



FLORIDA DEPARTMENT OF VETERANS' AFFAIRS

Honoring those who served U.S.

**DIRECT vs. PRESUMPTIVE SERVICE
CONNECTION**

SUMMARY TABLE

National Academy of Sciences.

November 2018 • **VETERANS AND AGENT ORANGE**

Sufficient Evidence of an Association with Agent Orange

- Soft-tissue sarcoma (including heart)
- * Non-Hodgkin lymphoma
- * Chronic lymphocytic leukemia (including hairy cell leukemia and other chronic B-cell leukemias)
- * Hodgkin lymphoma
- Chloracne
- **Hypertension** (category change from Limited or Suggestive in *Update 2014*)
- **Monoclonal gammopathy of undetermined significance (MGUS)** (newly considered condition)

Presumptives of Agent Orange

38 CFR 3.309(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.
 - **Boots on the Ground RVN, Thailand, DMZ Korea**
 - **Brown Water Navy**
 - **Blue Water Navy within 12-mile Territorial Waters of RVN**

Presumptive Diseases per 38 CFR 3.309(e)

- AL amyloidosis
- Chloracne
- **Diabetes Type 2**
- Hodgkin's disease
- Non-Hodgkin's lymphoma
- **Ischemic heart disease** MI, CAD, ACD, CABG, Angina
- Multiple myeloma
- **Parkinson's Disease**
- Prostate cancer

- Peripheral neuropathy: Acute and subacute, Fast onset & resolution
- Porphyria cutanea tarda
- Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
- Soft-tissue sarcoma (**other than** osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)
- Leukemia chronic B-cell leukemias, hairy-cell leukemia, CLL

NOTE 3: Ischemic Heart Disease does not include Hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of Ischemic heart disease.

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Presumptive List 38 CFR 3.309(e)

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- Non-Hodgkin lymphoma
- Chronic lymphocytic leukemia (including hairy cell leukemia and other chronic B-cell leukemias)
- Hodgkin lymphoma
- Chloracne

Sufficient Evidence of Association

Not on Presumptive List - Direct

- **Hypertension** (category change from Limited or Suggestive in *Update 2014*)
- **Monoclonal gammopathy of undetermined significance (MGUS)** (newly considered condition)

MGUS is a non-**cancerous** condition where the body makes an abnormal protein, called a paraprotein. MGUS is not a **cancer**, but people with it have a slightly higher risk of developing: **myeloma** (a **cancer** of blood cells called plasma cells)

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•Suggestive Evidence of an Association

- Laryngeal cancer
- Cancer of the lung, bronchus, or trachea
- Prostate cancer
- **Cancer of the urinary bladder**
- Multiple myeloma
- AL amyloidosis
- Early-onset peripheral neuropathy
- Parkinson disease (including **Parkinsonism and Parkinson-like** syndromes)
- Porphyria cutanea tarda
- Ischemic heart disease
- **Stroke**
- **Hypothyroidism**

SUMMARY TABLE

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November 2018 • VETERANS AND AGENT ORANGE

Suggestive Evidence of Association

Presumptive List 38 CFR 3.309(e)

- Respiratory Cancers (Lung, Bronchus, Larynx or Trachea)
- Prostate cancer
- * Multiple myeloma
- * AL amyloidosis
- Ischemic heart disease
- Parkinson disease
- Early-onset peripheral neuropathy
- Porphyria cutanea tarda

Suggestive Evidence of Association

Not Presumptive - Direct

- **Cancer of the urinary bladder**
- **Parkinsonism and Parkinson-like syndromes**
- **Stroke**
- **Hypothyroidism**

SUMMARY TABLE **National Academy of Sciences.**
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Insufficient Evidence of an Association #1

- Cancers of the oral cavity, lips and tongue, pharynx, tonsils), or nasal cavity including ears and sinuses
- Cancers of the pleura, mediastinum, and other unspecified sites in the respiratory system and intrathoracic organs
- Esophageal cancer
- Stomach cancer
- Colorectal cancer (including small intestine and anus)
- Hepatobiliary cancers (liver, gallbladder, and bile ducts)
- Pancreatic cancer
- Bone and joint cancers
- Melanoma
- Non-melanoma skin cancer (basal-cell and squamous-cell)
- Breast cancer
- Cancers of reproductive organs (cervix, uterus, ovary, testes, and penis; excluding prostate)
- Renal cancer (kidney and renal pelvis)
- Cancers of brain and nervous system (including eye)
- Endocrine cancers (thyroid, thymus, and other endocrine organs)
- Leukemia (other than chronic lymphocytic leukemia, including hairy-cell leukemia and other chronic B-cell leukemias)
- Other myeloid diseases (including myeloproliferative neoplasms)
- Cancers at other and unspecified sites
- Infertility
- Spontaneous abortion (other than after paternal exposure to TCDD, which appears not to be associated)

SUMMARY TABLE **National Academy of Sciences.**
November 2018 • **VETERANS AND AGENT ORANGE**

Insufficient Evidence of an Association #2

- Neonatal or infant death and stillbirth in offspring of exposed people
- Low birth weight in offspring of exposed people
- Birth defects in offspring of exposed people, including **spina bifida**
- Childhood cancer (including acute myeloid leukemia) or other adverse health outcomes in offspring of exposed people
- Neurobehavioral, cognitive and neuropsychiatric disorders
- Neurodegenerative diseases, **excluding Parkinson disease**
- Chronic peripheral nervous system disorders
- Hearing loss
- Respiratory disorders (wheeze or asthma, chronic obstructive pulmonary disease, and farmer's lung)
- Gastrointestinal, metabolic, and digestive disorders (liver disorders including cirrhosis, lipid abnormalities, and ulcers)
- Immune system disorders (immune suppression, allergy, and autoimmunity)
- Circulatory disorders (**other than hypertension, ischemic heart disease, and stroke**)
- Endometriosis
- Disruption of thyroid homeostasis (**other than hypothyroidism**)
- Eye problems
- Bone conditions
- Kidney and urinary disorders (including chronic kidney disorder, differences in kidney function, nephropathy, and end stage renal disorder)
- Chronic skin disorders (including skin infections and changes in skin pigmentation)

US Court of Appeals for Veterans Claims

August 22, 2019

Euzebio v. Wilke

- DIRECT SC for Diseases Listed as having *Suggestive* or *Sufficient* evidence of association with Agent Orange but are *not listed by VA as a Presumptive* under 3.309(e)
- VA adjudicators **ARE PERMITTED** to **IGNORE** the Natl. Acad. Of Sciences, Engineering & Medicine (NASEM) report **if the report is not submitted as evidence in the Veteran's claim.**

RECENT CASE **Board of Veterans' Appeals** August 27, 2019
Claim for Entitlement of Service Connection for **HYPERTENSION**

38 CFR 3.309 Note 2 HTN is not among conditions included in IHD

38 CFR 3.309(e) HTN is not on the List of Presumptives for A/O

C&P exam and Medical Opinion was prior to NAS 2018 Update

HTN elevated from Limited Suggestive to Sufficient Evidence

Remand

*“Provide the Veteran’s claims file to an examiner for review and opinion. The examiner should issue opinions as to whether **it is at least as likely as not** (a 50% probability or higher) that the Veteran’s **hypertension** had its **onset in service** or is related to service, including **exposures to herbicides**. **The examiner should make these determination in light of the recent 2018 NAS Update Report and is asked to refer this report as a part of the opinion.** All opinions must be supported by rationale.”*

RECENT CASE **Board of Veterans' Appeals** August 27, 2019
Claim for Entitlement of Service Connection for **HYPERTENSION**

The Veteran also has a right under BVA Remand to Obtain another Medical Opinion

Appeals and Remands take forever get back to BVA....therefore,

BE PROACTIVE....

ANTICIPATE THE DENIAL BY VA...

SUBMIT A MEDICAL OPINION WITH THE 526EZ CLAIM

Ask the Veteran's Private Doctor to Quote NASEM A/O UPDATE Nov 2018

*"The medical evidence for association of (Disease) with **exposure to herbicides** has been elevated from Suggestive to Sufficient by The Natl. Academies of Science.*

*In light of the findings of the **National Academies of Science, Engineering and Medicine 2018 Update**, it is at least as likely as not (a 50% probability or higher) that the Veteran's **hypertension/stroke/parkinsonism/Parkinson-like symptoms** is related to service due to **exposures to herbicides**"*

The NAS 2018 Update Report is the Scientific Rationale

Direct Service Connection

Submit the NASEM Report with the claim

To Trigger VA *Duty to Assist* (VAE, Opinion)

“ The Veteran was exposed to Agent Orange. He has been diagnosed with HTN/Bladder Ca/Parkinsonism/ Parkinson-like symptoms/hypothyroidism/Stroke.

Please see the attached summary of the *National Academies of Sciences, Engineering and Medicine Report November 2018, Veterans and Agent Orange: Update 2018* which indicates this condition may be associated with such exposure.

The veteran requests a medical opinion pursuant to VA’s *Duty To Assist* as to whether this condition is related to his/her exposure in service.”

Submit the NASEM Report with a Private Medical Opinion

Ask the Doctor to Use NASEM Report as the ***Rationale***

The association has been evaluated as ***Sufficient*** or ***Suggestive***

Therefore, “***It is at least as likely as not, that the veterans _____ Dgx Condition _____ is a result of exposure to herbicides in RVN (Thailand, DMZ-Korea, Other Location)***”

The Caveat VA RATING SCHEDULE FOR HYPERTENSION

- **7101** Hypertensive vascular disease (hypertension and isolated systolic hypertension):

Diastolic pressure predominantly 130 or more 60

Diastolic pressure predominantly 120 or more 40

Diastolic pressure predominantly 110 or more, or; systolic pressure predominantly 200 or more 20

Diastolic pressure predominantly **100 or more**, or; **systolic** pressure predominantly **160** or more, or; minimum evaluation for an individual with a history of **diastolic pressure** predominantly **100** or more who requires continuous medication for control 10

Diastolic under 100 0

QUESTIONS

- Is the VBA obligated under *Duty To Assist* statute to order a C&P Exam Claim for Hypertension due to Herbicide exposure
 - Without submission of NASEM Report?
 - With submission of NASEM Nov 2018 Report?
 - With statement on NASEM without the report?
 - With Physician Medical Opinion citing NASEM 2018 as the Rationale for the Link to Military Service?

QUESTIONS

- If the veteran does not submit a copy of the NASEM Report with his claim for Parkinson's Disease,
 - VA is still required to order a C&P Exam?
 - He can reference the NASEM Report in the Claim?
 - He can submit a Medical Opinion from his doctor?
 - He can submit the report with his request for a HLR?
 - He can File a Supplemental Claim?
 - He can File a 10-182 to BVA?

QUESTIONS

- All diseases listed by NASEM Report 2018 as “Sufficient Evidence of Association” with exposure to herbicides ...
 - Are on the Presumptives list in *38 CFR 3.309 (e)*

None of the diseases listed by NASEM Report 2018 as “**Suggestive Evidence of Association**” with exposure to herbicides...

- Are on the Presumptives list in *38 CFR 3.309 (e)*

QUESTIONS

- Claims for **Direct Service Connection** require a **Medical Opinion with a Nexus** to Military Service except for...
 - Bladder Cancer
 - Parkinson's Disease
 - Parkinsonism / Parkinson-like
 - Multiple Myeloma
 - Stroke
 - Hypothyroidism
 - Hypertension

QUESTIONS

- What is the **best evidence** you can submit with the claim for DIRECT Service Connection for exposure to herbicides
 - National Academies of Science Engineering and Medicine 2018 Update
 - A Medical Opinion that uses NASEM as the rationale
 - Medical evidence of the current diagnosis
 - A list of disabilities associated with Parkinson-like symptoms