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News for
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Service Officers

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March 2016 IOM Update for Herbicide Exposure

The National Institute of Medicine (IOM), National Academies of Science, released an updated Agent Orange report in March 2016. The impact of the report is two fold.

Impact #1

The report added Parkinsonism and Parkinson's-Like Syndromes to the previously added Parkinson's disease. Currently, Parkinson's disease is recognized as a presumptive disease for herbicide exposure in 38 CFR 3.309(e). Therefore, Parkinsonism and Parkinson-Like Syndromes should be treated as presumptive diseases.

Impact #2

Additionally, the IOM report upgraded bladder cancer and hypothyroidism from "Insufficient or Inadequate Evidence" to "Limited or Suggestive Evidence" of a causal relationship to Agent Orange Exposure. This does NOT mean that they are currently accepted as presumptive diseases. However it does improve our ability to argue **direct service connection**.

Notwithstanding the presumptive provisions, service connection based on exposure to herbicides may also be established by showing that a disorder is, in fact, causally linked to such exposure. See *Brock v. Brown*, 10 Vet. App. 155, 162-64(1997); *Combee v. Brown*, 34 F.3d 1039, 1044 (Fed. Cir. 1994) (citing 38 U.S.C. 1113, and 1116, and 38 C.F.R. § 3.303).

In other words, the fact that the requirements of a presumptive regulation are not met does not in and of itself preclude a Veteran from demonstrating that the disorder was in fact related to service, to include exposure to herbicides. *Combee v. Brown*, 34 F.3d (Fed. Cir. 1994).

In order to establish service connection for a claimed disorder, there must be (1) medical evidence of a current disability; (2) medical or, in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between the claimed in-service disease or injury and the current disability. See *Hickson v. West*, 12 Vet. App. 247, 253 (1999).

If the Veteran has a diagnosis of the claimed condition, bladder cancer or hypothyroidism, and exposure to herbicides can be proven, the only requirement needed is a medical link or opinion relating the condition to herbicide exposure. During development, the VA may fail to recognize the IOM report and ultimately, not request a medical opinion.

The Court in *McLendon v. Nicholson*, 20 Vet. App. 79, 81 (2006), held that a VA examination must be provided when there is: (1) competent evidence of current disability or recurrent symptoms; (2) establishment of an in-service event, injury, or disease; (3) an indication that the current disability may be associated with the in-service event; and (4) insufficient competent medical evidence to decide the claim.

The IOM report fulfills the third requirement in *McLendon*, as it states that there is limited or suggestive evidence of a link between herbicide exposure and bladder cancer and hypothyroidism. If the VA has not requested a medical opinion, a VA medical opinion is required based on the IOM report and *McLendon*.

Remember, if we discover any cases that have previous medical opinions, those medical opinions are more than likely now inadequate, as they may not be based on the most recent IOM report.

A copy of the IOM will be placed in the Library in iTRAK. Supervisors should conduct training over these changes and ensure NSOs understand the implications of the recently updated IOM report.



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