GULF WAR C&P EXAMS AND PRESUMPTIVE SERVICE CONNECTION

Ronald E. Brown
President, National Gulf War Resource Center
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 veteran’s active duty service. i.e. Car wreck after service causing veteran’s 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 veteran’s 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”

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

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>38 CFR 3.383 (Paired Extremity)</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constitutional/Developmental Abnorm</td>
<td>706</td>
<td>597</td>
<td>1,360</td>
<td>1,058</td>
<td>3,038</td>
<td>2,364</td>
<td>2,764</td>
<td>2,160</td>
<td>1,842</td>
<td>1,427</td>
<td>9,710</td>
</tr>
<tr>
<td>No Causation</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>10</td>
<td>9</td>
<td>25</td>
</tr>
<tr>
<td>No Diagnosis</td>
<td>287</td>
<td>223</td>
<td>380</td>
<td>308</td>
<td>619</td>
<td>405</td>
<td>548</td>
<td>427</td>
<td>342</td>
<td>283</td>
<td>2,176</td>
</tr>
<tr>
<td>Not Aggravated by Service</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Not In Country</td>
<td>43</td>
<td>39</td>
<td>59</td>
<td>51</td>
<td>90</td>
<td>85</td>
<td>86</td>
<td>80</td>
<td>66</td>
<td>53</td>
<td>344</td>
</tr>
<tr>
<td>Not Incurred/Caused by Service</td>
<td>1,431</td>
<td>1,200</td>
<td>1,985</td>
<td>1,598</td>
<td>3,028</td>
<td>2,399</td>
<td>2,477</td>
<td>1,977</td>
<td>1,647</td>
<td>1,293</td>
<td>10,568</td>
</tr>
<tr>
<td>Not Secondary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Well Grounded</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not in Line of Duty</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Totals (not unique)</td>
<td>2,475</td>
<td>2,065</td>
<td>3,795</td>
<td>3,065</td>
<td>6,797</td>
<td>5,365</td>
<td>5,886</td>
<td>4,655</td>
<td>3,910</td>
<td>3,068</td>
<td>22,863</td>
</tr>
</tbody>
</table>

Brad Flohr
Senior Veteran's Benefit Administration Specialist
Communication to NGORO, July 13, 2015
• 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.
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


THANK YOU FOR YOUR TIME, CONSIDERATION AND CONTINUED SERVICE TO OUR NATION’S VETERANS