

Yu, Cathy [REDACTED]

From: Sixeas, Joe [REDACTED]
Sent: Wednesday, May 04, 2016 2:44 PM
To: Berner, Hannah [REDACTED]; Yu, Cathy [REDACTED]
Cc: OCLA Benefits Team
Subject: O: js8155: js8100: js8073 Responses to RM McCaskill ltr dtd Feb 4 2016
Attachments: M21-1, Part IV, Subpart ii, Chapter 1, Section F.DOCX

Good afternoon Hannah,

Please find below VA's response to your inquiry on whether VA has any written policies or procedures related to the adjudication of mustard gas benefits.

Thanks

Response - VBA does have a written policy on the adjudication of claims for disabilities resulting from exposure to mustard gas or Lewisite. These procedures are found in VA's adjudication manual at M21-1, Part IV, Subpart ii, Chapter 1, Section F, a hard copy of which is also attached.

From: Sixeas, Joe
Sent: Monday, May 02, 2016 2:47 PM
To: 'Berner, Hannah [REDACTED]; Yu, Cathy [REDACTED]
Cc: OCLA Benefits Team
Subject: RE: js8155: js8100: js8073 Responses to RM McCaskill ltr dtd Feb 4 2016

Good afternoon Hannah,

I've passed the information in the preceding email to the team and continue to work to advocate for the responses.

Thanks

From: Berner, Hannah [REDACTED]
Sent: Friday, April 29, 2016 1:34 PM
To: Sixeas, Joe; Yu, Cathy [REDACTED]
Cc: OCLA Benefits Team
Subject: [EXTERNAL] RE: js8155: js8100: js8073 Responses to RM McCaskill ltr dtd Feb 4 2016

Hi Joe,

We really just need to know if the VA has any written policies or procedures related to the adjudication of mustard gas benefits. If you all need more time on the other piece that's fine, but we just need a yes or no answer on the first question. If you have questions about this, please feel free to give me a call.

Thanks,
Hannah

Hannah Berner
Senior Policy Aide
[REDACTED]

1. General Information on Developing Claims for SC for Disabilities Resulting From Exposure to Mustard Gas or Lewisite

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| Introduction | <p>This topic contains general information on developing claims for SC for disabilities resulting from exposure to mustard gas or lewisite. It includes information on</p> <ul style="list-style-type: none"> • SC based on full-body exposure to mustard gas or lewisite during military service • confirmed locations where service members have been exposed to mustard gas or lewisite • disabilities for which SC may be awarded by presumption under 38 CFR 3.316(a) • Veterans eligible for benefits based on exposure to mustard gas or lewisite, and • action to take when no disability is claimed. |
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| IV.ii.1.F.1.a. SC Based on Full-Body Exposure to Mustard Gas or Lewisite During Military Service | <p>38 CFR 3.316 authorizes service connection (SC) for certain diseases diagnosed in Veterans who underwent full-body exposure to mustard gas or lewisite during military service.</p> <p>Full-body exposure means that the entire body was exposed to mustard agents or lewisite as opposed to placement of drops of mustard agent or lewisite on one or more locations on the skin.</p> |
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Mustard gas refers to either of two vesicants (blister-producing) agents, sulfur mustard (Yperite), or nitrogen mustard.

Lewisite is a mustard vesicant agent containing arsenic.

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| IV.ii.1.F.1.b. Confirmed Locations Where Service Members Have Been Exposed to Mustard Gas or Lewisite | <p>The table below provides the <i>known</i> locations where Army and Navy personnel were exposed to mustard gas or lewisite.</p> |
|--|---|

| ARMY | NAVY |
|--------------------------------------|---|
| Bari, Italy | Bari, Italy |
| Bushnell, Florida | Camp Lejeune, North Carolina |
| Camp Lejeune, North Carolina | Charleston, South Carolina |
| Camp Sibert, Alabama | Great Lakes Naval Training Center, Illinois |
| Dugway Proving Ground, Utah | Hart's Island, New York |
| Edgewood Arsenal, Maryland | Naval Training Center, Bainbridge, Maryland |
| Naval Research Lab, Washington, D.C. | Naval Research Laboratory, Virginia |
| Ondal, India | Naval Research Lab, Washington, D.C. |
| Rocky Mountain Arsenal, Colorado | USS Eagle Boat No. 58 |

Notes:

- This list is not all inclusive. Some American service members may have participated in Allied mustard agent testing in Finschhafen, New Guinea, and Porton Down, England.
- Select merchant seaman were also exposed or killed at Bari, Italy.

IV.ii.1.F.1.c. Disabilities for Which SC May Be Awarded by Presumption Under 38 CFR 3.316(a)

Use the table below to identify the disabilities for which SC may be awarded by presumption under 38 CFR 3.316(a) based on full-body exposure during active military service.

Note: SC will not be awarded if the claimed condition is due to the Veteran's own willful misconduct or there is affirmative evidence that establishes a non-service-related supervening condition or event as the cause of the claimed condition.

| If the Veteran had full-body exposure to ... | Then SC may be awarded for ... |
|--|---|
| nitrogen or sulfur mustard gas | <ul style="list-style-type: none"> • chronic conjunctivitis • keratitis • corneal opacities • scar formation at the exposure site • nasopharyngeal cancer • laryngeal cancer • lung cancer (except mesothelioma), and/or • squamous cell carcinoma of the skin. |
| nitrogen or sulfur mustard gas or lewisite | chronic forms of <ul style="list-style-type: none"> • laryngitis • bronchitis • emphysema • asthma, and/or • chronic obstructive pulmonary disease (COPD). |
| nitrogen mustard gas | acute non-lymphocytic leukemia. |

IV.ii.1.F.1.d. Veterans Eligible for Benefits Based on Exposure to Mustard Gas or Lewisite

Veterans who are eligible for benefits based on exposure to mustard gas or lewisite include those who were

- exposed during field or chamber testing
- exposed under battlefield conditions in World War I
- present at the German air raid on the harbor of Bari, Italy, in World War II
- engaged in the manufacturing, handling, or destruction of vesicant agents during military service, or
- some Operation Iraqi Freedom service members who demolished

or handled explosive ordinance.

Notes:

- Veterans who participated in mustard gas testing prior to 1968 have been released from vows of secrecy by March 9, 1993, order of Deputy Defense Secretary William J. Perry. Veterans may discuss the type of agent(s) used, location, and circumstances of exposure, as this information is declassified.
- Participation in mustard agent and lewisite testing can be considered a stressor in determining SC for posttraumatic stress disorder (PTSD).

IV.ii.1.F.1.e. Action to Take When No Disability Is Claimed

A claim is not substantially complete if a Veteran alleges exposure to mustard gas or lewisite during service, but does not claim SC for a specific disability. In cases such as these

- inform the Veteran that exposure, in and of itself, is not a disability, and
- ask the Veteran to identify the disability(ies) that resulted from exposure to mustard gas or lewisite during service.

Important:

- Do not
 - process the claim as a denial, or
 - establish end product (EP) control for the incomplete claim.
- Whenever possible, telephone the Veteran to obtain the information needed to substantiate the claim.

Reference: For more information on what constitutes a substantially complete application, see

- 38 CFR 3.159(a)(3), and
- M21-1, Part I, 1.B.1.

2. Centralized Processing of Claims Based on the Effects of Exposure to Mustard Gas or Lewisite

Introduction

This topic contains information on the centralized processing of claims based on the effects of exposure to mustard gas or lewisite, including

- centralized processing of claims and appeals at the Muskogee Regional Office (RO), and

- forwarding claims and appeals to the Muskogee RO

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IV.ii.1.F.2.a. Centralized Processing of Claims and Appeals at the Muskogee RO

All claims and appeals based on exposure to mustard gas or lewisite received on or after January 19, 2005, are centrally processed at the Muskogee Regional Office (RO).

IV.ii.1.F.2.b. Forwarding Claims and Appeals to the Muskogee RO

Claims and appeals based on mustard agent or lewisite exposure received on or after January 19, 2005, must be sent to Muskogee for centralized processing. Use the table below to determine where to send the claims folder.

| If the claims folder is... | Then... |
|-----------------------------------|--|
| in paper format | send the claims folder to Department of Veterans Affairs VARO Muskogee (21-Mustard Gas) Federal Building 125 S. Main Street Muskogee, OK 74401 |
| in electronic format | transfer the claims folder according to the guidelines in M21-1, Part III, Subpart ii, 5.G. |

Note: If a mustard gas claim is already under the jurisdiction of the Muskogee RO and a subsequent claim is received, the Muskogee RO will process the new claim.

References: For more information on

- priority processing, see M21-1, Part III, Subpart ii, 1.D, and
- transferring electronic claims folders (eFolders), see M21-1, Part III, Subpart ii, 5.G.

3. Developing Claims Based on the Effects of Exposure to Mustard Gas or Lewisite

Introduction

This topic contains information on developing claims based on the effects of exposure to mustard gas or lewisite, including

- EP control of claims
- when development for evidence of full-body exposure is necessary

- requesting access to the U.S. Department of Defense (DoD) and VA Chemical Biological Warfare Exposure System (Chem-Bio) database
- forwarding requests for verification of full-body exposure to Compensation Service's mustard gas mailbox
- development when Veterans are not listed in the Chem-Bio database, and
- what to consider when rating mustard gas claims.

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| IV.ii.1.F.3.a. EP Control of Claims | <p>All claims for SC for disabilities resulting from exposure to mustard agents or lewisite are controlled with a standard compensation EP and EP 688.</p> <p>Select the appropriate MUSTARD GAS special issue identifier on the Veterans Benefits Management System (VBMS)-Core CONTENTION screen.</p> <ul style="list-style-type: none"> • References: For more information on EP codes, see M21-4, Appendix B, and • VBMS, see <i>VBMS User Guide</i>. |
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| IV.ii.1.F.3.b. When Development for Evidence of Full-Body Exposure Is Necessary | <p>If a Veteran alleges exposure to mustard gas or lewisite, but claims SC for a disease not listed in 38 CFR 3.316(a), ask the Veteran to submit medical or scientific evidence showing a causal relationship between the disease claimed and exposure.</p> <p>Request evidence of full-body exposure to mustard gas or lewisite <i>only</i> if the Veteran alleges exposure and</p> <ul style="list-style-type: none"> • claims SC for a disability listed in 38 CFR 3.316(a), or • submits medical or scientific evidence showing a causal relationship between a disease not listed in 38 CFR 3.316(a) and exposure. <p>Note: Development letters should be prepared using VBMS-Core. Access the appropriate MUSTARD GAS development selection from the ADD DEVELOPMENT ACTION menu in VBMS-Core.</p> |
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| IV.ii.1.F.3.c. Requesting Access to the U.S. DoD and Chem-Bio Database | <p>The U.S. Department of Defense (DoD) and VA Chemical Biological Warfare Exposure System (Chem-Bio) is a consolidated database for mustard gas, Shipboard Hazard and Defense (SHAD), and Chem-Bio participants.</p> <p>The Muskogee RO must maintain primary and alternate points of contact (POCs) and should gain access to the Chem-Bio database. POCs are responsible for conducting preliminary research regarding claimed in-service mustard gas-related exposures. Access should be requested in advance of receipt of a claim based on exposure in order to ensure that claims processing is not unnecessarily delayed.</p> <p>Important: To request access to the Chem-Bio database, send a completed <i>DD Form 2875, System Authorization Access Request (SAAR)</i>, to the Mustard Gas Mailbox at</p> |
|---|--|

IV.ii.1.F.3.d. Forwarding Requests for Verification of Full-Body Exposure to Compensation Service's Mustard Gas Mailbox

If the criteria stated in M21-1, Part IV, Subpart ii, 1.F.3.b, are met and database access has not been set up, send an e-mail message to Compensation Service's mustard gas mailbox (VAVBAWAS/CO/MUSTARDGAS) requesting verification of full-body exposure.

The e-mail message should include

- the Veteran's
 - full name
 - e-mail address
 - telephone number
 - date of birth
 - date of death (if applicable)
 - Social Security number (SSN)
 - branch of service
 - service number, and
 - dates of service
- the date of the alleged exposure (month and year)
- the geographic location of the alleged exposure
- the unit to which the Veteran was assigned at the time of alleged exposure
- the type of exposure involved (full-body, patch, etc.), and
- the disabilities claimed as having resulted from exposure.

Upon receipt of the e-mail message, Compensation Service personnel will review the Chem-Bio database and confirm whether the Veteran is listed in the database. If the Veteran's name does not appear in the database, follow the instructions at M21-1, Part IV, Subpart ii, 1.F.3.e.

Note: Request from the claimant any information listed above that is not already of record in the claims folder.

IV.ii.1.F.3.e. Development When Veterans Are Not Listed in the Chem-Bio Database

If Compensation Service reports that the Veteran is not listed in the Chem-Bio database, mail copies of the Veteran's service personnel records to the Compensation Service at the following address:

Department of Veterans Affairs
Compensation Service (211B)
ATTN: Mustard Gas Manager
810 Vermont Ave, NW
Washington, DC 20420

The documentation should include

- the Veteran's
 - full name
 - service number
 - SSN, and
 - full organizational designation (unit, company, division, etc.) at the time of alleged exposure(s)

- the number of exposures
- the date of the alleged exposure(s) (month and year)
- the geographical location of the alleged exposure(s)
- the type of activity the Veteran was engaged in at the time of each exposure, such as basic training or involvement in a test or experiment
- details of the exposure, including
 - the length of time the Veteran was exposed
 - the procedures that were followed before, during, and after the exposure
 - the effect of the exposure on the Veteran's body, and
 - whether the Veteran received medical treatment following exposure
- a copy of the Veteran's military personnel file, and
- any three-inch by five-inch index card in the service records documenting exposure to mustard gas or lewisite. (In some cases, DoD placed in the service records a three-inch by five-inch index card containing detailed information about mustard gas or lewisite exposure).

Note: Upon receipt, Compensation Service will forward this documentation to the Deployment Health Directorate for a determination regarding exposure.

IV.ii.1.F.3.f. What to Consider When Rating Mustard Gas Claims

When rating mustard gas claims, consider that

- the acute effects of exposure to mustard gas or lewisite may be evident in the service treatment records (STRs)
- the delayed effects of exposure may appear even though no acute effects were noted in service, and
- the Veteran may have been exposed to mustard gas or lewisite outside of service.

Note: When completing the SUBJECT LINE field on the ISSUE MANAGEMENT screen in VBMS-Rating (VBMS-R), end the description of the disability with *[Mustard Gas]* regardless of whether the issue is being granted or denied and then select the appropriate SPECIAL ISSUE field based on the nature of exposure claimed. This will clearly identify the mustard gas claimed issues, or those issues which the decision maker has decided are related to mustard gas, on the *Codesheet*.