

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies)

Approved: February 19, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons stated above, 38 CFR part 2 is amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 USC 302; 38 U.S.C. 501, 512; 44 U.S.C. 3702, unless otherwise noted.

2. In § 2.6, paragraph (e)(6) is revised to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(e) * * *

(6) This section sets forth delegations of authority concerning decisionmaking regarding complaints alleging employment discrimination on grounds of race, color, religion, sex, national origin, age, disability or reprisal brought by an employee of the Department of Veterans Affairs or an applicant for employment.

(i) Through August 31, 1998, the General Counsel, Deputy General Counsel, Assistant General Counsel of Professional Staff Group IV, Deputy Assistant General Counsel of Professional Staff Group IV, the Deputy Assistant Secretary for Resolution Management, Office of Resolution Management District Managers, and Office of Resolution Management Field Supervisory Managers are delegated authority to make procedural decisions (decisions to dismiss for untimeliness, for failure to state a claim, or for other procedural grounds). On and after September 1, 1998, the Deputy Assistant Secretary for Resolution Management, Office of Resolution Management District Managers, and Office of Resolution Management Field Supervisory Managers are delegated the sole authority to make procedural decisions.

(ii) Through February 18, 1998, the General Counsel, Deputy General Counsel, Assistant General Counsel of Professional Staff Group IV, and the Deputy Assistant General Counsel of Professional Staff Group IV are delegated authority to make substantive decisions (merit decisions). On and after February 19, 1998, the Director, Office

of Employment Discrimination Complaint Adjudication is delegated the sole authority to make substantive decisions.

(iii) Notwithstanding other provisions of this section, a complaint alleging that the Secretary or the Deputy Secretary personally made a decision directly related to the matters in dispute, or are otherwise personally involved in such matters, will be referred for procedural and substantive decisionmaking to the Department of Defense or the Department of Justice pursuant to a cost-reimbursable agreement. Referral will not be made when the action complained of relates merely to routine ministerial approval of selection recommendations submitted to the Secretary by the Under Secretary for Health, the Under Secretary for Benefits, the Director, National Cemetery Service, assistant secretaries, or staff offices heads.

(Authority: 38 U.S.C. 512; Pub. L. 105-114)

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[FR Doc. 98-5831 Filed 3-5-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AI77

Compensation for Certain Undiagnosed Illnesses

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document adopts as a final rule the provisions of an interim final rule which amended the Department of Veterans Affairs (VA) adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by Persian Gulf Veterans. This amendment is necessary to expand the period within which such disabilities must become manifest to a compensable degree in order for entitlement for compensation to be established. The intended effect of this amendment is to ensure that veterans with compensable disabilities due to undiagnosed illnesses that may be related to active service in the Southwest Asia theater of operations during the Persian Gulf War may qualify for benefits.

DATES: *Effective Date:* March 6, 1998.

Applicability Date: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810

Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7230.

SUPPLEMENTARY INFORMATION: In response to the needs and concerns of Persian Gulf veterans, Congress enacted the "Persian Gulf War Veterans' Benefits Act," Title I of the "Veterans' Benefits Improvements Act of 1994," Pub. L. 103-446. That statute added a new section 1117 to Title 38, United States Code, authorizing the Secretary of Veterans Affairs to compensate any Persian Gulf veteran suffering from chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses that became manifest either during active duty in the Southwest Asia theater of operations during the Persian Gulf War or to a degree of ten percent or more within a presumptive period, as determined by the Secretary, following service in the Southwest Asia theater of operations during the Persian Gulf War. The statute specified that in establishing a presumptive period the Secretary should review any credible scientific or medical evidence, the historical treatment afforded other diseases for which service connection is presumed, and other pertinent circumstances regarding the experience of Persian Gulf veterans.

In the **Federal Register** of February 3, 1995, VA published a final rule adding a new § 3.317 to title 38, Code of Federal Regulations to establish the regulatory framework necessary for the Secretary to pay compensation under the authority granted by the Persian Gulf War Veterans' Benefits Act (See 60 FR 6660-6666). As part of that rulemaking, VA, having determined that there was little or no scientific or medical evidence at that time that would be useful in determining an appropriate presumptive period, established a two-year-post-Gulf-service presumptive period based on the historical treatment of disabilities for which manifestation periods had been established and pertinent circumstances regarding the experiences of Persian Gulf veterans as they were then known.

In the **Federal Register** of April 29, 1997, VA published an interim rule with a request for comments that revised the presumptive period for disabilities due to undiagnosed illnesses suffered by Persian Gulf veterans. As revised, the presumptive period encompasses any such disability that becomes manifest to a compensable degree through the year 2001 (See 62 FR 23138-23139). Interested persons were invited to submit written comments concerning the interim rule on or before

June 30, 1997. VA received one comment from a concerned individual.

The commenter stated that the extension of the presumptive period for disabilities due to undiagnosed illnesses is inconsistent with the Secretary's responsibilities under the law.

Section 103(1) of Pub. L. 103-446 establishes that the first purpose of the legislation is to provide compensation to Persian Gulf War veterans who suffer disabilities resulting from illnesses that cannot now be diagnosed or defined, and for which other causes cannot be identified. The Secretary determined that in order to accomplish this purpose it was necessary to extend the presumptive period. That action clearly was consistent with his responsibilities under the law and we make no change based on this comment.

The commenter stated that it is unfair to make a decision to extend the presumptive period without supporting data regarding the latency period of the illnesses at issue.

Pub. L. 103-446 requires the Secretary to prescribe the period of time following Persian Gulf War service appropriate for the presumption of service connection for disabilities due to undiagnosed illnesses after reviewing, among other things, any available credible medical or scientific evidence.

Despite a broad federal research effort, there is still insufficient data about the nature and causes of the undiagnosed illnesses to establish a specific latency period. What is clear, however, is that a two-year presumptive period prevented VA from compensating certain veterans with disabilities due to undiagnosed illnesses that may have resulted from their service in the Persian Gulf War. The Secretary therefore decided to extend the presumptive period until a time when it is reasonable to anticipate that the results of ongoing research may have shed enough light on these issues to guide future policies. For these reasons, we make no change based on this comment.

This commenter also stated that the extension of the presumptive period for disabilities due to undiagnosed illnesses is unfair since we are still within the Persian Gulf War time period and veterans will, therefore, have significantly different presumptive periods.

Once it became clear that a significant number of veterans were developing disabilities due to undiagnosed illnesses more than two years after the date that they last served in the Persian Gulf, the Secretary determined that the most equitable way to address this issue was to extend the presumptive period in

such a manner that no Persian Gulf veterans with qualifying disabilities would be denied compensation. If the results of ongoing research eventually identify a latency period, VA will revise the presumptive period accordingly. In the meantime, no one should be denied benefits unfairly because of a presumptive period that, based on VA's experience with claims from Persian Gulf veterans, is too short. The department, therefore, makes no change based on this comment.

Based on the rationale set forth in the interim final rule and this document, the interim final rule amending 38 CFR part 3 which was published at 62 FR 23138 on April 29, 1997, is adopted as a final rule without change.

Approved: February 27, 1998.

Togo D. West, Jr.,

Acting Secretary.

[FR Doc. 98-5841 Filed 3-5-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AH68

Treatment of Research-Related Injuries to Human Subjects

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) medical regulations to provide (or to pay for the provision of) necessary medical treatment to certain human subjects injured as a result of participation in VA research. Under the final rule all participants in research approved by a VA Research and Development Committee (regardless of source of funding), and conducted under the supervision of one or more VA employees, are eligible for treatment unless injuries are due to noncompliance by a research subject with study procedures. VA will provide medical care in those circumstances where VA has some responsibility for the need for medical care.

DATES: Effective Date: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: David Thomas, Office of Research and Development (12B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8284.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on September 9, 1996 (61 FR 47469), VA proposed to provide (or to

pay for the provision of) necessary medical treatment to certain human subjects injured as a result of participation in VA research. Based on the rationale set forth in the proposed rule and in this final rule, the provisions of the proposed rule are adopted as a final rule with changes discussed in this document.

VA requested comments to be submitted on or before November 8, 1996. Comments were received from six sources. These comments are discussed below.

One commenter suggested that VA set forth the text of this final rule in a place in 38 CFR other than part 16. Part 16 consists of common rules applicable to a number of agencies. It was asserted that the provisions of the proposed rule are different because they are unique to VA. We agree with the suggestion and have included the text of the final rule in 38 CFR part 17.

Proposed § 16.125 (renumbered in the final rule as § 17.85) provided, in part, that VA medical facilities shall provide necessary medical treatment to research subjects who are injured as a result of participation in a research project approved by a VA Research and Development Committee and conducted by VA employees. One commenter asserted that the term "VA employee" should be narrowly construed and noted that this would lessen the amount of treatment that would need to be provided by VA. Another commenter asserted that medical treatment should be provided for injured subjects even if non-VA employees conducted the research. We believe VA should provide medical treatment to injured research subjects when individuals acting within their appointment as VA employees have supervisory responsibility over the conduct of the research. Consistent with this principle, the regulations are clarified to state that research subjects are eligible for medical treatment if injured during research conducted under the supervision of one or more VA employees. Further, to avoid confusion regarding who would be considered a VA employee, we have included in the final rule a definition of "employee," which provides that "VA employee" means any person acting within an appointment by VA as an officer or employee."

Also, the proposed rule excluded the provision of medical treatment by VA for subjects injured as a result of research conducted for VA under a contract with a non-VA institution. One commenter argued against this exclusion. VA has retained the exclusion. The obligation to provide treatment under such circumstances