

THE VETERANS MONTHLY



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FINAL AGENT ORANGE REGULATIONS ISSUED

AGENT ORANGE SERVICE CONNECTION REGULATIONS EXPANDED

Secretary Shinseki announced on August 30th that VA has taken the major step of amending their regulations for the purpose of establishing service connection for certain diseases related to exposure to herbicides, including Agent Orange. This is an essential step in VA's ongoing effort to take responsibility for those Veterans exposed to the dangerous chemicals used in the Vietnam War. For the first time, exposure to these herbicides has been linked to ischemic heart disease, Parkinson's disease and chronic B-cell leukemias, among others, and opens the door for VA to provide compensation to afflicted Veterans and their families.

...Continued on Next Page

Bergmann & Moore, LLC provides premium legal services to Veterans and their dependents. While consultations and other services are offered free of charge, fees are charged for representation before VA on the condition that the case is won. Managed by former VA attorneys, Bergmann & Moore, LLC is composed of seasoned attorneys and support staff who are experts at obtaining benefits for their clients. The firm encourages Veterans and their dependents to make full use of the free services available to them through their local Veterans Service Officer and/or Veterans Service Organizations.

The change in regulations is expected to improve health care access for more than 150,000 Vietnam Veterans who may have been exposed to the herbicide Agent Orange in the course of their service. Vietnam Veterans who suffer from Parkinson's disease, chronic B-cell leukemias, and ischemic heart disease will no longer be obliged to provide VA with evidence that their condition stems from encounters with herbicides during their military service to be eligible for service-connected treatment and compensation. The link between their condition and their service will hereafter be presumed and the service connection recognized.

This regulatory change is a component piece of Secretary Shinseki's "Fast Track" initiative. "Fast Track" is an automated benefits processing system developed to anticipate Agent Orange and other herbicide-related claims. Behind all this change is Secretary Shinseki's desire to improve the processes for identifying, tracking and treating Veterans and other servicemembers who were in the course of their military service exposed to contaminants so that it won't take decades for some future Secretary to adjudicate presumptive disabilities from our current and future conflicts.

This initiative is expected to provide timely benefits to Veterans and their dependents and contribute to the modernization of VA's systems. Basically, Veterans will no longer be bound by the previous evidentiary requirement that might have otherwise prevented them access to the medical care and benefits they deserve. Those Vietnam Veterans who were previously denied treatment and other benefits will be happy to know that with the publishing of this final rule they are now eligible for a re-adjudication of their claim.

To finance this new direction, The President and Secretary Shinseki have asked Congress for over 15.8 billion in 2010 and 2011 to meet the anticipated demand for benefits associated with the expansion of these presumptive conditions. Over the next several years eligible Veterans should expect to receive their share of the 13.4 billion appropriated by Congress for medical treatment and other benefits. However, it should be observed that according to the Congressional Review Act, this regulation and subsequent funding is still subject to a 60-day review.

Herbicides were used by the U.S. military during the Vietnam War to defoliate hiding places used by the North Vietnamese Army (NVA) regulars and the Viet Cong (VC) guerillas. The most infamous herbicide used was called Agent Orange and the steel drums in which the herbicide was transported were identifiable by their orange stripe. Fifteen other combinations,

such as blue, white, and pink, were used to designate different formulations of herbicide. About nineteen million gallons of Agent Orange was sprayed during the war. ■

LIVING FOR GIVING

S.W.A.N. HELPS FEMALE VETS

Service Women's Action Network (SWAN) was established in 2007 to meet the needs of a growing number of female Veterans. Based out of New York City, SWAN helps provide both local and national female Veterans with the community support and resources necessary for a healthy reintroduction to civilian life.

To help realize their goals, SWAN engages local Veterans with meditation classes, writing workshops, a community garden and yoga. In all their activities they focus on empowerment and healing. To speak with a member of their dedicated and professional staff, call (212) 683-0015.

To learn more, visit <http://www.servicewomen.org/>



MEDICAL MINUTE

LOU GEHRIG'S DISEASE & BRAIN TRAUMA

A peer-reviewed paper recently published in a leading journal of neuropathology says that soldiers given a diagnosis of Lou Gehrig's disease (also known as A.L.S.) might not suffer from that disease after all. Doctors from the Bedford, MA VA Medical Center studied the spinal cords of two NFL players and one boxer who were diagnosed with A.L.S. found that the athletes had been misdiagnosed. They suffered from other neuromuscular disorders caused by concussion-like trauma that affects the central nervous system in much the same way as A.L.S. does. The findings seem to confirm suspicions of the a long-suspected connection between A.L.S.-like motor disease and head trauma experienced by soldiers on the battlefield and athletes on the playing field. ■

VETERANS TV HOUR WITH HOST RICK SEAMAN



If you aren't yet watching, you should be. Hosted by Rick Seaman, Veterans TV Hour (VTH) is part of the Veterans Network (VN), the first inter-television network dedicated to our country's servicemembers. With VTH segments airing every couple of weeks, Mr. Seaman addresses a range of issues relevant to the interests of Veterans, including job searches, medical and dental benefits, educational benefits and opportunities, and legal developments. In one of VTH's more recent segments, Mr. Seaman brought together a panel of experts, including Carrie Weletz Esq. of Bergmann and Moore, to discuss VA's recent developments concerning PTSD. What follows is a short interview with Mr. Seaman regarding his project.

Q. What can you tell us about VN's earliest days?

A. I am a Vietnam Veteran, so my relationship with Veterans goes back to the 1960s. About 15 years ago I met Mr. Shad Meshad, founder of the National Veterans Foundation (NVF), and did a couple of charity events for him because of my motion picture history. He then asked me to join the NVF board. During one of these meetings the idea to start the network was developed. In 2004 we determined that the web was the best, most cost-effective way to move forward.

Q. Why did you choose web TV as a way to reach Veterans?

A. I noticed that many organizations had websites, but I thought that Veterans would appreciate the video content.

Q. What is the most satisfying part of the show for you?

A. To start with, interviewing veterans and talking with them about their service experiences is my favorite part of what I do. I enjoy letting them know they're not alone and that their efforts are sincerely appreciated. Second, being able to provide helpful information that Veterans can use. Third, our relationship with Congress. We have connections with key congressional members and involve these lawmakers in important on-air discussions.

Q. Where do you see VTH in five years?

A. Our goal is to popularize our model to the point where we evolve into a daily show on cable TV. There are over 24 million living Veterans in America today, with the largest percentage of Veterans associated with the Vietnam War. This is a powerful and absolutely underserved audience. We also see great commercial value in this for potential sponsors as Veterans continue to be a strong force in our economy. ■

To learn more, visit <http://veteransnetwork.net/>

'RECOGNIZING OUR VETERANS' ANNUAL FUNDRAISING EVENT

VVC Welcomes You To Sacramento

This fundraiser will take place on Thursday, November 11th, 2010 commencing at 6:00 PM and concluding at 10:30 PM. The event is designed to raise funds for Vietnam Veterans of California (VVC), the Sacramento Veterans Resource Center (SVRC), and the Veterans Business Outreach Center (VBOC).

The event is open to the general public and will feature many types of entertainment. The tentative agenda has a color guard, a silent auction, Oakland Raider players and Raiderettes signing autographs and taking photos with guests, a Raiderette performance and a musical performance by Nashville artist Stephen Cochran. The ticket prices range from \$50.00 to \$100.00 and all funds raised go to help these organizations with their programs. Discounted tickets are available for soldiers on Active Duty as well as Reservists. Hurry up and register, as tickets are expected to go fast.

To register and learn more, visit www.vboc-ca.org

VA ISSUES A NEW DIRECTIVE REGARDING THE USE OF MEDICAL MARIJUANA

The Veterans Health Administration (VHA) recently clarified its policies on medical marijuana through a directive distributed by Dr. Robert Petzel, Under Secretary for Health. The directive recognizes a conflict between some states' laws and federal law. Currently, 14 states have authorized the use of medical marijuana for medical conditions such as glaucoma, multiple sclerosis, and chronic pain; however, federal law classifies marijuana as Schedule I drug – meaning that a medical use has not been accepted and that it is a crime to produce, distribute, or possess it. For many years, Veterans have faced issues in receiving VA care when a private physician had prescribed medical marijuana. Additionally, some Veterans wanted to know whether VA doctors in one of the states with a medical marijuana program could prescribe it or recommend participation in the program.

The directive specifies that Veterans who use medical marijuana are not prohibited from participation in VHA substance abuse programs, pain control programs, or other clinical programs. However, the directive advises that changes to treatment plans might be necessary for those in a State medical marijuana program – for instance, what other pain prescriptions are provided when medical marijuana is being used.

The directive also clarified what is NOT allowed, including:

- VA medical providers may not provide recommendations or opinions regarding a Veteran's participation in a state medical marijuana program;
- VA will not provide marijuana;
- VA will not pay for a marijuana prescription to be provided by an outside source; and
- Veterans may not possess medical marijuana on VA property and may be prosecuted if found to be in possession.



STOLEN VALOR ACT CHALLENGED IN COURT

Those who have served and sacrificed for our country deserve special honor and recognition. One way these sacrifices are recognized is through the awarding of military medals and decorations. Sadly, sometimes individuals who have not earned these honors falsely pretend to have done so. In response to this issue, the Stolen Valor Act of 2005 was passed and became effective in December 2006. It is a federal offense for individuals to claim verbally or in writing to have received any military award that they have not. This offense is punishable by a fine and/or up to six months in jail, double if the offense involves valor awards or the Purple Heart. Since the law's enactment, courts have been prosecuting individuals under this law.

In a recent California case, an individual was prosecuted for falsely claiming to be a Medal of Honor recipient at a public meeting. He was fined \$5,000 and sentenced to community service at a Veterans' hospital. He appealed his conviction on the grounds that it violated his First Amendment free speech rights. In a 2-1 decision, a panel of the 9th Circuit Court of Appeals agreed. The majority found that there was no evidence that the lies harmed anyone, and no compelling reason for the government to ban such lies. The dissenting judge pointed out that Supreme Court precedent indicates that false statements are not entitled to First Amendment protection. While this case arguably did not involve harm, there have been Stolen Valor prosecutions involving fraud, such as another California case in which a man posed as a military officer and sought donations which he fraudulently claimed were to help wounded Veterans. ■

WHAT HAPPENS TO A CLAIM WHEN THE VETERAN DIES?

CAVC PROVIDES NEW ANSWERS IN *BREEDLOVE V. SHINSEKI*

A common concern among Veterans or their dependents with a VA claim is what would happen to the claim if they would die before it is resolved. Claimants often wonder if their spouse or child would be able to carry on their claim should they pass away before it is over. In legal terms, this process is called substitution. And, the answer as to whether it is allowed has changed and evolved over time, as Congress has created new pertinent statutes and the U.S. Court of Appeals for Veterans Claims (“CAVC” or “Court”) has sought to interpret the statutes. Very recently, however, the Court issued an order in *Breedlove v. Shinseki* that expands the circumstances where substitution will be allowed.

In *Breedlove*, the Court interpreted the effect a 2008 statute – 38 U.S.C. § 5121A – had upon substitution. Section 5121A allowed for substitution if a claimant dies when the “appeal of a decision” for benefits is pending – up until the date of a Board decision.

Prior to the enactment of 5121A, the situations where substitution was allowed were very limited. Actually, prior to 1994, substitution by a surviving spouse or dependent was readily permitted. However, in 1994, CAVC reversed this practice in *Landicho v. Brown*, 7 Vet. App. 42 (1994). In *Landicho*, the Court held that the Veterans’ claims do not survive the deaths of the Veterans. The appellants in *Landicho* argued that they should be able to substitute in for the deceased Veteran because they could potentially benefit from an accrued benefits claim, if VA determined that the Veteran would have been entitled to compensation. However, the Court separated accrued benefits claims from the initial disability compensation claims.

Approximately a decade later, CAVC and the Federal Circuit opened the door slightly to allow substitution in certain cases where the claim had been “submitted” to the Court prior to the death of the claimant. A claim was deemed to have been submitted if the appellant had filed a reply brief, waived the right to file a reply brief, or the expiration of the deadline for a reply brief had expired.

The key cases were *Padgett v. Nicholson*, 473 F.3d 1364 (Fed. Cir. 2007) and *Pekular v. Mansfield*, 21 Vet. App. 495 (2007). So, prior to *Breedlove*, substitution was possible if the Veteran died before a Board decision was made or after a claim was submitted to CAVC – but not in the period between.

In *Breedlove*, the Court found that through section 5121A, Congress no longer intended a Veteran’s claim to be treated as an entirely separate entity from a survivor’s accrued benefits claim. Because this distinction no longer existed, the Court found its earlier decision in *Landicho* to be inconsistent with the new legislation. Opposite to *Landicho*, the Court found in *Breedlove* that “a claim for VA benefits no longer necessarily dies with the veteran. . . an accrued-benefits claimant, in appropriate cases, can continue the veteran’s claim.” The Court decided to close the “zone of no substitution” that previously existed and held that “the Court henceforth will consider substitution, if requested, in all cases pending before the Court regardless of the stage of briefing at the time of a veteran’s death.” The Court also retained the option for a potential party to not pursue substitution, allow the Board decision to be vacated, and begin a new accrued-benefits claim. The Court was also clear that whether a person is an eligible accrued-benefits claimant must first be determined by VA or conceded by the Secretary before the Court will determine if substitution will be allowed.

The *Breedlove* decision is a real victory for those seeking substitution when the Veteran dies while his or her case is pending before CAVC. However, it still requires that the person seeking substitution be deemed eligible for accrued benefits by VA, as such, it is important to begin the eligibility process as quickly as possible. If you believe that you are eligible for substitution, discuss it with an attorney or VSO. They can help you decide if this is the best approach and, if so, help you through the process that is necessary with both CAVC and VA. ■

For more information, please visit:
<http://veteranslawlibrary.com/archive.html>



LAWMAKERS SUGGEST THAT VA TAKE OVER ARLINGTON CEMETERY

CONGRESS QUESTIONS WHETHER VA, NOT THE ARMY, SHOULD MANAGE THINGS

The possibility of VA taking over management duties at Arlington National Cemetery (ANC) comes on the heels of an investigation which uncovered dozens of mislabeled and unmarked graves, millions of dollars wasted on updating digital record systems that never came, and a variety of other poor management practices stretching from the cemetery all the way to the Pentagon.

Joe Davis, a spokesman for the Veterans of Foreign Wars, the country's oldest major Veteran's organization says that the Army should "let the experts take over." Running cemeteries "is a primary task of the VA, whereas the Army's primary task is to fight and win our wars." Joining in the call for VA to handle matters related to ANC are the American Legion and several members of Congress, including Rep. Ike Skelton (D-Mo.), chairman of the Armed Services Committee, who has questioned whether VA, which currently manages over three million gravesites nationwide, wouldn't be a better position to ensure the cemetery's proper administration.

ANC, which has an average of 27 funerals a day and four million visitors annually, is the nation's busiest military cemetery and has come under recent scrutiny because of the discovery of 200 graves that have either been mislabelled or unmarked. Unfortunately, the probe is still in the beginning stages and more troubling news is likely to surface as the investigation continues.

To make matters worse, Veteran advocates cite the fact that former ANC budget director Rory Smith had tried for years to alert officials in the Pentagon to the mis-management of funds. Specifically, he claims to have observed questionable contracting practices with regard to the attempted automation of ANC's records. Mr. Smith alleges in a union grievance and whistleblower complaint that he was first ignored, then harassed and given tasks outside of his purview before finally facing a three-day suspension for insubordination.



Having retired in 2007, Smith is no longer an active piece in this puzzle. However, his questioning of what he perceived to be ANC's irresponsibly loose fiscal policy initiated an inquiry sufficient to suspend funding to the cemetery's questionable record automation efforts.

After ANC's spending suspension, Claudia Tornblom, the Army's deputy assistant secretary for civil works, contacted the Office of Management and Budget official who stopped Arlington's spending, and said: "I believe you have been influenced inappropriately by one disgruntled ANC employee who is trying to stir up controversy." She then went on to censure him for using "words like 'disaster,' 'stunned,' 'throwing money at contractors,' or 'no product to show for it'" to describe ANC's efforts to modernize the way records are maintained.

During last month's Senate hearing on the ANC's contracting issues, Sen. Claire McCaskill (D-Mo.) confronted Tornblom, claiming that Smith was "spot on. . . . It is a disaster. We were throwing money at contractors, and we have absolutely nothing to show for it." In response, Tornblom said, "It's clear now that Mr. Smith was correct about those things." ■

For more information, please visit:
<http://www.govexec.com/dailyfed/0710/072910rb1.htm>



VETERAN EVENTS CALENDAR

HERE IS A LIST OF SOME EXCITING
EVENTS HAPPENING NATIONWIDE
THROUGHOUT OCTOBER

16th Annual Korean War National Reunion

Tropicana Express Hotel & Casino
2121 South Casino Drive - Laughlin, NV 89029
Telephone: (800) 523-4715 or (757) 366-0393
October 4th to October 7th, 2010
<http://www.koreanwar-educator.org/home.htm>

Cannon Blast Centennial Celebration

Soldiers & Sailors Memorial Hall & Museum
4141 Fifth Avenue - Pittsburgh, PA 15213
Telephone: (412) 621-4253 ext. 206
October 9th, 2010
<http://www.soldiersandsailorshall.org/events-list.php>

National Veterans Creative Arts Festival

Hosted by Tomah VA Medical Center
Viterbo University Fine Arts Center
929 Jackson Street - La Crosse, WI 54601
Telephone: (608) 372-1262
October 18th to October 24th, 2010
<http://www1.va.gov/opa/speceven/caf/index.asp>

2nd Annual Alamo Veterans Small Business Conference & Expo

Henry B. Gonzalez Convention Center
200 East Market Street - San Antonio, TX 78205
Telephone: (210) 224-9600
October 27th to October 28th, 2010
<http://medcomsbconf.com/>



CLAIMS PROCESS ADVICE

VA CLAIMS PROCESS 101

The process of getting a disability compensation claim processed by the VA is a time consuming and frequently frustrating endeavor. However, understanding the specifics of this process, and knowing the deadlines you must meet in order to appeal your claim, can help avoid unnecessary and stressful confusion.

Prior to filing any compensation claim, it is important to pinpoint those physical and mental health disabilities that may be related to your time in service. A well grounded claim for benefits involves a disability which either began in service or is the result of service and that is currently diagnosed or being treated. To begin the process, you can file a claim at your local VA regional office (RO), VA medical facility or online at www.va.gov. The VA recently simplified the claims form by reducing it from a 23 page application to 10 pages. Applying for benefits at the local RO, regardless of the success of the claim, results in the creation of a claim's file (C-file) that can almost always be found at the RO. When a Veteran submits a claim to a regional office, if that Veteran has never filed any claim before, VA will contact the National Personnel Records Center (NPRC) to obtain service medical and personnel records and contact any sources of post-service medical treatment identified by the Veteran.

The regional office then may or may not require the Veteran to attend a Compensation and Pension (C&P) examination to determine the severity of the claimed disability and whether it is related to service. To prepare for this examination, a Veteran is able to access C&P worksheets online at the VA's website in order to see what each examination entails. Reviewing this worksheet prior to an examination can eliminate much of the anxiety associated with these medical appointments. The RO will then issue a rating decision concerning the claimed conditions. There is no set timeframe for how long it will take for the RO to issue this decision after a Veteran files a claim, however, it is not unusual for it to take a year or more.

For additional information, please visit www.vetlawyers.com

VSO SPOTLIGHT

DEBRA COOK, VETERANS SERVICE OFFICER FOR TUSCARAWAS COUNTY



Tuscarawas County boasts a dedicated and experienced team of service office personnel led by Ms. Debra Cook. They have an excellent track record of obtaining benefits and entitlements for Veterans. Full of history and accomplishment, Tuscarawas County was home to the first Protestant settlement in Ohio, lays claim to football and baseball notables, was a training ground for Astronaut John Glenn, and is littered with mysterious mounds of earth that still raise questions today.



Website: <http://www.co.tuscarawas.oh.us/VeteransServices.htm>

National Website: <http://www.nacvso.org>

Know a VSO who should be honored? Email us at drohde@vetlawyers.com and we'll feature them in a future issue.

Q: How many counties/Veterans do you serve?

A: Our office assists about 11,000 Veterans and/or dependents every year. This may be for claim work, emergency assistance, or just referral to other programs. We also transport about 3,000 Veterans a year to VA medical appointments in the state of Ohio.

Q: Does each county in Ohio have a dedicated VSO?

A: Each county in the state of Ohio is required to have a County Veterans Service Officer. The Tuscarawas County office is very well received. We work with all county offices, the New Philadelphia Ohio VAOPC, and our local Social Security and family service office.

Q: How long have you been a VSO, Ms. Cook?

A: I have worked at this office since 1998. I started as a secretary, was promoted to a CVSO in 2004, and was accredited in 2005 before becoming director in 2006.

Q: What is your favorite part of the job?

A: My favorite part of working as a Veteran Service Officer is helping our Veterans - our Heroes, the men and women that have served our country.

Q: What is your biggest challenge in assisting Veterans with their claims?

A: The biggest challenge in assisting Veterans with their claims is the time that it takes to get a claim through VA.

Q: What started you down the path to becoming a VSO?

A: I am a Veteran who served honorably in the Army. I served with the 'Big Red 1' in a medical unit.

Q: What was your most memorable case and what were the circumstances?

A: I have so many memorable cases. As I tell all new VSOs, listen to your client and ask questions. It is the responsibility of the VSO to file for all the benefits a Veteran or their dependent may qualify for. Do not make them tell you what they want to do. I had a widow that came into the office a few years ago to complete the application for a marker. In our conversation she stated that the Veteran had part of his lung removed while serving during WWII and had never filed a claim with VA. However, on his death certificate it stated that the Veteran expired due to pulmonary conditions. I filed for DIC and the widow was granted the benefit. She has called me several times since to thank me and just came in to file for the marker. Yes, we filed for the CHAMPVA.

Q: What advice would you give to Veterans just beginning the claims process?

A: We tell all our clients to be patient and to make sure that we get a copy of all the mail that they get from VA. Our goal is to walk the client through the complete claim process. We do not want any claim dropped because some VA letter was not completed. ■



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