



Lesson 9

Presumptive

Conditions

The American Legion DSO School

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Lesson 9 Learning Objectives

Recognize claims for diseases and disabilities where VA can grant service connection on a presumptive basis:

- Evaluate claims to determine whether they meet **military service qualifications** for presumptive service connection.
- Evaluate claims to determine whether they meet **health condition qualifications** for presumptive service connection.
- Evaluate claims to determine whether they **meet time restrictions** for presumptive service connection.

Presumptive Conditions Overview

- Certain diseases and disabilities are presumed by VA to be related to military service:
 - 1. Tropical Diseases:** 38 CFR § 3.309(b)
 - 2. Prisoner of War:** 38 CFR § 3.309(c)
 - 3. Radiation:** 38 CFR § 3.309(d)
 - 4. Herbicide - Agent Orange:** 38 CFR § 3.309(e)
 - 5. Gulf War Illness:** 38 CFR § 3.317(e)
 - 6. Camp LeJeune:** 38 CFR § 3.309(f)
 - 7. Particulate Matter / Burn Pits:** 38 CFR § 3.320 * **New in 2021**
- For a Veteran with qualifying service and a qualifying health condition, presumption removes the need to show a nexus between the Veteran's military service and the Veteran's current condition.

1: Tropical Diseases

Qualifying Service: Served in a tropical area.

Qualifying Health Conditions:

Listed at 38 C.F.R. § 3.309(b), including cholera, dysentery, malaria, yellow fever, and resultant disorders or diseases due to treatment of such diseases, or as a preventative thereof.

Time Restriction:

Condition must have manifested to a degree of 10% or more **within one year of service** or within the incubation period for the condition.



Photo: CDC

**Presumptions
apply to any
Veteran with
service in a
tropical area.**

2: Prisoner of War

Qualifying Service: Was Prisoner of War (POW)

Qualifying Health Conditions: 38 C.F.R. § 3.309(c)(1)

Includes psychosis, anxiety conditions, depression, residuals of frostbite, posttraumatic osteoarthritis, certain heart diseases, and stroke.

Qualifying Health Conditions with at least 30 days as POW:

38 C.F.R. § 3.309(c)(2) Includes the above plus avitaminosis, chronic dysentery, malnutrition, irritable bowel syndrome, peptic ulcer disease, peripheral neuropathy, cirrhosis of the liver.

Time Restriction: None, if manifested to a degree of 10% or more at any time after exit from service



3: Radiation Exposed Veterans



Qualifying Service:

Participated in radiation-risk activities around atomic bomb blast sites in Japan, nuclear weapon test sites, and other high-risk locations.

Qualifying Health Conditions:

Listed at 38 C.F.R. §§ 3.309(d) and 3.311, including many types of cancer.

Time Restrictions: None.

Advocacy tip: Look carefully at the names and spelling of Pacific islands where the U.S. tested or stored nuclear weapons and waste.

4: Herbicide-Agent Orange

Exposure to herbicides is presumed if:

Qualifying Service:

- Service in Republic of Vietnam between January 9, 1962, and May 7, 1975.
- Served on the perimeter of airbases in Thailand used by the U.S. Air Force.
- Served on the Korean Demilitarized Zone between April 1, 1968 and August 31, 1972.
- Operated, maintained, or served onboard C-123s used to spray herbicides.

Excluded by VA regulations:

- Merely flew over Vietnam airspace.

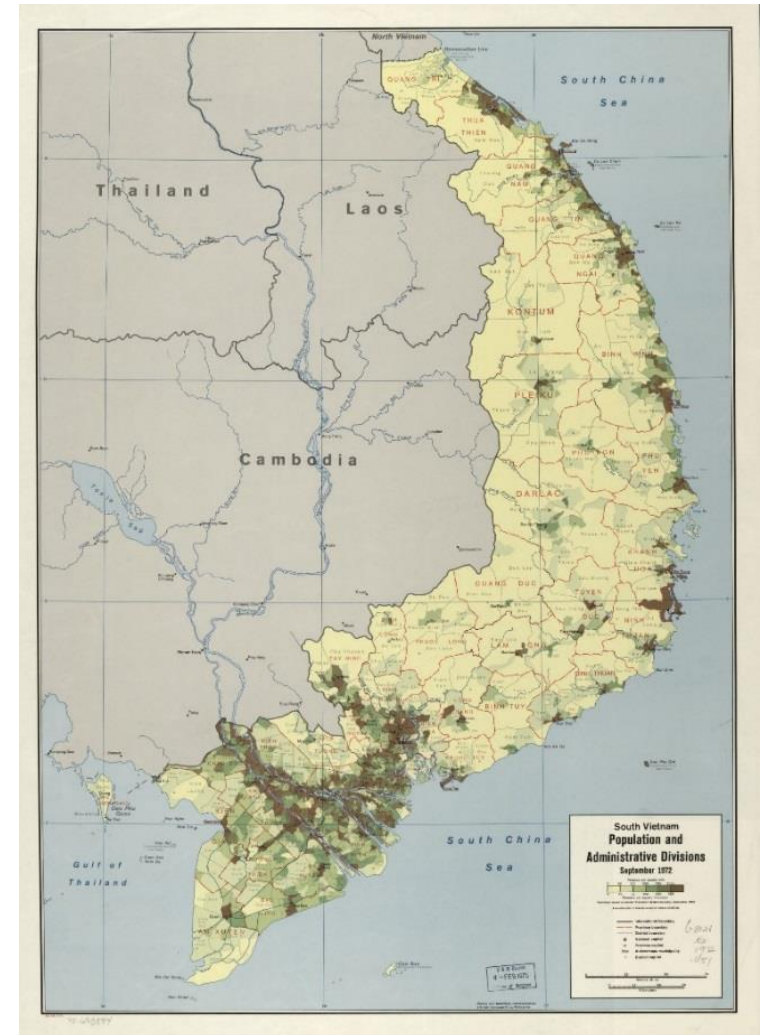


Photo: Library of Congress

4: Herbicide Cont.

Qualifying Health Conditions:

Listed at 38 C.F.R. § 3.309(e), including leukemia, Parkinson's disease, Hodgkin's disease, type 2 diabetes, prostate cancer, ischemic heart disease, etc.

Time Restrictions:

None, if manifested to a degree of 10% or more at any time after exit from service (with exceptions for chloracne, porphyria cutanea tarda, and early-onset peripheral neuropathy).



Photo: VA

5: Gulf War Illness

Qualifying Service:

Served in Southwest Asia from August 2, 1990, through the present (excludes Afghanistan, *except* for infectious diseases).

Qualifying Health Conditions:

Listed at 38 C.F.R. § 3.317:

1. Undiagnosed illnesses (UDX)
2. Chronic multi-symptom illness, such as chronic fatigue syndrome, fibromyalgia, functional gastrointestinal disorders
3. Infectious diseases

Time Restrictions:

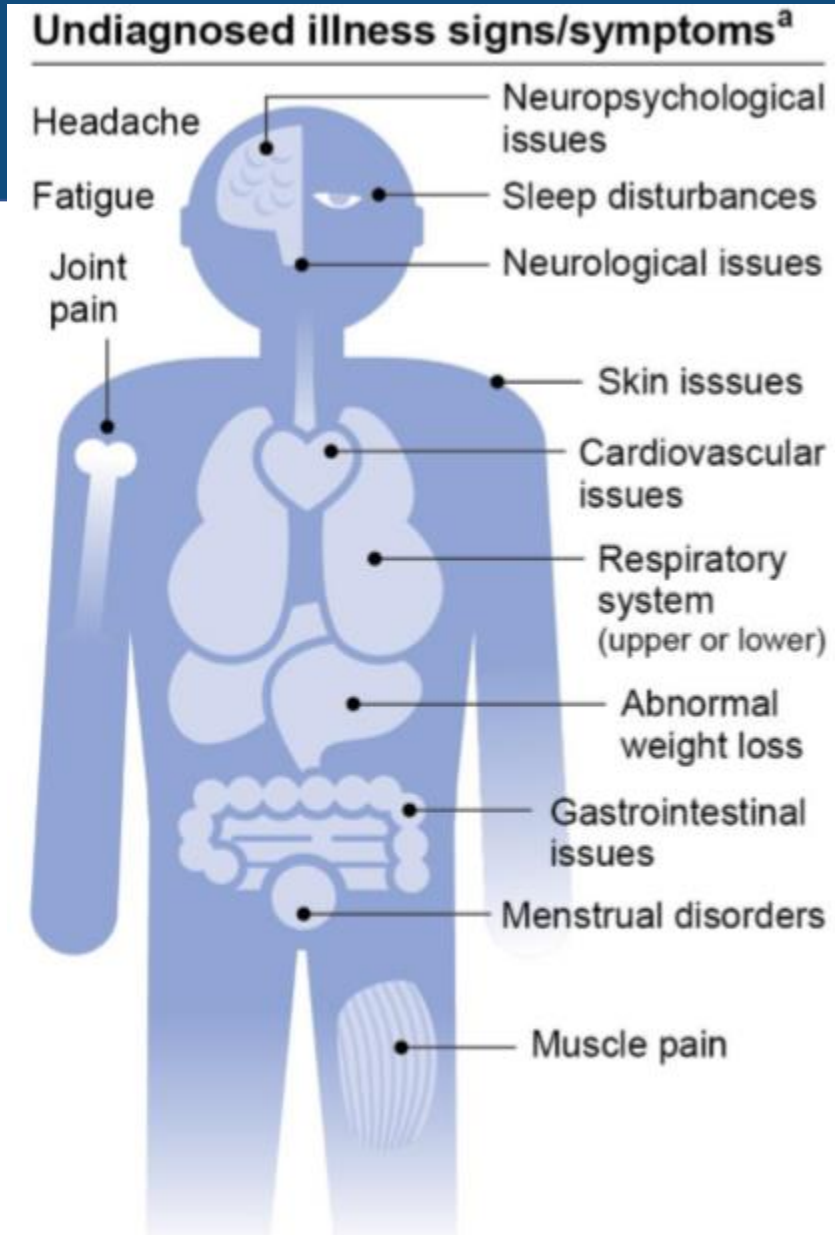
Condition must manifest before December 31, 2026.



5: Undiagnosed Illness

- VA regulations list signs and symptoms of undiagnosed illness, but no additional guidance.
- A UDX claim is difficult to win because most VA doctors provide diagnoses for patients' symptoms.

Try seeking direct service connection for these symptoms.



Source: GAO analysis of 38 C.F.R. § 3.317. | GAO-17-511

Quiz

Click the **Quiz** button to edit this object

A Veteran wants to file a claim for service connection for a respiratory condition which causes him to cough. In his medical record, his physician notes the Veteran's cough is "ongoing from Iraq." How can this Veteran establish service connection?

- Gulf War presumptive service connection for an diagnosed illness
- Both of these
- Direct service connection
- Neither of these

Question Answer

Both of these

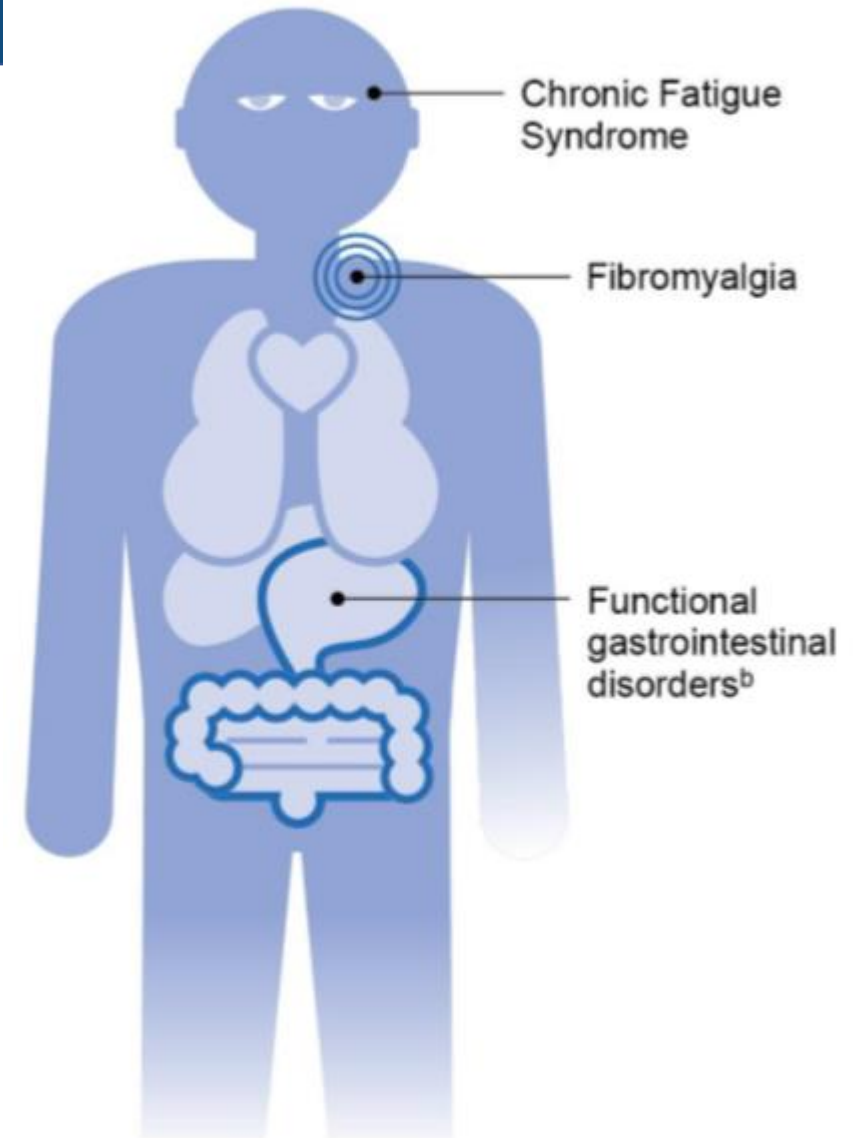
This Veteran can establish service connection two ways:

- He can establish direct service connection, because his cough started in service and is ongoing.
- He can also establish presumptive Gulf War service connection because respiratory symptoms are signs and symptoms of an undiagnosed illness, and he served in Iraq.

5: MUCMI

- VA's regulations provide more guidance about MUCMIs.
- MUCMI is a "diagnosed illness without conclusive pathophysiology or etiology."
 - *Etiology*: cause of a disease
 - *Pathophysiology*: the bodily changes caused by a disease
- The Court has stated that if ***either*** of the above is not conclusive, then the disease is a MUCMI.

Medically unexplained chronic multisymptom illness



5: Infectious Disease

- 9 diseases are listed (ex. brucellosis, malaria, TB, West Nile virus).
- Must be manifest to a degree of 10% or more within one year of separation from service.
 - Malaria: 1 year from separation or within incubation period.
 - No time limit for TB and leishmaniasis
- Long term effects may be service-connected.
 - Ex. Brucellosis--arthritis, hearing loss, eye issues
 - Ex. Coxiella burnetti--chronic hepatitis
 - Ex. West Nile--variable physical, functional, or cognitive disabilities
- Qualifying service for infectious diseases *includes Afghanistan* after Sept. 19, 2001.



6: Camp LeJeune



Photo: VA

Qualifying Service:

Spent cumulative total of 30 days at Camp Lejeune between August 1, 1953, and December 31, 1987.

Qualifying Health Conditions:

Listed at 38 C.F.R. § 3.309(f): including kidney cancer, liver cancer, non-Hodgkin's lymphoma, adult leukemia, multiple myeloma, Parkinson's disease, aplastic anemia and other myelodysplastic syndromes, bladder cancer.

Time Restriction: None.

7: Particulate Matter (Burn Pits)

- In the Gulf War theater, plus other deployment areas, service members were often instructed to dispose of waste and trash in huge "Burn Pits."
- Hundreds of Burn Pits produced smoke, fumes, and toxic pollution.
- The Public Health department of VA acknowledges that Veterans "may experience health effects related to this exposure."



Photo: VA

7: Particulate Matter Cont.

Qualifying Service:

- **Southwest Asia (SWA)** on or after **August 2, 1990**. See 38 C.F.R. § 3.317
- **Plus** Afghanistan, Syria, Djibouti, or Uzbekistan on or after **September 19, 2001**. See 38 C.F.R. § 3.320

Qualifying Health Conditions:

1. Asthma
2. Rhinitis
3. Sinusitis, to include rhinosinusitis



Photo: VA

Non-Presumptive Conditions

- **Direct service connection** for exposure is still possible to prove for conditions not on the presumptive lists. *See Combee v. Brown*, 34 F.3d 1039 (Fed. Circ. 1994).
- Proof must be based upon **specific risk factors** of the individual Veteran.
- Provide expert opinion on:
 - Why the Veteran's case is special, and
 - Why the Veteran's exposure is at least as likely as not to be the underlying cause.

Advocacy tip: You may be able to prove a non-presumptive condition is related to an exposure by arguing for “Direct” service connection.

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.