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Policy (211)

Routine Future Exams in Scheduling Temporary Total Evaluations

There has been ongoing confusion in the field regarding the need to schedule routine future examinations when a schedular temporary total evaluation is assigned following a medical event or procedure. It is clear by the content of the rating schedule that some schedular temporary total evaluations are to be assigned for an open-ended period, and others are for a specified, closed-end period. An example of an open-ended period is found under diagnostic code 7528, Malignant neoplasms of the genitourinary system. A 100 percent evaluation is assigned, and six months after the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, a mandatory VA exam is conducted. Subsequent evaluations will be based on the residual disability found on exam. Any change in the evaluation based on that exam or subsequent exams shall be subject to the due process requirements of 38 CFR §3.105(e).

In contrast, a schedular temporary total evaluation with a closed-end period is found under diagnostic code 5055, Knee replacement (prosthesis). The rating schedule directs that, following hospital discharge, a one month total rating be assigned based on 38 CFR §4.30. This is followed by assignment of a temporary total evaluation for a period of one year following implantation of the prosthetic joint. After the expiration of the one year, generally, the minimum schedular evaluation is assigned.

In the first example of prostate cancer, there is no question that the plain language of the rating schedule requires a future examination.

Therefore, the future examination will be scheduled by the rating decision. In the second example of a knee replacement, there is no such direction or guidance. In keeping with VA's

current emphasis on simplifying the claims process and reducing the number of unnecessary examinations, new guidance is being issued.

Effective immediately, in cases where the rating schedule provides for a closed-end temporary total evaluation, the rating establishing the total evaluation will prospectively assign the minimum schedular evaluation effective the day following expiration of the prescribed total period. **No future examination will be scheduled prior to the expiration of the temporary total period.** The decision notice letter will inform the veteran of the duration of the temporary total period and the effective date of reduced schedular minimum evaluation.

The exception to this guidance is when the evaluation prior to the temporary total period exceeds the minimum schedular evaluation, and that evaluation is protected under 38 CFR 3.951(b). In such cases, no future examination will be scheduled, and the higher protected evaluation will be assigned the day following expiration of the temporary total period.

The M21-1MR will be revised to reflect this guidance.

New Procedures for Claims Based on Herbicide Exposure in Thailand and Korea

Effective immediately, when regional offices (ROs) receive disability claims based on exposure to tactical herbicides, such as Agent Orange, from Veterans who served in Thailand or Korea during the Vietnam era, there is no longer a requirement to send an inquiry to the C&P Service Agent Orange Mailbox. Development inquiries can be sent directly to the Army and Joint Services Records Research Center (JSRRC) when the available evidence does not indicate tactical herbicide exposure. This will reduce processing time and provide better service to Veterans.

Herbicide related claims from Veterans with Thailand service

After reviewing documents related to herbicide use in Vietnam and Thailand, C&P Service has determined that there was significant use of herbicides on the fenced in perimeters of military bases in Thailand intended to eliminate vegetation and ground cover for base security purposes. Evidence of this can be found in a declassified Vietnam era Department of Defense (DoD) document titled *Project CHECO Southeast Asia Report: Base Defense in Thailand*. Therefore, when herbicide related claims from Veterans with Thailand service are received, RO personnel should now evaluate the treatment and personnel records to determine whether the Veteran's service activities involved duty on or near the perimeter of the military base where the Veteran was stationed.

DoD has provided information that commercial herbicides, rather than tactical herbicides, were used within the confines of Thailand bases to control weeds. These commercial herbicides have been, and continue to be, used on all military bases worldwide. They do not fall under the VA regulations governing exposure to tactical herbicides such as Agent Orange. However, there is some evidence that the herbicides used on the Thailand base perimeters may have been either tactical, procured from Vietnam, or a commercial variant of much greater strength and with characteristics of tactical herbicides. Therefore, C&P Service has determined that a special consideration of herbicide exposure on a facts found or direct basis should be extended to those Veterans whose duties placed them on or near the perimeters of Thailand military bases. This allows for presumptive service connection of the diseases associated with herbicide exposure. The majority of troops in Thailand during the Vietnam era were stationed at the Royal Thai Air Force Bases of U-Tapao, Ubon, Nakhon Phanom, Udorn, Takhli, Korat, and Don Muang. If a US Air Force Veteran served on one of these air bases as a security policeman, security patrol dog handler, member of a security police squadron, or otherwise served near the air base perimeter, as shown by MOS (military occupational specialty),

performance evaluations, or other credible evidence, then herbicide exposure should be acknowledged on a facts found or direct basis. However, this applies only during the Vietnam era, from February 28, 1961 to May 7, 1975.

Along with air bases, there were some small Army installations established in Thailand during this period, which may also have used perimeter herbicides in the same manner as the air bases. Therefore, if a US Army Veteran claims a disability based on herbicide exposure and the Veteran was a member of a military police (MP) unit or was assigned an MP MOS and *states that his duty placed him at or near the base perimeter*, then herbicide exposure on a facts found or direct basis should be acknowledged for this Veteran. The difference in approach for US Army Veterans is based on the fact that some MPs had criminal investigation duties rather than base security duties. Therefore, the Veteran's lay statement is required to establish security duty on the base perimeter. This also applies to US Army personnel who served on air bases in Thailand. During the early years of the war in Vietnam, before Air Force security units were fully established on air bases in Thailand, US Army personnel may have provided perimeter security. In such cases, if the Veteran provides a lay statement that he was involved with perimeter security duty *and there is additional credible evidence supporting this statement*, then herbicide exposure on a facts found or direct basis can be acknowledged for this Veteran.

Evaluation and adjudication of the cases described above can now be conducted by RO personnel without input from the C&P Service Agent Orange Mailbox. These instructions replace those provided in the August 2009 C&P service Bulletin. In summary, no herbicide related claim from a Thailand Veteran should be sent to the C&P Service Agent Orange Mailbox. If evidence shows that the Veteran performed duties along the military base perimeter, ROs should acknowledge herbicide exposure on a facts found or direct basis. If the available evidence does not show

service along the base perimeter and does not otherwise indicate exposure to tactical herbicides, place the *memorandum for the record* from M21-1MR IV.ii.2.C.10.q in the claims file and send a request for information to JSRRC.

Herbicide related claims from Veterans with Korean service

Currently, tactical herbicide exposure can be presumed for Veterans who served in specific US Army units that operated along the Korean demilitarized zone (DMZ) from April 1968 through July 1969. These units were identified by DoD documents and are listed in M21-1MR IV.ii.2.C.10.o. When service treatment or personnel records show that a Veteran was assigned to one of these units during the time frame of tactical herbicide use, the Veteran qualifies for the presumption of exposure. When a Veteran with Korean service alleges herbicide exposure but was not in one of the specified units or was in one of the specified units outside the time frame of tactical herbicide use, ROs were previously instructed to send an inquiry to the Agent Orange Mailbox for any additional evidence that might indicate tactical herbicide exposure.

C&P Service has now determined that ROs are no longer required to submit herbicide exposure inquiries from Korean service Veterans to the Agent Orange Mailbox. Inquiries related to potential herbicide exposure outside the specific units and time frame listed in M21-1MR should now be sent directly to JSRRC.

These policy changes are intended to reduce the time required to process these claims.

Procedures (212)

M21-1 Manual Rewrite (MR) Updates

Recently, C&P Service released changes to M21-1MR that:

- updates procedures regarding claims for

service connection for death from suicide (M21-1MR, Part IV, Subpart iii, Chapter 2)

- includes new information on Vocational Rehabilitation and Education (VR&E) motivational contact procedures and controlling the 810-diary in Share (M21-1MR, Part IX, Subpart I, Chapter 1, Section A)

For a detailed list of all the changes made to these chapters, please refer to the Transmittal Sheet in the “Changes by Part” or “Changes by Date” link at the top of the MR main website.

Handling and Storage Requirements for the DoD STR Folder

When a servicemember leaves the military, his or her Service Treatment Records (STRs) are transferred to VA on a long-term loan. The Department of Defense (DoD) is the owner of the STRs and the STR folder.

The DoD Records Custodians have raised the issue that VA is destroying their STR folders, which contain some medical documentation on the servicemember/Veteran, thus destroying the integrity of the total STR.

The M21-1 Manual Rewrite(MR), specifically Part III, Subpart iii, Chapter 2, Section A, details handling and storage requirements for STRs. The M21-1MR does not authorize the destruction of the STR folder. **Under no circumstances should the STR folder be destroyed.**

Some specifics related to handling and storing DoD STRs on loan to VA include:

- Avoid marking on, date stamping, or punching holes in any records received from the service department. Avoid removing STRs from the STR folder unless necessary for photocopying (M21-1MR III.iii.2.A.2.a).
- STRs belong to the respective service departments and are on loan to VA. As such,