

**STATEMENT OF
DAVID R. MCLENACHEN
DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE
VETERANS BENEFITS ADMINISTRATION
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OVERSIGHT AND INVESTIGATIONS AND DISABILITY AND MEMORIAL AFFAIRS
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Opening Remarks

Chairman Coffman, Chairman Abraham, ranking members Kuster and Titus, and Members of the Committee, thank you for the opportunity to discuss how the Department of Veterans Affairs (VA) processes Gulf War Veterans' compensation claims. My testimony will provide an overview of VA's processing of these claims, its training and quality assurance efforts, presumptive service connection, the statutory authority for establishing presumptions of service connection, and the science and rationale behind such presumptions.

Gulf War Claims Processing

This year marks the 25th anniversary of the start of the Gulf War. The initial conflict lasted from August 1990 until February 1991. However, neither the President nor the Congress has declared an end to the Gulf War, so men and women, who serve in the Southwest Asia theater of operations, to this day remain entitled to presumptions of service connection based upon their service.

As of the end of fiscal year (FY) 2015, almost 7.2 million Veterans served during the Gulf War period. Through FY 2015, over 1.8 million Gulf War Era Veterans were in receipt of disability compensation (approximately 26 percent of Gulf War era Veterans receiving the benefit), the highest percentage of Veterans in receipt of compensation from any era, wartime or peacetime. Each Gulf War Era Veteran averages greater than six service-connected disabilities, again, more than any other era, wartime or peacetime. The most prevalent disabilities for Gulf War Era Veterans include tinnitus, knee conditions, back conditions, post-traumatic stress disorder (PTSD), migraines, and

sleep apnea. Claims from Gulf War Era Veterans now make up the majority of claims received by VA.

VA has made considerable progress in its claims processing performance, including claims from Gulf War Veterans. It has reduced its backlog of pending claims by approximately 86 percent, from its peak of 611,000 in March 2013 to 83,226 as of the end of February 2016. VA has also reduced the average days waiting for a decision to 93 days, which is a 189-day reduction from a 282-day peak in March 2013.

Training and Quality Assurance

The Veterans Benefits Administration (VBA) is constantly looking for ways to improve the service it provides to this cohort of Veterans. We work with the Veterans Health Administration (VHA) in reviewing the research done by its Offices of Public Health and Research and Development, as well as the Institute of Medicine's biennial update on Gulf War issues. We also work with VHA and the Department of Defense in joint workgroups that research occupational and environmental hazards coincident with military service. We collaborate with VHA to update training for its medical examiners, as well as VBA's contract medical examiners. Finally, VA continues to collaborate with the National Gulf War Resource Center (NGWRC) in bimonthly meetings.

VBA has a national quality review staff, as well as quality reviewers in its local regional offices, to ensure that the employees correctly process and decide claims for Gulf War illness. As agreed with NGWRC, VA conducted a special-focused review of decisions on claims for Gulf War-related illnesses for fiscal year 2015. This review showed a 94-percent accuracy rate. In the last year, VBA updated training for claims processors on Gulf War illness, including such topics as medical examinations, evaluating disabilities, assigning effective dates, and awarding special monthly compensation. Beginning in October 2015, we required all decision makers and quality assurance staff to complete these training modules.

VA has implemented a number of other initiatives to improve Gulf War claims processing. VA has developed special tracking to specifically account for Gulf War claims. VA has also amended its Gulf War General Medical Examination template to include information for examiners on undiagnosed and chronic multi-symptom illnesses, as well as information on environmental exposures in the Gulf War.

Gulf War Illnesses

Service connection for undiagnosed illnesses or multi-symptom illnesses requires service in the Persian Gulf after August 2, 1990, and a qualifying chronic disability that rises to a compensable level of severity before December 31, 2016.

A medically unexplained chronic multi-symptom illness means a diagnosed illness without conclusive pathophysiology or etiology. The objective signs and symptoms of these disabilities, as well as undiagnosed illnesses, include fatigue, skin conditions, headaches, muscle pain, joint pain, sleep disturbances, and cardiovascular symptoms, among others. The term “medically unexplained chronic multi-symptom illness” also covers diagnosed illness defined by a cluster of signs or symptoms, such as chronic fatigue syndrome, fibromyalgia, and functional gastrointestinal disorders (excluding structural gastrointestinal diseases).

Service connection is also warranted for Veterans who contract certain infectious diseases, such as malaria, Q fever, and West Nile virus. In addition to Gulf War service, service in Afghanistan may qualify a Veteran for a presumption of service connection under this provision.

Processing these types of claims requires a careful review of service treatment records, military personnel records, and post-service treatment records. Claims processors must carefully review the claimed disabilities and symptoms to determine if a presumption will potentially apply. Medical examinations are generally required where VA identifies these disability patterns to determine whether there is a medical explanation of the disabilities.

Should VA determine that a Gulf War Veteran does not have a presumptive disease/disability, he or she may establish direct service connection by showing the three elements described below.

Overview of Presumptive Service Connection

Direct service connection requires three elements: (1) evidence of a current disability; (2) an injury, disease, or event during active duty military service; and (3) medical or, in certain cases, lay evidence establishing a link or nexus between the two. A presumption relieves Veterans of the burden of producing evidence that directly establishes at least one of the elements they need to substantiate their claims. A presumption regarding exposure may establish the occurrence of an event in the military based on service in specific locations. The law may also presume a medical nexus or relationship of a disease to a presumed exposure.

A presumption, whether based on location of service or medical relationship, provides a legal basis for establishing service connection for disabilities where a factual basis may not exist in the Veteran's individual service and/or medical record.

For example, presumptions regarding location of service provide a legal basis for establishing an in-service event, such as a toxic exposure, where factual documentation of the actual exposure event does not exist. Under the provisions of section 1118 of title 38, United States Code, and section 3.317 of title 38, Code of Federal Regulations, VA presumes any Veteran who served in Southwest Asia since August 2, 1990, and who develops a disease associated with certain environmental hazards was exposed to those environmental hazards in service (in the absence of conclusive evidence otherwise).

VA may also establish presumptions for the purpose of establishing relationships between certain events in service and certain diseases and conditions, even where specific factual documentation may not exist. For example, 38 C.F.R. § 3.317 establishes malaria as a presumptive condition for Veterans who served in the Gulf

War. In the absence of affirmative evidence of a cause outside of military service, including willful misconduct, VA presumes a Veteran's malaria resulted from this military service and provides compensation for that disability if it manifests to a compensable level of severity within a certain time.

Authority

The Secretary of Veterans Affairs has broad authority under section 501 of title 38, United States Code, to establish presumptions. To determine which diseases are associated with such service, the Secretary takes into account reports from the National Academy of Sciences (NAS) and all other sound medical and scientific information available. If the Secretary determines a presumption of service connection is warranted, he may issue proposed regulations setting forth his determination. VA issues a proposed regulation for public notice and comment outlining the presumption to be established. In proposing the regulation, VA outlines the scientific and/or medical basis for the presumption as well as the eligibility criteria for the presumption. VA then drafts a final regulation taking into account the public comments it received.

Scientific Bases

Public Law 105-368 charges the Secretary of Veterans Affairs with the responsibility for notifying Congress of findings of NAS that might impact presumptions of service connection for diseases associated with service in the Southwest Asia theater of operations during the Gulf War due to exposure to biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicine or vaccines.

In preparing its reports for Gulf War health issues, NAS committees conduct comprehensive searches of all medical and scientific studies on the health effects of the environmental exposure being reviewed. In the course of this literature search and review, it is not uncommon for these committees to cover thousands of abstracts of scientific and medical articles, eventually narrowing their review to the hundreds of the most relevant and informative peer-reviewed journal articles. NAS then scores the strength of the total medical and scientific evidence available by utilizing broad

categories of association such as “inadequate or insufficient evidence of an association,” “limited or suggestive evidence of an association,” or “sufficient evidence of an association.” NAS does not directly recommend new presumptions.

Upon receipt of the finished NAS reports, VA establishes work groups comprised of experts in medicine, disability compensation, health care, occupational and environmental health, toxicology, epidemiology, and law. These work groups, along with senior VA leaders, review in detail the NAS reports and all available scientific and medical information before recommending to the Secretary any presumptions. These recommendations to the Secretary are based in the strength and preponderance of the medical and scientific evidence.

Closing Remarks

VA continues to improve the efficient, timely, and accurate processing of claims involving service in the Gulf War. Presumptive service connection fills a critical gap when exposure to toxic substances or certain disabilities resulting therefrom are not specifically documented in a Gulf War Veteran’s service records. Although the science and medical aspects of undiagnosed illnesses and multi-symptom illnesses are not yet fully understood, VA continues to review scientific and medical literature to gain a better understanding of the impact of these illnesses on our Gulf War Veterans.

This concludes my testimony. I am pleased to address any questions you or other Members of the Committee may have.