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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. chronology re: Congressional Hearings (partial) (1 page)

ca. 1996-97

P3/b(3)

COLLECTION:

Clinton Administration History Project

OA/Box Number: 40511

FOLDER TITLE:

VBA History Project - Compensation & Pension - Briefing Book, C & P Service, Persian Gulf Illnesses]

ip14

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

**DEPARTMENT OF
VETERANS AFFAIRS**

**VETERANS BENEFITS ADMINISTRATION
COMPENSATION AND PENSION SERVICE**

CONGRESSIONAL HEARINGS

The Subcommittee on Human Resources and Intergovernmental Relations of the House Committee on Governmental Reform and Oversight has held a series of hearings on PG issues.

Subcommittee Chairman is Christopher Shays of Connecticut.

March 11, 1996: The first hearing focused on clinical affairs: treatment and examinations. VA did not testify.

Chairman Shays felt that VA's research plan was not coherent, treatment protocols inconsistent, and disability determinations were stalled.

March 28, 1996: The second hearing focused more on research. VHA testified for VA.

Chairman Shays continued to be critical of VA, and wanted assurance that VA's research agenda and treatment protocols were aggressive, comprehensive, and not biased.

June 25, 1996: The focus was to be on the exchange of medical information between VA and DOD and incidence of neoplasms among PG veterans. VBA, VHA, and DOD testified.

DOD's news release of findings of chemical weapons in a bunker in Iraq was the actual main focus of the hearing. Chairman Shays continued his sharp criticism of VA's research efforts.

September 19, 1996: The Subcommittee held a fourth hearing that focused on the aftermath of DOD's disclosures of possible chemical weapons exposure. Chairman Shays seemed to be pressing for affirmative changes in VA health care, research, and compensation as a result.

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Congressional Hearings

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December 10 , 1996: Testimony was heard from 3 active-duty marines who claimed to have encountered chemical exposures while in the Gulf, and from [REDACTED]

The AL and the VFW submitted written statements but did not testify in person.

December 11, 1996: Testimony was heard Gulf war veterans who recounted their presumed experiences from chemical exposure during the war and in attempting to seek assistance from VA. Drs. Mather and Murphy testified on behalf of VACO. Two VA physicians, who were their VAMCs' environmental physicians, also presented testimony on their experiences treating veterans. Both felt that chemical exposure was likely.

January 21, 1997: A seventh hearing is scheduled for this date. Dr. Kizer and the Secretary of Defense's Special Assistant for PG War Illnesses are scheduled to testify. The possibility is held open that VBA may be asked to testify as well. Speculation is that the "11,000 case review" could be a topic of interest.

Implications of the Hearings for VBA:

To date, VBA has attracted little interest on the part of Chairman Shays, who has been much more interested in the efforts of VA and DOD to research, identify, and treat the illnesses of veterans. DOD's disclosures about chemical weapons exposure at Khamisiyah have driven the focus of the last 4 hearings.

VBA had some minor involvement in the March 28 hearing; our role was limited to providing support and information. Questions and subjects specific to actual claims adjudication were conspicuously few, of little significance, and our responses to the issues raised seemed to generate little feedback.

Congressional Hearings

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Although Gary Hickman was the lead VA witness at the June 25 hearing, DOD was the focus of attention because of its recent disclosure of the events at Khamisiyah. Again, the attention to actual claims adjudication issues was slight and resulted in little or no feedback. The greatest interest was on the transferral of medical records from the service departments to VA. Chairman Shays attempt to show from VBA and VHA data that PG veterans were at increased risk for developing neoplasms was strongly refuted by both VA and outside sources, and was eventually abandoned by the Chairman for more fruitful endeavours.

At the December 10 and 11 hearings, although again the focus was on chemical exposure and VHA's response to DOD's disclosures, issues were mentioned that could have an impact on VBA:

Presumptive Period:

In their written statements for the December 10 hearing, both VFW and the AL advocated doing away with the 2-year presumptive period for undiagnosed illnesses.

VFW wanted an open-ended period.

AL did not specify a length but urged Congress to address the issue. Calls th 2-year period arbitrary.

At the December 11 hearing, Dr. Charles Jackson of the Tuskegee VAMC recommended a 7-year presumptive period. This was in response to a question from Cong. Edolphus Townes about the adequacy of the presumptive period.

Cong. Townes mentioned the possibility of legislation addressing the presumptive period.

Congressional Hearings

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Review of the 11,000 claims:

The AL recommended Congressional oversight to assess the review, in particular denials due to the 2-year presumptive period.

Claims Adjudication:

The VFW urged medical and scientific agreement on a case-definition for "Gulf War Syndrome." Develop a list of symptoms that persist for 6 months or more. This would ensure compensation for "the combat-related illnesses."

In response to a question from Chairman Shays on what policies or procedures should be changed as a result of DOD's announcements on chemical exposure, Dr. Jackson recommended making all symptomatic veteran service connected, even if only at zero percent. He also recommended establishing rating criteria reflecting progressive disability related to the symptoms of fatigue, memory problems, muscle cramps, diarrhea, and joint pain. (These recommendations were in the original draft of his testimony but were deleted in the final version.)

BACKGROUND

After the return of U.S. forces from the Persian Gulf, some veterans began exhibiting symptoms of unexplained illnesses.

They often had combinations of nonspecific symptoms that did not fit a single case-definition.

Medical science, over five years later, is still unable to define or explain the cause of some veterans' illnesses.

There are concerns that these illnesses may have been caused by various "environmental hazards":

medications

pesticides

chemical/biological warfare weapons

parasites: leishmaniasis

The illnesses could not be explained by the characteristic signs or symptoms of known diseases.

We, therefore, were unable to pay compensation under the usual statutory authorities, which permit compensation for diseases or injuries only.

Therefore, we strongly supported legislation giving us specific authority to compensate undiagnosed illnesses of PG veterans.

**DEPARTMENT OF
VETERANS AFFAIRS**

**VETERANS BENEFITS ADMINISTRATION
COMPENSATION AND PENSION SERVICE**

PUBLIC LAW 103-446

In 1994, the 103d Congress saw several measures intended to provide the relief we felt was needed for PG veterans.

Some bills were specific to PG veterans' undiagnosed illnesses. Others were more general and would have applied to all veterans.

Following an important September 1994 SVAC hearing on the bill introduced by Sen. Rockefeller, Congress enacted in October H.R. 5244, the "Veterans' Benefits Improvements Act of 1994."

The President signed this legislation on November 2, 1994, as Public Law 103-446.

Section 106 authorized VA to compensate PGW veterans suffering from chronic disabilities due to undiagnosed illnesses.

The undiagnosed illnesses must have appeared either during active duty in the Persian Gulf during the PG War or to a degree of 10 percent or more within a presumptive period thereafter, as determined by VA.

In determining the presumptive period VA was to take into account

credible scientific and medical evidence;

the historical treatment afforded disabilities for which manifestation periods have been previously established;
and

other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.

**DEPARTMENT OF
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**VETERANS BENEFITS ADMINISTRATION
COMPENSATION AND PENSION SERVICE**

38 CFR 3.317

On February 3, 1995, VA published 38 CFR 3.317, to implement the Persian Gulf compensation provisions of Public Law 103-446.

Significant features of the regulation include:

2-year presumptive period following service in Persian Gulf.

Definition of chronic disability as one that has existed for at least 6 months, including a disability with intermittent episodes of improvement and worsening.

Requirement that there be objective indications of chronic disabilities resulting from undiagnosed illnesses.

Disability must not be attributable to a known clinical diagnosis.

PRESUMPTIVE PERIOD

One-year period for chronic diseases is inappropriate for undiagnosed illnesses.

There is little or no medical/scientific evidence definitively linking the illnesses to service in the Gulf.

Medical/scientific evidence cannot yet explain cause or diagnosis of these illnesses of Persian Gulf veterans.

The scientific/medical evidence also supports no conclusions concerning a latency period for these illnesses.

Therefore, the medical/scientific evidence cannot be used to justify adoption of a particular presumptive period.

One-year period is insufficient to meet the special circumstances of Persian Gulf veterans.

Many first documented their illnesses in conjunction with VA's Persian Gulf Health Registry examination.

The Registry did not begin operating until November 1992, well over a year after the first veterans began returning from the Gulf.

2 years would allow all veterans of the hostilities an opportunity to document their illnesses.

Within 2 years, PG veterans were aware of the potential significance of their illnesses.

Within 2-years there was public concern for the veterans whose illnesses defied diagnosis but seemed linked to Gulf service.

Presumptive Period

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The presumptive period is measured from last service in Persian Gulf.

This is the intent of the law.

Measuring from date of separation would unfairly advantage long-term servicemembers.

It is believed the illnesses are connected to Gulf service.

This corresponds to what we have done elsewhere, e.g., certain diseases secondary to herbicide exposure.

ILLNESS MUST BE UNDIAGNOSED

The disability must be chronic and not be attributable to a known clinical diagnosis.

Diagnosis must be ruled out by history, physical examination, and laboratory tests.

The regulation lists 13 categories that may be signs and symptoms of undiagnosed illnesses.

The list is broad and encompasses many possible signs and symptoms.

It is not intended to be exclusive. We will consider any sign or symptom.

If a diagnosis is obtained, the provisions of 38 CFR 3.317 do not apply.

Service connection then must be considered under other statutory and regulatory provisions.

CHRONIC DISABILITY

We have defined chronic disability as one that has existed for at least 6 months.

This includes a disability with intermittent episodes of improvement and worsening over a 6-month period.

Why 6 months?

A period commonly accepted within the medical community for distinguishing chronic conditions from acute conditions

Provides an objective standard for determining chronicity.

Undiagnosed illnesses do not permit accurate prediction of clinical course.

Disability is determined through objective indications.

OBJECTIVE INDICATIONS

The regulation requires objective indications of chronic disabilities resulting from undiagnosed illnesses.

Objective indications include

"signs" in the medical sense of evidence perceptible to an examining physician, and

other, non-medical indicators that are capable of independent verification.

Examples of non-medical indicators (not all-inclusive):

time lost from work

evidence that a veteran has sought medical treatment

changes in physical appearance

changes in the veteran's mental or emotional attitude.

Non-medical indicators are generally provided through lay statements.

Non-medical indicators may allow us to determine existence of disability, when it first occurred, chronicity, and degree of impairment.

Non-medical indicators may not be used to rule out a diagnosis. Only medical evidence can do that.

**DEPARTMENT OF
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COMPENSATION AND PENSION SERVICE**

MISCELLANEOUS PROVISIONS OF § 3.317

Disabilities service connected under Public Law 103-446 shall be considered service connected for the purposes of all laws of the United States.

This conforms to the mandate of the statute.

A disability from an undiagnosed illness is evaluated under the criteria of the Rating Schedule for a disease or injury where there are similarities in

functions affected

anatomical localization

or symptomatology.

Compensation is not payable if an undiagnosed illness resulted from the veteran's own willful misconduct or abuse of alcohol or drugs.

Compensation is not payable if an undiagnosed illness is caused by a supervening condition or event occurring between the veteran's last service in the Persian Gulf and onset of the illness.

ADJUDICATION OF PG CLAIMS

Because of early concerns about potential exposures to environmental hazards, VBA centralized PG compensation claims based on exposures to a single RO.

Benefits of centralization: (1) the RO would acquire expertise in the issues; (2) VBA could more easily monitor the claims.

December 1992: PG environmental hazard claims centralized to Louisville.

October 1994: Due to the greater than anticipated volume of claims, they were redistributed to the 4 APOs, Louisville, Nashville, Phoenix, Philadelphia.

February 1995: PG compensation claims based on undiagnosed illnesses centralized to the 4 APOs.

The first task in reviewing undiagnosed illness claims was to reconsider denied PG environmental hazard claims for possible entitlement under Public Law 103-446.

We have recently extended to VBA Hearing Officers the authority to decide issues involving undiagnosed illnesses.

PROCESSING PERSIAN GULF CLAIMS

REFERENCES

38 CFR 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

All Station Letter 96-99 October 8, 1996

Regional Office Coordinators for Persian Gulf War Claims

(Includes list of coordinators and check list for development of PGW claims)

All Station Letter 96-89 September 13, 1996

Changes to Tracking System for Environmental Hazard and Undiagnosed Illness Claims

All Station Letter 96-82 August 15, 1996

Regional Office Coordinators for Persian Gulf War (PGW) Claims

All Station Letter 96-73 July 16, 1996

Review of Persian Gulf War Claims by Area Processing Offices (APOs)

M21-1, Part III, chapter 5, paragraph 5.17 Change 55, April 30, 1996

Development of Claims Based on Undiagnosed Illnesses of Persian Gulf War Veterans

Circular 21-95-2 (February 1, 1995, and Change 1, March 27, 1995)

Compensation for Undiagnosed Illnesses of Persian Gulf Veterans

VBA Circular 20-92-29 (Revised 10-11-94)

Area Wide Processing of Claims Based on Exposure to Environmental Agents in the Persian Gulf War

ALAN K. SIMPSON, WYOMING, CHAIRMAN

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United States Senate

COMMITTEE ON VETERANS' AFFAIRS

WASHINGTON, DC 20510-6375

April 27, 1995

Dear Jesse,

In response to posthearing questions following up on the Committee's March 9, 1995, budget hearing, you provided me with information on Persian Gulf War veterans' claims. I appreciate your responses and have an additional request.

As you know, I want to maintain active oversight of the status of efforts to compensate Persian Gulf War veterans for health problems related to their service. In that regard, I would appreciate receiving a monthly report on Persian Gulf veterans' disability cases, including the number of disability claims allowed, denied, and pending at each area processing office. Please include all cases from Persian Gulf veterans, including those with diagnosed and undiagnosed illnesses.

I have received this information through February 1995, so please begin with the March 1995 data.

Thank you for your attention to this matter.

Sincerely,



John D. Rockefeller IV
Ranking Minority Member

DEB
The Honorable Jesse Brown
Secretary of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

**FACT SHEET ADDRESSING THE INQUIRY FROM
THE HONORABLE JOHN D. ROCKEFELLER IV**

ISSUE: The Senator has asked for a monthly report on the number of allowed, disallowed and pending Persian Gulf War veterans' disability cases in which the veteran attributes environmental agents as the cause for the claimed disability, broken down by area processing office.

**INFORMATION AS OF DECEMBER 12, 1996
(FIGURES NOT AVAILABE AS OF END OF MONTH NOVEMBER, 1996)**

CASES PENDING AT THE AREA PROCESSING OFFICES

Eastern Area	440
Central Area	373
Southern Area	6437
Western Area	312

TOTAL **7562**

CASES PENDING AT REGIONAL OFFICES FOR DEVELOPMENT

Eastern Area	579
Central Area	246
Southern Area	1628
Western Area	451

TOTAL **2904**

ENVIRONMENTAL HAZARD CASES RATED

AREA	TOTAL CASES	SERVICE CONNECTION GRANTED	DISALLOWED
Eastern	1,707	213	1,494
Central	2,567	266	2,301
Southern	5,170	474	4,696
Western	1,813	438	1,375
NATIONAL	11,257	1,391	9,866

UNDIAGNOSED CASES RATED [NOTE: This is a subset of Environmental Hazard cases.]

If all issues in a case cannot be granted under 38 U.S.C. 1110 (direct causal basis), 38 U.S.C. 1112 (presumptions) or 38 U.S.C. 1153 (aggravation), it is then considered under Public Law 103-446 for undiagnosed conditions.

AREA	TOTAL CASES REVIEWED	S/C GRANTED UNDER PL 103-446	S/C NOT GRANTED UNDER PL 103-446
Eastern	1,411	71	1,340
Central	2,437	105	2,332
Southern	4,797	175	4,622
Western	1,605	269	1,336
NATIONAL	10,250	620	9,630

DISTRIBUTION OF CASES WHERE S/C WAS NOT GRANTED UNDER PL 103-446:

REASON	EASTERN	CENTRAL	SOUTHERN	WESTERN
Diagnosed illness	193	283	202	432
Illness not chronic	67	48	66	55
Due to other etiology	7	10	14	15
Not manifest on active duty or during the presumptive period	552	1,730	3,150	363
Not shown by evidence of record	515	239	1,165	425
Undiagnosed condition -- less than 10%	6	22	25	46
TOTAL	1,340	2,332	4,622	1,336

THE ROCKEFELLER REPORT

Senator John D. Rockefeller IV asked VA on April 27, 1995, for a monthly report on efforts to compensate Persian Gulf War (PGW) veterans, whether their disabilities were diagnosed or undiagnosed. He asked that VA report the number of claims allowed, denied and pending at each Area Processing Office (APO) beginning with March 1995 data. At that time we had rated 3773 PGW environmental hazard claims. By July 1996 that figure had grown to 11,288.

The Data for the Rockefeller Report is collected from two unrelated sources. The data on pending PGW claims is reported monthly by each APO on RCS 20-0894. Among other things that report shows the number of claims pending at regional offices (ROs) for development and the number of claims pending at the APOs for rating. The data for these reports is collected from WIPP, manual counts or a combination of the two. These differences in methods of data collection have led to some inconsistencies that are calling into question the reliability of this portion of the report. For instance, in September 1996 the Southern Area reported a 4500 case increase in claims pending at the APO because of development letters sent on all previously denied claims as part of the case review ordered in July 1996. The other three APOs did not report review cases in that category and the discrepancy was readily apparent.

If all APOs relied on the WIPP list for reporting their pending cases, we would have much more consistent reporting. When PGW claims are developed at ROs, a special EP 689 is established and would be reflected in WIPP. When development is completed, the EP 689 is taken by the RO, and the case is transferred to the APO. A count of the pending EP 689s would tell you exactly how many PGW claims were pending at ROs for development.

At the APOs new special end products are established for claims pending rating action. An EP 019 or 119 is established for initial PGW claims and an EP 029 is established for reopened claims. A count of these end products in WIPP would tell you how many initial PGW claims were awaiting rating action at the APOs and how many claims were being reviewed as reopened claims. Although some of the 029s could be initial PGW claims from veterans who had previously filed original claims for other conditions, we feel that number would be sufficiently small to be negligible. By relying on WIPP we would then have consistent criteria for reporting cases pending development, cases pending initial rating and cases pending review.

The data for the Rockefeller Report on allowed and denied claims is collected using a special PGW tracking system based on Access software. The tracking system records final rating action on all PGW environmental hazard claims and reports the rating action on undiagnosed illness claims as a subset of environmental hazard claims. In addition the system tracks the six distinct reasons for denial of undiagnosed illnesses. This portion of the Rockefeller Report has always been viewed as internally consistent, however further analysis has revealed some questionable data. For instance, although undiagnosed illnesses are a subset of environmental hazard claims, the Central Area figures show that more undiagnosed illness claims were denied than environmental hazard claims. At the same time the Eastern Area asserts that it has allowed more undiagnosed illness claims than the 71 reported by the tracking system. These discrepancies lie in the report writer function of the tracking system and need further investigation.

As indicated earlier the number of PGW claims reached a peak of 11,288 cases rated in July 1996. At that point a review of all previously denied claims was ordered (a total of 9,958 cases) for three specific reasons: (1) to ensure that all claims were properly developed, (2) to ensure that appropriate weight was accorded to lay evidence, and (3) to ensure that the tracking system was properly coded. With some very minor fluctuations, the number of cases rated has remained fairly constant over the past six months while APOs have concentrated their efforts on reviewing the previously denied claims. This has resulted in an appreciable rise in the number of initial claims that are pending rating action although the actual amount of that rise is masked by the Southern Area's inclusion of review cases in that count.

RECOMMENDATIONS:

1. Standardize the criteria for reporting pending PGW claims using special end products and the WIPP list where possible.
2. In conjunction with (20S) investigate the report writer functions of the PGW tracking system to ensure that the selection criteria for necessary reports are precise and result in reliable data.
3. Revise the format of the Rockefeller Report to present the desired PGW data in an understandable manner.

**DEPARTMENT OF
VETERANS AFFAIRS**

**VETERANS BENEFITS ADMINISTRATION
COMPENSATION AND PENSION SERVICE**

PERSIAN GULF REVIEWS

C&P Service Review

Responding to public and Administration concerns over cases where undiagnosed illnesses appeared after the presumptive period, the C&P Service reviewed 468 cases in March to May 1996.

Findings

288 cases miscoded in the tracking system.

180 cases correctly coded.

Undiagnosed illnesses appeared within 3 years in 62; 4 years in 171; and 5 years in all 180.

Several instances of failure to obtain recent VA examinations or other information such as lay evidence.

Followup Actions to C&P Service Review

a second, more intensive review of the 180 cases

a second review of all 11,000 cases in the PGW tracking system (in progress)

more detailed instructions on adjudicating PGW claims (dated 7/16/96)

training session with APOs on July 18 and follow-up hotlines

PG Reviews

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AL Report of April 1996

The purpose of the report was to understand why the service-connected grant rate for undiagnosed illnesses was only 5 percent.

Findings:

In many instances VA failed to consider lay evidence adequately.

VA often relied on inadequate examinations/medical evidence.

Criticized one APO's use of pre-printed rating sheets.

VA's denials were often premature, and VA's denial letters were inadequate.

The AL report substantiated many of the findings in the C&P Service review.

GAO Report of May 1996

Review undertaken at Senator Rockefeller's request to identify the procedures used to process undiagnosed illness claims. Rockefeller was concerned about the high denial rate.

Findings:

In many instances VA failed to develop for potentially important evidence.

Veterans often failed to provide requested evidence.

PG Reviews

Page 3

VA inaccurately reported reasons for denying Persian Gulf claims in its tracking system: esp. code 4 denials. Gives false impression that service connection could be granted with a longer presumptive period.

Again, this review substantiated many of the findings in the C&P Service review.

NOTE: It was unclear from any of the reviews, whether conducted by VA, AL, or GAO, that the decisions on the claims were necessarily incorrect as a result of the errors noted.

SECOND REVIEW OF THE 11,000 CASES

The decision to conduct a second review of the 11,000 cases in the PG Tracking System was made in June 1996.

New instructions were issued July 16. Highlights:

Emphasis on proper development

Emphasis on the weight of lay statements

Changes to the Tracking System

On July 18 representatives of the 4 APOs were in Central Office for a 1-day discussion/training session on the review.

The training session was followed by conference calls to discuss further issues that needed clarification or that newly arose.

The second review will result in correctly adjudicated cases and consistent categorization of denial reasons in the Tracking System.

The complete review will take about 6 months. Results should be available early in 1997.

Congress and the service organizations have been advised of the review.

We have been monitoring the review at various stages.

STATUS OF PGW REVIEW

1. 10,354 cases were re-developed in connection with the review of previously denied claims that was mandated in July 1996. Nearly half of them (4,598) are in the Southern Area.
2. 2,112 review cases have now been re-rated. That is 20% of the total number of review cases.
3. Under this special review, service connection for an undiagnosed illness has been granted in 136 cases, however 766 cases established service connection on some other basis. Most APOs expect service connection to increase significantly in the future because the first review cases to be rated were largely those in which development controls expired and no additional evidence was received. This would tend to result in confirmed ratings. In many cases where responses have been received, additional avenues of development have been opened and are being pursued.
4. Estimates of the length of time necessary to complete the review vary between APOs and is contingent on the ability to broker work. Estimates range from four months to one year.

QUALITY ANALYSES

The Advisory Review Staff has conducted 3 thorough reviews of rating decisions in claims for Persian Gulf War-related illnesses to assess the overall quality of those decisions.

The Staff is in the process of conducting fourth and fifth reviews.

First Review: 203 claims, Fall of 1995.

There were six areas of concern noted in the analysis:

Some claims were listed as denied in the PGW database even though SC was granted for the same symptom or complaint as a diagnosed illness.

Claims for PGW syndrome or Desert Storm syndrome were not being fully developed for clarification.

The initial development did not fully explain the requirements of PL 103-446.

There was a reluctance to return examinations as inadequate and request a "Phase II" protocol examination.

There was a failure to adjudicate all chronic disabilities even if the disabilities were not claimed.

The last area of concern dealt with the development of stressors in PTSD claims. The role of the Environmental Support Group was not being utilized.

69 cases required corrective action.

This review produced a letter to each APO dated January 22, 1996.

Quality Analyses

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Second Review: 52 PGW claims in an appellate status; April and May 1996.

The Chief of the Advisory Review Staff randomly selected 13 cases from each APO. The primary focus was the quality of the decision and the likelihood of a BVA remand.

The staff found 12 cases requiring corrective action.

One case dealt with an issue separate from the pending appeal and another case had no action because of the transfer between stations.

The review revealed premature decisions in the absence of SMRs and improper PTSD development.

One claim was granted by VACO under a difference of opinion.

Third Review: 178 cases; revisiting denials for undiagnosed illnesses.

The C&P review of 468 cases suggested potential entitlement to compensation in 178 cases **IF** the presumptive period had been longer. (Note: the figure had been reported as 180, but the number was found to be 178.)

The C&P Service Advisory Review Staff conducted a second, in-depth review of the 178 cases.

The glaring deficiency in these claims was incomplete development especially for lay evidence.

There were 16 claims in which an exception had been written by the Quality Assurance Staff.

Quality Analyses

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There were many errors that did not involve environmental issues.

A large number of cases were decided on incomplete or inadequate examinations.

There was a problem in disposing of all chronic and claimed disabilities.

There was the continuing denial of PTSD claims without complete stressor development.

The staff found the need for corrective action in 128 cases.

Fourth Review: The fourth review was to be conducted in two phases. The first phase was 101 cases in September. The staff found the need for corrective action in eleven cases.

In four cases, the proper development letter was not sent.

In two cases, the development letter sent to the claimant did not specify the person who could support the claim.

In two cases, the PGW Registry examination was not obtained.

One case involved the premature denial of PTSD due to a stressor

One case had an error in a rating regarding tinnitus.

One case involved undeliverable mail and improper rating action.

Quality Analyses

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Fifth Review: 60 cases. Each APO was asked to submit 15 cases of their choosing for review.

Although all cases have been received, the review is still ongoing. This review will also involve review of database entries for the first time. The staff has reviewed completely about one third of the cases.

Summary

All of these reviews seem to involve similar issues.

There is a definite problem with some basic rating issues such as accepting examinations when all requested tests are not of record.

There is a problem in rating chronic disabilities noted in the SMRs but not specifically claimed on the application.

Problems with obtaining and weighing the value of lay evidence in undiagnosed illness claims appear to be lessening.

**DEPARTMENT OF
VETERANS AFFAIRS**

**VETERANS BENEFITS ADMINISTRATION
COMPENSATION AND PENSION SERVICE**

EXTENSION OF PRESUMPTIVE PERIOD

After the Compensation and Pension Service completed its review of the 468 randomly selected cases, they prepared a proposed rule amending 38 CFR 3.317 to extend the presumptive period for undiagnosed illnesses to 5 years.

The Secretary, however, deferred a decision on the presumptive period and requested that we review Persian Gulf cases to analyze our experiences with these cases, discuss any scientific and medical information justifying an extension, and explain the basis for whatever cutoff point might seem appropriate for an extended period.

Information obtained from analyses of the 179 and 11,000 case reviews will be used in making a recommendation to the Secretary.

It is not clear at this time that an extension to the presumptive period is warranted.

We expect to make recommendations to the Secretary in early 1997.

Caveats:

Extending the presumptive period increases the potential for an intercurrent cause of a disability.

The C&P Service review of the 468 cases seems to have established the appearance of undiagnosed illnesses in Persian Gulf veterans up to 5 years after service in the Gulf. However, similar findings in reviews conducted in subsequent years might be used to justify further extensions of the presumptive period. The farther removed a disability is from the presumed causative circumstance, the less likely it is related to that circumstance.

Extension of Presumptive Period

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An extended presumptive period will disproportionately benefit service members whose service in the Gulf occurs long after the hostilities ended.

A decrease or elimination of the risk of exposure to the environmental hazards often associated with the undiagnosed illnesses may decrease the opportunity for the appearance of undiagnosed illnesses in service members currently serving in the Gulf. However, the Persian Gulf War era still has no ending date, and consideration under Public Law 103-446 must be given to these individuals.

CHEMICAL EXPOSURE

DOD's announcements about possible chemical exposure (sarin cyclosarin, mustard gas) in the Gulf has given rise to the question of whether this would result in changes to VA's adjudication policy.

At this time, too little is known to determine what the long-term adjudication-policy implications might be for VA.

However, at this time, the following might be stated:

We are dealing with exposures that have more or less well-documented immediate and (chronic) long-term health effects.

Therefore, the health consequences do not fit the definition of undiagnosed illnesses and are not for consideration under 38 CFR 3.317.

Current statutory and regulatory provisions already allow us to grant service connection for disabilities resulting from incidents in military service no matter how long after service the disabilities first appear or are first reported. We need only to be able to connect the disabilities with the inservice incident.

Before determining the need for policy changes, VBA is reliant on DOD/VHA for guidance on:

Who was exposed

Exposure levels

The health effects of exposure (immediate and chronic).