

**STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

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Good morning Chairwoman Luria, Ranking Member Bost and Members of the Subcommittee. VA welcomes this opportunity to discuss the process for establishing a presumption of service connection for toxic exposures and the related disability compensation decision making process. Accompanying me today is Laurine Carson, Deputy Executive Director of Policy and Procedures, Compensation Service, VBA, and Dr. Patricia Hastings, Chief Consultant, Post-Deployment Health Services, Office of Patient Care Services/Public Health, Veterans Health Administration.

VA is committed to the health and well-being of Veterans and is dedicated to working with our government and academic partners to continue to investigate potential adverse health effects associated with toxic hazard exposures during military deployments. One in three Veterans reports a possible exposure to environmental hazards such as exposure to burn pits, and one in four reports health concerns due to deployment exposures.

To address Veterans' concerns about military environmental exposures, VA created the Post Deployment Health Services (PDHS), which oversees health-related concerns of relevance to Veterans and their occupational and environmental exposure.

PDHS consists of four programs: Pre-9/11 and Post-9/11 Era Environmental Health Programs—addressing military environmental concerns from conflicts as well as garrison exposures; Epidemiology—providing research and scientific review to inform policy; and War Related Illness and Injury Study Center, which provides research, education, and medical consultation for cases that are difficult to diagnose or treat.

In accordance with 38 U.S.C. § 1110, VA provides compensation to Veterans for disabilities incurred in, or aggravated by, military service. To establish service connection, there must be: 1) a current disability, 2) an event, injury, or disease in service, and 3) a link between the disability and event in service. VA generally considers disability compensation claims on a direct service connection basis, meaning that VA reviews claims on a case-by-case basis by reviewing the individual facts and circumstances of the case to include service treatment records, medical records, lay evidence and other service records, to establish all three elements of service connection.

VA may also consider a claim for disability compensation on a presumptive basis if a regulatory or statutory presumption of service connection has been established for the claimed condition that covers the temporal and geographic scope of the Veteran's service. A presumption of service connection facilitates the decision-making process by relieving the Veteran of the burden to prove that the hazard actually caused the claimed condition. For example, a Veteran who served in the Republic of Vietnam between January 9, 1962, and May 7, 1975, would not need to prove service incurrence of lung cancer because this condition has been positively associated with exposure to Agent Orange and is subject to presumptive service connection under the law. A presumption of exposure may be established in regulation or statute, which eliminates the burden on the claimant to prove that an event, such as an exposure to toxins, occurred during his or her service.

The general rulemaking authority of the Secretary of Veterans Affairs under 38 U.S.C. § 501(a)(1) includes authority to create reasonable presumptions of service connection for any disease associated with toxic exposure. This authority encompasses the establishment of an evidentiary presumption of service connection and exposure under specified circumstances, provided there is a rational basis for the presumptions. For example, in 2017, the Secretary utilized his authority to establish presumptive service connection for several diseases based on exposure to toxins at Marine Corps Base Camp Lejeune. For VA to establish a presumption by rulemaking, there must be a reasonable, scientific, factual basis for the presumption. Accordingly, VA relies upon an evidence-based approach in determining whether to establish a presumption. The Secretary's rulemaking authority is also subject to all other laws and Executive Orders generally applicable to the notice and comment rulemaking process.

While today's discussion may focus on the potential for establishing presumptions, direct service connection is the method by which most disability compensation benefit claims are granted. A presumption of service connection is not required for Veterans to file a claim nor for VA to grant service connection. Moreover, a presumption of exposure is not required for VA to recognize that an exposure occurred in service. For example, VA understands that open air burn pits were utilized extensively in the Southwest Asia (SWA) theater of operations; and therefore, VA carefully considers exposure to burn pits. If a Veteran claimant served in SWA, VA recognizes that environmental exposures during deployment may be associated with both immediate and delayed adverse health consequences, and so there is no time limit for submitting such claims. VA continues to encourage any Veteran who believes that military service has negatively impacted his or her health to submit a claim as soon as possible, because, although there is no time limit to file a claim, benefits generally run from the date the claim was received by VA.

We thank you for your support, and Madam Chair, this concludes my testimony. My colleagues and I are prepared to answer your questions.