



STATEMENT FOR THE RECORD

MILITARY OFFICERS ASSOCIATION OF AMERICA

**THE TOXIC WORLD OF PRESUMPTIVE SERVICE
CONNECTION DETERMINATIONS: WHY SHOULD OUR
VETERANS WAIT?**

2nd SESSION of the 116th CONGRESS

Before the

**HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS**

December 9, 2020

CHAIRWOMAN LURIA, RANKING MEMBER BOST, and Members of the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, the Military Officers Association of America (MOAA) is pleased to submit this statement for the record offering our views on the current presumptive service connection determination process, the toxic exposure-related adjudication process, and needed improvements to support current and future generations of servicemembers and veterans.

MOAA does not receive any grants or contracts from the federal government.

EXECUTIVE SUMMARY

On behalf of the Military Officers Association of America (MOAA), the largest and most influential military and veterans service organization representing all uniformed services, including active duty and Guard and Reserve members, retirees, veterans, survivors, and their families, we thank you for convening this hearing to examine reforms to the presumptive and adjudication process for toxic exposures and environmental hazards.

Nearly 50 years have passed since Agent Orange was last used in Vietnam; almost 30 years have passed since Gulf War veterans were exposed to a myriad of hazardous materials and toxins; and our nation is approaching 20 years since the first troops were deployed to fight the Global War on Terror. Each of these wars resulted in unique hazards and exposures for servicemembers, and each conflict has led to tens of thousands of veterans suffering from illnesses or disabilities who are not receiving the health care and benefits they have earned as a result of their service.

Each wounded, ill, injured, or disabled veteran or survivor within this group is at a different stage in the adjudication process, but all are waiting for a decision – some giving up or dying in the process. They are waiting on Congress or the VA to acknowledge and legitimize the scientifically established link between their condition and their exposure, like those Vietnam veterans with the conditions of bladder cancer, hypothyroidism, Parkinsonism, and hypertension. They wait on appealed claims, like those whose claims for Gulf War Illness were denied due to [lack of training and clear definitions within the VA](#). Or they are waiting for additional studies to uncover causal linkage between their illnesses and their exposure, like 21st-century veterans who served near burn pits in Southwest Asia.

They have waited long enough. We must take action to improve the current claims system for veterans and survivors to receive a service connection determination for toxic exposures and hazards. This process requires significant improvements, which we can make if we take a holistic approach that supports establishing direct service connection and improves the presumptive process.

MOAA's Recommendations:

Support Direct Service Connection Adjudication

- Enroll post-9/11 veterans in priority group 6, ensuring they would not be responsible for VA copays for their toxic exposure related illnesses. ([S. 4393 – TEAM Act of 2020](#)).
- Concede exposure to airborne hazards and toxic substances to support veteran claims ([S.2950 - Veterans Burn Pits Exposure Recognition Act of 2020](#)).
- Eliminate evidentiary burdens for veterans with Agent Orange exposure ([S. 332/H.R. 566 – Agent Orange Exposure Fairness Act](#))
- Allow veterans to access the Individual Longitudinal Exposure Record (ILER) ([S. 4393 – TEAM Act of 2020](#) and [S. 4049, Section 753 – Fiscal Year 2021 National Defense Authorization Act](#)).
- Implement recommendations offered in the “[Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations](#)” report for future studies, partner to fill knowledge gaps, and fund enhanced data collection.
- Ensure the process requires new studies every two years to examine toxic exposures.
- Add illnesses to the list of presumptives when supported by the scientific community ([S. 3444/H.R. 5610 – Fair Care for Vietnam Veterans Act](#)).

Improve the Presumptive Disability Decision Process

- Create a formal advisory committee to offer the VA Secretary recommendations for research areas, illnesses, and possible presumptives ([S. 4393 – TEAM Act of 2020](#)).
- Adopt the service-connected classification scheme recommended in the “[Improving the Presumptive Disability Decision-Making Process for Veterans](#)” report (recommendations five to eight).
- Following the completion of a National Academies of Sciences, Engineering, and Medicine (NASEM) report, require the VA Secretary to formally respond within 60 days to determine whether presumption is warranted for each disease evaluated by NASEM.

Implementing these recommendations will help wounded, ill, injured, and disabled veterans currently seeking relief and ensure future generations of veterans and survivors have an improved presumptive decision process that works more efficiently with increased transparency and oversight.

SUPPORT DIRECT SERVICE CONNECTION ADJUDICATION

Establishing a presumption of an illness’s service connection takes time and a significant level of scientific rigor. While beneficial for all future claims once established, a holistic approach must be taken. Congress must support the establishment of direct service connection while scientific evidence is being collected and examined.

Establishing service connection requires three criteria be met:

- Evidence of a current disability or condition
- Evidence of an event or a disease or injury in the military
- Evidence of a medical link or opinion that the current diagnosed condition “is at least as likely as not” related to the event in-service

While establishing a presumptive reduces the need to meet one or more of the criteria that is placed on a veteran or survivor when they make their claim, supporting all three criteria must be prioritized by Congress and the VA. Through researching and studying toxic exposures, the case for presumptives is supported.

Approaching each of the criteria with the goal of supporting veteran adjudication is an important part of a holistic approach. The core of which is to help show the “evidence of a current disability or condition,” which requires the veteran to have access to health care.

Criterion 1: Evidence of a current disability or condition

Since 2016, MOAA has collaborated with the United Health Foundation to produce the “[America’s Health Rankings Health of Those Who Have Served Report](#).” Findings from this show that 7.5% of veterans do not have health care coverage, reducing the likelihood of a formal diagnosis.

Supporting access to health care will not only help keep veterans alive, but it will assist in the collection of knowledge gaps outlined in the “[Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations](#)” report. The report highlighted multiple concerns, such as constrictive bronchiolitis and excess mortality from respiratory-related causes, as feasible areas for further research. Additionally, disparities in subpopulations could be addressed by expanded health care coverage.

Core to supporting adjudication of claims and the identification of presumptives is the access to health care. This can be achieved for many veterans through [S. 4393 – TEAM Act of 2020](#).

Passing this bill would provide care to eligible veterans in priority group 6, such as Vietnam and Gulf War veterans, due to their exposure to toxic substances during their service. The waiver of copays for toxic exposure related illnesses would allow veterans coming to the VA to receive care for many conditions that require further study.

An added benefit of passing this bill is the connection it will provide to the VA for veterans suffering from mental health conditions. A key component of the [VA’s suicide prevention strategy](#) is to connect veterans with VA services. This provides another connection point for veterans to receive care and understand their care and benefits options.

Criterion 2: Evidence of an event or a disease or injury in the military

Veterans who served in Southwest Asia are experiencing a high rate of denials for their claims. [According to data provided by Laurine Carson](#), the Deputy Executive Director of Compensation Service in the Veterans Benefits Administration, 78% of veterans’ claims related to burn pit

exposure since 2007 were denied. Each case requires veterans to prove they were exposed to toxic substances during their service. By conceding that veterans were exposed to toxic substances and hazards in certain deployed locations, Congress can eliminate a significant evidentiary barrier for many veterans. Conceding exposure was a pivotal step in providing care and benefits for Vietnam and Gulf War veterans; the passage of this act would do the same for all who served in Southwest Asia. Passage of [S. 2950 – Veterans Burn Pits Exposure Recognition Act of 2020](#) would recognize locations in which burn pits were used in Iraq and Afghanistan, accomplishing much of the same for veterans of the post-9/11 era.

In addition to supporting veterans by conceding exposure, enabling a veteran’s access to the ILER would increase awareness about exposures during service without the veteran needing to file a Freedom of Information Act request. Awareness of the prevalence of service-connected conditions will improve health outcomes for veterans. If a veteran is aware of an exposure and their health provider is aware of related conditions, they may be less likely to overlook early symptoms of a serious condition. Both [S. 4393 – TEAM Act of 2020](#) and [S. 4049, Section 753 – Fiscal Year 2021 National Defense Authorization Act](#) would provide access for veterans to ILER.

When presumptives are established, lawmakers and regulators should consider the feasibility of requiring veterans to provide the evidence needed to prove the presumptive. Veterans exposed to Agent Orange are suffering with illnesses that have evidentiary burdens they are unable to meet, even though their conditions are recognized as connected to their service. For example, the illnesses of chloracne, peripheral neuropathy, and porphyria cutanea tarda have strict manifestation periods of one year after serving in Vietnam and required the illness to be compensable at a 10% rating. Unless these illnesses were properly diagnosed and documented in 1972, this is a near-impossible burden for a veteran to achieve. We support the full repeal of the manifestation periods for these presumptives through H.R. 566 or at a minimum, urge Congress to pass S. 332 as amended ([S. 332/H.R. 566 – Agent Orange Exposure Fairness Act](#)).

Criterion 3: Evidence of a medical link or opinion that the current diagnosed condition “is at least as likely as not,” related to the event in-service

While the ability to establish presumptives between burn pit exposures and servicemember illnesses was not established through the recent release of the “[Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations](#)” report, the recommendations in the report offer a roadmap on what future studies might look like, and additional knowledge gaps to fill through future research. MOAA encourages the Committee to seek funding for these recommendations to aid veterans and fill knowledge gaps around these exposures.

Unlike Agent Orange and Gulf War Illness diseases, there is no mandate for continued study for of airborne hazards and toxic exposures on the whole. Requiring new studies every two years to examine the body of research on airborne hazards and toxic exposures would establish a routine and proactive evidence-based review of presumptive conditions from which our veterans suffer.

While adding presumptives takes time, recognizing advances in scientific research will enable more and more veterans to have their claims recognized, and provide the potential for presumptives to be established where warranted.

Finally, when the scientific threshold of proof has been reached for a presumptive, action must be initiated by the VA or Congress without delay. Bladder cancer, hypothyroidism, Parkinsonism, and hypertension have all reached the classification level to be recognized as illnesses associated with Agent Orange, but inaction has left tens of thousands of veterans waiting without care and benefits. These delays, despite sufficient association for Agent Orange, have damaged the trust our aging veterans place in our government and point at the necessity of improving the presumptive process to ensure consistent and fair treatment for all veterans. MOAA supports the passage of [S. 3444/H.R. 5610 – Fair Care for Vietnam Veterans Act](#).

IMPROVE THE PRESUMPTIVE DISABILITY DECISION PROCESS

NASEM formally reviewed the presumptive process and released its [findings](#) in 2008. Over a decade since the report, few of the recommendations have been implemented. MOAA urges Congress and the VA to revisit this report and pursue the unaddressed recommendations.

The creation of a formal advisory committee to offer the VA Secretary recommendations for research areas, illnesses, and possible presumptives is a major step Congress could take to improve the presumptive process. [S. 4393 – TEAM Act of 2020](#) expounds on NASEM’s work and offers a framework supported by many veterans’ organizations.

Adopt the service-connected classification scheme recommended in the “[Improving the Presumptive Disability Decision-Making Process for Veterans](#)” report. The proposed classification levels of *Sufficient*, *Equipose and Above*, *Below Equipose*, and *Against* and the accompanying recommendations offer additional clarity around which illnesses should be added as presumptives. The updated language would match current U.S. laws to assist with decision making. A NASEM recommendation of *Sufficient* or *Equipose and Above* is sufficient to scientifically establish a presumptive illness.

Accompanying an updated classification scheme should be additional guidance for the VA Secretary. Following the completion of a National Academies report, MOAA recommends Congress require the VA Secretary to formally respond within 60 days to determine whether each disease if presumption is warranted. If NASEM reporting classifies any diseases as *Sufficient* or *Equipose and Above*, but the VA Secretary does not add the illness as a presumptive, a detailed explanation of clear and contradicting evidence to the contrary should be shared; in such instances, a call for further research should not be considered as a viable explanation in and of itself.

CONCLUSION

MOAA appreciates the opportunity to present our views and recommendations on the adjudication of toxic exposures and the presumptive process. We look forward to working with the Committee to offer additional recommendations and support legislation around these important issues.