

3.8.2 Veterans Should Reapply If Previously Denied Compensation for a Disease Listed in Table 3-1

It took over two decades after the U.S. military halted its spraying of Agent Orange in Vietnam because of concerns about its dangers to the health of its troops for the VA to recognize that Agent Orange is associated with seriously disabling diseases. As Table 3-2 below shows, the VA did not begin to recognize this association until the 1990s. Column 2 of the table lists for each disease the VA now recognizes as related to Agent Orange exposure the date that the VA published amendments to its regulations recognizing the disease for the first time.

Table 3-2

Disease	Publication Date	Effective Date	38 CFR §
Chloracne	05-19-93	02-06-91	3.309(e)
Soft-tissue sarcoma (STS)	10-15-91	09-25-85	3.311a
	05-19-93	02-06-91	3.307 & 3.309(e)
Non-Hodgkin's lymphoma	10-26-90	08-05-64	3. 313
	05-19-93	02-06-91	3.307 & 3.309(e)
Porphyria Cutanea Tarda	04-03-94	04-03-94	3.307 & 3.309(e)
Hodgkin's disease	04-03-94	04-03-94	3.307 & 3.309(e)
Cancer of the lung	06-09-94	06-09-94	3.307 & 3.309(e)
Cancer of the larynx	06-09-94	06-09-94	3.307 & 3.309(e)
Cancer of the bronchus	06-09-94	06-09-94	3.307 & 3.309(e)
Cancer of the trachea	06-09-94	06-09-94	3.307 & 3.309(e)
Multiple Myeloma	06-09-94	06-09-94	3.307 & 3.309(e)
Prostate cancer 11	-07-96	11-07-96	3.307 & 3.309(e)
Acute and subacute Peripheral Neuropathy	11-07-96	11-07-96	3.307 & 3.309(e)
Spina Bifida in children of Vietnam veterans	09-30-97	10-01-97	3.814
Type II Diabetes	05-08-01	07-09-01	3.307 & 3.309(e)

Prior to these changes, the VA's denial that a relationship exists between Agent Orange and serious disabling diseases led the VA to deny tens of thousands of disability and death claims filed by Vietnam veterans and their survivors, many of which asserted that Agent Orange caused the disease or death. A Court Order issued in a class action lawsuit litigated by attorneys from the NVLSP required the VA to automatically identify many of these previously denied claimants, reevaluate their claims under the amended Agent Orange regulations, and, if they qualified under the new regulations, grant them prospective and retroactive disability compensation or DIC benefits.⁵⁷¹ Unfortunately, the VA violated this Court Order by failing to identify many claimants previously denied benefits for diseases the VA later recognized as related to Agent Orange.⁵⁷²

Any Vietnam veteran who was previously denied disability benefits by the VA for a disease listed in Tables 3-1 and 3-2 should file a new application for the same benefits under the new regulations.⁵⁷³ The same advice applies to surviving family members of Vietnam veterans who died of a disease listed in Tables 3-1 and 3-2 and who were previously denied DIC benefits by the VA. Those who reapply and qualify for benefits under the rules discussed in this chapter will not only receive benefits in the future, but,

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as discussed in Section 8.6 of this Manual, many of them will also receive benefits retroactive to the date the VA received the claim it previously denied.⁵⁷⁴

Footnotes

571. See Appendix 8-A at the end of Chapter 8 of this Manual. A description of this class action lawsuit appears in Section 8.6.1 of this Manual.

572. See *Nehmer v. U.S. Veterans Administration*, 32 F. Supp. 2d 1175 (N.D. Cal. 1999).

573. Veterans who applied before and were denied but have no current disabling residuals from the disease, should still re-apply as they may still be eligible for retroactive benefits.

574. Many veterans and surviving family members are entitled to retroactive benefits due to a class action lawsuit brought by NVLSP, *Nehmer v. U.S. Veterans' Administration*. In *Nehmer* the Court invalidated the VA's denials of all claims based on diseases related to Agent Orange exposure, if such denials were made on or after September 25, 1985. See *Nehmer v. U.S. Veterans' Administration*, 712 F. Supp 1404 (N.D. Cal. 1989). Pursuant to the Court's Order, all claims based on Agent Orange-related diseases which it denied on or after September 25, 1985 must be readjudicated. *Nehmer v. U.S. Dep't of Veterans Affairs*, No. CV-86-6160 at ¶¶ 3 and 5 (N.D. Cal. May 14, 1991) (Final Stipulation and Order). For further information concerning readjudication and retroactive effective dates under *Nehmer*, review Section 8.6 of this Manual, and write to NVLSP's Agent Orange Resource Center, 2001 S Street, N.W., Suite 610, Washington, D.C. 20009. Also available from NVLSP is a 45-page Self-Help Guide on Agent Orange, published both in English and Spanish.