

THE VVA SELF-HELP GUIDE TO

Service-Connected Disability Compensation For Exposure To Agent Orange

FOR VETERANS AND THEIR FAMILIES



FEBRUARY 2010

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FOREWORD

Agent Orange is a highly toxic herbicide used by the U.S. military during the Vietnam War to defoliate hiding places used by the Viet Cong, rice paddies and fields that provided them with food, and to clear the perimeters of military bases to give service members a clear line of fire. Although colorless, it is known as “Agent Orange” because of an orange band painted on the drums used to store and transport it.

After years of advocating led by VVA, Congress enacted into law the Agent Orange Act of 1991. This legislation empowered the Secretary of Veterans Affairs to declare certain maladies “presumptive” to exposure to Agent Orange/dioxin and enable Vietnam veterans, as well as some veterans who served along the demilitarized zone in Korea in the late 1960s, to receive treatment and compensation for these health conditions. Service-connected benefits, however, also may be granted for other maladies not recognized as presumptive health conditions.



John Rowan
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INTRODUCTION

The purpose of this Vietnam Veterans of America (VVA) guide is simple: to present information and describe the process in a user-friendly fashion for a Vietnam veteran or (surviving) family member to file a claim for service-connected disability compensation or death benefits with the Department of Veterans Affairs (VA) for illnesses/diseases associated with exposure to Agent Orange and other related herbicides during military service. At the outset, please understand that the VA claims process is complicated, frustrating, and can be time-consuming. Please understand also that these guidelines are not legal advice.

VVA hopes this guide will be helpful:

- If you have never filed a VA claim for disability or death compensation because of exposure to Agent Orange; or
- If you have filed a VA claim for disability or death compensation because of Agent Orange exposure and it was denied (after all appeals, if any) by the VA *before* September 25, 1985 (this includes claims or death benefits for Adult Onset Type II Diabetes and ancillary conditions); or
- If you have filed a VA claim for disability or death compensation due to Agent Orange exposure and it was denied (after all appeals, if any) by the VA *on or after* September 25, 1985, or if it is still pending. In this situation, do not file a new claim. Contact the appropriate VA Regional Office in writing to confirm and ask the following: 1) whether you filed a claim; 2) what disability was claimed; 3) whether the claim was based on Agent Orange exposure; 4) whether the claim is in the VA's "Special Issue Rating System" as an Agent Orange claim; 5) does the VA have your current mailing address; and 6) request a copy of your entire claims file, your "C-file"; or
- If your claim was denied by the VA in the past, but you did not inform the VA in writing that you believed the disability or death was caused by exposure to Agent Orange. In this situation, re-open your claim by filing a new application that includes an attachment with the following statement: "I am re-opening the claim you denied previously, because I now have new and material evidence, namely, that I was exposed to Agent Orange in Southeast Asia (or other location), and I believe my disability (or veteran's death) is connected with my exposure to Agent Orange;" or
- If you do not remember 1) whether you've ever filed a VA claim; 2) when you filed a VA claim; 3) whether you stated that the disability or death in your VA claim was due to Agent Orange exposure; or 4) you believe you have a medical condition (or the veteran's death was) due to Agent Orange exposure. In this situation, file a claim as soon as possible, and request a complete copy of your C-file from the nearest VA Regional Office.

WHAT IS AGENT ORANGE?

A host of herbicides were used by the U.S. military in Vietnam and other Southeast Asian countries to protect American and allied troops by defoliating the dense jungle vegetation hiding enemy positions. The herbicides were named for the color-coded bands on the 55-gallon drums in which they were shipped; examples included Agent Blue, Agent White, and the most extensively used herbicide, Agent Orange. In Vietnam, herbicides were sprayed from fixed wing and rotary aircraft, trucks, and backpack sprayers to clear vegetation around fire bases, landing zones, and along river banks. It is estimated that between 1962 and 1971, almost 11 million gallons of Agent Orange were sprayed in Vietnam, primarily through an aerial spray program code-named “Operation Ranch Hand.” Agent Orange was also used at military installations and other facilities on and outside of the U.S. mainland, including Hawaii and Puerto Rico, as well as Cambodia, Canada, Korea, and Thailand.

Agent Orange is a combination of two compounds, 2,4-D and 2,4,5-T, technically known as chlorinated phenoxy acids in ester form. The most dangerous element of Agent Orange is a contaminant present in the manufacture of 2,4,5-T; this impurity is known chemically as 2,3,7,8-tetrachlorodibenzo-paradoxin, or more commonly, dioxin. Levels of dioxin in Agent Orange ranged from less than 0.05 parts per million to almost 50 parts per million.

- In Vietnam, herbicides were sprayed from fixed wing and rotary aircraft, trucks, and backpack sprayers to clear vegetation around fire bases, landing zones, and along river banks.

Some three million veterans served in Southeast Asia, and no one knows for sure how many of these veterans were exposed to Agent Orange. Some of these personnel were deployed in areas during and immediately after spraying operations, while others actually handled Agent Orange and did the spraying. Veterans exposed to Agent Orange and its dioxin contaminants have reported a variety of serious health problems and symptoms; these include chloracne, skin lesions, liver damage, loss of sex drive, changes in skin pigmentation and sensitivity to light, numbing or tingling in the extremities, sore joints, cancers, and birth defects in their children.

For an incomplete list of locations and dates where dioxin (Agent Orange and other agents) was used, consult the “DoD Report on Herbicides Used Outside Vietnam,” available online at www1.va.gov/agentorange.

Acute Peripheral Neuropathy: a temporary dysfunction of the nervous system characterized by involuntary “tingling” or numbness in the extremities

Adult Onset Type II Diabetes Mellitus (and subsequent complications caused by): non-insulin dependent and characterized by high blood sugars

AL Amyloidosis: a rare group of diseases that results from the abnormal deposition of a particular protein called amyloid in various tissues of the body

***Chloracne:** an acne-like eruption on the skin due to prolonged exposure to certain chlorinated compounds

Hodgkins Disease: a tumor found in the lymph nodes characterized by increasing enlargement of the lymph nodes, liver, and spleen, and accompanied by progressive anemia

****Ischemic (or ischaemic) Heart Disease:** a heart condition resulting when the arteries that bring blood and oxygen to the heart are blocked. There may be a buildup of cholesterol and other substances, called plaque, in the arteries that bring oxygen to heart muscle tissue. Over time, the heart muscle does not work well, and it is more difficult for the heart to fill and release blood. It is the most common cause of congestive heart failure.

Non-Hodgkins Lymphoma: a rare type of cancer which causes malignant tumors of the lymph nodes, distinguished from Hodgkins disease by the absence of giant Reed-Sternberg cells.

****Parkinson's Disease:** a neurological disease which limits a person's ability to control some of his or her muscles. It's caused by a slow, gradual loss of certain cells in the brain which manufacture a chemical called dopamine. This chemical is needed for muscles to

work normally. In many people, Parkinson's disease causes movement and muscle problems and may be accompanied by slight, uncontrolled shaking of the arms and legs.

***Peripheral Neuropathy:** a dysfunction of the nervous system involving either the somatic nerves or the autonomic nervous system (see Acute Peripheral Neuropathy); can cause sensory loss, atrophy, and muscle weakness

***Porphyria Cutanea Tarda:** characterized by skin lesions on exposed portions of the body and pigment changes in the skin; liver disease occurs in some patients

Spina Bifida in children conceived after the veteran first arrived in Vietnam: characterized by a defective closure of the spinal cord in which the cord may be exposed and/or protrude

Sub-acute Peripheral Neuropathy: a nervous system disorder either acute (temporary) or chronic (long-term) – see acute peripheral neuropathy and peripheral neuropathy

CANCERS

Cancer of the Bronchus: a malignant tumor found in the bronchus, an extension of the windpipe (trachea) connecting to the lungs

Cancer of the Larynx: a malignant tumor found in the voice box (larynx)

Cancer of the Lung: a malignant tumor found in the lungs

Cancer of the Prostate: a malignant tumor found in the prostate gland

Cancer of the Trachea: a malignant tumor found in the windpipe (trachea)

Adult Fibrosarcoma: a tumor formed from connective tissue

Alveolar Soft Part Sarcoma: a sarcoma found in the aveoli, the sac-like ducts in the lungs

Angiosarcoma: a tumor occurring on the breast and skin and believed to originate from blood vessels

Chronic Lymphocytic Leukemia: characterized by a progressive increase in production of white blood cells

Clear Cell Sarcoma of Aponeuroses: a sarcoma found at the end of a muscle where it becomes a tendon

Clear Cell Sarcoma of Tendons: a sarcoma found in the tendons

Congenital Fibrosarcoma: a malignant tumor formed before birth and derived from connective tissue

Dermatofibrosarcoma: a relatively slow-growing skin tumor consisting of one or more firm nodules

Ectomesenchymoma: a tumor found in certain parts of the skin

Epithelioid Malignant Leiomyosarcoma: a malignant tumor derived from smooth muscle found in the layer covering the muscle

Epithelioid Malignant Schwannoma: a moderately firm, benign tumor found in the layers of membrane covering surfaces inside the body cavity caused by too many Schwann cells growing in a disorderly manner

Epithelioid Sarcoma: a tumor found in the membrane covering surfaces inside the body cavity

Extraskeletal Ewing's Sarcoma: a tumor outside the bone consisting of small rounded cells

****Hairy Cell Leukemia:** a slow-growing form of chronic lymphocytic leukemia (CLL) called such because the leukemic lymphocytes have short, thin projections on their surfaces that look like hairs when examined under a microscope. Hairy cell leukemia is caused by an abnormal change in a B lymphocyte (a type of white cell).

Hemangiosarcoma: a tumor derived from blood vessels and lining blood-filled spaces

Infantile Fibrosarcoma: a tumor formed as a child derived from fibrous connective tissue

Leiomyosarcoma: a tumor derived from smooth muscle

Liposarcoma: a tumor that may occur anywhere in the body consisting of irregular fat cells

Lymphangiosarcoma: a tumor derived from blood vessels

Lymphoma: a malignant tumor of the lymph nodes

Malignant Fibrous Histiocytoma: a type of tumor found in connective tissue

Malignant Giant Cell Tumor of the Tendon Sheath: a tumor found in the membrane of tendons

Malignant Glandular Schwannoma: a moderately firm malignant tumor in the glands caused by too many Schwann cells growing in a disorderly pattern

Malignant Glomus Tumor: a tumor found in the tiny nodes (glomuli) in the the nailbed, pads of fingers, toes, ears, hands, feet, and other body organs

Malignant Hemangiopericytoma: a tumor characterized by rapidly growing

fat cells formed in blood vessels and lining blood-filled spaces

Malignant Mesenchymoma: a malignant tumor in the embryonic tissue or fluid

Malignant Schwannoma with Rhabdomyoblastic: a moderately firm malignant tumor found in skeletal muscle resulting from the rapid disorderly growth pattern of Schwann cells

Multiple Myeloma: cancer of specific bone marrow cells characterized by bone marrow tumors in the skeletal system

Proliferating Angioendotheliomatosis: increasing numbers of benign tumors in blood cells often causing skin discoloration

Rhabdomyosarcoma: tumors derived from skeletal muscle

Sarcoma: tumors arising in connective tissue, bone, cartilage, or muscle

Soft Tissue Sarcoma: a group of soft tissue cancers characterized by malignant tumors which develop on muscles and connective tissue, or in body fat

Synovial Sarcoma: a tumor found in the lubricating fluid surrounding joints and tendons

* Diseases with various time requirements

****As of February 1, 2010, the VA is in the process of adding B Cell leukemias, Ischemic Heart Disease, and Parkinson's Disease to the list illnesses and diseases recognized by the VA as connected to Agent Orange Exposure. A current version of this guide can be viewed online at www.vva.org.**

NOTE: This list may change over time. For official updates, see Title 38 Code of Federal Regulations Section 3.309(e) "Diseases associated with exposure to certain herbicide agents."

BIRTH DEFECTS RECOGNIZED BY THE VA AS CONNECTED TO AGENT ORANGE EXPOSURE

Spina Bifida: children born to either male or female Vietnam veterans; Spina Bifida Occulta not included

CHILDREN BORN TO FEMALE VIETNAM VETERANS

Achondroplasia: produces a type of dwarfism

Cleft Lip and Cleft Palate

Congenital Heart Disease

Congenital Talipes Equinovarus: clubfoot

Esophageal and Intestinal Atresia

Hallerman-Streiff Syndrome: premature small growth and other related defects

Hip Dysplasia

Hirschprung's Disease: congenital megacolon

Hydrocephalus Due to Aqueductal Stenosis

Hypospadias: abnormal opening in the urethra

Imperforate Anus

Neural Tube Defects

Poland Syndrome: webbed fingers

Pyloric Stenosis

Syndactyly: fused digits

Tracheoesophageal Fistula

Undescended Testicles

Williams Syndrome: thyroid defects

Not covered are conditions that are congenital malignant neoplasms, chromosomal disorders, or developmental disorders. In addition, conditions that do not result in permanent physical or mental disability are not covered.

NOTE: This list may change over time. Veterans may obtain more information on birth defects and should register all children and grandchildren with birth defects, including cancers and learning disabilities, online at www.birthdefects.org, maintained by the National Birth Defect Registry.

WHAT IS PRESUMPTIVE SERVICE-CONNECTED AGENT ORANGE DISABILITY COMPENSATION?

Scientific evidence has demonstrated that there is an association among service in Vietnam (and in Korea along the DMZ, April to August 1968 and May to July 1969), exposure to Agent Orange, and a variety of serious illnesses. As a result, the VA can make monthly monetary payments to veterans who suffer from serious illnesses related to their exposure to Agent Orange. The VA calls these payments “presumptive service-connected disability compensation.”

The amount of the compensation payment depends upon the severity of a veteran’s service-connected disability and, in some cases, the number of qualifying family members the veteran has. The VA uses a percentage basis ranging from zero percent to 100 percent for measuring the severity of the veteran’s service-connected disability; the higher percent the disability and the more qualifying family members the veteran has, the higher the monthly compensation payment. However, a percentage rating of 0 – 20 percent does not pay extra for dependents.

Generally, the VA will only grant service-connected disability compensation based on exposure to Agent Orange through what the VA calls its “presumptive service connection rules.” The VA maintains a list of illnesses and diseases that it agrees are linked to herbicide exposure in Vietnam. These rules cover exposure to Agent Orange and other herbicides used in Vietnam (and along the DMZ in Korea) such as Agent Blue and Agent White. If you are a Vietnam veteran (or served in Korea during the periods noted above) with an illness or disease found on this list, you have the right to disability compensation and health care.



Because Agent Orange was also used at military installations and other facilities on and outside of the U.S. mainland — including Hawaii and Puerto Rico, as well as localities in Cambodia, Canada, Korea, and Thailand — veterans who served in these localities may also be eligible for Agent Orange disability compensation. For an incomplete list of locations and dates where dioxin (Agent Orange and other herbicide agents) was used, consult the “DoD Report on Herbicides Used Outside Vietnam,” available online at www1.va.gov/agentorange. If you served in any of these places, came into contact with Agent Orange, and are suffering illnesses/diseases related to Agent Orange exposure, VVA urges you to file a claim.

HOW DO I KNOW IF I QUALIFY FOR PRESUMPTIVE SERVICE-CONNECTED AGENT ORANGE DISABILITY COMPENSATION?

To qualify, you generally need to show only two things, that

- You served on active duty in the military, naval or air service in the Republic of Vietnam regardless of the length of that service during the period January 9, 1962, to May 7, 1975, or in Korea along the DMZ during April to August 1968 and/or May to July 1969; and
- You currently have been diagnosed with one of the diseases found on the VA's list of conditions linked to herbicide exposure, or you currently have residual or secondary conditions from one of these illnesses (see pages 4–5).

GET AN EXAM. Even if you feel healthy, there are several exam options available to you, including the VA or a private healthcare facility or physician. If you use the VA system for your examination, consider getting added to the Agent Orange Registry.



Veterans who served in the waters offshore and who received the Vietnam Service Medal, but who did not set foot in the Republic of Vietnam are not currently eligible for presumptive service connection due to exposure to Agent Orange. At the time of this writing, this topic is the subject of both litigation and proposed legislation. Please consult a veterans' service officer for the current status of this situation.

WHAT IS THE AGENT ORANGE REGISTRY?

In 1978, the VA began a program to examine and to record the names of veterans concerned about health problems related to their exposure to Agent Orange and other herbicides during their military service in Southeast Asia. Eligible veterans qualify for an Agent Orange Registry examination at the VA. Almost 500,00 veterans — or one out of every six who served there — are in the registry.

Who Is Eligible for the AO Registry Exam?

Under Public Laws 102-585 and 100-687, any U.S. male or female veteran who served in the Republic of Vietnam between 1962 and 1975 for any length of time or in Korea along the DMZ, April to August 1968 and May to July 1969, is *presumed* to have been exposed to phenoxy herbicides and is therefore eligible to enroll and obtain an AO Registry exam. Verifiable evidence of such in-country service constitutes eligibility.

Under these same laws, however, any other U.S. veteran who may have been exposed to dioxin or other toxic substance in an herbicide or defoliant during their military service must provide proof of exposure to enroll and obtain an AO Registry exam. For an incomplete list of locations and dates where dioxin (Agent Orange and other agents) was used, consult the “DoD Report on Herbicides Used Outside Vietnam,” available online at www1.va.gov/agentorange.

*Veterans eligible for inclusion in the AO Registry **do not** need to be enrolled in the VA healthcare system.*

Does Participation in the AO Registry Constitute a Compensation Claim for VA Compensation?

No, although the results of an AO Registry exam may be used to support a subsequently filed claim. The exam in and of itself does not constitute the filing of a claim.

What Does an AO Registry Exam Entail?

The exam consists of four basic parts:

- An exposure history to determine where, when, and how the veteran was exposed to AO or other toxic chemicals before, during, and after service in Vietnam;
- A medical history to document health problems experienced by the veteran since the time of exposure;
- Laboratory tests such as blood chemistries, urinalysis, and a chest x-ray; and
- A physical examination of 21 body parts, focusing on those systems commonly affected by toxic chemicals, such as the liver, kidneys, skin, and reproductive, endocrine, immunological, and nervous systems.



You should try to arrange for the lab tests to be done at the same time as the scheduled physical exam. You may also be eligible for reimbursement from the VA for the cost of travel to the VA exam.

VVA encourages all veterans with Vietnam service to have an Agent Orange Registry exam, regardless of their current health status, as it is always possible that the exam may detect health problems that are caused by something else for which the VA may provide treatment and/or compensation.

What If the AO Registry Exam Uncovers a Medical Condition That Requires Further Treatment?

If the AO Registry exam uncovers a condition in a veteran who is enrolled or otherwise eligible for VA healthcare, and that condition requires further treatment, the veteran is to be referred to a VA primary care clinician to obtain the necessary medical assessment and appropriate treatment. If you are not enrolled or otherwise eligible for VA health care, the VA may suggest that you enroll in the VA or seek non-VA care.

Private Healthcare Examination for Claim Purposes

If you use a private healthcare facility for your examination, you will need to submit a detailed medical report to the VA Regional Office which includes documentation of your diagnosis and whether it is as likely as not due to herbicide exposure and to explain its impact on your life.

In addition, *always request copies* of the lab results and copies of the medical history and examination reports whether you use the VA or private healthcare provider.

HOW DO I FILE A CLAIM WITH THE VA FOR PRESUMPTIVE AGENT ORANGE DISABILITY COMPENSATION?

Step 1: GET HELP You will probably find the VA laws, regulations, and procedures surrounding Agent Orange-related claims to be complicated and frustrating. Many Veterans Service Organizations (VSOs), including VVA, offer free assistance to help you present your claim to the VA (see page 19 of this guide for VSO information). *Choose a representative carefully*; ask questions about his or her claims' experience; get a feel for the representative by talking with him or her. For example, ask if there are any limits on their service *before* you sign a power of attorney appointing him or her as your representative. Stay personally involved in your case to make certain everything that should be done is done. Communicate regularly with your representative. *Make copies of ALL documents used in your claim, and keep them in a safe place* in the event any of your paperwork is lost, misplaced, or destroyed during the claims process. Missing paperwork is one of the main reasons for delay in processing a claim.

Step 2: APPLY If you believe that you are entitled to compensation benefits under the VA's Agent Orange rules and have never previously filed a VA disability claim for an Agent Orange-related illness, or have previously filed a VA disability or death claim for such an illness, but that claim was denied before September 25, 1985, and that claim is not being currently considered, then *immediately* send the VA an "informal" claim letter. Make sure that the claim letter includes the date, your full legal name, Social Security number, and your VA C-file number, if known. Also make sure to sign the letter. Suggestions about what to write in an informal claim letter can be found on page 18.

The informal claim can be considered as an initial claims application, and you will eventually be required to complete additional official VA forms. Do not delay sending the informal claim until you and your representative have gathered the evidence to support your claim. You will have time after you file the informal claim to gather and submit your evidence. The earlier you file the claim, the better, because if your claim is granted, the monthly compensation usually starts from the date you first filed your claim.



Ask your representative to take a look at the informal claim letter and then make a copy for your records. Send the original informal claim letter to the VA Regional Office nearest your home address (do not send it to the nearest VA hospital) via "Certified Mail, Return Receipt Requested" and keep the receipt in your records after it is returned. If you have not heard back from the VA Regional Office within 30 days, your representative should call 1-800-827-1000 to verify receipt.

Step 3: FINISH THE CLAIM APPLICATION PROCESS Once the VA receives your informal claim, you will eventually be sent VA Form 21-526, the official “Application for Compensation and Pension.” Generally speaking, you have one year (365 days) from the date the VA mailed you Form 21-526 to fill out and return it to the nearest VA Regional Office. Follow the advice of your representative in completing the form. You have the right to review your military service records and any other records in your VA file before completing the form. Make sure to make a copy for your records.

*NOTE: From this point on during your claims process, **never** send any written documents directly to the VA without a prior review by your representative. All communication with the VA should be coordinated through your representative.*

Step 4: GATHER EVIDENCE Collecting evidence to support your claim can be time-consuming and very frustrating — but absolutely essential to winning your claim. Once the VA Regional Office receives your VA Form 21-526, it should determine whether or not your claim is plausible. If so, then the VA is legally required to help you gather the evidence — but don’t count on the VA to assist you. You and your representative should attempt to obtain all of your private post-military service and VA medical records, along with all of your military personnel and medical records. These records should be provided directly to your representative so that your representative can determine which documents should be submitted to the VA Regional Office in support of your claim. Make a copy for your records. To obtain one free copy of your military personnel and medical records, send a letter requesting such to:

National Personnel Records Center
Military Personnel Records
9700 Page Avenue
St. Louis, Missouri 63132
www.archives.gov

Your representative should have access to the SF-180 form — or you can download it from the VVA website, www.vva.org — that makes this request easier. If the NPRC tells you that your records are missing, your representative can help you file a National Archives and Records Administration Form 13075, “Questionnaire About Military Service.” The information you supply on the Form 13075 will be used by the NPRC to reconstruct lost, destroyed, or difficult-to-find military personnel records.

If you have used VA medical services in the past, if your claim was filed some time ago, or if this is a claim for compensation increase or a reopened claim, you have the right under the Privacy Act to find out what information is contained in your VA claims file. To obtain a free copy of your VA C-file, simply send a letter to the Regional Office that holds your C-file (usually the one where your claim has been filed) and request a copy. Always make a copy for your records. You and your representative should carefully review the C-file to determine if any information is missing.

Step 5: ORGANIZE EVIDENCE With the assistance of your representative, organize your evidence and arguments in written form for presentation to the VA Regional Office.

What if my claim is denied?

If the VA Regional Office determines that your disability is not service-connected, or if the evaluation of your disability is lower than you think is fair, you have the right to appeal to the Board of Veterans' Appeals in Washington, D.C.

Appeals Step 1: With the assistance of your representative, you should file a written "Notice of Disagreement" with the VA Regional Office within one year (365 days) of being notified of the denial and request a written copy of the rating decision. In your Notice of Disagreement letter, be sure to include the date of the VA's letter of denial, the claim number, and the list of benefits you are still seeking. Make a copy for your records. If you miss the one-year deadline for sending your Notice of Disagreement letter and have not requested an extension, the decision of the VA Regional Office may become final. You can re-open your claim at the VA Regional Office if you provide *new* and material evidence supporting your claim; however, the effective date of your claim will change.

Once you've filed your Notice of Disagreement at the VA Regional Office, you can request a hearing that will determine the status of any new evidence affecting the review of your claim. If the claim is denied, your appeal to the Board of Veterans' Appeals will go forward.

Appeals Step 2: If you and your representative have followed Appeals Step 1, and the VA continues to deny your claim, the VA Regional Office will respond to your notice of disagreement with a "Statement of the Case" letter to you and a copy to your representative, which details the laws that apply to your claim and the reasons why the claim was denied. Along with the Statement of the Case letter, the VA Regional Office will provide you with "the substantive appeal" form, VA Form 9. You and your representative must complete this form and return it to the VA Regional Office *within 60 days* of the date on the Statement of the Case letter for the Board of Veterans' Appeals to further consider your appeal. Again, make copies for your records. Return the completed VA Form 9 to the VA Regional Office within 60 days, regardless of whether or not you've requested a hearing under Appeals Step 1.

After your representative has submitted your VA Form 9, the VA Regional Office will send you and your representative a dated letter telling you that your appeal has been assigned a number and been put on the Board of Veterans' Appeals docket. You will also be notified when your file has been sent to the Board of Veterans' Appeals in Washington, D.C. You will then have 90 days from the date of this second notification to submit new evidence, request a hearing, or change your representative.

What if my appeal is denied, or I am not satisfied by the decision of the Board of Veterans' Appeals?

You have several options, but you should consult an experienced veterans' service officer or attorney before you choose any of these: a) request reconsideration by the Board of Veterans' Appeals; b) formally appeal to the U.S. Court of Appeals for Veterans' Claims; and/or c) re-open your claim at the Regional Office with new and material evidence.

Can I hire a lawyer?

Yes, you may hire a lawyer to represent you, but only after you have filed a "Notice of Disagreement" with a VA Regional Office.

IS PRESUMPTIVE SERVICE-CONNECTED AGENT ORANGE DISABILITY COMPENSATION AVAILABLE TO SURVIVING FAMILY MEMBERS OF DECEASED VIETNAM VETERANS?

Yes. If a Vietnam veteran dies of a medical condition considered to have resulted from exposure to Agent Orange during his/her military service, certain surviving family members may be eligible for monthly VA compensation payments through the VA's dependency and indemnity compensation (DIC) program.

Who Is Eligible?

To be eligible for DIC benefits, a surviving family member must show two things:

1) The family member meets one of the following criteria:

- You were married to the veteran at the time of death, and you had lived with the veteran from the date you were married until the veteran's death, unless separation occurred because of the veteran's misconduct without fault on your part; you are not currently married, remarried after age 57; or you are not currently living with another person and claiming to be the spouse of that person. There may be different rules that apply if you either were married to the veteran for less than one year or were in a common-law relationship with the veteran;
- You are a son or daughter of the veteran under the age of 18, are unmarried, and there is no eligible surviving spouse;
- You are a son or daughter of the veteran, 18 years old or older, and before you reached the age of 18, you became disabled and permanently unable to support yourself;
- You are a son or daughter of the veteran, unmarried, between the ages of 18 and 23, and are currently attending a VA-approved school; and
- You are the surviving parent or parents of the deceased veteran. The term "parent" includes a biological, adoptive, or foster parent. A foster parent is a person who legally stood in the relationship of a parent to the veteran for at least one year before the veteran's last entry into active duty.

Eligibility for dependent parents' DIC is need-based. When countable income exceeds the limit set by law, no benefit is payable. Income limits are adjusted annually.

2) In addition to one of the eligibility criteria noted above, you must also show that the veteran had active service in Vietnam (or Korea along the DMZ in April to August 1968 and/or May to July 1969), the veteran developed one of the illnesses/diseases considered by the VA to be presumptive to exposure to Agent Orange, and that the illness/disease was the principal or a contributory cause of the veteran's death.

NOTE: These eligibility requirements can be met, even if the deceased veteran never applied to the VA for disability compensation before death; or if the veteran had applied for compensation before death, but the claim was denied; or if the claim/appeal was pending at the time of death.

How Do I File a DIC Claim?

The procedures used by the VA for this type of claim are generally the same as those used to handle any veteran's claim; VA Form 21-535 is used. Information to be included in an informal claim letter can be found on page 18 of this guide.



IS PRESUMPTIVE SERVICE-CONNECTED AGENT ORANGE DISABILITY COMPENSATION AVAILABLE TO BIOLOGICAL CHILDREN OF VIETNAM VETERANS BORN WITH CERTAIN BIRTH DEFECTS?

Yes. The children of Vietnam veterans who are born with a birth defect may be eligible for compensation, free medical care, and vocational rehabilitation services.

Who Is Eligible?

To be eligible for these benefits, you must show three things:

- 1) You are the natural, biological child of a Vietnam veteran – one of your biological parents served in the active military, naval, or air service in the Republic of Vietnam for at least one day during the period January 9, 1962, to May 7, 1975;
- 2) You were conceived after the veteran parent first began service in Vietnam; and
- 3) You were born with a birth defect listed on page 5 of this guide.

Proof of the parent's exposure is not necessary. These children are entitled to three types of benefits:

a) monthly compensation payments based upon the degree of the child's disability; b) VA medical care or reimbursement from the VA for private medical care for medical problems related to the birth defect; and c) vocational rehabilitation services.

How Do I File a Claim?

The procedures used by the VA for this type of claim are generally the same as those used to handle a veteran's claim, but a special application, VA Form 21-0304, is used. Information needed for an informal claim letter can be found on page 18 of this guide. Such children are generally not required to undergo a VA medical exam.

NOTE: In addition to the Service-connected Agent Orange Disability Compensation award noted above, the VA also offers "dependents' allowance" to children of veterans who have been rated with at least a 30 percent service-connected disability. Children of veterans who are rated with a 100 percent permanent disability also are eligible for education assistance and health care under a separate VA program, CHAMPVA (the Civilian Health and Medical Program of the VA). This program covers dependents and survivors of certain veterans who are ineligible to receive health benefits under the Department of Defense TRICARE program.

IS PRESUMPTIVE SERVICE-CONNECTED AO DISABILITY COMPENSATION AVAILABLE TO INCARCERATED VIETNAM VETERANS?

Yes, but even if you are awarded Agent Orange disability compensation, you will likely not receive the entire monthly amount while you remain incarcerated, especially if you were convicted of a felony. However, any monetary benefits withheld from you may be “apportioned” (divided between you and an assigned family member).

How Do I File a Claim?

The procedures used by the VA for this type of claim are generally the same as those used to handle any veteran’s claim, but VVA recognizes that incarcerated veterans face many challenges, especially when seeking the required Agent Orange medical exam. A few Departments of Corrections will arrange transport to VA medical facilities, but most do not. Try to obtain a detailed medical report or exam conducted by the facility’s doctor. To assist the doctor, obtain a copy of the “VA Physician’s Guide to Disability Evaluation Examinations” and rating schedule by writing to the nearest VA Regional Office and invoking the federal Freedom of Information Act. Another alternative is to submit a petition to your facility administrator asking that he or she request a VA doctor visit your facility.

WHAT OTHER BENEFITS ARE AVAILABLE TO A VIETNAM VETERANS WITH AN AGENT ORANGE-RELATED ILLNESS?

Social Security Benefits

The Social Security Administration administers certain kinds of insurance and Supplemental Security Income (SSI) benefits for eligible adults and some eligible children of Vietnam veterans under the age of 18. In some cases, veterans can receive both Social Security Disability Insurance and VA disability compensation. You should check with your nearest Social Security Administration office for details about these programs.

Information for Military Retirees

As of June 1, 2003, some disabled military retirees no longer have their military retired pay offset by VA compensation. However, eligible veterans must apply to DoD to be included. In addition, for a veteran disabled by an illness associated with Agent Orange — if your disability is rated at 60 percent or more and you have 20 years of service for retired pay purposes — you are eligible for the Combat-related Special Compensation Program. Eligible veterans must apply to their respective branch of military service using Form DD-2860.

INFORMAL CLAIM LETTERS

An informal claim letter should be typewritten or printed legibly. It should include your full legal name; your name when you served in the military if different; official mailing address; Social Security number, and VA C-file number, if known. Ask your veterans' service representative to look it over. Make sure to sign the letter, make a copy for your records, and then mail the original to the nearest VA Regional Office. Send it via "Certified Mail, Return Receipt Requested," and keep the receipt in your records after it is returned from the VA Regional Office.

Vietnam veterans should include the following in your letter: "I am applying for service connection for (identify your illness/disease or disability) and any other benefits for which I may be entitled. Please send me the formal application form (VA Form 21-526) and delay deciding my claim, unless it is in my favor, until I submit additional evidence." Do *NOT* include any additional information in this letter unless approved by your representative.

The surviving family member of a deceased Vietnam veteran should include the following in your letter: "I am the (identify your relationship with the deceased veteran) of a Vietnam veteran named (include the full legal name, Social Security number, and VA C-file number, if known, of the deceased veteran), and I am applying for the service-connected death benefits (DIC) because of the death of this veteran and for any other benefits to which I am entitled. Please send me the formal application form (VA Form 21-535) and delay deciding my claim, unless it is in my favor, until I submit additional evidence." Do *NOT* include any additional information in this letter unless approved by your representative.

Vietnam veteran's child born with birth defect(s) should include the following in your letter: "I am the (son or daughter) of a Vietnam veteran named (include the full legal name, Social Security number, and VA C-file number, if known), and I am applying for the monthly compensation payments and any other benefits to which I am entitled as a result of being born with (spina bifida or other listed birth defect). Please send me the formal application form (special application VA Form 21-0304) and delay deciding my claim, unless it is in my favor, until I submit additional evidence."

A parent or legal guardian of such a child can write: "I am the (identify the relationship to the child) of (full legal name of child), who is the child of (include veteran's full legal name). This is an application for monthly compensation payments and any other benefits for which this child may be entitled as a result of being born with (spina bifida or other listed birth defect). Please send me the formal application form (special application VA Form 21-0304) and delay deciding my claim, unless it is in my favor, until I submit additional evidence." Do *NOT* include any additional information in this letter unless approved by your representative.

VETERANS SERVICE ORGANIZATIONS

Many Veterans Service Organizations offer free assistance to help you present your claim to the VA. This includes representation at hearings before the VA Regional Office, the Board of Veterans' Appeals, and the U.S. Court of Appeals for Veterans Claims. Some of these VSOs have a representative at your nearest VA Regional Office. You can also locate a VSO representative by contacting the organization's national office online or by phone. These are just a few of the many VSOs able to assist.

Vietnam Veterans of America:

www.vva.org
1-800-VVA-1316

American Legion:

www.legion.org
1-202-861-2700

AMVETS:

www.amvets.org
1-877-726-8387

Disabled American Veterans:

www.dav.org
1-877-426-2838

Military Order of the Purple Heart:

www.purpleheart.org
1-703-354-2140

Paralyzed Veterans of America:

www.pva.org
1-800-424-8200

Veterans of Foreign Wars:

www.vfw.org
1-816-756-1149

In addition, almost every state has a commission, division, or department of veterans' affairs that provides representation to veterans and their families. In some states VSO representatives' offices are located in county, state, or federal government facilities. These may be found in the government pages of your local telephone directory.

REFERENCES and RESOURCES

Vietnam Veterans of America Agent Orange/Dioxin and Other Toxic Substances Committee
www.vva.org/Committees/AgentOrange

Title 38, Code of Federal Regulations.
Available from the Government Printing Office; to order, call 202-512-1800

VA's Agent Orange Webpage:
www.va.gov/Agentorange

The Veterans Health Council, a program of Vietnam Veterans of America
www.veteranshealth.org

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