Like us on Facebook: https://www.facebook.com/NGWRC/

National Gulf War Resource Center, Inc.

Phone: 866-531-7183

www.ngwrc.org

Email: support@ngwrc.org

Our Mission

We provide education, advocacy, and support for veterans suffering from the complexities of modern warfare.

Specializing in "Gulf War Illness"

Educational Guide

A Guide to Today's Toxic Wars

Information and support for those involved in and transformed by today's wars.

Updated October 2017 v2.0

Distribution and Disclaimer

Gulf War Illness (GWI) is a generic term for a variety of medical problems which will be discussed in detail. This guide is not a review of the protocols for medical treatment of GWI; that goal is all too elusive. The primary purpose of this guide is to assist the veteran -- who believes he or she is afflicted with GWI -- with procedures for filing a claim for disability with the Department of Veterans Affairs and enhancing the probability of success in that endeavor.

Gulf War Illness is not something you can claim under 38 USC 1117. GWI is only a term to describe the symptoms veterans have from their service in the Gulf War. The VA and DOD are working on a case definition for it to be diagnosed as *medically unexplained chronic multi-symptom illness*, but this has not happened yet. It should be done soon.

The contents of this guide are for informational purposes only. Every effort is made to achieve accuracy, but neither the National Gulf War Resource Center, Inc. nor its principals assume responsibility for the accuracy or veracity of the information contained herein.

This guide is distributed freely to veterans, Veteran Service Organizations, accredited VA Agents, lawyers, and others interested in helping those who are ill, injured, or disabled due to the Gulf War. Any other use requires the written authorization of the National Gulf War Resource Center (NGWRC) or sources used in this guide.

ALL veterans need to work closely with Department of Veterans Affairs accredited representatives when filing their claims and any follow-up appeals. The regulation is always changing, and your VSO should be taking classes to be current. Do not let your claim get denied due to some bad advice given by the "untrained advocates" who are giving out their "personal opinion" and not the current regulation/laws on the internet. It is very hard to fix errors in the claim once the decision is made, so use this guide with your trained VSO Rep, agent, or lawyer. If you are planning to start a new claim or planning to reopen a claim, you need to go to the section in "Intent to File" and get this done before reading anything else in this guide.

Acknowledgments

This updated guide is the result of months of reviewing changes in regulations and science regarding Gulf War Illness[1] and other conditions affecting veterans who served our country from 1990 to the present day, and turning that information into a reference that veterans and their advocates can use. It is a core resource in our work to improve claims, medical treatment, and quality of life for these injured veterans.

The NGWRC thanks the following individuals and groups for their contributions to this guide:

COL (Ret) George Webb helped review and proofread this guide, among his many contributions to NGWRC.

William Ankenbauer, Jr., a retired DAV service officer and adviser to the NGWRC, provided invaluable insight and advice on how a veteran should develop his or her claim. Bill is a graduate of the DAV school for National Service Officers. He was one of the best service officers in Kansas that I trained with.

Finally, we thank the National Veteran Legal Service Program and all of the past leaders of the NGWRC who worked previous editions of the Guide and performed some of the advocacy work that lead to veterans being able to receive care and benefits today that they could not get a few years ago.

Thank you one and all,

James A. Bunker, Executive Director & VA Accredited Claims Agent.

[1] We are using Gulf War Illness only as the term for what Congress has passed into law in 1994 and updated in 2001. As per the law, there is no place to file a claim for Gulf War Illness. You file for the symptom in part (a) or the CMI's as in part (b).

TABLE OF CONTENTS

ABOUT THE NGWRC

Veterans and their families run the National Gulf War Resource Center (NGWRC). We help veterans affected by the 'invisible' injuries most common in the current conflict period, from 1990 to the present day. These injuries include Gulf War Illness (GWI)[2], Traumatic Brain Injury (TBI), and Post-Traumatic Stress Disorder (PTSD).

We are among the most successful Veterans' Organizations in the United States advocating for veterans affected by GWI. We formed shortly after the Persian Gulf War of 1991. Our work has been critical in establishing the rights, treatments, and benefits to which these veterans now have access. Yet our work is far from done. GWI is still poorly understood and incurable. While no longer in complete denial, the VA and the Department of Defense (DOD) often ignore recommendations from the scientific community that may lead to better treatment, and claims for VA benefits related to GWI are still difficult for veterans to file for, much less be granted, unless all of the proper evidence is in your claim.

The term 'Gulf War Veteran' refers to any veteran who served in Southwest Asia during Operations Desert Shield/Storm, Iraqi Freedom, New Dawn and any other operations from August 1990 until the present day. We work with veterans who have served since 1990 until today, no matter the Area of Operation.

Purpose of this Guide

When people are injured on-the-job in civilian work, their employers may pay for related medical treatment and provide compensation. If you are a veteran with injuries or disabilities incurred in the line of duty, you have earned the right to medical treatment and compensation for conditions connected to your service. The VA provides this care and compensation after you are discharged.

Common war injuries like Gulf War Illness (GWI)/Chronic Multi-symptom Illness (CMI) and Post-Traumatic Stress Disorder (PTSD) are difficult to diagnose. GWI was not recognized by the scientific and medical communities for several years after the events which first caused it.

If you are an ill or injured veteran, this is *your Guide* to understanding GWI [including Undiagnosed Illness (UDX) and medically unexplained CMI's], Amyotrophic Lateral Sclerosis (ALS), Traumatic Brain Injury (TBI), and PTSD. This guide focuses on what you need to know in order to file a claim with the Department of Veterans Affairs (VA) for disability compensation benefits you have earned as a result of your injury during your service.

Information on technical research was removed in order to focus on what you need to file a claim or to get help and support. The research is found on the VA research site and on the National Institute of Health (NIH) and Center for Disease control (CDC) sites. If you ever use any research in your claim, it cannot be from a pilot study. Unfortunately, most of the CDMRP studies are pilot studies and cannot be used; the same is true for non-human studies.

[2] We are using Gulf War Illness only as the term for what Congress has passed into law in 1994 and updated in 2001. Per the law, there is no place to file a claim for Gulf War Illness. You file for the symptom(s) in part (a) or the CMI's as in part (b).

NGWRC Core Values

1. **Advocate tirelessly for veterans from Southwest Asia (SWA[3]) and their issues** - We will promote media awareness and Congressional investigations to ensure that Department of Veterans Affairs (VA) Gulf War review efforts are comprehensive, correct, and supportive of the SWA veteran.

2. **Provide educational material and assistance to SWA Veterans, their VSOs, and families** - We are committed to helping veterans improve their chances of receiving overdue compensation for their service-connected illnesses. A key component of that commitment is producing and updating an Educational Guide that covers important topics such as medical research and legislative developments, organizations that support veterans of SWA, lessons learned, and assistance available from federal agencies such as the Department of Veterans Affairs.

3. **Educate VA staff, legislators, and members of medical facilities on the complexities of Gulf War Illnesses** - We serve the veteran by informing legislators of provisions needed to protect, treat, and compensate SWA Veterans, and we educate medical providers on the wide variety of symptoms and illnesses faced by SWA veterans.

4. **Create a diverse, dynamic organizational membership dedicated to vital veteran issues** - Gulf War Illness issues affect veteran, scientific, legal, family, and other constituents, as well as current and future service members. To ensure adequate involvement and to prevent repetition of past mistakes, NGWRC solicits from all interested communities and constantly updates its website with relevant and useful information.

5. **Review and analyze all relevant government and industry actions, policies, research efforts, and writings concerning Gulf War Era and future veterans' issues** - We are committed to being a leader in understanding the complexities of Gulf War Illnesses by evaluating new concepts in treatment through collaborations with and in our organizational presence at the VA Research Advisory Committee meetings. We will continue to create and implement progressive policies that maximize results for the veterans, increase public understanding, help create clear understanding of illness issues, and ensure the protection of future veterans.

6. **Further comradeship among those who are or have been members of the Armed Forces of the United States.**

The NGWRC has done much to bring Gulf War Veterans issues before Congress and the media, exposing Pentagon and VA policies that have severely impacted veterans and their families. Our most valuable efforts have resulted in legislation that required research and service-connected disabilities for certain conditions associated with Gulf War service. NGWRC does this with the grants and donations we receive from individuals and foundations.

[3] For our purposes, a SWA veteran is anyone who has served in Operations Desert Shield/Storm, Cease Fire Operations, Operation Southern Watch, Operation Iraqi Freedom (OIF), Operation New Dawn (OND), Operation Enduring Freedom (OEF), and any others which may occur. This is more than just the Gulf War subset.

CHAPTER I

The History of the Gulf War Illness Act

a. On November 2, 1994, Congress enacted the "Persian Gulf War Veterans' Benefits Act," Title I of the "*Veterans' Benefits Improvements Act of 1994*," *Public Law (PL) 103-446.* After VA research showed that over 17,000 veterans on the Gulf War Registry exams were suffering from undiagnosed symptoms, many grass root groups worked to get Congress to help the Desert Storm veterans. The statute added a new section, 38 U.S.C. §1117, authorizing the Department of Veterans Affairs (VA) to compensate any Gulf War (GW) veteran suffering from a chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses which manifested either during active duty in the Southwest Asia theater of operations during the GW, or to a degree of 10 percent more within **two years** following service in the Southwest Asia theater of operations during the Gulf War.

[Something that must be remembered is that this first passage of the law had a presumptive time of two years from the date that a servicemember left Southwest Asia. Many Gulf War veterans did not start to seek/complain of their illnesses until the mid-1990s. That was after the two-year time limit expired, and while many may have had what it took for filing their claims, the Veterans Benefit Administration (VBA) did not accept many of the claims, as per the law. Most of this was because the law was new and adjudicators did not understand it themselves. Those claims were denied on the basis of not being in the presumptive window. Many others were denied because evidence was not in their service records - something used to this date.]

b. The "*Persian Gulf War Veterans' Act of 1998*," *PL 105-277*, authorized VA to compensate GW veterans for diagnosed or undiagnosed disabilities that are determined by VA regulation to warrant a presumption of service connection based on a positive association with exposure to one of the following as a result of GW service:

- a toxic agent
- an environmental or wartime hazard, or
- a preventive medication or vaccine

> ***Note***: This statute added 38 U.S.C. 1118. *For the purposes of this regulation, a Persian Gulf veteran means a veteran who served in the active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, which by law runs from August 2, 1990 through a date yet to be determined by law or Presidential proclamation (38 U.S.C. 101(33)). The Southwest Asia theater of operations is defined according to Executive Order 12744 of January 21, 1991, in which President Bush designated the combat zone of the Persian Gulf War, and includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.*

The 1998 change made service a *presumption* when it established the end-date and §1118. This meant a servicemember no longer had to have proof in his or her records for two years from leaving the desert. The §1118 meant a nexus was not needed as per the meaning of presumption of service. However, the VBA still did a large number of these claims incorrectly and did deny them for not having a diagnosis and or a nexus. There are two court cases on the nexus that the VBA subsequently lost. This meant the requirement for "service connection based on a positive association with exposure" nexus was not legal.

c. The "*Veterans Education and Benefits Expansion Act of 2001,*" *PL 107-103,* expanded the presumption part for GWI with the definition of "qualifying chronic disability" under 38 U.S.C. §1117 to include, effective **March 2002,** not only a disability resulting from an undiagnosed illness but also:

- a medically unexplained chronic multi-symptom illness that is defined by a cluster of signs and symptoms, and
- any diagnosed illness that is determined by VA regulation to warrant presumption of service connection
- The Secretary added chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome as presumptive illness under 38 CFR §3.317 as seen in the Federal Register of June 10, 2003.

d. July 2010 change - 38 CFR §3.317, which implements 38 U.S.C. §1117, defined GW service and "qualifying chronic disability," and provided:

- a broad, but non-exclusive, list of signs and symptoms which may be representative of undiagnosed or chronic, multi-symptom illnesses for which compensation may be paid,
- and the presumptive period for service connection

Qualifying chronic disability, under 38 CFR §3.317, means a chronic disability resulting from any of the following or any combination of the following:

- an undiagnosed illness
- a medically unexplained chronic multi-symptom illness, such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome, that is defined by a cluster of signs or symptoms (There are some rule changes that will help the veterans in this area.) and/or
- any diagnosed illness that is determined by VA regulation to warrant a presumption of service connection

e. November 2011 change = the presumptive period for manifestation of qualifying chronic disability under 38 CFR §3.317

- begins on the date following last performance of active military, naval, or air service in the Southwest Asia theater of operations during the GW,
- and extends through December 31, 2021

38 CFR §3.317 specifies the following thirteen categories of signs or symptoms that may represent a qualifying chronic presumptive disability. The list of thirteen symptom categories is not exclusive.

• undiagnosed abnormal weight loss	• undiagnosed menstrual disorders
• undiagnosed cardiovascular signs or symptoms	• undiagnosed muscle pain
• undiagnosed fatigue	• undiagnosed sleep disturbances
• undiagnosed gastrointestinal signs or symptoms	• undiagnosed neurologic signs or symptoms
• undiagnosed headache	• undiagnosed neuropsychological signs or symptoms
• undiagnosed joint pain	• undiagnosed signs or symptoms of the skin
• undiagnosed signs or symptoms involving the upper respiratory system	• undiagnosed signs or symptoms involving the lower respiratory system

Signs or symptoms not represented by one of the listed categories may also qualify for consideration under 38 CFR §3.317.

To qualify, the claimed disability must be chronic, that is, it *must* have persisted for a period of six months or more. A claimant must measure the six-month period of chronicity from the earliest date on which all pertinent evidence establishes that the signs or symptoms of the disability first became manifest.

Note: If a disability is subject to intermittent episodes of improvement and worsening within a six-month period, consider the disability to be chronic.

f. July 2010, a letter was sent to all of the adjudicators with a revision to 38 C.F.R. § 3.317 to clarify the Meaning of *"Medically Unexplained Chronic Multisystem Illness" Related to Gulf War and Southwest Asia Service*. VA is revising 38 C.F.R. §3.317 to clarify that the three listed, diagnosed multi-symptom illnesses are not exclusive, but rather are examples that can serve to inform VA medical examiners and adjudicators of the general types of medically unexplained chronic multi-symptom illnesses that may qualify for service connection under the 38 U.S.C §1117 authority.

What is Gulf War Service (1990-current*)

Only someone deployed to the area of operation is a `Gulf War Veteran' and may file §3.317(a) claims. A Persian Gulf Veteran is any current or former member of the United States Armed Forces who served in the Southwest Asia Theater of Operations for at least one day between August 2, 1990 and the current date*. This includes, but is not limited to, serving in Operation Desert Shield, Operation Desert Storm, Operation Iraqi Freedom, and Operation New Dawn (Iraq Theater).

* See: http://www.publichealth.va.gov/exposures/gulfwar/military-service.asp
The end date of the presumed period is established by Congress. Current law ends it on December 31, 2021.

Congress has defined the Southwest Asia Theater (SWAT) of Operations as:

• Iraq • Kuwait • Saudi Arabia • Bahrain • Qatar • The neutral zone between Iraq and Saudi Arabia	• Oman • The United Arab Emirates (U.A.E.) • Gulf of Aden • Gulf of Oman • Waters of the Persian Gulf, the Arabian Sea, and the Red Sea • The airspace above these locations

A servicemember must meet these time and location criteria in order to receive service-connected status under §3.317.

If someone has a *medically unexplained chronic multi-symptom illness* or similar illness which they believe is service-connected, but they do not meet the definition of a Gulf War Veteran as Congress defines

it, they may still file a claim, but the claim will not fall under §3.317(a). Such a claim will be under some other regulation, like §§ 3.303, 3.304(b), 3.307, and it will have a different burden of proof.

Where is the current regulation posted and how do I use it?

The VBA does not use the M21-1MR anymore, so if you see someone using it, it has been out of date since 2016. Use the link here, as it will take you to the VA "live manual." Go to: http://www.knowva.ebenefits.va.gov/ and enter one of the terms 'Undiagnosed, Fibromyalgia, or IBS' in the search engine. It will bring up some help sections for you. Use this to see what you need to build your claim. Work with your Veteran Service Organization representative to ensure you are not adding information that is not in the file or that may harm your claim. You can also Google "38 CFR §3.317" to see what is on the internet. Something like "The DoD is covering up what happened---"and a blog on it will harm your claim.

These regulations change frequently. You should download the regulation in effect when you first file. Make a second copy and give it to your VSO representative with your other documentation, unless you have a representative who already specializes in Persian Gulf Claims. We have seen outdated regulations used in the decisions of veteran's claims, and this does make for an error.

What is Gulf War Illness and who may file a claim for it?

Gulf War Illness (GWI) is only a term and cannot be used when filing for a claim under 38 CFR §3.317. If someone files a claim by saying, "I am filing for Gulf War Illness due to my service," the Regional Office will send a letter asking what symptoms are being considered. This is where many doctors, the WRIISC, and some veterans pushing for change get it wrong. The law does not have any term of GWI in it, nor is there an IC10 code for it. If a doctor diagnoses someone with GWI, just what is he saying? Without the doctor spelling out the symptoms and testing to rule out the other types of illness, be ready for the long haul.

GWI is a term that refers to the listed symptoms first documented among the veterans of Operation Desert Storm as they returned home in 1991. More than one in four of these veterans are estimated to experience a wide range of unexplained symptoms or a CMI - such as fatigue, pain, and problems with digestion - for which there is no visible cause or explanation. Many have had these conditions since their deployment or soon after their return home. Still others became ill later in their lives.

It took years of strong advocacy by veterans and the NGWRC before much of the medical community, including the VA, accepted GWI as a medical disorder. Today, the exact cause remains unknown and treatment is still far off. Scientific research proves that whatever the cause, the disability is real and it is likely related to military service in the Persian Gulf region. Treatment methods and compensation ratings for this condition are still evolving.

The Institute of Medicine (IOM) said in 2013 to use the term "Gulf War Illness" (GWI) to refer to the symptoms and illnesses that apply to all GW-veterans affected by the disorder. Exposures present in the Southwest Asia Theater (SWAT) of Operations greatly increased the risk of GWI among Gulf War Veterans. **This distinction is for medical research and not, as advised above, for filing claims with the VBA.** GWI remains a descriptive medical term. To date there is not even a case definition. The VA is working on a clinical case definition, and the NGWRC is a part of those talks. Even after there is a new

clinical case definition, it would need to be tested and checked out by the National Academy of Science. Then the VBA would need to change the regulation. Then Congress might have to even change the law.

In the rest of this guide, we will refer to definitions and symptoms based on federal law, court cases, and VA regulations and guidelines, even if they are not updated to reflect the most recent scientific research. A claim is based on the laws and regulations as well as the court cases. A large study may help in a claim when it comes to the benefit of the doubt, but a pilot study will not. Unfortunately, most Gulf War studies are pilot studies. The VA has done some large studies that can help, but like everything else, a claimant still needs a nexus with it. Veterans cannot give the nexus that comes from a doctor in a given field.

When an Iraq or Persian Gulf veteran files a claim for compensation related to GWI/CMI, he or she is filing for presumptive service-connection of a qualifying chronic disability in accordance with laws and regulations. *Qualifying chronic disability*, under 38CFR§3.317(a)(2)(i), means a chronic disability resulting from any of the following or any combination of the following:

> *(A) An undiagnosed illness;*
> *(B) A medically unexplained chronic multi-symptom illness that is defined by a cluster of signs or symptoms, such as:*
> 1. *Chronic fatigue syndrome (CFS)*
> 2. *Fibromyalgia (FM)*
> 3. *Functional Gastrointestinal Disorders (FGID) (excluding structural gastrointestinal diseases)*

In summary, the law passed by Congress only allows those with what we generically call "Gulf War Illness" to receive compensation for their symptoms or for a diagnosed medically unexplained chronic multi-system illness. Veterans who file for only "Gulf War Illness" will get a letter from their VARO asking them to clearly define just what symptoms they are claiming. When filing, use this guide and do it right. The VA grants presumptive service-connection to Gulf War Veterans for Medically Unexplained Chronic Multisystem Illness which are rated at least 10% disabling, and which manifest the disabling symptoms for at least six consecutive months before the end of 2021. It does not matter whether the Medically Unexplained Chronic Multisystem Illness is one of the diagnoses named in §3.317(a)(2)(i)(B). The change to the regulation found in the VA's fast letter FL 10-26 sent out July 21, 2010 explains that they are examples.

Chapter II will explain undiagnosed illness claims (UDX), and we will cover the other parts of the regulation in other chapters.

The Burden of Proof

When you became injured in the line of duty[4], you might earn treatment and compensation for that injury. However, you still have to prove that (1) your injury occurred, (2) it is currently disabling, and (3) it is connected to your service. Among veterans, as in the civilian world, a small number of individuals make false claims while others make honest but erroneous claims. The VA, therefore, must perform its due diligence before a claim is completed.

[4] In line of duty means an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs. Authority: 38 U.S.C. §105

On the VBA side, some adjudicators do not understand injuries like PTSD, TBI, and GWI/CMI. These factors combine to create a complex claims adjudication system which places a heavy burden on veterans. This guide is to help you to better understand "undiagnosed illness" and "medically unexplained chronic multi-symptom illness." We hope that you learn to build any claim -- with the facts you need – in order to increase the likelihood that you will prevail on your claim or appeal.

No matter what condition or injury you live with as a result of your service, you have the burden of proof to meet before the VA will grant the benefits you are seeking. You are in effect suing the government for the injuries that happened to you while you were in the service. At the same time, you will not be able to make a claim for everything that happened to you.

The VA is required to consider all evidence of record and to consider, and discuss in its decision, all potentially applicable provisions of law and regulation. See Schafrath v. Derwinski, 1 Vet.App. 589 (1991); Weaver v. Principi, 14 Vet. App. 301, 302 (2001). When the VA fails to do so, it is an error in your claim.

The VA must also give a statement that is adequate to enable a claimant to understand the precise basis for the decision. See 38 U.S.C. 7104(d)(1); Allday v. Brown, 7 Vet. App. 517, 527 (1995); Simon v. Derwinski, 2 Vet.App. 621, 622 (1992).

There are five different ways for you to be granted benefits from the VA, but this guide will only look at three: Direct, Secondary, and Presumptive. Specifics for each follow.

A Claim for Direct Service Connection

For a claim of direct service connection, you will need the following:

1. Medical evidence of a current disability,
2. Medical evidence, or in certain circumstances, lay evidence of an in-service incurrence or aggravation of a disease or injury;
3. Medical evidence of a nexus between the claimed in-service disease or injury and the present disease or injury.

The regulations for a direct service connection are 38 CFR 3.303 and 38CFR §3.304. As §3.303(d) states "Post-service initial diagnosis of disease. Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service."

There are times the VBA forgets about some of the parts of 38 CFR §3.303(b), such as this part:

> *Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.*

Most claims will be denied for not being chronic, so you still show the continuance of symptomatology after service until a diagnosis is rendered. The claim should then be granted. If denied, file the appeal

and the evidence to show this. Remember symptoms are not in the service then again 20 years later; they are ever since service.

A Claim for Secondary Service Connection

These claims fall under 38 C.F.R. § 3.310(b). You need to prove that a secondary condition was *caused or aggravated* by your service-connected condition. When this includes the treatment for your service-connected condition, you need to so state it. Then you may raise the issue of aggravation by the rated issue and all other rated issues -- as well as the treatment given. The VA will look at the combined medical file. See El-Amin v. Shinseki, 26 Vet. App. 136, 140-41 (2013). You do have to lay it out better than this.

In a claim for secondary service connection, you first need a diagnosis of an illness or injury, just as you do for a direct connection. You will then need a medical nexus with a very good rationale that provides a link between that diagnosis and the issue that you do have rated by the VA. This nexus needs to come from a doctor who knows the particular medical area. A psychiatrist, for example, cannot give a nexus between your service connected knee injuries and a subsequent, secondary hip problem. An orthopedic surgeon would have a more medically legitimate position in this case. The psychiatrist, however, can prepare a nexus statement on how mental health medications can cause erectile dysfunction (ED), weight gain, or high blood pressure. Remember that you or your doctor need to give the research reference/ papers with your claim, too. These nexus assessments can be notes in your medical files with a letter you send in to the VBA from your doctor.

A Claim for Presumptive Service Connection

Presumptive service connection is addressed in different sections of the CFR, like §3.307, §3.309, §3.317 and §3.318. Claims in this category are the easiest to assess, because the VA has already determined that if a veteran has certain symptoms/conditions, they are *presumed* to stem from service in that area of operations during the deployed period. In other words, if a servicemember's time and geographical requirements are met, the VA presumes service connection if he or she has a particular affliction. The elements are the same, and you must meet the requirements in that section of the regulation for that type of presumptive connection. If you do not meet the delineated window/dates of service, are outside the timeframe set for the symptoms to first show, or have something happen to cause the same symptom after you left the area of combat as in 38 U.S.C. §1113, then you cannot use the presumptive connection. All presumptives must be able to be rated at 10% or more before the VBA will grant them.

For presumption of service connection from case law on Gulf War claims, see Gutierrez v. Principi, 19 Vet.App. 1 (2004). *In order to establish service connection under 38 U.S.C. §1117 and 38 C.F.R. §3.317, a claimant must present evidence that he or she is a Persian Gulf veteran who (1) exhibits objective indications; (2) of a chronic disability such as those listed in paragraph (b) of 38 C.F.R. §3.317; (3) which became manifest either during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10% or more not later than December 31, (2021); and (4) such symptomatology by history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.*

Most claims will get denied without these factors, and then you would need to file a Notice of Disagreement (NOD). You need to make sure to use the VBA's new form when doing this. You can read more on this in the Claims 101 section.

The Perspective of a Doctor

Before going to the next chapter, here is some advice, born from experience, on VA medical personnel. Doctors are professionals, and you need to treat them as such. You did not treat the doctors in the service with disrespect, so do not treat your non-military doctors with disrespect.

Your VA doctors do not have your military medical files, so they cannot make a nexus statement to your service. They will prepare medical notes and diagnoses from post-service conditions. Moreover, VA doctors can only see what is in your health records on the VA computer system (from your visits to the VHA). Your service medical records or STR are in your claims file, a legal file at the Veterans Benefits Administration (VBA). Only the C&P examiner will get to see the STR for your C&P. There are ongoing initiatives to merge active duty and VA medical records, but that is not in place now.

This limited access does keep your doctors from knowing what happened to you in the service, so he/she is starting off cold. You may get upset if many tests are redone, especially if you had these tests done just months before. In addition, many veterans who visit the WRIISC will find that researchers may be skeptical, as they, too, cannot see the military records to determine when an illness started. As Desert Storm veterans, we have years of hand-written or paper files, and only a few have been transcribed for someone to search in a computer program. That said, many servicemember's are provided with paper copies of their medical records at the time of their separation, and these could be useful to a physician or researcher.

Even if you feel frustrated, being disrespectful toward your doctor will not be in your interest. Keep in mind that if you "go off" on a doctor in a non-VA hospital, you may find yourself in jail; in the VA, you can find yourself with U.S. marshals leading you to your appointments. If you want to be treated well, treat others the same way.

The doctor's job is to find out what is causing the symptoms in your body today and to determine the best treatments to relieve those symptoms. As you work with him, focus on what he needs to know to help you now. This is where your medical journal, 'Gulf War Review,' and large VA studies (not the CDRMP or any other pilot studies) will come into play.

When you are giving your doctor information about your medical condition, focus on information related directly to it. What symptoms do you have now? How severe are they? How do they affect your work and other daily activities? When did they begin? Have they gotten worse or better over time? Does this doctor have full access to your medical records, or do you need to obtain copies of some records and bring them to him or her? Do they know about the WRIISC? Ask about getting help from the WRIISC. Give the doctor a WRIISC handout that is on the NGWRC website or google the WRIISC and print out the VA page to take to them.

If you go beyond this and begin focusing on specific events that you **think** caused the condition, or on how you believe you were wrongly ignored or improperly treated in the past, you could end up with a referral for mental health treatment instead of the medical care and diagnoses you need to manage your disability.

You **cannot** diagnose yourself with any of the conditions in this guide. Only a doctor can diagnose conditions, NOT a nurse-practitioner or physician's assistant (PA). The appeal of the claim will not hold up unless medical documentation comes from a doctor. It is best if the doctor that did diagnose you is an expert in the field of that illness. Submit paperwork to show the doctor is an expert if you use a non-government doctor.

If you, as a veteran, encounter difficulties at a VA medical facility, you may contact the patient advocate at that location for assistance in resolving the problem. If that does not work, you may move up the ladder until you get the help you need. In some cases, you may be assigned a doctor who does not understand your injury or who is unwilling or unable to help you. If so, the social worker (or patient advocate) is there to help you get things worked out. Your team social worker and the patient advocate can even help you get a different doctor. Do not suffer with a doctor that will not help you.

If you are using a Community-Based Outpatient Clinic (CBOC), you may have to go to a VA Medical Center to see a different doctor who has expertise in your situation. A CBOC may not have enough flexibility or staff to change your Primary Care Provider. Many of the VA CBOCs use PAs or nurse-practitioners, and a doctor may not be available. In this case, you will need to find someone else, either at the medical center or, if authorized, a civilian doctor with the appropriate specialty.

Finally, a short review of the VA's structure. The VA is a Department which has three principal subordinate elements called administrations. The **National Cemetery Administration** (NCA), as the name implies, is responsible for federal cemeteries world-wide. The **Veterans Health Administration** (VHA) is the medical component of the VA. For our purposes here, the VHA is the system of hospitals, clinics, doctors and other medical staff, and research where the veteran goes for medical assessment and treatment. The **Veterans Benefit Administration** (VBA) is responsible for assessing and providing benefits to eligible veterans (which includes acting upon records provided by VHA doctors). These benefits include educational and home loan assistance, but our concern here is with the VBA's role in reviewing and providing disability benefits for those afflicted with GWI symptoms. This work is performed in a VA Regional Office by personnel trained to advise upon, review, and adjudicate a claim. The VBA is also the VA component in the event the veteran appeals the initial decision.

CHAPTER II

Undiagnosed Illness Claim (UDX)

Introduction

This chapter will cover only the undiagnosed illness part of the law as found in [38 CFR §3.317(a)(2)(i)(A)] and the symptoms as listed in §3.317 (b).

This guide is only our views of how to prepare a claim, but it comes from working many claims, helping veterans and their VSO's, and reading court cases. Jim Bunker also takes courses in veteran law from the NVLSP.

You need to work closely with your power of attorney (POA), (service officer, agent, or lawyer) when doing any type of claim, but this type even more so. That is why we have been telling veterans to always ask around about the service officers in their area. You need to find the one that knows this issue and has worked it and won.

Winning this type of claim can come down to simple wording that you used in your statement to support your claim or that you say in your C&P exam that does lead to the granting or denial of the claim. The wording can set the level of the rating.

When is a symptom not an undiagnosed illness?

You cannot file for sleep apnea, Diabetes Type I or Type II, Multiple Sclerosis, and GERD under this law. They are not presumptive illnesses. Some of these are addressed in the rule-making found in the federal register and some in the 38 CFR 3.317. Congress addressed some and that is why you will see them in the Jun 10, 2003 rule making.

This guide should help you start a claim for disability compensation for Undiagnosed Illness (UDX) or a claim for a CMI that may be caused by your service in the Gulf War. At the same time, this guide may help you to decide if your symptoms are secondary to (caused by) the medication you take for a disability you now have or one which is an undiagnosed illness. With a secondary issue and a doctor's nexus and research, you would file on that basis and would have a better chance of winning a claim.

You need to make sure that before you file a claim for a UDX that you really have an undiagnosed illness as per the law and not symptoms that can be related to a diagnosed illness or a diagnosed chronic multi-symptom illness.

A claim for a UDX is the hardest type of claim to do, and most of the time you need to plan on going all the way to the Board of Veterans' Appeals (Board) and even to the United States Court of Appeals for Veterans Claims (Court or CAVC).

The VBA (examiner) will be looking at everything that you are diagnosed with to see if any of it can cause the same symptoms. This is in keeping with the law passed by Congress; if the symptom can be assigned to a known cause at the time, then it cannot be an undiagnosed illness. This is concluded by means of testing. Decisions are not always satisfying, however. Sometimes the examiner will "overreach" in writing the medical opinion or give a medical opinion that has no medical rationale or facts to uphold it. Other times, the opinion will show the examiner does not understand the field they are talking about. These are the times you need to point out the inadequate exams.

We have seen problems where veterans did have many symptoms in their records that they file for and the Gulf War General Medical examination will show "no" to most of them anyway. In those cases, the examiner may not have read the veteran's statements or the research the VSO sent in with the claim. Each one of these can make the exam inadequate.

There are a number of diagnosed illnesses that share the same symptoms. If you have a diagnosed illness with a known or partially understood etiology, it can prevent the granting of the claim for a UDX claim. An example is headaches. The VBA may say that if you are diagnosed with migraine headaches, you do not have an undiagnosed illness. Fortunately, a claim is not lost on this issue if the VSO uses the VA's 30,000 person study that showed the deployed veterans had migraines at a much higher rate than non-deployed veterans[5].

The same is true for a veteran who has had a heart attack or coronary artery disease. While the symptoms are listed under the law for the undiagnosed illness, you now have a diagnosed illness that the symptoms are caused by, and thus you are not able to file under 3.317. As such, a claim under 3.317 for the symptoms will be denied.

If you have a diagnosed *medically unexplained chronic multi-symptom illness (MUCMI)* such as Chronic Fatigue Syndrome, Fibromyalgia, Irritable Bowel Syndrome, TBI or a functional gastrointestinal disorder (FGID), please read and use the sections for those specific diagnosed illnesses. You should remember that all undiagnosed gastrointestinal problems can now fall under the FGID. All FGID's are commonly characterized by symptoms including abdominal pain, substernal burning or pain, nausea, vomiting, altered bowel habits (including diarrhea, constipation), indigestion, bloating, postprandial fullness, and painful or difficult swallowing with no known cause.

Be smart in filing your claim

Filing for undiagnosed illness at the same time you file for other claims with the same symptoms will delay them all and may in most cases cause them to be denied. That is, if you are diagnosed with Fibromyalgia, you should only file for that illness and not the subpart of fatigue, muscle or joint pain, memory issues, and sleep disorder. The law does not allow for it. If you have a diagnosis for the *MUCMI's*, you cannot file for the symptoms, too. See Table:

[5] Kang HK, Mahan CM, Lee LY, Magee CA, Murphy FM. Illnesses among United States veterans of the Gulf War: A population-based survey of 30,000 veterans. Journal of Occupational and Environmental Medicine. 2000;42(5):491–501.

Undiagnosed Illness	Fibromyalgia	Chronic Fatigue Syndrome (CFS)	IBS	Shared Features
Headaches	wide spread muscle pain	Fukuda 1994	Abdominal Pain	Abdominal Pain
Memory / cognitive	Muscle Pain / Myalgia (a must)	Fatigue not caused by other issues*	Chronic Diarrhea	Chronic Diarrhea
Fatigue	Joint pain / Arthralgia	Headaches	Bloating, Gas	Bloating, Gas
Headaches	May have (with or with out)	Memory / cognitive		Muscle Pain / Myalgia (a must)
Memory / cognitive	Fatigue	Sore/ tender throat		Joint pain / Arthralgia
Sleep Disturbance	Memory / cognitive	exercise-induced dysfunction		May have (with or with out)
Abdominal Pain	Headaches	exertional exhaustion		Fatigue
Sleep Disturbance	Sleep Disturbance like SA			Memory / cognitive
Bloating, Gas	Numbness in arms and legs			Headaches
Skin Disorders				Sleep Disturbance like SA
Menstrual Disorder	**Depression can be a secondary to chronic pain**			

As you can see in the table the only symptoms that are not related to the three presumptive is the skin disorder and the menstrual disorder. Both would still need to be of unknown causes for you to file under section 3.317. The table below is only an example as there are many other illnesses you can be diagnosed with that will prevent (deny) a claim for UDX.

You have this symptom	You cannot claim a UDX if diagnosed with
Chest pain	GERD, Heart Attacks/ myocardial infarction (MI), COPD, Neuro
Fatigue	PTSD / mental Health, Medication, Sleep Apnea, anemia, thyroid disorder.
Memory / cognitive	PTSD / mental Health, Medication, TBI
Sleep Disturbance	PTSD, Sleep Apnea, Insomnia, Narcolepsy, Restless Legs Syndrome, Shift Work
Joint pain	Arthritis, such as rheumatoid arthritis and osteoarthritis, DJD infection, and extremely rarely it can be a cause of cancer of the joint.
Skin Disorders	Less than 5% of the body/expose area. Of a known cause, fungal, bacterial, or parasitic (plant or insect)

Preparing a claim for an undiagnosed illness

Any claim under 38 CFR § 3.317 can be very hard, but a claim for undiagnosed illness can be one of the hardest. Some veteran service organization representatives (VSO reps), agents, and lawyers have a hard time preparing these claims and working an appeal if it becomes necessary. That is why you, the veteran, will need to get a lot of paperwork done to help your POA with your claim --even more than in most claims. The veteran is the one who knows the times he/she went to the doctor's office for the symptoms, and he/she is the only one who can write about the symptoms and how they are affecting his/her life. If you went to non-VA doctors, you must get the records, fill out a VA Form 21-4142a, and list all of the doctors that have treated your symptoms since the service.

Use the information in this chapter to help prepare a claim for undiagnosed illness or for specific symptoms which have not been associated with any diagnosis.

If you have a diagnosed illness with the same symptoms and it is not a medically unexplained chronic multi-symptom illness as outlined in the regulation, then you should file under a different section of VA regulations. You may or may not have a 38CFR§ 3.317 (a) claim for presumptive service connection.

Key elements that should be established in your claim

To receive compensation for an undiagnosed illness due to your service in the Gulf War, you will need to include/prove some of the following to the VA:

1. US military service in the Southwest Asia Theater between 2 Aug, 1990 and the current date*.

2. You have an undiagnosed illness of some type. (You cannot just claim "Gulf War Illness.")

3. You have "Objective Medical Evidence" as per § 3.317(3)
    a. Records from work showing time lost due to the symptoms you have.
    b. A detailed statement from you on the symptoms. See section on Form 21-4138.
    c. A detailed statement from others that have firsthand knowledge of you and your conditions(s) and service.

4. All medical records for the symptoms that the doctors could not diagnose.

Use your DD214, and have your VSO or the VA certify it before THEY fax it to the VA Regional Office (VARO). Also, send in a 21-4138 stating what unit you were in. You may say: B Btry, 4th BN 5th FA, 1st ID, Ft. Riley Kansas, but it may be better if you did it like this: 2nd Battalion of the 505th Parachute Infantry (UIC WABVA0). If you are submitting a claim for PTSD, it may be best to reference the UIC on the orders sending you to and from the unit and theater of operations. Sometimes claimants are told they were not in the Gulf War, and this attention to detail will help stop that. Remember you are working to win at the VBA and/or BVA.

Why do I need that?

You need to understand what it takes under the regulation of presumptive to be granted a claim. Below is the wording from the case of Gutierrez v. Principi, 19 Vet.App. 1 (2004)[6], slightly changed so it is in line with the regulation as of today's date:

> *Section 1117 of title 38 of the U.S. Code provides for entitlement to compensation on a presumptive basis to a Persian Gulf War veteran who complains of having an undiagnosed illness or illnesses that are 10% or more disabling during the presumption period established by the Secretary. 38 U.S.C. 1117(a)(1)(A) and (B). Pursuant to section 1117(d)(2), the Secretary has promulgated 38 C.F.R. 3.317, which provides, in pertinent part: (a)(1) Except as provided in paragraph (a)(7) of this section, VA will pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of a qualifying chronic disability, provided that such disability:(i) Became manifest either during active military, naval or air service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10[%] or more not later than December 31, 2021; and (ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.*[7]

[6] Gutierrez v. Principi, 19 Vet.App. 1 (2004)

[7] 60 FR 6665, Feb. 3, 1995, as amended at 62 FR 23139, Apr. 29, 1997; 63 FR 11122, Mar. 6, 1998; 66 FR 56615, Nov. 9, 2001; 67 FR 78979, Dec. 27, 2002; 68 FR 34541, June 10, 2003; 71 FR 75672, Dec. 18, 2006; 72 FR 68507, Dec. 5, 2007; 75 FR 59970, Sept. 29, 2010; 75 FR 61356, Oct. 5, 2010; 75 FR 61997, Oct. 7, 2010; 76 FR 41698, July 15, 2011; 76 FR 81836, Dec. 29, 2011; 77 FR 63228, Oct. 16, 2012

Manifestations of undiagnosed illnesses are presumed service connected unless there is affirmative evidence that an undiagnosed illness was not incurred in service or was instead caused by a supervening condition. See 38 C.F.R. §3.317 (a) 7. What this means is that you cannot have had the symptoms before you deployed. It also means that, after you came home, something could not have happened that could cause the same symptoms. This is where veterans using these pilot studies can be harmful to their claims for undiagnosed illness. If someone tells you that a pilot study shows your illness is caused by "X" due to Dr. Z's study, and then you tell your doctor or VSO, the VSO inputs it into your file. Your claim for undiagnosed illness will more than likely be denied because your symptom now has a known cause. The law is clear that once you have a known cause, you cannot be given a grant under § 3.317; that is, unless you use the large studies and the benefit of the doubt rule with a good nexus statement.

> *Thus, in order to establish service connection under 38 U.S.C. §§1117, 1118, and 38 C.F.R. §3.317, a claimant must present evidence that he or she is a Gulf War veteran who:*
>
> *(1) Exhibits objective indications;*
> *(2) Of a chronic disability such as those listed in paragraph (b) of 38 C.F.R. §3.317;*
> *(3) Which became manifest either during active military, naval, or air service in the Southwest Asia theater of operations during the Gulf War (note: in the gulf), **or** to a degree of 10% or more not later than December 31, 2021; and*
> *(4) Such symptomatology by history, physical examination, **and laboratory tests** cannot be attributed to any known clinical diagnosis, except a diagnosed medically unexplained chronic multisymptom illness. 38 U.S.C. §1117; 38 C.F.R. §3.317(a).*

The one thing that many veterans need to remember is that their symptoms need to meet the **10%** rating level before the VBA will grant a service connection on a presumptive basis. This means that you can have everything in the records to prove the claim, but it may not meet the 10% disabling rating in the regulation. There is a court case on this with a GW veteran who has a diagnosis of Fibromyalgia (FM). He refused any treatment for it, so he was not granted his claim. The 10% level of FM requires some type of treatment, and each level depends on how well the treatment works. On a direct basis, a veteran can get a 0% rating. A VSO rep can assist with likely ratings as your prepare your claim.

Objective Medical Evidence

This has always been the one part of the claims file that the VBA does incorrectly if the raters are unaccustomed to GWI. The difficulty is that there are so few of these claims and the standards for this to be used are lower than in most every other type of claim. Very few claims use the *time lost from work* or *the seeking of treatment with no diagnosis*. You need to make sure the examiner addresses it right for an adequate exam, too.

To have a better chance of winning, you need to include objective medical evidence in your claim from the start. If you are on the appeal, you can work and get it in now. The medical reports and work reports are the most important ones. For every doctor and hospital you went to that is not a VAMC, you will need to fill out a VA Form 21-4142. Work to get the records yourself, too. That is because if the doctor's office asks the VA to pay anything for a copy, the VA will not, and those records will therefore not get in your file. You will get a letter telling you this and asking you to get the records. Often the VBA will then deny the claim and tell you that you have one year to get the records. You are now behind the eight ball if you let this happen. So get the records first. That is why you filed the "intent to file" in the first place – to buy yourself the time to do this kind of work. You will need to address these records in your VA Form

21-4138. This will help your claim and will make your statement look much better. It will guide the rater over the history of your illness, if he reads it. The examiner is to read this information, too, although most do not. This is where you can find an error in the claim, and the exam can become inadequate.

This is what the law calls for. [8]

"Objective indications of chronic disabilities" include both "signs" in the medical sense of objective evidence perceptible to an examining physician and other, non-medical indicators that are capable of independent verification. Non-medical indicators include, but are not limited to, such circumstances or events as time lost from work, evidence that a veteran has sought medical treatment for his or her symptoms, and evidence affirming changes in the veteran's appearance, physical abilities, or mental or emotional attitude. As you might have noticed, we used the wording from the Federal Register. That is the only place you will find how some of the terms in the regulation are defined. It is how VBA and/or Congress meant to use it, and it is sometimes best to use the Federal Register in your appeal for the intent of the regulation.

Lay statements (VA form 21-4138) from individuals who establish that they are able from personal experience to make their observations will be considered as evidence if they support the conclusion that a disability exists. Objective indications will assist in determining both the actual presence of a disability and the extent of impairment caused by the disability. Some of the best statements come from the veteran's (ex) employer/supervisor(s) and (ex) spouse.

List your signs and/or symptoms, and separate out those which are undiagnosed

List out each of the symptoms that you have; a computer spreadsheet will work the best for this. As you list each symptom, include the date it first appeared or when you went to the doctor. The history section does have the list if you need to look back, but you will find it is best to be using your medical file, since it will have a list of signs and symptoms. Once you have all of your symptoms listed, sort out those which are undiagnosed and those which are part of a diagnosis. Some symptoms may be a part of a CMI, PTSD, or some other illness like GERD, sleep apnea (SA), Major Depression Disorder (MDD), Crohn's Disease, cancer, coronary heart or artery disease -- to name a few. Your doctor or nurse may be of some help here. You need to remember that CMI's of partially understood etiology and pathophysiology, such as diabetes and multiple sclerosis, cannot be claimed under this section, nor can you claim any of their symptoms.

If you have a diagnosis, such as Chronic Fatigue Syndrome (CFS), remember to list only those symptoms which are *not* CFS (or any other diagnosis) in your claim for undiagnosed illness. You may claim both the CFS and the completely undiagnosed symptoms, but they are separate issues in the VA's eyes. If you confuse the issues in your claim, you may delay your claim, or the VBA may combine everything under one claim. It may even increase your **chance of being denied.** CFS does have a lot of symptoms under it.

There is a presumptive end-date for the last date for your symptoms to manifest or to be reported in medical records. That date is now December 31, 2021 for the symptoms to manifest, but you may file your claim after that date as long as you have a record of symptoms appearing earlier than December 31, 2021. You need to go to the doctor to find out what is causing the symptoms as a part of the claim. You

[8] 60 FR 6665, Feb. 3, 1995, in the appeals go back to the FR and the 38 U.S.C 1§§117, 1118. The Board and Courts look at the law being applied right.

need to ensure this is for more than six months and that the doctor is doing tests to rule out other illnesses. For example, while a skin disorder of unknown causes accrue at higher rates you need to make sure that your doctor runs tests on the rash and doesn't just do the "look and say" type of DX (diagnosis). The other aspect you need to understand is there are many medical terms used to describe a skin rash, but the courts and the FR have said that you need to be diagnosed. A descriptive term is not a diagnosis. [9]

It is important to remember that in the Federal Circuit, Joyner v. McDonald, 766 F.3d 1393 (Fed. Cir. 2014) held that a medical professional does not have to have eliminated all possible diagnoses before the veteran can be compensated for a disability due to an undiagnosed illness. Refer to the Claims 101 chapter for details related to filing your claim and forms needed.

Critically Important Claims Protocol

Sometimes veterans have both diagnosed and undiagnosed symptoms which can be claimed under §3.317(a). Once a symptom is established and claimed as a diagnosed illness, it may no longer be claimed as part of an undiagnosed illness. Some of the diagnosed conditions may still be claimed due to the exposures you had. This is where the large VA studies will work for you. Remember that the pilot studies will not work in a claim; only large peer reviewed studies maybe helpful. See the Claims 101 chapter. This will only work in some cases; it is only appropriate on a case-by case bases.

What this means is that if you wait to file a claim for undiagnosed sleep disorder and your records show that you do have a clear diagnosis of sleep apnea, the claim will not be granted. The VBA will tell you that your undiagnosed sleep disorder is denied because this disability is determined to result from a known clinical diagnosis of sleep apnea. The same thing will happen if you file for headaches and have in your records a diagnosis of migraines. A diagnosis of tension headaches should give a reason; sometimes they can be claimed as secondary.

In the example above, you do not have a claim under §3.317 for an undiagnosed sleep disorder, and you cannot file the sleep apnea under §3.317. It is a diagnosed illness and not a presumptive illness under this section of the regulation. There is an article on the NGWRC website on sleep apnea as a secondary to medication side effects for mental health. VSOs will need to use the VA 2005 study found there, too. Make sure your VSO rep reads this article before you try to file a claim.

Sorting out your symptoms and your diagnoses is very important in building a strong claim for compensation under §3.317(a)(2)(i)(A). If you have a medically unexplained CMI diagnosis, you need to file for that. The CMI claim is not as hard to get granted has a UDX.

You will also need to look at secondary service connection for some of your symptoms. This is often overlooked by veterans and their POAs. A simple example is a veteran with a right knee and right foot injury that he is rated for. Over the years, his hip goes out due to the poor walking from the right leg injury as per his medical files. He can now be granted service connection for this on a secondary basis. This is what the website on sleep apnea is talking about.

[9] NEGRON-JIMENEZ v. SHINSEKI October 21, 2009 I use this single judge ruling as it brings out the skin issue in a GW-claim.

Many veterans have a problem with GERD. One of the reasons that I feel that such GW vets have GERD is all of the medications they are on[10]. See the NGWRC write-up on sleep apnea that is on the website.

In addition, skin disorders, chest pain, heart palpitations, abnormal weight loss, menstrual disorders, and any other symptoms that fall under the thirteen *signs and symptoms* should be explained and defined to the best of your ability before you begin this type of claim.

Please remember that each symptom must be a '*medically unexplained symptom*' in order to qualify you for compensation under 38 CFR §3.317(a)(2)(i)(A). Other medical diagnostic terms with similar meaning to '***medically unexplained***' are '***functional***', '***somatoform***', **and** '***idiopathic.***' If your doctor uses any of those words to define the cause of your symptoms, or to diagnose them, they are usually '*medically unexplained.*'

As you prepare your claim, remember to list all your symptoms which fall under these categories and each diagnosis. Match up the symptoms to the diagnoses you have so that you don't include a 'diagnosed symptom' in a claim for undiagnosed illness. If you also have a Traumatic Brain Injury (TBI) or a Post-Traumatic Stress Disorder (PTSD) diagnosis, consult with your doctor and your VSO rep about where to assign overlapping symptoms which may result from more than one of those causes. You may be able to list symptoms under more than one diagnosis, **but you may never list those same symptoms as 'undiagnosed.'** If **you were diagnosed with Type 2 diabetes** before filing under this section, be aware that most undiagnosed symptoms will be ruled out.

While the VA is denying many of the claims unjustly, you need to make sure to file them correctly. With the many years of helping veterans, we have developed an example for you to use on one type of claim.

Here is an example for a veteran:

Diagnoses the veteran has	*Symptoms the veteran has*
Chronic Fatigue Syndrome (CFS)	Unrefreshing sleep *CFS*
	Multi-joint pain without swelling or redness *CFS*
	Muscle pain *CFS*
Irritable Bowel Syndrome (IBS)	Daily Cramping *IBS*
	A sore throat that is frequent or recurring *CFS*
Undiagnosed symptoms	Significant impairment of short-term memory/ concentration CFS
	Diarrhea some days *IBS*
	Constipation other days *IBS*
	Bloating *IBS*
	Mucus in stool *IBS*

In the above case, the claimant has been diagnosed with CFS and IBS**.** The claimant would file for both issues using the Gulf War regulation *38 CFR §3.317(a)(2)(i)(B).* The claimant will not file a claim for symptoms related to either CFS or IBS. The claimant will make a total of two claims: CFS and IBS due to his service in the Gulf War as per *38 CFR §3.317(a)(2)(i)(B).* It is important that this wording is together with these illnesses on your 21-4138 for each illness.

[10] http://www.mayoclinic.org/diseases-conditions/gerd/expert-answers/heartburn-gerd/faq-20058535

Remember: adjudicators are not doctors, and these are unusual claims; medical examiners do not make legal rulings like determining if a condition is a presumptive. The examiner is to tell the Compensation and Pension (C&P) adjudicator only what is asked of them. Do not bring the 'Notice to the Examiner' to your exam as the examiner already has it in your file. If you MUST be diagnosed with the CMI before, you file and before the exam, bring the diagnosis and the testing that was done -- especially if it was outside of the VA. You can dispute the exam in your NOD. Remember no matter how nice comp & Pen examiners are during your examination seem, they are not your friends and most likely do a poor job on your exam. Be honest and frank with them. They are told to be nice. They are doing their jobs.

Make sure your VSO cover letter addresses the regulation that your claimed illness falls under, such as that it is a presumptive illness under §3.317(a)(2)(i). If you don't help them find the information they need to resolve your claim fairly, there is a good chance they won't. It is your VSO rep who will be able to talk to the rater right away if something goes wrong, but only if he is in the loop. Keeping the VSO reps at the VARO in the loop is what you need to do; they are the only ones working the claim for you, unless you have a claims agent or lawyer. On occasion, VSO reps have left this wording out, and valid claims were subsequently denied. Remember that a problem with some GW vets is their cognitive skills due to their illnesses, so please work with your VSO rep.

After you have listed each diagnosis, continue with individual symptoms which are undiagnosed. Each of the undiagnosed symptoms is filed in a similar fashion. "I am filing a claim for my chronic diarrhea as a presumptive service connected disability due to my service in the Gulf War per 38 CFR §3.317(a)(2)(i)(A), and it may also be a CMI under §3.317(a)(2)(i)(B)(3). The Form 21-526b (claim for disability compensation) will let you list each symptom due to the Gulf War, but you will need to also fill out a 21-4138 (statement in support of claim) and list out each of your symptoms in a statement. Fill out a separate 21-4138 for each symptom so the raters can track that symptom better.

CHAPTER III

Medically Unexplained Chronic Multi-symptom Illness Claim [38 CFR §3.317(a)(2)(i)(B)]

Introduction

You must first have a proper diagnosis of these CMI's before you even file a claim.

The courts and the regulations does allow the VBA to rebut presumption per 38 U.S.C §1113 and 38 CFR §3.317 (a)(7). They can call into question the diagnosis you have if it does not have a good rationale, is not done by an expert in the field of medicine, or does not follow a standard (well approved) up-to-date case definition of that CMI. The expert has to note any and all illnesses in your records over the years and address why they are not the cause of your CMI. Remember that these are illnesses of exclusion, that is, of unknown causes.

This chapter covers only *diagnosed* CMIs covered by [38 CFR §3.317(a)(2)(i)(B)]. To make a claim for *undiagnosed illness* in Persian Gulf veterans, please go to Chapter II. This chapter of the guide is about the diagnosed, medically unexplained chronic multi-symptom illness (CMI) such as, but not limited to, chronic fatigue syndrome (CFS), fibromyalgia (FM), and functional gastrointestinal disorder (FGID) which includes Irritable Bowel Syndrome (IBS).

If you have both diagnosed CMIs and undiagnosed symptoms, make sure to file a claim for each diagnosis first. Never include symptoms of your diagnosed CMI's (such as CFS, FM, or IBS) in your claim for undiagnosed illness.

If you confuse the issues in your claim, that may delay your claim. It may even increase your chance of denial by confusing the adjudicator. Some veterans have success by filing only for their diagnosed CMI's first. Then, after those claims are granted, they go back and file for any remaining undiagnosed symptoms.

What is a medically unexplained chronic multi-symptom illness?

38 CFR §3.317(a)(2)(i) reads as follows:

> For purposes of this section, a *qualifying chronic disability* means a chronic disability resulting from any of the following (or any combination of the following):
>
> *(A) An undiagnosed illness;*
>
> *(B) A medically unexplained chronic multi-symptom illness that is defined by a cluster of signs or symptoms, such as:*
>
> *(1) Chronic fatigue syndrome;*
>
> *(2) Fibromyalgia (FM);*
>
> *(3) Functional gastrointestinal disorders (excluding structural gastrointestinal diseases).*

Sub-paragraph (B)(1-3) is this chapter's topic. Y*our claim is **not** limited to* CFS, FM, or functional gastrointestinal disorders. Any diagnosis you have which meets the '*signs and symptoms*' criteria and which is also medically unexplained chronic multi-symptom can be used to file a claim under 38 CFR §3.317(a)(2)(i)(B).

Medically unexplained has a very similar meaning to 'syndrome', '*functional*', '*somatoform*', and '*idiopathic'* in medical terminology when diagnosing a condition. If your doctor diagnoses you with something, and you think it may be related to your service in Iraq or the Persian Gulf, it is appropriate to ask more questions about the diagnosis, to find out if it is *medically unexplained, syndrome, functional*, or *somatoform*. If the illness is also *chronic* (you have it for longer than six months), and *multi-symptom*, either by itself or together with other medically unexplained conditions, then it may be part of your claim for VA compensation under 38 CFR §3.317(a)(2)(i)(B). If you are diagnosed with a medically

unexplained chronic multi-symptom illness by your doctor, he will need to state in your record that it is medically unexplained. Your POA will address a part of the M 21-1 on this, too, in his cover letter.

Other MUCMI's?

All illnesses named in 38 CFR §3.317(a)(2)(i)(B), or which meet the same criteria, have been determined by law, after scientific review of medical studies, as being 'at least as likely as not' connected to service in the Southwest Asia Theater (SWA) in the year 1990 or later. So in that sense, whether you have 'undiagnosed illness', CFS, FM, IBS, FGID or a similar *somatoform* diagnosis not specifically named in the CFR, you have 'Gulf War Illness.'

What makes these 38 CFR §3.317(a)(2)(i)(B) diagnoses different from undiagnosed illness?

In truth, each of the CMI's covered by 38 CFR §3.317(a)(2)(i)(B) contains a subset of symptoms which closely overlaps at least one of the symptoms associated with Gulf War Illness. However, once you have the diagnosis, you are required by law to file for compensation benefits under that diagnosis, not claim it as 'undiagnosed illness.'

Why are diagnosed CMI's done as a separate claim from undiagnosed illness?

The regulation 38 CFR §4.14 Avoidance of pyramiding[11] is why you cannot claim the same symptom under two different illness. If you file in a way that is essentially asking the VA to compensate you twice for the same symptom (i.e., once as part of CFS and again as part of undiagnosed illness), it is highly likely that your claim will be delayed, denied, or both.

What diseases are specifically mentioned in 38 CFR §3.317(a)(2)(i)(B)?

The section mentions CFS and FM by name. It also lists several functional gastrointestinal disorders: irritable bowel syndrome (IBS), functional dyspepsia, functional vomiting, functional constipation, functional bloating, functional abdominal pain syndrome, and functional dysphasia. The illness of CFS, IBS, and FM are the three the VBA has presumed since the regulation change in July 2003; they are also the only ones in 38 U.S.C. *§1117* as the examples. As we stated, you may claim another diagnosis per medically unexplained CMI which meets the criteria outlined in the 38 CFR §3.317 note section.

What diseases other than those named in 38 CFR §3.317(a)(2)(i)(B) are allowed?

There is no list for the 'other' diagnoses. Each regional office, and frequently each individual claim adjudicator, is on their own when trying to determine if a diagnosis meets the criteria of *medically unexplained CMI* and *the 13 signs and symptoms*, or not. While you must, by law, file any diagnosis under 38 CFR §3.317(a)(2)(i)(B) whether that particular diagnosis is listed there or not, the burden of proof is more like undiagnosed illness. This is why you need to be diagnosed by an expert who gives a good rationale and also states that the illness is a medically unexplained CMI. He will need to state the tests done to rule out other illnesses and how he came to this diagnosis along with how he is an expert in the field.

---

[11] § 4.14 Avoidance of pyramiding.
The evaluation of the same disability under various diagnoses is to be avoided. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent, so that special rules are included in the appropriate bodily system for their evaluation. Dyspnea, tachycardia, nervousness, fatigability, etc., may result from many causes; some may be service connected, others, not. Both the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation, and the evaluation of the same manifestation under different diagnoses are to be avoided.

Adjudicators are not doctors; if it is not on their list, they may simply deny it unless you go the extra mile to prove the case to them. It most likely will be denied, so get ready for a DRO formal personal hearing (there is never anything other than a formal one) and then the Board. Use the law and not your "feeling."

The VBA Disability Benefits Questionnaires (DBQs) is not set up for diagnosing illnesses but for rating the illness as to the percentage of impairment to one's earning power, as you are comped for "loss of earning power." You need to make sure to write out a good 21-4138 and have your diagnosis done by a doctor who is an expert in the field. The doctor needs to list the tests to rule out other illnesses and the case definitions used with the year of the definition.

If you have been diagnosed with at least one CMI – CFS, FM, IBS, some other functional gastrointestinal disorder, or any diagnosed condition which falls under the CMI rule – make sure you file for ***each one*** as a separate, unique presumptive service-connected disability. See the example.

How are Chronic Fatigue Syndrome (CFS) and Fibromyalgia (FM) alike?

Fibromyalgia and chronic fatigue syndrome are very similar illnesses. In fact, up to 70% of their symptoms overlap. It is this overlap and § 4.14 Avoidance of pyramiding where many veterans have problems in their claims. This is where one needs to fight for the "most favorable outcome" if you think the VBA under-rated you.

Overlapping symptoms include:

A. muscle pain
B. fatigue
C. cognitive dysfunction
D. sleep disorders
E. joint pain

Why is it so important to get diagnosed with CFS (if you already have FM)?

The VA may grant you a 100% service-connected disability rating on CFS by itself: $3,197 per month, if the symptoms are severe enough. The highest rating allowed for FM is 40%, $702.00 per month. That is a large difference in untaxed compensation every month for two different veterans with dependents – identical symptoms but different diagnoses (the FM diagnosis being incomplete or incorrect), all because you got the wrong diagnosis, FM alone, when you really have CFS (either instead of, or in addition to, FM).

Many veterans who meet the criteria for CFS never get properly diagnosed for it. Instead, they are diagnosed with FM only, denying them the compensation they deserve because of that.

Finding the right doctor

The more you know about IBS, FM, and CFS, the better prepared you'll be when trying to find a doctor. It's a difficult process, and you may need to educate a few health-care professionals along the way. Be sure you know the list of symptoms and become familiar with the various ways these CMI's are diagnosed as well as treated. Informing your doctor of the VA's War Related Illness and Injury Study Center

(WRIISC) is one of the best things you can do for getting yourself some help. Your doctor can get help from the WRIISC in diagnosing you as well as determining new treatments.

One problem is that no medical specialty has "claimed" CFS to be within their professional clinical regime, so finding a knowledgeable doctor isn't as easy as with most illnesses. Even fibromyalgia, which is considered closely related to CFS, falls under the auspices of rheumatology. CFS is not well understood, and many health-care providers have a hard time recognizing it. Many advocates will tell you to go to the rheumatology clinic to get a diagnosis for CFS, but most doctors will be inclined only to diagnose FM. In the VAMC, you may not even get that. This means that the burden of finding someone qualified to treat you falls squarely on your shoulders. However, you have a number of resources to use in your search:

1. **Your primary care provider**
   If your regular doctor isn't well educated about CFS, see if he or she is willing to learn or knows of someone who is more knowledgeable.

2. **Other care providers**
   If you see a physical therapist, massage therapist, or chiropractor, ask whom he or she would recommend. http://www.mayoclinic.org/diseases-conditions/chronic-fatigue-syndrome/care-at-mayo-clinic/patient-stories/con-20022009

3. **Referral services**
   Check with this online service. It can help; but be aware you may have to pay for these doctors.
   http://fmcfsme.com/doctor_database.php

Chronic Fatigue Syndrome (CFS)

Chronic fatigue syndrome (CFS) is a condition that makes you feel so tired that you can't perform all of your normal, daily activities. There are other symptoms, too, but being very tired for at least 6 months is the main one. Myalgic encephalomyelitis (ME) is another name for CFS. Sometimes you will see the acronym ME/CFS used to refer to CFS.

The illness is characterized by prolonged, debilitating fatigue and a characteristic group of accompanying symptoms, particularly problems with memory and concentration, unrefreshing sleep, muscle and joint pain, headache, and recurrent sore throat. It is marked by a dramatic difference in pre- and post-illness activity level and stamina.

CFS shares various symptoms with many illnesses, including fibromyalgia, lupus, Lyme disease, sleep apnea, narcolepsy, untreated hypothyroidism, chronic hepatitis, and depression.

The most important thing in a disability claim is that if you notice on your VA problem list the words "Chronic Fatigue," this doesn't mean you are diagnosed with "chronic fatigue 'syndrome'." This is because "chronic fatigue" is a symptom for hundreds of other illnesses. That is why there is a CDC list of illnesses that must be excluded before one can be diagnosed with CFS. If your doctor does not rule these other illnesses out, the VA does have grounds to deny your claim.

As we stated before, CFS did not become presumptive under 38 CFR § 3.317 (a)(2)(i)(B) until the effective date of March 2002. The effective date per the law means that your claim for the illness under this section as a presumptive illness cannot have been granted earlier than this date.

There is no test for CFS, making it difficult to recognize. The process of 'testing for CFS' is really a set of tests to rule things out. Because it is hard to diagnose, many people have trouble accepting their disease or getting their friends and family to do so. Having people who believe your diagnosis and support you is very important.

Your tiredness is real. It's not "in your head." It is your body's reaction to a combination of emotional, environmental exposure and physical factors. In the case of most Gulf War veterans with CFS, it is the body's reaction to a complex combination of unhealthy exposures and conditions acting together to create the illness. A Gulf War veteran has been exposed to over twenty different toxins.

Conditions that Exclude a Diagnosis of CFS

1. Any active medical condition that may explain the presence of chronic fatigue, such as untreated hypothyroidism, sleep apnea, and narcolepsy, and iatrogenic conditions such as side effects of medication.
2. Some diagnosable illnesses may relapse or may not have completely resolved during treatment. If the persistence of such a condition could explain the presence of chronic fatigue, and if it cannot be clearly established that the original condition has completely resolved with treatment, then such patients should not be classified as having CFS. Examples of illnesses that can present such a picture include some types of cancers and chronic cases of hepatitis B or C virus infection.
3. Any past or current diagnosis of:

major depressive disorder with psychotic or melancholic features	bipolar affective disorders
schizophrenia of any subtype	delusional disorders of any subtype
dementias of any subtype	anorexia nervosa
bulimia nervosa	

4. Alcohol or other substance abuse, occurring within 2 years of the onset of chronic fatigue and any time afterwards.
5. Severe obesity is defined as having a body mass index equal to or greater than 45. No "normal" or "average" range of values can be suggested in a fashion that is meaningful. The range of 45 or greater was selected because it clearly falls within the range of severe obesity.

Any unexplained abnormality detected on examination or other testing that strongly suggests an exclusionary condition needs to be resolved before attempting further classification. Considerations of exclusionary conditions are important in research studies attempting to identify causes or evaluate therapies specific for CFS. Exclusionary conditions are important clinically because they are often treatable. However, once all exclusionary conditions have been fully treated, if the patient still meets criteria for CFS, they would be managed clinically as a CFS patient.

Conditions that Do Not Exclude a Diagnosis of CFS

1. Any condition defined primarily by symptoms that cannot be confirmed by diagnostic laboratory tests, including fibromyalgia, anxiety disorders, somatoform disorders, nonpsychotic or melancholic depression, neurasthenia, and multiple chemical sensitivity disorder.
2. Any condition under specific treatment sufficient to alleviate all symptoms related to that condition and for which the adequacy of treatment has been documented. Such conditions include hypothyroidism for which the adequacy of replacement hormone has been verified by normal thyroid-stimulating hormone levels, or asthma in which the adequacy of treatment has been determined by pulmonary function and other testing.
3. Any condition, such as Lyme disease or syphilis that was treated with definitive therapy before development of chronic symptoms.
4. Any isolated and unexplained physical examination finding, or laboratory or imaging test abnormality that is not enough to strongly suggest the existence of an exclusionary condition. Such conditions include an elevated antinuclear antibody titer that is inadequate, without additional laboratory or clinical evidence, to strongly support a diagnosis of a discrete connective tissue disorder.

CFS Diagnostic Resources

The VBA rates CFS under 38 CFR § 4.88b - Schedule of ratings - infectious diseases, immune disorders and nutritional deficiencies 6354 Chronic Fatigue Syndrome. The VBA rule makers stated in the Federal Register that it was placed in this section because "it often involves many body systems, and may be of infectious or immune origin, similar to other diseases in this section." So remember, if you do get rated for CFS, you are being rated under the same section as immune disorders. The VBA uses "A Pamphlet for Physicians" published in May 1992 by the U.S. Department of Health and Human Services, Public Health Service, National Institute of Health (NIH Publication No. 92-484). When you get a diagnosis, you need to make sure that your doctor uses the case definition and the year of it. Since there have been changes since the 1992/94 time period and per the CDC website, there are many case definitions.

Per the VBA guideline for a diagnosis and rating of CFS, the following is what you need. This comes from the Federal Register rule making.

These criteria are based on diagnostic criteria for CFS provided in a pamphlet entitled ``Chronic Fatigue Syndrome--A Pamphlet for Physicians'' published in May, 1992 by the U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health (NIH Publication No. 92-484).

The diagnosis of CFS, according to the NIH pamphlet, requires the presence of two major criteria: (1) The new onset of persistent or relapsing debilitating fatigue or easy fatigability in a person who has no previous history of similar symptoms, that does not resolve with bedrest, and that is severe enough to reduce or impair average daily activity below 50% of the patient's premorbid activity level for a period of at least six months, and (2) other clinical conditions that may produce similar symptoms must be excluded by thorough evaluation, based on history, physical examination, and appropriate laboratory findings. In addition to these major criteria, there must be either at least six of eleven specified symptoms plus at least two of three physical criteria, or at least eight of the specified eleven symptoms. These criteria are set forth in the final rule in a simplified form that is not intended to be materially different from that contained in the NIH pamphlet.

We have established three criteria for diagnosis:

(1) The new onset of debilitating fatigue that is severe enough to reduce daily activity below 50 percent of the usual level for at least six months,
(2) The exclusion by history, examination and laboratory tests of other clinical conditions that may produce similar symptoms, and
(3) The presence of six or more of the following: acute onset of the condition, low grade fever, nonexudative pharyngitis, palpable or tender cervical or axillary lymph nodes, generalized muscle aches or weakness, fatigue lasting 24 hours or longer after exercise, headaches (of a type, severity, or pattern that is different from headaches in the pre-morbid state), migratory joint pains, neuropsychologic symptoms, sleep disturbance.

Following the initial six-month period of illness required to establish the diagnosis, some people function well at home and work, while others are partially or totally disabled by the debilitating fatigue and other symptoms, which often wax and wane. We will evaluate the condition based either on symptoms of the syndrome as they affect routine daily activities or on the periods of incapacitation which result. While a reduction in daily activities of 50 percent for six months is required to establish the diagnosis, thereafter CFS may be manifested at other levels of severity. We have thus provided evaluation levels of 10, 20, 40, 60, and 100 percent; the 10% evaluation will be assigned for the condition when symptoms are controlled by continuous medication. We have also included a note defining incapacitation, a term used in the criteria, as a requirement for bed rest and treatment by a physician.

According to the Centers for Disease Control (CDC), approximately 50 percent of individuals suspected of having CFS show signs of psychiatric illness before the onset of CFS symptoms (``Chronic Fatigue Syndrome", Disease Directory Document #362100, CDC FAX Information Service, November 18, 1993). It is also possible that there may be a secondary mental disorder in some cases that encompasses some or all of the neuropsychologic symptoms used to establish the diagnosis of CFS. This would not, however, negate the diagnosis of CFS.

Keep in mind that you could have a different medically-unexplained chronic multi-symptom illness that may be close to CFS but not CFS. If the doctor diagnoses you with one, make sure he puts it in your records. Having a diagnosis of a "CFS-like medically unexplained chronic multi-symptom illness with symptoms of "-----" will let you to be able to file as a CMI. Your VSO should ask the VBA to use the CFS coding which the doctor said closely matched that illness. Remember that chronic fatigue syndrome can be misdiagnosed or overlooked, because its symptoms are similar to so many other illnesses. Fatigue, for instance, can be a symptom for hundreds of illnesses. Looking closer at the nature of the symptoms, though, can help a doctor distinguish CFS from other illnesses.

CFS Primary Symptoms

As the name *chronic fatigue syndrome suggests,* fatigue is one part of this illness. With CFS, however, the fatigue is accompanied by other symptoms. In addition, the fatigue is not the kind you might feel after a particularly busy day or week, after a sleepless night, or after a single stressful event. It's a severe, incapacitating fatigue that isn't improved by bed rest and that is often worsened by physical activity or mental exertion. It's an all-encompassing fatigue that can dramatically reduce a person's activity level and stamina.

It's important to tell your health care professional if you're experiencing any of these symptoms. You might have CFS, or you might have another treatable disorder. Only a health care professional can diagnose CFS.

People with CFS function at significantly lower levels of activity than they were capable of before they became ill. The illness results in a substantial reduction in work-related, personal, social, and educational activities.

What some doctors and raters forget is fatigue of CFS is accompanied by characteristic illness symptoms lasting at least 6 months. It is not just the fatigue alone but having the other symptoms with the fatigue. That is why we at the NGWRC tell veterans to get an expert to diagnose them and that studying the research can help. These other symptoms may include:

low grade fever	nonexudative pharyngitis
tender cervical or axillary lymph nodes	muscle weakness
muscle aches	fatigue lasting 24 hours or longer after exercise
headaches (of a type, severity, or pattern that is different from headaches in the pre-morbid state)	neuropsychologic symptoms (inability to concentrate, forgetfulness, confusion)
migratory joint pains	sleep disturbance (not sleep Apnea)

How is CFS diagnosed?

A CFS diagnosis is not based on one single test, but a battery of tests, measurements of symptoms, and questionnaires, done to rule out other possibilities and ultimately give the diagnosis of CFS. You may learn more about the protocol from the Centers for Disease Control by following this link: http://www.cdc.gov/cfs/diagnosis/ or from the Mayo Clinic http://www.mayoclinic.org/diseases-conditions/chronic-fatigue-syndrome/basics/tests-diagnosis/con-20022009

You cannot self-diagnose CFS; it can only be diagnosed by a doctor. Many other health problems can cause fatigue, and most people with fatigue may have something other than chronic fatigue syndrome. Filing for CFS without the proper diagnosis will just cause you headaches and a denial. Get a proper diagnosis first.

How is CFS treated?

Sadly, there is no treatment for CFS itself, but many of its symptoms can be treated. A good relationship with your doctor is important, because the two of you will need to work together to find a combination of medicines and behavior changes that will help you get better. Some trial and error may be necessary, because no single combination of treatments works for everyone. This is not because no one is looking. Researchers have been looking for treatments for CFS in the main population before we deployed to Desert Storm. Home treatment is very important. You may need to change your daily schedule, learn better sleep habits, and start getting regular gentle (light) exercise. Counseling and a gradual increase in exercise can help people with CFS improve.

Even though it may not be easy, keeping a good attitude really helps. Try not to get caught in a cycle of frustration, anger, and depression over your pain/ sickness. Learning to cope with your symptoms and talking to others who have the same illness can help you keep a good attitude. Getting out to help others can help, too. Having your doctor work with the WRIISC is your best bet on getting the latest treatments.

Fibromyalgia (FM)

The Department of Veterans Affairs' (VA's) Schedule for Rating Disabilities was updated in 1999 to add Fibromyalgia (FM) as a final rule from the interim rule. The interim rule adopted as final by this document was effective May 7, 1996 and is the earliest anyone can get a "direct" service connection for FM under diagnostic code 5025. There was a change to the diagnosing of FM in 2010. The VBA started to use the DBQ in 2012, and the DBQs are not set up for diagnosing illnesses but for rating the illness for the percentage of impairment to one's earning power (as you are comped for "loss of earning power"). You need to make sure to write out a good 21-4138 and have your diagnosis done by a doctor who is an expert in the field. The doctor needs to list the tests given to rule out other illnesses and the case definitions used with the year of the definition.

As we stated before, FM did not become presumptive under 38 CFR § 3.317 (a)(2)(i)(B) until the effective date of March 2002. The effective dates, per the law, means that your claim for the illness under this section cannot be granted earlier than this date. This means if you were diagnosed in 1998 and denied in 2001, then refiled in 2015 and granted the claim, you cannot file for an earlier effective date (EED) based on a clear and unmissable error (CUE) in the 2001 denial.

FM Symptoms

Fibromyalgia has often been called the "great imitator" because so many of its symptoms mimic those of other disorders. As a result, it can often be difficult to receive a proper diagnosis of FM. However, there are subtle differences between many of the illnesses and FM. Learning more about each of these disorders can help you figure out just how FM is distinct from them.

Tests for FM

A rheumatologist can run the tests which you need to rule out the nine conditions. Only after you test negative for each of these can you be diagnosed with FM. It is possible to have hypothyroidism and FM at the same time. In this situation, you cannot win a claim for FM until the hypothyroidism condition has been treated and stabilized for over six months, and the FM symptoms persist. This is true for many of the other conditions that can exclude a diagnosis of FM. There are some illness that cannot be excluded.

Tender points

During your physical exam, your doctor may check specific places on your body for tenderness. The amount of pressure used during this exam is usually just enough to whiten the doctor's fingernail bed. These 18 tender points are a hallmark of FM.

Blood tests

While there is no lab test to confirm a diagnosis of FM, your doctor may want to rule out other conditions that may have similar symptoms. Blood tests may include:

Complete blood count	Thyroid function tests
Erythrocyte sedimentation rate	Rheumatoid arthritis

Common disorders often mistaken as fibromyalgia which need to be ruled out are:

1. Lyme disease
2. Lupus
3. Osteoarthritis
4. Rheumatoid arthritis
5. Cushing's syndrome
6. Hypothyroidism
7. Polymyalgia Rheumatica
8. Reflex sympathetic dystrophy syndrome
9. Cervical spinal stenosis

Widespread pain and tender points with FM

The pain associated with FM is described as a constant dull ache, typically arising from muscles. To be considered widespread, the pain must occur on both sides of your body and above and below your waist.

FM is characterized by additional pain when firm pressure is applied to specific areas of your body, called tender points. Tender point locations include:

1. Back of the head
2. Between shoulder blades
3. Top of shoulders
4. Front sides of neck
5. Upper chest
6. Outer elbows
7. Upper hips
8. Sides of hips
9. Inner knees

Fatigue and sleep disturbances with FM

People with FM often awaken tired, even though they seem to get plenty of sleep. Experts believe that these people rarely reach the deep restorative stage of sleep (REM). Sleep disorders that have been linked to FM include restless legs syndrome and sleep apnea.

VA Fibromyalgia Examination

Narrative from the VA exam:

For VA compensation purposes, the diagnosis of fibromyalgia (sometimes called fibrositis, primary fibromyalgia syndrome, or myofascial pain syndrome) requires the presence of widespread musculoskeletal pain and tender points (at least 11 positive tender points), Additional findings may also be present[12]: fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud's-like symptoms.

Widespread pain is defined as pain in both the left and right sides of the body, that is both above and below the waist, and that affects both the axial skeleton (i.e., cervical spine, anterior chest, thoracic spine, or low back) and the extremities. Rule out other diagnostic entities that may be responsible for the symptomatology presented.

While some case definitions may require less time to be diagnosed with FM, to be granted a claim on a presumptive basis you must have the symptoms for over 6 months AND you must be on some kind of treatment protocol.

[12] (64 FR 32410 (June 17, 1999) Some individuals with fibromyalgia have only pain and tender points; others have pain and tender points plus stiffness; still others have pain and tender points plus stiffness and sleep disturbance; etc. As a shorter way of stating this, we have used the phrase ``with or without," followed by a list of symptoms, to indicate that any or all of these symptoms may be part of fibromyalgia, but none of them is necessarily present in a particular case.

Co-existing conditions with FM

Many people who have fibromyalgia also may have:

Chronic fatigue syndrome	Depression	Endometriosis
Migraine Headaches	Tension Headaches	Lupus
Irritable bowel syndrome	Osteoarthritis	Restless legs syndrome
Numbness or tingling of the extremities	Painful menstrual periods	Cognitive and memory problems (sometimes referred to as "fibro fog")

Because many of the signs and symptoms of FM are similar to various other disorders, you may see several doctors before receiving a diagnosis. Your family physician may refer you to a rheumatologist, a doctor who specializes in the treatment of arthritis and other inflammatory conditions.

What you can do

You may want to write a list that includes:

1. Detailed descriptions of your symptoms
2. Information about medical problems you've had
3. All the medications and dietary supplements you take
4. Questions you want to ask the doctor

What to expect from your doctor

In addition to a physical exam, your doctor may check your neurological health by testing:

Reflexes	Muscle strength	Muscle tone
Senses of touch and sight	Coordination	Balance

Treatment of FM

Patient education, pharmacologic agents, and other nonpharmacological therapies are used to treat FM. Yoga exercise has been found to improve outcomes for people with FM, as well as a heated swimming pool treatment. The medical community's understanding of this disease is evolving. For more in-depth and up-to-date information, visit the websites of the Mayo Clinic or the Centers for Disease Control. You will need to use the information from their sites with your doctors.

Only three medications (duloxetine, milnacipran, and pregabalin) are approved by the U.S. Food and Drug Administration (FDA) for the treatment of fibromyalgia. Duloxetine was originally developed for and is still used to treat depression. Milnacipran is similar to a drug used to treat depression but is FDA approved only for fibromyalgia. Pregabalin is a medication developed to treat neuropathic pain (chronic pain caused by damage to the nervous system).[13]

[13] Source https://www.niams.nih.gov/health_Info/Fibromyalgia/#d

Sample Statement in Support of the Claim
Sample VA form 21-4138

I am filing for a medically unexplained chronic multi-symptom illness known as Fibromyalgia due to my service in the Gulf War, as I am a Gulf War veteran as shown by my Kuwait Liberation Medal (Iraq Campaign Medal). My Fibromyalgia is a presumptive illness to my service as per 38 CFR §3.317(a)(1)(i). The medically unexplained chronic multi-symptom illness known as Fibromyalgia is also listed in the regulation 38 CFR §3.317(a) (2)(i)(B)(2) Fibromyalgia.

My medical records at the Minneapolis VA Health Care System clearly show that I was first diagnosed with Fibromyalgia in June 2006. My records also show how my PCP doctor sent me to a rheumatologist for all of the tests to rule out other illnesses that could be the cause before he diagnosed me with Fibromyalgia. A rheumatologist is the expert in the field of Fibromyalgia as it falls under their area of studies, and that is why my PCP doctor sent me to one.

My records also show that I am on medication to treat my Fibromyalgia and that I have been since 2006. I turned in a DBQ that clearly shows how I am in pain and refractory to therapy. I ask that you grant me my claim to the maximum allowed under the rating.

Remember the above is just an example, and it is not on the VA Form 21-4138. You must download that form and use it. Form 21-4138 has all of the legal information you need that most veterans leave off their statements when using a blank sheet of paper. When you leave the legal information out of your statement, most likely your statement will not be used in your claim.

There have been times that veterans get others who have served with them to send in statements, too. Sometimes those statements are not considered because the 'supporting' veteran will not give his SSN. The VBA needs this information to ensure that the 'supporting' statement is from a veteran who was in the same unit at the same time.

Functional Gastrointestinal Disorders

Functional Gastrointestinal Disorders are a group of digestive system disorders which are medically unexplained and for which there is no structural cause. The Note to paragraph 38 CFR §3.317(a)(2)(i)(B)(3) states that these:

Functional gastrointestinal disorders are a group of conditions characterized by chronic or recurrent symptoms that are unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract. Specific functional gastrointestinal disorders include, but are not limited to, irritable bowel syndrome, functional dyspepsia, functional vomiting, functional constipation, functional bloating, functional abdominal pain syndrome, and functional dysphagia. These disorders are commonly characterized by symptoms including abdominal pain, substernal burning or pain, nausea, vomiting, altered bowel habits (including diarrhea, constipation), indigestion, bloating, postprandial fullness, and painful or difficult swallowing. Diagnosis of specific functional gastrointestinal disorders is made in accordance with established medical principles, which generally require symptom onset at least 6 months prior to diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least 3 months prior to diagnosis.

A breakout of the list:

Irritable bowel syndrome (IBS)[14]	Functional abdominal pain	Functional vomiting
Functional constipation	Functional bloating	Functional dysphasia
Functional diarrhea	Functional dyspepsia	

All of the above diagnoses count. By far the most common diagnosis among veterans is IBS. Most of this section deals with that diagnosis.

While you think you will get compensation for each of the symptoms, the law does not allow for it. The 38 CFR §4.114 specifies that evaluations of digestive conditions under certain diagnostic codes (DCs) will not be combined with each other or assigned separate evaluations. All of these will fall under this rule.

In July 2011 the VBA amendment changed 38 CFR §3.317(a) (2)(i)(B)(3) IBS to where it now incorporates all of the Functional Gastrointestinal Disorders. Before July 2011, you could only claim the diagnosis of "IBS" that had an effective date of March 2002 for your GI issue. This change let the veteran claim the different parts of IBS if he did not have a diagnosis of IBS.

Remember there are tests that must be conducted to rule out any structural disorders before you can be granted a claim. There are times a veteran is told he may or does have IBS but the tests are not done. If the VA does not perform the test or if you have some other issue that excludes a diagnosis, your claim may be denied.

Functional vs structural disorders and FGID

If there is a *structural* cause in your digestive tract, any symptom connected to it is *not* a functional disorder. *Structural* causes include, but are not limited to, any tear, ulcer, polyp, cancer, or improperly working valve in your digestive tract. The VBA does note in the Federal Register and in the M21-1 manual the following:

> "*Important: FGIDs do not include structural gastrointestinal diseases, such as inflammatory bowel disease (such as ulcerative colitis or Crohn's disease) and gastroesophageal reflux disease, as these conditions are considered to be organic or structural diseases characterized by abnormalities seen on x-ray, endoscopy, or through laboratory tests."*

You cannot, therefore, claim a *structural* disorder under 38 CFR §3.317, as this is clearly stated in the regulation and the intent of Congress. You should seek other guidance before you submit a claim to the VA for compensation related to any *structural* gastrointestinal disorder. In addition, if you are now rated 30% for IBS, filing for GERD will not get you anything, as it is a structural disorder and you need to show a direct link to the service or a secondary link. Next, since you have IBS at 30%, you would need to prove the GERD at 60%, and that will take away your IBS compensation. Very few have been given 60% for GERD.

[14] The signs and symptoms of irritable bowel syndrome can vary widely from person to person.
http://www.mayoclinic.org/diseases-conditions/irritable-bowel-syndrome/basics/symptoms/con-20024578
The symptoms of IBS is made up from many other FGID.

Irritable Bowel Syndrome (IBS)

Irritable bowel syndrome (IBS) is a disorder characterized most commonly by cramping, abdominal pain, bloating, constipation, and diarrhea. IBS causes a great deal of discomfort and distress, but it does not harm the intestines, does not lead to a serious disease, and does not cause cancer. Most people can control their symptoms with diet, stress management, and prescribed medications. For some people, however, IBS can be disabling. They may be unable to work, attend social events, or even travel short distances.

As many as 15 percent of the adult population, or even one in five Americans, have symptoms of IBS, making it one of the most common disorders diagnosed by doctors. It occurs more often in women than in men, and it begins before the age of 35 in about half of people affected.

What are the symptoms of IBS?[15]

Abdominal pain, bloating, and discomfort are the main symptoms of IBS. However, symptoms can vary from person to person. Some people have constipation, which means hard, difficult-to-pass, or infrequent bowel movements. Often these people report straining and cramping when trying to have a bowel movement but not eliminating any stool, or they are able to eliminate only a small amount. If they are able to have a bowel movement, there may be mucus in it, which is a fluid that moistens and protects passages in the digestive system.

Some people with IBS experience diarrhea, which is frequent, loose, watery stools. People with diarrhea frequently feel an urgent and uncontrollable need to have a bowel movement. Other people with IBS alternate between constipation and diarrhea. Sometimes people find that their symptoms subside for a few months and then return, while others report a constant worsening of symptoms over time.

You need to keep track of your symptoms, and you need to be proactive in this with a journal of your illness. This is something we at the NGWRC have told veterans to do for years. Here you need to track your gut pain, constipation, and diarrhea and how frequently they occur. You have to describe it, too -- like loose stools, watery stools, or hard stools.

If your symptoms are so bad that you have bowel movements in your pants, state that and tell your doctor. Your VA PCP can get you pads or Depends that the VA will mail to your home. Let your POA know about this issue, too. It will help in your claim and add a secondary issue to the IBS.

In addition, people with IBS frequently suffer from depression and anxiety, which can worsen symptoms. Similarly, the symptoms associated with IBS can cause a person to feel depressed and anxious.

[15] https://www.niddk.nih.gov/health-information/digestive-diseases/irritable-bowel-syndrome/definition-facts

How is IBS diagnosed?

physical exam / history	blood tests
stool sample testing	x-rays
sigmoidoscopy	colonoscopy

If you think you have IBS, seeing your doctor is the first step. IBS is generally diagnosed on the basis of a complete medical history that includes a careful description of symptoms and a physical examination. Bleeding, fever, weight loss, and persistent severe pain are not symptoms of IBS or any other FGID's and may indicate other problems such as inflammation or, rarely, cancer.

There is no specific test for IBS, although diagnostic tests may be performed to rule out other problems. These tests may include stool sample testing, blood tests, and x-rays. Typically, a doctor will perform a sigmoidoscopy, or colonoscopy, which allows the doctor to look inside the colon. This is done by inserting a small, flexible tube with a camera on the end of it through the anus. The camera then transfers the images of your colon onto a large screen for the doctor to see it.

If your test results are negative, the doctor may diagnose IBS based on your symptoms, including how often you have had abdominal pain or discomfort during the past year, when the pain starts and stops in relation to bowel function, and how your bowel frequency and stool consistency have changed. Many doctors refer to a list of specific symptoms that must be present to make a diagnosis of IBS.

How does stress affect IBS?

Stress—feeling mentally or emotionally tense, troubled, angry, or overwhelmed—can stimulate colon spasms in people with IBS. The colon has many nerves that connect it to the brain. Like the heart and the lungs, the colon is partly controlled by the autonomic nervous system, which responds to stress. These nerves control the normal contractions of the colon and cause abdominal discomfort at stressful times. People often experience cramps or "butterflies" when they are nervous or upset. In people with IBS, the colon can be overly responsive to even slight conflict or stress. Stress makes the mind more aware of the sensations that arise in the colon, making the person perceive these sensations as unpleasant.

Some evidence suggests that IBS is affected by the immune system, which fights infection in the body. The immune system is affected by stress.

The following example is using the dates of the times of the decision. That is why the end date is 2016.

Sample Statement in Support of the Claim VA 21-4138

The Claimant would like to reopen his claim that was filed in February 2010 and decided 22 August 2012 for the issue of irritable bowel syndrome (IBS) that is a medically unexplained chronic multi-symptom illness based on a clear and unmistakable errors made by the AOJ in that they did not apply 38 USC §§1117, 1118, the federal register 68 FR 34541, June 10, 2003 and 38 CFR §3.317 (2010) as well as the case law Gutierrez v. Principi, (2004).

The 8-22-2012 decision is in error by stating that there was no nexus to the claimant's service for the diagnosed IBS. The decision is in error when it stated that claimant's STR did not contain any records of treatment for the IBS, any symptoms, or diagnosis; as this is a presumptive illness, the claimant does not need to have evidence if the illness in his STR. See Gutierrez v. Principi,

(2004). The AOJ did not apply the regulation of presumptive illness of 38 CFR §3.317(a)(1)(i) where the illness at the time of the decision had until 2016 to manifest a degree of 10 percent or more. Instead, the AOJ erred by stating the need for a nexus of the claimant's IBS and that it needed to have started in the service. IBS is a presumptive illness in 38 CFR §3.317(a)(2)(i)(B) (3) Functional gastrointestinal disorders (FGID)(2012).

The claimant's medical records in 2009 and ever since show that he suffers from severe IBS symptoms. His 21-4138s dated March 28, 2010; June 14, 2011; February14, 2012; and April 2016 are all found in his records. The claimant's C&P exam of March 2010 clearly shows that he should be rated the max of 30% as per 38 C.F.R. § 4.114, DC 7319. We included a DBQ of a GI doctor who has been treating the claimant since 2009. The DBQ also show a rating of 30% should be granted under § 4.114, DC 7319.

(Note: This example is done as a CUE only, as there is no way to do this with N&M.)

CHAPTER IV

38 CFR §3.317(c) Infectious Diseases

Introduction

Paragraph (c) of §3.317 grants presumptive service connection for ***nine infectious diseases*** which are endemic to many parts of the world, including *Iraq, Afghanistan*, and the *Persian Gulf*. Please read this chapter carefully if it may apply to you; the requirements for presumptive service connection are not the same for each disease.

The nine diseases are *Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), Malaria, Mycobacterium tuberculosis, Nontyphoid Salmonella, Shigella, Visceral leishmaniasis,* and *West Nile virus*. The manifestation time limits – based on how long each disease may take to incubate – are different, so they are divided up accordingly below.

Many of these diseases can lead to other health issues down the road. Getting the initial disease on the record and connected to your service ASAP protects your rights and your ability to take care of yourself later on.

38 CFR §3.317(c) applies to all veterans who served in the *Gulf War* from Aug 2, 1990 until today (day of this book 2017) and all veterans who served in *Afghanistan* after September 19, 2001. To say "an OEF veteran" would not work, as some operations of OEF were in place other than in Afghanistan.

If you served in some other overseas location and have one of the nine diseases, you may still file a claim under the normal standards using 38 CFR §§ 3.303, §3.307, §3.309 you simply have a higher burden of proof. Remember this if the symptoms started in the service and continued after service, shown by you going for treatment.

Is there a time limit for the symptoms to manifest?

Yes, most of these have one year to manifest, and some may be longer. In most cases, there is a time limit for listing for some presumption of service-connection, and only a few do not have one. However, if there is medical evidence or a doctor's opinion to validate your claim of service-connection, you should file even if you do not meet the presumptive deadline. The VA has a legal obligation to consider a valid claim on its merits, but it will hold you to a higher standard of evidence if you miss the presumptive window.

Six diseases have a one year manifestation requirement for presumption.

Most veterans have one year from their final date of separation to manifest symptoms of the following diseases to meet 3.317(c) guidelines for presumptive service-connection of:

Brucellosis.	*Campylobacter jejuni.*	*Nontyphoid Salmonella*
Coxiella burnetii (Q fever)	*Shigella*	*West Nile virus*

As with all presumptives, the disease must be considered to "have become manifest to a degree of 10 percent or more within one year from the date of separation" to qualify. It is important to get it service-connected as soon as you can, even if it doesn't bother you much today. You don't know when secondary health issues will follow or how bad they will get.

Is Malaria limited to one year, or not?

Malaria is also limited to one year after your discharge for the time being, and it must manifest to a degree of 10 percent in that time. The VA reserves the right to allow a longer presumptive period in the future, without a new law from Congress, if research supports that.

These two diseases have no time limit to manifest

mycobacterium tuberculosis	visceral leishmaniasis

Secondary conditions and filing a claim on them

Recall the chapter on Intent to File and the ways to show service connection. This will come in handy again.

38 CFR §3.317(d) addresses the long-term health consequences of the diseases named in §3.317(c). They are not presumptively service-connected at this time. However, the VA recognizes a potential connection between the infectious disease (listed in column A in the table below) and the associated long-term health effects beside it (in column B). Once you have your rating for one of the *nine infectious diseases*, you should look at the long-term effects associated with it. If any of those impact your own health, then you should seek out medical opinions and pursue a claim.

Before granting any of these secondary claims, the VA must receive a medical opinion from a doctor that: '*it is at least as likely as not that the condition was caused by the veteran having had the associated disease'* (in column A). Therefore, you need the WRIISC and the research on why the illness is in column B.

Do not file the claim until you have the much-needed doctor opinion for the VA, or you may get a doctor's statement on your own and submit it with your claim. While the VA may still get a second opinion from its own doctor, your claim will be stronger with a doctor supporting your '*at least as likely as not*' position. The VA's doctor is more likely to agree with your claim if you already have a doctor supporting you.

Table of Associated Long Term Health Effects

Here is the full table from 38 CFR §3.317(d) showing the associations which were found by the Institute of Medicine at the National Academy of Sciences:

Table to § 3.317—Long-Term Health Effects Potentially Associated With Infectious Diseases

A *Infectious Disease*	*B* *Long Term Health Effects*
Brucellosis	Arthritis. Cardiovascular, nervous, and respiratory system infections. Chronic meningitis and meningoencephalitis. Deafness. Demyelinating meningovascular syndromes. Episcleritis. Fatigue, inattention, amnesia, and depression. Guillain-Barr syndrome. Hepatic abnormalities, including granulomatous hepatitis. Multifocal choroiditis. Myelitis-radiculoneuritis. Nummular keratitis. Papilledema. Optic neuritis. Orchioepididymitis and infections of the genitourinary system. Sensorineural hearing loss. Spondylitis. Uveitis.
Campylobacter jejuni	Guillain-Barr syndrome *if manifest within 2 months of the infection* Reactive Arthritis *if manifest within 3 months of the infection*. Uveitis *if manifest within 1 month of the infection*.
Coxiella burnetii (Q fever)	Chronic hepatitis. Endocarditis. Osteomyelitis. Post-Q-fever chronic fatigue syndrome. Vascular infection.
Malaria	Demyelinating polyneuropathy. Guillain-Barr syndrome. Hematologic manifestations (particularly anemia after falciparum malaria and splenic rupture after vivax malaria). Immune-complex glomerulonephritis. Neurologic disease, neuropsychiatric disease, or both. Ophthalmologic manifestations, particularly retinal hemorrhage and scarring. *Plasmodium falciparum*. *Plasmodium malariae*. *Plasmodium ovale*. *Plasmodium vivax*. Renal disease, especially nephrotic syndrome.

Mycobacterium tuberculosis	Active tuberculosis. Long-term adverse health outcomes due to irreversible tissue Damage from severe forms of pulmonary and extrapulmonary Tuberculosis and active tuberculosis.
Nontyphoid Salmonella	Reactive Arthritis *if manifest within 3 months of the infection*.
Shigella	Hemolytic-uremic syndrome *if manifest within 1 month of the infection.* Reactive Arthritis *if manifest within 3 months of the infection*.
Visceral leishmaniasis	Delayed presentation of the acute clinical syndrome. Post-kala-azar dermal leishmaniasis *if manifest within 2 years of the infection.* Reactivation of visceral leishmaniasis in the context of future immunosuppression.
West Nile virus	Variable physical, functional, or cognitive disability.

It is important to remember that if you have an illness that is listed in "A" and you get it service connected, you and your health care provider need to be aware that the illnesses/long term health effects that are in column "B" can develop later on. You will still need a nexus statement from your doctor for the claim of secondary. The statement needs to have a good medical rational using research or medical knowledge from experts. You and your VSO can just use this section of the CFR when filing the claim for the secondary issues.

It is very important that after you have a C&P exam you get with your VSO and look over the exam right away. If there are, any statements that are wrong, let your VSO know. Then your VSO can address this in a statement on why the exam is inadequate.

There can be a number of reasons for an inadequate exam, but you need to address them before you get your rating decision and / or Statement of the Case (SOC). If you wish to appeal, you have to do this before you go to the Board and keep it up if you go to the court. This is covered more in our section on NOD.

Chapter IV –Claims 101

Introduction

This section is a very basic introduction into claims, thus it is called ‘Claims 101’ as it is for an average Gulf War Veteran needing help understanding how to start a claim. This is not an in depth review on the CFR, U.S.C or the case-law and just how to apply them. That is what a seasoned agent, VSO and lawyer, (your power of attorney (POA)) is for.

This is a down-to-earth how-to guide that is meant to help a veteran, who is working with a “good” POA so that the veteran knows just what their job is when submitting a claim and what it will take to submit a winning claim. From the time, I started the ‘Veterans Information Network’ until now, I have worked to help a large number of veterans understand what is needed in their claims.

The VBA is changing the regulations all of the time, and that is why you need someone who is keeping up on those changes. Even as I write this, it can become out of date before I am done. The VBA can change section 3.317 next week and that could make a lot of difference. The regulations on how you file paperwork with the VBA changed in March 2015.

The examples are just that, examples. Every claim is different and you cannot use any of the examples as your own write up. The other part of this you need to remember is that every VARO is different, while they should not be, they are. While the laws and regulations are all the same, they do not always get applied that way, and after helping veterans in many different VAROs, that point is very true. Some of the VAROs could not care less what the 38 U.S.C. or 38 CFR has to say about lay statements or what the court rulings say. They just do not count the veterans’ lay statements when working the claim, Gulf War or not. This is an error if your statement is credible.

You just need to do the best job from the start, keep doing it, and pointing out the errors and plan to win at the Board of Veterans' Appeals. Someone in a DAV training class told me that once.

Fully Developed Claim[16]

The Fully Developed Claims (FDC) Program was developed to provide a faster decision to veterans who are able to get all of your evidence together to prove their claim (case) for benefits. Your POA might help you with this and insure you are filing with the right evidence. Some POAs will file for everything.

Then when you tell the VA about your government records for your claim, the VBA will get them for you. You will need to provide all private (non-government) medical records that will prove your claim.

The VBA has a form for everything that a veteran needs to be using. The instructions for the VA Form 21-526 EZ does tell you the forms you need for your claims.

The VBA changed the regulation of 38 CFR 3.157 on inferred claims in March, 2015. A veteran now will need to file a claim for the issue that once could be inferred from your statements or exams. Now if it appears as if you are inferring a claim in your statement or in your NOD, the VARO will address it as an Intent to File (ITF). The VARO should send you a notice of the ITF and a 526EZ so that you can file a claim. Do file the claim.

VA Form 21-0966, Intent to File (ITF)

The ITF is to protect the earliest possible effective date claim for your benefits on the claim you want to file. The ITF will allow you NO MORE than one year to get all of the evidence to support your claim. It will be date-stamped when received by the VBA.

> *EXAMPLE: You file an ITF on November 10, 2015 for migraines and you lived in Topeka, Kansas. You now have until November 9, 2016 to have everything date stamped by the Wichita Kansas Regional Benefit Office (VARO). You always want to get a date stamp copy for your file from the VARO. Your VSO will help you to insure this does happen. This is why you should not take the full year as you want to get it in before the end and to make sure you do make it on time to the VARO.*

There are different ways that you can open an ITF:

- Paper VA Form 21-0966, *faxed, given to VSO or in-person interview at a VA regional office or other claim intake center*
- First-time "Save" of online application eBenefits
- Telephone call to 1-800-827-1000 (not the best way)

[16] Claims on exposures and undiagnosed illnesses most likely will not be worked under the FDC fast track. There are some claims as per the guidelines that are not worked under the FDC guidelines.

The VARO will send you some paperwork in the mail after you do this. You do not have to respond to this mail until you have all of the evidence for the claim ready to be sent back to the VARO. If you send or call them and state you are filing for "IBS," you just stated the claim without the evidence you wanted to send in. There is an 80% chance the claim will be denied.

When you file with the VA for the first time, it is an original claim and there is no evidence in the claims file but what you send in. That is why you, the person starting the claim, needs to insure that you include all of the evidence and all forms that you plan to submit.

Example: *You did the ITF for a claim on IBS and the exam is in nine months, then you get a diagnosis for your Fibromyalgia. You send in a new claim that was not planned on for the Fibromyalgia 1 month before the IBS results. The Fibromyalgia claim used the ITF that you wanted for the IBS claim. The IBS claim was sent in after 11 months of you sending in the ITF, but it now is not covered by that ITF and is given the effective date of the date you sent in the claim. If you had waited and sent them both in on the same 21-526EZ you would have had the same effective dates of claim as the symptoms are in the records. Now the IBS at 30% lost more than 11 months of payment.*

Sample Evidence List

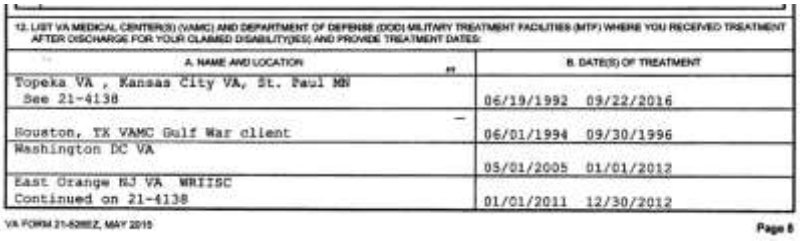
DD214 for each Discharge	**Your Kids' Birth Certificates**	**Work reports of time lost**
Marriage License(s)	**Step kids' Birth Certificates**	**Medical Reports**
Divorce Decree (if any)	**Your VA 21-4138's**	**VA Form 21-526EZ**
VA Studies and nexus letter	**Spouses' VA 21-4138**	**?? There can be more??**

Once you send the 21-526 and the evidence into the VBA, this will start your claims file, this is known as the C-file and uses you social security number. The VBA will retrieve your military and VA treatment records for you and place them into your C-File. I have seen in the last few years that not only the medical files from the service, but that some of the personnel files are now added to your C-file.

VA Form 21-526 EZ

The 21-526EZ needs to be filled out with all of the information of your medical care so that the VBA will have the information to decide your claim. You need to list ALL of the VA hospitals you have been treated at to insure the records are with your C-File. Veterans that are able to use the DoD medical system need to list all of the places and times they used the system. Missing information can cause your claim to get denied as the evidence is not there to support it for you. If you need more room, you can use the VA Form 21-4138.

Example:



12. LIST VA MEDICAL CENTER(S) (VAMC) AND DEPARTMENT OF DEFENSE (DOD) MILITARY TREATMENT FACILITIES (MTF) WHERE YOU RECEIVED TREATMENT AFTER DISCHARGE FOR YOUR CLAIMED DISABILITY(IES) AND PROVIDE TREATMENT DATES:

A. NAME AND LOCATION	B. DATE(S) OF TREATMENT
Topeka VA , Kansas City VA, St. Paul MN See 21-4138	06/19/1992 09/22/2016
Houston, TX VAMC Gulf War client	06/01/1994 09/30/1996
Washington DC VA	05/01/2005 01/01/2012
East Orange NJ VA WRIISC Continued on 21-4138	01/01/2011 12/30/2012

VA FORM 21-526EZ, MAY 2015 Page 6

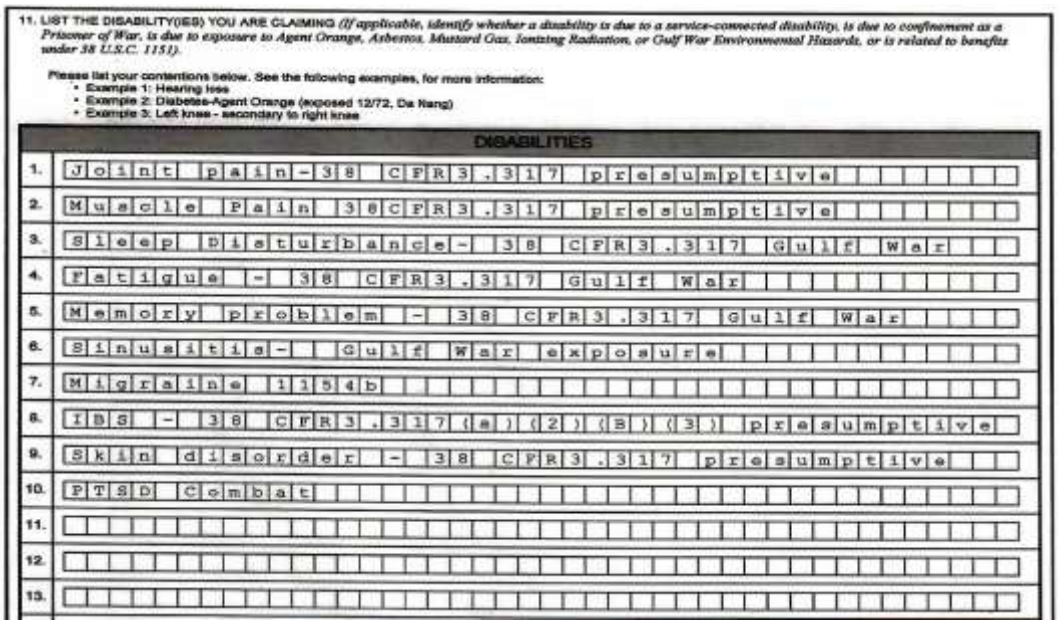
You need to list your Unit or Units you served with in combat. This will help in the combat exposure claims. There is in the law for those that "engaged with the enemy" a different standard at times, 38 U.S.C 1154(b). I will not address 38 U.S.C 1154(b) in this guide as there are set guidelines on this type of claim. As it is more for a direct service connection and veterans that were in direct combat, those veterans need to work with their POAs.

You will need to list all of the disabilities you are claiming. When doing this you will need to address each one of the disabilities to be 1) a presumptive, 2) a direct, 3) due to an exposure, 4) secondary, 5) Section 1154, and so on.

Remember that not everything you have is a presumptive to the Gulf War under §3.317, as we have covered in the guide. The VBA does not look at migraines as a presumptive under §3.317. You can claim it one of two ways; but you need the evidence in your file and a nexus.

Sometimes you may not get a diagnosis of IBS even after years of testing that ruled out everything else, even the food you eat, milk, medications, and other illness. You then claim the symptoms in your 4138; you say it could be a FGID as per §3.317.

This is an example of how to list things on the VA form 21-526EZ.



11. LIST THE DISABILITY(IES) YOU ARE CLAIMING *(If applicable, identify whether a disability is due to a service-connected disability, is due to confinement as a Prisoner of War, is due to exposure to Agent Orange, Asbestos, Mustard Gas, Ionizing Radiation, or Gulf War Environmental Hazards, or is related to benefits under 38 U.S.C. 1151).*

Please list your contentions below. See the following examples, for more information:
- Example 1: Hearing loss
- Example 2: Diabetes-Agent Orange (exposed 12/72, Da Nang)
- Example 3: Left knee - secondary to right knee

	DISABILITIES
1.	Joint pain - 38 CFR 3.317 presumptive
2.	Muscle Pain 38 CFR 3.317 presumptive
3.	Sleep disturbance - 38 CFR 3.317 Gulf War
4.	Fatigue - 38 CFR 3.317 Gulf War
5.	Memory problem - 38 CFR 3.317 Gulf War
6.	Sinusitis - Gulf War exposure
7.	Migraine 1154b
8.	IBS - 38 CFR 3.317 (a) (2) (B) (3) presumptive
9.	Skin disorder - 38 CFR 3.317 presumptive
10.	PTSD Combat
11.	
12.	
13.	

Medical Evidence

Making the rating officer try to find the needle which proves your claim is valid, in a haystack of other records that have nothing to do with your claim, will not help you. Help them to get it right the first time.

Medical evidence is crucial to support your claim. Provide only medical evidence which is relevant for each issue that you are claiming. You need to arrange the medical evidence in the date order and as to each issue that you are claiming. This will make it easier for the Rating Veterans Service Representative (RVSR) and the examiner to see the evidence for the one issue without mixing it up with some other issues.

This is how your lay statement will tie your daily symptoms together with the medical reports. Many Gulf War claims fail for the lack of medical reports. Going to your doctors, and your doctor not finding a cause for your complaints' for the five years you see him/her will provide great evidence for your claim. Not seeing a doctor since you left the service, then filing a claim will not help you.

Research can help in some types of claims and is very important medical evidence if used correctly. You cannot just send in the research and say this is why you need to be rated. I have received a lot of calls on our toll-free line over the years on this. You need your doctor to give a nexus statement that uses the terms like; "at less likely as not 50%/50%" or "more likely than not, better than 50%" rationale statement.

You can submit large scale peer reviewed studies that give a benefit of a doubt as to the cause of a diagnosed illness; VBA must address the study as well as the examiner. The courts have ruled on this. There have been times the VA 30,000 veteran study has been used to grant service connection for Desert Storm Veterans. The veterans had the illness within ten years of discharge, they had a nexus statement, and their POA used the laws and court cases. It also worked for the Desert Storm Veterans using this study as it was conducted on Desert Storm Veterans deployed before May of 1999. As such, it may or would not work on other groups of veterans, as the exposures have changed some over time.

With all of the pilot studies that have been done over the years, not one of them will help in a claim. No animal study will ever help you in a claim. The only studies are large clinical and epidemiological studies.

We have covered in the guide how the law and the courts have ruled as to "non-medical indications which can be independently observed or verified, such as time lost from work, evidence that a veteran has sought medical treatment for his or her symptoms, evidence affirming changes in a veteran's appearance, physical abilities, and mental or emotional attitude, etc." That means you need to have proof of your time loss from work over the years due to the illness. A statement from your boss or the HR department is needed. This is how veterans working a PTSD claim need to work things, too. You need to get the "bad boy" reports from your job(s) to show you have problems at work. A Gulf War claim is the same way. Then you address this in your own 4138. Remember that if the VBA does not use this, it is a reason for an appeal.

Provide a copy of all relevant medical evidence you have from non-VA doctors; this is a must. No matter the type of claim, you must send in a VA 21-4142/4142a on each provider to the VBA to grant permission to obtain medical records from your non-government healthcare providers. While the Regional Office (RO) may always get the files from your private doctors, not turning in the form will

give the VBA a reason to deny the claim. If you get a copy from your doctor to turn into the VBA, make a copy for yourself first.

If a civilian doctor's office asks you to pay for copies of your medical records, let them know that you are a veteran and need the copies in order to apply for Veteran's Disability Benefits. Many doctors and/or their office staff will waive their normal copy fee as an act of good will in honor of your service.

If the doctor's office offers to fax or mail your records to the VA for you, politely decline. Tell them that the VA is notorious for losing and misplacing records. Tell them you are planning to hand bring them to the VARO so that you can get a date stamp receipt from them with your POA's help. You may try to ask your doctor to send them to your VSO/Agent. I did have some veterans do this and it was the only way to get the files. Remember you need to be nice; it works a lot better than getting mad at everyone.

If you are one of the lucky few to have your service medical records (STR), go through them and make notes of the dates in the records which are relevant to your claim. You will need to address this evidence in your lay statement. You can send in a copy of that part of the records supporting your claim. Remember that you need to not only address the date(s) in the file but show the continuance of symptomology after the service with treatment thereafter. For some issues like skin, GERDS, headaches, and breathing disorders, you could get a direct rating.

If you have a record showing that you cut your finger in basic training, or anything else that does not support the claim you are filing, leave it out of the copies you send to the VA. As the finger healed and the record does not show any other problem, the law addresses things like this. Not everything that happened is something you can file a claim for. Filing a claim for the symptoms of your diagnosed illness is adding work for you, your POA, and the VBA.

Disability Benefits Questionnaires (DBQs)

If you use private doctors for most of your care, they will need to fill out Disability Benefits Questionnaires (DBQs) related to your diagnoses and symptoms. If your doctor does not understand the DBQ, it could hurt you in your claim more than it could help. The doctor could fill the form out wrong causing a denied claim or wrong rating. Let your doctor know about the DBQ forms well in advance of your next appointment. It may be best to address it after your doctor has diagnosed you with one of the presumptive illness since the DBQ is not meant to be used to diagnose someone but to rate how disabled you are. This will let your doctor have time to go to the VA website so they can read about the form and learn how to fill it out right. Do have your doctor go online to get a fillable PDF form of the DBQ, the hand written forms are hard to read and do miss a lot of information. When your doctor knows about this beforehand, the test and other information can be found before you come in for the appointment.

Only a doctor may fill out a DBQ if you do not want the VBA to disregard it. It is best that your doctor is your treating PCP for some time and has done many of the tests to rule out other illnesses or that you were sent to a specialized doctor (Neurologist, Gastroenterology, Rheumatologists, and

Dermatologist) that your doctor referred you to. It is best if your private doctor(s) complete the DBQ, place a copy in their file, give you a copy, and submit it by Regional Office Fax Numbers.

The VA may still order a Compensation and Pension (C&P) examination by a VA doctor regardless of the evidence you provide. The VA doctor may want to use DBQs as part of your C&P exam. Do look each of your exams over because many of the Gulf War exams have been inadequate. This was addressed in the 2017 GAO report to Congress; it also addressed how less than 10% of the examiners are trained to even do exams on Gulf War Veteran Claims. When you have an inadequate exam, your POA will need to address it right away in the NOD or Form-9 from that decision or Statement of the Case (SOC). You and your POA will need to keep addressing the inadequate examination until the RO gives you an adequate examination, or that you are given a favorable rating decision for the issue you are claiming.

There are some diagnoses for which no DBQ is available, the Gulf War general medical is one of them. Your private doctor may still provide a medical opinion in support of your claim; however, they will not be able to use a DBQ in relation to that diagnosis. In most of these cases, the VA will require you to get an exam from one of their doctors.

VA Form 21-4138 - Statements in Support of Claim

Your statement needs to flow in some kind of order. Do not jump all over the issue and be right to the point. Start with when the symptom started that your records show and then work up until you filed. VA Form 21-4138 (4138) - Statements in Support of Claim - is the form you have to use to present any lay evidence or personal statements in order to consider them as part of your case. The rules are more relaxed if you do have a true undiagnosed illness, presumptive illness under 3.317 (2). This is covered in their M21-1 Live Manual section on GW claims.

Download the form at http://www.vba.va.gov/pubs/forms/VBA-21-4138-ARE.pdf .

Get statements from those who you served with during the war if there are parts to your claim that will need these statements. Find those you served with you after the war and people who have known you since your discharge. If they saw evidence directly, or if you complained to them, they can write statements about your different symptoms, or about how your behavior changed. While these statements **cannot diagnose your problems**, they can attest to what they observe directly, or they can describe a conversation in which you complained of symptoms or how those symptoms affected you.

Be sure each statement is signed and dated. Make sure it has a line which states: to the best of my knowledge, this statement is true (VA form 21-4138 already includes this). Take a copy of all supporting statements to your Veterans Service Organization Representative (VSO Rep). Make sure you keep the originals. Ensure each of the statements for the Gulf War claim say it is in line with the court case of Gutierrez v. Principi (2004)

Any statement provided by someone other than a health care professional is lay evidence when presented as part of a claim for disability compensation to the VA. Lay evidence is an important part of

a claim, more so for any medically unexplained illnesses, diagnosed or not. The first and most important source of lay evidence for your claim is you. Once you have your symptoms all written out, and a log of when they occur, how often they occur, and how severe they are, you may take that to your doctor as the starting point to build up medical evidence.

If you have headaches

First, keep a log of your own that details your symptoms. Use as much detail and description as you can. Here are a couple example symptoms and how you should explain them in your own log:

If you have *headaches*, do not just say "I had a headache on May 21, 2015," describe details of the headache.

Answer all of the questions that would apply.

What is the onset like? Does sound or light bother you; that is, do you need a dark place?

Are you incapacitated; that is, lie in bed, until the headache subsides or goes away?

How long does it last? What does your doctor say about them?

Do you miss any work/family events or cannot go out for more than a day?

Does it move from one place in your head to another?

Does it make it hard to write, type, or do calculations?

Does it make it hard to walk, use your hands in manual labor, or play an instrument?

What were you doing when the headache started?

Does the headache start during the day, night, or both?

If you have *diarrhea,* do not just say "*I have diarrhea*." Accurately describes your experience; you need to do this as it is the only way to get the proper rating. This is a symptomology-based illness. This will give you something that will help your claim as it is how we were able to get some of the ratings fixed.

State when it first started, when you went to the doctor.

State exactly how many times a day you go to the bathroom.

State how it comes on and what it looks like.

How long it lasts, any pain or discomfort.

State if you have constipation afterward.

State if you take any medication for the diarrhea, whether it's over-the-counter or prescribed, and whether it is working or not.

State if you mess you pants and how frequently and when.

State what tests were done and when.

State what changes in your diet the doctor orders to see if it worked.

For each of the symptoms, you should be going to your doctor at the VA, or at least calling the VA and asking what to do. This is not only to get treatment for your symptoms, but to build a paper trail to support

your case. These calls to the VA usually go into your file. Your medical file establishes a record of the number and severity of your symptoms which helps you establish your claim. Use the Ebenefit to send messages to your doctors, too. These will help in a paper trail, too.

You can use MSWord to write out your statement and edit it and then copy it to the PDF form. Save the form using a new name like "IBS claim" for one and "Migraine" for the other. This way you will know what each one is covering. Have someone read it over for you to insure it is on the point and not some long story. You are addressing an illness and the symptoms, how it is affecting your life today.

Remember that a MUCMI or a UDX is only about the illness that has NO KNOWN CAUSE, so do not try to give it one. When a veteran says their MUCMI or UDX is caused by one type of exposure, it sets that claim up to be denied and will make it harder to fight for a win down the road. So remember that only a doctor can point out the cause of the illness. This is not a long story of everything that went on in the war, and it is not anything of what the government covered up. This is not needed and will hurt your claim; you do not need to set up your claim for the wrong track.

EXAMPLE:

This example addresses an error in an earlier rating decision. The veteran will need to keep fighting both issues to get the earlier effective day.

SAMPLE VA Form 21-4138

I am filing for the medically unexplained chronic multisymptom illness known as Fibromyalgia that is listed as a presumptive illness to my war time service 38 CFR §3.317(a) (2)(i)(B)(2) Fibromyalgia.

My DD214 is proof that I am a gulf war veteran as I was awarded the Kuwait Liberation Medal in 1991 after deploying with A-Co 2/16 INF 1st ID from Ft. Riley KS. It also shows I was awarded the CIB.

My VA medical records at the Minneapolis, MN VA Health Care System clearly show that I was first diagnosed with Fibromyalgia in June, 2006. This came after reporting the symptoms of the illness for years to my doctors starting in 1998 as shown in my VA records.

My records also show how my doctor did finally send me to a rheumatologist for my symptoms. The rheumatologist also conducted many tests to rule out other illnesses that could be the cause of my symptoms before I was diagnosed me with fibromyalgia. I was told by my PCP that a rheumatologist is the expert in the field of Fibromyalgia and it fell under their area of studies and my PCP said that is why he sent me to him.

My VA records do show that I am taking medication to treat my fibromyalgia and that I have been on some form of treatment before 2006. My VA records have shown the treatment has never worked and has been changed many times over the years as I am always in pain.

I have turned in a DBQ for my Fibromyalgia that does show that I am on continuous medication, in pain all of the time and refractory to therapy. I ask that you grant me my claim to the max allowed under the rating of the 40%. That is what my VSO is telling me that I should get.

My agent at the NGWRC told me the VBA made an error when they denied my fibromyalgia claim in 2007. He said I did have the required clear diagnosis at the time of the decision. He said I did not need to have a nexus to my service or to any exposure from the Gulf War which was the reason given for the denial. He said this is covered in the federal register of Jun 10, 2003 when the VBA printed the notice making Fibromyalgia a presumptive illness to service in the Gulf War.

You always want to be honorable in your statement (tell the truth); if the VBA can disprove anything that is in your statement, then the VBA will deny the claim. Then you have to prove everything with all facts and NO lay statement. I did have this happen in a PTSD claim I was helping on; the veteran made up things that were proven not true about his deployment. Also, do remember that the VA presumes you

were exposed to everything. As such, you do not have to bring up any one exposure; doing so will increase your denial likelihood.

VA Form 21-0958 - Notice of Disagreement (NOD)

The first step in appealing a claim is to send your VA Regional Office (VARO) a "Notice of Disagreement" (NOD). As of March 2015, the NOD has to be on the official NOD, VA Form 21-0958. The NOD cannot be a written statement on the VA Form 21-4138 or a letter that states that you disagree with the decision. You must use the VA Form 21-0958 NOD. It will guide you with the information as to the date of the decision that you disagree with, which issues you disagree with, and then why. You have ***one year*** from the date of the VA's notice of its decision to file your NOD with your VARO if it is the first time it was denied. If you miss this deadline, you can only reopen your claim based on new and material evidence or establishing that the VA denial was the product of clear and unmistakable error (which is very difficult to prove). The other exception to these conditions occurs when VA regulations regarding your disability change, with the CMI as to 3.317 in 2002. In that case, you may have the right to re-open your claim based on the change in regulations.

Outline the Errors

You are not helping your claim when you simply dump a pile of loose records on the VA for your appeal. Organize the records and explain their significance in a letter you and your VSO Rep prepare together. Once the VARO makes a decision with respect to your claim, you (and your VSO Rep) will receive a notice of that decision which explains the reasons for the VA's determination. Read the notice carefully, and discuss it with your representative. Your appeal should address specific reasons why the VA should not have denied a claimed condition, why an awarded rating is too low, or why an effective date is too late. Everything is based on the laws, court cases, and the evidence in your file at the time of the decision. Remember that the "internet pros" do not know most of this or how the court cases will get applied to your claim. Many VSOs have a hard time with that. This is how the benefits are changing all of the time. One court decision can change how the regulation is applied.

You need to work with your VSO on writing a good NOD. If your VSO cannot do a Gulf War NOD, it is a good time to shop around. Do not look too long. Remember most first time claims will get denied at the VARO no matter what. You will need to address the errors by the regulation and court cases. You have to address evidence that was overlooked that proved your case. You need to remember the secondary issues, anything you leave out will become a "final" issue after the appeals time runs out.

Example:

> *Your rating decision denied four issues, and you sent in your NOD on only three of the four issues. Then, at the DRO hearing two years after the rating decision was made, you bring up the issue on the denial of number four. The DRO stops you as you are first addressing this issue and goes off the record (stops recording). He states that you cannot bring up this issue as it was not on the NOD or form-9. As such, it is not one of the issues on appeal before the DRO.*

This is true and is why you need to look everything over. In this case, you would need to reopen this missed issue as it became final one year earlier.

Be sure to address that you think the rating should be on the NOD, too. You might be service connected for what you asked for but not at the rate, you should be. You would file this on the NOD, too.

I did include a small part of the write up as an example but not everything.

PART III - SPECIFIC ISSUES OF DISAGREEMENT *(Continued)*

A. Specific Issue of Disagreement	B. Area of Disagreement	C. Percentage (%) Evaluation Sought *(If known)*
Fibromylgia	[x] Service Connection [ ] Effective Date of Award [ ] Evaluation of Disability [ ] Other *(Please specify)*	40%
Sleep Apnea	[x] Service Connection [ ] Effective Date of Award [ ] Evaluation of Disability [x] Other *(Please specify)* Secondary to my issues	50%

11A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

I want a DRO personal hearing on these two issues

I disagree with the statement that I needed to show a "NEXUS" to my service in the Gulf War or to any exposures. My Fibromyalgia is a presumptive illness listed in C.F.R. § 3.317(a)(2)(i)(B)(2) and does not need a nexus.

I disagree with the statement that I did not meet the 10% disabling, as my Agent told me that under the DC 5025 of Fibromyalgia a 10% is only to be on medication after you are diagnosed. My records show I am on medications and that it is not work as I am in pain most all of the time. I am also using the swimming pool three days a week to help with the pain as shown in my VA records too.

I feel the examiner did not know the exclusion factors of Fibromyalgia when he said I did not have Fibromyalgia because my BMI was 23. My Rheumatologists that diagnosed me, told me the examiner is wrong as the BMI is not used to exclude a diagnosis of Fibromyalgia. I know that my Rheumatologists is an expert in the field as Fibromyalgia standards are set in a book that many doctors rely on called 'The American College of Rheumatology's guidelines to diagnose Fibromyalgia'.

SLEEP APNEA

I disagree with the statement that I needed to show a "NEXUS" to my service for my sleep apnea as I filed it as a secondary to my rated conditions. That is, my sleep apnea is caused by and or aggravated by my service-connected condition, or a combination of my service-connection conditions.

The examiner did not address how the sleep apnea can be caused by and or aggravated by my service-connected condition, or a combination of my service-connection conditions. This would include any and all treatment I am receiving, to include the side effects of the medications. How the different issues effect my life, prevent me from doing thing like working out and cause weight gain.

The examiner did not address the side effects of my medications that was sent in with my claim. That my three sleep studies before the medication was normal. The examiner did not address the nexus statement from my doctor and the VA 2005 study on sleep apnea and mental health disorders that my doctor used and my VSO turned in.

The examiner did not address my records on my service connected back, hips and leg disabilities as to how it keeps me from working out. The examiner did not address my service connected sinus problem and how it relates to sleep apnea.

The examiner did not address my statement I sent as evidence for the records or those of my wife.

11B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD?

[x] YES [ ] NO *(If so, how many?)* 2

PART IV - CERTIFICATION AND SIGNATURE

CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

12A. SIGNATURE	12B. DATE SIGNED
Jim Bunker	

PENALTY: THE LAW PROVIDES SEVERE PENALTIES WHICH INCLUDE A FINE, IMPRISONMENT, OR BOTH, FOR THE WILLFUL SUBMISSION OF ANY STATEMENT OR EVIDENCE OF A MATERIAL FACT, KNOWING IT TO BE FALSE.

VA FORM 21-0958, JAN 2016

After the VARO receives your NOD, you should receive a letter that acknowledges your NOD. You will be asked whether you wish to have your appeal sent to the Board of Veterans' Appeals (BVA) in

Washington, DC, or whether you wish to have your claim reviewed on a *de novo* basis. The latter refers to the VA's Decision Review Officer (DRO) program. This is an informal appellate process within each VARO. The DRO has the authority to reverse or modify a VA rating decision. We recommend that you seek a DRO review before you request a BVA appeal.

The DRO process is frequently successful and is generally faster than going straight to the BVA. If you do not receive a better decision from the DRO, you can still appeal to the BVA. It is best to ask for a formal DRO personal hearing. During the recorded part of the formal hearing, you must ask the VBA to send you a copy of the transcripts and voice recording; it will help you later at the BVA.

Once the DRO has made a decision or has received your request for BVA consideration, the VA will issue a "Statement of the Case" (SOC). This document will explain the VA's decision(s) in detail. You have 60 days from the date of the SOC to file your substantive appeal to the BVA on VA Form 9: http://www.va.gov/vaforms/form_detail.asp?FormNo=9. Your appeal will be certified and forwarded to the BVA for consideration.

VA-Form 9 Appeal to the Board

When doing the VA-Form 9, you, and your POA need to address just what regulation was not applied correctly and what evidence was not used in the decision. You need to point out the studies, exams, your files, if the exam was wrong, why, and the court case that addresses these points.

A. ☐ I WANT TO APPEAL ALL OF THE ISSUES LISTED ON THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENTS OF THE CASE THAT MY LOCAL VA OFFICE SENT TO ME.

B. ☒ I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM ONLY APPEALING THESE ISSUES: *(List below.)*

1. Fibromyalgia §4.71a --DC 5025 granting and a rating of 40% as shown by the records

2. Increased rating and earlier effective date for IBS.

10. HERE IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY: *(Be sure to read the information about this block in paragraph 6 of the attached instructions.)*

1. The only requirement for a rating of fibromyalgia is widespread musculoskeletal pain and tender points, as per the VA final rule Federal Register / Vol. 64, No. 116 / Thursday, June 17, 1999 / Rules and Regulations §4.71a --DC 5025 Fibromyalgia 1999. A 40% rating is where the symptoms that are constant, or nearly so, and refractory to therapy as the claimant are.

The regional office has increased the requirement for the 40% rating that the claimant needs with fibromyalgia by adding that the claimant must have a history of " be incapacitating " A symptoms of CFS and not listed under §4.71a --DC 5025 as a part of the regulation.

The regional office in denying the rating also stated that the claimant never had Raynaud's syndrome. In accordance to the regulation as per the final rule the symptoms may or/may not have to happen, but is not required for a rating or a diagnosis.

(Continue on the back, or attach sheets of paper, if you need more space.)

11. SIGNATURE OF PERSON MAKING THIS APPEAL	12. DATE *(MM/DD/YYYY)*	13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY *(Not required if signed by appellant. See paragraph 6 of the instructions.)*	14. DATE *(MM/DD/YYYY)*
	09/07/2016		09/14/2016

VA FORM NOV 2009 **9** Adobe LiveCycle Designer

EXAMPLE PAGE 2

2. The Examiner clearly stated the claimant was painful at all tender points and all muscles, joints too. That the claimant also has fatigue and headaches. The AOJ wrote it this was a reason not to grant award; but this is just as per the regulation to grant service connection for Fibromyalgia.

3. Earlier effective date. This claim stems from reopening the wrongfully denied claim from Fibromyalgia in 2005. In 2005 the AOJ did not use the claimants VAMC records that they was informed of by the 21-526 and 4138. This was a reopen of the denied claim of 1998. The regulation and the law changed on Fibromyalgia as a presumptive in March

A VSO would fill out a Form 646 (page 59-60) to send in with your Form 9, while Agents and Lawyers will do a more detailed brief. It will outline the case and state why the claim should be granted. It would point to evidence supporting the claim and a high rating and the laws too.

When you have a case going to the BVA, you are pointing out the laws and court case(s) that were not applied correctly, the evidence not used, and why your evidence was better. You point out why the VA exam was inadequate. One way is if the examiner used one part of a report but did not use the same report and address the diagnosis you had and the symptoms. This goes beyond this guide.

VA Accredited Claims Agent and Attorney

If you have a claim which has already been denied once, and you are looking for **highly specialized representation** from someone who can spend more time on your individual case, then you may consider an accredited claims agent or accredited attorney to help you pursue your claim.

You may look for accredited individuals in your area using the Office of General Counsel (OGC) database where you would locate VSO Reps, at http://www.va.gov/ogc/apps/accreditation/index.asp .

To change your representative while the case is at the board, you need to show "just cause." You can change once the Board makes their ruling and remands the appeal.

You will need an attorney if your case is going before the Court of Veterans Appeals or to a higher court. If your case is at the Regional Office or Board of Veterans Appeals, either an accredited claims agent or accredited attorney may help you with the case.

Interview anyone you are considering. You may even ask for and contact references before you allow them to represent you. You should find someone who has specific expertise with claims for your type of disability, and who has a proven track record of success. In other respects, you should treat your attorney or claims agent as you would treat a VSO Rep.

Veterans Service Organization Representative (VSO Rep)

It is always an advantage, regardless of the nature of the disorder underlying a claim for benefits, to have an accredited veteran service organization representative (VSO Rep) to assist you in the prosecution of a claim for VA disability compensation. These individuals may be called a veterans service representative (VSR) or a veteran service officer (VSO). In any case, the VA accredits them as a VSO Rep. Remember that you are one of about 600 plus veterans that person is dealing with.

You should only have an accredited VSO Rep working on your case, and you can search the database of the VA Office of the General Counsel (OGC) to determine if a VSO Rep is currently accredited or not at http://www.va.gov/ogc/apps/accreditation/index.asp . Make sure they are, there are some scammers out there.

You may also use that link to find a VSO Rep. If you want to work with a particular Veterans Service Organization, or with your State Veterans Affairs office, go directly to their website to locate a VSO Rep who works for them. In some states, there are county VSO Reps.

All accredited VSO Reps are familiar with veteran benefits law and procedures, and they can provide more effective representation than trying to handle the claim yourself. Some are volunteers, and others are paid for by tax dollars or private donations. They may not charge you for their services.

Keep in touch. You should talk to your representative at least once per month while your claim is pending. Whenever you get mail from the VA, call your representative to make sure that he or she received a copy (as required by VA regulations) and that you understand exactly what it means.

Ask questions. If you do not understand something about your claim, ask. Part of your VSO Rep's responsibility is to ensure that you understand the claims process.

Exercise your judgment. Your VSO Rep is charged with acting in your best interests. However, you are the ultimate decision maker with respect to your claim. Your VSO Rep will tell you if he or she disagrees with what you want to do and why. He or she can make recommendations but must do as you instruct. The law permits VSO Reps to resign if there are fundamental disagreements.

Insist that the VSO Rep:

- discuss your case with you;
- be familiar with your VA claims file and all of the evidence;
- be able and willing to discuss the specific VA regulations related to your case and what evidence is needed to prevail;
- discuss your case and what to anticipate with respect to personal hearings;

- Submit a written statement to the VA before a personal hearing. He or she should let you read the statement before it is submitted.
- Help you with your statement to make sure it helps the claim and not hurt it.
- Understand the laws and regulations 38 USC 1117 &1118 and 38 CFR 3.317.

Although it can be a difficult task, shop around for the best advocate. Talk to the prospective representative; ask if there are any limits on his or her representation. Get a feel for the person who will be working for you before you sign a power of attorney appointing him or her as your representative.

TO	REPRESENTATIVE	DATE
		10/18/2017

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN	FILE NO.
Strom, Desert 1991	

All evidence in connection with this appeal has been considered. Please complete and return the statement below on or before the date indicated. If we do not receive either the statement or a request for extension by that date, it will be necessary for us to certify the appeal to the Board of Veterans' Appeals on the present record.

REPLY REQUESTED BY *(Date)*	NAME AND MAIL ROUTING SYMBOL OF ORGANIZATIONAL ELEMENT MAKING REQUEST
10/26/2017	

TO BE COMPLETED BY ACCREDITED REPRESENTATIVE

NOTE: Section 7105(a) and (b)(2), Title 38, United States Code, give the claimant the right to be represented and give the accredited representative the right to file claims for the claimant. The presentation of an argument by the accredited representative is voluntary and not necessary for completion of the appeal. The opportunity or argument is given the accredited representative in order to accord the claimant the right of full representation at his stage of the appellate process. Failure to file this form may delay the appellate process.

I HEREBY CERTIFY that a statement of the case was furnished; that appellate review is desired on the evidence now of record; and that the issues for consideration by the Board of Veterans' Appeals are clearly defined.

☐ I REST THE APPEAL ON THE ANSWER TO THE STATEMENT OF THE CASE AND THE HEARING ON APPEAL *(If conducted)*, AND I HAVE NO FURTHER ARGUMENT.

☒ I WISH TO MAKE THE FOLLOWING ARGUMENT TO SUPPLEMENT THE ANSWER TO THE STATEMENT OF THE CASE AND OTHER ARGUMENT OF RECORD:

Issue #1: Entitlement rating for a headache disorder granted under 38 C.F.R. § 4.71a, DC 8100 Migraine. on a direct and or preceptive basis.

The appellant service in direct combat as per his records during Operation Desert Storm in in 1991. The appellant statement did claim he was EVACed off the battle field to the 410th hospital.

The appellant's exit exam for is MED does show headaches. The VAMC records show the appellant has been continuously treated for migraines since is discharge. That he has been in the VA's ER for treatment of his migraines 6 times per year and the doctors notes was a part of the records show the appellant needs to lay down 3 to 4 times per week due to the headaches.

(ATTACH ADDITIONAL SHEETS, IF NECESSARY)

SIGNATURE AND TITLE OF REPRESENTATIVE	DATE
Agent of Record 5MW	

VA FORM JUL 2000(RS) **646**

We ask the Board to acknowledge that the regulation does not define "prostrating" or "completely prostrating." That the meaning of prostrating is found to mean to stop and rest to recover.

We ask that the Board look sympathetically or liberally by generously construing the evidence at the evidence that the AOJ did not address in the SSOC of 06/20/1995 as listed on the Form 9, and the DRO hearing transcript of 12/11/1994 and to apply the 38 CFR § 4.7. That the Board also apply 38 CFR § 3.102 Reasonable doubt.

We ask the Board to acknowledge that the phrase "productive of severe economic adaptability" in DC 8100 is construed as either "producing" or "capable of producing" economic in adaptability.

We ask the Board to acknowledge and apply the Court rulings in Meyer v. Brown, 9 Vet.App. 425, 233 (1996),

We ask the Board to acknowledge that the AOJ did not use the Claimants VA form 21-4138 dated 7/12/1992 and 9/13/1993 where he did state that he needed to lay down to until the headaches pass, i.e. prostrating headaches. Also that the AOJ did not address this statement in the initial decision or in the SSOC.

A rating decision is based upon all evident of the records. Francisco v. Brown, (1994). The court have held that favorable evidence to the claimant cannot rejected without discussing that evidence. Daves v. Nicholson, 21 Vet.App. 46, 51 (2007) (citing Meyer v. Brown, 9 Vet. App. 425, 233 (1996)).

We ask the Board to acknowledge that the AOJ did not address the letter in support attached to the NOD's, and that was later also presented to the DRO hearing officer as shown in record. This letter from the appellant's former employer and it depicts just how completely prostrating the headaches are by losing 3 hours per day per per week per month. This was covered in the DRO hearing.

The AOJ Migraines are a presumptive under 38 CFR 3.307, 3.309 as the migraine are a neurological condition and have a one year time frame to be 10%. The evidence of the records show the Appellant surpassed that and is at the 50 percent.

Thus we are the Board to grant the appellant his rating of 50% for a headache disorder under 38 C.F.R. § 4.71a, DC 8100 Migraine

Where to find the forms for your claim

To file a *claim for disability compensation*, use Veterans Benefits Administration (VBA) form 21-526EZ.

You may download this form at: http://www.vba.va.gov/pubs/forms/VBA-21-526EZ-ARE.pdf .

To make a *statement in support of claim*, or to get a statement from your friend, comrade, co-worker, or family member, VA Form 21-4138: http://www.va.gov/vaforms/form_detail.asp?FormNo=21-4138 .

To download or print *Disability Benefits Questionnaires* (DBQs) for your private doctor, go to http://www.benefits.va.gov/COMPENSATION/dbq_disabilityexams.asp . **Only doctors may fill out a DBQ. Please use form 21-4138 for all other statements in support of your claim.**

There are no DBQs for the following medical examinations: Initial Examination for Post-Traumatic Stress Disorder, Hearing Loss and Tinnitus, Residuals of Traumatic Brain Injury**,** Cold Injury Residuals, Prisoner of War Examination Protocol, **Gulf War Medical Examination**.

To file a Notice of Disagreement you must use this form.

Notice of Disagreement (Fillable) http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf

You can request a copy of your *service medical records* from the National Personnel Record Center (NPRC) in St. Louis, MO, using a Standard Form 180, Request Pertaining to Military Records. This form is available from your representative or any VA office. You can also apply for a copy of your service records online http://www.archives.gov/veterans/military-service-records/ .

The NPRC Fire of July 1973 destroyed many Army and Air Force records of personnel discharged between 1912 and 1964. If you were discharged after Jan 1, 1964, or if you served in the Navy or Marines, your records were not burned, and you should be able to obtain a copy. Source: http://www.archives.gov/st-louis/military-personnel/fire-1973.html.