

Ok, G Alexander Graham

A respectfully submitted question:

Why do you keep saying that a Nexus Letter is required for a claim of a veteran who has Ischemic Heart Disease and was stationed at Udorn and whose duties placed him at or near the perimeter?

The service connection or Nexus is presumed, by law that the disease came from exposure to herbicide at Udorn if during duty near the perimeter.

The VA has already admitted that Nexus so what could any Doctor Letter say any better than the list of presumed diseases that have been presumed associated with herbicide exposure at Thailand bases including Udorn.

What does a typical Doctor know or be qualified to state that Ischemic Heart Disease is connected to herbicide exposure that the VA hasn't already ruled by law that it IS?

There are situations when a Nexus Letter is required but;

Ischemic Heart Disease after documented exposure on duty near the perimeter at Udorn is not one of them...in my opinion.

So, I respectfully ask again why do you keep submitting a convoluted message to the contrary?

The Nexus Letter would be required if you had Ischemic Heart Disease and you were trying to say it was service connected because of exposure to herbicide during service at Lackland AFB.

Could you kindly resubmit your comments aligned with my opinion so that our brothers are not trying to get a Nexus Letter they don't need if they have Ischemic Heart Disease and they can prove exposure to herbicide near the perimeter at Udorn!

Respectfully

Tom McCay

To Thomas McCay,

Sir, it would appear you have two different regulations confused. First: If you were in Vietnam, you get what is called the "presumptive exposure" under 38 CFR §3.307(a)(6)(iii). The diseases are listed in §3.309(e). IHD is one of these.

The other regulation is §3.303(a) and (d) which discuss what is called "direct service connection". Udorn claims fall into the latter as there is no "presumption" that anyone at Udorn was exposed to rainbow herbicides-just "tactical weed killers". To win an exposure claim at Udorn or any base in Thailand, you must present more than just evidence you were in the perimeter or worked there. We are gradually poking holes in that by saying when you went off base to seek pleasure, you were zero feet from the perimeter both coming and going. Remember, there is no legal time limit for being in the "perimeter" but merely exposure or proximity repeatedly. Certainly, a duty AFSC of Security policeman would place you in the perimeter spray zone but that, in and of itself, is not proof-positive of exposure to a recognized herbicide listed in §3.307(a).

Since the dawn of time, VA has required three things to grant service connection. 1)disease/injury or exposure to risk of disease in service; 2) same disease or injury now and 3) a nexus letter-also referred to as an Independent Medical Opinion (IMO) by a qualified MD, PA-C, PA, ARNP, RNP, RN or CNA that the disease or injury incurred in service is the same as the one now and a good explanation to support it. Presumptive claims for Radiation, POWs, Camp LeJeune water and RVN herbicide merely give you a 'bye' on the nexus requirement. That's why they call it presumptive.

As it stands now, granting exposure by virtue of proximity (duty AFSC or MOS) is a limited nexus that VA can, and still does, often dispute. Until they relent and grant all claims-including those of augmentees with no qualifying AFSC- we accredited advocates always obtain the IMO to ensure a win at the lowest level of adjudication. That level is the VARO Regional level. Most of these claims in dispute go to the BVA and take 4 years to get on the docket and be heard. If the evidence of that presumptive exposure is reasonably in equipoise, maybe you win. If you have the nexus letter, you often win at the VARO level and avoid a long, drawn out appeal. One trick I've learned is when I submit a good nexus letter at the BVA, I always win because the Judge will rarely send out to get another VA IMO and the VARO pukes never show up and demand a do over and a new nexus.

Mr. McCay, you are absolutely correct in your assessment that a nexus letter would be required if you were seeking direct service connection for IHD due to exposure to herbicides while stationed at Lackland or any base in the continental US.

However, please refer to VA's site-specific admittal of where they grant "presumptive" exposure. Nowhere will you see any base in Thailand listed-thus it is a claim for direct service connection. Proving work proximity to a presumed exposure zone is merely one requirement. VA is getting more lenient but they are not throwing in the towel or all of you wouldn't be on this board trying to figure out how to win it

(i) For the purposes of this section, the term "**herbicide agent**" means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram.

VA doesn't admit to the usage of AO in Thailand. An 'herbicide agent' is not a tactical herbicide.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, **shall be presumed to have been exposed during such service to an herbicide agent**, unless there is affirmative evidence to establish that the veteran was not exposed to any such **agent** during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(iv) A veteran who, during active military, naval, or air service, served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, **shall be presumed**

to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. See also 38 CFR 3.814(c)(2).

(v) An individual who performed service in the Air Force or Air Force Reserve under circumstances in which the individual concerned regularly and repeatedly operated, maintained, or served onboard C-123 aircraft known to have been used to spray an herbicide agent during the Vietnam **era shall be presumed to have been exposed during such service to an herbicide agent**. For purposes of this paragraph, "regularly and repeatedly operated, maintained, or served onboard C-123 aircraft" means that the individual was assigned to an Air Force or Air Force Reserve squadron when the squadron was permanently assigned one of the affected aircraft and the individual had an Air Force Specialty Code indicating duties as a flight, ground maintenance, or medical crew member on such aircraft. Such exposure constitutes an injury under 38 U.S.C. 101(24)(B) and (C). If an individual described in this paragraph develops a disease listed in 38 CFR 3.309(e) as specified in paragraph (a)(6)(ii) of this section, it will be presumed that the individual concerned became disabled during that service for purposes of establishing that the individual served in the active military, naval, or air service.

Mr. McCay, let's be frank here. Nowhere in any of the above scenarios described will you find any such description of Vets "presumptively exposed" to 2, 4-D, 2,4,5-T at air bases anywhere in Thailand. While you are entitled to your opinion, VA's regulations, promulgated by Congress and the VA Secretary, argue against your interpretation of what constitutes VA recognition of the "presumption of exposure". I will be happy to resubmit my agreement with your 'opinion' at such time in the future as the Veterans Administration or the US Congress amend 38 USC §1112 and 38 CFR §3.307 to reflect that all bases in Thailand grant presumptive exposure strictly based on duty AFSC or MOS placing them in the perimeter.

I have spent almost 30 years helping Veterans adjudicate and win their claims as well as my own. Why on earth would I want to mislead any on this Board as to what they need to prevail in their claims? What good would it do me (or any advocate) to spread false information and mislead Veterans? By law, I am forbidden as an officer of the court from misrepresentation of anything I do.

Please explain why your belief and firm opinion that proof of mere workplace proximity to the perimeter of any airbase qualifies as "presumptive exposure" and cite to Federal Circuit precedential panel decisions and/or applicable statute or regulation to support it. If I am wrong, I want to be the first to know about it and inform my cohorts who also do this for a living. While positive proof of Thailand presumptive exposure is a finding of fact that mitigates in your favor under the benefit of the doubt rule, it is not, *ipso facto*, proof of actual exposure to "tactical herbicides" let alone exposure to 2,4-D and 2,4, 5-T. For that, you need a nexus letter tying the two events together and a detailed, supported peer-reviewed rationale as to why. I will grant that while some Vets have presented appeals at the BVA that were granted on photo evidence, buddy letters and lay testimony, they were (and are) not a guaranteed win. In cases like this, in the words of one of our members, it appears as though it depends on "which Veterans Law Judge you draw". I don't litigate from the "I hope I get a favorable judge" viewpoint. I litigate (and win) from a firm legal foundation.

I certainly don't want to create confusion on this board so I'll refrain from offering any future advice to prospective Vets who seek knowledge. I apologize for any who were mislead. Too many cooks spoil the broth.

Regards

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