligibility as a Gulf War Veteran
* Determine if 5103 notification for Gulf War Veterans is required
* Determine if a VA examination for Gulf War claim is warranted or needed

References

All M21-1 references are found in the [Live Manual Website](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034).

* [38 CFR §3.2 Periods of War](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58" \l "se38.1.3_12)
* [38 CFR §3.159, Department of Veterans Affairs assistance in developing claims](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1159)
* [38 CFR §3.317, Compensation for certain disabilities occurring in Persian Gulf Veterans](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1317)
* [M21-1, Part IV, Subpart ii, Chapter 1, Section E – Developing Claims Based on Service in SWA](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317)

Topic 1: Verification of Southwest Asia Service

To verify service, look at the Remarks section of DD Form 214. The Remarks section should include the location of foreign service, and the dates of that service.

When reviewing a Veteran's [DD214](https://tpss.vba.va.gov/ConsistStudies/runtime/470200000060.html), take a look at the **REMARKS** block and the field which identifies [decorations](https://tpss.vba.va.gov/ConsistStudies/runtime/470200000060.html), medals, badges, citations and campaign ribbons awarded to the Veteran.



Use the table below when reviewing the Veteran’s DD Form 214 for verification of Southwest Asia service.

|  |  |
| --- | --- |
| **If the DD Form 214 shows…** | **Then consider…** |
| service in Southwest Asia with exact dates listed in the *Remarks* sectionIraq Campaign Medal, orKuwait Liberation Medal | service in Southwest Asia verified. |
| Southwest Asia Service Medal | service in Southwest Asia potentially verified.***Important:***  Review the *DD Form 214* and/or personnel records to ensure that this medal was not awarded solely for service in Israel, Egypt, Turkey, Syria, or Jordan (including the airspace above and the territorial waters) from January 17, 1991, through November 30, 1995. |
| Global War on Terrorism Service/Expeditionary Medal, orInherent Resolve Campaign Medal | service in Southwest Asia ***not*** verified, andrequest service personnel records, if not already of record, for verification of Southwest Asia service.***Reference***:  For more information on procedures for locating and obtaining personnel records, see[M21-1, Part III, Subpart iii, 2.D](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014158/M21-1%2C-Part-III%2C-Subpart-iii%2C-Chapter-2%2C-Section-D---Requesting-Information-and-Records-Through-the-Personnel-Information-Exchange-System-%28PIES%29), **and**[M21-1, Part III, Subpart iii, 2.B.5](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014155/M21-1%2C-Part-III%2C-Subpart-iii%2C-Chapter-2%2C-Section-B---Migration-of-Service-Records-and-the-Procedures-for-Obtaining-Them).  |
| Afghanistan Campaign Medal | service in Afghanistan verified for the sole purpose of a claim for presumptive SC for infectious diseases listed under [38 CFR 3.317(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=9455393d1e81372be32a98bc63592566&mc=true&node=se38.1.3_1317&rgn=div8), andSouthwest Asia service *not* verified for the purpose of compensation for undiagnosed illness or MUCMIs. |

**Requesting Service Department Records in SWA claim**In addition to service treatment records (STRs), request

* clinical records, if the Veteran furnishes information on the application about specific inpatient treatment, and
* service personnel records, if the dates of service in Southwest Asia during the Gulf War period that began on August 2, 1990, are not already of record.

***Note***:  Concurrently request clinical records, service personnel records, and STRs, if all are needed.

**Requesting Medical Evidence in Claims under 38 CFR 3.317**

Request reports of all private and Department of Veterans Affairs (VA) medical treatment that is indicated by the Veteran, both during and after service, including records such as

* statements or reports from
* doctors, hospitals, laboratories, medical facilities, and mental health clinics
* x-rays, and physical therapy records

***Note***:  If the Veteran indicates that a Gulf War Registry Health examination has been conducted, request the examination report from the appropriate medical facility.

**Exposure to Environmental Hazards but claims no Disability**

* A claim is not substantially complete if a Veteran alleges exposure to environmental hazards during service but does not claim service connection for a specific disability.
* In cases such as these, follow the procedures for handling an incomplete application.

***Important:***  When a Veteran with Southwest Asia service files a claim for a sign or symptom of undiagnosed illness or medically unexplained chronic multi-symptom illness (MUCMI), it must be processed as a substantially complete claim.

**5103 Notification Requirements**

It is unnecessary to issue the 5103 notice when a Veteran files a new claim for SC for a qualifying disability that resulted from service in Southwest Asia on a form that provides, or otherwise indicates he/she receive, the notice.

**Example:** VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits.

|  |
| --- |
| **Note:** If a Veteran alleges joint and/or muscle pain without specifying which joint(s) and/or area(s) affected |
| * make an attempt to contact the Veteran by telephone to specify the joint(s) and/or area(s) affected, **and**
* even if telephone contact is unsuccessful, proceed with all necessary claims development procedures, including requesting an examination, if needed to decide the claim.
 |

**Topic 2: Overview of Southwest Asia Exams**

**Gulf War Registry Examinations**

The Gulf War Registry Examination is part of the Veteran's Health Administration Persian Gulf Registry. We need to make sure these results have been obtained and considered with Gulf War claims. This registry exam can be used to establish the chronicity requirement under [**38 CFR 3.317**](https://tpss.vba.va.gov/ConsistStudies/runtime/470200000080.html).

These evaluations are offered at VA Medical Centers, which use the registry data to help VA understand and respond to these health problems more effectively. Veterans who served in the Gulf during Operation Desert Shield, Operation Desert Storm, Operation Iraqi Freedom, or Operation New Dawn are eligible for the Gulf War Registry exam.

**When is Exam Necessary in SWA Claims**

When an examination is needed to decide the claim, [38 CFR 3.159(c)(4)](http://www.ecfr.gov/cgi-bin/text-idx?SID=0995d33f9047781b71559a1428fccffd&mc=true&node=se38.1.3_1159&rgn=div8) provides that an examination must be requested in cases falling under [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=5a1991dcf0fbbbeb73d1a8cbdf5f4d5b&ty=HTML&h=L&r=SECTION&n=se38.1.3_1317) when there is:

|  |
| --- |
| * competent lay or medical evidence of a disease (or signs or symptoms of a disease) listed in [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=0995d33f9047781b71559a1428fccffd&mc=true&node=se38.1.3_1317&rgn=div8) manifesting within the period specified in [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=0995d33f9047781b71559a1428fccffd&mc=true&node=se38.1.3_1317&rgn=div8), namely
	+ no later than December 31, 2021, for disability due to undiagnosed illness and MUCMIs, *or*

as provided in [38 CFR 3.317(c)(3)(i)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=5a1991dcf0fbbbeb73d1a8cbdf5f4d5b&ty=HTML&h=L&r=SECTION&n=se38.1.3_1317) for infectious diseases, ***and*** |
| * service required by [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=0995d33f9047781b71559a1428fccffd&mc=true&node=se38.1.3_1317&rgn=div8), which is either
	+ qualifying service in the Southwest Asia theater of operations as defined in [38 CFR 3.317(e)(2)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=5a1991dcf0fbbbeb73d1a8cbdf5f4d5b&ty=HTML&h=L&r=SECTION&n=se38.1.3_1317), or
* qualifying service in Afghanistan (for the purpose of a claim under [38 CFR 3.317(c)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=5a1991dcf0fbbbeb73d1a8cbdf5f4d5b&ty=HTML&h=L&r=SECTION&n=se38.1.3_1317) only).
 |

***Important:***

* 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.
* The threshold for requiring an examination is ***low***. It is lower than the standard to prove entitlement to service connection under 38 CFR 3.317, because the purpose is only to determine whether VA has a duty to assist in substantiating the claim.

Topic 3: Requesting Southwest Asia Examinations

**Ordering a Gulf War General Medical Exam**

Request a Gulf War general medical examination when the threshold for an examination is met as provided in [M21-1, Part IV, Subpart ii, 1.E.2.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317#2a).  When an examination is needed for a claim under the provisions of [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=0995d33f9047781b71559a1428fccffd&mc=true&node=se38.1.3_1317&rgn=div8), request

* a *Gulf War General Medical Examination (Including Burn Pits) Disability Benefits Questionnaire* (DBQ), **and**
* any required specialist DBQs as defined in [M21-1, Part III, Subpart iv, 3.A.1.h](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015809/M21-1%2C-Part-III%2C-Subpart-iv%2C-Chapter-3%2C-Section-A---Examination-Requests-Overview).

**Exception**:  Do not request a Gulf War general medical examination if one has been completed in response to a pending claim or a decision that has not yet become final per [38 CFR 3.160(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad35a75ff932683b9d123718d32bf38b&mc=true&node=se38.1.3_1160&rgn=div8).  In these cases, only order the specialty DBQ specific to the claimed condition.

|  |
| --- |
| ***Example 1***:  A claim is received for SC for irritable bowel syndrome (IBS) based on Southwest Asia service and hearing loss based on military acoustic trauma.  A Gulf War general medical examination is requested.  Since it requires a specialist, a hearing loss DBQ is also ordered.  SC for hearing loss is granted, but the claim for SC for IBS is denied.  A claim for SC for chronic fatigue syndrome (CFS) based on Southwest Asia service is received five months after the denial of SC for IBS.  The regional office (RO) determines an examination is needed to decide the CFS claim |
| ***Analysis***:  In this case, do *not* request a new Gulf War general medical examination since the decision on the previous claim is not yet final per [38 CFR 3.160(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad35a75ff932683b9d123718d32bf38b&mc=true&node=se38.1.3_1160&rgn=div8).  Request the CFS DBQ only.  |

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| ***Example 2***:  Same scenario as in Example 1, except the claim for SC for CFS is received 15 months after the denial of SC for IBS.  The RO determines an examination is needed to decide the CFS claim. |
| ***Analysis***:  In this case, order the Gulf War general medical examination for the CFS claim since the decision on the previous claim is final per [38 CFR 3.160(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad35a75ff932683b9d123718d32bf38b&mc=true&node=se38.1.3_1160&rgn=div8).  |

***Note:***  When requesting examinations in support of a Southwest Asia claim

* send the claims folder to the examiner to review
* insert the required language for the examination type as shown in M21-1, Part IV, Subpart ii, 1.E.2.c, ***and***
* do not prepare a separate medical opinion DBQ. The *Notice* *to Examiners in Southwest Asia Claims* directs the examiner to provide the required medical opinion.

**Required Language in Examination for SWA Claims**

ROs must ensure that all examiners in Southwest Asia claims have access to the proper terminology and opinion language specific to these types of claims.  Consequently, ROs must follow the guidance in the table below to ensure examination requests for Southwest Asia claims contain the appropriate language for all examiner(s).

|  |  |
| --- | --- |
| **If requesting a…** | **Then in the examination request, include the…** |
| gulf war general medical examination only | *Notice to Examiners in Southwest Asia Claims from* [M21-1, Part IV, Subpart ii, 1.E.2.m](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317#2m) |
| * gulf war general medical examination, and
* specialist examination(s)

**Reference:** For more information on specialist examinations, see [M21-1, Part III, Subpart iv, 3.A.1.h](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015809/M21-1%2C-Part-III%2C-Subpart-iv%2C-Chapter-3%2C-Section-A---Examination-Requests-Overview). | * *Notice to Examiners in Southwest Asia Claims* from [M21-1, Part IV, Subpart ii, 1.E.2.m](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317#2m), and
* definition language from [M21-1, Part IV, Subpart ii, 1.E.2.n](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317#2n).
 |
| specialty DBQ only ***Reference***:  For more information on specialty examinations, see [M21-1, Part III, Subpart iv, 3.A.1.g](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015809/M21-1%2C-Part-III%2C-Subpart-iv%2C-Chapter-3%2C-Section-A---Examination-Requests-Overview). | * *Notice to Examiners in Southwest Asia Claims* from [M21-1, Part IV, Subpart ii, 1.E.2.m](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317#2m), and
* definition language from [M21-1, Part IV, Subpart ii, 1.E.2.n](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317#2n).
 |

**Clinical Diagnosis for SWA Claim**

* 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 ordering of an examination ***unless*** all symptoms claimed by the Veteran are clearly attributable to the diagnosis.

**No Potential Entitlement under 38 CFR 3.317**

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| Do not order a Gulf War General Medical Exam when there is no potential entitlement under 38 CFR 3.317.**Example:** A Gulf War Veteran with service in SWA files a claim on VA Form 21-526EZ. The Veteran was HON discharged from service in May 2004. The Veteran is claiming SC for neurological symptoms to include numbness and tingling of his legs as due to the Gulf War. However, there is a diagnosis of multiple sclerosis in the treatment records dated December 2009.Since the evidence shows the neurological symptoms are related to MS, there is no need for a GW General Medical Exam. Entitlement to service connection may be in order, but under a different regulation such as 38 CFR 3.307 and 38 CFR 3.309 for presumptive service connection. |

**SC Established Under Another Regulation**

**Example:** A Gulf War Veteran with service in SWA files a claim for service connection for leg pain. The claim was submitted on VA Form 21-526EZ. Review of the STRs were negative for any evidence of an injury or other reason for the condition. Post service treatment records shows treatment for leg pain secondary to an injury to the leg that happened after service.

In this case, there is a reason for the disability other than service.
Since you have the DBQ with the diagnosis of one of the MUCMI conditions listed in 38 CFR 3.317(a)(2)(i)(B)(1) to (3), no exam is needed. The Veteran's claim has all evidence required; therefore, it can go straight to an RVSR for a decision. See [M21-1, IV.ii.1.E.2.d.](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014938/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317#2)

Practical Exercise

Directions: *Answer the following questions. You may use your Student Handout.*

1. True or False: Southwest Asia service cannot be verified by reviewing the DD Form 214?
2. True or False: If the Iraq Campaign Medal is listed on the DD Form 214, Southwest Asia is verified.
3. When an examination is needed for a claim under the provision of 38 CFR 3.317, request which type of examination?
4. What are two required actions when requesting examinations in support of a Southwest Asia claim?
5. Fill in the blank: The threshold for requiring an examination is \_\_\_\_\_\_\_\_.

Development Based on Gulf War Veterans with SWA Service – TMS # 4560516

You have completed the instructional part of training on Development Based on Gulf War Veterans with SWA Service. You must log in to TMS and enter the TMS ID to complete the online assessment and survey to receive credit for this training. The assessment requires a score of 80% to pass. Any available resource can be utilized to complete the assessment. This includes but not limited to lesson handout, internet/intranet web sites, job aides, PowerPoint and any applicable reference materials. You will have unlimited attempts to pass this assessment.