



# **GULF WAR C&P EXAMS AND**

# **PRESUMPTIVE SERVICE CONNECTION**

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# WHAT MAKES A CONDITION PRESUMPTIVE?

- VA presumes that specific disabilities diagnosed in certain veterans were caused by their military service.
- VA does this because of the unique circumstances of their military service.
- If **one** of these conditions is diagnosed in a Veteran in one of these groups, VA presumes that the circumstances of his/her service caused the condition, and disability compensation can be awarded.

Fibromyalgia, Chronic Fatigue Syndrome, and Functional Gastrointestinal Disorders (IBS) are **presumptive** chronic multi-symptom illness (CMI) **conditions due to** service in the Gulf War.

# WHAT ARE CODE OF FEDERAL REGULATIONS PRESUMPTIVE CMI FOR GULF WAR VETERANS?

Code of Federal Regulations, Chapter 38, Section 3.317

In light of disabilities occurring in Persian Gulf veterans, the following is offered:

the term *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.

CFR 38 §3.317

Office of Public Health VA

# WHAT ARE PRESUMPTIVE CMI FOR GULF WAR VETERANS?

From the Office of Public Health (VA) three presumptive CMI conditions are:

- **Chronic Fatigue Syndrome**

a condition of long-term and severe fatigue that is not relieved by rest and is not directly caused by other conditions.

- **Fibromyalgia**

a condition characterized by widespread muscle pain; other symptoms may include sleep disturbances, morning stiffness, headache, and memory problems.

- **Functional gastrointestinal disorders**

a group of conditions marked by chronic or recurrent symptoms related to any part of the gastrointestinal tract. Functional condition refers to an abnormal function of an organ, without a structural alteration in the tissues (e.g., irritable bowel syndrome [IBS], functional dyspepsia, and functional abdominal pain syndrome).

# WHAT CAUSES PRESUMPTIVE CMI FOR GULF WAR VETERANS, AND HOW IS IT DIAGNOSED?

- To date, no one knows what causes these three presumptive CMI conditions.
- Diagnoses for these conditions are given only after all other possible diagnoses are ruled out via medical and laboratory testing.
- These conditions are not exclusive to Gulf War veterans, many other era veterans and civilians also get them.
- These are only presumptive conditions for Gulf War Veterans who served in Southwest Asia Theater of Operations.

# REASONS COMPENSATION SHALL NOT BE AWARDED FOR THE THREE PRESUMPTIVE CMI CONDITIONS.

- If there is affirmative evidence that the disability was not incurred during active duty in Southwest Asia Theater of Operations. **i.e. Preexisting before service in gulf war.**
- If there is affirmative evidence the disability occurred after the veterans active duty service. **i.e. Car wreck after service causing veterans muscle and joint pain (minus any presumptive conditions which can occur at any time within the presumptive time period.)**
- If there is affirmative evidence that the disability is a result of the veterans own willful misconduct. **i.e. Alcoholism or Drug addiction**
- **However, all of this should already be ruled out before the veteran is given the diagnoses for these three presumptive CMI conditions.**

# MEDICAL TESTING PROTOCOL ON PRESUMPTIVE CMI GULF WAR C&P EXAMS

- Perhaps a medical checklist of test should be created for the C&P examiner's to look for to see if certain other illnesses have been ruled out that are detectable by medical and lab testing. **i.e. Lyme disease, Rheumatoid Arthritis, Rocky Mountain Spotted Fever,**
- Perhaps as mentioned in a later slide **specific DBQ** for these three presumptive CMI would be beneficial to ensure requirements have been meet.
- By doing this we ensure that the veterans presumptive CMI diagnoses are indeed the correct diagnoses and all other possible causes have been ruled out.

# WHAT C&P EXAMINERS CAN LOOK FOR ON A GULF WAR PRESUMPTIVE CMI CLAIM

- Look to see if there is a diagnosis for any of the three presumptive CMI conditions while reviewing the medical record of a Gulf War veteran.
- If the Gulf War veteran already has a diagnosis of any of the three presumptive CMI conditions, no medical statement is required as to whether or not illness was incurred or caused by service because it is already presumed to have been caused by the service.
- If Gulf War veteran has no such diagnosis, defer the claim until proper medical testing has been completed to determine whether or not the veteran has a presumptive CMI.

# DISABILITY COMPENSATION: “PRESUMPTIVE DISABILITY BENEFITS”

benefits.va.gov

**DISABILITY COMPENSATION**  
“PRESUMPTIVE” DISABILITY BENEFITS

**WHAT IS “PRESUMPTIVE” SERVICE CONNECTION?**

VA presumes that specific disabilities diagnosed in certain veterans were caused by their military service. VA does this because of the unique circumstances of their military service. If one of these conditions is diagnosed in a Veteran in one of these groups, VA presumes that the circumstances of his/her service caused the condition, and disability compensation can be awarded.

**WHAT CONDITIONS ARE “PRESUMED” TO BE CAUSED BY MILITARY SERVICE?**

**Veterans in the groups identified below:** Entitlement to disability compensation may be presumed under the circumstances described and for the conditions listed.

**Veterans within one year of release from active duty:** Veterans diagnosed with chronic diseases (such as arthritis, diabetes, or hypertension) are encouraged to apply for disability compensation.

**Veterans with continuous service of 90 days or more:** Veterans diagnosed with amyotrophic lateral sclerosis (ALS)/Lou Gehrig's disease at any time after discharge or release from qualifying active service is sufficient to establish service connection for the disease, if the veteran had active, continuous service of 90 days or more.

Former Prisoners of War	Vietnam Veterans (Exposed to Agent Orange)	Atomic Veterans (Exposed to Ionizing Radiation)	Gulf War Veterans (Undiagnosed Illness)
(1) Imprisoned for any length of time, and disability at least 10 percent disabling: <ul style="list-style-type: none"> <li>psychosis</li> <li>any of the anxiety states</li> <li>dysthymic disorder</li> </ul>	Served in the Republic of Vietnam between 1/9/62 and 5/7/75: <ul style="list-style-type: none"> <li>acute and subacute peripheral neuropathy*</li> <li>AL amyloidosis</li> <li>B-cell leukemias</li> <li>chloracne or other acneform disease similar to chloracne*</li> <li>chronic lymphocytic leukemia</li> </ul>	Participated in atmospheric nuclear testing; occupied or was a POW in Hiroshima or Nagasaki; service before 2/1/92 at a diffusion plant in Paducah, KY, Portsmouth, OH, or Oak	Served in the Southwest Asia Theater of Operations during the Gulf War with condition at least 10 percent disabling by 12/31/11. Included are medically unexplained chronic multi-symptom

Disabilities determined by VA to be related to your military service can lead to monthly non-taxable compensation, enrollment in the VA health care system, a 10-point hiring preference for federal employment and other important benefits. Ask your VA representative or Veterans Service Organization representative about Disability Compensation, Pension, Health Care, Caregiver Program, Career Services, Educational Assistance, Home Loan Guaranty, Insurance and/or Dependents and Survivors' Benefits.

U.S. Department of Veterans Affairs

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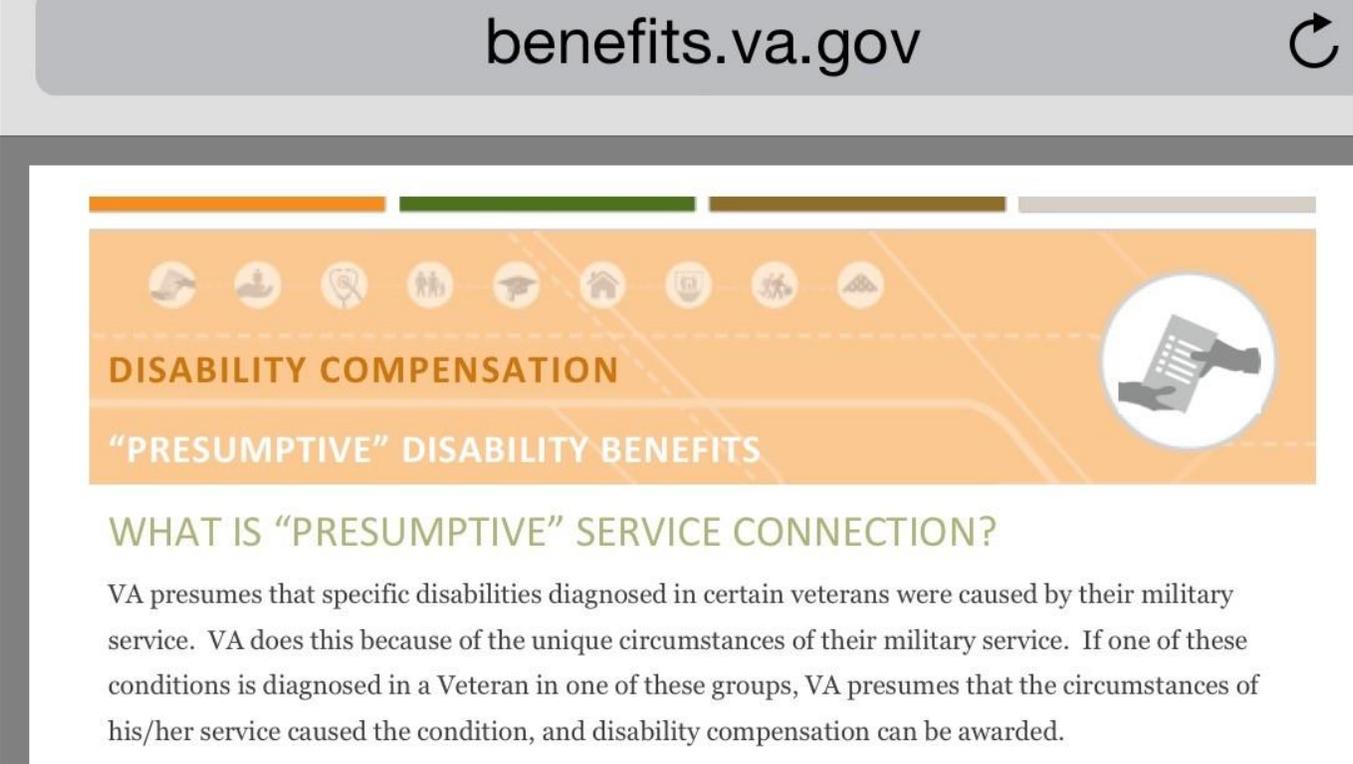
<ul style="list-style-type: none"> <li>organic residuals of frostbite</li> <li>post-traumatic osteoarthritis</li> <li>heart disease or hypertensive vascular disease and their complications</li> <li>stroke and its residuals</li> </ul>	<ul style="list-style-type: none"> <li>diabetes type 2</li> <li>Hodgkin's disease</li> <li>ischemic heart disease</li> <li>multiple myeloma</li> <li>non-Hodgkin's lymphoma</li> <li>Parkinson's disease</li> <li>porphyria cutanea tarda*</li> <li>prostate cancer</li> <li>respiratory cancers (lung, bronchus, larynx, trachea)</li> <li>soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma or mesothelioma)</li> </ul>	Ridge, TN; or service before 1/1/74 at Amchitka Island, AK: <ul style="list-style-type: none"> <li>all forms of leukemia (except for chronic lymphocytic leukemia)</li> <li>cancer of the thyroid, breast, pharynx, esophagus, stomach, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary tract (kidneys, renal pelvis, ureters, urinary bladder and urethra), brain, bone, lung, colon, ovary</li> <li>bronchiolo-alveolar carcinoma</li> <li>multiple myeloma</li> <li>lymphomas (other than Hodgkin's disease)</li> <li>primary liver cancer (except if cirrhosis or hepatitis B is indicated)</li> </ul>	illnesses defined by a cluster of signs or symptoms that have existed for six months or more, such as: <ul style="list-style-type: none"> <li>chronic fatigue syndrome</li> <li>fibromyalgia</li> <li>irritable bowel syndrome</li> <li>any diagnosed or undiagnosed illness that the Secretary of Veterans Affairs determines warrants a presumption of service connection</li> </ul> Signs or symptoms of an undiagnosed illness include: fatigue, skin symptoms, headaches, muscle pain, joint pain, neurological symptoms, respiratory symptoms, sleep disturbance, GI symptoms, cardiovascular symptoms, weight loss, menstrual disorders
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(2) Imprisoned for at least 30 days, and disability at least 10 percent disabling:
 

- avitaminosis
- beriberi
- chronic dysentery
- helminthiasis
- malnutrition (including optic atrophy)
- pellagra
- any other nutritional deficiency
- irritable bowel syndrome
- peptic ulcer disease
- peripheral neuropathy
- cirrhosis of the liver

\*Must become manifest to a degree of 10 percent or more within a year after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

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# PRESUMPTIVE SERVICE CONTINUED

It is important that C&P Examiners remember which conditions are presumptive to veterans' service in order to better serve them.

With presumption already granted, **the Rating Officer need not refer cases for further investigation over whether or not the conditions were incurred or caused by the veterans service.**

When a presumptive CMI condition has already been diagnosed, and the VA presumes that a condition is presumptive due to the veteran's service, **there is no need for C&P Examiners to make further diagnostic investigation.**

# DATA FROM VBA ON PRESUMPTIVE CMI CONDITIONS

10,568 veterans were denied benefits due to reasons of “Not Incurred/Caused by Service” despite being veterans meeting presumptive conditions.

CMI DENIALS BY REASON	2011 CONDITIONS	2011 VETERANS	2012 CONDITIONS	2012 VETERANS	2013 CONDITIONS	2013 VETERANS	2014 CONDITIONS	2014 VETERANS	2015 CONDITIONS	2015 VETERANS	TOTAL CONDITIONS
38 CFR 3.383 (Paired Extremity)					1	1					1
Constitutional/Developmental Abnormalities	1	1	3	3	11	11	1	1	1	1	17
No Causation	1	1	3	3	2	2	1	1	1	1	8
No Diagnosis	706	597	1,360	1,099	3,038	2,364	2,764	2,160	1,842	1,427	9,710
Not Aggravated by Service	2	2	1	1	6	6	6	6	10	9	25
Not Established by Presumption	287	223	380	308	619	495	548	427	342	283	2,176
Not In Country	4	2	3	1	1	1	1	1	1	1	10
Not Incurred/Caused by Service	1,431	1,200	1,985	1,598	3,028	2,399	2,477	1,977	1,647	1,293	10,568
Not Secondary	43	39	59	51	90	85	86	80	66	53	344
Not Well Grounded							1	1			1
Not in Line of Duty			1	1	1	1	1	1			3
<b>Totals (not unique)</b>	<b>2,475</b>	<b>2,065</b>	<b>3,795</b>	<b>3,065</b>	<b>6,797</b>	<b>5,365</b>	<b>5,886</b>	<b>4,655</b>	<b>3,910</b>	<b>3,068</b>	<b>22,863</b>

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Communication to NGORO, July 13, 2015

# FIXING THE PROBLEM WITH PRESUMPTIVE CMI GULF WAR CLAIMS.

- Chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome are Disability Pattern 2, diagnosable but medically unexplained chronic multi-symptom illnesses of unknown etiology. Therefore, the VA has determined that they are conditions presumptive to service for veterans having served in the Gulf War.
- In such cases, the examiner should provide a medical statement explaining the disability pattern. However, the examiner should not provide a medical opinion as to whether the condition was incurred/caused by service because the veteran has a diagnosis of a presumptive CMI.

# WORKING TOGETHER: SOME CONSIDERATIONS

It is important that we are all working together to address this issue.

- To help, perhaps, the **creation of a specific DBQ** for presumptive CMI conditions could help. For example, information could be added to the initial portion of the DBQ to ensure that Examiners will know about what presumptive condition the veteran has.
- In addition, **pocket reference cards and/or posters for all C&P Examiners** may be useful in streamlining the processing of these cases because they can reference presumptive conditions for veterans of every era.

# REFERENCES

- U.S. Department of Veteran's Affairs. Compensation for post-service Gulf War veterans (webpage). Retrieved 8-1-15 from <http://www.benefits.va.gov/COMPENSATION/claims-postservice-gulfwar.asp>
- U.S. Department of Veteran's Affairs. Disability compensation: "Presumptive" disability benefits (information sheet). Retrieved 8-1-15 from <http://benefits.va.gov/BENEFITS/factsheets/serviceconnected/presumption.pdf>
- U.S. Department of Veteran's Affairs. Gulf War presumptives (webpage). Retrieved 8-1-15 from <http://www.publichealth.va.gov/exposures/publications/gulf-war/gulf-war-spring-2015/gulf-war-presumptives.asp>

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CONSIDERATION  
AND CONTINUED SERVICE  
TO OUR NATION'S VETERANS**



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