

**10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents**

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**Introduction**

This topic contains general information on establishing service connection for disabilities resulting from exposure to herbicide agents, including

- the definitions of a **herbicide agent** and **service in the Republic of Vietnam**
  - presuming exposure to a herbicide agent
  - determining the last date of exposure
  - the time limits for disease manifestation
  - when to consider direct service connection
  - the definition of **acute** and **subacute peripheral neuropathy**
  - handling claims based on acute and subacute peripheral neuropathy and later-occurring peripheral neuropathy
  - the dates disabilities became subject to presumptive service connection under 38 CFR 3.309(e)
  - conditions determined to have no positive association with herbicide exposure
  - exposure to herbicides during service aboard the USS Ingersoll
  - exposure to herbicides along the demilitarized zone (DMZ) in Korea
  - storage of herbicide agents on Johnston Island, and
  - Fact Sheet: Storage of Agent Orange on Johnston Island.
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**Change Date**

October 2, 2007

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**a. Definition:  
Herbicide Agent**

Under [38 CFR 3.307\(a\)\(6\)\(i\)](#), a **herbicide agent** is a chemical used in support of the U.S. and allied military operations in the Republic of Vietnam (RVN) during the Vietnam Era, specifically

- 2,4-D
  - 2,4,5-T and its contaminant, TCDD (dioxin)
  - cacodylic acid, and
  - picloram.
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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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**b. Definition: Service in the RVN**

For the purposes of establishing service connection under [38 CFR 3.307\(a\)\(6\)](#) and [38 CFR 3.309\(e\)](#), *service in the Republic of Vietnam* (RVN) means

- service in the RVN or its inland waterways, or
- service in other locations if the conditions of service involved duty or visitation in the RVN.

**Reference:** For more information on the definition of service in the RVN, see VAOPGCPREC 27-97.

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**c. Presuming Exposure to a Herbicide Agent**

Presume that a veteran who served on active duty in the RVN during the Vietnam Era was exposed to a herbicide agent *unless* there is affirmative evidence to the contrary.

**Note:** Any exposure to herbicide agents during service in locations other than Vietnam *must* be established on a factual basis.

**Reference:** For more information on verifying exposure to herbicides in locations other than Vietnam, see M21-1MR, Part IV, Subpart ii, 2.C.10.1 through o.

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**d. Determining the Last Date of Exposure**

Under [38 CFR 3.307\(a\)\(6\)\(iii\)](#), the last date of exposure is the last date on which the veteran served in the RVN during the Vietnam Era.

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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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**e. Time Limits for Disease Manifestation**

In order to establish presumptive service connection, the following diseases listed in [38 CFR 3.309\(e\)](#) must become manifest to a degree of 10 percent or more within one year of the last date of exposure to herbicides:

- chloracne or other acne-form disease consistent with chloracne
- porphyria cutanea tarda, and
- acute and subacute peripheral neuropathy.

*Notes:*

- There is no time limit for the other listed diseases.
- Previously, respiratory cancers, cancers of the lung, bronchus, larynx, and trachea had to become manifest within 30 years of last exposure. *PL 107-103* eliminated this requirement effective January 1, 2002.

*Reference:* For more information on time limits for manifestation of diseases subject to presumptive service connection, see [38 CFR 3.307\(a\)\(6\)\(ii\)](#).

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**f. When to Consider Direct Service Connection**

Under [38 CFR 3.303\(d\)](#) the requirements for presumptive service connection do *not* preclude consideration of direct service connection when a medical nexus (link, relationship, or association) has been provided.

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**g. Definition: Acute and Subacute Peripheral Neuropathy**

*Acute peripheral neuropathy* and *subacute peripheral neuropathy* are *transient* peripheral neuropathies that

- appeared within one year of last exposure to an herbicide agent
  - resolved within two years of the date of onset, and
  - do not include chronic peripheral neuropathy.
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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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**h. Handling Claims Based on a History of Acute and Subacute Peripheral Neuropathy and Later-Occurring Peripheral Neuropathy**

Do not assign a “0-percent” evaluation based on a history of acute and subacute peripheral neuropathy that

- manifested within one year of the date of last exposure, and
- resolved within two years of the date of onset.

**Rationale:** There can be no valid claim without proof of a present disability.

**Reference:** For more information on what constitutes a valid claim for service connection, see *Brammer v. Derwinski*, 3 Vet. App. 223 (1992).

Claims of service connection for later occurring peripheral neuropathy should be evaluated under the ordinary standards governing direct service connection.

**Note:** Because any acute or subacute peripheral neuropathy will, by definition, resolve within a short time after exposure do *not* presume any later occurring peripheral neuropathy, whether transient or chronic, to be related to the

- prior herbicide exposure, or
- previously-resolved acute or subacute peripheral neuropathy.

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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

### i. Date Disabilities Became Subject to Presumptive Service Connection

The table below shows the dates on which the diseases listed in [38 CFR 3.309\(e\)](#) became subject to presumptive service connection.

Disability	Effective Date
<ul style="list-style-type: none"> <li>• Chloracne or other acne-form disease consistent with chloracne, and</li> <li>• soft-tissue sarcoma, <i>other than</i> <ul style="list-style-type: none"> <li>– osteosarcoma</li> <li>– chondrosarcoma</li> <li>– Kaposi's sarcoma, or</li> <li>– mesothelioma</li> </ul> </li> </ul>	February 6, 1991  <i>Note:</i> Originally, September 25, 1985, under <a href="#">38 CFR 3.311a</a> .
Non-Hodgkin's lymphoma	February 6, 1991  <i>Note:</i> Originally, August 5, 1964, under <a href="#">38 CFR 3.313</a> .
<ul style="list-style-type: none"> <li>• Porphyria cutanea tarda, and</li> <li>• Hodgkin's disease</li> </ul>	February 3, 1994
<ul style="list-style-type: none"> <li>• Respiratory cancers, such as cancer of the               <ul style="list-style-type: none"> <li>– lung</li> <li>– bronchus</li> <li>– larynx, or</li> <li>– trachea, and</li> </ul> </li> <li>• multiple myeloma</li> </ul>	June 9, 1994
<ul style="list-style-type: none"> <li>• Prostate cancer, and</li> <li>• acute and subacute peripheral neuropathy</li> </ul>	November 7, 1996
Type 2 diabetes mellitus	May 8, 2001
Chronic lymphocytic leukemia	October 16, 2003

*Note:* Unless an earlier effective date is determined pursuant to the *Nehmer* stipulation, the provisions pertaining to retroactive payment under [38 CFR 3.114\(a\)](#) apply.

*Reference:* For more information on the *Nehmer* stipulation, see M21-1MR, Part IV, Subpart ii, 2.C.11.

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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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**j. Conditions Determined to Have No Positive Association With Herbicide Exposure**

Under the Agent Orange Act of 1991, the Secretary receives from the National Academy of Science (NAS) periodic reviews and summaries of the scientific evidence concerning the association between exposure to herbicides and diseases suspected to be associated with those exposures.

Based on cumulative scientific data reported by the NAS since 1993, the Secretary has determined that there is no positive association between herbicide exposure and the following conditions:

- amyloidosis
- bone cancers
- brain tumors
- breast cancer
- circulatory disorders
- cognitive and neuropsychiatric effects
- female reproductive system cancers
- gastrointestinal and digestive disease, other than Type 2 diabetes mellitus
- gastrointestinal tract tumors
- hepatobiliary cancers
- immune system disorders
- leukemia
- lipid and lipoprotein disorders
- nasal and nasopharyngeal cancer
- Parkinson's disease
- chronic persistent peripheral neuropathy
- renal cancer
- reproductive effects, such as abnormal sperm parameters and infertility
- respiratory disorders, other than certain respiratory cancers
- skin cancer
- testicular cancer, and
- urinary bladder cancer.

**Note:** No positive association means that the evidence for an association does not equal or outweigh the evidence against association.

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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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### **k. Exposure to Herbicides During Service Aboard the USS Ingersoll**

The National Archives and Records Administration (NARA) has confirmed that the Navy destroyer USS Ingersoll (DD 652) traveled into the inland waterways of RVN on October 24 and 25, 1965. Therefore, according to [38 CFR 3.307](#), concede exposure to herbicides for crewmembers that served aboard the USS Ingersoll on these dates.

If a veteran alleges herbicide exposure based on duty aboard the USS Ingersoll, request Navy personnel records via the Personnel Information Exchange System (PIES) (request code O19).

If personnel records are unavailable or do not confirm a specific shipboard assignment during this timeframe, send a request for a review of NARA records to C&P Service via e-mail at VAVBAWAS/CO/211/AGENTORANGE. This request should include the veteran's

- name
- date of birth
- VA claim number
- Social Security number (SSN), and
- service number, if different than SSN.

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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

### I. Exposure to Herbicides Along the DMZ in Korea

The Department of Defense (DoD) has identified specific units that served in areas along the demilitarized zone (DMZ) in Korea where herbicides were used between April 1968 and July 1969.

Concede exposure to herbicides on a factual basis if a veteran

- alleges service along the DMZ in Korea, and
- was assigned to one of the units shown in the table below between April 1968 and July 1969.

Combat Brigade of the 2 <sup>nd</sup> Infantry Division	Division Reaction Force	3 <sup>rd</sup> Brigade of the 7 <sup>th</sup> Infantry Division
1 <sup>st</sup> Battalion, 38 <sup>th</sup> Infantry	4 <sup>th</sup> Squadron, 7 <sup>th</sup> Cavalry, Counter Agent Company	1 <sup>st</sup> Battalion, 17 <sup>th</sup> Infantry
2 <sup>nd</sup> Battalion, 38 <sup>th</sup> Infantry		1 <sup>st</sup> Battalion, 31 <sup>st</sup> Infantry
1 <sup>st</sup> Battalion, 23 <sup>rd</sup> Infantry		1 <sup>st</sup> Battalion, 32 <sup>nd</sup> Infantry
2 <sup>nd</sup> Battalion, 23 <sup>rd</sup> Infantry		2 <sup>nd</sup> Battalion, 10 <sup>th</sup> Cavalry
3 <sup>rd</sup> Battalion, 23 <sup>rd</sup> Infantry		2 <sup>nd</sup> Battalion, 17 <sup>th</sup> Infantry
2 <sup>nd</sup> Battalion, 31 <sup>st</sup> Infantry		2 <sup>nd</sup> Battalion, 31 <sup>st</sup> Infantry
<i>Note:</i> Service records may show assignment to either the 2 <sup>nd</sup> or the 7 <sup>th</sup> Infantry Division.		<i>Note:</i> Service records may show assignment to either the 2 <sup>nd</sup> or the 7 <sup>th</sup> Infantry Division.
		2 <sup>nd</sup> Battalion, 32 <sup>nd</sup> Infantry
3 <sup>rd</sup> Battalion, 32 <sup>nd</sup> Infantry		3 <sup>rd</sup> Battalion, 32 <sup>nd</sup> Infantry
<i>Note:</i> Service records may show assignment to either the 2 <sup>nd</sup> or the 7 <sup>th</sup> Infantry.		<i>Note:</i> Service records may show assignment to either the 2 <sup>nd</sup> or the 7 <sup>th</sup> Infantry.
1 <sup>st</sup> Battalion, 9 <sup>th</sup> Infantry		
2 <sup>nd</sup> Battalion, 9 <sup>th</sup> Infantry		
1 <sup>st</sup> Battalion, 72 <sup>nd</sup> Armor		
2 <sup>nd</sup> Battalion, 72 <sup>nd</sup> Armor		
1 <sup>st</sup> Battalion, 12 <sup>th</sup> Artillery		
1 <sup>st</sup> Battalion, 15 <sup>th</sup> Artillery		
7 <sup>th</sup> Battalion, 17 <sup>th</sup> Artillery		

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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

### I. Exposure to Herbicides Along the DMZ in Korea (continued)

Combat Brigade of the 2 <sup>nd</sup> Infantry Division	Division Reaction Force	3 <sup>rd</sup> Brigade of the 7 <sup>th</sup> Infantry Division
5 <sup>th</sup> Battalion, 38 <sup>th</sup> Artillery		
6 <sup>th</sup> Battalion, 37 <sup>th</sup> Artillery		
United Nations Command Security Battalion-Joint Security Area (UNCSB-JSA)		
Crew of the <i>USS Pueblo</i>		

**Note:** Submit a request to the U.S. Army and Joint Services Records Research Center (JSRRC) for verification of the location of a veteran's unit if he/she

- alleges service along the DMZ between April 1968 and July 1969, and
- was assigned to a unit other than one listed in the table above.

### m. Storage of Herbicide Agents on Johnston Island

Herbicide agents were stored in drums on Johnston Island in the north Pacific between April 1972 and September 1977. Because military contractors were responsible for the inventory, few military personnel who served on Johnston Island had duties involving the direct handling of herbicides. If a veteran alleges exposure to herbicides during service on Johnston Island, obtain verification of exposure on a factual basis.

**References:** For more information on

- verifying exposure to herbicides, see M21-1MR, Part IV, Subpart ii, 2.C.10.n, and
- storage of herbicides on Johnston Island, see M21-1MR, Part IV, Subpart ii, 2.C.10.o.

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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

### n. Verifying Exposure in Locations Other Than RVN or Along the DMZ in Korea

Use the table below to verify that exposure to herbicides occurred in locations *other than*

- in RVN during the Vietnam Era, or
- along the DMZ in Korea as specified in M21-1MR, Part IV, Subpart ii, 2.C.10.1.

Step	Action
1	Ask the veteran for the approximate dates, location, and nature of the alleged exposure.
2	Did the veteran furnish this information within 60 days? <ul style="list-style-type: none"> <li>• If <i>yes</i>, go to Step 3.</li> <li>• If <i>no</i>, decide the claim based on the evidence of record.</li> </ul>
3	<ul style="list-style-type: none"> <li>• Furnish the veteran's detailed description of exposure to C&amp;P Service via e-mail at VAVBAWAS/CO/211/AGENTORANGE, and</li> <li>• request a review of DoD's inventory of herbicide operations to determine whether herbicides were used as alleged.</li> </ul>
4	Did C&P Service's review confirm that herbicides were used as alleged? <ul style="list-style-type: none"> <li>• If <i>yes</i>, determine whether service connection is otherwise in order.</li> <li>• If <i>no</i>, submit a request to JSRRC for verification of exposure to herbicides.</li> </ul>

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## 10. General Information on Establishing Service Connection for Disabilities Resulting From Exposure to Herbicide Agents, Continued

- o. Fact Sheet:** Below is a fact sheet on the storage of the herbicide Agent Orange on Johnston Island.
- Storage of Agent Orange on Johnston Island**

### FACT SHEET: STORAGE OF AGENT ORANGE ON JOHNSTON ISLAND

- Approximately 1.5 million gallons of Agent Orange (AO) were stored on Johnston Island (JI) between April 1972 and September 1977, when it was incinerated at sea.
- There were approximately 25 thousand 55-gallon drums stored in rows stacked three high on about 3.5 acres on the NW corner of the island. The storage location was selected because the east-to-west trade winds would rapidly disburse any airborne AO into the Pacific.
- Military contractors (and not U.S. military personnel) were solely responsible for site monitoring, re-drumming, and de-drumming activities. The storage area was fenced and off limits from a distance.
- The entire inventory of AO was screened for leaks daily. Leaking drums were re-drummed on a weekly basis. Fresh spillage was absorbed, and surface soil was scraped and sealed.
- Leakage of drums began in 1974. Between 1974 and 1977, the equivalent of the contents of 405 drums was leaked.
- The floor of the storage site was comprised of dense coral. Because of the composition and properties of coral, leaked AO was literally bound to the coral, providing little opportunity for AO to become airborne.
- A 1974 Air Force report found that the condition of the storage area provided evidence of the rapid identification of leaking drums, as few spill areas were observed.
- Soil samples in 1974 revealed that herbicide contamination was not detected outside of the storage yard except in close proximity to the re-drumming operation.
- Water samples were collected and analyzed twice per month from 10 different locations.
- A 1978 Air Force Land Based Environmental Monitoring study concluded that no adverse consequences of the minimal release of AO into the JI environment during the de-drumming operation were observed. The report further stated that "exposure to (land-based operations) workers to airborne 2,4-D and 2,4,5-T were well below permissible levels."

**11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicide Agents**

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**Introduction** This topic contains information on the payment under the *Nehmer* stipulation, 38 CFR 3.816, for disabilities resulting from exposure to herbicides, including

- the background of the *Nehmer* stipulation
  - categories of *Nehmer* class members
  - the definition of a **covered herbicide disease**
  - entitlement to benefits under 38 CFR 3.816
  - effective dates of awards under 38 CFR 3.816
  - examples of establishing a retroactive effective date
  - handling claims that do not specifically mention herbicide exposure
  - an example of a claim in which exposure to herbicides was not specifically mentioned
  - handling claims for service connection for
    - porphyria cutanea tarda (PCT), and
    - Type 2 diabetes mellitus, and
  - examples of claims for service connection for Type 2 diabetes mellitus.
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**Change Date** December 13, 2005

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**a. Background of the Nehmer Stipulation**

38 CFR 3.311a, which became effective on September 25, 1985, was the first VA regulation to provide guidance for the adjudication of claims based on exposure to dioxin.

In February 1986, a class action suit entitled *Nehmer v. United States Veterans Administration*, No. C86-6160 THE (N.D. Cal.), was filed in the United States District Court for the Northern District of California.

On May 3, 1989, the district court invalidated a portion of 38 CFR 3.311a. All denials after September 24, 1985, that were based on 38 CFR 3.311a were voided, and a moratorium was placed on further denials. The moratorium was lifted on February 15, 1994.

On September 24, 2003, a new regulation, [38 CFR 3.816](#), was added to provide guidance in the adjudication of claims under the *Nehmer* litigation.

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## 11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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**b. Categories of Nehmer Class Members**

*Nehmer* class members under [38 CFR 3.816](#) include a

- veteran who
    - served in the Republic of Vietnam during the Vietnam era, and
    - has a covered herbicide disease, and
  - surviving spouse, child, or parent of a deceased veteran who
    - served in the Republic of Vietnam during the Vietnam era, and
    - died as the result of a covered herbicide disease.
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**c. Definition: Covered Herbicide Disease**

A *covered herbicide disease* under [38 CFR 3.816](#) means a disease for which VA has established a presumption of service connection before October 1, 2002, under the “Agent Orange Act of 1991.”

**Exception:** Chloracne is *not* a covered herbicide disease under [38 CFR 3.816](#).

The covered herbicide diseases under [38 CFR 3.816](#) are

- acute and subacute peripheral neuropathy
  - Hodgkin’s disease
  - multiple myeloma
  - non-Hodgkin’s lymphoma
  - porphyria cutanea tarda
  - prostate cancer
  - respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
  - soft-tissue sarcoma, as defined in [38 CFR 3.309\(c\)](#), and
  - Type 2 diabetes, also known as type II diabetes mellitus or adult-onset diabetes.
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## 11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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**d. Entitlement to Benefits under 38 CFR 3.816**

A *Nehmer* class member is entitled to compensation under [38 CFR 3.816](#) if a claim for service connection for a covered herbicide disease, or DIC based on death caused by a covered herbicide disease, was

- denied in a decision issued between September 25, 1985, and May 3, 1989
- pending on May 3, 1989, or
- received between
  - May 3, 1989, and
  - the effective date of the regulation establishing a presumption of service connection for the covered disease.

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**e. Effective Dates of Awards under 38 CFR 3.816**

The effective date of disability compensation or DIC benefits under [38 CFR 3.816](#) is the date of receipt of the claim on which the prior denial was based or the date entitlement arose, whichever is later.

**Exceptions:**

- If VA received the prior claim for compensation within one year after the veteran's separation from service, the effective date of compensation would be governed by [38 CFR 3.400\(b\)\(2\)](#).
- If VA received the prior claim for DIC within one year after the veteran's death, the effective date of DIC would be governed by [38 CFR 3.400\(c\)](#).

**Notes:**

- The provisions of [38 CFR 3.114\(a\)](#), which limit effective dates to no earlier than the date of a liberalizing law or issue, do not apply to benefits awarded under [38 CFR 3.816](#).
- Whatever the effective date, the actual payment of benefits commences on the first day of the following month in accordance with [38 CFR 3.31](#).

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## 11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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### f. Example 1: Initial Claim Denied After September 25, 1985

**Situation:** The veteran's initial claim for service connection for lung cancer was received on August 4, 1985, and denied on November 19, 1985. Medical evidence showed a diagnosis of lung cancer in July 1985. The veteran reopened his claim in March 2001.

**Result:** Establish service connection for lung cancer effective the date the initial claim was received, August 4, 1985.

**Rationale:** Since the initial claim for service connection for a covered herbicide disease was denied after September 25, 1985, service connection may be established from the date the initial claim was received, per [38 CFR 3.816](#).

**Note:** If the claim had been denied, to include any appeals, before September 25, 1985, it would be unaffected by the *Nehmer* stipulation, and the effective date would be governed by [38 CFR 3.114\(a\)](#).

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### g. Example 2: Initial Claim Received Prior to the Effective Date of the Law Establishing a Presumption of Service Connection

**Situation:** The veteran's initial claim for service connection for lung cancer was received on October 14, 1992, and denied on December 23, 1992. Medical evidence showed a diagnosis of lung cancer in September 1992. The veteran reopened his claim in March 2001.

**Result:** Establish service connection for lung cancer effective the date the initial claim was received, October 14, 1992.

**Rationale:** Since the claim was received prior to June 9, 1994, the effective date of the law establishing a presumption of service connection for lung cancer under [38 CFR 3.309\(e\)](#), service connection may be established from the date the initial claim was received, per [38 CFR 3.816](#).

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### h. Example 3: Claim for DIC Benefits Received Within One Year of the Veteran's Death

**Situation:** On November 3, 1986, a veteran who served in the RVN during the Vietnam era died from Hodgkin's disease. His surviving spouse's claim for DIC benefits was received on December 10, 1986, and denied on February 12, 1987. The surviving spouse reopened her claim on March 15, 1993.

**Result:** Establish entitlement to DIC benefits from November 1, 1986, the first day of the month in which the veteran died.

**Rationale:** Since the claim for DIC benefits was received within one year of the veteran's death, the effective date is governed by [38 CFR 3.400\(b\)\(2\)](#).

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## 11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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**i. Handling Claims in Which Exposure to Herbicides Is Not Specifically Mentioned**

In its February 11, 1999, order, the district court held that a *Nehmer* class member's claim for disability compensation or DIC need only include a request for service connection for a covered herbicide disease to qualify as a *Nehmer* claim.

It is not necessary for the claimant to assert the condition was caused by exposure to herbicides.

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**j. Example: Establishing an Effective Date When Exposure to Herbicides Is Not Specifically Mentioned in the Claim**

**Situation:** A veteran who served in the RVN during the Vietnam Era filed a claim in 1994, expressly alleging that his prostate cancer was caused by exposure to ionizing radiation before the veteran's service in Vietnam. VA denied the claim in 1995. The veteran reopened the claim in 1997 and service connection was established.

**Result:** Based on these facts, the effective date must relate back to the 1994 claim, even though the veteran alleged a different basis for service connection.

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**k. Handling Claims for Service Connection for Porphyria Cutanea Tarda**

Under [38 CFR 3.311a\(d\)](#), which was published on October 21, 1991, sound scientific and medical evidence did *not* establish a significant statistical association between exposure to herbicides and the development of porphyria cutanea tarda (PCT).

When determining the effective date for the establishment of service connection for PCT

- do not assign an earlier effective date under the *Nehmer* stipulation, since a denial of service connection for PCT under [38 CFR 3.311a](#) after October 20, 1991, is valid, and
  - consider an earlier effective date under the *Nehmer* stipulation for a claim for service connection for PCT that was denied between September 24, 1985, and October 21, 1991.
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## 11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicide Agents, Continued

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**l. Handling  
Claims for  
Service  
Connection for  
Type 2 Diabetes  
Mellitus**

Effective May 8, 2001, Type 2 diabetes mellitus became subject to presumptive service connection under [38 CFR 3.309\(e\)](#). Retroactive benefits under the *Nehmer* review may be warranted for claims filed or denied during the period September 25, 1985, to May 7, 2001.

If a prior claim did not involve service connection for Type 2 diabetes mellitus, there generally exists no basis for assigning an earlier effective date. However, a lack of specificity in the initial claim may be clarified by later submissions.

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**m. Example 1:  
Claim for  
Service  
Connection for  
Type 2 Diabetes  
Mellitus**

**Situation:** In January 1987, a veteran filed a claim for service connection for hyperglycemia. In developing the claim, VA obtained medical records indicating that the veteran was diagnosed with Type 2 diabetes mellitus in February 1987.

**Result:** Based on these facts, it would be reasonable to treat the January 1987 claim as a claim for service connection for Type 2 diabetes mellitus.

**Rationale:** Under *Nehmer*, benefits may be paid retroactive to the date the initial claim was received or the date the disability arose as determined by the facts of the case, whichever is later.

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**n. Example 2:  
Claim for  
Service  
Connection for  
Type 2 Diabetes  
Mellitus**

**Situation:** In 1995, a veteran filed a claim for service connection for hyperglycemia. Medical records obtained by VA indicated that the veteran did not have Type 2 diabetes mellitus. In 2001, the veteran filed a second claim for service connection for Type 2 diabetes mellitus, submitting evidence showing that the condition was diagnosed in 1996.

**Result:** Based on these facts, the 1995 claim is not considered a claim for service connection for Type 2 diabetes mellitus.

**Rationale:** Neither the claim nor the evidence of record (when the 1995 claim was processed) indicated the veteran had been diagnosed with Type 2 diabetes mellitus.

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12. *Payment to the Survivors or Estate of a Nehmer Class Member*

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**Introduction** This topic contains information on payment to the survivors or estate of a *Nehmer* class member, including

- identifying the appropriate payee
  - the action when an appropriate payee cannot be located, and
  - identifying other survivors.
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**Change Date** December 13, 2005

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**a. Identifying the Appropriate Payee** If a *Nehmer* class member entitled under [38 CFR 3.816\(c\) and \(d\)](#) dies before receiving the payment of retroactive benefits, VA will award the unpaid benefits to the first individual or entity in existence in the following order:

- spouse
- child or children, divided into equal shares if more than one child exists, regardless of age or marital status
- parents, divided in half if both parents are alive, and
- estate.

*Note:* The survivor or estate of a *Nehmer* class member is not required to file an application in order to receive unpaid benefits.

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**b. Action When Appropriate Payee Cannot Be Located** Use all available information in the folder to determine an appropriate payee if

- a class member is deceased, and
- the claims folder does not contain sufficient information to identify an eligible survivor.

*Example:* If an authorized representative or relative is identified in the claims folder, contact this person for information on the existence of a surviving spouse, children, parents, or estate. If this effort fails to identify an appropriate payee, annotate the rating decision, stating that it was not possible to locate any payee eligible for payment under *Nehmer*.

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## 12. Payment to the Survivors or Estate of a Nehmer Class Member, Continued

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**c. Identifying Other Survivors**

Before awarding benefits to an identified payee, ask the payee to state whether or not there are any other survivors of the class member who may have an equal or greater entitlement to unpaid benefits.

Once benefits have been awarded in full to a payee, do not pay any portion of the amount to any other individual, unless the payment previously released can be recovered.

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