38 USC 1310 SCENARIOS

38 USC 1310 under what path game? Please use the previous slides and provide the regulatory path to entitlement under 38 USC 1310.

1. Veteran death certificate list primary cause of death as sepsis, there are no contributory causes of death listed on death certificate. The last Rating Decision prior to death details the following information:

ASSOCIATED CLAIM(s): 020; New/Reopen/Increase; 11/13/2015

SUBJECT TO COMPENSATION (1.SC)

7005	CORONARY ATHEROSCLEROSIS (CLAIMED AS ISCHEMIC HEART DISEASE) [Agent Orange - Vietnam/Ischemic Heart Disease] Service Connected, Vietnam Era, Presumptive Static Disability 60% from 02/21/2012 100% from 01/21/2016

38 USC 1310 under what path?

ANSWER: VITAL ORGAN 100%. Per 38 CFR 3.312(c)(3) there are no causes of death listed that would rule a Veteran out from consideration.

Service-connected diseases or injuries involving active processes affecting vital organs should receive careful consideration as a contributory cause of death, the primary cause being ***unrelated,*** *from the viewpoint of whether there were resulting debilitating effects and general impairment of health to an extent that would render the person materially less capable of resisting the effects of other disease or injury primarily causing death. Where the service-connected condition affects vital organs as distinguished from muscular or skeletal functions and is evaluated as 100 percent disabling, debilitation may be assumed.*

Do not overdevelop claims by asking for medical opinions when Raters can grant benefits based on the evidence presented.

2. Veteran has confirmed RVN service, they have 50% service connection for a back condition. The primary cause of death is listed as Paralysis Agitans.

38 USC 1310 under what path?

ANSWER: Presumptive consideration (AO). Remember to use resources to such as the Index of DBQ/Exams by Disability to research various conditions and medical terms that are not familiar. Per 38 CFR 3.309(e) disease associated with exposure to certain herbicide agents, one of the following conditions listed is Parkinson's disease.

The DBQ index shows:

Disability	DX Code	Rating Schedule Name	Required DBQ	Historical DX Codes	Notes/Alternative Terms
Paralysis agitans	8004	Paralysis agitans	NEURO Parkinson's disease		Parkinson's disease; Parkinsons disease; parkinsonism

3. Veteran was service connection for 30% (DX 7530) for a kidney condition. The primary cause of death is listed as cardiopulmonary arrest, the contributory cause of death is listed as end stage renal disease.

38 USC 1310 under what path?

ANSWER: CONTRIBUTORY. Kidney=Renal those terms are interchangeable. Also use the resource of the DBQ Index, Rating Decisions could go back decades, to define terms use the VA resources given.

The DBQ Index shows:

Chronic renal disease	7530	Chronic renal disease requiring regular dialysis	GU Kidney conditions		Chronic kidney disease; renal failure; kidney failure; end-stage renal disease; end stage renal disease

4. Veteran was service connected at 20% for diabetes mellitus type II. The primary cause of death was listed as diabetes.

38 USC 1310 under what path?

ANSWER: Primary. Don’t overdevelop to determine AO exposure if it is not needed and we can grant benefits based on the evidence of record. Also DM2 is not a condition specific to the Agent Orange Herbicide Era, it is possible for Veterans of ANY Era (WW2, Korean, Peacetime, Gulf War) to have been awarded service-connection for this benefit.

5. Veteran has 70% service-connection for PTSD. Veteran primary cause of death is listed as self-inflicted gunshot wound, the contributory cause of death is listed as PTSD.

38 USC 1310 under what path?

ANSWER: CONTRIBUTORY. Working death claims is going to expose a RVSR to all manners of death. As discussed in previous lessons, the death certificate is an important piece of medical evidence and a medical examiner is qualified to provide competent medical opinions as to the Veteran's primary and contributory cause(s) of death.

6. The Veteran has confirmed RVN service. The Veteran was not service-connected for any condition. The primary cause of death was listed as lung cancer, there was no contributory cause listed.

38 USC 1310 under what path?

ANSWER: Presumptive consideration (AO). Per 38 CFR 3.309(e) disease associated with exposure to certain herbicide agents, one of the listed conditions under respiratory cancers is cancers of the lung.