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showing inception before or after service.

(Authority: 38 U.S.C. 1113)

[26 FR 1581, Feb. 24, 1961, as amended at 35 FR 18281, Dec. 1, 1970; 39 FR 34530, Sept. 26, 1974; 43 FR 45347, Oct. 2, 1978; 47 FR 11655, Mar. 18, 1982; 58 FR 29109, May 19, 1993; 59 FR 5106, Feb. 3, 1994; 59 FR 29724, June 9, 1994; 61 FR 57588, Nov 7, 1996; 62 FR 35422, July 1, 1997]

§3.308 Presumptive service connection; peacetime service before January 1, 1947.

(a) *Chronic disease.* There is no provision for presumptive service connection for chronic disease as distinguished from tropical diseases referred to in paragraph (b) of this section based on peacetime service before January 1, 1947.

(b) *Tropical disease.* In claims based on peacetime service before January 1, 1947, a veteran of 6 months or more service who contracts a tropical disease listed in §3.309(b) or a resultant disorder or disease originating because of therapy administered in connection with a tropical disease or as a preventive, will be considered to have incurred such disability in service when it is shown to exist to the degree of 10 percent or more within 1 year after separation from active service, or at a time when standard and accepted treatises indicate that the incubation period commenced during active service unless shown by clear and unmistakable evidence not to have been of service origin. The requirement of 6 months or more service means active, continuous service, during one or more enlistment periods.

(Authority: 38 U.S.C. 1133)

[39 FR 34530, Sept. 26, 1974]

§3.309 Disease subject to presumptive service connection.

(a) *Chronic diseases.* The following diseases shall be granted service connection although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under §3.307 following service in a period of war or following peacetime service on or after January 1, 1947, provided the rebut-

table presumption provisions of §3.307 are also satisfied.

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gall-bladder.

Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)

Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen's disease.
Hodgkin's disease.
Leukemia.
Lupus erythematosus, systemic.
Myasthenia gravis.
Myelitis.
Myocarditis.
Nephritis.
Other organic diseases of the nervous system.
Osteitis deformans (Paget's disease).
Osteomalacia.
Palsy, bulbar.
Paralysis agitans.
Psychoses.
Purpura idopathic, hemorrhagic.
Raynaud's disease.
Sarcoidosis.
Scleroderma.
Sclerosis, amyotrophic lateral.
Sclerosis, multiple.
Syringomyelia.
Thromboangilitis obliterans (Buerger's disease).
Tuberculosis, active.
Tumors, malignant, or of the brain or spinal cord or peripheral nerves.
Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an

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adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.

(b) *Tropical diseases.* The following diseases shall be granted service connection as a result of tropical service, although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under § 3.307 or § 3.308 following service in a period of war or following peacetime service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

Amebiasis.
Blackwater fever.
Cholera.
Dracontiasis.
Dysentery.
Filariasis.
Leishmaniasis, including kala-azar.
Lolasis.
Malaria.
Onchocerciasis.
Oroya fever.
Pinta.
Plague.
Schistosomiasis.
Yaws.
Yellow fever.

Resultant disorders or diseases originating because of therapy administered in connection with such diseases or as a preventative thereof.

(c) *Diseases specific as to former prisoners of war.* If a veteran is: (1) A former prisoner of war and; (2) as such was interned or detained for not less than 30 days, the following diseases shall be service-connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

Avitaminosis.
Beriberi (including beriberi heart disease).
Chronic dysentery.
Helminthiasis.
Malnutrition (including optic atrophy associated with malnutrition).
Pellagra.
Any other nutritional deficiency.
Psychosis.
Any of the anxiety states.

Dysthymic disorder (or depressive neurosis).

Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.

Post-traumatic osteoarthritis.
Irritable bowel syndrome.
Peptic ulcer disease.
Peripheral neuropathy except where directly related to infectious causes.

NOTE: For purposes of this section, the term *beriberi heart disease* includes ischemic heart disease in a former prisoner of war who had experienced localized edema during captivity.

(Authority: 38 U.S.C. 1112)

(d) *Diseases specific to radiation-exposed veterans.* (1) The diseases listed in paragraph (d)(2) of this section shall be service-connected if they become manifest in a radiation-exposed veteran as defined in paragraph (d)(3) of this section, provided the rebuttable presumption provisions of § 3.307 of this part are also satisfied.

(2) The diseases referred to in paragraph (d)(1) of this section are the following:

- (i) Leukemia (other than chronic lymphocytic leukemia).
- (ii) Cancer of the thyroid.
- (iii) Cancer of the breast.
- (iv) Cancer of the pharynx.
- (v) Cancer of the esophagus.
- (vi) Cancer of the stomach.
- (vii) Cancer of the small intestine.
- (viii) Cancer of the pancreas.
- (ix) Multiple myeloma.
- (x) Lymphomas (except Hodgkin's disease).
- (xi) Cancer of the bile ducts.
- (xii) Cancer of the gall bladder.
- (xiii) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).
- (xiv) Cancer of the salivary gland.
- (xv) Cancer of the urinary tract.

NOTE: For the purposes of this section, the term "urinary tract" means the kidneys, renal pelvis, ureters, urinary bladder, and urethra.

(3) For purposes of this section:

- (i) The term *radiation-exposed veteran* means either 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

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period of active duty for training or inactive duty training, participated in a radiation-risk activity.

(ii) The term *radiation-risk activity* means:

(A) Onsite participation in a test involving the atmospheric detonation of a nuclear device.

(B) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(C) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) The term *atmospheric detonation* includes underwater nuclear detonations.

(iv) The term *onsite participation* means:

(A) During the official operational period of an atmospheric nuclear test, presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.

(B) During the six month period following the official operational period of an atmospheric nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during the nuclear test.

(C) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951, through July 1, 1952, August 7, 1956, through August 7, 1957, or November 1, 1958, through April 30, 1959.

(D) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.

(v) For tests conducted by the United States, the term *operational period* means:

(A) For Operation *TRINITY* the period July 16, 1945 through August 6, 1945.

(B) For Operation *CROSSROADS* the period July 1, 1946 through August 31, 1946.

(C) For Operation *SANDSTONE* the period April 15, 1948 through May 20, 1948.

(D) For Operation *RANGER* the period January 27, 1951 through February 6, 1951.

(E) For Operation *GREENHOUSE* the period April 8, 1951 through June 20, 1951.

(F) For Operation *BUSTER-JANGLE* the period October 22, 1951 through December 20, 1951.

(G) For Operation *TUMBLER-SNAPPER* the period April 1, 1952 through June 20, 1952.

(H) For Operation *IVY* the period November 1, 1952 through December 31, 1952.

(I) For Operation *UPSHOT-KNOT-HOLE* the period March 17, 1953 through June 20, 1953.

(J) For Operation *CASTLE* the period March 1, 1954 through May 31, 1954.

(K) For Operation *TEAPOT* the period February 18, 1955 through June 10, 1955.

(L) For Operation *WIGWAM* the period May 14, 1955 through May 15, 1955.

(M) For Operation *REDWING* the period May 5, 1956 through August 6, 1956.

(N) For Operation *PLUMBBOB* the period May 28, 1957 through October 22, 1957.

(O) For Operation *HARDTACK I* the period April 28, 1958 through October 31, 1958.

(P) For Operation *ARGUS* the period August 27, 1958 through September 10, 1958.

(Q) For Operation *HARDTACK II* the period September 19, 1958 through October 31, 1958.

(R) For Operation *DOMINIC I* the period April 25, 1962 through December 31, 1962.

(S) For Operation *DOMINIC II/PLOW-SHARE* the period July 6, 1962 through August 15, 1962.

(vi) The term "occupation of Hiroshima or Nagasaki, Japan, by United States forces" means official military duties within 10 miles of the city limits of either Hiroshima or Nagasaki, Japan, which were required to perform

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or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the Japanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.

(vii) Former prisoners of war who had an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the occupation of Hiroshima or Nagasaki, Japan, by United States forces shall include those who, at any time during the period August 6, 1945, through July 1, 1946:

(A) Were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki, or

(B) Can affirmatively show they worked within the areas set forth in paragraph (d)(4)(vii)(A) of this section although not interned within those areas, or

(C) Served immediately following internment in a capacity which satisfies the definition in paragraph (d)(4)(vi) of this section, or

(D) Were repatriated through the port of Nagasaki.

(Authority: 38 U.S.C. 1110, 1112, 1131)

(e) Disease associated with exposure to certain herbicide agents. If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of §3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of §3.307(d) are also satisfied.

- Chloracne or other acneform disease consistent with chloracne
Hodgkin's disease
Multiple myeloma
Non-Hodgkin's lymphoma
Acute and subacute peripheral neuropathy
Porphyria cutanea tarda
Prostate cancer
Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

NOTE 1: The term "soft-tissue sarcoma" includes the following:

- Adult fibrosarcoma
Dermatofibrosarcoma protuberans
Malignant fibrous histiocytoma
Liposarcoma
Leiomyosarcoma
Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
Rhabdomyosarcoma
Ectomesenchymoma
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
Proliferating angioendotheliomatosis (systemic)
Malignant glomus tumor
Malignant hemangioendothelioma
Synovial sarcoma (malignant synovioma)
Malignant giant cell tumor of tendon sheath
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
Malignant mesenchymoma
Malignant granular cell tumor
Alveolar soft part sarcoma
Epithelioid sarcoma
Clear cell sarcoma of tendons and aponeuroses
Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

NOTE 2: For purposes of this section, the term acute and subacute peripheral neuropathy means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

(Authority: 38 U.S.C. 501(a) and 1116)

[41 FR 55873, Dec. 23, 1976 and 47 FR 11656, Mar. 18, 1982, as amended at 47 FR 54436, Dec. 3, 1982; 49 FR 47003, Nov. 30, 1984; 53 FR 23236, June 21, 1988; 54 FR 26029, June 21, 1989; 57 FR 10426, Mar. 26, 1992; 58 FR 25564, Apr. 27, 1993; 58 FR 29109, May 19, 1993; 58 FR 41636, Aug. 5, 1993; 59 FR 5107, Feb. 3, 1994; 59 FR 25329, May 16, 1994; 59 FR 29724, June 9, 1994; 59 FR 35465, July 12, 1994; 60 FR 31252, June 14, 1995; 61 FR 57569, Nov. 7, 1996]

§3.310 Proximate results, secondary conditions.

(a) General. Disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.

(b) Cardiovascular disease. Ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one

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lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles, shall be held to be the proximate result of the service-connected amputation or amputations.

(Authority: 38 U.S.C. 501, 1110-1131)

[44 FR 50340, Aug. 28, 1979]

§3.311 Claims based on exposure to ionizing radiation.

(a) Determinations of exposure and dose—(1) Dose assessment. In all claims in which it is established that a radiogenic disease first 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. When dose estimates provided pursuant to paragraph (a)(2) of this section are reported as a range of doses to which a veteran may have been exposed, exposure at the highest level of the dose range reported will be presumed.

(Authority: 38 U.S.C. 501)

(2) Request for dose information. Where necessary pursuant to paragraph (a)(1) of this section, dose information will be requested as follows:

(i) Atmospheric nuclear weapons test participation claims. In claims based upon participation in atmospheric nuclear testing, dose data will in all cases be requested from the appropriate office of the Department of Defense.

(ii) Hiroshima and Nagasaki occupation claims. In all claims based on participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, dose data will be requested from the Department of Defense.

(iii) Other exposure claims. In all other claims involving radiation exposure, a request will be made for any available records concerning the veteran's exposure to radiation. These records normally include but may not be limited to the veteran's Record of Occupational Exposure to Ionizing Radiation (DD Form 1141), if maintained, service medical records, and other records which may contain information per-

taining to the veteran's radiation dose in service. All such records will be forwarded to the Under Secretary for Health, who will be responsible for preparation of a dose estimate, to the extent feasible, based on available methodologies.

(3) Referral to independent expert. When necessary to reconcile a material difference between an estimate of dose, from a credible source, submitted by or on behalf of a claimant, and dose data derived from official military records, the estimates and supporting documentation shall be referred to an independent expert, selected by the Director of the National Institutes of Health, who shall prepare a separate radiation dose estimate for consideration in adjudication of the claim. For purposes of this paragraph:

(i) The difference between the claimant's estimate and dose data derived from official military records shall ordinarily be considered material if one estimate is at least double the other estimate.

(ii) A dose estimate shall be considered from a "credible source" if prepared by a person or persons certified by an appropriate professional body in the field of health physics, nuclear medicine or radiology and if based on analysis of the facts and circumstances of the particular claim.

(4) Exposure. In cases described in paragraph (a)(2)(i) and (ii) of this section:

(i) If military records do not establish presence at or absence from a site at which exposure to radiation is claimed to have occurred, the veteran's presence at the site will be conceded.

(ii) Neither the veteran nor the veteran's survivors may be required to produce evidence substantiating exposure if the information in the veteran's service records or other records maintained by the Department of Defense is consistent with the claim that the veteran was present where and when the claimed exposure occurred.

(b) Initial review of claims. (i) When it is determined:

(i) A veteran was exposed to ionizing radiation as a result of participation in the atmospheric testing of nuclear weapons, the occupation of Hiroshima or Nagasaki, Japan, from September

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1945 until July 1946, or other activities as claimed;

(i) The veteran subsequently developed a radiogenic disease; and

(ii) Such disease first became manifest within the period specified in paragraph (b)(5) of this section; before its adjudication the claim will be referred to the Under Secretary for Benefits for further consideration in accordance with paragraph (c) of this section. If any of the foregoing 3 requirements has not been met, it shall not be determined that a disease has resulted from exposure to ionizing radiation under such circumstances.

(2) For purposes of this section the term "radiogenic disease" means a disease that may be induced by ionizing radiation and shall include the following:

(i) All forms of leukemia except chronic lymphatic (lymphocytic) leukemia;

- (ii) Thyroid cancer;
- (iii) Breast cancer;
- (iv) Lung cancer;
- (v) Bone cancer;
- (vi) Liver cancer;
- (vii) Skin cancer;
- (viii) Esophageal cancer;
- (ix) Stomach cancer;
- (x) Colon cancer;
- (xi) Pancreatic cancer;
- (xii) Kidney cancer;
- (xiii) Urinary bladder cancer;
- (xiv) Salivary gland cancer;
- (xv) Multiple myeloma;
- (xvi) Posterior subcapsular cataracts;
- (xvii) Non-malignant thyroid nodular disease;
- (xviii) Ovarian cancer;
- (xix) Parathyroid adenoma;
- (xx) Tumors of the brain and central nervous system;
- (xxi) Cancer of the rectum;
- (xxii) Lymphomas other than Hodgkin's disease;
- (xxiii) Prostate cancer; and
- (xxiv) Any other cancer.

(Authority: 38 U.S.C. 501)

(3) For purposes of paragraphs (a)(1) and (b)(1) of this section, "radiogenic disease" shall not include polycythemia vera.

(4) If a claim is based on a disease other than one of those listed in paragraphs (b)(2) or (b)(3) of this section, VA shall nevertheless consider the

claim under the provisions of this section provided that the claimant has cited or submitted competent scientific or medical evidence that the claimed condition is a radiogenic disease.

(5) For the purposes of paragraph (b)(1) of this section:

(i) Bone cancer must become manifest within 30 years after exposure;

(ii) Leukemia may become manifest at any time after exposure;

(iii) Posterior subcapsular cataracts must become manifest 6 months or more after exposure; and

(iv) Other diseases specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure.

(Authority: 38 U.S.C. 501; Pub. L. 98-542)

(c) Review by Under Secretary for Benefits. (1) When a claim is forwarded for review pursuant to paragraph (b)(1) of this section, the Under Secretary for Benefits shall consider the claim with reference to the factors specified in paragraph (e) of this section and may request an advisory medical opinion from the Under Secretary for Health.

(i) If after such consideration the Under Secretary for Benefits is convinced sound scientific and medical evidence supports the conclusion it is at least as likely as not the veteran's disease resulted from exposure to radiation in service, the Under Secretary for Benefits shall so inform the regional office of jurisdiction in writing. The Under Secretary for Benefits shall set forth the rationale for this conclusion, including an evaluation of the claim under the applicable factors specified in paragraph (e) of this section.

(ii) If the Under Secretary for Benefits determines there is no reasonable possibility that the veteran's disease resulted from radiation exposure in service, the Under Secretary for Benefits shall so inform the regional office of jurisdiction in writing, setting forth the rationale for this conclusion.

(2) If the Under Secretary for Benefits, after considering any opinion of the Under Secretary for Health, is unable to conclude whether it is at least as likely as not, or that there is no reasonable possibility, the veteran's disease resulted from radiation exposure in service, the Under Secretary for

Benefits shall refer the matter to an outside consultant in accordance with paragraph (d) of this section.

(3) For purposes of paragraph (c)(1) of this section, "sound scientific evidence" means observations, findings, or conclusions which are statistically and epidemiologically valid, are statistically significant, are capable of replication, and withstand peer review, and "sound medical evidence" means observations, findings, or conclusions which are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis of management of a medical condition.

(d) *Referral to outside consultants.* (1) Referrals pursuant to paragraph (c) of this section shall be to consultants selected by the Under Secretary for Health from outside VA, upon the recommendation of the Director of the National Cancer Institute. The consultant will be asked to evaluate the claim and provide an opinion as to the likelihood the disease is a result of exposure as claimed.

(2) The request for opinion shall be in writing and shall include a description of:

(i) The disease, including the specific cell type and stage, if known, and when the disease first became manifest;

(ii) The circumstances, including date, of the veteran's exposure;

(iii) The veteran's age, gender, and pertinent family history;

(iv) The veteran's history of exposure to known carcinogens, occupationally or otherwise;

(v) Evidence of any other effects radiation exposure may have had on the veteran; and

(vi) Any other information relevant to determination of causation of the veteran's disease.

The Under Secretary for Benefits shall forward, with the request, copies of pertinent medical records and, where available, dose assessments from official sources, from credible sources as defined in paragraph (a)(3)(ii) of this section, and from an independent expert pursuant to paragraph (a)(3) of this section.

(3) The consultant shall evaluate the claim under the factors specified in paragraph (e) of this section and respond in writing, stating whether it is

either likely, unlikely, or approximately as likely as not the veteran's disease resulted from exposure to ionizing radiation in service. The response shall set forth the rationale for the consultant's conclusion, including the consultant's evaluation under the applicable factors specified in paragraph (e) of this section. The Under Secretary for Benefits shall review the consultant's response and transmit it with any comments to the regional office of jurisdiction for use in adjudication of the claim.

(e) *Factors for consideration.* Factors to be considered in determining whether a veteran's disease resulted from exposure to ionizing radiation in service include:

(1) The probable dose, in terms of dose type, rate and duration as a factor in inducing the disease, taking into account any known limitations in the dosimetry devices employed in its measurement or the methodologies employed in its estimation;

(2) The relative sensitivity of the involved tissue to induction, by ionizing radiation, of the specific pathology;

(3) The veteran's gender and pertinent family history;

(4) The veteran's age at time of exposure;

(5) The time-lapse between exposure and onset of the disease; and

(6) The extent to which exposure to radiation, or other carcinogens, outside of service may have contributed to development of the disease.

(f) *Adjudication of claim.* The determination of service connection will be made under the generally applicable provisions of this part, giving due consideration to all evidence of record, including any opinion provided by the Under Secretary for Health or an outside consultant, and to the evaluations published pursuant to §1.17 of this title. With regard to any issue material to consideration of a claim, the provisions of §3.102 of this title apply.

(g) *Willful misconduct and supervening cause.* In no case will service connection be established if the disease is due to the veteran's own willful misconduct, or if there is affirmative evidence to establish that a supervening,

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nonservice-related condition or event is more likely the cause of the disease.

(Authority: Pub. L. 98-542)

[50 FR 34459, Aug. 26, 1985, as amended at 54 FR 42803, Oct. 18, 1989; 58 FR 16359, Mar. 26, 1993. Redesignated at 59 FR 5107, Feb. 3, 1994, and amended at 59 FR 45975, Sept. 6, 1994; 60 FR 9628, Feb. 21, 1995; 60 FR 53277, Oct. 13, 1995; 63 FR 50994, Sept. 24, 1998]

§3.312 Cause of death.

(a) *General.* The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the principal or a contributory cause of death. The issue involved will be determined by exercise of sound judgment, without recourse to speculation, after a careful analysis has been made of all the facts and circumstances surrounding the death of the veteran, including, particularly, autopsy reports.

(b) *Principal cause of death.* The service-connected disability will be considered as the principal (primary) cause of death when such disability, singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related thereto.

(c) *Contributory cause of death.* (1) Contributory cause of death is inherently one not related to the principal cause. In determining whether the service-connected disability contributed to death, it must be shown that it contributed substantially or materially; that it combined to cause death; that it aided or lent assistance to the production of death. It is not sufficient to show that it casually shared in producing death, but rather it must be shown that there was a causal connection.

(2) Generally, minor service-connected disabilities, particularly those of a static nature or not materially affecting a vital organ, would not be held to have contributed to death primarily due to unrelated disability. In the same category there would be included service-connected disease or injuries of any evaluation (even though evaluated as 100 percent disabling) but of a quiescent or static nature involving muscular or skeletal functions and not ma-

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terially affecting other vital body functions.

(3) 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.

(4) There are primary causes of death which by their very nature are so overwhelming that eventual death can be anticipated irrespective of coexisting conditions, but, even in such cases, there is for consideration whether there may be a reasonable basis for holding that a service-connected condition was of such severity as to have a material influence in accelerating death. In this situation, however, it would not generally be reasonable to hold that a service-connected condition accelerated death unless such condition affected a vital organ and was of itself of a progressive or debilitating nature.

[26 FR 1582, Feb. 24, 1961, as amended at 54 FR 34981, Aug. 23, 1989; 54 FR 42803, Oct. 18, 1989]

CROSS REFERENCES: Reasonable doubt. See §3.102. Service connection for mental unsoundness in suicide. See §3.302.

§3.313 Claims based on service in Vietnam.

(a) *Service in Vietnam.* Service in Vietnam includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.

(b) *Service connection based on service in Vietnam.* Service in Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service

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(i) That a pensioner has 90 days from the date the notice is mailed to the pensioner to disaffirm a previous election by completing the disaffirmation form and mailing it to the Department of Veterans Affairs.

(ii) That a pensioner who disaffirms a previous election shall receive, beginning the calendar month after the calendar month in which the Department of Veterans Affairs receives the disaffirmation, the amount of pension payable if improved pension had not been elected.

(iii) That a pensioner who disaffirms a previous election may again elect improved pension but without a right to disaffirm the subsequent election.

(iv) That a pensioner who disaffirms an election of improved pension shall not be indebted to the United States for the period in which the pensioner received improved pension.

(Authority: Pub. L. 96-272, sec. 310; 94 Stat. 500)

(f) *Notification to the Department of Health and Human Services.* The Department of Veterans Affairs shall promptly furnish the Department of Health and Human Services the following information:

(1) The name and identifying information of each pensioner who disaffirms his or her election of improved pension.

(2) The name and identifying information of each pensioner who fails to disaffirm and election of improved pension within the 90-day period described in paragraph (e)(4)(i) of this section.

(3) The name and identifying information of each pensioner who after disaffirming his or her election of improved pension, subsequently reelected improved pension.

(Authority: 38 U.S.C. 501)

[46 FR 11661, Feb. 10, 1981]

§3.715 Radiation Exposure Compensation Act of 1990.

Payment to any individual under the provisions of the Radiation Exposure Compensation Act of 1990 (Pub. L. 101-426 as amended by Public Law 101-510) based upon disability or death resulting from a specific disease shall bar payment, or further payment, of compensation or dependency and indem-

nity compensation to or on behalf of that individual based upon disability or death resulting from the same disease.

(Authority: 42 U.S.C. 2210 note)

[58 FR 25564, Apr. 27, 1993]

CROSS REFERENCE: See §3.500(x) for effective date of discontinuance.

RETIREMENT

§3.750 Retirement pay.

(a) *General.* Except as provided in paragraphs (c) and (d) of this section and §3.751, any person entitled to receive retirement pay based on service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration; or the National Oceanic and Atmospheric Administration may not receive such pay concurrently with benefits payable under laws administered by the Department of Veterans Affairs. The term "retirement pay" includes retired pay and retainer pay.

(b) *Election.* A veteran entitled to retirement pay or compensation may elect which of the benefits he or she desires to receive. An election of retirement pay does not bar him or her from making a subsequent election of the other benefit to which he or she is entitled. An election filed within 1 year from the date of notification of Department of Veterans Affairs entitlement will be considered as "timely filed" for the purpose of §3.401(e)(1). If the veteran is incompetent the 1-year period will begin on the date notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if the claimant was not advised of his or her right of election and the effect thereof.

(c) *Waiver.* A person specified in paragraph (a) of this section may receive compensation upon filing with the service department concerned a waiver of so much of his (or her) retirement pay as is equal in amount to the compensation to which he (or she) is entitled. In the absence of a specific statement to the contrary, the filing of an