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7.22 COMPENSATION FOR DISABILITIES ASSOCIATED WITH GULF WAR SERVICE

a. Background.

(1) The Persian Gulf War Veterans Act. On November 2, 1994, Congress enacted the "Persian Gulf War Veterans' Benefits Act," Title I of the "Veterans' Benefits Improvements Act of 1994," Public Law 103-446. That statute added a new section 1117 to Title 38, United States Code, authorizing VA to compensate any Persian Gulf veteran suffering from a chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses which became manifest either during active duty in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10 percent or more within a presumptive period following service in the Southwest Asia theater of operations during the Persian Gulf War.

(2) The Persian Gulf War Veterans Act of 1998. The Persian Gulf War Veterans Act of 1998, Public Law 105-277 authorized VA to compensate Gulf War veterans for diagnosed or undiagnosed disabilities which are determined by VA regulation to warrant a presumption of service-connection based on a positive association with exposure to a toxic agent, environmental or wartime hazard, or preventive medication or vaccine associated with Gulf War service. This statute added section 1118 to Title 38, United States Code.

(3) The Veterans Education and Benefits Expansion Act of 2001. The Veterans Education and Benefits Expansion Act of 2001, Public Law 107-103, expanded the definition of "qualifying chronic disability" under 38 U.S.C 1117 to include, effective March 1, 2002, not only a disability resulting from an undiagnosed illness, but also a medically unexplained chronic multi-symptom illness that is defined by a cluster of signs and symptoms, and any diagnosed illness that is determined by VA regulation to warrant a presumption of service-connection.

(4) 38 CFR 3.317. Title 38 CFR 3.317, which implements 38 U.S.C. 1117, defines qualifying Gulf War service and qualifying chronic disability as well as establishes a broad but non-exclusive list of signs and symptoms which may be representative of undiagnosed or chronic multi-symptom illnesses for which compensation may be paid, and the presumptive period for service connection.

b. "Gulf War Veteran". The term "Gulf War veteran" under 38 CFR 3.317 means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Gulf War. The Gulf War extends from August 2, 1990, through a date yet to be determined by law or Presidential proclamation (38 U.S.C. 101(33)). The Southwest Asia theater of operations includes:

Iraq
Kuwait
Saudi Arabia
The neutral zone between Iraq and Saudi Arabia
The United Arab Emirates

Bahrain
Qatar
Oman
The Gulf of Aden
The Gulf of Oman
The Persian Gulf
The Arabian Sea
The Red Sea
The airspace above these locations

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c. Qualifying Chronic Disability

(1) Definition. The term "qualifying chronic disability" under 38 CFR 3.317 means a chronic disability resulting from any of the following (or any combination of any of the following):

(a) An undiagnosed illness.

(b) A medically unexplained chronic multi-symptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or symptoms.

(c) Any diagnosed illness that is determined by VA regulation to warrant a presumption of service-connection.

(2) Signs or Symptoms of Illness. Title 38 CFR 3.317 specifies 13 categories of signs or symptoms that may be a manifestation of an undiagnosed illness or a chronic multi-symptom illness. They are listed below. However, the list of 13 illness categories is not exclusive. Signs or symptoms not represented by one of the listed categories can also qualify for consideration. If a disability is affirmatively shown to have resulted from a cause other than Gulf War service, however, it cannot be compensated under 38 CFR 3.317.

Abnormal weight loss
Cardiovascular signs or symptoms
Fatigue
Gastrointestinal signs or symptoms
Headache
Joint pain
Menstrual disorders
Muscle pain
Neurological signs or symptoms
Neuropsychological signs or symptoms
Signs or symptoms involving the respiratory system (upper and lower)
Signs and symptoms involving the skin
Sleep disturbances

(3) Chronicity. The claimed illness must be chronic. To fulfill the requirement for chronicity, the claimed illness must have persisted for a period of 6 months. Disabilities which are subject to intermittent episodes of improvement and worsening within a 6-month period would

be considered chronic. The 6-month period of chronicity will be measured from the earliest date on which all pertinent evidence establishes that the signs or symptoms of the disability first became manifest.

d. Presumptive period for service connection. Title 38 CFR 3.317 establishes the presumptive period as beginning on the date following last performance of active military, naval, or air service in the Southwest Asia theater during the Gulf War. This period extends through September 30, 2011.

e. Special Considerations for Undiagnosed Disability Claims

(1) Diagnostic Codes. In order to properly identify and track claimed undiagnosed disabilities, the following diagnostic code series beginning with "88" has been established. The 88 code will be the first element of a hyphenated analogous code. It will be assigned according to the body system of the analogous code which it precedes. (See subparagraph 9b.)

DIAGNOSTIC
CODE DESCRIPTION

8850-50 __ UNDIAGNOSED CONDITION--MUSCULOSKELETAL DISEASES
8851-51 __ UNDIAGNOSED CONDITION □ AMPUTATIONS

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8852-52 __ UNDIAGNOSED CONDITION--JOINTS, SKULL, AND RIBS
8853-53 __ UNDIAGNOSED CONDITION--MUSCLE INJURIES
8860-60 __ UNDIAGNOSED CONDITION--DISEASES OF THE EYE
8861-61 __ UNDIAGNOSED CONDITION--HEARING LOSS
8862-62 __ UNDIAGNOSED CONDITION--EAR AND OTHER SENSE
ORGANS
8863-63 __ UNDIAGNOSED CONDITION--SYSTEMIC DISEASES
8865-65 __ UNDIAGNOSED CONDITION--NOSE AND THROAT
8866-66 __ UNDIAGNOSED CONDITION--TRACHEA AND BRONCHI
8867-67 __ UNDIAGNOSED CONDITION--TUBERCULOSIS
8868-68 __ UNDIAGNOSED CONDITION--LUNGS AND PLEURA
8870-70 __ UNDIAGNOSED CONDITION--HEART DISEASES
8871-71 __ UNDIAGNOSED CONDITION--ARTERIES AND VEINS
8872-72 __ UNDIAGNOSED CONDITION--UPPER DIGESTIVE SYSTEM
8873-73 __ UNDIAGNOSED CONDITION--LOWER DIGESTIVE SYSTEM
8875-75 __ UNDIAGNOSED CONDITION--GENITOURINARY SYSTEM
8876-76 __ UNDIAGNOSED CONDITION--GYNECOLOGICAL SYSTEM
8877-77 __ UNDIAGNOSED CONDITION--HEMIC AND LYMPHATIC
SYSTEM
8878-78 __ UNDIAGNOSED CONDITION--SKIN
8879-79 __ UNDIAGNOSED CONDITION--ENDOCRINE SYSTEM
8880-80 __ UNDIAGNOSED CONDITION--CENTRAL NERVOUS SYSTEM
8881-81 __ UNDIAGNOSED CONDITION--MISCELLANEOUS
NEUROLOGICAL
8882-82 __ UNDIAGNOSED CONDITION--CRANIAL NERVE PARALYSIS
8883-83 __ UNDIAGNOSED CONDITION--CRANIAL NERVE NEURITIS
8884-84 __ UNDIAGNOSED CONDITION--CRANIAL NERVE NEURALGIA
8885-85 __ UNDIAGNOSED CONDITION--PERIPHERAL NERVE PARALYSIS
8886-86 __ UNDIAGNOSED CONDITION--PERIPHERAL NERVE NEURITIS

8887-87__ UNDIAGNOSED CONDITION--PERIPHERAL NERVE NEURALGIA
8889-89__ UNDIAGNOSED CONDITION--EPILEPSIES
8892-92__ UNDIAGNOSED CONDITION--PSYCHOTIC DISORDERS
8893-93__ UNDIAGNOSED CONDITION--ORGANIC MENTAL
8894-94__ UNDIAGNOSED CONDITION--PSYCHONEUROTIC
8895-95__ UNDIAGNOSED CONDITION--PSYCHOPHYSIOLOGIC
8899-99__ UNDIAGNOSED CONDITION--DENTAL AND ORAL

(2) The Issue

(a) Issue for Consideration. State the issue for rating as "Service connection for [specify signs or symptoms] as due to an undiagnosed illness."

(b) Single or Multiple Issues. The decision to rate multiple symptoms or signs separately or as a single disability will depend on the most favorable outcome to the veteran. Although rating multiple manifestations under a single body system will in most cases allow the maximum benefit, be alert to symptoms affecting fundamentally different body systems which may clearly warrant separate consideration. If service connection for several symptoms or signs is denied for the same reason, consider such symptoms and signs as a single issue. Whether granted or denied, assign one hyphenated diagnostic code in the coded conclusion to each issue which is separately considered.

(3) Evidence. If there is a disability due to the existence of an undiagnosed illness, generally there are three facts that must be established before service connection for an undiagnosed illness may be granted or denied: when the disability arose; whether the condition was of compensable severity (unless manifested while in the Southwest Asia theater); and whether the condition chronically persisted for at least six months.

(a) Medical and Lay Evidence. When the object of service connection is a diagnosed illness, medical findings are of paramount importance because a physician specializes in identifying disabilities through

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diagnoses. However, the concept of "objective indications" expressed in 38 CFR 3.317 makes clear that the evidence required for undiagnosed illnesses--illnesses which are outside the scope of medical understanding--is not so dependent on formal medical findings. The veteran's testimony to the effect that he or she is experiencing these symptoms, when combined with an examining physician's inability to make a diagnosis, may be sufficient to establish existence of the illness. Similarly a lay person's statement regarding the veteran's complaints beginning at a certain time, lasting for a certain duration, and having a particular level of severity may be adequate to establish the requirements for consideration. Non-medical indicators include such information as time lost from work, evidence that the veteran has sought medical treatment for his or her symptoms, evidence affirming

situations such as a change in the veteran's appearance, physical abilities and mental or emotional attitude. Lay statements from knowledgeable individuals may be accepted as evidence providing objective indications if they support the conclusion that a disability exists.

(b) Unnecessary Development. Lay evidence is credible if the person was in a position to know the alleged facts and if not contradicted by evidence of record which is more credible. Do not dismiss any evidence as "self-serving." It is reasonable to expect claimants to provide evidence which they believe is in their best interests. Similarly, unless there is affirmative reason to doubt the credibility of evidence, do not develop for corroboration. For example, if lay evidence alleges that the veteran lost a certain amount of time from employment, accept that statement without further development if otherwise credible.

(c) PGW Registry Examination. In all cases, ask the veteran if he or she had participated in the VHA Persian Gulf Health Registry and had been examined as part of the Registry, and where he or she was examined. If he or she has been examined, secure examination results from the VAMC.

(4) Future Examination. Because the course of an undiagnosed illness cannot be predicted, monitor the case by establishing a future examination control within 24 months of the last examination of record. At the expiration of the control, review the evidence of record to determine if a reexamination is necessary.

f. Decision. State the rating decision as "Service connection for _____ is denied," or "Service connection for _____ is granted with an evaluation of _____ percent effective _____ ." The earliest effective date for entitlement to service connection under 38 CFR 3.317 is November 2, 1994.

g. Reasons For Decision

(1) Granted. Service connection established under 38 CFR 3.317 is considered service connection for purposes of all laws.

(a) During Active Duty. Service connection will be established if the qualifying chronic disability (as defined in subparagraph 7.22c(1)) became manifest, whether to a compensable degree or not, while the claimant was on active service in the Southwest Asia theater of operations during the Gulf War. Include the following sentence in the "Reasons and Bases" or Analysis section of the rating if service connection is established under this circumstance: "Service connection is established for _____ (or for _____ as due to an undiagnosed illness) which began in the Southwest Asia theater of operations during the Gulf War."

(b) During Presumptive Period. Service connection will be established if the qualifying chronic disability arose to a compensable degree after the veteran last served in the Southwest Asia theater during the Gulf War, regardless of the veteran's active duty status at the time. If service connection is established during the presumptive period, include the following statement in the "Reasons and Bases" or Analysis: "Service connection may be presumed for qualifying disabilities resulting from undiagnosed or diagnosed illnesses which arose to a compensable

degree after service in the Southwest Asia theater of operations during the Gulf War. Service connection for _____ has been granted on the basis of this presumption."

(2) Evaluation by Analogy

(a) Evaluate the level of impairment of chronic undiagnosed disabilities by analogy to an existing diagnostic code in the rating schedule (38 CFR 4.27). Precede a discussion of the evaluation criteria and next 7-IV-10

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higher level in the Reasons for Decision with the following statement: "Since the disability at issue does not have its own evaluation criteria assigned in VA regulations, a closely related disease or injury was used for this purpose."

(b) The RSVR will use a hyphenated diagnostic code as described in subparagraph 7.22e(1) for undiagnosed disabilities. For the second code, use the diagnostic code that most closely fits the evaluating criteria. Examples of analogies for the 13 signs or symptoms found in 38 CFR 3.317 are provided below. However, use of analogies is not limited to this list.

Abnormal weight loss, 8873-7328 (resection of intestine);
Cardiovascular signs or symptoms, 8870-7013 (tachycardia), 8870-7005 (ASHD);
Fatigue, 8863-6354 (chronic fatigue syndrome), 8877-7700 (anemia);
Gastrointestinal signs or symptoms, 8873-7305 (ulcer), 8873-7319 (irritable bowel syndrome);
Headache, 8881-8100 (migraine headaches);
Joint pain, 8850-5002 (rheumatoid arthritis);
Menstrual disorders, 8876-7622 (uterus displacement);
Muscle pain, 8850-5021 (myositis);
Neurologic signs or symptoms, 8885-85__ (peripheral neuropathy);
Neuropsychological signs or symptoms, 8893-9300 (organic mental disorder);
Signs or symptoms involving the respiratory system (upper or lower), 8865-65__, 8866-66__, 8868-68__ (respiratory system);
Signs and symptoms involving the skin, 8878-7806 (eczema);
Sleep disturbances, 8894-9400 (generalized anxiety).

(c) Denied. Begin a discussion of any denial in the "Reasons and Bases" or Analysis with a description of the general requirements for service connection under 38 CFR 3.317: "Service connection may be established for qualifying chronic disability resulting from an undiagnosed illness, a medically unexplained chronic multi-symptom illness that is defined by a cluster of signs or symptoms, or a diagnosed illness that is determined by VA regulation to warrant a presumption of service connection which became manifest either during active service in the Southwest Asia theater of operations during the Gulf War, or to a degree of 10 percent or more after the date on which the veteran last performed service in the Southwest Asia theater of operations during the Persian Gulf War."

1. Diagnosed Illnesses. A condition having a known clinical diagnosis cannot be favorably considered for service connection under 38 CFR

3.317 unless it meets the criteria for qualifying chronic disability shown in subparagraph 7.22c, but it will receive consideration for service connection under other provisions. If service connection is denied, include the following language in the "Reasons and Bases" or Analysis: "Service connection for _____ is denied because this disability is determined to result from a known clinical diagnosis of _____, which neither occurred in nor was caused or aggravated by service."

2. Illness Not Chronic. The fact that a claimed disability is not found on last VA examination does not necessarily preclude entitlement under 38 CFR 3.317. The requirement for chronicity is fulfilled if the disability has persisted for at least 6 months. Disabilities subject to episodic improvement and worsening within a 6-month period are considered chronic. If the disability does not meet the 6-month requirement, include the following statement under Reasons for Decision: "The disability must have persisted for a period of at least 6 months. Service connection for _____ is denied since this disability was first manifested on _____ and lasted less than 6 months."

3. Attributable to Some Other Etiology. Service connection under 38 CFR 3.317 cannot be established if there is affirmative evidence that the illness was not incurred during active service or was caused by some intercurrent circumstance. Affirmative evidence that the illness is caused by willful misconduct or alcohol or drug abuse will also preclude entitlement. Include the following statement under Reasons for

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Decision, if service connection is denied on this basis: "Service connection under this provision is precluded if there is affirmative evidence that the disability was unrelated to service in the Gulf War. Service connection for _____ is denied because evidence established that this disability resulted from _____."

4. Illness not shown by the evidence of record. There is no evidence that the condition ever existed.

5. Qualifying Chronic Disability Less than 10 Percent. In order to qualify for service connection, the qualifying chronic disability must have become manifest either during active duty in the Southwest Area Theater during the Gulf War or to a degree of 10 percent or more after the date on which the veteran last performed active service in the Southwest Asia theater of operations during the Gulf War. If the veteran fails to qualify for service connection because the severity of disability is noncompensable, include the following statement in "Reasons and Bases" or Analysis: "Service connection for _____ is denied since this disability neither arose during service in the Persian Gulf theater, nor was it manifested to a compensable degree after the last date of service in the Persian Gulf theater during the Gulf War."

(d) Description of Dates. Under Reasons for Decision, explicitly refer to any date which is pertinent to the decision. This particularly includes the dates during which the veteran served in the Southwest Asia theater, and the earliest date a qualifying chronic illness may have become manifest.

h. Coded Conclusion

(1) A decision regarding service connection will be shown under either code 1. SC or 8. NSC in the coded conclusion. The parenthetical entry following 1. SC will be "GW PRES."

(2) Hyphenated codes will be used for all undiagnosed conditions. The first code will always be one of the diagnostic codes established for Gulf War undiagnosed conditions (see subparagraph 7.22e(1)) followed by the analogous diagnostic code. For example, if the analogy is 6354, the hyphenated code would be 8863-6354; or if the analogy is 5002, the code would be 8850-5002.

i. Severance and Reduction. Once service connection is established under 38 CFR 3.317, it is considered service connected for the purpose of all laws, including the provisions pertaining to protection under 38 CFR 3.951 and 3.957. Situations may arise, however, that will require termination or reduction of payments previously awarded under section 3.317; for example, establishment of a known clinical diagnosis as the cause of a veteran's disabilities. Title 38 CFR 3.500 was amended to add a paragraph (38 CFR 3.500(y)) specifically requiring severance or reduction under 38 CFR 3.105(d) or (e) to be effective on the first of the month 60 days after expiration of the predetermination period and final notice to the veteran. Apply the usual procedures for reduction or severance outlined in chapter 9. Termination or reduction of benefits paid under section 3.317 would not preclude continuation of payments if entitlement is established under other regulations governing grants of service connection by incurrence, aggravation, or presumption.

j. Participation in Research Projects. Effective December 27, 2001, if a Gulf War veteran participates in a VA-sponsored medical research project, service connection established for disability under 38 U.S.C. 1117 or 1118 will be protected, regardless of the project's findings, unless the original award of compensation or service connection was based on fraud, or it is clearly shown from military records that the veteran did not have the requisite service or character of discharge. A list of VA-sponsored medical research projects for which service connection is protected will be published in the Federal Register.