

A REVIEW OF CHANGES TO THE DVA'S M21-1 MANUAL

A review of the changes that took place in the wording describing a veteran who is eligible for treatment for an herbicide-related disease is enlightening. The original description of that veteran from the **Agent Orange Act of 1991** reads:

“...a veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era and while so serving was exposed to that herbicide agent, [the disease] shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.”

What follows is a series of changes, instigated by the Department of Veterans Affairs, which occurred from this initial, rather simple, statement of January, 1991 to the last change, which occurred in February, 2002. These changes were made to the M-21-1 Manual, which contains all the rules for rating a veteran's compensation claim. The date of the change is hand written atop each page and the printed heading of the page provides the date of the M21-1 that received the change.

You might notice that the DVA's changes become progressively more complicated and less open and inclusive. This collection of documents clearly shows that offshore naval personnel were originally included in those veterans eligible for treatment of herbicide-related diseases until the February, 2002 change suddenly required “boots on ground.”

A very complete discussion of these changes can be found on the National Veterans Legal Service Program (NVLSP) web site at

<http://www.nvlsp.org/Information/ArticleLibrary/AgentOrange/AO-hassvnicholson.htm>

November 8, 1991

Chg 23, 10/6/93

M21-1, Part III

furnished to avoid requesting information previously furnished or which cannot be located without additional information. Clearly indicate the specific information required. Include all clues which may assist the service department or the State Adjutant General in locating the desired data. Complete items on subsequent requests the same as on original requests. This information is needed to assist the service department in locating the veteran's records.

i. **Date of Induction Not the Same as Date of Entry.** The date of induction is not the same as the date of entry on active duty. The date of induction is the date a person signed the enlistment obligation papers. The date of entry on active duty is the date that active military service actually began. If verification of service is received on a 3101 response showing the date of induction as the entry date, do not accept it as verified service. Submit a hardcopy VA Form 21-3101, with a copy of the DD Form 214 attached. Point out the inconsistency and request verification of service.

j. **Enter Regional Office Return Address on Hardcopy 3101's.** Use Target to request service records whenever possible. However, if it is necessary to send a hardcopy VA Form 21-3101, put the full address of the regional office on the form. If the regional office address is not on the form, the service department does not know where to send its reply.

k. **Verifying Vietnam Service for Purposes of Non-Hodgkin's Lymphoma, Soft-tissue Sarcoma, and Chloracne Claims**

(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims for service connection for non-Hodgkin's lymphoma, soft-tissue sarcoma and chloracne. See paragraph 5.03c. In the absence of contradictory evidence, "service in Vietnam" will be conceded if the records shows that the veteran received the Vietnam Service Medal.

(2) If a veteran who did not receive the Vietnam Service Medal claims service connection for non-Hodgkin's lymphoma, soft tissue sarcoma or chloracne and alleges service on a ship in the waters offshore Vietnam, review the record for evidence that the ship was in the vicinity of Vietnam for some significant period of time (i.e., more than just in transit through the area). If the veteran cannot produce evidence that the ship was in the waters offshore Vietnam, contact the Compensation and Pension Service Projects Staff (213B). Be prepared to furnish the name of the ship, the number of the ship and the dates that it is alleged to have been in the waters offshore Vietnam. Central Office will attempt to obtain confirmation from the Department of Defense.

4.09 SPECIAL FOLLOWUP BY THE MILITARY RECORDS SPECIALIST

Each regional office will designate an employee as the military records specialist. This person must possess expertise in this area and must be thoroughly familiar with this chapter. The person will be responsible for local training on military records requests and will serve as the contact point with the NPRC and service departments if it is necessary to request records from the military services or NPRC outside normal channels. Any change to the list should be sent via E Mail to the following mailbox: MAIL VBA STLOU/21. If E Mail is not available, changes may be mailed to:

f. **Insanity.** If insanity is an issue (pt. IV, par. 11.05), develop the case completely by obtaining all service medical records that are in any way pertinent. Obtain complete transcripts of any court-martial or board proceedings that may be relevant. On the 202 Screen or the VA Form 21-3101, enter the following statement in the additional information section: "The issue of insanity has been raised."

g. **Verifying Vietnam Service for Purposes of Non-Hodgkin's Lymphoma, Soft-tissue Sarcoma, and Chloracne Claims**

(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims for service connection for non-Hodgkin's lymphoma, soft-tissue sarcoma and chloracne. See paragraph 5.10c. In the absence of contradictory evidence, "service in Vietnam" will be conceded if the records shows that the veteran received the Vietnam Service Medal.

(2) If a veteran who did not receive the Vietnam Service Medal claims service connection for non-Hodgkin's lymphoma, soft tissue sarcoma or chloracne and alleges service on a ship in the waters offshore Vietnam, review the record for evidence that the ship was in the vicinity of Vietnam for some significant period of time, i.e., more than just in transit through the area. If the veteran cannot produce evidence that the ship was in the waters offshore Vietnam, contact the Compensation and Pension Service (213A). Be prepared to furnish the name of the ship, the number of the ship and the dates that it is alleged to have been in the waters offshore Vietnam. Central Office will attempt to obtain confirmation from the Department of Defense.

h. **Verification of Service of Affiants.** If it is necessary to verify the evidence of an affiant who alleges personal knowledge of certain occurrences while in active service with the veteran, attach a memorandum to the 3101 (par. 4.17g) in substantially the following language:

"Do the records of the department indicate that (name of affiant), (rank, organization and service number, if available), was present with his or her organization at or near (place) on or about (date)? Do the records of (name of hospital, vessel, dressing station, etc.) indicate that (name of veteran) (rank and organization) was receiving treatment for (disease or injury) on or about (date)?"

i. **Sick Reports.** If it is asserted that the veteran's name was carried on the organization morning sick reports but the service department report does not contain any information as to the disease or injury alleged, make a request for this specific information using the additional information field on the 202 screen or under ADDITIONAL INFORMATION REQUESTED on VA Form 21-3101. Show the approximate dates and the name of the organization, (company, battalion, detachment, vessel, etc.) sufficient to enable the service department to search sick logs, sick and morning reports, organization, hospital, infirmary and other records.

j. **Philippine Cases.** In cases involving potential Philippine service it is essential to determine the exact type of service the veteran had in order to determine what benefits, if any, the veteran is entitled to receive. See part IV, chapter 34. NPRC does not verify the branch of service on routine requests for service verification. Therefore, if you are requesting verification of service in a case where the veteran might have had Philippine service, include the following statement in the additional information section of the 202 screen or VA Form

(2) Request all information concerning any prior period of service, if not already of record, to determine if qualifying service existed prior to the serviceperson's final enlistment.

f. **Insanity.** If insanity is an issue (part IV, paragraph 11.05), develop the case completely by obtaining all service medical records that are in any way pertinent. Obtain complete transcripts of any court-martial or board proceedings that may be relevant. On the 202 Screen or the VA Form 21-3101, enter the following statement in the additional information section: "The issue of insanity has been raised."

g. Verifying Vietnam Service for Claims Involving Exposure to Herbicide Agents

(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims based on exposure to herbicide agents. See paragraph 5.10c. In the absence of contradictory evidence, "service in Vietnam" will be conceded if the records shows that the veteran received the Vietnam Service Medal except if the veteran participated in high altitude flights only. (VAOPGCPREC 7-93.)

(2) If a veteran who did not receive the Vietnam Service Medal claims service connection for exposure to herbicide agents, and alleges service on a ship in the waters offshore of Vietnam, review the record for evidence that the ship was in the waters off Vietnam. If the veteran cannot produce evidence that the ship was in the waters offshore of Vietnam, request verification from the Navy:

Naval Historical Center
Ships' History Branch
Washington Navy Yard
901 M St., SE
Washington, DC 20374-5060

Furnish the name and number of the ship (e.g., USS Galveston (CLG 3)), and the dates that it is alleged to have been in the waters offshore of Vietnam. Followup telephone calls may be made after 30 days to 202-433-2585.

h. **Verification of Service of Affiants (Buddy Statements).** If it is necessary to verify the evidence of an affiant who alleges personal knowledge of certain occurrences while in active service with the veteran, attach a memorandum to the VA Form 21-3101 (paragraph 4.17g) in substantially the following language:

"Do the records of the department indicate that (name of affiant), (rank, organization and service number, if available), was present with his or her organization at or near (place) on or about (date)? Do the records of (name of hospital, vessel, dressing station, etc.) indicate that (name of veteran) (rank and organization) was receiving treatment for (disease or injury) on or about (date)?"

i. **Sick Reports.** If it is asserted that the veteran's name was carried on the organization morning sick reports but the service department report does not contain any information as to the disease or injury alleged, make a request for this specific information using the additional information field on the 202 screen or under ADDITIONAL INFORMATION REQUESTED on VA Form 21-3101. Show the approximate dates and the name of the organization, (company, battalion, detachment, vessel, etc.) sufficient to enable the service department to search sick logs, sick and morning reports, organization, hospital, infirmary and other records.

j. Philippine Cases

June 1, 1999

(1) In the additional information section, enter the statement: "Please verify 2 years honorable active service on enlistment prior to death."

(2) Request all information concerning any prior period of service, if not already of record, to determine if qualifying service existed prior to the serviceperson's final enlistment.

f. **Insanity.** If insanity is an issue (part IV, paragraph 11.05), develop the case completely by obtaining all service medical records that are in any way pertinent. Obtain complete transcripts of any court-martial or board proceedings that may be relevant. On the 202 Screen or the VA Form 21-3101, enter the following statement in the additional information section: "The issue of insanity has been raised."

g. **Verifying Vietnam Service for Claims Involving Exposure to Herbicide Agents**

(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims based on exposure to herbicide agents. See paragraph 5.10c. In the absence of contradictory evidence, "service in Vietnam" will be conceded if the records shows that the veteran received the Vietnam Service Medal except if the veteran participated in high altitude flights only. (VAOPGCPREC 7-93.)

(2) If a veteran who did not receive the Vietnam Service Medal claims service connection for exposure to herbicide agents, and alleges service on a ship in the waters offshore of Vietnam, review the record for evidence that the ship was in the waters off Vietnam. If the veteran cannot produce evidence that the ship was in the waters offshore of Vietnam, request verification from the Navy:

Naval Historical Center
Ships' History Branch
Washington Navy Yard
901 M St., SE
Washington, DC 20374-5060

Furnish the name and number of the ship (e.g., USS Galveston (CLG 3)), and the dates that it is alleged to have been in the waters offshore of Vietnam. Followup telephone calls may be made after 30 days to 202-433-3643.

h. **Verification of Service of Affiants (Buddy Statements).** If it is necessary to verify the evidence of an affiant who alleges personal knowledge of certain occurrences while in active service with the veteran, attach a memorandum to the VA Form 21-3101 (paragraph 4.17g) in substantially the following language:

"Do the records of the department indicate that (name of affiant), (rank, organization and service number, if available), was present with his or her organization at or near (place) on or about (date)? Do the records of (name of hospital, vessel, dressing station, etc.) indicate that (name of veteran) (rank and organization) was receiving treatment for (disease or injury) on or about (date)?"

i. **Sick Reports.** If it is asserted that the veteran's name was carried on the organization morning sick reports but the service department report does not contain any information as to the disease or injury alleged, make a request for this specific information using the additional information field on the 202 screen or under ADDITIONAL INFORMATION REQUESTED on VA Form 21-3101. Show the approximate dates and the name of the organization, (company, battalion, detachment, vessel, etc.) sufficient to enable the service department to search sick logs, sick and morning reports, organization, hospital, infirmary and other records.

j. **Philippine Cases**

Veterans Benefits Manual M21-1, Part III, "Authorization and Clerical Procedures," is changed as follows:

The entire chapter 4 is revised to provide information about the Personnel Information Exchange System (PIES) and to update all other contact information.

Paragraphs 4.24e (1) and (2): These paragraphs are amended to clarify that "service in Vietnam" for the purpose of presumption of exposure to herbicides cannot be conceded based on receipt of the Vietnam Service Medal, because the presumption of exposure applies to land exposure only. The awarding of this medal was not limited to armed forces members whose service involved duty or visitation on land in Vietnam.

Paragraph 4.28b EXAMPLE: The Example is amended to provide language for a negative final response to a request for service records from NPRC.

Rescissions:

Change 41 dated July 12, 1995
Change 46 dated October 16, 1995
Change 48 dated January 16, 1996
Change 52 dated March 19, 1996
Change 54 dated April 11, 1996
Change 63 dated April 2, 1997
Change 66 dated May 18, 1998
Change 76 dated June 1, 1998.

By Direction of the Under Secretary for Benefits

Ronald J. Henke, Director
Compensation and Pension Service

Distribution: RPC: 2068
FD: EX: ASO and AR (included in RPC 2068)

the service department using request code O99 *only* if a claim for DIC or death pension is received and it has been determined that death was not in line of duty or was the result of willful misconduct.

(1) In the free text section, enter the statement: "Please verify 2 years honorable active service on enlistment prior to death."

(2) Request verification of service using request code S01 for any prior period of service, if not already of record, to determine if qualifying service existed prior to the serviceperson's final enlistment.

d. **Insanity.** If insanity is an issue (part IV, para., 11.05), develop the case by obtaining all service medical records that are in any way pertinent. Obtain complete transcripts of any court-martial or board proceedings that may be relevant. Use the free text request O99 and enter the following statement: "The issue of insanity has been raised."

e. **Verifying Vietnam Service for Claims Involving Exposure to Herbicide Agents.**

(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims based on exposure to herbicide agents. A veteran must have actually served on land within the Republic of Vietnam (RVN) to qualify for the presumption of exposure to herbicides. 38 CFR Sec. 3.307(a)(6). The fact that a veteran has been awarded the Vietnam Service Medal *does not* prove that he or she was "in country." Service members who were stationed on ships off shore, or who flew missions over Vietnam, but never set foot in-country, were sometimes awarded the Vietnam Service Medal. To verify service in RVN, you should review the veteran's DD-214 to determine if it shows such service (e.g., "Foreign Service: Republic of Vietnam"). If not, you may need to obtain and review the veteran's other personnel records (e.g., Department of the Army Form 20 or equivalent). (VAOPGCPREC 7-93.)

(2) If a veteran claims service connection for exposure to herbicide agents, and alleges service on a ship in the waters offshore of Vietnam, review the record for evidence that the ship was in the waters off Vietnam and that the veteran's service involved duty or visitation on land. If the veteran cannot produce evidence of this, request verification from the Navy:

Naval Historical Center
Ships' History Branch
Washington Navy Yard
901 M St., SE
Washington, DC 20374-5060

Furnish the name and number of the ship (e.g., USS Galveston (CLG 3)), and the dates that it is alleged to have been in the waters offshore of Vietnam. Follow-up telephone calls may be made after 30 days to (202) 433-3643.

f. **Verification of Service of Affiants (Buddy Statements).** If it is necessary to verify the evidence of an affiant who alleges personal knowledge of certain occurrences while in active service with the veteran, submit the PIES request with the original veteran's information on Page 1 of the PIES request and the affiant's name and service information on Page 2. Use request code O99 and state:

"Do the records of the department indicate that (name of affiant), (rank, organization and service number, if available), was present with his or her organization at or near (place) on or about (date)? Do the records of (name of hospital, vessel, dressing station, etc.) indicate that (name of veteran) (rank and organization) was receiving treatment for (disease or injury) on or about (date)?"