Claims Based on Undiagnosed Illnesses of Gulf War Veterans

**References**:

38 CFR 3.317 TL 10-01

M21-1, Part IV.ii.1.E (developing GW claims) TL 10-03

M21-1, Part IV.ii.2.D (rating GW claims) FL 10-26

GW VAE FAQ 9/25/13 FL 11-09

**History of claims based on undiagnosed illness:**

On November 2, 1994, Congress enacted the “Persian Gulf War Veterans’ Benefit Act”, Title 1 of the “Veterans’ Benefits Improvements Act of 1994, Public Law 103-446. That statute added a new section 1117 to Title 38, United States Code, authorizing VA to compensate any Gulf War Veteran suffering from a chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses which manifested either:

* During active duty in the Southwest Asia theater of operations during the GW, or
* To a degree of 10 percent or more within a presumptive period following service in the Southwest Asia theater of operations during the GW.

The “Persian Gulf War Veterans’ Act of 1998”, PL 105-277, authorized VA to compensate GW Veterans for diagnosed or undiagnosed disabilities that are determined by VA regulation to warrant a presumption of service connection based on a positive association with exposure to one of the following as a result of GW service:

* A toxic agent
* An environmental or wartime hazard, or
* A preventive medication or vaccine.

Finally, the “Veterans Education and Benefits Expansion Act of 2001”, PL 107-103, expanded the definition of “qualifying chronic disability effective March 1, 2002 to include:

* A medically unexplained chronic multi-symptom illness that is defined by a cluster of signs and symptoms, and
* Any diagnosed illness that is determined by VA regulation to warrant presumption of service connection.

**Who Qualifies as a GW Veteran?**

A Veteran who served on active duty military, naval, or air service in the Southwest Asia theater of operations during the GW period.

**What key elements am I looking for on a Veteran’s DD214 to let me know they served in the GW.** .

The “Remarks” section of the DD Form 214 will usually include an entry which provides the exact dates of the veteran’s “Service in SWA.” Occasionally, you may find that the DD Form 214 does not reference any specific dates of service in Southwest Asia, but it does indicate that the veteran was awarded a Kuwait Liberation Medal and/or the Southwest Asia Service Medal.

The Kuwait Liberation Medal was awarded by the Kingdom of Saudi Arabia for direct participation in Operation Desert Storm between January 17, 1991, and February 28, 1991. In addition to the Kuwait Liberation Medal issued by Saudi Arabia, the U.S. government has also accepted the Kuwait Liberation Medal issued by the government of Kuwait for participation in Desert Shield/Desert Storm from August 2, 1990 to August 31, 1993. To be eligible for either medal, the veteran must have served in the Arabian Gulf (a/k/a Persian Gulf), the Red Sea, the Gulf of Oman, that portion of the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude, the Gulf of Aden, or the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar and the United Arab Emirates. In many cases, the DD Form 214 does not reflect whether the Kuwait Liberation medal was awarded by Saudi Arabia or Kuwait. However, since both medals generally indicate service in the area and time period referenced under 38 C.F.R. § 3.317, consideration should be given as to whether evidence of the Kuwait Liberation medal is sufficient to establish service in the Southwest Asia theater of operations during the Gulf War.

The Southwest Asia Service Medal is issued by the US government and is generally authorized for individuals who served in support of Operation Desert Shield or Desert Storm in one or more of the following areas from August 2, 1990, through November 30, 1995: the Persian Gulf, Red Sea, Gulf of Oman, Gulf of Aden, that portion of the Arabian Sea that lies north of 100 N latitude and west 680 E longitude, as well as the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. *NOTE:* Individuals serving in Israel, Egypt, Turkey, Syria, and Jordan (including the airspace and territorial waters) directly supporting combat operations from January 17, 1991, through November 30, 1995, are also eligible for the Southwest Asia Service Medal. These countries technically do not fall under the “Southwest Asia theater of operations” as defined by 38 C.F.R. § 3.317.

The “Global War on Terrorism Expeditionary Medal” was created after the terrorist attacks of September 11, 2001, and is awarded for service generally in all foreign land, water, and air spaces outside the fifty states of the Untied States and outside 200 nautical miles of the shores of the United States. With regard to specific operation areas, it is awarded for service in Bahrain, Egypt, Iraq (although see below for more information on this), Israel, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia, Syria, Tajikistan, Turkey, Turkmenistan, United Arab Emirates, Yemen, that portion of the Arabian Sea north of 10 degrees north latitude and west of 68 degrees longitude, the Gulf of Aden, the Gulf of Aqaba, the Gulf of Oman, the Gulf of Suez, that portion of the Mediterranean Sea east of 28 degrees east longitude, the Persian Gulf, the Red Sea, the Strait of Hormuz, and the Suez Canal. It is also awarded for personnel serving in the Mediterranean Sea on boarding and searching vessel operations. While it was initially approved for Operation Iraqi Freedom, the War on Terrorism Expeditionary Medal (effective April 2005) is no longer authorized for service in Iraq.

In April 2006, the Department of Defense announced (in part) the creation of a new “Iraq Campaign Medal.” Those authorized the [Iraq Campaign Medal](http://www.defenselink.mil/news/Apr2005/d20050407MedalPic.pdf) must have served in direct support of Operation Iraqi Freedom on or after March 19, 2003, to a future date to be determined by the Secretary of Defense or the cessation of the operation.  The area of eligibility encompasses all land area of the country of Iraq, and the contiguous water area out to 12 nautical miles, and all air spaces above the land area of Iraq and above the contiguous water area out to 12 nautical miles.

**When is the GW period?**

The GW period extends from August 2, 1990 through a due date yet to be determined by law or Presidential proclamation.

The presumptive period was extended through December 31, 2016 based on the most recent update to 3.317.

**Where is the SW Asia Theater of Operations?**

The Southwest Asia theater of operations includes the following locations and airspace above them:

* Iraq
* Kuwait
* Saudi Arabia
* The neutral zone between Iraq and Saudi Arabia
* United Arab Emirates
* Oman
* The Gulf of Aden
* The Gulf of Oman
* The Persian Gulf
* The Arabian Sea
* The Red Sea

**What disabilities may be service connected under 3.317?**

VA will pay compensation to GW Veterans who exhibit *objective* indications of a qualifying chronic disability, provided that such disability:

* Became manifest either during active military, naval, or air service in the SW Asia theater of operations, or to a degree of 10 percent or more not later than 12/31/16; and
* By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

The disability must be chronic, meaning it must have persisted for a period of 6 months. The 6 month period of chronicity will be measured from the earliest date on which the pertinent evidence establishes that it first manifested.

3 types of disabilities:

1. An undiagnosed illness
2. A medically unexplained chronic multi-symptom illness that is defined by a cluster of signs or symptoms
3. Infectious diseases

Definition of “objective” above includes both signs in the medical sense of objective evidence perceptible to an examining physical and other, non-medical indicators that are capable of independent verification.

**1) Undiagnosed illness:**

Examples of signs or symptoms of undiagnosed illness:

* Fatigue
* Skin symptoms
* Headache
* Muscle pain
* Joint pain
* Neurological signs or symptoms
* Neuropsychological signs or symptoms
* Respiratory symptoms
* Sleep disturbances
* Gastrointestinal signs or symptoms
* Cardiovascular signs or symptoms
* Abnormal weight loss
* Menstrual disorders

These symptoms must not be due to a diagnosed disability. (This is pretty much the *only* instance in which SC could be granted for a symptom alone.)

**2) Medically unexplained multi-symptom illness:**

A medically unexplained chronic multi-symptom illness means a *diagnosed* illness without conclusive pathophysiology or etiology that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities.

Examples:

* Chronic fatigue syndrome
* Fibromyalgia
* Functional gastrointestinal disorders such as IBS (Added 7/15/11; see Note under 3.317(a)(2)(B)(3) for more information)

See also FL 10-26.

**Exceptions to types 1 and 2 of disabilities above:**

* If there is affirmative evidence that the disability was not incurred while on AD military service in SW Asia
* If there is affirmative evidence that the disability had an intervening cause.
* If the disability is a result of the Veteran’s own willful misconduct or the abuse of alcohol or drugs.
1. **Infectious diseases:**

Disabilities listed under 3.317(c)(2) will be SC if manifested within 1 year of service (with exceptions listed in 3.317(c)(3)(i)) for Veterans with SW Asia service as defined above OR with periods of service after September 19, 2001 in *Afghanistan*.

*Please note that this regulation took effect on September 29, 2010.*

When granting SC for an infectious disease under this provision, see also the Table to 3.317 for Long-Term Health Effects Potentially Associated with Infectious Diseases. A causative relationship must be determined on a case by case basis if both are present. A medical opinion will most likely be involved!

**What information I should look for in the claims process?**

* Special GW issue information in the 5103 notification letter
* Verified service in the SW Asia Theater of operations during the applicable time frame. (Please note that the SW Asia Service Medal does NOT verify SW Asia service!)
* STRs and any applicable clinical records
* VAMC and private record requests
* Information regarding whether the Veteran has had a GW Registry exam, and if so, it should be included in the c-file.

If the Veteran has claimed exposure only, he/ she should be notified in the VCAA letter that a specific disability must be claimed for further action to be taken on the claim.

If multiple joint or muscle pain is alleged, the VCAA letter should request that the Veteran specify the joints/ areas affected.

**VA exams are needed for GW claims:**

VA exams are necessary in *most* GW claims (see pages 6-9 of TL 10-01) with the verbiage from M21-1, Part IV.ii.1.E.19.g. Request the GW General Medical DBQ, noting that the examiner should complete any required DBQs and specialty DBQs.

\*Don’t forget the importance of lay testimony when requesting VAEs! The only evidence of undiagnosed illness symptoms may be in the form of lay testimony.

\*TL 10-01 also specifically notes that a clinical diagnosis in medical records should not be a deterrent to ordering a VAE since treating physicians are conditioned to provide diagnoses. This does not preclude the presence of an undiagnosed illness, and this must be evaluated by a VA examiner.

*\*See also the FAQ dated 9/25/13 on Gulf War Examinations*.

When reviewing the DBQ, make sure the examiner has completed the GW General Medical questionnaire in its entirety, as well as the necessary additional DBQs. The examiner must characterize each of the claimed disabilities associated with SW Asia service as belonging to one of four disability patterns:

1. An undiagnosed illness
2. A diagnosable but medically unexplained chronic multi-symptom illness of unknown etiology
3. A diagnosable chronic multi-symptom illness with a partially explained etiology, or
4. A disease with a clear and specific etiology.

**Information that is required to grant service connects a claimed disability under 3.317?**

A properly completed DBQ *should* make this decision easier.

* If the examiner notes a disability pattern to be consistent with #s 1 or 2 above, SC is warranted provided the Veteran meets the other requirements of 3.317.
* If the examiner notes a disability pattern to be consistent with #s 3 or 4 above, SC cannot be granted under 3.317. However, this does not preclude a direct grant of SC under 3.303 (such as in the case of COPD with a positive MO based on either symptoms in service or environmental hazards in service).

See the table provided in M21-1, Part IV.ii.2.D.14.i. As always, a decision whether to grant SC requires a full analysis and weighing of all evidence and facts associated with the case.

**Logistical notes associated with grants under 3.317:**

Include the GW Special Issue on the Disability Decision Input screen in VBMS (the same as was done in RBA2K). The best practice is to include a short note to the Veteran or reviewer regarding the exposure and particulars of the issue.

A routine future exam should be established within 24 months of the last VAE of record according to the manual. In light of FL 10-14, if one is needed, it should be set up in 5 years.

Analogous diagnostic codes should be used using the “88” format for the first DC. For example, for headaches due to undiagnosed illness, the DC used should be 8881-8100. See M21-1, Part IV.ii.2.D.16.e-g.

Note second signatures may be required for GW ratings at the discretion of the VSCM/PMCM at your duty station.

**Why claims get denied for GW illnesses?**

The following are the appropriate denial reasons for GW claims:

* The disability is determined to result from a known clinical diagnosis.
* The disability has not persisted for a period of at least six months.
* There is affirmative evidence that an undiagnosed illness was not incurred during active service or was caused by an intercurrent circumstance.
* There is no evidence that the condition ever existed.
* The disability did not arise in SW Asia, nor did it manifest to a compensable degree after the last date of service in SW Asia.

See M21-1, Part IV.ii.2.D.17.

\*FL 11-09 also discusses rating procedures and denial verbiage for the nine infectious diseases under 3.317(c). Although information is presented for RBA2000, the FL has not been rescinded, and the same procedures apply in VBMS-R.

**Some additional information concerning the Environmental Hazards outlined in TL 10-03 fit into the GW puzzle?**

When a Veteran has served in Iraq, Afghanistan, or Djibouti, we should accept their lay statement regarding exposure to **burn pits**. Examples of illnesses associated with the toxins from burn pits are disabilities affecting the respiratory, cardiopulmonary, neurological, autoimmune, and skin systems. A medical opinion may be needed in these cases.

 While burn pits are the most commonly claimed environmental hazard outlined in this TL 10-03, please refer to it also for particulate matter in Iraq, Afghanistan, and Djibouti; sulfur fire at Mishraq State Sulfur Mine near Mosul, Iraq; and Qarmat Ali Water Treatment Plant in Basrah, Iraq. Each topic section explains how to concede each exposure.

*Development*: The same 5103 letter with GW verbiage should be completed, along with any other necessary development.

*Exams*: Consider lay statements and err on the side of the Veteran. When requesting a VAE and MO, make sure to include the appropriate fact sheet.

*Rating*: We are considering **direct** SC here under 3.303, so the claimed disability does not have to be an undiagnosed illness. The event in service is the exposure, and SC may be granted with a current diagnosis and link provided by a supported MO. However, SC may also be considered under 3.317 if direct SC cannot be granted.