



Addendum

Compensation & Pension

Service Bulletin

Volume 1, Issue 7

July 31, 2007

NEHMER

As part of the CLL Nehmer review process, Central office has requested priority shipment of claims files to be temporary transferred to the Philadelphia Resource Center, Attn. Carl Dean for readjudication. All claims files must be accounted for and reviewed under the court order. Please follow the instructions in FL 06-16 for missing claims files, claims files charged out and/or at the BVA, retirement centers (Records Management Center/Federal Records Center), etc.

On July 19, 2007, the U.S. Court of Appeals for the Ninth Circuit denied the Government's appeal of a district court order holding that the 1991 final stipulation and order in this case, which provided that VA would make certain retroactive benefit payments within the scope of then existing law, will apply through "September 30, 2015, or until such other time as Congress shall establish, should it enact another extension" of the Agent Orange Act.

On July 23, 2007, representatives from Department of Justice, Office of the General Counsel, and Veterans Benefits Administration appeared before Judge Henderson, to show cause why it should not be held in contempt for violating his orders. At issue are two items concerning VA's adjudication of chronic lymphocytic leukemia claims: (1) Judge Henderson alleges that VA, in its periodic status report, has misrepresented the number of cases reviewed by the Philadelphia Resource Center by counting more than once rating decisions that had to be corrected and reviewed more than once; and (2) he does not find credible VA's explanation that a production slowdown during the holiday period can be attributed to vacation and excess leave during that time. A decision is currently pending.

HERBICIDE EXPOSURE PRESUMPTION EXTENDED TO USS INGERSOLL CREWMEMBERS

The USS Ingersoll (DD 652) operated as a Navy destroyer gunship providing fire support for military ground operations along the Vietnam coast during 1965. In addition to coastal duty, the USS Ingersoll traveled up the Saigon River on October 24th and 25th of 1965 to fire on enemy bases. C&P Service has reviewed the ship's deck logs, located at the National Archives and Records Administration, and confirmed this service in the "inland waterways" of Vietnam. As a result, the presumption of herbicide exposure, as described in 38 CFR 3.307(a)(6)(i), should be extended to any crewmember who served aboard ship during October of 1965. This presumption is authorized by M21-1MR section IV.ii.2.C.10.b. Regional offices should reevaluate any disability claim based on herbicide exposure from one of these veterans that has been denied.

STRESSOR VERIFICATION

Information on verification of PTSD stressors is located in M21-1MR, Part IV, Subpart ii, Chapter 1, Section D, *Claims for Service Connection for Posttraumatic Stress Disorder (PTSD)*. Refer to Section D.13 regarding PTSD development and veterans with combat awards.

If a veteran received one of the combat decorations cited in [M21-1MR, Part IV, Subpart ii, 1.D.13.d](#) but does not expressly state the nature of the stressor

assume the stressor is combat-related

order an examination, if necessary to decide the claim, and
in the examination request:

- State that VA has verified the veteran's combat service, and
- Specify any details regarding the combat stressor contained in the record.

ADMIN DECISIONS ON CHARACTER OF DISCHARGE

Administrative decisions regarding character of discharge are discussed in M21-1MR, Part III, Subpart v, Chapter 1, Section B, *Statutory Bar to Benefits and Character of Discharge*. Please ensure that character of discharge determinations discuss eligibility for health care when appropriate. For more information on eligibility for health care and related benefits, see 38 CFR 3.360 and 38 USC Chapter 17.